
(2003) 08 BOM CK 0038

In the Bombay High Court

Case No : Criminal Revision Application No. 268 of 1994

Suresh Dadarao Kapse

APPELLANT

Vs

State of Maharashtra and Shobha Suresh Kapse

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 307, 498A

Citation : (2003) 08 BOM CK 0038

Hon'ble Judges : P.B. Gaikwad, J

Bench : Single Bench

Advocate : P.R. Katneshwarkar, holding for, R.G. Karmarkar, for the Appellant;
N.H. Borade, APP, for the Respondent

Final Decision : Allowed

Judgement

P.B. Gaikwad, J.—Original accused Suresh, dissatisfied by the order passed by the learned Assistant Sessions Judge, Osmanabad dated 13.2.1990 in Sessions Case No.69 of 1988, convicting him for the offence punishable u/s 307 of Indian Penal Code (IPC) and directing him to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/ in default, to suffer rigorous imprisonment for one year, which is later on confirmed by the learned Additional Sessions Judge, Osmanabad, in Criminal Appeal No.11 of 1990 on 22.9.1994 has filed the present revision.

2.The facts in brief, leading to the present revision are that;

Marriage of respondent No.2 Shobha was performed with petitioner on 11.6.1982. After her marriage, she started co-habiting with the petitioner. The alleged incident took place on 29.3.1988, at about 5 p.m. at the house of the petitioner at village Gaurgaon, Tq. Kallam, District Osmanabad. Parents of Shobha reside at Kolegaon, Tq and District Osmanabad. Sulbha is the sister of Shobha. Sulbha was brought to her parents house at Kolegaon for delivery purposes and as there was function of naming ceremony of Sulbhas daughter,

Shobha had been to village Kolegaon on 24.3.1988 i.e. Thursday. She was directed to return on Saturday by her father in law - Dadarao. However, Shobha could not return on Saturday but she returned on Tuesday i.e. on 29.3.1988 at about 3 or 4 p.m. Bhagwan, agriculture servant working with father of Shobha, reached Shobha in a bullock cart to village Gaurgaon on that day and thereafter, he returned to Kolegaon.

At the time of return of Shobha at Gaurgaon, her father-in-law, mother-in-law, husband and sister-in-law (petitioners sister) were present at the house. Petitioner asked Shobha as to why she did not return to Gaurgaon on Saturday and Shobha replied that because of menses she could not return. The petitioner got annoyed by the said reply given by Shobha and thereafter, he took one iron bar and gave blow on the head of Shobha. She accordingly, sustained injury on her head. Father of the petitioner then took kerosene in an iron pot, handed over the said pot to petitioner, who in turn, poured the kerosene on the person of Shobha and set her on fire. She thus sustained burn injuries. She was taken in a bullock cart to village Govindpur and thereafter in a S.T. bus to Osmanabad for medical treatment. She was admitted in the hospital at about 10 p.m.

Dr.Kanade (PW 1) was on duty at the relevant time. He made certain enquiries, started treatment to Shobha and also informed the police authorities about the burn injuries sustained by Shobha. Police Constable Gaikwad came to the Civil Hospital and after ascertaining the condition of Shobha from the Medical Officer, he recorded statement of Shobha at about 11.30 p.m. or 12.00 midnight. On the basis of said statement, crime was registered for the offences punishable under Sections 147 and 498-A and 307 read with 149 of IPC against the petitioner and four others, including his father, mother, sister and uncle.

3. The Investigating Officer recorded statements of certain witnesses during the course of investigation and after completing the investigation, he submitted charge sheet before the learned Judicial Magistrate on 13.6.1988.

The learned Judicial Magistrate F.C. Kallam by his order dated 18.8.1988 committed the case to the Court of Sessions, as the offence u/s 307 of IPC is exclusively triable by the Court of Sessions. The above Sessions Case No.69 of 1988 was made over for trial to the learned Assistant Sessions Judge, Osmanabad. The learned Assistant Sessions Judge (Shri K.Y.Jagtap) accordingly framed a charge as per Exhibit 41 on 5.10.1989 against the petitioner and four others for the offences punishable under Sections 147 and 498-A and 307 read with 149 of IPC. Accused pleaded not guilty and claimed to be tried.

4. The prosecution to connect the accused with the above said crime, examined PW 1 Dr.Kanade (Exhibit 53). Through his evidence a letter given by him to Police Station (Exhibit 54) and injury certificate (Exhibit 55) is got proved. PW 2 is Dr.Tat (Exhibit 56), who examined petitioner, his father and uncle on 3.4.1988. Through his evidence, injury certificates Exhibits 57, 58 and 59 are got proved. PW 3 is the complainant Shobha (Exhibit 60). Through her evidence, the report

given by her on the basis of which is registered (Exhibit 61) is got proved. PW 4 is Waghmare (Exhibit 62), Agriculture Servant working with the father of Shobha. He reached Shobha to Gaurgaon on the date of incident i.e. on 29.3.1988. PW 5 is Laxman Kamble, Kotwal from village Gaurgaon, who had been to the place of incident, when Shobha sustained burn injuries at her house. Evidence of this witness is at Exhibit 63. PW 6 is Tekale, panch witness, as regards the panchanama of the place of incident. His evidence is at Exhibit 64. The spot panchanama is at Exhibit 65. Certain articles were attached from the place of incident. Arrest panchanama is proved at Exhibit 66. PW 7 is Patil, again another panch witness and through his evidence, disclosure statement made by the petitioner, showing his willingness to produce the iron bar is got proved at Exhibit 69. Panchanama as regards attachment of iron bar Article 7 is also got proved through this witness. PW 8 Lomte is brother of Shobha. His evidence is at Exhibit 70. PW 9 is Mane, again a panch witness in whose presence the location from hospital where Shobha was admitted, is got proved. The same is at Exhibit 72. PW 10 is Kavade, PSO attached to the Police Station, Osmanabad and who after receiving the message from the Medical Officer Dr.Kanade, deputed Head Constable Gaikwad for recording statement of Shobha. His evidence is at Exhibit 75. PW 11 is Gaikwad, Head Constable, attached to Police Station, Osmanabad, who recorded statement of Shobha on 29.3.1988 at about 11.55 p.m. which is at Exhibit 61. PW 12 is Apte, Assistant Sub Inspector and PW 13 is Thakare, Investigating Officer, who investigated the above crime and submitted the charge sheet against the accused.

5. The learned Assistant Judge after considering the evidence on record adduced by the prosecution acquitted the accused Nos.2 to 5 for the offences with which they were charged. The petitioner was however, convicted and sentenced for the offences under Sections 498-A and 307 of IPC and directed to suffer rigorous imprisonment for years and to pay fine of Rs.2,000/ in default, to suffer rigorous imprisonment for six months and to suffer rigorous imprisonment for 7 years, to pay fine of Rs.10,000/ in default, to suffer rigorous imprisonment for one year respectively. A further direction was given to pay Rs.5,000/, out of the fine amount realised, to Shobha u/s 357 of the CrPC.

6. The petitioner, dissatisfied with the order of learned Assistant Judge, filed Criminal Appeal No.11 of 1990 before the learned Additional Sessions Judge, Osmanabad, who partly allowed the said appeal by his judgment and order dated 22.9.1994. He set aside the conviction and sentence for the offence punishable u/s 498-A of IPC but maintained the order of conviction and sentence for the offence u/s 307 of IPC. Said order is challenged by the present revision.

7. In the petition, I heard Shri Katneshwarkar, Advocate for the petitioner and Shri Borade, APP for the State at length.

8. It is submitted by Shri Katneshwarkar, Advocate that the order of conviction and sentence for the offence u/s 307 of IPC is not proper and justified as the same is not in conformity with the evidence on record. It is also contended that

the findings recorded by the learned Additional Sessions Judge, convicting the petitioner for the offence u/s 307 of IPC is perverse and unjustified as the Court below has practically failed to scan and scrutinise the evidence on record.

Secondly, according to him, from the evidence on record, it is clear that the said incident took place approximately at about 5 p.m. Shobha came outside the house when she sustained burn injuries. Several persons from village gathered there and thereafter, she was taken to hospital at Osmanabad. She was admitted in the hospital approximately at about 8 p.m. When Dr. Kanade took history of burn injuries from Shobha, she stated that she sustained burn injuries accidentally. A note in that respect is also taken by Dr. Kanade in M.L.C.Register. This aspect, from the evidence of Dr.Kanade has been wrongly discarded by both the courts below and that too without any justification.

Thirdly, according to him, it is submitted that there is no evidence that the burn injuries sustained by Shobha are homicidal. As against this, the evidence on record sufficiently makes it clear that she sustained burn injuries, either accidentally or suicidal and in spite of this Court below has convicted the petitioner for the offence u/s 307 of IPC.

Fourthly, according to him, both the Courts below have wrongly relied upon the evidence of Shobha, without there being any corroboration, as in fact, it is not safe to accept the evidence of Shobha, without any corroboration as the same suffers from several infirmities, there are material contradictions and that Shobha has improved her version to such an extent involving the petitioner, his father, uncle, mother and sister. It is also submitted that both the Courts below on account of improvement in the statement of complainant discarded her evidence so far as regards accused Nos.2 to 5 are concerned and they came to be acquitted but on the other hand, the same piece of evidence has been taken aid of to convict the petitioner. Therefore, it is submitted that the orders passed by the Courts below are not in conformity or in consonance with the evidence on record.

Lastly, it is submitted that the evidence adduced by the prosecution suffers from several infirmities. Practically, the Police Patil who was immediately taken to the place of incident, has not been examined. To substantiate the contention that the petitioner poured kerosene on person of Shobha, the alleged bottle has also not been attached. Even though it is contended that some burnt pieces of clothes were on the person of Shobha, they were not sent to Chemical Analyser so as to ascertain whether there is kerosene smell or residues of kerosene. Except the evidence of PW 3 Shobha there is nothing on record to conclude that the petitioner has committed any offence and so far as regards the evidence of Shobha is concerned, reliance placed by the Court below on the said evidence is not justified and proper and therefore, a request is made to set aside the order of conviction and sentence.

9. Shri Katneshwarkar placed reliance on the decisions in the cases of Nanak

Chand Vs. The State of Punjab, , Suraj Pal Vs. The State of Uttar Pradesh, and Tarun alias Gautam Mukherjee Vs. State of W.B., . Relying on the above authorities, according to him, in the present case, the petitioner is not charged for the offence u/s 307 of IPC simpliciter and therefore, the order of conviction is not proper and justified. In other words, according to him, the charge is defective and therefore, the petitioner is entitled to get acquittal on that count alone.

10. On the other hand, it is submitted by Shri Borade, APP that the order of conviction and sentence is proper and justified.

11. Considering the submissions, it is now necessary to see whether the findings recorded by the learned Assistant Sessions Judge, convicting the petitioner for the offence punishable u/s 307 of IPC, which are later on confirmed by the learned Additional Sessions Judge, directing him to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/ are proper and justified, for which the evidence on record adduced by the prosecution will have to be scrutinised and scanned properly or has to be evaluated in proper perspective.

12. Firstly, to my mind, a reference to the contentions raised by Shri Katneshwarkar as regards defect in framing the charge needs to be considered. I have carefully gone through the above authorities on which reliance is placed by him. As a matter of fact, as I have already referred above in details, the learned Assistant Sessions Judge has acquitted all other accused Nos.2 to 5 for all offences with which they were charged and convicted the petitioner for the offences under Sections 498-A and 307 of IPC. So far as regards the order of conviction and sentence for the offence u/s 498-A of IPC is concerned, the same is set aside in appeal by the learned Additional Sessions Judge and the order of conviction and sentence u/s 307 of IPC is only maintained, which is impugned in the present revision.

13. A reference to Section 215 of CrPC is necessary, so far as defect in framing the charge is concerned, which reads as under:

" 215. Effect of errors. -- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

A reference is also necessary to Section 464 of CrPC, which reads as under :

" 464. Effect of omission to frame, or absence of, or error in, charge. -- (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2)

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts provided, it shall quash the conviction. "

Considering above two provisions and considering the factual aspects in the present case, I find that no prejudice is caused to the petitioner and there is no error or defect in framing the charge and therefore, the said contention on behalf of the petitioner needs to be discarded.

14. Before considering the evidence on record, it is necessary to make it clear that the guilt of the accused is to be established by the prosecution beyond possibility of any reasonable doubt on the basis of legal evidence and material on record. Even if there may be an element of truth in the prosecution story against the accused and considered as a whole, the prosecution may be true but between "may be true" and "must be true" there is invariably a long distance to travel and whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before the accused can be convicted. It is true that the law has not laid down any clear standard for the sufficiency of evidence to induce belief. However, the Judge in believing or disbelieving the evidence acts on his reason in conformity with his knowledge, observation and experience, which always furnish adequate ground for believing or disbelieving the evidence. In a case depending upon the circumstantial evidence, it is well settled that the cumulative effect of circumstances must be such as to negative the innocence of the accused. It is equally true that it is well settled principle that where on the evidence, two possibilities are open, one which goes in favour of the prosecution and another benefits the accused, the accused is entitled to the benefit of doubt. So far as regards the appreciation of evidence is concerned, the evidence must be approached the sense of reality with all awareness of life in its ordinary quality and not from unrealistic angle and also it should be appreciated from an ordinary reasonable human point of view. A reference in this respect is also necessary to the decision in the case of State of U.P. Vs. M.K. Anthony, , wherein, it is observed to the following effect :

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief."

Bearing in mind the above factors, it is now necessary to scan the evidence on record, adduced by the prosecution.

15. Evidence of PW 1 Dr.Kanade is at Exhibit 53. According to him, on 29.3.1988

he was Duty Medical Officer at Civil Hospital, Osmanabad, from 8 p.m. to 8 a.m. of next day. At about 10 p.m. patient - Shobha was brought to the hospital by one Babarao Kapse. She had sustained burn injuries. Dr. Kanade examined her and found following injuries.

(i) Superficial to deep burnt over right upper extremity 9%, left upper extremity 9%, right lower extremity 1%, left lower extremity 15%, abdomen and chest 9%, posterior chest 6%, face 7% - Total 67%.

(ii) Contused lacerated wound over occipital region in mid line, 1 cm by length X 0.5 cm. width, depth 0.5 c.m.

He accordingly admitted the patient in the hospital. Information was given to the police at Osmanabad about her admission and injuries sustained by her. A letter about giving the intimation is at Exhibit 54. According to him, the police visited the hospital, recorded statement of Shobha in his presence and he has endorsed the said statement that she was conscious when her statement was recorded. In the cross-examination he has made it clear that the Medico-Legal Register is maintained in the hospital and even an entry in respect of the injuries sustained by Shobha are also taken in the said register. He further made it clear in his evidence that when the patient was brought in the hospital, she has given history about the injuries sustained by her and patient told that she sustained accidental burns and accordingly a note in that respect is taken in the Medico-Legal Register. Said history was given by the patient herself. He has also made it clear that there is a practice to ask the history to the patient and accordingly he used to write the history given by the patient in the Medico-Legal Register or in the case papers.

16. PW 2 is Dr. Tat (Exhibit 56), who examined petitioner his father Dadarao and uncle Pandhari. So far as regards Dadarao is concerned, he has sustained superficial burns. Said certificate is at Exhibit 57.

17. Statement of Shobha is at Exhibit 60. As regards the incident which took place on 29.3.1988, she has contended that she reached at Gaurgaon from her parents house at 3.30 p.m. Her husband - petitioner, mother in law, father in law and sister of petitioner were present in the house. She then prepared tea for the cart-man, who had been to village Gaurgaon to reach her. Thereafter, her husband asked her as to why she did not return on Saturday. Balasaheb and Cart-man then left the place. She then disclosed that she could not return on account of menses and thereafter, the petitioner got annoyed and took iron bar (crow bar) in his hand and assaulted her on her head, due to which she sustained injuries. Dadarao - father of the petitioner, who was present there, told the petitioner that there is no use in assaulting her and accordingly went to a grocery shop and took kerosene in iron pot, gave it to the petitioner, who thereafter, poured the same on the person of Shobha and thereafter, set her on fire, due to which, she sustained the burn injuries. She then tried to extinguish the fire. She then came outside the house. Some persons gathered there. They extinguished

the fire and thereafter, Police Patil of village Gaurgaon and Kotwal and others came there and she was accordingly taken to Civil Hospital at Osmanabad.

18. The evidence of complainant, if read together with the first information report Exhibit 61, on the basis of which crime is registered, I find that there is material inconsistency in the evidence of prosecutrix and she has improved her version to such an extent and tried to involve the petitioner, his father Dadarao, uncle Pandhari and also mother and sister. As a matter of fact, all other accused are acquitted and therefore, detail reference in that respect is not necessary. However, it is necessary to see whether the Court below is justified in relying on the evidence of petitioner and whether there is perversity in scanning, assessing or accepting the evidence of this witness. Firstly, a reference to first information report Exhibit 61 is necessary, wherein, she contended that her husband started abusing as to why she has not returned on Saturday and thereafter, he took crow bar and hit near her abdomen. The material portion from the said first information report reads as under :

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She has further stated that she thereafter started raising shouts and at that time it is alleged that the petitioner insisted her not to raise shouts and thereafter, chained the door and started beating her. He also said that he will kill her and thereafter, he took bottle containing the kerosene, poured it on her person and set her on fire. As against this, she improved her version to such an extent saying that the petitioner has given a blow on her head, due to which she sustained injury. As in fact, she has not stated anything in respect of injury to her head in the complaint. So far as regards the pouring of kerosene by petitioner, she then improved her version saying that the father of the petitioner, who was present there, said that he will bring kerosene and he went to grocery shop and in iron pot he brought kerosene and handed over the same to petitioner, who then poured the same on the person of Shobha. Thus, so as to involve father of petitioner, she made such a statement, when in fact, there is no reference to that effect in the first information report.

The third circumstance, according to her, is that the petitioner has closed the door or chained the door and he was asking her not to shout. In such circumstances, it was difficult for her to come outside the house. Further, when she came outside the house, several persons gathered there, including Police Patil and Kotwal and it is apparently clear that too none of those persons, she has disclosed the cause of injuries sustained by her. In the present case, Police Patil is also not examined by the prosecution. From the evidence of PW 2 Dr.Tat is also brought on record by the prosecution that Dadarao - father of petitioner had also sustained burn injuries. This shows that even an attempt was made to extinguish the fire. When she was taken to the hospital, Doctor on duty has immediately recorded her statement, asking her as regards the cause of burn injuries and Shobha has disclosed the cause of burn injuries as "accidental". Entry to that effect has been taken by the concerned Doctor in the Medico-Legal

Register. Unfortunately, the prosecution did not feel it necessary to keep it on record. Even the Court has returned the said register for the reason better known to the learned Assistant Judge. As a matter of fact, when Shobha was admitted in the hospital, naturally, the Doctor has prepared the case paper about her admission, about the history given by her and even the prosecution has not brought on record said indoor patients case papers and this may be due to the reason that there is mention in the case papers about the history given by patient, that she suffered accidental burns.

It is further seen that her statement was recorded by police more than two hours after her admission and the possibility that some relatives might have arrived there and at their instance, she might have changed her mind and given a statement involving the petitioner, his father, mother and sister, cannot be ruled out. As a matter of fact, she has gone to such an extent in saying that the uncle of the petitioner has also extended threats to Shobha to disclose that the cause of burn injuries is accidental. As a matter of fact, her evidence specifically makes it clear that when the incident took place he was not present and when he does not know how the incident took place, it is difficult to digest that he extended threats to her to say that the burns are accidental. I find that both the courts below have practically failed to consider that she has improved her version to such an extent that there is material inconsistencies in her evidence and first information report (Exhibit 61) and in such circumstances, both the courts below ought not to have relied upon the said evidence unless it is corroborated by some other independent piece of evidence. In fact, the circumstances which are brought on record by the prosecution itself makes it clear that the burn injuries sustained by Shobha are not homicidal. Either it may be accidental or suicidal but at any rate it cannot be gathered safely and legitimately that those injuries are homicidal. I thus, find that the evidence of PW 3 Shobha needs to be discarded as a whole. I further find that both the Courts below have not properly scanned or evaluated her evidence. I further find that there is perversity in accepting her evidence by the courts below and therefore, the order of conviction and sentence for the offence u/s 307 of IPC needs to be quashed and set aside.

19. A reference is necessary to the certain observations from the judgment of the learned Assistant Sessions Judge so also from the judgment of the learned Additional Sessions Judge. The learned Assistant Sessions Judge has observed in his judgment to the following effect :

"So the complaint itself goes to show that accused No.1 had set her on fire by pouring kerosene. If the time factor when the complaint has been recorded in the hospital of the complainant Shobha is considered, I do not find any good reason to disbelieve her version considering the other circumstances on record. Those circumstances are (i) immediately after the incident Shobha came on the road shouting and asking help to extinguish (ii) there was a quarrel between the accused No.1 and Shobha on the count whey Shobha did not come on Saturday from fathers house, (iii) as the issues of Shobha were not surviving and the

husband of Shobha (accused No.1) all the time insisting her to permit him to have the second marriage. All these cumulative effects have resulted into action of accused No.1 in setting Shobha on fire on 29.3.1988."

From the above observations in the judgment and order, the learned Assistant Sessions Judge appears to have committed an error in considering the first information report as the substantive piece of evidence. Secondly, the instances, which he has quoted are of negligible nature and so far as regards the accused insisting Shobha to allow him to perform second marriage is out of imagination and there is material improvement in that respect, as there is no reference to this aspect in the complaint.

So far as another aspect, the learned Assistant Sessions Judge has also considered that there are two possibilities in view of the defence set up by the accused, i.e. Shobha set herself on fire so as to commit suicide and secondly, the accused No.1 petitioner set her on fire and out of these two possibilities, according to him, the possibility which is in favour of the prosecution has to be accepted. As a matter of fact when from the evidence on record, two view are possible, the view which is in favour of the accused needs to be preferred. Even there are certain other observations which go to show that the Court sat with predetermined mind and, which is clear from the observations as appearing in paragraph No.8 of the judgment, which are to the effect - " Now the real fact as put forth by the prosecution". Even this aspect is also sufficiently clear when the Court suo motu made certain queries to PW 1 Dr. Kanade, Medical Officer, who examined Shobha and PW 3 Shobha. When PW 3 Shobha was to be cross-examined by the defence, prior thereto, the Court has asked a question to the complainant to the effect that, whether she has made any statement to the Doctor giving certain indication.

It is further observed by the learned Assistant Sessions Judge to the following effect :

" No doubt it is a fact that such clothes were not attached by the Investigating Officer and that clothes and iron pot are not sent to Chemical Analyser. But mere this aspect cannot go to the help of the accused, because it is not necessary that in all the cases clothes and container should be sent to the Chemical Analyser for analysis. Because as per the universal principles of chemistry the smell of kerosene is evaporable, after lapse of some time. Here particularly when clothes of Shobha were covered with flames after pouring kerosene, question of existing of kerosene thereafter and its smell does not survive."

This observation by the learned Assistant Sessions Judge is practically wrong as in fact, if the partly burnt clothes if attached and sent to Chemical Analyser, the Chemical Analyser is definitely in a position to give opinion, whether there are residues of kerosene or not. Thus, I find that the conclusions arrived at by the learned Assistant Sessions Judge convicting the petitioner are definitely not justified and the same are unjust and perverse.

20. So far as regards the observations made by the learned Additional Sessions Judge are concerned, he has observed in paragraph no.39 of his judgment to the following effect :

" Apart from all these facts, nowhere it has been brought on record as to why Shobha should make a false statement against all the accused persons."

Equally there are certain other observations made by the learned Additional Sessions Judge and on close scrutiny of judgments of both the Courts below, I find that both the courts below have relied upon the evidence which is not in fact acceptable and suffers from basic infirmities. The evidence of complainant has been improved to such an extent from which the truth cannot be separated and therefore, I find that the petitioner deserves to be acquitted.

21. In the result, the Criminal Revision Application is allowed. The judgment and order of conviction and sentence passed against the petitioner for the offence u/s 307 of Indian Penal Code is quashed and set aside. The petitioner is acquitted of the said offence. His bail bond stands cancelled. Fine, if paid, be refunded to the petitioner.

Rule is accordingly made absolute.