

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.106 OF 2018

- 1) Ganesh s/o. Nagdevrao Revanwar,
Age : 43 years, Occu.: Service,
R/o.: C/o Primary Helath Center,
Dhanora Kale, Tq. Purna,
District Parbhani
- 2) Leena w/o. Bhimrao Khodke,
Age : 35 years, Occu.: Service,
R/o.: C/o Primary Health Center,
Dhanora Kale, Tq. Purna,
District Parbhani

.. APPLICANTS
(Ori.Resp.Nos.2 & 3)

VERSES

- 1) The State of Maharashtra,
through Police Station Tadkalas,
Tq. Purna, District Parbhani
- 2) Savitri w/o. Manikrao Avhad,
Age : 38 years, Occu.: Service,
Dhanora Kale, Tq. Purna,
District Parbhani at present
R/o.:C/o Primary Health Center,
Jamb, Tq. and Dist. Parbhani

.. RESPONDENTS

Mr. S.B. Bhapkar, Advocate for the applicants
Ms. R.P. Gaur, A.P.P. for the respondent No.1/State
Mr. V.M. More, Advocate for respondent No.2

CORAM : SANGITRAO S. PATIL, J.

DATE : 02nd AUGUST, 2018

ORAL JUDGMENT :

The applicants were prosecuted for the offences punishable under Sections 354, 323, 504 and 294 read with Section 34 of the Indian Penal Code ("IPC", for short). The Trial Court acquitted them of the said offences vide the judgment and order dated 08.02.2013 passed in Regular Criminal Case No.07 of 2012. The informant namely, Savitri Manikrao Avhad filed Criminal Appeal No.25 of 2013, challenging the judgment of acquittal. The Appellate Court reversed the judgment of acquittal, convicted both the applicants for the above-mentioned offences and sentenced each of them to suffer simple imprisonment for one month and to pay a fine of Rs.1000/- in respect of the offence punishable under Section 354; simple imprisonment for 20 days and to pay fine of Rs.500/- in respect of the offence under Section 323; simple imprisonment for 20 days and to pay a fine of Rs.500/- in respect of the offence punishable under Section 504 of the IPC, with default sentences. No separate sentence was passed in respect of the offence punishable under Section 294 of the IPC. The substantive sentences were directed to run concurrently. The applicants have challenged the said judgment and order

by filing this Criminal Revision Application.

2. The informant was serving as an Arogya Sevika in Vazur Circle, while applicant No.2 was serving as an Arogya Sevak in Deulgaon Circle, under the Public Health Centre ("PHC", for short) of Dhanora-Kale, Taluka Purna, District Parbhani. Applicant No.1 was serving as a Peon in that PHC. On 15.11.2011, a camp for tubectomy was arranged by PHC, Dhanora-Kale. The informant and applicant No.2 had brought some women from their circles for undergoing tubectomy at about 08.30 a.m. to 9.00 a.m. Some of the women brought by applicant No.2, were not found fit for being operated and therefore, they were sent back. It is alleged that since the said women were sent back, applicant No.2 got annoyed. She started hurling abuses against the informant. Applicant No.2 further rushed on the person of the informant and caught hold of both of her hands. Applicant No.1 kept pressed both of her shoulders and moved her Saari aside from her chest with a bad intention. Applicant No.2 beat the informant by slaps and fists on the chest, face, abdomen and nose. She further scratched by nails on the left hand of the informant. The other employees, who were present there, intervened. The informant went to the

police station and lodged report, on the basis of which Crime Number No.76 of 2011 came to be registered against both the applicants for the above-mentioned offences. The informant was examined by the Medical Officer. The statements of the witnesses were recorded. After completion of the investigation, the applicants came to be charge-sheeted for the above mentioned offences.

3. The prosecution examined eight witnesses to establish guilt of the applicants. The Trial Court evaluated the evidence of the witnesses and found that it was not sufficient to hold the applicants guilty for the above-mentioned offences. The Trial Court acquitted the applicants of the above-mentioned offences. The informant challenged that judgment of acquittal, whereon the Appellate Court allowed it, reversed the judgment of acquittal and convicted the applicants, as stated above.

4. The learned counsel for the applicants submits that the evidence produced by the prosecution to establish the guilt of the applicants, is not sufficient, cogent and consistent. No independent witness has supported the case of the informant. The Trial Court had rightly appreciated the facts of the case and evidence on record and rightly acquitted the

applicants. Relying on the judgment in the case of **Maloth Somaraju Vs. State of A.P., 2011(4)Mh.L.J. (Cri.) 604 (SC)**, he submits that unless the judgment of acquittal is found to be perverse or is not at all supportable, the Appellate Court is not expected to upset the judgment of acquittal. Merely because two views are possible, the Appellant Court cannot take a view contrary to that of the Trial Court and convict the applicants. He submits that the presumption of innocence that is in favour of the accused, gets strengthened after they are acquitted by the Trial Court. He submits that the judgment of acquittal delivered by the Trial Court in the present case, is not at all perverse. He, therefore, prays that the judgment and order passed by the Appellate Court may be quashed and set aside and that of the Trial Court may be restored.

5. The learned A.P.P. resisted the Revision Application. She submits that the evidence of the informant is supported by the two eye witnesses. The evidence of these two eye witnesses is quite consistent. It creates a great confidence. There was a great force in the evidence of the informant in respect of the offences alleged against the applicants. The medical

evidence also supports the case of the informant. According to the learned A.P.P., the Trial Court had not appreciated the evidence correctly, properly and had wrongly acquitted the applicants. She supports the judgment delivered by the Appellate Court and prays that the Criminal Revision Application may be rejected.

6. The informant deposes at Exh.28, that on 15.11.2011 at about 08.30 a.m. to 09.30 a.m., when she had gone to the PHC, Dhanora Kale, with the women, who were to undergo tubectomy, applicant No.2 hurled abuses against her in filthy language and further rushed on her person. Applicant No.2 caught hold of her hands, while applicant No.1 kept her shoulders pressed and further moved her Saari from her chest. At that time, applicant No.2 gave slaps and fists blow on her chest, face and abdomen. Applicant No.2 further scratched by nails on the face, left hand, nose and below right eye. According to her, since the women, who were brought by applicant No.2 for tubectomy were sent back, it was alleged by applicant No.2 that the informant had sent them back and on that count, the incident took place. Therefore, she lodged F.I.R. (Exh.30) against both the applicants.

7. The informant states that the employees attached to the Public Health Centre namely, Munde, Patil, Vikas Jadhav and Bebinanda Bhalerao, were present there. Moreover, the patients and their relatives were also present there.

8. The prosecution examined Vikas Jadhav (PW 4) and Ramkisan Munde (PW 5), who, according to the informant, were present at the time of the incident. However both of them state that the incident did not take place in their presence. As such, they did not support the case of the informant. The prosecution further examined Sunita (PW 6). She states that there had been quarrel between the informant and applicant No.2. The informant and applicant No.2 had caught hold of the hands of each other. Applicant No.2 hurled abuses against the informant and scratched on the face of the informant by means of nails and slapped her. Applicant No.1 moved the Saari from her chest. This witness does not state that applicant No.1 had kept pressed shoulders of the informant at the time of the incident. From her version, it seems that there had been quarrel between the informant and applicant No.2. It has come in her cross-examination that she belongs to the "Dhangar

Community". The informant also belongs to the same community. She further states that she came to the Court for giving evidence on the say of the informant and with the husband of the informant. She states that the informant was working at her village Wazur for five to seven years. In the circumstances, it seems that there were close relations between the informant and Sunita (PW 6).

9. The prosecution further examined Gaulan (PW 7), who also tried to support the informant. She states that applicant No.2 hurled abuses against the informant and scratched the informant as well. She then states that applicant No.1 caught hold of the hands of the informant and moved her Saari aside. This evidence is very scanty. She states that the maternal home of the informant and that of herself is at village Pokharni. Both of them are from Avhad family of village Pokharni. She admits that she was in visiting terms with the informant. From these facts, it is clear that Gaulan (PW7) is a close relative of the informant and had close contacts with her.

10. From the evidence of Sunita (PW 6) and Gaulan (PW 7), it is clear that their husbands are the

brothers. Gaulan (PW 7) and herself came in the same car and the informant gave them the copies of their statements before the police for being read. Considering the evidence of Sunita (PW 6) and Gaulan (PW 7), it is clear that they are not independent witnesses. They are made to read their statements prior to deposition the Court. Moreover, the evidence of those witnesses is very scanty.

11. Dr.Shaikh Raisuddin (PW 9) states that he examined the informant on 15.11.2011 and found three superficial abrasions over her left ring finger, right fore-arm and right side of cheek near nose. She states that the said injuries were possible by scratching with nails. The said injuries are simple.

12. As stated above, the evidence of the prosecution is not at all sufficient to bring home guilt of the applicants for the above-mentioned offences. The said evidence is very scanty. It seems that the trifling dispute between the parties was taken to the police instead of settling it amicably. The evidence of the informant is not supported by any of the independent witnesses. In the circumstances, the Trial Court cannot be said to have committed any mistake in acquitting the

applicants. In any case, the judgment of acquittal passed by the Trial Court cannot be said to be perverse and unsupportable. If that be so, only because an alternative view was possible, the Appellate Court should not have disturbed the judgment of acquittal delivered by the Trial Court and should not have convicted the applicants.

13. It is strange to note that applicant No.1 alone has been charged by the Trial Court for the offence punishable under Section 354 of the IPC. However, the Appellate Court convicted even applicant No.2 for the said offence. This fact also indicates that the Appellate Court did not appreciate the facts of the case and evidence on record correctly and properly and wrongly reversed the judgment of acquittal passed by the Trial Court.

14. In the circumstances, the judgment and order of conviction passed by the Appellate Court cannot be said to be legal, proper and correct. The impugned judgment and order are liable to be quashed and set aside.

15. In the result, I pass the following order:-

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned judgment and order dated 14.03.2018 passed by the learned Adhoc Additional Sessions Judge, Parbhani in Criminal Appeal No. 25 of 2013 are quashed and set aside.
- (iii) The applicants are acquitted of the offences punishable under Sections 354, 323, 504 and 294 of the Indian Penal Code.
- (iv) The bail bonds of the applicants are cancelled. They are set at liberty.
- (v) The fine amount deposited by the applicants be refunded to them.
- (vi) The Criminal Revision Application is accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE