

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

CRIMINAL REVISION APPLICATION NO.461 OF 2004

Smt. Laxmibai W/o Prakash Jagdane,
Age 27 years, Occu. Labour,
R/o Baudhawada, Chikalthana,
Aurangabad. ... Applicant.

Versus

1. State of Maharashtra.
2. Bhimrao Kondiram Magare,
Age 42 years.
3. Vithal Kondiram Magare,
Age 49 years.
4. Raju Vithal Magare,
Age 21 years.
5. Ravi Vithal Magare,
Age 19 years.
6. Ashruba Laxmanrao Nagrale,
Age 70 years.

R.Nos.1 to 4 R/o Baudhawada,
Chikalthana, Aurangabad.

R.No.5 R/o Balapur,
District Aurangabad. ... Respondents.

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Advocate for Applicant : Ms. Sawari M. Patil h/f Mr. Bhushan
Kulkarni.

APP for Respondent No.1-State : Mr. S. B. Narwade.

Advocate for Respondent Nos.2 to 6 : Ms. S. N. Devmane
(Munde) h/f Mr. G. V. Wani.

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CORAM : S. G. MEHARE, J.

**RESERVED ON : 01.12.2022
PRONOUNCED ON : 11.01.2023**

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The complainant/injured has preferred this revision against the judgment of acquittal of the respondents by the judgment and order dated 01.09.2004 in Regular Criminal Case No.1213 of 2004 passed by learned Chief Judicial Magistrate, Aurangabad.
3. The learned counsel for the applicant would refer to the deposition of the witnesses and argue that the evidence of P.W.1 injured has not been shaken in cross-examination. The witnesses are consistent with the incident and the role attributed to each accused. It has also been proved that the accused were present on the spot of the incident. P.W.3 Sudam was injured. P.W.4 Radhabai was the eyewitness. P.W.5 Doctor has examined the injured Sudam P.W.3. The learned Trial Court, without logical reasons, discarded the evidence of P.W.6. The Trial Court did not appreciate the evidence correctly. The learned Trial Court erroneously disbelieved the case of unlawful assembly assigning incorrect reasons that the District Magistrate did not issue the preventive orders and the accused

had violated the order of the District Magistrate. Hence, Section 135 of the Bombay Police Act cannot be brought into the fray. He would also refer to the observations the Trial Court recorded in paragraph 22 of the impugned judgment and argue that erroneous findings have been recorded that there was fake and scanty evidence as regards the overt act of the other accused. It has also been wrongly observed that the prosecution failed to establish that the accused were having a common object. The common object is missing. Hence, it cannot be said that the accused have formed an unlawful assembly. In sum and substance, he has argued that the Trial Court did not consider the evidence and erroneously acquitted the respondents. Therefore, the order impugned before this Court is liable to be set aside, and the matter may be sent for rewriting the judgment to the Trial Court.

4. Per contra, the learned counsel for the respondents would argue that the Trial Court has considered the evidence and appreciated it properly. The reasons have been assigned for discarding the evidence. There were material omissions in the deposition of the witnesses. The omissions were material; hence they were correctly held as contradictions. Referring to paragraph No.17 of the impugned judgment, he further argued

that the Investigating Officer failed to attribute any overt act to the accused. There is no *prima facie* error on the face of the record. Therefore, the petition is liable to be dismissed.

5. The law is well settled that in a revision against the acquittal, the High Court may set aside the finding of acquittal only in exceptional cases. Where the acquittal is passed by the Trial Court having no jurisdiction to try the case but acquits the accused, or where the Trial Court wrongly shut out of the evidence which the prosecution wished to produce or where the Trial Court admitted inadmissible evidence and overlooked the material evidence are generally the grounds to be considered to set aside the findings of acquittal in revision under Section 401 of the Cr.P.C. It is also the well-settled law that the High Court has no power to set aside the acquittal and order a re-trial. It has to set aside the findings and send the matter to the trial court or the Court whose order impugned for rewriting the judgment.

6. Herein the case in hand, the accused were charged for the offences of unlawful assembly, rioting, voluntarily causing hurt to one Sudam by the accused being the member of unlawful assembly, intentional insult giving provocation to the injured and witnesses with an intention to cause them to

breach the public peace as well as contravening prohibitory orders promulgated by the Commissioner of Police, Aurangabad under Section 135 of the Bombay Police Act.

7. The FIR discloses that the incident happened in two parts. In the first part, the accused Bhimrao went in front of the door of the complainant and unnecessarily kicked her son. Therefore, she asked him why did he abused and kicked him. In the meantime, her relatives came there and explained to him. Thereafter, accused Bhimrao went away. She went to lodge the report. However, when she reached home at about 2.30 p.m., all the accused came in front of her house and started abusing her. Accused Bhimrao kicked her to her stomach. Vithal Kondiram Magare (the convict) hit something on the mouth of Sudam Magare. He sustained injuries to his left eye. Then, the other co-accused started pelting stones at her house and then they went.

8. The prosecution had examined six witnesses in all. Injured Sudam Magare specifically deposed that convict Vithal hit a wooden log on his cheek and the other co-accused were pelting stones. P.W.5 Doctor Archana examined Sudam and found CLW near his left eye and blunt trauma over his back. She opined that the first injury may be possible by sharp object

and second was possible by means of hard and blunt object. Appreciating the evidence against the convict Vithal, he has been held guilty for the offence punishable under Section 323 and accordingly convicted. However, the benefit of probation was extended to him.

9. The witnesses appear to be consistent about the presence of the accused and pelting stones at the house of the first informant. The accused have a defence that since they were trying to install the statue of Dr. Babasaheb Ambedkar, the first informant and her brother-in-law were opposing it. A false report has been lodged against them. There appears to be an admission of P.W.1 about their opposition to installing the statue. One witness, Radhabai, was also examined. However, her presence was not shown on the spot of the incident. It appears that there were no good terms between the accused and the first informant and her family. There is no evidence that the pelted stones were recovered from the house of the complainant.

10. Perused the order impugned. The learned Trial Judge was not satisfied with the evidence the prosecution produced that the accused had formed an unlawful assembly with a common object to commit the crime. In view of the enmity, the

possibility of implicating the accused falsely in the crime cannot be ruled out because the witnesses were opposing them to install the statute. Appreciating the evidence, it appears that the learned Trial Judge has correctly recorded the findings of acquittal against the present respondents. The learned Trial Magistrate appreciated the evidence and correctly held accused Vithal guilty of the offence punishable under Section 323 of the IPC.

11. The record does not reveal that the Trial Court admitted the inadmissible evidence or overlooked the material evidence. The impugned order is error-free. There were no exceptional circumstances to warrant the findings of acquittal.

12. For the reasons mentioned above, the Criminal Revision Application stands dismissed.

13. Rule made discharged. No order as to costs.

(S. G. MEHARE, J.)

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