

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

CRIMINAL REVISION APPLICATION NO.32 OF 2000

Arun Raghunath Mhatre & ors.

... Applicants

Vs.

The State of Maharashtra

... Respondent

Ms.Megha Bajoria I/b K.S. Patil for the Applicants

Ms.Veera Shinde, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 3, 2019

ORAL JUDGMENT:

1. This revision application is directed against the order of conviction under section 147 of the Indian Penal Code r/w section 7 of the Criminal Law (Amendment) Act dated 27.6.1996 passed by the learned Judicial Magistrate First Class, Thane by which the applicants/accused were sentenced to suffer S.I. for a period of 3 months and payment of fine of Rs.250/- each and in default, they were to suffer S.I. for 15 days. The said judgment of conviction was challenged by the applicants/accused in Criminal Appeal No.56 of 1996 before the learned Sessions judge, Thane. However, the said Appeal was dismissed by judgment and order

dated 28.1.2000 by the learned Sessions Judge, Thane. Hence, this revision application.

2. The necessary brief facts of the case are as follows:

The offence of rioting and unlawful assembly punishable under section 147, 149 and 427 of the Indian Penal Code and section 7 of the Criminal Law (Amendment) Act was registered against the applicants/accused at the instance of one Sundar Yadav, who was working as an Assistant Production manager in the machine shop department of Voltas Switch Gear Company Ltd. at Thane. On 29.10.1992, the original accused No.12 had dispute over punching of the card and not attending the duty. So, the Personnel Manager Shri Patil issued him a notice which was to be served on him. However, accused No.12 refused to accept the notice. On 30.10.1992, he attacked the complainant with stool and also assaulted him with fists and blows and went away. Thereafter, on the same day, when Security Officer Shri Quadraz i.e., PW3 and Mr.Prasad Akherkar (PW7) who was an Engineer were assaulted by all the accused with fists and blows in the locker room. Thereafter, all the accused attacked Patil, Dighe, Quadraz when they were proceeding towards the machine shop on the same day.

Thus, there were 3 incidents of assault by the accused. After framing of charge, at exhibit 49, under section 147 , 149 and 427 of the Indian Penal Code and under section 7 of the Criminal Law (Amendment) Act, the trial commenced. The prosecution examined in all 10 witnesses. The accused took defence of vindictive approach of the management on account of rivalry between 2 unions. The trial Judge has assessed the evidence of each and every witness and also discussed and relied on the injury certificates of Shrirang M. Dighe (PW9), A.H. Patil (PW8), Prasad Akherkar (PW7). Thus, the medical evidence was found trustworthy as it corroborated the ocular evidence and the trial Court held that the accused have committed offence as alleged. It is also to be noted that the incident took place on 30.10.1992 and within 7 hours, the FIR was registered and the injured persons were sent for medical examination. Nothing can be faulted out with the impugned judgment of the learned Magistrate as also the judgement of the learned Sessions judge confirming the sentence. The submissions made by the learned Counsel for the applicants that for the first incident of assault which took place in the cabin, one Engineer, namely, Javed Shaikh was present and he claimed that he was also injured at the hands of the complainant, is not

examined and no independent witness is examined, are not convincing because all the other injured witnesses have entered the box and have faced cross-examination. However, their evidence alongwith the medical evidence is found reliable on the point of occurrence of the incident of assault. Similarly, the defence of union rivalry also cannot be appreciated for false implication of the applicants/accused when concrete evidence on the point of assault is tendered to call the witnesses. However, there is substance in the submissions of the learned Counsel for the applicants that the incident has occurred in October, 1992 and the applicants/accused are not hard core criminals but they were labourers in the factory, and this fact ought to have been considered by the Sessions Court.

3. Learned Prosecutor has opposed the appeal, however, he has submitted to the orders of the Court on the point of sentence.

4. The incident of assault has taken place prior to 26 years. The injuries on the persons of the witnesses are simple in nature. The manner in which the incident has occurred and the accused persons are not having criminal record and at present, they are above 50 years of age, though their conviction is confirmed on the

point of sentence, the sentence can be reduced as follows:

i) The judgment and conviction of the accused persons under section 147 of the Indian Penal Code r/w section 7 of the Criminal Law (Amendment) Act is confirmed, however, the substantive sentence awarded of 3 months is set aside. However, the payment of fine of Rs.250/- under each head is maintained.

5. I am informed that the fine amount of Rs.250/- under each head is paid at the time of filing of Criminal Appeal before the Sessions Court.

6. The appeal stands disposed of accordingly.

(MRIDULA BHATKAR, J.)