

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.388 OF 2004

1. Suryabhan S/o. Mhasu Jagtap,
Age 60 years, Occu. Agriculture,
R/o. Belgaon, Taluka Vaijapur,
District Aurangabad (Dismissed)
2. Subhas s/o. Vallabh Jagtap,
Age 26 years, Occu. Agri.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad
3. Dattu S/o. Pandharinath Jagtap,
Age 31 years, Occu. Agril.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad
4. Vasant s/o. Waman Jagtap,
Age 32 years, Occu. Agri.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad
5. Vijay s/o. Parasram Jagtap,
Age 30 years, Occu. Agri.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad
6. Nivrutti s/o. Jagannath Jagtap,
Age 30 years, Occu. Agri.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad
7. Sanjay s/o. Suryabhan Jagtap,
Age 30 years, Occu. Agri.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad (Dismissed)
8. Wallabh s/o. Mhasu Jagtap,
Age 55 years, Occu. Agri.,
R/o. Bhaggaon, Taluka Vaijapur,
District Aurangabad (Dismissed)

.. Applicants

Versus

1. The State of Maharashtra
2. Chandrakant Pandharinath Kulkarni,
Age about 45 years, Occu. Agri.,
R/o. Belgaon, Taluka Vaijapur,
District Aurangabad .. Respondents

(Dismissed as per order against applicant Nos. 1, 7 and 8, dated 05.07.2005)

...
Mr. S. G. Ladda, Advocate for Applicants;
Mr. A. R. Kakade, Advocate for Respondent No.1;
Mr. K. S. Patil, A.P.P. for Respondent No.2
...

CORAM : S. G. MEHARE, J.

DATE : 06-06-2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the applicants, the learned A.P.P. for respondent No.1/State and the learned counsel for the respondent No.2.
2. The applicants had challenged the order before the learned 3rd Adhoc Additional Sessions Judge, Aurangabad, confirming the impugned judgment and order of the learned Judicial Magistrate First Class, Vaijapur, in Criminal Appeal No. 104 of 2002 by the judgment and order dated 16.08.2004, modifying the sentence and releasing the accused on probation under Section 4 of the Probation of Offenders Act, 1958 (for short, "the Act").
3. The learned counsel for the applicants would submit that the

bonds as required under Section 4 of the Act, were executed long back. However, both Courts did not consider the material on record. Both Courts failed to appreciate the evidence. The Court did not consider the defence of the accused and erroneously held the accused guilty. Failing to appreciate the evidence properly is a substantial ground to interfere with the impugned judgments and orders. Therefore, the revision application may be allowed.

4. Per contra, the learned A.P.P. would submit that the evidence has been correctly appreciated. The witnesses were stuck up to their statements. The prosecution had proved the case beyond reasonable doubt. The defence of the accused was not probable. The accused had formed the unlawful assembly. The presence of the accused on the spot of the incident was also proved. Both judgments are free from error. There are no substantial grounds to interfere with the impugned judgments and orders.

5. The learned counsel for the injured/complainant also supported the contention of the learned A.P.P. and would point out that by lapse of around 20 years, nothing remained to be interfered. The accused have observed the conditions of the bond executed under Section 4 of the Act. Besides that, the applicants have no good case to interfere with the impugned judgments and orders.

6. There are two concurrent judgments against the

accused/present applicants. Both judgments reveal that the injured had suffered physical injuries. The presence of the accused/applicants on the spot of the incident was proved. Both Courts have correctly appreciated the evidence. There was nothing on record to disbelieve the witnesses. The medical evidence was there to corroborate the injured. The view taken by the learned 3rd Adhoc Additional Sessions Judge, Aurangabad, granting the benefit of the Act is also appropriate, just and proper. There are no errors apparent on the face of record to believe that both Courts have committed *prima facie* error of law to exercise power under Section 397 read with Section 401 of the Code of Criminal Procedure.

7. In view of the above, the Court is not satisfied that both impugned judgments and orders of conviction requires interference at the hands of this Court. Hence, the following order:-

ORDER

- i) Revision application stands dismissed.
- ii) No order as to costs.
- iii) Rule stands discharged.
- iv) R & P be returned to the Court of learned Judicial Magistrate First Class, Vaijapur, District Aurangabad.

**(S. G. MEHARE)
JUDGE**