

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

CRIMINAL REVISION APPLICATION NO. 99 OF 2003

Ashok Baburao More

Age : 37 Yrs., Occ. Service,

R/o : Nimbhora station,

Tq. Raver, Dist. Jalgaon.

.... APPLICANT/

[ORIGINAL INFORMANT]

V E R S U S

1. Manohar Kisan Tayde
Age : 40 Yrs., Occ. Service,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
2. Samadhan Bhavsing Mahale
Age : 29 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
3. Kiran Devidas Mahale
Age : 32 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
4. Dinesh Baburao Lochure

Age : 32 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.

5. Pandit Digambar Tayde
Age : 35 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
6. Gariba Bhurva Dhondud Mahale
Age : 43 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
7. Vishwanath Ramesh More
Age : 23 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
8. Chandrakant Kitkul Bhalerao
Age : 43 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.
9. Ashok Laxman More
Age : 39 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.

10. Sopan Digambar Tayde
Age : 32 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.

11. Bandu Vikas Devids Tayde
Age : 32 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.

12. Dilip Digambar Tayde
Age : 31 Yrs., Occ. Labour,
R/o : Boudh Wada,
Nimbhora, Tq. Raver,
Dist. Jalgaon.

**[R – 5 to 12 are deleted
as per Court Order
dated 21/04/2003]**

.... RESPONDENTS/

[R – 1 to 12

ORIGINAL ACCUSED]

13. The State of Maharashtra

.... RESPONDENT

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Mr. K.C.Sant, Advocate for Applicant.

Mr. V.P.Kadam, A.P.P. for R - 13 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 25th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Respondent Nos. 1 to 4 were acquitted by the learned Judicial Magistrate First Class, Raver on 17/01/2003 in S.C.C. No. 826/1999 for the offence punishable u/s 147, 341, 323 and 504 of the Indian Penal Code. Though the learned Magistrate acquitted respondent Nos. 1 to 4, the State did not prefer Appeal against the acquittal. It is the first informant who is before this Court to challenge the order of acquittal.

2. The first informant lodged report on 07/01/1999 with police station Nimbhora. The said report is at Exh. 41. The sum and substance of the First Information Report [hereinafter referred as 'F.I.R.' for the sake of brevity] is that the Applicant is working as Conductor with Maharashtra State Road Transport Corporation at Raver Depot. On 07/11/1999, when he was returning to his house on motorcycle at Nimbhora in between 6.30 to 6.45 p.m., respondent Nos. 1,2 and 4 accosted him. Respondent No. 1 used abusive words and asked as to why he is making propaganda against him in the election. That time, 10-12

persons from Boudha Wada came there and they started beating him. That time, Arvind Nimbhore, Bhagwan Mahale and Alamgir rescued him. He, therefore, rushed to the police station and lodged report. The police referred him to the Primary Health Centre at Nimbhora, where he was examined by Doctor. The injury certificate is at Exh.47.

3. During trial, 3 witnesses were examined including the first informant. Except P.W. 1 i.e. first informant, the remaining witnesses turned hostile and they did not support the prosecution. The injury certificate was admitted by defence. The learned trial Court on taking over-all view of the prosecution case, has acquitted respondent Nos. 1 to 4 along with others.

4. Mr. Sant, the learned counsel for the applicant vehemently urged before this Court that the learned trial Court has failed to consider the evidence of P.W. 1 correctly. The learned trial Court ought to have convicted respondent Nos. 1 to 4, since the applicant has specifically ascribed role against them.

5. The prosecution was launched against 12 persons. All were acquitted. The present Revision application was also filed against 12 persons, however the original accused Nos. 5 to 12 were deleted from the array of respondents in the present Revision Application by the applicant.

6. In the present case, there is specific reference in the F.I.R. that the first informant was assaulted by the mob of 10-12 persons, of which present respondent Nos. 1 to 4 were the members. That time, he was rescued by the witnesses Arvind Nimbhore, Bhagwan Mahale and Alamgir. However, these witnesses did not support the prosecution case. Thus, the claim of the first informant about actual assault is totally uncorroborated version.

7. Further, within one hour the applicant was sent for medical examination and medical certificate is at Exh. 47. The Doctor who is examined has specifically stated in the injury certificate that the age of injury as 'within 8 hours'. It is to be noted that from the injury certificate, it is clear that the applicant was examined on 07/11/1999 at 7.30 p.m. Even

according to the first informant, the incident occurred in between 6.30 and 6.45 p.m. In that view of the matter, the age of the injury as mentioned in clause No. 4 of the injury certificate assumes importance and a doubt is created as to whether really the injuries mentioned in the medical certificate [Exh.47] are caused during the incident as alleged by the first informant.

8. The first informant has also admitted, when he was in witness box, that police station is situated at 5 minutes distance away from the spot of incidence. However, the incident was reported by him to the police after 1 hour. Looking to the fact that police station was situated just 5 minutes distance from the spot of occurrence, lodging of F.I.R. after a period of 1 hour assumes importance, especially when, as to why the first informant required 1 hour to lodge F.I.R., is not at all explained either in the F.I.R. or during the course of his evidence. This aspect is rightly considered by the learned trial Court. Thus, the delay remained unexplained.

9. The present Revision Application is against the acquittal. The scope of the Revision against acquittal is

limited. To succeed in the Revision against acquittal, the applicant should demonstrate that the Judgment of acquittal is out of perverse approach of the court below. The findings recorded by the learned trial Court clearly shows that there is no tinch of perversity.

10. Hence, the present Revision application is dismissed.

[V.M.DESHPANDE, J.]

KNP/Cr. Revn. Apln. 99.2003 - [J]