
(2015) 03 BOM CK 0383
In the Bombay High Court
Case No : Criminal Appeal No. 87 of 2003

The State of Maharashtra	Vs	APPELLANT
Shivsambh and Others		RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 34, 504, 506

Citation : (2015) ALLMR(Cri) 3527

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : S.R. Palnitkar, A.P.P., for the Appellant; Pravin G. Patil, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Heard both sides. Aggrieved by the recording of acquittal of the present respondents from the offences punishable under section 324, 323, 504 and 506 read with section 34 of the I.P. Code, vide judgment and order dated 30th August, 2002 passed by the learned IInd Joint Judicial Magistrate First Class, Parbhani in Regular Criminal Case No. 605/1999, the present appeal is preferred by the State.

2. The prosecution allegations are that since the complainant P.W. 1 Ramrao Lokhande was in good terms with the eye witnesses i.e. PW3 Mohan Bhujbal and PW4 Gangadhar Bhujbal the present respondents who are the father and son inter se, had animosity against complainant-the injured. In the circumstances, on 3rd September, 1999, when the complainant P.W. 1 Ramrao was returning from the river, at that time, respondent No. 1 Shivsambh has started slapping and giving fists. Thereafter at about 11.00 a.m., in the morning, when the complainant went to the house of the respondents to narrate the incident to the father i.e. respondent No. 2 Bajrang, at that time, both of them started assaulting him. During the assault, respondent No. 1 Shivsambh gave one blow of stick over the head of the complainant. In the incident, respondent No. 2

Bajrang hurled bricks and stones towards the complainant. The eye witnesses i.e. PW3 Mohan and PW4 Gangadhar had mediated in the quarrel and thereafter, the brother of the complainant admitted him to the Government hospital at Parbhani. In the circumstances, FIR came to be filed on the same day i.e. 3rd September, 1999.

3. The Investigating Officer conducted the usual investigation. He recorded panchanama of spot of occurrence at Exhibit 29, collected injury certificate (Exh 34) and recorded the statements of the witnesses and submitted the chargesheet in the Court of learned Judicial Magistrate First Class, Parbhani.

4. Before the learned Judicial Magistrate First Class, the complainant was examined as P.W. 1 Ramrao. The eye witnesses were examined as PW3 Mohan and PW4 Gangadhar as detailed supra. The Medical Officer i.e. Dr. Bhagwan Thutmal as PW5. The learned Judicial Magistrate First Class, however, disbelieved the prosecution witnesses and by extending benefit of doubt, the respondents came to be acquitted. Hence, the present appeal by the State.

5. The learned A.P.P. for the appellant/state submitted that despite there being two eye witnesses to the incident and the injuries being corroborated by the testimony of the Medical Officer, the learned Judicial Magistrate First Class has unnecessarily amplified contradictions in the prosecution case and extended benefit of doubt when no doubt was in existence. He took me through the record and submitted that since the reasoning forwarded by the learned Judicial Magistrate First Class is perverse, the appeal be allowed and the respondents be convicted for the offences with which they were charged.

6. On the other hand, Mr. Pravin G. Patil learned counsel (appointed by this Court as amicus curiae), submits that the record, as has been scrutinized by the learned Judicial Magistrate First Class in the judgment, would show that only out of animosity, the respondents were falsely involved in the offence by taking advantage of existence of one injury over the head of the complainant. In the circumstances, Mr. Patil submitted that since reasonable and probable view has been taken by the learned Judicial Magistrate First Class the appeal be dismissed.

7. On the basis of above material on record and the submissions advanced on behalf of both sides, the following point arises for my determination:

"Whether the prosecution has proved that on 3rd September, 1999 the present respondents, in furtherance of their common intention, have assaulted the complainant with dangerous weapon and in the same process, have criminally intimidated the complainant?"

My finding to the above point is in the negative. The appeal is therefore, dismissed, for the reasons to follow:--

REASONS

8. In the FIR as well as in the statement of the eye witnesses recorded by the

Investigating Officer, the motive for assault on the complainant is found that the eye witnesses and the complainant were in good relations with each other. Therefore, the present respondents were aggrieved by the same. In the Court, however, the complainant as well as the eye witnesses resiled from this material. The complainant stated that he has not made the said statement at the time of recording the FIR while PW3 Mohan and PW4 Gangadhar disowned the statements which were duly proved later on by the Investigating Officer. The motive as is explained during the investigation was tried to be shadowed during the trial.

9. The complainant - P.W. 1 Ramrao had admitted that the houses of the eye witnesses i.e. PW3 Mohan and PW4 Gangadhar are away from the spot of occurrence. The learned Judicial Magistrate First Class has correctly doubted their presence at the time of occurrence. Further, while the complainant stated that the eye witnesses - PW3 Mohan and PW4 Gangadhar had witnessed the incident, these witnesses stated that upon hearing the shouts of the complainant, they went to the spot of occurrence and thereafter, they witnessed the incident. In the said incident, according to the Medical Officer - PW5 Dr. Bhagwan Thutmal, a single injury to the head of the complainant was received. When the spot of occurrence is away from the houses of the eye witnesses and the incident was of a short duration i.e. giving only one blow by the stick over the head of the complainant, then naturally the eye witnesses had no occasion to witness the said incident.

10. Further, the learned Judicial Magistrate First Class has also underlined the unnatural behaviour of the complainant in not approaching the nearby primary health centre or nearby police outpost, but seeking admission in the Government Hospital at Parbhani and thereat, filing the FIR, which was ultimately transferred to the Police Station at Tadkalas, District Parbhani. If all these facts on record are taken together, the finding of the learned Judicial Magistrate First Class cannot be termed as unreasonable or improbable. In the circumstances, in the appeal against acquittal, no interference in the impugned judgment is warranted. The appeal, therefore, fails. Hence, the following order:

The appeal is hereby dismissed. The judgment and order dated 30th August, 2002, passed by the learned IInd Joint Judicial Magistrate First Class, Parbhani in Regular Criminal Case No. 605/1999 is hereby confirmed.

The fees of learned counsel Mr. Pravin G. Patil, who was appointed by this Court as amicus curiae for the respondents, is hereby quantified at Rs. 10,000/- (rupees ten thousand), which would be paid to him through the High Court Legal Services Subcommittee at Aurangabad.