

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.130 OF 2017**

**WITH**

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**JANARDHAN PANJABRAO PASARE )...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.P.B.Shah a/w. Mr.Akshay Chikale i/b. Mr.K.P.Shah, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 11<sup>th</sup> APRIL 2017.**

**ORAL JUDGMENT :**

1 By this revision petition, revision petitioner / original accused no.1 is challenging the judgment and order dated 23<sup>rd</sup> January 2017 passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.11 of 2010 thereby confirming the

judgment and order passed by the learned JMFC, Pune, in Regular Criminal Case No.106 of 2003 convicting the revision petitioner of offences punishable under Sections 323 and 325 read with 34 of the IPC and dismissing his appeal. The learned trial Magistrate upon convicting the revision petitioner / original accused no.1 of offences punishable under Sections 323 and 325 read with 34 of the IPC has sentenced him to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default, to undergo further simple imprisonment for one month for the offence punishable under Section 323 of the IPC; and he is further sentenced to suffer simple imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to suffer further simple imprisonment for one month, in respect of offence punishable under Section 325 of the IPC.

2                    Heard. Admit. Heard finally by consent of parties.

3                    Facts giving rise to filing of the instant revision petition can be summarized thus :

A report came to be lodged by PW2 Ganesh Gosavi on 27<sup>th</sup> January 2003 against the present revision petitioner and his two associates with allegations that, when on that day at about 7.00 a.m. he was going for his work, the revision petitioner / accused no.1 Janardhan Pasare came from behind and gave a blow of stick on his head. He further alleged that two other accused persons were accompanying revision petitioner / accused no.1 Janardhan Pasare. They all assaulted him by means of sticks, kicks and fist blows. When his wife Sheetal (PW3 ) came for his rescue, she was assaulted by accused persons. Thereafter, when his father-in-law Shivgir Giri (PW4 ) tried to intervene, accused persons also assaulted him. This report has resulted in registration of Crime No.42 of 2003 with Kothrud Police Station, Pune, and wheels of investigation were set in motion. Ultimately, the revision petitioner / accused no.1 along with two co-accused came to be charge-sheeted for offences punishable under Sections 323, 324 and 325 read with 34 of the IPC. After trial, the learned trial Magistrate was pleased to convict the revision petitioner / accused no.1 and he was sentenced as indicated in the opening

paragraph of this judgment. Out of two co-accused, accused no.3 Vinod Chaudhary died during pendency of the trial whereas accused no.2 Mahendra Thakre came to be acquitted for want of sufficient evidence against him. Being dissatisfied with this judgment and order of conviction and sentence, the revision petitioner / accused no.1 preferred a criminal appeal which came to be registered as Criminal Appeal No.11 of 2010 and by the impugned judgment and order dated 23<sup>rd</sup> January 2017, the learned Additional Sessions Judge, Pune, was pleased to dismiss the appeal and to confirm the conviction and sentence recorded by the learned trial Magistrate.

4            I have heard the learned advocate appearing for the revision petitioner / original accused no.1. By drawing my attention to the evidence of witnesses examined by the prosecution, the learned advocate vehemently argued that no role is attributed to the revision petitioner / accused in causing grievous hurt to PW2 Ganesh Gosavi. There is no evidence to show that accused persons were acting in league and in

furtherance of their common intention they had injured the first informant as well as prosecution witnesses. The only role attributed to the revision petitioner / accused no.1 is that of giving a blow on backside of the head by means of a stick. He is not the author of fracture injury allegedly suffered by PW2 Ganesh Gosavi and therefore, the offence punishable under Section 325 of the IPC is not made out by the prosecution. The learned advocate further argued that evidence of PW2 Ganesh Gosavi coming on record through his cross-examination goes to show that about 20 to 25 persons gathered on the spot of incident but the prosecution has failed to examine independent witnesses in support of the charge. Panch witnesses have turned hostile and therefore, when co-accused with similar offences was acquitted, the revision petitioner / accused no.1 ought to have been acquitted by the courts below. It is further argued that sentence imposed on the revision petitioner / accused no.1 is too excessive and for this purpose reliance is placed on judgment of the Hon'ble Apex Court in the matter of **Manjappa vs. State of Karnataka**<sup>1</sup> and **Basayya Prabhayya Hallur vs. State of Karnataka with Virabasayya**

<sup>1</sup> (2007) 6 Supreme Court Cases 231

**Prabhayya Hallur vs. State of Karnataka**<sup>2</sup>. The learned advocate for the revision petitioner argued that fine imposed on the revision petitioner can be enhanced to Rs.50,000/- as per the course of action adopted in these judgments. It is further argued that benefit of Probation of Offenders Act ought to have been granted to the revision petitioner / accused no.1.

5           The learned APP supported the impugned judgment and order.

6           I have carefully considered the rival submissions and I have also gone through the record and proceedings. Both courts below have concurrently recorded a finding of fact that the revision petitioner / accused no.1 has committed offences of causing voluntarily hurt so also that of voluntarily causing grievous hurt to the first informant and prosecution witnesses. Accordingly, the revision petitioner / accused no.1 came to be convicted of offences punishable under Section 323 and 325 read with 34 of the IPC.

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2 (2009) 17 Supreme Court Cases 55

7           It is well settled that revisional jurisdiction is to be exercised sparingly when there is manifest error of law apparent from the face of record or when there is glaring defect in procedure resulting in miscarriage of justice. Evidence cannot be re-appreciated while exercising revisional jurisdiction and finding of fact supported by some evidence cannot be upset. Sufficiency of evidence cannot be gone into while exercising the revisional jurisdiction. With this, let us examine whether courts below have committed error of law or procedural irregularity in convicting the revision petitioner / accused no.1 for offences punishable under Sections 323 and 325 read with 34 of the IPC.

8           PW2 Ganesh Gosavi is the first informant. It is in his evidence that while going to his office at Wanaj by bicycle, the revision petitioner / accused no.1 had given a blow of stick on the backside of his head and he also saw two other persons with revision petitioner / accused no.1 Janardhan Pasare and they were holding sticks. PW2 Ganesh Gosavi has categorically stated in his evidence that both accused persons who were with revision

petitioner / accused no.1 Janardhan Pasare had also started beating him by means of sticks and kicks. As per version of PW2 Ganesh Gosavi, he has suffered fracture injury to his left arm near elbow. He has also deposed that when his wife PW3 Sheetal and his father-in-law PW4 Shivgir Giri tried to intervene, they were also assaulted by accused persons. The FIR lodged by this witness is at Exhibit 22. This FIR was lodged on the day of incident itself. Cross-examination of this witness reveals that the incident of assault on him was preceded by the quarrel between his wife and wife of the revision petitioner / accused no.1 Janardhan Pasare. It is brought on record from his cross-examination that this injured witness was not knowing names of two other accused persons. It is brought on record from his cross-examination that to 20 to 25 persons had gathered on the spot of incident at the time of the incident.

9 PW3 Sheetal Gosavi in tune with PW2 Ganesh Gosavi has stated that after she heard sounds of noise, she came out to see accused no.1 Janardhan Pasare and two others were

assaulting her husband Ganesh Gosavi. She stated that she tried to intervene but she was also assaulted by the accused persons and her father who came there, was assaulted by them. As per version of PW3 Sheetal she sustained injuries on her head and stomach and she was admitted to Sassoon Hospital for three to four days.

10 PW4 Shivgir Giri - father-in-law of the first informant has deposed that after hearing noise he came out of the house to see accused no.1 Janardhan Pasare with two others assaulting his son-in-law Ganesh Gosavi. As per his version, when he went to intervene, he was also beaten by accused persons causing injuries to his hand, head as well as right hand. This witness also vouched that his daughter Sheetal who was running pregnancy of seven months duration was also assaulted by the accused persons. His cross-examination reveals that because of conviction recorded against him, this witness was in jail at Akola for a period of 1½ year.

11            This is the evidence coming on record from mouth of three injured witnesses. It is seen that on the day of incident itself, PW2 Ganesh Gosavi and PW4 Shivgir Giri were referred to the Sassoon Hospital for their medical examination. PW6 Dr.Kishore Chabukswar, Medical Officer had examined them medically on that day. Evidence of PW6 Dr.Kishore Chabukswar which is duly corroborated with contemporaneous record in the form of medical certificates at Exhibits 30 and 31 is reflecting following injuries on person of PW2 Ganesh Gosavi and PW4 Shivgir Giri. PW2 Ganesh Gosavi had suffered following injuries :

- |             |                                                                                                                                                                                                    |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Injury No.1 | Contusion with abrasion over left middle third of the forearm, size 8 cm x 6 cm – swelling tender and abrasions were 3 cm x 2 cm superficial and 2 x 2 cm superficial. Query fracture radius ulna. |
| Injury No.2 | Abrasion over left wrist joint dorsally size 1 x 1 cm superficial, 1 x 1 cm superficial                                                                                                            |
| Injury No.3 | CLW on over left parital region size 5 x 1 cm deep to bone and it was bleeding                                                                                                                     |

|             |                                                                                                                        |
|-------------|------------------------------------------------------------------------------------------------------------------------|
| Injury No.4 | Contusion over left lower third of forearm size 6 x 5 cm swelling tender reddish                                       |
| Injury No.5 | Contusion over left scapular region size 8 x 3 cm swelling tender reddish                                              |
| Injury No.6 | Contusion over left knee joint size 5 x 5 cm swelling tender                                                           |
| Injury No.7 | Abrasion over left side of the chase wall on 5 <sup>th</sup> , 6 <sup>th</sup> and 7 <sup>th</sup> ribs size 3 x 2 cm. |
| Injury No.8 | Abrasion left maxillary region.                                                                                        |

PW4 Shivgir Giri had suffered following injuries in the assault :

|             |                                                                                             |
|-------------|---------------------------------------------------------------------------------------------|
| Injury No.1 | Contusion over right thumb dorsally size 2 cm x 2 cm swelling tender                        |
| Injury No.2 | Contusion over right shoulder joint posteriorly size 8 cm x 3 cm swelling tender reddish    |
| Injury No.3 | Abrasion over right infra scapular region size 10 cm x 1.4 cm superficial                   |
| Injury No.4 | CLW over right parieto occipital region measuring about 7 cm to 1 cm deep to bone-bleeding. |

12           It is settled principle of appreciation of evidence that injured witnesses are stamp witnesses whose presence on the scene of occurrence admits no doubt because of injuries suffered by them in the incident. If testimony of injured witnesses is found to be truthful and reliable, then explicit reliance can be placed on version of such witnesses. In the case in hand, cross-examination of PW2 Ganesh Gosavi – an injured first informant goes to show that the revision petitioner / accused no.1 was having motive to commit the crime in question because of quarrel between his wife and wife of PW2 Ganesh Gosavi on the day of the incident. All three injured witnesses namely Ganesh Gosavi, Sheetal Gosavi and Shivgir Giri are categorically stating that it was the revision petitioner / accused no.1 along with two other accused persons who had assaulted them. None of these three injured witnesses were in a position to name the two associates of revision petitioner / accused no.1 Janardhan Pasare. If they really wanted to implicate somebody else falsely then, they could have very well named other two accused persons also. That is how the learned courts below had acquitted accused no.2 of alleged offences. It is

not possible that injured witnesses will spare a real culprit and would name accused no.1 Janardhan Pasare in order to falsely implicate him in the crime in question. As such, I find no error of law in the impugned judgment and order by which testimony of PW2 Ganesh Gosavi, PW3 Sheetal and PW4 Shivgir Giri came to be accepted to record conviction. Their version is duly corroborated by medical evidence on record, so also the evidence coming on record from the mouth of the Investigator who had seized sticks used in the commission of the crime in question. Considering injuries reflected on person of PW2 Ganesh Gosavi and PW4 Shivgir Giri, it is not possible to hold that these injuries were suffered by these two witnesses because of their fall from the bicycle, and that too, simultaneously. There is no evidence to infer such eventuality. As such, evidence adduced by the prosecution is sufficient to hold that PW2 Ganesh Gosavi, PW3 Sheetal and PW4 Shivgir Giri were assaulted by revision petitioner / accused no.1 Janardhan Pasare along with his two associates.

13           Now let us examine whether the assault was in furtherance of common intention or it was a criminal act which was a fresh and independent act springing wholly from the mind of the doer. Section 34 of the IPC deals with common intention. If criminal act is done by several persons in furtherance of common intention of all of them, then each of such person is liable for that act in the same manner as if it were done by him alone. In other words, if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. In the case in hand, evidence of all three injured witnesses show that the revision petitioner / accused no.1 Janardhan Pasare, so also his two associates had simultaneously assaulted them and each of them had participated in the action. As such, it cannot be said that the assault was not in furtherance of common intention shared by the revision petitioner / accused no.1 with his associates. Hence, I find no merit in the submission of the learned advocate for the revision petitioner / accused no.1 that the only role which can be attributed to the revision petitioner / accused no.1 is that of blow on the backside of head

of the injured PW2 Ganesh Gosavi. The assault was certainly in furtherance of common intention of all three persons out of which one is proved to be revision petitioner / accused no.1 Janardhan Pasare.

14 In the case in hand, evidence of three eye witnesses, who themselves are injured, is found to be trustworthy and therefore, non-examination of other witnesses who might have witnessed the incident in question, is not affecting the prosecution case in any manner. When evidence available on record suffers from infirmity or lacuna, then the question of non-examination of other prosecution witnesses though available, assumes importance. Therefore, as the available evidence is trustworthy, non-examination of independent witnesses is of no consequence.

15 Now let us examine whether the prosecution has proved the offence punishable under Section 325 of the IPC, which according to the prosecution case, is committed by the revision petitioner / accused no.1, in furtherance of his common

intention shared with his associates. Section 325 of the IPC reads thus :

**“325. Punishment for voluntarily causing grievous hurt** – Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

This section deals with punishing an accused who voluntarily causes grievous hurt to the victim. The term grievous hurt is defined in Section 320 of the IPC. It reads thus :

**“320. Grievous hurt** – The following kinds of hurt only are designated as “grievous” :-

First – Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly - Permanent privation of the hearing of either ear.

Fourthly - Privation of any member or joint.

Fifthly - Destruction or permanent impairing of the powers of any member or joint.

Sixthly - Permanent disfiguration of the head or face.

Seventhly - Fracture or dislocation of a bone or

tooth.

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

It is, thus, clear that, for bringing the hurt in the category of “grievous hurt” such hurt must be falling under Clause First to Clause Eighthly of Section 320 of the IPC. It covers fracture or dislocation of bone or tooth apart from other injuries.

16           In the case in hand, evidence of PW2 Ganesh Gosavi shows that he had suffered fracture injury to his left arm near elbow. This evidence is supported by medical evidence on record. PW6 Dr.Kishore Chabukswar has deposed that initially he suspected fracture of radius ulna and then on perusal of X-ray of PW2 Ganesh Gosavi, he came to the conclusion that PW2 Ganesh Gosavi suffered fracture of middle third of ulna. As such, no infirmity can be found in conviction of the revision petitioner / accused no.1 in respect of the offence punishable under Section 325 of the IPC, as this hurt falls in Clause Seventhly of Section

320 of the IPC defining “grievous hurt.” Medical evidence coming on record from the mouth of PW6 Dr.Kishore Chabukswar supports the evidence of PW4 Shivgir Giri that he had suffered wound in the assault which is proved to have been caused by the revision petitioner / accused no.1 in association with two other persons. Requirement of proof of the offence punishable under Section 323 of the IPC is causing of hurt. This section does not require any medical evidence because “hurt” as defined by Section 319 of the IPC means bodily pain, disease or infirmity to any person. Evidence of PW3 Sheetal shows that because of assault on her, she suffered injuries to her head and stomach. Hence, with proof of injuries to PW4 Shivgir Giri and hurt to PW3 Sheetal, the prosecution has also proved the offence punishable under Section 323 read with 34 of the IPC, committed by the revision petitioner / accused no.1.

17           Now let us examine whether sentence imposed on revision petitioner / accused no.1 is excessive and undue harsh. Section 323 of the IPC provides for punishment of imprisonment

of either description for a term which may extend to one year or with fine which may extend to One thousand rupees or both. For this offence, the revision petitioner / accused no.1 is sentenced to suffer simple imprisonment for six months apart from imposition of fine of Rs.1,000/-, in default, he is directed to undergo further simple imprisonment for one month. No infirmity can be found with this sentence. It is well settled that the sentence must commensurate with the offence proved to have been committed by the accused. The nature and circumstances in which the crime is committed is also relevant in awarding sentence. It is well settled that deterrence and reformation are two fundamental objectives of punishment. Rights of victims and society at large are also required to be kept in mind while awarding punishment. In the case in hand, for the offence punishable under Section 325 of the IPC, the revision petitioner / accused no.1 is sentenced to suffer simple imprisonment for a period of two years apart from imposition of fine of Rs.2,000/- and in default, to suffer further simple imprisonment for a period of one month. The crime in question took place on 27<sup>th</sup> January 2003. We are in the year

2017. In the matter of **Manjappa (supra)** relied by the learned advocate for the revision petitioner / accused no.1 this aspect of passage of time from commission of offence and the ultimate conviction was considered by the Hon'ble Apex court in paragraph 14 of its judgment. In that matter, compensation was imposed and the accused was made liable to pay it to the victim and sentence of simple imprisonment for one year came to be reduced to six months for the offence punishable under Section 325 of the IPC. In the matter of **Basayya Hallur (supra)** relied by the learned advocate for the revision petitioner / accused no.1, for the offence punishable under Section 324 read with 149 of the IPC, considering the delay in disposal of the matter finally, as well as the fact that accused therein were on bail, the sentence came to be reduced to the period already undergone with a direction to pay fine of Rs.25,000/- by each of the accused persons and that fine was made payable to the wife of the deceased. In the case in hand, the incident had an origin in quarrel between wife of the revision petitioner / accused no.1 and wife of injured PW2 Ganesh Gosavi. They are stated to be neighbours. The incident

dates back to the beginning of the year 2003. Fourteen years have passed since the incident and during this intervening period, no untoward incident is reported. Therefore, keeping in mind the circumstances in which the crime in question took place, for the offence punishable under Section 325 read with 34 of the IPC, sentence of two years imposed by the courts below appears to be harsh and excessive. Taking guidance from the course of action taken by the Hon'ble Apex Court in the matter of **Basayya Hallur (supra)** and as argued by the learned advocate for the revision petitioner / accused no.1, fine imposed on the revision petitioner / accused no.1 for the offence punishable under Section 325 of the IPC is increased to Rs.50,000/- and major portion of the same can be made over to PW2 Ganesh Gosavi – an injured informant and injured PW4 Shivgir Giri. This course of action would meet the ends of justice and the substantive sentence of imprisonment for the offence punishable under Section 325 read with 34 of the IPC can be reduced to the period of six months. Hence the order :

### **ORDER**

The Revision Petition is partly allowed as under :

- i) The conviction of the revision petitioner / accused no.1 Janardhan Pasare for the offence punishable under Sections 323 and 325 read with 34 of the IPC is maintained and confirmed.
- ii) Similarly, sentence imposed upon him for the offence punishable under Section 323 read with 34 of the IPC is confirmed.
- iii) However, for the offence punishable under Section 325 read with 34 of the IPC, the revision petitioner / accused no.1 Janardhan Pasare is directed to under go simple imprisonment for a period of six months and to pay a fine of Rs.50,000/-, in default, to undergo further simple imprisonment for one year.
- iv) On realization of the fine amount of Rs.50,000/-, Rs.40,000/- therefrom be paid to PW2 Ganesh Gosavi – an injured informant and PW4 Shivgir Giri – another injured in equal proportion.
- v) Substantive sentences to run concurrently.
- vi) The revision petition is disposed of accordingly.
- vii) In view of disposal of revision petition, pending Criminal Application Nos.129 of 2017 and 130 of 2017 stand disposed of.

**(A. M. BADAR, J.)**