

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

CRIMINAL REVISION APPLICATION NO. 482 OF 2004

1. Bibhishan Namdeo Chaugule,
Age- 30 years, Occu- Labourer.
2. Anil Namdeo Chaugule,
Age- 34 years, Occu- Service.
3. Sunil Namdeo Chaugule,
Age- 31 years, Occu- Labourer.
4. Sanjay Namdeo Chaugule,
Age- 27 years, Occu- Labourer.
5. Baban Bajirao Dhotre,
Age- 47 years, Occu- Labourer.
6. Somnath Bajirao Dhotre,
Age- 51 years, Occu- Labourer.
7. Shivaji Bajirao Dhotre,
Age- 36 years, Occu- Labourer.
8. Ankush Bajirao Dhotre,
Age- 32 years, Occu- Labourer.

All R/o. Kharda, (Wadarwada)
Tq. Jamkhed, Dist. Ahmednagar.

... **APPLICANTS**
(Orig. Accused)

Versus

1. The State of Maharashtra
2. Chandrakant Piraji Dhoke,
Age 43 years, Occ. Service.
3. Vishnu Piraji dhoke

Age 46 years, Occ. Labourer.
Both R/o Kharda,
Tq. Jamkhed, Dist. Ahmednagar.

... **RESPONDENTS**

(No.2 is orig. Compt. & No.3 is injured)

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Advocate for Applicants : Mr. Siddharth S. Garud h/f Mr. N.C. Garud.

A.P.P. for Respondent/State : Mr. B.V. Virdhe.

Advocate for Respondent nos. 2 and 3: Mr. A.R. Borulkar.

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CORAM : MANGESH S. PATIL, J.

RESERVED ON: 30.08.2019

PRONOUNCED ON: 10.10.2019

JUDGMENT :-

Heard both the sides.

2. In this revision under Section 397 read with Section 401 of the Code of Criminal Procedure the applicants are the original accused. They are impugning the judgment of the trial Court convicting and sentencing them for the offences punishable under Section 147, 323, 337 and 506 read with Section 149 of the Indian Penal Code whereby they were sentenced to suffer R.I. for six months on each count but sentences were directed to run concurrently, and the judgment and order in the appeal against conviction preferred by them which was merely partly allowed, whereby the conviction for Sections 147, 323, 337 read with Section 149 was upheld but the sentence was modified and instead of sending them for any sentence they have been directed to pay fine. They have been acquitted of Section 506 read with

Section 149 of the Indian Penal Code but have been convicted for the offence punishable under Section 143 read with Section 149.

3. It is necessary to mention here that the State has not preferred any appeal or revision either in respect of acquittal of the offence punishable under Section 506 of the Indian Penal Code or for enhancement of the sentence.

4. In nutshell, the prosecution case is to the effect that the applicants/accused were suspecting that the respondent no.2 who was residing in their locality had filed some complaint against them to police. On 24.11.1998 at about 3.00 p.m. he was present at the place of his work and his brother was on his own grocery shop. The applicants Ankush and Bibhisnan arrived there and gave a call to him and asked him to come out. When he came out all the applicants / accused started questioning him as to why he had lodged complaint with police. They then started abusing him. Accused Anil splashed chilli powder and the rest of the accused assaulted him with stones. When he raised hue and cry his brother Vishnu arrived there and tried to intervene but even he was assaulted. The respondent no.2 sustained injuries to his right cheek near right ear, back and leg. Whereas Vishnu sustained injuries to his left hand, back and legs. They were taken to the

Primary Health Center. The Medical Officer treated them and noted the injuries and issued Injury Certificates. They then went to the Jamkhed police station and lodged the F.I.R. on 24.11.1998 and the offence was registered. The applicants were arrested. Investigation was carried out and in due course of time the charge-sheet was filed. After the trial the learned Magistrate convicted them as mentioned herein-above. They preferred appeal which has been partly allowed as mentioned earlier.

5. The learned advocate for the applicants vehemently submitted that there are number of contradictions in the testimonies of the prosecution witnesses. The medical evidence is not compatible with the allegations. There was no evidence about throwing of chilly powder. There are not independent witnesses though the incident is stated to have occurred in the public place. There was animosity and the applicants have been falsely implicated. Without there being sufficient and cogent evidence proving the incident beyond reasonable doubt the learned Magistrate has convicted the applicants. The learned Additional Sessions Judge also erred in re-appreciating the evidence, facts and circumstances and has grossly erred in confirming the conviction. Both the decisions therefore be set aside and the applicants may be acquitted.

6. The learned A.P.P. and the learned advocate for the respondent nos. 2 and 3 supported both the decisions. They submitted that there was no fault in appreciating the evidence by both the Courts. Minor contradictions are bound to occur and no weight can be attached to them. There was no sufficient reason to disbelieve the testimonies of the prosecution witnesses and the evidence on the record was sufficient to prove the guilt beyond reasonable doubt. The revision may be dismissed.

7. I have carefully gone through the record and the proceedings and the judgments of the trial Court and the Appellate Court. At the outset, it is necessary to note that there are concurrent findings of facts arrived on the basis of appreciation of the evidence by the two Courts and it is only if it can be said that there is a gross error in appreciating the evidence or that the observations are perverse and arbitrary this Court is expected to step in. The scope to interfere with such concurrent decisions under the powers of revision vested in this Court are very limited.

8. The prosecution has been relying upon the first hand account of the incident in the form of testimonies of the first informant Chandrakant (PW-1) who is the respondent no.2 and his brother Vishnu (PW-5) who is the respondent no.3 herein. Both of whom were allegedly assaulted by the

applicants. In consonance with the allegations in the complaint Chandrakant (PW-1) narrates as to how the incident had taken place. Initially, the accused nos. 1 and 8 had called him and when he came out, the other six accused were also present there. They questioned him as to why he had filed a complaint against them and thereafter they assaulted him. Since even according to the applicants there was an animosity, there was no dispute about identification of the assailants as this witness was knowing each of the applicants. He has specifically stated that applicant Anil splashed chilly powder and thereafter he was beaten with kicks and stones and had sustained injury to the right cheek near ear, on the back and feet. He thereafter stated about having raised alarm and his brother Vishnu (PW-5) having arrived there but even he was assaulted and thereafter they went to the police station and lodged the report and were referred to the Primary Health Center.

9 During his cross-examination it was elicited that the incident had taken place at a distance of about 20 feet from Kharda Police Station where usually three policemen are present. The incident had taken place at a place where many Trucks and Tempos are parked. The State Transport bus stand is also nearby. The incident had lasted for fifteen minutes. He specifically denied that he could not describe as to which of the accused had assaulted him. He further denied to have sustained injury near right ear because of fall.

10. One Rajabhau (PW-2) stated that he knew the respondent nos. 2 and 3 as well as the applicants. He was present in his house. He heard commotion and shouting and therefore reached the spot where accused persons were there and Chandrakant (PW-1) was lying on the ground with a bleeding injury to the right cheek. During his cross examination again similar information was elicited but conspicuously it could not be elicited as to why he had any reason to falsely implicate the applicants. It was merely suggested that he was having good relations with Chandrakant (PW-1) but he denied even that suggestion. He specifically admitted that police recorded his statement on next day. The police station was at a distance of 15 feet from the spot of incident. Tempos and Jeeps are always parked nearby and even the State Transport stand is also near the spot. He also admitted that the place of incident was a crowded place. He then stated that he did not see accused no.7-Samnath on the spot. It was also elicited that the residence of the accused/applicants were about 100 to 110 feet from the spot.

11. The prosecution thereafter examined Vishnu (PW-5) who is the brother of the Chandrakant (PW-1) and respondent no.3 herein. Obviously he has corroborated the prosecution version and the testimony of his brother Chandrakant (PW-1). During his cross-examination he was unable to tell as to

which of the accused had assaulted Chandrakant. Obviously it was after the assault that he had reached the spot when a hue and cry was raised and no capital from this reply can be made. On the contrary during his cross-examination it has been elicited that the applicants had prosecuted him and his brother Chandrakant (PW-1) and prior to the incident even he had filed a complaint to the police against the applicants and the matter was settled between them by the police. It was also elicited that Chandrakant (PW-1) faced prosecution in the Courts at Bhoom and Ashti and was also involved in a case of theft. These replies indicate that there was indeed a strong motive for the applicants to assault Chandrakant (PW-1) because of the previous animosity.

12. A careful perusal of the testimonies of these three witnesses clearly shows that they are in conformity with each other in material particulars except some deviations in respect of minor things like distance between the spot and the other places and other particulars in respect of the topography of the spot. Conspicuously, cross-examinations of these witnesses do not bring about any material circumstance to discredit their version.

13. The version of these witnesses particularly Chandrakant (PW-1) and Vishnu (PW-2) further stand corroborated by the Medical Officer Sanjay

Wagh (PW-4). He stated that during the relevant period he was Medical Officer at Jamkhed Rural Hospital. On 24.11.1998 i.e. date of the incident at 4.10 p.m. he examined Chandrakant Piraji Doke and Vishnu Piraji Doke and describes the injuries noticed on the person of both of them. Conspicuously, he specifically mentions about Chandrakant (PW-1) having sustained incise wound over right cheek near the ear and abrasion over back, right feet, lower limb whereas he found contusion over right shoulder, left elbow and back of Vishnu (PW-2). The age of injuries was within 24 hours and accordingly has stated to have issued the Medical Certificate (Exhibit-50 and 51). He was cross-examined and suggestions were put which he denied. Nothing has been elicited to discredit his version as regards the injuries found on the person of Chandrakant (PW-1) and Vishnu (PW-5). As has been rightly noticed by the two Courts below the version of this witness about there two persons having sustained such injuries on the specific portion of their respective bodies stood duly corroborated by the evidence of this Medical Officer who apparently has no axe to grind.

14. Both the Courts below have thus correctly appreciated the evidence on the record and have reached a plausible conclusion. There is no perversity or arbitrariness in appreciation of the evidence which clearly corroborates the prosecution version about applicants having assaulted

Chandrakant (PW-1) and Vishnu (PW-5) on account of previous animosity. Since they had all gathered there and as the narration goes, the accused nos.1 and 3 had initially called Chandrakant to come out and thereafter even the other accused were present outside and they all have assaulted them, is clearly indicative of the fact of they had arrived there with some premeditation. Obviously they had arrived there on account of previous animosity and in all probabilities to settle score since these injured had filed a police complaint against them. There was a strong motive. They were eight in numbers and by forming an unlawful assembly with an intention to assault Chandrakant (PW-1) and in the process have also assaulted Vishnu (PW-5). Therefore by invoking the provision of Section 149 they have been rightly convicted by the trial Court and the conviction has rightly been upheld by modifying it to some extent. There is no apparent error committed by the two Court below in arriving at the conclusion about guilt of the applicants and I find no justifiable, sufficient and cogent reason to interfere/ intervene.

15. The revision is dismissed. The Rule is discharged. The applicants shall surrender before the Trial Court immediately pursuant to the bail bonds.

[MANGESH S. PATIL, J.]