

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.452 OF 2001
WITH
CRIMINAL APPLICATION NO.4962 OF 2015
IN
CRIMINAL APPEAL NO. 452 OF 2001**

1. Rajendra Namdeo Takate,
Age: 27 years, Occ: Business,
2. Chintaman Damodhar Takate,
Age: 26 years, Occ: Business,
3. Vilas Damodhar Takate,
Age: 22 years, Occ: Business,
4. Jagan Namdeo Takate,
Age: 35 years, Occ: Business,

All R/o. Lane No. 5 Dhule.

...Appellants

versus

The State of Maharashtra.

...Respondent

.....
Mr. R.S. Deshmukh, Advocate for appellants
Mrs. R.K. Ladda, Addl. Public Prosecutor for respondent/State
Mr. A.S. Deshmukh, Advocate for original complainant/respondent
No. 2 in Criminal Application No. 4962 of 2015
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CORAM : M.T. JOSHI, J.

DATE : 7th OCTOBER, 2015

ORAL ORDER :

Heard both sides.

2. Mr. A.S. Deshmukh, learned Counsel filed vakilpatra on

behalf of one injured witness PW-3 Dipak alias Bunty s/o Suresh Khopade. Same is accepted and marked 'X' for identification.

3. Perused the contents of the Criminal Application No. 4962 of 2015 filed by the present appellants and complainant jointly, and an affidavit of injured witness PW-3 Dipak for quashing of the proceedings and more particularly, the judgment passed by learned Adhoc Additional Sessions Judge, Dhule.

4. The present appellants/applicants were convicted for the offences punishable under Sections 148, 149 and 307 of the Indian Penal Code. For offence punishable under Section 307 read with Section 149 of the Indian Penal Code, they were sentenced to suffer R.I. for 7 years and to pay a fine of Rs.1000/- each. For other offence, certain lesser punishment was awarded and both the sentences were directed to run concurrently.

5. In Criminal Application No.4962 of 2015 the appellants as well as the complainant have stated that since they are residing in neighbourhood, the incident had occurred suddenly over minor reason and they have inimical terms.

6. The injury certificate regarding complainant Sachin Bharat Khopade would show that he had suffered incised wound to

his left hand thumb and index finger alongwith abrasion to right hand and incised wound to his occipital region measuring 4x1/2x1/2 cm and abrasion on back of about 6 cm long.

7. So far as the injured Bunty Suresh Khopade is concerned, injury certificate at Exhibit-53 would show that he had suffered :

- 1) incised wound on frontal area left side – vertically placed of about 6x1/2 cm – 8 cm deep;
- 2) Incised wound – left forearm lower/ 3 about 3x2x1 cm horizontally placed;
- 3) Abrasion right forearm middle/3 of about 5x5 cm.

No evidence of any fracture was noted.

8. The facts on record would show that, the present appellants were arrested on 03/01/1998 and they were under trial prisoners till decision in Sessions Case No. 94 of 1998 by learned Sessions Judge, Dhule on 22/10/2001. Thereafter, upon filing appeal in this Court, the substantial sentences were suspended and thereafter they were released on bail.

9. All the applicants/appellants as well as the injured witness PW-3 Bunty @ Dipak s/o Suresh Khopade are present before the Court.

10. Taking into consideration all the material facts and in view of statement of eye witnesses, as corroborated by injury certificates, as stated supra, the conviction of present appellant-applicants is hereby confirmed.

11. However, in view of filing of criminal application No. 4962 of 2015 and attending circumstances as alleged above, the order of learned Sessions Judge awarding sentence as detailed supra is hereby set aside. It is hereby directed that, all the appellants to suffer imprisonment already undergone by them for both the offences i.e. offence punishable under sections 148 read with 149 and 307 read with 149 of the Indian Penal Code. Each of them shall pay fine as directed by the learned Sessions Judge, Dhule, in default to suffer further imprisonment as ordered by the learned Sessions Judge, Dhule.

12. With these directions, the appeal as well as application stands disposed of.

[M.T. JOSHI, J.]