

(2018) 06 BOM CK 0131
In the Bombay High Court
Case No : CRIMINAL APPEAL No. 230 Of 2007

SOU. BHIKABAI BHAGWAN HERODE	Vs	APPELLANT
THE STATE OF MAH. THRU. P.S.O.		RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 294, 307, 320, 325

Citation : (2018) 06 BOM CK 0131

Hon'ble Judges : MANISH PITALE, J

Bench : Single Bench

Advocate : Deepa, Shamsi Haider

Final Decision : Disposed Of

Judgement

1. The appellant herein has been convicted by the impugned judgment and order passed by the Court of AdÂhoc Additional Sessions Judge, Akot

(Trial Court) for offence under Section 307 of the Indian Penal Code (I.P.C.) and she has been sentenced to suffer rigorous imprisonment for five

years and to pay fine of Rs.500/Â?.

2. As per the prosecution case, on 12.03.2006, at about 12.00 noon, when the injured victimÂ?complainant (PW1) Jayashree had gone to fetch water at

a public tap in her village, the appellant (accused) had a quarrel with her.Â The appellant allegedly uttered abusive words against the complainant

(PW1) and during the quarrel, she pushed the complainant into a dry well which was about fifty feet deep.Â The complainant was severely injured

and she had to be taken out from the well by her brother and one Nagorao (PW5).Â The complainant had fallen unconscious due to the impact of the

injuries.Â Upon regaining consciousness in the hospital, her statementÂreport was recorded, wherein she stated that the appellant had abused her

during the quarrel near the tap and that she had pushed her into the well.Â On this basis, First Information Report (F.I.R.) was registered in Police

Station Telhara against the appellant for offences under Sections 307 and 294 of the I.P.C.

3. The prosecution examined fourteen witnesses in support of its case, which included the complainant (PW1), her brother and other relatives, as also

Doctors who had treated her in the hospital and the Investigating Officer.

4. The trial Court in the impugned judgment and order found that the evidence of the so called eye witnesses could not be believed because the

complainant (PW1) had not named any of them in the report made to the police.Â The presence of the said alleged eye witness was disbelieved by

the trial Court.Â But, the trial Court found that the evidence of the complainant (PW1) read with the evidence of PW5ÂNagorao, person who helped

in bringing the injured complainant out of the well, the Doctors (PW9 and PW12) and the Investigating Officer (PW14) was sufficient to prove the

prosecution case.Â The trial Court found that the evidence of complainant (PW1) demonstrated that the appellant was having an affair with the

brother of the complainant (PW1).Â The brother was found to be already married and that for the said reason, there was animosity between the

complainant's family and the appellant.Â The trial Court found that the nature of injury suffered by the complainant (PW1) and the manner in which

the appellant gave a forceful push to her demonstrated that she had intention or in the alternative knowledge of the fact that her act could lead to the

death of the complainant (PW1). On this basis, the trial Court convicted the appellant under Section 307 of the I.P.C.

5. Mrs. Deepa Charlewar, learned counsel appearing on behalf of the appellant, submitted that the sole testimony of the complainant (PW1) was not

sufficient in the present case for convicting the appellant. It was submitted that the trial Court itself had disbelieved the presence of the alleged eye

witnesses and that there was insufficient material on record to show that the appellant was responsible for the complainant (PW1) falling into the well,

resulting in serious injuries.

6. On the other hand, Mrs. Shamsi Haider appearing on behalf of the State, submitted that even if other alleged eye witnesses were disbelieved by the

trial Court, perusal of the evidence of the complainant (PW1) demonstrated that

she had categorically stated about the presence and the role of the appellant in the incident that occurred on 12.03.2006. It was submitted that there was no reason why the solitary evidence of the complainant (PW1) could not be the basis of the conviction and sentence imposed by the trial Court in the present case.Â It was submitted that the manner in which the appellant had forcefully pushed the complainant (PW1) into the well demonstrated that she definitely had an intention to cause her death.Â It was submitted that serious injuries were caused to the complainant (PW1) including a fracture of the femur bone, demonstrating that the appellant was guilty of having committed offence under Section 307 of the I.P.C.

7. Having heard the counsel for the parties, it is clear that the trial Court has convicted and sentenced the appellant only on the basis of the evidence of the complainant (PW1), supported by the medical evidence on record.Â The trial Court has categorically found that none of the alleged eye witnesses could be believed in the present case.Â This finding of the trial Court is correct because the complainant (PW1) never mentioned the presence of any of the alleged eye witnesses, in the report that she had given on the date of incident.Â The statement made by the complainant (PW1) in her evidence before the trial Court that her brother and other eye witnesses were present at the time of the incident, was obviously an improvement.Â But, a perusal of the evidence of the complainant (PW1) shows that she has stated in clear terms about the presence and the role of the appellant in the incident that occurred on 12.03.2006.Â The background facts of the present case regarding illicit relationship between the brother of the complainant (PW1) and the appellant, go to show that there was reason for quarrel between the complainant (PW1) and the appellant.Â Even if the quarrel was related to the manner in which the complainant (PW1) had kept her pitcher near that of the appellant at the public tap, it becomes evident that there had been a quarrel between the two.Â The presence of the appellant and the manner in which she pushed the complainant (PW1) into the well has been established by the evidence on record.Â The medical evidence shows that the complainant (PW1) did suffer serious injuries, including fracture of the femur bone.

8. But, the crucial question that arises in the present case is as to whether it can be said that when the appellant pushed the complainant (PW1) into

the well, during the quarrel between the two, she had the intention or knowledge that it could result in the death of the complainant (PW1).¹ The fact that there was a quarrel between the two has been established beyond doubt but, in the process of the quarrel whether the appellant developed the intention to cause the death of the complainant and thereupon pushed her into the well needs to be determined.² There is no doubt that when a quarrel, in the nature that appears to have ensued between the complainant (PW1) and the appellant, takes place, the persons involved do undertake actions that can cause serious injuries.³ But, to attribute intention to one of them of causing the death of the other would require some evidence or material more than that which is available in the present case.⁴ It does appear from the evidence on record that when the appellant forcefully pushed the complainant (PW1) into the well, she did have the intention of causing hurt and discomfort to the complainant (PW1).⁵ In the facts of the present case, therefore, it can be said that the appellant did have an intention to cause hurt to the complainant (PW1).⁶ In this situation, the nature of injury suffered by the complainant (PW1) becomes relevant for deciding as to whether it could be said that the appellant had caused grievous hurt to the complainant.⁷ Section 320 of the I.P.C. defines 'grievous hurt' as follows:⁸

320. Grievous hurt.—"The following kinds of hurt only are designated as grievous—

First. —"Emasculation.

Secondly. —"Permanent privation of the sight of either eye.

Thirdly. —"Permanent privation of the hearing of either ear.

Fourthly. —"Privation of any member or joint.

Fifthly. —"Destruction or permanent impairing of the powers of any member or joint.

Sixthly. —"Permanent disfiguration of the head or face.

Seventhly. —"Fracture or dislocation of a bone or tooth.

Eighthly. —"Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.⁹

9. In the present case, the complainant (PW1) suffered fracture of femur bone apart from other bodily injuries.¹⁰ She had to be admitted to the

hospital and upon recovery, she was discharged.Â These facts clearly show that the injuries suffered by the complainant (PW1) were covered in

clauses 'seventhly' and 'eighthly' to Section 320.Â Therefore, even if it is held that the appellant did not have the intention to cause the death of the

complainant (PW1), she was clearly liable for having caused grievous hurt to the complainant and that therefore, she deserved to be punished under

Section 325 of the I.P.C.Â The said provision prescribes punishment of imprisonment for a term which may extend to seven years.

10. On the basis of the evidence and material on record, the finding of the trial Court about the appellant being guilty under Section 307 of the I.P.C. is

not sustainable.Â But, at the same time, the material is sufficient to demonstrate that the appellant was indeed liable for being punished under Section

325 of the I.P.C.Â Considering the fact that even the trial Court had shown leniency towards the appellant while imposing sentence under Section

307 of the I.P.C., it would be appropriate that in the facts and circumstances of the present case, the appellant is sentenced to undergo rigorous

imprisonment for a period of two years upon being convicted for offence punishable under Section 325 of the I.P.C.

11. Accordingly, this appeal is partly allowed in the following terms:Â?

I. The conviction of the appellant is altered from Section 307 of the I.P.C. to Section 325 of the I.P.C. for having caused grievous hurt to the complainant (PW1).

II. The appellant is sentenced to suffer rigorous imprisonment for a period of two years for her conviction under Section 325 of the I.P.C.

III. The fine amount imposed by the trial Court is maintained. IV. Consequently, the appellant shall be taken in custody for serving out the sentence as

imposed above.

V. Needless to say that the appellant is entitled to set off for the period already undergone.

VI. The appeal stands disposed of.

VII. In view of disposal of the criminal appeal, Criminal

Application (APPA) No.331 of 2018 also stands disposed of.