

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION (ST) NO. 3685 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 940 OF 2024**

Kurshna Yashwant Mali

Age : 55 years,

Occ: Agriculture

R/o. Shirambe Road, Kasegaon,

Tal. Walwa, District Sangli

...Applicant

Vs.

1. The State of Maharashtra
(Through Kasegaon Police Station)

2. Parshuram Maruti Mali
Age : 29 years, Occ : Agriculture
R/o. Bhairewadi Kalipand Road,
Kasegaon, Tal. Walwa, Dist: Sangli

...Respondents

Mr. Nikhil N. Pawar	Advocate for the Applicant
Mr. V. N. Sagare	APP for the Respondent No. 1
Mr. N. Y. Chavan	Advocate for Respondent No. 2

CORAM : S. M. MODAK, J.

DATE : 26th APRIL 2024

JUDGMENT :-

1. Heard learned Advocate for the Applicant-accused and learned

APP and learned Advocate for the first informant – relative of the accused.

2. He was convicted by the Court of the JMFC, Islampur on 16/07/2019 for the offence punishable under Sections 324, 323, 504 and 506 of the Indian Penal Code. The sentence imposed is as follows :

- (i) For the offence punishable under **Section 324** of the Indian Penal Code - Six months rigorous imprisonment and Rs. 1,000/- fine.
- (ii) For the offence punishable under **Section 323** of the Indian Penal Code, three months rigorous imprisonment and Rs. 500/- fine.
- (iii) For the offence punishable under **Section 504** of the Indian Penal Code – three months rigorous imprisonment and Rs. 500/- fine.
- (iv) For the offence punishable under **Section 506** of the Indian Penal Code – three months rigorous imprisonment and Rs. 500/- fine.

3. He preferred an appeal. Though initially, he engaged an advocate, at the time of hearing, his learned Advocate has not appeared and he himself has argued the appeal as the Court of the Additional Sessions Judge has not granted sufficient time to engage another advocate. His submission is on page no. 65. It is true that in para no. 6 of the Appellate Court Judgment, there is a reference of appeal being argued by the Appellant himself. The appeal was dismissed and judgment and sentence were maintained and that is why present Revision.

4. When revision came before me, learned Advocate for the Applicant argued that in fact there is lacunae in the prosecution evidence. That is to say, out of two injured (Parshuram and Maruti), one injured that is father-Maruti of the first informant-Parshuram was not examined. Initially, it also appealed to my conscious that is why instead of hearing on the point of suspension of the sentence, the revision was taken up for final hearing.

5. In the meantime, it was also submitted that the first informant

and Applicant are related to each other. The first informant is relative of the Applicant and they have settled their dispute. The Applicant was asked to secure the presence of the first informant. Accordingly, he appeared and filed an affidavit on 19/04/2024. He has said about relationship and about settlement of the dispute and for releasing the Applicant on bail.

6. On this background, I have heard all the respective Advocates finally.

7. Learned Advocate for the Applicant has invited my attention to the evidence of seven witnesses. They are as follows :-

(a)	Parshuram Maruti Mali	PW No. 1	Nephew (main injured) of the Applicant
(b)	Amol Mali	PW No. 2	Spot and seizure panch of the seized stone from the spot
(c)	Babytai M. Mane	PW No. 3	Mother of the main injured.
(d)	Dr. Ranoji Ashok Shinde	PW No. 4	Medical Officer
(e)	Bhimrao Pandurang Mali	PW No. 5	Eye witness
(f)	Dattatraya Shankar Marale	PW No. 6	Eye witness
(g)	Wajir E. Mujawar	PW No. 7	Investigating officer

8. The prosecution case in nutshell is as follows:-

- (a) There was one minor incident earlier to this main incident, when Babytai had gone for some agricultural work on 27/06/2017 at about 09.00 a.m., the present Applicant by way of his gestures tried to insult Babytai. After returning home, she narrated the incident to her husband-Maruti Mali. As a result, Maruti went to the house of the Applicant. There was some altercation. PW No. 1-Parshuram Mali, heard about noise and he went to the spot and tried to separate them.
- (b) The Applicant got annoyed and gave blow of the stone on the head of the first informant. This was witnessed by PW No. 5-Bhimrao and PW No. 6- Dattatraya. PW No. 5 was present in the adjoining agricultural field. Whereas PW No. 6 had gone there for collecting some JCB charges from the father of the first informant. Thereafter, all of them took Parshuram to private health center. He was given treatment.

9. There was some variance. According to the mother-Babytai,

treatment was not given in the Government Center and that is why they took him to Samarth hospital. However, this version is not correct. Because there is evidence of the medical officer from the primary health center and no evidence from the private hospital. The investigation was carried out and charge-sheet was filed.

10. During the trial, above witnesses were examined. Maruti Mali could not give evidence. It is not clear why he has not given evidence. But during arguments, it is submitted by learned Advocate for the first informant that at that time, he was not keeping well. The trial Court has not considered it as a lacunae. However, it is not agreeable. It is for the reason that if prosecution is not examined the father, there cannot be conviction for causing simple hurt to him under Section 323 of the Indian Penal Code.

11. Even though, it is tried to argue that examination of the father was very much necessary because quarrel started only after father visited the house of the Applicant. And only when there was some scuffle, then only PW No. 1 went there. **It is not agreeable to me.** I agree with the trial Court partially. When father is not examined, I

think that part of the prosecution case is not proved.

12. Learned Advocate for the Applicant relied upon the observations in case of *State of U.P. and Another Vs. Jaggo Alias Jagdish and Others*¹. It is on the point of the examination of the necessary witnesses. The principle is correct but it depends upon the facts and circumstances. If we can separate the events, then the non-examination of the material witness is lacunae in the prosecution case.

13. Number of the contentions were raised. They are :

- (a) about not seizure of the clothes of the Parshuram,
- (b) when he has deposed about bleeding from the injury the medical officer-PW No. 4 has given description of two injuries, however the first informant only says about injury to his head and not described about injury to his wrist.
- (c) Not noticing the blood on the spot.
- (d) The offence under Section 324 of the Indian Penal Code is not made out because considering the description of the stone, it cannot be said that it is dangerous weapon. Even

¹ (1971) 2 SCC 42

learned Advocate for the first informant supported that submission on the point of the non-applicability of Section 324 of the Indian Penal Code.

14. According to the learned APP, the conviction under Section 324 of the Indian Penal Code needs to be sustained.

15. The Applicant's counsel relied upon the following two judgments on the point of the stone not being dangerous weapon:

(a) Nitesh s/o Motiram Jumna Vs. The State of Maharashtra, in Criminal Revision Application No. 77 of 2021, dated 25/10/2021.

(b) Mathai Vs. State of Kerala²

16. It is true that Section 324 of the Indian Penal Code lays down the different manner of causing the hurt. One of manner is causing hurt by dangerous weapon. Whether the weapon used is dangerous or not, it depends upon the facts and circumstances.

17. The trial Judge in para no. 37 has made comments, 'as to

² 2005(1) Supreme 215

whether the stone is deadly weapon'. Section 324 of the Indian Penal Code, nowhere used the word 'deadly weapon', it uses the word 'dangerous weapon'.

18. Whereas in Sections 397 and 398 of the Indian Penal Code, the word used is deadly weapon. The Hon'ble Supreme Court in case of *Mathai* (supra) has made this distinction in between the dangerous weapon and deadly weapon (in para no. 17). It is further observed that it depends upon the size, sharpness, the manner assault for deciding whether it is dangerous weapon or not.

19. Learned Single Judge of this Court in case of *Nitesh s/o Motiram Jumna* (*supra*) also opined that the stone seized in that case is not dangerous weapon and that is why the conviction was reduced from Section 324 to Section 323 of the Indian Penal Code.

20. The trial Court Judge has taken note of the fact that weight of the stone is not mentioned in the muddemal receipt.

21. Learned Advocate for the Applicant invited my attention to

description of the stone in the spot panchnama. The measurement is not made. So what is mentioned is the stone was of such size which one can hold in palm. It is important to note that when the scuffle started in between Maruti Mali and the Applicant, at that juncture, the son intervened and that is how the Applicant gave blow of the stone on head of the son. It is not that since beginning there was quarrel in between the son and the Applicant. From the manner of the incident, it appears that the Applicant took the stone lying on the ground and hits the son. Furthermore, when the injury certificate is perused, we find one CLW at frontoparietal junction just left lateral from midway and abrasion over left wrist joint on lateral aspect. Though medical officer stated about stitches, there is no reference in the certificate. It is also true that certificate does not mention about the bleeding. From all these facts, it seems that the blow was not with force. When person can hold stone in one hand, the nature of the injuries will be of that type only.

22. Considering all these factors, it can not be said that seized stone can be said to the dangerous weapon. Stone was not of such kind that

the Applicant holds it in both of his hands and then hits the first informant.

23. So I am disagree with the findings by the trial Court that seized stone is dangerous weapon. As said above, the Appellate Court has disposed of the appeal only on hearing the Appellant in-person. **So considering the facts, the offence is not made out under Section 324 of the Indian Penal Code but it is only under Section 323 of the Indian Penal Code.** All the contentions raised on behalf of the Applicant are not acceptable except nature of weapon. Simple hurt is a common factor for both these offences. Only differentiating factor is use of dangerous weapon (Section 324) and without weapon (for Section 323).

24. Learned Advocate for the first informant submitted that if it is under Section 323 of the Indian Penal Code, it can be compounded as per the provision of the Section 320 of the Criminal Procedure Code. The first informant has already filed an affidavit. It is true that both are closed relatives. If the dispute is settled, one can expect pence in the family of both of them. If the Applicant will remain in jail, there will

be disturbance in their families.

25. Considering this fact, settlement can be considered. In view of that the conviction needs to be set aside. Hence the Order:-

ORDER

- (i) The Revision application is allowed. Accordingly, interim application is disposed of.
- (ii) The conviction under Section 323 of the Indian Penal Code is set aside on account of non-examination of the father Maruti Mali.
- (iii) The conviction under Section 324 of the Indian Penal Code is set aside.
- (iv) The settlement in between the first informant and the Applicant is recorded and hence conviction under Sections 323, 504 and 506 is set aside.
- (v) The Order dated 16.07.2019 passed by learned JMFC, Islampur in RCC No. 269 of 2017 and Order dated 19.12.2023 passed by learned Additional Sessions Judge, Islampur in Criminal Appeal No. 44 of 2019 are set aside.
- (vi) Applicant be released from Jail if not required in any other

case.

26. Parties to act upon an authenticated copy of this Order.

27. Amount of fine, if any, paid as per the Rules be refunded to the Applicant.

[S. M. MODAK, J.]