

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

Criminal Revision Application No. 92 of 2002

1. Ganpati s/o. Babu Jadhav,
Age : 47 years,
Occupation : Labourer,
R/o. Daithan,
Taluka : Parbhani,
District : Parbhani.
2. Ashruba s/o. Tukaram Gaikwad,
Age : 42 years,
Occupation : Labourer,
R/o. as above.
3. Kishan s/o. Rama Pawar,
Age : 47 years,
Occupation : Labourer,
R/o. Wazar,
Taluka : Purna,
District : Parbhani.

.. Revision Petitioners
(Original Accused
Nos.1, 2 & 4)

versus

The State of Maharashtra,
Through Complainant -
Paraji s/o. Ashruba Gire,
Age : 64 years,
Occupation : Agriculture,
R/o. Rumna Javala,
Taluka & District : Parbhani.

.. Respondent.

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Mr. S.B. Bhapkar, Advocate, for the revision applicants.

*Mr. S.D. Kaldade, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.**DATE : 17TH MARCH 2015****ORAL JUDGMENT :**

1. Heard Adv. Mr. S.B. Bhapkar appearing for the revision applicants and the learned APP Mr. S.D. Kaldate appearing for the respondent - State.
2. The applicants had filed present revision under Section 397 of the Code of Criminal Procedure, 1973.
3. The applicants herein were prosecuted for offence punishable under Section 394, read with Section 34, of the Indian Penal Code, in Regular Criminal Case No. 190/1985. By the judgment and order dated 14-1-1988, passed by the learned Judicial Magistrate (F.C.), Gangakhed, present applicants were convicted for the offence punishable under Section 394 of the IPC and each of them was sentenced to suffer rigorous imprisonment for 9 months and to pay fine of Rs. 50/-, in default of payment of fine, further rigorous imprisonment for 10 days. Being aggrieved by this judgment and order, the applicants herein had filed Criminal Appeal No. 5/1988. The learned Additional Sessions Judge, Parbhani, vide judgment and order dated 18th September 1997, has been pleased to dismiss the appeal. Hence, this revision.

4. Such of the facts necessary for the decision of this revision application are as follows :-

One Paraji s/o. Ambrubaba Giri had lodged a report at Gangakhed Police Station on 8-7-1984, alleging therein, that in the intervening night of 7th July 1984 and 8th July 1984, he was in his agricultural land Survey No.43, along with his servant. At about 10 p.m., four persons entered into the agricultural land. They had broken the tube light which was installed in the said field. Thereafter, they had mounted assault upon the complainant and his servant. One of the servant, namely, Allauddin, had escaped in order to rescue himself. The complainant had seen the miscreants in the moon light. He had identified them as the persons belonging to Kaikadi community and has named the present applicants in the First Information Report. He has further alleged that they had stolen battery and other articles belonging to him worth Rs. 269/-. On the basis of this report, Crime No. 95/1984 was registered against the accused under Section 394 of the IPC. After completion of investigation, charge sheet was filed against the accused. They were tried. The prosecution has examined as many as six witnesses to bring home the guilt of the accused.

5. PW 1 Shesharao Nile has deposed before the court, that on the same day at about 10.30 p.m., accused nos.1 to 4 came to his agricultural land from the land of Paraji. They mounted assault upon PW 1 Shesharao. They had abused PW 1 Shesharao and had denuded him of his clothes. They were armed with sticks. They had assaulted PW 1 Shesharao. It is pertinent to note that PW 1 Shesharao has not stated in his substantive evidence, that the present applicants were the same persons who had

assaulted and abused him. There is no identification of the accused in the court / before the court. There are inherent omission elicited in the cross examination. The material omissions in the statement under Section 161 of the Code of Criminal Procedure, are elicited in the cross examination.

6. PW 2 Paraji happens to be the first informant. He has deposed before the court in consonance with the FIR which is at Exhibit 24. It is elicited in the cross examination, that the contents of complaint, that the accused persons started to beat him, Kashinath and Allauddin, is incorrect and that the accused persons had only assaulted him and Kashinath. It is pertinent to note that this witness has also not deposed before the court, that he had identified the accused and had given their names in the FIR. The accused have not been identified before the court at the time of trial. The substantive evidence appears to be omnibus in nature.

7. PW 3 Ranba also owns an agricultural land adjacent to the land of the complainant. He had also deposed before the court, that at the time of incident, on the same day, the accused had come to his agricultural land and had taken away his clothes as well as clothes of his son and assaulted PW 3 Ranba and his son, as well. The said witness has also not identified the accused persons before the court as being the same persons who had assaulted PW 3 Ranba on the day of the incident.

8. PW 4 Kashinath s/o. Namdeo has also deposed before the court in consonance with the evidence of PW 1 Shesharao, PW 2 Paraji and PW 3 Ranba. It is elicited and admitted in the cross examination, that

eye sight of PW 4 Kashinath is weak. PW 4 Kashinath has admitted in the cross examination, that the said accused had muffled their faces.

9. PW 5 Dr. Bhalchandra Kundlikrao has examined prosecution witnesses Nos.1 to 4 on the date of the incident. They all had sustained injuries which were simple in nature. PW 5 Dr. Bhalchandra Kundlikrao has proved injury certificates of the prosecution witnesses. The injury certificates are at Exhibits 30, 31, 32 and 33. All injuries are simple in nature.

10. PW 6 Munjaji s/o. Ganpatrao Shinde has acted as a Panch for recovery of Muddemal property. He has identified the Muddemal property in the court.

11. The learned Counsel for the applicants submits that the prosecution has not conducted test identification parade, and that the witnesses have not identified the accused before the court. Hence, according to the learned Counsel for the applicants, in the absence of any substantive evidence in the nature of identification of accused in the court, the conviction recorded against the applicants would be unjustified.

12. As against this, the learned Additional Public Prosecutor has submitted that in the First Information Report itself, the complainant has given the names of the accused persons as he was knowing the accused persons to be persons belonging to Kaikadi community. He has given the first name of all accused persons. However, it is a matter of record, that the said identification has not been substantiated by the prosecution at the

time of trial. The learned Additional Public Prosecutor further submits that the lacunae in the course of investigation shall not always entitle the accused to acquittal.

13. Perused record & proceedings.

14. It prima facie appears that the prosecution witnesses Nos. 1 to 4 have stated about the incident one after another and according to the prosecution witnesses, present applicants are the persons who have committed the said offence. However, it is a matter of record, that none of the prosecution witnesses Nos.1 to 4 has either named the accused in their substantive evidence nor have identified them at the time of trial. The allegations are omnibus in nature. The prosecution has not examined the Investigating Officer or any Police Officer who had recorded statements of the witnesses and hence, accused persons could not prove the omissions and contradictions in their substantive evidence. PW 4 Kashinath has categorically stated that he has a weak eye sight and, therefore, learned Counsel for the applicants has rightly submitted that the identification, as far as PW 4 Kashinath is concerned, is insignificant. The prosecution has failed to prove guilt of the accused beyond reasonable doubt.

15. The learned Additional Public Prosecutor submits that the present application is a revision application and the substantive evidence cannot be appreciated in revision proceedings and, therefore, the accused whose conviction has been confirmed by the appellate court, do not deserve any leniency and prayed that the judgment and order of learned Magistrate, as well as, of the appellate court, be confirmed.

16. As against this, the learned Counsel for the applicants has rightly submitted that the prosecution witnesses had not even mentioned the date of the incident in their substantive evidence. It is rightly submitted that the contents in the FIR under Section 154 of the Code of Criminal Procedure, is only in the nature of corroborative evidence. The learned Counsel has further submitted that the incident is dated 8th July 1984. There is a hanging sword on the present applicants for more than 30 years due to the present case. He, therefore, submits that the applicants deserve to be acquitted as the prosecution has failed to prove its case beyond reasonable doubt.

17. Taking into consideration the nature of evidence adduced by the prosecution, and the submissions advanced across the Bar, this court is of the opinion that the applicants herein deserve benefit of doubt and consequently, the acquittal.

18. In the result, the Revision Application is allowed.

The judgment and order passed by the learned Additional Sessions Judge, Parbhani, dated 18th September 1997, in Criminal Appeal No. 5/1988, thereby confirming the judgment and order passed by the Judicial Magistrate (First Class), Gangakhed, dated 14th January 1988, in Regular Criminal Case No. 190/1985, is hereby quashed and set aside. The applicants - accused are acquitted of the offence punishable under Section 394 of the Indian Penal Code. Fine, if paid by the applicants, be refunded to them. Their bail bonds stand cancelled.

19. The Revision Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV)
JUDGE

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