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

CRIMINAL REVISION APPLICATION (REVN) NO. 120/2021

1. Ganesh S/o Kashiram Devkar,
aged 41 years, Occ. Agriculturist.

2. Kashiram S/o. Devrao Devkar,
aged about 71 years, Occ. Agriculturist,

Both R/o. Dahad (Bk.) Ta. & Dist.
Buldhana,

..... APPLICANTS

VERSUS

State of Maharashtra, through
P.S.O. Buldhana (Rural),
Buldhana.

....NON-APPLICANT/

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Mr. R. M. Daga, Advocate for applicants.
Mr. I. Damle, APP for non-applicant/State.

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CORAM : VINAY JOSHI, J.
DATE OF JUDGMENT : 06.10.2022.

ORAL JUDGMENT :

Heard.

2. Admit.

3. This revision application is of accused No. 2 (applicant No.1) and accused No. 3 (applicant No. 2) of Regular Criminal Case No. 207/2012 challenging the order of conviction.

4. Facts in brief are that, on 29.09.2012 while informant (injured) Ramkrishna Uttam Raut was returning from his field, applicants along with co-accused Kautikarao assaulted him by means of stick and rare handle of axe, causing him bleeding injury. On the basis of said incident, informant has lodged report on 09.10.2012 with concerned Police Station which was registered vide Crime No. 56/2012 for the offence punishable under Sections 325, 504, 506 read with Section 34 of the Indian Penal Code. The Police have completed the investigation and filed charge-sheet against three accused. The prosecution led evidence of eight witnesses as well as relied on certain documents.

5. On full-fledged, the learned Magistrate was pleased to acquit accused No. 1 – Kautikrao Kashiram Deokar whilst held accused No. 2 Ganesh Kashiram Deokar and accused No. 3 – Kashiram Deorao Deokar guilty. The Magistrate has convicted accused No. 2, Ganesh for the offence punishable under Section 324 of the Indian Penal Code, and sentenced him to suffer simple imprisonment for one year along with fine of Rs. 1,000/-. Likewise accused No. 3, Kashiram was convicted

for the offence punishable under Section 325 of the Indian Penal Code, and sentenced to suffer simple imprisonment for one year along with fine of Rs. 1,000/- vide judgment and order dated 11.10.2014.

6. Both convicted accused have challenged the order of conviction in Criminal Appeal No. 76/2014. Being aggrieved by acquittal of accused No. 1, the informant has filed Criminal Appeal No. 50/2015 as well as filed Criminal Revision No. 112/2014 seeking enhancement of sentence of convicted accused. The learned Sessions Judge heard all the matters together since they were arising out of the same judgment and order of the Trial Court. The learned Sessions Judge has dismissed both appeals as well as revision and thereby confirmed the order of the learned Magistrate.

7. Being aggrieved by the dismissal of Criminal Appeal No. 76/2014, the convicted accused are before this Court. Though the informant's appeal as well as revision was dismissed, he has not challenged the same. Thus, the legality and correctness of the conviction of accused Nos. 2 and 3 is for consideration in this revision application. Besides challenging the order of conviction on merit, the learned counsel appearing for applicants would submit that the sentence imposed by the Trial Court and confirmed by the Sessions Court is disproportionate. He would submit that accused No. 3 is 73

years of age having several ailments. Moreover, it is contended that the alleged occurrence was of the year 2012 and no offence was registered against accused No. 3 till then. He would submit that though one crime was registered against accused No. 2, however in the said case, he was discharged as a result of compromise. It is submitted that both parties are resident of same village.

8. The learned APP resisted the submission on merits. It is argued that the prosecution led evidence of injured as well as three eye-witnesses which is sufficient to establish the guilt. Moreover, medical evidence strongly supports the testimony of the eye-witnesses. On the point, sentence though he admits that the incident is very old, however considering the gravity of occurrence, submitted to maintain the sentence.

9. As per police report of injured, on 29.09.2012 in the evening around 07.00 p.m., he was returning to his house. In the way, accused No. 3, accosted him who was accompanied by his two sons. Quarrel took place in which accused No. 3 who was under influence of liquor had dealt a stick blow at his right hand wrist whilst accused No. 2 dealt a blow at his head and neck by iron rod. He stated that accused No. 1, Kautikrao Kashiram Deokar also beat by kicks and fist blows at his chest. The prosecution led evidence of in all eight witnesses to

establish the guilt. Injured Ramkrishna has specifically stated the act of accused Nos. 2 and 3 about the assault. His cross-examination remained to be abortive. The prosecution has led evidence of PW-4, Sitaram Raut who is independent eye-witness. He has squarely supported the evidence of informant on material aspect. Likewise, evidence of PW-5, Vandana Raut and PW-7, Anita Raut also support the prosecution case. Cross-examination of these witnesses withstood to their evidence. The prosecution has also examined Medical Officer as well as produced medico-legal certificate. As per the evidence of Medical Officer, injured sustain the injuries namely:-

(I) Abrasions size of 3 x 0.5 cm on forehead left side.

(ii) Blunt trauma on left side mandible.

(iii) Blunt trauma to right hand.

The injuries were at forehead, face and right hand which corroborates the ocular evidence.

10. The Trial Court as well as the First Appellate Court has rightly considered the evidence while holding accused Nos. 2 and 3 guilty. On revisiting the entire material, it is evident that the evidence led by the prosecution is sufficient to establish the incident as alleged. As per evidence of medical officer, injured sustained right hand

metacarpal bone fracture, whilst other injuries were of simple nature. Since accused No. 2 has used handle of axe which is a dangerous weapon, his conviction under Section 324 is well justifiable likewise accused No. 3 caused grievous hurt by stick, conviction under Section 325 of the Indian Penal Code is maintainable. In view of that, the challenge raised by the applicants on merits is untenable. Both the Courts below have properly appreciated the evidence, while recording the finding of guilt, which calls no interference.

11. Coming to the aspect of sentence, the Trial Court has sentenced both of them to undergo simple imprisonment for one year and to pay fine of Rs. 1,000/- each with default caluse. The learned counsel appearing for the applicants primly argued that the applicants are not history sheeter nor having criminal antecedents. It is submitted that though applicants were convicted for the incident of the year 2012, till date i.e. during span of last ten years, there was no quarrel or incident of assault in between the parties. The incident was a sudden outcome at the instance of some village dispute. Both the parties, are residing in the same village.

12. It is submitted that the applicants are agriculturists. The applicant No. 1, Ganesh is cultivating the land and earning for his livelihood. He is shouldering the responsibility of his wife and kids.

As regards to applicant No. 2, Kashiram, he is 73 years of age and suffering from various ailments.

13. Always a sentence shall be in proportion to the atrocities committed by the accused. Section 324 of the Indian Penal Code provides punishment of imprisonment of either description for a term which may extend to three years or with fine or with both. Section 325 of the Indian Penal Code, provides punishment of imprisonment of either description for a term which may extend to seven years along with fine. The Legislature has purposefully left a vast discretion with the Courts while imposing punishment as no minimum sentence has been prescribed by the statute. Obviously, on the basis of emerging facts and taking into account over all circumstances, the sentence has to be awarded.

14. The applicants are villagers, doing agricultural work. It reveals that out of villager rivalry or may be due to land dispute, there appears to be sudden incident of quarrel. Pertinent to note that incident was occurred prior to a decade, concededly no further untowards incident in between the parties was reported. The applicants had faced criminal prosecution for last 10 years and were under shadow of conviction from the year 2014. Having regard to these peculiar facts and especially incident is very old, the

circumstances do not warrant to take stringent view. On the other hand, injured can be adequately compensated from the fine amount which would suffice the purpose. Moreover, it will maintain harmony in the village.

15. The First Appellate Court had dismissed the appeal on 15.12.2021 on which both applicants were taken in to custody. This Court vide order dated 21.12.2021 has suspended the execution of sentence and it is informed that after two days, they were released from Jail, meaning thereby, they were in custody for eight days. By taking into account all these factors, I deem it appropriate to mold the sentence by upholding conviction.

16. In view of above, the conviction recorded by both the Courts is maintained, however sentence needs to be modified as below:-

(I) Criminal Revision is partly allowed.

(II) Conviction of both the applicants in Regular Criminal Case No. 207/2012 is maintained, instead of sentenceing the applicants as directed by the Courts below, they are sentenced for the period which they have already undergone, along with fine of Rs. 25,000/- each to be deposited in the Trial Court within a period of two weeks from today, in-default, they shall suffer simple

imprisonment for six months.

(III) On recovery of fine amount, it shall be paid to the informant namely Ramkrishna Uttam Raut towards compensation in terms of Section 357(1) of the Code of Criminal Procedure.

17. Application stands disposed of in above terms.

(VINAY JOSHI, J.)

*Gohane*

JITENDRA BHARAT GOHANE

Digitally signed by JITENDRA BHARAT GOHANE
Date: 2022.10.10 18:16:10 +0530