
(2014) 06 BOM CK 0075

In the Bombay High Court

Case No : Criminal Revision Application No. 193 of 2000

Kalyan Mahipati Madne

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Penal Code, 1860 (IPC) — Section 323, 324, 326, 504

Citation : (2014) ALLMR(Cri) 3191 : (2014) 3 BomCR(Cri) 510

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

Bench : Single Bench

Advocate : S.S. Jadhavar, Advocate for the Appellant; D.R. Korde, A.P.P,
Advocate for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.—The present Revision is filed against the judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Karjat, District Ahmednagar, dated 29.9.1997, in Regular Criminal Case No. 12 of 1991, together with the judgment and order, passed by the learned Additional Sessions Judge, Ahmednagar, dated 17.7.2000, in Criminal Appeal No. 68 of 1997.

2. Herein under, the facts leading to the present Revision can be stated :-

On 30.1.1991, Dnyandev Sarjerao Gabale, resident of Babhulgaon Khalsa, Taluka Karjat reached to the police station, Karjat and lodged his report. The said report is at Exh. 36.

Report lodged by the first informant reveals that he is cousin of one Vishwanath Namdeo Kadam, who also resides in the same village along with his family, though separately. Kalyan Mahipati Madne (applicant) is residing in front of the house of Vishwanath Kadam. On account of timber business, there was dispute amongst Vishwanath and Kalyan since last so many days, however, the nature of the dispute was minor. The first information report further reveals that about 8?

months back Vishwanath lodged a report against Kalyan and in that case Kalyan was arrested by police.

It was further reported by first informant that on 30.1.1991, in the morning, he left his village for weekly market at Mirajgaon. In the evening at about 7 O'clock he reached back to his village Babhulgaon. On reaching to the house, his son Sanjay informed him that prior to some time Kalyan assaulted Vishwanath on his head by means of stick and Vishwanath was lying in front of his house. Therefore, immediately he rushed to the house of Vishwanath and found that Vishwanath was inside his house surrounded by his wife Sindhubai and their son. Upon inquiry with Sindhubai, it was disclosed to the first informant that Kalyan, on account of previous enmity and on account of business, made an assault on her husband. According to the first information report, the first informant found that Vishwanath was unconscious and there was bleeding injury on his head. Therefore, he, along with Ramchandra, brought a jeep and was taken initially to the Government Hospital at Mirajgaon and after giving medical assistance at Mirajgaon, the doctor referred Vishwanath for further treatment at Government Hospital, Ahmednagar.

On the basis of this first information report, a crime was registered against the applicant/Kalyan vide Crime No. I-13 of 1991.

The investigation was entrusted with Govind Nana Warat (PW 12), who, at the relevant time, was attached to police out post Mirajgaon. On receipt of the report, he referred the injured to the Primary Health Center, Mirajgaon, and thereafter registered an offence at Karjat. On the next day, spot panchanama was drawn by him. After usual investigation, he submitted charge sheet in the court of law for the offences punishable under Sections 326, 323, 504 of the Indian Penal Code.

3. The learned Judicial Magistrate, First Class, Karjat on 3.11.1995 framed the charge against the present applicant. The applicant was charged that, on 30.1.1991 he assaulted Vishwanath on his head by means of stick which was used as an instrument of offence. The learned Magistrate framed charge for the offences punishable under Sections 326, 323, 504 of the Indian Penal Code.

The applicant denied the charge and claimed for his trial.

4. In order to bring home the guilt of the applicant, the prosecuting agency examined 12 witnesses.

PW 2 is Vishwanath, the injured. The prosecution examined PW 3 Chayabai, PW 5 Sindhubai, PW 7 Shahaji and PW 8 Mukinda as eye witnesses. PW 8 Mukinda turned hostile.

Dr. Devdatta Kshirsagar was examined as Prosecution Witness No. 9 to prove the injury certificate. Dnyandev was examined as PW 1, who lodged the first information report. PW 6, PW 11, Sanjay and Suresh, respectively, were examined as panch witnesses, however, both turned hostile. Uttam Kadam PW 4,

the brother of injured Vishwnath was also examined, but his evidence is hear say.

5. The learned Judicial Magistrate, First Class, Karjat vide judgment and order of conviction, dated 29.9.1997 convicted the applicant for the offence punishable u/s 324 of the Indian Penal Code and was directed that the applicant shall suffer rigorous imprisonment for one year and shall pay a fine of Rs. 2,000/-, and in default he shall suffer rigorous imprisonment for one month. The learned Magistrate also convicted the applicant for the offence punishable u/s 323 of the Indian Penal Code and he was directed to suffer rigorous imprisonment for three months on that count and also to pay a fine of Rs. 500/-, and in default to suffer rigorous imprisonment for eight days. The learned Magistrate, however, acquitted the applicant for the offence punishable u/s 504 of the Indian Penal Code.

Since the applicant was dissatisfied with the verdict which was handed down to him, preferred an appeal in the court of Sessions Judge at Ahmednagar. The said appeal was registered as Criminal Appeal No. 68 of 1997. The said appeal was made over to the file of the Additional Sessions Judge, Ahmednagar.

6. After hearing both the applicant and the learned Prosecutor, the learned lower appellate court partly allowed the appeal by his judgment and order, dated 17.7.2000, by which the appellate court was pleased to maintain the applicant's conviction and order of sentence passed by the learned Magistrate for the offence punishable u/s 324 of the Indian Penal Code, however, the order of conviction and sentence in respect of the offence punishable u/s 323 of the Indian Penal Code was set aside.

7. It is against these two judgments and orders, the applicant has approached to this court in the present Revision questioning the correctness of both the judgments and orders convicting him for the offence punishable under Sections 324 of the Indian Penal Code.

8. On 31.7.2000, this court was pleased to issue notice to the State and on 14.8.2000 the applicant was released on bail by this court. The Revision was admitted for its final hearing on 15.2.2002.

9. I have heard Shri S.S.Jadhavar, learned counsel for the applicant and Shri D.R.Korde, learned A.P.P. for the respondent/State. With the assistance of both the learned counsel and the learned A.P.P. I have gone through the impugned judgments.

10. The learned counsel for the applicant urged before this court that the court should also peruse the record and proceedings of the trial court, since both the courts below have evaluated the prosecution evidence erroneously resulting into miscarriage of justice. The learned counsel for the applicant submitted that the impugned orders of both the courts below are outcome of perverse approach on the part of both the courts below.

11. The learned counsel for the applicant strenuously urged before me that in view of the glaring discrepancies in the evidence of the witnesses, who were

examined as eye witnesses by the prosecution during trial, there is a serious doubt as to really the said incident has occurred, as alleged by these eye witnesses. He further submitted that the manner in which the investigation is carried out in the present case creates serious doubt about the truthfulness and genuineness of the entire prosecution case itself. He submitted that the present applicant is innocent and was falsely implicated. Therefore, he, with all humility at his command, submitted that this is a fit case wherein this court should interfere with the concurrent finding recorded by both the courts below and the applicant be acquitted.

12. Per contra, learned Additional Public Prosecutor appearing for the respondent/ State submitted that the finding of fact is recorded by the courts below. According to him, there is no fault on the part of the courts below to reach to the conclusion, since ample evidence is available against the present applicant. He supported both the judgments of the courts below and prayed that the present Revision be dismissed.

13. Though a very detailed first information report (Exh.36) was lodged by Dnyandev (PW 1), his evidence from the witness box is very cryptic. Nothing was stated from the witness box by him that when he reached to the house of Vishwanath (injured), he found that injured was unconscious. His evidence does not disclose that Sindhubai (PW 5), the wife of injured Vishwanath, disclosed to him that her husband was assaulted by present applicant. Evidence of Dnyandev reveals that Sindhubai asked him to take her husband at Mirajgaon by jeep.

The first information report is not a substantive evidence, but it can be used both for corroboration or for contradiction to it's maker or even to the other witnesses.

In the backdrop of this settled principle of law, evaluation of the testimony of PW 1 Dnyandev shows that at the earliest PW 5 Sindhubai did not disclose to him the name of the present applicant as the author of the injury received by her husband Vishwanath.

14. PW 9 Dr.Kshirsagar on 30.1.1991 examined injured Vishwanath at Primary Health Centre, Mirajgaon. On his examination, he found following injuries.

(1) C.L.W. on left parietal region 4" x 1" x ?".

(2) Contusion of 4" below the right scapular region on oblique of 3" x 1".

According to the doctor, the injuries were grievous. The cause of the injury was hard and blunt object. According to the doctor, the injury can be sustained due to assault by stick. PW 9 Dr. Devdatta has accepted the suggestion given to him in his cross- examination that the injuries are possible if the person hits with the frame of the door while entering into the house.

15. PW 2 Vishwanath's evidence shows that at the time of incident, he and Shahaji (PW 7) were in the door of his house and that time the door was locked. Accused came there along with axe and assaulted on him by means of handle of

axe. One Devidas also came there with the stick and he also assaulted on him by means of stick.

16. PW 3 Chayabai states that on the date and time of the incident when she was returning to her house from the field, she noticed a quarrel in progress in between the applicant and the injured Vishwanath and she intervened in the said scuffle. It was noticed by her that the clothes of Vishwanath were stained with blood. The evidence of Sindhubai, wife of injured, shows that at the time Chayabai was with her and she was preparing food, she heard shouts, therefore, she noticed that the applicant was holding an axe in his hand and made an assault on her husband. Her husband sustained injury on his head. His clothes were stained with blood. Herself and Chayabai rescued injured Vishwanath.

17. Another eye witness PW 7 Shahaji's testimony shows that on the date and time of the incident, he was sitting with injured Vishwanath and was chitchatting. In the mean while, the applicant came there and assaulted on his head with stick.

18. The glaring discrepancies appearing in the evidence of these prosecution witnesses lead me to exercise my powers u/s 401 of the Code of Criminal Procedure to evaluate the evidence of the prosecution witnesses to avoid miscarriage of justice.

19. The evidence of PW 3 Chayabai and PW 5 Sindhubai (wife of injured) is completely silent about the presence of PW 7 Shahaji with the injured. The evidence PW 3 Chayabai shows that she intervened the quarrel. Had really Shahaji been present at the spot, then he would have intervened in the said quarrel as claimed by Chayabai or ought to have taken some steps in the matter. It is established on record through his evidence that Shahaji is having political connection in the Grampanchayat elections. He has admitted that there are two factions in the village, one led by Maruti Pabale and another by Jagannath Rabade. He has very readily accepted that he belongs to fraction of Maruti Pabale, however, his evidence shows that he was not able to tell from which faction the applicant was contesting election. Though he was unable to tell the faction to which the present applicant belongs, however, that shows that the applicant was contesting the Grampanchayat election, which clearly goes to show and suggest that present applicant is not belonging to the faction in the Grampanchayat election to which Shahaji (PW 7) belongs. In cross-examination, he has admitted that, in another case filed by injured Vishwanath against the present applicant, his name was mentioned as a witness, though he did not witness the said incident, however, from this one can very firmly reach to the conclusion that PW 7 Shahaji is having very close acquaintance with injured Vishwanath and nursing grudge against the present applicant by him is not completely ruled out.

20. In the backdrop of this position, non- mentioning about the presence of Shahaji by two ladies, PW 3 Chayabai and PW 5 Sindhubai (wife of the injured) creates a very serious doubt about his presence on the spot at the time of the

incident.

21. PW 2 injured Vishwanath is completely silent in his entire evidence about the quarrel in between him and the applicant. His evidence discloses that at the relevant time he was at the door of his house and the door was locked. The evidence of Sindhubai reveals that she was with Chayabai and was preparing food. If she was preparing food inside the house with Chayabai, who is not her family member, there was no reason that the door of the house will be locked.

22. PW3 Chayabai is completely silent in the court that the quarrel was intervened by Chayabai and by Sindhubai, as claimed by them, respectively. This will also be another factor as to how much weight the court should give in respect of the prosecution case to reach to the conclusion that the prosecution has proved its case against the present applicant beyond reasonable doubt.

23. As per the first information report (Exh.36), Sindhubai disclosed to the first informant that the weapon used in the assault was a stick. As per the evidence of PW 2 injured Vishwanath shows that the applicant/accused came on the spot along with axe and assault was made on him by the handle of the axe. PW 3 Chayabai is silent about the weapon used. PW 5 Sindhubai asserts that her husband was assaulted by the handle of the axe. PW 7 Shahaji claims that the weapon was a stick.

Thus, on the record there are two versions available in respect of the weapon that was used i.e. (1) the handle of axe, and (2) the stick. Though, it is not the case of any of the prosecution witness that the sharp portion of the axe was used during the assault, however, according to one set of prosecution witnesses, the case is that the blunt portion, namely the handle of the axe, was used.

During the course of the investigation, no axe is seized. A stick is seized as per the seizure panchanama (Exh.35) on 3.2.1991. Though the panch witnesses to this panchanama turned hostile, this panchanama was proved by the investigating officer Govind Warat (PW 12). The panchanama does not show that the stick was stained with blood. What is important is that though this stick was seized, the same was not produced before the court during trial. This fact is admitted by the investigating officer in his cross-examination, which is reproduced as under :-

It is true that the article i.e. stick seized is not before the court.

24. Though the evidence of PW 3 Chayabai, PW 5 Sindhubai and PW 4 Uttam reveal that blood was oozing from the injury from the head of Vishwanath, the investigating officer has not seized the blood stained clothes of injured Vishwanath.

PW 2 Vishwanath has stated in his examination-in- chief as under :-

The accused told me that I have loss with his wood business, and assaulted me by handle of axe. Devidas also came with a stick and he has also assaulted me

by a stick.

Now, who is this Devidas is not at all brought on record by the prosecution. Thus, from the evidence of the injured himself, he was assaulted by two persons, if his evidence is to be believed.

25. Both the courts below have completely erred in not examining the evidence of the prosecution analytically. The courts below are duty bound and are under obligation to scrutinize each piece of evidence brought on record by the prosecution with utmost care and with analytical mind. The court should not readily accept the face value version of the prosecution witnesses unless those are corroborated with each other on material aspect. The entire case of the prosecution has to be examined and has to be scrutinized with care and by giving due importance to every aspect that would be emerging from analytical survey of the prosecution case, so as to record conclusive finding against the accused that the prosecution has proved its case beyond reasonable doubt, then only it can be said that there is no miscarriage of justice, if the accused is convicted. The main object in the administration of justice is to give legal justice to the parties to the proceedings. During the process of said administration of justice, if it is noticed that legal justice is victim due to the incorrect and/or erroneous appreciation of the evidence, then the Revisional court will not shirk its responsibility to re-appreciate the evidence of the prosecution case afresh to do the justice in accordance with law.

26. The afore said analytical survey of the prosecution case clearly shows that right from beginning the prosecution tried to hide the truth from the record. In the backdrop of the evidence of the injured and the prosecution witnesses who are mostly related to the injured, the suggestion given to the doctor in his cross-examination, as observed in the preceding paragraph of this judgment, assumes importance.

27. Over all survey and discussion leads me to reach to the conclusion that the prosecution has failed to bring home the guilt of the applicant/accused beyond reasonable doubt and surely the applicant/accused is entitled for the benefit of doubt. Hence, interference to the judgments of the courts below is called for.

28. The judgment and order of conviction, passed by the Judicial Magistrate, First Class, Karjat, dated 29.9.1997 together with the judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar, dated 17.7.2000 convicting the applicant for the offence punishable u/s 324 of the Indian Penal Code is hereby quashed and set aside. The bail bonds of the applicant stands cancelled. Revision allowed.