

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

CRIMINAL REVISION APPLICATION NO. 193 OF 2003

Mauli S/o Sanjeevan Bidgar,
Age : 28 years, Occu.: Agri and Business,
R/o. Daudpur, Tq. Parli-Vaijanath,
Dist. Beed.

...Applicant

Versus

1. The State of Maharashtra.
2. Dashrath S/o Vithal Bidgar,
Age : Major, Occu: Agri,
R/o. Daudpur, Tq. Parli-Vaijanath,
Dist. Beed.
3. Subhash S/o Vithal Bidgar,
Age : Major, Occ.: Agri,
R/o. Daudpur, Tq. Parli-Vaijanath,
Dist. Beed.

...Respondents

.....
Shri. H. K. Mundhe, Advocate for the applicant
Shri. S. M. Jadhav, APP for respondent/State
Shri. Govind Kulkarni, Advocawte h/f Shri. R. S. Deshmukh,
Advocate for respondent No. 2 and 3
.....

**WITH
CRIMINAL REVISION APPLICATION NO. 305 OF 2003**

Mauli S/o Sanjeevan Bidgar,
Age : 28 years, Occu.: Agri. and Business,
R/o. Daudpur, Tq. Parli-Vaijanath,
Dist. Beed.

...Applicant

Versus

1. The State of Maharashtra.
2. Rambhau S/o Vithal Bidgar,
Age : Major, Occu: Agri,

R/o. Daudpur, Tq. Parli-Vaijanath,
Dist. Beed.

...Respondents

.....
Shri. H. K. Mundhe, Advocate for the applicant
Shri. S. G. Nandedkar, APP for respondent/State
Shri. Govind Kulkarni, Advocate h/f Shri. R. S. Deshmukh,
Advocate for respondent No. 2
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CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 9TH, 2015.

ORAL JUDGMENT : -

. Heard learned Counsel for respective parties.

2. The applicant herein happens to be the original complainant in C.R. No. 80 of 1997, registered at Parli-Vaijanath Police Station (Rural), Dist. Beed, for offences punishable under Sections 435, 324, 325 read with 34 of the Indian Penal Code.

3. Such of the facts necessary for a decision of these revision applications are as follows:

On 8th June, 1997 the present applicant lodged a report at the Police Station Parli-Vaijanath alleging therein that on 8th June, 1997, in the midnight a labour Shri. Shrimant Vitthal Aagwan came home and had informed him that the fodder which was stocked next to their tin-shed was set on fire by the present respondents No. 2 and 3. Immediately, the

complainant, his mother Gangubai, his cousin Tukaram and his father Sanjeevan went to the spot. They were attempting to distinguish the flames. At that time, the accused persons came on the spot, armed with axes and sticks. It is alleged, that the accused Rambhau was asserting that, in fact he had purchased the land and he was asking the complainant to return back the said land to him. There was a verbal altercation which had become violent subsequently. Rambhau is alleged to have assaulted the father of the complainant with stick and axe. Dashrath had assaulted his mother and Subhash had assaulted his cousin Tukaram. They had sustained injuries. People in the vicinity had noticed the incident wherein the complainant and his parents were assaulted by the accused persons. The complainant has further asserted that he has suffered financial loss to the extent of Rs. 50,000/- due to igniting the fodder. On the basis of the said report, Crime No. 159 of 1997 was registered against the accused. Investigation was completed charge-sheet was filed. The case was registered as Reg.Cri.Case No. 7 of 1998. The prosecution had examined seven witnesses to bring home the guilt of the accused. The learned JMFC, Parli-Vajnath vide judgment and order dated 11th March, 2003 has been pleased to acquit the accused from all the charges levelled against them. Hence, these revision applications.

4. Learned Counsel for the applicants submits that, the learned Magistrate has not appreciated the evidence in its proper perspective. The learned Counsel for the applicant has drawn attention of this Court to the injury certificates of the witness. Upon perusal of the injury certificates, it appears that Sanjeevan had sustained as many as seven injuries. The injury No. 1 was a grievous injury whereas; the other injuries were simple in nature. Victim Gangabai had also sustained an incised wound on her Head which was shown as a grievous injury. Tukaram had sustained a contused lacerated wound on his head which was also shown as simple injury. The said injury certificates are at Exh. 53, 54 and 55 of the proceedings. The prosecution has examined Dr. Madhav Mundhe to prove the said injury certificates. He has proved the said injury certificates. It is elicited in the cross-examination that the contusions and abrasions are possible by fall of a person on rough substance with sufficient force. That, the persons were referred by Parli Police Station. Dr Mundhe has evaded to answer the time of examination of the victims. He had not brought along with him the reference letter sent by the police. He has asserted that he had taken entries about the examination of the said persons in the M.L.C. register however, he could not

produce the same before the Court. He had sought time to produce the M.L.C. register. He has expressed his inability to comment upon the history given by the injured at the time of admission. He has admitted that the certificates issued at Exh. 53, 54 and 55 are in his own handwriting. He was examined on 11th February, 2003 i.e. practically after six years of the alleged incident and, therefore, he has rightly submitted that his memory does not permit him to depose before the Court in the absence of the M.L.C. register. The learned Magistrate had considered this aspect and had arrived at a conclusion that in the absence of the original M.L.C. register, it cannot be said that the injuries were proved. The learned Magistrate has considered that the victims had specifically stated before the Court that at the time when the fodder was set on fire several villagers had assembled on the spot however, none of them had made any efforts to extinguish the fire neither intervened to help the complainant. The learned Magistrate has drawn an inference of the very fact that, none of the villagers or the people residing in the neighborhood had seen the fodder being set on fire and not attempting to distinguish the fire it cannot be said that the alleged incident had taken place as narrated by the complainant. The learned Magistrate has considered the variance and the inconsistencies in the deposition of the three

material witnesses, who are injured witnesses. The learned Magistrate has considered that the ocular evidence has not been corroborated by the medical evidence. In fact, the learned Counsel for the applicant rightly submits that in the eventuality that there is variance between the ocular evidence and the medical evidence, normally the ocular evidence would prevail over the medical evidence. Learned Counsel for the applicant also rightly submits that in the present case the witnesses are not just eye-witnesses but, they are injured witnesses. That, they could identify the accused since they were acquainted with the accused. The identity of the accused was disclosed in the First Information Report itself and, therefore, according to the learned Counsel, the sterling testimony of the prosecution witnesses ought not to have been brushed aside only because the Medical Officer could not place on record the M.L.C. register.

5. Learned Counsel for the respondents submits that the prosecution in a present case is by the State. The State of Maharashtra had not found it a fit case to challenge the judgment and order by filing a substantive appeal and, hence according to the learned counsel for the respondents, the revision applications deserve to be dismissed as the substantive

evidence cannot be appreciated in revision application like it would have been appreciated in the appeal. Learned Counsel for the respondents submits that, in fact, Section 401(3) of Code of Criminal Procedure specifically contemplates that 'nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction' and in view of this prays that the revision applications be dismissed. It is further seen from the record that incident is of the year 1997, the revision applications are of the year 2003 and by efflux of time it would not be appropriate on the part of this Court to remand the matters for re-appreciating the evidence adduced by the prosecution. Moreover, learned APP submits that, after 1997, there is no untoward incident reported between the parties to the revision applications. It appears that they have been living in peace and harmony and, therefore, prays that the revision applications be dismissed. Taking into consideration the evidence on record and submissions at the bar, this Court is of the opinion that the revision applications deserve to be dismissed and are accordingly dismissed. No order as to costs. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)