

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 20 OF 2005

Laxman Sudamrao Pawar
Age 56 years, Occ. Shop
R/o. Wangi Road, Parbhani

...Applicant
(Ori. Complainant)

Versus

1. Parasram s/o Sakharamji Darade
Age 54 years, Occ. Services
R/o. Lokmanya Nagar, Parbhani
2. Sanjay s/o Gyandearao Darade
Age 28 years, Occ. Education
R/o. Lokmanyagar, Parbhani
3. Sow. Nirgunabai w/o Parasram Darade
Age 46 years, Occ. Household
R/o. Lokmanyagar, Parbhani

4. Tukaram s/o Baliramji Ghuge
Age 56 years, Occ. Services
R/o. Mauje Sawli, Tq. Jintur
District Parbhani

(Ori. Accused)

5. The State of Maharashtra
Through Police Station,
New Mondha Parbhani
Through P.P. having it's office
in High Court premises,
Jalna Road, Aurangabad

...Respondents

.....

Mr. S.K. Chavan, advocate for the applicant
Mr. S.S. Bora, advocate for respondent Nos. 1 to 4
Mr. B.V. Virdhe, A.P.P. for respondent No.5-State

.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment :30.01.2019**

**Date of pronouncing
the Judgment : 20.06.2019**

JUDGMENT :-

1. The applicant-original complainant has preferred this criminal revision application against the judgment and order of acquittal passed by learned Additional Sessions Judge, Parbhani by order dated 30.10.2004 in Sessions Trial No. 74 of 1999.

2. Brief facts of the prosecution case are as under:-

a) Precisely in the year 1996, deceased Anil alongwith his two friends allegedly kidnapped P.W. 11 Jyoti from lawful custody of her parents. In consequence thereof, father of P.W. 11 Jyoti-respondent -original accused No.1 herein, had lodged complaint against deceased Anil and his two friends in the concerned police station.

b) According to P.W.2 Laxman Pawar, the father of deceased Anil, there was love affair between deceased Anil and P.W.11 Jyoti and about two years before the death of Anil, deceased Anil and Jyoti together ran away from the house. After registration of crime as against deceased Anil and his two friends about kidnapping, as detailed above, respondent accused No.1 Parasram contacted P.W. 2 Laxman Pawar and inquired with him as to whether he would accept his daughter Jyoti as wife of deceased Anil. P.W.2 Laxman

Pawar told him that he would not accept the said marriage. The respondent accused No.1 Parasram thereafter reacted that he would kill deceased Anil if he get married with P.W.11 Jyoti.

c) In connection with the said crime of kidnapping, the investigating officer had brought deceased Anil and Jyoti from Pune to Parbhani. Deceased Anil was sent to jail, however, after some time, he was released on bail. It further appears from the prosecution story that as both the parents were not happy with so called marriage of deceased Anil with P.W.11 Jyoti, on 29.03.1998 the marriage of P.W.11 Jyoti was solemnized with one Prashant Andhale. Immediately after the marriage on 4.4.1998, as per the tradition, P.W.11 Jyoti had come to her parents house at Parbhani for *Yeti Jati* purposes. All the family members, including P.W.11 Jyoti had taken dinner together and slept in the house at different places. P.W.11 Jyoti slept in her bedroom. On 5.4.1998 at about 3.00 to 4.00 a.m. the family members heard certain loud voice of P.W.11 Jyoti from her bedroom. Thus, respondent accused No.1 Parasram and others rushed towards the bedroom of P.W.11 Jyoti. On reaching there, they witnessed that deceased Anil Pawar was there in the bedroom of Jyoti and scuffle was going on between deceased Anil and P.W.11 Jyoti. Thus, all the family members got annoyed and nephew of accused No.1 Parasram and viz. Sanjay accused No.2 inflicted the

blows on neck, legs of deceased Anil with the help of sickle used for cutting the sugarcane. Respondent accused No.1 Parasram had extended beatings with the help of iron pipe. The prosecution story further reveals that left leg of deceased Anil was cut due to extensive beatings extended to him and he died on the spot. On the same day, respondent P.W.1 Parasram had gone to the police station and informed to the police about the incident, as detailed above. On the basis of his information, crime No. 54 of 1998 for the offence punishable under Section 302 of I.P.C. came to be registered. The said report is marked at Exh 91.

d) After registration of crime, investigating officer has carried out investigation and on conclusion of the same, submitted charge sheet against the accused persons for the offences punishable under Sections 302 r.w. 34 of I.P.C. During the course of investigation, the accused persons came to be arrested. The blood stained clothes on the person of accused Nos. 1 and 2 came to be seized. The investigating officer has drawn the inquest panchanama of the dead body of deceased Anil. The Article 30 - cutter/katti came to be recovered at the instance of accused No.2. Blood stained clothes of deceased Anil also came to be seized. The dead body of deceased Anil was sent for medical examination. After investigation, charge sheet was filed against the accused persons in the court of learned

J.M.F.C. for the offences punishable under section 302 r.w. 34 of I.P.C. The case was committed to the Court of Sessions.

e) The learned Additional Sessions Judge, Parbhani has framed charge against all accused for the offences punishable under Sections 302 r.w. 34 of I.P.C. All accused persons pleaded not guilty to the said charge and claimed to be tried. The prosecution has examined in all 10 witnesses to substantiate the charges levelled against the accused. P.W.11 Jyoti came to be examined as Court witness. The defence of the accused was of total denial and they have contended that they have been falsely involved in the case.

f) After recording the statements of accused persons under section 313 of Cr.P.C. and after hearing both sides, the learned Additional Sessions Judge, Parbhani, by judgment and order dated 30.10.2004 in Sessions Case No. 74 of 1999 had acquitted accused Nos. 1 to 4 of the offences punishable under sections 302 r.w. 34 of I.P.C. Hence, this criminal revision application.

3. Learned counsel for the applicant submits that though P.W.11 Jyoti had not supported the prosecution case, still then the prosecution has established its case on the basis of chain of circumstantial evidence. There is sufficient evidence about the

motive. Though P.W.11 Jyoti got married with deceased Anil when P.W.11 Jyoti ran away from house alongwith deceased Anil, however, under the pressure of parents, Jyoti got married with one another person. On the basis of the complaint lodged by the father of P.W.11 Jyoti, crime came to be registered against deceased Anil for kidnapping P.W.11 Jyoti and the said case was pending till death of deceased Anil. Learned counsel submits that the homicidal death of deceased Anil is proved. Learned counsel submits that there are chain of grave circumstances, such as (i) strong motive, (ii) homicidal death of deceased Anil proved beyond reasonable doubt, (iii) evidence on record clearly shows that deceased Anil was found in the company of P.W.11 Jyoti in her bedroom soon before his death, (iv) dead body of deceased Anil was found in the bedroom of P.W.11 Jyoti i.e. in the house of the respondents-accused, (v) F.I.R. was lodged by accused No.1 in the morning of 5.4.1998 admitting his guilt, (vi) the statement in the F.I.R. contains the occurrence of incident and relevant facts and circumstances in which deceased Anil died, (vii) accused Nos. 1 and 2 came to be arrested immediately after lodging of F.I.R. and blood stains were found on their clothes, (viii) Article 30 - the cutter or Katti came to be recovered at the instance of accused No.2 and (ix) except the respondents-accused persons none else had an opportunity or reason to cause the death of deceased Anil.

4. Learned counsel for the applicant submits that the trial court even accepted the evidence about motive and observed that it is reasonably probable that when the accused persons noticed the presence of deceased Anil with P.W.11 Jyoti in the bedroom they must have been gravely and suddenly provoked and upset because of the conduct of deceased Anil. That could be the reason for making assault on deceased Anil. Learned Judge of the trial court has concluded that the motive alleged by the prosecution has been duly proved. Even the learned Judge of the trial court has also concluded that the medical evidence on record and the surrounding circumstances clearly shows that deceased Anil met with homicidal death.

5. Learned counsel for the applicant submits that the respondents-accused persons have not denied lodging of F.I.R. Exh.91 on 5.4.1998 by accused No.1 at 7.15 a.m. The P.W.10 investigating officer Mr. Angole has also deposed that on 5.4.1998 in the morning when he was on duty in the police station, New Mondha, Parbhani, accused No.1 came to the police station and lodged the complaint. P.W.10 investigating officer has further stated that the information report was scribed by him as per the say of the accused No.1 and he obtained signature of accused No.1 below it. The

accused No.1 had not denied his signature below the F.I.R. Exh.91. Even accused No.1 has also admitted the said F.I.R. Exh.91 in his examination under Section 313 of Cr.P.C. to the effect he had gone to the police station only to inform the police that dead body of deceased Anil was lying in his house. The trial court ought to have considered the contents of the F.I.R. Exh.91 as admission to be used against accused No.1 and the same is not hit by Section 25 of Indian Evidence Act. Learned Judge of the trial court has erroneously concluded that F.I.R. lodged by accused No.1 is confessional statement and thus hit by Section 25 of the Indian Evidence Act. Learned counsel submits that even if the statement in the F.I.R. Exh.91 is considered to the extent that accused No.1 had gone to the police station at the relevant time, reported the incident to the police and further the dead body of deceased Anil was found in the bedroom of house of accused No.1, there is no reasonable explanation as contemplated under Section 106 of the Evidence Act as to the homicidal death of deceased Anil in the bedroom of P.W.11 Jyoti which was exclusively within the knowledge of respondents-accused. Learned counsel submits that the other circumstances, such as blood stained clothes of accused Nos. 1 and 2 and recovery of weapon allegedly used in the assault are not considered by the trial court. The trial court has thus, erroneously acquitted the accused persons. The criminal revision application may be allowed and the

respondents-accused persons may kindly be convicted.

Learned counsel for the applicant, in order to substantiate his submissions, placed reliance on the following cases:-

- i) Faddi vs. State of M.P. reported in AIR 1964 SC 1850
- ii) Chandra Bhawan Singh vs. State of Uttar Pradesh, reported in 2018 AIR (SC) 2205
- iii) Kailas Damu Gaikwad vs. State of Maharashtra, reported in 2018 ALL MR (Cri) 1163

6. Learned counsel for the respondents-original accused submits that the prosecution witnesses are highly interested witnesses. Learned Judge of the trial court has rightly held that the F.I.R. Exh.91 being confessional in nature is hit by Section 25 of the Evidence Act. So far as the circumstances of homicidal death and motive at the most creates strong suspicion against the respondents-accused persons.

7. Learned counsel submits that the explanation about the homicidal death of deceased Anil in the house of accused persons was tendered. It is not incumbent on the accused persons to prove such explanation beyond doubt. Learned counsel submits that it is

always for the prosecution to prove its case beyond doubt and if the case rests upon circumstantial evidence, the failure on the part of the accused to explain the death, would be additional circumstance against the accused persons. Learned counsel for the respondents submits that Section 106 of Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved, the burden in regard to such fact, which was within special knowledge of the accused may be shifted on the accused for explaining the same. Learned counsel submits that the suspicion, however, grave may be, cannot be a substitute for proof. Learned counsel submits that accused Nos. 1 and 2 came to be arrested in the morning of 5.4.1998 soon after the F.I.R. Exh.91 was lodged by accused No.1. In the arrest panchanama Exh.72 and 73 there is reference that blood stained clothes on the person of accused Nos. 1 and 2 came to be attached when they were arrested. Learned counsel submits that accused No.1 during the course of examination under Section 313 of Cr.P.C. has explained that on hearing the cry of his daughter P.W.11 Jyoti, he went there in the bedroom and found dead body of deceased Anil there in the bedroom. It further explained that he was frightened and he touched the dead body for ascertaining whether deceased Anil was alive. It is further revealed during the course of trial that the clothes of accused Nos. 1 and 2 were not duly sealed when they

were attached. The said clothes of accused Nos. 1 and 2 were also not kept in safe custody and the learned Judge of the trial court has therefore, rightly held that the possibility of tampering after attachment of clothes cannot be ruled out. The attached clothes were not sealed at all. So far as the seizure of Muddemal Article 30 i.e. cutter or Katti is concerned, the prosecution claims that the same has been recovered at the instance of accused No.1 on 7.4.1998. P.W.5 Sampati panch witness has not supported the prosecution case. Thus memorandum of panchanama Exh.74 and recovery panchanama Exh.75 are proved through P.W.8. P.W.8 Sayyad Taher has further admitted that he was in the police department and was attached to New Mondha police station, Parbhani from the year 1994 to 1997. He had served in the said police station for quite a long time. Thus, calling upon the said person to act as a panch witness is highly suspicious and objectionable. Learned counsel for the respondents submits that the alleged recovery as per the memorandum panchanama Exh.74 and recovery panchanama Exh.75 was on 7.4.1998 between 9.00 to 10.00 a.m. and the said recovery was pursuant to the alleged statement of accused No.1 at about 8.30 a.m. on 7.4.1998. There is considerable delay in the recovery after the arrest which was not explained. Furthermore, the said recovery of the weapon is highly suspicious since P.W.2 Laxman Pawar has given material admission that said Katti was lying near the

dead body of deceased Anil when the inquest panchanama about dead body of deceased Anil was drawn. Learned counsel submits that the trial court has rightly stated and observed in para 27 of the judgment that admittedly there is ample evidence on record that there were many relatives and family members of accused Nos. 1 to 3 present in the house in the relevant night and therefore, it cannot be said that except the accused persons none else had any opportunity to assault deceased Anil. It is the defence raised by the accused that they have reached to the bedroom of P.W.11 Jyoti and noticed dead body of deceased Anil lying there. According to P.W.11 Jyoti deceased was upset and desperate and he had inflicted the injuries on himself by sword. Learned counsel submits that the trial court has rightly acquitted the accused. There is no reason to interfere. The criminal revision application is liable to be dismissed.

Learned counsel for the respondents-original accused, in order to substantiate his submissions placed reliance on the following cases:-

- i) Abbas Nawaj Shaikh vs. State of Maharashtra, Criminal Appeal No. 159 of 2000 decided on 18.12.2018, (Coram: I. Mahanty and V.K. Jadhav, JJ.)
- ii) Aghnoo Nagesia vs. State of Bihar, reported in AIR 1966 SC 119

- iii) Bapurao Irbhan Tayade vs. State of Maharashtra, reported in 2002 Cri.L.J. 1280
- iv) Salim Akhtar vs. State of Uttar Pradesh, reported in AIR 2003 SC 4076
- v) Sahib Singh vs. State of Punjab, reported in AIR 1997 SC 2417
- vi) State of Rajasthan vs. Ramanand, reported in AIR 2017 SC 2100,
- vii) Parvati Nandkishore Taksalkar vs. State of Maharashtra, Criminal appeal No. 823 of 2014 decided on 17.12.2018 (Coram: Smt. S.S. Jadhav, J.)
- viii) Huma Ali and Ors. vs. State of Maharashtra, Criminal Appeal Nos. 260 of 2014 and other connected appeals, decided on 21.11.2018 (Coram: S.B. Shukre and S.M. Modak, JJ.).
- ix) Ildas vs. The State of Maharashtra, reported in 2017 ALL MR (Cri) 4315

8. I have also heard the learned A.P.P for the respondent-State.

9. I have gone through the well reasoned judgment of the trial court. The learned Judge of the trial court has rightly discarded the F.I.R. (Exh.91) being the confessional statement hit by Section 25 of the Evidence Act. Furthermore, the learned Judge has rightly observed that the statement in the F.I.R. is admissible as against accused No.1 to the extent that accused No.1 had gone to the police station at the relevant time and lodged the F.I.R. The contents of the F.I.R. Exh.91 are admissible to the extent that dead body of

deceased Anil was lying in the bedroom in the house of accused No.1. It is well settled that the confession or an admission is evidence against the maker of it, unless its admissibility is not excluded by some provisions of law; that Section 25 of the Evidence Act does not exclude all statements by the accused to police officer, except the confession. Section 25 of the Evidence Act protects the accused in respect of a confession made by him to the police officer. The accused cannot be compelled to be a witness against himself. It is also well settled that Section 25 of the Indian Evidence Act covers a confession made to a police officer even before any investigation has started and is not confined to a confession in the course of an investigation.

10. It is well settled that the motive plays great role when the prosecution case rests upon the circumstantial evidence. In the instant case, deceased Anil allegedly kidnapped P.W.11 Jyoti, got married with her and in consequence thereof, crime came to be registered against deceased Anil. It has also come in the prosecution evidence that the parents of P.W. 11 Joyti had not given consent for the said marriage of deceased Anil with P.W.11 Jyoti and as a result thereof, the marriage of P.W.11 Jyoti was solemnized with some other person. It has also come in the evidence that soon after the marriage, P.W.11 Jyoti had come to her parents for *Yeti Jati* purposes

as a tradition. Deceased Anil met with homicidal death in the bedroom of P.W.11 Jyoti. Thus, there is motive on the part of the accused persons to kill deceased Anil after noticing his presence in the bedroom of P.W.11 Jyoti though she got married with other person. Furthermore, the homicidal death of deceased Anil is proved beyond doubt. It is also not disputed that dead body of deceased Anil was found in the bedroom of P.W.11 Jyoti. Thus, the cumulative effect of all these circumstances though create strong suspicion against the accused persons, however grave it may be, cannot substitute the proof.

11. The prosecution has not examined P.W.11 Jyoti for the reason that she was not likely to support the prosecution case. Consequently, the trial court under Section 311 of the Cr.P.C. has examined P.W.11 Jyoti as the court witness. In response to the question No.2, P.W.11 Jyoti has deposed which is reproduced herein below:-

“ Q. No.2: It is the prosecution case that dead-body of Anil Laxman Pawar was found in the bedroom of the house of accused Nos. 1 and 3 in the night of 5.4.1998 at about 4 a.m. What have you to say about this incident?

Ans: I was present in the bed-room in the relevant night. I was alone in the bed room. Somebody called me from outside the

window of the bedroom. I opened the gate of the bed-room and looked outside to see who was there. I found Anil Pawar there. He had consumed alcohol. He was intoxicated. He had a sword in his hand. He said to me that he wanted to speak to me. Both of us went in the bed-room. He started quarreling with me. I asked Anil Pawar to go away. Anil Pawar started beating me. He used criminal force and pulled my Mangalsutra. It was broken. Anil Pawar then said to me that if I did not listen to what he said he would commit suicide. I again insisted that he should go away. Anil Pawar then caused injuries to himself by the sword. I cried. My family members rushed to the bed-room on hearing my cries. I was very much frightened. Anil Pawar had fallen down and he was injured. I was feeling giddy. My maternal uncle then took me to Chimegaon, Tq. Aundha. I returned to Parbhani on 6.4.1998. Thereafter, I went to my matrimonial home.”

P.W.11 Jyoti was subjected to cross examination by the prosecution and she had denied that in the relevant night her father accused No.1 and her cousin accused No.2 had assaulted the deceased Anil with cutter and iron rod. P.W.11 Jyoti denied to have stated portion mark “A” to portion mark “C” of her statement. P.W.11 Jyoti is alone as eye witness to the incident. It appears that she had deposed in such a manner that her testimony is liable to be discarded to the extent of cause of death of deceased Anil in her bedroom. However, P.W.11 Jyoti has given reference that deceased Anil had come with sword and he had used the same to kill him. It is pertinent to note that the Article 15 sword was lying near the dead body of deceased Anil for which no explanation has been tendered

by the prosecution. P.W.1 Dr. Durgadas Pande has also deposed that all the injuries, except injuries 6 and 8, on the person of deceased Anil are possible by the weapon Articles 15 and 30 (Article 15 sword and Article 30 Katti). P.W.1 Dr. Pande, by referring C.A. reports Exh.65 and Exh.66 also deposed that the report indicates that ethyl alcohol present in the blood and viscera and that deceased Anil was under the influence of alcohol.

12. So far as the other circumstances such as blood stained clothes on the persons of accused Nos. 1 and 2 are concerned, the learned Judge has rightly taken a note of non sealing of clothes and also unsafe custody of those clothes and observed that the possibility of tampering with those clothes cannot be ruled out. The learned Judge of the trial court has also rightly considered that there is reasonable explanation about the blood stains appearing on the clothes of accused persons. Furthermore, there is no blood group of deceased and as such, there is no evidence to conclude that the blood stains on the clothes of accused persons are of blood group of deceased Anil. So far as the seizure of weapon Article 30 Katti, the same loses its significance for the reason that P.W. 2 Laxman Pawar has deposed in his examination in chief itself that he has noticed one dagger (katti) near the dead body of Anil.

13. So far as the burden of proving of facts especially within the knowledge as contemplated under Section 106 of the Indian Evidence Act, it is well settled that Section 106 of the Evidence Act is not intended to be used to place upon the accused the burden of proving his innocence. It is not a proviso to the rule that the burden of proving the guilt of the accused is upon the prosecution. Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved, the burden in regard to such facts which was within the special knowledge of the accused, may be shifted to the accused for explaining the same and failing therein, the said circumstance would be considered as an additional circumstance going against the accused. In the instant case, the prosecution has failed to prove its case beyond all reasonable doubt and at the most, strong suspicion is created against the accused persons.

14. The Supreme Court in the case of ***Faddi v/s State of M.P.*** (supra) relied upon by learned counsel for the applicant, in para 11 and 15 has made the following observations:-

“11. This report is not a confessional statement of the appellant. He states nothing which would go to show that he was the murderer of the boy. It is the usual first information

report an aggrieved person or someone on his behalf lodges against the alleged murderers. The learned Sessions Judge and the High Court considered the appellant's statements in this report which went to explain his separation from Gulab on account of the conduct of Ramle and others and came to the conclusion that those statements were false. This was in a way justified as the burden lay on the appellant to account for the disappearance of Gulab when the prosecution evidence showed that the appellant had taken Gulab with him. Besides, what the appellant had stated in the report, he had given no explanation for the disappearance. Of course, he had denied that he took Gulab with him. The evidence about that aspect of the case consists of the statements of Ramle, Shyamlal and Bhagwan Singh which have been accepted by the Courts below.

15. *The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and S. 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. Admissions are admissible in evidence under S. 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations*

(c), (d) and (e) to S. 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in S. 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him”.

In the facts of the said case, as discussed in para 15 above by the Supreme Court, report was not a confession and as such the Supreme Court has held that Section 25 of the Evidence Act and Section 162 of Cr.P.C. do not bar its admissibility. In the instant case, the F.I.R. Exh.91 consists of clear confession of accused No.1 to the effect that when deceased Anil was found in the bedroom of P.W.11 Jyoti and scuffle was going on between them, accused No.2 Sanjay had inflicted blows on the neck and leg of deceased Anil with the help of Katti whereas accused no.1 himself inflicted the blows on the person of deceased Anil with the help of iron pipe and in fact they cut his left leg and deceased Anil died on the spot. In my opinion, the observations made by the Supreme court in the aforesaid case are in different context and the same cannot be made applicable to the facts and circumstances of the present case.

15. In the case of ***Kailas s/o Damu Gaikwad vs. The State of Maharashtra (supra)*** relied upon by learned counsel for the applicant, this Court in para 25 of the judgment has made the

following observations:-

“25. The provisions of sections 3 and 106 of the Evidence Act if considered together show that it was necessary for the accused to give explanation with regard to the information which he must have regarding the incident. If the accused gives false information, such circumstance itself can be used against the accused and such circumstance becomes additional link of the chain of circumstances and possible inference needs to be drawn against the accused due to existence of such circumstances.”

There is no dispute about this legal position. However, it is settled that initial burden is on the prosecution to prove its case beyond reasonable doubt. Section 106 of the Evidence Act cannot be treated as proviso to the said burden on the prosecution.

16. It is well settled that interference with the order of acquittal passed by the trial court is limited to exceptional cases such as, order under revision suffers from glaring illegalities, or has caused miscarriage of justice, or the trial court has illegally shut the evidence which otherwise ought to have been considered, or where the material evidence which clinches the issue has been overlooked or where the admissible evidence is wrongly brushed aside as inadmissible.

17. 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."

18. On going through the judgment and order of acquittal, I do not find any glaring illegalities or miscarriage of justice. In the cases of ***Kali Ram vs. State of H.P. reported in AIR 1973 SC 2773*** and ***Subramaniam vs. State of T.N. reported in AIR 2009 SC (Supp) 1493***, the Supreme Court has observed that in the appeal against acquittal, the appellate court should not interfere when two views are possible and if the view taken by the trial court not wholly unreasonable or otherwise perverse. In the instant case, on the basis of the prosecution evidence, the view taken by the trial court does not appear to be unreasonable. I do not find any perversity in the order of acquittal passed by the trial court. In view of the same, I find no substance in this criminal revision application. Hence, the following order:-

O R D E R

Criminal revision application is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)