

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

CRIMINAL REVISION APPLICATION NO. 118 OF 2019

Nagnath s/o Pandhari Kendre,
Age 32 years, Occupation Agriculture,
R/o. Fawadewadi, Tq. Renapur, Dist.
Latur.

... Applicant.
(Original complainant
and injured).

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Renapur, Tq. Renapur, Dist. Latur.
- 2) Dinkar s/o Sheshrao Gitte,
Age 47 years, Occ. Agriculture.
- 3) Sheshrao s/o Govind Gitte,
Age 67 years, Occ. Agriculture.
- 4) Motiram s/o Sheshrao Gitte,
Age 28 years, Occ. Agriculture,

All r/o. Fawadewadi Tq. Renapur,
Dist. Latur.

... Respondents.
(Original accused Nos.
1 to 3)

...

Advocate for the Applicant : Mr. Kendre N.D.
APP for the Respondent No.1/State : Mr. S.B. Joshi.
Advocate for the respondents No. 2 to 4 : Mr. V.D. Godbharle.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	04/10/2019
PRONOUNCED ON	:	26/11/2019.

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. The learned A.P.P. waives service for the respondent No.1. The learned advocate Mr. Godbharle, waives service for the respondent Nos. 2 to 4. On the request of both the sides the matter is heard finally at the stage of admission.

2. Original complainant/injured who set the criminal law in motion has approached seeking this Court to invoke the powers under Section 397 read with Section 401 of the Code of Criminal Procedure, being aggrieved and dissatisfied by the judgments of the two Courts below returning concurrent findings acquitting the respondent Nos. 2 to 4 of the offences punishable under Sections 326, 341, 323, 504, 506 r.w. Section 34 of the Indian Penal Code.

3. Shorn of verbiage the allegations in the F.I.R. lodged by the applicant are to the effect that on 12.10.2012 at about 16.30 hours he along with one Kisan Sangale was returning home after working in the field on the former's motor-cycle. When they reached in front of the house of respondent No. 2 Dinkar all the respondent Nos. 2 to 4 intercepted them. They asked Kisan to leave. Thereafter they started teasing him by saying as to what could he do when they had abused his father. Saying so respondent No. 2 Dinkar assaulted him on his

back and neck with a stick, whereas respondent Sheshrao and Motiram started abusing and beating him. His mother Kashibai (P.W. 3) rushed to the spot and tried to rescue him but the respondent Nos. 2 to 4 also assaulted her with fists and kicks and threatened her of dire consequences. Tulshiram (P.W.2) and one Balaji Gitte rescued him.

4. Nagnath (P.W. 1) and Kashibai (P.W. 3) both went to the Primary Health Centre Pangaon. Dr. Sangita (P.W. 6) who was serving there as Medical Officer examined Nagnath (P.W. 1) and noticed following injuries:

- 1) Contusion over left shoulder having size 6 x 1 x 0.5 cm.
- 2) Contusion over left scapular region having size 7x1x0.5 cm.
- 3) Contusion over lower end of left scapular having size 6x1x0.5cm.
- 4) Contusion over left side of back parallel to vertebral column having size 5x1x0.5cm.
- 5) Contusion over right scapular region having size 12x1x0.5cm.
- 6) Contusion over right shoulder having size 6x1x0.5 cm.
- 7) Contusion over left shoulder having size 5x1x0.5cm.
- 8) Contusion over left forearm having size 5x1x0.5cm.
- 9) Abrasion over left hand dorsal part having size 2x1x0.5 cm.

- 10) Contusion over back side of head just above the neck having size 4x2x1 cm.
- 11) Contusion over left thigh. They were 4 in number parallel to each other having size 5-6x1x0.5 cm.
- 12) Contusion over left knee having size 5x1x0.5 cm.
- 13) Contusion over both buttocks 4 in number, all are transversely lined, two on each buttock having size 5x1x0.5 cm.
- 14) Contusion over right thigh having size 7x1x0.5cm.

She noted that all the injuries were simple in nature, were caused within 12 hours by hard and blunt object and accordingly issued Medico Legal Certificate (Exhibit 48).

5. Dr. Sangita (P.W. 6) then examined Kashibai (P.W. 3) at 9.30 p.m. and noticed following injuries:

- 1) Fallen tooth from lower jaw central incisor. Blood was oozing from the injury having size 0.5 x 0.5 x 0.5 cm.
- 2) Contusion over chin having size 2x1x0.5 cm.
- 3) Contusion over right forearm dorsal part having size 2x2x0.5cm
- 4) Contusion over right side of the chest having size 2x2x1 cm.

She noticed that injury No. 1 was grievous whereas the other injuries were simple. All these injuries were caused within 12 hours by hard and blunt object and accordingly issued Medico Legal Certificate

(Exhibit 49). Nagnath (PW. 1) then lodged the F.I.R. (Exhibit 35) in the same night at 23.40 hours. The Crime was registered and the investigation was handed over to P.S.I. Namdeo (PW. 7). He conducted the spot panchnama (Exhibit 52) on 15.10.2012 in presence of Bapurao (PW. 5). He then arrested the accused on 15.10.2012. He seized a stick from the respondent No. 2 Dinkar under a seizure panchnama (Exhibit 53) in presence of Suresh (PW. 4). In due course of time he submitted the charge-sheet.

6. The learned Magistrate framed the charge for the aforementioned Sections. Recorded pleas. The respondent Nos. 2 to 4 pleaded not guilty. He recorded the evidence of the prosecution. He also examined them under Section 313 of the Code of Criminal Procedure. Their defence was of total denial and false implication. They submitted their written statement as well. They contended that they were relatives of Nagnath (PW. 1) and Kashibai (PW. 3). In fact respondent No.3 Sheshrao is the father of respondent Nos. 2 & 4 i.e. Dinkar and Motiram. Applicant's father Pandhari had two wives. His first wife Janabai died and Kashibai (PW. 3) was his second wife. Janabai's sister Manabai is the wife of respondent Sheshrao and thus Nagnath (PW. 1) is the step brother of three daughters of Janabai. These respondents were having cordial relations with these three step

sisters and therefore Nagnath (PW.1) and his family were holding grudge against them. They also stated that Nagath's (PW. 1) motor-cycle skidded and he fell to the ground and sustained injuries. They also contended that few days prior to the incident two teeth of Kashibai (PW. 3) were surgically removed. She also fell to the ground and sustained injury. Taking advantage of injuries sustained by them they have falsely implicated them.

7. By the impugned judgment and order the learned Magistrate held that the evidence led by the prosecution was not reliable and convincing and was not sufficient to bring home the guilt and acquitted them of all the charges.

8. Being aggrieved by the acquittal, the applicant Nagnath (PW. 1) preferred an appeal under Section 372 of the Code of Criminal Procedure before the Sessions Court. By the impugned judgment and order the learned Sessions Judge confirmed the findings of the Trial Court of returning acquittal and dismissed the appeal. Hence this Revision.

9. The learned advocate for the applicant vehemently submitted that both the Courts below have failed to appreciate the evidence in the proper perspective. In spite of availability of sufficient evidence,

both the Courts below have given unnecessary importance to minor contradictions and improvements. They failed to appreciate the fact that there was no apparent reason for the prosecution witnesses to testify against them. The medical evidence clearly corroborated the version of Nagnath (P.W. 1) and Kashibai (P.W. 3) who had sustained many injuries. In spite of the fact that Kashibai (P.W. 3) had lost a tooth which is a grievous injury as defined under Section 320 of the Indian Penal Code, both the Courts below have given unnecessary importance to minor contradictions as to if it was a case of fall of two teeth or one tooth and absence of any reference to any such incident in the F.I.R. It was expected of the Appellate Court to have reappreciated the evidence. But the learned Sessions Judge has not discharged the duty and has readily concurred with the faulty conclusions of the Magistrate. Thus the learned advocate submitted that the conclusions and findings by both the Courts below are grossly erroneous and perverse.

10. The learned advocate then referred to the decision of the Supreme Court in the case of ***Shamim Vs. State (Government of NCT of Delhi); (2018)10 SCC 509*** and submitted that both the Courts below have failed to follow the well settled principles reiterated in this judgment while appreciating the evidence of the prosecution witnesses.

11. Though the learned Sessions Judge had limitations in dealing with an appeal against acquittal, she ought to have interfered in the judgment and order of the Magistrate since it was clearly perverse and arbitrary. He thus prayed to quash and set aside the judgments and orders of both the Courts and to convict the respondent Nos. 2 to 4.

12. The learned advocate for the respondent Nos. 2 to 4 supported the judgments of the Lower Courts. He submitted that the testimonies of Nagnath (P.W. 1) and Kashibai (P.W. 3) were not compatible with each other. Tulshiram (P.W. 2) is related to them and was bound to support their version. The F.I.R. mentioned about presence of independent witnesses namely Kisan who was accompanying Nagnath (P.W. 1) and was allegedly asked to leave the spot and one Balaji Gitte who along with Tulshiram (P.W. 2) have been stated to have rescued Nagnath P.W. 1 but neither of them has been examined as a witness. Besides, there are inherent contradictions in the testimonies of all the prosecution witnesses particularly Nagnath (P.W.1), Tulshiram (P.W.2) and Kashibai (P.W. 3). Since both the panchas Suresh(P.W.4) and Bapurao (P.W. 5) turned hostile, the prosecution also failed to prove the spot panchnama as well as seizure panchnama. After meticulously scanning the testimonies the Magistrate had arrived at a plausible conclusion about prosecution

having failed to bring home the guilt by leading cogent and convincing evidence. Therefore, the learned Sessions Judge could not have interfered with such plausible conclusions since it was an appeal against acquittal. Therefore, the appeal has also been rightly dismissed. Since there are concurrent findings of facts by the two fact findings Courts below, this Court cannot invoke the powers under Section 397 read with Section 401 of the Indian Penal Code and resort to reappreciation of the evidence.

13. I have carefully gone through the entire evidence led by the prosecution and the judgment and orders of the two Courts.

14. I am alive to the trite legal principle as to the scope for this Court to invoke the powers of revision under Section 397 read with Section 401 of the Code of Criminal Procedure particularly when there are concurrent findings of the two Courts of acquitting the respondent Nos. 2 to 4. Needless to state that this power has inherent limitations and can be exercised in a limited sphere and the power has been circumscribed by well settled principles from catena of judgments. It is not that this Court cannot invoke these powers at all though the instances would be exceptional. In my considered view, the instant matter presents one such exceptional case where this Court would be

failing in its duty if it refuses to intervene in the judgments and orders of acquittal of the two Courts.

15. Needless to state that since Nagnath (P.W. 1) is an injured and victim of the crime, though it was a police case, a Warrant Case instituted on a police report, he had right under Section 372 of the Code of Criminal Procedure to challenge the judgment and order of acquittal of the Magistrate by preferring appeal. Consequently, he also has a right to approach this Court and invoke the powers under Section 397 read with Section 401 of the Code of Criminal Procedure impugning the judgment and orders of both the Courts.

16. Nagnath (P.W. 1) in his testimonies has specifically stated that at the material time while he was returning home with one Kisan on his motor cycle and reached near the house of respondent No. 2 Dinkar, all the respondents Dinkar, Motiram and Sheshrao intercepted his motor cycle. They made him and Kisan to alight. They asked Kisan to leave. Respondent No. 2 Dinkar then questioned him as to what he could do though his father was abused by them and saying so he started assaulting him with a stick. He stated that respondent No. 2 Dinkar assaulted him on his back, neck and other parts of the body. He then stated that respondents Motiram and Sheshrao assaulted him with fist and kicks and threatened him of dire consequences. He then

raised alarm whereupon his parents and Tulshiram (PW.2) arrived there. When they tried to rescue him respondent No. 2 Dinkar gave a blow of stick on the mouth of his mother because of which her two teeth were dislocated. She sustained bleeding injury and became unconscious. He then stated about Tulshiram (PW.2) and some villagers having carried his mother in an autorickshaw and his brother having carried him on his motor cycle to Pangaon Police Chowki. Police referred them to the Government Hospital where they were taken to and treated. He then stated to have returned to police Chowki and lodged the F.I.R. (Exhibit 35). He then stated that he would be able to identify the stick and also identified the stick from the muddemal to be the same which was used to assault him. Lastly, he stated that his supplementary statement was also recorded by the police.

17. Apparently, there seem to be some improvements made by Nagnath (PW.1) , than what had he mentioned in the F.I.R. which can be enlisted:

(1) The F.I.R. mentions that he was assaulted on the neck and back whereas in his testimony he has stated to have been assaulted on the other parts of the body as well;

(2) He stated about both his parents having arrived at the spot to rescue him whereas the F.I.R. only mentions that his mother having arrived but does not refers his father;

(3) He deposed about incident having taken place near the house of respondent No. 2 Dinkar but the F.I.R. reads that it had occurred in front of the house of Dinkar.

(4) He stated that respondent No. 2 Dinkar had given a blow of stick on the mouth of his mother Kashibai (P.W.3) and her two teeth having been dislocated. But the F.I.R. is silent about such an injury.

(5) He deposed about Tulshiram (P.W.2) and some villagers carried his mother in an autorickshaw and he having been carried on a motor cycle by his brother. But the F.I.R. is silent about both these.

18. As far as testimony of Kashibai (P.W.3) is concerned she has stated that the incident had taken place in front of the house of respondent No. 2 Dinkar. She along with her husband, son Nagnath (P.W. 1), Kisan Sangale and Tulshiram (P.W.2) harvested Soybean in her field throughout the day. In the evening they all started returning to the village. Nagnath (P.W.1) and Kisan went ahead on a motor cycle. She heard commotion and rushed to the spot in front of the house of respondent No. 2 Dinkar where Nagnath (P.W. 1) was lying and

respondent No. 2 Dinkar was assaulting him with stick, whereas respondents Sheshrao and Motiram were assaulting him with fists and kicks and were abusing him. She then stated that when she along with others tried to rescue Nagnath (PW.1), respondent No. 2 Dinkar assaulted her with stick, as a result her two teeth of the lower jaw fell off. She then stated that having seen blood she became unconscious and somebody carried her to Government Hospital at Pangaon and on the next day her statement was recorded and the stick that was shown to her was the same with which the respondent No. 2 Dinkar had assaulted.

19. It is apparent that though Kashibai (PW.3) stated that her two teeth were dislocated, Dr. Sangita (PW.6) could notice that only one tooth was dislocated from the lower jaw.

20. Turning to the testimony of Tulshiram (PW.2) he deposed to have worked in the field of Pandhari Kendre (who happens to be the father of Nagnath (PW.1) and husband of Kashibai (PW.3). He along with Nagnath (PW.1) and Kashibai (PW.3) harvested Soybean crop. Thereafter Nagnath (PW.1) and Kisan left the field in the evening on a motor cycle. He along with Kashibai (PW.3) and Pandhari started proceeding towards village on foot. They heard commotion and rushed to the spot near the house of respondent No. 2 Dinkar and saw that

respondent No. 2 Dinkar was assaulting Nagnath (P.W.1) with stick, whereas respondents Motiram and Shesherao were assaulting him with fists and kicks. He along with Kashibai (P.W.3) and Pandhari tried to rescue Nagnath (P.W.1) but respondent No. 2 Dinkar gave a stick blow on the mouth of Kashibai (P.W.3) due to which her two teeth from the lower jaw fell off. She became unconscious and he carried her in an autorickshaw to the police station. He further identified the stick.

21. It is apparent that Tulshiram (P.W.2) deposed in consonance with Kashibai (P.W.3) that even Pandhari who happens to be the father of Nagnath (P.W.1) was accompanying these two witnesses but the F.I.R. does not mention about it.

22. As is admitted by the respondents-accused in their statements there is no dispute about identification since Nagnath (P.W.1) and his family are related to the respondents-accused.

23. Though it has been suggested to Nagnath (P.W. 1), Tulshiram (P.W.2) and Kashibai (P.W.3) that they were holding some grudge against respondents-accused because of their affectionate relations with the step sisters of Nagnath (P.W.1) these witnesses have denied these suggestions. Independently there is no evidence to even give an inkling of existence of any such animosity.

24. As has been pointed out by the learned Magistrate, indeed there are the aforementioned contradictions in the evidence of Nagnath (PW.1) and the contents of the F.I.R. lodged by him. Similarly the testimonies of Nagnath (PW.1) and Tulshiram (PW.2) and Kashibai (PW.3) also are not completely compatible with each other. However testimonies of the witnesses have to be appreciated from all the angles, bearing in mind the usual tendency to improve upon, for the obvious reasons and possibility of some contradictions creeping in on account of lapse of time. The principle *falsus in uno, falsus in omnibus* is not applicable in India. Merely because witnesses tend to improve upon in their enthusiasm and may be with some oblique motive, the grain has to be sifted from chaff. It is the primary responsibility of a Trial Judge and in some cases even of the Appellate Court to reach the truth and to decipher the falsehood. In my considered view both the Courts below have miserably failed to bear in mind such trite principles and have grossly failed in reaching to the truth by making any attempt to sift the falsehood from the honest statements in the testimonies of the prosecution witnesses.

25. It is obvious that since according to Kashibai (PW.3), Nagnath (PW.1) had already fallen to the ground and it is only after hearing the commotion she and Tulshiram (PW.2) had reached the spot, they may

not have had any occasion to actually witness the respondents-accused assaulting Nagnath (P.W.1), albeit these two witnesses have also deposed about having seen respondents-accused assaulting him. One could easily discard their such version as has been rightly done by the Trial Court and the Appellate Court.

26. Thus there remains the testimony of Nagnath (P.W.1) alone as regards the first phase of the incident wherein according to him respondents-accused had assaulted him. Assuming for the sake of arguments that there was some previous animosity between the two families, still the fact remains that he had stated about the respondents-accused having assaulted him wherein respondent No. 2 Dinkar assaulted him with a stick and the respondents Motiram and Shesherao assaulted him with fists and kicks and also they all threatened him of dire consequences.

His such version is clearly corroborated from variety of circumstances appearing from the evidence. He has immediately approached the Police Chowki at Pangaon, he was referred to the Government Hospital and was examined by Dr. Sangita (P.W.6) at 8 p.m. who noticed as many as 14 injuries, mentioned herein above. True it is that in the F.I.R. Nagnath (P.W.1) simply stated to have sustained injuries on the back and neck but made some improvement

in his testimony by saying that the assault was also on other parts of the body and one cannot ignore the fact that he must have made some improvements so as to look compatible with the number of injuries mentioned in the injury certificate (Exhibit 48); wherein apart from the back, injuries were noticed on the shoulders, hands, thigh, knee, buttocks. Precisely for these reasons both the Courts below have readily discarded his testimony saying that when the F.I.R. mentions about he having sustained injury only on the back and neck, he had improved upon his such version by testifying about having received injuries on the other parts as well. One can easily understand his enthusiasm. However, one cannot comprehend as to how Dr.Sangita (P.W.6) who was the Medical Officer and an independent witness could have any reason to support the prosecution. She could noticed as many as 14 injuries though all were simple in nature but were caused by hard and blunt object and even the age of the injury was within 12 hours which was clearly compatible with the prosecution version. Therefore when this independent witness immediately after the incident had an occasion to medically examine Nagnath (P.W.1) and had noticed these many injuries, there was no apparent reason for both the Courts below to discard the testimony of this witness Dr. Sangita (P.W.6).

It is pertinent to note that it is after receiving so many injuries and suffering from the trauma the F.I.R. was lodged in the same night. It is trite that F.I.R. is not supposed to be an encyclopedia. Nagnath (P.W.1) did state in the F.I.R. about having sustained injury on the back and neck and it is not that he had not received such injuries. It is over and above such injuries to the back and neck he had sustained several other injuries on the nearby region i.e. both the shoulders, scapulae. It is also pertinent to note that Dr. Sangita (P.W.6) specifically stated that it took her 20 minutes to examine Nagnath (P.W.1). She denied that the injuries No. 1 and 7 were the same. She further denied that these injuries noticed by her and mentioned in the injury certificate (Exhibit 48) were possible due to fall on thorny bushes from a speeding motor cycle. Therefore in my considered view both the Courts have miserably failed to appreciate evidence of Nagnath (P.W.1) which stood corroborated by Dr. Sangita (P.W. 6) in material particulars. They have erred in completely discarding this important evidence.

27. Now turning to the testimony of Kashibai (P.W.3), again I find no sufficient and justifiable reason for disbelieving her version more so when her version about the respondent No. 2 Dinkar having given a stick blow on her mouth and her teeth having fallen off has been duly corroborated by Dr. Sangita (P.W. 6) who has stated about having

noticed the aforementioned four injuries sustained by her. Merely because the prosecution version and even the version of Kashibai (P.W.3) is about falling of two teeth when Dr. Sangita (P.W.6) noticed that only one tooth had fallen, the entire version of Kashibai (P.W.3) could not have been discarded as a rank falsehood.

Pertinently even according to the written statement filed by the respondents-accused in their examination under section 313 of the Code of Criminal Procedure they have admitted about absence of two teeth from the lower jaw, may be according to them as a result of some surgery.

Interestingly the learned Magistrate has refused to believe version of Kashibai (P.W. 3) about dislocation of tooth on the ground that there should have been some injury to her lips but none was noticed. Dr. Sangita (P.W. 6) specifically stated to have noticed injury to the chin though it was a simple one. She specifically stated that one central incisor tooth from lower jaw had fallen off and blood was oozing from the site. She admitted that there was no injury to the lip however denied that the tooth of Kashibai (P.W.3) was already removed. The observations and conclusions of the Trial Judge in this regard are therefore quite perverse and arbitrary.

28. Again, the version of Tulshiram (PW.2) has been discarded by the Magistrate on the ground that he had made an improvement, when there was no possibility of he having seen Nagnath (PW. 1) being assaulted by the respondents-accused and that even he had stated about loss of two teeth of Kashibai (PW.3) when in fact only one tooth was lost. The learned Magistrate has also refused to believe testimony of Tulshiram (PW.2) on the ground that he having admitted to have landed property and growing sugar-cane crop and earning around Rs. 2,00,000/- to Rs. 2,50,000/- p.a. from his land, it was difficult to believe that on the date of the incident he had gone to the field of Pandhari or his son Nagnath (PW.1) for doing labour work and his presence at the spot was unnatural and his version was tainted.

Such observations of the learned Magistrate in my considered view are grossly erroneous and were not sufficient to discard his testimony. The learned Magistrate clearly ignored the fact that this witness specifically stated to be the cousin of Nagnath (PW.1) and Pandhari is his uncle. If such is the state of affairs, merely because this witness has his own land, one can easily comprehend a situation that he could have gone to the field of Nagnath (PW.1) to help in harvesting the crop. It is not unusual for relatives to help each other in agricultural operations and that would be irrespective of the fact

whether one of the relatives is better placed than the other. Therefore, the observation of the Magistrate discarding the testimony of Tulshiram (P.W.2) for this reason is also perverse and demonstrates utter lack of skill to appreciate the testimonies.

29. The learned Magistrate has then refused to believe the testimony of these three prosecution witnesses Nagnath (P.W.1), Tulshiram (P.W.2) and Kashibai (P.W.3) on the ground that their testimonies were unnatural. Though he appreciated the fact that the testimonies of Tulshiram (P.W.2) and Kashibai (P.W. 3) could not be discarded on the sole ground that they were close relatives he refused to believe the version of these prosecution witnesses only for the reasons about presence of the aforementioned contradictions and improvements. In my considered view such contradictions and improvements are clearly minor and can easily be explained away by the aforementioned reasons.

30. The learned Magistrate then indulged in and apparently got swayed away by some contradictions in respect of the exact spot of the incident. The F.I.R. mentions about the incident having taken place in front of the house of respondent No.2 Dinkar whereas in the testimonies, Nagnath (P.W.1), Tulshiram (P.W.2) and Kashibai (P.W.3) changed the version and stated about occurrence of the incident near

the house of respondent No.2 Dinkar. The submission of the learned advocate for the applicant therefore deserves to be accepted when he submitted that this contradiction needs to be ignored being minor one.

31. Again, the Magistrate has refused to believe the prosecution version saying that it has failed to establish any motive or to substantiate the motive attributed. Needless to state that when there is a direct evidence, the question of motive loses importance. When Nagnath (PW.1) has specifically stated about respondents-accused having assaulted him, when Kashibai (PW.3) has also stated about having been assaulted by the respondents-accused, the question of motive has very little role to play. Besides, even according to the defence version, as is mentioned herein above, there was some animosity. According to the defence version animosity was on account of affectionate relations of respondents accused with the step sisters of Nagnath (PW.1) which the latter disliked. Therefore it cannot be said that there was no motive. The Magistrate failed to appreciate these facts.

32. The following observations from the case of *Shamim (supra)* clearly demonstrate and lay down the manner in which the evidence of witnesses should be appreciated:

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.”

33. It is quite apparent that the Magistrate had miserably failed to scan and appreciate the evidence by following such trite principles reiterated by the Supreme Court, which resulted in gross miscarriage of justice. The observations and the conclusions drawn by the Magistrate were clearly perverse, arbitrary and capricious. The view taken by the learned Magistrate was grossly erroneous and was liable to be interfered with in the appeal.

34. However, the learned Sessions Judge has failed to consider all the aforementioned facts and circumstances and the evidence and has readily concurred with the view of the Magistrate in a slipshod and perfunctory manner. I am emboldened to state so for one more reason. According to the prosecution as is mentioned herein above, in fact Nagnath (P.W.1) as well as Kashibai (P.W.3) had sustained injuries. Conspicuously, the learned Magistrate had failed to frame any charge for causing hurt to Nagnath (P.W.1). Even the learned Sessions Judge failed to notice this fact and has framed points for determination as were framed by the Magistrate. In fact there should have been a charge in that respect, of causing hurt to Nagnath (P.W.1) may be simple in nature with a stick. Absence of such charge clearly demonstrates utter lack of application of mind by the Magistrate as also by the learned Sessions Judge. The charge was merely framed in

respect of the injuries sustained by Kashibai (PW.3). It is for this reason also I have no hesitation to conclude that the learned Sessions Judge has miserably failed to examine the judgment and order passed by the Magistrate and to ascertain if the view taken by the Magistrate was plausible one and was borne out from the evidence.

35. Coming back to the powers of this Court in such matters while exercising the jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, obviously, this Court cannot reverse the finding of acquittal and convict the respondents-accused, in view of the Provision of Sub Section 3 of Section 401 of the Code of Criminal Procedure, as has been laid down in case of ***K. Chinnaswami Reddy Vs. State of Andhra Pradesh; A.I.R. 1962 SC 1788*** as referred to and relied upon in the case of ***Vimal Singh Vs. Khuman Singh & anr.; (1998) 7 Supreme Court Cases 223*** and particularly the observations in paragraph No. 9 :

“Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments 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.”

36 In view of the discussion herein above, in my considered view this is a case wherein there is an apparent illegality committed by the Appellate Court which has caused miscarriage of justice since it has failed to take into account the aforementioned facts and circumstances.

37. In the light of the above, the Revision is partly allowed. The judgment and order of acquittal passed by the Magistrate and the judgment and order passed by the Sessions Court confirming it are quashed and set aside. The Appeal is remanded to the Sessions Court

for decision afreseh by extending opportunity to both the sides to be heard. It is made clear that the Sessions Court shall not feel influenced by any of the observations made herein above touching the merits and shall independently decide the appeal as expeditiously as possible and in any event within a period of three months.

38. The parties to appear before the Sessions Court on 13.12.2019.

(MANGESH S. PATIL, J.)

mkd