

CASE NO.:
Appeal (crl.) 1391 of 1999

PETITIONER:
NASIR SIKANDER SHAIKH

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 05/05/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P. SINGH, J.

In this appeal by special leave the appellant has challenged his conviction under Section 307 IPC. The trial court sentenced him to undergo 4 years rigorous imprisonment and to pay a fine of Rs.500/- and in default to undergo two months rigorous imprisonment. The High Court by its impugned judgment and order of 11th November, 1988 in Criminal Appeal No.311 of 1991 upheld the conviction but reduced the sentence to 2 years rigorous imprisonment. It maintained the sentence of fine.

With the assistance of counsel appearing for the parties, we have gone through the evidence on record.

The case of the prosecution is that on 20th May, 1990 at about 4.00 P.M. an altercation took place between PWS 2 and 3 on the one hand, and the appellant on the other.

That altercation was followed by PW2 slapping the appellant. This occurrence took place at 4.00 p.m. Later at 9.00 P.M. when PWS 2 and 3 closed their shop and left for their house on a scooter driven by PW2, the appellant along with one Ravindra Swamy accosted them on the way.

Ravindra Swamy hit the scooter with an iron rod as a result of which PW2 and PW3 fell down,

whereafter the appellant is said to have stabbed PW2 with knife in his abdomen. PW2 was taken to the hospital. On the basis of the report lodged by PW3 the case was investigated and ultimately the appellant along with Ravindra Swamy was put up for trial before the Additional Sessions Judge, Pune being Sessions Case No.317 of 1990.

At the trial the prosecution relied upon the evidence of PWS 2 and 3. It also relied upon the recovery of weapon of offence, namely, a knife at the instance of the appellant. On chemical examination, it was found that the knife had human blood on it of 'AB' group which was the blood group of the injured. Relying upon the aforesaid evidence, the trial court convicted the appellant of the offence under Section 307 IPC. It, however, gave benefit of doubt to the co-accused Ravindra Swamy since his name did not find mention in the First Information Report and, therefore, his complicity in the occurrence appeared to the trial court to be doubtful.

On appeal preferred by the appellant, the High Court affirmed the order of conviction but reduced the sentence as earlier noticed.

Counsel for the appellant submitted that the appellant had also received injuries in the course of the said occurrence which remained unexplained by the prosecution.

We have examined the evidence on record. This submission has no force because in

the first instance, there is no evidence on record to prove that the appellant had received any injury. Moreover, there is no suggestion made to PWS 2 and 3 that they had assaulted him as a result of which he had suffered any injury. In the absence of any such suggestion to the prosecution witnesses, the argument which is not supported by any evidence on record, cannot be accepted. While it is true that burden is heavy on the prosecution to prove every ingredient of the offence, while the defence has only to probabalise the defence taken, there must be some material on record to support the defence plea and probabalise its case. We find that completely lacking in this case. Moreover, PW2 is an injured witness who was the victim of the assault and PW3 was accompanying him. Two courts below have concurrently found their evidence to be acceptable, and we find no reason to take a different view.

The appeal is dismissed.

The appellant was released on bail by this Court pending the appeal. His bail bonds are cancelled and he is directed to be taken into custody forthwith to serve out the remainder of the sentence, having regard to the provisions of Section 428 of the Code of Criminal Procedure.