

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.487 OF 2018

IN

CRIMINAL APPEAL NO.842 OF 2017

PANDITRAO RANGNATH KATAD & ANR.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Sagar Talekar, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 4th APRIL 2018

P.C. :

1 Both applicants/accused nos.1 and 2, by this application, are seeking stay to their conviction for offences punishable under Section 326 and 324 read with 34 of the Indian Penal Code recorded by the learned Special Judge and Additional Sessions Judge, Nashik, in Special Case (SC/ST) No.34 of 2015. Perusal of the impugned judgment and order dated 15th

September 2017 shows that applicant/accused no.1 Panditrao Katad was convicted for the offence punishable under Section 326 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 6 months apart from payment of fine of Rs.1,000/- and default sentence for 1 month. Applicant/accused no.2 Pappu Katad is convicted for the offence punishable under Section 324 read with 34 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 3 months apart from payment of fine of Rs.500/- and default sentence of fifteen days.

2 Heard the learned Advocate appearing for the applicants/accused at sufficient length of time. He took me through the entire evidence adduced by the prosecution in order to demonstrate that there is variance in the evidence adduced by the prosecution witnesses. There is no evidence of hitting the injured with an iron rod as stated in the Charge framed against the applicants/accused. The learned Advocate also argued that evidence adduced by the prosecution is not trustworthy by

pointing out that the same is suffering from discrepancies. He argued that though the victim has stated that applicant/accused Panditrao had assaulted him by means of a broken hand of a chair and the applicant/accused no.2 Pappu had assaulted him by hitting a chair. This evidence is not in tune with the evidence adduced by eye witness named Balu Dhondage. With this, it is argued that the applicant/accused no.1 is a member of the Gram Panchayat and he shall incur disqualification on the ground of conviction.

3 The learned APP opposed the application by submitting that the application is devoid of necessary pleadings and that applicant/accused no.1 has not pointed out the term of the Gram Panchayat and the fact that as to whether he is still a member of the Gram Panchayat.

4 I have heard the rival submissions and also perused copies of deposition of prosecution witnesses. Applicant/accused no.1 Panditrao Katad, at the relevant time, was a member of the

Gram Panchayat. On 26th November 2014, meeting of the Gram Panchayat was convened. Injured Vitthal Charoskar (PW2) was also the member of the Gram Panchayat. It is seen from evidence of the injured witness that when he attended the meeting of the Gram Panchayat, present applicant/accused no.1 Panditrao Katad started questioning the propriety of convening the meeting of the Gram Panchayat and when injured Vitthal Charoskar (PW2) informed him that there is problem of drinking water in the village necessitating convening of the meeting of the Gram Panchayat, applicant/accused no.1 Panditrao Katad abused him and assaulted him by using chair as a weapon. His son applicant/accused no.2 Pappu Katad also assaulted the injured by means of a chair.

5 Version of the injured is gaining corroboration from evidence of eye witness PW1 Balu Dhondage who has stated that he saw both the applicants/accused assaulting the injured by means of a chair.

6 The incident in question took place during the course of meeting of the Gram Panchayat. Injured Vitthal Choraskar (PW2) was the member of the Gram Panchayat who suffered injuries at the instance of both applicants/accused. It is trite that evidence of the injured witness cannot be jettisoned because of minor discrepancies in his version. The same is accepted by the learned trial court. The same is gaining corroboration from the medical evidence adduced by the prosecution.

7 So far as stay to the conviction is concerned, such powers are to be exercised only in exceptional circumstances when failure to stay to conviction leads to injustice and irreversible consequences. (Refer Ravikant S. Patil vs. Sarvabhabhouma S. Bagali¹ and Navjot Singh Sidhu vs. State of Punjab and Another²).

8 In the case in hand, a member of the Gram Panchayat was assaulted during the course of meeting of the Gram Panchayat causing grievous hurt to him by present applicant/accused no.1

1 (2007) 1 SCC 673

2 (2007) 2 SCC 574

Panditrao Katad who was also a member of the Gram Panchayat. Considering the nature of evidence and the fact that the assault was during the course of meeting of the Gram Panchayat and on proof of the offence, in the case in hand, conviction cannot be stayed or suspended. Therefore, the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)