

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPEAL NO. 3 OF 2009**  
**WITH**  
**CRIMINAL APPLICATION [APPA] NO.73 OF 2021**

Abdul Wasim s/o Abdul Majid,  
Aged about 27 years,  
Occupation-Business,  
R/o. Jamil Colony, Amravati,  
Tq. & District-Amravati. .. Appellant

.. Versus ..

State of Maharashtra,  
Through Police Station Officer,  
Nagpurigate Police Station,  
Amravati. .. Respondent

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Shri Anil S. Mardikar, Senior Advocate a/b Shri N.R. Tekade and  
Ms. A.M. Kshirsagar, Advocates for the appellant,  
Ms. Shamsi Haider, APP for the respondent-State.

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**CORAM : N.B. SURYAWANSHI, J.**  
**DATED : 17.02.2021.**

**JUDGMENT**

1. By this appeal, appellant-original accused challenges  
impugned judgment passed by the learned Additional Sessions  
Judge, Amravati in Sessions Case No.163/2007 thereby

convicting the appellant under Section 307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/- with default clause.

2. In short, the prosecution case is that the informant PW-1 Sayyed Zakir Ali is the elder brother of injured PW-2 Sayyed Sabir Ali. PW-1 and 2 and accused were resident of Amravati. The accused had borrowed some amount from PW-2. In the year 2007, PW-2 was constructing his house at Jameel Colony, Amravati. PW-4 Shaikh Lal was watchman on the construction site. PW-2 used to visit the construction site daily in the evening. On 10.4.2007 PW-2 visited the construction site. PW-3 Saleem Khan was present there. At that time the accused came there. After supervising the construction work, PW-2 was to return to home. He was having motorcycle. The accused was resident of Jameel Colony, Amravati and he asked PW-2 to give lift to him and drop him in the next square. Accordingly, PW-2 gave lift to the accused. While proceeding on the motorcycle, PW-2 asked the accused to repay the borrowed amount. The accused felt offended and started abusing PW-2. PW-2, therefore, stopped the motorcycle and accused got down from

it. Though PW-2 tried to pacify, the accused continued to abuse him. The accused then took out a razor from his pocket and attacked PW-2 with it. PW-2 received injuries on his neck, chin, left side of chest and right side of abdomen. PW-3 Saleem Khan came there and accused ran away. PW-2, thereafter, went by auto-rickshaw to his brother's (PW-1) shop. He was thereafter taken to Police Station. He was thereafter referred to General Hospital, Amravati. On the basis of report lodged by PW-1, Crime No.47/2007 under Section 307 of the Indian Penal Code was registered against the accused. After completion of investigation, the chargesheet was filed. The accused was charged under Section 307 of the Indian Penal Code. He denied the charge and his defence was of total denial. The learned Trial Judge convicted the appellant under Section 307 of the Indian Penal Code. Hence, the present appeal.

3. On going through the evidence on record, it is seen that injured PW-2 has deposed in his evidence that he was assaulted with razor on neck, chin, left side of chest and right side of abdomen by the appellant, as the appellant was enraged because of demand of borrowed money. The FIR is promptly

lodged as is clear from the evidence of PW-1.

4. As per the evidence of PW-6 Dr. Kanchan Dhole, Medical Officer, following injuries were found on the person of PW-2.

Injury No.1 : Incised wound on front side of neck, 7 cm. X 3 cm. X 1., caused by sharp weapon. Fresh injury.

Injury No.2 : Incised wound on left side of abdomen, 10 cm x 1 cm, caused by sharp weapon. It was a fresh injury.

Injury No.3 : Incised wound on right side of chest, 10 cm x 10 cm, caused by sharp weapon.

Injury No.4 : Contused lacerated wound and incised wound on left angle of mandible, 5 cm. X 3 cm. X 2 cm., caused by sharp weapon. Fresh injury.

5. The Medical Officer has admitted in his cross-examination that it is true that every injury caused on the vital part of the body is not necessarily to be serious one. He stated that it is not necessary that every injury caused on the vital part is sufficient to cause death. He stated that whether the injuries are sufficient to cause death, depends upon the blood loss.

6. As per the evidence of the Medical Officer and the medical certificate, it is clear that except injury no.1, the other injuries are on non-vital part of the body of PW-2.

7. The learned Trial Court has disbelieved the recovery of razor from the house of appellant on the ground that the incident had taken place on 10.4.2007, whereas the alleged recovery was effected in the month of June-2007 and since razor was belatedly forwarded for the chemical examination, the learned Trial Court, therefore, held that the prosecution has not proved the recovery of razor beyond reasonable doubt. There is no justifiable reason to differ with the said finding.

8. Considering the nature of injuries suffered by PW-2, in my opinion, the offence would fall within Section 324 of the Indian Penal Code and not under Section 307 of the Indian Penal Code. The learned Trial Court has failed to take into consideration the nature of injuries suffered by PW-2 in the proper perspective and has wrongly convicted the appellant for the offence punishable under Section 307 of the Indian Penal Code. The appellant's conviction under Section 307 of the Indian Penal Code is not sustainable and the appellant is liable to be convicted for offence punishable under Section 324 of the Indian Penal Code.

9. At the time of final hearing of the present appeal, the appellant and original complainant jointly filed Criminal Application (APPA) No.73/2021. It is stated in the application that they both are resident of nearby places and they have developed cordial relations with each other. The incident had taken place 13 years back. During the pendency of appeal, their relations have improved and they have decided to settle the matter in order to have peace and harmony in their relations. It is averred that by invoking powers under Section 482 of the Code of Criminal Procedure, this Court can quash and set aside the conviction of the appellant in order to secure ends of justice. The prayer therefore is to allow the application and to quash and set aside the conviction of the appellant under Section 307 of the Indian Penal Code. It is further prayed that the settlement may be taken as a mitigating circumstance to modify conviction and sentence.

10. In the light of Full Bench decision of this Court in **Maya Sanjay Khandare and another .vs. State of Maharashtra, 2021 (1) Mh.L.J. 613**, to which I was a party, it is not permissible to quash conviction on the basis of settlement, the

relief of quashing of conviction, therefore, cannot be granted.

However, in view of the ratio of the Hon'ble Apex Court in **Ram Pujan and others .vs. State of U.P., AIR 1973 SC 2418** and **Surendra Nath Mohanty and another .vs. State of Orissa, (1999) 5 SCC 238**, the effect of compromise after conviction for non-compoundable offence has to be taken into consideration only for the purpose of reducing the sentence.

11. Since the appellant is held liable to be convicted under Section 324 of the Indian Penal Code and the same is a non-compoundable offence, the effect of the settlement needs to be taken into consideration at the time of awarding sentence to the appellant. The appellant has no criminal antecedents. He has undergone one month imprisonment. In view of these facts and considering the settlement, according to me, following order would meet the ends of justice.

#### O R D E R

i) The impugned conviction of the appellant under Section 307 of the Indian Penal Code passed by the learned Sessions Judge, Amravati in Sessions Case No.163/2007 is hereby set aside.

- ii) The appellant is convicted for the offence punishable under Section 324 of the Indian Penal Code and is sentenced for the period already undergone.
- iii) The bail bonds of the appellant stand cancelled.
- iv) The appellant and original complainant are directed to deposit Rs.10,000/- each with the High Court Legal Services Sub-Committee, Nagpur within a period of eight weeks from today.
- v) Criminal Appeal No.3/2009 as well as Criminal Application (APPA) No.73/2021 stand disposed of accordingly.

**(N.B. Suryawanshi, J.)**