

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

CRIMINAL REVISION APPLICATION NO.226 OF 2005

Harun Khan s/o. Jarwar Khan Pathan,
Age: 37 yrs, Occu. Business,
R/o. Mohiamadiya Colony, Telgaon Road,
Beed Tq & Dist. Beed. **.. APPLICANT**
[Ori.First Informant]

VERSUS

01. The State of Maharashtra.
02. Vijay s/o. Mohan Jadhav,
Age: 28 yrs, Occu. Business,
R/o. Balbhim Nagar, Beed
Tq. & Dist. Beed.
03. Mohan s/o. Santram Jadhav,
Age: 47 yrs., Occu. Business,
R/o. As above.
04. Santosh s/o. Mohan Jadhav,
Age: 22 yrs, Occu. Business

..RESPONDENTS
[Res.No.2 to 4
Ori. Accused]

...

Mr.U.M.Mhaske, Advocate holding for
Mr.S.B.Ghatol-Patil, Advocate for the
applicant.
Mr.A.P.Basarkar, Addl.P.P. for respondent
no.1-State
Mr.C.V.Dharurkar, Advocate for respondent
nos.2 to 4.

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CORAM: V.M.DESHPANDE, J.

DATE : 27.03.2019

ORAL JUDGMENT:

1] Heard Shri U.M.Mhaske, Advocate holding for Shri S.B.Ghatol-Patil, learned counsel for the Applicant, Shri A.P.Basarkar, learned Additional Public Prosecutor for respondent No.1–State and Shri C.V.Dharurkar, Advocate for respondent nos.2 to 4.

2] The present Criminal Revision Application questions the correctness of the judgment and order of acquittal dated 30th April, 2005, passed by the learned 8th Ad-hoc Assistant Sessions Judge, Beed in Sessions Case No. 143/2004, by which the Court below acquitted respondent nos.2 to 4 for the offences punishable under Sections 323, 342, 306, 504 read with Section 34 of the Indian Penal Code and Section 33 of the Money Lending Act.

3] The First Information Report is lodged by the present applicant – Harun Khan Jarawar Khan Pathan. It is at Exhibit-21. As per the First Information Report, on 01.03.2004, respondent no.2 – Vijay Mohan Jadhav came to his house and demanded Rs.52,000/- else the present applicant should transfer his house, and on that he gave abuses to the present applicant and his wife and also assaulted on him. The First informant states that, he will refund the amount within 2-3 days. The First Information Report further states that then he went to attend his work and when he was returning and was having tea in the Hotel of one More, at that time respondent nos.2 to 4 came and assaulted him and confined in one Room. Thereafter, past mid-night, according to the First Information Report, wife of first informant, namely Mumtaj Begum, and others

came there at that time though the applicant raised voice, but they told him to keep silence. On 02.03.2004, the respondents freed the applicant and when he was proceeding towards his house that time one Shaikh Pasha intimated him that his wife Mumtaj Begum has committed suicide.

4] The Investigating Agency, after completing the investigation, filed charge sheet. Charge was framed against respondent nos.2 to 4. They abjured the guilt. In order to prove the charge, the prosecution has examined in all 7 witnesses. PW-1 Sk.Ali Sk.Jafar was a Panch of inquest panchanama, who has turned hostile. PW-2 is Harun Khan s/o. Jarawar Khan Pathan - the present applicant. PW-3 is Jarawarkhan Amin Khan Pathan, father of the present applicant. PW-4 is Ayyubkhan s/o. Jarawarkhan Pathan, brother of the present applicant. PW-5 is Shaikh

Ilhai Sk. Dasthgir, brother of the deceased. PW-6 is Yasmin Harunkhan Pathan, daughter of the complainant. PW-7 is PSI, Subhash Gosavi, Investigating Officer.

5] The defence of respondent nos.2 to 4 before the Court was that they were having inimical terms with one Nizam Jainoddin, councillor and at his behest false complaint is lodged against them.

6] The evidence of the witnesses would show that on the date of incident, there was visit on the part of respondent no.2 – Vijay, who demanded money.

7] After acquittal the State has not filed the Appeal. It is the first informant, who has filed the present Revision Application before this Court. The scope of the Revision is very limited. Normally, this

Court will not evaluate or re-appreciate the evidence as done by exercising appellate powers unless the perversity is noticed in the appreciation of the evidence at the hands of the Court below. The learned Judge of the Court below has properly appreciated the evidence to reach to a conclusion that it cannot be said that there was any act or omission on the part of respondent nos.2 to 4 to show that it could be termed as 'abetment' within the meaning of Section 107 of the Indian Penal Code and they can be termed as abettor for abetting the deceased to commit suicide. The prosecution was under obligation to prove the charge against the accused persons. The prosecution and/or the present applicant cannot take advantage of any lacunae in the defence taken by respondent nos.2 to 4. The prosecution case stands or falls on its own legs. In my view, the Court

below has not committed any mistake in the light of available evidence brought on record, for acquittal of respondent nos.2 to 4 from the charges they faced trial. Consequently, there is no merit in the Revision Application and hence same stands dismissed. Rule stands discharged.

[V.M.DESHPANDE]
JUDGE

DDC