

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

CRIMINAL REVISION APPLICATION NO.55 OF 2018

Shaikh Sima W/o Shaikh Shabbir,
Age: 30 years, Occu. Household and Agri.,
R/o Kurla, Tq. and Dist. Beed.

... PETITIONER
(Ori. Complainant)

VERSUS

1. Shaikh Dilshad Shaikh Alim,
Age : 27 years, Occu: Agricultural,
R/o Kurla, Tq. & Dist Beed.
2. Shaikh Alim Shaikh Pasha,
Age :30 years, Occu: Agricultural,
R/o Kurla, Tq. & Dist. Beed.
3. Shaikh Salim s/o Shaikh Pasha
Age : 34 years, Occu: Agricultural,
R/o Kurla, Tq. & Dist Beed.
4. Shaikh Shamim w/o Shaikh Pasha,
Age : 56 years, Occu: Agricultural,
R/o Kurla, Tq. & Dist Beed.
5. The State of Maharashtra,
[Copy to be served on Public prosecutor,
High Court of Judicature of Mumbai,
Bench at Aurangabad.

... RESPONDENTS
(Respondent No.1-4
Ori. Accused)

...

Advocate for Applicant : Mr. Shelke Manoj U.
Advocate for Respondent/State: Mr. S.B. Joshi

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CORAM : MANGESH S. PATIL, J.

DATE : 18.09.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned APP for the respondent No. 5 waives service. At the request of both the sides the matter is heard finally at the stage of admission.

2. The applicant is the original complainant/victim who is challenging the order passed by the learned Judicial Magistrate First Class in RCC No.391/2013 whereby the respondent nos. 1 to 4 were acquitted of the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, by the judgment and order dated 07.08.2015. She had preferred Criminal Appeal No.112/2015 before the Sessions Court against the order of the acquittal returned by the Magistrate. Unfortunately for her even the appeal has been dismissed by the impugned judgment and order dated 21.11.2017. Thus the applicant is challenging the concurrent findings of the two courts below in this Revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

3. The learned advocate for the applicant submits that both the courts below have committed gross error in scrutinizing the evidence. The observations and conclusions drawn by them are

perverse and arbitrary and even though there is a concurrent finding of facts this Court should intervene. He submits that there was enough material to establish the motive since there was a long standing animosity between the two families. There were eye witnesses. Apparently, there was no reason to disbelieve the applicant who had sustained an injury on the forehead with a sickle. Similarly, during the Spot Panchanma the weapon used in the crime in assaulting the applicant i.e. sickle was also seized. In spite of such cogent and reliable evidence, the courts below have lightly brushed aside the testimonies of some of the witnesses by saying that they are partisan. The medical evidence has been ignored and therefore the impugned judgments of acquittal be quashed and set aside and the respondent nos. 1 to 4 be convicted.

4. The learned APP submits that the State had not preferred any appeal against the acquittal.

5. I have carefully gone through the papers and evidence as well as the impugned judgments of the two courts below. Obviously, the scope in an appeal against acquittal is well settled and so long as the view taken by the Trial Court in returning acquittal is a plausible view based on correct appreciation of evidence, the Appellate Court is not expected to intervene in the order of acquittal. Again, when there

is a concurrent findings of the facts of the two courts below, the scope to interfere with such concurrent findings in the revision is still very little. Bearing in mind these principles let us examine what was the evidence before the trial Court.

6. The applicant and the respondent nos. 1 to 4 are owners of the adjoining land. There is a common bandh between the two lands and the two families are at loggerheads on account of its use. It is alleged that on 06.07.2013, the applicant was busy working in her field. At around 1.00 pm accused no.1 i.e. respondent no.3 questioned her as to why she had sown crop on the bandh intervening the two lands. When she retorted by saying that she did not know who had sown the crop there and also said that it could be her husband. Where upon accused Salim started abusing her. She asked him not to abuse but the rest of the accused respondents arrived there. Accused Shamim was carrying sickle. Accused Shamim caught hold her with her hair and gave a blow of sickle on her forehead. Thereafter, accused Dilshad assaulted her with a Chappal. Accused Alim also abused and threatened to kill her. She informed her husband on phone about the assault. Her husband arrived there on a motorcycle. She was taken to the Government Hospital, Beed, where Dr. Burande (PW-5) treated her and stitched the wound. The applicant's statement was recorded by police in the hospital. The crime was registered. Spot

Panchnama (Ex.50) was drawn in presence of one Shaikh Safdar – (PW4). A sickle was seized during the course of that Spot Panchanama. The accused were arrested and in due course of time the charge sheet was filed.

7. In accordance with her version, in the FIR applicant Sima (PW-1) deposed about the incident. She stated about accused Shamim having given a blow of sickle on her forehead, however, one Amar (PW-3) who was posed to be an eye witness and an independent person stated that it was the accused Amin who had assaulted her with a sickle. True it is that merely because there is an animosity, the testimony of a witness cannot be brushed aside. It only requires a minute scrutiny so as to rule out any partisan version. But when this independent witness has controverted the version of the applicant, as to who had actually inflicted the injury on her forehead with a sickle, it certainly gives a room to doubt veracity of the prosecution case. Besides this independent witness Amar (PW-3) has been disbelieved by the two courts below also on the ground that there was no occasion for him to be present at the scene of the crime when he admitted that his land was at a distance of half a kilometer from the spot. He also admitted that one Nisar was working as a driver on his tractor and this Nisar happened to be the brother of Shaikh Shabbir (PW-2) who is the husband of the applicant. It is for these cogent reasons that both the

courts have refused to rely upon this witness Amar (PW-3) who was posed as an eye witness.

8. Shaikh Shabbir (PW-2) is the husband of the applicant but admittedly, he was not present at the scene of the crime when the incident took place and was merely informed telephonically by her after its occurrence. Therefore, his version is of no help as far as the incident is concerned.

9. Then Shaikh Safdar (PW-4) is the Panch who has stated to have been present at the time of Spot Panchanam (Ex.50) during which the sickle is alleged to have been recovered. He admitted that he is the brother of the applicant. The two courts below have refused to believe that the accused could have left the sickle on the spot if really it was used in inflicting injury.

10. Again, though the applicant (PW-1) stated that her clothes were stained with blood those were not seized during the investigation.

11. Dr. Burande (PW-5) has merely deposed about having treated the applicant who was found to have sustained a Contused Lacerated Wound and the injury on the head could have been caused by grubbing hoe. However, apparently, the sickle seized during the course of the Spot Panchnama was not confronted to this Medical

Officer to elicit if the injury found on the forehead of the applicant could have been caused by it.

12. The learned Magistrate had considered such evidence led by the prosecution in the correct perspective and had reached a plausible conclusion. After scrutinizing such decision by the Magistrate, the learned Sessions Judge has also reappreciated the evidence and having found that the trial court had appreciated the evidence properly and there was no evidence beyond reasonable doubt, had rightly acquitted the accused respondents and has dismissed the appeal.

13. I find no infirmity in the appreciation of evidence by the two courts below and there is not sufficient and cogent reason for this Court to interfere with such concurrent findings.

14. The Revision is dismissed.

(MANGESH S. PATIL, J.)

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