

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

**CRIMINAL REVISION APPLICATION NO.191 OF 2024
WITH
INTERIM APPLICATION NO.1690 OF 2024**

Madhukar Bemtya Gavand

Age : 60 Years, Occu. : Labourer,

R/o. : Aware, Taluka : Uran,

District : Raigad.

...Applicant

vs.

The State of Maharashtra

(At the instance of Uran Police

Station, District : Raigad).

...Respondent

Mr.Kuldeep Patil i/by Ms.Saili Dhuru:-	Advocate for Applicant.
Ms.S.E.Phad:-	APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 12th JULY 2024

P. C. :-

1. Heard learned Advocate Shri.Patil for the Applicant-accused and learned APP.
2. Even though, initially the matter is argued for suspension of sentence, considering the limited controversy involved about exact

Section of IPC applicable, it is taken up for final hearing by consent.

3. **Admit.**

4. Both the Courts below have convicted him for an offence punishable under Section 326 of IPC. The punishment is as follows:-

(i) 3 years Rigorous Imprisonment.

(ii) Rs.4,000/- as fine.

5. It is confirmed by the Appellate Court.

6. The incident took place on 29th September 2013 in the courtyard of first Informant - Jagannath Chandar Gavand. The Applicant assaulted him with the help of a knife in his abdomen. The reason for this assault is very trifle. When Gunjal – daughter of brother of the first informant went to the courtyard of the Applicant at 4.30 p.m., Applicant drove her out. The first informant went and protested to the Applicant. Instead of pacifying, Applicant abused him.

7. This is followed by the main incident. It took place between 8.00 p.m. to 8.15 p.m. The Applicant came back along with the knife and pierced the knife in his abdomen. When he shouted loudly, the informant's son, brother and niece came back and had seen the Applicant standing in the courtyard along with the knife. They have

not seen actual assault. The FIR was lodged with Uran Police Station.

The charge-sheet was filed. The prosecution in all examined 10

witnesses. They are as follows:-

(i) PW-1 – Jagannath Chandar Gavand:-

He is an injured examined on the point of incident.

(ii) PW No.2 – Madhukar Babya Bhoir:-

Panch witness on the memorandum and recovery panchnama.

(iii) PW No.3 – Namdev Shivram Gavand:-

One of the witnesses on the spot panchnama.

(iv) PW No.4 – Gurunath Sambhaji Gavand:-

One of the witnesses on the spot panchnama.

All of them have turned hostile. On the point of visit to the spot after shouting, the prosecution examined the following witnesses.

(i) PW No.5 – Rupesh Rajaram Gavand:-

Relative of the First-Informant.

(ii) PW No.6 – Amit Jagannath Gavand:-

Relative of the First-Informant.

(iii) PW No.8 – Ram Chandar Gavand:-

Relative of the First-Informant.

(iv) PW No.9 – Savita Ram Gavand:-

Relative of the First-Informant.

They have not seen the actual assault. But they have seen the applicant standing in the courtyard possessing with knife.

8. In order to prove the injury, Dr.Babasaheb Kashinath Patil, Medical Officer : Navi Mumbai Municipal Corporation PW No.7 is examined. Whereas, Baban Maruti Avhad – PW No.10 – API carried out the investigation.

Findings by both the Courts

9. The trial Court has believed the prosecution evidence and concluded about the guilt of the Applicant.

10. Both of them read the evidence. I do not find any fault on the part of trial court to disbelieve them. In fact the trial Court is conscious of importance of injury under Section 326 of IPC. It is recorded in paragraph Nos.6 and 11. Discussion is there in para No.26. However there is no reasoning why the injury falls within the purview of Section 326 of IPC.

11. The Appellate Court has also appreciated the prosecution evidence. However, there is no finding why the injury falls within the

purview of Section 326 of IPC. The Appellate Court opined, oral evidence prevails over the medical evidence in para No.18.

12. So it will be relevant to consider the evidence of medical officer.

With the assistance of both of them, I have perused evidence of PW-7.

The nature of injuries are as follows:-

- (a) **CLW (Stab) on hypochondriac region size of injury (3x1x upto Omentum (fold of Peritoneum supporting the Viscera).**

13. There is some issue raised by learned Advocate Shri.Patil as to whether Dr.Patil has examined the patient. Dr.Rajdeepak has treated the patient and operated him. Dr.Patil has not treated him. Dr. Patil has not operated. If we read the examination-in-chief, one can find that he has examined him initially. So there is not merit in the said contention.

It will be relevant to see the provisions of 320 of IPC. There are eight kinds of injuries.

“320. Grievous hurt.- The following kinds of hurt only are designated as “grievous:-

First.- Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head of face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

14. Admittedly, the injury does not fall within first to seventh category. Eighth category is applicable in following cases :-

First.- hurt which endangers life.

Second.- If there is severe bodily pain during space of 20 days.

Third.- who is unable to follow his ordinary pursuits.

15. According to Ms.Phad, when there is injury to omentum, it is due to serious assault. Whereas, according to Mr.Patil, Medical Officer has to depose it. No doubt, this is a serious injury, but I find lacuna in his evidence. Dr.Patil has never deposed that the injuries have endangered life of the injured or he was hospitalized for twenty days. Both the Courts below have overlooked this ingredient of Section 320 of IPC. It is not at all referred. The Court has to record finding that the injury falls within the purview of Section 320 of IPC. This is an error. It can certainly be corrected by a Revisional Court. This is not

appreciation of evidence but correcting a finding given by the Court below without going through the provisions of IPC. So, certainly offence is not made out under Section 326 of IPC.

16. If there is a hurt caused with deadly weapon, the offence will fall under Section 324 of IPC. Certainly, it is a hurt and knife is a deadly weapon. So, offence under Section 324 of IPC is made out.

17. I have heard both the sides on the point of sentence.

18. According to Mrs.Phad, the Applicant deserves to be punished with 3 years imprisonment. According to Mr.Patil, he is a poor guy and is hand-to-mouth and no motive is established and the reason of assault is very trifle. Mr.Patil is right. He is already in police custody and then in jail custody prior to grant of bail. There are options under Section 324 of IPC. When I am not inclined to sentence him for 3 years, the interest of the first Informant also needs to be protected by awarding some compensation. Hence the Order:-

ORDER

- (i) The Revision is partly allowed.
- (ii) The judgment passed by the learned JMFC – Uran in Regular Criminal Case No.51 of 2014 dated 14th February 2017 and confirmed by the Court of Additional Sessions

Judge, Alibaug is modified and instead of under Section 326 of IPC, the Applicant is convicted for an offence under Section 324 of IPC.

- (iii) He is sentenced to the period already undergone and to pay compensation of Rs.50,000/- (Rupees Fifty Thousand Only) to the First Informant - Jagannath Chandar Gavand.
- (iv) The amount be deposited within eight (8) weeks before the Court of JMFC - Uran and then, it be paid to the First Informant.

19. In view of the above, Revision Application is disposed of. **Rule is discharged.**

20. Interim Application also stand disposed of.

[S. M. MODAK, J.]