

(2013) 08 BOM CK 0254

In the Bombay High Court

Case No : Criminal Revision Application No. 47 of 2011

Tanoi Adwalpalkar

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 5 ABR 758 : (2013) ALLMR(Cri) 4175

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : Joseph Vaz, for the Appellant; S.R. Rivonkar, Public Prosecutor, for the Respondent

Judgement

R.C. Chavan, J.—This revision is directed against the concurrent findings of the learned trial Magistrate and the Additional Sessions Judge holding the applicant guilty of offences punishable u/s 332 of the Penal Code. The facts which are material for deciding this appeal are as under:

On 29/12/2008 at about 6.45 p.m., PW1/Head Constable Ravindra Khorate, buckle No. 3501 claims to have been posted at duty at the spot. The applicant took exception to parking of a car possibly on the road. Head Constable Ravindra Khorate claims to have told the applicant that the car belonged to some Karnataka Minister and that it would move away as soon as the occupants alighted from the car. However, the applicant was not satisfied with the reply and hit the Head Constable with a key chain in his hand resulting in an abrasion on the victim's cheek. Other police men were informed and the applicant was taken to police station along with the Head Constable. The Head Constable was referred for medical examination and, thereafter, on his report an offence was registered. In course of investigation on 30/12/2008, panchanama of spot was performed. Statements of witnesses were recorded and on completion of investigation a charge was sent to the Court of learned Judicial Magistrate First Class, Panaji.

2. The learned Magistrate charged the applicant of offence punishable u/s 332 and since he pleaded not guilty put him on trial, at which prosecution examined in all 4 witnesses to bring home the guilt of the applicant. After considering the prosecution evidence, in the light of defence of denial, the learned Magistrate convicted the applicant as afore mentioned and sentenced him to pay fine of Rs. 2,000/- or in default undergo simple imprisonment for 20 days. The applicant appealed to the Court of Sessions, but in vain and this is how the applicant is before this Court.

3. I have heard the learned Counsel for the applicant and the learned Public Prosecutor for the respondent and with the help of both, I have gone through the evidence on record. The learned Counsel for the applicant submitted that if the applicant has been taken along with the injured Head Constable Ravindra Khorate to the police station, it is not clear as to why the report at Exhibit 49 does not mention the name of the applicant and only states that an unknown person had hit the Head Constable. The learned Counsel pointed out from the cross-examination of PW1/Head Constable Ravindra Khorate that he had seen the accused on the date of incident and even after the incident, as the brother of the accused was having a shop at Santa Monica Jetty. Thus, PW1/Ravindra Khorate should have been able to name the applicant in the report.

4. The learned counsel for the applicant next submitted that there is no evidence to show that PW1/Head Constable Ravindra Khorate was in fact on duty at the relevant time at the spot. The prosecution made an attempt to place on record the extract of station diary of traffic cell, but it was obviously not admitted in evidence rightly because original was not produced for perusal of the Court. Thus, there was nothing to show that PW1/Head Constable Ravindra Khorate was indeed on duty at the relevant time.

5. The prosecution examined police constable 4850 Rupesh Vengurlekar as PW2 to corroborate the version of PW1/Head Constable Ravindra Khorate. However PW2/Rupesh Vengurlekar stated that incident took place on 30-12-2008 and was categorical that his statement was recorded on the next date i.e. 31-12-2008. PW4/Praveen Pawar, P.S.I., the Investigating Officer, admitted in his cross-examination that in their statements all the witnesses have stated that incident occurred on 30/12/2008. Mercifully, the prosecution did not examine those witnesses. Thus, the record of investigation itself contradicts the version of PW1/Ravindra Khorate about the incident having taken place on 29/12/2008.

6. PW3/Ganpat Azgaonkar, who was supposed to be an independent eye-witness turned hostile and did not support the prosecution. The learned Counsel for the applicant submitted that in the face of such discrepancies the version of PW1/Ravindra Khorate should not have been believed by the trial Court as well as the first appellate Court. Though even un-controverted testimony of any injured person can be sufficient for upholding a conviction, in this case, the testimony is riddled with several discrepancies, which casts doubt about the reliability of version of PW1/Ravindra Khorate, benefit whereof should go to the applicant. In

view of this, the application is allowed. Conviction of the applicant for offences punishable u/s 332 of Penal Code and sentence imposed is set aside. He is acquitted of the offence. Fine, if paid, is refunded.