
(2013) 01 BOM CK 0233
In the Bombay High Court
Case No : Criminal Appeal No. 320 of 2003

The State of Maharashtra

APPELLANT

Vs

Ashok and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3354

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : D.V. Tele, app, for the Appellant; M.P. Tripathi and Shri K.D. Bade Patil, for Respondents No. 2 to 13, for the Respondent

Judgement

T.V. Nalawade, J.—The appeal is filed against the judgment and order of acquittal delivered in R.C.C. No. 141/1998 by Judicial Magistrate (First Class), Pathri District Parbhani. The accused are acquitted of the offences punishable u/s. 147, 148, 325, 279, 337, 427 r/w section 149 of the Indian Penal Code. Both the sides are heard. This Court has perused the original record.

2. In short, the facts leading to institution of proceedings can be stated as follows.

3. The complainant and the accused hail from same village, Viz. Raigavhan Tah. Partur District Jalna. The incident took place on 13/08/1997. The complainant and his relatives were proceeding to a temple for Darshan in jeep of the complainant. When jeep reached near spot Wadi naka, accused Ashok Kadpe over took this jeep. Ashok was present in other jeep. Ashok had purchased one truck about 15 days prior to the incident and this fact was known to the complainant. This truck of Ashoka came from opposite direction and gave dash to the jeep of complainant. From this truck persons like Khandu Maroti, Namdeo Bhagwat, Vilas Abhiman, Baliram Bhagwat, Uttam Kadpe, Balasaheb, Narayan alighted. Ashoka also came there with revolver. Then all these persons assaulted complainant by using sticks. The complainant approached police, Pathri and gave

report. Crime came to be registered for aforesaid offences. As the complainant and some persons from jeep had sustained injuries due to assault, they were referred for medical examination. Spot panchanama came to be prepared. The police recorded statements of witnesses and after completion of investigation, charge sheet came to be filed for aforesaid offences.

4. To charge, all the accused pleaded not guilty. The prosecution examined in all 11 witnesses to prove the offences. The trial Court has not believed the witnesses and all the accused are acquitted. It was submitted for the State that as injuries were sustained by the complainant and others, the trial Court ought to have believed the witnesses. However, the Id. A.P.P. conceded that in absence of evidence on rash and negligent driving, due to non-examination of driver of jeep of the complainant, the conviction was not possible for offences of rash and negligent driving and the injuries caused if any during the accident. The other side submitted that view taken by the trial Court is possible view and the story given by the prosecution witnesses itself appears to be improbable in nature.

5. The evidence of the complainant shows that the driver who was allegedly driving the jeep, was hired by him 7 to 8 days prior to the incident. The said driver is not examined. Suggestions are given that the complainant himself was driving jeep and there was no such driver employed by the complainant. Substantive evidence is given by the complainant that when the jeep of the complainant was proceeding towards temple, the truck came from the opposite direction and it gave dash to the jeep. The complainant has deposed that after giving dash to the jeep, all the accused persons came to the jeep and they gave beating to him by using iron rod and axe. The report at Exh. 82 is proved in the evidence of complainant. In Substantive evidence no specific allegations are made either against Ashoka or others with regard to exact part played by them in the incident. Though the case was not properly conducted in trial Court, there is probability that in the accident some persons from jeep were injured and probably no assault as such was made atleast on other persons who include ladies and who were travelling in the jeep. In the substantive evidence, the complainant has not stated that the truck was brought to the side of the jeep intentionally to give dash to the jeep or that there was error on the part of driver of truck. The record shows that the accused persons approached police first after the accident and then the complainant went to the Police Station. It was a new truck of the accused side and it does not look probable that the accused took risk of causing damage to the new truck by intentionally giving dash to the jeep. There was no such whisper in F.I.R.

6. The evidence in cross examination of the complainant shows that many cases were pending against the complainant which were filed at the instance of side of the accused. Similarly, the complainant side had filed some cases against other side. All these witnesses examined by the prosecution are involved as accused in some cases filed by other side. The story given in the complaint and in substantive evidence by the complainant is different. Not only that the stories

given by other witnesses are also different and inconsistent with each other. One thing is common that every witness has admitted that there was previous rivalry which included civil dispute and filing of criminal cases against each other.

7. Nivrutti (P.W. 3) has given evidence that only motor over took their jeep and after that the truck came from opposite direction and gave dash to the jeep. He has tried to give specific part played by each accused in the incident which was not done by the complainant. He has admitted that there are two political rival groups in the village and these two sides belong to the two groups. He was not sitting on front seat and he has no evidence with regard to the manner in which the incident took place. Sahebrao (P.W. 4) has given evidence that the truck came from opposite direction and gave dash to their jeep. He has not stated that first some accused had over taken their vehicle and then the truck was brought from front side. The complainant is maternal uncle of this witness. He has also admitted that there are two rival groups in the village. Kausabai (P.W. 5) is sister of the complainant and she has tried to say that one jeep and one motor cycle first over took their jeep and then truck came from opposite direction. She is interested witness and against her criminal case is filed at the instance of other side.

8. Lankabai (P.W. 6) is also relative of the complainant. She has tried to say that one jeep and motor cycle first over took their jeep and then truck came from opposite direction. She has also tried to give specific role played the accused in the incident. Datta (P.W. 7) has deposed that one motor cycle over took their jeep, the driver of motor cycle gave signal to a truck which was on opposite side and then the truck came towards jeep and gave dash to the jeep. This is altogether different version. The wife of complainant is his sister and so he is close relative of complainant.

9. Smt. Shantabai (P.W. 8) has given altogether different version. She has not uttered word about accident. She has deposed that one motor cycle over took their jeep and then assault was made on the complainant. Her husband is working as agricultural labour with the complainant.

10. Dr. Bhaskar (P.W. 9) has given evidence on injuries which were found on the persons of complainant and some other witnesses. The complainant had sustained fracture injury over 1/3rd left radius. Such injuries can be caused by hard and blunt object according to the Doctor. Others had sustained simple injuries like contusion. The Doctor has admitted that the injuries sustained by the complainant can be caused due to fall on ground. Thus, medical evidence does not rule out the possibility of sustaining injury in the accident, though there are no specific suggestions given in this regard. The prosecution has examined two panch witnesses to prove spot panchanama. Police officer Kadam (P.W. 11) has also given evidence. There is no independent corroboration to the evidence of Police Officer on spot panchanama. There is no evidence to show as to who was driving the truck. In any case, when there is no evidence of driver of the jeep, such evidence would not help prosecution much. The aforesaid evidence shows

that the evidence of witnesses is not consistent with each other. Almost all the evidence is interested in nature. There was rivalry between two groups. The story given by the witnesses does not appear to be natural and probable. There is clear possibility that there was some accident and the things were blown out of preparation due to previous enmity. In view of nature of evidence, conviction is not possible for the offences for which charge was framed. This Court sees no reason to interfere in the order of trial Court. View taken by the trial Court is possible one. The appeal stands dismissed.