

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

CRIMINAL REVISION APPLICATION NO. 82 OF 2002

Laxman S/o Chiman Khengat

Age : 46 Yrs., Occ . : Business,

R/o : Newasa Khd., Tq. Newasa,

Dist. : Ahmednagar.

..... **APPLICANT/**
[ORIGINAL COMPLAINANT]

V E R S U S

1. The State of Maharashtra
Through the P.S.I.,
Sonai Police Station,
Tq. Newasa, Dist. : Ahmednagar.
2. Gangadhar Maruti Darandale
Age : 56 Yrs., Occ. Agril.,
R/o : Ganeshwadi, Tq. Newasa,
Dist. : Ahmednagar.
3. Bhausahab @ Mahadeo Natha Lohkare
Age : 25 Yrs., Occ. Agril.,
R/o : Ganeshwadi, Tq. Newasa,
Dist. : Ahmednagar.
4. Kachru Vithal Lohkare
Age : 46 Yrs., Occ. Agril.,
R/o : Ganeshwadi, Tq. Newasa,
Dist. : Ahmednagar.
5. Mithu Jagannath Lohakare Lohkare
Age : 43 Yrs., Occ. Agril.,

R/o : Ganeshwadi, Tq. Newasa,
Dist. : Ahmednagar.

6. Narayan S/o Dattoba Daule

Age : 41 Yrs., Occ. Agril.,

R/o : Ganeshwadi, Tq. Newasa,

Dist. : Ahmednagar.

..... RESPONDENTS

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Mr. N.N.Shinde, Advocate for the Applicant.

Mr. V.P.Kadam, A.P.P. for R – 1 State.

Mr. K.N.Lokhande h/f Mr. D.G.Nagode,

Advocate for R – 2 to 6.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 15th JANUARY, 2015

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ORAL JUDGMENT :

1. The present Criminal Revision Application is filed by the first informant against the Judgment and Order of acquittal dated 03/01/2002 passed by the learned Judicial Magistrate First Class, Newasa in R.T.C. No. 98/2000, by which the learned Magistrate acquitted the accused for the offences punishable u/ss 143, 147, 323, 427, 506 read with 149 of the Indian Penal Code.

2. Heard Mr. N.N.Shinde, the learned counsel for the applicant and Mr. V.P.Kadam, the learned A.P.P. for respondent No. 1 – State.

3. Mr. N.N.Shinde, the learned counsel for the applicant vehemently submitted that the Judgment and order of acquittal is erroneous and can not stand to the touch stone of law. At the same time, the learned counsel submissively pointed out the case of the first informant and prayed that the interference is warranted in the present case in the revisional jurisdiction of this Court.

With his able assistance, I have gone through the record and proceedings, which was called by this Court at the time of admission and the impugned Judgment thoroughly.

4. The First Information Report (for short, ' F.I.R. ') [Exh.22] was recorded with police station Sonai, District Ahmednagar on 16/07/2000. The said F.I.R. was lodged by the present applicant. Since the F.I.R. was disclosing a commission of cognizable offence, a crime was registered vide Cr. No. I-70/2000 for the offences punishable u/ss 143, 147, 323, 427, 506 read with 149 of the Indian Penal Code

against the accused persons/present respondent Nos. 2 to 5.

5. The Investigating Officer, after completion of usual investigation, found that sufficient evidence is collected to send the accused persons for trial and, therefore, he filed chalan in the Court of the Judicial Magistrate First Class, Newasa. The case was registered as R.T.C. No. 98/2000.

On 16/01/2001, the learned Magistrate framed Charge against accused persons/present respondent Nos. 2 to 5 for the offence punishable u/ss 143, 147, 323, 427, 506 read with 149 of the Indian Penal Code. The accused persons denied the Charge and claimed for their trial.

In order to bring home the guilt of the accused persons, the prosecution examined 4 witnesses.

The learned Judicial Magistrate First Class, Newasa on appreciation of the prosecution case, recorded a finding that the prosecution has failed to bring home the guilt of the accused persons beyond reasonable doubt and, therefore, by giving the benefit of doubt, he acquitted all of them.

6. Prosecution witness No. 1 is Laxman S/o Chiman

Khengat, who is the first informant and the original complainant. Prosecution witness No. 2 Shobha is the wife of P.W. 1 Laxman. Prosecution witness No. 3 is one Nivrutti Dnyandeo Tandale and prosecution witness No. 4 is Narayan Hari Kadam, the Investigating Officer.

7. The F.I.R. [Exh.22] states that the first informant is having his grocery shop at village Ganeshwadi. Since the space was found to be short for the said purpose, he, on 13/08/1999, purchased house from one Adinath Yadav. The first informant was intending to start his grocery shop at that place and, therefore, for fixing the shutter, he was trying to fix iron beams. That time, his said act was opposed by the villagers and, therefore, he stopped the work.

The F.I.R. further discloses that on 15/07/2000 at 6.30 p.m. when he was present in his house purchased from Adinath, that time the accused persons reached there and they asked him not to fix the shutter and assaulted by giving fists and kick blows and also used abusive language to him. They also gave threat to face with dire consequences.

8. Though the incident has occurred at 6.30 p.m.,

the same was reported belatedly after the period of 8 hours in the police station.

One of the reasons for acquitting the present respondents is the delay in lodging report. The learned counsel for the applicant submitted that the F.I.R. came to be recorded at night hours, that fact itself demonstrates that the applicant was having fear of the accused persons as stated in the F.I.R.

The first informant Laxman Chiman Khengat has stated that he was beaten by fists and kick blows by the accused persons and, therefore, he concealed himself in his house due to fear and reached to the police station only in mid night.

Fear due to accused and hiding himself for such fear is a vital fact. Such vital fact is not appearing in the F.I.R. [Exh.22].

The learned counsel for the applicant placed reliance on the authority of pronouncement of the Apex Court reported in the case of **Kanhiyalal and others Vs. State of Rajasthan, AIR 1989 Supreme Court 1515**, Head note ' B ', in order to buttress his submission that the delay is properly explained.

The F.I.R. is not an encyclopedia of the entire prosecution case. However, not finding place in respect of the vital aspect in the F.I.R., creates doubt about its truthfulness. Hiding himself due to fear of the accused persons was not only a vital piece of fact, but also it was a reason for not reporting the matter with police promptly. Normally, the first informant would not have missed to mention such important aspect in his F.I.R. The F.I.R. is not a substantive piece of evidence, but at the same time, it can be used for corroboration and contradiction. The version of the first informant from the witness box has thus to be remain uncorroborated. Further, P.W. 2 Shobha, the wife of the first informant Laxman, is completely silent that there was a fear due to the accused persons and, therefore, her husband did not dare to step out side the house to lodge the report. In that view of the matter, the delay remain to be unexplained.

9. Now, in so far as the main incident is concerned, the first informant Laxman has admitted in his cross examination that about 100 persons were gathered on the spot of the incident. The prosecution has failed to examine

any independent witness in the present case.

10. The evidence of present applicant Laxman [P.W. 1], the first informant, does not disclose the presence of his wife Shobha at the time when he was assaulted by the accused persons. However, Shobha [P.W.2] has claimed that she has witnessed the assault on her husband. We can not forget a fact that the incidence of assault did not take place in the residential house of the first informant, but it was occurred in the house which was purchased by the first informant for his grocery shop. In that view of the matter, non disclosure in respect of the presence of P.W. 2 Shobha in his evidence by Laxman [P.W.1] assumes importance. In the light of such circumstance, the presence of Shobha [P.W.2] is really doubtful and, therefore, I see no reason to record any other finding than the finding recorded by the learned Court below to discard the evidence of P.W. 2 Shobha.

11. To have a corroboration, the prosecution has examined one Nivrutti Dnyandeo Tandale as an eye witness. P.W. 1 Laxman did not claim that he was assaulted by sticks by any of the accused. He only claims that he was assaulted

by fists and kick blows. However, Nivrutti, who claims to be a witness to the occurrence, states from the witness box that Laxman [P.W.1] was assaulted by the accused by sticks and hands.

Further, it is brought on record that Nivrutti is in service of one Mula Sugar Factory and the office hours were till 5.30 p.m. His work place is 12 Kms. away from village Ganeshwadi.

In view of the fact that Nivrutti has not only exaggerated the incident, but also it is really impossible for him to reach to the village within half an hour by travelling 12 Kms. in a remote village. No illegality is committed by the learned Court below while discarding the evidence of Nivrutti also.

12. Further, the fact that Laxman [P.W.1] was not referred for the medical examination, is also having its own impact on the prosecution case.

The Investigating Officer has admitted in his cross examination that he failed to record the statement of neighbours during his investigation. The neighbours would have been the best witnesses to throw light on the

prosecution case.

13. The evaluation of the prosecution case thus clearly shows that there is an element of doubt in the prosecution case. When there is a doubt, the benefit must be extended to the accused persons.

14. Upshot of the aforesaid discussion leads me to pass the following order :

The present Criminal Revision Application is dismissed.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 82.2002 - [J]
