
(2016) 04 BOM CK 0075
In the Bombay High Court
Case No : Criminal Appeal No. 408 of 2003

State of Maharashtra

APPELLANT

Vs

Haribhau & Others

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2016) ALLMRCri 2608

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : S.S. Doifode, APP, for the Appellant; V.S. Kukday, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.(Oral) - Heard Shri S.S. Doifode, A.P.P. for the appellant and Shri V.S. Kukday, advocate for the respondents.

1. The respondent No.3 is reported to be dead. The appeal against the respondent No.3 stands abated.

2. The State of Maharashtra has filed this appeal challenging the judgment passed by the learned Additional Sessions Judge acquitting the respondents/accused of the offence punishable under Section 307 and 34 of the Indian Penal Code.

3. The case of the prosecution is :

On 28th August, 1997 around 7.00 p.m. to 8.00 p.m., Deochand Gomase and his son Sanjay were returning from weekly market, at that time Haribhau and Sheshrao caught hold of Deochand and Mahadeo, assaulted Deochand by sword causing injuries on his head, chin and ear. Umesh was also present at that time. Haribhau (accused) is elder brother of Deochand (victim) and Mahadeo and Umesh are sons of Haribhau. Sanjay took his father to Rural Hospital, Arvi where

PSI Ambhore recorded his statement in presence of Dr. Matkar. Crime No. 147/1997 was registered against Haribhau, Sheshrao and Mahadeo. The investigation was undertaken and after the investigation was completed, charge-sheet was filed in the Court of J.M.F.C., Arvi against all the accused. As the offence is triable by the Court of Sessions, the case was committed to the Court of Sessions. The charge was framed and explained to the accused except Mahadeo (accused No. 3) who was absconding. The accused did not accept the guilt and claimed to be tried. The learned Additional Sessions Judge conducted the trial and by the impugned judgment concluded that the prosecution has failed to prove that the accused assaulted the complainant Deochand by sword on 28th August, 1997 and that the accused caused injuries to Deochand intentionally knowing that by their acts they would be guilty of committing murder of the victim. The learned Additional Sessions Judge acquitted the accused.

4. The learned A.P.P. has submitted that the learned Additional Sessions Judge has committed an error in discarding the evidence of complainant Deochand who is victim and has suffered injuries. It is argued that the learned Additional Sessions Judge has doubted the evidence of Deochand only because some irrelevant omissions on the point of distance at which Sanjay was stated to be from Deochand was pointed out by the defence. It is submitted that there are no omissions in the evidence of Deochand on the relevant aspects. It is further submitted that the learned Additional Sessions Judge has overlooked the fact that the injuries suffered by Deochand are proved in the evidence of Dr. Matkar (P.W.6) and the benefit is given to the accused on the ground that the prosecution has failed to prove that the injuries suffered by Deochand are inflicted by the accused. It is argued that the impugned judgment suffers from perversity as the relevant evidence has not been considered and whatever evidence is considered, it is not appreciated in the right perspective.

5. With the assistance of the learned A.P.P. and the learned advocate for the respondents/accused, I have examined the record. It is undisputed that there was civil dispute between Deochand (victim) and Haribhau (accused) regarding right of way through the field Survey No.20 which was purchased by the wife of Sheshrao (accused No. 2). Sheshrao is son-in-law of Haribhau. The learned Additional Sessions Judge has rightly examined the evidence on record with circumspection, considering the close relationship of the victim and the accused and the civil dispute between them. The learned Additional Sessions Judge has recorded that the victim gave statement (Exh.50) stating that his son Janardhan admitted him in the hospital and in the evidence he stated that Sanjay had admitted him in the hospital. The learned Additional Sessions Judge, after scrutinising the evidence of the witnesses, has found omissions and contradictions. It cannot be said that the learned Additional Sessions Judge has taken a view which is not possible. The learned Additional Sessions Judge has rightly concluded that the prosecution has failed to prove the guilt of the accused, beyond doubt.

6. I see no reason to interfere with the judgment. The appeal is dismissed. In the circumstances, the parties to bear their own costs.