

HIGH COURT OF MADHYA PRADESH : JABALPUR**SB : HON'BLE SHRI JUSTICE SUBODH ABHYANKAR, J****CRIMINAL REVISION NO.456 OF 2000**

Smt Roopa Shukla

Vs.

Shyamsharan Dubey and others

Present :-

Dr. Miss V. Bhatnagar, Advocate for the applicant.

Shri G.S. Thakur, Government Advocate for the respondent No.3/State.

ORDER(Passed on this the 07th day of December, 2017)

This Criminal revision has been filed by the applicant against the order of acquittal dated 31.12.1999 passed in Criminal Case No.748/1997 by the learned Judicial Magistrate First Class, Rewa whereby the non-applicant Nos.1 and 2 have been acquitted from the charges under Sections 323, 324 and 354/34 of IPC and being aggrieved by the same, the present revision has been filed by the complainant Smt. Roopa Shukla.

2. Brief facts of the case are that on 30/03/1993, at around 5.30 P.M. at Vyankat Square Rewa where the complainant's

husband Vinod Mishra had a shop, she and her husband were assaulted by the present respondents No.1 and 2 and the allegations against them are that they outraged the modesty of the complainant by tearing her blouse and causing injuries over her breasts. The F.I.R. was lodged at 9.30 P.M. on the same day with the allegations that at around 5.30 P.M. she saw the accused/applicants Shyamsharan Dubey and Ashok Kumar Dubey both residents of Ghoghar Rewa assaulting her husband and when she went to save her husband, she was also beaten by them and they also outraged her modesty. At that time Sharadchandra Shukla (PW-3) and Mohd. Haneef (PW-5) also came on the spot. The charge sheet was filed against the accused persons and the Judicial Magistrate First Class, Rewa after recording the evidence acquitted the accused persons vide judgment dated 31/12/1999 and being aggrieved by the same, the present revision has been filed.

3. Dr. Miss V. Bhatnagar, learned counsel for the applicant has submitted that the impugned judgment has been passed without properly appreciating the evidence on record despite the fact that the complainant has not been declared

hostile and she was also medically examined by Dr. B.K. Tiwari (PW-8), who has also confirmed that the complainant had received certain injuries on her breasts and this fact has also been corroborated in her evidence.

4. Heard the learned counsel for the applicant and perused the record.

5. From the record, this Court finds that the FIR in the present case was lodged on 30.3.1993 at 9.30 p.m. whereas the incident has taken place at around 5.30 p.m. There is no explanation provided for the delay caused in lodging the FIR despite the fact that the Police Station is merely two furlongs away. The learned Judge of the Trial Court has held that even on foot the distance can be covered within 10 minutes' time. Thus, admittedly there was a delay of around 4 hrs.

6. So far as the injuries caused to the complainant are concerned, Dr. B.K. Tiwari (PW-8) has opined that the complainant Roopa Mishra has received three injuries which were simple in nature, two on her knee and the third injury consisting of three scratch marks was on the upper middle part of her chest. A close scrutiny of the MLC reveals that the said

injuries were 1.5 c.m. below the clavicle in the middle part of the chest which in itself prove that no injuries were caused on the breast of the complainant as alleged by her.

7. So far as the place of the incident is concerned, the same has taken place in the broad day light in the middle of a busy street and the allegations against the accused persons are that both of them hugged her and tore her blouse. The learned Judge has discussed all the aspects of the case in detail and has found that the dispute between the complainant and the accused persons was in respect of possession of a shop. It is also an admitted fact that the accused No.1 Shyamsharan Dubey, aged about 45 years happens to be the shop owner and the other accused Ashok Kumar Dubey, aged 38 years is his servant. In the cross-examination of Roopa Mishra (PW-1) this fact has also come on record that the dispute was regarding the possession of a shop. The prosecution has also examined Mohd. Haneef Khan (PW-5) who is an independent witness but he has turned hostile and has stated that he has not seen the accused persons causing any injury to the complainant and in his cross-examination he has clearly denied that the accused persons had

not caught hold of the complainant. From the deposition of the complainant, it is also apparent that initially the accused persons were having the altercation with her husband and when the complainant intervened in the dispute, she was allegedly assaulted and held close by the accused persons with an intent to outrage her modesty. However, the learned Judge of the Trial Court has rightly appreciated the evidence on record to hold that there does not appear to be a possibility that while indulging in the *Marpeet* with the husband of the complainant in the broad day light in a busy street the accused persons would fear to outrage the modesty of the complainant and it has been rightly held that the complainant has exaggerated the manner in which the incident has taken place. Apart from that there is no explanation for lodging the FIR after a period of 5 hours which in the considered opinion of this Court amounts to an inordinate delay especially when the police station was hardly 10 minutes away.

8. So far as the scope of appreciation of evidence in the criminal revision under Section 397 of Cr.P.C. against an order of acquittal is concerned, the same has been aptly delineated by

the Apex Court in the case of **Kaptan Singh and others vs State of M.P. and another**, reported as **(1997) 6 SCC 185**, paras 3 and 5 of the same read as under:-

“3. In assailing the judgment of the High Court Mr Lalit, the learned counsel appearing for the appellants, submitted that the High Court exceeded its revisional jurisdiction under Section 401 CrPC in that it reappraised the entire evidence from its own point of view and reached inference contrary to those of the trial court on almost every point, which was legally impermissible. In support of his contention he relied upon the judgments of this Court in *K. Chinnaswamy Reddy v. State of A.P.*, *Mahendra Pratap Singh v. Sarju Singh*, *Khetra Basi Samal v. State of Orissa* and *Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu*⁴ wherein the scope and extent of the revisional jurisdiction of the High Court in dealing with an order of acquittal have been dealt with. In *Chinnaswamy* this Court held that though it was open to the High Court to set aside an order of acquittal even at the instance of the private parties the revisional jurisdiction should be exercised only in exceptional cases when there was some glaring defect in the procedure or there was a manifest error on a point of law and consequently there had been a flagrant miscarriage of justice. This Court pointed out that it was not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies but indicated some cases which would justify the High Court to interfere with an order of acquittal in revision. The cases so indicated are: Where the trial court has no jurisdiction to try the case but has still acquitted the accused or where the trial court has wrongly shut out evidence which the prosecution wished to produce or where the appeal court has wrongly held evidence which was admitted by the trial court as not admissible or where material evidence has been overlooked either by the trial court or by the appeal court or where the acquittal is based on a compounding of an offence, which is invalid under law. In the other cases referred to above this Court reiterated the principles laid down in *Chinnaswamy*¹ and observed that the revisional jurisdiction when invoked by a private complainant

against an order of acquittal ought not to be exercised lightly and that it could be exercised only in exceptional cases where the interests of public justice required interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice.

5. From a conspectus of the above decisions it follows that the revisional power of the High Court while sitting in judgment over an order of acquittal should not be exercised unless there exists a manifest illegality in the judgment or order of acquittal or there is grave miscarriage of justice.....”

(emphasis supplied)

9. From the aforesaid enunciation it can be culled out that the scope of interference in a criminal revision against an order of acquittal is very limited and can be made only in exceptional cases especially when the revision has been filed by the private complainant. None of the conditions as enumerated above by the Apex Court are present in the case at hand and as such no interference is called for.

10. In the circumstances, this revision being devoid of merit is hereby dismissed.

(Subodh Abhyankar)
Judge