

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

CRIMINAL REVISION APPLICATION NO.290 OF 2017

Rais Ahmad Mohammad Kasmi Siddiqui Age 50 years, Occu: Service, R/o Udgir Tq. Udgir, Dist. Latur	... Applicant Original Complainant
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VERSUS

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| 1. The State of Maharashtra
Through Police Station Udgir
(City), Tq. Udgir Dist. Latur | |
| 2. Abdul Baari Ghulam Hyder
Age 65 years Occu: Business
R/o Raja Mohammad Dargah Road,
Udgir Tq. Udgir, Dist. Latur | ... Respondents
(R/2to4
Original
accused) |
| 3. Washim Abdul Baari Hashmi
Age 40 years Occu: Business
R/o Raja Mohammad Dargah Road,
Udgir Tq. Udgir, Dist. Latur | |
| 4. Kaleem Abdul Baari Hashmi
Age 35 years, Occu: Business
R/o Raja Mohammad Dargah Road,
Udgir Tq. Udgir, Dist. Latur | |

Shri A.V. Patil (Indrale), Advocate for the appellant
Shri A. A. Jagatkar, APP for respondent No.1
Shri S.A.P. Quadari, Advocate for respondent Nos.2 to 4

CORAM	: A. M. DHAVAL, J.
RESERVED ON	: 24.06.2019
PRONOUNCED ON	: 04.07.2019

JUDGMENT

1. Aggrieved by the concurrent findings of acquittal of respondent Nos. 2 to 4 in RCC No. 328/1997 by the J.M.F.C. Udgir and in Criminal Appeal No. 22/2012 by

learned Additional Sessions Judge, Udgir for the offences under sections 452, 324, 504 read with 34 of IPC, the informant/son of the victim has filed this revision.

2. As per the first information report dated 05.07.2019 lodged at Udgir City Police Station, Respondent No.2 Abdul Baari/accused No.1 is uncle of the informant/applicant Rais Siddiqui while, accused No. 3 Waseem Baari and accused No.2 Kaleem Baari, respondent Nos. 3 and 4 herein are sons of accused No.1 and they were also his neighbour.

3. On 04.07.1997, at 7.30 a.m., the informant had kept one big stone near the house of the accused as it was to be used for construction of platform in his house. Accused No.1 asked him to remove that stone immediately. The informant Rais Siddiqui told him that it was too heavy and he would require 4 to 5 persons to lift it and he would shift it within a short time. Accused No.1 was therefore annoyed. His two sons, accused Nos. 2 and 3 rushed at Rais Siddiqui. That time Rais's mother Gausiya came out and was taking Rais inside the house. Then, accused No.1 started breaking the stone by using hammer. When Rais had requested him not to break the stone, accused No.2 Kaleem held his mother Gausiya and

accused No.1 Abdul Baari inflicted two blows of handle of the hammer on her skull, thereby causing her bleeding injuries. She was immediately taken to the Hospital, where she was examined at 8.00 a.m. and report was lodged at 8.30 a.m. at the police station, but initially it was registered as N.C. case and on the next day, on receipt of medical certificate, it was converted into F.I.R. and the crime was registered at Crime No.49/1997. After investigation, the accused were charged for the offence under sections 452, 324 and 504 read with 34 of the Indian penal Code.

4. The accused pleaded not guilty. The prosecution examined injured PW-4 Gausiya, her son/informant PW-2 Rais Siddiqui, the Medical officer Dr. Shivling Sontakke as PW-3 and one panch witness Sheikh Shikh Ajijoddin, who has turned hostile. The accused took defence of total denial. The learned trial judge acquitted the accused. The learned trial judge observed that in the cross examination, evidence of witness PW-4 Gausiya was not shaken. However, the evidence disclosed that there was previous enmity resulting into civil and Criminal disputes. The informant, by keeping the platform stone in a common area, invited the trouble and

therefore, the accused were not responsible for the commission of crime. The crime was not proved beyond reasonable doubt.

5. In the criminal appeal, the learned Additional Sessions Judge observed that there was animosity between PW-2 and 4 and the accused persons. There were civil and criminal litigations between them. PW-2 Rais showed ignorance about some facts, when he must be aware as to since when the accused were residing there. Similarly, PW-4 pleaded ignorance about the pendency of disputes between them and the accused. The learned Additional Sessions Judge observed that in such circumstance, evidence of eye witness should be corroborated by an independent witness. He observed that evidence of PW-4 that she became unconscious after receiving blows was not disclosed in the F.I.R. He recorded that initially, only N.C. Case was registered under section 323 r/w 34 I.P.C, which according to him, means that there was simple injury and there was no bleeding injury sustained by PW-4. He further observed that PW-4 stated to have sustained grievous injury by the blows of hammer but that has not happened. Evidence of PW-3 Medical officer discloses that injury was caused by coming into contact

with rough surface and therefore the possibility of assault by hammer was ruled out. The learned Additional Sessions Judge observed that the incident must have been witnessed by outsiders and evidence of PW 2 and 4 was highly exaggerated and could not be accepted. Lastly, the learned Additional Sessions Judge observed that investigating officer was not examined and hence the appeal was dismissed.

6. Learned Advocate Mr. Indrale Patil submits that both, PW-2 and 4 have deposed as per the story narrated in the FIR. There was immediate reporting of the incident to the police. There is medical evidence supporting the story of the assault by hammer. There was finding that evidence of PW-4 was not shaken in the cross examination. In such circumstances both the Courts below gave undue importance to some irrelevant facts. It was error on their part to expect corroboration from independent sources. Enmity cannot be a sole ground to discard the evidence of injured witness. Therefore, there is perversity in the finding of both the Courts below. Hence the revision be allowed and the matter be remanded to the trial court for taking proper decision.

7. Per contra, learned Advocate Mr. Quadari for respondent Nos. 2 to 4 argued that in the first place, the revision is not maintainable against the concurrent finding of acquittal. The learned Counsel relied on the Section 401(3) of the Criminal Procedure Code. He also argued that there are material discrepancies in the evidence and the learned Courts below have given sound reasoning for acquittal and no interference is called for.

8. I have carefully considered the arguments advanced and the evidence on record.

9. The points for my consideration with my findings are as follows:

	Points	Findings
1	"Whether the Courts below have shown perversity or illegality in passing the order ?	Yes
2	What order ?	Matter is remanded.

10. PW-4 Gausiya has deposed that on 04.07.1997, at 7.30 a.m., one big tile/stone brought for construction of kitchen ota was kept outside the house near gate. It was not liked by the accused persons. The accused called upon her son to shift the tile/stone immediately. Her

son told that it was too heavy and he would remove the same by calling some persons. Then the accused Nos. 2 and 3 abused him. She called her son Rais inside the house. That time, accused No.1 Abdul Bari was breaking the tile/stone by hammer blows. Thereafter all the three accused entered her house and accused No.1 inflicted blow of hammer on her skull. Accused Nos. 2 and 3 held PW-4 at that time she had sustained bleeding injuries, thereafter they left the spot. She became unconscious. She was taken to Hospital. She identified the Muddemal hammer/hatoda as the same. In cross examination, she admitted that she had disputes with the accused in the Court. There was one criminal case against her husband for assaulting a constable. Rest of the cross examination is in the form of only denials. She admitted that the accused had right of way by the side of her house. Her evidence is not shaken in the cross examination. Even the learned judicial Magistrate First class has recorded the said finding.

11. Her evidence is well corroborated by her son PW-2 Rais. He has deposed the story as deposed by PW-4 Gausiya. There is consistency in their evidence. He has proved FIR Exh.85. Evidence of PW-2 and PW-4 is

consistent with the contents in the FIR. In the cross examination he stated that incident took place at 7.30 a.m. and Gausiya reached to the Hospital at 8.00 a.m.

12. Evidence of PW-2 and PW-4 consistent with the FIR, is corroborated by the medical officer PW-3 Dr. Shivling Sontakke. His evidence shows that PW-4 was brought to the Hospital on 04.07.1997 at 8.00 a.m. and he noticed following injuries:

(1) Lacerated wound on right temporal region, $1\frac{1}{2} \times \frac{1}{4} \times \frac{1}{2}$ inch.

(2) Lacerated wound on right parietal region, $1\frac{1}{2} \times \frac{1}{4} \times \frac{1}{2}$ inch.

13. Both the injuries were seen to be simple, caused by hard and blunt object. He has proved the certificate Exh.84. The injuries disclosed by him are consistent with the evidence of PW-2 and 4. He admitted that such injuries were possible by a small hammer. His evidence that blow of hammer can cause tissue crushing injury cannot be accepted as possible in all cases.

14. On going through the evidence, I find it very cogent, consistent, reliable and trustworthy. Learned Trial Judge recorded that evidence of PW-4 was not

shaken in the cross examination, but he strangely observed that PW-2 and 4 were responsible for instigating the the accused to commit such crime by keeping big tile/stone in the common place. This is a perverse appreciation. It is the sole ground shown to disbelieve the PW-2 and 4.

15. In the appeal, learned Sessions Judge referred to the animosity between the parties and pendency of civil and criminal litigations. These can put the judge on guard but mere enmity cannot be a ground to discard the evidence of witnesses. The learned Appellate has referred to some ignorance shown by PW-2 Rais.

16. Initially NC complaint was registered under section 323 r/w 34 IPC in respect of the same crime. It disclosed that it was an assault with hammer on the skull. The same was lodged immediately after the medical examination, within a short time after the incident. The FIR came to be registered on the next date by change of sections. There was no delay in lodging the FIR. The observation of the learned appellate Court that as the injury was simple, there is no question of bleeding is again contrary to the provisions of section

320 IPC which defines what are grievous injuries. All injuries having bleeding cannot be called as grievous injuries. It is strange observation of the learned appellate Court that since the injury to Gausiya was caused by coming into contact with the rough surface, the possibility of assault by hammer is ruled out. The evidence of the Doctor Specifically shows that it was possible by hammer blow. The certificate shows that it was caused by hard and blunt object. The finding of the appellate Court that it could not be caused by hammer is perverse. The expectation of the appellate court that there should have been independent witness on the spot is not substantiated by the evidence on record. There is no rule that corroborated testimony of victim even if found to be trustworthy cannot be relied upon. The observation of the appellate court that evidence of PW-2 and PW-4 was improper and unable to digest is again contrary to the evidence on record. It is a perverse finding. If the Police have committed mistake in not seizing the blood stained clothes of PW-4 Gausiya, it does not mean that she had not sustained bleeding injury. The medical evidence is specific on this point. I find that appreciation of both the courts below was perverse

and is not sustainable.

17. In the case of State of U.P. Vs. Harimohan, reported in AIR 2001 SC 142, the Apex Court recorded as to how the evidence should be appreciated. In the case of Vimal Singh Vs. Khuman Singh and others, reported in AIR, 1998 SC 2280 with respect to power of the High Court in Criminal revision, it is observed as follows:

7. Coming to the ambit of power of High Court under [Section 401](#) of the Code, the High Court in its reversional 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 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 have 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 403](#) 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 reversional 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.

On going through the evidence, I find that this is an exceptional case when there is glaring illegality which has caused miscarriage of justice. It is necessary to exercise revisional jurisdiction to prevent such miscarriage of justice.

18. In the light of above, the revision is allowed. The judgment and order of acquittal is set aside and the matter is remanded to the appellate Court.

19. The parties shall appear before the appellate Court on 22nd July, 2019. The appellate Court shall

decide the matter expeditiously.

20. No re-trial is necessary, however, the appellate Court shall re hear the learned Advocates and pass appropriate order afresh without getting influenced by the observations in this judgment.

21. The appellate Court, in case of judgment of conviction, shall have due regard to the fact that incident had taken place more than 22 years back.

22. Criminal Revision Application is accordingly disposed of.

(A. M. DHAVALA, J.)

JPC