

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

CRIMINAL REVISION APPLICATION NO. 28 OF 2011

- 1) Baban s/o Ramchandra Godge,
Age 24 years, Occ. Agriculture.
R/o. Gavali Mohalla, Jalna,
Tq. & Dist. Jalna.
 - 2) Ganesh Ramchandra Godge,
Age 34 years, Occ. Agriculture,
R/o. Gavali Mohalla, Jalna,
Tq. & Dist. Jalna.
 - 3) Pintu @ Satish s/o Ramchandra Godge,
Age 21 years, Occ. Agriculture,
R/o. Gavali Mohalla, Jalna,
Tq. & Dist. Jalna.
- ... **Applicants.**

VERSUS

- 1) The State of Maharashtra.
 - 2) Shiladidi Rajkumar Kapur,
Age 50 years, Occ. Social Work
& Household, R/o. Ganpati Galli,
Old Jalna, Dist. Jalna.
- ... **Respondents.**

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Advocate for the Applicants : Mr. Sudarshan J. Salunke.

APP for the Respondent No. 1/State : Mrs. R.P. Gaur.

Senior Counsel for Respondent No. 2 : Mr. V.D. Sapkal

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	22.07.2021.
DECIDED ON	:	04.08.2021.

JUDGMENT :

This is a Revision under Section 397 read with Section 401 of the Code of Criminal Procedure by the original accused who were acquitted by the Trial Court but by the impugned judgment and order convicted by the

learned Sessions Judge in an Appeal against acquittal whereby they have been sentenced to suffer rigorous imprisonment for six months under Section 324 read with Section 34 of the Indian Penal Code, rigorous imprisonment for three months under Section 354 read with Section 34 of the Indian Penal Code and rigorous imprisonment for six months under Section 452 read with Section 34 of the Indian Penal Code and in addition to pay fine of Rs. 200/- on each count.

2. The allegations of the prosecution initiated by Shiladidi (PW. 1) by filing F.I.R. (Exh.31) are to the effect that she along with her brother Rajesh (PW. 2) was proceeding on a motorcycle for fetching milk on 26.04.2004 at about 10.30 p.m. The applicants (hereinafter 'the accused') along with three more persons accosted their motorcycle. They were carrying sticks, spade and axe. By threatening to withdraw the complaint filed by them against these accused persons the latter assaulted Rajesh (PW. 2) causing bleeding injuries. When a hue and cry was raised and some one reported the incident to his sister Komal (PW. 7) and wife Nayana (PW. 3), Komal (PW. 7) rushed to the spot to rescue her brother. However, the accused chased her down and reached the house of Rajesh (PW. 2). They ransacked the articles and molested Komal (PW. 7) by pulling her Odhani.

3. The incident was reported to police within an hour. Rajesh (PW. 2) and Shiladidi (PW.1) both were referred for medical aid with reference letters (Exh. 64 and 65). Dr. Agrawal (PW. 4) examined Rajesh (PW. 2) at about 11.10 p.m. and noticed a C.L.W. over forehead on the left side, abrasion over right side of the forehead and an abrasion each over the right elbow and right knee. He accordingly issued Injury certificate (Exh. 40). In the same night Dr. Agrawal (PW. 4) examined Shiladidi (PW.1) and noticed that she was having contusion over right hand second metacarpal and right forearm. Accordingly he issued Injury certificate (Exh. 41). Police Head Constable Mandlik (PW. 5) received the F.I.R. and registered the crime. The investigation was carried out by one P.S.I. Madar. A spot panchnama

(Exh. 44) of the house of Rajesh (PW. 2) was conducted in presence of panch Nandu (PW. 6). The accused were arrested and in due course of time they were charge-sheeted for the offences punishable under Section 147, 148, 324, 354, 452 read with Section 149 of the Indian Penal Code.

4. The defence of the accused is one of total denial and false implication. It is also being tried to be demonstrated that Rajesh (PW. 2) had in fact molested a woman from the accused's family and was therefore implicated in a Crime and the accused are being implicated with an ulterior motive.

5. The learned Chief Judicial Magistrate acquitted the accused. The judgment and order of acquittal was challenged by the State before the Sessions Court and by the impugned judgment and order the accused have been convicted and sentenced as mentioned herein above. It is pertinent to note that the Sessions Court, however, concluded that the prosecution had failed to prove that the offence was committed by forming an unlawful assembly and in furtherance of the common object of any such assembly. This is how the present Revision.

6. The learned advocate for the accused would vehemently submit that the prosecution had miserably failed to bring home the charge. The Trial Court had taken a plausible view. It had given sufficient and cogent reasons pointing out to the discrepancies and shortcomings in the prosecution evidence. Without there being any perversity or arbitrariness the Sessions Court ought to not have interfered in the appeal against acquittal. He would submit that the parameters for exercising the powers to reverse an acquittal have been reiterated by the Supreme Court time and again as succinctly culled down in ***Mahtab Singh and Anr Vs. State of U.P.; A.I.R. 2009 Supreme Court 2298***. Merely because another view was possible the Sessions Court ought not to have substituted its view in place of the one expressed by the Trial Court which was well founded. The learned advocate would further submit that merely because the Trial Court had erred in some

respect and has at times been even perverse was not sufficient for the Sessions Court to reverse the acquittal. The ultimate conclusion drawn by the Trial Court was unassailable and should not have been interfered with while exercising a limited jurisdiction.

7. The learned advocate Mr. Salunke for the accused would further submit that the inferences drawn by the Sessions Court in the impugned judgment are based on surmises and conjectures. It has blatantly overlooked the contradictions and inconsistencies as well as improbabilities referred to and pointed out by the Trial court. There was no reason to set aside the acquittal.

8. The learned A.P.P. and the learned advocate for the respondent No.2 would support the impugned judgment and order. They submit that the observations and conclusions of the Trial Court were perverse and arbitrary. The Sessions Court has pointed out such perversity in appreciation of evidence and has rightly interfered with and reversed the judgment of acquittal.

9. I have carefully gone through the judgments of the two Courts below and the record and proceeding and considered the rival submissions. Since this Revision arises out of a judgment and order reversing the acquittal, it would be appropriate to bear in mind the principles which govern the powers of the Appellate Court in reversing an acquittal. Suffice for the purpose to refer to the decision in the case of **Mahtab Singh (supra)**. Though in the facts of the matter before the Supreme Court the powers of the High Court while dealing with an appeal against acquittal have been discussed the same would equally govern the powers of Sessions Court while exercising the appellate jurisdiction. After considering catena of decisions the Supreme Court affirmed the following principles culled out in the case of **Ghurey Lal Vs. State of Uttar Pradesh; (2008) 10 SCC 450:**

“1. The appellate court may review the evidence in

appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial Court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong."

10. A careful perusal of these principles would clearly set out that the Appellate Court has the power to review the evidence in appeal against acquittal and even to reappreciate the entire evidence. It can consider both facts as well as law. However, there has to be some substantial and compelling reason for the Appellate Court for holding the view of the Trial Court as wrong. Bearing in mind these principles let us scrutinize the matter in hand objectively.

11. The Trial Court has refused to rely upon the testimonies of the prosecution witnesses particularly informant Shiladidi (PW.1), Rajesh (PW.2), Nayana (PW. 3) and Komal (PW. 7). It has given following few reasons for disbelieving the prosecution witnesses and the prosecution narrative by referring to the fact that in fact the offence involves two episodes. It has discussed the evidence regarding each of them separately. As far as first episode is concerned, it assigns following grounds to disbelieve the testimonies of Shiladidi (PW.1) and Rajesh (PW.2).

- (i) The F.I.R. (Exh. 31) lodged by Shiladidi (PW.1) is absolutely

silent about any assault on her. For the first time in her testimony Shiladidi (P.W.1) deposed about even assault on her.

(ii) Shiladidi (P.W.1) and Rajesh (P.W.2) state about accused Ganesh having given a blow of spade on the head of Rajesh (P.W.2) and do not state about any other injury. However his Injury certificate (Exh. 40) mentions about he having sustained four injuries.

(iii) Though Shiladidi (P.W.1) and Rajesh (P.W.2) allege about Rajesh (P.W.2) having been hit on head the injuries mentioned in Injury certificate (Exh. 40) do not demonstrate any injury on head.

(iv) If Shiladidi (P.W.1) and Rajesh (P.W.2) had gone to the police station simultaneously and were referred for medical examination with letters (Exhs. 64 and 65) simultaneously there was no reason why Rajesh (P.W.2) was examined at around 11.10 p.m., Shiladidi (P.W.1) was examined at 1.15 a.m.

(v) Though these two persons are alleged to have sustained injuries simultaneously, the age of injuries mentioned in the Injury certificates (Exh. 40 and 41) are quite contradictory in as much as the injuries sustained by Rajesh (P.W. 2) are stated to have been caused within two hours whereas those caused to Shiladidi (P.W.1) were within 24 hours.

(vi) Though the prosecution has examined Nandu (P.W. 6) only a panchnama (Exh. 44) of the spot inside the house of Rajesh (P.W. 2) was got proved from him and though he is a panch even on the seizure panchnama of the weapons that has not been duly proved.

As far as second episode is concerned, the Trial Court has given following reasons to disbelieve prosecution witnesses Nayana (PW. 3) and Komal (PW. 7):

- (i) Nayana (PW. 3) who happens to be the wife of Rajesh (PW. 2) had heard the occurrence of the first episode but her behaviour of not rushing to the spot is improbable.
- (ii) Komal (PW. 7) does not attribute the act of pulling of her Odhani to any specific accused and she vaguely states about accused persons pulled her Odhani. Nayana (PW. 3) attributes it to accused Baban.

In addition to these reasons the Trial Court has also made a passing reference that the prosecution has examined Police Head Constable Mandlik who had merely received the F.I.R. (Exh. 31) and registered the offence but the investigation was carried out by P.S.I. Madar and who has not been examined as a witness.

12. If one examines the reasoning resorted to by the learned Judge of the Sessions Court, he did resort to reappraisal of the evidence which he was entitled to but has either overlooked the discrepancies pointed out by the Trial Court or has not noticed the reasoning resorted to by it. Pertinently, he in a way confirmed the finding of the Trial Court that there was no unlawful assembly and the assault was not carried out in furtherance of any common object. While appreciating the evidence and pointing out the perversity in the reasoning assigned by the Trial Court he correctly observed that Shiladidi (PW.1) and Rajesh (PW.2) had described the latter having received an injury to head but their such description being that of laymen, and when Dr. Agrawal (PW. 4) in his Injury certificate (Exh. 40) has stated that Rajesh (PW. 2) had sustained couple of injuries on the forehead which is nothing but a part of head as commonly understood, the learned Judge of the Trial Court ought to have borne in mind this fact which he had miserably failed

to. Therefore to this extent I do not find any perversity or illegality in the conclusion drawn by the Sessions Court.

13. However, according to the learned Judge of the Sessions Court, the Trial Court had erred in giving unnecessary importance to the omissions of material facts in the F.I.R. by observing that in the process the Trial Court had ignored that the F.I.R. was lodged promptly and it is not supposed to be an encyclopedia. True it is that the F.I.R. was lodged promptly and it is equally trite that an F.I.R. is not expected to be an encyclopedia. However, the observation and conclusion of the Trial Court that the F.I.R.(Exh. 31) is absolutely silent about any injury having been sustained by Shiladidi (PW.1) and such absence in juxtaposition to the time lag of about two hours in medically examining her and Rajesh (PW. 2) coupled with the fact that the self-same Medical Officer Dr. Agrawal (PW. 4) has given age of injuries sustained by these two witnesses with a difference of about 22 hours, are the facts and circumstances which would clearly demonstrate that the learned Judge of the Trial Court was not wholly incorrect in appreciating these circumstances which create a doubt about the veracity of the injuries sustained by Shiladidi (PW. 1). At least it was a reasonable and plausible view of the matter.

14. For the same reason, the observations and the conclusions of the learned Judge of the Trial Court that even the number of injuries spoken about in the F.I.R. (Exh. 31) do not tally with the number of injuries noticed by Dr. Agrawal (PW. 4) was equally based on plausible appreciation.

15. As far as the evidence regarding the second episode is concerned, the learned Judge of the Sessions Court has clearly overlooked the fact that Komal (PW. 7) herself has not attributed the act of pulling of her Odhani to any specific individual accused. Whereas, Nayana (PW. 3) attributes it to accused Baban. Such a discrepancy pointed out by the Trial Court has not at all been considered by the learned Judge of the Sessions Court. It was

indeed a material discrepancy pointed out by the Trial Court which ought to have been considered and reappreciated in appeal against acquittal.

16. So far as failure on the part of the prosecution to prove the seizure of weapons, the learned Judge of the Appellate Court seems to have been convinced by the fact that the fact of seizing of weapons to which Nandu (P W. 6) was witness was a mere lapse and an attempt was made by the prosecution to recall him which opportunity was not extended to it by the Trial Court when it rejected/refused its request. The fact remains that the seizure of weapons has not been duly established by the prosecution which finding of the Trial Court was clearly unassailable.

17. All these aforementioned facts and circumstances would clearly indicate that assuming that another view was possible to be taken, the learned Judge of the Sessions Court was not entitled to reverse the judgment of acquittal returned by the Trial Court with the plausible reasoning.

18. Since by the impugned judgment and order the accused persons have been convicted and therefore if the reasoning given by the Sessions Court is to be scrutinized objectively by reappreciation of evidence for a limited purpose, it is quite conspicuous that in spite of even a specific testimony of Komal (P.W. 7) about her Odhani having been pulled she has not even whispered about such pulling of Odhani was with some intention to molest her. If the accused persons were chasing her and in the process one of them had pulled her Odhani, there has to be something more to establish and attribute an intention on their part to molest her. The learned Judge of the Sessions Court does not seem to have objectively scrutinized her evidence before concluding that such pulling of Odhani constituted molestation and convicting the accused for an offence punishable under Section 354 of the Indian Penal Code.

19. The upshot of the discussion is that though the learned Judge of the Sessions Court has rightly decided to review and reappreciate the entire

evidence, there was no sufficient and cogent reason which would have entitled him to reverse the plausible finding of the Trial Court. Merely because he was entitled to take a different view it was not sufficient for him to topple the judgment of the Trial Court. Besides, even such reappraisal of evidence by him is not sustainable as is demonstrated herein above. Resultantly, the impugned judgment and order is liable to be quashed and the one passed by the Trial Court deserves to be restored.

20. Apart from the above state of affairs it needs to be noted, before parting, that during pendency of this Revision a dispute was raised as to the juvenility of accused No. 3 Pintu @ Satish. An enquiry was directed under Section 7 (A) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Rules framed under that Act. As a result of such direction the learned Chief Judicial Magistrate has conducted the enquiry and has submitted a report to the effect that he was aged 17 years 07 months and 26 days on the date of the incident and consequently was a juvenile in conflict with law. Therefore irrespective of the impugned judgment and order, the accused No. 3 Pintu @ Satish cannot be convicted and sentenced.

21. The Revision is allowed.

22. The impugned judgment and order of the Sessions Court is quashed and set aside and the one passed by the Trial Court is restored.

23. Fine amount deposited, if any, shall be refunded.

(MANGESH S. PATIL, J.)

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