

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.86 OF 2018

Munir Khan @ Munna s/o Wahid Khan Pathan,
Aged 38 years, Occupation: Driver,
Resident of Fakir Mohalla, Ward No.4,
Tahsil Nagbhid, District Chandrapur. **APPLICANT**

...V E R S U S...

The State of Maharashtra through
Police Station Officer, Police Station Nagbhid,
District Chandrapur. **RESPONDENT**

Mr. U. P. Dable, Counsel for Applicant.
Mr. N. S. Rao, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **30th SEPTEMBER, 2021.**

ORAL JUDGMENT:

Heard Mr. U. P. Dable, the learned Counsel for the applicant and Mr. N. S. Rao, the learned Additional Public Prosecutor for the respondent/State.

2. Munir Khan and his brother Nasir Pathan are accused of assaulting Mr. Altaf with a cycle pump, at 11:00 a.m. on 21.07.2000. Mr. Altaf suffered injuries and he lodged complaint at the Nagbhid Police Station on the basis of which Crime 40/2000

for offence punishable under section 324 read with 34 of the Indian Penal Code (IPC) was registered.

3. The complainant alleged that he was assaulted due to a not too serious a dispute stemming from booking passengers for private passenger buses.

4. The police submitted final report under section 173 of the Criminal Procedure Code, 1973 (Code) and the jurisdictional Magistrate framed charge under section 324 read with 34 of the IPC. The accused were charged under section 324 of the IPC on the premise that the cycle pump, if used as a weapon of offence, is likely to cause death.

5. The prosecution examined as many as five witnesses. The material witnesses are PW-4 who is the complainant Mr. Altaf Husain and PW-3 Aspak Husain who is the brother of the complainant and a projected eye witness. PW-1 Nathu Mahadeo Ramgunde and PW-2 Waman Mahadeo Amrutkar are *panchas* to the spot *panchnama*, who did not support the prosecution. PW-5 Mrs.. Mala Vijay Walade, who is a nurse, who has identified the signature of Dr. Pandit who issued the injury certificate. In view of

the undisputed death of Dr. Pandit, the courts below have held the injury certificate admissible in view of the provisions of section 32 of the Indian Evidence Act.

6. In view of the extremely limited scope of revisional jurisdiction, the learned counsel Mr. Uday Dable has rightly not invited me to re-appreciate the material on record. Certain glaring errors and misdirection are however, highlighted.

7. Mr. Uday Dable would submit that the very presence of PW-3 at the scene of occurrence, and at any rate as an eye witness, is doubtful. The evidence of PW-3 Aspak Husain that the applicant Munir Pathan assaulted the complainant twice and then the co-accused Nasir took-over and assaulted the complainant on knee and waist, is inconsistent with the evidence of PW-4 Altaf, who has deposed that accused Munir delivered one blow from a pipe from behind and then accused Munir assaulted him on the legs, waist and face. It is also worth noting that the statement that accused Munir assaulted Mr. Altaf with pipe on the head from behind is an omission, and so is the statement that accused Munir assaulted Mr. Altaf with pipe on legs, face and waist. The omission could not be proved since the Investigating Officer is not

examined by the prosecution.

8. Given the state of the evidence, while the entire testimony of the injured need not be discarded, there is obviously an over implication and exaggeration and all that can be attributed to the applicant is inflicting one blow with the pipe or cycle pump which has caused injury (2) referred to in the medico legal certificate (MLC).

9. No recovery is effected. Some cycle pump was shown to the witness who asserts the same to be weapon of offence. Nothing has come on record to enable the Court to form any opinion as to the size, the dimensions etc. of the pump as would enable forming an opinion whether if used as a weapon of offence death was likely. I am, therefore, inclined to hold that a gross miscarriage of justice is caused by a clear misdirection by the courts below and the applicant Munir Khan can, at the highest, be convicted under section 323 of the IPC. Notably, none of the injury suffered is a grievous injury, and indeed it is nobody's case that any injury is grievous. Section 324 is invoked on the premise that the cycle pump is a lethal weapon which is likely to cause death if used as a weapon of offence. The courts below clearly fell in error

in so holding. I am not for a moment suggesting that a metal cycle pump cannot in any event be a lethal weapon. All that is noted is that the material on record is hopelessly insufficient to determine the nature of the cycle pump which allegedly is the weapon of offence. Indeed, it is doubtful whether the pump shown to the witness is the pump which was used as a weapon of offence.

10. In view of the clear error and the resultant miscarriage of justice, I see no difficulty in invoking revisional jurisdiction to set aside the conviction under section 324 of the IPC and to instead convict the applicant Munir Khan under section 323 of IPC.

11. The conviction of the applicant under section 324 of IPC is set aside and instead the applicant Munir Khan is convicted for offence punishable under section 323 of IPC and is sentenced to suffer rigorous imprisonment for five months.

12. The applicant shall surrender to serve the sentence, within the next two weeks.

13. If the applicant does not surrender within the next

two weeks, the jurisdictional Court shall initiate appropriate action.

14. The revision is partly allowed.

JUDGE

NSN