

(1998) 09 BOM CK 0016
In the Bombay High Court
Case No : Criminal A. No. 654 of 1993

Satish Vishwanath Palasdekar and others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Bombay Police Act, 1951 — Section 161, 161(1)
Criminal Procedure Code, 1973 (CrPC) — Section 197, 313
Penal Code, 1860 (IPC) — Section 302, 304(a), 304A, 330, 34

Citation : (1998) 09 BOM CK 0016

Hon'ble Judges : V.H. Bhairavia, J

Bench : Single Bench

Advocate : A.N. Samant and Deepak R. Mores Nos. 1 and 5 and M.S. Sawants Nos. 2, 3 and 4, for the Appellant; P. Singhal, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.H. Bhairavia, J.—This appeal is directed against the judgment and order dated 29-11-1993 passed by the learned Second Additional Judge, Satara, in Sessions Case No. 131 of 1992, whereby the appellants have been held guilty for offences punishable u/s 304(a) read with section 34, Indian Penal Code and section 330 read with section 34, Indian Penal Code and sentenced each of them to suffer S.I. for 6 months and to pay a fine of Rs. 500/-, in default to suffer further S.I. for one month for offence punishable u/s 304(a) read with section 34, Indian Penal Code and also sentenced each of them to suffer S.I. for 6 months and to pay a fine of Rs. 500/-, in default to suffer further S.I. for one month. Both the sentences were ordered to run concurrently.

2. The prosecution case, in brief, is that on 9-12-1990 the appellant-accused No. 1 was working as P.S.I., appellant-accused No. 2 was working as police head constable and appellants-accused Nos. 3 to 5 were working as police constables. All of them were attached to Vaduj Police Station. It is the further prosecution

case that Crime No. 125/90 of theft was registered with the said Police Station and the investigation into the said crime was entrusted with appellant-accused No. 2. It is the prosecution case that one Rikavalya (now deceased) and his brother Varisarya were living at Vaduj. It is stated that on 6-12-1990 at 2.30 p.m. deceased Rikavalya was taking his wife Ruki to the hospital as she was pregnant and running eight months and was complaining pain in her stomach. When both of them along with Varisarya, the brother of deceased Rikavalya, reached near Vaduj Police Station, appellants-accused Nos. 3 to 5, who were keeping a watch over the culprits in respect of the aforesaid crime, they were stopped there and both deceased Rikavalya and his brother Varisarya were taken to the police station. The wife of the deceased Rikavalya also gone to the police station. It is alleged that in the police station the deceased and his brother were beaten by the police since they were suspecting these two persons to be the persons involved in the offence of theft, but they were not admitting the guilt and, therefore, they were put up in the police lock up. On the next day, both of them were produced before the learned Judicial Magistrate, First Class, Vaduj, who remanded both of them to police custody for seven days. It is alleged that on 9-12-1990 these two persons and some other persons were in the police lock up. Police Head Constable Ankush Shinde and other police constables were on guard duty of the police lock up on that day. It is further alleged that the appellants-accused persons closed the door of the office of P.S.I, from inside and started beating both the persons by stick on their back and private parts and other parts of their body, but even then, they did not admit the guilt. Thereafter one table, one chair and two pairs of handcuffs were brought there. These handcuffs were put on the hands of both these persons. Then the appellants-accused persons put lathi between both arms of these persons and thereafter chairs were put on the table. On the said chairs both these persons were hanged, by which act both them got strain on their stomach. Thereafter they were given beating by the appellants-accused persons. By this beating deceased Rikavalya became unconscious and, therefore, the beating was stopped. The handcuffs of both these persons were taken out. Both of them were taken back to the lock up room. Appellant-accused No. 2 asked the police constable to keep both of them in two different lock up and they were put accordingly. It is alleged that at about 11.15 p.m. one constable from the guard duty of the lock up went to D.W.7 Ankush Shinde and told him that Rikavalya was complaining that he was getting pain in his stomach. That was reported to Thane Amaldar Dagde in writing. Therefore, he deputed two constables for taking Rikavalya to the hospital and accordingly he was taken to the Primary Health Centre, Vaduj, but the doctor was not available there. Therefore, Rikavalya was brought back to the police station and from there he was taken to the Civil Hospital Satara, by the appellant-accused No. 1 in police jeep. It is the further prosecution case that on the next day 10-12-1990 at about 6.25 a.m. a wireless message was received from Vaduj Police Station to the effect that Rikavalya died while he was being taken to the Civil Hospital, Satara, and his relatives were called to Satara. It is alleged that at that time Varisarya, the brother of deceased Rikavalya, was in the lock up. The

relatives of deceased Rikavalya reached the police station. Thereafter Varisarya told them about the incident. The body of Rikavalya was taken to the Civil Hospital, Satara, where he was found dead by Dr. Baliram Shinde, who conducted the post mortem on the dead body of Rikavalya. In the examination the doctor found interior and superficial injuries on the said dead body of deceased Rikavalya. He preserved viscera. It is the further prosecution case that on 10-12-1990 Varisarya was produced before the learned Judicial Magistrate, before whom he complained about ill-treatment by the police. The learned Magistrate referred him to Dr. Katkar (P.W.21) who examined him and found five injuries on his person. On 11-12-1990 Varisarya was again examined. The dead body of Rikavalya was given in the custody of his relatives. Thereafter a complaint was lodged by Varisarya (P.W.I 1) on 10-12-1990. On the basis of the said complaint. Crime No. 136 of 1990 was registered. Investigation commenced. After completing the investigation, charge-sheet was filed against the appellants-accused persons before the learned Judicial Magistrate, First Class, Vaduj, who committed the matter to the Sessions Court, Satara.

3. After framing the necessary charges and recording the evidence of the prosecution witnesses and after recording the statements of the appellants-accused persons u/s 313, Criminal Procedure Code, the learned Additional Sessions Judge, Satara, found the appellants-accused not guilty for the offence punishable u/s 302 read with section 34, Indian Penal Code and accordingly acquitted them for the said offence. However, the learned Judge found the appellants-accused guilty for the offence punishable u/s 304A read with section 34, Indian Penal Code and accordingly convicted them and sentenced them as stated above. Hence this appeal by the appellants-accused.

4. Heard Mr. A. N. Samant, learned counsel for appellants Nos. 1 and 5, Mr. Sawant, learned counsel for the appellants Nos. 2, 3 and 4 and Mr. P. Singhal, learned A.P.P. for the respondent-State.

5. It is submitted by Mr. Samant, learned counsel for appellants Nos. 1 and 5, that appellant No. 1-accused No. 1 was on leave on the date of incident and he resumed his duties on 9-12-1990 at about 8 a.m. By that time the deceased was taken to the Primary Health Centre, Vaduj, but as the doctor was not available, the deceased was brought back to the police station. Thereafter, appellant No. 1 took the deceased to the Civil Hospital, Satara, in jeep but on the way the deceased died. The learned counsel has relied on the leave report and the evidence of the Investigation Officer (P.W.36) Bharna Deoba Karkaskar. Further, he has submitted that the appellant-accused No. 1 was not the Investigating Officer in Crime No. 125 of 1990. Therefore, the appellant-accused No. 1 was not responsible for the alleged beating. Further, he has submitted that the medical evidence docs not support the prosecution charge. He has submitted that the cause of death was shown as death due to poison which was found on the stomach of the deceased and, therefore, appellant-accused No. 1 cannot be held responsible for the death of the deceased. So far as appellants-accused Nos. 2 to

5 are concerned, it is submitted by the respective learned counsel that the cause of death was not the direct result of beating, but as per the medical report, poison was found on the stomach of the deceased.

6. Having gone through the record and proceedings of the case, I am not impressed by the arguments advanced on behalf of appellants-accused Nos. 2 to 5. It is an admitted fact that appellant-accused No. 2 was the Police Head Constable and he was entrusted with the investigation of the crime of theft and in that connection, the deceased and his brother were taken into custody and remanded to police custody.

7. It is further submitted by the respective learned counsel for the appellants-accused persons that prior sanction was not obtained before filing the case as required u/s 161 of the Bombay Police Act since the case has been filed after 2½ years. It is also submitted that sanction u/s 197 of Criminal Procedure Code is required for lodging prosecution against gazetted officers. Since no sanction was obtained u/s 197, Criminal Procedure Code and u/s 161 of the Bombay Police Act before lodging prosecution against appellant No. 1-accused No. 1, the prosecution is liable to fail.

8. It is submitted by the learned counsel for appellant No. 1 that appellant No. 1-accused No. 1 was on leave on the date of the alleged incident and he resumed his duties on the next day 9-12-1990 at 8 a.m. Further, the said appellant No. 1 accused No. 1 was not the Investigating Officer in charge of Crime No. 125 of 1990 and the Investigating Officer (P.W36) Bharna Deoba Karkaskar supports this defence of appellant-accused No. 1. Appellant-accused No. 2 was in-charge of the investigation into the said crime and at his instance the deceased and his brother were brought to the police station. Appellant No. 2-accused No. 2, being the Investigating Officer, took remand for seven days of the deceased and his brother from the Magistrate's Court. During the period of the said remand, he must have used his power. Appellants Nos. 3 to 5 were also party to the beating of the deceased and his brother. Therefore, it cannot be said that appellant No. 1 was responsible for the beating of these two persons or there was common intention between this appellant and the other appellants to beat the deceased in order to admit his guilt. Therefore, appellant-accused No. 1 cannot be held guilty for the alleged beating. However, so far as appellants-accused Nos. 2 to 5 are concerned, the cause of death of the deceased as shown in the post mortem examination report is beating on the stomach resulting into severe multiple injuries. The learned Judge has rightly held appellants-accused Nos. 2 to 5 held guilty for the said offence.

9. The learned Judge has found the appellants-accused not guilty for offence punishable u/s 302 read with section 34, Indian Penal Code and therefore, he has acquitted them for the said offence. However, he has held them guilty for a lesser offence punishable u/s 304A read with section 34, Indian Penal Code and convicted accordingly.

10. So far as the legal contention of prior sanction u/s 161 of the Bombay Police Act is concerned, the learned A.P.P. has submitted that though there was delay in lodging the prosecution against the said appellants-accused Nos. 2 to 5, no such sanction is required. In support of his contention, learned A.P.P. has cited one authority, viz., State of Maharashtra Vs. Narharrao, .

11. As against this, the respective learned counsel for the appellants-accused Nos. 2 to 5 has cited certain authorities, viz., 1. Matajog Dobey Vs. H.C. Bhari, , 3. Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, , 5. Anil Shet Gaonkar Vs. Abdulla Khan Karol and Another, Cri. W. P. No. 68 of 1987 decided by this Court on 11th August, 1989

12. Section 161(1) of the Bombay Police Act reads as under :-

In any case of alleged offence by a Magistrate, Police Officer, or other person, or of a wrong, alleged to have been done by Magistrate, Police Officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein, it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complied of.

Provided that, any such prosecution against a police officer may be entertained by the Court, if instituted with the previous sanction of the State Government within two years from the date of the offence.

13. Section 161 of the Bombay Police Act is a protection to Police Officers against arbitrary prosecution. In this view of the matter, appellants Nos. 2 to 5 are entitled to the protection u/s 161 of the Bombay Police Act and, therefore, the prosecution is liable to fail on that count also.

14. It is to be noted here that because of their involvement in the aforesaid offence, appellants Nos. 2 to 5-accused Nos. 2 to 5 also lost their job. Therefore, in my view, they have been adequately punished. However, in view of non-compliance of the provisions of section 161 of the Bombay Police Act, the appellants-accused Nos. 2 to 5 are entitled to the benefit of the non-compliance of that provision. Hence, on this technical ground, the prosecution against them fails and the conviction and sentence of the appellants-accused Nos. 2 to 5 requires to be quashed and set aside.

15. In the result, this appeal is allowed. The order of conviction and sentence dated 29th November, 1993 passed by the trial Court is set aside and the appellants-accused are acquitted of the offence with which they have been charged. Their bail bonds shall stand cancelled.

16. It is submitted by Mr. Samant, learned counsel for appellant No. 1, that the said appellant No. 1 is under suspension for the last eight years and is virtually out of job since then. Therefore, it is hoped that he will be taken back to service immediately.