

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

CRIMINAL REVISION APPLICATION NO. 102 OF 2021

- 1) Khushal s/o Ashokrao Chugh,
Aged about 35 years,
Occupation – Business,
- 2) Raju Hiranman Kubde,
Aged about 42 years,
Occupation – Service.
- 3) Tapeswar Moreshwar Chandekar,
Aged about 31 years,
Occupation – Driver,
- 4) Bhupesh Moreshwar Chandekar,
Aged about 27 years,
Occupation – Computer Operator,

All R/o. Ashti, Tahsil – Chamorshi,
District – Gadchiroli.

.... **APPLICANTS**

VERSUS

State of Maharashtra,
through P.S.O., Ashti Police Station,
Tahsil – Chamorshi, District – Gadchiroli.

.... **NON-APPLICANT**

Mr. S.A. Bramhe, Counsel for the applicants,
Mr. M.K. Pathan, Addl.PP for the non-applicant/State.

CORAM : ROHIT B. DEO, J.
DATE : 15-11-2021

ORAL JUDGMENT :

The applicants, who shall be hereinafter referred to as the accused, are assailing the judgment dated 09-5-2019 rendered by the learned Judicial Magistrate First Class, Chamorshi in Regular Criminal Case 66/2017 whereby the accused are convicted for offence punishable under Section 323 read with Section 34 of the Indian Penal Code (IPC) and are sentenced to suffer rigorous imprisonment for six months and to payment of fine of Rs.1,000/- and in default, to suffer further rigorous imprisonment for fifteen days and are further convicted for offence punishable under Section 452 read with Section 34 of the IPC and are sentenced to suffer rigorous imprisonment for six months and to payment of fine of Rs.1,000/- and in default, to suffer further rigorous imprisonment for fifteen days and accused 1-Khushal Chugh is additionally convicted for offence punishable under Section 427 of the IPC and is sentenced to suffer rigorous imprisonment for six months and to payment of fine of Rs.1,000/- and in default, to suffer further rigorous imprisonment for fifteen days, and are further assailing the judgment dated 20-10-2021 rendered by the learned Sessions Judge, Gadchiroli in Criminal Appeal 46/2019 whereby the appeal is dismissed and the judgment of conviction rendered by the learned Magistrate is confirmed.

2. The prosecution case is thus :
- (i) The incident occurred on 3rd August, 2017. Yuvraj Parsode was at his residence alongwith his wife and children and was having dinner when the accused barged in and started assaulting Yuvraj. Accused 1-Khushal questioned Yuvraj why he called his *Diwanji*. Yuvraj's wife Anita came to her husband's rescue, and she too was assaulted. Yuvraj rushed out of the house to escape the assault and was again assaulted by the accused near the gate. Yuvraj then tried to take shelter in the house of his friend Sajjan Ghyar. The accused followed and assaulted Yuvraj in the courtyard of his friend's house. When Anita was proceeding to the police station for lodging report, accused 1-Khushal snatched her mobile and broke the same. Anita went to Police Station, Ashti and returned alongwith the policeman on duty. However, the accused had fled by then. The police took Yuvraj to Rural Hospital, Ashti. He was referred to the General Hospital, Gadchiroli and treated on 4th and 5th August, 2017. Yuvraj lodged report on 6th August, 2017 alleging that he was assaulted since he insisted that accused 1-Khushal pay him the unpaid salary.
- (ii) Police registered Crime 121/2017 under Sections 323, 324 and 452 read with Section 34 of the IPC. Investigation proceeded on

the usual lines and the final report under Section 173 of the Criminal Procedure Code (Code) was filed in the court of the jurisdictional Magistrate who framed charge against the accused for offences punishable under Sections 323, 324, 427 and 452 read with Section 34 of the IPC. The accused abjured guilt and claimed to be tried in accordance with law.

- (iii) The prosecution examined nine witnesses. The accused did not step into the witness box nor was any witness examined in defence. It appears from the statements recorded under Section 323 of the Code and the tenor of the cross-examination that the defence was that Yuvraj misappropriated certain amount while working as a driver with accused 1-Khushal and since he was terminated from service, Yuvraj lodged false report.
- (iv) The learned Magistrate was pleased to convict the accused as noted supra and the learned Sessions Judge after re-appreciating the evidence on record, dismissed the criminal appeal.

3. I have heard the learned Counsel Mr. S.A. Bramhe for the accused and the learned Additional Public Prosecutor Mr. M.K. Pathan for the State. The learned Counsel for the accused has placed a compilation of the evidence on record in response to a Court request to place on record the evidence and such documents as the accused deems necessary for

final hearing at the stage of admission.

4. Considering the limited scope of revisional jurisdiction, the learned Counsel Mr. S.A. Bramhe has fairly not invited this Court to re-appreciate the evidence on record as if acting as an appellate Court. Mr. S.A. Bramhe would submit that there are certain glaring infirmities in the prosecution case which have occasioned miscarriage of justice and interference in the restricted jurisdiction under Section 397 read with Section 401 of the Code is warranted. Mr. S.A. Bramhe would submit that there is an unexplained delay in lodging the report, which has left the possibility of introduction of exaggerated or coloured version of the alleged incident, wide open. Mr. S.A. Bramhe would then submit that the evidence of the eyewitnesses must be discarded since the embellishments are too many. Mr. S.A. Bramhe hastens to submit that while he is not inviting the Court to re-appreciate the evidence on record, the omissions are significant and partake the character of contradictions. Mr. S.A. Bramhe submits that coupled with the admission of the doctor who issued the injury certificate, that the injuries suffered by Yuvraj could be caused by a fall on the ground while running, the infirmities in evidence ought to have persuaded the Courts below to grant the accused the benefit of the doubt. The learned Additional Public Prosecutor Mr. M.K. Pathan would disagree.

Mr. M.K. Pathan points out that the Courts below have recorded a finding of fact that the delay in lodging the report is well explained. Mr. M.K. Pathan then submits that assuming the existence of certain infirmities in the evidence of the eyewitnesses, including omissions and improvements, all witnesses have deposed broadly consistently on the aspect of the assault. Mr. M.K. Pathan would submit that exaggerated versions are fairly common and it is the duty of the Court to separate the grain from the chaff, which the Courts below have done. Mr. M.K. Pathan concludes by reminding the Court that revisional jurisdiction must be exercised with caution and restraint particularly when invoked against the concurrent findings by the Courts.

5. With the assistance of the learned Counsel, I have scrutinized the entire evidence and the reasons recorded by the Courts below.

6. The prosecution has clinchingly proved that Yuvraj suffered injuries which can only be attributed to assault. PW 8-Dr. Ashwin Walke has deposed that he examined Yuvraj at the Rural Hospital, Ashti, when Yuvraj was brought at the hospital by Head Constable Verokar at 11-05 p.m. on 3rd August, 2017. The doctor noted five injuries, which he described as follows :

- a) abrasion over left elbow joint 1 x 1 cm.
- b) abrasion over nasal septum 2 x 1 cm.
- c) contusion over nasal septum 3 x 2 cm.
- d) close lacerated wound over right frontal area of dimension 3 x 2 cm., and
- e) blunt trauma to back.

Dr. Ashwin Walke proved the Medico-Legal Certificate Exhibit 46.

In the cross-examination, no serious attempt is made to dispute the existence of the injuries noticed. Two suggestions are given to the doctor. The first suggestion is that the injuries could be caused due to hit and run accident and the other suggestion is that the injuries could be caused due to a fall on the road while running. In my considered view, in the absence of material on record to suggest a real possibility of Yuvraj having fallen on the road while running, the affirmative answers elicited from the doctor, are of no relevance.

7. The evidence of doctor Ashwin Walke is duly corroborated by PW 7-Ravikant, who is the Police Constable, who took Yuvraj to the Rural Hospital, Ashti. PW 7 has deposed that when he went to the house of Yuvraj, the assailants had fled and blood was oozing from nose and mouth of Yuvraj. PW 7 has further deposed that he took Yuvraj to the Rural Hospital, Ashti on motorcycle. The Mulahiza Form Exhibit 41 dated 3rd August, 2017 issued by Head Constable Jaswant further

corroborates the evidence of PW 7. The said form records that injured Yuvraj is being sent to the Rural Hospital for medical examination.

8. Both the Courts below have concurrently held that it is the accused who are responsible for assaulting Yuvraj. I see no reason to differ. PW 1-Yuvraj has deposed that on 3rd August, 2017 while he was having food at his house, accused came to his house. Anita opened the door and when Yuvraj stepped out, the accused started assaulting him with fists and kicks. Yuvraj has deposed that he rescued himself and took shelter in the house of his friend Sajjan. The accused followed and started kicking the door of Sajjan's house. When Yuvraj came out of Sajjan's house to wash the blood from his face, he was again assaulted near the gate. Yuvraj further states that when his wife Anita sought to call the police, the accused broke her mobile. It is true, as is submitted by Mr. S.A. Bramhe, that certain omissions are brought on record. However, both the Courts below have found that the omissions, which are proved, do not touch the core of the testimony and that the evidence that Yuvraj was assaulted by the accused with common intention is not rendered totally unacceptable. In revisional jurisdiction, it would be impermissible to interfere in such finding which is recorded after due consideration of the evidence on record. In the cross-examination, it is suggested that Yuvraj misappropriated certain

amount and spent the amount in gambling. It is further suggested that Yuvraj abused accused Raju telephonically and when Yuvraj was asked by Raju to contact his former employer-accused 1-Khushal, Yuvraj went to the house of accused 1-Khushal in drunken condition and started creating ruckus. It is further suggested that when accused Raju and Khushal came out of the house, Yuvraj started running away and fell down on the road.

9. The evidence of Yuvraj is duly corroborated on the aspect of assault by his wife Anita, who is examined as PW 3. She has also deposed that her mobile phone was snatched and broken. Certain omissions are indeed proved, but as held by the Courts below, the proved omissions do not affect the credibility of Anita's evidence on the material aspect of assault on her husband. Yuvraj and Anita are further corroborated by PW 4-Sajjan and PW 6-Kalpana. PW 5-Radhika has also corroborated the evidence of Yuvraj and Anita and has further deposed that Anita's phone was snatched from her and thrown on the ground.

10. I have given due and anxious consideration to the evidence on record. Notwithstanding certain embellishments in the evidence, on the factum of assault by the accused, the evidence is confidence inspiring. I

further see no reason to disbelieve the evidence of Anita on the aspect of accused 1-Khushal snatching and breaking her mobile. The delay in lodging the report, assuming there is any delay as such, is well explained. It has come on record that Yuvraj was examined at Rural Hospital, Ashti at 11-05 p.m. on 3rd August, 2017 and that he was treated at the General Hospital, Gadchiroli on 4th and 5th August, 2017. The report, which is lodged on 6th August, 2017, is not unduly delayed. That apart, there is cogent evidence on record to show that the police were informed of the incident on 3rd August, 2017. PW 3-Anita did seek police help immediately. PW 7-Ravikant, Constable did come to the spot immediately and took Yuvraj to Rural Hospital, Ashti. The defence has not brought on record any material to suggest the existence of possibility of introduction of exaggerated or coloured version of the incident or then the role played by the accused.

11. No case is made out to interfere with the conviction, in exercise of revisional jurisdiction.

12. In so far as sentence is concerned, I am inclined to modify the sentence of imprisonment for six months imposed on accused 1-Khushal and instead of accused 1-Khushal to suffer rigorous imprisonment for four months. The sentence of fine is maintained. Accused 2 to 4 have

played a relatively lesser role and considering that the said accused were the employees of accused 1-Khushal, the possibility that the said accused accompanied accused 1-Khushal at his dictate, is a real possibility. I am inclined to modify the sentence to rigorous imprisonment for two months, while maintaining the sentence of fine, for each of the offence for which accused 2 to 4 stand convicted.

13. The criminal revision application is partly allowed. The judgments impugned are set aside. In so far as accused 1-Khushal Chugh is concerned, the conviction for offences punishable under Sections 323, 427 and 452 read with Section 34 of the IPC is maintained, the sentence for each of the offences is reduced to rigorous imprisonment for four months. The sentence of fine is maintained. While accused 2-Raju Kubde, Accused 3-Tapeshwar Chandekar and accused 4-Bhupesh Chandekar is concerned, the conviction for offences punishable under Sections 323 and 452 read with Section 34 of the IPC is maintained, the sentence for each of the aforesaid offences is reduced to rigorous imprisonment for two months. The sentence of fine is maintained.

JUDGE

Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 23.11.2021 10:15

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