
(2015) 03 BOM CK 0345

In the Bombay High Court

Case No : Criminal Revision Application No. 170 of 2003

Pandurang and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294
Penal Code, 1860 (IPC) — Section 325, 326, 34, 504

Citation : (2015) 03 BOM CK 0345

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : S.S. Bora, for the Appellant; U.S. Mote, APP, Advocates for the Respondent

Judgement

Sadhana S. Jadhav, J—Heard Adv. Mr. S.S. Bora for the revision applicants, and the learned APP Mr. U.S. Mote for the respondent -State.

2. At the threshold, the learned Counsel for the applicants has submitted that the applicant no.1, Pandurang s/o. Gangaram Budhewant, and applicant no.4, Gangaram Mahadeo Budhewant, have expired during the pendency of the present revision application. Hence, the revision application stands abated as far as applicant no.1, Pandurang s/o. Gangaram Budhewant, and applicant no.4, Gangaram Mahadeo Budhewant, are concerned.

3. The learned Counsel for the applicants has argued on behalf of applicant no.2, Sudhakar s/o. Gangaram Budhewant, and applicant no.3, Awandas s/o. Gangaram Budhewant.

4. The applicants herein are convicted for the offence punishable under Section 326, read with Section 34, of the Indian Penal code, by the learned Judicial Magistrate (F.C.), Dharmabad [District : Nanded], vide judgment and order dated 24th September 1998, in Regular Criminal Case No. 140/1997.

5. Being aggrieved by the judgment and order of conviction, the applicants

herein filed Criminal Appeal No. 22/1998 before the Court of Sessions at Biloli. The learned Additional Sessions Judge, Biloli, vide judgment and order dated 19th April 2003, has dismissed the appeal. Hence, the present revision.

6. Such of the facts necessary for the decision of this revision application, are as follows :-

On 22nd February 1997, Gangaram s/o. Chimanji Gaikwad lodged a report at Dharmabad Police Station, alleging therein that he was on inimical terms with the present applicants and the deceased applicants. On 22nd February 1997, at about 7.00 a.m., the informant was working as an agricultural labour in the land of one Renewad. Suddenly, Gangaram and his sons i.e. present applicant nos.1 to 3, came running towards him. They were armed with sticks. They assaulted the complainant on his hands and legs. When the complainant fell down, applicant no.2 sat on the chest of the complainant and at the instigation of the deceased accused, applicant no.2 had cut both ears and nose of the complainant with a knife. It is alleged, that applicant no.3 was instigating applicant no.2 to cut his ears and nose. They continued to abuse him. When Manohar Gangaram Audhute and Gangaram Lalu Bhoi had come to rescue, applicant nos.3 and 4 threatened them and, therefore, they went away. Thereafter, accused / applicants also fled from the scene of offence. The informant noticed a school going boy Laxman Pandhari passing by the road. He requested the said boy to inform his family members. Thereafter, his wife and other persons arrived at the spot and he was taken to the Civil Hospital at Dharmabad. On the basis of this report, Crime No. 22/1997 was registered against the accused for the offence punishable under Sections 326, 504, read with Section 34 of the IPC. Investigation was set in motion. The accused were arrested. After completion of investigation, charge sheet was filed on 28th April 1997. The case was registered as Regular Criminal Case No. 140/1997. The prosecution examined 7 witnesses to bring home the guilt of the accused.

7. PW 1 Gangadhar Gaikwad is the complainant. He has deposed before the court in consonance with the First Information Report and has proved the contents of the FIR which is marked at Exhibit 18. It is elicited in the cross examination, that the complainant and the accused are on inimical terms for the past 20 years prior to lodging of the report. The learned Judicial Magistrate (F.C.) has recorded an omission in the cross examination in respect of the fact as to whether it was stated in the FIR, that the accused were armed with sticks. Upon perusal of Exhibit 18, it appears that there is specific allegation in the FIR, that when the complainant was working in the Jawar crop, the accused had appeared on the scene of offence and at that time, they were armed with sticks and, therefore, omission is recorded incorrectly. Another omission which is attempted to be elicited is in respect of assault with stick. Upon perusal of Exhibit 18, it appears that there is no omission to that effect. The witness has denied the suggestion that due to his act of attempting to outrage modesty of a woman, the accused had cut his ears and nose. The testimony of the complainant appears to be of a

sterling nature.

8. PW 2 Gangubai Gangaram Gaikwad is the wife of the complainant. She has deposed before the court, that she received a message from a boy, namely, Laxman Pandhari, who had informed her that her husband was assaulted and was lying on the ground. That, she along with her daughter-in-law Chavitrabai had rushed to the spot. She had collected the mutilated parts of the nose and ears of the complainant and had taken them to the hospital along with her husband. She has further stated that the complainant was admitted in the hospital as an indoor patient for 7 days. The complainant had informed her, that the accused nos.1 to 4 had assaulted him and then cut off his nose and ears. She was not cross examined. Hence, the sterling testimony of PW 2 Gangubai would inspire confidence of the court.

9. PW 3 Gangadhar Lalu Jingabhoi, PW 4 Manohar Gangaram Audhute, PW 5 Dinesh Hanmanthrao Raherkar and PW 6 Ganpat Nagorao Katre have not supported the prosecution and have been declared hostile. PW 7 Subhash Babarao Shette happens to be the Investigating Officer. He has deposed before the court, that he had conducted investigation in accordance with law.

10. It is pertinent to note that the accused have admitted the injury certificate of the complainant under Section 294 of the Code of Criminal Procedure, 1973, and therefore, it was not necessary for the prosecution to examine the Doctor who had issued the said certificate.

11. Upon perusal of the injury certificate Exhibit 31, it is apparent that the medical evidence corroborates the allegations made by the complainant. The medical certificate would indicate that there was Avulsion of both the ears as well as Avulsion of nose and there was Haematoma formation on the left leg and Haematoma formation on the upper arm. There is no doubt, that the complainant had been brutally assaulted by all the accused including the present applicants. The prosecution has proved the guilt of the accused beyond reasonable doubt.

12. The substantive sentence imposed upon the applicants was, to undergo rigorous imprisonment for three years. They were also sentenced to pay fine of Rs. 5,000/- each. The incident is of the year 1997. The learned Counsel for the applicants submits that the applicant no.2 has undergone substantive sentence of 31/2 months, whereas applicant no.3 has undergone substantive sentence of 21/2 months. The learned Counsel for the applicants submits that, in fact, there is no overt act attributed to applicant no.3 and, therefore, applicant no.3 deserves to be acquitted.

13. It is proved that no specific overt act is attributed to applicant no.3. However, he was present at the scene of offence. He was instigating applicant no.2 to commit the offence of cutting the ears and nose of the complainant. It prima facie appears that all accused had assembled at the scene of offence and had shared common intention to assault the complainant and, therefore, applicant

no.3 deserves to be convicted with the aid of Section 34 of the IPC.

14. The learned Counsel for the applicants submits that at the time of the incident, applicant no.2 was hardly 20 years of age, whereas applicant no.3 was a student. It is submitted that after a lapse of 18 years of the alleged incident, it would not be proper to send the applicant to jail. They regret that they had committed the said offence. Moreover, it is also submitted that after the alleged incident, the applicants had not indulged into any similar criminal activities and had maintained peace and harmony in the society. There was no quarrel of any kind between the complainant and the applicants although they are residents of the same village.

15. The court is of the opinion, that instead of sending the applicants to jail after a lapse of more than 25 years, enhancing the sentence of fine would meet the ends of justice and the victim would be benefited by the same. Section 325 of the IPC contemplates imprisonment of either description for a term which may extend to 10 years and shall also be liable to pay fine. The learned Judicial Magistrate (F.C.) had imposed a short term sentence upon the applicants. The State has not filed any appeal for enhancement nor the complainant has preferred any revision seeking enhancement of sentence. In view of this, the court is of the opinion that enhancing the sentence of fine to an amount of Rs. 1,50,000/- would meet the ends of justice. The learned Counsel for the applicants, upon instructions, submits that the applicant nos.2 and 3 are willing to compensate the victim by paying a fine of Rs. 1,50,000/- collectively, within a period of four weeks from today.

16. In the result, the Revision Application is partly allowed.

(A) The conviction of the accused / applicants for offence punishable under Section 326, read with Section 34, of the Indian Penal Code, is maintained.

(B) However, substantive sentence imposed upon applicant nos. 2 and 3 is reduced to the period which they have already undergone. Their bail bonds stand cancelled.

(C) So far as sentence of fine is concerned, in addition to the fine of Rs. 5,000/- imposed by the learned Magistrate, applicant nos.2 and 3 are hereby collectively directed to pay fine of Rs. 1,50,000/-[Rupees one lac fifty thousand]. The said amount of fine be deposited before the court of Judicial Magistrate (F.C.), Dharmabad, within four weeks from today.

(D) The learned Judicial Magistrate (F.C.), Dharmabad, upon receiving the amount of fine of Rs. 1,50,000/-, shall issue notice to the complainant, namely, Gangadhar s/o. Chimnaji Gaikwad, resident of Allur [Taluka : Biloli, District : Nanded]. Upon an application made by the original complainant, after due verification of the identity of the original complainant, the learned Judicial Magistrate (F.C.), Dharmabad, shall allow the original complainant to withdraw the amount of fine of Rs. 1,50,000/-.

17. Rule is made absolute in the above terms.