

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

CRIMINAL APPEAL NO. 503 OF 2009

Abid Umed Fanan,
Aged about 35 years,
Resident of Arni, Taluq Arni,
District-Yavatmal.

..

Appellant
Accused

.. Versus ..

The State of Maharashtra,
through its Police Station Officer,
Police Station, Arni, Taluq Arni,
District-Yavatmal.

..

Respondent

.....

Shri Amol S. Mardikar, Advocate for the appellant,
Shri I.J. Damle, APP for the respondent-State.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 09.03.2021.

JUDGMENT

1. The appellant is convicted for the offence punishable under Section 307 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default of fine simple imprisonment for one month, by the learned Additional Sessions Judge, Darwaha in Sessions Trial No.132/2004.

2. In brief, the prosecution case is that the complainant Mohammad Hanif Abrubhai Fanan was having Kirana shop and one Star Electricals shop at village Arni, being run by his sons. The injured Mohammad Aalam (PW-1) was his son. On 11.10.2001 i.e. on the day of incident at about 12.00 pm, he sent his son Mohd. Aalam for lunch break. When he was proceeding to his house, an altercation took place between him and accused nos.1 and 2. Mohammad Alam then went to the Star Electricals shop. Accused Abid Fanan, armed with dagger, went to the said shop along with his father-accused no.2. At that time, injured Mohammad Alam came out of the shop and accused Abid assaulted him on his abdomen with the dagger and caused bleeding injuries to him. His blood was spread on the stairs. He was taken to the Rural Hospital, Arni. Accused no.1 was the husband of Mohammad Aalam's wife's sister. Their relations were strained since many days. Therefore, the accused attempted to commit murder of Mohd. Aalam. Report (Exh.75) was lodged by PW-3 at Arni Police Station. Accordingly, Crime No.125/2001 under section 307 r/w 34 of the Indian Penal Code was registered against the accused. After conducting the investigation, chargesheet came to be filed.

3. The accused were charged for the offence under Section 307 r/w 34 of the Indian Penal Code. They denied the charge, their defence was of denial and they also claimed right of private defence. After recording the evidence, the learned Trial Court was pleased to acquit original accused no.2-Umed Umardin Fanan, however, convicted the accused no.1-Abid Umed Fanan. Hence the present appeal.

4. The learned advocate for the appellant urged that the prosecution has failed to prove the offence beyond reasonable doubt. There are material discrepancies in the evidence of the prosecution witnesses and the seizure of dagger is doubtful. The defence of the appellant that he was being assaulted by PW-1 and at that time, he caught hold the hand of PW-1 and twisted it, PW-1 received injuries due to that in the scuffle was probable. He further stated that the learned trial Court has erred in convicting the appellant under Section 307 of the Indian Penal Code. In the alternate, he submitted that the offence under Section 307 of the Indian Penal Code is not made out by the prosecution and the appellant may held guilty for commission of lesser offence.

5. On the other hand, the learned APP supported the decision of the learned Trial Court, stating that the prosecution has proved its case beyond reasonable doubt and the learned Trial Court has, by giving cogent reasons, rightly convicted the appellant. No interference is, therefore, called for in the judgment of the learned Trial Court. According to him, the appeal is without merit and the same is liable to be dismissed.

6. Heard the learned Advocate for the appellant and the learned APP for the respondent-State at length. Perused the record.

7. In support of its case, the prosecution has examined nine witnesses. The material witnesses are PW-1 Mohd. Alam, the injured, PW-2 Rehana Bailim and PW-3 Haji Mohammad, the father of injured PW-1, who is the informant.

8. PW-1 Mohd. Aalam, in his evidence, has stated the manner in which the appellant assaulted him. According to him, the accused-appellant had a suspicion that he was talking

against him at the house of his in-laws. He described the sequence of events and how the appellant inflicted injuries by dagger. Five to six blows were given by the dagger on his abdomen and chest by the appellant-accused. Thereafter, he was taken to District Hospital, Yavatmal. He identified the dagger and the clothes worn by him at the time of incident. During his cross-examination, nothing damaging to the case of the prosecution could be brought on record.

9. PW-2 Rehana is a social worker. She is an eyewitness. She narrated the incident of accused-appellant assaulting injured PW-1. She stated that she went there and caught hold of accused Abid. Injured received bleeding injuries and fell down. She stated that accused Abid left wooden stick and dagger on the spot and ran away from there. She helped Mohd. Aalam to stand up and sent him in the government hospital at Arni.

In the cross-examination, she stuck to the version given by her in the in-chief. Nothing damaging to the prosecution case could be brought on record in her cross.

10. PW-3 Haji Mohammad is the father of injured in whose presence the assault had taken place. He has also narrated the incident of assault by the appellant on injured. His evidence could not be shattered during cross-examination.

11. PW-8 Dr. Sau. Vandana Gharade, the Medical Officer, has proved the injury certificate (Exh.94) of PW-1. There were total six injures, all stab wounds on the person of injured. She noticed following injuries on the person of injured.

- 1] Stab wound on the right side of chest below and lateral to right nipple of size 2 cm x 1 cm x 1 cm. Depth could not be ascertained.
- 2] Stab wound on left side of chest blow and lateral to left nipple of size 2 cm. X 1 cm. Depth could not be ascertained.
- 3] Stab wound 1½ cm. below injury no.2 of size 2 cm. X 1 cm. Depth could not be ascertained.
- 4] Stab wound above the umbilicus of size 2 cm. X 1 cm. Depth could not ascertained.
- 5] Stab wound on the back side right side lumber region of size 2 cm. X 1 cm. Depth could not be ascertained.
- 6] Stab wound in the right lumber region of abdomen of size 2 cm. X 3 cm. Depth could not be ascertained.

She also proved on record injury certificate of the appellant-accused (Exh.96), wherein she found following injuries :

- 1] Contusion on the left forearm 2 cm. x 1½ cm.
- 2] Lacerated wound over right leg 2½ cm. x ¼ cm. x ¼ cm.
- 3] Abrasion on left knee 1½ cm. x 1 cm.
- 4] Abrasion on right forearm 1½ cm. x ¼ cm.
- 5] Abrasion on the right index finger ¼ cm. x ¼ cm.

12. Evaluation of the evidence brought on record by the prosecution shows that the prosecution was successful in proving the assault by the appellant-accused on the injured. The FIR was promptly lodged. The evidence of the prosecution witnesses is consistent so far as the actual assault is concerned. Therefore, it can be safely held that the appellant-accused assaulted the injured on the day of incident.

13. The question would be what is the offence committed by the appellant-accused. The depth of the injuries suffered by the injured is not disclosed in the medical certificate. Though the injuries are on vital part i.e. three injuries on chest and three

injuries on the abdomen at lumber region. Taking into consideration the nature and size of the injuries, it cannot be said that the appellant had the intention to kill the injured. Had there been any intention to commit murder, the injuries would have been more serious and more fatal. Taking into consideration the fact that even the accused-appellant had suffered injuries, which were not explained by the prosecution, it is confirm that a scuffle having taken place cannot be ruled out. In view of the injuries described in the injury certificate, the conviction of the appellant-accused under Section 324 of the Indian Penal Code would be proper in the facts of the present case.

14. The learned Trial Court was not justified in convicting the appellant-accused for the offence punishable under Section 307 of the Indian Penal Code. While doing so, the learned Trial Court has failed to take into consideration the nature of injuries suffered by PW-1.

15. At this stage, the learned advocate for the appellant-accused has tendered criminal application across the bar, jointly

preferred by the original informant and the appellant-accused. It is averred in the application that the victim-informant and the appellant are close relatives of each other and are residing in the same village. They both are having good relations in the family since last 20 years. The incident had taken place in the year 2001 and since then, there has been no untoward incident between them. It is stated that both had amicably settled their dispute and have decided to settle the present matter. They therefore prayed for permission to compound the offence. The informant and appellant have verified the application and they are identified by their respective Advocates. The informant and appellant are present before the Court and they confirmed the settlement.

16. The registry to register the application.

17. Since this Court has come to the conclusion that the appellant-accused is liable to be convicted for offence punishable under section 324 of the Indian Penal Code, the said offence is not compoundable under Section 320 of the Code of Criminal Procedure, therefore, compounding is not permissible.

18. 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 needs to be taken into consideration at the time of sentencing of the appellant.

19. Since the appellant-accused 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 88 days of imprisonment up till now. In view of these facts and considering the settlement, according to me, following order would meet the ends of justice.

ORDER

- i) Criminal Appeal No.503/2009 is partly allowed.
- ii) The impugned judgment and order passed by the learned Additional Sessions Judge, Darwaha in Sessions Trial

No.132/2004 convicting the appellant under Section 307 of the Indian Penal Code, is hereby quashed and set aside.

iii) The appellant is convicted for the offence punishable under Section 324 of the Indian Penal Code and is sentenced for the period already undergone.

iv) The bail bond of the appellant stands cancelled.

v) The appellant and original informant are directed to deposit Rs.5,000/- each with the High Court Legal Services Sub-Committee, Nagpur within a period of four weeks from today.

vi) Criminal Application (APPA) No.188/2021 is disposed of accordingly.

(N.B. Suryawanshi, J.)