
(2015) 09 BOM CK 0218
In the Bombay High Court
Case No : Criminal Appeal No. 329 of 1991

State of Maharashtra

APPELLANT

Vs

Balaji Nagnath Kendre and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 307, 324

Citation : (2015) 09 BOM CK 0218

Hon'ble Judges : A.B. Chaudhari and I.K. Jain, JJ.

Bench : Division Bench

Advocate : M.M. Nerlikar, A.P.P., for the Appellant

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—This is an Appeal against acquittal, filed by the State against the impugned Judgment and order dated 20th July 1991, in Sessions Case No. 190 of 1990 passed by the Additional Sessions Judge, Aurangabad by which he acquitted accused Nos. 2 to 73 for various offences such as Under Section 302 , 307 , 147 , 148 , 324 read with Section 34 of the Indian Penal Code. In support of the Appeal, the A.P.P. submitted that the trial Court recorded perverse findings, contrary to the evidence on record and therefore the Judgment of the trial Court needs interference, as large number of accused are acquitted for the offence of murder and attempt to commit murder. He submitted that the learned trial Judge ignored the evidence of three eye witnesses.

2. Per contra, the learned counsel for Respondents vehemently opposed the Appeal and submitted that the impugned Judgment and order of acquittal is correct, proper and at any rate, based on proper appreciation of evidence brought on record. There is no perversity in the reasons recorded and findings arrived at by the learned trial Judge and therefore interference cannot be made in the Appeal against acquittal.

3. We have perused the entire evidence tendered by the prosecution before the

trial Judge. We have perused the reasons recorded by the trial Court for acquitting large number of accused. Accused No. 1 Balaji was convicted by the learned trial Judge for the offence punishable under Section 324 of the Indian Penal Code. But, it is reported by the learned counsel Mr. Munde, that Accused No. 1 died and consequently Appeal stands abated against him. Be that as it may, we find that the following reasons recorded by the trial Judge while dealing with three important eye witnesses are in consonance with the evidence of those witnesses and we find no perversity in whatsoever nature in appreciation of evidence of these witnesses. Instead of repeating reasons, we would like to quote following paragraphs from the Judgment of the trial Court:-

"21. It has also come in the evidence of Mr. Jagdishchandra Sharma himself as well as so stated by the two guards namely Lalbahadur Rana and Nandkumar Deshmukh that all these workers to the tune of 300/400 numbers had assembled in the open space falling in between the main gate the combined building of Shed Nos. 1 and 2, the open space lying in between the combined building of Shed Nos. 1 and 2 and the main gate and the running compound was abutting the road in a north-south direction, right upto the Shed No. 3. The capacity of this open space could very well accommodate the number of 300/400 workers at one time, and that why even Mr. Jagdishchandra Sharma himself had stated together with the other two guards that even 300/400 workers had already assembled when the incident of throwing of Satishchandra Prem down on the floor inside the main building, but outside the respective hall, which according Mr. Sharma had been personally seen by him. Here lies the falsehood of Mr. Jagdishchandra Sharma that if Sharma was standing in the same level of the ground floor and if there are in between 100 workers standing from the gate towards the main office building of Shed Nos. 1 and 2, it was humanly impossible for Mr. Sharma to have any vision or look as to what is going on even outside the reception hall door on a spot falling in a sort of lobby portion. There is a lobby at the very entrance of this combined building of Shed Nos. 1 and 2 and mainly inside the portion of Shed No. 1, on north side of which reception hall is situate while it is on southern side of which first the cabin of Personal Manager Mr. Kapade is situate and beyond which the electric hall is situate. The cabin of Mr. Puri is again situate on the southern side of this reception hall. At this juncture we are not concern with the incident of assault on Mr. Puri which according to the prosecution had occurred either in his cabin or in his attached toilet or in the reception hall, because I have taken up the evidence of Jagdishchandra Sharma alone for my discussion at this stage, concentrating therefore, on the instance of opportunity to Mr. Jagdishchandra Sharma to actually see the assault caused on Mr. Satishchandra Prem by 10 to 15 persons and that too thereby giving him further opportunity to see their faces by causing this attack on Mr. Satischandra Prem after he was lifted and thrown down by Shivaji Thorat. If Mr. Sharma is being falsified on this main question of identification of the assailants of Mr. Prem, it further obviously followed that he also cannot be accepted and believed on the further point that he could see as many as 15/20 persons while entering that

reception hall forcibly and that too after taking watch. Accused No. 1 Balaji s/o. Nagnath Kendre actually broke open that entrance door of that reception hall. This tall claim of Jagdishchandra Sharma, therefore, appears to me as totally false and can not be accepted as trustworthy.

24. An attempt was made by Mr. Jadhav in his argument to submit before me that formation of an unlawful assembly commenced after the morning incident of 9 a.m. when Mr. Satishchandra Prem was allegedly lifted and tried to be thrown into an acid tank outside his electro plating department in Shed No. 4. To my mind, this very incident of throwing of Mr. Prem into an acid tank is not at all been proved by the prosecution. Admittedly, no other eye witness was there when Mr. Prem was lifted and was to be thrown into an acid tank or tank's as the case may be. Vijay Mirajkar and others have no doubt stated about it, but as to have heard about it through Mr. Prem. As rightly submitted, therefore, by Mr. Kapadia or Mr. M.P. Taksal, the learned Advocates for the defence, if such a serious incident had really occurred of throwing a person into an acid tank containing either the citric acid or sulphuric acid, there would have been a commission caused in the electro plating department atleast as it's head was attempted to be killed. Mr. Satishchandra Prem claimed to have submitted his report about this morning incident to the Welfare Officer Mr. Naik and Mr. Praveen Naik in turn submitted that report or transmitted that report to the cabin of Mr. Puri. However, for the reasons best known to the prosecution, that important piece of document has not been produced on record. I shall be dealing with the manner of investigation in this case at the later stage of my judgment. But at this juncture also I must express my displeasure towards the most lethargic and sluggish manner of investigation caused in this case.

27. Coming back to the point of formation of unlawful assembly and taking the trans of the submission of Mr. Jadhav, it was submitted before me on behalf of the prosecution that after the earlier morning incident, the mind of the leaders namely Mr. Shivaji Thorat, Mr. Balaji Kendre, Mr. Udhav Kale and other office bearers of the managing committee of CITU union came together and started deciding to have common object to assault Mr. Prem and Mr. Puri and then the incident of afternoon occurred as a result of the prosecution of this common object of such unlawful assembly. Here again this submission cannot be accepted because of the specific break given to this chain of circumstance by Jagdishchandra Sharma himself and the other two guards and even by Satischandra Prem himself. All these witnesses have admitted in their cross-examination that every thing was calm and quite in the electro plating department right up to 3 p.m. Jagdishchandra Sharma also stated further that all the workers were found working in their respective departments, during the shift hours except Mr. Shivaji Thorat who was found loitering here and there. One can understand about the allegation of loitering of Shivaji Thorat in the premises of the factory, because of the further allegation of the prosecution story that a suspension order was served on Shivaji Thorat on that day and that is why it is further alleged in the evidence of one of the witness that Shivaji Thorat happen

to enter into the cabin of Mr. Puri before this incident also. However, moving around of one person namely Shivaji Thorat without establishing any link or any chain of this person with the mind's of other persons like Mr. Kendre, Kale and Lathe and others, it is difficult to hold and accept the submission on behalf of the prosecution that these leaders together with the other workers had formed an unlawful assembly prior to the causing of the main incident in this case. Prior meetings of the minds of all these workers the office bearers of the union, therefore, needs the basic opportunity to these workers first to meet physically each other in between the morning incident and the afternoon incident. All these deficiencies, therefore, and the links in the chain of circumstances which in fact break this chain of circumstance, would undoubtedly lead me to the only inference that the prosecution has not at all been able to establish beyond reasonable doubt that there was a formation of an unlawful assembly of these workers together that too for the purpose of having common object to cause an assault either on Mr. Puri or on Mr. Prem or on others or even causing the mischief on the property of the office.

31. The first witness examined in this case is the key witness of the prosecution namely Satishchandra Prem, whose evidence is recorded at Exhibit No. 106. I have already observed earlier with regard to the falsity of this witness on the incident of morning of 28th April 1990. This attempt of Mr. Satischandra of adding the story of causing an attempt to throw him into an acid tank appears to me as an after thought attempt, because much water had been flowed under the bridge in between the period. His complaint was recorded on 28th April 1990 and similarly his supplementary statement for the first time was recorded by the investigating officer on 7th May 1990. However, he does not spell out any such incident either in his complaint or in his first supplementary statement. It is for the first time that on 11th May 1990 Mr. Satishchandra Prem remembers this important incident which had occurred in his life of causing an attempt to do away with his at the hands of the workers.

41. Then comes the evidence of Vijay Mirajkar. Vijay Mirajkar has no doubt stated in a very assertive and positive manner with regard to the complicity or activity of Accused No. 1 Balaji Nagnath Kendre in respect of his attack on Mr. Puri as in the reception hall. Mr. Vijay Mirajkar has categorically admitted in his examination-in-chief itself that he was not able to say as to which particular assailant has assaulted him and has caused injuries on his person and that he is not also able to name the person or persons, who had caught his hair to pull him down. Mr. Mirajkar further claims to have been compelled to put his face down when he was being assaulted by the assailants and as such he was not at all expected also in normal course to have/had an opportunity to look to the assailants of his own assault and that is why as a prudent man, Mirajkar did not claim so to have identified any such culprits out of the assailants who had caused an assault on him."

4. We find that the above reasons recorded by the trial Judge in above

paragraphs, relating to three eye witnesses, are not perverse and at any rate the learned trial Judge took possible view of the matter. The Judgment of acquittal was passed in the year 1991. We are reminded of the parameters laid down by the Apex Court and particularly Para 24 of the Judgment in the case of State of Rajasthan Vs. Darshan Singh @ Darshan Lal, . We quote Para 24 of the Judgment cited supra, as under:

"24. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

5. In the light of above discussion and keeping in view the legal principles enunciated by the Apex Court in the matters relating to Appeals against acquittal in the case of State of Rajasthan, cited supra, we pass following order:

(I) Criminal Appeal No. 329 of 1991 is dismissed.

(II) Fees of the appointed counsel is quantified at Rs. 4000/- (Rupees Four Thousands only).