
(2009) 08 BOM CK 0002

In the Bombay High Court

Case No : Criminal Miscellaneous Application No. 153 of 2009

State

APPELLANT

Vs

Uday Naik Dessai and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307

Citation : (2009) 08 BOM CK 0002

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

Bench : Single Bench

Advocate : C.A. Ferreira, P.P, for the Appellant; Arun Bras De Sa, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard Shri C. A. Ferreira, the learned Public Prosecutor on behalf of the State. The State seeks leave to appeal against the acquittal of the accused under Sections 143, 147, 148, 341, 323, 307, 427, 506(ii) r/w 149 I.P.C. by Judgment dated 12-8-2008 of the learned Sessions Judge, Margao.

2. The case was investigated upon a complaint filed by PW2/Divakar Dessai and the charge-sheet was filed with the allegation that on 4-5-2007 when the said PW2/ Divakar Dessai was returning to Quepem at around 11 p.m. at Bombdamol, Fatorpa, the accused i.e. A-4/Prashant and A-5/Mahesh came in an Alto car bearing No. 8559 and assaulted the said PW2/Divakar Dessai with fist blows and slaps, and thereafter the remaining accused came in two more vehicles, namely another Alto car and a Maruti car bearing Nos. 9599 and 3855, respectively, with dandas and started pulling out PW4/Babal Kavlekar from the van, and assaulted him with fist blows, slaps, kicks and also with dandas and also damaged the vehicle in which PW2/Divakar Dessai and PW4/Babal Kavlekar were travelling.

3. In support of the charge, prosecution examined 17 witnesses and it has been

conceded by the learned Public Prosecutor that five of them turned hostile to the case of the prosecution and were cross-examined. The learned trial Court after meticulously considering the evidence produced on behalf of the prosecution, proceeded to give benefit of doubt to the accused. The said PW4/Babal Kavlekar is the brother of the local MLA by name Babu Kavlekar and PW2/Divakar Dessai is the friend of the said Babal/PW4. The defence taken by the accused was that on the next day there were the elections for the Village Panchayat and the said PW2/Divakar Dessai and the said PW4/Babal were going about distributing money to the voters and were stopped and assaulted by the villagers.

4. As per the version given by PW2/Divakar Dessai, it is he who was driving the van with his friend PW4/Babal Kavlekar, and that they were returning from Quepem and when they reached at Mateamol, Fatorpa, at about 11 p.m. the said Alto car bearing No. 8599 came in their direction and parked on their way and the same was being driven by A-4/Prashant, and thereafter A-4/Prashant and A-5/Mahesh started pulling him out of the van and A-4/Prashant slapped him and A-5/Mahesh also assaulted him with fist blows and slaps and by that time two other vehicles, namely Alto bearing No.9599 and Maruti bearing No. 3855 came there from which came out A-1/Uday, A-2/Sanjay, A-6/Naresh and A-7/Krupesh carrying dandas in their hands and all the above five persons pulled out PW4/Babal Kavlekar from the van and they assaulted him with fist blows, slaps, kicks and dandas and hit their van with dandas and damaged the same. In cross-examination, various omissions and contradictions were brought out by the defence which have been referred to in detail by the learned trial Court.

5. PW4/Babal Kavlekar repeated the initial version given by PW2/Divakar Dessai but according to him, from the two vehicles which came later, about 5 or 6 persons alighted and those persons are A-1/Uday, A-2/Sanjay, A-3/Raju, A-6/Naresh and A-7/Krupesh Dessai, and, it is A-1/Uday Dessai who came near the van, caught hold of his neck and started assaulting him with fist blows and thereafter all of them caught hold of his neck and started giving fist blows and as he was being assaulted he was not in a position to see what was being done to PW2/Divakar Dessai. According to him, it is A-7/Krupesh Dessai who caught hold of his private parts, and, after which he started shouting and all the accused started assaulting him. In his cross-examination also, a number of omissions and contradictions have been brought out.

6. It appears that PW4/Babal Kavlekar was examined at the Primary Health Centre at 2.30 a.m. on 5-5-2007 with certain injuries. The first injury, namely, an abrasion can be taken note of. The said PW4/Babal was then examined by PW14/Dr. Barros on the same day, but the time is not known. The said Dr. Barros has not referred to the said first injury, namely the said abrasion but has referred to injury no. 4, and which according to him is a swelling on both the testicles with pain and tenderness, on touch, which according to PW14/Dr. Barros, was unbearable. However, it is strange to note that PW13/Dr. S. Gaonkar is totally silent about the said injury on private parts in his evidence as well as the hurt

certificate-Exh. 41. According to PW4/Babal Kavlekar, this injury was caused by A-7/Krupesh Dessai. PW2/Divakar Dessai is totally silent about it, and, according to PW1/Patrick Almeida who did not know the names of any of the accused, this injury was caused by one Umesh who is not an accused in the case.

7. According to PW1/Patrick Almeida, 5 to 6 persons came on three or four bikes which is contrary to what the two friends PW2/Divakar Dessai and PW4/Babal Kavlekar have stated. Further, according to PW1/Patrick Almeida out of these 4 to 6 persons, two persons by name Prisco and Sandip are not the assailants of PW2/Divakar Dessai and PW4/Babal Kavlekar. They ought to have been, if one was to accept the version of PW2/Divakar Dessai and PW4/Babal Kavlekar.

8. Sandip was examined as PW6. The said Prisco appears to have been a Director of I.D.C. having been appointed in that position by the Congress Party to which Babu Kavlekar belongs. It was suggested to him that the said Prisco was made a Director at the suggestion of MLA Babu Kavlekar, a suggestion which he denied. PW6/Sandip Malkarnekar stated that he had seen A-1/Uday and A-5/Mahesh pulling out the occupants of Maruti Omni. This version also would otherwise not fit in with the version given by PW2/Divakar Dessai and PW4/Babal Kavlekar, and in fact, he was confronted with his statement where he had made no reference either to A-1/Uday and A-5/Mahesh. Needless to say, the implication by him to A-1/Uday and A-5/Mahesh was a clear improvement.

9. The said PW11/Prisco Sequeira chose not to support the case of the prosecution, and in fact he was declared hostile and cross-examined. He has stated that he did not know as to who had assaulted the said PW2/Divakar Dessai as well as PW4/Babal Kavlekar.

10. These are only some of the inconsistencies in the case of the prosecution. Others have been noted in detail by the learned Additional Sessions Judge. The case of the prosecution, as narrated by different witnesses was nothing but a bundle of contradictions and not only that the version given by PW2/Divakar Dessai and PW4/Babal Kavlekar, were by and large not only inconsistent with their versions earlier recorded but also were not in conformity with their respective versions given in the Court. Considering the above position, in my view, this is not a fit case to grant leave to appeal, against the acquittal of the accused.

Application dismissed