



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 127 OF 2017
WITH
CRIMINAL APPLICATION NO. 69 OF 2020

Ajinath Dhondiba Dhalpe,
Age 40 years, Occu. Service,
R/o. Shirapur, Taluka Ashti,
District Beed.

... Applicant

Versus

The State of Maharashtra
Through Ambhora Police Station,
Taluka Ashti, District Beed.

... Respondent

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Mr. S. S. Jadhavar, Advocate for the Applicant.
Mr. C. V. Bhadane, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 21.02.2025

JUDGMENT :

1. In this revision, there is challenge to the judgment and order dated 15.05.2015 passed by learned JMFC, Ashti in RCC No. 43 of 2012 and it being further partly confirmed by learned Sessions Judge, Beed by judgment and order dated 24.05.2017 in Criminal Appeal no. 67 of 2015.

BRIEF FACTS

2. Ambhora Police chargesheeted present revisionist for offence punishable under Sections 324, 323, 504, 506 of IPC resulting into trial by learned JMFC, Ashti by way of RCC No. 43 of 2012, wherein prosecution set up a case that on 13.02.2011, when informant Suresh, his wife Shantabai and son Gahininath were creating a way from the field of accused Ajinath, i.e. present revisionist, accused objected and further hit axe handle on the head of the informant, causing him grievous injury. On report being received to that extent, Ambhora Police registered crime bearing no. 12 of 2011 and after gathering evidence, chargesheeted present revisionist, who was tried by learned JMFC, Ashti. Prosecution examined in all 7 witnesses and also adduced documentary evidence like injury certificate etc. After appreciating the case, learned JMFC, by judgment and order dated 15.05.2015, held revisionist guilty for offences punishable under Sections 324 and 323 of IPC, but acquitted him from charge of Sections 504 and 506 of IPC.

3. Aggrieved by the same, present revisionist preferred Criminal Appeal No. 67 of 2015 before learned Sessions Judge, Beed, who, after hearing appellant-revisionist as well as the State, partly allowed

the appeal setting aside conviction for offence under Section 324 IPC, but confirmed and upheld the conviction for offence under Section 323 of IPC. Hence present revision.

SUBMISSIONS

On behalf of the revisionist :

4. Sum and substance of the arguments put forth by learned counsel for the revisionist is that, there is false implication. That, there was improper appreciation of evidence. He pointed out that, there was no independent eye witness account. According to him, there was no convincing and legally acceptable evidence about assault by means of handle of axe. However, both, learned trial court as well as first appellate court, failed to consider and appreciate the evidence in this regard and directly accepted the prosecution case. That, answers given by witnesses in cross have not been touched or appreciated. Independent witness had not supported and therefore, both the courts below ought not to have straightway relied on interested witness account. Hence, he questions the findings and conclusion by both, learned trial court as well as the first appellate court.

5. In the alternate, learned counsel for the revisionist pointed out that occurrence is almost two decades old. That, revisionist was a young man at the time of the incident. That, sword of conviction is hanging over his head for almost over two decades and hence, he prays to give revisionist benefit of Probation of Offenders Act or to sentence him to suffer imprisonment already undergone.

On behalf of the State :

6. Learned APP opposed on the ground that on minor count, there was assault with deadly weapon like axe on vital part like head. That, there is direct eye witness account. That, when eye witness account was credible, prosecution case was not affected by non-cooperation from independent witness. He submitted that there is medical evidence. According to learned APP, required ingredients for offence under Section 323 of IPC were available in the prosecution evidence and hence, findings and conclusion cannot be faulted at. Hence, he opposes revision and prays to dismiss it for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

7. The role and status of the seven witnesses examined by prosecution in support of its case, and the sum and substance of their evidence, can be summarized as under :

- PW1** Suresh is the informant. In his evidence at Exhibit 17, he deposed that accused is his brother. That, on 13.02.2011 at 11.00 a.m., when he, along with his wife and son, were creating road from the field of accused as per the court's order, accused came there, obstructed them and gave blows with the handle of axe on informant's head and back, due to which he suffered injury. His wife and son pacified accused and thereafter informant lodged report Exhibit 18.
- PW2** Annasaheb acted as pancha to spot panchanama Exhibit 24.
- PW3** Shivilal, pancha witness, who did not support prosecution.
- PW4** Shanta is the wife of informant. She claims to be the eye witness. Her evidence is at Exhibit 31. Regarding the occurrence, she deposed that three years before, when she, her husband and son were making way with the help of axe, her brother-in-law (accused) came there, snatched the axe from her husband's hands and gave blow of axe handle on the head of her husband. That, she, her son and one Kantilal intervened and thereafter her husband lodged report with Ambhora Police Station.
- PW5** Vijay, an acquaintance, who turned hostile.
- PW6** ASI Trimbak Khelbude was the Investigating Officer.

PW7 Dr. Vinod Kakade was the treating doctor. He claims to have noticed three injuries on the person of informant, i.e. CLW over right vertex area, abrasion over right arm and contusion over right middle arm. According to him all three injuries were simple in nature and caused by hard and blunt object.

ANALYSIS

8. Conviction recorded for offence under Section 323 and confirmed by learned first appellate court is the subject matter of the instant revision. Learned counsel submitted that there is no convincing evidence and that, there is no independent witness. According to him, it is doubtful whether there was use of any axe as is alleged by prosecution. In the alternative, it is his submission that a period of almost two decades has lapsed since the occurrence and he seeks either benefit of probation or reducing the sentence to imprisonment already undergone, i.e. for two days, by the present applicant till he was released on bail.

9. Re-appreciated the evidence. Evidence of informant Suresh, his wife and doctor is crucial. Informant, in his evidence at Exhibit 17, which is reproduced above, has categorically stated that he, his wife and son were creating a road. At that time, he was obstructed by present revisionist and was hit by means of handle of the axe,

resulting into injury. His wife Shanta (PW4), who was party to the occurrence, has also deposed in the witness box by virtue of evidence at Exhibit 31. She lends support to the version of her husband about revisionist hitting with the handle of axe on the head of her husband. Therefore, as regards the occurrence is concerned, evidence of injured informant finds support from his wife, who is eye witness. Evidence of doctor, who is examined as PW7, shows that on examination he noticed three injuries, of which he has given description in the witness box. Therefore, apparently apart from injured witness account supported by eye witness account, occurrence of injury is fortified by medical expert.

10. No doubt trial was conducted by learned JMFC vide RCC No. 43 of 2012 resulting into conviction by order dated 15.05.2015 i.e. exactly 10 years back. On appeal, learned Sessions Judge, after re-appreciating the evidence, has confirmed the conviction, but only for offence under Section 323 of IPC by judgment and order dated 24.05.2017. Therefore, even such judgment of learned Sessions Judge is almost eight years back. As submitted, sword of conviction is hanging over the revisionist since almost two decades. Apparently, parties are real brothers. Statement is made across the bar by learned counsel for the revisionist that now harmonious relations are restored.

The Hon'ble Apex Court, in the case of *Jagat Pal Singh and others v. State of Haryana* 1999 SCC (Cri) 1313, wherein also there was conviction under Sections 323, 452 and 506 r/w 34 of IPC, has permitted invoking Section 4 of the Probation of Offenders Act, 1958 in a case of similar nature. Here also, there are no criminal antecedents and taking above material into consideration, in stead of sentencing him to suffer imprisonment, benefit of probation is required to be extended by following consequential directions. Hence, following order is passed :

ORDER

- I. The Criminal Revision Application is partly allowed.
- II. The conviction under Section 323 of IPC awarded to the revisionist Ajinath Dhondiba Dhalpe by learned JMFC, Ashti in RCC No. 43 of 2012 and confirmed by the learned Sessions Judge, Beed by judgment and order dated 24.05.2017 in Criminal Appeal no. 67 of 2015, is hereby upheld.

HOWEVER

- III. Instead of sentencing revisionist to imprisonment, he is directed to be released on probation of good conduct by entering into a bond with one surety to appear and receive the sentence when called upon during the period of one year.

IV. The bond for a period of one year shall be executed by him before the trial court within a period of four weeks from today.

V. The Criminal Revision Application is accordingly disposed off.

VI. In view of disposal of the Criminal Revision Application, pending Criminal Application also stands disposed off.

[ABHAY S. WAGHWASE, J.]

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