

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

Criminal Revision Application No.234 of 2004

* Pandurang Bhaguji Bandgar,
Occupation: Agriculture
R/o Koregaon, Taluka Karjat,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) The State of Maharashtra.
- 2) Ramdas Bhaguji Bandgar,
Age 26 years,
Occupation: Agriculture.
- 3) Mahadev Bhaguji Bandgar,
Age 40 years,
Occupation: Agriculture.
- 4) Vithabai Ramdas Bandgar,
Age 31 years,
Occupation: Agriculture.
- 5) Chhababai Mahadev Bandgar Kamble,
Age 35 years,
Occupation: Agriculture.
All R/o Koregaon, Taluka Karjat,
District Ahmednagar. **.. Respondents.**

Shri. Nitin V. Gaware, Advocate, for petitioner.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 19 JANUARY 2017

ORAL JUDGEMENT :

1) The revision is filed to challenge the judgment and order of learned 2nd Additional Sessions Judge Ahmednager delivered in Criminal Appeal No.59/2001. Heard learned counsel for the petitioner, original complainant and learned Additional Public Prosecutor. Nobody turned up for the accused persons.

2) On the basis of report given by the present petitioner, Pandurang, crime was registered for offences punishable under sections 324, 323, 504, 506 and 34 of the Indian Penal Code and charge sheet was filed for these offences against four accused. Accused Nos.2 and 3 Ramdas and Mahadeo are real brothers of present petitioner. Accused No.3 is the wife of accused No.1 and accused No.4 is the wife of accused No.2. Some dispute is going on between family of the complainant on one side and the families of the accused on other side.

3) According to the complainant, incident in question took place on 7-10-1999 at 11.00 a.m. Allegations are made that accused came to his house and they gave

him call. He has made allegations that when he came out of the house, they started demanding their share in the sale proceeds of wood of the trees sold by the complainant to third party. It is contended that when the complainant said that he had taken only his own share, quarrel started. Allegations are made that all the accused assaulted him with hand and kick blows and during incident accused Ramdas took a bite on his right forearm. Report was given by him to Karjat Police Station immediately. He was referred for medical examination. Injuries were found on his person which include contusion on back at right scapula and teeth mark on right forearm. Charge sheet was filed for aforesaid offences and charge was framed. Prosecution examined Pandurang, complainant, one witness Kera Bhise and other witnesses. Medical Officer who had examined the complainant was also examined. Witness Kera Bhise supported the case of the complainant by saying that he reached spot when quarrel was going on and he had given company to the complainant when the complainant was taken to the hospital. The evidence of the medical officer gives corroboration as injury like contusions over back, right scapula were found and one

injury of teeth mark was found on right forearm. The medical certificate was duly proved. During cross examination of the medical officer no other probability in favour the accused was created in respect of the medical evidence. Thus, there was direct evidence and there was medical evidence for corroboration.

4) On the basis of aforesaid evidence, the Judicial Magistrate had given conviction as against accused No.1 Ramdas for offence punishable under section 324, Indian Penal Code and he was sentenced to suffer rigorous imprisonment for 6 months and to pay fine of Rs.1000/-. All the accused were convicted for offence punishable under section 323 read with section 34 of the Indian Penal Code and for that offence each accused was sentenced to suffer simple imprisonment for six months and fine of Rs.500/- each.

5) The Sessions Court has reduced the sentence to make the imprisonment till rising of the Court but the order of penalty of fine amount imposed is maintained. Fine amount is already deposited by the accused persons.

6) The facts of the present case show that the complainant had sold some wood of the trees which was apparently belonging to the families of the complainant and the accused. Thus there was dispute over the property of the joint Hindu family. The complainant and accused Nos.1 and 2 are real brothers, *inter se* and even the lady members of the brothers were made accused when there was allegation of assault in the night time. Thus there was possibility of exaggeration and there was also reason for the quarrel. These circumstances cannot be ignored when criminal Court wants to sentence the accused. In view of nature of dispute and the nature of injury caused, this Court holds that the appellate Court has rightly reduced the sentence and the fine amount is already paid by all the accuse persons. The view taken by the appellate Court cannot be called as improper or illegal. This court holds that it is not possible to interfere in the decision of the Sessions Court. In the result, the revision stands dismissed.

Sd/-

(T.V. NALAWADE, J.)

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