

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

CRIMINAL REVISION APPLICATION NO. 117 OF 2002

Sow.Shobha Ambadas Supekar

Age : 50 Yrs., Occ. : Agril.,

R/o : Bhambora, Tq. Karjat,

Dist. Ahmednagar.

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

V E R S U S

1. Ankush Ganpat Jagtap
 Age : 49 Yrs., Occ. Agri.,
 R/o : Bhambora, Tq. :
 Karjat, Dist. Ahmednagar.
2. Narayan Ganpat Jagtap
 Age : 31 Yrs., Occ. Agri.,
 R/o : Bhambora, Tq. :
 Karjat, Dist. Ahmednagar.
3. Pramod Ankush Jagtap
 Age : 22 Yrs., Occ. Agri.,
 R/o : Bhambora, Tq. :
 Karjat, Dist. Ahmednagar.
4. Saraswati Ankush Jagtap
 Age : 44 Yrs., Occ. Household,
 R/o : Bhambora, Tq. :
 Karjat, Dist. Ahmednagar.
5. The State of Maharashtra.

**..... RESPONDENTS/
[ORIGINAL ACCUSED]**

..... RESPONDENT

.....

Mr. N.B.Suryawanshi i/b Mr. M.Y.Deshmukh,
Advocate for the Applicant.

None for R – 1 to 4.

Mr. V.P.Kadam, A.P.P. for R – 5 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 20th JANUARY, 2015

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ORAL JUDGMENT :

1. The present Revision Application is directed against the Judgment and Order dated 07/03/2002 passed by the learned 2nd Additional Sessions Judge, Ahmednagar in Criminal Appeal No. 72/2000, by which the learned Sessions Judge allowed the Appeal filed on behalf of the present respondent Nos. 1 to 4 and acquitted them for the offences punishable u/ss 452, 325, 323 read with section 34 of the Indian penal Code.

2. The applicant is first informant/injured in the incident and has approached this Court to ventilate her grievance by challenging the aforesaid Judgment. It is to be noted that against the said acquittal, the State has not

preferred any Appeal.

3. The prosecution case is as under :

The applicant, who is the first informant, lodged First Information Report [for short, ' F.I.R.'] [Exh. 34] on 12/11/1998 with police station Karjat, district Ahmednagar. By the said F.I.R., it was reported that a day prior to the lodging of the F.I.R., the respondents allowed their cattles to enter into the agricultural field of the first informant. The said act on the part of the respondents/accused was objected by Nagesh, son of the first informant. However, at that time, Nagesh was assaulted by respondent No. 1 Ankush.

4. The F.I.R. further proceed that on 13/11/1998 at 7.30 p.m., the first informant and her daughter Tai [P.W. 3] only were present in their house. At that time, the present respondent Nos. 1 to 4 made their forceful entry in the house of the first informant and they used abusive words against the first informant, at the same time, respondent No. 1 – Ankush gave a fist blow, resulting into the falling of one tooth of the first informant.

5. Since the F.I.R. was disclosing a commission of cognizable offence, the police station authority, Karjat registered crime against respondent nos. 1 to 4 vide Crime No. I-46/1998 for the offences punishable u/ss 325, 323, 452, 504, 506 read with 34 of the Indian Penal Code.

6. After completion of the usual investigation, the Investigating Officer was of the view that sufficient material is collected to send the accused persons for trial and accordingly on 14/12/1998 he filed chalan No. 123/1998 in the Court of the Judicial Magistrate First Class, Karjat.

 The Criminal Case was registered as R.C.C. No. 139/1998 and was made over on the file of the learned Judicial Magistrate First Class, Karjat. The learned Magistrate on 15/09/1999 framed Charge against the accused persons. The accused persons abjured their guilt and claimed that they be tried.

7. In order to bring home the guilt of the accused persons, the prosecution has examined in all 8 witnesses, those are : P.W. 1 Shobha Ambadas Suprekar, the first informant and injured; P.W. 2 Ambadas Ramchandra

Supekar, the husband of the first informant; P.W. 3 Tai Ambadas Supekar, daughter of the first informant; P.W. 4 Bashir S/o Pathanbhai Pathan, a panch; P.W. 5 Arun Baburao Salunke, brother of the first informant; P.W. 6 Ajinath Aba Jawale, a panch ; P.W. 7 Maruti Bahiru Jadhav, the Investigating Officer and P.W. 8 Dr. Subhash Bhagwan Shinde, who has examined the injured.

8. The learned Magistrate, after evaluating the prosecution evidence, found that the prosecution was successful in bringing home the guilt of the accused persons and accordingly on 14/11/2000 passed Judgment and order convicting the respondents/original accused for the offences punishable u/ss 325, 323, 452, 504, 506 read with 34 of the Indian Penal Code. Respondent No. 1 Ankush Ganpat Jagtap was sentenced to suffer Simple Imprisonment for six months for the offence punishable u/s 452 of the Indian Penal Code. He was also directed to suffer Simple Imprisonment for six months for the offence punishable u/s 325 of the Indian Penal Code. He was further directed to suffer Simple Imprisonment for three months and to pay fine of ₹ 500/- [Rupees Five Hundred only] for the offence punishable u/s

323 of the Indian Penal Code.

Though the respondent Nos. 2 to 4 were convicted, but instead of sentencing them, the learned Magistrate released them on their executing a Bond of good behaviour of ₹ 2,000/- [Rupees Two Thousand only] for the period of two years u/s 4 of the Probation of Offenders Act.

9. Being dis-satisfied with the said verdict of recording finding of guilt against them, all the respondents preferred Appeal in the Court of the learned 2nd Additional Sessions Judge, Ahmednagar. The same was registered as Criminal Appeal No. 72/2000 and the learned 2nd Additional Sessions Judge, Ahmednagar, on 07/03/2002, was pleased to allow the Appeal filed on behalf of the respondent Nos. 1 to 4 and set aside the Judgment and order of conviction and they were set at liberty. As observed above, the first informant is before this Court.

10. Heard Mr. N.B.Suryawanshi instructed by Mr. M.Y.Deshmukh, the learned counsel for the Applicant in extenso and Mr. V.P.Kadam, the learned A.P.P. for respondent No. 5 - State. None for the respondent Nos. 1 to

4 though they were served and represented by their learned counsel.

11. The submission of Mr. N.B.Suryawanshi, the learned counsel for the applicant is that the perusal of the Judgment of the learned lower appellate Court would reveal that the learned appellate Court has recorded finding without going through the record. Thus, according to him, the Judgment suffers from non application of mind. He, therefore, submitted that this is fit case, wherein the Court should exercise its revisional jurisdiction and should remand the matter for the fresh consideration.

12. In order to buttress his submission, the learned counsel for the applicant has invited my attention to paragraph 6 of the impugned Judgment. In the said paragraph, the learned 2nd Additional Sessions Judge, Ahmednagar has observed as under, :

*“ The Doctor has not been examined.
There is no medical certificate of
complainant ”.*

13. This observation made by the learned Additional Sessions Judge clearly shows that the learned Additional Sessions Judge has not applied his mind, since the Doctor is examined in the prosecution case as P.W. 8 Dr. Subhash Bhagwan Shinde and the Medical Certificate of the applicant is available on record at Exh. 50.

14. No doubt, true it is that the learned Additional Sessions Judge has decided the Appeal in most casual manner. However, after going through the entire prosecution case, to me, it appears that remanding the matter to the learned appellate Court will be a futile exercise, if the evidence of the prosecution witnesses is scanned and evaluated in its true perspective.

15. The learned counsel for the applicant has took me through the evidence of all prosecution witnesses. From the prosecution case, it is clear that there was a dispute in between the families. The F.I.R. is recorded on 14/11/1998. If the F.I.R. is properly examined, it is clear that in main incidence of attack, there is prelude in the prosecution case, viz. on 13/11/1998 in the afternoon, Nagesh, son of the first

informant, when he was present in the agricultural field, that time accused persons deliberately allowed their cattles to enter the agricultural field of the first informant which was objected by Nagesh and at that time he was assaulted by respondent No. 1 Ankush.

The main incident, which is reported in the F.I.R. dated 14/11/1998, has occurred at 7.30 p.m. on 13/11/1998. There is no explanation coming on record from the first informant as to why the report is lodged at belated stage.

16. Nagesh, son of the first informant, is not examined in the present case. If the prosecution case is evaluated in its true perspective, the main incident is sequel of the incident dated 13/11/1998, which occurred in the agricultural field of first informant at noon hours. It was happened to Nagesh. Therefore, the examination of Nagesh, as prosecution witness, was obligatory on the part of the prosecution since it is only Nagesh who could have thrown light in respect of the assault to him by respondent No. 1 Ankush and also the fact about entering the cattles of the respondents/original accused in the agricultural field of the

first informant. No reason is forthcoming as to why the prosecution has not examined Nagesh. Non examination of Nagesh requires to draw adverse inference in respect of first part as it appearing in F.I.R.

17. According to P.W. 1 Shobha Ambadas Supekar and from the F.I.R., it is clear that at the time of the incidence of assault, her husband Ambadas [P.W.2] was not present in the house, therefore, he can not be a witness to the occurrence. The evidence of P.W. 1 Shobha would reveal that respondent No. 1 Ankush gave first blow on her face, due to which she lost one tooth from upper jaw. She further states that there was bleeding from her mouth. Not only that, her evidence would reveal that due to the said bleeding, her saree was stained with blood and there was blood on the floor also. The appearance of the blood on saree of P.W. 1 Shobha is also corroborated by P.W. 2 Ambadas, her husband, who has stated in his evidence that he had shown the blood stained clothes to the police and also by P.W. 3 Tai [P.W. 3], who claims to be an eye witness.

Though the saree and blouse of the injured were blood stained, those clothes are not seized during the

investigation by the Investigating Officer. On the contrary, the Investigating Officer, P.W. 7, has admitted that P.W. 1 Shobha has not shown blood stained clothes to him. The seizure of blood stained clothes would have been a corroborative piece of evidence. It could have corroborated the version of the first informant about the assault on her by respondent No. 1 Ankush. Why the blood stained clothes were not produced before the Investigating Officer and why those clothes were not seized by the Investigating Officer, has remained in the dark cloud of mistry. The prosecution is always obliged to clear all clouds of suspicions hovering around the prosecution case, since it is the duty of the prosecution to prove its case against the accused persons beyond reasonable doubt. When all the prosecution witnesses in chorus are stating that the applicant/first informant P.W. 1 Shobha suffered bleeding injury and the blood was not only oozing from the injury, but her clothes were blood stained and when such clothes are not seized, it not only creates doubt about the truthfulness of the prosecution case but also creates serious doubt as to whether really the prosecution witnesses are witnesses to the truth.

18. Further, according to P.W. 1 Shobha, her tooth was available on the floor. However, that tooth is also not seized by the Investigating Officer. The evidence of the Investigating Officer would reveal that when he visited the spot of incident, he could not locate that part of the body of the first informant and it was disclosed to him that the tooth was misplaced. It is also another circumstance, by which it can be said that there is doubt in the prosecution case.

19. In so far as the medical evidence is concerned, the Medical Certificate of P.W. 1 Shobha, the first informant, is available at Exh. 50. It would be useful to refer the admissions given by the Doctor in the cross examination and they are reproduced hereunder, :

“ It is true that unless microscopic examination, it can not be said that tooth is fallen previously, if same part came in contact of hard and blunt substance. I have not done said examination of the patient in this case ”.

20. Thus, from the cross examination of the Doctor,

it is amply clear that to reach to finding that the falling of tooth is recent one, for that microscopic examination is essential, which is not done. Therefore, the Doctor is unable to state whether falling of tooth is recent or not. This assumes importance that in absence of seizure of tooth and when the Investigating Officer visited the spot of the incident, it is informed to him by the injured that the tooth is misplaced.

21. Thus, in totality of all these circumstances, it is clear that surely it was not a case of conviction. Though the learned lower appellate Court has not applied mind, that by itself will not be sufficient to remand the matter, because on the aforesaid evaluation, to me, it will be a futile exercise and wastage of judicial time.

22. In that view of the matter, the Court passes following order :

(1) The present Criminal Revision Application
is dismissed.

(2) The acquittal of respondent Nos. 1 to 4 is
hereby confirmed.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 117.2002 - [J]
