
(2002) 10 BOM CK 0029
In the Bombay High Court
Case No : Criminal Appeal No. 599 of 1998

Barkatsingh Raina

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 353

Citation : (2002) 10 BOM CK 0029

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Arfan A.E.A. Sait, for the Appellant; Gadkari, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Shri Sait and Shri Gadkari at length. Shri Sait, Counsel appearing for the appellant vehemently submitted that the evidence of complainant Shamrao Jedhe is discrepant on many points and lacks corroboration of independent witnesses and therefore. Court should not have believed it and should have acquitted the appellant. He pointed out that there is a difference between the names of the appellant a Barkatsingh and Jorawarsingh. He submitted that the information was in respect of Barkatsingh and therefore, as the appellant happens to be Shikh persons, he might have been implicated in this case on account of suspicion. He prayed that the appellant be acquitted, though he has undergone the sentence and the order of sentence be also set aside.

2. Shri Gadkari, A.P.P. for the prosecution, submitted that the appellant may be Jorawarsingh or may be Barkatsingh, but the most important fact which the Court should consider is that he was caught on the spot and he was the same person who had put the Pistol on the chest of P.W. P.I. Jedhe. Shri Gadkari submitted that when the appellant whipped out the pistol from the pocket and put it on the chest of complainant Shri Jedhe and when the said pistol was fully loaded, there cannot be any other intention but to attempt for killing P.I. Jedhe.

He submitted that, in view of that, order of conviction and sentence is correct, proper and legal, because, by the evidence of Shri Jedhe himself, the prosecution has proved the guilt of the appellant beyond reasonable doubt.

3. I find force in the submissions advanced by Shri Gadkari for the prosecution, because he may be Barkatsingh or he may be Jorawarsing but fact remains that he was the person who took out a pistol from his pocket, which was fully loaded and put on the chest of P.I. Jedhe. When he put a loaded Pistol on the chest of P.I. Jedhe who was there for arresting him what could be his intention? His intention was to attempt for committing the murder of P.I. Jedhe and to obstruct him from discharging his duty. Therefore, the difference in the names does not assume importance at all.

4. The evidence of P.I. Jedhe has been corroborated by panchanama, a document which was drawn for the purpose of seizure of the said pistol and seven live cartridges with one identity card. Other witnesses have been examined for the purpose of proving that he was taken from Hotel Diamond with handcuffs but that has got no relevancy so far as present case is concerned. The present case revolves on two points. Whether the appellant had attempted to commit the murder of P.I. Jedhe and subsequently, by such an act, he had obstructed P.I. Jedhe from discharging his official duty. The answer to these points would be in affirmative for the reasons stated below. P.W. P.I. Jedhe has been cross-examination at length after obtaining adjournment for cross-examination. In spite of that lengthy cross-examination, the evidence of P.W. P.I. Jedhe has remained unshattered. P.I. Jedhe was the person who was sufferer and the appellant was successful in pulling the trigger and firing the said pistol but fortunately, it did not so happened and Jedhe survived. Therefore there cannot be any doubt that Jedhe would commit any mistake in identifying the appellant, but that also goes, because the appellant has been arrested on the spot itself and a pistol and seven live cartridges were seized from him under panchanama. Thus, the prosecution has proved that the appellant put the loaded pistol on the chest of P.I. Jedhe who was there to arrest him on information. Though, said pistol did not fire any bullet, the intention which was behind the act which was committed by the accused was nothing but to commit the murder of P.I. Jedhe. Here one thing is to be kept in mind and that is the intention of the appellant behind whipping out pistol, pointing in towards P.W. Jedhe and triggering it. Though bullet did not come out from that pistol, the intention was to commit murder of P.W. Jedhe. "Actus non facit rem nisi sit mens rea" has to be remembered. Therefore, the prosecution has proved that the appellant had committed the offence punishable under the provisions of Section 307 of Indian Penal Code beyond reasonable doubt. The said act was for the purpose of obstructing P.I. Jedhe from discharging his official duty. Therefore, offence punishable u/s 353 of I.P.C. has been also spelled out and has been proved beyond reasonable doubt.

5. The learned trial Judge has appreciated the evidence on record properly and conclusions drawn by him are borne out by the evidence on record. He happens

to be right in convicting and sentencing the appellant for the offences mentioned above.

6. Shri Sait submitted that sentence was too severe. Shri Gadkari opposed. This Court does not find that sentence was severe. Therefore, this Court dismisses the said submissions made on behalf of the appellant.

7. Thus, in the result, the appeal fails and stands dismissed.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristedar of this Court.