

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

**CRIMINAL REVISION APPLICATION NO. 71 OF 2002**

Shri Yatin Laxman Pabale,  
age 29 years, occ. Business,  
r/o Nimon, Tq. Sangamner,  
Dist. Ahmednagar

...Applicant

VERSUS

1] The State of Maharashtra,

2] Ashok Kashinath Dhanapune,  
age 48 years, occ. Hotel business,  
r/o Nimon, Tq. Sangamner,  
Dist. Ahmednagar

...Respondents

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Shri R.K.Tmekar, advocate for applicant  
Shri V.P.Kadam, A.P.P. for respondent no.1  
Shri S.S.Wagh, advocate h/f  
Shri S.T.Shelke, advocate for respondent no.2  
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**CORAM : V.M.DESHPANDE, J.**

**DATED : 16<sup>th</sup> January, 2015**

**ORAL JUDGMENT :-**

1] The present Revision is filed against the judgment and order of acquittal, passed by the Additional Sessions Judge, Sangamner, dated 19.12.2001, in Sessions Case No. 21 of 2001, by which the learned trial court acquitted the

respondent no.2 accused for the offence punishable under Section 307 of the Indian Penal Code.

2] The applicant is the first informant/victim and was examined as Prosecution Witness no.2.

As per the prosecution case, applicant Yatin was resident of village Nimon, Taluka Sangamner. He used to reside with his uncle and parents. The accused/respondent no.2 also hails from village Nimon and was relative of the first informant.

First informant hold a license to run a country liquor shop at village Nimon. He executed a "nokarnama" in the name of the accused for the period from 1990 to 1991 and as such accused was serving as a servant at the said shop. The differences cropped up amongst the first informant and the accused resulting into cancellation of nokarnama in the month of April, 2000. According to the prosecution case, in view of such cancellation, the accused used to abuse and threaten the first informant. However, the accused being his relative, the matter was not reported to the police.

3] According to the prosecution case, in the intervening night of 24.12.2000 and 25.12.2000 when the first informant got up for urination and went at the back side of his house, that time a blow was given on his head by a weapon like iron rod or

stick. That time, the first informant noticed presence of the accused and other two persons. Due to the said assault, the first informant shouted. His mother came and thereafter he became unconscious. The prosecution case further proceeds that the first informant was admitted in the Life Line Hospital at Nashik and he was in the intensive care unit till 29.12.2000. He regained consciousness on the said date and thereafter he lodged the report with the police station, Sangamner on 30.12.2000. The first information report is at Exh.25.

4] After completion of usual investigation, charge sheet was filed against the present respondent no.2 accused in the court of Judicial Magistrate, First Class, Sangamner. The learned Magistrate found that the offence is exclusively triable by the court of Sessions. Therefore, he committed the case to the Court of Sessions.

5] Charge under Section 307 of the Indian Penal Code was framed against the accused. He denied the charge and claimed for his trial.

6] The prosecution, in order to bring home the guilt, has examined in all six witnesses.

7] The defence of the accused was not only of total denial, but according to him, in view of the political as well as trade rivalry with one Vijay Zalke and the first informant, he was falsely implicated in the crime.

He also examined one defence witness Dr. Ashok Ithape.

8] The prosecution case solely rests on the evidence of present applicant. Even, according to the prosecution case, the incident occurred on 25.12.2000. However, the first information report is recorded on 30.12.2000 and the reason given for such delay is that the first informant was in the hospital. According to the prosecution, initially the first informant was admitted in the hospital of Dr. Tambe at Sangamner and therefrom he was shifted to Life Line Hospital at Nashik. Thus, Dr. Tambe's hospital was the hospital wherein the first informant was first admitted. However, the prosecution has not taken any steps to examine either Dr. Tambe or anyone from his hospital to bring the fact on record about the condition of the first informant when he was admitted in the hospital at Sangamner.

Further, Dr. Sanjay (PW 5) from Life Line Hospital, examined by the prosecution, nowhere states in his evidence that when the first informant was admitted in the hospital he was unconscious. On the contrary, his evidence states as

under :-

“ When the patient had been to the hospital he was in conscious condition.”

Further, a contemporary document (Exh.45), the certificate at the time of admission of the present applicant at Life Line Hospital, clearly shows that, on examination, the doctor found him conscious, not only conscious, but well oriented. Further, there is nothing available on record that he was not conscious during the period when he was admitted in the hospital. Therefore, on the available medical papers and the evidence from the doctor, we will have to discard the evidence of the applicant/first informant that he could not lodge the report till 30.12.2000, for the reason that he was unconscious. In that view of the matter, the prosecution has completely failed to give explanation for recording of the first information report at belated stage.

9] Prosecution Witness No. 4 is one Atul. According to this witness, who is cousin of the first informant, he saw the accused near the door of his house. The house of the accused and the house of the complainant are near to each other. The prosecution, by examining Atul wants to fix the presence of accused near his house and thereby try to impress upon the court to draw an inference that it is the accused who has assaulted the complainant. Worth to note that Atul is not a

witness to the actual incident of assault. Mere presence of the accused near his house cannot be an incriminating circumstance against him. Further, Atul ought to have reported the matter immediately and ought to have narrated about the presence of the accused. In absence of such action on the part of Atul, his evidence is of no use.

It is brought on record that there is a dispute between Atul and the first informant on one hand and the accused on the other on account of liquor shop. Mere dispute amongst them by itself is not sufficient to draw an inference that it is the accused, must have given blow on the first informant. Suspicion, however strong, cannot take place of proof. Criminal case cannot be decided only on the basis of mere suspicion.

10] The trial court on evaluation of the available evidence has rightly discarded the discoveries at the behest of the accused and I see no reason to differ from such finding.

11] The learned court below has further rightly appreciated that the weapon was seized under panchanama (Exh.30) and it does not disclose that at the time of its seizure it was having blood stains. However, surprisingly when the weapon was sent to the Chemical Analyser, blood appeared on the said weapon, however, the blood group was not determined. Appearance of the blood on the rod when it was

sent for chemical analysis creates a serious doubt about the truthfulness of the case and it cannot be used against the accused.

12] The learned court, on over all appreciation of the prosecution case, reached to the conclusion that the prosecution was unable to bring home the guilt of the respondent/accused beyond reasonable doubt.

13] The learned counsel for the applicant fairly stated that he was unable to locate any perversity in the impugned judgment. The scope of the Revision is limited. Unless it is shown that the view taken by the trial court is impermissible, the revisional court should be slow in interfering with the finding of fact recorded by the court below.

14] The upshot of the afore said discussion leads me to pass the following order.

The Revision is dismissed. Rule is discharged.

**[V.M.DESHPANDE, J.]**