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

CRIMINAL REVISION APPLICATION NO.206 OF 2015

Bhagirath s/o Shriramji Parikh,
Age : 58 years, Occu.Agri.,
r/o Bhokramba, Tq. Renapur,
District Latur

..APPLICANT

VERSUS

1. Rahul s/o Raosaheb Bhise,
Age : 34 years, Occu. Agril.,
r/o Bhokramba, Tq. Renapur,
District Latur

2. Balu @ Balaji s/o Baburao Bhise,
Age : 26 years, Occu.Agril.,
r/o Bhokramba, Tq. Renapur,
District Latur

3. The State of Maharashtra

..RESPONDENTS

Mr P.P. Khandagale Patil, Advocate for applicant;
Mr C.V. Dharurkar, Addl. Public Prosecutor for respondent no.3

CORAM : N.W. SAMBRE, J.

DATE : 29th August, 2016

ORAL ORDER :

On 10th January, 2011, at about 12 noon, the respondents assaulted the applicant-complainant P.W.1 Bhagirath, with the help of an iron rod, thereby causing grievous injury, claiming it to be by a deadly weapon. After the medical examination and after receiving report, the investigation in the matter was completed and respondents-accused were charge-sheeted.

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2. In order to prove the offence, the prosecution had examined P.W.1 Bhagirath - complainant at Exh.18, P.W.2 Mangal, his wife at Exh.22, P.W.3 Prakash and P.W.4 Vijay, panch witnesses to the spot panchnamas at Exhs.23 and 24. P.W.5 Maroti, an eye-witness and P.W.6 Balasaheb at Exh.27. The seizure panchnama came to be proved through P.W.7 Ishwar at Exh.29 and injury certificate at Exh.34 came to be proved by Dr. Dinkar. The injury certificate at Exh.35 and x-ray plates at Exhs.36 and 37 were proved. P.W.9 Investigating Officer was examined at Exh.38.

3. Learned Judicial Magistrate First Class, Renapur acquitted the accused of offences punishable under sections 326, 504 read with section 34 of the Indian Penal Code, however, convicted them for offences punishable under sections 325, 323, 506 read with section 34 of the Indian Penal Code.

4. An appeal against the order of acquittal for offences punishable under sections 326, 504 read with section 34 of the Indian Penal Code, being Criminal Appeal No.117 of 2013 suffered dismissal on 4th December, 2015 at the hands of learned Additional Sessions Judge-2, Latur. As such, this revision.

5. While trying to make out a case for remand, Mr Khandagale, learned Counsel appearing on behalf of the applicant-complainant would urge that the acquittal of the accused for an offence punishable under section 326 of the Indian Penal Code is by incorrect appreciation of evidence when, in

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fact, the road in question which was used for assault, was recovered from the accused persons. According to him, the witness, namely, Ishwar to the incident in question, who is examined in support of the case of the prosecution, has supported the seizure of rod and the same has to be considered as a 'deadly weapon' for committing an offence punishable under section 326 of the Indian Penal Code.

6. Mr Dharurkar, learned Addl. Public Prosecutor supports the submissions made on behalf of the applicant.

7. At the outset, it is required to be noted that sufferance of grievous injuries by P.W.1 victim Bhagirath is already considered to be proved by both the courts below. The only point that was required to be addressed before this Court is, whether the offence could be punishable under section 325 or 326 of the Indian Penal Code. It is, no doubt, true that both the courts below have convicted respondents – accused under section 325 of the Indian Penal Code, for causing grievous injuries. The iron rod which is used in causing such injuries could be termed as 'deadly weapon', pursuant to the provisions of section 326 of the Indian Penal Code is required to be appreciated. So far as the above referred submissions are concerned, though Mr Khandagale has taken me through the observations made by both the courts below, still it is required to be noted that while appreciating evidence on record, both the courts below have considered the fact that the medical evidence, particularly x-ray plates were taken to be proved though X-ray Technician was not examined, still a weightage is

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given to the piece of evidence that x-ray plates are coming from a proper custody.

8. Apart from above, there is hardly any material on record to consider whether the weapon used is a deadly weapon or not.

9. In view thereof, in my opinion, no case for interference, much less for remanding the matter for re-considering conviction for offence punishable under sections 326, 504 read with section 34 of the Indian Penal Code, is made out. Criminal Revision Application as such fails and stands dismissed.

(N.W. SAMBRE, J.)

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