

(2017) 04 BOM CK 0198
In the Bombay High Court
Case No : 188 of 2002

Kirtilal s/o Yashwant Garfade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Indian Penal Code, 1860, Section 353,
Section 333 - Assault or criminal force to deter public
servant from discharge of his duty - Voluntarily causing grievous hurt to deter public
servant fro

Citation : (2017) 04 BOM CK 0198

Hon'ble Judges : Indira Jain

Bench : SINGLE BENCH

Advocate : V.N. Morande, R.S. Nayak

Judgement

1. This appeal takes an exception to the judgment and order dated 01/04/2002 passed by the learned Ad hoc Additional Sessions Judge, Gadchiroli in Sessions Case No.7/2001 convicting the appellant-accused of the offences punishable under Sections 333 and 353 of the Indian Penal Code and sentencing him as under :

Sections Sentence Fine

333 IPC R.I. for 3 years + Fine of Rs.1,000/-, in default R.I. for 6 months.

353 IPC R.I. for 6 months + Fine of Rs.500/-, in default R.I. for 3 months.

Both the sentences were directed to run concurrently.

2. Prosecution case, which can be revealed from the charge-sheet and connecting papers thereto, may be stated, in brief, as under : i. Complainant Dr. Haridas Nanduji Nandeshwar was attached to Allopathic Hospital of Zilla Parishad, Jogisakhara since 1996 as Assistant Medical Officer. A peon and a nurse were also working in the said hospital. Accused was resident of village Jogisakhara. He was son of ex-sarpanch of the village.

ii. Incident occurred on 05/02/2000 at around 04:15 p.m. Accused went to the hospital. Complainant was on duty. Accused asked complainant that he received an injury due to bullock bite on his finger and asked him to apply bandage. Complainant put medicated cotton swab on injury on the finger of accused and asked him to hold the same so that he can bring bandage and medicines. It is the case of the prosecution that on that, accused arrogantly told the complainant that it is not his job to hold cotton swab and saying so delivered two fist blows on the chest of complainant. Complainant fell down. He then got up. Accused pulled and pushed the complainant. He caught left hand of complainant and pressed it forcibly in the wooden door. Thereafter, accused delivered blows on the chest of complainant and abused him in filthy language.

iii. Complainant received multiple injuries including a fracture to the left hand. Thereafter, complainant went to the house of PW-3 Jagannath Bhagadkar, who was serving in the same hospital and narrated the incident to him. Then, he had been to Armori Police Station and lodged report. Crime No.6/2000 was registered against the accused. Investigation was taken over by PW-6 ASI Purushottam Thakare. He went to the spot of incident and recorded spot panchnama. Statement of witnesses were recorded.

iv. Meanwhile, complainant was referred to Rural Hospital Armori. PW-7 Dr. Riyaz Ahemad was the Medical Officer on duty. He examined the complainant and found injuries on left wrist, shoulder and tenderness over fingers of left hand and left lumbar region. Patient was referred to General Hospital, Gadchiroli for X-Ray. Technician Shri Madami took X-Ray of complainant. From the X-Ray, fracture of scaphoid left bone was noticed. Medical Certificate was accordingly issued by the Doctor. Investigating Officer collected the Medical Certificate and on completion of investigation, submitted charge-sheet to the Court of Judicial Magistrate First Class, Armori, who in turn committed the case for trial to the Court of Sessions.

3. On committal, Trial Court framed charge against the accused vide Exh.2. He pleaded not guilty and claimed to be tried. His defence was of total denial and false implication. Accused submitted that he had not gone to the hospital and he did not receive any injury as stated by the complainant. He submitted that accused used to remain absent from duty. He was coming late to the hospital and, therefore, complaint was made to higher authority. Complainant came to know about the same and to take vengeance, lodged false complaint against the accused.

4. Prosecution examined in all seven witnesses in support of its case. Considering the evidence of prosecution witnesses and submissions made on behalf of the parties, Trial Court came to the conclusion that offences under Section 333 and 353 of the Indian Penal Code have been proved and in consequence thereof convicted the accused as stated in paragraph 1 above. Being aggrieved by the judgment and order of conviction and sentence, appellant-accused has preferred this appeal.

5. Heard Shri V.N. Morande, learned Counsel for the appellant and Shri R.S. Nayak, learned A.P.P. for the State. With the assistance of the learned Counsel for the parties, this Court has gone through the evidence of prosecution witnesses. On meticulous evaluation of the evidence of star witnesses i.e. complainant and Medical Officer, who examined the complainant, and taking into consideration the submissions made on behalf of the parties, reasonings recorded by the Trial Court, this Court, for the below mentioned reasons, is of the view that prosecution could not succeed in proving the guilt of accused beyond reasonable doubt.

6. PW-4 Haridas Nandeshwar is the complainant. He stated that on the day of incident at about 04:00 p.m., he was in O.P.D. According to complainant, accused Kirtilal came to O.P.D. at 04:15 p.m. He told the doctor that he received injury to his finger due to bullock bite and asked him to apply bandage. It is the say of complainant that he registered the name of accused in O.P.D. register. Copy of O.P.D. register is not filed on record. Accused has denied that he had been to the hospital at any time. In view of specific denial, it was incumbent on prosecution to produce copy of O.P.D. register, which would have thrown light on visit of accused to the hospital and injury on his finger as stated by the complainant.

7. On occurrence of incident, PW-4 Dr. Nandeshwar stated that he put medicated cotton swab on finger of accused and asked him to hold the same so that he can bring medicines. On that, accused told PW-4 that it is not his job to hold the cotton swab and gave fist blows twice on his chest. He fell down and then got up. Accused abused him. When he asked the accused not to abuse, he raised his hand to beat him. Again he gave fist blows and complainant fell down. Thereafter, accused caught hold hand of complainant and pushed his hand forcibly in the door, due to which he received fracture over wrist and other injuries. It is also stated that accused threw articles which were kept on table and uttering filthy abuses left the O.P.D.

8. So far as occurrence is concerned, except PW-4 complainant, prosecution did not examine any other witness. It appears from the evidence of complainant that at the relevant time, he was alone in the O.P.D. It is significant to note that incident took place at 04:15 p.m. It was a Government hospital. It is the case of prosecution that at the relevant time, a peon and a nurse were also attached to the said hospital. Investigating Officer PW-6 ASI Thakare nowhere states in his evidence that during investigation, he tried to record the statement of witnesses and it was revealed that complainant was the only person, who was present at the time of occurrence of incident. F.I.R. [Exh.11] indicates that Shri Bhagadkar, Health Assistant and Smt. Khanke (Butle), a nurse both were appointed in the hospital, in which complainant was the Medical Officer. It is stated in F.I.R. that at the relevant time, both were not available in the hospital. There is no whisper in the evidence of complainant that except accused, no other patients were present in the hospital. The reasons for quarrel assigned by the complainant appears to be improbable and unreasonable that a person having received injury

on finger was asked to just hold a cotton swab and instead of holding the cotton swab, he started assaulting the treating doctor. Accused has raised a defence that complainant used to come late in the hospital. Most of the times, he was remaining absent from duty and so his father and several other person made a complaint against him. It is not denied that father of accused was ex-sarpanch. In the light of this defence raised by the accused, it was necessary for the prosecution to bring corroboration to the testimony of the complainant.

9. PW-3 Jagannath Bhagadkar was serving in the same P.H.C. He is the person to whom complainant has made immediate disclosure of the incident. PW-3 does not support the prosecution. He was declared hostile and nothing could be elicited in his cross-examination by the learned A.P.P. to show that he had a reason to side the accused, except a fact that he was knowing the accused.

10. Learned A.P.P. has placed reliance on the testimony of PW-5 Dr. Malik and PW-7 Dr. Riyaz and submitted that injuries on the person of the complainant have been proved and medical evidence corroborates the testimony of complainant. So far as PW-5 Dr. Malik is concerned, it is interesting to note that he was not the Medical Officer In-charge of Civil Hospital, Gadchiroli, where X-Ray of complainant was taken. His evidence clearly indicates that he was not at all concerned with the X-Ray of complainant, as the X-Ray was taken by technician Shri Madami and Dr. Indurkar, who was the Medical Officer at the relevant time. Neither technician Madami nor Medical Officer Indurkar came to be examined by the prosecution.

11. The moot question would be, whether PW-5 Dr. Malik can be said to be a competent witness on X-Ray of the complainant. It appears from the admissions elicited in the cross-examination of PW-5 Dr. Malik that simply on the basis of a chit pasted on X-Ray plate, he brought the X-Ray and produced the same before the Court. It is not known whether this X-Ray was collected during the course of investigation by the Investigating Officer and it was a part of charge-sheet or not.

12. In any case, evidence of PW-5 Dr. Malik would not be helpful to the prosecution, as he was not the person to take X-Ray or the Medical Officer under whose supervision X-Ray was taken. Even copy of M.L.C. register was not produced by PW-5 Dr. Malik, which would have thrown light on the fact that complainant had been to the hospital for X-Ray and his X-Ray was taken. In view of the drawback and for non-examination of the competent witness on X-Ray of the complainant, it cannot be said that prosecution has legally proved X-Ray plate and legally established the fact that complainant sustained fracture.

13. PW-7 Dr. Riyaz was the Medical Officer at Rural Hospital, Armori. He stated that on 05/02/2000, injured Haridas Nandeshwar was brought to the hospital by police. He examined the injured and noticed the following injuries.

(i) Contusion on left wrist - size 3 x 3 cm.

(ii) Mild contusion on left shoulder.

(iii) Tenderness over four fingers of left hand.

(iv) Tenderness over left lumber region.

14. According to the Medical Officer, Injury Nos. (iii) and (iv) were simple injuries and could cause by hard and blunt object. Regarding Injury Nos.(i) and (ii), it is stated by the Medical Officer that only after X-Ray, it could be commented whether there was a fracture to left wrist joint or left shoulder joint. So far as X-Ray is concerned, this Court has already observed that evidence is deficient and for non-examination of the competent witness, reliance cannot be placed on X-Ray plate. Injury Nos.(iii) and (iv) are not the injuries in real sense and even according to the Doctor, tenderness over four fingers of left hand and over left lumber region was noticed. It is stated by the Medical Officer that no obvious bony deformity was found on the finger and no rigidity was noticed on the lumber region. Medical Certificate [Exh.28] appears to be in two parts. The first part relates to the injuries stated by the Medical Officer and the second part is regarding X-Ray Report by the Medical Officer of Civil Hospital, Gadchiroli. So far as second part is concerned, concerned Medical Officer has not been examined. So far as injuries as stated by PW-7 are concerned, he could not opined regarding Injury Nos.(i) & (ii) as, according to him, same could be commented only after receipt of X-Ray report. Prosecution has not assigned any reason for non-examining the Medical Officer on X-Ray report. As the Medical Officer is not examined, X-Ray report is required to be kept out of consideration and if X-Ray report is kept out of consideration, offence under Section 333 of the Indian Penal Code would fail.

15. Regarding offence under Section 353 of the Indian Penal Code, prosecution wants to rely upon the sole testimony of the complainant. For non-production of copy of extract of O.P.D. register, absence of evidence to show that accused had been to the hospital with an injury to his finger due to bullock bite and for want of corroboration to the testimony of complainant, against whom serious allegations of absence from duty and coming late to the office were levelled, this Court is of the opinion that it is risky to rely upon the sole testimony of complainant, particularly, in the light of specific defence raised by the accused.

16. In the above premise, the judgment and order of conviction recorded by the trial Court is unsustainable and interference is warranted in the present appeal Hence, the following order. O R D E R

i. Criminal Appeal No.188/2002 is allowed.

ii. Impugned judgment and order of conviction and sentence of the appellant-accused passed by the learned Ad hoc Additional Sessions Judge, Gadchiroli, dated 01/04/2002 in Sessions Trial No.7/2001 is quashed and set aside.

iii. Accused is acquitted of the offences punishable under Sections 333 and 353 of the Indian Penal Code.

iv. His bail bonds stand cancelled.

v. Fine, if paid, shall be refunded to the appellantaccused.

vi. No costs.