



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.252 OF 2019

Sanjay S/o Yadavrao Neware
Aged about 40 years, Occ: Labourer,
R/o Khapri (Moreshwar), Tah. Hingna,
District Nagpur.

....APPELLANT

...V E R S U S...

The State of Maharashtra through
P.S.O., Police Station, Butibori,
District Nagpur.

...RESPONDENT

Shri S.B. Negrare, Advocate for appellant.
Shri A.M. Kadukar, A.P.P. for respondent.

CORAM:- M.W. CHANDWANI, J.
ARGUMENTS WERE HEARD ON :- 05.10.2023
JUDGMENT PRONOUNCED ON :- 30.10.2023

JUDGMENT:

. This is an exception to the order of conviction dated 28.02.2019 passed in Sessions Trial No.409 of 2014, whereby the appellant is convicted under section 323 and 324 of the Indian Penal Code (for short, "IPC") and sentenced to suffer simple imprisonment for one year and to pay fine of Rs.500/- and three years and to pay fine of Rs.1,000/-, respectively.

Prosecution's case, in short, can be summarized as under:

2. The appellant is brother of wife of the informant – Devidas Domaji Kohale. On 16.05.2018 at about 9.00 pm, the appellant got annoyed with the informant as the informant had sent his wife i.e. sister of the appellant as a maid servant, therefore, the appellant abused the informant and even, beat the informant with fist and kick blows. At about 11.00 pm on the same day, when the informant was returning to his house, the appellant again started abusing the informant. The appellant brought axe and unleashed axe blows on his chest and near the left eye. He was taken to the hospital. On the next day, on the report of the informant, Crime No.119 of 2014 came to be registered. The appellant was charge-sheeted for offences punishable under sections 327 and 323 of IPC. On trial, the learned Additional Sessions Judge found the appellant guilty under Sections 323 and 324 of IPC and by the impugned order convicted and sentenced the appellant for above referred imprisonment. Feeling aggrieved with the said order of conviction, the present appeal has been filed.

3. Before proceeding to deal with the submissions of the respective parties, let me state some developments, which occurred post-conviction. The appellant and the informant settled

the dispute out of Court and filed the settlement compromise on record. According to the settlement, they compromised the dispute and the informant does not want to prosecute the appellant. Since, the offence under Section 324 is non-compoundable and the proceeding before this Court is a substantive appeal therefore, the said compromise was rejected as offence under Section 324 is non-compoundable. The matter was posted for final hearing.

4. It is contended on behalf of the appellant that the prosecution has not examined material witnesses i.e. wife of the informant and driver of the Scorpio, who accompanied the informant while going to the hospital. Even, the investigating officer has not recorded the statements of the independent witnesses, who were present at the relevant time of the incident. It is also contended that the trial Court did not appreciate the evidence in its proper perspective and solely relied on the version of the informant. The injury on the person of informant has not been proved. In spite of these flaws in the case of prosecution, the trial Court wrongly convicted the appellant for the offence under Section 324 of IPC. It is therefore submitted that the impugned order does not sustain and required to be set aside by allowing the appeal.

5. Per contra, learned APP on behalf of State submits that the trial Court has rightly appreciated the evidence of injured witness. The conviction can be recorded on sole version of injured person. The injury certificate is on record. Even PW6 – Dr. Dinesh Akarte has been examined. According to him, no material has been brought on record by way of cross-examination to disbelieve the injured witness, therefore, he supported the findings of the trial Court and prayed for dismissal of appeal.

6. Having heard the learned counsel for the respective parties and having gone through the record of the case, it appears that the prosecution has examined eight witnesses in total to prove the charge i.e. PW1- Hanumant s/o Vanwasji Masram, PW2- Devidas s/o Domaji Kohale (informant), PW3- Dhansingh s/o Ramsingh Chavan, PW4 – Mohan s/o Mahadeorao Sawarkar, PW5 – Hiranman s/o Chhatrapati Wargane, PW6 – Dr. Dinesh Suresh Akarte, PW7 – API Mahesh Ramdev Meshram, and PW8 – Head constable Namdev Sahebranna Pujari.

7. PW2 – Devidas Kohale (injured), while narrating the incident of assault has affirmed that on the day of incident at about 9.00 pm, appellant initially abused and assaulted him by means of fist and kick blows on his chest. This witness further

narrated about the subsequent incident, which occurred at about 11.00 pm on the same day. He deposed that when he was returning to his house, the appellant followed him, brought axe from his house and unleashed axe blows on the right side of his chest. He also inflicted blow of axe stick on his face whereby he sustained injuries. The informant was taken to Government Hospital and thereafter he lodged the report with the Police Station, Butibori, on the next day. The informant identified the weapon of offence and the seized blood stained clothes.

8. The evidence of PW5 – Hiranman Wargane, an auto driver, who initially took the informant to Primary Health Center, Takalghat, corroborated the evidence of informant in material aspect as to how the medical aid was provided to him at the Primary Health Center. Even PW6- Dr. Dinesh Akarte was examined and he issued injury report of informant with history of assault by axe on chest and head. The injury report shows that the injured was having two chop wounds anterior aspect of chest, lacerated wound on left eyebrow and contusion over right temporal region.

9. Thus, the evidence of the informant is corroborated by the prosecution witnesses in material aspects whereas nothing has

been brought in cross-examination to disbelieve the version of the informant and other witnesses. The evidence of the informant is further corroborated by the seizure of blood stained clothes of the appellant as well as accused by the PW8 and other panch witnesses. No serious infirmity has been brought on record to raise the dispute about occurrence of the incident, even the recovery of axe has been proved at the instance of appellant under Section 27 of the Indian Evidence Act. Nothing has been brought on record as to why the informant, who is brother-in-law of the appellant will depose falsely.

10. No fault is seen in the finding of the learned Additional Sessions Judge, rather, it was rightly concluded that the appellant is guilty of offence punishable under Sections 323 and 324 of IPC. No perversity is seen in the order of learned Additional Sessions Judge. The order of learned Additional Sessions Judge recording conviction is just, proper and legal and, therefore, does not require interference in finding of the trial Court.

11. At this stage, learned counsel for the appellant submitted that the trial Court has inflicted excessive punishment. According to him, imprisonment for one year and three years has been provided in IPC for Sections 323 and 324 and the trial Court

has directed to undergo the imprisonment to the fullest punishment provided for the said offences i.e. for one year and three years, respectively. According to him, the appellant has not committed any offence prior to the present case. There are no antecedents against the appellant. He further submitted that the appellant and the informant are relatives; rather, the appellant is the brother-in-law of the informant. They have settled the dispute and arrived at compromise, which is placed on record. Therefore, considering this aspect a lenient view may be taken and the punishment inflicted by the trial Court be reduced.

12. It is a matter of record that the appellant and the informant have settled the dispute, which is recorded at Farad Sheet dated 07.07.2022 by the Registrar (Judicial). As a matter of fact that, as per section 320 of the Code of Criminal Procedure, the offence under Section 324 is non-compoundable. Therefore, conviction of the appellant cannot be set aside in view of settlement amongst them. Compromise post-conviction is one of the aspect while imposing the sentence. It will be useful to refer here, the decision of Full Bench in the case of ***Sau. Maya Sanjay Khandare and another Vs. State of Maharashtra*** [Criminal Application (APL) No.709/2020], wherein this Court, relying on

various judgments has concluded that the compromise post-conviction for a non-compoundable offence *ipso facto* cannot result in acquittal of the convict and compromise is one amongst various aspects to be considered while imposing appropriate sentence when the conviction is liable to be maintained on examining the merits of the case.

13. It is not disputed that the appellant is brother-in-law of informant. So they are related by marriage. The appellant is depending on his daily wages. There are no antecedents against the appellant. This is the first offence of the appellant. The informant also forgave the appellant and wanted to resume cordial relations once again. Since, the offence is non-compoundable therefore the conviction cannot be set aside. However, in view of settlement arrived between the parties and considering the relations between the appellant and the informant, I think this will be one of the mitigating factors while considering the punishment. Though the conviction of the appellant is hereby maintained under Sections 323 and 324 of the IPC, however, after considering the pros and cons, in my view, the imprisonment to the appellant for the period which he has already undergone would meet the ends of justice. Resultantly, the appeal is partly allowed.

14. The conviction imposed by the learned Additional Sessions Judge-9, Nagpur by the impugned order dated 28.02.2019 in Sessions Trial No.409 of 2014 under sections 323 and 324 is hereby maintained. However, sentence awarded by the learned Additional Sessions Judge to the appellant is modified for offence under Sections 323 and 324 of IPC to the extent of the period for imprisonment which the appellant has already undergone. There is no interference in the amount of fine.

The appeal is accordingly disposed of.

JUDGE

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