

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Revision Application No. 320 / 2004

Nagorao S/o Bhaurao Sabale
Age 64 years, Occu. Agriculture,
R/o. Jawala, District Beed.

...Applicant

Versus

1. The State of Maharashtra,
(Through Police Station Sirsala
District Beed.)
Copy to be served on P.P. High Court
of Judicature of Bombay,
Bench at Aurangabad.
2. Suresh S/o Sakharam Misal,
Age : 24 years, Occu. : Agri,
R/o. Jawala Tq. Wadwani,
District Beed.
3. Baburao S/o Bukaram Misal,
Age : 35 years, Occu. : Agri,
R/o. Jawala Tq. Wadwani,
District Beed.
4. Aba S/o Sakharam Misal,
Age : 21 years, Occu. : Agri,
R/o. Jawala Tq. Wadwani,
District Beed.
5. Shaku D/o Bukaram Misal,
Age : 19 years, Occu. : Agril,
R/o. Jawala Tq. Wadwani,
District Beed.

...Respondents

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Mr. B. S. Kudale, Advocate for the Applicant

Mrs. Harsha R. Lomate h/f Mr. V. D. Salunke,
Advocate for Respondent Nos.2 to 5

Mrs. G. L. Deshpande, APP for Respondent No.1/State

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CORAM : BHARAT P. DESHPANDE, J.

RESERVED ON : 10th AUGUST, 2022.

PRONOUNCED ON : 17th AUGUST, 2022.

JUDGMENT :

1. Rule was issued vide order dated 20.01.2006.

2. The Applicant is the Original Complainant. On his complaint, FIR was registered vide Crime No. 24/1999 for the offence punishable under Sections 323, 324 read with 34 of the Indian Penal Code (IPC for short), against the Respondent Nos. 2 to 5/ Original Accused persons. After completion of investigation, charge-sheet came to be filed before the learned Magistrate. Vide judgment dated 14.11.2002, learned Magistrate at Majalgaon, found Accused Nos. 1 to 4 as guilty for the offence punishable

under Section 324 read with 34 of IPC and sentenced them to suffer rigorous imprisonment for three years and to pay fine of Rs.5000/- each in default to suffer simple imprisonment for three months each.

3. The Respondent Nos. 2 to 4/ Accused persons preferred appeal vide Criminal Appeal No. 39/2002 challenging the conviction and sentence. The learned Adhoc Additional Sessions Judge, Beed vide its judgment dated 05.06.2004 allowed the appeal, set aside the judgment passed by the learned Judicial Magistrate First Class and acquitted all the Accused persons for the offence punishable under Section 324 read with 34 of IPC. The Applicant/ Original Complainant is before this Court challenging the above acquittal on various grounds as mentioned in the Revision Application.

4. Record and proceedings were called and upon issuing notices, the Respondents appeared and contested the matter.

5. Heard. Mr. Kudale, learned Counsel for the Applicant, Mrs. Lomate, learned Counsel for Respondent Nos. 2 to 5 and Mrs. Deshpande, learned APP for State. With the assistance of learned Counsel for the parties, I have perused entire record.

6. Learned Counsel appearing for the Applicant submits that the learned Additional Sessions Judge committed error in the eyes of law by acquitting Accused persons. He submitted that much importance is given to so called contradiction and omission in the evidence of prosecution witnesses, which were not proved through the Investigating Officer. He submitted that even though summons were issued on many occasions to the Medical Officer, he remained absent. However, learned Sessions Judge observed that non-examination of Medical Officer is fatal to the case of prosecution. He then submitted that judgment passed by the learned Magistrate is a reasoned order, which has been reversed without proper appreciation of evidence and therefore such order of the First Appellate Court required interference. The matter

needs to be remanded to the First Appellate Court to decide it afresh.

7. The learned APP appearing for the State supported contentions of the learned Counsel for Applicant. However, it is admitted by the learned APP that no appeal was filed by the State challenging such order of the Additional Sessions Judge.

8. Learned Counsel for Respondent Nos. 2 to 5 forcefully submitted that the order/judgment of acquittal passed by the learned Additional Sessions Judge is a well reasoned order and entire evidence has been properly assessed. He submitted that there are major contradictions, improvements in the evidence of prosecution witnesses, which makes them unreliable witnesses. He then submitted that the story put forth by the prosecution, nowhere proved any common intention carried by the Accused persons to commit such offence. The doctor was not examined before the learned Magistrate and hence there is nothing on record to show

that any grievous injury was caused. He submitted that alleged knife was never recovered and therefore entire story of the prosecution has been rightly disbelieved.

9. Having heard the learned Counsel for the respective parties, the case put forth by the Complainant in nutshell needs to be discussed. On 11.03.1999 at about 07:00 pm., Complainant was going to answer nature's call. While he was proceeding from the front side of house of Balbhim Ghorpade, Accused No.1 - Suresh Misal gave him a dash and asked him to withdraw the rape case. When he refused to do so, Suresh assaulted him on his head with Chappal and gave a bite on his left hand resulting into injury caused by teeth. Accused No.2 - Baburao came and gave knife blow on the right palm of the wife of Complainant namely Papitabai. Accused No.4 - Shaku gave tooth bite to the left hand causing injury and also hit him with the stone on his knee joint. At that time Suvarnamala came at the scene. Whereupon Accused No.3 - Aba gave tooth bite on her back, fingers of both hands as well as left arm. Jagdish i.e. son of Complainant

came at the spot, however he sustained a blow of stone on his left hand, while Accused No.1 - Suresh caught hold of him and smashed against wall causing head injury. During the said assault, Papitabai lost her golden necklace and ear tops.

10. After framing of charges by the learned Magistrate against Accused persons, prosecution examined the Complainant - Nagorao, his wife Papitabai, his son Jagdish and Investigation Officer as PW-1 to 4.

11. It is also a fact that Accused No.1-Suresh was charge-sheeted in connection with offence of rape on Suvarnmala. Similarly Suresh alongwith his father Sakharam and Accused No.2-Baburao alongwith others were prosecuted for murder of Suvarnmala. Thus, it is a fact that matters were pending against Accused persons, wherein Complainant and his family members were involved.

12. The charge framed in the matter is only with regard

to tooth bites/causing hurt to Nagorao and his family members by the Accused persons that is the offence under Section 324 read with 34 of IPC.

13. First of all, it is clear from the evidence produced before the learned Magistrate that Medical Officer was not examined to prove the nature of injuries caused to the Complainant and his family members and more particularly alleged injuries as tooth bites. Similarly it is a fact that pancha witnesses were not examined by the prosecution and therefore the spot incident as alleged by the Complainant and his witnesses was not at all established during trial. No doubt the learned Magistrate did not consider only this aspect of non-examination of pancha witnesses and claimed that since the evidence of Complainant and his witnesses discloses the spot, he has no any reason to disbelieve their version regarding the said spot.

14. The learned First Appellate Court in its reasoned order observed that in absence of any independent eye-

witnesses though available, the story put forth by the Complainant and his witnesses is highly suspicious. The evidence of Complainant-Nagorao clearly goes to show that he tried to improvise his case by stating that all Accused persons came together, which is not found in the complaint itself. Therefore, the learned First Appellate Court observed that Complainant tried to implicate by improvising his case so as to bring the matter within the ambit of Section 34 of IPC. Similarly the evidence of Wife (Papitabai) of Complainant is also disbelieved on the basis of contradictions and improvising her statement. The deposition of PW-3 Jagdish, who at the relevant time was minor and about 10 years old, is also not supporting the case of prosecution on material aspects. This witness claimed that when he reached near Maruti Temple, he noticed quarrel going on between Accused persons and his family members. He then claimed that Accused No.3-Aba was beating Suvarnamala and when he tried to rescue her, Aba assaulted him with stone on his left hand and Accused No.1-Suresh threw him on surface, due to which

he sustained head injury. There is no reference in the complaint or statements of earlier witnesses that Accused No.3-Aba was found beating Suvarnamala and at that time PW-3 Jagdish tried to rescue her.

15. The statements of PW-1, 2 and 3 are therefore self contradictory, full of discrepancies and inconsistencies. All these witnesses have deliberately improvised their depositions and therefore learned First Appellate Court found it difficult to believe such testimonies for the purpose of confirming the conviction awarded by the learned Magistrate.

16. It is well settled proposition of law that prosecution duty is to prove the charges leveled against Accused persons beyond all reasonable doubt. If a reasonable doubt appears on the face of record, the Accused persons are entitled for acquittal. The matter in hand clearly goes to show that three witnesses are all family members and they tried to improvise their statements in order to implicate Accused persons. Due

to previous enmity between the parties, such depositions of interested witnesses and that to without any independent corroboration has been rightly rejected by the First Appellate Court.

17. Apart from it, there is no corroborative evidence regarding injuries caused to the Complainant and his family members as claimed in the charge-sheet. The concerned doctor was not examined before the trial Court. Only producing certificate without examining doctor cannot be considered as evidence.

18. It is also admitted fact that the allegations regarding use of knife by the Accused persons at the time of alleged incident is also not established beyond reasonable doubt. No corresponding injuries are found on the Complainant and other victims *qua* the knife. Therefore, contentions of the Complainant and his witnesses regarding use of knife by the Accused persons is highly doubtful. The discussion of the First Appellate Court while acquitting the Accused persons is

considered to be sound and reasonable. No interference is therefore necessary with such findings. The contentions raised by the learned Counsel for the Applicant in the present Revision Application are therefore devoid of merits.

19. The Revision Application therefore deserves to be rejected. Hence the following order.

O R D E R

- (i) The Criminal Revision Application stands rejected.
- (ii) Rule stands discharged.
- (iii) Party shall bear their own costs.

[BHARAT P. DESHPANDE, J.]