
(1984) 03 BOM CK 0054

In the Bombay High Court

Case No : Criminal Appeal No. 4 of 1977 with Criminal Revision Application No. 51 of 1977

Gopal Ramchandra Ajgaonkar and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-03-1984

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 149, 427, 436

Citation : (1984) 1 BomCR 411

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : P.R. Gune, for the Appellant; J.A. Bardey, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

H.H. Kantharia, J.—Criminal Appeal No. 4 of 1977 arises out of a judgment and order recorded by the learned Additional Sessions Judge, Greater Bombay, Bombay, on 22nd September, 1976 in Sessions Case No. 245 of 1975.

2. The relevant facts giving rise to this appeal are that on or about 7th November, 1974, at about 11.00 p.m., an information was received by Jogeshwari Police Station that there were riots in Meghwadi area within its jurisdiction. On receipt of this information the duty officer, Sub-Inspector, Mohan Patil (P.W. 7) along with his staff rushed there. He was followed by Sub-Inspector Ramugrah Singh (P.W. 1) along with five police constables. Sometimes thereafter a commotion was heard at Idga Maidan. Therefore, Sub-Inspector Patil with wireless van went there and Sub-Inspector or Singh remained at the junction of Shamnagar and Meghwadi where trouble was going on. Further case of the prosecution is that at about 2.00 a.m. Sub-Inspector Singh heard further commotion coming from the side of Sayyed Ajgaralli Chawl near Nalla at Meghwadi. He, therefore, proceeded to that side and found that a chawl was burning and brick-bats and fire balls were being thrown at the chawl. He noticed

a crowd of about 25/30 miscreants among whom the seven accused persons, who were prosecuted in this case, were present Sub-Inspector Singh and a police constable rushed at the crowd and Sub-Inspector caught hold of appellant No. 1-Gopal Ramchandra Ajgaonkar (accused No. 1) who was seen having a burning Mashal in his hand. Police Constable, Rajaram Shinde (P.W. 5) apprehended original accused No. 2 and the present appellant No. 2 Anant Daulat Palande- (accused No. 3). They were seen throwing stones at the chawl. Another police constable, Vithal Thorat (P.W. 3) caught hold of appellant No. 3-Bhagwan Vasudeo Bhogle (accused No. 4) and appellant No. 4-Anant Gangaram Rane- (accused No. 5). Still one more constable by name Sitaram Kapse (P.W. 4) apprehended accused Nos. 6 and 7 with whose case we are not concerned. Thereafter all these accused persons were brought to Jogeshwari Police Station where Sub-Inspector Singh lodged his First Information Report (Exh. 5). After some investigation was carried out, further investigation was handed over to D.C.B., CID. On completion of the investigation the seven accused persons were charge-sheeted in the Court of the learned Metropolitan Magistrate, 28th Court, Esplanade, Bombay, on 18th March, 1975. The learned Metropolitan Magistrate by his order dated 3rd July, 1975 committed the case to the Court of Sessions, Bombay.

3. On these facts the learned trial Judge framed charges against seven accused persons that all of them, on or about 3-11-1974 at about 2.15 a.m. at Meghwadi, Jogeshwari, Bombay, along with 15/20 other unknown persons, were members of unlawful assembly whose common object was to commit an offence of mischief by fire to a dwelling house and thereby committed an offence punishable u/s 143 of the Indian Penal Code. They are further charged that at the same time and place and in the same transaction, they used force and violence, being members of unlawful assembly, and thereby committed an offence punishable u/s 147 of the Indian Penal Code. Accused No. 1 was further charged that at the same time and place and in the course of the same transaction and in pursuance of the common object of the unlawful assembly, he committed mischief by fire to a dwelling house belonging to one Sayyed Ajgaralli and thereby committed an offence punishable u/s 436 r/w section 149 of the Indian Penal Code. Accused Nos. 2 to 7 were further charged that at the same time and place, and in pursuance of the common object of the unlawful assembly, they committed mischief by fire in respect of a dwelling house of the said Sayyed Ajgaralli by pelting stones and brick-bats and caused damage to the extent of Rs. 18,000/- or more and thereby committed an offence punishable u/s 427 r/w section 149 of the Indian Penal Code. All the accused persons pleaded not guilty. Their defence was that they were not present at the time of time of the alleged incident and were picked up from their huts.

4. On appreciation of the evidence adduced before him the learned trial Judge did not find accused No. 1 guilty of an offence of the mischief by fire in respect of a dwelling house and acquitted him. He also did not find accused Nos. 2 to 7 guilty of an offence of mischief in respect of the said dwelling house by pelting

stones and brick-bats at it and acquitted them of the said offence. However, he held that the prosecution proved that all the accused persons were members of unlawful assembly whose common object was to commit offence of mischief by fire or otherwise in respect of a dwelling house and also held that the prosecution further proved that at the same time and place and in the course of the same transaction they used force and violence, being the members of unlawful assembly. He accordingly held them guilty of offences punishable under sections 143 and 147 of the Indian Penal Code. Consequently, he sentenced accused No. 1 to suffer rigorous imprisonment for three months for an offence punishable u/s 143 and six months for an offence punishable u/s 147 of the Indian Penal Code and ordered that both the sentence would run concurrently. So long as accused Nos. 2 to 7 are concerned , he released them on bond of Rs. 2000/- with one surety in the like amount for a period of two years for their good conduct. Being aggrieved by the said judgment and order accused Nos. 1, 3, 4 and 5 (appellant Nos. 1 to 4) preferred the present appeal. It appears that other accused persons did not bring the matter to High Court. While admitting the appeal this Court (Apte, J.) issued notice of enhancement of sentence against the appellants which was registered as Criminal Revision Application No. 51 of 1977. By consent of parties both these matters are being disposed of by this common judgment.

5. Now, as regards accused No. 1 there is evidence of solitary witness Sub-Inspector Singh. His evidence shows that at the relevant time he apprehended accused No. 1 and that at that time he was having a burning Mashal in his hand. He took charge of the Mashal from him and extinguished the fire. According to him the rest of the persons, ran away towards the Kabrastan side. However it is important to note that in his cross-examination Sub-inspector Singh admitted that the time when he apprehended accused No. 1 was about 2.00 a.m. and it was sufficiently a dark night. But in the same breath he stated that he could see accused No. 1 because there was sufficient light as the chawl was burning. He gave complete go-by to this evidence when he further stated in the cross-examination that particular chawl which he referred to earlier as burning was not set on fire on that day. From this evidence Mr. Gune, learned Advocate appearing on behalf of the appellant, legitimately canvassed a point that there is no satisfactory evidence on record to show that at the relevant time there was sufficient light to enable this witness to recognize accused No. 1 and also that it cannot be said that an offence of mischief was committed because the whole prosecution case falls to ground when Sub-Inspector Singh admits that chawl in question was not set on fire on that day. In the submission of Mr. Gune even the panchanama of the scene of offence (Exh. II) does not show the slightest traces that the chawl in question was burning. In the submission of Mr. Gune from this evidence it is difficult to come to a conclusion that accused No. 1 was a member of unlawful assembly whose common object was to commit mischief by fire to a dwelling house. In addition, we may also point out that the evidence of Sub-Inspector Singh is not at all corroborated by any other independent witness, in my opinion, it is rather risky to rely upon uncorroborated testimony of an

interested witness, like the Police Officer in a case like this. Mr. Gune attacked the conduct of this witness by pointing out that Sub-Inspector Singh had not made even the station diary entry before leaving the Police Station and after reaching there. He also did not make panchanama regarding recovery of the Mashal. Mr. Gune further pointed out that the identity of the Mashal is also doubtful in inasmuch as a portion of the slip showing the identification of the Mashal in the trial Court was not tallying with the piece of the slip which was tied to the Mashal. All this makes it very much suspicious whether the Mashal that was attached and produced in the trial Court was the same which is alleged to have been recovered from accused No. 1. Mr. Gune also pointed out that after reaching the spot Sub-Inspector Singh did nothing in the matter of protecting the inmates of the houses which were said to have been set on fire and no efforts were made by him to extinguish the fire. All this, in the submission of Mr. Gune, goes to show that Sub-inspector Singh perhaps must not have visited the scene of offence at all and as submitted by the accused persons they might have been picked up from their huts after everything was over. Apart from all these submissions of Mr. Gune I am not inclined to rely upon the uncorroborated testimony of Sub-Inspector Singh as regards the involvement of accused No. 1 in the commission of the crime. I am inclined to give him the benefit of reasonable doubt and acquit him of the offences with which he stood charged.

6. As regards the case against accused No. 3 again we have the solitary evidence of head constable Rajaram Shinde (P.W. 5). All that he has stated against accused No. 3 is that he along with accused No. 2 was seen throwing stones on the chawl when he was caught. It may be recalled here that according to Sub-Inspector Singh the night was dark and that the hut was not burning. Even this witness has stated that there was darkness at the relevant time. It means that there was no sufficient light for Head Constable Shinde to see and identify accused No. 3 throwing stones. Again, according to head constable Shinde on seeing him and other officials of Jogeshwari Police Station accused No. 3 and others started running away. It is not understood as to why accused No. 3 and for that reason others should start running away on seeing Head Constable Shinde and others because his evidence further shows that when they reached the spot they were in plain clothes. In other words there was no reason for accused No. 3 and others to suspect that the persons wearing plain clothes were the Police Officers and that they should run away. Again, no independent witness was examined by the prosecution to corroborate the testimony of head constable Shinde. According to the prosecution huts were being burnt and stones were being pelted on the huts and if that was so how is it that not even single person from the locality was examined by the prosecution. As observed by me in the case of accused No. 1 it is rather risky to rely upon uncorroborated testimony of an interested witness like Head Constable Shinde.

7. So long as accused Nos. 4 and 5 are concerned, the evidence is again that of an interested Police Officer namely Police Constable Vithal Thorat (P.W. 3). He has stated that he had arrested these two accused persons at the relevant time. It

is important to note that no overt act is ascribed to these to accused persons. They were seen running away. As I have stated above if the Police Constables were in plain clothes there was no reason for these two accused persons to run away on seeing them. My comments as regards impossibility to see these accused persons without making a mistake on account of darkness is the same as observed by me earlier in case of other accused person. Again, the evidence of Police Constables Thorat is not corroborated by any other independent evidence and at the cost of repetition I would say that I am not at all inclined to rely upon such uncorroborated testimony. In the result, all the three accused persons viz. accused Nos. 3, 4 and 5 are also entitled to the benefit of reasonable doubt and consequent acquittal.

8. In this view of the matter I hold that the prosecution did not prove its case against the present appellants beyond reasonable doubt. The appellants should be given benefit of such doubt and they should be acquitted of the offences with which they stood charged. Therefore, the Criminal Revision Application No. 51 of 1977 for enhancement of sentence will not survive. The notice issued in that regard should also be discharged.

9. Appeal is thus allowed. All the four accused-appellants are acquitted. The impugned order passed by the learned trial Judge convicting and sentencing them is set aside. The appellants are on bail. Their bail bond stands cancelled. Rule issued in Criminal Revision Application No. 51 of 1977 is discharged.