
(2014) 07 BOM CK 0055
In the Bombay High Court
Case No : Criminal Appeal No. 343 of 1999

State of Maharashtra

APPELLANT

Vs

Kawdu

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2014) ALLMR(Cri) 3683

Hon'ble Judges : C.V. Bhadang, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.S. Fulzele, APP, Advocate for the Appellant; A.R. Wagh, Advocate for the Respondent

Judgement

C.V. Bhadang, J.—This is an appeal filed by the State challenging acquittal of the respondent for the offences punishable under Sections 302 and 323 r/w 34 of Indian Penal Code. The brief facts are that P.W. 1 - Kalidas Uikey is the uncle of the respondent/original accused No. 1. The charge-sheet was filed against the respondent and his brother Kailas Uikey, who was then found to be juvenile in conflict with law (J.C.L.) and as such, his case was sent to the Juvenile Justice Board. The trial proceeded only against respondent Kawdu before the learned Sessions Judge, Chandrapur bearing Sessions Case No. 113/1998. According to the prosecution, the houses of P.W. 1 - Kalidas and his brother Ramdas who is the father of the respondent are adjacent to each other, situated at village Meha (Khurd), Taluka Saoli, District: Chandrapur. Deceased Saraswatibai was the wife of P.W. 1 - Kalidas. The incident in question had occurred on 9.4.1998 at about 9:00 p.m. It is said that she-goats of Kalidas had strayed into the courtyard of Ramdas and had damaged "Toor" crop stored there. Upon this, respondent Kawdu went to the house of Kalidas and accosted him as to why he is not keeping his she-goats tethered, whereupon Kalidas is alleged to have said that respondent is at liberty to send the she-goats to cattle-pound. Upon this, there was some hot exchange of words and the quarrel ensued between them. It is at this point of time that the younger brother of respondent Kawdu, namely, J.C.L. -

Kailas came there with stick and assaulted Kalidas. Saraswatibai wife of Kalidas made attempt to intervene and separate the quarrel, whereupon it is said that J.C.L. Kailas also assaulted Saraswatibai with stick. On account of this, Saraswatibai had sustained bleeding injury to her head. According to the prosecution, the respondent Kawdu also assaulted Kalidas with stick. After this, both the respondent Kawdu and J.C.L. - Kailas went to their house.

2. Further according to the prosecution, P.W. 1 - Kalidas along with deceased Saraswatibai started proceeding to the house of Police Patil, when the respondent and J.C.L. - Kailas followed them. The second incident is alleged to have taken place near the Pan shop of one Arvind near a drainage in a chowk, where again quarrel ensued between respondent and J.C.L. - Kailas on one hand and Kalidas and Saraswatibai on the other. According to the prosecution, J.C.L. - Kailas again assaulted Saraswatibai with stick. Insofar as respondent is concerned, it is the material case of the prosecution that respondent Kawdu, at the relevant time, was having crowbar and assaulted Saraswatibai with the same on account of which Saraswatibai fell down and died on the spot. P.W. 1 - Kalidas went ahead to the Police Patil followed by Kawdu. The Police Patil expressed his inability to help him saying that he has ceased to be Police Patil. Thereafter, respondent Kawdu along with one Namdeo came to Pathari and met P.W. 7 - Vasant Alam. According to the prosecution, Kawdu made a confessional statement to P.W. 7 - Vasant of having assaulted Saraswatibai with crowbar. P.W. 7 - Vasant advised Kawdu to report the matter and that is how the respondent/accused along with Namdeo and P.W. 7 - Vasant came to Police Station Pathari. Some time thereafter P.W. 1 - Kalidas also arrived at Police Station Pathari. It appears that P.W. 1-Kalidas filed complaint, which was scribed by P.W. 7 - Vasant. On the basis of the complaint, P.W. 9 - P.S.I. Motiram Pakhare, who is the Investigating Officer, registered an offence and took over investigation. The Investigating Officer visited Meha on the following day i.e. 10.4.1998, drew spot panchanama of the scene of occurrence and inquest panchanama of the dead body of Saraswatibai. The dead body was sent for postmortem examination. The Investigating Officer also effected seizure of the clothes on the dead body, as well as P.W. 1 - Kalidas and the respondent/accused. Statements of the witnesses including P.W. 2 - Nalini Pendam, who happens to be the daughter of the sister of Saraswatibai and was at the house of the deceased at the time of the incident, came to be recorded. The Investigating Officer also effected certain seizures including that of the crowbar which was allegedly on the basis of the confessional statement by the respondent. The seized articles were sent for the report of the Chemical Analyzer and on completion of the investigation, a chargesheet came to be filed, which was committed to the Court of Sessions.

3. As noted earlier, case against J.C.L. - Kailas was separated and was sent to the Juvenile Justice Board (J.J.B.). The learned Sessions Judge framed charge against the respondent for the offence punishable under Section 302 r/w 34 of Indian Penal Code for having intentionally caused death of Saraswatibai and under Section 323 r/w 34 of Indian Penal Code for having voluntarily caused hurt

to P.W. 1 - Kalidas. The respondent pleaded not guilty to the charge and claimed to be tried.

4. The prosecution examined in all nine witnesses at the trial and produced the record of the investigation.

5. Although the learned Sessions Judge came to the conclusion that Saraswatibai met with a homicidal death on the basis of the appreciation of evidence of P.W. 1 - Kalidas and P.W. 2 - Nalini and the other evidence, it was found that the prosecution had failed to prove the charge against the respondent. That is how the respondent came to be acquitted. Feeling aggrieved, the State is before us.

6. We have heard the learned Additional Public Prosecutor for the appellant and the learned Counsel for the respondent. With the assistance of the learned Counsels, we have scrutinized the entire evidence and the impugned judgment.

7. It is submitted by the learned Additional Public Prosecutor that P.W. 1 - Kalidas is an injured witness and as such his presence on the spot could not be doubted. It is submitted that at the relevant time, P.W. 2 - Nalini had also come to the house of her maternal aunt i.e. deceased Saraswatibai and has deposed about the incident and assault by the respondent and the J.C.L. - Kailas on both P.W. 1 - Kalidas and deceased Saraswatibai. It is submitted that P.W. 7 - Vasant has also deposed about the extra judicial confession made by the respondent. In that view of the matter, there was sufficient evidence on record to hold the respondent guilty. It is submitted that the discrepancies, as noticed by the learned Sessions Judge, would not be material so as to go to the root of veracity of these witnesses. It is, therefore, submitted that the view taken by the learned Sessions Judge would be impossible view and as such needs to be interfered with. It is, therefore, submitted that the appeal be allowed.

8. On the contrary, it is submitted by the learned Counsel for the respondent that the learned Sessions Judge has properly appreciated the evidence on record and on the basis of the discrepancies as noticed has rightly found that the respondent was not holding any crowbar and had in fact attempted to intervene, so as to prevent the assault by J.C.L. Kailas. It is submitted that the learned Sessions Judge has, therefore, rightly acquitted the respondent and finding does not call for any interference.

9. At the outset, finding that Saraswatibai died homicidal death is not all all challenged. Even otherwise the evidence of P.W. 6 - Dr. Pradipchandra Badnore, who conducted post-mortem examination, had found the following external injuries on the dead body of the deceased Saraswatibai.

"1) lacerated injury with depressed fracture over occipital region left side, transverse reddish, 2" x 1/2", it was skull deep.

2) Contusion over face on right frontal region, vertical 1" x 1/2" with depressed fracture of frontal bone.

3) Contusion over face left frontal side 2" above left eyebrow, 1" x 1/2".

On internal examination, the following injuries have been found.

"i) crack fracture of frontal bone left side, 2" above eye 1".

ii) depressed fracture of occipital region left side 1" x 1" cavity deep.

iii) lacerated injury with haematoma over frontal lobe, 1" x ?" x ?".

iv) lacerated injury with haematoma of occipital lobe left side 1" x 1" x 1/2".

10. All these injuries were found to be ante-mortem and having caused by hard and blunt object. The Medical Officer has stated in cross-examination that all these injuries are possible even by a single weapon like stick. Be that as it may, there is no manner of doubt that Saraswatibai died homicidal death. The only question is whether the respondent can be held guilty of the assault on Saraswatibai and for the matter of that of having voluntarily caused hurt to P.W. 1 - Kalidas. The learned Sessions Judge on appreciation of the evidence had observed in paragraph No. 15 of the judgment that there is a reasonable doubt as to whether respondent Kawdu had really participated in incident of assaulting Kalidas or Saraswatibai. The learned Sessions Judge was therefore of the view that benefit of doubt would go to the respondent.

11. Undoubtedly, P.W. 1 - Kalidas is an injured witness and his evidence would carry greater probative value. It has come in his evidence that on the day of incident he was at his house along with deceased, his wife Saraswatibai and Nalini when the respondent came along with J.C.L. - Kailas and accosted him as to why he had allowed the she-goats to stray into his courtyard, when this witness said that he can send the she-goats to cattle-pound. This witness has stated that Kawdu started assaulting him with stick on his head and when his wife Saraswatibai came forward, she was also assaulted by stick on her back. It is the further evidence that when this witness and Saraswatibai came on the road, J.C.L. - Kailas dealt a blow with stick on both of them on account of which Saraswatibai fell on the ground. Thereafter, the respondent Kawdu assaulted Saraswatibai on head with crowbar.

12. In the cross-examination, this witness has in categorical terms admitted that at that time there was nothing in the hand of Kawdu and the talk/altercation between P.W. 1 - Kalidas and Kawdu went on for about 5 to 6 minutes and at that time, Saraswatibai and Nalini were in the house, while P.W. 1 - Kalidas was in the Varandah. This witness has thereafter stated that when quarrel between this witness and Kawdu was going on, Kailas came there with stick. It is the material evidence thereafter that at this point of time, respondent Kawdu rushed, apprehending assault to this witness by J.C.L. - Kailas when Kailas rushed on the person of Saraswatibai the respondent followed Kailas.

It appears that at this time one Kalidas Meshram and Shalikram Gawande came there and separated the quarrel. When P.W. 1 - Kalidas and Saraswatibai

proceeded to go to Police Patil, Saraswatibai was abusing respondent Kawdu and J.C.L. - Kailas. Even at that time Kalidas Meshram and Shalikram Gawande followed them in the chowk J.C.L. - Kailas came in the chowk and assaulted Saraswatibai in the chowk. Thus, it appears that this witness has not spoken about any assault by crowbar on Saraswatibai in the second part of the incident which had occurred in the chowk, where Saraswatibai had allegedly fallen down.

P.W. 2 - Nalini has deposed that when the quarrel between Kawdu and Kalidas was going on, J.C.L. - Kailas beat Kalidas with stick. She has also in categorical terms admitted that there was nothing in the hands of respondent Kawdu. This witness has stated that when P.W. 1 - Kalidas and Saraswatibai started proceeding to the house of Police Patil, J.C.L. - Kailas started assaulting Saraswatibai with the help of stick, whereupon she fell giddy and sat on the ground. It would thus appear that both these witnesses have in their cross-examination admitted that respondent Kawdu was not holding anything at that time. There is also evidence to show that in all probability respondent had rushed only to intervene when J.C.L. - Kailas had allegedly assaulted P.W. 1 - Kalidas and Saraswatibai.

13. It may be mentioned that P.W. 3 - Suresh Bhoyar and P.W. 4 - Shalikram Gawande, who were examined as eyewitnesses, have turned hostile. P.W. 5 - Namdeo Gawande to whom the respondent had made confessional statement was also declared hostile and has not supported the prosecution.

14. P.W. 7 - Vasant has stated that the respondent came to him along with one Namdeo Gawande when respondent disclosed that there was a quarrel between him and P.W. 1 - Kalidas and his wife and he had assaulted Saraswatibai with crowbar. Although this witness has accompanied the respondent to the police station, ultimately he had scribed a report for P.W. 1 - Kalidas. In any case, the material witnesses P.W. 1 - Kalidas and P.W. 2 - Nalini have stated that the respondent Kawdu was not holding anything. The learned Sessions Judge has disbelieved the evidence of P.W. 7 - Vasant in paragraph No. 11 of the judgment and in our view, rightly so. The learned Sessions Judge has also considered the fact that although there is evidence to show that the respondent had also filed the report to the police station, that was not forthcoming, and as such the true incident has not come on record. In that view of the matter, the learned Sessions Judge has proceeded to give benefit of doubt to the respondent/accused.

15. The law, relating to the parameters of interference in appeal against acquittal, is now too well settled to be restated. The question recently fell for consideration of a Three Judge Bench of the Hon''ble Supreme Court, in the case of Basappa Vs. State of Karnataka, . In that case the Hon''ble Supreme Court has considered its earlier decision in the case of Chandrappa and Others Vs. State of Karnataka, in which following principles have been laid down in paragraph No. 42 of the judgment.

"42. From the above decisions, in our considered view, the following general

principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

(Emphasis supplied)

16. It is, thus, clear that unless and until the view taken by the learned trial Court is found to be perverse or not borne out of record or impossible view, the appellate Court cannot interfere with the acquittal even where two views are equally possible and the learned trial Court has preferred one. On consideration of the evidence on record and the findings as recorded, we do not find any reason to hold the findings of the learned Sessions Judge to be in any manner perverse or an impossible view. In that view of the matter, the criminal appeal is devoid of any substance and the same is hereby dismissed.