

(2018) 01 BOM CK 0108
In the Bombay High Court
Case No : 609 of 2002

Dhnyaneshwar s/o. Ganba Varthi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 324](#),
[Section 307](#), [Section 326](#) -
Voluntarily causing hurt by dangerous weapons or means - Attempt to murder -
Voluntarily causing grievous hurt by dangerous weapons or means

Citation : (2018) 01 BOM CK 0108

Hon'ble Judges : Rohit B. Deo

Bench : Division Bench

Advocate : V.D. Muley, N.H. Joshi

Final Decision : Allowed

Judgement

1. The appellant is aggrieved by the judgment and order dated 28.10.2002 delivered by the 1st Adhoc Additional Sessions Judge, Nagpur in Session Trial 456 of 2000, by and under which, the appellant (hereinafter referred to as "the 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 four years and to payment of fine of Rs.1,000/- and is further convicted for offence punishable under section 324 of the IPC and is sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs. 500/-.

2. Heard Shri V.D. Muley, the learned counsel for the

accused and Shri N.H. Joshi, the learned Additional Public Prosecutor for the respondent / State.

3. The case of the prosecution in brief, is that on 1.3.2000 at 7.30 p.m. the injured Ramchandra (PW 1) was in his pan shop, "Sanjay Pan Mandir" when the accused arrived at the pan stall. The accused was armed with a knife and after quarreling with PW 1 Ramchandra, the accused gave a blow on the abdomen region of PW 1. PW 1 was taken to Rural Hospital, Katol and thereafter admitted in Mayo Hospital, Nagpur. His statement was recorded in Mayo hospital on 3.3.2000 which is treated as First Information Report (Exh. 13). The motive for the knife blow was the inimical relations between the injured PW 1 and the accused. PW 1 states that he had helped the police to seize illicit liquor from a relative of the accused one Balkrushna Varthi.

4. The defence of the accused is of false implication. The accused also asserted that his relations with the injured PW 1 were strained although the defence gives different reasons for the strained relationship. The defence is that the injured PW 1 was brandishing a knife and fell down in the drain under the influence of liquor and hurt himself.

5. The prosecution has examined as many as twenty witnesses to prove the offence. The testimony of PW 1 Ramchandra, who has deposed that at 7.30 p.m. on 1.3.2000 the accused assaulted him with knife is not shaken in the cross examination. Minor omissions, which do not dent the credibility of evidence, are brought on record. The attempt of the defence was to suggest that PW 1 under the influence of liquor and while brandishing knife was abusing the accused. The suggestion given to PW 1 is that he started running towards house of the accused

and fell in the drain. The defence is noted only for rejection. Nothing is brought on record to probabalize the defence. The medical officer has correctly stated in the cross examination that had the accused fallen in the drain, signs of other injuries on his person would be visible. The medical evidence apart, there is nothing on record to suggest that PW 1 suffered injury due to his own knife when he fell in the drain while being under the influence of liquor.

6. The ocular evidence of PW 1 who is injured is more than amply corroborated by PW 6 Sanjay and PW 7 Shantabai, the brother and mother of injured PW 1. PW 9 Sitabai, who is residing near the spot has deposed that she heard shouts from the pan shop and saw accused and PW 1 quarreling. PW 9 thereafter went to the house of PW 1 and gave information of the quarrel to PW 7 Shantabai. PW 9 Sitabai states that when she again went to the spot, PW 1 Ramchandra was lying on the ground.

7. PW 8 Suresh who is examined as eye witness did not support the prosecution. However, the fact that the independent eye witness PW 8 Suresh has not supported the prosecution would not dilute the probative value of the implicitly reliable version of the injured PW 1 Ramchandra, PW 6 Sanjay and PW 7 Shantabai. I am not impressed by the submission that since the witnesses are relatives, they are interested witnesses. A related witness is not necessarily an interested witness. I have found the testimonies of the brother and mother of injured Ramchandra confidence inspiring. There is no reason to disbelieve the evidence of injured and PW 6 and PW 7 only because PW 8 Suresh did not support the prosecution.

8. The finding recorded by the learned Sessions Judge that accused delivered a knife blow to PW 1 is exceptionable.

However, it is difficult to hold that the prosecution has established offence under section 307 of IPC. It is not in dispute that a single blow was inflicted. The accused did not make any attempt to continue the assault or to take the assault to the logical end, if the intention were to be to kill PW 1. It is not the case of the prosecution that accused was prevented from continuing the assault. The evidence is suggesting that there was a quarrel although the details are blurred. In the circumstances available on record, it would be unsafe to convict the accused under section 307 of IPC. However, PW 1 was operated and three internal wounds were noticed which according to the medical officer could be caused by single blow. In view of the medical evidence on record, the accused is liable to be convicted under section 326 of IPC.

9. In so far as sentence is concerned, the accused and the injured PW 1 have moved a joint application 42 of 2018 seeking permission to compound the offence. Paragraph 3 of the application reads thus:

"That, the matter is compromised by the appellant and injured amicably. They are the resident of village Magagsur, Tahsil Katol, District Nagpur. The incident is of the year 2000. After long gap of time, the relations between the appellant and injured is very good and families of both is on very good terms. It is submitted that no fruitful purpose would be served in continuing the case, and thus prays for permission to compound the offence in extra ordinary jurisdiction of this Hon"ble Court".

Both the complainant and the accused are present. I have interviewed the complainant Shri Ramchandra Ankushraoji Mankar in order to satisfy the conscious of the Court that the process of law is not being subverted and I am satisfied that the joint application is not malafide. Offence punishable under section 326 of IPC is not compoundable offence. However, in view of the fact that the accused and the injured PW 1 are before the

Court contending that the offence be compounded in view of the contents of paragraph 3 reproduced supra, I am inclined to sentence the accused to detention already undergone.

Hence, this order:

- i) The conviction of the accused for the offence punishable under section 307 of IPC is set aside and the accused is instead convicted under section 326 of IPC and is sentenced to detention already undergone.
- ii) Criminal Application 42 of 2018 is disposed of.
- iii) The appeal is partly allowed.