

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

CRIMINAL REVISION APPLICATION NO. 199 OF 2004

Rakhmaji Shivram Bhumkar

Age : 39 years, Occu. : Service

R/o Kalipeth, Basmath, Taluka Basmath,
District Hingoli

.. Applicant

Versus

1. The State of Maharashtra
Through P.S.O. Police Basmathnagar,
Basmath, Taluka Basmath,
District Hingoli.
2. Gangadhar s/o Dattatraya Alaspure
Age : 72 years, Occu. : Pensioner,
R/o Kalipeth Basmath, Taluka Basmath,
District Hingoli (Abated)
3. Sakharam s/o Dattatraya Alaspure
Age : 42 years, Occu. : Labourer,
R/o. Kalipeth Basmath, Taluka Basmath,
District Hingoli (Abated)
4. Sunil s/o Gangadhar Alaspure
Age : 34 years, Occu. : Panpatti Shop,
R/o. Kalipeth Basmath, Taluka Basmath,
District Hingoli.
5. Anil s/o Gangadhar Alaspure,
Age : 32 years, Occu. : Panpatti Shop,
R/o. Kalipeth Basmath, Taluka Basmath,
District Hingoli.

.. Respondents

Mr. R. S. Shinde, Advocate h/f Mr. V. P. Latange, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondent/State.
Mr. Suraj R. Bagal, Advocate for Respondent Nos. 4 and 5.

CORAM : BHARAT P. DESHPANDE, J.

Date on which reserved for judgment : 02nd August, 2022.

Date on which judgment pronounced : 04th August, 2022.

JUDGMENT :-

1. By way of present revision application filed under Section 401 of the Code of Criminal Procedure (for short "Cr.P.C."), the informant/applicant is challenging the judgment and acquittal passed by the learned Additional Sessions Judge, Parbhani in Sessions Case No. 135/2002 vide its judgment dated 31.12.2003. The respondent Nos. 2 to 4 were prosecuted for the offence punishable under Sections 302, 506 r/w Section 34 of the Indian Penal Code (for short "IPC") and Section 323 of the IPC.

2. During the pendency of the present revision, the respondent Nos. 2 and 3 have expired and vide order dated 17.02.2017, the present revision stands abated against the respondent Nos. 2 and 3. The respondent No. 1 is the State of Maharashtra through P. I. Basmathnagar Police Station.

3. The applicant/informant lodged the information on 09.02.2002 about assault on his father by the accused persons which took place around 5.30 p.m. on 06.02.2002. The father of the applicant has expired subsequently while undergoing treatment and therefore, the matter was investigated, charge-sheet was filed and the accused persons were tried before the learned Sessions Judge, Parbhani who acquitted all the accused persons by the

impugned order which is under challenge before this Court.

4. It is admitted fact that the State failed to file appeal. Therefore, the applicant/informant is before this Court.

5. Heard learned counsel for the applicant, the learned APP for the State and the learned counsel appearing for the respondent Nos. 4 and 5.

6. The learned counsel for the applicant forcefully submitted that findings of the learned Sessions Judge are against the settled proposition of law, perverse and illegal and therefore, the same needs to be interfered with. He invited attention of this Court to the evidence of the witnesses and more specifically three eye witnesses i.e. PW-3 – Rukhmaji, PW-4 – Meerabi and PW-5 – Abaji. Similarly, the learned counsel for the applicant invited attention of this Court to the evidence of the Doctors as well as post mortem report. He submitted that, cause of death is because of head injury and the same is homicidal. He then submitted that, the learned Sessions Judge on flimsy grounds discarded evidence of three eye witnesses, disbelieved the evidence of medical experts and therefore, such judgment needs to be quashed and set aside and the matter needs to be remanded for fresh consideration.

7. The learned APP appearing for respondent No. 1 supported the findings of the learned counsel for the applicant and submitted that findings of the learned Sessions Judge are contrary to the settled proposition of law.

8. The learned counsel for the respondent Nos. 4 and 5 (original accused Nos. 3 and 4) submitted that re-appreciation of evidence is not at all permissible under Section 401 of the Cr.P.C. Therefore, what remains is only the aspect as to whether there is any illegality committed by the learned Sessions Judge in passing the order of acquittal. According to him, version of three eye witnesses are so contrary to each other and therefore, learned Sessions Judge has rightly disbelieved them. He submitted that there is unexplained delay in filing FIR which has been considered by the Court below in proper manner. He then claimed that there is discrepancy in ocular evidence with that of medical evidence as no such injuries are found on the deceased. He submitted that, when possible view appears which favours the accused persons, the same has to be accepted. He finally claimed that since prosecution has failed to discharge burden of proving charges against the accused beyond all reasonable doubt, same cannot be appreciated in this proceeding.

9. It is well settled proposition of law that, while exercising revisional jurisdiction, the powers of this Court are very limited. It is not permissible to re-appreciate evidence while deciding revision filed against the impugned judgment. Only in case of illegality on the face of record or perversity in the findings, the revisional Court can consider interference in the impugned order. The scope is only to find out legality and regularity of any proceeding

or order made in the case. The object of the revisional jurisdiction is to set aside patent defect or error of a jurisdiction or law or perversity which is crapped up in the proceeding. Keeping in mind above settled proposition of law, the submissions of the learned counsel for the applicant needs to be examined.

10. First of all, it has been claimed that the learned Sessions Judge disbelieved depositions of three eye witnesses by giving flimsy reasons. In this respect and on perusal of the impugned judgment, one thing is clear that there is elaborate discussion while discarding evidence of three eye witnesses. Such discussion cannot be termed as perverse for the simple reason that there are major contradictions, variations and improvements interse between these eye witnesses. On this count, the learned Sessions Judge observed that these witnesses are not reliable witnesses. Admittedly, re-appreciation of evidence of these witnesses is not permissible in the present proceeding. Therefore, the findings of the learned Sessions Judge while discarding such evidence of eye witnesses cannot be termed as perverse though another view is possible.

11. Secondly, it has been contended by the learned counsel for the applicant that delay in lodging FIR was considered by the learned Sessions Judge as fatal to the case of prosecution. He submitted that incident took place on 06.02.2002 during evening time and thereafter, deceased Shivram was taken to the hospital. He remained in the hospital and was operated on

07.02.2002 for head injury. The informant remained with his father. However, he lodged FIR on 09.02.2002 which was registered for the offence punishable under Sections 324, 504 r/w Section 34 of the IPC vide Crime No. 23/2002. Hence, he claimed that there is no delay and, if any, the same has been properly explained.

12. Per contra, learned counsel appearing for the respondent Nos. 4 and 5 forcefully submitted that deceased himself was conscious and went walking to the hospital and even at that time, there was no report lodged either by the deceased himself, his wife as well as informant. The FIR was lodged on 09.02.2002 by concocting a story of assault. He submitted that history given to the Doctor is only by push and fall.

13. The learned Sessions Judge while considering this aspect of delay in lodging FIR, in detailed discussed about it and arrived at a conclusion that such delay has not been properly explained and there is possibility of lodging the FIR as an after thought. Thus, findings are on the basis of material produced during trial. The view expressed by the learned Sessions Judge is a possible view and therefore, such opinion cannot be termed as perverse or illegal.

14. The third aspect which has been raised by the learned counsel for the applicant is that of head injury. He submitted that, the evidence of three Doctors clearly suggests that head injury is possible due to assault with the

wooden stick and iron angle. He therefore, submitted that such material evidence has been discarded and therefore, judgment itself is against settled proposition of law.

15. Per contra, the learned counsel appearing for the respondent Nos. 4 and 5 forcefully submitted that there is vast variance between ocular and medical evidence and the possibility of sustaining injury by the deceased due to push and fall cannot be ruled out. He submitted that evidence of the Doctors clearly goes to show that no corresponding injury was found on the head as tried to be projected by the eye witnesses. Since there were no external injuries, the possibility of assault with the iron angle and wooden stick and more particularly, giving multiple blows by the accused persons is completely ruled out.

16. The learned Sessions Judge while discussing these aspects and more particularly, from paragraph No. 21 onwards observed that evidence of three eye witnesses does not inspire confidence as there are glaring discrepancies and interse inconsistencies. He also observed that, the head injury sustained by the deceased Shivram was possible by fall. He further opined that, evidence of three Doctors also given contrary opinion and the same is inconsistent with the story put forth by prosecution witnesses.

17. On careful perusal of the entire record as well as reasons given by the learned Sessions Judge while discarding evidence of the eye witnesses as

well as medical evidence, it is observed that such findings cannot be termed as perverse or against the settled proposition of law though another view is possible. Admittedly, re-appreciation of evidence in the present proceeding is not at all permissible. There is no illegality or perversity in the impugned judgment. The learned Sessions Judge by giving reasons discarded evidence of three eye witnesses. In such circumstances, it is not possible to hold that the impugned judgment is in any way against the settled principles of law. Having said so, the revision fails and hence, I pass the following order :-

ORDER

1. Criminal revision application stands rejected.
2. The parties shall bear their own costs.
3. Proceeding is closed.
4. Rule discharged.

(BHARAT P. DESHPANDE, J.)

PS.B.