

(2012) 08 BOM CK 0011

In the Bombay High Court

Case No : Criminal Appeal No. 351 of 1994

Saudagar Alias Balu Bajirao Bhangre

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Bombay Police Act, 1951 — Section 135

Income Tax Act, 1961 — Section 139(9), 143(1)(a), 143(1A), 154, 32AB

Penal Code, 1860 (IPC) — Section 307, 324, 334

Citation : (2013) ALLMR(Cri) 2012

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : P.G. Sarda, for the Appellant; J.P. Kharge, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

R.C. Chavan, J.—This appeal is directed against appellant's conviction by the learned Additional Sessions Judge, Solapur for the offence punishable u/s 324 of the Indian Penal Code and sentence of rigorous imprisonment for two years imposed upon the appellant on conclusion of Session case No. 288 of 1993 before him. Facts which are material for deciding this appeal are as under:-

The victim Sudha was married to the appellant and they have a son from their wedlock. The appellant was drunkard and in fact, had been sacked from police service and therefore, she started residing separately. The appellant allegedly found her a job in a Spinning Mill and wanted that Sudha should either reside with him or reside in another village, if Sudha wished to reside separately. She told him that she would reside separately in the same village. This led to exchange of words. On the 6th August, 1993 at about 4:00 p.m. near Spinning Mill where Sudha was working appellant hit her with scissors. Sudha suffered severe bleeding injuries and was taken to the hospital. Police were informed. Police recorded report of Sudha whereupon an offence was registered. Police performed panchanama of the spot, seized blood stained clothes of Sudha,

recorded statement of witnesses and on completion of investigation, sent charge sheet to the Judicial Magistrate F.C. Madha, who committed the case to the Court of Session.

2. The learned Additional Sessions Judge to whom the case was made over, charged the appellant for the offence punishable u/s 307 of the Indian Penal Code and u/s 135 of the Bombay Police Act for breach of prohibitory order. Since the appellant pleaded not guilty, he was put on trial at which the prosecution examined in all 11 witnesses in its attempt to bring home guilt of the appellant. After considering the prosecution evidence in the light of defence of incident occurring due to sudden and grave provocation on the part of the victim, the learned Judge convicted and sentenced the appellant as aforementioned. Aggrieved thereby, the appellant is before this Court.

3. I have heard the learned counsel for the appellant the learned Additional Public Prosecutor for the respondent - State. With the help of both the learned counsel I have gone through the evidence on record. PW-1 Ashok Bhagwan Gawali and PW-4 Shivaji Maruti Patekar are hostile panchas on Memorandum Panchanama and resultant seizure of scissors at the instance of the appellant. PW-2 is the victim herself, who stated as to how the appellant inflicted injuries on her person. It was suggested to her in her cross examination that upon appellant's suggestion that victim should reside in some other village, she had told him that she would reside in the same village and then abused the appellant and his mother, which resulted in appellant's losing his balance. The victim stated that she did not know, if due to loss of balance and provocation, this act was committed. PW-3 Shahnaj Nazir Ahmed Shikalkar is a hostile eye witness, who went a step ahead and stated that because the victim alleged that the appellant was impotent, the appellant possibly inflicted the blows on Sudha. She stated that she turned back on hearing cries of Sudha and saw Sudha fallen down and the appellant going away.

4. PW-5 Dr. Prabhu Shivayya Kesarallimath and PW-7 Dr. Shashikant Appa Trimbake had examined and treated the victim. Their evidence shows that the victim had as many as four insisted wounds, which Doctors classified as simple. The victim was in hospital from 6th August, 1993 to 9th August, 1993. The evidence of PW-6 Vishwanath Nagayya Kanade about prohibitory orders is irrelevant, since the learned Judge has rightly acquitted the appellant of the offence punishable u/s 135 of the Bombay Police Act. PW-9 Dharmaraj Dagadu Ombase, PW-10 Gorakhnath Bhanudas Yelgundi and PW-11 Bharatsingh Janma Dalvi are police officers, who participated in various steps in investigation.

5. Since the appellant had specifically taken the defence that the incident occurred due to provocation by the victim, the appellant cannot escape the finding that he is the author of the injuries sustained by the victim. The learned counsel for the appellant submitted that since the incident had occurred due to sudden and grave provocation, the learned Judge should have convicted the appellant not for the offence punishable u/s 324 but for one punishable u/s 334

of the Indian Penal Code. Even if worst case against the victim is accepted, all that the victim did was possibly abused the appellant and his mother. She could also be held to have called the appellant impotent. This cannot be equated to any grave or sudden provocation to warrant conversion of the conviction of the appellant from that for offence punishable u/s 324 to one punishable u/s 334 of the Indian Penal Code. The abuses or even calling the appellant impotent would not amount to sudden or grave provocation though it may qualify to be provocation for a person to lose his cool. Still the step which the appellant took by subjecting the victim to a vicious attack was thoroughly unjustifiable. Therefore, conviction of the appellant by the learned Judge for the offence punishable u/s 324 of the Indian Penal Code was proper and has to be upheld.

6. The learned counsel for the appellant next submitted that the incident was occurred 20 years ago, the appellant was in jail for 20 days. The appellant's son is residing with him. In these 20 years the appellant has not committed any offence and it would be harsh to send the appellant to prison after 20 years for the offence punishable u/s 324 of the Indian Penal Code. He submitted that the appellant has been living under the shadow of conviction for all these years and therefore, he may not be sent back to the prison. It is unfortunate that the appellant may have to gain from the law's delay and the fact that he has been living under the shadow of conviction. This would have to be taken into consideration in the peculiar facts of the case and therefore, considering the nature of assault as also the circumstances in which the incident occurred, it may be appropriate to reduce the sentence of imprisonment to that for period already undergone and imposing fine on the appellant which may compensate the victim. In view of this, the appeal is partly allowed. Conviction of the appellant for the offence punishable u/s 324 of the Indian Penal Code is maintained. The sentence imposed is, however, substituted by rigorous imprisonment for 20 days with a fine of Rs. 25,000/- or in default for further rigorous imprisonment for six months. If the fine is paid, the entire amount shall be paid to the victim as compensation. The learned Session Judge shall check up, if the appellant has already undergone rigorous imprisonment for 20 days in which case, it would not be necessary to send the appellant to prison, if he deposits the fine within a period of four weeks.