

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

CRIMINAL REVISION APPLICATION NO. 69 OF 2005

Bhausahab Babasaheb Kapse

Age: 29 Years

R/o: Nimgaon Wagha, Tq. Nagar,

Dist: Ahmednagar

... Petitioner

Versus

1. The State of Maharashtra

2. Sandip alias Bantya s/o Ramdas Nimse

Age: 25 Years

3. Santosh Ramdas Nimse

Age: 29 Years,

R.Nos. 2 and 3 R/o: Nimgaon Wagha,

Tq.: Nagar, Dist.: Ahmednagar

... Respondents

...

Mr. S.S. Wagh holding for Mr. S.T. Shelke, Advocate for the
Applicant

Mr. V.M. Kagne, APP for Respondents/State

...

CORAM : V. K. JADHAV, J.

DATED : 3rd JANUARY, 2019

JUDGMENT :-

1. This Criminal Revision Application has been preferred against the judgment and order of acquittal passed by the Judicial Magistrate, First Class, Court No.1, Ahmednagar dated 10.12.2004 in R.T.C. No. 83 of 2002.

2. Brief facts giving rise to this Criminal Revision Application are as follows :-

I. As per the prosecution case on 28.08.2002, at about 1.00 pm, PW-1 – Bhausahab Kapase was going to his house at village Nimgaon by selling milk at Ahmednagar. Accused No.1 in front of one factory at Kedgaon obstructed PW-1 – Bhausahab Kapase by placing his motorcycle before him and further given him the threats. It further reveals from the prosecution story that on the same day at about 4.00 pm, PW- 1 – Bhausahab went to his agricultural field and started cutting the grass. The land of accused is situated adjacent to his land. Both the accused came in their field and PW-1 questioned them as to why accused no.1 had placed his motorcycle in his way. Thus, accused no.1 abused him and also extended the beating with the help of fist and kick blows and accused hit him by stick under his left eye. The accused have also beaten his brother - Sachin Bajirao Kapase.

II. On the basis of complaint lodged by PW-1 – Bhausahab Kapase, the Crime No. 156 of 2002 came to be registered in the concerned Police

Station for the offences punishable under Sections 324, 323, 504 and 506 read with Section 34 of IPC. The Head Constable Mr.T.B. Kolhe has submitted the charge sheet against both of the accused before the Court. The learned Judge of the trial Court has framed the charge against the accused for the offences under Sections 324, 504 and 506 read with Section 34 of IPC and further also framed the additional charge under Section 326 of IPC. Both the accused pleaded not guilty to the charge and claimed to be tried.

III. In order to substantiate the charges leveled against the accused, the prosecution has examined six witnesses. The defence of the accused is of total denial and false implication. After recording the statement under Section 313 of the Code of Criminal Procedure and after hearing both the sides, the learned Magistrate has acquitted both the accused for the offences under Sections 325, 504 and 506 and read with Section 34 of IPC. Hence, this criminal revision application preferred by the original complainant.

3 The learned counsel for the applicant submits that the learned Judge of the trial Court has discarded the evidence of PW-1 – Bhausahab Kapase, who is an injured witness and further ignored the ocular evidence of PW-4 – Sunil Tukaram Kapase. The learned counsel submits that the medical evidence corroborates the allegations leveled against both the accused persons. The learned Judge of the trial Court has recorded the perverse finding and erroneously acquitted the accused. The learned counsel submits that the criminal revision application deserves to be allowed by setting aside the order of acquittal and both the respondents – accused persons may be convicted for the offence for which they were charged and tried.

4 None present for the respondents-accused persons.

5 I have also heard the learned APP for the respondents/State.

6 The interference with the order of acquittal passed by the trial Court is broadly limited to the following exceptional cases :-

(I) Order under revision suffers from glaring illegalities

- (II) Or has caused miscarriage of justice
- (III) Or where the trial court has illegality shut the evidence which otherwise ought to have been considered
- (IV) Or where the material evidence which clinches the issue has been overlooked
- (V) Where the admissible evidence is wrongly brushed aside as inadmissible.
- (VI) Where the acquittal is based on the compounding of the offence which is invalid under the law.

7 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."

8. 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."

9 In the instant case, though PW-1 has deposed about the incident in detailed and also ascribed the specific role to both of the accused. However, there is no corroboration to his evidence. The complainant and the accused are the adjacent land holders. The prosecution has not examined the witness - Sachin Bajirao Kapase, whose name was referred in the F.I.R. and who was also assaulted by both the accused persons. Further, the learned Judge of the trial Court after discussing the evidence of PW-4 in detailed has observed that PW- 4 is not a trust worthy and reliable witness. As per the evidence of PW-4, the father and wife of PW-1 – Bhausahab Kapase were also cutting the grass in their field at the relevant time. The PW- 4 along

with his parents was working in the field adjacent to the said field of PW-1. The learned Judge of the trial Court has rightly observed that the father and wife of PW-1 did not rush to PW-1 to rescue him from the clutches of the accused. On the other hand, PW- 4 went there and pacified the quarrel. Furthermore, as per the injury certificate (Exhibit-32) all the four injuries appear to have been caused near the left eye and right side of nose. PW-1 has categorically deposed that he was beaten by two accused persons by fist and kick blows. However, except those injuries, no other injuries were found on his person. In the backdrop of this finding, I have carefully gone through the evidence of PW-3, who has examined PW-1 – Bhausahab Kapase and issued the injury certificate (Exhibit – 32). The injuries Nos. 1 to 3 are simple while he has recorded the nature of injury No.4 as grievous. PW-3 has admitted in his cross-examination that except the redness in the eye, there was no external injury to the said eye and he has mentioned the nature of said injury as grievous only for the reasons that the said injury was on the vital part. He has further admitted that he is not specialist and he has obtained the opinion of the Eye-Surgeon. However, the said opinion is not placed on record nor the prosecution has examined the said

Eye-Surgeon.

10 It appears that there is a previous dispute between the parties and as such, the corroboration from the independent witness was necessary. Thus, considering the entire aspect of the case, the learned Judge of the trial Court has rightly discarded the evidence of PW-1 and PW-4. The other witnesses mainly panch witness has not supported the prosecution case. The prosecution has not examined the Investigating Officer. I do not think that, the judgment and order of acquittal passed by the learned Magistrate suffers from any perversity. There is no merit in this Criminal Revision Application. Hence, following order.

O R D E R

1. Criminal Revision Application is hereby dismissed.
2. Rule discharged.

(V. K. JADHAV, J.)

Sam.

....