PETITIONER:
RAJANIKANT

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
30/09/1970

BENCH:
[S. M. SIKRI, K. S. HEGDE AND I. D. DUA, JJ.]

ACT:
Appeal--Conviction under Ss. 326 and 324 I.P.C.-High Court dismissing appeal summarily without giving any reason-If desirable course- Necessity for giving reasons to enable Supreme Court property to exercise its power under Article 136 of the Constitution.

HEADNOTE:
The appellant was convicted. by the Trial Court for offences under Sections 326 and 324 I.P.C. for having voluntarily caused grievous hurt with a dangerous weapon to one person, and for causing hurt to three other persons. He was sentenced to imprisonment for four years for his conviction under Section 326 and for 11/2 years for each of the three offences under Section 324, all sentences to run concurrently. The appellant filed an appeal against his conviction to the High Court at Bombay but his appeal was dismissed by the Court with one word "dismissed".
In appeal to this Court by special leave under Article 136, it was contended on behalf of the appellant that the injuries complained of were inflicted by him in the exercise of his lawful and legitimate right of self-defence. It was also contended that the statements of three of the eye witnesses made in the committing Court from which they had: resiled at the trial should not have been acted upon by the Trial Court in support of the prosecution version; and that the only witness who did not resile from the statement in the committing Court was a highly interested witness in that he was the person on whom injuries were stated to,. have been inflicted by the appellant; therefore his evidence should not have been implicitly accepted.
HELD : dismissing the appeal,
(i) On the evidence, the plea of self defence taken by the appellant could not be sustained. Furthermore the statements of the three witnesses in the committing court from which they resiled at the trial and which were duly brought on the record of the trial court under Section 288 Cr. P.C. constituted substantive evidence and if the court was satisfied that those statements were true whereas those made in the trial court were untrue, then the earlier statements could safely be relied upon to sustain the conviction. In this case a mere reading of the statements at the trial demonstrated their unconvincing nature and it was clear that there was some ulterior motive for the witnesses to resile from the earlier statements which appeared to have a ring of truth about them. The trial

court was therefore right in convicting the appellant for offences under Ss. 326 and 324 I.P.C. [536 B-D]
(ii) On reading the judgment of the learned Additional Sessions Judge and the memorandum of the grounds of appeal in the High Court it was clear that the summary dismissal of the appeal by the High Court with one word "dismissed" without indicating its views on the points raised in the appeal which appeared to be arguable was not right. This
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Court has repeatedly pointed out that when an appeal to the High Court under the Code of Criminal Procedure raises some arguable points, the High Court would be well-advised to give some indication of the reasons for its view while repelling those points. Without having the benefit of the opinion of the High Court, this Court is likely to feel embarrassed in dealing with those points on appeal by special leave. [530 H-531 C]
Mustak Hussein, v. The State of Bombay, [1953] S.C.R. 809 at 820 and Challappa Ramaswami v. State of Maharashtra [1970] (2) S.C.R. 426; referred to.
Section 410 Cr.P.C. confers a right of appeal to the High Court on a person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge. This right entitles the aggrieved party to challenge conclusions of facts and to claim reappraisal of evidence. It would, therefore, be conducive to the ends of justice if the High Courts were as a general rule to let this Court have the benefit of their valuable opinion in cases which raise arguable points whether on facts or on law so as to enable this Court satisfactorily to exercise its power under Art. 136 and dispose of the appeal finally. [in order to avoid further delay in the disposal of the present case the Court decided to go into the evidence-a course this Court is normally reluctant to adopt in appeals under Art. 136-because this case prima facie raised arguable points]. [531 D-F]
(iii) Although this Court would not normally interfere with the quantum of sentences on appeal under Art. 136, in the present case as the High Court had erroneously dismissed the appeal summarily without giving the reasons, this was a fit case where this Court on a consideration of the relevant circumstances could go into the question of sentences itself (the Court field that the sentence of two years imprisonment would meet the ends of justice). [536 E]

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 99 of 1968.
Appeal by special leave from the order dated March 28, 1968 of the Bombay High Court in Criminal Appeal No. 380 of 1968.
V. M. Tarkunde, N. H. Hingorani and K. Hingorani, for the appellant.
M. C. Bhandare and S. P. Nayar, for the respondent.
The Judgment of the Court was delivered by
Dua, J. This is an appeal by special leave from the judgment of the High Court of Judicature at Bombay dated March 28, 1968 summarily dismissing the appellant’s appeal against his conviction by the Additional Sessions Judge, Greater Bombay for offences under ss. 326 and 324, I.P.C. The High Court disposed of his appeal with one word "dismissed".
At the outset we must point out that on reading the judgment of the learned Additional Sessions Judge and the memorandum of ,the grounds of appeal in the High Court we felt that the summary

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dismissal of the appeal by the High Court with one word "dismissed" without indicating its views on the points raised in the appeal which clearly appears to us to be arguable was not right. This Court has repeatedly pointed out that when an appeal to the High Court under the Code of Criminal Procedure raises some arguable points the High Court would be well advised to give some indication of the reasons for its view while repelling those Points. Without having the benefit of the opinion of the High Court this Court is likely to feel embarrassed in dealing with those points on appeal by special leave' [see Mushtak Hussain v. The State of Bombay() and Challappa Ramaswami v. State of Maharashtra(2)]. We would like once again to emphasise that Art. 136 of the Constitution does not confer a right of appeal on a party aggrieved by the, decision of a High Court : it merely confers on this Court a discretionary power to interfere in suitable cases. For judicious exercise of this power this Court expects the High Courts to record speaking orders, however sketchy, even while summarily dismissing appeals which raise arguable points. Section 410, Cr. P.C., it is worth noting, confers a right of appeal to the High Court on a person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge. This right entitles the aggrieved party to challenge conclusions of facts and to claim reappraisal of evidence. It would, therefore, be conducive to the ends of justice if the High Courts were as a general rule to let this Court have the benefit of their valuable opinion in cases which raise arguable points whether on facts or on law so as to enable this Court satisfactorily to exercise its power under Art. 136 and dispose of the appeal finally. In the absence of a speaking order of the High Court this Court may have to remand the cases to the High Courts for re-hearing and recording reasons for their conclusions, to the avoidable harassment of the accused persons concerned and delay in the final disposal of criminal cases. In the present appeal to avoid further delay in the disposal of the case we chose to go into the evidence ourselves-a course which normally this Court is reluctant to adopt in appeals under Art. 136-because we felt that it did prima facie raise arguable points.

The appellant Rajni alias Bal Ghanshyam Gadkar was charged with an offence of attempted murder under s. 307, I.P.C. for having stabbed Namdeo Keshav Padte (P.W. 2) with a knife on June 21, 1966. In the alternative he was charged under S. 326, I.P.C. with the offence of having voluntarily caused the said Padte grevious hurt with a dangerous weapon (knife). He was further charged with three offences under S. 324, I.P.C. for having

(1) [1953] S. C. R. 809 at 820. [1970] 2 S. C. R. 426.

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voluntarily caused in the same transaction hurts to Vasant Narayan Shinde, Promod Dattaram Chavan and to Sudam Mahadeo Khanvilkar. The trial court convicted the appellant under S. 326, I.P.C. instead of s. 307, I.P.C. for stabbing Padte and sentenced him to rigorous imprisonment for four years. It also convicted him under S. 324, I.P.C. for causing hurt to the other three persons and, sentenced him to rigorous imprisonment for one and:, a half years for each of the three offences. All the sentences were directed to run concurrently.

Shri Tarkunde, learned counsel for the appellant, took us through the relevant record for the purpose of showing that the, assessment of the evidence by the trial court was

erroneous and, therefore, unsustainable. We were constrained to permit him to refer to the evidence as we did not have the benefit of knowing the reasons which had prevailed with the High Court in agreeing with the ultimate conclusions of the trial court. The occurrence took place at 9 p.m. on June 21, 1966 in the 10th Lane of Kerwadi, Bombay and the F.I.R. was lodged 'by Namdeo Keshav Padte (P.W. 2 )at 10-30 p.m. the same night at the police station, Lamington Road. According to this report Padte's cousin Dattatraya Gajanan More (P.W. 8) who wanted to purchase a scooter had for that purpose approached one Vinod Nimbelkar (P.W. 3) known to Padte. More had told Padte that the former had paid a sum of Rs. 5 or 6 thousand to the accused Rajni through Nimbelkar. The accused neither gave the scooter nor returned the money. On being approached by More for the return of the money he was put off on various pretexts. More had about two days earlier instructed Padte to go to Rajnikant with Nimbelkar to get back the money. Accordingly on June 20, in the evening Padte contacted Rajinikant at his residence but he was told that Rajnikant had returned the money to Nimbelkar at about 3 p.m. On the date of the occurrence Padte returned home at about 6 p.m. He went to Nimbalkar and after taking him along, they both went to the accused. The accused was not present at his residence but they learnt from his mother that he would return at about 9 p.m. Padte and Nimbalkar then went back to the latter's residence in Sikka Nagar. At about 8-45 p.m. when they again went to the house of the accused Chavan (P.W. 5) another resident of Sikka Nagar, also accompanied them. Shinde (P.W. 4) who was known to Chavan also jointed them on the way. They all went to the residence of the accused at about 9 p.m. but again did not find him there. While coming down from the first floor of the building they found the accused with three or four boys. Nimbalkar asked him as to when he would return the money. The accused replied that he did not recognise Nimbalkar but would settle the matter with More. On Padte's intervention the accused told him also that he did not

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recognise him. When Padte insisted that he had been introduced to him by More the accused whipped out a knife from the pocket of his pants and stabbed him causing injury on the left side 'of his stomach and on his left hand. Thereafter the accused stabbed Shinde and then ran away. This report was actually recorded in the J. J. Hospital where R. M. Naik, S. 1. Lamington Road Police Station (P.W. 10) and B. N. Patil, G.S.I. attached to the same police station (P.W. 12) had gone, on learning on telephone about an assault case in the 10th Lane, Kerwadi and admission of two persons in that hospital. This information was conveyed on telephone from V. P. Road Police Station where Padte and Shinde had been taken by their friends and from where the injured persons were taken to the J. J. Hospital in a jeep by constable Babu Parab (P.W. 9). After registering the crime at the police station both P.W. 10 and P.W. 12 went to the appellant's residence but found him absent. A watch was kept at his house. The appellant was, however, arrested at Goregaon on the following day (June 22, 1966) and was not medically examined. He had some injuries on his person.

An abnormal feature in this, case is that three eye-witnesses Shinde (P.W. 4), Chavan (P.W. 5) and Khanvilkar (P.W. 6) who supported the prosecution case in the committing court changed their statements at the trial in the court of the Additional Sessions Judge. They were declared hostile and cross-examined by the prosecutor and

confronted with their earlier statements from which they had resiled. Nimbalkar (P.W. 3) who had not been examined in the committing court also declined to Support the prosecution story when produced as a witness at the trial in the court of the Additional Sessions Judge. The ground stated by him was that apprehending use of violence and of assaults lie had left the place of occurrence as soon as the quarrel started. He too was declared hostile and cross-examined. The evidence of Padte (P.W. 2) completely supported the prosecution case and remained unshaken. The statements of P.Ws. 4, 5 and 6 made in the committing court were duly brought on the record under s. 288, Cr. P.C., When confronted with the portions of their statements made in the committing court, the truth of which they had denied at the trial, they merely said that they did not know how those portions came to be recorded. The trial court after going through the material on the record came to the conclusion that the version given by Padte regarding the actual occurrence was fully established. The discrepancies on minor points were held not to affect the trustworthiness of the witness on the salient features of the occurrence which fully brought home to the appellant his guilt. On appraisal of the entire evidence the appellant was found guilty of offences under S. 326 and s. 324, I.P.C. Under 626, I.P.C. he was sentenced to four years rigorous
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imprisonment for injuries caused to each one of the three P.Ws. Shinde, Chavan and Khanvilkar. All the four sentences of imprisonment were to run concurrently
In this Court on behalf of the appellant his learned counsel Shri Tarkunde very strongly argued that the evidence on the record and the probabilities of the case show that Padte (P.W. 2) and his companions were the. aggressors and the appellant was merely trying to defend himself when he attempted to catch hold of the knife with which Padte had threatened to attack him. Padte, according to the submission, got wounded as a result of the push given to him by the appellant who, during this struggle, Successfully snatched his knife. Emphasis was in this connection laid on the fact that Padte and his companions were admittedly six in number and the appellant who was single-banded could not have dared to run the risk of a clash with them by starting the assault. In the alternative it was suggested that assuming the appellant had in his possession a knife of his own, as a matter of fact he was first hit by Padte (P.W. 2) with his umbrella and it was thereafter that the appellant, in order to defend himself gave the knife blow. Now this was not the plea taken by the appellant in his statement under s. 342, Cr. P.C., but his counsel contended that it was open to him to rely on the prosecution evidence itself for substantiating this defence. For this purpose lie relied on the evidence of Padte where he admitted that he had tried to push back the appellant with his umbrella after receiving from him the stab wound. Padte, it was argued, had rightly admitted use of umbrella by him, but bad suppressed the truth. Instead of admitting the initial assault by him he had shifted the use of umbrella to a time after the receipt of injury by him suggesting thereby that it was used in self-defence Stress was in this connection laid on the fact that a broken umbrella was found by the investigating officers at the place of occurrence. From this circumstance support was sought for the suggestion that Padte must have hit the appellant with the umbrella with considerable force and that could only be done before he was

injured. Faced with six hostile men, use of knife by the appellant after having been severely hit was, according to the counsel, a lawful and legitimate exercise of his right of self-defence.

It is true that an accused person can, without calling defence evidence in support of the plea of self-defence, rely on the evidence led by the prosecution and the material on the record for showing that he had acted in self-defence. In such cases the real question which the court is called upon to decide is whether on proper appraisal of the evidence and the relevant material on the record it can be said that the accused has been proved to be guilty beyond reasonable doubt. For the court cannot justifiably ignore the

535

material which establishes the right of self-defence merely because the accused has for some reason or the other omitted to take such plea. On going through the evidence and the material on the record we are, however, unable to hold that the injuries in question had been inflicted on the prosecution witnesses by the appellant while acting in self-defence. The, injuries on the appellant's person were found, on examination by Dr. V. B. Nair, Casualty Medical Officer in Charitable Nair Hospital on June 22, 1966 at about 5 p.in. to be a contused lacerated wound over the right scapular region 1/2" x 1/4" skin deep and two abrasions, (a skin abrasion on the right ring finger and a linear abrasion over the left elbow). The injury over the right scapular region indicates that it was, caused to the appellant by someone hitting him from behind and if that be so, then as suggested by the trial court it seems more probable that in the melee following the free use of knife by the appellant, someone bit him with the umbrella when he was trying to escape after giving the knife injuries to the P.Ws. It could not be the result of a push as stated by Padte. There being no clear evidence on the point the Court has to go by probabilities. On this view we are unable to sustain the appellant's suggestion that he was first assaulted with umbrella. The other submission that the appellant, when threatened by Padte with knife, tried to snatch it and during the course of this struggle Padte may have accidentally been wounded in his abdomen when pushed by the appellant, has merely to be stated to be rejected. 'The story not only sounds unrealistic but we are also unable to find on the record any rational basis for its acceptance. The nature of the stab wound in the abdomen as described by Dr. Virendra J. Shankar (P.W. 11) also seems to negative this suggestion. The wound has penetrated into the abdominal cavity and intestinal loops were visible and were coming out. Keeping in view the nature of the scuffle it could not be accidental. The abrasions on the appellant's finger relied upon by the appellant's counsel in support of this theory is equally unhelpful. In a struggle for snatching an open knife from another person's hostile hands one would expect more serious injuries than mere abrasions. The plea on the right of private defence must, therefore, be repelled.

It was then contended that the statements of the three witnesses (P.Ws. 4, 5 and 6) made in the, committing court from which they had resiled at the trial, should not have been acted upon by the trial court in support of the prosecution version and P.W. 8 the only witness who did not resile from the statement in the committing court is a highly interested witness and, therefore, his evidence should not be implicitly accepted, said the counsel.

Nimbalkar (P.W. 3) who was produced at the trial without having been examined in the committing court was also declared hostile
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and was permitted to be, cross-examined by the prosecutor. His evidence, according to the appellants counsel, is no better and, therefore, does not add strength to the prosecution case. This Court must, therefore, hold that the evidence on the record is not trustworthy and it does not establish the appellant's guilt beyond reasonable doubt. We are not impressed by this submission. The statements of the three witnesses in the committing court from which they resiled at the trial and which were duly brought on the record of the trial court under S. 288, Cr. P.C. constitute substantive evidence and if the court is satisfied that those statements were true whereas those made in the trial court were untrue then the earlier statements can safely be relied upon to sustain the conviction. In this case a mere reading of the statements at the trial demonstrates their unconvincing nature and it seems clear that there was some ulterior motive for the witnesses to resile from the earlier statements which appear to have a ring of truth about them. We are, therefore, satisfied that the trial court was right in convicting the appellant for offences under ss. 326 and 324, I.P.C.

On the question of sentence, however, we feel that in view of the somewhat dubious nature of the transaction which led to the occurrence and the fact that the, appellant had felt somewhat annoyed at the repeated visits of P.Ws. to his house where unpleasant scenes were created in the presence of his mother the sentence imposed is somewhat severe. In our opinion a sentence of two years' rigorous imprisonment would meet the ends of justice. This Court normally does not interfere with the quantum of sentence on appeal under Article 136, but in the present case, :as the High Court bad, in our opinion, erroneously dismissed the :appeal summarily without giving reasons, we have chosen on a consideration of all the relevant circumstances to go into the question ourselves.

The appellant will surrender to his bail bond to serve out the remaining sentence.

R.K.P.S. Appeal dismissed.

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