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

CRIMINAL REVISION APPLICATION NO.325 OF 2003

- 1] Shri. Vaijnath Babarao Dhonde
Age 35 years, Occu. Agriculture,
R/o. Shevdi (Bajirao),
Tal. Loha, District Nanded
- 2] Shri. Mahadu Babarao Dhonde,
Age 30 years, Occu. Service,
R/o. As above

..PETITIONERS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr S.M. Godsay, Advocate for petitioners.
Mr C.V. Dharurkar, A.P.P. for respondent.

CORAM : N.W. SAMBRE, J.

DATE : 19th August, 2016

ORAL JUDGMENT :

Heard Mr. S.M. Godsay, learned counsel for
the applicants-accused and Mr. C.V. Dharurkar,
learned A.P.P. for the State.

2. Present revision is directed against the
judgment and Order passed by learned Judicial

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Magistrate, First Class, Kandhar in Regular Criminal Case No. 256 of 1991 ordering the conviction of the applicants for an offence punishable under Section 324 of the Indian Penal Code, sentencing the applicants to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/-, in default to suffer simple imprisonment for one month and the order passed by learned Session Judge, Nanded in Criminal Appeal No. 52 of 1996 dismissing the appeal preferred by the present applicants against the above order of conviction on 23rd September, 2003 and uphold their conviction.

3. Facts, as are necessary, for deciding the present revision application, are as under :

On 19th September 1991 at about 8.30 a.m. the complainant was assaulted by applicants by use of deadly weapons as there was difference between the applicants and the complainant over the agricultural land.

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4. Pursuant to the complaint lodged after the crime was registered, charge was framed against the accused persons at Exhibit-43 for an offence punishable under Sections 147, 148, 324, 325 read with Section 149 of the Indian Penal code.

5. The prosecution has examined complainant PW-1 Santram at Exhibit-63, PW-2 Ramrao Potphode at Exhibit-69, PW-3 Basling Arale at Exhibit-70, PW-4 Gangadhar Mudewar at Exhibit-72, PW-5 Ahmed Ali at Exhibit-73, PW-6 Abdul Rashid, panch for seizure of weapon at Exhibit-74, PW-7 Shaikh Mohamad, panch for seizure of weapon at Exhibit-75, PW-8 Dr. Vinayak Kulkarni, Medical Officer at Exhibit-80, PW-9 Maroti Dhonde at Exhibit-84, PW-10 Dattu Potphode at Exhibit-85 and PW-11 Devidas Patil at Exhibit-87.

6. The defence of the present applicants was that of total denial.

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7. After considering the above referred evidence in analytical manner, learned Judicial Magistrate, First Class, Kandhar, by verdict dated 23rd July, 1996 convicted present applicants. The said conviction is confirmed in Criminal Appeal No.52 of 1996, by verdict dated 23rd September, 2003 passed by learned Additional Sessions Judge, Nanded.

8. While questioning the conviction, Mr. Godsay, learned counsel for the applicants submits that the material contradictions and omissions appearing in the evidence of complainant and witnesses are not considered by the Courts below. According to him, once it is noticed that the Investigating Officer was not examined, the contradiction could not have proved in its proper spirit. He would then took me through the charge that was framed on 28th May, 1993 by learned Judicial Magistrate, First Class, Kandhar, so as to submit that defective charge was framed against the accused, as such, the trial, according to him, is

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vitiated. He would then add that the ingredients of common objects and unlawful assembly are since not spelt out in the charge, the entire trial vitiates. He would then submit that there is a denial of principle of fair trial to the applicants, as the Investigating Officer was not examined, which has resulted into great prejudice and as such, according to him, the applicants are entitled for the acquittal.

9. Learned A.P.P. supported the judgment of conviction based on the evidence that is brought on record.

10. With the assistance of Mr. Godsay, learned counsel for the applicants and Mr. Dharurkar, learned A.P.P. for the State, I have perused the evidence of complainant Santram, contents of complaint dated 19th July, 1991, the evidence of PW-3 Basling, spot panchnama at Exhibit-71, the evidence of PW-4 Gangadhar, the evidence of PW-7 Shaikh Mohamad, so as to prove recovery of stick,

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seizure panchnama at Exhibit-77, Exhibit-78 and Exhibit-79, evidence of PW-8 Dr. Vinayak, PW-9 Maroti, an eye witness.

11. Upon perusal of the evidence of all the above referred witnesses, it could be rightly gathered that the complainant PW-1 Santram suffered injuries, which were caused by the present applicants with the aid of stick, which was recovered from their possession. The recovery of stick which was used in the commission of crime was proved by PW-7 Shaikh Mohammad, the injuries suffered by Santram were proved by evidence of witness No.8 Dr. Vinayak and other eye witnesses i.e. PW-1 Santram, PW-2 Ramrao, PW-4 Gangadhar and PW-9 Maroti.

12. So far as the claim of the applicants that because of non-examination of the Investigating Officer, the material omissions are not proved, will be of hardly any assistance, as the recovery was very much proved by examining panch witnesses

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and other evidence was duly adduced by eye witnesses, who supported the prosecution story.

13. Having perused the judgments delivered by both the Courts below, it could be noticed that the role attributed to the applicants of participation in the crime in question, particularly assaulting the complainant Santram, Santram suffering injuries and role played by each of the applicant was very much proved beyond reasonable doubt.

14. In view of above, in my opinion, no case for interference in the revisional jurisdiction is made out. As such, the order of conviction is required to be upheld.

15. This takes me to the next limb of submission of Mr. Godsay, learned counsel of applicants that benefit of Section 360 of the Code of Criminal Procedure be extended to the present applicants, particularly by releasing the applicants on probation in exercise of power under

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the Probation of Offenders Act.

16. Perusal of the judgment of conviction depicts that the applicants were convicted for an offence punishable under Section 324 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for six months by judgment dated 23rd July, 1996. During the trial, so also during the pendency of appeal, the applicants were on bail. The alleged incident is of 1991. In my opinion, having regard to the fact that the incident took place about 26 years back from today and the applicants were convicted for maximum punishment of period of six months and the applicants have already paid fine amount, the prayer of the applicants for releasing them on probation needs to be considered favourably. There is one more aspect of the matter, which needs to be considered is, the applicants herein during the pendency of the present matter have not jumped conditions of the bail or have not indulged themselves in any other crime.

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17. In view thereof, the applicants are entitled to be released on probation on the following conditions :

(i) The applicants shall execute the bond of good behaviour with one surety before the Probation Officer for period of one year from the date of its execution, within a period of four weeks from today.

(ii) If the applicants engaged themselves in the commission of crime, it will be appropriate that the Probation Officer to submit report to that effect to learned Judicial Magistrate, First Class, Kandhar, who may apprehend the present applicants and shall submit appropriate report to that effect to this Court for further orders as regards the probation.

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18. With the above observations, Criminal Revision Application stands dismissed. Rule stands discharged.

(N.W. SAMBRE, J.)

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