

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.177 OF 2012

Attam s/o. Sopan Bansode,
Age: 47 years, Occ.:Business,
R/o. Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed

...PETITIONER
(Ori. Complainant)

VERSUS

1. The State of Maharashtra
Through Police Station,
Ambajogai, Dist. Beed
2. Awala @ Walmik s/o. Dhanraj Bansode
Age: 45 years, Occ.:Labour,
R/o. Lokhandi Sawargaon,
Tq.Ambajogai, Dist. Beed
3. Kalawatibai w/o Awala @ Walmik Bansode
Age: 42 years, Occ.:Household,
R/o. Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed

...RESPONDENTS
(Res.No.2 & 3
Orig. Accused)

...

Shri.V.B.Dhage, Advocate holding for Shri.
Shrimant R. Kedar, Advocate for Petitioner;

Shri.K.D.Mundhe, A.P.P. for respondent-state;

Shri.M.A.Kulkarni, Adv.for respondent no.2 & 3.

WITH

CRIMINAL REVISION APPLICATION NO.159 OF 2012

Awala @ Walmik Dhanraj Bansode,
Age: 45 years, Occ.:Labour,
R/o. Lokhandi Sawargaon,

Tq. Ambejogai, Dist. Beed ... **PETITIONER**

VERSUS

The State of Maharashtra ... **RESPONDENT**

...

Shri.M.A.Kulkarni, Advocate for petitioner;

Shri.K.D.Mundhe, A.P.P. for respondent-state.

CORAM : P.R.BORA, J.

DATE : 20th February, 2018.

ORAL JUDGMENT:

1) Since both these revision applications are arising out of order passed by Additional Sessions Judge, Ambejogai on 14th September, 2012 in Criminal Appeal No.33/2011, I have simultaneously heard the arguments in both the matters and I deem it appropriate to decide these revisions by a common reasoning.

2) On a complaint lodged by one Attam Sopan Bansode, an offence was registered against the Revision petitioner in Criminal Revision Application No.159/2012 and Respondent No.3 in

Criminal Revision Application No.177/2012 at Police station, Ambejogai.

3) Informant complainant Attam has alleged that on 27th July, 2004 at about 7.30 a.m., when he was in his grocery shop, he was called upon by accused No. 1 – Awala @ Walmik Dhanraj Bansode in front of the statue of Dr.Babasaheb Ambedkar and was questioned by the said accused Awala as to why he made his signature on a representation made by the villages against him forwarded to the Deputy Collector and Deputy Superintendent of Police. Informant Attam at that time explained to accused Awala that he was not the only person to make the signature on the representation, but several others had also signed the said representation and as such, accused should not hold him alone responsible for making such representation. Because of such answer given by informant Attam, accused Awala was annoyed and as alleged by the complainant Attam, he then took out a sword and made assault on his head. It was

also alleged that wife of accused Awala, viz. Kalawatibai and son of the accused Awala viz. Nilesh also made assaults on him. It was also alleged that when the wife of Attam tried to intervene in the quarrel, she was also assaulted by the accused persons and injuries were caused to her also.

4) On such a report being lodged by informant Attam, offences under Sections 147, 148, 149, 326, 323, 504 and 506 of IPC was registered against accused Awala and Kalawatibai w/o Awala @ Walmik Bansode.

5) After having completed the investigation, charge sheet was filed against both of them in the court of JMFC at Ambejogai and both the accused were tried by the said court. In order to prove the guilt of the accused, total seven witnesses were examined before the court of JMFC at Ambejogai. Learned JMFC, after having assessed oral and documentary

evidence brought on record, convicted both the accused for the offences punishable under Sections 147, 148, 324, 323 read with Section 149 of IPC and sentenced both of them to suffer simple imprisonment for three months each with fine of Rs.1,000/- each, in default, to suffer S.I. for fifteen days each. The learned Magistrate however acquitted both the accused for the offences punishable under Sections 326, 504 and 506 read with Section 149 of IPC.

6) Aggrieved by the order of conviction passed by learned JMFC, the accused preferred Criminal Appeal No.33/2011 in the Sessions Court at Ambejogai. The learned Additional Sessions Judge, vide the impugned judgment partly allowed the criminal appeal. The learned Additional Sessions Judge set aside the conviction ordered of accused No.2 – Kalawatibai and acquitted her of all the charges levelled against her. The learned Additional Sessions Judge also set aside the order of conviction against original accused

No. 1 – Awala for the offences punishable under Sections 147, 148 and 149 of IPC and consequently, acquitted him from the said offences. The learned Additional Sessions Judge, however, confirmed the order of conviction passed by learned Magistrate against original accused No. 1 – Awala under Sections 324 and 323 of IPC.

7) Aggrieved by the order passed by the learned Additional Sessions Judge, original accused No.1 has preferred criminal revision application no. 159/2012; whereas aggrieved by the order of acquittal recorded in favour of original accused No.2 – Kalawatibai, original informant – Attam has preferred Criminal Revision Application No. 177/2012.

8) Smt. M.A.Kulkarni, learned Counsel appearing for the Revision petitioner in Criminal Revision Application No.159/2012 criticized the judgments passed by the courts below on various grounds. The learned Counsel submitted that both

the courts below have failed in properly appreciating the oral as well as documentary evidence on record and has given undue weightage to the evidence of some of the witnesses, more particularly, complainant – Attam though there are several material inconsistencies in his evidence. The learned Counsel, taking me through the evidence on record, submitted that neither the prosecution had brought on record any concrete evidence as about the author of the injuries allegedly caused to victim – Attam, nor there was any certainty as about the weapon of the offence in question. In the circumstances, according to learned Counsel, accused no.1 – Awala must have been acquitted by both the courts for want of sufficient evidence against him. The learned Counsel further submitted that the reasons for which the learned Additional Sessions Judge has set aside the order of conviction passed by the learned JMFC against original accused No. 2 – Kalawatibai, accused No.1 – Awala was also liable to be acquitted by the learned

Additional Sessions Judge. The learned Counsel further submitted that the courts below have also failed in appreciating that the injuries alleged to have been caused to informant Attam were all simple injuries. The learned Counsel further submitted that medical evidence on record demonstrates that the injuries, as were noticed on person of informant Attam were liable to be caused by hard and blunt object. The learned Counsel submitted that the only weapon which was alleged to have been used in making the assault on Attam was named to be the sword. The learned Counsel submitted that thus, the medical evidence was not supporting the case of the prosecution that the injuries noticed on person of complainant – Attam were caused by accused No.1 – Awala with the aid of the sword. The learned Counsel submitted that it was thus quite clear that no believable evidence was brought on record by the prosecution. In the circumstances, according to learned Counsel, no conviction of accused No. 1 – Awala could have been recorded by

the learned Magistrate for the offences punishable under Sections 147, 148, 323 and 323 read with Section 149 of IPC and similarly the order of conviction for the offences punishable under sections 324 and 323 of IPC could not have been confirmed by the learned Additional Sessions Judge. The learned Counsel, in the circumstances, prayed for setting aside the order passed by the learned Additional Sessions Judge on 14th September, 2012.

9) In the alternative, it was submitted by the learned Counsel that if at all the court comes to the conclusion that no interference is required in the order passed by the learned Additional Sessions Judge, the sentence may be modified and instead of sending the applicant accused in jail, he may be sentenced only with the amount of fine and in such case, the court may appropriately enhance the amount of fine than imposed by the courts below.

10) Learned APP Shri K.D.Mundhe supported the impugned judgment and order. The learned APP submitted that the learned Additional Sessions Judge has passed a well-reasoned order and no interference is required in the order so passed. The learned APP submitted that the Sessions Court has taken all pains to closely scrutinize the evidence on record and after having assessed the said evidence, though has set aside the conviction of accused No.1 – Awala for the offences punishable under Sections 147, 148 and 149 of IPC, has rightly maintained the conviction under Sections 323 and 324 read with 149 of IPC. The learned APP further submitted that no interference is warranted in the judgment and order passed by the learned Additional Sessions Judge.

11) Learned Counsel appearing for Respondent no.2 – i.e. original informant viz. Attam, submitted that the order passed by the learned Magistrate was, in fact, based on sound reasons

and could not have been interfered by the learned Additional Sessions Judge. The learned Counsel submitted that the reasons for which the learned Additional Sessions Judge has acquitted the original accused No.2 – Kalawatibai and has reduced the quantum of punishment of accused No.1 – Awala, are erroneous. The learned Counsel, therefore, prayed for dismissal of the revision.

12) I have carefully gone through the impugned judgment as well as the evidence on record. On perusal of the evidence on record, it is apparently revealed that sufficient evidence had come on record against original accused No. 1 Awala proving that he did make assaults on the complainant – Attam and caused him certain injuries. It is further revealed that having regard to the evidence of the Medical Officer indicating that the injuries noticed to have been caused to informant complainant – Attam were all simple injuries, the learned Magistrate has held both the accused guilty for the offences

punishable under Sections 324 and 323 of IPC. The learned Additional Sessions Judge in the appeal filed by original accused No.1 and 2, has noticed the evidence brought against original accused No.2 – Kalawatibai short to hold her guilty for the offences charged against her and has, therefore, rightly acquitted her of all the charges. On perusal of the judgment passed by the learned Additional Sessions Judge, it appears that the learned Additional Sessions Judge has properly analyzed the evidence on record and has, therefore, arrived at a finding that the evidence brought on record by the prosecution was not sufficient to hold the accused persons guilty for the offences punishable under sections 147, 326 and 148 of IPC and the conviction was liable to be confirmed only for the offences punishable under sections 323 and 324 of IPC.

13) After having considered the entire material on record, it does not appear to me that any patent and cognizable error has been

committed by the learned Additional Sessions Judge in holding the original accused No.1 guilty for the offences punishable under Sections 323 and 324 of IPC and acquitting original accused No.2 – Kalawatibai of all the charges leveled against her. Though there seems no reason for causing any interference in the order of conviction recorded by the learned Additional Sessions Judge against original accused No.1 – Awala, having regard to the facts and circumstances, as were indicated by learned Counsel appearing for the applicant, alternate prayer made on behalf of original accused No.1 – Awala, however, certainly deserves positive consideration. The alleged incident had admittedly occurred in the year 2004, i.e. prior to about fourteen years. As is revealing from the record, age of accused No.1 – Awala at the time of alleged occurrence was around 45 years. It is thus evident that he has now crossed the age of 60 years. As was further submitted by the learned Counsel, the alleged incident had

occurred on the spur of moment and there was no intention of accused No.1 – Awala to cause any serious injuries to the victim. The learned Counsel further submitted that accused No.1 – Awala had become annoyed with the act of informant – Attam putting his signature on the representation made against him to the police authorities. The learned Counsel further submitted that accused No.1 – Awala had just sought some explanation in that regard from informant –Attam and the said incident ultimately resulted in serious altercations between him and informant Attam and in a fit of anger, certain injuries were caused at the hands of accused No. 1-Awala to the informant. As has been further submitted by the learned Counsel, the nature of injuries allegedly caused by accused No.1 –Awala to the informant were admittedly simple injuries. Having considered the circumstances as are brought on record, it appears to me that after fourteen years of the alleged occurrence, there is no propriety in sending accused No.1-Awala,

who has now admittedly crossed his sixties, to suffer imprisonment. It has to be noted that for the offence punishable under section 324 of IPC, the accused can be punished with the sentence of imprisonment or can be punished with by imposing fine upon him. It appears to me that balance can be struck by enhancing the amount of fine and by directing to pay said amount of fine, by way of compensation, to the victim.

14) For the reasons stated above, I am inclined to partly allow the criminal revision by modifying the sentence as has been imposed by the learned Additional Sessions Judge vide the impugned judgment.

15) In so far as criminal revision application filed by original informant – Attam challenging the acquittal of original accused No.2-Kalawatibai is concerned, for the reasons, which I have recorded herein above, deserves to be dismissed. I reiterate that in so far as

accused No.2 – Kalawatibai is concerned, since no such evidence had come on record showing her complicity in commission of the alleged crime, the learned Additional Sessions Judge has set aside the order of conviction passed against her by the learned Magistrate. It does not appear to me that any error has been committed by the learned Additional Sessions Judge in recording acquittal of original accused No.2 – Kalawatibai. Criminal Revision Application No. 177/2012 thus deserves to be dismissed.

16) In the result, following order is passed.

ORDER

(i) Criminal Revision Application No.159/2012 is partly allowed;

(ii) The order of conviction against Revision petitioner – Awala @ Walmik Dhanraj Bansode, for the offences punishable under Sections 324 and 323 of

IPC though is maintained, the sentence is modified as under, -

(a) The revision petitioner - Awala @ Walmik Dhanraj Bansode, is sentenced to pay fine of Rs.15,000/- (Rupees fifteen thousand), in default, to suffer simple imprisonment for six months;

(b) Fine amount, if deposited, shall be paid to Complainant/informant - Attam Sopan Bansode;

(iii) Criminal Revision Application No.177/2012 stands dismissed.

(P . R . BORA)
JUDGE

bdv/