

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 1 OF 2018

SURYAKANT KAUTHANKAR AND 3 ORS., ... Petitioners

Versus

**STATE, THR. INCHARGE, OLD GOA
POLICE STATION, OLD GOA AND ANR., ... Respondents**

Shri Arjun F. Naik, Advocate for the petitioners.

Shri Mahesh Amonkar, Additional Public Prosecutor for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 1st March 2018

P.C.

The challenge in this Criminal Revision Application is to the concurrent finding by the Courts below, convicting the petitioners for offence punishable under Section 324 read with Section 34 of Indian Penal Code (IPC). The petitioners have been sentenced to suffer imprisonment till rising of the Court and to pay compensation of Rs.5,000/- each. The petitioners happen to be the accused nos.1 to 4. The accused no.5 Pandurang Kauthankar has been acquitted.

2. Admittedly, there is a dispute ongoing between the complainant and the accused over a paddy field. The incident is alleged to have happened on 22/06/2012 at 18.20 hours in the

said paddy field bearing Survey No.46/3 of Choao village, in which the accused in furtherance of their common intention had assaulted PW1-Tejashvini Kauthankar and PW2- Vishwanath Kauthankar by means of the wooden danda of a spade, which are M.O. nos.1 and 2.

3. At the trial, the prosecution examined as many as seven witnesses, including PW6 i.e. the Medical Officer, who had examined PW1 and PW2. The Medical Officer found simple injuries on the person of the prosecution witnesses PW1 and PW2, which he stated, can be caused by the wooden danda of the spade.

4. I have heard Shri Naik, the learned Counsel for the petitioners and Shri Amonkar, the learned Additional Public Prosecutor for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the evidence and the impugned judgment of the learned Magistrate as also of the learned Sessions Judge.

5. It is submitted by Shri Naik, the learned Counsel for the petitioners that all the witnesses are interested witnesses being closely related. It is submitted that PW5, who was examined as panch witness for the recovery of two spades, is admittedly working as a driver of the complainant. It is submitted that there

are omissions and contradictions in the evidence of material prosecution witnesses PW1 to PW4. It is, further, submitted that the Medical Officer has admitted that the injuries found on the person of the PW1 and PW2, are possible by mere fall. It is, thus, submitted that the learned Magistrate was in error in convicting the petitioners.

6. Shri Amonkar, the learned Additional Public Prosecutor submits that the incident is corroborated by the complaint as well as the fact that there were injuries found on the person of the prosecution witnesses PW1 and PW2. It is submitted that the evidence of the material prosecution witnesses PW1 to PW4 has not been shaken in the cross-examination and though there are some minor omissions, they do not go to the root of the veracity of these witnesses.

7. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

8. Admittedly, there is a dispute ongoing between the petitioners and the accused over a paddy field and their relations are strained. The incident is alleged to have happened in the said paddy field, where PW1 to PW4 were present. The medical evidence also shows that there were injuries found on the person

of PW1 and PW2, which are commensurate with their version of assault and also with the fact that they are possible by wooden danda of the spade. It is well settled that the evidence of the injured witnesses carries a greater probative value. I have carefully gone through the evidence of PW1 to PW4 and there is nothing brought on record to discard their evidence. Merely because the Medical Officer has admitted that the injuries are possible by a fall, would not dislodge the version of PW1 to PW4 that the injuries have been caused by the assault, as deposed by these prosecution witnesses. The absence of any independent witnesses, to my mind, cannot have any effect on the consistent version given by PW1 to PW4 of the incident. The impugned judgment does not show any infirmity, so as to require interference in the revisional jurisdiction. In such circumstances, the Criminal Revision Application is dismissed.

C. V. BHADANG, J.

SMA