

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No.89 Of 2003.

(1) Vishnu Dnyandeo Navale.
Age: 30 Years, Occ.: Agriculturist.

(2) Vitthal Dnyandeo Navale.
Age: 28 Years, Occ.: Agriculturist.

Both R/o.: Takli Nilwana, Tal. Manwat,
Dist. Parbhani. :: **Applicants.**

Versus

(1) The State of Maharashtra.

(2) Sitaram Ganpat Wajir.
Age.: 30 Years., Occ.: Agriculturist.

(3) Sunil Ganpat Wajir.
Age.: 18 Years., Occ.: Agriculturist.

(4) Vitthal Bapurao Wajir.
Age.: 30 Years., Occ.: Agriculturist.

(5) Anil Sitaram Wajir.
Age : 21 Years., Occ.: Agriculturist / Education.

All R/o.: Ganpur, Tal. Jintoor,
Dist. Parbhani. :: **Non-Applicants.**

Appearance =>

Mr. A.S. Mantri, Advocate for the Applicant. Not Present.

Mr. V.P. Kadam, Additional Public Prosecutor for the State of Maharashtra / Non-Applicant No.1.

Mr. B.R. Sontakke-Patil, Advocate for Non-Applicant Nos.2 to 5. Not Present.

CORAM : V.M. DESHPANDE, J.

DATE : 23rd FEBRUARY, 2015.

ORAL JUDGMENT:-

By the present Criminal Revision Application, the applicants are challenging the judgment and order dated 9th December, 2002 of acquittal passed by the learned Judicial Magistrate, F.C., Sailu, Dist. Parbhani, passed in Regular Criminal Case No.237 Of 2000 whereby, the learned Magistrate was pleased to acquit Non-Applicant Nos. 2 to 5 for the offences punishable under Section.s. 452, 323, 504, 506 read with 34 of the Indian Penal Code.

[2] None present for the Applicants. None present for Non-Applicant Nos. 2 to 5.

[3] Heard Mr. V.P. Kadam, learned Additional Public Prosecutor for the State of Maharashtra / Non-Applicant No.1. With his assistance, I have gone through the record and proceedings.

[4] Present Criminal Revision Application is filed by the first informant Vishnu Dnyandeo Navale, who lodged the First Information Report with Police Station, Bori, Tal. Jintoor, Dist. Parbhani on 22nd August, 2000. Said F.I.R. was recorded as C.R. No.63/2000, since it disclosed the commission of cognizable offences. After completion of usual investigation, charge-sheet was presented by the Investigating Officer in the court of the Judicial Magistrate, F.C., Sailu.

[5] The learned Magistrate framed Charge against the accused, who denied the said Charge and claim for their trial. In order to bring home the

guilt of accused, prosecution has examined in all four witnesses. The learned trial court, as observed in the opening paragraph of this judgment, found that prosecution has utterly failed to prove the alleged guilt, beyond reasonable doubt and acquitted them.

[6] From the record, it is clear that accused persons and the first informant are closely related. Wife of Vitthal, younger brother of first informant – Vishnu, is the sister of accused persons. From the record, it is clear that, undisputedly the relations between the first informant and accused were strained.

[7] F.I.R. Exhibit - 26 shows that on the day of incident, i.e. on 22nd August, 2000, first informant was sitting on the platform of Hanuman temple at village. That time, he heard hue and cry of quarrel from the side of his house, requiring him to rush towards his house. When he reached the spot, he found that, accused persons were assaulting to his younger brother – Vitthal. It is also stated in the F.I.R. that, that time, he was also assaulted by the accused by means of stick blows and iron rod. It is also specifically mentioned in the First Information Report that one Sudam Kankute was one of the witness alongwith Parwatibai Bansode.

[8] Vishnu, first informant was examined as PW No.1. He has very specifically deposed in his evidence that on the day of incident, he was assaulted by accused No.2 by means of stick on his leg. That time, he was caught hold by accused No.1; whereas accused No.4 gave blow of iron rod on his head, resulting into sustaining bleeding injury and accused No.5 also beat him. His evidence would reveal that, that time, Sudam and Daulat came there and they rescued him from the clutches of the accused. His evidence would further reveals that, he rushed towards the Police Station however,

firstly he referred for medical examination and thereafter, his report was lodged.

[9] Though it is consistent case of the prosecution that, Vitthal, younger brother of Vishnu was assaulted, for the reasons best known to the prosecution, said Vitthal was not examined before the court. No reason was supplemented for non examination of said Vitthal. Further though Vishnu has claimed that he was assaulted on his leg and head and, thereby, he sustained bleeding injury and though he was sent for his medical examination, injury certificate is not brought on record nor Medical Officer, who examined him has proved the injury certificate. There is no seizure memo showing seizure of clothes of Vishnu. Further in the present case, the Investigating Officer is also not examined and seizure of alleged weapons remained to be proved.

[10] It is the claim of first informant that he was rescued by Suresh and Daulat. Reference of Suresh also found in the First Information Report. However, neither Suresh nor Daulat were examined by the prosecution. PW No.2 Daulatrao Deshmouk appears to be another Daulat, since he was examined only on the point of spot panchnama, who proved the spot panchnma Exhibit - 45.

[11] Admittedly, there is dispute between the parties. In that view of the matter, corroboration to the version of first informant was necessary. Said corroboration could have been from the evidence of Suresh and Daulat, who were not only present there but who witnessed the incident and rescued the first informant and his brother. Further, corroboration could have been from the medical evidence in order to establish the injury appearing on the person of Vishnu, as claimed by him.

[12] In absence of these things, I see no reason to upset the findings recorded by learned Magistrate in acquitting the accused persons. Scope of Revision against acquittal is limited. After going through the impugned judgment, I see no reason to upset the impugned judgment, since on evaluation of the prosecution case, as observed by me, in foregoing paragraphs, view taken by the learned Magistrate is possible one. Hence, Criminal Revision Application is dismissed. Rule discharged.

(V.M. DESHPANDE, J.)