
(2018) 01 BOM CK 0212
In the Bombay High Court
Case No : 533 of 2004

Ashok s/o Hari Gharde

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:

Indian Penal Code, 1860, Section 307,
Section 326 - Attempt to murder - Voluntarily causing ievious
hurt by dangerous weapons or means

Citation : (2018) 01 BOM CK 0212

Hon'ble Judges : Rohit B. Deo

Bench : Single Bench

Advocate : R.R. Prajapati, ?S.V. Kolhe

Judgement

1. The appellant is assailing the judgment and order dated 17-7-2004 rendered by the learned 3rd Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial 105/2002, by and under which the appellant-accused is convicted for offence punishable under Section 307 of the Indian Penal Code (" IPC " for short) and is sentenced to suffer rigorous imprisonment for five years and to payment of fine of Rs.1,000/-.
2. Heard Shri R.R. Prajapati, learned Counsel for the appellant and Smt. S.V. Kolhe, learned Additional Public Prosecutor for the respondent.
3. The learned Counsel for the appellant-accused would submit that even if the evidence on record is taken at face value,

offence punishable under Section 307 of the IPC is not established by the prosecution. He invites my attention to the evidence on record, both ocular and medical. The doctor, who examined the injured, (P.W.1) has opined that the solitary lacerated wound may have been caused due to the blunt side of the weapon (axe).

4. Concededly, single blow with the blunt side of the axe was inflicted, although on a vital part of the body.

5. The prelude appears to be an altercation between the brother of the injured and the family members of the accused. The injured is the cousin brother of the accused.

6. The prosecution witnesses, of course, do not state in the examination-in-chief that the assault was preceded by an altercation. However, in the cross-examination, it is brought on record that the prelude to the assault was an altercation over breaking of the earthen pots.

7. Even if the evidence on record is taken at face value, it is difficult to come to any conclusion with reasonable certainty that the requisite intention or knowledge contemplated by Section 307 of the IPC can be attributed to the accused.

8. However, the accused deserves to be convicted under Section 326 of the IPC. The blow, albeit from the blunt side of the axe, caused fracture of left fronto-parietal region. The injury was, therefore, grievous in nature.

9. The conviction of the appellant under Section 307 of the IPC is set aside and instead the appellant-accused is convicted for offence punishable under Section 326 of the IPC.

10. In so far as sentence is concerned, injured Rajesh Gharde has left for heavenly abode in the year 2009. His widow, whom I have personally interviewed, Smt. Ramakanta Rajesh Gharde has filed on record an affidavit. The relevant portions of which read thus :

3. That, on the basis of said FIR S.T. No.105/2002 was registered against the appellant and others. That, in Sessions Trial Vijay Domaji Gharde was acquitted and Padmakar Domaji Gharde expired before commencement of trial and the present appellant (Ashok Gharde) has been convicted on 17-7-2004 for sentence to suffer R.I. for five years. That, since 2007 the relation between the appellant family and my family were good and cordial till today and also appellant having good and cordial relationship with my late husband also.

4. That, my husband expired on 15-2-2009 at Indira Gandhi Medical College (MAYO) and at the relevant time also, the appellant help me and my family for the assistance of treatment at Hospital. That, the appellant and late deceased Rajesh Gharde were the real cousins and are residing in the same locality. And after the death of Rajesh Gharde, the relation between the appellant family and the deponent families were good and cordial and the appellant is also looking the daily affairs of the business of the family. That, the appellant also borne expenses on the marriage of deponents daughter by name Neha performed on 18-4-2016 at Kamptee Road, Nagpur. That the deponent also was as witness in the Sessions Trial as P.W.2 and she deposed on 10-2-2004 before the Sessions Court, Nagpur.

5. That at present the deponent having no grievance against the appellant and she also does not want to prosecute the matter and she want to compound the appeal proceeding because at present the relations between the appellant family and my family has been good and cordial, so the present appeal against the appellant and the offence

under Section 307 be compounded in view of settlement between myself and appellant's family.

11. The offence is non-compoundable, as is fairly conceded by the learned Counsel for the accused. However, consistent with the view of the Hon'ble Apex Court in Ishwar Singh vs. State of Madhya Pradesh reported in (2008) 15 SCC 667, I see no impediment in altering the sentence to already undergone. The appellant has suffered detention, as under trial prisoner and as a convict for more than two months. The incident occurred more than 16 years ago. The family of the injured and the accused, who are relatives, have buried the past.

12. In view of the affidavit filed on record and the attending circumstances, while convicting the appellant under Section 326 of the IPC, I deem it appropriate to sentence the appellant-accused to detention/imprisonment already undergone.

13. The appeal is partly allowed and disposed of.

14. The bail bond of the accused shall stand discharged.