IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 514 OF 2024
WITH
INTERIM APPLICATION NO. 3784 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 514 OF 2024

Nisar Abdul Shaikh — Applicant .. (Orig. Accused No.1)

Versus

State of Maharashtra and Anr. .. Respondents

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- Mr. Mahendra Chandanshiv a/w. Mr. Dushyant Pagare, Advocates for Applicant.
- Ms. Manisha R. Tidke, APP for Respondent No.1 – State.
- Mr. Vikas Shivarkar, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 20, 2024.

ORAL JUDGEMENT:

1. Heard Mr. Chandanshiv learned Advocate for Applicant; Ms. Tidke, learned APP for Respondent No.1 – State and Mr. Shivarkar, learned Advocate for Respondent No.2.

2. Present Criminal Revision Application (for short "**CRA**") challenges two concurrent judgments passed by the learned Trial Court dated 13.10.2014 and the learned Appellate Court 06.08.2024. Revision Applicant is convicted under Section 326 of Indian Penal Code, 1860 (for short "**IPC**") and sentenced to suffer one year rigorous imprisonment and payment of fine of Rs.3,000/- and in default to suffer two months rigorous imprisonment.

3. Mr. Shivarkar, learned Advocate appears for the victim. He made a plea to the Court to be impleaded in the Revision proceedings on 14.10.2024. He informs the Court that the victim and Revision Applicant have agreed to compromise and therefore they would like to file consent terms. Mr. Chandanshiv, learned Advocate for the Applicant supported the plea of Mr. Shivarkar. Both the learned Advocates have made their submissions on merits of the matter. I have also heard the learned APP Ms. Tidke on behalf of the State and perused the record.

4. Briefly stated, facts of the case are that the victim and Applicant (Accused) are close relatives. On 17.04.2010, victim alongwith his wife (First Informant) at about 01:00 p.m. were drawing water from the common family well for the onion crop in their field when Accused Nos.2 and 4 (family members) accosted them and obstructed them from drawing the water.

4.1. A verbal and physical quarrel ensued between parties leading to slapping of first informant i.e. wife of victim by accused Her husband i.e. victim immediately intervened when Accused Nos.1 and 3 arrived at the incident spot and Accused No.1 picked up an iron rod and gave a blow on the head of the victim. Victim suffered head injury. Accused also threatened the victim for his life.

4.2. First Information Report (for short "**FIR**") was lodged by the wife of victim on the same date against 4 Accused family members. Crime No.96 of 2010 was registered. Charge-sheet was filed against 4 Accused including Applicant (Accused No.1). After a full fledged trial, Accused Nos.2 to 4 were acquitted whereas Applicant (Accused No.1) was convicted under Section 326 of IPC and sentenced.

4.3. Judgment of Trial Court dated 13.10.2014 is appended at page No.32 of the Application. Applicant filed Criminal Appeal No.46 of 2014 before Appellate Court i.e. Sessions Court, which was dismissed by the impugned judgment dated 06.08.2024. Both the aforesaid concurrent decisions are the subject matter of challenge in the present CRA.

5. I am informed that parties are close blood relatives and have settled the dispute out of the Court amicably and have no grievance with each other.

6. Mr. Chandanshiv, learned Advocate for Applicant has informed Court that the victim – PW-5 has filed his Affidavit dated 21.11.2024 confirming that he and Applicant have amicably settled their case out of Court and he has no objection to compounding of the case since offence under Section 326 of IPC is not a compoundable offence. Both parties have agreed for settlement in the present CRA. In view of the settlement, both Advocates would submit that this Court

should exercise its power under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (for short "**Cr.PC**").

7. On merits Mr. Chandanshiv, learned Advocate for Applicant would submit that if facts in the present case are scrutinised *qua* the evidence on record, it is discernible that at the highest this can be a case of causing simple hurt under Section 323 of IPC and not grievous hurt under Section 326 of IPC. He would submit that the offence took place at the spur of the moment due to the verbal altercation between parties relating to the drawing of well water on the particular day and it was not a premeditated act of Applicant to cause injury or harm to the victim. He would submit that though it is prosecution case that injury was caused with an iron rod, the same has not been recovered by the Investigating Officer (for short "**IO**"). Hence, it is highly suspicious and doubtful if at all whether the iron rod was the weapon used by Applicant and this possibility cannot be ruled out.

8. Next he would submit that none of the prosecution witnesses have deposed in their evidence that Accused No.1 arrived at the scene alongwith the iron rod with a premeditated mind to assault the victim. He would submit that evidence of PW-4 i.e. wife of victim who is first informant is crucial because she is the eye witness to the incident. He would draw my attention to her deposition and after going through the same would submit that she has not stated that Accused No.1 used the

iron rod for causing injury to her husband i.e. the victim. He would submit that in the absence of recovery panchnama of the alleged weapon (iron rod) and deposition of the eye witness namely PW-4 – first informant, prosecution case cannot be said to be proved beyond all reasonable doubts. He would submit that prosecution has merely relied upon medical evidence for indicting and convicting the Applicant which is not supported by deposition of any independent witness. As such, prosecution case suffers from this grave infirmity which does not stand corroborated. He would next draw my attention to the deposition of PW-5 i.e. victim himself and on a clear suggestion put to him as to whether he was injured with the iron rod by the Applicant (Accused No.1), he has answered the said question in the negative. Hence, he would submit that both the learned Courts have without any cogent evidence of independent witness wrongfully concluded that Accused No.1 was responsible for the injury caused to the victim with the weapon and therefore it calls for interference of this Court in its Revisional jurisdiction.

9. The aforesaid submissions advanced by Mr. Chandanshiv are duly supported by Mr. Shivarkar. Both of them would therefore jointly urge the Court to consider the amicable settlement arrived at by parties and compound the offence.

10. After perusing the record, it is seen that there is no dispute about the fact that parties have amicably settled their dispute. Their Advocates have confirmed this fact. Affidavit has been filed by victim and taken on record which asserts that parties have amicably settled the case out of Court and the victim himself does not have any objection for compounding of the case. Offence punishable under Section 326 of IPC is however not compoundable. There is no doubt about this.

11. Mr. Chandanshiv, learned Advocate for Applicant has however vehemently contended that even otherwise, Applicant cannot be convicted under Section 326 of IPC because of the infirmities in the prosecution evidence and absence of recovery panchnama of the alleged dangerous weapon. Hence on merits, he would submit and urge the Court to alter the charge to offence under Section 323 of IPC and permit the parties to compound the offence.

12. The evidence on record indicates that Accused No.1 had used an iron rod, but the same has not been recovered. Medical evidence in this case assumes significance. PW-6 is the Doctor who treated the victim. He has deposed that when victim was brought to hospital, he had suffered head injury, CLW over the right side parietal region and left crushed ear with fractured cartilage. In his cross-examination, however the Doctor has opined that the fracture can be noticed only

after undergoing an X-ray and not otherwise. Next in his cross-examination, he has answered that the head injury can be detected only after a C-T scan but he did not give any C-T scan report to the police. In his cross-examination, he has merely deposed orally and has admitted the fact that he has not brought any documents regarding any treatment given to the victim. He has categorically deposed that the injury caused to the victim is also possible if a person falls on a hard surface in the agricultural field.

13. Relying on the aforesaid medical evidence, indictment and conviction of Applicant is decided. The learned Trial Court in its judgment dated 13.10.2014 concluded that Accused No.1 i.e. Applicant has committed a serious offence only due to a dispute of water sharing and if the Accused is shown leniency, then it will send a wrong signal to the Society and hence leniency cannot be shown to the Accused. This conclusion and justification by the learned Trial Court of giving punitive punishment to the Accused in order to send a signal to the Society is not the correct manner in which criminal jurisprudence is required to be applied. In criminal jurisprudence what is crucial to be noted is the material evidence placed before Court and proved by the prosecution on record and whether it is in consonance with the provisions of the statute.

14. The facts and evidence in this case and whether prosecution has proved its case beyond all reasonable doubts to indict and convict the Accused are required to be proved to the hilt. Merely because of a serious injury and no leniency to be shown to Accused in order to send a signal to the Society cannot and should not be a ground to arrive at a conclusion for conviction.

15. Evidence of PW-4 clearly records that when the quarrel took place at that time two neighbours namely Anil Bachhav and Gulab Shevale intervened at the incident spot to dissuade the parties from further quarrel. In this regard, statement of Anil Bachhav recorded by the IO and his deposition recorded below Exhibit "38" as PW-3 is extremely critical and crucial. He has infact deposed that he and Gulab Shevale intervened in the quarrel and dissipated the quarrel between the parties. He has stated that the quarrel took place between the family members because of drawing and releasing of water from the family well in their respective fields on the particular day of the week. He has categorically stated that Applicant did not bring alongwith him or use the iron rod to injure the victim nor did he injure the victim by inflicting any blow on his head. Similarly PW-1 and PW-2 who are panch witnesses, have also not supported the prosecution case.

16. PW-3, independent witness has been examined by the prosecution. Hence, there is a serious lacuna in the prosecution case

since the independent eye witnesses PW-3 who intervened in the quarrel and rescued the victim and who were very much present at the scene of crime has not supported the prosecution case. In view of the deposition of Mr. Anil Bachhav, there is clear inconsistency in the prosecution case for seeking conviction of the Applicant as it clearly aligns with the admission given by the victim – PW-5 himself in his cross examination and this evidence is clearly inconsistent with the prosecution case about who caused the injury and how it was caused. Because of this very discrepancy, the other 3 Accused have been exonerated.

17. Both the judgments passed by the learned Courts below suffer from this serious infirmity. Case of the prosecution has not been proved beyond all reasonable doubts to bring home the guilt of the Applicant – Accused No.1 on the basis of the evidence led by the prosecution. There is clear inconsistency in the evidence of the key eye witnesses of the prosecution namely the first informant (PW-4), victim (PW-5) and PW-3. PW-4 and PW-5 are both wife and husband and interested parties. Prosecution cannot seek indictment merely on the basis of medical evidence. There were several independent eye witnesses whose evidence has not been led by the prosecution. When the evidence of PW-3 – independent eye witness is perused, it revolts against the prosecution case as he categorically states that Applicant did not cause any injury to the victim and in the absence of

recovery of the alleged weapon used in question, case of the prosecution fails.

18. Both the judgments passed by the learned Courts below do not stand to test of Criminal jurisprudence on facts and the evidence of the prosecution witnesses itself and are therefore required to be interfered with. Both the judgments dated 13.10.2014 and 06.08.2024 are quashed and set aside.

19. Resultantly, the impugned order dated 06.08.2024 is quashed and set aside.

20. In view of the above, Criminal Revision Application stands allowed and disposed in the above terms.

21. Learned Advocate for the Applicant informs the Court that Applicant i.e. original Accused No.1 is presently in custody in Nashik Road Central Jail. In view of the above, the Jailor / Superintendent / In-charge, Nashik Road Central Jail is directed by this Court to release the Applicant forthwith and set him free on a server copy of this judgment having been brought to the notice of the concerned Jailor / Superintendent / In-charge, Nashik Road Central Jail.

22. Registrar (Judicial – I) of this Court shall act immediately upon this judgement and convey the same to the concerned Jailor / Superintendent / In-charge, Nashik Road Central Jail for immediate

release of the Applicant.

23. Bail Bond, if any, of the Applicant is cancelled. Affidavit dated 21.11.2024 is consigned to record. Fine amount of Rs.2,000/- deposited by Revision Applicant before the learned JMFC, Malegaon is permitted to be returned back to him by the Registry of JMFC Court, Malegaon on a server copy of this judgement being placed before the Court.

24. In view of disposal of Criminal Revision Application, Interim Application No.3784 of 2024 is also accordingly disposed.

25. All concerned to act on a server copy of this judgement.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK UGALMUGALE

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