

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

Criminal Revision Application No. 240 of 2003

Chandbee w/o. Taimurkhan Pathan,
Age : 42 years,
Occupation : Household,
R/o. Talwada, Taluka : Georai,
District : Beed.

.. Petitioner.

versus

1. Shaikh Asad s/o. Shaikh Kalimulla,
Age : 32 years,
Occupation : Agriculture,
R/o. Talwada, Taluka : Georai,
District : Beed.
2. Shaikh Kayyaumtulla s/o. Shaikh Niyamatulla,
Age : 50 years,
Occupation : Agriculture,
R/o. as above.
3. Shaikh Hidayat s/o. Shaikh Rahmat,
Age : 19 years,
Occupation : -,
R/o. as above.
4. Shaikh Amina w/o. Shaikh Rahmat,
Age : 40 years,
Occupation : Household,
R/o. as above.
5. The State of Maharashtra,
Through P.S.O.,
Talwada Police Station,
Taluka : Georai,
District : Beed.

.. Respondents
(Nos.1 to 4 -
Original accused)

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Mr. S.D. Ghayal, Advocate, for the revision applicant.

Mr. S.P. Katneshwarkar, Advocate, for respondent nos.1 to 4.

Mr. S.G. Nandedkar, Additional Public Prosecutor, for respondent no.5 - State.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 24TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. S.D. Ghayal for the revision applicant, Adv. Mr. S.P. Katneshwarkar for respondent nos.1 to 4, and the learned APP Mr. S.G. Nandedkar for respondent no.5 - State.
2. The applicant herein is the original complainant in Regular Criminal Case No. 217/2002 wherein respondent nos.1 to 4 herein were tried for the offences punishable under Sections 326, 504, 506, read with Section 34 of the Indian Penal Code. The case was registered as Regular Criminal Case No. 217/2002. The prosecution has examined as many as 7 witnesses to bring home the guilt of the accused. The learned Judicial Magistrate (F.C.), Georai, vide judgment and order dated 10th April 2003, has been pleased to acquit the accused for the offences with which they were charged.
3. Such of the facts necessary for the decision of this Revision

Application are as follows :-

That, on 9-6-2002, Crime No. 37/2002 was registered at Talwada Police Station, against the present respondent nos.1 to 4, for the offences punishable under Sections 325, 323, 504, 506, read with Section 34, of the Indian Penal Code. The complainant had lodged a report alleging therein that on 9-6-2002, her grandson was answering nature's call on the road. The present respondent nos.1 to 4 appeared on the street and they had questioned the complainant about her grandson being allowed to answer nature's call on the road. There was verbal altercation which had subsequently become violent. It is alleged that respondent no.1 gave stick blow on the right hand of the complainant; respondent no.2 assaulted her by stick of fodder and remaining accused assaulted her by means of fist and kick blows. On her report, Non-cognizable offence No. 143/2002 was registered against respondent nos.1 to 4. However, subsequently, after receipt of the medical report, the offence was registered under Sections 325, 323, 504, 506, read with Section 34, of the Indian Penal Code. The complainant had been referred to Civil Hospital by the Police. She was further directed to undergo X-ray test. That, upon undergoing X-ray test, it was revealed that she had sustained fracture to her left hand. After completion of investigation, charge sheet was filed and the learned Magistrate, after considering the evidence on record and submissions advanced by the parties, had acquitted the accused / respondent nos.1 to 4 of all the charges.

4. The learned Counsel for the applicant vehemently submits that the learned Magistrate has not appreciated the evidence in its proper

perspective. It was erroneous on the part of the learned Judicial Magistrate (F.C.) to consider the contradiction, that in the FIR, the complainant had stated that she was assaulted on her right hand, however, it subsequently appears that she had sustained fracture to her left hand. The learned Magistrate has considered the contention of the complainant, that the contents of the FIR were not read over to her and that she did not know the contents of the FIR. The learned Counsel for the applicant rightly submits that the FIR is only a corroborative piece of evidence which can be used for the purpose of recording an omission or contradiction. It is further submitted that PW 6 Dr. Sangeeta Khandare had specifically stated before the court, that the complainant had sustained a fracture to her left hand. Initially, in the medical certificate, it was shown that she had only sustained an abrasion. That, the Police had prima facie formed an opinion that it was a non-cognizable case and accordingly non-cognizable case was registered. The X-ray Technician was examined by the prosecution. The X-ray Technician has stated that he has examined the complainant. It appeared prima facie, that she sustained a fracture. X-ray plates were sent to the investigating agency by post. It is pertinent to note, that after 20 days from the date of occurrence of the incident, offence was registered against the accused persons. Besides a bare statement of the complainant, that she was treated as indoor patient for 3 days, there is no evidence on record to show that her hand was plastered and that she was discharged from the hospital after 3 days.

5. Upon appreciating the evidence on record, this Court is of the opinion that the learned Magistrate has assigned sound and justifiable reasons for recording acquittal in favour of respondent nos.1 to 4.

Criminal jurisprudence contemplates that whenever there are two view possible, the court shall take the view which is in favour of the accused. In the present case, by efflux of time, practically after more than 13 years of the alleged incident, the evidence adduced by the prosecution cannot be re-appreciated. There is bar under Section 401(3) of the Code of Criminal Procedure, 1973, that the verdict of acquittal cannot be converted into verdict of conviction by the High Court, in its revisional jurisdiction. Taking into consideration the evidence on record and the submissions advanced across the Bar, the judgment and order passed by the learned Judicial Magistrate (F.C.) does not warrant any interference.

6. In the result, the Revision Application being sans merits, stands dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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