

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1293 OF 2013

Sachin Bhimrao Churi & Ors.	...Appellants
Versus	
The State of Maharashtra	...Respondent

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Mr. S.V. Marwadi with Mr. Kartik A. Garg for the Appellants.
Ms Mallika Ingale for the first informant and witnesses.
Mr. M.G. Patil, APPP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 27th NOVEMBER, 2017.

P.C.:-

The Appellants herein who were the accused Nos.2, 3 and 6 in Sessions Case No.7 of 2010 have challenged the judgment of conviction dated 20th November, 2013 whereby they have been held guilty of the offences punishable under Sections 143, 147, 148, 326 and 504 r/w. Section 149 of the IPC.

2. The case of the prosecution in brief was that on 18th December, 2009 at about 7.15 p.m. at Talekhal Churipada (the Appellants and the co-accused hereinafter referred to as the accused) formed an unlawful assembly with a common object of causing hurt to Santosh Pal-PW8. It is alleged that all the accused were armed with

sticks and that they had assaulted Santosh Pal and Raju Chaudhary and thereby caused grievous injury to said Santosh Pal and Raju Chaudhari. The accused were also alleged to have intentionally insulted said Santosh Pal and Raju Chaudhari by hurling abusive words. It was further alleged that the accused had intentionally intimidated and humiliated the first informant- Manglya Parhad, who is a member of scheduled caste, in a place within public view.

3. Based on the FIR lodged by said Manglya Parhad, offences were registered against the accused for offences punishable under Sections 143, 147, 148, 326, 504, 506 r/w. Section 3(1) (x) of the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused pleaded not guilty and claimed to be tried. Upon considering the evidence adduced by the prosecution, the learned Additional Sessions Judge, Palghar, acquitted the accused of Section 3(1) (x) of the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but convicted and sentenced them for offences punishable under Sections 143, 147, 148, 326 and 504 r/w. Section 149 of the IPC.

4. Mr. Marwadi, the learned counsel for the accused as well as Ms Mallika Ingale, the learned counsel for the injured witnesses viz.

PW2-Raju Chaudhary, PW4-Devya Babar, PW8-Santosh Pal and Prakash Bovari, submitted that the accused and the injured witnesses have settled the dispute amicably and that they do not wish to proceed with the matter. He has relied upon the decision in ***Puttaswamy Vs. State of Karnataka & Anr. 2009 ALL MR (Cri) 2486 S.C.*** wherein the Apex Court has held thus :-

“9. What emerges from all these decisions is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.”

5. I have perused the records. The evidence of PW2, PW8 and PW4 indicates that they were assaulted by wooden sticks. Evidence of PW7-Dr. Prakash Babu (Medical Officer) reveals that PW2-Raju Chaudhary and PW8-Santosh Pal had sustained simple injuries. PW8 had sustained deep lacerated wound over his right frontal region till temporal parietal region of the head. PW7-DR. Prakash Babu has opined that said injury can be said to be grievous injury. It is to be noted that in the certificate at Exh.69, Dr. Prakash Babu-PW7 had not certified the said injury to be grievous injury. Testimony of PW7 also does not indicate that the said injury falls in any of eight clauses of Section 320 of the IPC. The evidence of PW7 indicates that PW8 was

discharged from hospital on 22nd December, 2013. The evidence of PW7 does not indicate that the said injury, which according to him can be considered as grievous injury was sufficient to endanger life of PW-8 Santosh Pal. Hence, offence under Section 326 of the IPC is not made out. The offence at the most which categories is under Section 324 of the IPC. The offence under Section 324 of the IPC is not compoundable.

6. Thus, the evidence on record does not indicate that the injury suffered by PW7 was grievous injury so as to attract provisions of Section 326 of the IPC. The evidence on record indicates that weapons of offence were bamboo sticks. In this regard evidence of PW3-Vijay Tokre indicates that the said sticks were recovered from the place of incident. The evidence viz. scene of offence panchanama at Exhibit 60 reveals that said sticks which were used as weapon of offence were of the radius of 3 inches. The phraseology of Section 324 shows that to bring the offence under Section 324 of the IPC, the weapon used must be one for shooting, stabbing, cutting or must be such that it is likely to cause death. Bamboo sticks used by the accused, by virtue of its very nature is not the one which would render death probable. There being no evidence to prove that the weapons of

offence used by the accused are the weapons within the meaning of Section 324 of the IPC, the accused cannot be held guilty for the offence under Section 324 of the IPC. The conviction therefore has to be converted to Section 323 of the IPC.

7. Be that as it may, the accused and the injured witnesses have expressed their willingness to compound the offence. They have filed affidavits stating that they have settled the dispute amicably. The injured witnesses viz. PW2-Raju Chaudhary, PW4-Devya Babar and PW8-Santosh Pal are present before the Court and they have confirmed the contents of the affidavits and stated that they have no grievance against the accused and that they want to compound the offence. Statements accepted.

8. The offences are compoundable. Hence, permission is granted to compound the offences. Consequently, the sentence is set aside and quashed.

9. The Appeal stands disposed of. The Appellants to pay costs of Rs.5000/- to the Legal Services Authority, Mumbai, within a period of one week from the date on which this order is uploaded.

(ANUJA PRABHUDESSAI, J.)