

(2012) 12 BOM CK 0098
In the Bombay High Court
Case No : Criminal Appeal No. 328 of 1996

The State of Maharashtra

APPELLANT

Vs

Jaganath Shantaram Pawar

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)
Penal Code, 1860 (IPC) — Section 394

Citation : (2013) ALLMR(Cri) 550 : (2013) 2 BomCR(Cri) 78

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : M.H. Mhatre, APP for the State, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Kode, J.—The appellant-State of Maharashtra has appealed against the Judgment and Order of acquittal passed by the learned Judicial Magistrate, First Class, Murbad on 29th January, 1996 in R.C.C. No. 107 of 1988 acquitting respondent-accused from the charge of commission of offence punishable u/s 394 of Indian Penal Code. Such of the facts regarding said prosecution and necessary for deciding the present proceeding are as under :-

1.1. On 9th June, 1988 by S.T. Bus at 6.15 p.m., Baban Dagadu, first informant (PW-5) resident of village Malhed, alongwith one Raghunath Krishna Pawar (PW-2) and Tukaram Pawar had been to Village Tondli for replacing tiles on the house of one Shri Babaji Shankar. After finishing the said work, PW-5 alongwith his companion Bhaga Krishna (PW-3) returned to Murbad at about 6.50 p.m. by S.T. Bus. By another bus, from Murbad they went to Village Shivale. PW-5, while returning from the house of Babaji Shankar borrowed Rs. 500/-. After reaching the village Shivale, PW-3 proceeded to Village Malhed, while PW-5 went to the shop of one Shri Zunjarrao for purchasing the handkerchief. He purchased the handkerchief for Rs. 6/- from borrowed money. The respondent-accused then present saw PW-5 having such amount.

1.2. After purchasing handkerchief, PW-5 proceeded on foot for returning to his home. At about 9.30 p.m., he reached nearby underground tunnel in between Village Ambele and Malhed. The respondent then suddenly came from rear side of PW-5 and demanded to hand over money and by assaulting on his head, legs and hand with stick made him to fall down. He snatch away Rs. 494/- kept by PW-3 at his waist in the couch of Dhoti. PW-5, sustained injuries on his head, hands and both the legs due to assault made and remained lying in the field of one Shri Tungar.

1.3 It appears that one Daji Shankar Pawar informed to brother of PW-5 i.e. to Police patil Mhadu Dagadu Pawar, PW-1 and others about PW-5 lying the field of Shri Tungar. PW-1 and other villagers brought PW-5 to Murbad in a bullock-cart. PW-5 was initially taken to Murbad Police Station and thereafter as advised to Murbad Hospital. On the next day, complaint (exhibit-35) of PW-5, narrating such matters was recorded by police Head Constable of Murbad Police Station and thereon crime no. 102 of 1988 for offence u/s 394 of Indian Penal Code was registered against the respondent at said police station. After due investigation the respondent was charge-sheeted for commission of offence u/s 394 of Indian Penal Code by the said police station.

2. The respondent pleaded not guilty to charge (exhibit-8) framed against him for commission of offence u/s 394 of Indian Penal Code and claimed to be tried. The prosecution in addition to the above referred 4 witnesses examined PW-4 Dr. Ramchandra Damodar Thombhare who had examined PW-5 on 10th June, 1995 and issued medical certificate (exhibit-29). The defence of the respondent was that of total denial. The respondent during his examination u/s 313 of the Code of Criminal Procedure stated that the prosecution evidence was false and all the material witnesses examined were relatives of the complainant and hence they have deposed falsely against him. He claimed that Kisan son of PW-5 was also working along with him at the place of Mangal Pandurang. As he did not report for the work and he asked about the same to PW-5, PW-5 was enraged due to the same and on suspicion he has involved him in the case.

3. After the assessment of the prosecution evidence in the light of the submissions advanced by the both the sides, the trial court came to the conclusion that the prosecution has not proved that the respondent had voluntarily caused hurt to PW-5 by beating on his head, legs and hands with wooden stick and thereafter robbed from him Rs. 494/- on 9.6.1988 at 9.30 p.m. at Ambele Malhed Road. In consonance of the said finding arrived the trial court acquitted the respondent from the charge of commission of offence u/s 394 of Indian Penal Code.

4. Being aggrieved by the said Judgment and Order of acquittal, the State of Maharashtra sought the leave u/s 378(1) of the Code of Criminal Procedure for preferring the present appeal and after grant of such a leave on 28th January, 2000 the present appeal is registered.

5. Mrs. M.H. Mhatre, learned APP urged that the trial court manifestly erred in acquitting the respondent after coming to the conclusion that the evidence of PW-5 has remained to be contradicted on behalf of the respondent and therefore it makes a strong incrimination against the respondent. She urged that the reasoning given by the trial court for not accepting evidence of PW-5 is primarily due to their being no corroboration to the same. She urged that the trial court erroneously came to such a conclusion on the basis of some discrepancies occurring in between the evidence of PW-5 & PW-1, PW-2 & PW-3 who were admittedly not present at the time of the incident. She urged that the trial court failed to take into account that PW-5 had immediately disclosed that the respondent was the assailant who had attacked and robbed him. She urged that considering the prosecution evidence in proper perspective the same squarely establishes the guilt of the respondent in commission of offence u/s 394 of Indian Penal Code. She further urged that the said evidence does not reveal that two views were possible upon the same and as such the trial court manifestly erred in giving benefit of doubt to the respondent and further erred in acquitting him for the charges levelled against him.

6. None being present on behalf of the respondent at the hearing of the appeal, there was no advantage to hear the submissions on behalf of him.

7. The careful perusal of Record and Proceedings and particularly the Judgment delivered by the trial court reveals that the trial court has duly taken into consideration all facets disclosed from the evidence of PW-5. The same also reveals the trial court having observed as pointed out by learned APP that the evidence of PW-5 having been not contradicted by the respondent, the same makes a strong incrimination against him. However, perusal of the matters recorded in paragraph nos. 7, 8 and 9 of Judgment reveals that the trial court has come to the conclusion that the evidence of PW-1 to PW-3 is not of much assistance to the prosecution to advance the case as the same relates to the facets narrated to them by PW-5. Such a position is found to be correct after careful perusal of the evidence of said three witnesses. The same is obvious as none of them was either along with PW-5 at the time of the occurrence of the incident and later on they had been to the place at which PW-5 was lying.

8. Further more careful perusal of the evidence of PW-1 and that of PW-5 also supports the observation made by the trial court in paragraph no. 8 of the judgment that though PW-1 had claimed that PW-5 was initially taken to Murbad Rural Hospital and from said hospital he was shifted to Ulhasnagar Hospital and after remaining for 10-12 days at the said hospital was again shifted to Thane Hospital and at the said place he had remained for 10-12 days, no support to the latter part is found from the evidence of PW-5. The said observation appears to be in consonance with the record of the case as in the evidence PW-5 had not stated that he was admitted at Civil Hospital, Thane and had remained at the said hospital for 10-12 days. Thus there appears to be glaring inconsistency regarding the said important aspect which could never have been forgotten by

PW-5 while deposing at trial.

9. Similarly, the observations made by trial court in paragraph no. 9 of judgment regarding the evidence of PW-2, Raghunath Krishna made by the trial court are also found in consonance with the evidence on record. The evidence of PW-2 Raghunath Krishna significantly does not reveal that when he had been to see PW-5 on the spot, PW-5 did not disclose him the reason for which he was beaten and what had happened with the money that he was then having. As rightly observed by the trial court the said vital factor assumes much significance as PW-2 was amongst the persons who had been to the spot to see PW-5. Needless to add that the same will have also effect of affecting the evidence of PW-1 who had made a contradictory claim of PW-5 having narrated him the reason of attack being for extorting money from him.

10. Similarly, the observation made by the trial court in the said paragraph that such position emerging from the evidence of PW-1, PW-2 and PW-3 also raises suspicion regarding the truthfulness of the complainant also cannot be said to be devoid of merit.

11. The perusal of the evidence of PW-3 in the light of the observations made by the trial court clearly reveals that the trial court has correctly assessed his evidence and come to the conclusion that claim stated by him of Babaji Shankar had given Rs. 500/- to PW-5 being an improvement made at the time of the trial. The same assumes importance as beyond the word of PW-5 there is absolutely no cogent evidence on record that at the relevant time PW-5 was possessing Rs. 494/- i.e. after purchasing handkerchief for Rs. 6/- out of Rs. 500/- allegedly taken by him from Babaji Shankar. Significantly enough the evidence of the said Babaji Shankar was not adduced at the trial in support of the said facets. The present prosecution being for the offence u/s 394 of Indian Penal Code amongst other facets it was necessary for the prosecution to establish by the cogent evidence that PW-5 was possessing the property which was allegedly robbed from him. Needless to add that the evidence adduced at the trial does not reveal that any such stolen property was recovered during the course of investigation. Thus it cannot be then said that any error was committed by the trial court in coming to the conclusion that evidence of PW-3 is not of any significant assistance to the prosecution for establishing the charge against the respondent.

12. Even careful consideration of the evidence of PW-4 Dr. Ramchandra Damodar reveals that the observations made by the trial court thereon are apparently justified. The said observation amongst the others reveal that at the most the said evidence was helpful to the prosecution for establishing the nature of injuries caused to PW-5. The trial court by pinpointing the admission given by PW-4 to the effect that in event of wooden stick shown to him being used in the office then blood stains would have occurred on the same after causing the injuries as sustained by PW-5 and no blood stains were found on the said wooden stick shown to him. As rightly observed his evidence knocks down the possibility of wooden stick produced on record was the weapon used for

commission of the offence.

13. Thus reappraisal of the entire evidence adduced on record fully justifies the observations made by the trial court that due to the various facets emerging out of the evidence of PW-1, PW-2 and PW-3 creates doubt regarding claim of PW-1. In view of the same the trial court though his evidence has remained to be contradicted on behalf of the respondent came to the conclusion of both the views are possible upon his evidence and as such gave the benefit of doubt to the respondent. The said view taken by the trial court is a possible and plausible view and for the same correct reasoning has been recorded by the trial court. The Judgment and Order passed by the trial court can be neither be said to be perverse nor can be said not based upon evidence surfaced at the trial.

14. In the said state of affairs reference to the decision in a case of Arulvelu and Another Vs. State represented by the Public Prosecutor and Another, reveal that therein the Apex Court after considering the principal emerged regarding considering the appeal against acquittal right from the decision in a case of AIR 1934 227a (Privy Council) ; and followed thereafter in number of decisions including Shambhoo Missir and another Vs. State of Bihar, ; Chandrappa and Others Vs. State of Karnataka, ; Ghurey Lal Vs. State of U.P., ; State of Rajasthan Vs. Naresh @ Ram Naresh, ; State of U.P. Vs. Banne @ Baijnath and Others, has come to the conclusion that in such state of affairs no interference with the Judgment and Order of acquittal recorded by the trial court is warranted. Considering the present case upon the said principles there appears absolutely no merit in the present appeal and the same deserves to be dismissed. Hence the same stands dismissed. The bail bond if any, entered by the respondent stands cancelled.