

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

CRIMINAL APPLICATION (APPA) NO.607 OF 2018

State of Maharashtra,
Through PSO Murtizapur,
Tq. Murtizapur, Dist. Akola

-- Applicant

vs.

Sk. Nisar Sk. Isa.

--Respondent

Mr. A.R. Chutke, A.P.P. for applicant.

Mr. J.S. Umale, Advocate for respondent.

**CORAM : PRASANNA B. VARALE &
N.B. SURYAWANSHI JJ.**

DATE : MARCH 30, 2021

P. C. :

The respondent is convicted by the learned Sessions Judge, Akola, for an offence punishable under Section 324 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 18 months and to pay a fine of Rs.10,000/-. The State has challenged the said conviction by filing the present appeal, thereby seeking his conviction under Section 307 of the Indian Penal Code and further has sought enhancement of the sentence.

2. The prosecution case, in nutshell, is that injured Akash and respondent were friends. On 23/08/2014, at about 11.00 p.m., the respondent came to the house of injured and knocked the door

of the injured house and called him out of the house. The injured, on the say of respondent, accompanied him to the bypass. After reaching the bypass, the respondent assaulted the injured on his back and left side of stomach by knife, due to which injured sustained bleeding injuries. The injured was thereafter rushed to the hospital. On the basis of his statement, Crime No.199/2014 was registered and after completing investigation, charge-sheet was filed. The respondent was charged along with one more accused under Section 307 read with 34 of the Indian Penal Code. After recording the evidence, the learned Trial Court acquitted the second accused, however, convicted the appellant under Section 324 of the Indian Penal Code. Being aggrieved by the conviction of the appellant under Section 324 and as a lessor sentence was imposed on the respondent, the prosecution has filed present appeal.

3. Heard the learned Additional Public Prosecutor for the State and the learned Advocate for the respondent.

4. The learned Additional Public Prosecutor submitted that there is sufficient evidence on record to warrant conviction of the respondent under Section 307 of the Indian Penal Code. He has taken us through the notes of evidence and submitted that in view of the medical evidence, the respondent is liable to be convicted under Section 307 of the Indian Penal Code. 1

According to him, the learned Trial Court was not justified in convicting the respondent for an offence punishable under Section 324 of the Indian Penal Code. He, therefore, submitted that the prosecution has made out a case for grant of leave to file appeal, hence, leave may be granted and appeal may be admitted.

5. *Per contra*, the learned Advocate for the respondent claimed that even the conviction of the respondent under Section 324 of the Indian Penal Code is not sustainable. The respondent has already challenged his conviction by filing Criminal Appeal No.300 of 2018 and he has good grounds to succeed in the said appeal. He therefore, submitted that there is no merit in the appeal filed by the State and the same deserves to be dismissed.

6. On going through the relevant evidence on record, we find that the respondent was the author of two stab injuries to the injured PW1. We have gone through the evidence of medical officer PW5 and PW6. According to PW5, both the injuries suffered by injured were muscle deep. One was on the back over left side and another was on inguinal region.

7. The learned Trial Court has recorded a finding that the prosecution has failed to prove that there was an intention on the part of the respondent to cause death of the PW1. The prosecution also failed to prove the motive on the part of the respondent. After considering the evidence of PW5, the learned Trial Court observed

that the injured suffered medical complications due to poor first medical treatment. It is further observed that from the fact that injured sustained two stab injuries of size 2 cm x 1 cm muscle deep on back and stomach, it appears that respondent had no requisite intention or knowledge to commit murder of the injured. By relying on the ratio in Dinkar Namdeo Sawant Vrs. State of Maharashtra & anr., 2014(4) Bom.C.R.(Cri.) 271, learned Trial Court came to the conclusion that the respondent is liable to be convicted under Section 324 of the Indian Penal Code and not under Section 307 of the Indian Penal Code.

8. According to us, the learned Trial Court has properly appreciated the evidence on record and has given cogent reasoning while convicting the respondent under Section 324 of the Indian Penal Code. The view taken by the learned Trial Court is a reasonable and probable view. We do not find any perversity in the judgment rendered by the learned Trial Court. According to us, this is not a fit case to grant leave to file appeal. Hence Criminal Application No.607 of 2018 is, therefore, dismissed.

The observations in this appeal are restricted to the present matter and they shall not come in the way of the appellant while arguing the Appeal No.300 of 2018 on merits.

[N.B. SURYAWANSHI, J.]

[PRASANNA B. VARALE, J]