

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

CRI. REVISION APPLICATION NO. 334 OF 2015

Krishnat Nathaji Yadav

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mrs. Prabha U. Badadare, Advocate for the Applicant.

Mr. V. B. Konde-Deshmukh, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 31st JULY, 2015

P.C. :

1 Admit. Heard finally.

2 Heard learned counsel appearing for the applicant
and learned additional public prosecutor for the State.

3 The applicant has been convicted by the learned Magistrate for the offence punishable under section 326 of the Indian Penal Code and has been sentenced to suffer R. I. for the period of three months and to pay fine of Rs. 2,000/-. The appeal filed by the applicant has been dismissed by the appellate court.

4 In all seven witnesses were examined by the prosecution; out of which PW-1, PW-2, PW-3 and PW-4 were

eye witnesses. PW-5 and PW-6 were Panch witnesses. PW-7 was a medical officer.

5 PW-7 Medical Officer has stated that the injured had suffered fracture of right upper 3rd of tibia. There is no mention of any other injury on any other part of the body of the injured. The weapon allegedly used was a stick. PW-6 was examined to prove seizure of the stick. However, there is no discussion in the judgment of the trial Magistrate regarding evidence of PW-6. Description of the stick has not come on record. To punish the person for the offence punishable under section 326, it was necessary for the prosecution to establish that the weapon used was either an instrument for shooting, stabbing or cutting or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal. Since the description of the weapon has not come on record, it was difficult for the learned trial Magistrate to ascertain as to whether the weapon falls in any of the categories mentioned under section 326 of the IPC.

6 No doubt the respondent had been able to establish that the injured had suffered a fracture due the assault on the part of the applicant. Therefore, the applicant had voluntarily caused grievous hurt to the injured. However, it was not established that the weapon used by the applicant fall under any of the categories mentioned under section 326 of the IPC. Therefore, in my opinion, the applicant could have convicted for the offence punishable under section 325 of the IPC and not under section 326 of the Indian Penal Code. I am, therefore, inclined to set aside the orders passed by both the courts below. However, the applicant is found guilty of the offence punishable under section 325 of the IPC.

7 As far as the sentence is concerned, the applicant had remained in custody for about 2 to 3 days during the course of investigation. Thereafter, he was on bail. He is physically challenged person. There was no premeditation at the time of committing offence and moreover no other injuries were found on the person of the injured. Therefore, the story of the prosecution that the injured was assaulted for about 30 minutes is absolutely false.

8 In view of the fact that the applicant himself is a physically challenged person and there was no other injury except fracture of leg, I am of the view that imposition of a

heavy fine as compensation to the injured PW-3 Rangrao Shripati Kamble will serve the ends of justice.

9 Hence, I pass the following order.

i. The conviction of the applicant for the offence punishable under section 326 is set aside.

ii. The applicant is found guilty of the offence punishable under section 325 of the Indian Penal Code and is sentenced to suffer for a period already undergone by him and shall pay a fine of Rs.27,000/-, in default S.I. for two months.

iii. An amount of Rs. 2000/- has already been paid by the applicant. He shall pay additional amount of Rs.25,000/-. Compensation of Rs.25,000/- shall be given to PW-3 -Rangrao Shripati Kamble out of the fine amount.

iv. The fine to be paid by the applicant within a period of eight days from today. If he fails to comply with this order, the learned trial Magistrate shall take steps for execution of the order.

Criminal Revision application stands disposed of in the above terms.

(JUDGE)