

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

CRIMINAL APPEAL NO.369 OF 2022

Jitendra Suresh Chavan,
Age-43 years, Occu:Service,
R/o-Municipal Colony, Nalegaon,
Delhi Gate, Ahmednagar,
Dist-Ahmednagar.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Station Officer,
Tophkhana Police Station,
Ahmednagar, Taluka and Dist-Ahmednagar,
- 2) Pawan S/o Dipak Pawar,
Age-26 years, Occu:Labour,
R/o-Municipal Colony, Nalegaon,
Taluka and Dist-Ahmednagar,
- 3) Shivam @ Shubham S/o Dipak Pawar,
Age-22 years, Occu:Labour,
R/o-Municipal Colony, Nalegaon,
Taluka and Dist-Ahmednagar

...RESPONDENTS

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Mr.A.B. Jagtap Advocate h/f. Mr. R.S. Kasar Advocate
for Appellant.
Mr.A.M. Phule, A.P.P. for Respondent No.1.

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

DATE : 10th FEBRUARY, 2023

ORDER :

1. Learned Advocate Mr. Jagtap holding for learned Advocate Mr. Kasar for the appellant seeks leave to amend the prayer clause which is in respect of enhancement of the sentence. The appellant is the original informant who has filed the present Appeal under Section 372 of the Code of Criminal Procedure and therefore, the enhancement in the sentence cannot be sought. Leave is granted. Amendment be carried out forthwith.

2. Present appeal has been filed under Section 372 of the Code of Criminal Procedure by the informant victim challenging the acquittal of the respondents from the offence punishable under Sections 307, 336, 329, 323, 324, 427, 504 read with Section 34 of the Indian Penal Code. However, it is to be taken note of the fact that respondent Nos.2 and 3 have been convicted for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for three years each and to pay fine of Rs.2000/- each and in default to suffer rigorous imprisonment for one month each. Respondent Nos.2 and 3 have been held guilty of committing offence punishable

under Section 4/25 of the Arms Act and they have been sentenced to undergo rigorous imprisonment for one year each and to pay fine of Rs.1000/- each and in default to suffer rigorous imprisonment for 15 days each.

3. Today the amendment has been carried out by the learned Advocate for the appellant to the prayer clause, as the prayer clause of the appellant was defective and it sought enhancement in the sentence, for which there is no remedy under Section 372 of the Code of Criminal Procedure.

4. Heard learned Advocate appearing for the appellant and learned APP appearing for the State.

5. With the help of learned Advocate appearing for the appellant and learned APP appearing for the State, we have gone through the depositions i.e. the evidence which was before the learned trial Court. It is to be noted that though respondent Nos.2 and 3 were served, they have not caused appearance.

6. Learned Advocate for the appellant vehemently submitted that the learned trial Judge has not appreciated the evidence properly. Taking into consideration the contents of the First

Information Report (for short "FIR"), testimony of the informant and the eye witnesses, it ought to have been considered that the intention of respondent Nos.2 and 3 was to commit murder of the appellant. The ocular evidence was supported by the medical evidence which was got proved through PW-7, the medical officer and the injury certificates. The weapon used in this case is sword and iron rod which were discovered under Section 27 of the Indian Evidence Act and those have been got proved through the panchas and the investigating officer. Therefore, the learned trial Judge ought to have been held that the offence under Section 307 of the Indian Penal Code was proved and accordingly the punishment ought to have been awarded. As the learned trial Judge has erred, the Appeal deserves to be allowed.

7. Learned Advocate for the appellant relied on the decision in **Anjani Kumar Chaudhary vs. State of Bihar and another, (2014) 12 SCC 286**, wherein it has been observed thus:-

" 10. The scope of Section 307 IPC has elaborately been dealt with by this Court in Mohan case, (2013) 14 SCC 116, (SCC pp. 121-22, para 14), wherein this Court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract Section 307 IPC. Further, this Court has also taken the view

that, in order to attract Section 307 IPC, the injury need not be on the3 vital part of the body.”

8. At the outset, we would like to say that as regards the quantum of punishment is concerned, Section 326 of the Indian Penal Code also prescribes for the maximum imprisonment i.e. imprisonment for life. For Section 327 of the Indian Penal Code, the maximum sentence that can be imposed is imprisonment for life. Therefore, taking into consideration the facts of the case and the evidence that has been led, it was for the trial Court to decide first which offence has been made out. The learned trial Judge has discussed the said point considering various decisions cited by learned APP and it can be seen that those citations were on the point as to how Section 327 of the Indian Penal Code is attracted. The learned Judge has observed that the motive of the crime, body parts where injuries caused, nature of weapon and number of injuries also determine intention of the assailant. The learned trial Judge was aware about the position of law that the intention of the accused is of prime consideration and he was required to assess the evidence from that angle first, thereafter, he has considered the evidence before him.

9. As per the prosecution case, accused Shubham hit sword on the head of the informant – PW-1, it was the simple injury by sword and that too as per the deposition of the medical officer as well as the injury certificate, it was simple in nature. It was also considered that the opinion of the doctor is against the offence under Section 307 of the Indian Penal Code. We have also considered the injury certificate Exhibit-57. There were four injuries. First injury is CLW (Contused Lacerated Wound) of 5 cm. over right high parietal region. Nature of injury is simple. Second injury is blunt trauma to the right lateral aspect of hand and the X-ray showed fracture to left 5th metacarpal and the nature of injury is grievous. Third injury is abrasion over right side of face. Nature of injury is simple. Fourth injury is blunt trauma over left thumb and the nature of injury is simple. PW-7, the medical officer, Dr. Sandip Surana has stated that the injury No.1 may be probably caused by sharp object. That means, he was not sure about the same, but it appears that it was depending on the history he has given that it might have been caused by sharp object. Injury No.2 is stated to have been caused by blunt object and injury Nos.3 and 4 can be caused by hard or rough object or surface. It appears that after the weapons were seized, those were not sent to the medical officer

for his opinion and only at the time of his deposition the articles were shown to him and his opinion was sought. In examination-in-chief of PW-7, medical officer, the prosecution has not asked a question, as to whether in the ordinary course the injuries found on the person of the informant were sufficient to cause death. Same is the case in respect of injured witness Rohan Chavan. He has sustained CLW over right parietal region of size 4 cm. X 1 cm. X 1 cm. Second injury is blunt trauma over left forearm near right shoulder and third injury is blunt trauma over neck. All his injuries have been categorized as, simple injuries.

10. Now, coming to the point as regards intention is concerned, it is to be noted that the said sword appears to have been seized under Section 27 of the Indian Evidence Act and PW-4 Prashant Chajlani is the panch who was examined to prove those discovery panchnamas. The description of the sword shows that it had 2 ft. 3 cm. blade and 18 cm. handle. It was stated to be an iron sword, but it was then stated that it was rusted. There is absolutely no mention that one of the edge of the sword was sharp. As per the contents of the FIR as well as testimony of the informant, the incident took place on the ground of demand of money which was taken by the nephew of the informant from respondent No.2. It was stated that the

amount was taken on 12th September 2017 and incident is stated to have taken place on 26th October 2017. When the amount was lend by the accused, whether he would have thought of committing murder of the person to whom the amount has been lend or to the relative, is a question. Exhibit-19 appears to be the statement of the informant recorded by the Special Judicial Magistrate on 15th November 2017 in which he has stated that his nephew Rohan was assaulted by the accused persons with kicks and fist blows. However, in his FIR informant has stated that his nephew was assaulted by respondent No.2 with iron rod also. The trial was also against one Sangita Dipak Pawar, as accused No.3, who has been acquitted of all the charges and now in this Appeal that acquittal is not challenged. Said Sangita is not made party respondent here.

11. Taking into consideration all these aspects, we hold that no case is made out for admitting the Appeal, as the case is not made out for offence under Section 307 of the Indian Penal Code and therefore, the Appeal deserves to be dismissed.

12. We clarify that at this stage we have not considered anything on merits i.e. in respect of, whether the offence under the other Sections under which the respondents have been

convicted have been proved or not. The said Appeal filed by respondent Nos.2 and 3 i.e. Criminal Appeal No.346 of 2022 lies before the learned Single Bench and upon its hearing and consideration the concerned Court would take appropriate decision. We were only concerned with, whether the case is made out for the offence under Section 307 of the Indian Penal Code and we answer it in the negative.

13. Accordingly, the Appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB23