

(2015) 04 BOM CK 0104
In the Bombay High Court
Case No : Criminal Appeal No. 319 of 2013

Shashikant Chandrakant Chaudhary

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 325, 326

Citation : (2015) ALLMR(Cri) 3966 : (2015) 3 BomCR(Cri) 208

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : A.P. Mundargi, Senior Advocate i/b Hrishikesh Mundargi and P.G. Sarda, for the Appellant; Anamika Malhotra, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.M. Thipsay, J.

1. This Appeal is directed against the judgment and order dated 8th March 2013 delivered in Sessions case No. 77 of 2012, convicting the appellant, who was the sole accused in the said case, of an offence punishable under section 307 of the IPC, and sentencing him to suffer Rigorous Imprisonment for 10(ten) years, and to pay a fine of Rs.2,000/-in default to suffer RI for 6(six) months.

2. I have heard Mr.A.P Mundargi, Senior Advocate for the applicant. Heard Mrs. Anamika Malhotra, learned APP for the State.

3. The appellant had sought for the suspension of the sentence imposed upon him during the pendency of the Appeal, but in the course of hearing of the application for suspension of sentence, the learned counsel had submitted that he would not press the said application if the Appeal could be taken up for hearing, expeditiously. It was, therefore, decided to keep the application for suspension of sentence in abeyance, and make an endeavour to hear the Appeal itself, finally at an early date. Accordingly, the Appeal has been heard today finally.

4. The case of the prosecution, as put forth before the trial court, was, in brief, that the appellant and the First Informant Sadhana Rasane had a love affair between them. Sadhana had given birth to a child by name Arjun out of their relationship. That, this relationship between the appellant and Sadhana was since the year 1982. In 1988-89 there was some dispute, and they had separated after executing an agreement in writing. In 1995-96, they again re-united. The appellant is a married person, having two sons and a daughter from his wife. The son of the appellant from his wife one Ashish was to get married. The appellant it appears needed money to meet the marriage expenses. He, therefore, started insisting that Sadhana should sell her house for meeting the marriage expenses of Ashish. Over this, a quarrel took place between the appellant and Sadhana. The appellant, however, on 26th July 2011, approached Sadhana, tendered an apology, and urged that she should again start residing with him. This was refused by Sadhana. That, on 27th July 2011, while Sadhana and her son who is also the son of the appellant were proceeding to Sadhana's workplace a post office --on a motorcycle. At a particular place, the accused who had hidden himself, came across the motorcycle, and kicked it. As a result of the kicks given by the appellant, Sadhana and Arjun fell down from the motorcycle. The appellant was armed with a Sattur in his right hand, and a stick to which a sharp weapon had been attached in his left hand. The appellant gave several blows of sickle on the head, neck and left shoulder arm of Sadhana. When Arjun rushed to rescue her, the appellant gave some blows of sickle on his face cheek, right hand, left shoulder, right ear, etc.

5. It appears that since this incident took place on a road in broad day light i.e. at 1.00 a.m, a number of persons assembled there while the assault was still going on, and some of them threw stones at the appellant. The appellant then left the place. A police vehicle came to the spot, and Sadhana and Arjun were taken to civil hospital in an auto-rickshaw. Sadhana's statement was recorded by the police, and was treated as the First Information Report. The weapons of assault, used by the appellant, were lying on the spot, and were taken charge of by the police under a panchnama.

6. The learned counsel for the appellant fairly conceded that he would not question the correctness of the finding that the appellant indeed assaulted Sadhana (PW 1) and her son Arjun (PW 2) He submitted that in view of the evidence of Sadhana and Arjun coupled with the evidence of Dr.Shraddha Gaikwad (PW 7) and Ramesh Bhandare,(PW 9) Inspector of Police attached to Sadar Bazar Police Station where the offence was registered at the material time, it would be futile to contend that this aspect of the prosecution case was not proved. He, however, submitted that what he wanted to emphasize was that the offence committed by the appellant, on the proved facts, would not be one punishable under section 307 of the IPC. The learned counsel also submitted that though the theory of assault can be accepted on the basis of the evidence adduced during a trial, the nature of injuries as were sustained by Sadhana and Arjun, are not consistent with the use of sharp weapons like Sattur and Koyta by

the appellant. He submitted that no intention to commit murder of Sadhana and/or of Arjun can be attributed to the appellant, and that the offence committed by him would be one punishable under section 325 of the IPC, or, at the most, punishable under section 326 of the IPC. He submitted that if this Court comes to the conclusion that the offence committed by the appellant is not punishable under section 307 of the IPC, then a consequent and appropriate reduction in the sentence imposed upon the appellant should follow.

7. I have carefully considered the matter.

8. Indeed, the weapons of assault are said to be Sattur (sickle) and an iron spear attached to stick. It is not in dispute that the weapons of assault were, allegedly, sharp weapons. In this background, when the injuries sustained by Sadhana and Arjun are seen, they all are stated to be "contused lacerated wounds" except one abrasion suffered by Arjun. It would be appropriate to reproduce here the nature of injuries sustained by Sadhana, as is revealed from the evidence of Dr.Shraddha Gaikwad.

1. CLW over left arm, size 6 x 3 x 2 cm,
2. CLW over neck posterior region, size 20 x 3 x 5 cm,
3. CLW over left side of occipital region, size 3 x 1 x 1 cm,
4. CLW over neck of left side, size 5 x 3 x 2 cm
5. CLW over left hand, size 7 x 2 x 2 cm

Dr.Shraddha Gaikwad has stated that the injuries at Sr.1 and 5 were "simple" and the other were "grievous".

9. The injuries sustained by Arjun are said to be

1. CLW over right cheek, size 6 x 2 x 2 cm,
2. CLW over right elbow, size 5 x 5 x 5 cm,
3. CLW behind right ear on scalp, size 5 x 1 x 1 cm,
4. Abrasion over lower lip size 2 x.5 cm
5. Deformity of right elbow
6. Blunt trauma of left shoulder.

10. Dr.Shraddha Gaikwad stated that these injuries were caused by "hard and blunt object". In the examination-in-chief, she stated that the injuries could be possible by the blunt sides of weapons like koyta or spear. In the cross-examination, she admitted that if koyta and Sattur would be used by the sharp side, the injured would sustain incised wounds.

11. The fact that the weapons were recovered from the spot, and that they had been lying there after the incident, is to be gathered only from the evidence of

the Investigating officer. The panch witnesses to the spot panchnama did not support this theory and were declared hostile.

12. Undoubtedly, there is some substance in the contention advanced by Mr. Mundargi, the learned counsel for the appellant. The weapons are said to be sharp, but the injuries sustained are indicative of having been caused by hard and blunt objects. However, what cannot be ignored is that injuries, as aforesaid were, in fact, sustained by the victims and there has been no challenge to this aspect. In what manner the weapons were used, is not clear, and one may proceed on the basis that blunt side of the koyta and the stick was used for the assault. The possibility of the weapons not being sufficiently sharp also may be kept in mind. However, the question is whether because of these aspects, it would be possible to conclude that the case would not be of an offence punishable under section 307 of the IPC. After all, the injuries sustained by Sadhana are of a serious nature.

13. The learned Addl. Public Prosecutor submitted that considering the relationship between the parties, and the long history of the affair, dispute, re-union and the further dispute, as also the number of blows given to the victims by the appellant, an intention to cause death of Sadhana can be attributed to him. I have also examined how the learned trial Judge has dealt with this question. It appears that the appellant was found in possession of a pesticide. The learned trial Judge has inferred that considering the facts of the case, the appellant, in all probability, intended to consume the pesticide, and put an end to his life after doing away with First Informant Sadhana. This view of the learned trial Judge cannot be said to be suffering from any error. Such inference, if drawn from the entire evidence on record, cannot be said to be improper, or incorrect.

14. The intention behind the assault would be a matter of inference to be drawn from the facts of the case. The relationship between the appellant and Sadhana was certainly of a peculiar nature. Such relationship can arouse extreme feelings. Apart from the fact that the appellant was possessing a pesticide, there are other facts suggesting the "mens rea" behind the assault to be the one requisite to constitute the offence into one punishable u/s/307 of the IPC. The appellant gave up the assault only after members of public had gathered there, and had thrown stones on him. This is found in the evidence of Arjun, and has not been challenged in the cross-examination. On the contrary, the same gets support from the fact that the appellant had sustained some injuries during the incident. Therefore, it would be proper to conclude that the assault ended only when members of public gathered there, and threw stones on the appellant.

15. Considering the totality of the circumstances, it is not possible to hold that the offence committed by the appellant would not be one punishable under section 307 of the IPC.

16. Even assuming just for the sake of arguments that the offence would be one punishable under section 326 of the IPC, the same is also a serious offence

punishable with Imprisonment for life. Considering the facts of the case, the offence allegedly committed by the appellant has to be treated as a grave and serious one. Therefore, for such an offence, the sentence of Rigorous Imprisonment for 10 years, as awarded by the trial Judge, cannot be said to be too harsh or unreasonable. One, therefore, would not interfere with the sentence and reduce the same, even if that the offence would be one punishable, under Section 326 of the IPC could be successfully established.

17. The order of conviction as recorded by the learned trial Judge, and the sentence imposed upon the appellant, is proper and legal.

18. No interference is warranted.

19. The Appeal is dismissed.