

(2003) 03 BOM CK 0061

In the Bombay High Court

Case No : Criminal Revision Application No. 75 of 1993

Bhausahab Mahadeo Karale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 323, 324, 34
Probation of Offenders Act, 1958 — Section 11, 12, 3, 4, 4(2)

Citation : (2003) 03 BOM CK 0061

Hon'ble Judges : P.B. Gaikwad, J

Bench : Single Bench

Advocate : R.L. Kute and M.S. Mhase, holding for, R.N. Dhorde, for the Appellant; P.B. Patil, APP, for the Respondent

Judgement

P.B. Gaikwad, J.—Original accused No. 1 Bhausahab, being dissatisfied with the order passed by the learned Sessions Judge, Ahmednagar dated 15.2.1993 in Criminal Appeal No. 26 of 1989 confirming the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Ahmednagar dated 7.1.1989 in R.T.C. No. 142 of 1986 convicting the accused Nos. 1 to 4 for the offences under Sections 323 and 324 read with 34 of the Indian Penal Code, directing the accused Nos. 2 and 3 to execute a bond of good behaviour for an amount of Rs. 1,000/- for the period of one year and sentencing the original accused Nos. 1 and 4 and directing them to pay fine of Rs. 100/ in default, simple imprisonment for one month, has filed the present revision.

2. The facts in brief are that; PW 2 Shripat resides at village Pokhardi, Taluka and District Ahmednagar along with his family members, including his son Vithal (PW 1) and wife Rakhamabai (PW 4). Shripat is having agricultural land and he used to cultivate it personally. Accused No. 1 Bhausahab/ appellant is the nephew of Shripat and cousin of Vithal, while the accused No. 2 Subhadrabai is the mother of accused No. 1, accused No. 3 Samindrabai is the sister of accused No. 2 and accused No. 4 Dattatraya is the son of accused No. 2. It is alleged that there is

civil litigation between the parties i.e. the complainant and accused No. 1 in respect of land gut No. 109 situated at village Pokhardi.

3. It is alleged that the incident took place on 19.11.1986. Shripat, after taking dinner at about 8 p.m. was proceeding towards his field on a bicycle. On his way, when he came in front of shop of one Bhanudas, accused came there holding stick and axe in their hands and assaulted Shripat. Accused Nos. 2 and 3 assaulted him with stones, accused No. 3 was holding stick in his hand and accused No. 1 was holding axe in his hand. On account of beating and assault by the accused, complainant raised shouts. PW 1 Vithal son of complainant and PW 4 Rakhamabai wife of complainant came to the spot. Accused assaulted PW 1 Vithal. Accused after beating complainant and his son, left the place.

4. PW 4 Rakhamabai gave information to the police on phone. Police accordingly came to the village. Both PW 1 Vithal and PW 2 Shripat were sent to Civil Hospital, Ahmednagar for treatment. Both the injured were treated at Civil Hospital. Police Constable visited the hospital and recorded the complaint of Shripat, on the basis of which, he registered crime. During the course of investigation, spot panchanama was prepared. The accused were arrested. The weapons with which the complainant and PW 1 Vithal were attacked, were attached and after completing the investigation charge sheet was submitted.

5. The learned Judicial Magistrate F.C. framed charge. Accused pleaded not guilty and claimed to be tried.

6. The prosecution examined near about 7 witnesses. PW 1 is Vithal, one of the injured and son of complainant Shripat. PW 2 is Shripat / Complainant, who made report, on the basis of which crime was registered. PW 3 is Shankar, a panch witness. PW 4 is Rakhamabai, an eye witness to the said incident. PW 5 is Dr.Gaikwad, who examined Vithal and Shripat on 19.11.1986, while PW 6 is Pawar, Assistant Sub Inspector, MIDC Police Station, Ahmednagar, who investigated the above crime and submitted charge sheet against the accused. PW 7 is Rabhaji, another panch witness.

7. The learned Judicial Magistrate F.C. after considering the evidence on record, convicted all the four accused for the offences punishable under Sections 323 and 324 read with 34 of the Indian Penal Code. So far as regards the accused Nos. 2 and 3 are concerned, instead of directing them to pay fine, the learned Judicial Magistrate directed the accused Nos. 2 and 3 to execute a bond for good behaviour for an amount of Rs. 1,000/ while accused Nos. 1 and 4 were directed to pay fine of Rs. 100/ by each of them for the offence u/s 324 of the Indian Penal Code. No separate sentence was awarded for the offence u/s 323 read with Section 34 of the Indian Penal Code.

8. Accused Nos. 1 to 4, dissatisfied with the said order of learned Judicial Magistrate, preferred Criminal Appeal No. 26 of 1989. The learned Sessions Judge, Ahmednagar, after hearing the parties dismissed the appeal by his order dated 15.2.1993 and maintained the order of conviction. Said order of learned

Sessions Judge is challenged by way of filing present revision only by the original accused No. 1 Bhausahab.

9. In appeal, I heard Shri Kute and Ms. Mhase, Advocates holding for Shri R.N.Dhorde, Advocates for the petitioner and Shri Patil, APP for the State at great length.

10. It is submitted on behalf of the petitioner that the order of conviction and sentence passed by the learned Judicial Magistrate as confirmed in appeal by the learned Sessions Judge, is not proper. Firstly, according to him, the evidence on record is not satisfactory. There is material inconsistency in the evidence of complainant, so far as regards attack and weapon used. Secondly, according to him, on bare perusal of evidence of PW 2 Vithal, it is seen that the same is inconsistent with the first information report in material particulars. Even the medical evidence is also not satisfactory and therefore, according to him, at any rate, the order of conviction, so far as regards the petitioner is concerned, is not sustainable. Lastly, it is submitted that the petitioner is a government servant. Thus according to him, the revision be allowed and the order of conviction and sentence be set aside as the same is not in conformity with the evidence on record.

11. On the other hand, it is submitted by Shri Patil, learned APP that the order passed by the learned Judicial Magistrate and confirmed by the learned Sessions Judge in appeal is proper. According to him, there is no material inconsistency in the evidence of PW 1 Vithal, PW 2 Shripat and PW 4 Rakhamabai and in fact the said evidence is trustworthy, acceptable and convincing. It is further submitted that the evidence of complainant is supported by the medical evidence. According to Shri Patil, the revision is without merits and the same needs to be dismissed.

12. Considering the submissions made on behalf of the parties to the revision, only the point raised for my determination is whether the order of conviction passed by the learned Judicial Magistrate F.C. for the offence under Sections 323 and 324 read with 34 of the Indian Penal Code is proper and justified.

13. On perusal of evidence, it will be seen that PW 4 Rakhamabai had been to the place of incident after hearing hue and cry. She saw that the complainant was lying in an injured condition. PW 1 Vithal, her son also sustained injuries. Accused No. 4 was holding stick in his hand, while accused No. 1 / petitioner was holding axe in his hand. It is further made clear that she snatched axe from the hands of petitioner and proceeded towards Aurangabad road. She went near the octroi naka and from octroi naka she gave a message on phone to MIDC Police Station in respect of the incident. Police accordingly came to the village Pokhardi. She also made clear that her husband PW 2 Shripat and son PW 1 Vithal were thereafter taken to Civil Hospital, Ahmednagar for treatment.

14. It is further seen from the evidence of PW 6 Pawar, ASI that in the year 1986 he was attached to MIDC Police Station, Ahmednagar as the Head Constable and

was attached to outpost Jeur. He received telephonic message from MIDC Police Station at about 9 p.m. about the incident at village Pokhardi and accordingly, he was directed to visit village Pokhardi. He noticed PW 1 Vithal and PW 2 Shripat in an injured condition. They were taken to Civil Hospital. He recorded complaint of Shripat, one of the injured, who was admitted in the hospital. Evidence of PW 2 Shripat also makes out that his statement was recorded in the hospital on 19.11.1986 and it further makes it clear that on the basis of said report, crime No. 130 of 1986 was registered for the offences under Sections 323 and 324 read with 34 of the Indian Penal Code. PW 6 Pawar during the course of investigation, visited the place, prepared spot panchanama and after completing the investigation and after recording statements of witnesses, submitted charge sheet.

15. Thus, the evidence of PW 4 Rakhamabai and PW 6 Pawar so also PW 2 Shripat is consistent so far as regards the alleged incident in respect of information given by Rakhamabai to MIDC Police Station, visit of Police Head Constable - in pursuance of the said information - to the village Pokhardi and then to Civil Hospital and recording statements of prosecution witnesses. It is now necessary to see about the actual incident and whether the evidence of PW 1 Vithal, PW 2 Shripat and PW 4 Rakhamabai is consistent in that respect.

16. According to PW 1 Vithal, on the day of incident at about 8 or 9 p.m. he was at his house. He heard shouts raised by his father as "-----" and some persons also came to his house informing that his father was attacked. He immediately went to the place of incident and saw that his father was lying. Petitioner was holding axe in his hand. Accused No. 4 was also there. Two of the accused then also attacked Vithal with sticks and axe. He also sustained injuries. His evidence also makes it clear that the accused/ petitioner attacked him with axe, even mother of PW 1 Vithal - Rakhamabai also came there and she snatched the axe from the hands of Bhausaheb. It is further seen from his evidence that his father sustained injuries. Accused then left the place. He and his father were thereafter taken to Civil Hospital at Ahmednagar. His father was indoor patient for about 10 - 15 days.

17. Evidence of PW 2 Shripat also makes it clear that accused Nos. 1 to 4 attacked him with stick, axe, first and kick blows. He has given the details about the incident, the manner in which it took place, and the attack by the accused. His evidence is consistent with the evidence of PW 1 Vithal so also with the first information report and even the said evidence is again consistent with the evidence of PW 4 Rakhamabai. I, therefore, find that the court below has rightly relied upon the said evidence of complainant, his son and wife.

18. It is further seen that the evidence of these witnesses, more particularly, PW 1 Vithal and PW 2 Shripat is also supported by the medical evidence i.e. PW 5 Dr.Gaikwad. According to him, he examined PW 1 Vithal and PW 2 Shripat on 19.11.1986. Vithal had sustained three injuries i.e. (i) abrasion at left elbow 5 cm x 1/2 cm, (ii) contusion 7 cm x 1 cm at back side and (iii) contused lacerated

wound over the head above forehead 5 cm x 1/2 cm x 1/4 cm - bleeding present. The Medical Officer has accordingly issued certificate in respect of the injuries sustained by Vithal, which is proved at Exhibit 34. Shripat, father of Vithal was also examined by Dr. Gaikwad on the same day and it was noticed that he had sustained near about 5 injuries i.e. (i) contused lacerated wound on right arm 1 cm x 1 cm, muscular deep and bleeding was present, (ii) swelling over left leg, 2 cm x 1 cm - muscular, (iii) swelling at left lower 1/3rd of thigh 4 cm x 1 cm, muscular swelling, (iv) contused lacerated wound over right forearm, anterior aspect 1 cm x 1 cm and (v) chest pain at right side.

19. If the parts of the bodies, where the injuries were sustained by the complainant and his son, if read together with their evidence, I find that the said evidence of complainant is corroborated by the medical evidence. Even from the evidence of these witnesses, it is sufficiently clear that number of persons gathered there. However, nobody tried to rescue the complainant and his son. On close scrutiny I find that the court below has rightly scanned and scrutinised the evidence on record. Even the conclusion arrived at by the court below is reasonable and proper.

20. It is submitted by Shri Kute, learned Advocate that there is inconsistency in the evidence of PW 2 Shripat about the weapon used as in the complaint and in the evidence of PW 1 Vithal, axe blow is shown to have been given by petitioner, however, PW 2 Shripat in his evidence has stated that petitioner beat complainant with stone and accordingly he sustained injury on his right rib and accused No.4 gave axe blow. Relying on this particular inconsistency, it is submitted that the evidence of complainant is not acceptable and the court below ought to have discarded the said evidence. I find that on close scrutiny, the evidence so far as regards beating by accused to complainant and Vithal is definitely trustworthy and acceptable. Inconsistency about the weapon is practically of no relevance, considering the factual aspects in the present case and considering the illiteracy and the witnesses being rustic villagers. There may be some inconsistency as regards narration of incident and sequence in which the incident is deposed by PW 1 Vithal and PW 2 Shripat. At any rate, I find that the evidence on record is definitely trustworthy and acceptable and the Court below has rightly accepted the evidence adduced by the prosecution and rightly convicted the accused for the offences under Sections 323 and 324 read with 34 of the Indian Penal Code. I do not find any infirmity in the said finding.

21. So far as regards sentence is concerned, as I have already referred above, the Court below has directed the petitioner to pay fine of Rs. 100/ in default, simple imprisonment for one month. No separate sentence is awarded for the offence u/s 323 of the Indian Penal Code. At this stage, it is submitted by Miss Mhase, Advocate for petitioner that the petitioner is Government service and if the fine amount is reduced to some extent, he may not be required to lose his job. She, therefore, submits that this is a case where the benefit of Probation of Offenders Act also can be given. She seeks time to submit on this issue till

tomorrow. S.O. to 25.3.2003.

Dated : 25.03.2003

22. It is submitted by Miss Mhase, Advocate for the petitioner that in view of Section 11 of the Probation of Offenders Act, 1958 this Court is competent to pass an order either u/s 3 or Section 4 of the said Act. She further submits that in the peculiar circumstances the report from the Probation Officer as required u/s 4(2) of the said Act also can be dispensed with. According to her, as in the present case, though the court below has shown leniency and directed the accused to pay fine of Rs.100/ still if the order of sentence is maintained, the petitioner will have to loose his service and therefore, it is requested that in case if the order of conviction is to be maintained the benefit of Probation of Offenders Act may be given to the accused, either u/s 3 or Section 4 of the said Act or u/s 360 of the Code of Criminal Procedure. According to her in case benefit is given to petitioner, there may not be any disqualification in view of Section 12 of the said Act and in that case, the petitioner will not be required to loose his service.

23. In support of her contention, Miss Mhase has relied upon the decisions in the cases of Shivnath Ram Vs. State of Bihar [1995 CRI.L.J.3522], State of U.P. Vs. Mata Bhikh [1994 (2) SCJ 256] and Rajbir Vs. State of Haryana, . According to her, this is a fit case where the benefit of the said Act can be given to the petitioner.

24. So far as regards factual aspects of the present case are concerned, the parties complainant and the accused - are closely related as the complainant is the uncle of the petitioner. It is further seen that there is a civil dispute between the parties. A suit was filed by petitioner against the complainant in the year 1982. Equally, the complainant had also filed a suit against the petitioner in respect of land Gut No.109 and this particular incident seems to be outcome of the said civil litigation. It is further clear that the petitioner is serving as a Government servant. The incident took place long back some 14-15 years ago and considering the above circumstances and when the evidence on record does not disclose that the petitioner has committed any other offence, I find that the benefit u/s 3 of the Probation of Offenders Act can be safely given to the petitioner.

25. In the result, the appeal is partly allowed.

The order convicting petitioner for the offence under Sections 323 and 324 read with 34 of the Indian Penal Code is maintained. Order of sentence is however modified. The sentence imposed by the learned Judicial Magistrate F.C. and confirmed in appeal by the learned Additional Sessions Judge, directing the petitioner to pay fine of Rs.100/, in default, simple imprisonment for one month, is set aside and the petitioner be released on probation of good conduct as he is released on due admonition in view of Section 3 of the Probation of Offenders Act. R & P be sent to the court below immediately.