

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.108 OF 2017

Mohan Hanumant Jadhav ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Nitesh J. Mohite i/b. Jaydeep D. Mane, Advocate for the Applicant.

Ms.P.P.Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 11th OCTOBER 2017.

ORGAL JUDGMENT :

1 Heard.

2 Rule. Rule returnable forthwith. Heard finally by consent of parties.

3 The revision petitioner is convicted of offences punishable under Sections 452, 354 and 506 of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity) by the learned trial Magistrate by the Judgment and Order dated 06/02/2014 in Regular Criminal Case No.97 of 2007. He carried that Judgment and Order of conviction and resultant sentence in appeal by approaching Sessions Court at Solapur by filing Criminal

Appeal bearing No.19 of 2014, which came to be partly allowed reducing the sentence and maintaining the conviction for offences held to be proved by the learned trial Court.

4 Heard the learned Advocate for the revision petitioner/accused. He argued that except interested witness nobody is examined by the prosecution to prove offences alleged against the present revision petitioner. As against this, the learned Additional Public Prosecutor argued that both Courts below have concurrently held that the revision petitioner has committed offences punishable under Section 452, 354 and 506 of the IPC and as such, in revisional jurisdiction, this Court need not interfere with the conviction and the resultant sentence.

5 I have carefully considered the rival submissions and also perused Record and Proceedings including oral and documentary evidence.

6 Briefly stated, facts of the present case against the present petitioner are thus :

(a) The revision petitioner is neighbourer of First Informant Savitra Dadasaheb Nagtilk. On 17/03/2007, when her father-in-law and husband left house for working in the field, after finishing her lunch, First Informant Savitra slept in the house keeping the door of house open. The revision

petitioner entered in her house and caught hold her hand. He put his hand inside her blouse and outraged her modesty. Because of shouts of First Informant Savitra, Mangal Chavan, Chitra Chavan and Surekha Pawar came there. The revision petitioner then flee from the spot threatening the First Informant.

- (b) After completion of investigation, the revision petitioner was charge-sheeted and ultimately after due trial, he came to be convicted and sentenced as indicated in opening paragraph of this Order.

7 The revisional powers of this Court are invoked by the accused. It is well settled that revisional jurisdiction of this Court is extraordinary jurisdiction, which is to be exercised when glaring defect in procedure or perversity in the findings is pointed out. Evidence cannot be re-appreciated. Findings of the facts confirmed by the learned appellate Court cannot be interfered with unless and until the same is shown to be perverse. Keeping in mind these parameters of revisional jurisdiction, let us examine the matter in a limited arena, whether Courts below have recorded concurrent findings of facts perversely.

8 P.W.No.1 Savitra has deposed that on 17/03/2007 at about 3.00 p.m. when she was sleeping in her house the revision petitioner/original accused entered in her house, caught hold of

her hand, put his hand in her blouse and when she raise shouts, he ran away. P.W.No.1 Savitra claimed that Mangal Chavan, Chitra Chavan and Surekha Pawar came and looking at them, the revision petitioner flee from the spot after threatening her.

9 The next witness examined by the prosecution is Chitrakala Chavan, who deposed that after hearing shouts she came out to see the revision petitioner/accused scuffling with P.W.No.1 Savitra and then he flee from the spot.

10 The third witness examined by the prosecution is Shivaji Chavan, a witness to the spot panchanama (Exhibit.17). Considering the nature of the allegations against the revision petitioner, spot panchanama is of no consequence.

11 Perusal of evidence of P.W.No.1 Savitra, P.W.No.2 Chitrakala and P.W.No.3 Shivaji Chavan shows that P.W.No.2 Chitrakala Chavan is near relative of First Informant P.W.No.1 Savitra. P.W.No.3 is husband of P.W.No.2 Chitrakala.

12 Cross-examination of P.W.No.1 Savitra shows that she is second wife of her husband Dadasaheb. P.W.No.1 Savitra has accepted the fact that the revision petitioner/accused had illicit relation with first wife of Dadasaheb i.e. her husband. P.W.No.1 Savitra has also accepted the fact that there were court cases

between her husband Dadasaheb as well as first wife of Dadasaheb which ultimately lead to divorce between them. P.W.No.1 Savitra candidly accepted the fact that even prior to her marriage with Dadasaheb, there was dispute between her husband Dadasaheb and the present revision petitioner/original accused. This material elicited from cross-examination of P.W.No.1 Savitra reflects that parties were totally on inimical terms as, revision petitioner/accused was having illicit relations with first wife of Dadasaheb – husband of the First Informant/alleged victim in the crime in question. Enmity was even prior to marriage of P.W.No.1 Savitra. P.W.No.2 Chitrakala during her cross-examination denied that she is relative of P.W.No.1 Savitra, though P.W.No.1 Savitra has candidly accepted this fact. P.W.No.2 Chitrakala, however, accepted the fact that there was dispute between husband of the First Informant as well as the revision petitioner/original accused. P.W.No.3 Shivaji has again confirmed that there was serious dispute between the husband of the First Informant Savitra and revision petitioner/original accused since long.

13 All prosecution witnesses have candidly accepted the fact that the incident happened at populous locality and house of the First Informant is surrounded by houses where about 200 people were residing. Witnesses have further accepted the fact that there is road in front of the house of First Informant, is regularly having vehicular traffic.

14 Perusal of impugned Judgments and Orders passed by the learned trial Court as well as appellate Court goes to show that these aspects elicited from cross-examination of prosecution witnesses were not at all considered and what was stated by the prosecution witnesses in chief examination was taken to be considered as gospel truth to conclude that the prosecution has proved charges levelled against accused/revision petitioner beyond all reasonable doubt. Though independent witnesses were available with the prosecution to vouch about the incident in question except examining only one alleged eye-witness i.e. Chitrakala Chavan, who is near relative of the First Informant/victim, no other witness is examined by the prosecution to prove the incident. It is trite that when evidence adduced by the prosecution is suspect and suffers from doubt then non-examination of other available witnesses assumes importance and leads to an inference that the prosecution has suppressed best available evidence. Element of perversity creeps in impugned Judgments and Orders as the material as discussed in foregoing paragraphs was not considered by the Courts below in arriving at conclusion regarding a guilt of the revision petitioner/accused in the matter.

15 In this view of the matter, it cannot be said that the prosecution has proved charges levelled against revision petitioner/accused beyond all reasonable doubt. The revision

petitioner is certainly entitled for benefit of doubts. Therefore, the Order :

- (i) The revision petition is allowed.
- (ii) The impugned Judgments and Orders of Courts below are quashed and set aside.
- (iii) The revision petitioner/original accused is acquitted of alleged offences punishable under Sections 452, 354 and 506 of the Indian Penal Code.
- (iv) He be set free, if not required in any other case.
- (v) Fine amount, if any, paid by him be refunded to him.

16 In view of disposal of the revision petition, the pending Criminal Application, if any, stands disposed of.

(A.M.BADAR J.)