
(2014) 03 BOM CK 0229
In the Bombay High Court
Case No : Criminal Appeal No. 556 of 2002

The State of Maharashtra

APPELLANT

Vs

Rambhau

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2014) ALLMR(Cri) 3688

Hon'ble Judges : P.N. Deshmukh, J

Bench : Single Bench

Advocate : G.R. Ingole, APP, Advocate for the Appellant; P.D. Suryawanshi i/b. D.N. Suryawanshi, Advocate for the Respondent

Judgement

P.N. Deshmukh, J.—This Appeal is preferred by the State of Maharashtra against the judgment and order passed by learned Judicial Magistrate F.C., Majalgaon in Regular Criminal Case No. 262 of 1999 acquitting the respondents of the offence punishable under Sections 147, 148, 149, 324, 323, 504 of Indian Penal Code. It is the case of prosecution that Dnyanoba, complainant is son of PW 3 - Tukaram and PW 4 - Rukhminbai. They were having agricultural land at village Kitti Aadgaon. About 15 days prior to the alleged incident, respondent - Rambhau had lodged a complaint against Tukaram on account of some dispute of Bandh in the field.

On 21st September, 1999 at about 4:00 pm., when the complainant - Dnyanoba along with his family members were present in their field and were providing fertilizer to the cotton crop, the respondents, all of sudden, arrived along with one Laxman Garge (not accused in this crime), having armed with sticks and axes, abused and beat Dnyanoba and his parents. It is the case of the prosecution that respondent/accused Pralhad assaulted PW 3 Tukaram, who is father of Dnyanoba, complainant, by axe on his head and other respondents beat PW 2 - Dnyanoba and PW 4 - Rukhminbai by sticks due to which, they sustained injuries on their leg and knees. It is also case of the prosecution that Laxman,

who is another son of Tukaram, was also injured in the assault. On the basis of the report lodged by PW 2 - Dnyanoba on the same day at 10:00 pm. at Majalgaon Police Station, offence came to be registered vide Crime No. 187 of 1999 and was investigated by PW 6 - API Nagnath Kode.

During the course of investigation, he referred the injured for medical examination. PW 5 - Dr. Bhausahab Chalak examined the injured and issued medical certificates Exhibits 47, 48 and 50.

On 22nd September, 1999, spot panchnama came to be prepared as per Exhibit 52 and article No. 1 Axe, produced by accused Pralhad, was seized under Exhibit 53; while a stick produced by respondent/accused No. 2 Narayan was seized under Exhibit 54 and a stick of Babul-tree, produced by respondent/accused No. 1 Rambhau, was seized under Exhibit 55. After recording statements of witnesses, charge sheet came to be filed. Learned Magistrate, on considering the evidence, acquitted the respondents and hence, this Appeal.

2. With the assistance of learned APP for appellant State and learned counsel for the respondents, I have scrutinised the evidence on record.

At the outset, it is noted that though, it is case of the prosecution that the incident took place on 21st September, 1999 at 4:00 pm. of which, report came to be lodged by Dnyanoba on the same day at 10:00 pm. and thereafter, PW 2 - Dnyanoba as well as PW 3 - Tukaram and PW 4 - Rukhminbai, since injured, were referred for their medical examination; and though, it is also evidence of the Investigating Officer PW 6 - Nagnath Kode about referring the injured for medical examination, the medical certificates on record Exhibits 47, 48 and 50 of PW 2 - Dnyanoba, PW 3 - Tukaram and PW 4 - Rukhminbai, reveal that Dnyanoba was examined on 21st September, 1999 at 8:15 pm, Tukaram was examined at 8:55 pm; and Rukhminbai was examined at 8:45 pm, respectively. It, thus, appears that even before registering the crime, the injured were referred for medical examination. No explanation is forthcoming by the prosecution on above aspect. In fact, the above documents also reveal that they were referred for medical examination by P.I. of Majalgaon Police Station.

3. On the point of assault, it is noted that there are various discrepancies in the evidence of these witnesses as, PW 2 - Dnyanoba stated that the incident took place at 4:00 pm. while, according to the case of the prosecution, Dnyanoba, Tukaram and Rukhminbai were in the field for providing fertiliser to the crops where accused came and assaulted them. Though PW 2 - Dnyanoba stated about the assault in the cross-examination, he has admitted that on the day of incident, he was not present in the field since morning and according to him, Tukaram and Rukhminbai were working in the field at about 3:00 pm. and at that time, he had come to see the progress of agricultural operations of providing fertilizer. Even otherwise, according to Dnyanoba, when he arrived at the field, quarrel was already going on between the respondents/accused and his parents Tukaram, Rukhminbai and brother. When he noted that Tukaram was assaulted

by an axe, he was at a distance of about 500 ft., while he noted the incident of assault on Rukhminbai, he was at a distance of about 200 ft.

4. Evidence of PW 3 Tukaram contradicts with the evidence of PW 2 - Dnyanoba about his arriving in the field to check the progress of providing fertiliser to the crop, as Tukaram has deposed that Dnyanoba as well as Rukhminbai were in the field since morning. According to him, Dnyanoba as well as Rukhminbai were involved in removing grass and were present in the field at a distance of 50 ft. from each other. Similar is the evidence of Rukhminbai, which establishes presence of PW 2 - Dnyanoba, PW 3 Tukaram along with her in the field. She has specifically deposed that on the day of incident, they attended the field at 10:00 a.m. and she attended the field at about 12:00 noon. Above evidence is contradicted by the evidence of PW 2 - Dnyanoba of his reaching in the field at 3:00 pm i.e. prior to assault.

5. With reference to arrival of respondents and their committing assault on Dnyanoba, Tukaram and Rukhminibai, it is the case of PW 2 - Dnyanoba, as revealed from his report, that when he reached on the spot, respondent No. 1 - Rambhau and respondent No. 2 - Narayan were only present and about half an hour thereafter, remaining accused persons came there from village side; while, according to PW 3 - Tukaram, when he was present with PW 2 - Dnyanoba and PW 4 - Rukhminbai in the field, the accused persons arrived in their field. Admittedly, the lands of the respondents as well as of the injured and the complainant were adjoining. According to the version of PW 3 - Tukaram, all of sudden, respondent No. 1 - Rambhau, respondent No. 3 - Pralhad, respondent No. 4 Kisan opened the assault. Evidence of PW 3 - Tukaram, as such, is silent about the assault by respondent No. 2 - Narayan and respondent No. 5 - Mahadu.

As against the version of PW 3 - Tukaram, PW 4 - Rukhminbai, in her evidence, stated that on attending the field at 12 noon, accused persons were already present in their hut in their field, which contradicts the version of the complainant - Dnyanoba of accused arriving on the spot from village side armed with weapons. As such, there is no corroborative evidence of these witnesses on the point of arrival of the respondents on the spot. Though it is also found to be the case of the prosecution that, after the incident, one Bhagwat, Shivaji, Babasaheb and Devram immediately arrived on the spot and carried the injured persons in the bullock-cart, neither these witnesses are examined nor there is any reason put forth for the same. Admittedly, no other farmers from the neighboring fields appears to have examined to establish the fact as alleged by these witnesses.

6. Now, coming to the aspect of actual incident of assault, PW 2 - Dnyanoba stated that he had sustained injury by axe. However, there is no mention of his sustaining injury by axe in his report. Evidence of Tukaram shows that respondent No. 3 - Pralhad had also committed assault on Dnyanoba by axe, while he was assaulted by axe on his head, on the above right side ear and another blow of axe was given on his right hand from the sharp side of axe. PW 4

- Rukhminbai stated that she received injuries of axe from its blade side. She also stated about Tukaram sustaining injury of axe.

With reference to the above evidence, the complaint when perused, reveals that Dnyanoba had stated only about one injury of axe to his father Tukaram by accused No. 3 - Pralhad. It is pertinent to note that nowhere in the medical certificates Exhibits 47, 48 and 50 of PW 2 - Dnyanoba, PW 3 - Tukaram and PW 4 - Rukhminbai, there is mention of their sustaining injuries of any sharp weapon. Evidence of PW 5 - Dr. Bhausahab Chalak, Medical Officer, who has examined the injured, is also silent about any injury sustained by them by sharp weapon.

7. In view of the above, the evidence of PW 2 - Dnyanoba, PW 3 Tukaram and PW 4 - Rukhminbai about PW 2 and PW 3 sustaining injury by axe, does not appear to be convincing. Similarly, though PW 3 - Tukaram stated that PW 2 - Dnyanoba was assaulted by respondent No. 2 - Narayan by a bicycle chain on his head and back, PW 2 - Dnyanoba is silent on this aspect. Even the Medical Officer has nowhere deposed in his finding that the injuries on the person of Dnyanoba could be possible by a bicycle chain. Though the Medical Officer found one fracture injury sustained by Dnyanoba to his Meta Carpal left side bone, no evidence is led before the trial Court to establish the fact of Dnyanoba sustaining any fracture injury. Moreover, the evidence of Dnyanoba himself is silent on his sustaining fracture injury.

8. In the circumstances, I find that on close scrutiny of oral version of PW 2 Dnyanoba, PW 3 - Tukaram and PW 4 - Rukhminbai as well as Medical Officer, the medical certificates Exhibits 47, 48 and 50 are neither corroborating to each other nor there is any uniformity about the injuries deposed by these witnesses and the injuries referred in the medical examination.

9. Lastly, though it is the case of prosecution that the respondents themselves arrived in the police station and produced weapons which, according to the Investigating Officer, came to be seized under seizure panchnama Exhibits 43 to 45, said documents are got proved by the prosecution from the Investigating Officer; as such, there is absolutely no independent witness to corroborate said version of the Investigating Officer. In the absence of panch witness on this material aspect of seizure panchnama, mere evidence of the Investigating Officer, without giving sufficient reasons for not examining independent witness, cannot be accepted, particularly when there is no other convincing evidence. Even otherwise, the evidence of the Investigating Officer is also to the effect that one Laxman had produced one weapon - stick, however, as already noted above, there is no any accused by name, Laxman in the present case. On considering the evidence, as such, I find that the prosecution has failed to establish the charges leveled against the respondents/accused and thus, I find no substance in the Appeal. The Appeal is, thus, dismissed.