

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

Criminal Revision Application No. 149 of 2003

Gopal s/o. Namdeo Survase,
Aged : 30 years,
Occupation : Agriculture,
R/o. Dhanegaon,
Taluka and District : Latur.

.. Revision Applicant
(Original PW 7)

versus

1. Balaji s/o. Gyandeo Survase,
Aged : 25 years,
Occupation : Agriculture,
R/o. Chincholi (B),
Taluka : Latur,
At present R/o. Dhanegaon,
Taluka & District : Latur.

2. Dhondiba s/o. Bhavani Kamble,
Age : 27 years,
Occupation : Labourer,
R/o. Mataji Nagar,
House of Malibai, Latur.

.. Respondents
(Nos.1 & 2 - Original
accused)

3. The State of Maharashtra.

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*Mr. G.G. Vayal, Advocate, for the
revision applicant (Absent).*

*Mr. Mobin H. Shaikh, with Mr. V.N. Shelke,
holding for Mr. R.N. Dhorde, Senior Advocate,
and Mr. V.R. Dhorde, Advocate, for respondent
nos.1 and 2.*

*Mr. U.S. Mote, Additional Public Prosecutor,
for respondent no.3 - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 20TH MARCH 2015

ORAL JUDGMENT :

1. None present for the revision applicant. Heard Adv. Mr. M.H. Shaikh with Adv. Mr. V.N. Shelke h/f. Sr. Adv. Mr. R.N. Dhorde and Adv. Mr. V.R. Dhorde for respondent nos.1 and 2, and the learned APP Mr. U.S. Mote for respondent no.3 - State.

2. The applicant herein is Prosecution Witness No.7 in Sessions Case No. 34/2001. Being aggrieved by the judgment and order dated 25th February 2003, passed by the learned IInd Additional Sessions Judge, Latur, in Sessions Case No. 34/2001, thereby acquitting the respondent nos.1 and 2, of the charges under Sections 302, read with Section 34 of the Indian Penal Code, the Prosecution Witness No.7 had filed the present revision challenging the judgment and order of acquittal.

3. Such of the facts necessary for the decision of this revision application are as follows :-

That, Gyandeo Rokdoba Survase had landed property at village Dhanegaon and Chincholi. The respondent no.1 herein happens to be the

son of deceased Gyandeo. It is the case of the prosecution, that there was dispute between Gyandeo and his son Balaji on account of agricultural land situated at village Dhanegaon. That, Gyandeo had alienated the said land in favour of PW 7 Gopal Survase and his brother Surdas Survase. There was a dispute between the father and son. The father used to sleep in Nath Temple. It is alleged that in the intervening night of 18th and 19th January 2001, Gyandeo was sleeping in the Nath Temple. In the midnight, the complainant Dhondiram Survase heard humping noises and, therefore, he awoke from the sleep. In the tube light, he saw that respondent no.1 was assaulting his father with bricks on his head. He tried to restrain respondent no.1 from assaulting, however, Dhondiram was threatened of dire consequences and, therefore, he left the place of offence. He had then approached PW 6 Dattatraya Chaudhary, Ex-Police Patil of the village and narrated him about the incident. That, PW 6 Dattatraya Chaudhary came along with Police personnel at the scene of offence on 19-1-2001. A complaint was lodged at the Police Station, Gategaon. The investigation was set in motion. After completion of investigation, charge sheet was filed. The case was committed to the Sessions Court and registered as Sessions Case No. 34/2001. The prosecution examined as many as 11 witnesses to bring home the guilt of the accused.

4. The prosecution has examined Dhondiram Survase as PW 3. It is the case of the prosecution, that PW 3 Dhondiram is the first informant. It is clear, that he has stated in his examination in chief, that he had seen original accused no.1 assaulting his father. When he attempted to restrain respondent no.1 from assaulting father of respondent no.1, he was also threatened of dire consequences. In the examination in chief, he has

stated that he had signed on the complaint Exhibit 31 in the Police Station. It is elicited in his cross examination, that he was initially taken to Nath Temple and thereafter he was taken to the Police Station. From the tenor of his cross examination, it appears that the Police had prepared Panchanama prior to registration of offence. On the next day, he has signed on Exhibit 31. That, the witness is unable to read and write, but can only sign. According to him, his statement was not recorded but Police had obtained his signature on written paper and, therefore, he was not aware of the contents of the written document. It can be inferred that PW 3 Dhondiram had not set the law in motion. That, he could not have been treated the first informant as the Police already had information about the alleged incident and the investigation had started prior to registration of offence.

5. It is the case of the prosecution, that deceased Gyandeo was also administered poison. It is pertinent to note that the post mortem notes, which are at Exhibit 17/C, would indicate in Column No.17, that the deceased had sustained contused lacerated wound on the middle portion of the head, size 2 X ½ X ½ cm; one lacerated wound on the forehead and another on the occipital region. However, Column No.19 does not indicate that the said head injury was fatal as it is indicated that nothing abnormal detected. The opinion, as far as probable cause of death was reserved and viscera was preserved for chemical analysis. The Chemical Analyser's report which is at Exhibit 21/C would indicate that there was evidence of Organophosphorous insecticide Dimethoate (Rogor). It is, therefore, clear that deceased Gyandeo died due to poisoning. However, there is no evidence to the effect that he was administered poison at the

hands of respondent no.1.

6. Moreover, the revision application is filed by one of the interested prosecution witnesses in whose favour deceased Gyandeo had alienated the land. Taking into consideration the evidence adduced by the prosecution, and the submissions advanced across the bar, by the learned Counsel appearing for respondent nos.1 and 2 / original accused, it is clear that the prosecution has failed to prove guilt of the accused beyond reasonable doubt.

7. The learned Counsel for respondent nos.1 and 2 / original accused has placed reliance on the judgment of the Hon'ble Apex Court, in the case of ***Venkatesan Vs. Rani and another***, reported in ***2013 (14) SCC 207***, wherein Hon'ble Apex Court has held that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in exercise of its revisional jurisdiction.

8. In the present case, there is nothing on record to indicate that the learned Additional Sessions Judge has committed a manifest error of law or procedure or appreciation of evidence adduced by the prosecution. The learned Additional Sessions Judge has recorded justifiable reasons for acquitting the accused. Hence, no interference is warranted.

9. In the result, the Revision Application is dismissed.

(SMT. SADHANA S. JADHAV)
JUDGE

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