

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 192 OF 2019

The State of Maharashtra,
Through : Police Inspector,
Newasa Police Station, Taluka Newasa,
District Ahmednagar

.... Appellant
(Orig. Complainant)

Versus

Vilas Shyamrao Kardile
Age : 32 years, Occ : Agriculture,
R/o : Jeur-Haibati, Tal. Newasa,
Dist. Ahmednagar.

... Respondent
(Orig. Accused No.1)

.....

Mr. A. M. Phule, APP for the Appellant-State

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 3rd January, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. This is a statutory appeal by invoking Section 377 of Code of Criminal Procedure (for short 'Cr.P.C.'). State has taken exception to the Judgment and order passed by the learned Additional Sessions Judge, Newasa in Sessions Case No.23 of 2016 by which accused No.1 stood convicted for the offence under Sections 326 and 324 of Indian Penal Code (IPC) and stood acquitted from the charge under Sections 307, 504 and 506 of IPC.

BACKGROUND OF THE PROSECUTION CASE

2. Newasa Taluka Police Station launched prosecution against accused No.1 Vilas Shyamrao Kardile, accused No.2 – Shyamrao Balaji Kardile and accused No.3 – Hirabai Shyamrao Kardile for commission of offence under Sections 307, 326, 323, 504, 506 read with Section 34 of the IPC on the basis of FIR at the instance of injured victim Suresh Shivaji Kardile, who alleged that, on 08-10-2014 at around 07:30 p.m. he requested accused Shyamrao to clear the way for his cart by removing crop standing in way. Getting annoyed by the same, it is alleged that initially Shyamrao issued life threats and at such time, accused No.1 Vilas came there armed with sickle and he inflicted blows on the person of informant PW-1, who collapsed. He further alleged that, at such time, accused No.2 Shyamrao and accused No.3 Hirabai also reached there and they too were armed with sickles and they inflicted injuries on informant and thereby all three accused caused bleeding injuries to the informant. Informant gave a call to his brother Satish, who came and initially shifted informant to Lune Hospital at Kukana and thereafter, shifted him to City Care Hospital, Ahmednagar for treatment. There informant gave complaint against accused i.e. while he was admitted in the hospital, on the strength of which Newasa Taluka Police Station registered Crime bearing No.276 of 2016.

3. Police carried out investigation and after completing the same, accused persons were charge-sheeted. Case being exclusively triable by Court of Sessions, case came to be committed to learned Additional Sessions Judge, Newsa, who conducted trial and reached to a conclusion that prosecution succeeded in making out a case only for commission of offence under Sections 326 and 324 of IPC that too only against accused No.1. Said accused No.1 was acquitted from remaining charges under Sections 307, 504 and 506 of IPC.

Feeling aggrieved by such Judgment and order, State has preferred instant criminal appeal praying for enhancing sentence of accused No.1.

4. Heard learned APP for the appellant State for admission.

GROUND S RAISED IN APPEAL BY STATE

The principal grounds raised in the appeal could be summarized as under :

- (i) Sentence awarded is inadequate and therefore, **it be enhanced.**
- (ii) Manner of assault, site of injury, nature of weapon and nature of injury have not been properly considered and appreciated by the learned trial Judge.
- (iii) Medical evidence is not considered in proper perspective and
- (iv) Unnecessarily lenient view is taken by ignoring settled legal

position in cases of serious offence like under Section 307.

5. For appreciating the case of the appellant State, we need to examine the available documentary as well as oral evidence that has come up before the learned trial Court.

EVIDENCE ON RECORD

It seems from the record and file of the learned trial Court that, prosecution is banking on the oral testimonies of six witnesses as well as documentary evidence and therefore, same needs to be carefully appreciated. On doing so, it is emerging that PW-1 is the informant / injured victim and his evidence is at Exhibit-17; PW-2 seems to be brother of the informant and his evidence is at Exhibit-19, PW-3 and PW-4 appear to be Panchas to the spot and seizure of clothes and article and their evidence is at Exhibits-20 and 22 respectively; PW-5 is Investigating Officer and his evidence is at Exhibit-27 and PW-6 is medical expert, who examined injured PW-1 and placed on record medical papers at Exhibit-39 and his evidence is at Exhibit-36.

6. The sum and substance of FIR is that there is dispute over way of passage. On relevant day, informant claims to have requested accused No.2 - Shyamrao to clear crop for passage of the bullock cart. Getting annoyed by the same, accused No.1 – Vilas (son of accused No.2) assaulted informant with

sickle on the head. After informant PW-1 fell down, accused Nos.2 and 3, who were also armed with sickles assaulted informant. Hence, crime was registered for the aforesaid offences. To ascertain the credibility of above discussed witnesses examined by prosecution, their evidence is required to be visited and scrutinized.

7. On carefully evaluating testimonies of witnesses named above, in our opinion testimony of PW-1, PW-2 and treating Doctor is only of vital importance. According to PW-1, when he requested Shyamrao to clear the way, at that time, he alleged that accused No.1 Vilas assaulted him with sickle and thereafter, accused Nos.2 and 3 also assaulted with sickle. PW-2 brother also spoke about getting call from his injured brother and therefore, he visited the spot and he noticed PW-1 in injured condition and therefore, he brought him to hospital. Therefore, from these two witnesses, who are brothers, occurrence and assault are firmly established and both the aspects are not disturbed or dislodged by defence Advocate, who cross-examined them. Infliction of Injuries is also supported by medical evidence i.e. Doctor PW-6. Now, as to whether as put-forth by prosecution, offence under Section 307 is made out or not is to be examined and verified. The best witness on this point could be none other than PW-6 Doctor therefore, his evidence is required to be dealt carefully.

8. Before proceeding to test the creditworthiness of available evidence, we think it necessary to spell out essential ingredients for attracting offence under Section 307 of IPC and the settled law thereupon.

By catena of Judgments, the Hon'ble Apex Court has squarely and fairly settled legal requirements for attracting this charge and has held that for the purpose of conviction under **Section 307** of IPC, prosecution is bound to prove following essentials :

- (i) That accused did some act, by which death of human being was attempted.
- (ii) Said act done was with intention or knowledge coupled with *mens rea*. That such act was done with intention of causing death; or that it was done with intention of causing such bodily injury;
 - (a) the accused knew to be likely to cause death; or
 - (b) was sufficient in the ordinary course of nature to cause death, or that accused attempted to cause death by doing an act known to him to be so imminently dangerous, that, it must in all probability cause, [a] death or [b] such bodily injury as is likely to cause death, the accused having no excuse in incurring or causing such death or injury.

Thus, in order to justify conviction under **Section 307** of IPC prosecution is bound to prove the following :

Firstly, accused did an act.

Secondly, the said act was done with intention and knowledge and under the circumstances that if he by said act cause death, he would be guilty of murder.

9. Resultantly, the ratio culled out from various pronouncements of the Hon'ble Apex Court is that, to justify conviction under Section 307 of IPC, there has to be presence of intention coupled with some overt act in execution thereof. It is clarified that it is not always necessary that bodily injury capable of causing death should have been inflicted. Although nature of injury caused may often give considerable assistance in arriving to a finding as regards to the intention of the accused and further intention can also be gathered from the available circumstances. The determinative question thus is intention, knowledge coupled with *mens rea* and not the nature of injury.

The above propositions are succinctly spelt out in series of Judgments and few of them are as under;

- (i) ***State of Maharashtra vs. Balram Bama Patil and Ors. [(1983) 2 SCC 28]***
- (ii) ***Girija Shankar vs. State of U.P [(2004) 3 SCC 793]***
- (iii) ***State of Madhya Pradesh vs. Saleem @ Chamaru and Anr. [(2005) 5 SCC 554]***
- (iv) ***State of M.P. vs. Kashiram and Others [Judgment dated 02-02-2009 in Criminal Appeal 191 of 2009].***

10. Bearing in mind the essential ingredients for attracting above charge, we proceed to scan the evidence on record. As discussed above, injured witness narrated that accused Nos.1, 2 and 3 assaulted him with sickles i.e. on head, neck, lower limbs respectively.

On going through evidence of **PW-6 Doctor**, we find him deposing that, he is M.S. Ortho and he runs City Care Hospital. Services of Neuro-Surgeon Dr.Shaha are also engaged but said Doctor had shifted to USA. In his evidence, he stated that on 09-10-2014, PW-1 Suresh was admitted in the hospital with the history of assault and he examined him and noted following injuries :

- (i) three contused lacerated wounds over face on occipital region, admeasuring 8x2x2 c.m., 8x2x1 c.m. and 4x4x4 c.m. on neck.
- (ii) contused lacerated wound on right shoulder of size 4x2x1 c.m.
- (iii) contused lacerated wound over left elbow of size 2x2 c.m.
- (iv) contused lacerated wound over left leg of size 4x2x1 c.m.
- (v) contused lacerated wound over left palm size 3x2x1 c.m.
- (vi) contused lacerated wound over left leg of size 3x2x1 c.m.

In his further testimony, PW-6 narrated that injuries were within 24 hours. C.T. scan was done which revealed fracture to the frontal bone of skull. Injury No.1 was grievous in nature and rest of the injuries were simple in nature and possible by sharp object. He added that if somebody is assaulted with sickle like article-D, such injuries are possible. In his further chief, he stated that injured was initially treated by Doctor at Kukana, but his hospital had issued injury certificate and the same was signed by Dr.Shaha. Such signature of Dr.Shaha was identified and therefore, injury certificate was marked and exhibited as Exhibit-37.

On visiting **cross** of the medical expert, we find him admitting that none of the injuries on patient were bone deep. He denied that he had no occasion to see the patient. He categorically answered that he himself and Dr.Shaha treated the patient. He was questioned by cross-examiner on the point of colour and age of injuries and he candidly answered that he did not receive case papers from Doctor at Kukana. He admitted that he did not note characteristics of the edges of injuries and admitted that patient was stable and was therefore, discharged. Rest all suggestions are denied.

11. From above discussed evidence of medical expert, it is evident that, out of six injuries, only injury No.1 is found to be grievous one. PW6 has specifically stated that injuries noted by him are possible by article-D sickle, however, he denied that if tense part of blunt weapon is used for assaulting, it may result in injury like the one which can be caused by sharp weapon, but he has also admitted that he did not note characteristics of edge of injuries. As noted above, according to medical expert, injury No.1 is stated to be comprising of three contused lacerated wounds over face, on occipital region, over neck and over forehead. Dimensions of said injuries are also noted on medical certificate at Exhibit-37 which was referred by PW-6 while deposing before the Court. It is further pertinent to note that as measurements of injuries on occipital part and forehead are noted, surprisingly measurement of injury on neck is not reflected in the oral evidence or in the medical certificate.

PW-6 has admitted that he himself has not drawn medical certificate Exhibit-37, rather it is by Dr.Shaha and he is not available being abroad. With such material, there is no concrete evidence as to which of the alleged three injuries i.e. on occipital region, neck or forehead is grievous one. Rather all three injuries are quoted as injury No.1. With such ambiguity in the medical evidence and evidence of PW-1, by applying logic and common sense, fracture injury seems to be the only grievous injury. It is very pertinent to note that no question is asked by prosecutor to PW-6 as to whether said injury No.1 was capable of endangering life so as to bring it in the ambit of attempt to commit murder. Further, medical expert as well as learned APP before us speak about PW-1 being discharged in 3 to 4 days. Medical expert has declared victim to be discharged on recovery and on finding him stable. For the more reason, with such material on record, commission of offence under Section 307 of IPC is rendered doubtful.

12. Here guilt and conviction is recorded for commission of offence under Sections 326 and 324 of IPC.

Section 326 of IPC comes into play for voluntarily causing grievous hurt by dangerous weapon or means. The grievous hurt is expected to be caused by any instrument of shooting, stabbing or cutting or any instrument which, used as weapon of offence is likely to cause death or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by

means of explosive substance or by any substance which is deleterious to human body to inhale or swallow or receive in blood or by means of any animal, shall be punished with imprisonment for life or of prescription of term which may extend to ten years with fine.

Thus, the essential ingredients to attract this charge are; **firstly**, voluntarily causing hurt, **secondly**, hurt caused must be grievous hurt and **thirdly**, grievous hurt must have been caused by dangerous weapon or means.

Here in the case in hand, accused No.1 is found to be armed with sickle. He has mounted assault on PW-1 **voluntarily** i.e. in absence of any sort of provocation. Rather oral evidence indicates that there was mere conversation between PW-1 injured and accused No.2 only. Needless to say, admittedly, article sickle is a dangerous weapon. Doctor has confirmed infliction of one grievous injury. Therefore, required essentials for attracting offence under Section 326 of IPC are very much available. Apart from one grievous injury, there are other simple injuries also. Therefore, hurt has shown to be caused i.e. by use of dangerous weapon. Consequently, even charge of commission of offence under Section 324 of IPC is successfully brought to home by prosecution.

13. In present appeal, State is apparently aggrieved with the quantum of sentence and thereby seeking enhancement of sentence by way of instant proceedings. However, having considered the quality of evidence on record,

the circumstances in which offence has taken place and the quantum of sentence prescribed by law, in our opinion sentence awarded by learned trial Court seems to be just, proper and legal. Consequently, no case being made out, we pass following order :

ORDER

- (i) Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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