

(2017) 03 BOM CK 0139
In the Bombay High Court
Case No : 393 of 1999

The State of Maharashtra

APPELLANT

Vs

Rajaram Yashwant Rasal

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 264](#), [Section 255\(1\)](#), [Section 378\(1\)](#) - Judgment in cases tried summarily - Acquittal or conviction - Appeal in case of acquittal

Citation : (2017) 03 BOM CK 0139

Hon'ble Judges : M.S.Karnik

Bench : SINGLE BENCH

Advocate : Avinash Kambhedkar, S.M. Railkar

Judgement

1. The present Appeal under section 378(1) of the Code of Criminal Procedure, 1973 (for short "CrPC") is preferred by the State of Maharashtra against the judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, Rajapur, Ratnagiri on 29/04/1999 in Summary Criminal Case No. 282 of 1996.

2. The prosecution's case arises out of report lodged by P.W.1 against the respondent - original accused at Rajapur police station under section 189 of the Indian Penal Code (for short "IPC") and section 120 of the Bombay Police Act.

3. The prosecution's case in nutshell is as under : On 19/01/1996, the respondent entered the workshop of S.T. Depot, Rajapur. He misbehaved with one Shri S.P. Chougule (P.W.2), Shri Prakash L. Shinde (P.W.3) and his staff. The respondent threatened to remove them from services and also threatened that he will not allow any person to enter in their cabin. The respondent threatened to beat them. The respondent also threatened them by saying that he was facing 50 cases and there will be no harm to him if he faced one more case. Based on the report Exhibit 15 submitted by P.W.2 - Subhash and P.W.3 - Prakash, P.W.1 -

Shashikant Mahadev Rasam lodged a complaint Exhibit 16 against the respondent accused at Rajapur police station under section 189 of IPC and under section 120 of the Bombay Police Act.

4. The charge was framed and respondent pleaded not guilty and claimed to be tried. The respondent's defence was that a false case was registered against him. The prosecution examined 3 witnesses. The record indicated examination of 3 witnesses by prosecution. However, there is apparent error in numbering the witnesses. (i) P.W.1 - Shri Shashikant Mahadev Rasam, the Depot Manager at Rajapur Depot at the relevant time.

(ii) P.W.3 (as per paper book) - Shri Subhash Bapu Chougule, Traffic Inspector at Rajapur Depot. (ought to have been referred to as P.W.2)

(iii) P.W.4 (as per paper book) - Shri Prakash L. Shinde, (virtually P.W.3).

5. The learned Judicial Magistrate (First Class), Rajapur by judgment and order dated 29/04/1999 acquitted the respondent under section 255(1) of CrPC for offence punishable under section 189 of IPC and 120 of Bombay Police Act. The proceedings were conducted in accordance with summary procedure envisaged under Chapter XXI of CrPC.

6. Learned APP for State invited my attention to the evidence on record. It is submitted by learned APP that the learned trial Judge virtually has not given any reason while acquitting the accused. According to learned APP, evidence on record was sufficient to convict the respondent under section 189 of IPC and section 120 of Bombay Police Act. Learned APP would contend that evidence of eyewitness - P.W.3 & P.W.4 is not shaken in cross examination and that by itself was sufficient to prove the guilt of the respondent. Learned APP further submitted that there is no reason why the witnesses would falsely implicate the respondent as there is no previous enmity alleged. He also contends that nowhere it has come on record that P.W.1 has filed complaint due to pressure of union. The trial Court has not appreciated the evidence in its proper perspective. According to him, the order of acquittal needs to be reversed.

7. On the other hand, learned Counsel for respondent supported the judgment and order passed by the trial Court. According to him, the trial Court on the basis of evidence on record has come to the conclusion that the evidence of P.W.1 is hearsay one. He submits that the trial Court upon considering the evidence of the witnesses came to the conclusion that there are several contradictions and omissions in their evidence. In his submission, a plausible view is taken by the trial Court. The admission of P.W.1 in his cross examination that "all the workers have threatened him to go on strike if the case is not filed against the accused" is totally fatal for the case of prosecution and therefore the order of acquittal does not call for any interference. He submitted that the prosecution has failed to establish its case beyond all reasonable doubts and the trial Court has rightly acquitted the accused.

8. Learned Counsel for the respondent further submitted that the evidence suffers from material contradictions in the testimony of the witnesses and therefore the conclusion drawn by the learned trial Judge does not call for any interference. Learned Counsel for the respondent relied upon the decision of the Apex Court in the case of K.Venkateshwarlu Versus State of Andhra Pradesh reported in 2012 (8) SCC 73 to support his submission that if the view taken by the trial Court is a reasonably possible view, the High Court cannot set it aside and substitute it by its own view merely because that view is also possible on the facts of the case. The relevant portion of paragraph 5 of the Apex Court's decision reads thus : "This court has repeatedly stated what should be the approach of the High Court while dealing with an appeal against acquittal. If the view taken by the trial court is a reasonably possible view, the High Court cannot set it aside and substitute it by its own view merely because that view is also possible on the facts of the case. The High Court has to bear in mind that presumption of innocence of an accused is strengthened by his acquittal and unless there are strong and compelling circumstances which rebut that presumption and conclusively establish the guilt of the accused, the order of acquittal cannot be set aside. Unless the order of acquittal is perverse, totally against the weight of evidence and rendered in complete breach of settled principles underlying criminal jurisprudence, no interference is called for with it. Crime may be heinous, morally repulsive and extremely shocking, but moral considerations cannot be a substitute for legal evidence and the accused cannot be convicted on moral considerations."

9. Learned Counsel has also relied upon the decision of the Apex Court in the case of State of Rajasthan Versus Shera Ram @ Vishnu Dutta reported in 2012(1) SCC 602. Learned Counsel for the respondent invited my attention to paragraph 13 which reads thus: 13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

10. The present Appeal is examined by me in the light of the principles enunciated by the Apex Court. The prosecution witness No.1 - Shri Shashikant Rasam was attached as depot Manager at Rajapur depot on the date of incident i.e. on 19/01/1996. He deposed that he joined duties at 9.30 hrs. P.W.4Prakash Shinde and P.W.3 - Subhash Chougule reported to P.W.1 Shashikant Rasam in his

cabin that at about 8.25 hrs the accused misbehaved with P.W.3 - Subhash Chougule and P.W.4 - Prakash Shinde and entered the depot without prior permission of the watchman and threatened them with transfer. P.W.1 deposed that P.W.3 - Subhash Chougule and P.W.4 Prakash Shinde further told him that as depot Manager (P.W.1) was not present at the relevant time and but for his absence, the accused might have slapped the depot manager. P.W.1 further deposed that the workers of the Kamgar Sanghatna of the depot met him and stated that there must be some action against the accused otherwise they will go on strike.

11. In the cross examination, P.W.1 has deposed that the accused had met him on several occasions in his cabin prior to the incident and that the accused used to obtain prior permission before coming in the cabin. On all occasions, the accused put forth the problems of the people at large. The respondent is the representative of people and also Chief of the Shivsena party for that area. It has further come in cross examination of P.W.1 that there were large number of passengers standing when the incident occurred but neither any names of passengers were collected nor the same is mentioned in the complaint Exhibit 16. Accused No.1 in cross examination has further deposed that there is every probability that upon the complaint made by respondent to P.W.1's superiors regarding the grievance of the public and after calling for explanation from P.W.1, upon directions from superiors, P.W.1 and others have started functioning as per suggestions of the accused. It has further come on record that there is every probability of all suggestions of respondent to P.W.1's superiors were for the welfare of the public at large. It has further come in his evidence that except alleged incident as stated by colleagues of P.W.1 in the present case, at all times the respondent forwarded the application to his superiors in legal way for grievances of public at large.

12. P.W.3 - Subhash Chougule has stated in his examination in chief that respondent came to depot Manager P.W.1 Shashikant Rasam and told P.W.1 that he will transfer him and not allow him to take his seat if he came into the chamber. In the cross examination, he has stated that he along with P.W.1 - Shashikant Rasam and P.W.4 - Prakash Shinde were standing next to each other at the time of incident. The talks took place on the date of incident between P.W.1 Shashikant Rasam and the respondent. The said talks took place for 10 to 15 minutes.

13. P.W.4 Prakash Shinde in his deposition has stated that when he was chitchatting with P.W.3 at 8.25 a.m. on 19/01/1996, the respondent came to the gate and started abusing him and P.W.3. According to him, there were several workers working. The respondent is supposed to have uttered the following words in Marathi the rough English translation of which reads thus: "Time has come to remove you from your jobs and I will punish you. You are not obliging us by doing your duty. Where is Rasam. I will not step in his cabin and if I do come in the cabin, I will not come out without slapping him. There are 50 cases

registered against me. It will not make any difference to me if one more offence is registered against me. I will be acquitted from this case also."

14. In the cross examination P.W.4 - Prakash Chougule has further deposed that the respondent belonged to Shivsena having support of Kamgar Sena Union. Members of the Kamgar Sena supported by Shivsena were in minority at the Rajapur depot. P.W.4 further stated in cross examination that it is true that members of Kamgar Sanghatna is having majority at Rajapur depot.

15. Having perused the evidence of all the witnesses, I find it difficult to rely on their testimony. According to me, the trial Court has rightly discarded their evidence as the same is totally contradictory to each other. The trial Court has held that evidence of P.W.1 is totally hearsay. It is material to note that P.W.1 in his deposition has categorically stated that it is upon the report Exhibit 15 received from P.W.3 & P.W.4 as regards misbehavior of the respondent at 8.25 hrs. on 19/01/1996 that the complaint at Exhibit 16 is filed by P.W.1. P.W.1 therefore deposed that the incident did not happen in his presence and he in fact acted on the report of P.W.3 & P.W.4 in whose presence the incident took place.

16. P.W.3 - Subhash Chougule in his examination in chief has stated that P.W.1, P.W.3 & P.W. 4 were standing next to each other when the alleged incident took place. From the evidence of P.W.3 it is seen that it is the respondent who told P.W.1 that he will transfer him and not allow him to take seat if he came in the chamber. P.W.3 therefore deposed that incident took place in presence of P.W.1 also.

17. The evidence of the P.W.4 - Prakash Shinde on the other hand indicates that the incident took place at 8.25 a.m. on 19/01/1996 when P.W.4 - Prakash Shinde was chitchatting with P.W.3 Subhash Chougule. The respondent came up to them and uttered words which are already mentioned in paragraph 13. P.W.4 does not mention about the presence of P.W.1, on the contrary he deposed that the respondent asked them about the whereabouts of P.W.1

18. As per the deposition of P.W.1 he has filed a complaint based on report of P.W.3 & P.W. 4. P.W.4 does not mentions the presence of P.W.1 at the time of incident and has in his deposition mentioned the threats given by the respondent to P.W.3 & P.W.4. P.W.3 - Subhash Chougule except saying that respondent told P.W.1 that he will transfer him and not allow him to take his seat if he came into chamber has not deposed anything about threats which have been given by the respondent and as stated by the P.W.4 in his testimony. P.W.3 however mention the presence of P.W.1.

19. The evidence of P.W.1 indicates that the same is hearsay. It has come in the deposition of P.W.1 that the respondent has made several complaints to the superiors of P.W.1 in respect of the working of depot and many times suggestions given by the respondent have been acted upon. It has also come on record that respondent is representing Shivsena party at local level and that the members of Kamgar Sanghatna supported by Shivsena at Rajapur depot were in minority. It

has come in evidence that members of Kamgar Sanghatna is having majority at Rajapur depot.

20. It is pertinent to note that the prosecution did not examine the investigating officer. On perusing the record and the roznama of the proceedings, it is apparent that, on 19/04/1999 the investigating officer was absent. Hence, witness summons was issued to him. The summons was served upon him. However on 21/04/1999 he was again absent. The case was kept for hearing on 22/04/1999, but on that day also the investigating officer was absent. The accused preferred an application for closing the evidence. The Court issued bailable warrant against the investigating officer. The report of warrant was not returned. Hence evidence was closed on 29/04/1999. The statement of accused was recorded on that day and the trial Court proceeded to deliver the impugned judgment and order. It is thus clear that the prosecution was not diligent in examining the investigating officer. In the absence of evidence of investigating officer factual aspects as to how the investigation was conducted was not brought on record. Both the offences are noncognizable in nature. As per section 155(2) CrPC, no police officer shall investigate a noncognizable case without the order of a Magistrate having power to try such case or commit the case for trial. In the absence of evidence of investigating officer, it is not clear whether the compliance of the said provision was done. The paper book also does not indicate such compliance. However, no submissions were made by either party in that regard and hence, I am not dealing with the said aspect. In any case no interference is warranted in the judgment of the trial Court.

21. In this view of the mater, I feel that the trial Court has rightly discarded the evidence of the witnesses as totally contradictory to each other. The evidence does not inspire confidence. I do not find that the order of acquittal is perverse or totally against the weight of the evidence and rendered in complete breach of settled principles underlying criminal jurisprudence.

22. The offence under section 189 IPC related to threat of injury to public servant and the offence under section 120 of Bombay Police Act (Maharashtra Police Act) is willful trespass at places mentioned therein. As observed above the evidence do not establish the charges under the said penal provisions. There are infirmities in evidence in the nature of hearsay and contradictions. The evidence indicates that the accused used to obtain previous permission before entering cabin of P.W.1. The prosecution has not brought evidence of any independent witnesses. The accused was President of one of the Union in the past. P.W.1 has deposed that the workers of Kamgar Sanghatna had warned that they would go on strike if action is not taken against the accused. He also stated that on all the earlier occasions the accused had forwarded applications to superiors in legal way for the grievances of the public at large. Admittedly, there was delay in departure of bus at the depot. From the judicial pronouncements referred to above, it is settled principle of law relating to dealing with appeal against acquittal that, if the view taken by the trial Court is a reasonably possible view,

the High Court cannot set it aside and substitute it by its own view merely because that view is also possible on the facts of the case. It fact in the present case, it appears from nature of evidence that the trial Court has rightly acquitted the accused. The learned APP had submitted that the trial Court judgment does not give reasons for acquittal. Although the judgment is not very elaborate, I have perused the evidence on record which indicates that the view taken by trial Court does not call for interference. It is also pertinent to note that the proceedings were conducted by resorting to procedure under Chapter XXI of CrPC. As per section 264 of CrPC, in every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Probably the trial Court had delivered a brief judgment in view of the aforesaid provisions.

23. In view of the above discussion, I find no error in the judgment under Appeal. I have thus no hesitation in dismissing the Appeal and hence I pass the following order. "Criminal Appeal No. 393 of 1999 stands

dismissed with no order as to cost."