

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 243 OF 2018

Mangesh @ Bablu Ankush Gaikwad
Age 28 yrs. Occ. Nil,
r/o Panchshil Nagar, Bhusawal
Dist. Jalgaon
at present r/o Kasara Dumala
Tq. Sangamner, Dist. Ahmednagar ... Appellant

Versus

The State of Maharashtra ... Respondent

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Shri Rajendra K. Temkar, Advocate for the appellant
Shri S. P. Sonpawale, APP for respondent - State

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 03rd JULY, 2021

PRONOUNCED ON : 30th JULY, 2021

JUDGMENT:-

. This appeal is arising out of the judgment and order dated 21.02.2018, passed by the Additional Sessions Judge, Sangamner, in Sessions Case No.5 of 2017. By the impugned judgment and order, the appellant has been convicted for the offence punishable under Section 307 of the Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for ten (10)

years and pay fine of Rs.10,000/- (Rupees Ten Thousand). In default of payment of fine, he has been directed to undergo rigorous imprisonment for six (06) months.

2. After having heard the learned Advocate for the appellant for a while, he came around to accept the judgment of conviction. The learned Advocate, however, urged for reduction of sentence of imprisonment of ten (10) years to the period already undergone. In support of his submissions, he took me through the evidence of the victim - Pradeep (PW1) and the Medical Officer Dr. Rajendra (PW5).

3. The learned APP would, on the other hand, support the impugned order on quantum of sentence as well.

4. It is in the evidence of the victim - Pradeep (PW1) that the incidence took place on 02.10.2016 at 8.30 p.m. The appellant is his cousin (son of maternal aunt). On the previous day, there was quarrel between him and the appellant. At about 8.30 p.m. on 02.10.2016, the appellant came to him and questioned as to why did he not give him money the previous day. The appellant threatened to kill him. The appellant then assaulted him on the left ribs with a

knife. On hearing the shouts, the wife of PW1 and brother came there. The appellant fled.

5. The evidence of Pradeep (PW1) indicate that he was indoor patient for fifteen days. He claimed to have been at home for 2–3 months next after the discharge from the hospital. The evidence of the Medical Officer Dr. Rajendra (PW5) is however to the effect that the injured was admitted to Tambe Hospital by 9.15 p.m. on 02.10.2016. He was indoor patient from 02.10.2016 to 10.10.2016. The same indicates that Pradeep (PW1) was indoor patient for not more than eight days. The nature of injury suffered by Pradeep (PW1) was as under:-

“Stab injury over post aspect of left axilla directing towards the chest is around 5 CM X 4 CM X 15 CM.

X-ray chest shows – hemothorax left side. ICD put of left side with all aseptic precautions.

6. In the case of ***Ravinder Singh v. State of Haryana (2015) 11 SCC 588***, it was held as under:

“11. The question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases. The law courts have been consistent in the approach that a

reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that a sentence disproportionately severe should not be passed that does not clothe the court with an option to award the sentence manifestly inadequate. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.”

7. The appellant and PW1 (Pradeep), are cousins. At the time of offence was committed, the appellant was 27 years of age. He was serving as a Cleaner of a truck. On the preceding day of the incidence, there had been quarrel between the two. As a result of the injury, PW1 (Pradeep) had to be in hospital for not more than eight days. The Medical Officer (PW5) has testified that the injury heals within three weeks.

All these facts dictate my conscious to observe that sentence of imprisonment for a period of ten (10) years is disproportionately severe.

8. The appellant has been behind the bars since 03.10.2016. As such, he has been in jail for about a period of four years and ten months. In my view, his having been behind the bars for the said period is the sentence adequate or proportionate to the crime committed.

9. In view of the above, I am inclined to allow the appeal in terms of the following order:

ORDER

The order sentencing the appellant to suffer rigorous imprisonment for a period of ten (10) years is hereby replaced with the sentence of rigorous imprisonment for four years and ten months. Rest of the terms of the impugned order to stand unaltered.

[R. G. AVACHAT, J.]

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