
(1999) 12 BOM CK 0003

In the Bombay High Court

Case No : Criminal Appeal No. 329 of 1991 (By Accused Against Conviction)
With Criminal Application No. 1219 of 1991

Lalit @ Lallu Vinodchandra Shaha

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 504, 506

Citation : (2000) 102 BOMLR 284

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Judgement

Vishnu Sahai, J.—Through this appeal, the appellant challenges the Judgment and Order dated 3.6.1991 passed by the IIInd Additional Sessions Judge, Satara, in Sessions Case No. 193 of 1989, convicting and sentencing him in the manner stated hereinafter:-

(i) u/s 307 of the I.P.C. to five years R.I. and to pay a fine of Rs. 2000/- in default to undergo six months R.I. ;

(11) u/s 324 of the I.P.C. to one year R.I. ;

(iii) u/s 504 of the I.P.C. to six months R.I. ; and

(iv) u/s 506 of the I.P.C. to two years R.I.

The substantive sentences of the appellant were ordered to run concurrently.

2. In short, the prosecution case runs as under:-

The two victims of the instant case namely the informant Rajesh Shaha P.W. 3 and Shailaja P.W. 5 are brother and mother of the appellant respectively. Since the appellant was in the habit of committing theft, sometime before the incident, one room which was taken on rent at Phaltan was separately given to him for his residence. The grandfather of the appellant had created a trust in his favour and

from the interest income, he used to sustain himself. At about 5 to 5.30 p.m. on 30.10.1988, when Shailaja along with her son Rajesh and Rahul and husband was present in her house situated in Shukrawar Peth, in Phaltan in Satara District, the appellant with his luggage on a trolley and himself on a moped came and informed Shailaja and others that he wanted to reside in the house. On this, they told him that there was a godown near the house and arrangement for his stay could be made there. The appellant insisted that he wanted to stay only in the house and he would kill them and reside in the house. Thereupon, he took out a gupti and inflicted a blow with it on the right side of abdomen of Shailaja. When he wanted to inflict a second blow on her, Rajesh intervened. Thereafter, the appellant went to assault his father. Again, Rajesh intervened. At that time, the appellant inflicted a blow on his left hand. Thereafter, the appellant ran away.

Thereafter, Shailaja's husband (appellant's father) telephoned the police which came and took Shailaja and Rajesh to Zilla Parishad Hospital.

3. The injuries of Shailaja and Rajesh were examined the same day by Dr. Prakash Kamble P.W. 7 from 6.15 p.m. onwards.

On the person of Shailaja, Dr. Kamble found a stab wound on the anterior aspect of the lower chest (right side) at the level of 9th rib in mid clavicle region of the dimensions of 1" x 1/2" x 2". In his statement, in the Trial Court, Dr. Kamble stated that the said injury was serious.

On the person of Rajesh, Dr. Kamble found two Incised wounds which were situated over left hand.

In the opinion of Dr. Kamble, the injuries of both the injured were about six hours old and could be caused by a sharp cutting weapon.

In his cross - examination, Dr. Kamble stated that the injuries of Rajesh were skin deep.

4. The F.I.R. of the incident was recorded by P.S.I. Balasahab More P.W. 10 on the information given by Rajesh, the next day P.S.I. More after the usual investigation submitted the charge-sheet against the appellant on 1.12.1988.

5. The case was committed to the Court of Sessions in the usual manner where the appellant was charged on a number of counts, including Section 307 of the I.P.C. He pleaded not guilty to the charges and claimed to be tried. His defence was of denial.

During the trial, in all the prosecution examined 10 witnesses, two of them Rajesh P.W. 3 and Shailaja P.W. 5, brother and mother of the appellant respectively were examined as eye-witnesses.

In defence, no witness was examined. The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated in para 1 above.

Hence, this appeal.

6. I have heard learned Counsel for the parties and perused the entire material on record. After the utmost circumspection, I am of the Judgment that this appeal deserves to be partly allowed.

7. So far as the involvement of the appellant in the incident is concerned, the same in my view, has been established to the hilt through the credible evidence rendered by Rajesh P.W. 3 and Shailaja P.W. 5, the brother and mother of the appellant respectively. It is on the basis of the recitals contained in the examination-in-chief that I have set out the prosecution story in para 2 above and consequently, I advert to the recitals contained in there evidence in a capsule - form now. In short, both these witnesses stated that the appellant was a thief. He had been turned out of the house and was residing in a rented room in Phaltan and was surviving on the income of interest accruing from the trust created in his favour by his grandfather. On the date of the incident, at about 5 to 5.30 p.m. he came bag and baggage to the house wherein Rajesh and Shailaja were living and insisted that he would reside there. On this, Shailaja and others told him that if he wanted, he could reside in the godown. At this, he flared up and said that he would kill them. Thereafter, he took out a gupti and inflicted a blow with it on the abdomen of Shailaja. He tried to repeat the blow but, his bid was foiled by Rajesh. He thereafter, went to assault his father. Rajesh again intervened. He thereupon, inflicted a gupti blow on the person of Rajesh.

We have examined the said statement of Rajesh and Shailaja and find it to be implicitly truthful. The manner of assault furnished by them is corroborated by the medical evidence. Dr. Kamble P.W. 7 who medically examined them candidly stated that their injuries could be caused by a sharp cutting weapon. It is common knowledge that the injuries sustained by the victims could be caused by a gupti. It should be borne in mind that since Rajesh and Shailaja were brother and mother of the appellant respectively, they would not have falsely implicated him on a trumped - up charge u/s 307 of the I.P.C. inspite of the fact that the relations between them and the appellant may have been bad. I also find it difficult to believe that they would have done so excluding the real assailant.

8. Assurance to the ocular account is lent by the circumstance that the F.I.R. of the incident was lodged immediately after the medical examination of the victims was done by Dr. Kamble. This has come in the evidence of PSI Balasahab More P.W. 10 who recorded the F.I.R., on the information given by Rajesh P.W. 3. It is pertinent to mention that in the said F.I.R., the appellant, is named and the manner of assault detailed by me "above" has been stated therein.

9. For the said reasons, in my view, the learned trial Judge acted correctly in finding the involvement of the appellant in the incident proved beyond all shadow of doubt. However, I feel that the learned trial Judge erred in convicting the appellant for the offence u/s 307 of the I.P.C. The basis for the appellant's conviction on the said count is the solitary stab wound received by Shailaja P.W.

5. It is true that Dr. Kamble P.W. 7 has stated that the said injury was serious in nature, but merely from this fact it cannot be inferred that the appellant committed the offence within the four corners of the said section. There is nothing to indicate that Shailaja's injury was dangerous to life or was capable of causing death. A division Bench of this Court in para 11 of the ease in The State of Maharashtra Vs. Bodaya Ramji Patil, has laid down that an offence u/s 307 of the I.P.C. would only be made out if the injuries caused are capable of causing death. In view of the ratio laid down in the said case, and bearing in mind that the appellant only inflicted a solitary injury on Shailaja's person, which was not dangerous to life, in my view the safer course would be to alter his conviction from Section 307 to one u/s 324 of the I.P.C.

The question which arises is what should be the quantum of sentence which should be awarded for the offence u/s 324 of the I.P.C. in relation to the injuries caused to Shailaja P.W. 5. I have reflected over the said question. The appellant had no business to assault his mother and brother with a gupti. In the normal course, I would have awarded him a severe sentence for assaulting his mother but, I cannot shut my eyes to the reality that the incident took place more than eleven years ago ; there is nothing to indicate that the appellant is a previous convict; and he was provoked into assaulting Shailaja P.W. 5 by her suggestion that instead of living in the house, he should live in the godown. Considering these circumstances, in my view, a sentence of one year R.I. coupled with a fine of Rs. 10.000/- and six months R.I. in default for the offence u/s 324 of the I.P.C. for causing injuries to Shailaja P.W. 5 would satisfy the ends of justice.

I however, feel that the conviction and sentence of the appellant for the offence u/s 324 of the I.P.C. (for causing injuries to Rajesh P.W. 3) and 504 of the I.P.C. does not warrant any interference but, I feel that the sentence of two years R.I. u/s 506 of the I.P.C. is excessive and deserves to be reduced to one year R.I.

10. In the result, this appeal is partly allowed. I set aside the conviction and sentence of the appellant for the offence u/s 307 of the I.P.C. and acquit him thereunder. In case he has paid the fine of Rs. 2000/-imposed thereunder, it shall be refunded to him. Instead I find him guilty for the offence u/s 324 of the I.P.C. and direct him to serve a sentence of one year R.I. and pay a fine of Rs. 10.000/- in default to undergo six months R.I. The said fine shall be deposited by him within six months from today in the Trial Court and shall be paid as compensation to P.W. 5. Although I maintain the conviction of the appellant for the offence u/s 506 of the I.P.C. but, I reduce his sentence from two years R.I. to one year R.I. I however, maintain the conviction and sentence of the appellant for the offence u/s 324 of the I.P.C (for causing injuries to Rajesh P.W. 3) and Section 504 of the I.P.C.

The substantive sentences of the appellant on all the counts shall run concurrently. The appellant is on bail and shall be taken Into custody forthwith to serve out his sentence.