

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION No. 305 OF 1998

Shri Bhillu Poma Rathod & Ors.

...Applicants

Versus

State of Maharashtra

...Respondent

Mr.Priyal G.Sarda for the Applicants.

Mrs.Veera Shinde, APP for the Respondent-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 24 JANUARY 2019**

P.C.:

1. In this Revision Application, the applicant/accused No.1- Bhillu Poma Rathod, the applicant/accused No.3- Ramchandra Mahadeo Pawar and the applicant/accused No.4- Harishchandra Shamrao Rathod are dead. Hence, the matter to proceed only against the applicant/accused No.2- Sidram Pomu Rathod.

2. This Revision Application is directed against the order dated 31st January, 1996 passed by the learned Asst. Sessions Judge, Solapur in Sessions Case No. 142 of 1994 thereby convicting the applicant/accused

No.2 and the late co-accused for the offence punishable under section 326 read with 34 of the Indian Penal Code and sentencing to suffer R.I. for five years and to pay a fine of Rs.1,000/-, and in default to suffer S.I. for two months. The said conviction and the sentence was challenged by the applicant/ accused No.2 and the late co-accused by filing Criminal Appeal No. 13 of 1996 in which the learned Sessions Judge, Solapur confirmed the said sentence and conviction and dismissed the said Appeal.

3. The incident took place on 20th March, 1994. There was enmity between the complainant's family, injured persons and the family of the accused. In the assault, three persons i.e., PW 3 – Balu Chavan, PW 4 Dnyaneshwar Chavan and PW 5 – Shankar Chavan, were injured. They were sent for medical examination and thereafter, the offence was registered against the applicant/accused No.2 and the late co-accused mainly under section 326 read with 34 of the Indian Penal Code.

4. The learned counsel for the applicants/accused submits that the medical certificates of PW 4- Dnyaneshwar Chavan and PW 5 – Shankar Chavan are not produced on record. Only the medical certificate

of PW 3- Balu Chavan is available on record. He further submits that PW 3 – Balu Chavan sustained compound fracture on the left elbow and PW 9- Shivaji Rathod was an eye witness to the said incident. He further submits that PW 6 is a Medical Officer, who examined PW 3 Balu Chavan. However, no Medical Officer, who attended PW 4- Dnyaneshwar Chavan and PW 5 – Shankar Chavan, is examined. He further submits that no medical certificates in respect of PW 4- Dnyaneshwar Chavan and PW 5 – Shankar Chavan are available on record. He further submits that in view of such evidence so also considering the time flow between the date of incident and today, is to be taken into account. He prays that the order of conviction and sentence passed by the learned Sessions Judge is to be set aside.

5. The learned APP submits to the orders of this Court.

6. I have perused the evidence of PW 3- Balu Chavan, PW 4- Dnyaneshwar Chavan, PW 5- Shankar Chavan, PW 6- Medical Officer and PW 9- Shivaji Rathod. I have also perused the impugned orders of both the Courts. The injured persons and PW 9- Shivaji Rathod are the eye witnesses to the incident. They have deposed about how the incident had occurred and only the applicant/accused No.2 to this

Revision Application was holding a sword in his hand and other accused also at the time of incident were carrying dangerous weapons. All these witnesses have attributed a specific role to the applicant/ accused No.2. PW 5- Shankar Chavan deposed that the applicant/accused No.2 assaulted him with sword in which he lost his little finger. The evidence of other witnesses is corroborated by the evidence of PW 5- Shankar Chavan. The medical certificate, which is marked at exhibit 55 discloses that PW 3 Balu Chavan had sustained compound fracture on left elbow and, therefore, the offence of causing grievous hurt as defined under section 323 of the Indian Penal Code is made out. Both the Courts have rightly discussed and analyzed the evidence of assault and the conviction is justified. I am informed by the learned counsel for the applicant/accused No.2 that the applicant/accused No.2 was detained in prison upto 6 to 7 months before trial.

7. The incident had occurred in the year 1994 i.e., before 25 years and, therefore, I reduce the sentence by modifying the order passed by the learned Sessions Judge as follows :

“The order of conviction of the applicant/accused No.2 for the offence punishable under section 326 read with 34 of

the Indian Penal Code is hereby confirmed. However, the prayer of reduction of the sentence is accepted and the applicant/ accused No.2 to suffer sentence for the period under gone”.

8. Thus, Revision Application is partly allowed.

(MRIDULA BHATKAR, J.)