
(1994) 09 BOM CK 0040
In the Bombay High Court
Case No : Criminal Appeal No. 399 of 1991

Anil Lade and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (1996) 1 BomCR 532 : (1995) CriLJ 2149

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : A.J. Khan, for the Appellant; Khamborkar, for the Respondent

Judgement

1. Original accused No. 1 Anil, original accused No. 2 Pandurang and original accused No. 3 Yadav have preferred this appeal before this Court, aggrieved by the judgment passed by the 2nd Additional Sessions Judge, Bhandara, on 30-10-1991, whereby the original accused Nos. 1, 2 and 3 have been convicted for the offence punishable u/s 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years each and to pay a fine of Rs. 500/- each and in default of payment of fine further rigorous imprisonment for six months each, and the original accused Nos. 1 and 2 have been also convicted for the offence punishable u/s 354, of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs. 300/- each and in default of payment of fine to further rigorous imprisonment for three months each. The Additional Sessions Judge has directed the substantive sentences of original accused Nos. 1 and 2 for the aforesaid offences to run concurrently.

2. The incident relates to the year 1988 at the time of Diwali festival, to be more specific on 12-11-1988 at about 5-00 p.m. at Mouza Wangi, district Bhandara. The prosecution case is that one Sugandha (P.W. 1), Lilabai (P.W. 4), Parwatabai and Mirabai (PW2) went to village Wangi to attend the fair on that day in the

evening at about 5-00 to 6-00 P.M. Sugandha (PW 1) and 3 other ladies went to the General Store which was situated in the fair. Original accused No. 1 Anil Balaji Lade pushed Sugandha (PW 1) and so she abused him. Original accused No. 2 Pandurang Atmaram Dongre caught the blouse of Sugandha (PW 1) and torn the same. Original accused No. 1 Anil caught hold of her hair and bent her down and, therefore, she started weeping. Her maternal uncle on seeing the said incident rushed towards her to rescue from original accused Nos. 1 and 2. Then all the accused persons, viz, original accused No. 1 Anil, original accused No. 2 Pandurang and original accused No. 3 Yadav, original accused No. 4 Devidayal, original accused No. 5 Suresh, original accused No. 6 Jagdish, original accused No. 7 Purshottam, original accused No. 8 Baburao and original accused No. 9 Dilip assaulted Dayaram by means of fists, blows and kicks. Some of them assaulted Dayaram by means of shoes and stones. The prosecution case is that Sugandha (PW 1) went to the house of the Sarpanch and when he did not listen to her, she returned to village Bodde. Dayaram died after about two days and the first information report was registered at Police Station, Bhandara, on 13-11-1988 at 8-00 P.M., which was registered at the instance of one Rajesh Chandragupta Mogre and in which original accused Nos. 1 and 2 were shown accused persons. The said first information report is registered u/s 302 read with Section 34, of the Indian Penal Code (Exh. 92). Thereafter one more first information report has been registered on 14-11-1988 at police station Duggipar, Sub Division Gondia, district Bhandara, vide Crime No. 104/88 for the offence u/s 302, read with Section 34, of the Indian Penal Code at the instance of Police Constable Waman Murkute, in which original accused Nos. 1, 2 and 3 have been shown as accused persons. The said first information report dated 14-11-1988 is Exh. 94. Since the crime was within the jurisdiction of police station Duggipar, Sub Division Gondia, district Bhandara, Pursuant to the first information report dated 14-11-1988 (Exh. 94) the investigation was started by Nivruti Gopal Narkhede, P.S.I. Duggipar police station (P.W. 14). The said Investigating Officer went to the scene of offence at village Wangi and prepared the panchanama of the scene of occurrence (Exh. 58) in the presence of panchas. Original accused Nos. 1, 2 and 3 were arrested on 14-11-1988 and their clothes were seized under different panchanamas. The blouse of Sugandha (PW 1) was seized vide seizure memo (Exh. 62). Various other articles were also seized. Though no medical examination of Sugandha (PW 1) was conducted, another lady Meera (PW 2) and Shamrao were medically examined. The post mortem of deceased Dayaram, who died on 13-11-1988 at about 3-50 p.m., was conducted on 14-11-1988 in between 1-00 to 2-00 p.m. and following injuries were found on his person -

(1) Cut 1" x 1/2" x 1", 4" above the right ankle joint.

(2) Bruises on abdomen.

(3) Multiple bruises on the abdomen.

The post mortem report is Exh. 46.

3. After the investigation was completed, the Investigating Officer submitted the Challan against nine persons, viz, Anil (original accused No. 1), Pandurang (original accused No. 2), Yadav (original accused No. 3), Devidayal (original accused No. 4), Suresh (original accused No. 5), Jagdish (original accused No. 6), Purshottam (original accused No. 7), Baburao (original accused No. 8), and Dilip (original accused No. 9) for the offences punishable under Sections 147, 148, 149, 354, 356 and 302 of the Indian Penal Code. Since the said offences were exclusively triable by the Sessions Judge, all the accused persons were committed for trial of the aforesaid offences in Sessions Trial No. 52 of 1989 by the 2nd Additional Sessions Judge, Bhandara.

4. In the trial, prosecution examined Sugandha (PW 1), Meerabai (PW 2), Raoji Sakharam Share (PW 3), Lilabai wife of Madhukar Uike (PW 4), Meerabai wife of Dayaram Uike (PW 5), Laldas Pandurang Masram (PW 6), Goma Suka Wadhawe (PW 7), Dr. Khushalchand Maniram Meshram (PW 8), Kashiram Tulsiram Waghawe (PW 9), Prabhakar Wamanrao Shesh (PW 10), Dr. Krishnakumar Surendranath Tripathi (PW 11), Sitaram Ganpat Kapgate (PW 12), Namdeo Domaji Ingole (PW 13), and Nivrutti Gopal Narkhede (PW 14). Prosecution also produced and proved the documentary evidence including the post mortem report of deceased Dayaram (Exh. 46), inquest panchanama (Exh. 45), various seizure panchanamas, memorandum of identification parade held at Bhandara on 2-12-1988 and 3-12-1988 respectively (Exhs. 78 and 79).

5. The statements of accused-appellants were recorded u/s 313 of the Code of Criminal Procedure and also of other accused persons, viz, original accused No. 4 to original accused No. 9 and all of them denied of having committed any crime and pleaded not guilty.

6. After hearing the learned counsel for the parties, the trial Court found that the prosecution has not been able to prove that on or about 12-11-1988 in between 5-00 to 6-00 p.m. at mouza Wangi, accused Nos. 1 to 9 formed an unlawful assembly, having common object to cause injury to deceased Dayaram. The trial Court also held that the prosecution has failed to prove that on or about the above date, time and place accused Nos. 1 to 9 were the members of the unlawful assembly and in prosecution of the common object, committed the offence of rioting and at that time the accused were armed with deadly weapons like stones and shoes as alleged. The learned additional Sessions Judge also held that the prosecution has failed to prove that on or about the above date, time and place, accused Nos. 1 to 9 being the members of the unlawful assembly, having common object as referred to above, did cause hurts to Mirabai wife of Laldas Masram and Dayaram Akharam Uike as alleged. The trial Court further held that the prosecution has failed to prove that on or about the above date, time and place, accused Nos. 1 to 9 in furtherance of their common intention pelted stones rashly or negligently as to endanger human life or the personal safety of others as alleged. However, the trial Court came to the conclusion that so far as original accused Nos. 1 to 3 are concerned, prosecution has proved that

on or about the above date, time and place, prosecution has proved the guilt of accused Nos. 1 to 3 for committing culpable homicide not amounting to murder of Dayaram and, therefore, guilty of the offence punishable u/s 304, Part II of the Indian Penal Code. As regards original accused Nos. 1 and 2 the trial Court concluded that the prosecution has proved that on or about the above date, time and place, they used criminal force to Sugandha (PW 1) by pushing her, catching her hair and tearing her blouse as alleged and, therefore, the prosecution has proved the offence u/s 354, of the Indian Penal Code against accused Nos. 1 and 2. In view of the aforesaid finding, as stated above, the Additional Sessions Judge convicted the original accused Nos. 1 to 3 for the offence u/s 304 Part II of the Indian Penal Code and sentenced them each to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500/- each and in default of payment of fine further rigorous imprisonment for six months, and convicted the original accused Nos. 1 and 2 for the offence u/s 354, of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for one year each and to pay a fine of Rs. 300/- each and in default of payment of fine further rigorous imprisonment for three months each. The trial Court also directed that the substantive sentences awarded to original accused Nos. 1 and 2 would run concurrently.

7. Shri A. J. Khan, the learned counsel for the original accused Nos. 1 to 3, who have filed this appeal, has strenuously urged that the prosecution has miserably failed to prove the guilt of the offences against the accused-appellants for which they have been convicted by the trial Court. Shri Khan submitted that the prosecution story is not at all believable and on the face of the testimony of P.W. 1 sugandha, PW 2 Meerabai and other depositions it cannot be said that the original accused Nos. 1 to 3 have committed the culpable homicide not amounting to murder of Dayaram and that the original accused Nos. 1 and 2 had used criminal force against PW 1 Sugandha. The argument of Shri Khan is that the prosecution story is highly improbable and, therefore, the conviction and sentence passed by the Additional Sessions Judge, Bhandara, against the accused-appellants in the impugned judgment deserve to be quashed and set aside.

8. On the other hand, Shri Khamborkar, the learned Additional Public Prosecutor, submitted that the trial Court has already given benefit of doubt to original accused Nos. 4 to 9 and since the offence against original accused Nos. 1 to 3 is specific and the evidence having not been shaken against them, the trial Court was justified in convicting original accused Nos. 1 to 3 for the offence u/s 304 Part II of the Indian Penal Code and convicting original accused Nos. 1 and 2 for the offence u/s 354, of the Indian Penal Code.

9. On thoughtful consideration of the arguments advanced by the learned counsel for the accused-appellants as well as the Additional Public Prosecutor and the reasoning advanced by the trial Court, I find that the impugned judgment passed by the learned Additional Sessions Judge, Bhandara, convicting the

accused-appellant for the offence u/s 304 Part II, of the Indian Penal Code and convicting original accused Nos. 1 and 2 for the offence u/s 354, of the Indian Penal Code cannot be sustained. It will be seen from the testimony of P.W. 1 Sugandha that she went to village Wangi on 12-11-1988 at about 5-00 to 6-00 p.m. to attend the fair along with three other ladies, viz, Lilabai (PW 4), Parwatabai and Mirabai (PW 2). She has testified that when she along with three other ladies went to the General Store in the fair, original accused No. 1 Anil pushed her and so she abused him, and original accused No. 2 Pandurang caught her blouse and torn the same. She has further deposed that accused No. 1 Anil caught hold of her hair and bent her down and, therefore, she started weeping, and on that her uncle Dayaram rushed towards her to rescue and then all the accused assaulted Dayaram by means of fist blows and kicks and also some of the accused persons by shoes and stones. Then she went to the house of the Sarpanch of village Wangi and when he did not listen to her, she returned to village Bodde. According to her, Dayaram died after two days. When confronted in cross-examination, she has admitted that there were many villagers gathered at the place of fair and policemen were also present at that place for Bandobast duty. She has further admitted that she knew the police patil of village Wangi as well as the Sarpanch of village Wangi, but she stated her ignorance about their presence in the fair on that day. She has also admitted in her cross-examination that she was not in a position to say as to which particular accused assaulted Dayaram by means of fist blows or kick blows or by means of stones. She has also admitted that she was not in a position to say that how many assailants were present at that time. Confronted with the post-incident, she admitted that Dayaram went to the village after the quarrel was over and she went to the house of the Sarpanch. Her statement was recorded u/s 164, of the Code of Criminal Procedure by the Special Judicial magistrate, Bhandara, and the same is Exh. 80. Confronted with her statement u/s 164, of the Code of Criminal Procedure, which was recorded by the Special Judicial Magistrate, Bhandara, P.W. 1 Sugandha stated that she did state before the police and the Special Judicial Magistrate that accused No. 1 Anil pushed her and caught hold of her hair and bent her down and accused No. 2 Pandurang had torn her blouse. She was not in a position to state why there was no mention about this fact in her statement before the Special Judicial Magistrate, Bhandara. She further admitted in her cross-examination that she did not complain about the accused persons before the policemen who were present at the fair nor she lodge and report before them or at the police station. She even did not complain about the alleged incident before anybody at any time till the death of Dayaram. A look at the statement of P.W. 1 Sugandha would show that she is not a witness of a sterling worth and her statement cannot be believed. It is not conceivable that if the said incident had taken place as stated by her examination-in-chief, why she did not state that to the policemen who were already there at that place for Bandobast duty. It is highly improbable that if the said incident had taken place, the policemen who were already there would not have seen the incident. She has not been able to say even whether the Sarpanch and the police patil were there at the fair on that

day or not, when in her examination-in-chief she stated that after the incident she went to the house of the Sarpanch of Wangi and when he did not listen to her, she returned to village Godde. It is also doubtful that if the incident would have taken place as deposed by PW 1 Sugandha, she would have kept quiet for two days till the death of Dayaram, because she admitted in cross-examination that she did not complain about the alleged incident before anybody at any time till the death of Dayaram. Her statement recorded in Court suffers from improvements and contradictions when she was confronted with her statement recorded by the police and by the Special Judicial Magistrate, Bhandara. The statement of PW 1 Sugandha, therefore, cannot be believed and relied upon.

10. Meerabai wife of Laldas Masram (PW 2), who was one of the ladies with Sugandha (PW 1), has in her examination-in-chief deposed in the manner the statement was given by PW 1 Sugandha. However, confronted with the contradictions and omissions in her statement recorded by the police and her statement before the Court, she stated that before the police she has stated that accused No. 1 Anil had caught hold of the hair of Sugandha and dragged her. However, she could not state why there was no mention about the same in her statement. She admitted that before the Special Judicial Magistrate, she made the same statement, but she was not in a position to say why that statement did not find place in the statement recorded by the Special Judicial Magistrate. Her statement too, therefore, is highly unreliable and cannot be acted upon.

11. Lilabai wife of Madhukar Uike (PW 4) in her deposition before the Court while making the statement about the incident has deposed that one Sunil, resident of Wangi, pushed Sugandha. She further was not in a position to identify as to whether Sunil, referred to by her, was sitting in the Court hall where all the accused persons were sitting. She also stated that she did not know Sunil by face. On the face of such testimony, Lilabai (PW 4) is also an unreliable witness and cannot be acted upon.

12. Meerabai, who is the wife of deceased Dayaram and who has been examined as P.W. 5 by the prosecution, has stated that the villagers from Wangi had beaten her husband in the fair on that day. She tried to rescue her husband by catching his waist. Those persons were beating her husband by means of shoes and Ubharis. However, in cross-examination, she admitted that she did not know the persons who were beating her husband. Confronted with her statement recorded by the police, she deposed that she had stated before the police that those persons had assaulted her husband by means of shoes and Ubharis. But she was not in a position to say why there was not mention about the same in her statement. In cross-examination she further admitted that she knew all the accused persons before the Court in this case. The testimony of P.W. 5 Mirabai is also of no avail to the prosecution, because, she has not been able to with-stand in cross-examination.

13. Laldas Pandurang Masram (PW 6) has deposed that at the time of the incident, accused Nos. 1 and 2 viz, Anil and Pandurang, had pushed Sugandha

(PW 1) and so she abused them. Accused Nos. 1 and 2 dragged her. Sugandha shouted for help. Then he and Dayaram went to rescue her. Accused Nos. 1 and 2 took away Dayaram by beating him, and he ran away from that place. PW 1 Sugandha even does not say that when she cried, PW 6 Laldas came to rescue her along with Dayaram. In cross-examination, he has admitted that it was correct that the scuffle was going on between Dayaram and the villagers of Wangi at the time when he reached there. It appears, therefore, PW 6 Laldas is a planted witness and is not believable.

14. Goma Suka Wadhav (PW 7) does not say about original accused Nos. 1 and 2 and about original accused No. 3. He has deposed that one person wearing red coloured shirt and others assaulting Dayaram on his stomach by means of fist blows and kick blows. In cross-examination, he has admitted that he knew all the accused persons, except accused No. 3. He also admitted that there were two persons wearing red coloured shirt at that time and the other red coloured shirt was similar to the red coloured shirt which is Article 12 before the Court. In this view of his statement, Goma's testimony also does not help the prosecution.

15. Dr. Khushalchand Maniram Meshram (PW 8), who examined Dayaram, has testified that he was not in a position to say about the cause of death of deceased Dayaram.

16. Special Judicial Magistrate, Prabhakar Wamanrao Shesh (PW 10), who had recorded the statement u/s 164, of the Code of Criminal Procedure, has deposed in his cross-examination that PW 1, Sugandha did not state before him that accused No. 1 Anil had caught hold of her hair and bent her down and accused No. 2 Pandurang had torn her blouse. He further stated that he recorded the statement of Mirabai wife of Laldas and she did not state that accused No. 1 Anil had caught hold of the hair of Sugandha and dragged her. She also did not state that accused No. 1 Anil had pelted stones towards her. The testimony of Special Judicial Magistrate, Bhandara (PW 10), therefore, shows that PW 1, Sugandha and PW 2 Mirabai have improved their version in the Court.

17. Dr. Krishnakumar Surendranath Tripathi (PW 11), who conducted the post mortem of deceased Dayaram, has stated in his deposition before the Court that the bruises were found on the abdomen, and the internal injuries on the person of deceased Dayaram were -

"On opening abdomen hemorrhagic spot on peritoneum cavity full of clotted blood and Erum and pus, red hemorrhages on stomach, half digested food present in intestine, many small perforation on small intestine wall, on large intestine multiple hemorrhages seen. On liver lacerated wound size 2" x 1/2" x 1/2" on medial lobe. Heart, left chamber of heart empty, right chamber of heart full of blood."

In his cross-examination, he has admitted that if a drunken person falls on rough stone and the stone comes in contact with the abdomen, then such injury is possible.

18. The Investigating Officer, Nivrutti Gopal Narkhede (PW 14) has deposed about the details of the investigation.

19. Scan of the aforesaid evidence leads to an irresistible conclusion that the prosecution story is not supported by the star witness PW 1, Sugandha. Rather her statement is highly doubtful and cannot be believed in view of inherent contradictions. She has sought to improve upon her version in the Court which is duly reflected from the statement recorded by the police and the Special Judicial Magistrate, with which she was confronted. The evidence of PW 2, Mirabai and PW 4, Lilabai was no better and cannot be believed and acted upon PW 6 Laldas appears to be a planted witness since even PW 1 Sugandha in her statement does not say that he came along with Dayaram to rescue her. All in all, the evidence which has been led by the prosecution does not inspire confidence. The prosecution has not come to the Court with true version of the incident, which is apparent and obvious from the statements of various witnesses, referred to hereinabove. On such weak evidence, the conviction of the accused-appellants for the offences under Sections 354 and 304 Part II of the Indian Penal Code cannot be based.

20. For the reasons stated above, I find myself unable to agree with the reasoning given by the Additional Sessions Judge, Bhandara, in his judgment dated 30th October 1991, convicting accused-appellant Nos. 1 to 3 for the offence u/s 304 Part II of the Indian Penal Code and convicting the accused appellant Nos. 1 and 2 for the offence u/s 354, of the Indian Penal Code.

21. In the result, this criminal appeal succeeds and the judgment passed by the 2nd Additional Sessions Judge, Bhandara, on 30-10-1991 in Sessions Trial No. 52 of 1989 State of Maharashtra v. Anil is set aside. The conviction of the accused-appellants Nos. 1, 2 and 3 for the offence u/s 304, Part II of the Indian Penal Code and the conviction of accused-appellant Nos. 1 and 2 for the offence u/s 354, of the Indian Penal Code is set aside. In view of the setting aside of the conviction of the aforesaid accused-appellants, the sentences awarded by the said Court also stands set aside. The accused-appellants Nos. 1, 2 and 3 are acquitted of the offence u/s 304 Part II, of the Indian Penal Code and accused-appellant Nos. 1 and 2 are acquitted of the offence u/s 354 of the Indian Penal Code. The bail bonds are discharged.

22. Appeal allowed.