
(2012) 07 BOM CK 0006
In the Bombay High Court
Case No : Criminal Appeal No. 5 of 2001

State of Maharashtra

APPELLANT

Vs

Gautam Parasram Khobragade and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 324, 452

Citation : (2013) 3 BomCR(Cri) 223

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : P.V. Bhoyar, app, for the Appellant; Niraj Jawade, for the Respondent

Final Decision : Dismissed

Judgement

Bhangale A.P., J.—The appeal is to challenge the judgment and Order dated 11/9/2000 passed by the learned Judicial Magistrate, First Class, Chimur in Regular Criminal Case No. 316 of 1991 (Old Case No. 329 of 1988) whereby the accused were acquitted of the offences punishable under sections 147, 148, 149, 324 and 452 of the Indian Penal Code. The accused were facing trial on the charge that they had formed an unlawful assembly on 15/09/1988, at about 9 p.m. at Mauja Khapri in Chimur Tahsil, Chandrapur District and in prosecution of the common object of the assembly, were armed with stick, a deadly weapon; committed house trespass by entering in the house of Bhaurao having made preparation to cause hurt and caused hurt to the complainant Pramila and her family members and voluntarily caused hurt to Pramila and Father Bhaurao with stick. The facts, briefly stated, are as under:-

On or about 15/9/1988, at Khapari, tahsil Chimur, District Chandrapur, while Bhaurao Meshram was resting after having dinner with family members, 15 to 20 villagers-including accused Gautam Khobragade along with other accused-challenged Bhaurao to come out of his house on the pretext that Bhaurao had played black magic with villagers. They then broke open the door and dragged Bhaurao out of the house. They started beating him with stick, fists and kicks.

The accused took him to the house of accused Sampat. There, one Vaidya installed "Ghat" (earthen pot) and said Vaidya ordered Bhaurao to point out Cheda (a thing with the help of which the black magic is played). The accused took Bhaurao to his Field in search of "Cheda" and while going towards the field, they beat him. Then, the accused persons brought the complainant to the village and fed him with excreta of cow and man. One Sonba Meshram intervened and therefore, the accused left Bhaurao. His daughter Pramila lodged report to Police Station, Bhisi about the incident of assault on her Father Bhaurao. Offence was registered against accused Nos. 1 to 4 and 11 and 20 unknown persons and the investigation followed. SHO of Bhisi Police station prepared spot Panchnama. Bhaurao and his family members were referred to the hospital. Statements of witnesses were recorded. The accused were charge-sheeted. The accused pleaded innocence and claimed to be tried. The Prosecution led evidence of total seven witnesses, namely Bhaurao, his daughter Pramila, Ramesh Shribhaiye, Fulanabai, Manjula Ramteke and Ravindra Meshram. The accused denied the liability.

2. Learned A.P.P. argued that the trial Court ought to have held the accused guilty of forming unlawful assembly with an unlawful object to commit criminal trespass and beating the victim Bhaurao. The trial Court was in error to hold that the victim had not specifically identified the assailants. It is submitted that the trial Court gave undue importance to minor omissions of non-disclosure of specific names of the members of the unlawful assembly. Learned A.P.P. submitted that the trial Court ought to have considered the corroborative evidence of the relatives of victim Bhaurao to nail the accused. He, therefore, prayed to set aside the impugned judgment and order.

3. On the other hand, learned Advocate for the respondents submitted that the impugned judgment is free from any fault and is well reasoned. According to Learned Advocate for the respondents, there was material omission regarding the alleged dragging of Bhaurao out of the house and there was no evidence of identification of the offender by the main witness Bhaurao. The trial Court rightly observed the inconsistencies and the discrepancies inherent in the prosecution case. The Medical Officer who allegedly examined the injured was not examined. There was also inconsistency regarding the exact place of assault. The F.I.R. was unreasonably delayed till the next day of the incident. Ramesh Shirbhaiye (PW-3) was disowned by prosecution as he did not support the prosecution case. Regarding interference in the order of acquittal, learned Advocate Shri Jawade made a reference to the rulings in the cases of V.S. Achuthanandan Vs. R. Balakrishna Pillai and Others, and State of U.P. Vs. Ram Sajivan and Others, to argue that no doubt the Appellate Court do have power to review, re-appreciate and reconsider the evidence upon which an order of acquittal is founded. The Code of Criminal procedure has not put any limitation, restriction or condition on exercise of the appellate power of the Court and the appellate Court is free to arrive at such conclusion on facts and law, as it may consider appropriate, even to upset the order of acquittal if there are substantial and compelling grounds to

reverse the order. However, the appellate Court has to bear in mind that, in case of acquittal, there is double presumption in favour of the accused. The presumption of innocence is available as in criminal jurisprudence. Every accused is presumed to be innocent unless he is proved guilty by a competent Court of law. The presumption of innocence is further bolstered up by an order of acquittal. Thus, If two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

4. Hearing the submissions as above, I have also seen the record of the case. It is astonishing that although main witnesses Bhaurao and Pramila named certain persons, no care was taken by the Prosecutor concerned in the trial Court to put the questions to the witnesses regarding identification of the named persons in the dock/Court. The incident had occurred at night time at about 9 p.m. in the village. Care should have been taken to put query to the witnesses as to whether they were able to see the incident due to darkness and whether there was sufficient light in the vicinity at the time of the occurrence to be able to see and identify the culprits. Witness Fulanbai (PW-4) was contradicted with her own earlier statement to the effect that Baudhha, Kunbi, Wadhai, Pardeshi all persons came to her house which when read over to her was disowned by her as incorrect. Her evidence, therefore, suffered from material contradiction as to identity of the culprits. Looking into the impugned judgment, it appears that the trial Court had noted that Bhaurao did not lodge complaint with the police, but it was his daughter Pramila who did that Bhaurao's daughter had lodged the F.I.R. According to the F.I.R., accused Nos. 1 to 4 and 11 and 20 to 25 persons of Baudha and Pardeshi community of her village had attacked his house and drove out her Father to the village. Sonba had intervened. Victim Bhaurao, who was allegedly driven to village after the accused trespassed in his house, is unable to identify any assailant by the specific name, although he claimed in his examination-in-chief that he knew all the accused. Name of accused No. 13 was not stated as connecting with any act According to the prosecution, some 20 to 25 persons had attacked the victim with kicks and fists. Had it really happened that the accused had trespassed in the house of Bhaurao and drove him out of the house and took him to the village and then to Sampat's house as alleged by the prosecution, Bhaurao would have disclosed or identified the assailants specifically since the longer incident can give enough opportunity to the injured to identify the victim. Bhaurao is silent in his evidence as to who came to his house and who beat him. There was no evidence to inspire Judicial mind due to inconsistency in the main evidence. The witnesses were family members and no independent witness was examined. Sonba Meshram, who had allegedly intervened and saved Bhaurao from the assault and allegedly provided medical aid to the injured, was, for the reasons best known to the prosecution, was not examined. Pramila Meshram (PW-2) and Fulanbai Meshram (PW-4) were not the eye witnesses to the incident of assault. They are close relatives of Bhaurao. There were inconsistencies in their evidence about involvement of the accused

and their identity. When there is a doubt regarding identity of the actual assailants and the Investigating Officer was also not examined, the prosecution, as observed by the trial Court, has failed to discharge the burden of proof to establish the offences beyond reasonable doubt as against any of the accused. The prosecution failed to prove the guilt of any of the accused before the Court and the accused were acquitted of all the charges. The impugned judgment appears well reasoned and logical as material witnesses such as intervener Sonba Meshram, a material eye witness was withheld by the prosecution. Even the Investigating Officer was not examined by the prosecution. Non-examination of material witnesses proved fatal to the prosecution case. The prosecution had miserably failed to establish it's case beyond reasonable doubts. Even otherwise, the High Court in an appeal against acquittal has to be slow to interfere with the acquittal order, which strengthens the presumption of innocence. The High Court, therefore, does not ordinarily set aside the judgment of acquittal when two views are possible unless the impugned judgment and order is perverse or clearly unreasonable. The trial Court in the present case appears to have considered the relevant material and having regard to salutary principles in appreciation of evidence available with it, seems to have reached a just and proper conclusion of acquittal and there are no any compelling or substantial grounds to upset the impugned judgment and order. That being so, the Appeal has to fail. Hence, it is dismissed. No order as to Costs.