



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

CRIMINAL APPEAL NO.850 OF 2018

Sanjay s/o. Sitaram Kate,
Age : 42 years, Occ. Labour,
r/o. Kate Mala, Wadali,
Tq. Shrigonda, Dist. Ahmednagar

..Appellant

Vs.

1. The State of Maharashtra,
Through Police Inspector,
Shrigonda Police Station,
Dist. Ahmednagar
2. Bhaskar s/o. Dada Kandekar,
Age : 30 years, Occ. Agri.,
r/o. Surdi, Tq. Shrigonda,
Dist.Ahmednagar

..Respondents

Mr.A.G.Vasmatkar, Advocate for appellant (appointed)
Mrs.S.N.Deshmukh, APP for respondent no.1
Mr.N.G.Kale, Advocate for respondent no.2

AND

CRIMINAL APPEAL NO.849 OF 2018

The State of Maharashtra,
Through Police Inspector,
Shrigonda Police Station,
Dist. Ahmednagar

..Appellant

Vs.

Sanjay Sitaram Kate,
Age : 41 years, Occ. Labour,
r/o. Kate Mala, Wadali,
Tq. Shrigonda, Dist. Ahmednagar

..Respondent

Mrs.S.N.Deshmukh, APP for appellant – State
Mr.A.G.Wasmatkar, Advocate for respondent

AND
CRIMINAL APPEAL NO.851 OF 2018

Bhaskar s/o. Dada Khandekar,
Age : 30 years, Occ.Agri.,
r/o. Surodi, Tq. Shrigonda,
Dist. Ahmednagar ..Appellant

Vs.

1. The State of Maharashtra,
Through Shrigonda Police Station
2. Sanjay Sitaram Kate,
Age : 41 years, Occ. Labour,
R/o. Kate Mala, Wadali,
Tq. Shrigonda, Dist. Ahmednagar ..Respondent

Mr.N.G.Kale and Mr.S.B.Wakhre, Advocates for appellant
Mrs.S.N.Deshmukh, APP for respondent no.1 – State
Mr.A.G.Wasmatkar, APP for respondent no.2

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : MARCH 22, 2024

JUDGMENT (PER R.G.AVACHAT, J.) :-

A group of these three appeals is being decided by this common judgment and order, since they are interconnected.

2. Criminal Appeal No.850 of 2018 has been filed taking exception to the judgment and order dated 22.03.2018, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.30 of 2017, convicting the appellant for the offence punishable under Section 307 of Indian Penal Code and therefore, sentencing him to suffer rigorous imprisonment for five years and to pay fine of Rs.50,000/-, in default, to undergo simple imprisonment for six months.

Criminal Appeal No.849 of 2018 has been filed by the State of Maharashtra for enhancement of the sentence imposed against the convict; while Criminal Appeal No.851 of 2018 has been filed by the original informant (father of victim) for enhancement of amount of compensation directed to be paid by the convict to the victim (son of the appellant).

3. The facts, giving rise to these appeals, are as follows:-

The appellant/convict was resident of village Surodi, Tq. Shrigonda, Dist. Ahmednagar. He was an ex-serviceman. He was retired one year before the incident dated 23.11.2016. Bhaskar (informant)/appellant in Criminal Appeal No.851 of 2018, is also resident of the very village. The agricultural lands of both appellant/convict and informant adjoin each other. There was

dispute between both of them over the agricultural lands. The water pipeline of the informant has been laid from under the land of the appellant/convict. A civil suit was also pending between the two.

4. It so happened that on 23.11.2016, by 10.00 in the morning, the appellant/convict took his cattle from the field of the informant. Onion crop was there in the informant's field. Brother of the informant asked the appellant/convict to take the cattle away from the field. The appellant got annoyed. He abused the informant's brother and assaulted him. Fight took place between the two. The matter reached Shrigonda Police Station. The injured (brother of informant) was examined at Rural Hospital, Shrigonda.

5. We are concerned with the incident that took place little past 03.00 p.m. on the very day. Rohini (PW 2) is wife of the informant. Master Karan was their son. He returned home by 03.15 pm. from school. He was hungry. He, therefore, went to his mother (Rohini) in the field. Both of them, therefore, started back to their residence. The appellant/convict, all of a sudden, opened fire from his shot-gun towards Rohini and Master Karan. The pellets hit lower limbs of Karan. Rohini took shelter in an orchard. She raised hue and cry. Her cousin brother-in-law arrived. They took Karan to Rural Hospital, at Shrigonda, and then, shifted him to K.E.M. Hospital, Pune.

6. Rohini had related the incident to the informant – Bhaskar, who, in turn, lodged the First Information Report (Exh.21). Based on the same, crime vide C.R. No.553 of 2016, came to be registered against the appellant/convict for the offence punishable under Section 307 of Indian Penal Code and under Section 3 read with Section 25 of the Arms Act. The appellant/convict was arrested. The scene of offence panchnama (Exh.24) was drawn. Injury certificate of the victim was obtained. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant/convict was proceeded against by filing charge sheet in the Court of learned Judicial Magistrate, First Class, Shrigonda, Dist. Ahmednagar. The case was committed to the court of learned Addl. Sessions Judge, Ahmednagar (trial court) for trial in accordance with law. The trial Court, initially, framed Charge (Exh.12) for the offence under Section 307 of Indian Penal Code and Section 3 read with Section 25 of the Arms Act. It, however, deleted the charge for offences under the Arms Act, for want of sanction.

7. The appellant pleaded not guilty. His defence was of false implication on account of civil dispute. According to him, the informant, his brother and others had assaulted him. The

appellant/convict was armed with a shot-gun. The trigger got pulled accidentally. According to him, Karan suffered injuries is a sheer accident.

8. The prosecution examined eight witnesses and produced in evidence certain documents to establish the charge (Exh.12). On appreciation of the evidence in the case, the trial court convicted the appellant-Sanjay and consequently, sentenced as stated above.

9. Heard learned counsel for the parties.

10. Learned counsel appointed to represent the appellant/convict would submit that the appellant/convict has undergone the entire sentence imposed against him. Learned counsel took us through the evidence on record to submit that all was not well between the appellant/convict on one hand and the informant and his family members, on the other. A civil litigation was *sub-judice*. Number of complaints against each other were filed with the concerned police station. According to him, it was a shot-gun and not a fire-arm and pellets (छर्चे) hit legs of Karan and not bullets. The Government Medical Officer, Shrigonda, who examined Karan, opined that the injuries were simple in nature. For the reasons best known to the informant, Karan was shifted to a private

hospital in Pune. The medical certificate, suitable to the case of the informant, was obtained with a view to see that the appellant/convict was taught a lesson. He, therefore, submitted for allowing the Criminal Appeal (850 of 2018) and acquittal of the appellant/convict.

11. Learned APP would, on the other hand, submit that not less than 16 pellets were removed from the lower limb of Master Karan. Fire was opened towards Karan and his mother. Same indicates the appellant's intention to commit their murder. The Court's attention was drawn to the definition of offence to commit murder. Learned APP, therefore, urged for enhancement of the sentence.

12. Learned counsel for the appellant/informant would submit that the compensation of Rs.50,000/- awarded by the trial court, has been grossly inadequate. Karan was operated upon in K.E.M. Hospital, Pune. A huge amount has been spent for his medical treatment. According to him, the appellant/convict has agricultural land. He is, thus, financially able to pay more compensation. Learned counsel also adverted our attention to Section 357-A of the Code of Criminal Procedure, to submit that the District Legal Services Authority or the State Legal Services Authority may be directed to pay the victim compensation of Rs.5 Lakhs.

Learned counsel relied on the following judgments:-

(i) Hari Kishan and State of Haryana Vs. Sukhbir Singh and ors., AIR 1988 SC 2127;

(ii) Neeraj Sharma Vs. State of Chhattisgarh, AIR 2024 SC 271

13. Considered the submissions advanced. Perused the evidence on record. Let us advert to the evidence in the case and appreciate the same.

14. PW 1 - Bhaskar, informant, is not an eye-witness to the incident. His evidence indicates that the appellant/convict's residence and agricultural land adjoin his (informant) agricultural land. There was dispute between the two over agricultural field. On 23.11.2016 at 10.00 in the morning, the appellant/convict took his cattle from the field of the appellant. Onion crop was there in the informant's field. Brother of the informant asked the appellant/convict to take the cattle away from the field. The appellant got annoyed. He abused the informant's brother and assaulted him. Fight took place between the two. The matter reached Shrigonda Police Station. The injured was examined at Rural Hospital, Shrigonda. It is further in his evidence that his wife Rohini (PW 2)

informed him the appellant to have opened fire at her and their son, Master Karan. He, therefore, rushed to them. He first took Karan to Rural Hospital, Shrigonda and then, shifted him to K.E.M. Hospital, Pune. It is further in his evidence that he lodged the FIR (Exh.21) against the appellant.

During cross-examination of PW 1 - Bhaskar, it has been brought on record that his pipeline runs from below the land of the appellant. The appellant had asked him to remove the same. The appellant was constructing a pond (शेत तळे). A civil suit, R.C.S. No.209 of 2016, was pending between them.

15. Since the evidence of PW 1 - Bhaskar is hearsay, we do not propose to refer it in extenso. Suffice it to say, based on the FIR lodged by him, criminal law was set in motion. It has been brought through his evidence that all was not well between him and the appellant/convict. The appellant had assaulted the brother of PW 1 - Bhaskar in the morning.

16. Then, we have evidence of PW 2 - Rohini. It is in her evidence that Master Karan came home from school by 03.15 p.m. She was in the field. Karan was hungry. Both of them, therefore, were on way back home. All of a sudden, firing started. She saw the appellant to have opened fire at both of them. The appellant was

standing on the roof of his house. It is further in her evidence that pellets hit lower limbs of Karan. Rohini took shelter in an orchard. She raised hue and cry. Her cousin brother-in-law arrived. She immediately contacted her husband (informant). They took Karan to Rural Hospital, at Shrigonda and then shifted him to K.E.M. Hospital, Pune. It is further in her evidence that Karan underwent operations. Twenty-one out of 22 pellets from his legs were removed.

During her cross-examination, it has come on record that she did not report the incident to the police though she was an eye-witness and even targeted victim. All the suggestions, indicating the appellant's defence, have been denied by her.

17. PW 5 - Karan testified consistent with the evidence of his mother Rohini. It is in his evidence that the Major (appellant/convict) had opened fire at him. He identified the appellant before the court. His evidence indicates that after the incident, he was rushed to Rural Hospital, Shrigonda and then, was shifted to K.E.M. Hospital, Pune. He has, however, admitted that his mother had told him to depose that he sustained pellets injuries when they were returning home.

18. PW 6 - Dr. Kishorkumar was Medical Officer at Rural Hospital, Shrigonda. He examined Master Karan by 04.20 p.m. on 23.11.2016 and noticed following injuries :-

Gunshot injuries to right and left limb.

To the right leg, below knee there were 13 entry points of bullets, of average size 0.5 x 0.3 c.m. There was no exit wound. There was no tenderness over bone.

To the left leg there were multiple bullet entry points above knee. Those were 8 in numbers, 0.5 x 0.3 c.m. average size. There was also no exit wound. No tenderness was to the bones.

In his opinion, the age of injuries was within three hours. The injuries were simple in nature. There was mild bleeding from the entry-side of the wound. The patient was referred to Civil Hospital, Ahmednagar, for further management. He issued certificate (Exh.32).

19. Then we have evidence of PW 8 – Dr. Shashank. His evidence suggests that he was Pediatric Surgeon at K.E.M. Hospital, Pune. Master Karan was admitted to hospital. The patient had sustained gun-shot injuries to his both lower legs. He examined the patient. The patient was in shock. He was frightened and became pale. There was tachycardia due to heavy loss of blood. There were 13 wounds to his right foot near ankle and 5 wounds to his left thigh region. The patient was operated by him on the same day. He removed all the superficial pellets from his both the legs, mostly

from the ankle region. On the next day, he was again operated and the pellets in the joint region and bones were removed by the Orthopedic team. He was in the team. On the first day, 8 pellets were removed and on the second day, 10 pellets were removed from the legs of the patient. The patient was admitted in K.E.M. Hospital for 12 days.

20. PW 8 – Dr. Shashank observed that the nature of the injuries on the patient was grievous. Such wounds were possible by firing of bullets from a fire-arm, i.e. 12-bore pistol. It is further in his evidence that at the time of examination of the patient, he had drawn a rough sketch of the injuries on both legs of patient.

During cross-examination, he testified to have not noted the nature of injuries to be grievous. He went on to admit that the injuries were not fatal.

21. We do not propose to refer to the evidence of other witnesses, namely, PW 3 - Ashok, who is witness to the scene of offence panchnama (Exh.24) and PW 4 – Balasaheb, A.S.I., who tendered in evidence copies of FIR (Exh.26), lodged by the brother of Bhaskar in respect of the incident that took place at 10.00 in the morning.

22. What could be observed is that there was a long-standing dispute between the appellant and the informant. A civil suit was pending. Number of complaints were lodged against each other with the concerned Police Station. On the given day, the appellant/convict had, first, quarreled with the brother of the informant. The matter had reached the Police Station. In the afternoon, the appellant/convict opened fire from his shot-gun at PW 2 – Rohini and her son PW 5 – Karan. As a result thereof, pellets (छर्चे) hit lower limb of Karan. PW 6 - Dr.Kishorkumar found the injuries to be simple. PW 8 – Dr. Shashank, the Medical Officer attached to K.E.M.Hospital, Pune, too, testified that he did not observe in his certificate or medical papers that the the injuries were grievous in nature. True, all the medical papers of Karan, maintained by K.E.M. Hospital, have been placed on record. The Medical Officer observed the injuries were not fatal. Admittedly, those were not on vital part of Karan. True, fire was opened towards Rohini and Karan. We, therefore, find that it was a bid on the lives of both Master Karan and his mother Rohini. PW 2 – Rohini did not suffer any injury. Karan appears to have suffered injuries to his lower limbs. He appears to have been completely recovered. The appellant has served out the entire sentence of five years of imprisonment.

23. In the facts and circumstances of the case, we are not inclined to allow the State's appeal (Criminal Appeal No.849 of 2018) for enhancement of sentence. We also find no merit in the appeal (Criminal Appeal No.850 of 2018) filed by the appellant/convict. Both these appeals stand dismissed.

24. So far as regards Criminal Appeal No.851 of 2018 for enhancement of compensation is concerned, convict - Sanjay has been directed to pay fine of Rs.50,000/-. It has further been directed that the fine amount, if recovered, be paid to the informant as compensation in terms of Section 357(1) of the Code of Criminal Procedure. Although the convict appears to have undergone the sentence in default of payment of fine, still, the fine could be recovered (Section 70 of Indian Penal Code).

25. In exercise of the powers/jurisdiction under sub-section (2) of Section 357-A of the Code of Criminal Procedure, we request the District Legal Services Authority, Ahmednagar, to decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1) of Section 357-A of Cr.P.C. We expect that the authority would decide the amount of compensation, which shall not be less than Rs.25,000/- and more than Rs.40,000/-.

26. With the aforesaid directions, Criminal Appeal No.851 of 2018 stands disposed of.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP