

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 22 OF 2007

Chootu S/o Ramchandra Khairnar
age : 30 years, Occ.: Agri.,
R/o Bangaon, Tq. Chalisgaon,
Dist. Jalgaon

APPLICANT
(Ori. Informant)

VERSUS

1. The State of Maharashtra

2. Babulal Pawlu Pardeshi,
age : 52 years, Occu.: Nil.,
R/o Bangaon, Tq. Chalisgaon,
Dist. Jalgaon

RESPONDENTS
(Resp.No.2-Ori.Accused)

Mr. V.Y. Patil, Advocate for the applicant
Mr. M.M. Nerlikar, A.P.P. for respondent no.1/State
None for present respondent no.2

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

Reserved On : 22nd September, 2016

Pronounced On: 27th October, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

The applicant is the informant, who lodged the First Information Report (for short, "the FIR"), dated 17th August, 2011 in respect of homicidal death of his brother namely Sunil on 16th August, 2003 at about 8.30

p.m. at village Bangaon, Taluka Chalisgaon, on the basis of which Crime No. 203 of 2003 was registered against one Hiranman Bhimrao Pawar.

2. Hiranman Bhimrao Pawar, his wife Sunderabai and respondent No. 2 were chargesheeted for the offence punishable under section 302 read with section 34 of the Indian Penal Code ("the IPC", for short) for committing murder of Sunil. Since Hiranman Pawar and respondent No. 2 were alleged to have been absconded, their names were shown in the chargesheet as absconded persons. Sunderabai alone was available when the chargesheet was filed. After committal of the case, Sessions Case No. 171 of 2004 came to be instituted. The trial proceeded against Sunderabai alone and she came to be acquitted vide judgment and order dated 04.12.2004.

3. A separate chargesheet was filed against respondent No. 2 on the basis of which Sessions Case No. 91/2005 came to be instituted against him. It is stated by the applicant in paragraph No. 3 of this application that the learned Adhoc Additional Sessions Judge, Jalgaon wrongly acquitted respondent No. 2 for the offences punishable under sections 174 and 302 of the

IPC vide judgment and order dated 9th October, 2006 in Sessions Case No. 91 of 2005. Being aggrieved by the said judgment and order, the applicant has come with this revision application contending that the said judgment is not legal, proper and correct. It has not been delivered by appreciating the evidence properly and correctly. There was sufficient material to convict respondent No. 2 available on record. It is, therefore, prayed that respondent No. 1 may be directed to prefer an appeal against the judgment and order dated 9th October, 2006 passed in Sessions Case No. 91 of 2005 and that the said judgment may be set aside. It is further prayed that respondent No. 2 may be convicted for the offences punishable under sections 174 and 302 of the IPC. It is also prayed that the case may be remanded to the Sessions Court for fresh trial.

4. This revision application was heard with Criminal Appeal No. 230 of 2013 that was filed by accused Hiranman Bhimrao Pawar, who was convicted for the offence punishable under section 302 of the IPC on the allegations of committing murder of Sunil. After re-appreciation of the evidence on record, this Court found

that the prosecution failed to produce sufficient, cogent, consistent and dependable evidence on record to establish the guilt of the said Hiranman Bhimrao Pawar. Therefore, he came to be acquitted. While considering the evidence, recorded in Sessions Case No. 11 of 2012, filed against Hiranman Bhimrao Pawar, it was noticed that the name of respondent No. 2 was not even mentioned as a co-accused in the FIR lodged by the present applicant. It is only on the basis of the insistence of the present applicant that his supplementary statement came to be recorded on 5th June, 2004 and respondent No. 2 came to be arrayed as a co-accused.

5. At the outset, it may be stated that the prayers of the applicant seeking directions against respondent No. 1 for filing appeal against acquittal of respondent No. 2 and further seeking conviction of respondent No. 2 in the present revisional proceedings cannot at all be considered since they fall beyond the ambit of revisional jurisdiction of this Court.

6. We have considered the evidence of the witnesses recorded in Sessions Case No. 91 of 2005. We have gone through the judgment of acquittal dated

9th October, 2006. Admittedly, the applicant was not an eye witness to the incident. None of the witnesses examined by the prosecution is an eye witness. Besides respondent No. 2, Hiranman Bhimrao Pawar and Sunderabai were stated to be in the house of respondent No.2 at the time of the alleged incident. No motive on the part of respondent No. 2 has been attributed and established on the basis of which it can be said that he had any reason to cause death of Sunil. The evidence on record was so scanty that it was difficult to connect respondent No. 2 with the alleged offences. The learned Trial Judge has rightly appreciated the facts of the case as well as the evidence on record and has rightly acquitted respondent No. 2. We do not find any reason to interfere in the said judgment and order and order retrial of the case against respondent No. 2. There is no substance in the revision application. Hence, the order :-

The Criminal Revision Application is dismissed.

[SANGITRAO S. PATIL]
JUDGE

[S.S. SHINDE]
JUDGE