

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

CRIMINAL APPEAL NO.606 OF 2020

The State Maharashtra, Through
Police Station, Khultabad,
Tq. Khultabad, Dist.Aurangabad.

..Appellant
(Ori. Informant)

Versus

Dnyaneshwar Hari Dandage
Age: 32 years, Occu.: Agriculturist,
R/o. Village Kanaksheel,
Tq.Khultabad, Dist.Aurangabad.

.. Respondent
(Ori. Accused)

WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.119 OF 2020

The State Maharashtra, Through
Police Station, Khultabad,
Tq. Khultabad, Dist.Aurangabad.

..Appellant
(Ori. Informant)

Versus

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Age: 32 years, Occu.: Agriculturist,
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.. Respondent
(Ori. Accused)

...

APP for Appellant / Applicant : Mr.A.M.Phule

...

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

DATE : 14th February, 2023

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

. State is questioning the Judgment and order passed by the learned Additional Sessions Judge-6, Aurangabad in Sessions Case No.61 of 2015 dated 25-11-2019, by which the learned trial Court has convicted respondent accused for offence under Section 324 of Indian Penal Code (IPC) and sentenced him to suffer imprisonment till rising of Court and to pay fine of Rs.15,000/-, in default of payment of fine to suffer simple imprisonment for eight days. Thus, here appellant State is seeking enhancement of above sentence by way of Criminal Appeal No.606 of 2020.

Application for Leave to Appeal by State No.119 of 2020 is preferred by the State seeking leave to file appeal against acquittal of respondent / original accused from the charge under Section 307 of the Indian Penal Code vide the aforesaid judgment.

2. Heard learned APP for the appellant / applicant State.

3. Learned APP for the appellant State would apprise us that informant is brother of victim, who is differently able. On 19-09-2014, brother of the informant namely Karbhari had been to weekly Bazar but there accused / respondent Dnyaneshwar Hari Dandage had stabbed him with broken glass bottle. That it was a clear case of attempt to commit murder. That medical evidence in support of injury was adduced by prosecution, however, the same

has not been considered and later inspite of availability of incriminating evidence for attracting charge under Section 307 of IPC, learned trial Judge has held accused guilty for commission of offence under Section 324 of IPC and has moreover, sentenced him to suffer imprisonment till rising of Court and hence, it is submitted that the said judgment and order is required to be interfered herewith by allowing the appeal.

4. It seems that present respondent accused was put up for trial on the charge of commission of offence under Section 307 of IPC i.e. on account of stabbing injured Karbhari, who is brother of the informant. At trial, it seems that prosecution has examined in all six witnesses i.e. **PW1** Vishnu, informant, **PW2** Pravin, Pancha to spot, **PW3** Kailas, Pancha to seizure, **PW4** Dr.Sandeep, Medical Officer, **PW5** Karbhari, injured victim and **PW6** Raosaheb, independent witness. Injury certificate and seizure panchanama are also placed before the trial Court. On going through the evidence and judgment and order under challenge, it seems that informant received information from his acquaintance Supadu about respondent / accused Dnyaneshwar stabbing his brother Karbhari and therefore, he rushed to the spot and shifted him to the hospital. Injured **PW5** Karbhari is examined at Exh.32. Unfortunately, he being differently able i.e. deaf and dumb, prosecution was required to seek aid of Special Educator for interpretation and translation. Through such mode, his evidence is translated before the trial Court. Equally, there is evidence of

PW4 Dr.Sandeep, Medical Officer.

5. While giving evidence in the witness box, injured **PW5** Karbhari seems to have made some gestures and the same were duly noted. The gestures were regarding being beaten and stabbed in stomach. Injured Karbhari seems to have pointed out to respondent / accused before the Court when asked as to who assaulted him.

6. **PW4** Dr.Sandeep, Medical Officer stated that he come across injuries on the person of Karbhari, which were contused lacerated wound over left periumbilical region of abdomen, admeasuring 2 x 1 x 0.5 cm and contusion around CLW periumbilical region admeasuring 3 x 2 cm. Doctor has opined that injuries had been caused within 24 hours and further defined injuries to be simple one. Doctor has opined that the said injuries are possible by thrust of broken glass bottle in abdomen. Medical certificate is also placed on record. The fundamental defence of respondent / accused is that injured was under influence of liquor and he fell on ground and suffered injuries.

7. Here there being charge under Section 307 of the IPC, the prosecution was bound to bring home the required ingredients for attracting the said charge under Section 307 of IPC. It was incumbent upon prosecution to show that there was *mens rea* coupled with intention and knowledge to commit

murder of Karbhari. However, evidence on record does not remotely also suggest that such required ingredients are available on record. It seems that the incident had taken place in Bazar. There is nothing on record to show that there was any motive or intention on part of respondent / accused to commit murder. Taking into consideration the injury certificate and medical evidence, the case does not travel beyond Section 324 of IPC. There is voluntary assault on victim by accused and therefore, charge under Section 324 of IPC is squarely attracted and no offence under Section 307 of IPC by any means gets attracted. Therefore, on the strength of such evidence, more particularly, medical evidence, which is crucial, learned trial Judge has committed no error in bringing down the charge from Section 307 of IPC to Section 324 of IPC.

8. Taking into account the circumstances and background in which the incident had taken place, there being no previous animosity or any material to that regard, sentence of imprisonment till rising of Court awarded by the trial Court in our opinion would sub serve the purpose of justice. We do not find it a fit case to enhance the sentence.

9. By filing Application for Leave to Appeal By State No.119 of 2020, applicant State is praying to grant leave to file appeal by invoking Section 378(1)(b) of the Code of Criminal Procedure.

For above discussed reasons, we do not find that there is patent error or

perversity in the findings reached by learned trial Judge. Entire evidence has been appreciated in the light of legal requirements. Taking into account the findings and reasons assigned by the learned trial Judge, we do not think that there is another possible view that could emerge from the quality of evidence that has come on record. No purpose would be served by granting leave and even otherwise on merits, no case to that extent is made out. Therefore, leave is appeal is refused. Accordingly, we pass the following order :

ORDER

(i) Criminal Appeal No.606 of 2020 and Application for Leave to Appeal by State No.119 of 2020 stand rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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