

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 505 OF 2019

1. Kisan Dnyandeo Bhavar
Age; 34 years, Occ; Agril,

2. Dnyandeo Yadav Bhavar,
Age; 69 years, Occ; Agri

Both R/o; Morewadi,
Tal. Ashti, Dist. Beed.

... Appellants

VERSUS

1. The State of Maharashtra
Through Police Station Officer
Ashti Police Station,
Dist. Beed.

2. Rohidas Maroti More,
Age; 64 years, Occ; Agri,
R/o; Morewadi, Post; Kerul
Tq. Ashti, Dist. Beed.

...Respondents

...
Advocate for Appellant No. 1 : Mr.Salunke Sudarshan J.
APP for Respondent No. 1-State : Mr. A.S. Shinde
Advocate for Respondent No. 2 : Mr.Kharosekar A.B.

...

CORAM : R. G. AVACHAT, J.

DATE : 13.04.2023.

ORAL JUDGMENT :

1. This is an appeal against conviction and sentence

passed by the Additional Sessions Judge, Beed in Sessions Case No. 69 of 2015 vide judgment and order dated 03.05.2019. Both the appellants have been convicted for the offence punishable under Section 324 and 326 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and 3 years respectively, besides direction to pay fine of Rs. 25,000/- and 10,000/- each respectively.

2. The record indicates that, along with the present appellants, three more persons were also prosecuted. They have been acquitted of the charge, but the State has not preferred any appeal against their acquittal.

3. As per the case of the prosecution, the incident took place on 19.01.2015. Rohidas (PW-1) was returning home from the field. At the entrance of the cattle shed, he saw both the appellants and one Bhau (acquitted co-accused) were assaulting Ramrao (PW-2). It is further in his evidence that they were beating Ramrao (PW-2) since he had no role to compromise the matter. His evidence would further indicate that appellant Dnyandeo was assaulting Ramrao (PW 2) by stick, while appellant Kisan was assaulting Ramrao (PW 2) with iron strip

and Bhau (acquitted co-accused) assaulting Ramrao (PW 2) by stick. It is further in his evidence that he intervened in the quarrel. Both the appellants Dnyandeo and Kisan even beat him up on the ground as to why he was a witness in the earlier case. The other family members of the appellants had gathered on the spot. They also assaulted the wife of Rohidas (PW-1). It is further in his evidence that he fell unconscious. He was first rushed to the Civil Hospital and then shifted to City Care Hospital.

4. Ramrao (PW-2) gave his evidence on the line of the evidence given by Rohidas (PW-1). It is in his evidence that appellant Kisan assaulted on his head with iron strip. The witness showed the injury marks to the trial Court.

5. The injury certificates of both the appellants have been duly proved. Those find place at Exhibits 43 and 44. Exh. 70 is the certificate issued by the doctor who treated Ramrao (PW-2) in City Care Hospital. The medical papers on record indicate that Ramrao (PW-2) was the indoor patient for 21 days. He underwent operation and was in the Intensive Care Unit (I.C.U.) and on Ventilator as well. The head injury suffered by

Ramrao (PW-2) has been described as grievous in nature. The C.T. scan report and other medical papers although not placed on record, there is no reason to doubt Ramrao (PW-2) to have suffered injury grievous in nature.

6. The question is as to whether the said act is an offence of voluntarily causing grievous hurt by dangerous weapon.

7. The learned APP would submit that, the said offence is punishable with imprisonment for life or with imprisonment for a term which may extend to 10 years. According to him, the sentence has to be in proportion with the offence committed. He relied on the judgment of Hon'ble Apex Court in the case of *Jaswinder Singh (Dead) through Legal Representative v. Navjot Singh Sidhu and Others reported in 2022 DGLS (SC) 591*. He then relied upon the judgment in *Hori Lal v. State of Uttar Pradesh 1969 DGLS (SC) 323* wherein, it is observed that

"It is contended by the learned counsel for the appellant that none of the injuries 2 to 6 which were inflicted on P.W. 2 discloses that there is a fracture or dislocation of any bone. These injuries, it is said, at the most show that the

*particular bones on which the injuries were inflicted were cut which however does not amount to a fracture. It is true that fracture has not been defined in the Penal Code. It is sometimes thought as in the case of Po Yi Maung v. Ma E Tin, AIR 1937 Rang 253 that the meaning of the word fracture would imply that there should be a break in the bone and that in the case of a skull bone it is not merely sufficient that there is a crack but that the crack must extend from the outer surface of the skull to the inner surface. In **Mutukdhar Singh v. Emperor. AIR 1942 Pat 376** it was observed that if the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether a deep one or a mere scratch on the surface of the bone, it will be difficult to infer that the injury is a grievous hurt within the meaning of S. 320 of the Penal Code. In our view, both these assumptions are misleading. It is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a reapture or fissure in it, it would amount to a*

fracture within the meaning of cl. 7 of S. 320. What we have to see is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them. The nature of the injuries as spoken to by the doctor in his evidence, discloses the length, breadth and depth of each injury. So far as the depth of the injuries Nos. 3,4,5 and 6 is concerned, each one of the injuries shows that it is bone deep and they are described as cutting the underlying bone. In injury 3 left humerus, in injury 4 radius, in injury 5 both the bones of the left forearm and in injury 6 the tibia bone shaft have been cut which would show that they are fractures. Apart from this, the doctor as noticed earlier has in his evidence said that these injuries are grievous. It is contended that the doctor has not disclosed the reason why he thinks that the injuries were grievous. But in our view the doctor would not be unaware of what injuries are grievous or what are simple. At any rate, the nature of the injuries considered with the evidence of the doctor would undoubtedly establish that all the aforesaid injuries were grievous. These injuries were inflicted by kantas which are dangerous weapons and hence the conviction under S. 326 is fully

justified.”

8. There can be no two views over the preposition that the sentence has to be in proportionate with the offence committed. This Court is also in agreement with the learned APP that Ramrao (PW-2) had suffered grievous injury to his head. He was the indoor patient for 21 days. Admittedly, he was assaulted with iron strip. The said iron strip was not shown to the doctor when the doctor's evidence was being recorded to solicit his opinion as to the said iron strip, if used as a weapon of offence, is likely to cause the death. The description of the seized iron strip indicates that it was 1^{1/2} feet in length and 2 c.m. in width. Admittedly, this iron strip was recovered from the place adjoining the water tank. The Investigating Officer stated in his evidence that it was in the water tank. Admittedly, this iron strip did not bear any blood stain to connect the same with the offence in question. Taking that Ramrao (PW-2) suffered grievous injures to his vital parts i.e. on frontal area of skull, it is reiterated that there is nothing in the evidence to indicate that appellant Kisan had assaulted the victim with the seized iron strip. As such, it is an offence punishable under Section

325 of the Indian Penal Code.

9. During the hearing of this appeal, since the parties were related inter-se, the Court had proposed for the settlement. Initially, the learned Counsel for the appellants came around that the appellants would pay a sum of Rs. 1,00,000/- to the claimants as compensation, provided the appellants are released on the sentence, which they have already undergone. One of the victim and heirs of the deceased Ramrao (PW-2) was initially not agreeable to the proposal put up by the learned Advocate for the appellants, later on, they came around. It is true that this Court intervened in the matter to see the same is to be settled. The learned Advocate for the appellants then came around to pay to the legal representatives of the victim a sum of Rs. 3,00,000/-. Here it needs to be mentioned that Ramrao (PW-2) passed away little over 3 years after the incident. The incident in question has no relation with the cause of death of Ramrao (PW-2). The legal representatives of deceased Ramrao (PW-2), one Rohidas and appellants have placed on record certain terms of settlement. They acknowledged to have received a sum of Rs. 2,30,000/- across the bar with condition that the fine amount of Rs. 70,000/- be paid to them as compensation. In terms of

settlement, they have given consent for acquittal of the appellants. Same cannot be done since the offences have been duly proved.

10. On the question of quantum of sentence, appellant Dnyandeo did not assault Ramrao (PW-2). The offence committed by appellant Kisan is punishable under Section 324 read with Section 34 of the Indian Penal Code. His liability for the offence punishable under Section 326 is sought to be invoked with the aid of Section 34 of the Indian Penal Code. It appears that he ought not to have been convicted for the offence punishable under Section 326 of the Indian Penal Code with aid of Section 34 of the Indian Penal Code. He would, therefore, stand acquitted of the offence punishable under Section 326 read with Section 34 of the Indian Penal Code. His conviction under Section 324 stand as it is. He has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 10,000/-. Considering the nature of the offence, it being the offence punishable under Section 324 of the Indian Penal Code and the fact of settlement between the parties, this Court propose to reduce the sentence of three years to the period

already undergone. Appellant No. 2 Dnyandeo was in jail for the period of five months. His age is 77 years. While appellant No.1 is in jail for little over two years and four months. He is reported to be on parole. The sentence of ten years imposed on him is reduced to the period already undergone so far. The amount of fine which has been deposited with the trial Court, be paid to the parties to the settlement before this Court i.e. Rohidas Maroti More and two sons of deceased Ramrao (PW-2) i.e. Ankush Ramrao Shelar and Raosaheb Ramrao Shelar equally. The terms of settlement are marked as Exh. 'X' for identification. As such, the appeal stands disposed of in aforesaid terms. Hence the order :

ORDER

- a) The appeal is partly allowed.
- b) The conviction of both the appellants for the offence punishable under Sections 324 read with Section 34 of the Indian Penal Code is maintained. However, the sentence of imprisonment of three years, on this count imposed by the trial Court, is reduced to the period already undergone.

c) The conviction of appellant No. 2 Dnyandeo Yadav Bhavar, for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code is hereby set aside. He is acquitted for the offences punishable under Sections 326 read with Section 34 of the Indian Penal Code.

d) The conviction of appellant No. 1 Kisan Dnyandeo Bhavar for the offence punishable under Section 326 of the Indian Penal Code is converted to the conviction for the offence punishable under Section 325 of the Indian Penal Code, with imposing sentence of imprisonment which he has already undergone i.e. the period of imprisonment of two years, ten months and five days, as per the jail certificate dated 22.03.2023 (inclusive of remission).

e) The amount, which both the appellants have deposited before the trial Court towards fine, be paid to the parties to the settlement Exhibit 'X' equally.

(R. G. AVACHAT)
JUDGE