

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

CRIMINAL REVISION APPLICATION NO. 33 OF 2005

...

CHINTAMAN NAMDEO CHAUDHARI

age 55 years, occ. Agriculture,

R/o Bahadarpur, Tq. Parola,

Dist. Jalgaon.

...Petitioner...

(orig. complainant)

VERSUS

1. The State of Maharashtra,
Through The Secretary,
Home Department, Mantralaya, Mumbai.
2. Jagannath Mango Chaudhari,
age 25 years, Occ. Labour.
3. Manjula Mango Chaudhari,
age 60 yrs, Occ. Household,
Both nos.2 and 3 r/o Bahadarur,
Tq. Parola, Dist. Jalgaon. ...Respondents...
(Resp Nos.2 & 3 are orig.
accused 1 and 2.)

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Advocate for Applicant : Mr R R Mantri

APP for Respondent 1 : Mr V M Kagne

Advocate for Respondent 2,3 : Mr N L Choudhari

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CORAM : V.K. JADHAV, J.

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Reserved on : September 12, 2018

Pronounced on : September 24, 2018

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JUDGMENT :-

1. This Criminal Revision has been preferred against
the judgment and order of acquittal passed on

26.11.2004 by the Additional Sessions Judge, Amalner, District Jalgaon in Sessions Case No.31/1996 for the offence punishable under sections 302, 109, 114 of the Indian Penal Code.

2. Brief facts, giving rise to the present Criminal Revision are as follows :-

a] On 26.4.1996 at about 07.00 a.m. deceased Lahu was proceeding towards his cattle shed. He had come in front of the house of the accused and at that time accused no.2 instigated accused no.1 to finish deceased Lahu for the reason that he had purchased two Bigha land belonging to Shankar. Thereupon, accused no.1 gave a blow of a wooden log on the head of deceased Lahu. In consequence thereof, deceased Lahu had sustained bleeding injury on his head. On the basis of the complaint lodged on that day, Crime no.90/1996 for the offence punishable under section 307 read with section 34 of Indian Penal Code came to be registered at about 11.05 p.m. with Parola Police Station. On 27.4.1996 deceased Lahu succumbed to the head injury and accordingly Section 302 of the Indian Penal Code

has been added.

3. The learned Additional Sessions Judge, Amalner, District Jalgaon has framed charge under section 302 of Indian Penal Code against accused no.1 and under sections 109, 114 r/w 302 of the Indian Penal Code against accused no.2 vide exh.7. The contents of the charge were read over and explained to the accused in vernacular. Both of them pleaded not guilty and claimed to be tried. The defence of the accused was of total denial and false implication in the crime on the ground that they were not willing to sell their remaining land to the deceased. Prosecution has examined in all 12 witnesses to substantiate the charges levelled against accused persons. The learned Additional Sessions Judge, Amalner by judgment and order dated 26.11.2004 acquitted both the accused for the charges levelled against them. The petitioner/original complainant has preferred this Criminal Revision against the order of acquittal.

4. The learned counsel for revision petitioner submits

that, the learned Additional Sessions Judge, Amalner District Jalgaon has failed to exercise the jurisdiction vested in him by not procuring the postmortem report and examining the concerned Medical Officer by using coercive methods of issuing warrant, etc. The learned Additional Sessions Judge, Amalner has played a role of silent spectator occasioned thereby a grave failure of justice. The learned Additional Sessions Judge, Amalner has discarded the evidence of the eye witnesses on flimsy grounds without making an attempt to separate the truth from the falsehood, if any. Even, the learned Additional Sessions Judge, Amalner has not considered extra judicial confession made before PW 6 Nathu. The learned Additional Sessions Judge, Amalner has rejected the evidence about blood stained clothes of deceased Lahu and found fault with delay in FIR only on the ground that said shirt was not produced when the FIR was given. Learned counsel submits that, the Additional Sessions Judge, Amalner has erroneously recorded the findings that prosecution has failed to prove the homicidal death. Even, in absence of postmortem report and in absence of the evidence of the

concerned Medical Officer, who has conducted postmortem examination on the basis of other medical evidence, the learned Additional Sessions Judge, Amalner could have recorded the finding in the positive about homicidal death of deceased Lahu. Learned Additional Sessions Judge, Amalner has unnecessarily given weightage to the conduct of the eye witnesses when two blows were given with quick succession leaving no chance for the eye witnesses to intervene or rescue the deceased.

5. Learned counsel appearing for respondent nos.2 and 3/original accused submits that, PW 3 Pravin Chintaman Chaudhary, PW 4 Sham Lahu Chaudhary and PW 5 Arjun Pitambar Chaudhary who are claiming to be the eye witnesses to the incident after scrutinizing their evidence carefully, the learned Judge of the Trial Court rightly discarded their evidence. The above stated witnesses are closely related to the deceased and their conduct before the incident and after the incident is highly suspicious. Furthermore, their evidence is not consistent, trust worthy and reliable. Learned Additional

Sessions Judge, Amalner has rightly discarded the evidence of PW 6 Nathu Vitthal Chaudhary, before whom accused no.1 allegedly made extra judicial confession. Learned counsel submits that, as per the prosecution story, after assault, PW 3 Pravin Chintaman Chaudhary took the deceased Lahu on his shoulder, who has sustained bleeding injury on his head, however, surprisingly the clothes of PW 3 Pravin Chaudhary were not found stained with blood. Furthermore, blood on the wooden log could not be determined as the results were inconclusive. Said wooden log was not recovered at the instance of accused. There is no panchnama drawn under section 27 of the Indian Evidence Act, and, therefore, recovery as per panchnama exh.16 shown to have been at the instance of accused no.1 loses its significance. The contents of panchnama exh.16 cannot be read in evidence. Prosecution has failed to prove the recovery of wooden log at the instance of accused no.1. Learned counsel submits that, even, the Additional Sessions Judge, Amalner, after considering the entire aspect of the case, has rightly come to the conclusion that, even

there is no motive for the accused to commit the murder of the deceased. Learned counsel submits that, even PW 8 Dr. Prakash Bhikanrao Patil, who has noted injury on the person of deceased Lahu, when he was brought to the Primary Health Center in injured condition, has admitted in paragraph no.3 of the cross examination that injuries mentioned in the case papers can be possible if a person falls on the ground and his head comes into contact with the triangular shaped stone. Learned counsel submits that there is no iota of evidence to held that deceased Lahu died because of injury sustained by him on his head and the learned Additional Sessions Judge, Amalner, observed that after due efforts prosecution has failed to secure the attendance of concerned doctor, who has conducted postmortem examination and accordingly recorded finding about homicidal death in the negative. Learned counsel submits that, even if death is assumed as homicidal one, there is no further positive evidence to connect the accused persons with the alleged crime of commission of murder. The trial Court has rightly acquitted the accused. No interference is required.

6. Learned counsel for respondent nos. 2 and 3 placed their reliance on a judgment in case of **State of Rajasthan Vs. Taran Singh** reported in 2004 AIR (SC) 1080.

7. I have also heard the learned APP for the respondent no.1/State.

8. In the case of **Vimal Singh vs. Khuman Singh**, reported in **1998 (7) SCC 223** the Supreme Court, while discussing the power of High Court in the matter of interference with the order of acquittal, by referring the decision of the Supreme Court in the case of **K. Chinnaswamy Reddy vs. State of Andhra Pradesh**, reported in **AIR 1962 SC 1788**, in para nos. 8 and 9 of the judgment, has made the following observations:-

“8. The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer res integra, as the law in this regard is very well settled. Suffice it to refer to in this regard a decision of this Court in K. Chinnaswamy Reddy vs. State of Andhra Pradesh (AIR) 1962 SC 1788) wherein it was held, thus :

“It is true that it is open to a High Court in

revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.....

Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

9. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under

revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304 Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."

7. In the case of **Sheetala Prasad and others vs. Sri Kant and Anr.** reported in **AIR 2010 SC 1140**, the Supreme Court in para 9 has made the following observations: -

“9. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered.”

10. Thus, by applying the above stated principle to the facts of the case in hand, I have carefully scrutinized the prosecution evidence. PW 3 Pravin Chintaman Chaudhary, PW 4 Sham Lahu Chaudhary and PW 5

Arjun Pitambar Chaudhary are claiming to be the eye witnesses to the incident. PW 2 Chintaman Namdeo Chaudhary is elder brother of the deceased Lahu. PW 3 Pravin Chaudhary is son of PW 2 Chintaman Chaudhary, PW 4 Sham Chaudhary is son of deceased Lahu Chaudhary and PW 5 Arjun Pitambar Chaudhary is cousin uncle of deceased Lahu. PW 2 Chintaman is the elder brother of the deceased Lahu, who had been to the spot and noted that deceased Lahu was lying in injured condition. These eye witnesses are close relatives of the deceased and, the learned Judge of the trial court by observing the same scrutinized their evidence with great care and caution.

11. PW 3 Pravin Chintaman Chaudhary has deposed that on the day of incident i.e. 26.4.1996 at about 07.00 a.m. he was proceeding towards his Wada (Residential House). His uncle deceased Lahu was proceeding ahead of him at some distance and son of deceased Lahu. PW 5 Sham was with him. He has also explained that deceased Lahu and his son Sham were proceeding towards their cattle shed. On careful perusal of the

evidence of PW 4 Sham Chaudhary, who happened to be the real son of deceased Lahu, it appears that he has not stated that he was proceeding behind his father deceased Lahu alongwith PW 3 Pravin. He deposed that after the blows of wooden log given to his deceased father by accused no.1 Jagannath and when his father fell down and become unconscious, he shouted for help and at that time PW 3 Pravin came there. It would be appropriate to repeat here again that PW 3 Pravin has deposed that deceased Lahu was proceeding ahead of him at some distance and son of deceased Lahu PW 4 Sham was with him. PW 3 Pravin in paragraph no.8 of his cross-examination has admitted that when he first saw his uncle i.e. deceased Lahu, he saw him in unconscious condition lying in front of house of Janabai. He has further admitted that, while he was taking his uncle on his shoulder, one Pitambar Chaudhary met him in the Chowk and except Pitambar Chaudhary, no one met him on the way towards the house of his uncle. He has further admitted in the same paragraph that when he reached to the house of his uncle (deceased Lahu), PW 4 Sham was in the

house. Even, PW 4 Sham in paragraph no.4 of his cross-examination has admitted that when PW 3 Pravin took his father on his shoulder, at that time he was in his house. PW 2 Chintaman, who is real brother of the deceased and who has also lodged the complaint at exh.19 has deposed that when he returned to his house at about 07.30 am, on the day of incident, he found crowd gathered in front of the house and Lahu was lying in unconscious condition in front of the house. He has given reference of PW 4 Sham as witness and has not stated name of PW 3 Pravin as eye witness to the incident.

12. PW 5 Arjun seems to be a got up witness. He has materially improved the story. He has not deposed about the presence of PW 4 Sham on the spot. He has deposed about presence of PW 3 Pravin and Pitambar to the extent that they took the deceased Lahu to his house. However, the prosecution has not examined said Pitambar and as discussed above name of PW 3 Pravin is not mentioned in the FIR as an eye witness. Conduct of PW 5 Arjun before the incident and after the incident

is highly suspicious. Despite close relations with the deceased, he did not go towards the deceased even after sustaining injuries by him. I find no fault at all in the observations made by the learned Judge of the trial court that PW 3 Pravin, PW 4 Sham and PW 5 Arjun are not the eye witnesses to the incident. Even assuming that PW 3 Pravin has come to the spot immediately after the incident and carried deceased Lahu on his shoulder, but, surprisingly, his clothes were not stained with any blood stains and in order to patch up the same, surprisingly, PW 3 Pravin has deposed that since deceased Lahu has sustained bleeding injuries on his head, blood fallen down on the road and not on his clothes.

13. The learned Additional Sessions Judge, Amalner has further discussed the evidence on motive and observed unequivocally that there is no motive to commit the murder of deceased Lahu on the part of the accused persons. Furthermore, the other evidence is also lacking. Furthermore, recovery of wooden log directly from the accused without drawing the

panchnama under section 27 of the Evidence Act is not admissible and the contents of the panchnama exh.16 cannot be read in evidence. For the sake of discussion, even if that recovery is accepted, blood group of the blood stains on the wooden log could not be determined. As per the prosecution story, as deposed by the so called eye witnesses, if accused no.1 has given two blows i.e. one is on head and another one is on back, medical evidence does not support the injury on back of the deceased Lahu. On the basis of the evidence of Medical Officer, who has examined deceased Lahu when he was brought to the Primary Health Center in injured condition, and, on the basis of the contents of the inquest panchnama, prosecution has proved the homicidal death of deceased and no purpose is likely to be served by remanding the matter to the trial court only for the purpose of proving the contents of the postmortem report which is a part of the record of the trial court. Otherwise, evidence as discussed above of the so called eye witnesses would remain as it is.

15. Thus, by applying the above stated principle in the

case of Vimal Singh Vs. Khuman Singh and Sheetala Prasad and others Vs. Sri Kant and another (supra) to the facts of the case in hand, I do not find that any case is made out so as to cause interference in the order of acquittal by exercising revisional jurisdiction. Trial court has considered each and every piece of evidence and by a well reasoned order, acquitted the accused. The revision petitioner has failed to point out that the trial court has considered irrelevant evidence and wrongly brushed aside the admissible evidence as inadmissible. In view of the same, I do not find any substance in this criminal revision application. Hence, I Proceed to pass the following order.

ORDER

Criminal Revision Application is hereby dismissed.

(**V.K. JADHAV, J.**)

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