
(2011) 04 BOM CK 0043

In the Bombay High Court

Case No : Criminal Appeal No. 699 of 1996

Sadashiv Mahadev Ghatе, Aakaram Mahadev Ghatе, Shivram
Chandramma Ghatе and Sanjay Shivram Ghatе

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 324, 325, 326

Citation : (2011) 113 BOMLR 1517 : (2011) 8 RCR(Criminal) 2578

Hon'ble Judges : N.D. Deshpande, J

Bench : Single Bench

Advocate : S.V. Marwadi and V.V. Katti, for the Appellant; S.A. Shaikh, APP, for the Respondent

Final Decision : Allowed

Judgement

N.D. Deshpande, J.—This Appeal impugns the correctness of the judgment and order of conviction and sentence both passed by the 3rd Additional Sessions Judge, Kolhapur on 30th October, 1996 in Sessions Case No. 29 of 1993.

2. By the impugned judgment of conviction all the four Appellants were held guilty. They were convicted u/s 326 read with Section 34 IPC and directed to suffer R.I. for 3 years, fined Rs. 3000/-each i.d.R.I. for 1 year. They were also held guilty u/s 324 read with Section 34 of IPC and directed to suffer R.I. for 1 year each, fined Rs. 1000/-each i.d.R.I. For 3 months each. Both the substantive sentences to run concurrently.

3. However, by the same impugned judgment, all the four accused were acquitted of the charges under Sections 302, 336, 337, 325 and 504 read with Section 34 IPC and there is no challenge by the State to the said acquittal ordered in favour of these Appellants. As such, it is not disputed that the scope of the hearing of this appeal is limited to the order of conviction and sentence u/s 326 and 324 read with Section 34 of IPC, as aforesaid, and the relevant findings

recorded on point Nos. 4 and 5 and reasoning given in Para 15 of the impugned judgment.

4. Thus, the Appeal is heard mainly on the point as to whether the impugned findings of conviction recorded as aforesaid is legal and proper and sustainable in law in the light of the findings recorded in negative on point Nos. 1,2,3,6,7 and 8 which are undisputedly, in favour of the Appellants who are original accused Nos. 1 to 4, in peculiar facts and circumstances of the case which has background of two counter cases registered and tried. Those are arising out of one and the same incident dated 24.4.1992 at around 2 p.m. which is present Sessions case No. 29 of 1993 (C.R. No. 49 of 1992) of Kagal police station and criminal counter case 186/95 arising out of C.R. No. 50 of 1992 registered u/s 324, 323, 504 read with Section 34 of IPC on complaint of Appellant No. 2 Aakaram Ghatge against opposite party viz. Koli family.

5. The prosecution story as disclosed in the judgment, admittedly is that there was a civil dispute of open space between the parties since the year 1986. The present Appellants are members of Ghatge family as accused 1 to 4 in C.R. No. 49 of 1992. Complainant Dayanand Koli and his relatives are accused Nos. 1 to 4 in a counter case vide C.R. No. 50 of 1992. All are residents of village Surkurd in Taluka Kagal and their civil dispute was pending in the Civil Court, Kagal from 1986 in respect of an open space situated in front of the house of complainant Dayanand Koli PW 7. It is stated that City Survey Officer had passed order in favour of Appellants Ghatge family and therefore, their father Mahadev Ghatge filed a civil suit and obtained an order of injunction against Koli family (complainant). It is said that the said order was vacated by the Appellate court. However, order of ? status quo? was operating in respect of the disputed open site at the material time. This dispute of possession admittedly is the root cause of the incidents in question.

6. According to the prosecution in the said incident both parties were armed with axe, sickle, sticks and they assaulted each other. There was pelting of stones and everybody was injured. It is evident from their respective FI Rs which are proved on record.

7. In the present case, the complainant Dayanand Koli (PW 7) and his brothers and father Shivram had sustained injuries and after about two weeks Shivram had died in the hospital. Therefore, Appellant Nos. 1 to 4 Ghatge family came to be charge sheeted by Kagal police station for offences punishable u/s 302 for murder of Shivram and under Sections 326, 325, 336, 504 read with Section 34 of IPC for causing injuries to others. Their rival group members of Koli family including the present complainant Dayanand Koli PW 7 were also prosecuted in a counter case 186/95 under Sections 324, 332, 336, 337, 504 read with Section 34 IPC which was subsequently decided and now during the course of hearing this appeal it was informed that they came to be acquitted by the trial court. Before deciding a counter case the trial court by impugned judgment held Appellants guilty as aggressors on the premises. It is main point of challenge in

appeal.

8. Heard arguments of both the sides. With the assistance of the learned APP, I have gone through the relevant evidence of witnesses and impugned findings in the judgment recorded against the present Appellants. However, most of the findings have been recorded in favour of the Appellants and those are answered ? No . Admittedly, it is also seen that the impugned judgment of conviction has been recorded and pronounced without any decision and appreciation of evidence in the counter case resulting from common investigation when trial was held before the same Court. It is strange to see that the present Appellants/accused were held as ? aggressors and convicted under Sections 326, 324 read with Section 34 IPC, as guilty for causing injuries to witnesses Rajkumar Koli (PW 10) and complainant Dayanand Koli (PW 7) with axe sickle and sticks and also Shiv ram his father and the complainant Dayanand Koli (PW7) by means of sticks and other instruments. Therefore, the entire evidence of the relevant witnesses including the Investigating Officer requires reconsideration and re-appreciation. No doubt it is permissible and justified for hearing of this appeal; which cannot be separated from the evidence recorded in a counter case. During the course of hearing of the appeal, it is informed that in the said counter case filed by the complainant Dayan and Koli,(PW 7) the family members was decided subsequently and they came to be acquitted.

9. Following observations and findings recorded in Para 13 of the judgment are no doubt in favour of the present Appellants and it is held not an intentional assault by 699.1996 them for committing murder of Shivram.

Under such circumstances and in view of the cause of death given by the Medical Officer, in the p.m.notes one thing is crystal clear that the accused neither caused any grievous injury on any vital part of said Shivram nor they knew that their said act was likely to cause his death appointed out by the learned defence counsel, the prosecution has not examined the concerned Medical Officer who has sutured those wounds of the injured-Shivram. Under such circumstances, there is possibility of developing any complication in the hospital itself while suturing the wounds and thereafter in not taking proper care of the wounds. Under such circumstances, the ingredients of Section 302 of IPC are faraway from the instant case. The prosecution has miserably failed to prove the culpable homicide of late Shivram at the hands of the accused. In view of the above discussion, I answer these points in the negative.

10. It is admitted that the incident took place on 24th April, 1992 at 2 p.m. The deceased Shivram (victim) succumbed to the injuries on 5th May, 1992 after about two weeks. The Medical Officer who conducted the autopsy issued post mortem certificate Exhibit 46 on 11th May, 1992. Thus, according to the trial Court, his death wasn't due to the injuries alleged in the assault.

11. All the Appellants/accused were found guilty for other charges u/s 326 and 324 IPC and convicted mainly on the evidence of interested witnesses who are

members of one family. Rajshekhar Shivram Koli had three injuries on his person as stated by Dr. (Sou) Manisha Kulkarni (PW 5)

1. Incised penetrating wound having the size of 6 cm x 2 1/2 cm x 2 1/2 cm over posterior aspect of left arm, muscle deep, bleeding was present. There was no fracture.

2. Incised wound above first wound, muscle deep measuring 1cm x 1 cm x 2 cm.

3. Incised wound below elbow over post ere lateral aspect of left arm, measuring 4 cm x 2cm x 2 1/2 cm bone deep, left elbow dislocated.

It is also seen that the nature of the first injuries were simple and third injuries were grievous in nature. Such observations are also recorded in paragraph 14 of the judgment. Those are concerning Shivram and Rajkumar Koli (PW 10). Similarly, in paragraph 15 there is discussion about medical evidence relating to the injuries sustained by complainant Dayanand Koli (PW 7). At the time of medical examination, the doctor found the following injuries described below:

1. Single abrasion 2 cm x 1cm over right partial bone, bleeding was present.

2. Abrasion 1 cm x 1/2 cm over left shoulder no bleeding.

3. Swelling 1 cm x 1/2 cm over dorsal of left hand

4. Abrasion of 4 cm x 1/2 cm over infra scapular region right side. No bleeding .

5. Abrasion 4 cm x 1/2 cm over lower 1/3rd back oblique in direction.

6. Tenderness on forearm lower 1/3 rd.

12. It is stated that those injuries were caused by hard and blunt object but, none of the injuries was found to be serious. In paragraph 16 it is further found that the Appellant No. 2 Aakaram Mahadev Ghate had also sustained injuries by a hard and blunt object and therefore, it has been rightly pointed out that some of the Appellants had sustained injuries of the same kind. Therefore, separate C.R. No. 50 of 1992 under Sections 324, 323, 336, 504 read with Section 34 of IPC came to be registered on a complaint of Aakaram Mahadev Ghatge Appellant No. 2 and both cases were investigated by the same I.O. There is also a observation found to that effect. In FIR No. 50 of 1992 it is mentioned that there was use of weapons like sickle, axe and sticks. Four members from Koli family and four members of Ghate family both were responsible for the said incident and they were armed with similar weapons and they all had sustained injuries.

13. After going through the entire evidence about happening and incident, it cannot be said that the Appellants alone were the aggressor"s which was the reason given by the trial court for holding Appellants guilty under Sections 326 and 324 read with 34 of IPC. Admittedly, members of the accused family had also sustained injuries and those were not considered and appreciated. There is no discussion in the judgment.

14. In fact, when two counter cases are pending before the trial court judgment should have been pronounced only after the appreciation of entire evidence recorded in such cases. Therefore the trial court judgment of conviction of the Appellants under Sections 326 and 324 read with section 34 IPC alone cannot sustain in law. So also they were all acquitted under Sections 302, 336, 337, 325 and 504 read with Section 34 IPC and such findings are recorded in paragraph 41 of the impugned judgment.

Learned Counsel for the Appellants has rightly pointed out that the prosecution has to explain and appreciate the injuries received by the Appellant's family members who also sustained injuries in the same incident and the opposite party is responsible for the same. Therefore, Appellants are entitled for benefit of doubt, thus, it is seen that the learned trial court failed in appreciating the evidence and for the aforesaid reasons, the Appeal deserves to be allowed. Hence, following order is passed:

ORDER

1. Appeal is allowed.
2. All Appellants 1 to 4 (Original Accused nos. 1 to 4) are found not guilty and acquitted of all charges.
3. The impugned judgment and order of conviction is quashed and set aside.
4. Appellant's bail bond shall stand canceled. Appeal is disposed of accordingly.