ABC 2019 (III) 159 BOM

ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Mangesh S. Patil, J.)

Criminal Revision Application No.145 of 2004 With Criminal Revision Application No.349/2004

Decided on 4 June 2019

Aurangabad Bench

VIKRAM WAMAN BACHAKE ***- Petitioner(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 307 & 324 — Conviction u/s 307 by trial Court — Sword blow on head — Corroborated by witnesses & Medical evidence — deposition of medical officer — injury sustained by the victim was likely to cause death — No previous enmity —Incident occurred on the spur of the moment — mutual fight — Counter FIRs — blade of sword was not used, injury was inflicted from blunt side — Intention of the accused — Held, If at all the accused was intending to kill the victim, he would have certainly used the sharp edge of the sword instead of a blunt portion — Creates a reasonable doubt as to the intention & knowledge on the part of accused — Conviction altered to s 324, IPC— Indian Evidence Act, 1872 — Section 3. (Para 17 & 18)***

(B) Indian Penal Code, 1860 — Section 307 — Offence under — Establishing of — It is trite that hypothetically, consequence is immaterial & it is to be ascertained from all the attending facts & circumstances as to whether the accused was holding sufficient intention or knowledge of committing murder — Certainly the consequence is also important but such intention & knowledge has to be gathered from all the attending circumstances. (Para 17)

(C) Indian Penal Code, 1860 — Section 307 — Sword blow in the head with the blunt side — Medical evidence— presence of cerebral edema — testimony of the doctor— injury was likely to cause death — Held, One cannot conclusively ascertain as to the force used while giving the blow on the head — one cannot conclude that the injury was so severe that in all probabilities it could have caused death. (Para 18)

Facts:- *As per the complaint, on the relevant day a quarrel had ensued between two children the matter escalated and the accused gave a a*

blow of sword on the head of the injured witness, as a result he fell to the ground and sustained a bleeding injury on his head and became unconscious. It was also allged that accused persons also gave iron rod blows to the complainant party. A cross FIR was also filed. The learned Assistant Sessions Judge convicted all the three accused for the offences punishable u/ss 143, 147, 148, 307 r/w 149 of IPC, Section 323 r/w 149 of IPC and Section 506 r/w 149 and imposed separate sentences. Feeling aggrieved, the accused preferred Criminal Appeal before the Additional Sessions Court. By the impugned judgment and order it was partly allowed. The conviction and sentence against all the accused was quashed and set aside except that of accused-appellant for offence punishable u/s 307 of I.P.C. which was maintained. The hon'ble Bombay High Court in the present revision altered the conviction to one u/s 324, IPC.

Law of relief:- ***Single blow of blunt part of a weapon, held, there is reasonable doubt as to if really accused was intending or had knowledge to kill the victim.***

Held:- It is trite that hypothetically, as has been laid down in several decisions of the Supreme Court, while considering the case under Section 307 of the I.P.C. consequence is immaterial and it is to be ascertained from all the attending facts and circumstances as to whether the accused was holding sufficient intention or knowledge of committing murder. Certainly the consequence is also important but such intention and knowledge has to be gathered from all the attending circumstances. Looked at from this angle, in my considered view, there are few very important circumstances which appear on the record, which certainly create a reasonable doubt as to the intention and knowledge on the part of accused Vikram to kill Kashinath. (Para-17)

It is not the prosecution case that there was any previous animosity between the two families. The incident had occurred on the spur of the moment when the two minor boys from both the families engaged in some quarrel which drew their family members to the spot. The things seem to have flared up thereafter which must have resulted in some fighting and in fact both the sides have lodged counter F.I.Rs. albeit in a counter case complainant Prafulla and his family members have been acquitted in R.C.C. No.1258 of 1999 by the learned J.M.F.C. by the judgment and order dated 30.10.2006. Though recovery of weapon is not always necessary, the nature of the injury sustained by Kashinath (PW-2) *ex facie* shows that assuming that the injury was caused by weapon like a sword, the blade of the sword

was not apparently used, else he would have certainly sustained some incise wound. Though there was *cerebral edema* and though Dr. Pagaria (PW-7) has testified that but for the timely intervention injury could have caused death, one cannot conclude that the injury was so severe that in all probabilities it could have caused death. One cannot conclusively ascertain as to the force used while giving the blow on the head. If at all the accused Vikram was intending to kill Kashinath, in all probabilities, he would have certainly used the sharp edge of the sword instead of a blunt portion. (Para-18)

Counsel:- ***For Petitioner(s):*** *Mr.A.D.Soman, Mr.S.K.Adkine, Advs.*

For Respondent(s): *Mr.S.P.Sonpawale, Adv.*

Cases Referred:-

1. *Gulab Das and Ors V/s State of Madhya Pradesh; (2011) 10 SCC 765, (Para-7)*
2. *Hari Singh V/s. Sukhbir Singh and Ors.; (1988) 4 SCC 551, (Para-9)*
3. *Waman S/o Tulsiram Ghodemare and anr. V/s. State of Maharashtra.; 2018 SCC Online Bom. 807, (Para-9)*
4. *Tatigari Durgaiah S/o Lakshmaiah V/s. State of Andhra Pradesh,; 2007 Cri. L.J. 524, (Para-9)*

JUDGMENT

MANGESH S. PATIL, J.: - 1. These are Criminal Revisions arising out of the judgment and order passed by the learned Additional Sessions Judge, Aurangabad in Criminal Appeal No.90/2002, the first preferred by the accused no.1 being aggrieved and dissatisfied by the dismissal of part of his appeal thereby confirming his conviction for the offence punishable under section 307 of the IPC and the other being preferred by the original informant complainant aggrieved by the decision in the appeal to the extent it sets aside acquittal of the rest of the accused, as also acquittal of the accused no.1 of the rest of the charges.

2. Both these revisions have been heard simultaneously and are being disposed of by this common judgment and order. For the sake of convenience the parties are hereinafter referred to by their status in the trial.

3. Respondent Prafulla lodged a complaint at Chawani Police Station, Aurangabad on 31.05.1999 alleging that on that day at about 8.00 p.m. a quarrel had ensued between his brother Sachin and one Nitin Bachke. After hearing commotion he along with his parents rushed to the spot. The parents of Nitin Bachke and his minor brother had already gathered there. It was alleged that accused Vikram was

carrying a sword whereas accused Anil was carrying an iron rod. Vikram gave a blow of sword on the head of his father, as a result he fell to the ground and sustained a bleeding injury on his head and became unconscious. Anil also gave a blow of iron rod on the head of his father. When he tried to intervene accused Vikram gave another blow of sword on his head and even Anil assaulted his cousin Anil with iron rod on the head. It was further alleged that even his mother was given kicks and fist blows. On the basis of such complaint Crime No. I-126 of 1999 was registered. Investigation was carried out. The charge-sheet was submitted against all the three accused whereas a separate charge-sheet was sent up to the Juvenile Court in respect of juvenile in conflict with law i.e. Nitin and Anil. After conducting the trial the learned Assistant Sessions Judge convicted all the three accused for the offences punishable under Sections 143, 147, 148, 307 read with Section 149 of IPC, Section 323 read with Section 149 of IPC and Section 506 read with Section 149 of IPC read with Section 149 and imposed separate sentences.

4. Feeling aggrieved, the accused preferred Criminal Appeal No.90 of 2002 before the Additional Sessions Court. By the impugned judgment and order dated 17.03.2004 it was partly allowed. The conviction and sentence imposed by the Assistant Sessions Judge against all the accused was quashed and set aside except that of accused Vikram for offence punishable under Section 307 of I.P.C. which was maintained. Hence these cross revisions.

5. At the out set it is necessary to note that the informant Prafulla has filed affidavit and based on that his learned advocate submitted that after passage of time, with the help of imminent persons from the locality they have sorted out the differences between the two families and he has no grievance left against the accused and therefore he does not want to pursue Criminal Revision Application No.349 of 2004.

6. The learned advocate for the accused Vikram also toed the line of the submissions made by the learned advocate for complainant Prarulla.

7. However, the learned A.P.P. vehemently submitted that since accused Vikram has been convicted for a serious offence punishable under Section 307 of the I.P.C. which is not compoundable under Section 320 of Cr.P.C., this Court should not take cognizance of any such out of court settlement which is not permissible in law. In support of his submission the learned A.P.P. referred to and relied

upon the decision of the Supreme Court in the case of ***Gulab Das and Ors V/s State of Madhya Pradesh; (2011) 10 SCC 765***.

8. *Per contra*, the learned advocate for the accused Vikram submitted that though strictly speaking such compounding of a non-compoundable offence it *de hors* the provision of law still the fact can be taken cognizance of against the accused Vikram as has been done by the Supreme Court in the case of Gulab Das (supra),as a mitigating circumstance to refute the punishment.

9. Alternatively, the learned advocate for the accused Vikram submitted that the incident had taken place without any premeditation. Though the sword is alleged to have been used by him, nothing has been recovered and even the injury sustained by the father of the complainant Prafulla is not an injury attributable to a weapon like sword. There was no intention or knowledge on his part to kill Praulla's father. Only one blow on the head is attributable to him. There is no evidence to show that the blow was sufficient in the ordinary course to cause death. Merely because the Medical Officer has testified that it would have turned fatal had he not been treated promptly, accused Vikram could not have been convicted for the offence punishable under Section 307 of the I.P.C. Therefore going by the evidence and all the aforementioned circumstances, at the most he can be convicted only for a minor offence punishable under Section 324 of the I.P.C. and he could easily be allowed to let off, since he has already suffered sentence of about 29 days and has further been under a hanging sword for last so many years. He sought to derive benefit from the decision in the cases of ***Hari Singh V/s. Sukhbir Singh and Ors.; (1988) 4 SCC 551, Waman S/o Tulsiram Ghodemare and anr. V/s. State of Maharashtra.; 2018 SCC Online Bom. 807 and Tatigari Durgaiah S/o Lakshmaiah V/s. State of Andhra Pradesh,; 2007 Cri. L.J. 524***.

10. The learned A.P.P. so far as facts are concerned, submitted that there is a direct evidence about accused Vikram having assaulted complainant's father on vital part of the body with a weapon like a sword. This very fact is sufficient to attribute intention and knowledge on his part to commit murder. Absence of a cut injury, and non discovery of the weapon is purely insignificant. He has been rightly convicted by the learned Assistant Sessions Judge and it has been correctly upheld by the learned Additional Sessions Judge in appeal. These being concurrent findings of facts and the observations

and the conclusions being clearly borne out from the evidence, this Court should not interfere under revisional jurisdiction.

11. I have carefully considered the judgments of the two courts below, the evidence, oral as well as the documentary and the rival submissions.

12. So far as the supervening circumstance of there being an out of court settlement entered into between the two sides and filing of the affidavit by complainant, I shall advert to it a little later. I propose to deal with the matter independently, on facts, for the present.

13. It is indeed a matter of direct evidence, wherein a quarrel between the two boys seems to have drawn their family members to the spot. They seem to have indulged in some fighting which culminated in both the sides lodging F.I.R. against one another. The very fact that even in the counter F.I.R. in which complainant Prafulla and his family members were accused of assaulting the present accused Vikram and his family members at around the same time and on the same spot, is sufficient to reach a conclusion that accused Vikram was indeed present at the scene of the crime.

14. As has been pointed out by the trial Judge and confirmed by the learned appellate Judge, from the testimonies of the three eye witnesses i.e. complainant Prafulla, his father Kashinath who had actually sustained injury on the head, Kashinath and his mother Kantabai. Barring some insignificant variance they have all stated in unison about accused Vikram having given a blow of sword on the head of Kashinath. A careful perusal of their cross-examination further points out that nothing significant could be drawn so as to disbelieve their version about such an assault of sword on the head of Kashinath by accused Vikram.

15. Their such version is further corroborated by Rickshaw driver Mahindra (PW-4) who was passing by the side and having seen Kashinath lying in the pool of blood had carried him in his rickshaw to Ghati Hospital Aurangabad.

16. Again Dr. Pagaria (PW-7) has also testified saying that on that day he had examined Kashinath (PW-2) and had issued the injury certificate (Exh.25). He has further deposed that the injury sustained by Kashinath (PW-2) was likely to cause death. It was a contused lacerated wound of size 2" X 1cm X ½ cm on the occipital region. He has further deposed that the age of the injury was within

24 hours and it was grievous in nature. Thus there is enough evidence on the record which is certainly reliable and cogent to point out that accused Vikram had assaulted Kashinath (PW-2) on the head with a weapon and the latter had sustained head injury as described in the certificate (Exh.25) issued by Dr. Pagaria (PW-7).

17. It is trite that hypothetically, as has been laid down in several decisions of the Supreme Court, while considering the case under Section 307 of the I.P.C. consequence is immaterial and it is to be ascertained from all the attending facts and circumstances as to whether the accused was holding sufficient intention or knowledge of committing murder. Certainly the consequence is also important but such intention and knowledge has to be gathered from all the attending circumstances. Looked at from this angle, in my considered view, there are few very important circumstances which appear on the record, which certainly create a reasonable doubt as to the intention and knowledge on the part of accused Vikram to kill Kashinath.

18. It is not the prosecution case that there was any previous animosity between the two families. The incident had occurred on the spur of the moment when the two minor boys from both the families engaged in some quarrel which drew their family members to the spot. The things seem to have flared up thereafter which must have resulted in some fighting and in fact both the sides have lodged counter F.I.Rs. albeit in a counter case complainant Prafulla and his family members have been acquitted in R.C.C. No.1258 of 1999 by the learned J.M.F.C. by the judgment and order dated 30.10.2006. Though recovery of weapon is not always necessary, the nature of the injury sustained by Kashinath (PW-2) *ex facie* shows that assuming that the injury was caused by weapon like a sword, the blade of the sword was not apparently used, else he would have certainly sustained some incise wound. Though there was *cerebral edema* and though Dr. Pagaria (PW-7) has testified that but for the timely intervention injury could have caused death, one cannot conclude that the injury was so severe that in all probabilities it could have caused death. One cannot conclusively ascertain as to the force used while giving the blow on the head. If at all the accused Vikram was intending to kill Kashinath, in all probabilities, he would have certainly used the sharp edge of the sword instead of a blunt portion.

19. It is in view of all these circumstances, in my considered view when only a single blow of blunt part of a weapon has been

used in inflicting injury, there is reasonable doubt as to if really accused Vikram was intending or had knowledge to kill Kashinath. In exactly similar fact situation in the case of Hari Singh (supra), the Supreme Court had upheld acquittal of the accused under Section 307 of the I.P.C. It is in this fact situation and the evidence, it is quite apparent that the two Courts below have not appreciated the aforementioned circumstances in their proper perspective and by overlooking them have convicted accused Vikram for the offence punishable under Section 307 of the I.P.C. Had they borne in mind these circumstances and the decision of the Supreme Court in the case of Hari Singh (supra), they would not have reached the conclusion which they have.

20. Considering all these aspects accused Vikram could have been and is liable to be convicted for lesser offence punishable under Section 324 of the I.P.C. rather than a serious offence of attempt to murder punishable under Section 307 of the I.P.C. His conviction and sentence consequently for the latter offence is not sustainable on facts and evidence albeit he is liable to be convicted and sentenced for the former offence.

21. Now turning to the question of quantum of sentence, simultaneously one needs to also take cognizance of the apparent settlement arrived at between the two families as has been submitted by the learned advocate for the complainant Prafulla by referring to his affidavit. Interestingly in exactly similar fact and circumstances, in the case of Gulab Das (supra), though the offence punishable under Section 307 of the I.P.C. was not compoundable under Section 320 of the Cr.P.C., in view of such a settlement and compromise arrived at between the parties, the quantum of sentence was determined. Following observations in paragraph nos. 10 to 13 are significant.

> "*10. Having said that, we are of the view that the settlement/ compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants.*

11. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellants 2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross- case against the complainant party in which the trial court has already convicted Veeraji and others for the offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs.300 and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High court for an appropriate order in the appeal pending before it. More so, the appellants have already served substantial part of the sentence awarded to them.

12. In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalise the relationship between them.

13. In the result, while upholding the order of conviction recorded by the courts below, we reduce the sentence awarded to the appellants to the sentence already undergone by them. The appeal is to that extent allowed and the impugned orders modified. The appellants shall be set free forthwith if not otherwise required in any other case."

22. With respect, exactly for the same reasons, while setting aside conviction of accused Vikram for the offence punishable under Section 307 of the I.P.C. and instead convicting him for the lesser offence punishable under Section 324 of the I.P.C., the quantum of sentence can be reduced for the period already undergone by him, which is about 29 days i.e. from 03.06.1999 to 18.06.1999 during the course of investigation and from 01.11.2002 to 13.11.2002 before he was released on bail in the appeal.

23. Accordingly, Criminal Revision Application No.145 of 2004 is allowed partly.

24. The conviction and sentence of accused Vikram for the offence punishable under Section 307 of the I.P.C. is quashed and aside and instead he is convicted for the offence punishable under Section 324 of the I.P.C. and sentenced to suffer imprisonment for the period already undergone by him, by maintaining the fine imposed for the offence punishable under Section 307 of the I.P.C.

25. Criminal Revision Application No.349 of 2004 is disposed of as withdrawn.

October & November 2019

The Rule is made absolute in above terms.

***Result*:-** Criminal Revision Application No.145 of 2004 allowed partly.

ABC 2019 (III) 168 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(K. K. Sonawane, J.)
Criminal Appeal No. 388 of 2013
Decided on 6 June 2019
Aurangabad Bench

AARIF ALI YUSUF ALI SAYYAD ***- Appellant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered*:-** ***(A) Prevention of Corruption Act — Sections 7 & 13(1)(d) — Trap case — recovery of tainted notes — Solitary version of complainant — Non-adducing the evidence of the truck-driver or any other independent witness though available — no endeavours to produce call detail report — Doubt as to whether the complainant was travelling in the truck — Explanation of accused — the complainant attempted to thrust the currency notes in his pocket & in jostling the currency notes were strewed on the ground — the police personnel collected the currency notes and brought it to the office of ACB — Held, serious dent in the trustworthiness and veracity of the version of complainant in regard to demand of bribe by the accused— Two views possible— the benefit of the same is necessary to be given to accused— Acquittal. (Para 20 & 24)

(B) Prevention of Corruption Act — Sections 7 & 13(1)(d) — Requirement under — Recovery — The factum of recovery of currency notes cannot itself sufficient to constitute offence — unless it is proved beyond all reasonable doubt that accused made demand of illegal gratification & voluntarily accepted the same knowingly it to be bribe amount—Demand of illegal gratification is the sine-quo-non to constitute the offences. (Para 13)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Demand of bribe —No acquaintance between accused & complainant — Accused was not in a police uniform & no any other persons in police uniform — No police vehicle available nearby the spot of