

(2019) 07 BOM CK 0009

In the Bombay High Court

Case No : Criminal Revision Appliation No. 290 Of 2017

Rais Ahmad Mohammad Kasmi

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 320, 323, 324, 452, 504
Code Of Criminal Procedure, 1973 — Section 401(3), 403(3)

Citation : (2019) 07 BOM CK 0009

Hon'ble Judges : A.M. Dhavale, J

Bench : Single Bench

Advocate : A.V. Patil, A.A. Jagatkar, S.A.P. Quadari

Final Decision : Disposed Off

Judgement

,Points,Findings

1,â??Whether the Courts below have shown perversity or illegality in passing the order ?,Yes

2,What order ?,Matter is remanded.

(1) Lacerated wound on right temporal region, 1.1/2 x 1/4x1/2 inch.",,

(2) Lacerated would on right parietal region, 1/z x 1/4 x 1/2 inch.",,

13. Both the injuries were seen to be simple, caused by hard and blunt object. He has proved the certificate Exh.84. The injuries disclosed by him are",,

consistent with the evidence of PWÂ2 and 4. He admitted that such injuries were possible by a small hammer. His evidence that blow of hammer can,,

cause tissue crushing injury cannot be accepted as possible in all cases.,,

14. On going through the evidence, I find it very cogent, consistent, reliable and trustworthy. Learned Trial Judge recorded that evidence of PWÂ4",,

was not shaken in the cross examination, but he strangely observed that PW² and 4 were responsible for instigating the the accused to commit such",,,

crime by keeping big tile/stone in the common place. This is a perverse appreciation. It is the sole ground shown to disbelieve the PW² and 4.,,,

15. In the appeal, learned Sessions Judge referred to the animosity between the parties and pendency of civil and criminal litigations. These can put the",,,

judge on guard but mere enmity cannot be a ground to discard the evidence of witnesses. The learned Appellate has referred to some ignorance,,,

shown by PW² Rais.,,,

16. Initially NC complaint was registered under section 323 r/w 34 IPC in respect of the same crime. It disclosed that it was an assault with hammer,,,

on the skull. The same was lodged immediately after the medical examination, within a short time after the incident. The FIR came to be registered on",,,

the next date by change of sections. There was no delay in lodging the FIR. The observation of the learned appellate Court that as the injury was,,,

simple, there is no question of bleeding is again contrary to the provisions of section 320 IPC which defines what are grievous injuries. All injuries",,,

having bleeding cannot be called as grievous injuries. It is strange observation of the learned appellate Court that since the injury to Gausiya was,,,

caused by coming into contact with the rough surface, the possibility of assault by hammer is ruled out. The evidence of the Doctor Specifically shows",,,

that it was possible by hammer blow. The certificate shows that it was caused by hard and blunt object. The finding of the appellate Court that it could,,,

not be caused by hammer is perverse. The expectation of the appellate court that there should have been independent witness on the spot is not,,,

substantiated by the evidence on record. There is no rule that corroborated testimony of victim even if found to be trustworthy cannot be relied upon.,,,

The observation of the appellate court that evidence of PW² and PW⁴ was improper and unable to digest is again contrary to the evidence on,,,

record. It is a perverse finding. If the Police have committed mistake in not seizing the blood stained clothes ofPW⁴ Gausiya, it does not mean that",,,

she had not sustained bleeding injury. The medical evidence is specific on this point. I find that appreciation of both the courts below was perverse and,,,

is not sustainable.,,,

17. In the case of State of U.P. Vs. Harimohan, reported in AIR 2001 SC 142, the

Apex Court recorded as to how the evidence should be",,

appreciated. In the case of Vimal Singh Vs. Khuman Singh and others, reported in AIR, 1998 SC 2280 with respect to power of the High Court in",,

Criminal revision, it is observed as follows:",,

7. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its reversional power does not ordinarily interfere",,

with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of",,

acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has",,

caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the",,

evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are",,

the instances where the High Court would be justified in interfering with the order of acquittal. Sub-Section (3) of Section 403 mandates that the High",,

Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into",,

one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its reversional power can set",,

aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order",,

of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-Section (3) of Section 401 of the Code",,

forbids the High Court in converting the order of acquittal into one of conviction.,,

On going through the evidence, I find that this is an exceptional case when there is glaring illegality which has caused miscarriage of justice. It is",,

necessary to exercise revisional jurisdiction to prevent such miscarriage of justice.,,

18. In the light of above, the revision is allowed The judgment and order of acquittal is set aside and the matter is remanded to the appellate Court.",,

19. The parties shall appear before the appellate Court on 22nd July, 2019. The appellate Court shall decide the matter expeditiously.",,

20. No re-trial is necessary, however, the appellate Court shall re hear the learned Advocates and pass appropriate order afresh without getting",,

influenced by the observations in this judgment.,,

21. The appellate Court, in case of judgment of conviction, shall have due regard to the fact that incident had taken place more than 22 years back.",,

22. Criminal Revision Application is accordingly disposed of.,,