

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

Criminal Revision Application No. 177 of 2003

Gulam Mohammad s/o. Gulam Ahmed,
Age : 24 years,
Occupation : Driver,
R/o. Bada Darwaza, Khultabad,
District : Aurangabad.

.. Revision Applicant.

versus

1. The State of Maharashtra.
2. Syed Samad s/o. Hafij Hanif,
Age : 20 years,
Occupation : Labour,
R/o. Khultabad,
District : Aurangabad.
3. Salimoddin s/o. Gulam Mohiyoddin,
Age : 34 years,
Occupation : Labour,
R/o. as above.
4. Mujiboddin s/o. Gulam Mohiyoddin,
Age : 30 years,
Occupation : Labour,
R/o. As above.
5. Hafij s/o. Hanif Gani,
Age : 43 years,
Occupation : Labour,
R/o. as above.

All R/o. Behind Dargah, Bawis Khwaja,
Bada Darwaza, Taluka : Khultabad,
District : Aurangabad.

.. Respondents.

.....

Mr. N.S. Ghanekar, Advocate, for the revision applicant.

*Mr. U.S. Mote, Additional Public Prosecutor, for
respondent no.1 - State.*

*Mr. Naseem R. Shaikh, Advocate, holding for
Mr. J.R. Shaikh, Advocate, for respondent nos.2 to 5.*

.....

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 27TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. N.S. Ghanekar for the revision applicant, learned APP Mr. U.S. Mote for respondent no.1 - State, and Adv. Mr. N.R. Shaikh h/f. Adv. Mr. J.R. Shaikh for respondent nos.2 to 5.
2. The applicant herein happens to be the original complainant in Crime No. I-129/2000, registered at Khutabad Police Station [District : Aurangabad], against the accused / respondent nos.2 to 5, for the offence punishable under Section 326, read with Section 34, of the Indian Penal Code. The original accused / respondent nos.2 to 5, have been acquitted of the offence punishable under Section 326, read with Section 34, of the IPC, vide judgment and order dated 15th March 2003, passed by the learned 5th Judicial Magistrate (F.C.), Aurangabad, in Regular Criminal Case No. 1791/2000.
3. It is the case of the prosecution, that on 22nd October 2000,

Gulam Mohammad s/o. Gulam Ahmed i.e. the present revision applicant, lodged a report at Khultabad Police Station, alleging therein that on 20th October 2000, his brother Gulam Khadir had been to watch a movie at Shalimar Theatre at Khultabad. It is alleged, that at about 11.30 p.m., his brother came home in an injured condition. The informant asked his brother about the cause of the injuries and he had informed that due to civil disputes over the residential house, accused told the complainant that he should convince his father for selling the house to them. Thereafter, accused / respondent no.2 made assault by means of sharp weapon on the neck of the complainant and accused fled away from the spot. Thereafter, the injured was taken to Khultabad Primary Health Centre and from there, to the Medical College & Hospital at Aurangabad. On the basis of said report, Crime No. I-129/2000 was registered at Khultabad Police Station on 22nd October 2000. After completion of investigation, charge sheet was filed on 12th November 2000. The case was registered as R.C.C. No. 1791/2000. The learned Judicial Magistrate (F.C.) had acquitted all the accused of the charges levelled against them. Hence, the present Revision Application preferred by the original complainant, against the said order of acquittal.

4. The learned Counsel for the applicant submits that, in fact, the victim was examined at Medical College & Hospital at Aurangabad. That, he had sustained grievous injuries. However, it appears from the record, that the said injury certificate has not been proved. The patient had been referred to the Medical College & Hospital at Aurangabad from Khultabad. However, the initial injury certificate is not on record. The First Information Report has been lodged practically after two days of the

alleged incident. The prosecution has not examined the Doctor who had treated the injured and hence, the injury certificate was not proved.

5. The learned Counsel for the applicant submits that the prosecution has not examined the Investigating Officer and the same has caused serious prejudice to the complainant. Upon perusal of the substantive evidence adduced by the prosecution, it appears that the victim had sustained injuries. PW 1 Gulam Mohammad Gulam Ahemad i.e. the complainant has specifically admitted in the cross examination, that initially the victim was taken to the hospital at Khultabad and he was in the said hospital for more than half an hour. A letter was given by the Doctor of the hospital at Khultabad, to refer the patient to Ghati Hospital at Aurangabad. He is not aware as to who had given the history of assault to the Doctor. Neither there is any evidence on record to show that the history of assault by the present applicant was given at the Medical College & Hospital at Aurangabad. There are inherent omissions and contradictions in the evidence of PW 1 Gulam Mohammad Gulam Ahemad which are reflected in para 5 of his deposition. He has admitted in the cross examination, that his brother Gulam Khadir had not informed him about particular weapon by which he was assaulted. Police had interrogated the victim 4 - 5 times after the alleged incident. There is nothing on record to show that the injured was unconscious and, therefore, his statement could not be recorded.

6. The victim Gulam Khadir Gulam Ahemad is examined as PW 2. He has also deposed before the court. His statement was recorded after two days of the alleged incident. He has specifically admitted before the

court, that in the hospital at Khultabad, he had not disclosed about the history of assault to the Doctor, nor the same was disclosed to the Doctor in Ghati Hospital at Aurangabad. He has further deposed that although he was accompanied by his friends at the relevant time, they had not made any attempt to rescue him and pacify the quarrel and he had come home alone.

7. PW 3 Naimoddin Syed Jamaloddin is the Panch witness for the spot Panchanama. PW 4 Fajloddin Moinoddin is an eye witness to the incident. All that he had stated is, there was an assault by accused / respondent no.2 and accused / respondent nos.3 and 4 had caught hold the victim Gulam Khadir. When they raised hue and cry, the accused had fled from the spot. He has deposed before the court, that he had taken the injured to his house and narrated the incident to the brother of the injured. However, the same has been falsified by PW 2 Gulam Khadir himself and, therefore, the said evidence cannot be relied upon. The same is the case is with PW 5 Najmoddin Jamiloddin Shaikh.

8. The learned Judicial Magistrate (F.C.), Aurangabad, has rightly recorded that the accused deserve to be acquitted for want of cogent and convincing evidence. The reasons assigned by the learned Judicial Magistrate (F.C.) are sound and justifiable, and no interference is warranted. The learned Judicial Magistrate (F.C.) has rightly held that the injury certificate put forth by the prosecution has not been proved. The view taken by the learned Judicial Magistrate (F.C.) is fit and proper in the given circumstances. That, whenever there are two views possible, the court is bound to take the view in favour of the accused.

(6)

Cri. Revn. Appln. No. 177 of 2003

9. For the reasons assigned herein above, the Revision Application being sans merits, is dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

.....

puranik / CRIREVN177.03