

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

CRIMINAL REVISION APPLICATION NO.109 OF 2021

Khushab Premdas Suryawanshi
Aged 36 years, Occ: Labour,
R/o Waigaon (Haldya), Tah. Samudrapur,
District Wardha

...APPLICANT

---VERSUS---

State of Maharashtra,
Through its Police Station Officer,
Samudrapur, Tah. Samudrapur,
District Wardha.

...NON-APPLICANT

Ms P. S. Kosare, Advocate for the applicant.
Shri S.A. Ashirgade, APP for non-applicant/State.

CORAM : G.A. SANAP, J.
DATE : NOVEMBER 22, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith with consent of the parties.

2. In this revision, the applicant challenges the judgment and order dated 27.10.2021 passed in by the learned Additional Sessions Judge, Hinganghat, District Wardha, whereby the learned Additional Sessions Judge dismissed the appeal filed by the applicant against his conviction and sentence for the offence

punishable under Section 325 of the Indian Penal Code (for short, 'IPC') awarded by the learned Judicial Magistrate First Class, Samudrapur, District Wardha. Learned Judicial Magistrate First Class (JMFC) by the judgment and order dated 13.04.2017 convicted the applicant for offence punishable under Section 325 and sentenced him to undergo simple imprisonment for six months and to pay fine of ₹10,000/-, in default to undergo further simple imprisonment for two months.

The prosecution case, in short, is as follow:

3. The incident in question occurred on 02.09.2012 about 08:00 am at village Waigaon (Haldya), Taluka Samudrapur, District Wardha. Informant, who is witness no.1, was assaulted by the applicant with stick. The informant sustained the injury to her left hand. On her examination, it suspected to be a fracture. The informant reported the matter to the police and accordingly, Crime No.112/2012 was registered against the applicant. The applicant was arrested. At his instance, the weapon used in offence was recovered. The informant was medically examined. She was referred to Hinganghat Hospital for taking X-ray. After completion of the investigation, charge-sheet was filed. The charge was framed. The applicant denied the charge.

4. The prosecution examined seven witnesses to prove the charge against the applicant. Learned JMFC on the basis of the evidence adduced by the prosecution found the applicant guilty of the offence punishable under Section 325 and accordingly convicted and sentenced him as above. The learned Additional Sessions Judge in an appeal filed by the applicant on scrutiny of the material on record found that the order passed by the learned JMFC is according to law and dismissed the appeal. The applicant is, therefore, before this Court in revision.

5. The grounds of challenge to the impugned judgment and order have been set out in the application.

6. I have heard Ms P.S. Kosare, learned advocate for the applicant and Shri S.A. Ashirgade, learned Additional Public Prosecutor for non-application/State. Perused the record and proceedings.

7. Ms P.S. Kosare, learned advocate for the applicant submitted that in this case the evidence of Medical Officer is not sufficient to prove that the informant had sustained fracture. Learned advocate for the applicant therefore submitted that the conviction of the applicant under Section 325 is not according to

law. Learned advocate for the applicant took me through the remaining evidence and pointed out that the said evidence is full of omissions and inconsistencies and therefore not sufficient to prove the charge against the applicant even for lesser offence. She further submitted that the informant and other witnesses have admitted that there was enmity between them and the applicant. Learned advocate submitted that the applicant has falsely implicated due to the enmity. She further submitted that the reasons have not been recorded for awarding the sentence of six months, which in the facts and circumstances would be disproportionate to the gravity of the crime.

8. Learned advocate for the applicant further submitted that now the dispute between the applicant and the informant has been amicably settled.

9. The informant is present in the Court. On enquiry, the informant has stated that the applicant is her cousin brother and as on today she has no grievance against him.

10. Learned advocate on the basis of above submitted that lenient view is required to be taken in the matter, if the Court is not inclined to accept her submissions.

11. Learned Additional Public Prosecutor submitted that cogent and concrete reasons have been recorded by the Courts below to convict and sentence the applicant. He submitted that there are no reasons to discard and disbelieve the oral evidence of the informant and other witnesses. He further submitted that the offence punishable under Section 325 is non-compoundable and therefore even if the informant has stated that they have arrived at a settlement, it would be of no help. Learned Additional Public Prosecutor on going through the record fairly conceded that X-ray report and the opinion of the Radiologist are not available. Learned Additional Public Prosecutor therefore submitted even if it is held that in absence of this evidence, the offence under Section 325 is not made out then considering the weapon used in the commission of the crime, the applicant would be liable to be punished under Section 324 of the IPC.

12. In order to satisfy myself about the legality and the correctness of the impugned judgment and order, I have gone through the evidence adduced before the learned JMFC. Medical officer was examined as PW7. Perusal of the evidence of the Medical Officer would show that on examination he found two injuries on the person of the informant. The Medical Officer in his

evidence has categorically stated that the injuries were simple in nature. He has stated that the informant was referred to General Hospital, Wardha/ Sub-District Hospital Hinganghat for the purpose of taking X-ray of left hand wrist. He has categorically deposed that his final opinion was kept reserved till receipt of the X-ray report. It is therefore seen that there is no final report or opinion given by the Medical Officer with regard to the nature of injury. In the facts and circumstances and particularly in the backdrop of the evidence of the Medical Officer, it is not possible to accept the case of the prosecution that the informant had sustained fracture. In view of this position, the injury sustained by the informant could not be said to be grievous hurt as defined under Section 320 of the IPC. The evidence adduced on record, therefore, falls short to accept the case of the prosecution that the informant had sustained grievous hurt as defined under Section 320.

13. In view of this position, the conviction and sentence awarded under Section 325 is not according to law. The Courts below have not taken this fact into consideration. In my view, this illegality is required to be rectified depending upon the available evidence.

14. Next important question is, whether the oral evidence

coupled with the medical evidence is sufficient to prove the lesser offence punishable under Section 324. On going through the record and particularly evidence of the informant and the evidence of the Medical Officer, I am of the opinion that lesser offence punishable under Section 324 is made out on the basis of the evidence.

15. PW1 informant has stated that when she was returning from flour-mill, the applicant assaulted her with a stick. She has deposed that she had sustained the injury to her left hand. The report of the incident was lodged. The Medical Officer in his evidence has stated that on examination of the informant he found two injuries on the left hand. The informant in the Court identified the stick used by the applicant for assault. She was subjected to cross-examination. Perusal of her cross-examination would show that as far as the incident of the assault with the stick by the applicant is concerned, the evidence has not at all been shaken. Therefore, there is no reason to discard and disbelieve the evidence of the informant on the point of causing hurt to her by the applicant with a stick, which by any means has to be termed as a dangerous weapon.

16. The oral evidence of the informant has been corroborated by PW2 and PW3. According to PW2 and PW3, they saw incident

of the assault with the stick by the applicant on the informant. In my view, on the basis of this evidence the prosecution has successfully proved the incident and the offence punishable under Section 324.

17. The stick was seized during the course of the investigation. Stick was sent to the Medical Officer for examination. He has opined that injuries sustained by the informant could be caused by the stick. The description of the stick has been mentioned in the Panchanama as well as in the query report submitted by the Medical Officer. In the facts and circumstances, I am of the view that though the conviction and sentence under Section 325 is not sustainable, the lesser offence made out on the basis of the evidence would be under Section 324 of the IPC.

18. As stated above, the applicant was sentenced to suffer simple imprisonment for six months and to pay a fine of ₹10,000/-. Learned advocate pointed out that the applicant has already deposited fine amount. There is no grievance about this fact at the behest of the prosecution. In my view, while awarding the sentence and modifying the substantive sentence, the statement made before this Court by the informant would be required to be taken into consideration. It is to be noted that in the facts and circumstance for

the offence punishable under Section 324 the substantive sentence of six months would be disproportionate. In my view, the interest of justice would be met if the sentence of the imprisonment already undergone by the applicant during the course of the trial as well as after the decision of the appeal is awarded. Therefore, substantive sentence needs to be modified. The sentence of fine needs to be maintained. Hence, following order:

ORDER

- (i) The Criminal Revision Application is partly allowed.
- (ii) The order of conviction and sentence under Section 325 of the IPC is set aside.
- (iii) The applicant is convicted for the lesser offence under Section 324 of the IPC and sentenced to suffer imprisonment, which he has already undergone (i.e. 2 ½ months) during the trial as well as after his arrest on the date of the judgment by the Sessions Court till he was released on bail pursuant to the order of this Court.
- (iv) The Criminal Revision Application stands disposed of in above terms.

JUDGE