
(2004) 03 BOM CK 0013
In the Bombay High Court
Case No : Criminal Appeal No. 121 of 1988

State of Maharashtra

APPELLANT

Vs

Nilappa Shankarappa Chakure and Others

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 452, 504

Citation : (2004) 4 MhLj 139

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : S.D. Kaldate, app, for the Appellant; Hanmant V. Patil, holding for V.G. Sakolkar, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—Heard Shri S.D. Kaldate, learned A. P. P. for the appellant and Shri Hanmant V. Patil, learned counsel holding for Shri V.G. Sakolkar, learned counsel for the respondents. Perused the judgment and also the depositions of the witnesses examined by the prosecution.

2. This is an appeal by appellant/State challenging the Judgment and order passed by Judicial Magistrate, First Class, AUSA, District- Latur, in Regular Criminal Case No. 7671983 passed on 29-1-1988 acquitting the respondents of the offences under Sections 452, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. In an incident that took place on 7-6-1983 the victim Vijayabai was wife of complainant Sharanappa (P.W.2). Respondents along with Kamlabai Ghodke (original accused No. 5) and Kasturabai Chakure (original accused No. 6) was dragged from the house, by making forceful entry in the house and was taken to a place where Grampanchayat Office is situated and there she came to be assaulted by the accused and in that respondent No. 4 Prakash is stated to have snatched the blouse of victim Vijayabai. The husband of Vijayabai namely

Sharanappa (P.W.2) lodged complaint by going to police station Bhada in respect of which Ganeshsing Thakur, the then A.S.I. (P.W.8) registered offence vide Cr. No. 31/83 and after carrying out investigation filed charge sheet against the respondents.

4. Before the learned Judicial Magistrate, respondents pleaded not guilty to the charge and claimed to be tried. Their defence is that of total denial. At the trial the prosecution examined the victim Vijayabai (P.W.1), her husband Sharanappa (P.W.2), one Vishvanath Desai (P.W.3) who is admittedly an employee and one Ganesh (P.W.7) claimed to have witnessed the incident that took place in front of Chawadi. The trial Court after examining the accused u/s 313 of Criminal Procedure Code and after hearing the counsel for the parties, came to the conclusion that the prosecution has failed to prove the charges against the accused. The evidence on record was found not satisfactory to establish that the accused persons committed the offence. Consequently, the trial Court acquitted the accused. Hence, the present appeal challenging the acquittal.

5. The learned A.P.P. took me through the Judgment of the trial Court and also the evidence of the witnesses recorded at the trial. He submitted that the trial Court has not considered the evidence of eye witnesses namely Vijayabai (P.W.1), Vishvanath (P.W. 3) and Ganesh (P.W.7) who have categorically supported the prosecution case. He submitted that when there being any substantial reason, the trial Court has discarded the evidence which sounds probable and plausible and also carrying the ring of truth. He, therefore, submitted that the Judgment of acquittal be set aside and the accused persons be convicted.

6. As against that learned counsel for the respondents vehemently submitted that the trial Court has rightly appreciated the evidence and recorded the findings against the prosecution. He pointed out the infirmities in the evidence of witnesses who claimed to have eye witnessed the incident. Apart from inconsistency in their evidence, the learned counsel pointed out that emphasis that the entire story as put forth by victim Vijayabai as to the occurrence of the incident in which she came to be dragged and assaulted does not stand probable. He, therefore, urged that the trial Court has rightly acquitted the accused and, therefore, the appeal needs no consideration.

7. After perusal of the evidence of the witnesses and also the reasoning given by the trial Court in his judgment, at the first blush what appears is that the trial Court has appreciated the evidence and for recording his finding of acquittal he has given detail reasons to indicate as to how the evidence given by the witnesses is not believable and acceptable. The learned A.P.P. though pointed out emphatically statement given by the witnesses about the occurrence which apparently goes to show that the claim of witnesses is true, the learned A.P.P. could not satisfy this Court as to how the reasoning the finding recorded by the trial Court is perverse. If that is so, then it has relevancy so far as the decision of this appeal against the order of acquittal is concerned.

8. In recent decision of the Apex Court in *State of Rajasthan Vs. Raja Ram*, , the Apex Court has observed that "generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

9. Therefore, bearing in mind this principle and the parameter that has been laid down by the Apex Court, let us consider whether the reasoning recorded by the trial Court while acquitting the accused is either perverse or unreasonable. The victim Vijayabai though claimed in her evidence that the accused entered her house and dragged her from there to a "place in front of "Chavadi" where untoward incident has been committed by the accused. It is a matter on record that she was dragged from her house to a place by road which is crowded and thickly populated. It is also matter on record that about half an hour was required for the accused to take Vijayabai from her house to the place where further incident has taken place. In the first place, taking into consideration the situation as to the place the present of so many persons witnessing the incident and that too which has taken place in a broad day light, the happening of the incident even of dragging a woman from her house to a place which is in the thickly populated area, does not sound natural and probable. In the nature of thing, if such incident had taken place, people in the vicinity must have at least intervened to the rescue the victim, but what the prosecution wants or to believe is that none intervened till the victim was dragged from her house to the place where the further incident took place.

10. As the evidence stands, as to the incident of dragging from the house the only evidence on which prosecution could place reliance is that of Vijayabai. It is pertinent to note that witness Vishvanath who was admittedly in the employment of Sharanappa, the husband of Vijayabai, has stated that nobody was present in the house of the complainant. But at the same time, in the next breath, he states that after leaving the cart of salt he was standing in the house of complainant. He further claimed that when he heard the noise towards Panchayat, he went there and he saw that Prakash, Nilappa, Malikarjun were beating Vijayabai by Chappals. In this context the evidence of Sharanappa (P.W.2), the husband of

Vijayabai is self eloquent. He claimed that he was returning from his land by bullock cart and he learnt from his son and daughter that accused Nos. 1 to 6 entered his house and they assaulted their mother and grandmother. It has come in his evidence that Vishvanath was with him in the bullock cart when he was returning from the field. This evidence of witness Sharanappa is derogatory to what has been claimed by witness Vijayabai and witness Vishvanath at least as regards the presence of witness Vishvanath either in the house or at the place where the latter incident has taken place.

11. That apart though Vijayabai claims that witness Vishvanath was in the house, the witness Vishvanath was not prepared to claim that he was in the house from the beginning. As stated earlier what has been stated by witness Sharanappa that Vishvanath was with him in the bullock cart while he was returning from the field falsifies the claim of Vijayabai as well as Vishvanath. This is significant in that sense that the claim of both these witnesses Vijayabai and Vishvanath is discarded either in respect of the incident that has taken place in the house and as to the incident of dragging and assault on Vijayabai that alleged to have been taken in the latter part of the incident.

12. It is crystal clear from the evidence of Sharanappa that he was not an eye witness to any of the incident, but surprisingly in the complaint which he lodged, he has stated that while he was returning by his bullock cart along with his servant i.e. witness Vishvanath, he witnessed the incident that took place and he went to the extent of saying that the accused persons were assaulting his wife with Chappal and they have caused damage to her clothes which she was wearing and also to the "Mangalsutra" which she was wearing. The happening in this incident as claimed by Vijayabai and also by Sharanappa as narrated in the complaint, if it is visualised before our eyes, in the background of circumstances attending the case, it has to be rejected as improbable and unbelievable.

13. It is true that witness Ganesh (P.W.7) has stated in his evidence that the accused Prakash snatched the blouse of Vijayabai but that was not the case of the victim herself. It is a matter of record that witness Ganesh was well acquainted with Sharanappa, it appears that it was the reason for him to make a false story which is on the face of it unbelievable.

14. It has come in the evidence that some dispute was there between accused Nilappa over some measurement of land. In the absence of substantial evidence connecting the accused, having regard to this motive for the complainant to involve the accused because of dispute with accused No. 1, what spells out is false implication of the accused in this case. Therefore, taking over all view of the matter on the basis of evidence that is now scanned by way of reappraisal by this Court, as Court of appeal, I do not think that any other view other than the view taken by the learned Judicial Magistrate could be possible. I do not think that the view taken by the learned Judicial Magistrate in recording finding for the offence against the accused as not proved beyond reasonable doubt on the evidence on record, is either unreasonable or perverse. What appears to me, is that there

was justification having considered the infirmities in the evidence and improbability as to occurrence of the incident as alleged by the prosecution. No interference in the Judgment of acquittal is called for.

15. The appeal needs no consideration. The trial Court has not committed any error in acquitting the accused. The appeal is dismissed.