



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 367 OF 2023

1. Smt. Vatchalabai W/o. Rangnath Korde,
Age : 76 years, Occu. : Household,
R/o. Village Amba, Tq. Partur,
Dist. Jalna.

... Applicant
(Orig. Informant)

Versus

1. The State of Maharashtra,
Through Senior Police Inspector,
Police Station, Partur,
Tq. Partur, Dist. Jalna.
2. Krushna Jijabhau Korde,
Age : 46 years, Occu. : Agril.,
R/o. Village Amba, Tq. Partur,
Dist. Jalna.
3. Radhabai Krushna Korde,
Age : 42 years, Occu. : Household,
R/o. Village Amba, Tq. Partur,
Dist. Jalna.
4. Prabhu Jijabhau Korde,
Age : 43 years, Occu. : Agril.,
R/o. Village Amba, Tq. Partur,
Dist. Jalna.

... Respondents.

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Mr. Md. Samiuddin M.Y. Choudhari, Advocate for Applicant.
Mr. V.M. Chate, APP for Respondent No.1 – State.
Mr. Shubham Kote h/f. Mr. Ashwin V. Hon, Advocate for
Respondent Nos.2 to 4.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 FEBRUARY, 2025

PRONOUNCED ON : 21 FEBRUARY, 2025

JUDGMENT :

1. Revisionist takes an exception to judgment and order passe by learned trial court and first appellate court in R.C.C. No.15 of 2009 dated 09.03.2020 and Criminal Appeal No.29 of 2020 dated 18.08.2023 acquitting respondents from charges under sections 326, 325, 324, 323, 504 and 506 r/w 34 of Indian Penal Code.

BRIEF BACKGROUND OF THE CASE

2. Informant PW1 Vatchalabai lodged complaint Exh.81 alleging that on the night of 24.12.2008 respondent accused no.2 Radhabai threw waste water in complainant's area. When complainant went to question her about it, at that time, Radhabai, Pandhari, Krushna and Prabhu initially abused her and thereafter it is alleged that respondent Prabhu hit her with stick; Pandhari, Krushna and Radhabai made her fall and gave kicks and fist blows. When husband of complainant, namely Rangnath, one Subhash and their son Dnyandeo came to separate, it is alleged that accused beat them also. In the episode, complainant suffered head injury and therefore, on her report, police registered crime bearing No. 120 of 2008 for offence punishable under sections 326, 325, 324, 323, 504 and 506 r/w 34 of IPC and they were made to face trial vide R.C.C. No. 15 of 2009.

3. After appreciating the prosecution evidence, learned J.M.F.C. Partur vide judgment and order dated 09.03.2020 acquitted accused from all charges.

Against acquittal complainant preferred Criminal Appeal bearing No. 29 of 2020 before learned Additional Sessions Judge-4, Jalna. After hearing both sides, learned first appellate court confirmed the judgment and order passed by learned J.M.F.C. in R.C.C. No. 15 of 2009 and dismissed the appeal.

Feeling aggrieved by the acquittal at the hands of both, learned trial court as well as first appellate court, original informant - complainant has preferred instant revision.

SUBMISSIONS

4. Learned counsel for revisionist submits that, the fundamental grounds raised in revision are that, both, learned trial court as well as first appellate court failed to appreciate the oral and documentary evidence in its proper perspective. *Secondly*, evidence of prosecution witnesses was full-proof and had remained intact and unshaken in spite of extensive cross on the point of occurrence and assault. That, occurrence was proved through complainant, her son and even through the evidence of Rangnath.

Their testimonies are unfortunately disbelieved. That, there were injuries on the person of complainant including fracture and medical expert was also examined by prosecution, but even such overwhelming and corroborating evidence has not been appreciated by learned trial Judge as well as first appellate court. That, judgment is based on conjectures and surmises. That, there is improper appreciation and non consideration of the settled legal principles. According to learned counsel, required ingredients for attracting the offence were very much available in the prosecution evidence, but still accused are acquitted without assigning sound reasons for disbelieving their evidence. Hence, learned counsel seeks indulgence at the hands of this court by allowing the revision.

5. In answer to above, learned APP and learned counsel for respondent Nos.2 to 4 while supporting the judgments of both, learned trial court as well as first appellate court, would submit that, prosecution has miserably failed to adduce convincing and independent evidence. That, there is false implication. That, witnesses are inconsistent and their testimonies are full of material omissions, contradictions and exaggeration. That, medical evidence also does not support informant's version. That, there was delayed reporting. That, seizures were not promptly

dispatched to analyzer. It is pointed out that, none of the pancha witnesses have supported and therefore learned counsel canvasses in the favour of findings reached at by both, learned trial court as well as first appellate court and prays to dismiss the revision for want of merits.

6. After hearing submissions of each of the side and on re-appreciating the evidence and papers on record, it is emerging that, R.C.C. No.15 of 2009 was in consequence to crime registered by PW1 Vatchalabai. Papers show that, in support of it, apart from documentary evidence, prosecution has adduced in all 9 witnesses. Crucial evidence is of PW1 Vatchalabai, PW2 Rangnath, PW3 Dnyandeo and PW6 Dr. Dnyandeo Nawal, a Medical Officer. PW4 Babu and PW5 Datta seem to be panchas, PW8 is a witness, whereas rest of the witnesses seem to be police personnel.

ANALYSIS

7. Reanalyzed the evidence of PW1 complainant, PW2 Rangnath and PW3 Dnyandeo, who are examined at Exh.80, 84 and 105 respectively. Substance of accusation of informant is that on the night of 24.12.2008 around 8:30 p.m., accused Radhabai threw waste water in her premises and therefore she went to question it and thereafter it is alleged that she was initially abused by all three accused and she was hit by means of stick by accused no.3 son of accused no.1, causing her head injury.

8. Evidence of PW1 complainant, PW2 Rangnath and PW3 Dnyandeo is consistent only about occurrence taking place on the night of 24.12.2008. However, on minute scrutiny it does emerge that witnesses are not consistent and lending support to each other on events that took place. According to informant, she alone went to question with accused no.2 Radhabai. However, contrary to it, PW2 Rangnath her husband claims that he also went along with her. As pointed out, what were the abuses, has not been narrated by any of the witnesses. Though complainant claims that she suffered head injury, regarding it FIR shows insertion by way of ink of which Investigating Officer could not offer any explanation. PSO, who noted report is not examined to prove the subsequent insertion. Therefore, there is force in the submissions that contents of FIR are interpolated and exaggerated. Surprisingly, further evidence of very son of informant and PW2 seems to be full of material omissions. PW2 Rangnath himself testified and admitted that his statement was not recorded by police.

9. Medical evidence PW6 Dr. Dnyandeo though deposed about noticing fracture, however, he has in his evidence admitted regarding not carrying x-ray report which was essential for drawing inference of causing grievous injury. Moreover,

subsequently, x-ray report has been brought on record and its source is not demonstrated. Medical expert has admitted injury on the informant to be possible on account of fall. Panchas to spot have not supported. Articles though shown to be seized during investigation were shown to be produced after four years of the occurrence creating doubt about the very seizure. Presence of husband PW2 Rangnath and son PW3 Dnyandeo also comes under shadow of doubt. In spite of availability of neighbourhood to the house of informant as well as house of accused, there is no independent witness. Though law does not require corroboration through only independent witness, still evidence of prosecution witnesses, who are family members, should at least be consistent and lending support to each other. Above discussion shows that, statement of PW2 Rangnath was not recorded. Evidence of PW3 Dnyandeo carries material omissions and therefore, finding prosecution evidence to be weak, initially learned trial court did not accept the prosecution case.

10. On re-appreciation, even first appellate court found no fault or perversity in the manner of appreciation at the hands of learned trial court.

11. Here also, in revision, no infirmity or perversity, which

is so patent and which has not been appreciated, is brought to the notice so as to interfere in the view taken by both, learned trial court as well as first appellate court. Evidence of prosecution being weak and fragile, both learned courts below rightly refused to accept the same.

12. For above reasons, no case being made out in revision, the same is dismissed.

(ABHAY S. WAGHWASE, J.)