

(2018) 02 BOM CK 0038
In the Bombay High Court
Case No : 322 of 2010

Harishchandra s/o Kashiram Bawankar	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Indian Penal Code, 1860, Section 325 - Punishment for voluntarily causing grievous hurt
Probation of Offenders Act, 1958, Section 4 - Power of court to release certain offenders on probation of good conduct

Citation : (2018) 02 BOM CK 0038

Hon'ble Judges : Rohit B. Deo

Bench : Single Bench

Advocate : K.B. Zinjarde, N.R. Patil

Final Decision : Disposed

Judgement

1. Challenge is to the judgment and order dated 14.05.2010 rendered by the Additional Sessions Judge, Bhandara in Sessions Trial 69/2007, by and under which, the appellant-accused is convicted for offence punishable under Section 325 of the Indian Penal Code (" IPC " for short) and is sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs.5000/-.
2. Heard Shri K.B. Zinjarde, the learned counsel for the appellant and Shri N.R. Patil, the learned Additional Public Prosecutor for the respondent-State.
3. The learned counsel for the accused submits that the

evidence on record is grossly insufficient to sustain the conviction. The prelude to the incident is not brought on record by the prosecution, is the submission. The defence that P.W.4 Rameshwar suffered injuries when his head accidentally hit the iron wheel of the tractor is probablized on the touchstone of probabilities, is the submission.

4. Per contra, Shri N.R. Patil, the learned A.P.P. would submit that the testimonies of the eye witnesses are consistent. The evidence of P.W.4 is amply corroborated by the evidence of P.W.2 Wasudeo and P.W.3 Digamber the father and brother of the injured Rameshwar, respectively. There is no reason why the evidence of the injured witness should be disbelieved, is the submission.

5. I have closely scrutinized the evidence and the reasons recorded by the learned Sessions Judge, and having done so, I do not see any infirmity in the finding recorded that the accused assaulted the injured P.W.4 Rameshwar with spade.

6. The evidence of the injured, which is even otherwise, entitled to be placed on higher pedestal than that of the other witnesses, as is rightly submitted by the learned A.P.P., is more than corroborated by the evidence of P.W.2 Wasudeo and P.W.3 Digamber. The evidence is consistent. There is no reason for the injured witness to falsely inculcate the accused. The evidence is corroborated by the medical evidence. The defence that injured accidentally dashed against the tractor which caused the head injury is not probablized even on the touchstone of preponderance of probabilities. The criticism that the owner of the tractor one Raju was not examined, is misplaced. The evidence, must necessarily be weighed and not counted. It is trite law that in a criminal trial the burden is that of the prosecution to bring home

the charge beyond reasonable doubt. However, if the defence is that the injured witness suffered injury due to dash against the tractor, which according to the defence was in the field of the accused, the owner of the tractor, if at all he was an eye witness, could have been examined in defence. I see no reason to disagree with the learned Sessions Judge who has correctly marshalled the evidence on record to come to a conclusion that the assault is proved.

7. In view of the submission of the learned counsel that the accused deserves to be granted the benefit of the Probation of Offenders Act, by order dated 08.02.2018 the report of the District Probation Officer was summoned. I have perused the report, which recommends grant of probation.

8. The incident occurred more than ten years ago.

The prelude to the incident is to a certain extent blurred.

The possibility of an altercation in which both the injured and the accused engaged in a scuffle, is not excluded. A single blow is struck with a spade. The accused was indubitably breaking or otherwise working on the embankment (dhura) when the altercation occurred. It is not that the accused went out of the way to lay his hands on the spade. Having perused the report of the District Probation Officer, I am of the opinion that sending the accused to jail may possibly convert him into an obdurate criminal. The accused deserves a chance to reform. I am therefore, inclined to grant the benefit of the Probation of Offenders Act, to the accused. The conviction of the accused under Section 325 of the Indian Penal Code is maintained. However, the sentence of imprisonment is set aside. The accused is extended the benefit of Section 4 of the Probation of Offenders Act, 1958. The accused to execute bond before the trial court to appear and receive sentence

if and when called upon during the period of one year and to keep the peace and be a good behaviour. Bail bond of the accused shall stand discharged.

9. The appeal is disposed of in the above terms