

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

**3. CRIMINAL REVISION APPLICATION NO.123 OF 2020 WITH
CRIMINAL APPLICATION NO.2481 OF 2020 IN CRIMINAL
REVISION APPLICATION NO.123 OF 2020**

1. Sheshrao S/o Bhaguji Chate
(Abated as per order dated
13th September, 2017)
 2. Indramohan Bhaguji Chate
 3. Dnyanoba Shankar Chate
 4. Chandrakant S/o Vishwanath Chate
 5. Vitthal S/o Harishchandra Chate
 6. Bandu @ Baliram S/o Bhagwan Chate
- ..APPLICANTS
- VERSUS-

The State of Maharashtra
.

..RESPONDENT

...

Mr.S.S. Thombre, Advocate for the applicants.
Mr.A.A. Jagatkar, APP for respondent/State

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CORAM : V.L.ACHLIYA,J.
DATE : 18.01.2021

ORAL ORDER :

. Being aggrieved by the judgment and order dated 03.12.2020 passed in Criminal Appeal No.14/2014 by the learned Additional Sessions Judge, Ambajogai to confirm the judgment and order dated 27.02.2014 passed in Regular Criminal Case No.249/2010 by the Judicial Magistrate, First Class, Ambajogai,

the petitioners-accused have preferred this Revision Petition.

2. Heard learned counsel for the petitioners – accused and learned APP representing the respondent-State.

3. In brief, it is the contention of learned counsel for the petitioners that the judgment and order passed by the trial Court and confirmed in appeal by the appellate Court is not sustainable in law. By referring to overall facts of the case and the evidence adduced, learned counsel submits that the Courts below erred in convicting the petitioners for committing the offence under section 326 r/w section 149 of the Indian Penal Code. It is submitted that the injuries sustained by the injured persons found to be simple in the nature i.e. abrasions. No grievous injury as defined U/Sec. 320 of the Indian Penal Code found to be sustained by any of the injured. It is further submitted that the injury alleged to be caused resulting in fracture injury to informant alleged to be caused by accused no.1 – Sheshrao, who died in the year 2017. The appeal has abated against him. Accusations

made against the petitioners confines to bearing by stick resulting simple injury over thigh that too caused by stick.

4. It is further submitted that as per the case of the prosecution, the incident was occurred on account of civil dispute amongst the accused and the informant and his family. The incident in question was outcome of land dispute. It was occurred all of sudden. It was not premeditated, so as to term that the alleged act as voluntary causing grievous hurt. The trial Court as well as appellate Court failed to take into account that the incident was neither pre-planned nor committed in furtherance of common object of alleged unlawful assembly. The Courts below erred in convicting the petitioners by taking recourse to section 149 of the IPC. Although the incident was occurred in day light at about 7 a.m and that too in thickly populated area still no independent witnesses have examined in case. All the three witnesses examined in the case are closely related with informant and highly interested to see the accused being convicted. The report in respect of the incident was lodged after four days of incident. The delay in lodging the

complaint has explained by informant. The explanation offered that one of the injured was hospitalized cannot be treated as satisfactory explanation to delay in lodging report for the reason the injury was found to be a minor injury. The complaint was filed after due deliberation so as to rope in the petitioners on account of civil dispute between accused and informant.

5. Dr. Mundhe (PW-7) Medical Officer examined in the case has categorically deposed that the injuries caused to injured were simple in nature. Ignoring the vital admission on the part of the Medical Officer, the Courts below convicted the petitioners for committing offences punishable U/Secs. 324 and 326 of IPC by taking recourse to Sec. 149 of IPC.

6. Learned counsel further submits that the accused and the informant have decided to settle the matter, however, appellate Court has refused to allow them to compound the offence as offence U/Sec. 326 of IPC being non-compoundable. In this background, learned counsel submits that the petitioners have good case to succeed in revision petition.

The orders passed by the Courts below are perverse and urged to release the petitioners on bail on such terms and conditions as deem fit and proper.

7. On the other hand, learned APP supports the judgments and orders passed by the Courts below. It is submitted that there is no perversity in the judgment and order passed by the Courts below. By referring to overall facts of the case and the evidence adduced, learned APP submits that the testimony of the eye witnesses examined in the case duly corroborates the testimony of informant. All three witnesses examined in the case themselves injured in the incident. It is submitted that the petitioners had visited the house of the informant and other injured, armed with weapons like axe, stick and iron rod and assaulted the informant and others. In that view, inference can be drawn that the assault was premeditated and made in furtherance of the common object of unlawful assembly formed by the petitioners/accused.

8. On due consideration of the submissions advanced in the light of overall facts of the cases and the reasons and

findings recorded by the Courts below, I am of the view that there is arguable case to be considered in the Revision Petition.

9. As per the case of the prosecution the informant – Sitaram Shamrao Chate had sustained the following injuries :-

"1. Abrasion on left leg size 10 x 2 c.m.

2. Abrasion and fracture. Left forearm size 2/1 c.m. The nature of the injury was grievous, x-ray left forearm with AP and lateral view, shows evidence of fracture, shaft ulna middle 1/3.

3. Abrasion left thigh size 4/3."

10. The above-referred injury nos.1 and 3 claimed to be simple in nature whereas the injury no.2 claimed to be fracture injury caused in the incident due to assault made by accused no.1 Sheshrao, who reported to have died in the year 2017. So far as the petitioners are concerned they are attributed an act of assault by means of stick/iron rod and alleged to have assaulted the injured

persons over chest, right arm, right and left thigh. The injuries attributed to the petitioners found to be simple in nature. Dr.Mundhe-Medical Officer in his testimony before the Court has categorically deposed that the injuries attributed to the petitioners were simple in nature. The incident is alleged to have occurred on account of land dispute. The complaint in respect of the incident was lodged after four days of the incident. The Courts below have not considered the material aspect of delay in lodging the complaint as well as the specific act attributed to the petitioners. In the facts and circumstances of the case, it is required to be examined as to whether the charge U/Sec. 324 r/w Sec. 149 and Sec. 326 r/w Sec. 149 is sustainable against the petitioners – accused. I am therefore of the view, the revision petition deserves to be admitted. Hence the following order :-

ORDER

(i) **Admit.**

(ii) Issue notice to the respondent. Learned APP accepts notice for respondent-State.

Call for record and proceedings with paper

book.

(iii) Pending the hearing and final disposal of the revision petition, the substantive sentence awarded to the petitioners by the trial Court in Regular Criminal Case No.249/2010 and confirmed in Criminal Appeal No.14/2014 for committing offences punishable U/Secs. 148, 324 r/w 149, 326 r/w 149 and 147, 323, 504, 506 r/w 149 of the Indian Penal Code stands suspended.

(iv) Pending the hearing and final disposal of revision Petition, the petitioners-accused be released on bail, if not required in any other case, on each of them furnishing bail in the sum of Rs.15,000/- with one or two sureties in the like amount on the following conditions :-

a) Pending the hearing and final disposal of revision petition, the petitioners shall not cause threats to the informant and other witnesses in the case.

b) Pending the hearing and final disposal of revision petition, the petitioners shall appear before the Officer Incharge of Rural

Police Station, Ambajogai in between 11 a.m. to 12 noon on last day of each month to record their appearance.

c) Pending the hearing and final disposal of revision petition, the petitioners shall not commit offences of similar in nature.

d) In the event of breach of any of the conditions, the prosecution will be at liberty to move the Court for cancellation of bail of petitioners/accused.

(e) The Criminal Application No.2481/2020 is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA