

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 103 OF 2009

Mohit s/o Subhash Sarap,
aged about 21 years, Occ. Student,
R/o Jalgaon Jamod, Tq. Jalgaon Jamod,
District Buldhana.

...APPELLANT

Versus

State of Maharashtra,
through PSO, Police Station Jalgaon Jamod.

...RESPONDENT

Shri A.V. Bhide, Advocate for the appellant.
Shri M.J. Khan, A.P.P. for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JANUARY 20, 2021.

ORAL JUDGMENT :

Heard.

2. This appeal is directed against the judgment and order dated 03/02/2009 passed by the Ad-hoc Addl. Sessions Judge, Khamgaon in Sessions Trial No. 65/2005, whereby the appellant/accused is convicted for the offence punishable under Section 324 of the Indian Penal Code, 1860 (for short "IPC"),

and is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- (rupees five thousand), in default, to suffer further rigorous imprisonment for three months.

3. The case of the prosecution, in nutshell, is as under :

i. On 16/05/2005, the informant Tejrao Bhaurao Patil (father of the deceased Pawan) (PW1) lodged a written complaint with the Police Station, Jalgaon, against the appellant/accused along with his friends for voluntarily causing grievous hurt to his son Pawan, stating therein that on 10/05/2005, at around 5.00 to 6.00 pm, when his son Pawan went to the college ground for playing cricket, the appellant/accused along with his friends, including the co-accused Amol Deshmukh, came there and assaulted his son Pawan by means of fists and kick blows, as a result of which he sustained injuries on his head and other parts of the body. Thereafter, he was admitted to Dr. Jadhav's hospital, from where he was referred to Dr. Mantri, Khamgaon. That on

20/05/2005, he succumbed to the injuries.

ii. On the basis of the aforesaid report, the First Information Report No. 58/2005 came to be registered against the appellant/accused and others for the offence punishable under Sections 326 and 324 read with Section 34 of the IPC.

iii. Police started investigation. During investigation, offence punishable under Section 302 of the IPC came to be added. After completion of investigation, the chargesheet came to be filed against co-accused Amol Deshmukh (acquitted) and the present appellant before the Court of Magistrate, who in turn, committed the case to the Sessions Court. The Sessions Court framed charge against the appellant/accused and the other co-accused Amol for the offence punishable under Section 302 read with Section 34 of the IPC. The charge was read over and explained to them in their vernacular, to which they pleaded not guilty and claimed trial. Their pleas were recorded. Their defence were of total denial.

iv. In order to prove guilt against the accused persons, the prosecution examined in all ten witnesses, and also brought on record relevant documents. The Sessions Court recorded the statements of the accused persons under Section 313 of the Code of Criminal Procedure, 1973. After hearing both the sides, the Sessions Court found that the prosecution has failed to prove the charge of murder against the accused persons, however, it could prove charge of voluntarily causing hurt by the appellant to the deceased Pawan, which is punishable under Section 324 of the IPC. Accordingly, the Sessions Court acquitted the co-accused Amol and convicted the appellant/accused for the offence punishable under Section 324 of the IPC. This judgment is impugned in this appeal.

4. I have heard Shri Bhide, learned counsel for the appellant/accused, and Shri Khan, learned APP for the State.

5. At the outset, though, the prosecution has examined ten witnesses, but none of them deposed that they have seen the appellant/accused voluntarily causing hurt to the deceased

Pawan. None of the alleged eye-witnesses i.e. Tushar (PW3) and Nikhil (PW9), supported the case of the prosecution. The medical witness Ashwinikumar (PW5) deposed about the antemortem injuries found on the body of the deceased Pawan, and that he opined that the probable cause of death was “head injury”.

6. The prosecution also could not bring on record chain of circumstances, leading to fix the liability against the appellant/accused. Shri Khan, learned A.P.P., submitted that the eye witness Tushar (PW3), despite being declared as hostile, deposed that he saw the incident of pushing between the appellant/accused and the deceased. This single statement with regard to incident of pushing, in view of this Court, is not sufficient to convict the appellant/accused for any offence, as it is not clear as to who was pushing to whom.

7. Learned A.P.P. also harped on the point of recovery of two finger rings at the instance of the appellant/accused. This also is not of any assistance to

the case of the prosecution, as there is nothing on record to show that any of the injuries, sustained by the deceased Pawan, was due to finger rings. A perusal of the impugned judgment would reflect that the Sessions Court convicted the appellant/accused solely on the basis of medical report, which is unsustainable in law.

8. In this view of the matter, this Court has no hesitation in reaching to the conclusion that the prosecution has miserably failed to prove the guilt against the appellant/accused. Hence, I proceed to pass the following order :

ORDER.

- i. The Criminal Appeal is allowed.
- ii. The judgment and order dated 03/02/2009 passed by the Ad-hoc Addl. Sessions Judge, Khamgaon in Sessions Trial No. 65/2005, is quashed and set aside. The appellant is acquitted of the offence punishable under Section 324 of the

IPC.

iii. The bail bond of the appellant stands cancelled and sureties stand discharged.

JUDGE

Sumit