

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

REVISION APPLICATION NO. 123 OF 2024

Parshuram Krishna Shigwan

...Applicant

vs.

The State of Maharashtra

...Respondents

Mr. Raj Khude	Advocate for the Applicant
Mr. V. N. Sagare	APP for the Respondent/State

CORAM : S. M. MODAK, J.

DATE : 26th APRIL 2024

P. C. :-

1. Heard learned Advocate Mr. Khude for the Applicant and learned APP Shri Sagare.
2. There is concurrent findings of the fact and conviction for the offence punishable under Section 326 of the Indian Penal Code. The sentence is 18 months and fine of Rs. 5,000/-. There were two appeals before the Court of the Additional Sessions Judge, Khed. One is at the instance of the Applicant that is Criminal Appeal No. 26 of 2013 and whereas another is Criminal Appeal No. 10 of 2015 by the first

informant. It is for the further enhancement of the sentence and enhancement of the compensation. The compensation is enhanced from Rs. 3,000/- to Rs. 3,00,000/-. That amount was enhanced, is not subject matter of this revision. There were in all eight witnesses examined. They are as follows:

(a)	Sitaram M. Sawant	PW No. 1	injured whose hand is amputated
(b)	Krishna M. Sawant	PW No. 2	eye witness
(c)	Nilima N. Mhadalekar	PW No. 3	Eye witness
(d)	Manohar G. Pangale	PW No. 4	spot and memorandum panch
(e)	Ramling D. More	PW No. 5	Medical Officer
(f)	Anant Y. Shinde	PW No. 6	PSI, Investigating Officer
(g)	Jagannath G. Bargude	PW No. 7	Head Constable, who recorded the F.I.R.
(h)	Vinayak K. Shingare	PW No. 8	PSI, Subsequent Investigating Officer

3. The prosecution case in nutshell is as follows:

- a) All are resident of village Varovali, Taluka Khed, District Ratnagiri. There was an agricultural field and the first informant-Sitaram Mahadev Sawant and his brother Krishna have planted crops of the rice and according to the Applicant-

accused, they have complained it on his right of the way. This is a day prior to the incident dated 06/07/2004. The Applicant uprooted those plants that is why first informant and other witnesses have visited the house of the Applicant. It is on 06/07/2004 at about 7.30 a.m.. The left hand near wrist of the first informant—Sitaram was amputated. There are two versions:-

- (i) As stated by First informant-Sitaram : It is due to blow of the sickle by the Applicant.
- (ii) Whereas Applicant in Section 313 statement had given an explanation that Sitaram and Krishna had come to his house. Sitaram was having heap of grass. He fell down. At that time, sickle possessed by Krishna, has fallen on his hand and that is why his hand was amputated.

4. According to the learned Advocate for the Applicant, his version about the incident was not referred and considered by both the Courts below.

5. Whereas learned APP submitted that this is not an oath and this was not put during cross-examination of the prosecution witnesses.

6. Learned Advocate Mr. Khude made the following submissions:-

- (a) The memorandum statement panchnama was done earlier to the Applicant being arrested.
- (b) He invited my attention to timings in the following documents:
 - (i) page no. 53 of the revision, the time of the arrest is 06/07/2004 at about 12.15 hours. It is in charge-sheet.
 - (ii) The timing of the memorandum statement, on page no. 28 of the compilation, the starting time is 06/07/2004 at 12.00.05 hours.
 - (iii) The timing of the memorandum panchnama, on page no. 32, 06/07/2004 from 13.05 hours to 13.35 hours.
 - (iv) According to him, the memorandum statement was recorded earlier to the time of the arrest and that is why it is hit by the provisions of the law.
 - (v) The seized sickle was having a curve. The medical officer-PW No. 5 has admitted during cross-examination that the amputation may not be possible with the help of curve sickle, if there is assault from backside.

7. According to him this lacunae was rectified by recalling the medical officer and by showing him the seized sickle. According to him

the trial Court ought not to have allowed the recalling. He also prayed for suspension of the sentence on above grounds.

8. Whereas learned APP submitted that this ground falls within the scope of the appreciation of the evidence and it is not permissible before the revision Court. There is no illegality.

9. I have perused the oral evidence, cross-examination and the documents. It is true that at the time of the suspension of the sentence, the Court has to take *prima-facie* view and if the Court is satisfied that there are certain illegalities, Court can certainly suspend the sentence.

10. I am of this view that at this stage it is difficult to give benefit to the Applicant by suspending the sentence. I am not in favour of the suspension. The hearing of the revision can be expedited. The applicant can reiterate this prayer after some time.

11. Hence the Order :

ORDER

- (i) The hearing of the revision is expedited.
- (ii) Record and Proceedings be called of the both the Courts below.
- (iii) The application of the suspension is rejected.

- (iv) If revision is not finished within six months from today,
then the Applicant is at liberty to reiterate the prayer for
the suspension.

12. Matter be kept on 13th June 2024.

[S. M. MODAK, J.]