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

CRIMINAL REVISION APPLICATION NO. 357 OF 2003

Kisan Baburao Gund ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

**WITH
SUO MOTO REVISION NO. 5 OF 2003**

The Addl. Registrar,
High Court of Bombay,
Bench at Aurangabad ..APPLICANT

VERSUS

Kisan s/o Baburao Gund ..RESPONDENT

Ms R. P. Gaur, Addl. Public Prosecutor for respondent/State

CORAM : N.W. SAMBRE, J.

DATE : 26th April, 2016

ORAL ORDER :

The applicant in Criminal Revision Application no.357 of 2003 is an accused, who is convicted for an offence punishable under section 326 read with section 34 of the Indian Penal Code. He has preferred the present revision against conviction.

2. So far as suo moto revision no.5 of 2003 is concerned, the same is initiated by issuing notice for enhancement of sentence.

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3. Few facts, as are necessary for deciding both the revisions, are as under :-

That the present applicant-accused and complainant Arjun were at differences in relation to their agricultural lands. It is claimed by the prosecution that in the night intervening between 14th and 15th June, 1999, when complainant Arjun got awoke at 1:30 am to answer nature's call, the present applicant along with co-accused Subhash started abusing him in the matter of illegally drawing compensation amount and thereafter both assaulted him with an iron pipe. It is claimed that the present applicant was instigated by accused Subhash and as such the complainant Arjun suffered injuries near his right eye, neck and wrist of right hand. The complaint came to be lodged for offences punishable under sections 324, 326, 506 (II) of the Indian Penal Code in the morning of 15th June, 1999. After the investigation, the chargesheet came to be filed against the accused persons for offences referred supra. Learned Judicial Magistrate First Class, Ahmednagar convicted both the accused for offences punishable under sections 323, 324 and 326 of the Indian Penal Code and passed the following order :-

"2) The accused no.1 is convicted for the offence p/u/s. 324 read with 34 of I.P.C. and sentenced to suffer simple imprisonment till rising of court and fine of Rs.500/- in default simple imprisonment for one month.

3) The accused no.1 is convicted for the offence p/u/s. 326 r/w 34 of I.P.C. and sentenced to suffer simple imprisonment till rising of court and fine of Rs.1000/- in

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default simple imprisonment for 3 months.

4) The accused no.2 is convicted for the offence p/u/s. 323 r/w 34 of I.P.C. and sentenced to suffer simple imprisonment till rising of court and fine of Rs.200/- in default simple imprisonment for 15 days.

5) Both the accused are convicted for the offence p/u/s. 506 r/w 34 of I.P.C. and sentenced to suffer simple imprisonment till rising of court and fine of Rs.500/- each and in default simple imprisonment for one month.

The sentence to run concurrently."

4. Against aforesaid conviction, an appeal was preferred by the applicant before the learned Sessions Judge, which came to be decided on 22nd August, 2003, before which date, the complainant and accused had entered into a compromise on 18th June, 2003. Learned Sessions Judge ordered compounding of offences punishable under sections 323 and 324 of the Indian Penal Code and as such the accused were acquitted of the said offences. The appeal as such was restricted for conviction under section 326 of the Indian Penal Code. The learned appellate Court on 22nd August, 2003 confirmed the conviction and sentence of the applicant for offence punishable under section 326 read with section 34 of the Indian Penal Code. Thus, the present revision.

5. When the matter was called out on last four occasions, none appeared on behalf of the applicant.

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6. Having heard the learned Additional Public Prosecutor for some time, it is required to be noted that the learned Sessions Judge has maintained the conviction of the present applicant under section 326 read with section 34 of the Indian Penal Code and sentence till rising of the Court. As such, the applicant is required to suffer imprisonment till rising of the Court.

7. One more aspect of which this Court must take note of is that, from bare perusal of the evidence, as is brought before this Court while admitting Criminal Revision Application no. 357 of 2003, this Court was *prima facie* of the opinion that the sentence awarded under section 326 of the Indian Penal Code is inadequate and as such issued notice for enhancement of sentence.

8. The record depicts that the present applicant by now must have completed 85 years of age. Apart from above, the fact remains that the applicant is being prosecuted for an offence which took place sometime in 1999 and the parties hereto have already arrived at compromise and have compounded offences punishable under sections 323 and 324 of the Indian Penal Code.

9. *Prima facie*, the applicant being the age of 85 years old as on today and the fact that the parties have compounded offences punishable under sections 323 and 324 of the Indian Penal Code, in my opinion, it will be appropriate to reject Suo Moto Revision No.5 of 2003, whereby the notice

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was ordered to the applicant for enhancement of sentence. As such, Suo Moto Revision No. 5 of 2003 is dismissed.

10. So far as Criminal Revision Application No.357 of 2003 preferred by the applicant against the conviction for offence punishable under section 326 of the Indian Penal Code is concerned, I have scanned the evidence on record. It is required to be noted that there is enough material on record to convict the applicant for offence punishable under section 326 of the Indian Penal Code.

11. With the assistance of the learned Additional Public Prosecutor, I have scanned the entire evidence and noted that the evidence brought on record depicts involvement of the applicant.

12. It is required to be noted that though the incident took place in the night, the first information report was lodged after 7 hours.

13. It is brought on record from the evidence of the Doctor that the complainant first was required to get treatment, i.e. stitches to his wound and the report came to be lodged against the accused persons. Apart from above, it is required to be noted that the presence of the accused was very much established from the oral testimonies of the complainant i.e. PW1 – Arjun and PW2 – Namdeo, father of the complainant. Apart therefrom, if the accused have come out with a plea of *alibi*, the burden to prove the same was on them.

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14. The fact remains that the enmity as regards the dispute in relation to land and compensation was very much brought on record during recording of the evidence.

15. In view of above, no case for interference in the revisional jurisdiction is made out. Criminal Revision Application No.357 of 2003 as such fails and stands dismissed.

(N.W. SAMBRE, J.)

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