

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

903 CRIMINAL REVISION APPLICATION NO. 222 OF 2004

Shaikh Osman Sk.Rasool
Age: 67 years, Occu.: Agri.,
R/o. Ranjangaon Danga,
Tq.Paithan, Dist.Aurangabad.

..Applicant
(Orig. Accused No.8)

Versus

The State of Maharashtra,
through Public Prosecutor,
High Court of Judicature of
Bombay, Bench at Aurangabad.

..Respondent

...
Advocate for Applicant : Shri D.K.Kulkarni
APP for Respondent : Shri S.P.Sonpawale

...
CORAM : PR.BORA, J.

DATE: 29th November, 2018

ORAL JUDGMENT:-

1. When the present revision application is taken up for hearing, the learned Counsel appearing for the applicant submitted that he is restricting his argument to the point of quantum of punishment.

2. The learned Counsel submitted that though on merits also the applicant has challenged the impugned Judgments passed by the Courts below, in view of the fact that the applicant has now attained the age of more than 80 years and suffering from several ailments, he

has decided not to contest the present matter on the said grounds, but has prayed for leniency by reducing the period of substantive sentence imposed upon him. The learned Counsel for the applicant submitted that the applicant has already undergone the punishment of one month against imprisonment of six months imposed upon him. The learned Counsel submitted that considering the fact that the alleged incident had occurred way back in 1987 i.e. about 31 years and further that the present applicant has now attained the age of 81 years and suffering from several ailments, he be released on imprisonment already undergone by adequately increasing the amount of fine. The learned Counsel relied upon the Judgment of Hon'ble Division Bench of this Court in the case of *Narayan Aba Pawar and others Vs. State of Maharashtra [2014(3) Bom.C.R. (Cri.) 42]*. The learned Counsel submitted that in the aforesaid case, the Division Bench, in similar circumstances as are existing in the present case, had released the appellants therein on the sentence of imprisonment already undergone for the offence punishable under Section 304 (II) of the Indian Penal Code. The learned Counsel submitted that in the present matter, the applicant has been convicted for the offences punishable under Sections 147, 149, 323 and 326 of the Indian Penal Code and the sentence imposed upon the applicant is rigorous

imprisonment for six months. The learned Counsel, therefore, reiterated the prayer for releasing the applicant on the sentence of imprisonment already undergone.

3. Shri S.P. Sonpawale, learned APP has opposed for considering the request made by the learned Counsel for the revision applicant stating that the material on record shows that overt act was committed by the present applicant and it was also undoubtedly proved and though, the Trial Court had imposed sentence of two and half years of rigorous imprisonment, by showing leniency, the Sessions Court has reduced the punishment to six months. According to the learned APP, no more leniency deserves to be shown to the present applicant.

4. I have given due consideration to the submissions made by the learned Counsel appearing for the revision applicant and learned APP appearing for the State. I have perused the Judgments passed by the Courts below. As has been noted herein above, the only prayer, which is now pressed by the revision applicant is to reduce the substantive sentence imposed upon him by the Sessions Court and to release him on the sentence of imprisonment already undergone by

him. The applicant has been convicted for the offence punishable under Sections 147, 149, 323 and 326 of the Indian Penal Code and has been sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.200/-, in default, to suffer rigorous imprisonment for 15 days. It is not in dispute that the alleged incident had occurred way back in the year 1987 i.e. prior to about 31 years. It is further not in dispute that the applicant has now crossed the age of 80 years. It is further not in dispute that the applicant has already undergone the imprisonment for the period of about one month. Having considered the facts as aforesaid, though the learned APP has opposed for considering the request of the applicant to reduce the punishment imposed upon him and to release him on sentence of imprisonment already undergone, I am inclined to consider the request so made by the applicant.

5. In the case of *Narayan Aba Pawar and others* (supra) before the Division Bench of this Court similar request was made by the appellants – accused therein. In the said case, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and was sentenced to suffer life imprisonment. In the appeal, the Hon'ble Division Bench set aside the conviction of the

applicant for the offence punishable under Section 302 of the Indian Penal Code and held him guilty for the offence punishable under Section 304 (II) of the Indian Penal Code and sentenced him to suffer imprisonment already undergone. As has been observed by the Hon'ble Division Bench, two circumstances weighed in the minds of Their Lordships; first that the alleged incident had occurred prior to more than 17 years and that the appellants had already undergone the imprisonment for the period of three months. In the circumstances, the Hon'ble Division Bench released the appellants before them on the sentence of imprisonment already undergone by increasing the amount of fine.

6. In view of the fact that identical facts are involved in the present case, I see no difficulty to follow the same course as was followed by the Hon'ble Division Bench in the cited case. While reducing the substantive sentence, balance can be struck by increasing the amount of fine.

7. For the reasons stated above, the following order is passed:-

ORDER

I) The conviction of the revision applicant for the offence punishable under Sections 147, 323 r/w. Section 149 and 326 r/w. Section 149 of the Indian Penal Code, is maintained. The sentence imposed by the Sessions Court, however, is modified as under:-

“The revision applicant is sentenced to suffer imprisonment already undergone and to pay fine of Rs.15,000/-, in default, to suffer simple imprisonment for three months.”

II) The revision application thus stands partly allowed in the aforesaid terms.

III) The Judicial Magistrate (First Class), Paithan, shall ensure the execution of the present order and report the compliance accordingly.

(PR.BORA)
JUDGE

SPT

