
(2014) 09 BOM CK 0050

In the Bombay High Court

Case No : Criminal Revision Application No. 479 of 2013

Pandharinath Tukaram Raut

APPELLANT

Vs

Manohar Sadashiv Thorve

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228, 228(1)(a)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2014) 09 BOM CK 0050

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

Bench : Single Bench

Advocate : A.P. Mundargi, Senior Counsel i/by Satyajeet H. Joshi, Advocate for the Appellant; Bhushan Deshmukh i/by Uday Warunjikar, Ranjeet Patil i/by K.S. Patil and Y.S. Shinde, A.P.P, Advocate for the Respondent

Judgement

A.M. Thipsay, J.—The Applicant No.1 is the original First Informant. On the report lodged by him, a case in respect of offences punishable under sections 307 IPC, 325 IPC, 323 IPC, 147 IPC, 148 IPC, 341 IPC read with section 149 of the IPC came to be registered on 1st April, 2009. In the course of investigation, the Respondent Nos. 1 to 9, who were named as the assailants in the First Information Report, came to be arrested. On completion of investigation, a Charge-Sheet came to be filed in the Court of the Magistrate and as the case included the offence punishable under section 307 of the IPC, which is triable exclusively by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The case was pending before the Court of Sessions for quite some time when the Respondent Nos. 1 to 9 made an application contending that no case of an offence punishable under section 307 of the IPC was made out from the police report and accompanying documents; and that, therefore, the accusation with respect to the said offence be deleted and the case be sent back to the Judicial Magistrate, First Class, Karjat, in accordance with the provisions of section 228(1)(a) of the Code of Criminal Procedure ("the Code" for short). This application was opposed by the prosecution. The learned

Judge, however, by the impugned order, allowed the said application stating that the accused were discharged with respect to the offence punishable under section 307 of the IPC. The learned Assistant Sessions Judge directed that the charge with respect to other offences would be framed and thereafter the case would be sent to the Judicial Magistrate, First Class, Karjat in accordance with clause (a) of sub-section (1) of section 228 of the Code for holding a trial in accordance with law.

2. Being aggrieved by the said order discharging the Respondent Nos. 1 to 9 from the accusation of an offence punishable under section 307 of the IPC, the Applicants, who claim to be the victims of the offences, have approached this court by filing the present Revision Application.

3. I have heard Mr. A.P. Mundargi, the learned Senior Advocate for the Applicants. I have heard Mr. Bhushan Deshmukh, the learned Counsel for the Respondent Nos. 1, 2, 5 and 9. I have heard Mr. Ranjeet Patil, the learned Counsel for the Respondent Nos. 3, 4, 6, 7 and 8. I have heard Mr. Y.S. Shinde, the learned Additional Public Prosecutor for the Respondent No.10-State.

4. By consent, the Criminal Revision Application was heard finally at the admission stage itself.

5. Mr. Mundargi, the learned Counsel for the Applicants, submitted that the impugned order is patently erroneous. He submitted that there was absolutely no basis for holding, at the stage of framing of charge, that no offence punishable under section 307 of the IPC was made out. He also submitted that such a conclusion, at best, could have been arrived at only after evidence would have been adduced during the trial. He also submitted that, even otherwise, the reasons given by the learned Judge for coming to a conclusion that the case did not disclose any offence punishable under section 307 of the IPC are factually and legally incorrect. He submitted that even the facts reflected in the Charge-Sheet have not been properly dealt with by the learned Judge and some of the observations with respect to the facts made by the learned Judge are actually conflicting with the material on record.

6. The learned Counsel for the Respondent Nos. 1 to 9, however, submitted that the impugned order is proper and legal. It is submitted that the Criminal Revision Application is not maintainable at all. The grounds on which the maintainability of the Criminal Revision Application is challenged are two - the first being that the Sessions Case in question being a State case, the Applicants, who are private parties, are not entitled to challenge the order passed by the learned Assistant Sessions Judge and the second being that the impugned order being an interlocutory order, the powers of revision cannot be exercised in relation to the said order.

7. Before going further, the issue regarding the maintainability of the Criminal Revision Application, as raised by Mr. Bhushan Deshmukh, the learned Counsel for the Respondent Nos. 1, 2, 5 and 9, be dealt with. Mr. Deshmukh placed

reliance on the decision of the Supreme Court of India in the case of Dr. Subramanian Swamy and Others Vs. Raju, through Member, Juvenile Justice Board and Another, , to support his contention that in a prosecution initiated by the State, a third party / stranger would not have any right to participate. I have gone through the said reported judgment and I am unable to hold that this judgment lays down a proposition that in a prosecution initiated by the State, a private party has no right to challenge the order passed in the course of said prosecution by filing an application for revision. Moreover, in this case, the Applicants are the victims of the alleged offences and by no stretch of imagination can be said to be "strangers" to the proceedings. Mr. Deshmukh also placed reliance on a decision rendered by a learned Single Judge of the Karnataka High Court in the case of Kerala Transport Co. Vs. D.S. Soma Shekar and Others, , in support of his contention that the First Informant has no locus standi to file a revision in a prosecution initiated by the State. Indeed, it appears that, the observations made by the learned Single Judge support the contention advanced by Mr. Deshmukh, but, with respect, I am unable to agree with the view expressed by the learned Judge in the said judgment. It is clear from the scheme of the relevant provisions that the revisional power belongs basically to the Court. The Court can call for the record and proceedings even "suo-motu" and revise the order. When the court has been given powers to revise an order "suo-motu", it would be rather futile to raise the issue of locus standi. In fact, a party applying for revision is only drawing the attention of the court to a particular alleged illegality, impropriety or irregularity. Moreover, as aforesaid, in this case the Applicants are not "strangers" to the prosecution, in as much as, though the prosecution has been initiated by the State, the Applicants are the victims of the offence. The Applicant No.1 is the one who initiated the process of criminal law against the accused persons. The contention that the Criminal Revision Application is not maintainable as the Applicants have no "locus standi" to file the same is, therefore, untenable and is rejected.

8. Mr. Deshmukh also placed reliance on the observations made by the Supreme Court of India in the case of V.C. Shukla Vs. State through C.B.I., , in support of his contention that the order framing charge is an interlocutory order. Though much can be said about what exactly is the ratio of the said decision, it is not necessary to go into that for the present, in as much as, what the Applicants are challenging is not the order framing charge of lesser offences, but they are challenging the order discharging the accused from the charge in respect of an offence punishable under section 307 of the IPC. Mr. Deshmukh made a feeble attempt to contend that the order impugned is the order framing charge of lesser offences, but such a contention cannot at all be accepted. The challenge is not to that part which directs framing of a charge with respect to the lesser offences, but the challenge is to the part which directs discharge of the accused from an offence punishable under section 307 of the IPC. Thus, even the second contention, being without merit, is liable to be rejected forthwith.

9. Coming to the merits of the matter, with the assistance of the learned Counsel

for the parties and the learned A.P.P., I have examined the annexures to the Revision Application and the impugned order carefully.

10. The version of the Applicant No.1, the First Informant, is that he received a telephone call from his cousin Bhaskar Vasudev Raut that the key of the First Informant's Tavera Motor Car was taken away by Atul Babu Thorve (Respondent No.4) and Vishwanath @ Papya Sadashiv Thorve (Respondent No.2). The Applicant No.1, therefore, left for coming to the place where the key of the said car had been reportedly taken away by the said two persons. Near Karjat Post Office, the Applicant No.1 met Balu Pundalik Thorve (Respondent No.8). When the Applicant No.1 asked him as to why the key of his car had been taken away, Balu Thorve (Respondent No.8) told him that he may take away his car and that he would telephone to Atul Thorve (Respondent No.4) and Papya Thorve (Respondent No.2). The Applicant No.1 then went to the house of Ramesh Kashinath Thorve (Respondent No.7), where his car was standing. That, at that place all the Respondents were standing. Manohar Thorve (Respondent No.1) was having an iron rod in his hand. Papya Thorve (Respondent No.2) was having an iron pipe in his hand and Ganesh Thorve (Respondent No.3) was having an iron bar in his hand. Atul Thorve (Respondent No.4) was also having an iron rod in his hand. The others were having sticks with them. The First Informant demanded the key of his motor car from Atul and Papya. At that time, the Respondent Nos. 1 to 9 started assaulting the Applicant No.1 and also the Applicant No.2, who was with him, as also one Vasudev Bhage Raut. It is on these facts that the Applicant No.1 lodged a report that because of some dispute between the Applicant No.1 and the accused persons, the accused persons had formed an unlawful assembly and had, by dangerous weapons, assaulted him, the Applicant No.2 Bhaskar Vasudev Raut and one Vasudev Bhage Raut with the intention necessary for the offence of murder.

11. Mr. Murdargi, the learned counsel for the Applicants, has drawn my attention to the medical certificate in respect of the injuries sustained by the Applicants. It appears that the Applicant No.1 had sustained six injuries on his person, out of which four were certified as ""grievous "" . It also appears that one injury was on the head i.e. over left temporoparietal region of scalp. It appears that there were three injuries on the person of Applicant No.2, out of which two were fracture injuries. Mr. Mundargi has also drawn my attention to the fact that during the course of investigation, the weapons allegedly used by the accused persons, i.e. iron rod, iron pipe, sticks etc., came to be recovered. The substance of the contentions advanced by Mr. Mundargi is that when the Applicants were assaulted by a number of persons who were holding dangerous weapons like iron rods, iron pipe, sticks etc. and when the Applicants had sustained injuries even on the vital part of their bodies, there was no question of ruling out the accusation of an offence punishable under section 307 of the IPC.

12. The learned Counsel for the Respondents, on the other hand, submitted that the serious injuries, i.e. the fracture injuries, are only on the legs of the

Applicants and that the injury on the head of the Applicant No.1 has been opined to be simple. It is, therefore, submitted that the incident which had taken place without any premeditation, where the accused persons did not try to cause any injuries on the vital parts of the body, reveals only a lesser offence, namely, an offence punishable under section 325 of the IPC, as held by the learned Assistant Sessions Judge and that, therefore, there is no occasion to interfere in the matter.

13. I have carefully gone through the impugned order and examined reasons, as mentioned by the learned Assistant Sessions Judge in his order, for coming to the conclusion that no case of an offence punishable under section 307 of the IPC was, prima-facie, disclosed. The learned Judge, in the initial part of his order, noted the contentions of the parties. The learned Judge noted the contentions advanced on behalf of the accused that the serious injuries sustained by the victims were not on the vital parts of their bodies. The learned Judge also noted the contentions of the accused persons that in order to make out a case of an offence punishable under section 307 of the IPC, the weapons used in the offence must be "sharp edged" or fire arms, and that the weapons used in the present case were iron rods, iron pipe, iron bar and sticks, which were blunt objects. The learned Judge noted that there were injuries on the head and chest also, which are vital parts, but those injuries were simple.

14. The reasoning of the learned Judge is found in para 14 of the impugned order. The learned Judge observed that the ingredients of an offence punishable under section 307 of the IPC were not disclosed from the facts alleged, particularly, because the quarrel started suddenly. The learned Judge observed that the arrival of the Applicant No.1 at village Posari was not within the knowledge of the accused. The learned Judge further observed that the incident might have lasted for about 20 to 30 minutes and, that, that much time was sufficient for the accused to give death blow to the victims.

15. It is not possible to agree with the reasoning of the learned Assistant Sessions Judge.

16. In the first place, the observation that the Applicant No.1 was to arrive at Village Posari was not within the knowledge of the accused persons, does not appear to be correct. The facts recorded in the First Information Report indicate that the Applicant No.1 was told by one of the accused to go to a particular place and take away his car from there; and that, when the Applicant No.1 went to that place, the accused persons were already standing there with weapons in their hands. Thus, going by the version in the First Information Report, it appears that the Applicant No.1 was directed to that place by one of the accused and it was already expected by the accused persons that he would come there to take his car. The accused persons were already standing at that place with weapons in their hand.

17. Secondly, the importance given by the Assistant Sessions Judge to the aspect of the "injuries sustained by the victims on the vital parts of the body being

simple" is not correct. It is a fact that the victims had sustained serious fracture injuries. True, these injuries were not on the vital parts and the injuries sustained on the vital parts were simple, but from this it would be too much to suggest that the accused persons had deliberately given gentle blows on the vital parts. There would be a natural tendency among the victims to protect the vital parts of the body when facing an assault, and therefore the fact that the injuries caused on the vital parts are simple, would not be conclusive to rule out the intention and or the knowledge requisite for constituting the offence punishable under section 307 of the IPC.

18. However, the crucial aspect of the matter is different. It relates to the approach to be adopted by a court of law at the stage of framing of charge. It is well known, that, at that stage, the court has to take the material appearing in the police report and accompanying documents at face value. The court is not expected to scrutinize the material minutely at that stage and evaluate it for judging what offence would ultimately be proved against the accused persons. The object behind framing a charge is to give a notice to the accused as to what case he is required to meet. The court is empowered to frame more charges than one in respect of a single incident and on the same facts. Such charges can be in addition to one another, or even in the alternative.

19. Whether the commission of an offence punishable under section 307 of the IPC is disclosed cannot be decided only on the basis that there was no injury on the vital parts of the body of the victims. In fact, what matters in that regard is the state of mind of the offender and it is not necessary at all, that an accusation of an offence punishable under section 307 of the IPC can be successfully levelled only when an injury is caused to the victim. True, that usually the intention is to be gathered from the nature of injuries inflicted, but that would not be the sole criteria. In this case the facts, as alleged, show that the accused persons had already assembled at a particular place after having made preparation for attacking the 1st Applicant, whose arrival at that spot was being anticipated by them. The Applicants together suffered six serious injuries on their person. The weapons used were quite dangerous and blows on the vital parts by those weapons might have proved fatal. The only fact that no such serious injuries were inflicted on the vital parts of the body of the Applicants, by itself, would not, at this stage, relieve the accused persons from facing a charge in respect of an offence punishable under section 307 of the IPC. Such analysis of the matter can be done only after evidence is adduced during trial.

20. It is not to suggest that the offence allegedly committed by the accused persons must fall within the penal provisions of section 307 of the IPC and that it can never fall within the penal provisions of section 326 of the IPC or 325 of the IPC. But what is important to note is that this aspect could be decided in a satisfactory manner only on the basis of evidence. It would be hazardous at this stage to rule out the possibility of the offence in question being one punishable under section 307 of the IPC.

21. The learned Assistant Sessions Judge should have kept the question open and the only way of keeping it open was to frame a charge also in respect of an offence punishable under section 307 of the IPC. Whether that charge would ultimately be proved or not was not the matter that was required to be considered at the stage of framing of charge. Moreover, the accused persons would lose nothing by framing of a charge of a graver offence, when no new facts and/or additional facts or new evidence was being introduced.

22. The learned Additional Sessions Judge was, therefore, clearly in error in declining to frame a charge in respect of an offence punishable under section 307 of the IPC and in directing the matter to be remanded back to the Judicial Magistrate, First Class, Karjat, for proceeding with the trial on the charge of an offence punishable under section 325 of the IPC. The order passed by him is contrary to law and, therefore, needs to be interfered with in the interest of justice.

23. The Criminal Revision Application is allowed. The impugned order, dated 21st September, 2013, passed by the Assistant Sessions Judge, Raigad, Alibag in Sessions Case No.54 of 2010, is set aside.

24. The learned Assistant Sessions Judge, Raigad, Alibag, shall proceed further with the case in accordance with law.