

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

Criminal Revision Application No. 37 of 2003

Deorao s/o. Subhanrao Betkar,
Age : 65 years,
Occupation : Agriculture,
R/o. Hivra, Taluka : Purna,
District : Parbhani.

.. Revision Applicant
(Original complainant)

versus

1. The State of Maharashtra.
2. Rawan s/o. Babarao Hambarde,
Age : 45 years,
Occupation : Agriculture.
3. Sakharam s/o. Babarao Hambarde,
Age : 35 years,
Occupation : Agriculture.
4. Motiram s/o. Babarao Hambarde,
Age : 38 years,
Occupation : Agriculture.
5. Kashinath s/o. Babarao Hambarde,
Age : 30 years,
Occupation : Agriculture.
6. Tukaram s/o. Babarao Hambarde,
Age : 32 years,
Occupation : Agriculture.
7. Babarao s/o. Pandoji Hambarde,
Age : 75 years,
Occupation : Agriculture.

Respondent nos.2 to 7, R/o. Hivra,
Taluka : Purna, District : Parbhani.

.. Respondents
(Nos.2 to 7 -
Original accused)

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Mr. S.S. Rathi, Advocate, for the revision applicant.

*Mr. S.G. Nandedkar, Additional Public Prosecutor, for
respondent no.1 - State.*

Mr. S.R. Bagal, Advocate, for respondent nos.2 to 7.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 26TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. S.S. Rathi for the applicant, learned APP Mr. S.G. Nandedkar for respondent no.1 - State, and Adv. Mr. S.R. Bagal for respondent nos.2 to 7.

2. The applicant herein happens to be the original informant in Crime No. 39/2007, registered at Purna Police Station, on 7-4-1997. It is the case of the prosecution, that the complainant i.e. present applicant had approached Purna Police Station on 7-4-1997 and lodged report alleging therein, that the present respondent nos.2 to 7 had, without any reason, assaulted him while he was in his agricultural land. Upon hearing his cries, his son Rangnath had come to the spot and that the accused / respondent nos.2 to 7 had also assaulted Rangnath. They had sustained injuries. They had approached Purna Police Station immediately. They were referred to the hospital. On the basis of his report, Crime No. 39/1997 was registered at the Police Station against present respondent nos.2 to 7 for the offences under Sections 147, 148, 149 and 326 of the

Indian Penal Code. After completion of investigation, charge sheet was filed on 1-5-1997. The case was registered as Regular Criminal Case No. 474/1997.

3. The accused / respondent nos.2 to 7 herein had also lodged a report at Purna Police Station, in respect of the same incident. On the basis of the report lodged by Sakharam Hambarde, Crime No. 40/1997 was registered against the present applicant and that, the present applicant and Rangnath were tried for the offences punishable under Sections 323, 324, read with Section 34 of the Indian Penal Code. The accused / respondent nos.2 to 7 have been acquitted in the present case. So also, the applicant has also been acquitted in the cross complaint in Regular Criminal Case No. 466/1997. Hence, the applicant is challenging the judgment and order of acquittal passed in favour of present respondent nos.2 to 7, by filing present Revision Application.

4. Perused the record & proceedings.

5. The prosecution witness No.1 is the applicant herein. He is the complainant. He has proved the First Information Report which is at Exhibit 31. In the examination in chief, he has stated that he was not aware of the reason or motive for the assault mounted upon him by the accused. All that he has stated is, as a corollary to the said incident, he had sustained injuries. The persons from neighbourhood had appeared on the scene and rescued the applicant i.e. PW 1 Deorao and PW 2 Rangnath. In the cross examination, it is specifically elicited that the she-goats of PW 1 Deorao had entered into the field of the accused and were damaging the crops of sugarcane.

6. PW 2 Rangnath happens to be the son of PW 1 Deorao. He has also deposed before the court, in consonance with the deposition of PW 1 Deorao. There are material omissions and contradictions which are elicited in the cross examination and proved through the Investigating Officer.

7. The learned Counsel for the applicant vehemently submits that at the time of assault, the applicant was not aware of the reason as to why he was being assaulted by the respondents / accused. He has submitted that it was subsequently learnt that she-goats had entered into the sugarcane crop of the respondents / accused. It appears to be a quarrel which had occurred on the spur of the moment. There was no premeditation. The accused / respondent nos.2 to 7 were in their own agricultural land and conducting agricultural operations and, therefore, it cannot be said that they had formed an unlawful assembly.

8. Upon perusal of the evidence of the Investigating Officer PW 9 Kishansing Parihar, Police Head Constable, and the substantive evidence of the Investigating Officer, thereby deposing before the court, that he had investigated into Crime No. 40/1997, on the basis of which R.C.C. No. 466/1997 was registered against the present applicant and his son. The Investigating Officer i.e. PW 9 Kishansing Parihar has deposed before the court, that Sakham and Motiram had also sustained injuries in the same incident. The learned Counsel for respondent nos.2 to 7 submits that there has been suppression of facts. The non-explanation of injuries on the person of the accused would be fatal to the prosecution and in the present case, Sakham and Motiram both had sustained injuries. The learned

Counsel for respondent nos.2 to 7 has, therefore, urged that the revision application be dismissed.

9. The learned Magistrate has taken into consideration the omissions and contradictions which are proved through the Investigating Officer. The learned Magistrate has observed that the complainant is an accused in the cross case. The learned Magistrate has placed implicit reliance upon judgment of the Hon'ble Apex Court, in the case of **Balak Ram Vs. State of U.P.**, reported in **1974 Cr.L.J. 1486**. The learned Magistrate has also placed implicit reliance upon judgment of the Hon'ble Apex Court, in the case of **Lakshmi Singh and others Vs. State of Bihar**, reported in **AIR 1976 SCC 2263**. The findings recorded by the learned Judicial Magistrate (F.C.), in acquitting the respondent nos.2 to 7 / original accused are sound and justifiable. No interference is warranted.

10. Hence, the Revision Application being sans merits, is dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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