

(2017) 05 BOM CK 0044
In the Bombay High Court
Case No : 290 of 2002

The State of Maharashtra

APPELLANT

Vs

Basavraj Suryakant Banegaon, & Ors.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 395](#), [Section 427](#) - Acts done by several persons in furtherance of common intention - Punishment for dacoity - Mischief causing

Citation : (2017) 05 BOM CK 0044

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : Amit Palkar

Final Decision : Dismissed

Judgement

1. By this appeal, the State is challenging the judgment and order dated 12th October, 2001 passed by Sessions Judge, Solapur in Sessions Case No.89 of 2001 thereby acquitting Respondent Nos.1 to 5 for the offences punishable under Sections 395, 427 read with Section 34 of the Indian Penal Code (IPC).

2. Brief facts of the appeal can be stated as follows; On 11th December, 2000 at about 9.30 am, PW3 Devgunabai, the Deputy Sarpanch of Village Chapalgaon found that the present Respondents were removing the tin-sheets of the study room, which was constructed out of MLA's fund and the same was belonging to the Grampanchayat, Chapalgaon. She along with the other persons, who were present there noticed that at the instructions of Respondent No.1 Basavraj, Respondent No.2 Ganesh and Respondent No.3 Hanmant were removing the tin-sheets from the roof of the study room. Despite the objections raised by PW3-Devgunabai and the Sarpanch of the village Santosh Patil, those tin-sheets were taken away by Respondent No.4 Siddharam and Respondent No.5 Parmeshwar from the spot, again at the instruction and at the instance of Respondent No.1

Basavraj.

3. When PW1 Gramsevak Vithal Shinde came to the office of Grampanchayat at 11.30 am, the Sarpanch and Deputy Sarpanch informed him about this fact. PW1 Shinde then verified from the record whether the tin-sheets of the roof of study room belong to Grampanchayat. Thereafter, after discussing the matter with his superiors, on 15th December, 2000, PW1 Shinde lodged complaint against Respondents at Akkalkot Police Station.

4. On the complaint (Exh.19) of PW1 Shinde, CR No.84 of 2000 came to be registered against Respondents for the offences punishable under Sections 395 and 427 read with Section 34 of IPC. Investigation of the said CR was taken over by PW7 P.I. Pradip Babar. On the next day, he visited the place of incident and prepared spot panchanama Exh.20. In the course of investigation, he recorded statements of various witnesses and arrested the Respondents. During Police custody, at the instance of Respondent No.5 Parmeshwar, on 9th January, 2001, 14 tin-sheets came to be recovered along with the "tikav" (instrument used for removing the tin-sheets from the roof) were seized under Panchanama Exh.31. After completion of investigation PW7 PI Babar filed charge-sheet in Court of Judicial Magistrate First Class at Akkalkot against Respondents on 23rd February, 2001.

5. In usual course, the case was committed to the Sessions Court at Solapur. The Sessions Court framed charge against the Respondents vide Exh.03. The Respondents pleaded not guilty and claimed to be tried, raising the specific defence that the case was filed out of political rivalry and enmity.

6. In support of its case, the prosecution examined in all seven witnesses. Out of them, PW2 Bhimashankar, PW3 Devgunabai and PW4 Abdul Gani were the eye-witnesses to the incident. Whereas, PW1 Shinde was the Gramsevak; and the formal witness. PW5 Ram Dede and PW6 Shivaji Patil were the Panch witnesses to the memorandum of seizure panchanama of the tin-sheets. Both of them were, however, declared hostile as they did not support the prosecution case. Lastly, prosecution examined PW7 Investigating Officer, PI Babar.

7. On appreciation of their evidence, the Trial Court was pleased to hold that prosecution has utterly failed to prove its case against Respondents and accordingly, the trial Court acquitted the Respondents on both the charges, leveled against them.

8. This judgment of the Trial Court is challenged in this appeal by learned A.P.P. submitting that the Trial Court has committed an error in acquitting the Respondents in the face of the evidence of three eye-witnesses, who have categorically deposed that they saw the Respondents carrying away the tinsheets of the study room belonging to Grampanchayat. It is urged by learned A.P.P. that evidence of PW1 Shinde goes to prove that the tin-sheets of the study room were owned by the Grampanchayat and the Respondents have not offered any satisfactory explanation for removal of the same. Hence, necessary inference of

mens-rea is required to be drawn in this case which Trial Court has not done. Hence, according to learned A.P.P., the judgment and order of Trial Court acquitting the Respondents of the charges leveled against them is required to be quashed and set-aside.

9. At the outset itself, it needs to be stated that the law relating to the scope of inference of the Appellate Court in Appeal against acquittal is fairly well settled and crystallized to the effect that unless the impugned judgment and order of the Trial Court is found to be manifestly illegal and perverse the Appellate Court is not expected to interfere therein.

10. In the instant case, if the evidence on record, as adduced by the prosecution is perused, then it can be clearly seen that evidence of PW2 Bhimashankar, PW3 Devgunabai, PW4 Abdul Gani, who are the eye-witnesses to the incident, establishes and proves the fact that the Respondents have removed the tin-sheets from the study room of the Grampanchayat and taken them away. However, at the same time, it is necessary to bear in mind, the defence raised by the Respondents also, which is proved in this case through the cross-examination of the prosecution witnesses.

11. It is the specific case of Respondent No.1 that there were two political parties in village Chapalgaon, one was led by his father Suryakant, whereas another was led by Sarpanch Santosh Patil. From the past several years, before the incident, the party of Respondent No.1's father Suryakant was being elected in the Grampanchayat and hence, the party of Sarpanch Santosh Patil was having grudge against them. Moreover, Respondent No.1 Basavraj was also elected as "Director" of Indira Sahkari Sakhar Karkhana, Akkalkot and that had added to the grudge on the part of rival party. In such situation, according to Respondent No.1, the Resolution was passed by Grampanchayat in the meeting held on 23rd February, 1999. As per the said Resolution, the study room was leased out to Respondent No.1 Basavraj at a monthly rent of Rs.30/-. By the said Resolution he was also permitted to repair the flooring and to replace the tin-sheets, along with making some other repairs of the study room. According to Respondent No.1 Basavraj, on the date of incident, he was removing the tin-sheets of the study room with the help of labourers i.e. Respondent Nos.2 to 5 for replacing them. Out of enmity Sarpanch Santosh Patil objected to the same. The police were called. Both the parties were taken to the Police Station and the matter was settled amicably. PW1 Gramsevak Shinde informed the Police that Respondent No.1 Basavraj has right to replace the tin-sheets. However, on the same day, in the night, Sarpanch Santosh Patil and his associates abused Respondent No.2 Ganesh on his caste and assaulted him. Hence, Respondent No.2 lodged a complaint against Sarpanch and his associates with Police. As a result of the same, this false complaint came to be filed by Sarpanch through PW-1 Gramsevak Shinde against Respondents and that too after the lapse of four days from the incident, as an afterthought and counter blast.

12. This defence of the Respondents is found to be substantiated from the cross-

examination of PW-3 Deputy Sarpanch Devgunabai. She has admitted that on 23rd February, 1999 there was monthly meeting of Grampanchayat in which a Resolution was passed to the effect that study room should be leased out to Respondent No.1 for his office. She has also admitted that, as per the said Resolution Respondent No.1 was permitted to do the necessary repairs of the study room. According to her, one Mahapure was taking rough notes of the meeting and he used to write the minutes of meeting as per the convenience. Thus PW3 Devgunabai has clearly supported and proved the defence of Respondent No.1 that in pursuance of this Resolution which was passed on 23rd February, 1999, he had removed the tin-sheets of the said room, in order to replace them, as the study room was leased out to him. Once this fact is established through the cross-examination of prosecution witness itself, then there is no question of the offence of either 395 or 427 of IPC being made out against the Respondents.

13. Perusal of the judgment of the Trial Court also shows that the Trial Court has considered the fact that if intention of Respondents was to commit the dacoity, as alleged by prosecution, they would not have chosen the time of morning, when the villagers are gathered near the study room, which is also surrounded by hotels, shops etc. It is also pertinent to note that Sarpanch Santosh Patil, who was material witness to the incident is not examined by prosecution. The major infirmity as noticed by prosecution also pertains to the delay of four days in lodging the complaint which again supports the defence of Respondent No.1 that after the incident both the parties were taken to the Police Station, where the matter was amicably settled and hence, the complaint was not lodged even though PW1 was also very much present at the Police Station. It also supports and substantiates the defence of Respondent No.1 that only thereafter, as the incident of Sarpanch and his associates abusing and beating Respondent No.2 Ganesh took place, in respect of which complaint came to be lodged in Police Station, as a counter blast thereto this complaint was lodged after the lapse of four days. Otherwise this delay of four days in lodging the complaint is not explained by the prosecution also.

14. Thus, having regard to the totality of the facts and circumstances of evidence on record, it cannot be said that the view taken by the trial Court of acquitting the Respondents as perverse or illegal. In any way, as a matter of fact, that being the only view from the evidence on record, the judgment of trial Court acquitting the Respondents of all the charges leveled against them needs to be confirmed.

15. Appeal, therefore, holds no merit, hence stands dismissed. The bail bonds of the Respondents stand cancelled.