
(2013) 10 BOM CK 0240

In the Bombay High Court

Case No : Criminal Appeal No's. 347, 538 of 1996, 245 and 478 of 2000

The State of Maharashtra

APPELLANT

Vs

Balu and Others

RESPONDENT

Date of Decision : 15-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 180

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

Bench : Single Bench

Advocate : R.P. Phatke, app, Mr. S.P. Chapalgaonkar, Criminal Revision application No. 245 of 2000 and Mr. S.G Shinde, in Criminal Revision No. 347 of 1996, for the Appellant; S.P. Chapalgaonkar, for Respondent Nos. 1 to 9 in Cri. Appeal No. 538 of 1996 and for Respondent Nos. 1 to 4 in Cri. Appeal No. 478 of 2000, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—Criminal Appeal No. 538/1996 is filed by the State against the acquittal given by the Chief Judicial Magistrate, Parbhani in R.C.C. No. 344/1993. The decision of acquittal given in favour of accused Nos. 4 to 8 in respect of offences punishable u/s 147, 149, 324 and 354 of Indian Penal Code is challenged by the State. Criminal Appeal No. 539 of 1996 was filed by the State in the past against the judgment and order of aforesaid case for enhancement of sentence given to accused Nos. 1, 2, 3 and 9. Accused Nos. 1, 2, 3 and 9 had filed Criminal Appeal No. 41/1996 in Sessions Court against the same decision and the Sessions Court has set aside the conviction given to accused No. 1 for offence punishable u/s 354 of I.P.C. and the conviction given to accused Nos. 2, 3 and 9 for offence punishable u/s 324 r/w. 34 of I.P.C. The Sessions Court has convicted the accused No. 1 for offence punishable u/s 352 of I.P.C. and accused Nos. 2, 3 and 9 are convicted for offence punishable u/s 323 r/w. 34 of I.P.C. This decision was given on 15.9.2000. In view of this decision of the First Appellate Court, the appeal filed in this Court viz. Criminal Appeal No. 539/1996 was withdrawn by the State and the State filed Criminal Appeal No. 478/2000

against the judgment and order of Sessions Judge, Parbhani in Criminal Appeal No. 41/1996.

2. Criminal Revision Application No. 347/1996 is filed by the first informant, the victim, to challenge the entire decision of Chief Judicial Magistrate, Parbhani given in R.C.C. No. 344/1993. The decision given in favour of accused Nos. 4 to 8 of acquittal is challenged and the proceeding is filed also for enhancement of sentence given by C.J.M. to accused Nos. 1, 2, 3 and 9.

3. Criminal Revision Application No. 245/2000 is filed by the original accused Nos. 1, 2, 3 and 9 to challenge the decision given by the Sessions Court in Criminal Appeal No. 41/1996.

4. In view of the powers given to this Court u/s 386 of Criminal Procedure Code, if the appeals filed by the State Government are decided on merits, the purpose behind the aforesaid Criminal Revision Applications will also be served. Both the sides are heard.

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

Ashrubai, the first informant is resident of village Limla, District Parbhani. All the accused are resident of the same village. The houses of the complainant and the accused are situated in the same lane. The family of Ashrubai lives with family of her brothers in law like Maroti, Hanwata, Datta. Bhimrao is cousin of her husband and he lives separate, but in the same lane. The accused are relatives interse.

6. The incident took place on 14.6.2013 at about 7.00 a.m. when Ashrubai was proceeding to her cattleshed to collect cattle dung. Accused No. 1 -Balu Shinde obstructed her, held her hand and said that he was in love with her. He was asking Ashrubai to go to his field. Ashrubai became angry and said that she was a lady having many issues and he should not talk with her in that manner. As the accused was not ready to leave her, she started shouting.

7. After hearing the shouting of Ashrubai, first, her husband rushed to the spot and he enquired with the accused as to why accused had held Ashrubai. The accused gave blunt reply by saying that he wanted to take her to the field to have relations with her. After hearing the shouting, all other accused like Achut (accused No. 2), Gangadhar (accused No. 9) and Manchak (accused No. 3) rushed there. They started assaulting the husband of Ashrubai.

8. Accused No. 3 - Manchak was holding iron bar, accused No. 2 was holding metal weight, accused No. 9 - Gangadhar was holding stick and they assaulted husband of Ashrubai. Other accused also rushed there and they were holding sticks. Ashrubai started crying and then brothers in law like Maroti, Datta, Hanwata and Bhimrao rushed to the spot All the accused assaulted these witnesses also. The villagers like Ram Galande and Balasaheb Paradkar intervened in the incident to separate the quarrel. Due to the beating given by the accused, the husband of Ashrubai became unconscious. Ashrubai approached

police on the same day and on the basis of her report, the crime at C.R. No. 45/1993 came to be registered in Tadkalas Police Station, District Parbhani for offences punishable under sections 354, 149, 324, 34 etc. of I.P.C. Police referred Ashrubai and aforesaid witnesses for medical examination as all of them had sustained injuries. Police Head Constable - Abdagire (PW 8) made the investigation of the case. He prepared the spot panchanama, he arrested accused and he recovered the weapons. He filed chargesheet for aforesaid offences against all the accused.

9. To the charge for the aforesaid offences, all the accused pleaded not guilty. They took the defence of total denial. Alternatively, they contended by way of giving suggestions to the witnesses that they were assaulted by the witnesses and to give counter blast to their case, false report was given against them. The Trial Court believed the evidence given as against accused Nos. 1,2,3 and 9 and they were convicted and sentenced for the aforesaid offences. In the appeal filed by these convicted accused, the Sessions Court has set aside the conviction as against accused Nos. 1 - Balu for offence punishable u/s 354 of I.P.C. and he is convicted for offence punishable u/s 352 of I.P.C. Accused Nos. 2, 3 and 9 were convicted by C.J.M. for offence punishable u/s 324 r/w. 34 of I.P.C. and the Sessions Court has convicted them for offence punishable u/s 323 r/w. 34 of I.P.C. Accused No. 1 is sentenced to suffer simple imprisonment for the period of one month by the Sessions Court and accused Nos. 2, 3 and 9 are sentenced to suffer simple imprisonment for the period of five months.

10. The tenor of the cross examination of the witnesses examined by the prosecution shows that the accused did not dispute that some incident did take place. In view of such defence, the evidence given by the prosecution witnesses need to be appreciated.

11. Ashrubai (PW 1) has given evidence that the incident took place in front of house of accused No. 3 at about 7.00 a.m. She has deposed that she had gone to that side to collect cattle dung and there, accused No. 1 caught hold her hand and pulled her. She has given evidence that accused No. 1 had held her with intention to quarrel. She has deposed that she shouted and then her husband and other witnesses rushed to the spot.

12. Ashrubai (PW 1) has given evidence that in the incident, accused No. 3 gave blow of iron bar on the head of her husband and accused No. 2 gave blow of weight of metal on the head of her husband. She has deposed that accused No. 3 gave blow of iron bar on her head also. She has deposed that all the accused then assaulted her husband and other witnesses, who had rushed to the spot. She has given the names of the witnesses, who had rushed to" the spot like Bhimrao, Datta, Maroti and Hanwata. She has given evidence that she sustained injuries in the incident and on the same day, she gave report, which is at Exh. 64. She has given evidence that she was referred for medical examination and in Government Hospital she was examined.

13. In the cross examination of PW 1, it is brought on the record by defence that the house of accused No. 1 is situated beyond the spot of offence and the house of PW 1 is situated in the vicinity of house of accused No. 1. The evidence in the cross examination and the spot panchanama show that in the same lane, the houses of witnesses and accused are situated. The house of Tukaram is situated at the end of lane. It appears that only the house of accused No. 4 is not situated in the lane, however, there are houses of other villagers also in that lane.

14. The evidence of Ashrubai (PW 1) in the cross examination shows that she has admitted that when she was held by accused No. 1, the witnesses like her husband and brothers of husband had not reached the spot. She has given evidence that they rushed there only when she shouted. In the examination in chief, she has stated that the accused No. 1 had intention to quarrel. It was 7.00 a.m. The evidence shows that there are houses of many villagers in the lane and there is no evidence given by even the complainant that there was intention of accused No. 1 to outrage her modesty. Though, in the examination in chief, she has given her age less, in the cross examination, she has admitted that her marriage had taken place 25 years prior to the date of incident and she had five children. The provisions of section 354 of I.P.C. show that the prosecutrix is required to prove that the accused used the criminal force or assaulted the prosecutrix with intention to outrage her modesty or he did such act with the knowledge that he was likely to do so. Evidence of PW 1 shows that she did not feel that there was outrage of her modesty. In view of the time of the incident, the place of incident and aforesaid nature of evidence given by the prosecutrix, this Court holds that it is not possible to believe that there was the intention to outrage the modesty of PW 1. In view of the substantive evidence given by the PW 1, there is no need to discuss more the evidence of other witnesses for proving the offence punishable u/s 354 of I.P.C. The evidence is sufficient to prove that the accused No. 1 had caught hold of PW 1 and he had used criminal force, but the evidence is not sufficient to prove that accused had intention to outrage the modesty of PW 1. Thus, the Sessions Court has not committed error in holding that the offence punishable u/s 352 of I.P.C. is proved as against accused No. 1, but the offence punishable u/s 354 of I.P.C. is not proved.

15. Vithal (PW 2), husband of PW 1 has given evidence that after hearing the shouting of PW 1, he rushed to the spot. He has deposed that PW 1 narrated the incident to him and then he questioned accused No. 1 about his act. He has deposed that accused No. 1 gave blunt reply to him and then the incident started. He has deposed that in the incident, accused No. 3 - Manchak gave blow of iron rod on his head and accused No. 2 - Achut gave blow of metal weight on his head. He has deposed that accused Nos. 4 to 9 gave blows of sticks to him. He has given evidence that accused No. 3 - Manchak gave blow of iron rod on the head of PW 1, when she tried to save him. He has given evidence that his brothers Hanwata, Maroti, Bhimrao and Datta were also assaulted in the incident by the accused persons. He has given evidence that witnesses like Ram and Baiasaheb intervened to separate the quarrel. He has given evidence that the

injured were referred for medical examination. Thus, he has given evidence against all the accused, though the evidence is vague as against accused Nos. 4 to 9.

16. Hanwata (PW 3) has given evidence that in his presence, accused No. 3 assaulted PW 2 on his head with iron bar and accused No. 2 assaulted PW 2 with metal weight. He has given specific evidence that accused No. 9 - Gangadhar gave stick blow on the head of PW 2. He has given evidence, which is specific as against accused Nos. 3 and 2. He has given evidence as against other accused that they all beat him, Vithal, Maroti, Bhimrao and Datta. His evidence also shows that he was referred for medical examination.

17. The evidence of Bhimrao (PW 4) is consistent with the versions of PW Nos. 1 and 2 that accused Nos. 2 and 3 gave blows of metal weight and iron bar to Vithal and accused No. 3 gave blow of iron bar on the head of PW 1. He has tried to give specific evidence as against Maroti (accused No. 6) that he gave blow of plough, agricultural implement to Vithal, but there is no such substantive evidence of PW 2 - Vithal or PW 1. He has given evidence that other accused assaulted Vithal with sticks. He has given specific evidence against accused No. 2 - Achut that Achut assaulted him.

18. The evidence of PW 1 to 4 shows that there is specific evidence as against accused Nos. 1, 2, 3 and 9. The evidence of three witnesses shows that PW 2 had become unconscious during the incident. PW 2 has not given specific evidence as against accused No. 9, but the evidence shows that the accused kept assaulting the informant and the others even when PW 2 collapsed on the ground and so, the absence of specific evidence from PW 2 as against accused No. 9 cannot be given much importance.

19. The F.I.R. at Exh. 64 is consistent with the evidence of Ashrubai (PW 1) on material points. In F.I.R. also there is specific mention about the part played by Manchak (accused No. 3), Achut (accused No. 2). In F.I.R., there is mention that all other accused assaulted her husband with sticks, though there is no specific mention that accused No. 9 - Gangadhar assaulted with stick. In view of such mention in F.I.R. not much weight can be given to the absence of specific mention as against accused No. 9 - Gangadhar. Further, there is specific substantive evidence against Gangadhar on this point, which is not contradicted. The F.I.R. is also consistent with the presence of witnesses on the spot. The names of independent witnesses were also given by her. Thus, the F.I.R. has given necessary corroboration to the version of PW 1 and it shows that right from the beginning, there was the allegation as against the accused Nos. 1 to 3 and 9. The F.I.R. was given on the same day and this circumstance also cannot be ignored.

20. In the evidence of Medical Officer Shri. Bhalerao (PW 6) the record of medical examination of the injured witnesses is proved. His evidence shows that Vithal sustained as many as four injuries. There was one C.L.W of size 6 x 1/2 x

1/2 inches on scalp region from temporal region to occipital region and it was caused by hard and blunt object. There was one contusion on the back, left side, infra scapula region, which was caused by hard and blunt object. There was one contusion over back at L-1 and L-2 level, which was also caused by hard and blunt object. There was one C.L.W. over scalp, occipital region, which was caused by hard and blunt object. Thus, there were two injuries on the head and there were other injuries on the other parts of the body. This evidence is consistent in respect of the evidence given as against accused Nos. 2 and 3.

21. On the person of Hanuman (PW 6), the doctor found two injuries like one C.L.W. over scalp region at left parietal region and one contusion over neck. PW 1 was having two injuries which include one C.L.W. over scalp, temporal region and one contusion on right forearm. The injury No. 1 of PW 1 is described as serious, but no reason is given as to why it is described as serious injury. On the person of Marotrao, two injuries were found. One was C.L.W., on scalp occipital region and one contusion was present on deltoid region. The injury certificates are proved as Exhs. 73 to 76. The injuries on the person of Bhimrao, Girjabai, Balasaheb are also proved and their injury certificates are at Exhs. 77 to 79. The evidence of doctor shows that all the injuries were sustained within 24 hours. The examination was done on the same day at 11.00 a.m.

22. The injuries on the person of Hanuman and Ashrubai are described as grievous, but they did not sustain fracture injury. No reason is given by the doctor as to why they were described as grievous injuries. In view of such nature of the evidence, it is not possible to convict the accused persons for offence punishable u/s 325 of I.P.C. Injuries do not fall under the definition of grievous injuries given in section 320 of I.P.C.

23. In the cross examination, PW 6 has admitted that the injuries sustained by few persons like Girjabai, Bhimrao are possible due to fall on the ground. In view of the aforesaid nature of evidence, number of injuries sustained by number of persons and the fact that some incident did take place, it is not possible to believe that these two persons had sustained injuries due to fall on the ground.

24. The evidence of Abdagire (PW 8), the Investigating Officer shows that spot panchanama at Exh. 87 was prepared by him. Nothing incriminating was found on the spot. He has given evidence on the recovery of stick from the house of one accused, but the panch witness has turned hostile. As there is direct evidence and there is medical evidence, for corroborating the direct evidence, there is no necessity for proving that weapons were recovered. The absence of incriminating material on spot of offence and the absence of evidence on recovery of weapon cannot affect the fate of the case in view of the direct and medical evidence already discussed.

25. In the cross examination, it is suggested to PW 8 that accused No. 1 had given report against prosecution witnesses and police had filed case against the prosecution witnesses. At Exh. 95, copy of chargesheet filed against Vithal,

Maroti, Hanwata is produced. At Exh. 96, there is copy of judgment and order of C.J.M. showing that they came to be acquitted in that case. These circumstances show that report was given in respect of the same incident by the defence side and so, they are not disputing that some incident did take place at the place mentioned by the prosecution witnesses. In view of the evidence and the aforesaid circumstances, there is no reason to disbelieve the prosecution witnesses, atleast in respect of case as against accused Nos. 1, 2, 3 and 9. The evidence as against other accused is vague in nature and there are some inconsistencies. The Trial Court has refused to believe the prosecution evidence as against these accused. As the evidence is vague and the F.I.R. shows that accused Nos. 1, 2, 3 and 9 had reached the spot first and as there is no corroboration of independent evidence, this Court holds that there is no ground made out to interfere in the decision of acquittal given in favour of accused Nos. 4 to 8. The view taken by the Trial Court is a possible view.

26. In view of the evidence given as against accused Nos. 1, the conviction for offence punishable u/s 352 of I.P.C. is proper. Similarly, the evidence on record is not sufficient to prove the use of dangerous weapon or causing of grievous injuries. Thus, the conviction for offence punishable u/s 323 r/w. 34 of I.P.C. is proper. The evidence shows that accused Nos. 2, 3 and 9 came together and accused No. 1 was present on the spot already. This evidence is sufficient for use of section 34 of I.P.C. as against accused Nos. 2, 3 and 9. Thus, no ground is made out for interference in the decision given by the Sessions Court.

27. The learned counsel for convicted accused submitted in alternative that accused Nos. 1, 2, 3 and 9 were behind bars for atleast 10 days in the case. He submitted that the accused must have faced agony and they must have spent amount for defence since 1996. He submitted that no evidence is given on previous enmity and the incident took place between neighbours all of a sudden. He submitted that the lenient view needs to be taken and the convicted accused may not be sent behind bars after so many years of the incident. He submitted that this Court can use power given u/s 386 of Cr.P.C. to reduce the sentence in appeal filed by the State and the convicted accused can be directed to pay the compensation in stead of sending them behind bars. He submitted that the incident took place all of a sudden and counter cases were filed and all the persons are living in the same lane and due to this circumstance also, after so many years, they may not be sent behind bars. This Court holds that there is force in the alternate submissions made by the learned counsel for convicted accused. This Court holds that sending the convicted accused behind bars may again create tension and may give rise to another incident. During last 17 years, no untoward incident has taken place and it can be said that they have learnt the lesson. This Court holds that the convicted accused can be directed to pay some amount of compensation to the injured witnesses and the decision can be modified accordingly. In the result, the following order:--

ORDER

(I) Criminal Appeal No. 538/1996 filed by the State as against acquittal given to accused Nos. 4 to 8 is dismissed.

(II) The Criminal Revision Application No. 347/1996 filed by the original complainant, victim, against the decision of Trial Court is also dismissed.

(III) The other two proceedings bearing Criminal Appeal No. 478/2000 and Criminal Revision Application No. 245/2000 are partly allowed and disposed of in following terms.

(i) The judgment and order of Criminal Appeal No. 41/1996 decided by the learned Additional Sessions Judge, Parbhani is modified.

(ii) The conviction of accused No. 1 for offence punishable u/s 352 of I.P.C. is maintained. The conviction of accused Nos. 2, 3 and 9 for offence punishable u/s 323 r/w. 34 of I.P.C. is maintained.

(iii) However, the sentence given to accused Nos. 1, 2, 3 and 9 is modified and they are sentenced to suffer imprisonment for the period already undergone and to pay compensation of Rs. 10,000/- (Rupees ten thousand) each. In default of making payment of compensation, each accused to undergo simple imprisonment for the period ordered by Sessions Court.

(iv) The compensation amount is to be deposited in the Court of Chief Judicial Magistrate, Parbhani within 15 days of the date of order. After depositing the amount, the C.J.M. is to call the injured witnesses like Ashrubai (PW1), Vithal (PW2), Hanwata (PW 3) and Bhimrao (PW 4) and distribute the amount equally amongst these four injured persons.