
(2015) 09 BOM CK 0236
In the Bombay High Court
Case No : Criminal Appeal No. 320 of 2005

Harvinder

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 308, 34, 353

Citation : (2015) ALLMR(Cri) 4046

Hon'ble Judges : A.M. Thipsay, J.

Bench : Single Bench

Advocate : Chaitanya Pendse, Advocate, for the Appellant; S. Gajare Dhumal, APP, for the Respondent

Final Decision : Allowed

Judgement

A.M. Thipsay, J.—This Appeal is directed against the judgment and order dated 18th March 2005 passed by the Addl. Sessions Judge, Greater Mumbai in the Sessions Case No. 92/99, convicting the appellant who was the accused No. 1 in the said case of offences punishable under section 308 of the IPC and 353 of the IPC. The learned Addl. Sessions Judge sentenced the appellant to suffer Rigorous Imprisonment for 5(five) years with respect to the offence punishable under section 308 of the IPC, and Rigorous Imprisonment for 4(four) months, and to pay a fine of Rs. 500/- in respect of an offence punishable under section 353 of the IPC. There was one more accused in the said case i.e. Accused No. 2 Anwar Shaikh, but the learned Addl. Sessions Judge found him not guilty and acquitted him. Being aggrieved by his conviction and the sentences imposed upon him, the appellant has approached this Court by filing the present Appeal. During the pendency of the Appeal, the appellant passed away. However, since the sentence was also of fine, the Appeal would not abate, and was required to be heard and decided on merits.

2. I have heard Mr. Chaitanya K. Pendse, learned counsel for the appellant. I have heard Mrs. S. Gajare Dhumal, learned APP for the State. With their

assistance, I have gone through the entire evidence adduced during the trial. I have also gone through the impugned judgment.

3. The allegation against the appellant was that he had attempted to commit murder of Ravindra Agre (PW 1) a Police Constable attached to Sion police station at the material time. The attempt to commit murder was done by giving the dash of a vehicle which was allegedly being driven by the appellant. The dash given by the appellant had resulted in causing a fracture to the right leg of the said Ravindra Agre.

4. The prosecution case may be narrated as follows:

"That on 5th January 1998, the First Informant Shivaji Nikam (PW 2) was on Nakabandi duty at Sion Fish Market. After that duty was over, he went for duty on Sion Peter Mobile bearing No, MH-01-T-5606 along with operator No. 14046 Ravindra Agre (PW1), for patrolling in Sion area. At that time, the operator of Sion Mobile-I gave a message to the control room that one blue colour Gypsy bearing registration No. MH-018731 was proceeding from Chembur towards Sion side in suspicious manner. On receipt of this information, Shivaji Nikam and others in Sion Peter Mobile kept a watch near the Sion circle. They noticed the vehicle arriving at Sion circle, and passing towards Laxmibai Kelkar Marg. The said vehicle was chased by Sion Peter Mobile. However, the vehicle somehow could not be detained, and escaped. Shivaji Nikam and Ravindra Agre, along with the Sion Peter Mobile were waiting near Adenwala Road and Sheth Bhagwandas Narottamdas Road. Ravindra Agre was standing on the road on the right side of the Sion Peter Mobile van. At about 4.20 a.m., the same blue colour gypsy arrived towards Maheshwari Udyan by the side of Adenwala Road. Shivaji Nikam gave a signal with the help of a battery, to stop the vehicle. He noticed that the appellant was driving the said vehicle. The vehicle did not stop, and gave a dash to Ravindra Agre. Agre sustained a fracture injury. He was taken to Sion hospital where he was examined. He had sustained a fracture injury. A report was lodged with the Matunga Police Station by Shivaji Nikam (PW 2), and a case in respect of offences punishable under section 307 of the IPC and 353 of the IPC read with section 34 of the IPC was registered."

5. In the course of investigation, the appellant and the said accused No. 2 were apprehended. On completion of investigation, they were prosecuted, and the prosecution, as aforesaid, resulted in the conviction of the appellant and the acquittal of the accused No. 2.

6. Mr. Pendse, the learned counsel for the appellant has pointed out to me that the prosecution evidence was full of discrepancies and improbabilities.

7. It appears that as per the version given by Agre to the Dr. Chittaranjan Talwalkar (PW 6) at Sion hospital on 23rd April 1998, Agre had met with an accident at Sion circle. Admittedly, the place where the accident took place is not Sion circle. The place is said to be the corner of Adenwala road and Bhagwandas Narottam road.

8. The evidence of Agre as well as Shivaji Nikam to the effect that the appellant was driving the vehicle in question, is not reliable. Both these witnesses have simply made such an assertion as a matter of fact. Both have stated that they "spotted Kukku" (Kukku is supposed to be the appellant) in the said vehicle. The evidence does not show even the fact that "Kukku" was known to them, and that he could be easily identified by them.

9. No record of the messages received by the wireless van, or the log book of the wireless van was produced before the Court during the trial. No record to show the messages received from the control room was produced. That, there was indeed information about any such vehicle, and it was noted down, was not established. Why such record was not produced, is not clear.

10. The witnesses have given the number of the vehicle that the appellant was allegedly driving i.e. MHO 18731. However, there is no evidence to show that any connection between the said vehicle and the appellant. There is no evidence that the said vehicle belonged to the appellant, or that he was a driver of the said vehicle. There is no evidence to show as to whom the said vehicle belonged, and how the appellant had come in possession thereof.

11. The investigation does not seem to be sincere. It appears that the appellant had some past criminal record. This is clear from the way he is described by the police witnesses i.e. Ravindra Agre and Shivaji Nikam (PW Nos. 1 and 2) by mentioning his alias name as "Kukku". In the absence of even a police record to support the story put forth before the trial court, the bare statement of these witnesses that "Kukku" was driving the car, cannot be accepted. This is particularly so, because to whom the said car belonged, and how it had come in possession of the appellant was not investigated into, at all.

12. Secondly, the allegation of an offence punishable under section 307 of the IPC, as had been levelled against the appellant also does not seem to be justified. Just because a dash was given by the said vehicle to a police person, and just because the vehicle went without stopping, as alleged, it was not possible to level an accusation that the driver of the vehicle attempted to commit murder of the policeman who wanted to stop the vehicle. Since such an exaggerated allegation has been levelled, it reflects that the investigation was not sincerely done.

13. In any case, the bare assertion of the witnesses that the appellant was driving the vehicle, at the material time, cannot be safely relied upon in the absence of any corroborative material to support their story which could have been available in the police record itself. There is absolutely no justification for not producing such record. That during the night time and in the running vehicle, the witnesses could identify the appellant, is not safe to be accepted. This is more so, because no attempt to establish the connection of the appellant with the vehicle in question was made.

14. This was a case where the appellant should have been acquitted.

15. Appeal is allowed.

16. The impugned order is set aside.

17. The appellant stands acquitted. Fine, if paid, be refunded to his heirs and legal representatives.