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

CRIMINAL REVISION APPLICATION NO.198 OF 2023

- 1) Ramrao Shankar Pesode,
Aged about 65 years,
Occupation : Agriculturist,
- 2) Arun Ramrao Pesode,
Aged about 23 years,
Occupation – Agriculturist,
Both R/o Pimprala,
Taluka - Khamgaon,
District – Buldhana.

.... APPLICANTS

// VERSUS //

State of Maharashtra
Through its Police Station Officer,
Police Station Khamgaon, Rural
Taluka Khamgaon,
District – Buldhana.

.... NON-APPLICANT

Ms. Poonam Pisurde, Counsel h/f Mr. S. V. Sirpurkar, Counsel for
the applicants.
Ms. Ritu Sharma, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.03.2025

ORAL JUDGMENT :

1. **Admit.**
2. Heard learned Counsel for the applicants and learned
APP for the non-applicant/State.
3. The applicants are assailed the judgment dated
07.02.2013 passed by the learned Judicial Magistrate First Class, 2nd
Court, Khamgaon in Regular Criminal Case No.10/2008 whereby the

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applicants are convicted for the offence punishable under Section 324 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.3,000/- each, in default payment of fine, they shall suffer simple imprisonment for one month.

4. The applicants challenged the said judgment and conviction in Criminal Appeal No.14/2013 which is dismissed by the learned Additional Sessions Judge, Khamgaon on 03.07.2023.

5. As per the prosecution's case, the applicants and the informant are the neighbours. The incident took place on 01.10.2007 at village Pimprala near the house of the informant. At the relevant time of incident, the construction of the house of the informant was in progress. The construction material was kept near the house in order to save the raw material from destruction. The accused alleged to have raised quarrel, on count that those bags which are laid down by the informant, are coming within the area of property owned by them. Though the applicants were convinced, but they were not in a position to hear. On that count, the quarrel was started and in that quarrel, the present applicants assaulted the informant. As per the allegation, the applicant No.1 Ramrao Shankar Pesode went at his home and brought the axe from his home, whereas the another accused No.2 Arun Ramrao Pesode also present there. Ramrao assaulted him by means of axe by giving

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blow on his head, whereas Arun has assaulted and manhandled him. On the basis of the said report, police have registered the crime.

6. During registration the formality of visiting the spot of incident, arrested the accused, recording the statements of the relevant witnesses and drawing the spot panchanama was done by the Investigating Officer. After completion of the investigation, he submitted charge-sheet against the accused. The charge was framed and in support of the charge, the prosecution has examined in all six witnesses. The informant is examined as PW-1 who narrated about the incident during his chief-examination. Though he was cross-examined at length, nothing incriminating is brought on record to shatter the incident as to the assault is concerned. To substantiate and to corroborate his version PW-2 Wasudeo Namdeo Bilewar is examined who has acted as a panch on the spot panchnama. PW-3 is Dinkar Tulshiram Paisode, who is also the eye witness of the incident, he testified that the accused Ramrao was armed with an axe and he had given the blow of axe to the informant. PW-4 Mangla Prakash Paisode is also an eye witness of the said incident. PW-7 is the Investigating Officer. PW-6 is the Medical Officer whose evidence shows that on examination of the informant, she observed the injuries at CLW over right side of forehead left parietal 3 inch half, CLW size 1 inch X 1/2 inch on

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frontal bone, abrasion 1 cm X 1/2 cm lateral side of right eye, contusion with abrasion 4 cm X 3 cm left arm and abrasion 1 cm, 1/2 cm left earlobe. The evidence of the Medical Officer further shows that all the injuries were caused by hard and blunt object. The healing period for first and second injury was 8 to 10 days and healing period for third injury was 4 to 5 days in absence of any complications. The x-ray was suggested, however it was not done. Accordingly, she prepared the medical certificate and issued the certificate. She is also cross-examined. During cross-examination also she admitted that if the injury within a period of six hours it can be stated as fresh injury. If a person assaulted by means of axe the injury of shortcut nature occurred. The injury certificate nowhere shows that injury is by sharp edged weapon, but she has mentioned that injury is by hard and blunt object.

7. After appreciating the evidence, learned Judicial Magistrate First Class has held the applicants as guilty of the offence punishable under Section 324 of the Indian Penal Code and convicted them as aforestated. Being aggrieved with the same, the appeal is preferred by the present applicants which also came to be dismissed by appreciating the evidence on record.

8. I have perused the material on record and after going through the evidence, the involvement of the present applicants revealed and there is no reason to disagree with the findings of fact

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recorded concurrently by the trial Court as well as the Appellate Court. It does not appear that the applicants subsequently involved in any other criminal matters. There are no criminal antecedents prior to the incident and subsequent to the incident also. On appreciation of the facts, it reveals that the incident occurred due to the dispute between the two neighbours on account of keeping the construction material allegedly in the premises of the present applicants. Thus, there was neither intention to cause any harm to the injured, however there was a knowledge. Admittedly, the incident occurred on 01.10.2007. The applicant No.1 is having family, including wife and other family members. The applicant No.1 is now old aged person and applicant No.2 is also married person having wife and children and shouldering their responsibilities. As the learned Counsel for the applicant requested for the benefit of the Probation of the Offenders Act, the report of the Probation Officer of Buldhana is called. The report of the Probation Officer has recommended the grant of probation.

9. Considering the applicants have no criminal antecedents and subsequent to the incident also the applicants were not shown to be involved in any other criminal activities and considering the alleged incident has occurred between the two neighbours on account of trifle reasons, the opportunity is to be granted to the present applicants to reform.

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10. While maintaining the conviction, the sentence of imprisonment and payment of fine is not required, and therefore, it requires to be set aside and the same the applicants can be released on probation.

11. In view of that, it is directed that the applicants shall remain under the supervision of the concerned Probation Officer for the next two years, the applicant shall enter into a bond to permanently reside within the territorial jurisdiction of the District Probation Officer, Buldhana and to furnish to the Probation Officer his mobile number and permanent address. The applicants shall further undertake not to take themselves in any criminal or otherwise undesirable activities.

12. The revision application is allowed in the aforesaid terms.

13. The revision application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.