

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

Criminal Revision Application No.201 Of 2013.

Vilas s/o Bhagwanrao Jadhav.

Age.: 43 Years., Occ.: Agriculturist.

R/o.: Sarwadi, Tal.& Dist. Jalna.

:: Applicant.

Versus.

(1) The State of Maharashtra.

(2) Shivaji s/o Dattatraya Jadhav.

Age.: 43 Years., Occ.: Agriculturist.

(3) Vitthal s/o Dattatraya Jadhav.

Age.: 43 Years., Occ.: Agriculturist.

(4) Kailash s/o Bhujangrao Jadhav.

Age. : 35 Years., Occ.: Agriculturist.

(5) Vishnu s/o Bhujangrao Jadhav.

Age. : 35 Years., Occ.: Agriculturist. **:: Respondents.**

Appearance ==>

Mr. Ravindra Deshmukh, Advocate for the Applicant.

Mr. D.R. Kale, Additional Public Prosecutor for the State of Maharashtra.

Mr. S.G. Joshi, Advocate for Respondent Nos. 2 to 5.

CORAM : V.M. DESHPANDE, J.

DATE : 22nd JANUARY, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally, by consent of both the parties.

[2] Present applicant is the First Informant. On the basis of F.I.R., lodged by him, Crime No. 94/2007 was registered against the Respondent Nos. 2 to 5 with Maujpuri Police Station, Dist. Jalna, for the offences punishable under Sections 452, 323, 336, 337, 504, 506 read with 34 of the Indian Penal Code.

[3] After completion of usual investigation, the Investigating Officer was of the opinion that, sufficient material is collected against the accused to sent them for trial. Accordingly, he filed challan in the court of the Judicial Magistrate, First Class, Jalna. Case was registered as Regular Criminal Case No.52 Of 2008.

[4] In order to bring home the guilt of the accused persons, prosecution has examined seven witnesses. The learned Magistrate on 1st December, 2010 after evaluating the evidence of the prosecution, recorded findings that the prosecution has failed to prove its case against the accused persons, beyond reasonable doubt, therefore, acquitted all the accused persons. Though it was State case, the State chosen not to prefer Appeal, questioning the correctness of the Judgment and Order of acquittal.

[5] Present applicant / First Informant preferred the Appeal before the Sessions Court, Jalna. Said was registered as Criminal Appeal No.3/2011. Said Criminal Appeal was made over to the file of the learned Additional Sessions Judge, Jalna. After hearing the parties to the Criminal Appeal, the learned Additional Sessions Judge, was of the view that no fault can be found in the order of acquittal. Further the learned Additional

Sessions Judge being last fact finding court, has re-appreciated the prosecution case and upon such re-appreciation, the learned lower appellate court was of the view that the prosecution could not successfully bring home the guilt of the accused persons, therefore, on 23rd September, 2013 dismissed the Criminal Appeal and confirmed the Judgment of acquittal passed by the learned Magistrate. It is against such concurrent findings of fact, present Criminal Revision Application is filed.

[6] Heard Mr. Ravindra Deshmukh, learned counsel for the Applicant, Mr. D.R. Kale, learned Additional Public Prosecutor and Mr. S.G. Joshi, learned counsel for Respondent Nos. 2 to 5. With their able assistance, I have gone through the Record & Proceedings, placed before this court.

[7] F.I.R. clearly shows presence of Dhondiram and Tulshiram, who are independent persons and according to the F.I.R., they have witnessed the occurrence. These two independent eye witnesses are not examined by the prosecution. Not only that, there is no reason supplemented by the prosecution as to why these two persons were not examined before the Court.

[8] One of the injured, according to the prosecution case, Gangubai who was examined by the prosecution as PW No.5, has not supported the prosecution and she has reciled from her oral version made to the police. It is evident that, during her cross examination, nothing is brought on record which could substantiate the prosecution case. Entire case of the prosecution hinges on the testimony of PW No.1 i.e. present applicant and PW No.3 Baburao. Baburao is real brother of present applicant. Merely because PW No.3 is brother of the complainant, that does not mean that his evidence is to be discarded. However, at the same time, one cannot forget that he has

some interest in the prosecution. Therefore, evidence of such close related witness has to be examined more carefully and court should attempt to seek corroboration from the other available evidence on record.

[9] Worth to note that both the First Informant as well as PW No.3 Baburao claims that Baburao was present at the time of incident and though the F.I.R. is recorded on the same day, police statement of this witness was recorded on the next date. Not only that no explanation is coming forth either in the entire prosecution case or from PW No.3 himself as to why his statement is recorded belatedly. Not only that from the cross-examination of this witness, it is clear that on the same day, it was election day and police were present in the village. In spite of that, he has not made any statement. That itself creates a doubt in respect of his presence on the spot especially when he has admitted in his cross-examination that daily he is doing up-and-down to Jalna. In that view of the matter, entire case, ultimately balanced on the un-corroborated evidence of PW No.1 – present applicant. It is brought on record that there are two political parties in the village and incident has occurred due to Gram-Panchayat election.

[10] In that view of the matter and having gone through the Judgment delivered by both the courts below, view taken by the courts below is possible view. Merely because another view is possible that by itself is not reason to upset the concurrent findings of fact in favour of the applicant. Hence, there is no merit in the Criminal Revision Application. Same is dismissed accordingly. Rule discharged.

Criminal Revision Application dismissed.

(V.M. DESHPANDE, J.)