

(2009) 09 BOM CK 0031

In the Bombay High Court

Case No : Criminal Miscellaneous Application No. 226 of 2009

State

APPELLANT

Vs

Mr. Balaji Bondar and Vikram Mirgani

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 326, 34, 504, 506

Citation : (2009) 09 BOM CK 0031

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : C. A. Ferreira, P.P, for the Appellant;

Final Decision : Dismissed

Judgement

N.A. Britto, J.—The State seeks leave to appeal against the acquittal of the accused under Sections 307, 504 and 506(i) r/w 34 I.P.C. Heard Shri C. A. Ferreira, the learned Public Prosecutor on behalf of the State.

2. Upon a complaint filed by Smt. Sulochana J. Mahalkar, the case against the accused came to be registered under Sections 326, 504, 506(ii) r/w 34 I.P.C. Eventually charge-sheet was submitted with the allegation that on 22-1-2005 at about 17.05 hrs. at St. Cruz, Ponda, all the accused in furtherance of their common intention assaulted Manoj/PW2, and thereby they committed offences punishable u/s 307 r/w 34 I.P.C. Secondly, the accused were also charged that on the said date, time and place, and in furtherance of common intention they gave bad words to Ravi Kumar/PW5 and thereby intentionally insulted him and provoked him to break public peace and thereby committed offences punishable u/s 504 r/w 34 I.P.C.

3. In the trial which followed, prosecution examined 12 witnesses. Accused No. 4 examined himself and produced various documents in support of the plea of alibi taken by him that at the time and on the day of the incident he was at the Government Rest House at Beed, in the State of Maharashtra, and after staying

there for two days i.e. on 19-1-2005 and 20-1-2005 he was admitted with high fever for Malaria at S.R.T. R. Medical College and Hospital Ambajogai, and was discharged on 24-1-2005. In support of the said plea he produced the receipt of payment of charges to the Government Rest House at Beed and so also the discharge card. In his evidence he also set out his relationship with the said Ravi Kumar/PW5, as to how after the said Ravi Kumar/PW5 who was working as an Engineer was removed from service, he had come to him seeking employment and as he had a truck, he had given him a contract of transporting iron ore from Hospet to Goa, and how the said Ravi Kumar/PW5 had transported iron ore by employing four trucks without his knowledge and sold ore of a value of about Rs. 3.5 lakhs and had retained the money. He also gave details as to how the letter dated 19-1-2005-Exh.18/B came to be given by the said Ravi/PW5, in his office and after which he had left for the construction site in Maharashtra on the same evening.

4. Amongst the witnesses examined by the prosecution, there were three brothers, namely Jitendra/PW3, Devendra/PW4 and Virendra/PW6 and two were cousins, namely Manoj/PW2, who was the victim of assault and the said Ravi Kumar/PW5. Sulochana/PW1 was the mother of the said three sons.

5. Strangely, in this case the abuses and threats are alleged to have been given to Ravi Kumar/PW5 but it is Manoj/PW2 who has been assaulted. None of the witnesses examined by the prosecution uttered a single word as regards the said abuses or threats and Shri Ferreira, the learned Public Prosecutor on behalf of the State concedes, and in my view fairly, that there is no case made out by the prosecution to grant leave under Sections 504 and 506 I.P.C. In fact, the learned Additional Sessions Judge observed that the complainant Smt. Sulochana had not whispered a word that the accused persons had given any abuses or threats to the prosecution witnesses, and similarly Manoj/PW2, Jitendra/ PW3, Devendra/ PW4, Ravi Kumar/PW5, Virendra/PW6 and Vinod/PW11 had not spoken any words of abuses or threats given by the accused which also strengthened the defence version that the entire incident is a fabricated incident to cover the acts of the aforesaid witnesses who had gone to the office of accused No. 4 to get back the truck of Ravi Kumar/PW5 and recover the said writing given by the said Ravi Kumar/PW5 to the said accused No. 4.

6. Shri Ferreira, the learned Public Prosecutor submits that there was unanimity in the versions given by prosecution witnesses that accused No. 1 had assaulted the said Manoj Kumar/PW2 with a wooden danda, and, therefore the entire case of the prosecution could not be disbelieved.

7. Ravi Kumar/PW5 had admitted that there were two cases filed against him by the said accused No. 4, one for dishonour of a cheque of Rs. 3,00,000/- issued by him and the other on the allegation that he had taken Rs. 3,00,000/- from accused No. 4 to buy a second hand truck by issuing a cheque for Rs. 3,00,000/-. The entire genesis of the case of the prosecution is not free from doubt. As regards the said writing which admittedly was given by Ravi Kumar/

PW5 to accused No. 4, it states that Ravi Kumar/PW5 had taken four trips of iron ore from Sagar Minerals, Ponda, Goa, and he was keeping his tipper truck bearing No. GA-01-W-6318 in the premises of the said accused No. 4 at St. Cruz, Ponda, Goa which he could take back after the payment was cleared. In other words, the accused No. 4 had a truck of Ravi Kumar/PW5, and a writing given by him in relation to the said truck, and in the light of that the prosecution story that Ravi Kumar/PW5 was called by accused No. 4 to settle outstanding payment of Rs. 30,000/- as stated by Sulochana/PW1 appears to be false. Ravi Kumar/PW5 as well as Manoj/PW2 have only referred to, they being called to settle his business dispute. The Additional Sessions Judge has observed, and in my view rightly, that the admission by Ravi Kumar/PW5 that he had kept his truck at the office of accused No. 4 and had given the writing Exh.18/B that the truck was to be released as soon as the payment would be cleared by him, of the four trips showed, that he had gone there along with others to the office of accused No. 4 to recover the truck and the said writing and in that process that the incident had taken place. The learned trial Court also observed that no evidence of any phone call having been made by accused No. 4 to Ravi/PW5 was produced by the prosecution. The learned Additional Sessions Judge also observed that Ravi Kumar/PW5 had gone along with a number of persons to the said office and their explanation that they had gone there on their way to zatra was an improvement in their case. It is also doubtful that any of the accused who were in their office would have a danda readily available to assault the said Manoj/PW2, and, in case Ravi Kumar/PW5 along with his brothers and cousins had gone to the office of the accused it is certainly more probable they had taken along with them the said stick. As regards this stick also there are different versions given. Some have referred to it as a rib(kamb) and others as a rounded stick.

8. The first three accused were arrested on the same date while accused No. 4 was not arrested. The complaint of Sulochana/PW1 was to take action only against the first three accused. Accused No. 4 had proved by preponderance of probabilities that he was not present and this coupled with other evidence of prosecution was sufficient to throw great amount of doubt whether accused No. 4 was present at all, and, if he was not present, he could not have given a call and called Ravi Kumar/PW5 to his office. As per Manoj/PW2 and Ravi Kumar/PW5, the accused assaulted three of them i.e. Manoj/PW2, Devendra/PW4 and Ravi Kumar/PW5, but injuries have been found only on Manoj/PW2. The version of Sulochana/PW1 is entirely different. Jitendra/PW3 also claims that accused No. 4 assaulted him with the danda on his knee and he fell down. No injuries were found on him. There were no independent witnesses produced. All the witnesses being related, the learned Additional Sessions Judge has closely assessed their evidence and has found it to be conflicting and unreliable.

9. In my view, the view arrived at by the learned Additional Sessions Judge is a plausible and reasonable view based on evidence produced, and therefore calls for no interference from this Court. Granting of leave in a case of this nature

would be sheer waste of time of this Court and harassment to the accused.
Application for leave to appeal therefore is hereby rejected.