

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

**INTERIM APPLICATION NO.1191 OF 2022
IN
CRIMINAL APPEAL NO.1749 OF 2019**

**WITH
CRIMINAL APPEAL NO.1749 OF 2019**

Devidas Mahadeo Sarade Applicant

versus

Chandrakant Kamalnath Janbhare & Anr. Respondents

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- Mr. Shriram S. Chaudhari, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 26th AUGUST, 2022**

P.C. :

1. For the reasons mentioned in paragraph No.3, the Application is allowed and Criminal Appeal No.1749 of 2019 is restored to its original file.

2. In this Appeal, the Appellant challenged the Judgment and Order dated 11/10/2019 passed by the Extra Joint Additional Sessions Judge, Barshi, in Criminal Appeal No.14 of

2017. By the impugned Judgment and Order, learned Sessions Judge interfered with the trial Court's order and set aside the conviction u/s 324 of the Indian Penal Code and instead convicted the Respondent No.1/accused u/s 323 of the IPC. He was released on execution of bond of good behaviour of Rs.10,000/- for a period of one year u/s 4 of the Probation of Offenders Act. The sentence of fine was maintained. Out of the fine Rs.2,000/- was directed to be paid to the victim.

3. Now this Appeal challenges not only the setting aside of conviction u/s 324 of IPC, but also releasing the Appellant on probation. Learned counsel for the Appellant submits that the sentence should be imposed on the Respondent No.1.

4. I have considered these submissions. I have also perused the judgment and order passed by the learned J.M.F.C., Karmala, dated 20/04/2017 in RCC No.137 of 2010 as well as the impugned judgment and order passed by the Appellate Court. The date of incident is 31/10/2009, in which it is alleged

that near a tea stall the Respondent No.1 assaulted the Appellant with a knife causing injury on the web of left palm between thumb and forefinger of the size 3 x 2 cm. It was described as CLW. Both the learned Judges have believed the incident. The only difference is that the Sessions Court had held that the injury was not caused by a sharp weapon. For that purpose he has given reasons in paragraph Nos.9 and 10 of the appellate order. It was observed that in the examination-in-chief the Doctor had deposed that the injury was possible due to sharp and cutting object. However in the injury certificate there was no such mention. There was also overwriting on the medical certificate and the time of assault was mentioned as 9 p.m. on 31/10/2009 instead of 08.00 a.m. Learned Judge observed that the medical evidence was doubtful and the opinion regarding the sharp weapon was given only during trial. The injury itself was mentioned as Contused Lacerated Wound and not as Incised Wound. The knife was recovered at the instance of the Respondent No.1 after 20 days. There is no further connecting evidence in the form of C.A. report.

5. Ultimately the Appellate Court converted the conviction from section 324 of the IPC to 323 of the IPC and released the Respondent on probation.

6. I do not see the findings and approach of the learned Judge as perverse. The offence is not that serious. Considering the reasons given by the learned Sessions Judge, I do not feel it necessary to interfere with these observations. Therefore the Appeal is dismissed.

(SARANG V. KOTWAL, J.)