

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

CRIMINAL REVISION APPLICATION NO.143 OF 2022

Balaram S/o. Jairam Kasdekar,

Aged : 44 Yrs., Occ.: Labour,

R/o. Laktu, Post Susarda,

Tq. Dharni, Distt. Amravati.

.... **APPLICANT**

// VERSUS //

State of Maharashtra,,

Through PSO,

Police Station Dharni,

District Amravati

.... **RESPONDENT**

Shri S. I. Ghatte, Advocate for the applicant

Mr H. D. Dubey, APP for the respondent/State

CORAM : G. A. SANAP, J.

DATE : 15th DECEMBER 2022

JUDGMENT :

1. Heard.

2. RULE. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

3. In this revision application, the challenge is to the Judgment and order, dated 16.03.2020, passed by the learned

Additional Sessions Judge, Achalpur, whereby the learned Judge dismissed the criminal appeal filed by the applicant and maintained the Judgment and order of Judicial Magistrate First Class, Dharni. Learned Judicial Magistrate First Class, Dharni had convicted the applicant for the offence under Section 325 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.1000/- (Rs. One Thousand Only). Learned Additional Sessions Judge modified the order of sentence and reduced the substantive sentence from two years to one year and increased the fine amount from Rs.1000/- (Rs. One Thousand Only) to Rs.3000/- (Rs. Three Thousand Only).

4. In this judgment, for the purpose of convenience, the parties would be referred by their nomenclature in the appeal. The informant (PW-1) is the brother of injured Surajlal (PW-3). On the basis of the report of the informant (PW-1), the crime was registered against two accused namely, Balaram and Narendra. During pendency of the appeal against conviction, accused-Narendra died and therefore, the prosecution against him stood

abated. It is the case of the prosecution that, on 31.12.2009, accused-Narendra had taken bicycle of Surajlal (PW-3). When he brought back the bicycle, Surajlal found that its pedal was broken. In the evening, at about 6:00 p.m., Surajlal requested accused-Narendra to repair the bicycle. Therefore, accused-Narendra and Balaram, therefore, beat Surajlal with stick. Surajlal sustained injury on his hand and on his back. The matter was reported to Dharni Police Station. The police registered the crime bearing No. 14 of 2010. PW-6 conducted the investigation. The stick was seized during the course of the investigation. Injured Surajlal (PW-3) was sent to Civil Hospital, Amravati for treatment. He was admitted in the said Hospital. The X-ray of the injuries sustained by him shown the fracture. After completion of the investigation, the charge-sheet came to be filed. The prosecution examined six witnesses. Learned Magistrate found the evidence of the prosecution witnesses reliable and as such, convicted and sentenced accused-Balaram, as above. Learned Magistrate, however, granted benefit of provisions of Section 4 of the Probation of Offenders

Act, 1958 (For short ‘ the Act of 1958’) to accused-Narendra with appropriate conditions.

5. Being aggrieved by this Judgment and order, the accused persons preferred an appeal in the Sessions Court, Achalpur. Learned Additional Sessions Judge partly allowed the appeal and modified the sentence, as above. Being aggrieved by this Judgment and order the accused-Balaram is before this Court.

6. I have heard Mr. S. I. Ghatte, learned Advocate for the accused/applicant and Mr H. D. Dubey, learned APP for the State. Perused the record and proceedings.

7. The gist of the submissions of the learned Advocate for the accused/applicant is as under:

There was an inordinate delay in lodging the FIR. There is no explanation for lodging the FIR of the incident dated 31.12.2009 on 14.01.2010. The delay has not been properly explained. The investigation is full of defects and lacunae. The

recovery of the stick is doubtful. The overall investigation is tainted. The evidence of the witnesses, examined by the prosecution, is not credible and believable. There are omissions, contradictions and inconsistencies in their evidence. The medical Certificate, to establish the fracture injury, has not been proved. Learned Additional Sessions Judge has committed error on the face of record. There is failure to appreciate the evidence and as such, the order is perverse. Learned Judge has not extended the benefit of Section 4 of the Act of 1958 to the accused without recording any reason. The substantive sentence is disproportionate to the gravity of the crime. The accused is entitled for benefit of doubt and as such, acquittal.

8. The gist of the submission of the learned APP is as under :

The report of the incident was lodged by the informant on 01.01.2010 at about 10:30 a.m. The injured was immediately taken to the Hospital at Dharni and from Dharni he was referred to Civil Hospital, Amravati. He was discharged on 07.01.2010. The

police received the X-ray report on or before 14.01.2010 and on the basis of the X-ray report, the FIR was registered. The reason for delay, in lodging the FIR, is mentioned in the FIR. The injured on 31.12.2009 itself had reported the matter to the Police. The medical certificate from the Dharni Primary Health Center and the injury certificate and X-ray report from Civil Hospital, Amravati are admitted by the accused. The accused, therefore, cannot make a grievance. The evidence adduced by the prosecution is consistent, cogent and reliable. The evidence of the injured (PW-3) has been corroborated by the independent eye witnesses. The weapon of offence namely the stick was recovered after arrest of the accused. Learned Magistrate as well as the learned Sessions Judge on threadbare analysis of the evidence, found the said evidence cogent, concrete and reliable. The concurrent finding of fact recorded by the Courts below does not warrant interference. No illegality or perversity, as sought to be made out, is committed.

9. In order to appreciate the submissions, I have gone through the record and proceedings and particularly the Judgment

and order passed by the learned Additional Sessions Judge. On consideration of the material on record, I am satisfied that the Courts below have not committed any mistake or error apparent on the face of record. The evidence led by the prosecution is consistent, cogent and reliable. Undisputedly, the FIR was registered on 14.01.2010. However, for such delayed registration of FIR, the informant cannot be blamed. Exh. 18 is the report lodged by the informant, on 01.01.2010, at 10:30 a.m. There is one more report dated 31.12.2009 lodged by injured PW-3. The entry of this report in the sana diary at Sr. No. 21 of 2010 was made on 01.01.2010 at about 14:15 hours. Perusal of Exh. 18 and this report would show that the informant and injured immediately reported the incident to the Police. The informant and injured, therefore, cannot be blamed for delayed registration of crime. It was necessary on the part of the accused to cross examine the investigating officer to elicit the reasons for the same. The delay for lodging the FIR has been mentioned in the FIR. It is stated that the FIR was registered on receipt of the X-ray report from the hospital. This reason mentioned in the FIR cannot be discarded. It

is to be noted that on the basis of the report lodged by the informant, on 01.01.2010, the police could have registered the FIR for the offence under Section 324 of the Indian Penal Code and later on added the other offence on the basis of the X-ray report. This, in my view, seems to be mistake on the part of the police. The mistake on the part of police cannot be a ground to give clean cheat to the accused. The informant and injured were not at fault. The delayed registration of the FIR, in the teeth of evidence available on record, cannot make the main incident of assault on the injured, doubtful. I am, therefore, not inclined to accept the submissions advanced by the learned Advocate for the applicant/accused on the point of delay. The delay, in the fact and circumstances, could not be said to be fatal to the case of the prosecution.

10. The next important aspect is with regard to the nature of injury. The X-ray report is at Exh. 23. It has been categorically stated in the report that the X-ray revealed the fracture of lower third of shaft of Ulna bone of right forearm. Exh. 21 is the

discharge card cum medical treatment paper of the injured from Civil Hospital, Amravati. The discharge card would show that the injured was admitted in the Hospital on 04.01.2010. Exh. 22 is the discharge information of patient given by Civil Hospital, Amravati to Police Station Officer, Dharni. It is to be noted that if the accused had not admitted medical paper and particularly the X-ray report then the prosecution would have summoned the medical officer with all the papers. Therefore, the defence of the accused that before his admission in the Civil Hospital, Amravati, the injured (PW-3) had a fall and sustained fracture and to take revenge lodged the police report against the accused, in my view, cannot be accepted. On the basis of the medical evidence it has been proved that the injured had sustained the fracture to his right hand.

11. The prosecution has examined six witnesses. PW-1 is the informant. He was not an eye witness to the incident of beating. PW-2 and 3 are the eye witnesses to the incident of assault on the injured by the accused. Injured Surajlal (PW-3) has narrated the incident of assault on him with lathi by the accused persons.

He has stated that accused- Balaram came to the spot with lathi and inflicted the lathi blows on his hand and on his back. He has stated that he sustained fracture to his hand. He has stated that when the quarrel was going on between him and accused- Narendra, accused- Balaram was not present. The quarrel between him and accused- Narendra was on account of damage caused to the pedal of his bicycle by Narendra. Major role was not attributed to accused- Narendra and therefore, the learned Magistrate was inclined to grant benefit of Section 4 of the Act of 1958 to accused-Narendra. PW-1 is the brother of the injured. He came to the spot after incident. He carried the injured to the Hospital. PW-2 is an independent witness. He has deposed that the accused persons beat the injured. He has stated that accused-Balaram inflicted a lathi blow on the injured and the injured sustained fracture. As far as the main incident is concerned, evidence of PW-2 Ravi and PW-3 Surajlal is consistent. The evidence of PW-1 also corroborates the fact which he has noticed on the spot when he went there, on being informed about the incident. The evidence of injured is corroborated by the medical evidence. Perusal of cross examination

of the injured and other eye witnesses would show that some omissions, contradictions and inconsistencies have been brought on record. Perusal of the Judgment and order passed by the learned Additional Sessions Judge would show that same have been taken into consideration. The learned Magistrate as well as the learned Additional Sessions Judge observed that those omissions, contradictions and inconsistencies are not major. Since, this point is touching the grievance of failure to properly appreciate the evidence, I have gone through the evidence. I am satisfied that the omissions and inconsistencies are minor. The omissions and inconsistencies are not affecting the core of the case of the prosecution. The omissions and inconsistencies, even if considered at their face value, would indicate that the same are not sufficient to discard and disbelieve the incident and the evidence of the witnesses about the incident. In the facts and circumstances, I conclude that no error or mistake apparent on the face of record has been committed. The submissions on the point of perversity, while deciding the matter by the Courts below, advanced by the learned

Advocate for the applicant/accused, therefore, deserves to be rejected.

12. The learned Advocate submitted that during pendency of the appeal, the son of accused-Balaram has expired. The responsibility to maintain the family of his son Narendra and other family members has fallen on his shoulder. He has already undergone two months imprisonment. Learned Advocate submitted that both the parties are resident of the same village. It is submitted that if this Court is not inclined to grant him benefit of Section 4 of the Act of 1958, then the imprisonment already undergone by him be awarded as substantive sentence. Learned APP, in order to oppose these submissions pointed out the role of accused-Balaram and submitted that leniency cannot be shown to him. Learned APP in the alternative submitted that if the substantive sentence is reduced, as submitted by the learned Advocate for accused-Balaram, then the fine amount may be increased.

13. It is to be noted that the accused and the informant are the rustic villagers. They are labourers. The cause of quarrel was too trifling. The bicycle of the injured was taken by Narendra. The damage was caused to the pedal of the bicycle. The injured was insisting Narendra to get it repaired at his cost. The dispute started because of this and culminated into assault on the injured. This fact would indicate that before this incident two families were on good terms otherwise, the injured would not have given his bicycle to accused-Narendra. In my view, considering all these facts the submission advanced by the learned Advocate can be considered. The substantive sentence as well as sentence of fine can be modified. In my view, the ends of justice would be met if the accused is sentenced to undergo imprisonment for the period which he has already undergone (two months) and to pay a fine of Rs.7,000/- in addition to Rs.3000/- imposed by trial Court. Accordingly, the applicant/accused is sentenced to suffer imprisonment for the period already undergone by him. In addition to fine of Rs.3000/-, he is further directed to pay fine of Rs.7,000/-. The applicant/accused shall deposit the entire fine

amount within a period of two months from today in the trial Court. Out of the fine amount Rs.5000/- be paid to injured-Surajlal. In default of payment of fine, the accused shall undergo simple imprisonment for three months. The trial Court shall take steps to execute sentence, in default of payment of fine amount. Accordingly, this revision application is partly allowed, with above modification.

14. The learned Advocate Shri S. I. Ghatte and learned APP Shri H. D. Dubey deserve a word of appreciation for the assistance rendered by them to the Court. Thorough preparation of matter by Shri S. I. Ghatte is commendable.

15. The criminal revision application stands **disposed of**. Rule accordingly.

(G. A. SANAP, J.)

Namrata