

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 83 OF 2002

1. Chintamani Yashwant Bhusanar }
2. Janardan Chintaminai Bhusnar }
All are R/o. Hole, Tal. Pandharpur }..Applicants
Dist-Solapur. }(Org. Accused no. 1 & 2)
 V/s.
The State of Maharashtra }..Respondent

None for the applicant.
Mr. A.R. Patil, A.P.P. for State.

**CORAM : C.V. BHADANG, J.
DATE : 28TH APRIL 2015.**

ORAL JUDGEMENT

1. By this revision application the original accused no. 1 and 2 take exception to the judgment and order dated 14th February 2002 passed by the learned Additional Sessions Judge, Pandharpur in Criminal Appeal No. 7 of 1997 by which the learned Sessions Judge has partly allowed the appeal, and while maintaining the conviction of the appellants for the offence punishable under section 323 and 325 of Indian Penal Code ('IPC' for short), they have been sentenced to suffer simple imprisonment for one month and to pay fine of Rs. 2,500/- each and in default to suffer simple imprisonment for 2 months. Out of the fine amount Rs. 2,000/- is directed to be paid to PW-1 Bhimrao Daryappa Bhusner and PW-2 Shakubai

Bhimrao Bhusner each.

2. The brief facts necessary for the disposal of the revision application may be stated thus.

That the complainant Bhimrao Bhusnar is resident of Village Hole. He is residing along with his wife and daughter. The appellant no. 1 Chintamamani Bhusnar is the cousin brother of the complainant. The appellant no. 2 is the son of the appellant no. 1. The original accused no. 3 Mohan @ Mahavir Chintamani Bhusnar is also the son of the appellant no.1. According to the prosecution the complainant and the accused were on cross terms on account of a dispute as regards right of way.

3. The incident occurred on 14th April 1993 at about 7 a.m. to 8 a.m. in field Gut No. 439 of the complainant. It was alleged that the original accused no. 2 and 3 in furtherance of their common intention had voluntarily caused hurt to the complainant by means of a stick. It was further alleged that the accused no. 1 along with others had voluntarily caused hurt to the complainant by kick blows. It was also alleged that all the accused in furtherance of their common intention had voluntarily caused grievous hurt to Shakubai Bhusnar, wife of the complainant and the complainant and

his wife were abuse and provoked.

4. The appellants-accused were put on trial in Regular Criminal Case No. 16 of 1993 before Judicial Magistrate First Class, Pandharpur. The prosecution led evidence including that of PW-1 Bhimrao Bhusnar and his wife PW.2-Shakubai Bhusnar. The learned Magistrate by a judgment and order dated 16th May 1997 found the appellant no. 1 and 2 herein guilt of offence punishable under section 325 read with 34 of Indian Penal Code and they were sentenced to suffer simple imprisonment for one year and pay a fine of Rs.500/- in default to suffer simple imprisonment for 10 days. The appellants were also convicted under section 323 read with 34 of the Indian Penal Code and have been sentenced to suffer simple imprisonment for 15 days. The original accused no. 3 Mohan @ Mahavir was given benefit of the Probation of Offenders Act. All the accused were acquitted of the offence punishable under section 504 read with section 34 of the Indian Penal Code.

5. Feeling aggrieved by the conviction and sentence the applicants preferred an appeal being Criminal Appeal No. 7 of 1997 before the Additional Sessions Judge, Pandharpur. By judgment and order dated 14th February 2002, the appeal came to be partly

allowed and while maintaining the conviction of the appellant under section 323 and section 325 read with 34 of the Indian Penal Code, the sentence was reduced as stated above. It is against this judgment that the original accused no. 1 and 2 are before this court.

6. The record shows that on 27th February 2002 this revision was admitted on the point of sentence. The record further discloses that there was no appearance on behalf of the applicants on some dates and on 25th January 2012, it was informed that Advocate Shri. Tanaji Mane who was representing the applicants had expired. Hence this court had issued notice to the applicants to appear in person or through their counsel. It further appears that the appellants thereafter engaged an Advocate Shri. Jaideep Mane. However, none appears for the applicants at the hearing. I have heard Shri. Patil Additional Government Pleader for the respondent-State. Perused record, I have gone through the judgment of the learned Magistrate and the Learned Sessions Judge, the evidence of the PW-1 and PW-2 about the assault. The learned Sessions Judge has noted the injuries found on the person of PW-1 and PW-2 in paragraph 7 and 8 of the judgment, which corroborate the oral testimony of the said witnesses. The prosecution has also established

motive namely there being a dispute between the parties on a path way. In the circumstances and particularly in view of the fact that the Revision Application was admitted on the limited point of sentence, no exception can be taken to the concurrent findings recorded by the Courts below on the conviction of the applicant under section 325 and 323 of the Indian Penal Code. Even so far as the sentences is concerned I do not find that there is any scope for interference, particularly in the limited jurisdiction available under section 397 of the Criminal Procedure Code. The learned Magistrate had sentenced the applicants to undergo one year of simple imprisonment under section 325 and 15 days of simple imprisonment under section 323 of Indian Penal Code. The learned Sessions Judge on consideration of the relevant circumstances has reduced the sentences to one month of imprisonment with fine of Rs.2,500/- each. The learned Sessions Judge has considered the circumstances in paragraph 14 of the judgment including the age of the applicant no.1, in reducing the sentence.

7. In the result no interference is called for. The revision application is accordingly dismissed.

[C.V. BHADANG, J.]