

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

CRIMINAL REVISION APPLICATION NO. 142 OF 2005

Sunita w/o Angad Gangnar
Age: 30 Years, Occu: Household,
R/o: Tamloor, Tq. Degloor
Dist: Nanded

... Applicant
(Orig. Complainant)

Versus

1. The State of Maharashtra

2. Pralhad s/o Hanmant Gavate,
Age: 23 years, Occu: Agri.
R/o: Tamloor, Tq. Degloor,
District: Nanded.

3. Gangadhar s/o Hanmant Gavate,
Age: 32 years, Occu: Agri,
R/o Tamloor, Tq. Degloor,
District: Nanded.

4. Hemant s/o Gangaram Gavate,
Age: 65 years, Occu: Agri,
R/o Tamloor, Tq. Degloor,
District: Nanded.

5. Padminbai Hanmant Gavate,
Age: 55 years, Occu: Household,
R/o Tamloor, Tq. Degloor,
District: Nanded.

... Respondents
(Orig. Accused Nos. 2 to 4)

...

Mr. P.P. Mandlik, Advocate for the Applicant
Mr. P.K. Lakhotiya, APP for Respondent/State
Mr. S.V. Chandole, Advocate for Respondent Nos. 2 to 5

...
CORAM : V. K. JADHAV, J.
DATED : 3rd JANUARY, 2019
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JUDGMENT :-

1. This is a criminal revision application preferred against the judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Degloor dated 17.3.2005 in RCC No.185/2002.

2. Brief facts, giving rise to the present criminal revision application are as under :-

a] As per the prosecution story, on 20.8.2002 at about 04.00 p.m., the complainant Sunita was working in her land. Accused Pralhad went there and stated to her that she and her husband being resident of other village, purchased the land in his village and he would not allow them to cultivate the land. Accused no.1 Pralhad had also abused her in filthy language. He had also given threats to her. It also reveals from the prosecution story that accused no.1 hit her by blunt portion of axe on her head. In consequence of which, the complainant Sunita had sustained bleeding injury. So also other co-accused extended the beating to PW 1 Sunita with kick and fist blows and by the handle of sickle.

B] On the basis of the complaint lodged by PW 1 Sunita crime came to be registered in the concerned police station for the offences punishable under sections 323, 324, 504, 506, 294, 447, r/w section 34 of the Indian Penal Code.

After investigation PSI Patil submitted charge sheet against all accused persons.

C] The learned Judge of the trial court has framed charge against all accused persons and all accused pleaded not guilty and claimed to be tried. Prosecution has examined in all four witnesses to substantiate the charges levelled against the accused. The defence of the accused is of total denial and false implication. Statement under section 313 of Cr.P.C. came to be recorded and after hearing both the sides, the learned Judicial Magistrate First Class, Degloor acquitted the accused for the offence, for which they were charged. Hence, this criminal revision application.

3. The learned counsel for the applicant – original complainant submits that PW-1 – Sunita is the injured witness and there was no reason for the trial Court to discard her evidence. She has sustained the injuries in the assault and she had particularly sustained the bleeding injury on her head. Accused No.1 was carrying the deadly weapons and inflicted the injury on her head with the help of it.

4. The learned counsel for the respondent – accused submits that there was a dispute in respect of the cultivation

of the land. There is no independent corroboration to the evidence of PW-1 – Sunita. Even though prosecution has examined PW-2 - Pandurang as eye witness to the incident, the Investigating Officer has admitted in his cross examination that he has not recorded the statement of the said PW-2 – Pandurang, whose name is mentioned in the FIR. Furthermore, name of another witness – Narayan does not appear in the FIR. The prosecution has not placed on record the injury certificate. The learned Judge of the trial Court has, therefore, rightly acquitted the accused. No interference is required.

5. The interference with the order of acquittal passed by the trial Court is limited only 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.

6 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."

7. In the instant case, there is no independent corroboration to the evidence of PW-1 – Sunita, PW-2 – Pandurang and PW-3 – Narayan cannot said to be the eye witness of the incident. The Investigating Officer has admitted in cross - examination that PW-2-Pandurang before the Court is not the person, whose statement he has recorded during the course of investigation. Furthermore, the name of PW-3-Narayan has not been referred in the FIR as eye witness to the incident. Though there are specific allegations of the complainant that the accused Pralhad hit her with blunt side of the axe and the accused Padmini hit her with handle of sickle, the prosecution failed to examine the medical officer to prove the injuries on the person of PW-1-Sunita if any. Even the Investigating Officer has not taken any pains to obtain the medical certificate and produce it on the record. Thus, considering the previous enmity and the dispute in respect of the cultivation of land,

the learned Judge of the trial Court has not believed the bare testimony of the complainant. The learned Judge of the trial Court has rightly observed that there is no sufficient and satisfactory evidence to hold the accused guilty on the basis of uncorroborated testimony of the complainant alone. I do not find that the order under revision suffers from glaring illegalities or has caused miscarriage of justice. There is no substance in this Criminal Revision Application. Hence, following order:

ORDER

- I) The Criminal Revision Application is hereby dismissed.
- II) Rule discharged.

(V. K. JADHAV, J.)

Sam.