

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

CRIMINAL APPEAL NO. 129 OF 2009

1. Shamrao s/o Ramchandra Vaidya,
aged about 40 years.
2. Rahul s/o Bhimrao Vaidya,
aged about 22 years.

Both are R/o Khadki, Tah. Ashti,
District Wardha.

...APPELLANTS

Versus

State of Maharashtra,
through PSO, Ashti (City),
District Wardha.

...RESPONDENT

Shri R.M. Daga, Advocate for the appellants.
Shri H.D. Dubey, A.P.P. for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JANUARY 19, 2021.

ORAL JUDGMENT :

Heard.

2. This appeal is directed against the judgment and order dated 18/02/2009 passed by the Ad-hoc Addl. Sessions Judge – 2, Wardha in Sessions Trial No. 90/2007, whereby the

appellants/accused are convicted for the offence punishable under Sections 452 and 307 read with Section 34 of the Indian Penal Code, 1860 (for short “IPC”).

For the offence punishable under Section 452 of the IPC, the appellants/accused are sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- (rupees one thousand) each, in default, to suffer rigorous imprisonment for one month.

For the offence punishable under Section 307 of the IPC, the appellants/accused are sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.2,000/- (rupees two thousand) each, in default, to suffer rigorous imprisonment for two months.

Both the sentences were directed to run concurrently.

The substantive sentences imposed upon the appellants/accused, have been suspended by this Court vide order dated 26/02/2009.

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

i. On 21/12/2006, the informant Awadhut Somaji Pingale (PW1) lodged a report with the Police Station, Ashti, District Wardha, stating therein that on 21/12/2006, at about 2.00 pm, the appellants/accused entered the house of Pravin Khairkar (PW8), and assaulted him by means of iron rod and wooden stool on his head, on the suspicion that the liquor of accused No.1 Shamrao was seized by the police on the basis of information supplied by him.

ii. On the basis of aforesaid report, the First Information Report No. 140/2006 came to be registered against the appellants/accused for the offence punishable under Sections 326 and 452 read with Section 34 of the Indian Penal Code, 1860 (for short "IPC"). Police started investigation. Spot panchnama was prepared. The statements of the witnesses were recorded. MLC report of injured Pravin was obtained.

iii. After completing other formalities of the investigation, police filed chargesheet before the Court of Magistrate, who in turn, committed the case to the Sessions Court. The Sessions Court framed charge against the appellants/accused for the offence punishable under Sections 452 and 307 read with Section 34 of the IPC. The charge was read over and explained to the appellants/accused, to which they pleaded not guilty and claimed trial.

iv. To substantiate charge against the appellants/accused, the prosecution examined in all eleven witnesses, and also brought on record relevant documents. The Sessions Court recorded the statements of the appellants/accused under Section 313 of the Code of Criminal Procedure, 1973. Their defence were of total denial, however, no evidence was led in defence.

v. The Sessions Court found the appellants/accused guilty of the charge framed against them, and accordingly, passed the judgment of conviction. Being aggrieved by the

impugned judgment and order, the appellants/accused have preferred this appeal.

4. I have heard Shri Daga, learned counsel for the appellants/accused, and Shri Dubey, learned A.P.P. for the respondent.

5. Shri Daga, learned counsel for the appellants/accused, reads out the testimonies of the material witnesses i.e. the informant Awadhut (PW1), the wife of the informant Geetabai (PW6) and the injured Pravin (PW8), and also pointed out the medical evidence and submitted that considering the evidence on record, the offence punishable under Section 307 of the IPC was not made out against the appellants/accused and at the most, a minor offence punishable under Section 324 of the IPC can be proved against the appellants/accused.

He further submitted that the appellants/accused are agriculturist. That the matter has been settled between the

parties, they being of the same village, and now their relations are friendly in nature. He also submitted that both the appellants/accused have undergone around four months imprisonment till date.

6. As against this, Shri Dubey, learned A.PP, while supporting the judgment of conviction submitted that there are eye-witnesses to the incident i.e. the informant Awadhut (PW1) and the wife of the informant Geetabai (PW6). That the testimony of the injured witness Pravin (PW8) is consistent and corroborative with the testimonies of the eye-witnesses. He further submitted that iron rod and wooden stool were used as weapons for inflicting injuries on the head of the injured Pravin. That the appellants/accused were keeping grudge against the injured Pravin, as he had informed the police about the illegal liquor business of the appellants/accused. Lastly, he submitted that the prosecution could prove the charge against the appellants/accused beyond reasonable doubt and thus prayed for dismissal of the appeal.

7. I have considered the submissions put forth on either side. I have also perused the record with the assistance of learned both the counsel.

8. At the outset, considering the testimony of the injured witness Pravin (PW8), coupled with the testimonies of the eye-witnesses i.e. the informant Awadhut (PW1) and the wife of the informant Geetabai (PW6), this Court is of the firm view that the prosecution could prove the incident of assault, thereby causing head injury to the injured Pravin at the hands of the appellants/accused.

9. Now, the question for consideration of this Court is whether the appellants/accused have attempted to commit murder of the injured Pravin ? On this point, Shri Daga, learned counsel, has rightly pointed out that though the injured witness Pravin deposed that the appellants/accused had assaulted him by means of iron rod and wooden stool on his head, as a result of which he sustained bleeding injuries, however, the medical report (Exh.60) shows only a single injury, which is as under :

“CLW of dimension 8 X 1 cm present over scalp on vertex extending from parietal to frontal region.”

The record is silent with regard to the nature of injury i.e. whether it was grievous or simple. However, the fact remains that the aforesaid injury does not fit in the definition of grievous injury, as contemplated under Section 320 of the IPC.

10. Furthermore, there is major discrepancy with regard to use of weapon by the appellants/accused. The eye-witnesses Awadhut (PW1) and Geetabai (PW6) deposed about use of wooden stool, while the injured witness Pravin (PW8) deposed about use of iron rod for sustaining the injuries. Shri Dubey, learned A.P.P., could not point out from the record as to whether the prosecution seized the iron rod or not.

11. Furthermore, the medical witness Dr. Raksha (PW11), in her cross-examination, admits that the weapon of the offence was not sent for medical opinion.

12. On careful examination of the testimonies of the prosecution witnesses, it appears that at the most, the prosecution could prove that the appellants/accused voluntarily caused hurt to the injured Pravin with wooden stool.

13. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the conviction of the appellants/accused under Section 307 of the IPC cannot sustain, and they are liable to be convicted for the offence punishable under Section 324 of the IPC. Hence, the following order :

ORDER.

- i. The Criminal Appeal is allowed in part.
- ii. The conviction and sentence of the appellants/accused under Section 307 of the IPC is set aside, however, they are held guilty of the offence punishable under Section 324 of the IPC and they are sentenced to the period already undergone.

iii. The conviction of the appellants/accused under Section 452 of the IPC is upheld, however, sentence is reduced to the period already undergone.

iv. The appellants/accused are stated to be on bail. Their bail bonds are cancelled and sureties are discharged.

JUDGE

Sumit