

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 406 OF 2001

Yunus s/o Shaikh Ibrahim,
age 40 years, occ. Business,
R/o Navapur, Devalphali,
District Nandurbar

...Applicant
[Orig.Complainant]

VERSUS

- 1] Jalil Shaikh Gafur,
age 32 years, occ. Business,
- 2] Imam Akbarkhan Rahematkhan,
age 46 years, occ. Business,
- 3] Gulam Ahmed Patel (Bharoch),
age 48 years, occ. Business,

All R/o Old Post Office, Navapur,
District Nandurbar

- 4] The State of Maharashtra ...Respondents
[Nos. 1 to 3 orig. accused nos. 1 to 3]

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Shri H.F.Pawar, advocate for applicant
Shri S.S.Kazi, advocate for respondent nos. 1 to 3
Shri D.R.Kale, A.P.P. for respondent no.4

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CORAM : V.M.DESHPANDE, J.

DATED : 7th January, 2015

ORAL JUDGMENT :-

1] By the present Revision, the applicant is challenging the judgment and order of acquittal, passed by the Additional Sessions Judge, Nandurbar, dated 19.9.2001 in Sessions Case No. 103 of 1990, by which the learned Judge acquitted non-applicant nos. 1 to 3 for the offences punishable under Sections 302, 307, 325, 324 r/w 34 of the Indian Penal Code.

2] I have heard Shri H.F.Pawar, learned counsel for the applicant, Shri S.S.Kazi, learned counsel for non-applicant nos. 1 to 3 and Shri D.R.Kale, learned Additional Public Prosecutor for respondent no.4/State, and with their able assistance, I have gone through the impugned judgment.

3] Applicant Yunus Shaikh Ibrahim, the first informant, has six brothers and was having a fruit shop at Light Bazar Navapur. Adjacent to their shop, fruit shop of accused exist.

On 29.3.1989, first informant along with his younger brother Yusuf Shiakh were present at their fruit shop. At the adjacent fruit shop, non-applicant nos. 1 to 3 were present. At about 2.15 p.m. one Gujarati lady came to the fruit shop of the first informant to purchase grapes. Upon inquiry, the first informant disclosed the rate of grapes as Rs.2.50 for 250 grams. The said lady asked Yunus the first informant to deliver

the grapes. Accordingly, he weighed the grapes and was packing the same, that time non-applicant no.1 from his shop asked the said lady customer that he will supply the grapes at the rate of Rs.2/- for 250 grams, and accordingly, he weighed 250 gms. grapes and delivered the same through his servant Gulam Kadir. That time, brother of the first informant Yunuf Shaikh asked accused Jaleel as to why he is supplying the grapes at the lower rate to the customer, who has come to his shop. Upon that quarrel ensued in between them. In the said quarrel ultimately Hussain the brother of the first informant died. The first informant came to the police station and lodged his report (Exh.24), on the basis of which Crime No. 20 of 1989 was registered.

4] After completion of the investigation, charge sheet was filed and case was committed to the court of Sessions and it was registered as Sessions case No. 103 of 1990.

At the same time, non-applicant no.1 Jaleel Shaikh also reported the matter to the police about the same incident and on that basis Crime No. 21 of 1989 for the offence punishable under Sections 325, 337, 323, 504 r/w 34 of the Indian Penal Code was registered, which ultimately culminated into Sessions Case No. 2 of 1995. Both the cases were decided by common judgment.

5] After hearing learned counsel and after having gone through the record, it is clear that the incident has occurred on 29.3.1989. It is clear from the version of the witnesses from both the sides that the incident has occurred on account of the visit of Gujarati lady to the shop. The said Gujarati lady is not identified during the course of the investigation by the investigating officer.

6] In order to prove the case against the non-applicants, the prosecution has mainly relied on the evidence of applicant and two alleged eye witnesses, namely Masood Ahmed and Shaikh Rashid and Yusuf Shaikh.

7] The learned trial court, after minutely scrutinizing the evidence in the light of contemporaneous document in the nature of first information report, reached to the conclusion that the version of PW 1 Yunus Shaikh Ibrahim the applicant from the witness box in respect of the incident is not in conformity with the recitals in the first information report. Not only that, the learned Judge of the trial court has noticed that he has developed the case during the course of the evidence. The learned Judge of the court below found that his evidence consists of material omissions which go to the root of the matter. The learned Judge found that the applicant has nowhere stated about the injuries received by the accused

persons which are stated by the witness PW 4 Masood Ahmed and the other witness to the effect that they received the injuries in the scuffle. At the same time, the learned Judge has also noticed that their previous police statement is completely silent about the injuries caused to accused Jaleel and Akbar. Therefore, the learned Judge, in my view, has correctly reached to the conclusion that the prosecution witnesses have materially developed the prosecution case during the course of the evidence.

The learned trial court, on appreciation of the facts, characterized the evidence of PW 4 Masood as the evidence of interested witness. Merely because evidence is of interested witness, that by itself is not sufficient to discard the same. However, the learned Judge found that there is no corroboration, and therefore, I see no reason to disagree for discarding the evidence of such interested witnesses whose evidence remained to be corroborated.

8] The learned trial court has also noticed that, the weapon produced, cannot cause incised wounds, which were found on the person of the deceased. According to the learned Judge, on the basis of cross-examination of Dr. Vasave, the weapon the scissor can only cause punctured wound and not the incised wound. In that view of the matter, the court below reached to the finding that it is hard to believe the version of the

prosecution witnesses in respect of giving of blows of scissor by accused Jaleel on the chest and stomach of deceased Shaikh Hussain.

9] The trial court, in my view, has correctly reached to the conclusion that if the prosecution case in the light of the evidence of the prosecution witnesses that the scuffle had taken place among the two rival groups and mob gathered there that time, naturally in such scuffle it is not expected to bear in mind the act played by each person in commission of the said scuffle. Therefore, the prosecution witnesses in both these Sessions cases are deposing in their own fashion in order to involve their rivals. In that view of the matter, the learned Judge has reached to the conclusion that the evidence of prosecution witnesses is not trustworthy.

10] The State did not prefer the appeal against acquittal. The jurisdiction of this court to entertain Revision against the acquittal is not barred but is severally restricted. When there is no glaring defect in the procedure nor there is any manifest error, interference at the hands of this court is not called for. It is settled principle of law that the order of acquittal cannot be interfered with in Revision merely on the ground of error in appreciation of evidence.

In the present case, the view taken by the learned trial court is not impossible one. In that view of the matter, I see no reason to interfere with the judgment and order of acquittal. Hence, the Revision is dismissed.

(V.M.DESHPANDE, J.)

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