

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION. NO.150 OF 2002

Dilip Navasaji Ughade	]	
Age - 35 years,	]	
Occupation - Agriculture,	]	
R/at. Village - Sakori,	]	
Taluka-Junnar, District-Pune.	]	
(At present detained in	]	
Yerwada Central Prison, Pune).	]	.. Applicant

Vs.

The State Of Maharashtra	]	
(Through Officer-in-charge,	]	
Narayangaon Police Station, Pune)	]	.. Respondent

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Shri. Jayesh Kocheta, Advocate for the Applicant.
Y.M. Nakhwa, APP For Respondent.

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CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 2nd August 2018.

Date of Pronouncing the Judgment : 7th June 2019.

JUDGMENT :

The applicant has preferred this application by invoking Revisional Jurisdiction of this court Under section 401 of Code of Criminal Procedure 1973 (hereinafter

referred to as "Cr.PC.), against the judgment and order dated 28th March, 2002, passed by the Sessions Judge, Pune in Criminal Appeal No. 47 of 2000, and the judgment & order dated 18th March, 2000, passed by Judicial Magistrate First Class, Junnar, District-Pune in Regular Criminal Case No. 225 of 1995.

2 The case of the prosecution is that, the complainant resides at Village Sakori along with his family and Bhima Ughade was his neighbour. Relations between complainant and Bhima were cordial. They used to consult each other in family matters and agriculture affairs. There was dispute between Bhima Ughade and Accused No. 1 (applicant) on count of Hadaki Hadavali land Gat No. 616. Civil litigation was pending in the court. Accused disliked relations between complainant and Bhima Ughade. The Accused told the complainant not to keep relations with Bhima. On the said count, accused also gave threats to complainant. Since the accused was in Bhavki, the

complainant did not report the matter to Police. On 10th December, 1995 at about 09:00 p.m., the complainant was about to go for his duty and when he came in front of his house, both the accused told him not to keep relations with Bhima Ughade and not to assist him. The Accused gave fist blows on mouth and thereby upper front of tooth complainant was broken. Accused no.2 Sadashiv Ughade assaulted complainant with fist blows and kicks. The complainant's wife and sister tried to intervene. Accused gave threats to them. Then accused left the spot. As it was too late and night time and there was no facility of transport report was filed by complainant on the next day. Police issued Yadi for examination and treatment. Crime No. 148 of 1995 was registered. On completing investigation charge sheet was filed.

3. Charge was framed against the accused vide Exhibit-19 for the offences punishable under Sections 325, 323, 504 and 506 read with 34 of Indian Penal Code (hereinafter referred to as "IPC", for short).

4 The prosecution examined six witnesses. PW- 1 Ashok Ughade is the complainant, PW-2 Ranjana Ughade is the wife of complainant, PW-3 Suryakant Ughade is the eye-witness, PW-4 Vinayak Sambherao is the Panch witness for spot Panchnama and seizure of Muddemal property, PW-5 Dr. Janardhan Muneshwar examined injured Ashok Ughade. PW-6 is Damodhar Gavari, conducted investigation.

5. Trial Court convicted the applicant for the offence punishable under section 325 of IPC and sentenced to suffer Simple imprisonment for six months and fine of Rs. 1,000/- (Rs. One thousand). Accused no. 2 was acquitted for the offence punishable under section 325 of IPC. Both the accused are convicted for the offence under section 323 read with 34 of IPC and sentenced to pay fine of Rs. 500/- (Rupees five hundred), each. They were acquitted for the offence punishable under section 504, 506 r/w 34 of IPC.

6. Learned Advocate for the applicant submitted that judgments and orders passed by the subordinate courts are patently erroneous and against well establish principles of law. The courts had drawn unwarranted and unfounded inferences. Both the courts erroneously came to the conclusion that the prosecution has proved against the applicant offences punishable under sections 325, 323 of IPC, in absence of any independent and cogent evidence. The evidence led by the prosecution in respect to motive is vague and insufficient. No independent witness is examined on this point. On the contrary, the first informant had motive to falsely implicate applicant in the crime. There are number of omissions, material improvements and contradictions in the evidence of prosecution witnesses. There was unnecessary delay in lodging First Information Report (hereinafter referred to as "FIR", for short) and recording of statements of witnesses. The prosecution has failed to prove the injury sustained by first informant due to assault by the applicant. The courts ignored the medical

evidence on record, which indicate that the applicant could not have caused the injuries and the first informant might have received the same by accident. The applicant is well educated person. He has completed M.A. in English. He is a lecturer of M.A. English in the College.

7. Learned APP submitted that there is concurrent findings of two courts convicting the applicant. There is no reason to discard the evidence of witnesses. Motive has been established. There is no reason to disbelieve injured eye-witness. Medical evidence supports the prosecution case. The spot of offence is proved by Panch witness. The evidence of PW-1 to PW- 4 shows that the incident took place in front of house of complainant towards west side. There are minor contradictions in the evidence of witnesses which is not fatal to the prosecution case. The revisional court has limited scope while dealing with the revision against conviction. Muddemal property is identified by prosecution witnesses before the court. The prosecution

has proved that accused no. 1 had caused grievous hurt to complainant by giving fist blows on his mouth. The Revision Application may be dismissed.

8. I have perused the evidence on record. To appreciate the submissions advanced by both sides, it would be necessary to analyse the evidence. PW-1 Ashok Ughade has deposed that the accused gave abuses to him. He also told him not to keep relation with Bhimaji. Accused no.1 (applicant) gave fist blow on his face and thereby his tooth was broken and he fell down. Accused no. 2 assaulted him with fist blows and kicks. His mother, sister and wife intervened. Accused also scuffled with them. On the next day he lodged report to the police. Police referred him to Government Hospital. He was examined by Doctor. Medical Certificate was issued. He identified the shirt and tooth before the court. In the cross-examination he deposed that his relation with Bhima Ughade were cordial. There was dispute between Bhima and accused on count of land

and the litigation was filed in the court. There was no talk between accused and Bhimaji after the filling of litigation in the court. He sustained injury on his lip. He had shown injuries sustained by him to the medical officer. He had stated to police that he sustained injuries to his lip. Without reading complaint Exhibit-24, he signed the same. He do not know whether police has written the contents of complaint right or wrong. The accused Sadashiv gave 10 to 12 fist and kick blows. His house is situated in populated area. It is not specifically mentioned in his complaint that the accused also scuffled with his wife and sister. up to the incident his relations with accused were cordial. He told police that at the relevant time he felt giddiness. PW-2 Ranjana Ughade is wife of PW-1. She stated that, accused assaulted her husband and gave abuses. Accused no. 1 assaulted PW-1 with hand on face. Thereby his front upper tooth had fallen. Both accused assaulted her husband by fists and kick blows on his chest and stomach. She along with her mother-in-law, sister-in-law and brother-in-law

Suryakant tried to separate quarrel. Accused scuffled with them and left the spot. It was night time and no transport facility was available to reach police station. On next day morning they went to police station. In the cross-examination, she stated that her mother-in-law, sister-in-law are residing separately. The relation of PW-1 were cordial with Bhima Ughade. There was dispute between accused and Bhima Ughade on count of land and they were not on talking terms with Bhima since last 7 to 8 years . Bhima was uncle of complainant. Prior to incident, there was no dispute between complainant and accused to high extent. Prior to 7 to 8 days, both accused told complainant not to give advise to Bhima Ughade or not to interfere in the dispute between them. Her husband used to go on duly on bicycle. Suryakant is son of Bhima Ughade. Accused not gave 2 to 3 blows on face of complainant and chest and stomach of complainant. In her statement it is not specifically mentioned that after giving fist blow by accused Dilip on the face of complainant, his front teeth was

broken. In the statement, it is not specifically mentioned that accused beat complainant with fist and kicks. The fact that her mother-in-law, sister-in-law and Suryakant came on the spot was stated to police, is not mentioned in her statement. It was stated to police that they tried to separate the quarrel and the accused scuffled with them but, the said fact is not reflected in her statement. She had stated to the police that due to assault, her husband, felt giddiness and that she had collected tooth of her husband from the spot, however, the same is not mentioned in the statement. PW-3 Suryakant Ughade is the cousin of complainant. He deposed that accused had assaulted complainant with fists and kicks. Accused Dilip beat complainant on his face and the other accused assaulted him with fist blows and kicks on his chest and stomach. Due to assault on face, one tooth of complainant had fallen. In the cross-examination he deposed that before the police he had stated that accused no.1 was giving blow on the face of complainant. But, it is not specifically mentioned in

his statement before the police. He had not stated before the police that accused no. 2 assaulted complainant on his chest and stomach with fist. Complaint was filed against him and Ashok (PW-1) at Parner by in laws of Nanda Shinde. His relations with PW-1 is friendly. PW-4 Vinayak Sambherao deposed that he acted as the panch witness to the spot panchnama. Complainant was present when he produced one tooth and shirt with blood stains. In the cross-examination, He stated that complainant paid his fare charges from Narayangaon to Junnar. PW-5 Dr. Janardhan Muneshwar deposed that he was attached to Public Health Center Belha. He examined injured. He noticed injuries on his person such as CLW at the root of left first incisor upper with loss of upper left tooth, the underline wound, bleeding on touch. Tenderness on right side of chest. Tenderness on back at right scapular region. Tenderness on right hypochondriac region, abrasion on nose and left maxillary region. Injury no. 1 is serious and rest of the injuries are simple in nature. Injuries might have caused by hard and

blunt object. Injury no. 1 might be possible by fist blow if it is given in force. Injury no.6 may be possible due to fist blow. In cross-examination, he stated that the time "at 8:30 a.m." is not mention in Exhibit-33. He had not brought MLC register dated 11th December, 1995. He had asked about history of assault to the patient. He did not take note of it. Injury no. 1 may be possible only if blow of fist was given with force. The person who assaulted by fist, must sustain injury on his fist. Due to assault by fist on face, there should be injury on lip. There was no injury to the lip and no incise wound to teeth. There was no injury to the patient in his lips and no tenderness on the lip. There is no torn injury to the lip. In the certificate it is not mentioned that the roots of the tooth broken. If assault to a person given by fist and kick blow in force then injury would be abrasion and swelling. If there was blow to the chest then there may or may not be injury on lung. If there is kick blow on stomach there is every possibility of injury on abdomen. Injury no. 5 is possible if a person fall from the

bicycle on rough and hard surface. If a person received blow of kick forcibly on the nose, swelling is possible. Injury no. 2 is possible if a person has impact on chest or handle of bicycle. Injury no. 3 possible if there is multifall. If the person fall from bicycle on stone, then injury no. 1 is possible. Injury No. 6 may be possible if a person fall from the bicycle on hard and rough surface on the ground. PW-6 Damodhar Gawari recorded the complaint. He prepared spot panchnama. He recorded statement of witnesses. Accused was arrested on 13th December 1995. Complainant produced tooth and shirt. He recorded N.C. vide serial no. 907 of 1995. In cross-examination, it was stated that he did not prepare arrest panchanama during investigation. It is not revealed that accused no. 1 had any injury on his right or left fist. The spot of offence is towards south side of house of complainant. There is house at the distance of 20 feet from the house of complainant. At the time of filling of complaint, the complainant has not produced teeth and blood stained shirt. Complainant

brought teeth and blood stained shirt to Police Station at about 02:30 p.m. There was dispute between accused and Bhima Ughade on the count of agricultural land. The omission which was brought vide cross-examination of witnesses were proved through him. It is not revealed during investigation or nobody stated that the teeth of complainant cause insize injury to the lip. The timing of referring the complainant at hospital has not been mentioned in Yadi. He did not make inquiry about duty hours of complainant. There is no streetlight at the spot.

9. Although there is concurrent findings of both the courts below, on scrutiny of evidence adduced by the prosecution, I find that the evidence suffers from serious infirmities. The veracity of deposition of witnesses is under clouds of suspicion. The evidence does not inspire confidence. The accused was charged for the commission of offences under sections 325, 323 and 504 read with 34 of I.P.C. The accused no. 1 was convicted for the offence punishable under Section 325 of I.P.C. Both the accused

were convicted for the offence punishable under Section 323 read with 34 of I.P.C. and both the accused were acquitted for the offence punishable under Sections 504, 506 read with 34 of I.P.C. In paragraph 20 of the judgment of the trial court, it is observed that accused no. 2 has no share in the offence punishable under section 325 of I.P.C.

10. The alleged incident had occurred on 10th December 1995. According to PW-1, accused no. 1 assaulted him by giving fist blows on his face and his tooth was broken. Accused no. 2 assaulted him with fist blows and kicks. Accused also scuffled with the relative of PW-1, who had intervened. Complaint was not lodged on the same day. The explanation for lodging the complaint on the next day given by the complainant is that he had suffered giddiness, the prosecution case is that there was dispute between Bhimaji Ughade and accused. The litigation is pending between them since then. PW-1 was acquainted with Bhimaji. He was assaulted by the accused. Except oral statement, nothing is brought on record to show that there

was any dispute between Bhimaji and accused. On account of closeness between PW-1 and Bhimaji, accused had allegedly assaulted PW-1. The motive is, thus, very vague in nature. The fact that PW-1 felt giddiness is not reflected in his complaint. Thus, the explanation for lodging the complaint on the next day is apparently afterthought. PW-2 is wife of PW-1. The defense has brought on record that the relation between PW-1 and Bhimaji Ughade were cordial. PW-1 and Bhimaji were taking advise of each other. There are dispute between accused and Bhimaji Ughade since last 7 to 8 years. However, there was no dispute between complainant and accused. The defence of the accused is that on account of cordial relationship between PW-1 and Bhimaji, the accused were falsely implicated in the crime.

11. The evidence of PW-2 suffers from serious omissions, which are as follows:

- (i) After giving blows by accused no. 1 on the face of the complainant, the front tooth was broken;
- (ii) After complainant fell down both the accused

assaulted him by fist and kick;

- (iii) Does not mention in the statement that accused assaulted complainant with fists and kicks;
- (iv) Her mother-in-law, sister-in-law and Suryakant came on the spot when the incident was going on;
- (v) When they tried to separate quarrel, accused scuffled with them;
- (vi) Due to assault, PW-1 felt giddiness;
- (vii) P.W.-2 collected tooth of her husband on spot.

These facts are not mentioned in her statement.

12. Taking into consideration the improvements and serious omissions in the statement, it is difficult to believe her version. PW-3 is allegedly the eye-witness to the incident. From the evidence of PW-2 it is apparent that she had not stated in her statement that her mother-in-law, sister-in-law and PW-3 came on the spot when incident was going on. Thus, presence of PW-3 at the place of incident is doubtful. The fact that accused no. 1 was giving blow on

the face of the complainant is not specifically mentioned in his statement before the police. He has not stated that accused no. 2 assaulted complainant on chest and stomach with fist. PW-4 is the Panch witness for seizure of clothes of the injured. The clothes was not sent for Chemical Analyses to determine the blood group of the blood found on the shirt of PW-1. PW-5 have stated that injury no.1 is possible only with forceful fist blows. He also stated that the person who assaulted by fist, himself shall sustain injury on his fist. There should be injury on lip. However, there was no injury on lip of PW-1 and no incise wound to the teeth. There was no tenderness on the lip. The certificate also did not mention that the roots of tooth were broken. Investigating officer did not notice any injury on hands of accused no. 1. If there is kick blows on stomach, there is possibility of injury on abdomen. Injury no.5 is possible if a person fall from the bicycle on rough and hard surface. Injury no. 6 is possible if a person fall from the bicycle on hard and rough surface on the ground. Injury no. 1 is

possible if a person fall from the bicycle on stone. Injury no. 2 is possible if a person has impact on chest or handle of bicycle and injury no. 3 is possible if there is multifall. The evidence of PW-5 is falsifies the ocular evidence of PW-1, PW-2 and PW-3. If the version of the said witnesses about kicks and blows on the mouth of PW-1 is accepted, there has to be corresponding injury. It is pertinent to note that initially N.C. complaint was lodged. The prosecution case is that PW-1 was closely associated with Bhima Ughade. Thus, possibility of applicant having falsely implicated in the case, cannot be ruled out. There is doubt whether the accused have caused injury to the complainant. The investigating officer did not prepare arrest Panchnama. From the evidence of medical officer, it was established that in the event forceful blows in the kicks, there would be injury on the fist of each hand of the assailant. There is no other independent evidence to support the prosecution case. PW-6 have stated that at the time of lodging complaint, the complainant has not produced tooth and

blood strained shirt. He produced the same at about 02:30 p.m. at the Police Station. During investigation it was not revealed that tooth of complainant had caused incise injury to his lip, at the time of referring the complainant to Primary Health Center. The evidence of PW-1, PW-2 and PW-3 suffers from contradictions and omissions.

13. PW-6 has also stated that there is no streetlight at the spot. PW-2 has not stated in her statement that accused gave fist blow to complainant on his nose, back and below eye. She has stated that accused gave one fist blow. There is no evidence to show that she went to PHC and that due to fist blow given by accused no.1, tooth of complainant had fallen. She did not specifically state that both accused assaulted on stomach and chest of complaint and due to assault, complainant felt giddiness. PW-3 have not stated in his statement that incident took place out of house of complainant, due to assault of accused, the tooth of complainant had fallen.

14. PW-1 did not stated that he was assaulted by fist and kicks on chest and stomach. Whereas PW-2 deposed that both accused assaulted PW-1 by fist and kicks on chest and stomach. PW-1 has not referred to presence of PW-3 at the place of incident. PW-2 however, stated that PW-3 had intervened along with her mother-in-law and sister. The presence of PW-3 is afterthought and his version is apparently concocted. From the evidence of PW-1 it is also revealed that house of Police Patil is of a distance of 500 feet. From his house. There is no evidence that incident was disclosed to Police Patil since the complainant to police was lodged on next day. It is evident from evidence of PW-2 that prior to incident there were no disputes between PW-1 and accused to high extent. She also stated hat 7 to 8 days accused had told complainant not to give advise to Bhima or not to interfere in dispute between them in respect of land. However, PW-1 is silent it that regard. PW-1 in fact stated that up to incident his relations with accused were cordial. PW-2 stated that accused gave 2 to 3 blows on face

and chest/stomach of complainant. However, PW-1 has not stated so. Taking into consideration the cumulative effect of serious infirmities in the evidence of the witnesses, I do not find that the prosecution has proved the case beyond all reasonable doubts.

15. Indeed, this court in exercise of revisional powers, in the absence of cogent evidence establishing the guilt of the accused, can certainly set aside the judgment & order of conviction. In the circumstances I am of the considered opinion that the conviction of accused has to be set aside.

16. Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Revision Application No.150 of 2002, is allowed;
- (ii) The impugned judgment & order dated 18th March, 2000, passed by Judicial Magistrate

First Class, Junner, District-Pune, convicting the applicant for the offence under section 325 of IPC and Section 323 read with 34 of IPC and the judgment & order dated 27th March, 2002, passed by Sessions Judge Pune, confirming the conviction awarded by trial court, are quashed and set aside, and, applicant is acquitted of the charges.

(iii) Criminal Revision Application is disposed of.

(PRAKASH D. NAIK, J.)