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

CRIMINAL REVISION APPLICATION NO. 277 OF 2003

Shivram Tukaram Surwase,
Age: 64 yrs., Occ: Agril.,
R/o: Kambalga, Tq.: Shiruranantpal,
Dist. : Latur

..APPLICANT

VERSUS

1. The State of Maharashtra
2. Uttam Vithal Shinde,
Age: 46 yrs., Occ: Agril.
3. Waman Vithal Shinde,
Age: 49 yrs., Occ: Agril.
4. Umakant Pundlik Shinde,
Age: 29 yrs., Occ: Agril.
5. Tukaram Apparao Shinde,
Age: 29 yrs., Occ: Agril.
6. Kamlakar Laxman Shinde,
Age: 44 yrs., Occ: Agril.
7. Sulabai w/o Waman Shinde,
Age: 44 yrs., Occ: H.H.
8. Dnyandeo Shrihari Shinde,
Age: 29 yrs., Occ: Agril.

Respondent Nos. 2 to 8
R/o: Kambalga, Tq. Shriruranantpal,
District : Latur

..RESPONDENTS

Mr D. A. Mane, Advocate holding for Mr Milind Patil, Advocate for applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent No. 1;
Mr N. D. Kendre, Advocate holding for Mr V. V. Temke, Advocate for respondent Nos. 2 to 8

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CORAM : N.W. SAMBRE, J.

DATE : 9th June, 2016

JUDGMENT :

The present revision application is against the order of acquittal, passed on 8th May, 2003, by the learned Judicial Magistrate First Class, Nilanga, in Regular Criminal Case No. 29 of 1999.

2. The present applicant preferred a complaint at Exh. 54, alleging that all the accused persons, on 28th October, 1998, assaulted him with axe, sticks and fist blows. The said complaint had resulted into registration of Crime No. 81 of 1998, against the accused persons for offences punishable under Sections 325, 323, 149 and 148 of the Indian Penal Code.

3. After registration of the offence, P.S.I. Thite carried out investigation and pursuant to the charge-sheet against the accused persons, charge came to be framed at Exh. 41.

4. In support of the complaint, the complainant himself deposed at Exh. 53. He has stated in his deposition that the accused persons had assaulted him on the parts of his body by the respective weapons. So as to substantiate his case, the complainant also examined his son Laxman at Exh. 60 and Medical Officer at Exh. 73.

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5. While assailing acquittal, Mr Mane, learned Counsel appearing on behalf of the applicant would urge that the learned Court below has committed an error by acquitting accused persons, as the cumulative effect of the evidence of witnesses, is not taken into account by the learned Court below. He would then submit that the evidence of the other witnesses, namely, Kanta surwase and Ramchandra is not considered by the learned Court below and unnecessary and undue weightage has been given by the learned Court below to the narration in the first information report i.e. Exh. 54. He would then submit that this Court should reverse the acquittal and order conviction of the accused persons.

6. With the assistance of the learned Counsel for the respective parties, I have perused the papers as are brought before me, in relation to deposition and other material. It is required to be noted that the case in hand is almost based on the incident, which occurred some 18 years back. The narration speaks of the assault on the complainant by the accused persons, who are from same family, as the bullock of the accused Waman had attacked the bullock of the complainant.

7. From the record, it depicts that the incident in question had occurred in late hours i.e. at about 9.00 p.m. Perusal of the complaint at Exh. 54 does not depict any clarification or details, as to the weapons used by each of the accused persons and the act attributed to each of them. The same was sought to be clarified by the accused in their deposition before the

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Court.

8. It is then required to be noted that, what is recovered in the present crime is an axe from accused Uttam, pursuant to the provisions of Section 27 of the Indian Evidence Act. The alleged happening of incident, during the investigation, is not noted to be witnessed in the light of electric bulb. The complainant claimed that he became unconscious after he was assaulted by the accused persons and in view there of, in my opinion, the acquittal based on the above referred reasons, particularly after a period of about 18 years, does not call for any reversion.

9. One more aspect of which this Court must take note of is that Laxman, son of complainant, examined at Exh. 60, is not an eye witness to the incident in question, however, he had claimed that he reached to the spot, after he came to know from one Bharat Jadhav about assault on his father. Admittedly, Bharat Jadhav is not examined in the present case. It is the fact that, the Investigating Officer in the present case, is not examined by the prosecution. Apart from above, it is required to be noted that the Investigating Officer speaks that the complainant approached him on his own, with a police memo. Though Doctor has certified the injuries of the complainant, however, the material to draw an inference with this injuries could be due to the respondents-accused, cannot be confirmed. Though an axe is recovered from accused Uttam, however, Medical Officer certified said at Exh. 74, speaks of two incised wounds on the head of the complainant, and the said incised wounds are not explained by the

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complainant or the prosecution.

10. The complainant has tried to prove his case, based on his own and his son Laxman's evidence. The evidence of son, in my opinion, is rightly discarded by the learned Court below, as he, being not an eye witness to the incident. The conviction, as is sought by the complainant, is based on his testimony, is also required to be rejected, as the investigation as is carried out, is not proved by examining the Investigating Officer.

11. In the above background, no case for interference, in exercise of revisional jurisdiction is made out. Criminal Revision Application fails and same stands dismissed.

(N.W. SAMBRE, J.)

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