
(2015) 02 BOM CK 0332

In the Bombay High Court

Case No : Criminal Revision Application No. 296 of 2002

Balraj Lalu Birkure

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 332, 353

Citation : (2015) ALLMR(Cri) 3479

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : Nikhil Tekaley, Advocate, for the Appellant; V.P. Kadam, A.P.P., for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.—The present Criminal Revision Application is directed against the Judgment and Order dated 22nd May, 2000 passed by the Judicial Magistrate, F.C., Bhokar in R.C.C. No. 17/2000, by which the learned Magistrate convicted the applicant for the offence punishable under Section 332 of the Indian Penal Code and directed him to suffer Simple Imprisonment till rising of the court and to pay fine of Rs. 500/- and in default of payment of fine to suffer Simple Imprisonment for eight days. He was also convicted for the offence punishable under Section 353 of the Indian Penal Code and was directed to suffer Simple Imprisonment till rising of the court and to pay fine of Rs. 300/- and in default of payment of fine amount, to suffer further Simple Imprisonment for five days, together with Judgment and Order dated 3rd October, 2002 passed by the learned Sessions Judge, Nanded in Criminal Appeal No. 40 of 2002 whereby, the lower appellate court was pleased to dismiss the Criminal Appeal and confirmed the order of conviction passed by the learned Magistrate. I have heard Mr. Nikhil Tekaley, learned counsel for the Applicant and Mr. V.P. Kadam, learned Additional Public Prosecutor for the State of Maharashtra, in extenso. With their able assistance, I have gone through the Record & Proceedings.

2. The prosecution case can be narrated herein-under:--

"(i) PW No. 1 Namdeo Jhingraji Karle lodged First Information Report Exhibit-13 with Police Station, Bhokar. As it discloses commission of cognizable offence, CR No. 207/1998 was registered against the accused for the offences punishable under Section 332, 353 of the Indian Penal Code.

(ii) The first informant at the relevant time was working as Head-Master of Zilla Parishad School at Palaj. The applicant was also working in the said school as Assistant Teacher, Physical Education.

(iii) On 15th December, 1998 at 10 O'clock in the morning, the first informant came to the school. After the morning prayer, he took his seat in his office and was going through the muster roll and other papers. After completion of first period, he called one student and asked him to give the bell. Thereafter, he again came to his office and was going through the time-table. That time, at about 10.55 a.m. accused came there. From the locker, he took his personal file and kept it on the table of the first informant. Thereafter without asking the concerned teachers, he took out other files and kept it on his table and then by showing the file he asked him in high pitch voice "as to why he is not sending the letter for his increment".

(iv) First Information Report also disclosed that accused uttered abusive words. Upon that, first informant replied that, unless there is explanation from the superior, he is helpless. Upon that applicant caught hold of his colour and pushed him away and then gave fist blows to him. Thereafter, accused took a stone and assaulted him on the thumb of his right hand.

(v) The Investigating Officer PW No. 5 Bhimrao Sonba Punjarwad after completion of usual investigation, filed the charge-sheet. The accused denied the charge and claims for his trial.

(vi) In order to bring home the guilt of the accused, in all five witnesses were examined. The learned Magistrate, as observed in opening paragraph of this judgment convicted the accused-applicant."

3. The present case hinges on the evidence of PW No. 1 Namdeo Karle only. The other prosecution witnesses namely PW No. 2 Gangareddy Ramareddy Muttalwar and PW No. 3 Prashant Madhukar Rao Patki, who were also Teachers in the said school, did not support the prosecution in respect of assault and obstructions to the first informant by the accused-applicant.

4. PW No. 4 Dr. (Mrs.) Lalita Swami has proved the injury certificate of first informant, which is at Exhibit-20 and also injury certificate of PW No. 2 Gangareddy, which is at Exhibit-21. The evidence of Dr. Lalita Swami and injury certificate Exhibit --20 shows that first informant sustained following injuries:--

"(i) Abrasion on Rt thumb. 3 cm x 2 cm.

(ii) Abrasion on occipital region. 2 cm x 2 cm.

(iii) C.L.W. on 2nd toe of Rt. foot. 2 cm x 1 cm x 1/2 cm.

(iv) Abrasion on Rt. Index finger. 1 cm x 1 cm."

As per the version of Dr. Lalita injuries mentioned above are simple in nature. In her cross-examination, Dr. Lalita admitted that, injuries mentioned at Sr. Nos. 1 to 4 are possible due to fall on plinth. Further PW No. 2 Gangareddy was also examined by Dr. Lalita and found following injury:--

"Abrasion on Lt. middle finger. Size 2 x 2 cm."

In her cross-examination, Dr. Lalita stated that the aforesaid injury is possible while removing the wrist watch having steel belt from the wrist.

5. In the light of the aforesaid injuries and upon scanning the evidence of PW No. 1 Namdeo - first informant it is clear that there is variance on the material aspect in respect of the incident, as stated by him in the First Information Report and from the witness-box. PW No. 1 Namdeo has stated in his evidence that applicant took out his personal file from the locker and then he threw the said file on his table however, from the First Information Report it is clear, which recites as under:--

Further from the witness box, P.W. No. 1 has disposed that, "He started shouting on the ground, why I am not granting his increment." Curiously if perused the First Information Report, it recites as under:--

Thus, it is clear that first informant has exaggerated the incident from the witness-box. It is also noticed that he has claimed before the court that due to push given by the accused, he fell down however, said is not mentioned in the First Information Report. In so far as assault by stone is concerned, no attempt was made by the prosecution to recover the said stone. Thus, the stone is not before the court.

6. In this backdrop, suggestion given to the first informant while he was under cross-examination assumes importance. He has not denied that on 19th November, 1998 there was N.C.C. Examination at Bhokar. Further suggestion was given to him, which was denied by him that, the applicant was called at Bhokar by Block Education Officer for the said test and he sought written permission for leaving the Headquarter, which was not granted by the first informant and inspite of that the applicant left the Headquarter because of the order in his favour by the Block Education Officer. Further he has admitted that on 20th November, 1998 the accused came to the school alongwith order of the Block Education officer. Thus, the ego of first informant appears to have been hurt and, therefore, false implication of accused at his behest cannot be ruled out. Evidence of PW No. 1 Namdeo is not at all corroborated by other two teachers, who according to the first informant were present when incident occurred. Further at the relevant time, which official work he was discharging is not brought on the record. On the contrary, according to the prosecution, the applicant-accused was showing his file to him and was asking, "as to why steps

are not taken by him in respect of his increment". Sending a proposal to the higher authority, is a duty of Head Master. And it is the applicant, who was asking the first informant to perform his duty. There is nothing on record to prove that, the accused assaults or uses criminal force to the first informant to prevent or deter him from discharging his duty as such public servant. In that view of the matter, it is clear that prosecution was unable to bring home the guilt of the accused, beyond reasonable doubt. Hence, I pass the following order:--

"ORDER

(i) Criminal Revision Application is allowed.

(ii) Judgment and Order dated 22nd May, 2000 passed by the Judicial Magistrate, F.C., Bhokar in R.T.C. No. 17/2000 together with Judgment and Order passed by the learned Sessions Judge, Nanded dated 3rd October, 2002 in Criminal Appeal No. 40 of 2002 are hereby quashed and set aside.

(iii) The accused - applicant is acquitted of the offences punishable under Sections 332, 353 of the Indian Penal Code.

(iv) Fine amount paid by the applicant -accused shall be refunded to him.

(v) Rule made absolute."