

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

CRIMINAL REVISION APPLICATION NO. 44 OF 2017

APPLICANT : Satish S/o. Vishwanath Kale, Aged
about 38 years, Occu. Labour, R/o.
Old City, Murtizapur, Tq.
Murtizapur, District Akola.

//VERSUS//

NON-APPLICANT : State of Maharashtra, through
District Government Pleader, Akola.

Mr. A.S. Thotange, Advocate for the Applicant.
Ms. Mayuri Deshmukh, APP for the Non-applicant/State.

CORAM : G. A. SANAP, J.
DATED : 5th JULY, 2023.

ORAL JUDGMENT

In this revision application, challenge is to the judgment and order dated 27th February, 2017, passed by learned Sessions Judge, Akola, whereby learned Sessions Judge dismissed the appeal filed by the applicant/accused against his conviction and sentence awarded by learned Judicial Magistrate First Class, Murtizapur for the offence punishable under Section 324 of the Indian Penal Code, 1860 (for short "IPC"). Learned Magistrate, on conviction, had sentenced the accused to undergo rigorous imprisonment for

one year and to pay fine of Rs.2,000/- and in default, to suffer simple imprisonment for one month. Learned Sessions Judge, however, modified the order with regard to substantive sentence and reduced it to six months.

02] The facts are as follows:

PW-1 Nilesh Ghatol is the informant. On 22nd September, 2010, on his report, a crime bearing No.180/2010 was registered against the accused for the offence punishable under Section 324 of the IPC. It is the case of the prosecution that the injured lady is the sister of the informant and wife of the accused. On account of matrimonial dispute between PW-3 Priti and accused, PW-3 Priti had started residing at the house of the informant. The accused was addicted to liquor. On the date of the incident, the accused had consumed liquor. He came to the house of the informant and demanded the custody of daughter from PW-3 Priti. PW-3 Priti refused to handover the custody of daughter to the accused. The accused, therefore, became angry. The accused, with knife, inflicted blows on the chest and neck of PW-3. She sustained bleeding injuries. The mother of PW-3, Kusum saw the assault on PW-3 and tried to intervene in the quarrel. The accused inflicted knife blows on the chest of Kusum. She sustained

bleeding injuries. After hearing commotion, the neighbours, namely Nilesh Nirale and Amol Thakare came on the spot. They caught hold the accused. Injured Priti and Kusum were taken to LD Deshmukh Civil Hospital, Murtizapur. The informant and his neighbours took the accused to the police station. PW-1 lodged the report of the incident at Murtizapur Police Station. On his report, a crime bearing No.180/2010 under Section 324 of the IPC was registered. PW-13 Santosh Borkhade conducted the investigation. The knife was seized from the possession of the accused in the police station. The Investigating Officer drew the spot panchanama. The injured were referred to the Civil Hospital, Akola. The Investigating Officer, after completion of the investigation, filed charge-sheet against the accused in the court of learned Judicial Magistrate First Class, Murtizapur.

03] The prosecution examined 13 witnesses. Learned Magistrate, on consideration of the evidence, held the accused guilty and sentenced him as above. The appeal filed by the accused against his conviction and sentence was dismissed by learned Sessions Judge, Akola with modification of the substantive sentence as above. The accused has come before this Court against the judgment and order passed by learned Sessions Judge, Akola.

04] I have heard Mr. A.S. Thotange, learned advocate for the accused and Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

05] Learned advocate for the accused submitted that, if we consider the nature and description of the knife from the seizure panchanama, it would indicate that the injuries sustained by PWs 3 and 4 could not be possible by the said knife. Learned advocate further submitted that if the accused had inflicted blows with knife, as stated by the witnesses, then the injuries, in all probability, would have been grievous in nature. Learned advocate submitted that the nature of the injuries sustained by the injured and the description of the weapon allegedly used in the crime if considered together, it belies the case of the prosecution against the accused. Learned advocate further submitted that the defence of the accused of false implication, has been supported by material on record. Learned advocate pointed out that there was matrimonial dispute between the accused and PW-3. The family members of injured Priti were not on good terms with the accused. It is, therefore, submitted that the accused has probablised his defence of false implication on account of dispute between the accused and the informant. Learned advocate submitted that PWs-1, 3 and 4 are

the interested witnesses and therefore, in the absence of concrete, cogent and corroborative evidence, the same cannot be given weightage and accepted. Learned advocate submitted that the independent witnesses are the neighbours and as such interested witnesses. Learned advocate pointed out that there is no corroboration to the evidence of PWs-1, 3 and 4 from independent source. Learned advocate submitted that the Courts below have failed to consider all these aspects and came to a wrong conclusion. Learned advocate submitted that, therefore, the accused is entitled for acquittal.

06] Learned Additional Public Prosecutor submitted that PWs-3 and 4 are the injured witnesses. Learned Additional Public Prosecutor submitted that the evidence of PWs-3 and 4 has been fully corroborated by the evidence of Medical Officer PW-8. Learned Additional Public Prosecutor submitted that as far as the evidence of PWs-1, 3 and 4 is concerned, it is consistent on the point of the main incident, the injuries sustained by PWs-3 and 4 and the involvement of the accused in this crime. Learned Additional Public Prosecutor submitted that the Courts below have considered the evidence adduced by the prosecution and on the basis of the same evidence, held the accused guilty. Learned

Additional Public Prosecutor submitted that in the exercise of revisional jurisdiction, unless and until it is pointed out to the satisfaction of the Court that there is an apparent error on the face of the record or perversity in the concurrent findings of fact of the Courts below, the judgment and order cannot be reversed. In short, learned Additional Public Prosecutor supported the judgment and order passed by learned Sessions Judge, Akola.

07] I have perused the record and proceedings. The evidence of Medical Officer, in this case, is the most important corroborative piece of evidence. PW-8 Medical Officer has stated that on 22nd September, 2010, he was on duty in causality at LDH Murtizapur. He has stated that injured PWs-3 and 4 were brought by ASI 1831, attached to Police Station, Murtizapur. He has stated that he examined PWs-3 and 4. He has stated that on examination of PW-3, he found following injuries:

1. Incised stab wound on Epigenetic region about 1x1/2x1/2 cm. Bleeding was present. Injury was fresh and grievous in nature. I advised her for Ultra sonography of abdomen. The injury was caused by hard, sharp and fine object. Approximately healing period was 4 to 5 days.
2. Injury on incised wound on left side neck measuring about 1x1/2x1/2 cm. Injury was fresh and simple in nature.

Approximately healing period was 4 to 5 days. Probable object of causing injury was sharp or fine object. Respiratory system by lateral crapes present on her abdomen. Tenderness all over abdomen was present. I advised her USG, X-Ray, chest PAU, Surgeon opinion and referred her to Medical College, Akola. Identification mark was present mole was present on right forearm.

He has further stated that on examination of PW-4 Kusum, he found following injuries:

1. Incised stag wound on right side chest over right breast measuring about 1x1/2x1/2 cm. Bleeding was present. Injury was fresh and simple in nature. Approximately healing period was 3 to 4 days. Probable object of causing injury was sharp and fine object.
2. Blunt trauma to abdomen. On respiratory system right sided occasional crape present. On her abandon tenderness present on right side abandon. I advised her X-ray of chest PAU and Ultra sonography of abandon. Identification mark black mole present on her.

08] The Medical Officer has recorded the measurements of the injuries sustained by PWs-3 and 4. The injury certificate of PW-3 is at Exh.51 and the injury certificate of PW-4 is at Exh.52. In his cross-examination, he has admitted that injury No.2 sustained by Priti and injury No.2 sustained by Kusum, are simple in nature. He has also stated that the injuries mentioned in the

certificates at Exhs.51 and 52 could be possible due to at fall on sharp cutting object, like bamboo. It is to be noted that with the specific recording of measurements of the injuries, the cross-examiner was required to bring on record some material in the cross-examination, to substantiate the defence of the accused that the injuries sustained by PWs-3 and 4 could not have been caused by the knife, which was seized in this crime. Perusal of this evidence would show that no dent has been caused to this basic evidence.

09] In the context of the evidence of the Medical Officer, it would be necessary to consider the evidence of panch witness. The knife was seized from the accused on the date of the incident. It has come on record that the accused was overpowered by the neighbours of the informant. The informant and his neighbours took the accused to the police station. The knife was seized under seizure panchnama at Exh.43. In the seizure panchanama, the description of knife has been recorded. The knife was without handle. The length of the knife was 5 inch. The breadth was 6 cm. The knife was sharp at the top. The description of the knife recovered in the crime and the identification of the said knife by the witnesses leaves no manner of doubt in the mind of the Court

with regard to the use of the said knife in the commission of the crime by the accused. The blade knife without handle was used in this case. A forceful blow is not possible with the knife without handle. Therefore, the submission advanced by learned advocate for the accused that, if the incident had occurred in the manner stated by PWs-1, 3 and 4, then they ought to have sustained more serious injuries, cannot be accepted. PW-3 has identified the said knife at the time of evidence, being the weapon used by the accused for inflicting blows. PW-4 has also identified the said knife at the time of her evidence. PW-1 has also identified the said knife.

10] The most important witnesses, in this case, are PWs-1, 3 and 4. PWs-3 and 4 are the injured witnesses. The injuries sustained by them in the incident have been independently proved. PWs-1, 3 and 4, in their evidence, have placed on record first hand account of the incident. They have stated that the accused came to their house and demanded the custody of daughter from Priti. It has come on record that when Priti refused to handover the custody of her daughter, the accused became angry and took out the knife and inflicted blows on the chest and neck of PW-3. It has come on record in their evidence that PW-4 tried to intervene and prevent the accused from assaulting Priti. PW-4 has stated that the

accused inflicted a knife blow on her chest and she sustained grievous injuries. PW-1 has also stated that, at the time of the incident, he was at his house. He has narrated the incident in great detail. His evidence is consistent with the evidence of PW-3 and PW-4.

11] Perusal of the evidence of PWs-1, 3 and 4 would show that on the main incident of assault by the accused with knife and the cause for the assault, their evidence is consistent. Perusal of their evidence in entirety would show that they have placed on record first hand account of the incident and the involvement of the accused in the crime. PWs-3 and 4 had sustained bleeding injuries. It is not the defence of the accused that the injuries were self-inflicted, with a view to falsely implicate him. It was suggested to these witnesses that they had a fall and in the said fall, they sustained the injuries. In my view, the defence of the accused, if appreciated in the teeth of the evidence of PWs 1, 3 and 4, could not be said to be probable and as such cannot be accepted.

12] PW-9 Babita Khakkar and PW-11 Sunanda Sonar are the eye witnesses to the incident. The sum and substance of their evidence is that they saw the incident. They saw that the accused

had inflicted blows with knife on PW-3 Priti and the mother of Priti namely Kusum PW-4. They are the neighbours of PW-1 informant. Perusal of their evidence would show that they have not exaggerated the incident in any manner at the time of their evidence. Their evidence is consistent with the evidence of injured PWs-3 and 4. Perusal of their evidence would show that they have placed on record the vivid account of the incident. It is not possible for the witness to narrate such a vivid account of the incident due to tutoring and on the basis of sheer imagination. Perusal of their evidence in entirety would show that on the incident and the involvement of the accused, it is cogent and credible.

13] Perusal of the judgment and order passed by learned Sessions Judge would show that learned Sessions Judge has taken into consideration the entire material available on record. The finding of fact recorded by learned Sessions Judge is based on proper appreciation of evidence. There is no reason to discard and disbelieve the evidence of the injured witnesses and the eye witnesses. It has come on record that injured Priti had filed a petition for divorce. In the said proceeding, divorce decree has been granted. This fact would indicate that there was discord in their matrimonial life, which ultimately led Priti to leave the house

of accused and stay at the house of her parents.

14] On going through the record, it is seen that the evidence on record is overwhelming, to establish the complicity of the accused in the commission of crime. It needs to be stated at this stage that in the exercise of revisional jurisdiction, the concurrent findings of fact cannot be interfered with unless and until it is established that the concurrent findings of fact suffer from error or perversity. The exercise of re-appreciation of evidence cannot be undertaken as a matter of course and in a routine manner in the exercise of revisional jurisdiction. In this case, the Courts below have taken the entire evidence into consideration. The Courts below have properly appreciated the evidence. The concurrent findings of fact, in my view, therefore cannot be interfered with. The revision is, therefore, devoid of merits and deserves to be dismissed.

15] Learned advocate for the accused submitted that the accused has already undergone the imprisonment for 50 days. Learned advocate submitted that considering the date of the incident i.e. 22nd September, 2010 and the time taken for final adjudication of the case, the substantive sentence may be modified

and reduced to the imprisonment already suffered by him. Learned advocate submitted that the purpose of the injured and the informant would be served with this sentence.

16] Learned Additional Public Prosecutor submitted that considering the gravity and seriousness of the offence, the substantive sentence of one year was reduced to six months by learned Sessions Judge. Learned Additional Public Prosecutor submitted that the leniency on this count shown to the accused would be misplaced. Learned Additional Public Prosecutor submitted that the substantive sentence of six months is proportionate to the gravity and seriousness of the crime.

17] I have bestowed thoughtful consideration to the submissions. It is seen on perusal of the record that the act of the accused was very unmindful. He inflicted the injuries on PWs-3 and 4 in a merciless manner. They were admitted in the hospital for 3 to 4 days.

18] In the facts and circumstances, the submissions for modification of substantive sentence, cannot be accepted. The revision application is **dismissed**.

19] Learned Judicial Magistrate First Class, Murtizapur to ensure the compliance of this order.

(G. A. SANAP, J.)

Vijay