

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

CRIMINAL REVISION APPLICATION NO. 139 OF 2002

Jijabai w/o Prabhakar Lakal,
age 33 years, occ. Agril.,
R/o Palsap, Tq. and Dist.
Osmanabad

...Applicant
[Original Complainant]

VERSUS

1] Balu s/o Vishwanath Lakal,
age 47 years, occ. Agril.,
R/o Palsap, Tq. And Dist.
Osmanabad,

2] The State of Maharashtra,
through police station,
Dhoki,
Tq. and Dist. Osmanabad

...Respondents
[No.1 Original Accused]

.....
Shri R.K.Ashtekar, advocate for applicant
Shri P.D.Bachate, advocate h/f
Shri A.N.Irpatgire, advocate for respondent no.1
Shri V.P.Kadam, A.P.P. for respondent no.2
.....

CORAM : V.M.DESHPANDE, J.

DATED : 5th February, 2015

ORAL JUDGMENT :-

1] Being aggrieved by the judgment and order of
acquittal, passed by the learned Judicial Magistrate, First Class,

Osmanabad, dated 7.2.2002 in Regular Criminal Case No. 63 of 2000, whereby the learned Magistrate acquitted respondent no.1 for the offences punishable under Sections 324, 341, 342, 504 of the Indian Penal Code, Jijabai, who lodged the first information report, is before this court to ventilate her grievance.

2] I have heard Shri R.K.Ashtekar, learned counsel for the applicant, Shri P.D.Bachate, advocate holding for Shri Irpatgire, learned counsel for respondent no.1 and Shri V.P.Kadam, learned Additional Public Prosecutor for respondent no.2/State.

3] The prosecution case, as it is disclosed in the first information report and the evidence, can be narrated as under :-

On 25.2.2000, Jijabai (PW 1) was proceeding to field from the cattle shed. When she reached near the field of Shivram Lakhal, respondent no.1 Balu, her relative, came near her. That time he was under influence of liquor. He picked up quarrel with her that she is not behaving with him properly and assaulted her with fist and kick blows. Thereafter, she was tied by him to one tamarind tree by the side of cattle shed and thereafter he went away to bring his cow. After some time, her nephew Bharat Dashrath Lakhal (PW 2) came there. He released Jijabai. Then, he went to the accused for inquiry as to

why Jijabai was tied with the tree. Accused used abusive words to Bharat also and took bite of right arm of Bharat.

4] The prosecution examined in all seven witnesses. The trial court has given due weightage to the evidence of Dr. Dhananjay Raut (PW 7), who has deposed before the court that the injuries noticed on the person of Jijabai, which were simple in nature, can be caused by fall. At the same time, as per the evidence, injury appearing on the person of PW 2 Bharat is possible self bite and thus it can be self inflicted one.

5] The evidence and the first information report lodged by Jijabai, if read correctly, makes it clear that there is material variance in respect of spot of bite given by respondent no.1 to Bharat. The first information report shows that after removing Jijabai, Bharat went to the accused, however, her evidence shows that accused took bite to Bharat at the spot of the incident itself. Bharat has also stated that the incident of bite took place near the tamarind tree, which is not supported by contemporary document first information report (Exh.24).

6] Though, Ganpati Lakhal is examined to show that he has witnessed the incident and he tried to rescue Jijabai, respondent no1. Balu extended threats to him that he will assault him by axe, however, presence of this witness on the

spot of incident does not find place in the first information report. Further, this witness is totally silent about the bite being given by the accused to Bharat at the place of incident i.e. near the tamarind tree. Therefore, the learned Judge of the court below has rightly branded him as a got up witness.

7] The scope of Revision against acquittal is very limited. The State has not preferred any appeal against acquittal. Unless perversity is shown, the Revisional Court will not exercise its jurisdiction. From perusal of the record and on scrutiny of the impugned judgment, it is clear that the view taken by the learned trial court is permissible in the light of evidence on record. Further, the learned counsel for the applicant was unable to point out any perversity warranting interference by the Revisional Court. In that view of the matter, Revision fails and is dismissed.

[V.M.DESHPANDE, J.]