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**(2015) 01 BOM CK 0280**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 195 of 2012**

Ankush

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 07-01-2015

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 307, 326

**Citation :** (2015) ALLMR(Cri) 2604

**Hon'ble Judges :** A.B. Chaudhari, J;P.N. Deshmukh, J

**Bench :** Division Bench

**Advocate :** R.M. Daga, for the Appellant; S.M. Ukey, APP, Advocates for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

A.B. Chaudhari, J—Being aggrieved by the Judgment and Order dated 6th March, 2012 passed by learned Ad Hoc Additional Sessions Judge, Gondia, by which the appellant, Ankush Ashok Ramteke, was convicted of the offence punishable under Section 307, Indian Penal Code, and sentenced to Imprisonment for Life and to pay a fine of Rs. 30,000-00, in default, to undergo Rigorous Imprisonment for three years, the present appeal has been filed by the appellant-accused. Chhannulal Mane lodged First Information Report with Police Station, Gondia, on 17th January, 2009, that his daughter Sandhya studying in XIIth Standard was to have an engagement ceremony. On 17th January, 2009, he received the information that Sandhya was assaulted. He, therefore, rushed to the spot and found her injured and was being taken to hospital. Appellant Ankush Ramteke was having one side love affair and he, therefore, assaulted her with a sharp weapon with an intention to commit her murder. In the assault, Sandhya lost her right hand finger and three fingers of left hand besides other head injuries. Police investigated the crime and filed a charge-sheet. Prosecution examined its witnesses and finally the Trial Court, after hearing, convicted the appellant and sentenced him to undergo Imprisonment for Life having found that the incidents

of assault of the nature due to one side love affair were on rise and for no reason Sandhya was disfigured. Hence this appeal.

#### ARGUMENTS:

2. Mr. Daga, learned counsel for the appellant, in support of the appeal, vehemently argued that the Trial Court committed a serious error in convicting the appellant of the offence under Section 307, Indian Penal Code, when the medical evidence as well as the other evidence clearly lacked the basic requirement that it should be proved by the prosecution that in ordinary course the injuries could have caused death of Sandhya. According to him, neither the Medical Officer, nor any other witness deposed to that effect and, in fact, the injuries being on hands and head without much damage, no offence under Section 307 was at all proved, for which the appellant was convicted. Mr. Daga then contended that at any rate the evidence of the victim as well as other witnesses examined by the prosecution could not be believed and was required to be rejected, since the prosecution evidence was infirm and untrustworthy. In the alternative, Mr. Daga submitted that the appellant has already undergone about five years of sentence and he should be allowed to be released on completion of the sentence undergone looking to the young age of the appellant.

3. Per contra, learned Additional Public Prosecutor vehemently opposed the appeal and argued that the charge under Section 307, Indian Penal Code, was fully proved, since the appellant had an intention to finish off the victim Sandhya and that is why, he inflicted as many as thirty-two injuries on her person with a lethal weapon like knife. The injuries are on all parts of the body which clearly depicts that he had a definite intention to cause her death. He then submitted that the offences like the one, namely assault due to failure of one side love affair are on the rise, but still the society is not taking a lesson and, therefore, the sentence of Life Imprisonment imposed on the appellant cannot be said to be on the higher side.

4. We have heard learned counsel for the rival parties. We have carefully perused the judgment and order. We have seen the entire evidence in this case. Perusal of the evidence of the doctor and the other evidence on record clearly shows that the prosecution did not at all prove the ingredients of Section 307, Indian Penal Code. Medical evidence does not show any indication that the injuries caused to the victim by the appellant in the ordinary course could have led to death. On the contrary, the concerned doctor does not even say a word about the said aspect of the matter which is sine qua non for holding a person guilty for offence of attempt to commit murder. We are surprised to see this position in the entire evidence of the doctor and the other witnesses also. We are, therefore, of the clear opinion that the appellant could not have been held guilty of the offence of attempt to commit murder under Section 307 of Indian Penal Code.

5. We, however, find that the evidence of Sandhya [PW 1], Chhannu [PW 2], Ritesh [PW 3], Supriya [PW 4] and other witnesses is clear, consistent and

without any ambiguity whatsoever. The weapon was identified by the victim Sandhya and the appellant-accused was following her and committed the offence in question. The evidence of none of the witnesses was at all shattered and on the contrary, the same is consistent and believable and was rightly believed by the Trial Court. It would be appropriate to quote the following paragraphs from the Judgment of the Trial Court, which read thus:--

"8. The evidence of PW 1 Sandhya, who is hardly 21 years old girl and who is victim in the present case, indicates that she knows the accused and the incident had taken place on 17.1.2009 at 7.00 a.m., when she was proceeding towards natural call and the accused came from opposite side near her and assaulted on the head with a weapon like knife. At that time she kept her hands on head and her left hand three fingers and right hand 1 finger cut off and she became unconscious. Her evidence further indicates that the accused resided in the said area and hence she knows him and the accused wanted to marry with her, but she refused.

9. Her evidence further indicates that she identified the clothes which were wore by her on the date of incident. She also identified the weapon used by the accused and Articles A.B.C.D.E.F.G. Her evidence also indicates that after the incident she became unconscious and later on she was admitted in the Government hospital and the seizure panchanama also proved in her evidence Exh. 25. The evidence of PW 2 Chhannu indicates that he is not eye witness to the incident, but his wife disclosed about the incident that the accused Ankush Ramteke has assaulted to Sandhya. The evidence of this witness indicates that he rushed towards the spot and noticed the injuries over the shoulder and head of Sandhya and there is blood injuries and this witness carried out Sandhya towards KTS Hospital and lodged report Exh. 28 and FIR Exh. 29."

6. There is independent witness by names Ritesh [PW 3] and Supriya [PW 4], whose evidence has been discussed by the Trial Court in Paras 10 and 11 which we quote hereunder:--

"10. The evidence of PW 3 Ritesh indicates that he is eye witness to the incident and he heard the voice and he proceeded towards the spot and notice that he accused assaulted to Sandhya with weapon and accused thrown away the weapon and ran away from the spot and later on he caught hold the accused and handed over the accused to the persons who were gathered. This witness is independent witness and 45 years old and he is labourer.

11. The evidence of PW 4- Supriya indicates that he is eye witness to the incident and at the relevant time she noticed that the accused possessed the weapon and assaulted to Sandhya on her head and Sandhya lost her 3 fingers of left hand and 1 finger of right hand in the said incident. She shouted and people were gathered. Her evidence further indicates that the accused tried to ran away from the spot."

Thus, the attempt by the appellant on victim Sandhya was amply proved.

7. We have already held at the outset that no offence under Section 307, Indian Penal Code, was at all proved in the absence of medical evidence or any other evidence. In the preceding paragraph, we have held that prosecution has duly proved that the appellant by means of a knife cut four fingers of the victim Sandhya - one of right hand and three of left hand. That being so, we are of the firm opinion that the offence under Section 326, Indian Penal Code, causing grievous hurt was clearly proved against the appellant, even from the medical evidence. It is true that the offence under Section 307, Indian Penal Code, was not proved for the reasons given by us, but then the offence under Section 326 of Indian Penal Code has been proved by the prosecution against the appellant. Now, coming to the point of sentence, we find that Section 326 of Indian Penal Code also provides for Imprisonment for Life. Here is a case where the appellant caused thirty-two injuries to the victim though on all parts of the body, and did not cause any injury to the vital part. But then, appellant is clearly guilty for chopping off four fingers of a young girl of twenty-one years who was to get married and, thus, disfigured her. In a normal course, we do agree with the Trial Court that in view of increase in incidents of assault by such road romeos on the young girls, it is necessary to have a stern view of the matter. But then we find that the appellant does not have any previous bad antecedents, apart from the fact that he is also a young boy and made a mistake in assaulting the young girl. But then, as contended by Mr. Daga, we cannot allow his release from the jail merely because he has completed around five years of sentence. We find that imprisonment for a period of ten years or sentence for ten years should suffice the interest of justice. Trial Court had made an order of imposition of fine of Rs. 25,000-00 for being given to Sandhya and in default, he was to undergo Rigorous Imprisonment for three years. We think that the victim Sandhya must get some compensation from the appellant and in his default, he must suffer some more punishment. We, therefore, think that in addition to ten years" imprisonment, the appellant should pay a fine in the sum of Rs. 25,000-00 [rupees twenty-five thousand only] to victim Sandhya and in default, should undergo Rigorous Imprisonment for further two years. We think the above view of the matter should subserve the interest of justice. We, therefore, make the following order:--

#### ORDER

"[i] Criminal Appeal No. 195 of 2012 is partly allowed.

[ii] The order of conviction and sentence passed by Additional Sessions Judge, Gondia in Sessions Trial No. 39/2009, convicting appellant-Ankush Ashok Ramteke, for an offence punishable under Section 307 of the Indian Penal Code, is modified as under:--

The appellant-Ankush Ashok Ramteke is acquitted of an offence punishable under Section 307 of the Indian Penal Code. However, he is convicted for an offence punishable under Section 326 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for 10 years and make payment of fine of Rs.

25,000-00 [rupees twenty-five thousand only] payable to the victim -Sandhya Hariram Mane, and in default, to undergo additional Rigorous Imprisonment for two years.

[iii] Rest of the order passed by the learned Ad Hoc Additional Sessions Judge, Gondia in Sessions Trial No. 39 of 2009 is confirmed."