

2. By this appeal, the appellant (original complainant) has impugned the judgment and order dated 24th November, 2021 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 88 of 2018 only to the extent, that it acquits the respondent No.2 (original accused) of the offence punishable under Section 307 of the Indian Penal Code.

3. Learned Counsel for the appellant submits that the acquittal of the respondent No.2 under Section 307 of the Indian Penal Code was contrary to the evidence on record. Learned Counsel relied on the evidence of PW4 – Annasaheb Balu Waghmode to show that the respondent No.2 intended to cause his death by assaulting him with a sickle on his head. He submits that the respondent No.2 has been wrongly acquitted of the offence punishable under Section 307 of the Indian Penal Code ('IPC' for short). He submits that instead of convicting the respondent No.2 for the offence punishable under Section 307 of the IPC, the learned Judge has convicted the respondent No.2 for a lesser offence i.e. for the offence punishable under Section 326 of the IPC.

4. Perused the papers with the assistance of the parties, in

particular, the evidence of the PW4 - Annasaheb Waghmode and the evidence of PW11 - Dr. Pankaj Sukhlal Pawara, Medical Officer attached to the Civil Hospital, Solapur, as well as the Injury Certificate of the appellant (original complainant – injured). PW4 – Annasaheb Waghmode, aged 19 years, in his examination-in-chief has stated that on 10th October, 2017, at about 9.30 a.m., respondent No.2 gave him a blow of sickle on his head; that in order to save himself, he raised his left hand to skip the attack; and hence, he sustained an injury between the portion of his little finger and wrist of his left hand. He has stated that had he not raised his left hand, he would have been killed by the blow of sickle on his head. He has further stated that the respondent No.2 and co-accused – Ganesh also assaulted him with a sickle on his right thigh. The cross-examination of the said witness, in particular, para 4 is relevant. The same reads as under;

“4. it is not true that I had not stated in my report that accused tried to give blow of sickle on my head. I cannot assign any reason why said fact was not mentioned in my report. I also stated to police in my report that had I not raised my left hand, I would have been killed by blow of sickle on my head. I cannot assign any reason why said fact is not mentioned in my report.”

5. The evidence of PW11 – Dr. Pankaj Sukhlal Pawara shows that the injured was brought to the hospital and that, he had received blunt

trauma to his left hand, right leg and to his back. He has stated that there was a displaced fracture of the fifth metacarpal of left hand and that, the injury was grievous in nature.

6. A perusal of the Medical Certificate of PW4 - Annasaheb Waghmode shows that he had sustained three blunt traumas caused by a hard and blunt object on his left hand, right leg and his back.

7. The learned Judge, after appreciating the evidence on record, was pleased to acquit respondent No.2 of the offence punishable under Section 307 of the IPC. However, the learned Judge convicted the respondent No.2 for the offence punishable under Section 326 of the IPC and sentenced him to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in default, to suffer further rigorous imprisonment for two months. The respondent No.2 has also been convicted for the offence punishable under Section 506 of the IPC and is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default, to suffer further simple imprisonment for one month. Both the aforesaid sentences were directed to run concurrently.

8. The respondent No.2 obviously must have filed an appeal

against his conviction for the aforesaid offences, for which he is convicted.

9. Having regard to the evidence on record, we do not find any infirmity in the judgment and order acquitting the respondent No.2 of the offence punishable under Section 307 of the IPC and as such, dismiss the appeal filed by the appellant.

10. The appeal is accordingly dismissed.

11. Needless to state, that the observations made in this judgment are restricted to the challenge before us i.e. acquittal of the respondent No.2 for the offence punishable under Section 307 of the IPC.

12. We make it clear, that we have not gone into the merits of the conviction awarded by the trial Court under Sections 326 and 506 of the IPC and as such, leave all contentions with respect to the same open.

13. Accordingly, the appeal stands disposed of.

V. G. BISHT, J.

REVATI MOHITE DERE, J.