

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

CRIMINAL REVISION APPLICATION NO.18 OF 2006

Vijaykumar Ramanlal Shah,
Age 57 years, Occu. Business,
R/o HIMCO House, Nehru Road,
Jalna, Taluka and District Jalna. ... Applicant.

Versus

1. Suresh Uttamchand Sethiya – Deleted.
2. Ritesh Suresh Sethiya,
Age 26 years,
3. Rupesh @ Dharmendra Suresh Sethiya,
Age 22 years,

All R/o Mahico Colony, Jalna,
Taluka and District Jalna.
4. State of Maharashtra. ... Respondents.

...
Advocate for Applicant : Mr. Joydeep Chatterji.
APP for Respondent No.4-State : Mr. Y. G. Gujrathi.
Advocate for Respondent Nos.2 & 3 : Mr. S. G. Ladda.
...

CORAM : S. G. MEHARE, J.

**RESERVED ON : 12.06.2023
PRONOUNCED ON : 03.07.2023**

JUDGMENT :-

1. Heard the respective sides.
2. The injured/applicant has preferred this criminal revision application under Section 397, read with Section 401

of the Code of Criminal Procedure against the judgment and order of acquittal of learned 4th Jt. Judicial Magistrate First Class, Jalna, in R.C.C. No.396 of 2004, dated 29.10.2005.

3. The brief facts of the case were that the accused and the injured had shops adjacent to each other. The incident happened on 21.03.2004. The first informant and the injured went to their shop. The accused asked them to park their scooter at another place as it was their shop. The injured told them they should remove their scooter parked in front of his shop, and then he would remove his scooter. Then the accused said to the injured, 'Is the road your father's'? Then they started quarreling with the injured. The accused went into their shop and brought a wooden log, and hit on the head of the injured. The complainant tried to explain to them, but they abused him, also. The report was lodged immediately. A crime was registered for the offences punishable under Sections 323, 324 and 504, read with Section 34 of the IPC. The prosecution examined seven witnesses in all and closed the case. The accused had a defence of false implication. Appreciating the evidence, the learned Magistrate acquitted the accused.

4. Learned counsel for the applicant/injured has vehemently argued that there were no discrepancies and

inconsistencies in the statement of the witnesses. The weapon used in the crime was seized. The doctor proved the injuries. There were eyewitnesses to the incident. However, the learned Magistrate erroneously discarded the eye witness assigning the reason that he was working in the firm having concern with the injured. In fact, nothing was brought in the cross-examination of the witnesses. The impugned judgment is incorrect on the face of the record. The learned Magistrate has incorrectly applied the law on contradictions and omissions. Evidence has not been properly appreciated. The reasoning of the impugned judgment and order is perverse and illegal. Hence, it is liable to be set aside, and the case be remitted to the trial Court for rewriting the judgment.

5. The learned APP supporting the complainant argued that the acquittal is on technical grounds. The defence was not probable. Hence, the impugned judgment and order of acquittal is liable to be set aside.

6. Per contra, learned counsel for the respondents/accused would argue that the parties had a civil dispute. Hence, the accused have been implicated falsely in the crime. There were no consistent statements as regards the incident. The injuries suffered to the injured were possible by slipping the scooter.

The prosecution did not prove the case beyond a reasonable doubt. The father of the victim was allegedly examined as an eyewitness. However, he was not present on the spot of the incident. Hence, the impugned judgment and order is legal, correct and proper.

7. Learned Magistrate acquitted the accused as the injured and other witnesses did not corroborate each other, and there are inconsistencies in their versions. There are also improvements, contradictions and omissions in their versions. The prosecution failed to prove who was the author of the injuries caused to the injured. There was no sufficient incriminating evidence against the accused. The prosecution miserably failed to prove the ingredients of the sections levelled against the accused beyond any reasonable doubt.

8. The learned Magistrate also recorded the findings that the injured did not depose that he had not shown the spot of the incident. But the Investigating Officer deposed that the complainant Vijaykumar Shah had shown the spot of the incident. The injured did not show the spot of the incident.

9. The injured categorically deposed that the accused Ritesh brought the wooden log and hit on his head. He also

described the role played by each accused. It was confirmed in his cross-examination. The eyewitness also corroborated the injured. The medical evidence corroborates the injured. It is proved that accused Ritesh produced the weapon used in the crime. The Medical Officer opined that the injury on the head of the injured was possible by the stick shown to him. He also deposed that the other injuries are possible by fists and blows. As far as the spot panchanama was also proved. The correctness of the impugned judgment has to be examined, discussing the law on corroboration, contradiction and omission, along with the evidential value of the testimony of the injured witness.

10. The Hon'ble Supreme Court in ***M.O. Shamsudhin Vs. State of Kerala***, on 21 March 1995 in paragraph No.13 has observed thus as regards the corroboration ;

“13. The word ‘Corroboration’ means not mere evidence tending to confirm other evidence. In DDP Vs. Hester, (1972) 3 ALL ER 1056, Lord Morris said:

“The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is

sufficient and satisfactory and credible, and corroborative evidence will only fill its role if it itself is completely credible.”

11. It is well settled that corroborating evidence can be by way of circumstantial evidence. Like contradiction, corroboration is meant to test the truthfulness of the witness.

12. Recently, the Hon’ble Supreme Court, in the case of ***Balu Sudam Khalde and another Vs. The State of Maharashtra ; 2023 Live Law (SC) 279*** has laid down the law that evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements can’t be discarded lightly.

13. In ***Ram Kishan Vs. State of U.P ; AIR 2004 SC 4678***, the Hon’ble Supreme Court held that evidence of injured witness cannot be discarded in toto on the ground of inimical disposition towards the accused or improbabilities of narrating the details of the actual attack. If evidence of injured witness is otherwise reliable and trustworthy, then it carries more weight and cannot be thrown away merely because it is not corroborated by any independent witness. It is also settled that little discrepancies cannot make evidence injured witness

unacceptable. (*The state of Maharashtra Vs. Nana Trimbak Tadas , 2015 23. Feb*)

14. The record reveals that an independent witness and the Medical Officer corroborate the evidence of the injured witness. The Medical Officer immediately examined the injured. Barely the eyewitness was the servant of the injured in the absence of other evidence cannot be disbelieved. His presence on the spot of the incident was also proved. He had no enmity with the injured. Previous enmity is a double-edged weapon. On examining the record, it appears that a civil dispute between the accused and the injured was not the cause of implicating the accused in a false crime.

15. In the case of *Shyamal Ghosh Vs. State of West Bengal ; (2012) 7 SCC 646*, the Hon'ble Supreme Court observed that the discrepancies or the omissions have to be material ones, and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety.

It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements for contradictions before the Court in order to render the evidence unacceptable, that the Courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradiction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case, however, the latter would not adversely affect the case of the prosecution. I have gone through the impugned judgment and order, the Court is of the view that there were no material contradictions and omissions to doubt the prosecution case and there was nothing to believe that such contradictions and inconsistencies affect the core of the prosecution case make it disbelieve.

16. The record reveals that there were no substantial reasons to discard the evidence of the injured, eyewitness and medical Officer for the sole reason that the first informant did not witness the incident. A bare suggestion that the injury suffered by the injured was possible by slipping the scooter was

insufficient unless the opponent brings such circumstances on record to believe such probability. In other words, to prove probability, there must be circumstances to believe such circumstances exists. The record also reveals that witnesses have specifically deposed the role played by each accused.

17. Examining the record, with the law laid down in the above cases, it is apparent that the learned Magistrate did not appreciate the evidence in consonance with the law on corroboration, contradiction and omission.

18. After examining the record and the impugned judgment and order, the Court concludes that there was an apparent error on the face of the record. Therefore, the criminal revision application is liable to be allowed. Hence, the following order :

ORDER

- (i) Criminal Revision Application stands allowed.
- (ii) The judgment and order acquitting the respondent/accused for the offences punishable under Sections 323, 324, 504 read with Section 34 of the IPC passed by the learned 4th Jt. Judicial Magistrate First Class, Jalna, in R.C.C. No.396 of 2004, dated 29.10.2005 is quashed and set aside.

- (iii) The criminal revision application is remitted back to the Court of learned 4th Jt. Judicial Magistrate First Class, Jalna for re-writing the judgment after giving an opportunity to both sides to advance the arguments.
- (iv) The accused to appear before the Learned Magistrate on 14.07.2023.
- (v) The bail and surety bonds stand restored till the decision of the learned Magistrate if cancelled.
- (vi) Rule made absolute.
- (vii) No order as to costs.
- (viii) Record and Proceedings be returned to the Court of 4th Jt. Judicial Magistrate First Class, Jalana.

(S. G. MEHARE, J.)

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vmk/-