

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.185 OF 2016

IN

CRIMINAL REVISION APPLICATION NO.186 OF 2017

VILAS JANARDHAN SALAVKAR & ANR.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Suraj Desai Almeida a/w. Zakira Maniyar, Advocate for the Applicant.

Mr.Ameet Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 29th MARCH 2017.

P.C. :

1 This is an application for releasing revision petitioners / accused on bail during pendency of the revision petition filed by them.

2 Heard the learned advocate appearing for revision petitioners / accused. He argued that no offence punishable under

Sections 325 read with 34 of the IPC is made out by the prosecution, as seen from the evidence of the victim as well as the evidence of the Medical Officer. In submission of the learned advocate appearing for the revision petitioners, there was no injury to lips of the victim and there is no evidence on record to show that the victim was having teeth which were uprooted in the incident in question. Lost teeth have not been retrieved during the course of investigation and there is no spot panchnama showing recovery of lost teeth. No independent witnesses are examined by the prosecution though the incident is said to have been witnessed by several other independent witnesses. The learned advocate further argued that victims was assaulted by several people as seen from the evidence of Medical Officer but except the arraigned revision petitioners, all others were let off. The revision petitioners are imposed harsh punishment and they are sole bread earners of their family. With this, the learned advocate for revision petitioners prayed for seeking release of applicants / revision petitioners / accused on bail.

3 The learned APP opposed the application for releasing
the applicants / revision petitioners / accused on bail.

4 The learned Metropolitan Magistrate, 29th Court,
Dadar, Mumbai, on 4th April 2016 was pleased to convict the
applicants / accused of offences punishable under Section 325
read with 34 of the IPC, Section 323 read with 34 of the IPC and
Section 504 read with 34 of the IPC. On each count, they were
sentenced to suffer simple imprisonment for six months apart
from imposition of fine of Rs.5,000/- and in default, to undergo
further simple imprisonment for one month. In appeal, on 20th
March 2017, the learned Additional Sessions Judge, Greater
Bombay, Mumbai, had partly modified the impugned order of the
learned trial Magistrate by acquitting applicants / revision
petitioners / accused of offence punishable under Section 504
read with 34 of the IPC. For the offence punishable under Section
323 read with 34 of the IPC, sentence came to be modified to
simple imprisonment for one month apart from payment of fine of
Rs.1,000/- and in default to undergo simple imprisonment for
seven days, by each of applicants / revision petitioners / accused.

5 Conviction and sentence for the offence punishable under Section 325 read with 34 of the IPC came to be confirmed by the learned appellate court.

6 It is well settled that revisional jurisdiction is exercised sparingly when it is shown that the impugned order suffers from procedural irregularity or manifest error of law resulting in miscarriage of justice.

7 PW1 Vithal Jagdale is the victim of the crime in question. He deposed that both applicants / revision petitioners assaulted him and applicant / revision petitioner no.2 Kesharinath Salavkar assaulted on his teeth by fist blows and in that assault, he lost two teeth. This victim further deposed that applicant / revision petitioner no.2 Kesharinath assaulted his wife by means of a ice pick (tocha) and she sustained injury by that weapon.

He further deposed that when PW4 Girish Kambli intervened, applicant / revision petitioner no.2 Kesharinath gave him a blow by cricket bat on his leg. Similar is the version of the incident coming from the mouth of PW2 Vijaya Jagdale – wife of victim PW1 Vithal Jagdale. This witness has also stated that she suffered injury to her finger by means of iron pick at the hands of applicant / revision petitioner no.2 Kesharinath. PW4 Girish Kambli has deposed in the line of version given by injured PW1 Vithal Jagdale. In addition, he has also deposed that when he attempted to rescue victim, applicant / revision petitioner no.2 Kesharinath took a cricket bat and assaulted him on his right leg.

8 The prosecution has examined PW7 Dr.Sandip Bamnote, Medical Officer, having qualification MBBS, DNB (General Surgeon) FCPS, who happens to be working as Medical Officer with Sion hospital, Mumbai. He deposed that upon examination of victim PW1 Vithal Jagdale he found two lower incisor teeth missing with bleeding. Apart from this, he noticed tenderness over abdomen of the victim and a friction

abrasion 2x 1cm over right leg. On the day of the incident itself, this Medical Officer had noticed all injuries to be fresh and that they were possible with fist blows and screw driver.

9 In revisional jurisdiction, sufficiency of evidence cannot be decided and evidence cannot be re-appreciated. When the witness states that because of the fist blows his teeth were uprooted by the accused and when said evidence is corroborated by the medical evidence on record, then by no stretch of imagination it can be held that such finding is perverse. In this view of the matter, I see no merit in contention of the learned advocate for applicants / revision petitioners / accused that lost teeth ought to have been traced out by adducing spot panchnama. What is required is proof from the standard of a prudent person and not proof of mathematical precision. When available evidence is sufficient then non-examination of other witnesses who may be available, cannot cast a shadow of doubt on the prosecution case.

10 With this, in revisional jurisdiction, considering the nature of evidence found on record, it is not possible to release applicants / revision petitioners / accused on bail during pendency of the revision petition. For the offence punishable under Section 325 of the IPC, the punishment prescribed is up to seven years. Causing of grievous hurt established as uprooting teeth, falls under the mischief of Section 320 of the IPC.

11 In this view of the matter, the application is rejected.

(A. M. BADAR, J.)