

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

CRIMINAL REVISION APPLICATION NO.46 OF 2003

Shaikh Allauddin Shaikh Usman,
Age 65 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad

..Applicant

Versus

1. Shaikh Ibrahim Shaikh Chand,]
Age 40 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad
2. Shaikh Gani Shaikh Balam,
Age 60 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad
3. Shaikh Chand Shaikh Jamal,
Age 70 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad
4. Shaikh Iqubal Gulam,
Age 35 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad
5. Rukshanabi w/o Ibrahim Shakh,
Age 32 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad
6. Bibi w/o Shaikh Gani,
Age 55 years, Occu. Agriculturist,
R/o Ghodegaon, Taluka Gangapur,
District Aurangabad
7. The State of Maharashtra

..Respondents

Mr R.R. Sancheti, Advocate h/f Mr R.R. Mantri, Advocate for petitioner
Mr S.R. Deshpande, Advocate for respondents No.1, 2, 4 to 6
Smt. B.B. Gunjal, A.P.P. for respondent No.7

CORAM : N.W. SAMBRE, J.

DATE : 3rd September 2015

ORAL JUDGMENT

1. This revision application is against the order of acquittal delivered by the Judicial Magistrate, First Class, Gangapur on 1st November 2002, of the offences punishable under Sections 143, 147, 325, 323, 504 and 506 read with Section 149 of the Indian Penal Code in Regular Criminal Case No.118 of 1998.

2. The facts, as are necessary for deciding the present revision application are as under:

3. The revision petitioner, the complainant lodged F.I.R. on 26th October 1996 in above referred offences resulting into registration of crime in question. The prosecution story as narrated by the petitioner in the F.I.R. was that he is resident of village Ghodegaon, Taluka Gangapur. As he was intending to have water connection, upon appropriate permission from the Gram Panchayat, his son started digging for installing water connection. The respondents No.1 to 6 herein have started assaulting him. It is claimed that the respondents No.5 and 6 - Rukshanabi and Bibi, respectively assaulted his wife, whereas rest of the accused assaulted him and his son. The said assault took place on 5th August 1996. It is further claimed that as a result of assault by the respondents, the petitioner suffered grievous injury, as hairline crack was discovered on his nasal bone which was certified clinically to be grievous injury, by the Medical Officer on 6th August 1996.

4. The other facet of the matter is, there exists a civil dispute between the applicant, complainant and the accused persons in relation to the immovable property, which is pending adjudication in Second Appeal at the behest of the applicant. There is one more facet of the matter that prior to lodging of F.I.R. by the complainant, the accused persons lodged F.I.R. of the said incident in which offence punishable under Sections 324 read with Sec.34 of the Indian Penal Code was registered and the applicant was convicted, but was released on good behaviour.

5. In this background, when the investigation in the matter was complete and the charge-sheet was filed, a charge was framed against the present respondents No.1 to 6 at Exh.69. The prosecution examined in all five witnesses, i.e. P.W.1. Shaikh Allauddin at Exh.54, who is author of F.I.R., Exh.55, P.W.2, the father Shaikh Najmuddin at Exh.58, who is injured witness. P.W.3 Shaikh Quadir at Exh.63, an eye witness to the incident, P.W.4 Shamabee at Exh.67, wife of P.W.2, an eye witness and P.W.5 Pandharinath at Exh.76, Investigating Officer.

6. Upon appreciation of the evidence, learned Court below ordered acquittal of all the respondents No.1 to 6 on the ground of unexplained delay in lodging the F.I.R., vague and omnibus allegations of assault, non-examination of the Medical Officer, who has certified the injury, absence of mention in the F.I.R. about Quadir and P.W.4 Shamabee as eye witnesses to the incident.

7. In this background, while questioning the acquittal in the revisional jurisdiction, learned Counsel for the applicant would strenuously urge that the Court below has acquitted the respondents No.1 to 6 without considering the relevant material, which was placed on record, through the eye witnesses to the incident. He would then urge that the matter needs to be remanded for recording the evidence of Medical Officer, as it was the duty of the Court so also of the Public Prosecutor to summon the Medical Officer and the benefit of their fault cannot be passed on to the accused at the cost of present applicant-complainant.

8. Learned A.P.P. and the learned Counsel for respondents No.1 to 6 would urge that the view taken by the learned Court below in acquitting the accused is based on cogent and proper reasons. According to them, the acquittal as ordered is based on the appreciation of material evidence, as was brought on record and then urged that the revision application be dismissed, as the same does not warrant any remand, as prayed.

9. I have bestowed my anxious thoughts to the submissions made. From the record, it depicts that accused No.2 Shaikh Gani Shaikh Balam has expired on 22nd January 2011 and his death certificate is placed on record. In view thereof, the present revision application stands abated and dismissed against him.

10. So far as the evidence that is brought on record by examining the eye witnesses and the victim is concerned, it is required to be noted that the overall reading of the evidence depicts that none of the

witnesses have attributed any specific role of assault on the petitioner by a particular accused person. The complaint speaks of the assault on nose, which has resulted into hairline fracture. The said assault could be read from the injury certificate, as caused because of hard and blunt object. The allegations in the F.I.R. speak of use of fists, blows in commission of crime in question. There is no specific role attributed to the respondents No.1 to 6 of actively participating in commission of crime by using any weapon. Taking cumulative effect of evidence that was brought on record, coupled with the fact of pendency of civil litigation between the parties and the conviction of the present petitioner, upon the complaint of respondents herein, for an offence punishable under Section 324 of Indian Penal Code, in my opinion, the view taken by learned Court below appears to be plausible view.

11. The non-examination of Medical Officer, for which the prayer for remand is made, in my opinion, is not called for further consideration, for the reason that the other evidence of eye witnesses is taken into consideration, as is discussed herein above. No case of involvement of the respondents No.1 to 6 in crime in question could be inferred.

12. Learned Court below, in my opinion, has rightly relied upon the provisions of Section 32 of the Evidence Act so as to infer that the present respondents No.1 to 6 were prima facie involved in commission of crime in question.

13. In this background, in my opinion, the revision does not weigh any merit. As such, stands dismissed.

(N.W. SAMBRE, J.)

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