
(1978) 04 BOM CK 0016
In the Bombay High Court

Avaba Bajirao Nikam and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-04-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 143, 147, 148, 323

Citation : (1979) CriLJ 72

Hon'ble Judges : Dighe, J

Bench : Single Bench

Judgement

Dighe, J.—This is an application in revision filed by six convicted accused. The accused No. 1 has been found guilty by the Appellate Court of the offence under Sections 323, 148 of the I. P. C. and accused Nos. 2 to 6 have been found guilty under Sections 323 and 147 of the I. P. C. One more accused has been put on probation.

2. Mr. Kamat, the learned advocate appearing on behalf of the petitioners, is interested in pressing the law point. He submits that the conviction u/s 148 or 147 I.P. C. is illegal in the face of the finding of the appellate Court acquitting these appellants u/s 143 of the I.P. C.

3. Even before going to the law aspect for appreciating the background, certain facts may be referred to. The incidence in this case is alleged to have taken place on 18-5-1975 at about 8.30 p. m. One Tatyaba Ramji Nikam of Ambheri had gifted his landed property to his son-in-law Sharmrao Piraji Sakpal, from a different village. Shamrao was interested in selling those lands. The accused wanted to purchase the lands belonging to Shamrao. However, an agreement of sale came to be executed in favour of complainant Raghunath Nikam on 7-3-1975. A sale-deed also took place on 5-7-1975. The accused are interrelated. Smarting under their defeat in securing the lands of Shamrao they seem to have taken recourse to the unlawful means of beating Raghunath. On the night in question Raghunath had gone to the house of Nana Madane, while he was returning from that house he was set upon and a number of injuries were

caused to him. There were in all 14 weal marks and one contused lacerated wound on the occipital region of the scalp. The evidence showed that accused No. 1 - Avaba Bajirao Nikam was armed with an axe and he caused injuries to the complainant with butt end of the axe and other accused gave blows with sticks.

4. Relying upon the oral evidence, the learned Judicial Magistrate, Koregaon, found accused Nos. 1 to 4 and 6 guilty of the offence u/s 143 as well as u/s 147 of the I. P. C. In addition, he found accused No. 1 guilty of the offence under Sections 148 and 324 of the I. P. C. The remaining convicted accused viz., accused Nos. 2 to 4 and 6 were convicted u/s 323 of the I. P. C. though they were acquitted of the offence u/s 324 of the I. P. C. Accused No. 7 was released on probation of good conduct.

5. The convicted accused went in appeal. The evidence was re-assessed substantially. The case put forward on behalf of the prosecution, has been taken as proved and some sentences are maintained. The final order passed by the learned Additional Sessions Judge, Satara, on 30-7-1977, shows that the conviction and sentence of appellants Nos. 1 to 6, u/s 143 and conviction and sentence of appellant No. 1 u/s 147 of the I. P. C. were set aside. Similarly, the conviction and sentence of appellant No. 1 u/s 324 of the I.P. C. was set aside and instead conviction u/s 323 of the I. P. C. was, substituted. The learned Sessions Judge, affirmed the conviction and sentence of appellant No. 1 u/s 148 and of the other appellants u/s 147 of the I. P. C. He also maintained the conviction and sentence of the appellants other than appellant No. 1, u/s 323 of the I. P. C. Therefore, in substance, by the appellate order, the accused who appealed are convicted u/s 323 of the I. P. C. Appellant No. 1 was convicted u/s 148 and the other appellants were convicted u/s 147 of the I. P. C.

6. Mr. Kamat for the petitioners now argues that when the learned Addl. Sessions Judge has given an express finding acquitting all these appellants, original accused Nos. 1 to 4 and 6, of the offence u/s 143, and also appellant No. 1 u/s 147 of the I. P. C. in the first part of his order, there remains nothing to base a conviction u/s 147 against accused Nos. 2 to 4 and 6 or u/s 148 of the I. P. C. against accused No. 1.

7. Bereft of the facts and the analysis carried out by the learned Addl. Sessions Judge, the argument is attractive. It cannot however, be forgotten that the learned Judge was dealing with one and the same transaction. It is not as if, that there was one transaction regarding which there was acquittal u/s 143 or 147 (so far as accused No. 1 is concerned of the I. P. C. and some other transaction whereunder the punishment was given u/s 147 to accused other than accused No. 1 and u/s 148 of the I. P. C. so far as accused No. 1 is concerned. This is realised by Mr. Kamat but he says that for that very reason the order has to be up-set. I cannot persuade myself to accept Mr. Kamat's contention. There is no gainsaying that Section 143 simpliciter refers to punishing a person who is a member of an unlawful assembly as defined in Section 141 of the I. P. C. Section

147 refers to punishment for rioting as described in Section 146, when force or violence is used by an unlawful assembly or by any member of it. Section 148 refers to rioting armed with deadly weapon. Consequently for punishment under any or all these sections an unlawful assembly is sine qua non. If there is only one transaction, regarding which the punishment is meted out and if that punishment is u/s 147 or to a particular accused u/s 148, it is implicit in the finding that there was an unlawful assembly. The contention of Mr. Kamat cannot be accepted unless it is shown that the evidence which weighed with the learned Addl. Sessions Judge was insufficient to come to the conclusion that there was any unlawful assembly. If, on the other hand, the finding of the learned Judge is in concurrence with the finding of the learned Magistrate that so far as the transaction under discussion is concerned there was the unlawful assembly and that finding could not be challenged as in fact, it is not challenged before me in the argument, it is obvious that the learned Addl. Sessions Judge has not expressed himself properly, when in certain terms he says that the conviction under Sections 143 and 147 of the I. P. C. is set aside.

8. The key to the working of the mind of the learned Addl. Sessions Judge, could be found if, we refer to certain paragraphs in his judgment. At the end of para 9. While summarising the evidence he observed:-

The evidence in the case particularly of Nana inspires confidence and the learned Judicial Magistrate rightly believed him and the complainant Raghunath.

9. Thereafter he refers to the elements of various sections. He expresses himself that these sections are applicable when there is an unlawful assembly. He further says that more serious section will be attracted depending upon the members playing graver role in the incident. He then says that:-

The same person cannot be convicted for being a member of unlawful assembly and also for committing rioting or for being armed with deadly weapon when committing rioting. It would amount to double conviction for the very act. This is against the Criminal Jurisprudence. Therefore the conviction of appellant No. 1 under Sections 143 and 147 I. P. C. has to be set aside and that of appellant Nos. 2 to 8 u/s 143 I. P. C. cannot sustain.

10. This is the mis-conception that persuaded the learned Addl. Sessions Judge, in writing the first paragraph of his order. Punishing a person for different offences, and viewing the offences constituted by different elements, some of which lead into a lesser offence, while with the addition of certain other elements a graver offence is constituted are two different things. If graver offence is proved, in its wake, the lesser offence is also proved and pronouncing a person guilty of both lesser and higher offence does not amount to double conviction although punishment may be given for higher offence only, or may be made concurrent. In that light if the offender is found guilty of the offence u/s 147 or u/s 148, the offence u/s 143 is automatically proved. The learned Addl. Session Judge erroneously looked upon it as double conviction. The offender is not

punished twice for the same offence. He is found guilty of both the offences, they having been done in the same transaction. The learned Judge probably wanted to convey that there should not have been separate punishment but words are used either inadvertently or in confusion saying in so many words that the conviction u/s 143 and so far as appellant No. 1 is concerned u/s 147 is set aside. The observations of the learned Judge are incapable of being read as a finding that there was no unlawful assembly and as such the conviction was set aside.

11. If it were necessary, this Court could have used its inherent power by taking action in revision for seeing that those sentences are deleted. The matter can however, be decided by an alternative approach. Petitioners Nos. 2 to 6 are challenging their conviction u/s 147 of the I. P. C. and petitioner No. 1 is challenging his conviction u/s 148 of the I. P. C. The Court does not find the finding given by the learned Addl. Sessions Judge, in the latter part of his final order as erroneous and therefore, there is no necessity to interfere with the order. Hence the rule will have to be discharged.

12. Mr. kamat further argues for reduction of sentence. All the petitioners now stand convicted u/s 323 of the I. P. C. although the sentence meted out to accused No. 1 is different. His sentence was reduced from one year to six months by the learned Addl. Sessions Judge, because the offence was reduced from Section 325 to Section 323 of the I. P. C. but this is given on the background that he is guilty of the graver offence u/s 148 of the I. P. C. Considering however, the fact that the incident had taken place long back and the petitioners may have learnt a lesson that crime does not pay, I am inclined to accept Mr. Kamat's plea for reduction of the sentence. I, however, feel that reducing the substantive sentence to three months R. I. and maintaining the fine, will be sufficient to meet the ends of justice.

13. Mr. Kamat at this stage argues that so far as the petitioners Nos. 1 and 2 are concerned, the substantive punishment meted out to them in Criminal Revision Applications Nos. 321 and 322 of 1977, should be made to run concurrently. The matter is adjourned to Monday for hearing this aspect.

14. Mr. Kamat relies on the authority reported in Jainta Kumar Banerjee Vs. The State, According to that authority, it is within the inherent jurisdiction of this High Court to pass an order making the sentences to run concurrently.

15. It does appear that there were two instances of assault. The accused however, were obsessed with the idea that the land should not go to any stranger and hence they were impelled and probably wrongly advised to take the law in their own hands.

16. Substantive punishment of 3 months R. I. should be able to meet the ends of justice and hence I accept Mr. Kamat's request. Consequently, substantive punishment meted out to Avaba Bajirao Nikam and Hambirrao Vyankatrao Nikam in Criminal Revision Applications Nos. 321 and 322 of 1977 is made concurrent, Hence the final order would be:

In Criminal Revision Application No. 321 of 1977 Rule is discharged save and except that the substantive punishment for the offences u/s 148 and u/s 323 of the I. P. C. so far as accused No. 1 is concerned, and u/s 147 of the I. P. C. so far as accused Nos. 2 to 4 and 6 are concerned is reduced to 3 months R. I. Similarly substantive punishments of petitioners Avaba Bajirao Nikam and Hambirrao Vyankatrao Nikam in Criminal Revision Application No. 322 of 1977, are made to run concurrently.