

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.76 OF 2016
WITH
CRIMINAL APPLICATION NO. 76 OF 2016**

Suresh Rupa Dhopat & Anr. Applicants
Vs.
The State of Maharashtra Respondent

Mr. Satyajeet P. Dighe, Advocate for the Applicants.
Ms. P.B. Bhosale, A.P.P. for the Respondent - State.

Coram : Smt. R.P. SondurBaldota, J.
Date : 22nd February, 2016

P.C.

1 The applicants have been convicted of the offences punishable under Section 324 read with 34 Indian Penal Code and have been sentenced to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/-. In default of payment of fine, they are to undergo simple imprisonment for a period of three months. The applicants were tried before the Court of Chief Judicial Magistrate, Ratnagiri vide Regular Criminal Case No.120 of 2010 for the offences punishable under Sections 324, 325, 326 read with 34 Indian Penal Code.

2 According to the prosecution, on 5th July, 2010 at about 7.45 pm., the first informant, Vijay Shitut was present in his house with his wife and son. The applicants armed with sticks and sickle came there and called him out. When the first informant and his son came out, the applicants demanded to know as to why he had misled Mayekar about the property at Maharwadi and assaulted them with stick and sickle. In the assault, the first informant sustained injuries of i) Contusion 4 cm. in diameter on right eye, ii) Fracture of left nasal bone and iii) CLW 0.5 x 0.5 cm. Over vertex

3 The trial court, on appreciation of the evidence on record convicted the applicants of the offences punishable under Sections 323 and 324 read with 34 Indian Penal Code and sentenced them to different periods.

4 Being aggrieved by the order of their conviction, the applicants had filed Criminal Appeal No.65 of 2012 before the Sessions Court, Ratnagiri. The Sessions Court found that appreciation of the evidence by the trial court was correct and proper and so were the findings of conviction. It has thereafter observed that the conviction of the applicants for the offences punishable under Sections 323 and 324 Indian Penal Code, in the course of the same transaction was not proper. In view of

Section 71 Indian Penal Code, when punishment is given by the higher offence, there cannot be conviction and punishment for the lesser offence in the same definition. It has therefore set aside the conviction for the offence punishable under Section 323 and confirmed the conviction under Section 324 Indian Penal Code.

5 Mr. Dighe, the learned advocate for the applicants submits that there could not have been conviction of the applicants for the offences punishable under Section 324 Indian Penal Code because it cannot be said that the applicants have caused hurt to the first informant and the other victim by dangerous weapons or means. He argues that a stick cannot be said to be a dangerous weapon. Section 324 Indian Penal Code refers to use of instrument for shooting, stabbing or cutting and also “any instrument which used as weapon of offence, which is likely to cause death”, in addition to the other weapons and means. In the facts of the case, the courts below have treated the stick as an instrument, which is used as a weapon of offence likely to cause death. Considering the nature of the injuries caused and the part of the body on which the same have been inflicted, I am not inclined to interfere with the findings of the courts below. The conviction of the applicants for the offence punishable under Section 324 read with 34 Indian Penal Code is

supported by the evidence on record.

6 Mr. Dighe then submits that the applicants should be given benefit of Probation of Offenders Act. The allegations in the complaint clearly indicate that the assault by the applicants on the first informant was by design and with planning. They have visited the residence of the first informant armed with sticks and sickle. Therefore, they are not entitled to the benefit of Probation of Offenders Act also. Hence, the Revision Application is dismissed.

7 In view of dismissal of the Revision Application, the Criminal Application No. 76 of 2016 does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)