
(2015) 06 BOM CK 0298
In the Bombay High Court
Case No : Criminal Appeal No. 607 of 2003

The State of Maharashtra	Vs	APPELLANT
Vasant and Others		RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 325, 34, 504

Citation : (2015) ALLMR(Cri) 3649

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

Bench : Single Bench

Advocate : B.B. Gunjal, A.P.P., for the Appellant; S.A. Dhengle, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Heard both sides. Aggrieved by the order of acquittal recorded in favour of the respondents by the learned Chief Judicial Magistrate, Beed, vide judgement and order dated 04.06.2003 passed in Regular Criminal Case No. 481/2000, from the offences punishable under section 323, 324, 325, 504 read with section 34 of the Indian Penal Code, the present appeal is preferred by the State.

2. The prosecution case, in short, is as under:-

That, on 4th October, 2000, while present respondent No. 1 Vasant and respondent No. 2 Sominath assaulted PW1 Babu the complainant with an axe on his head, rest of their family members i.e. respondents No. 3 and 4 the women members gave fist blows on hands and legs of complainant Babu. When his son i.e. PW2 Siddhu tried to rescue his father, the respondent No. 2 Sominath gave a blow of reverse side of the axe on his hand. Further, they criminally insulted the complainant. The incident is stated to have occurred at 11.00 a.m. in the morning in the field.

3. The evidence of PW7 Dr. Baburao Doiphode, coupled with the injury certificate

would show the following injuries on the person of PW1 Babu:

(i) Swelling on right leg upper third, tenderness plus movements restricted. Clinical evidence of fracture movements restricted. Clinical evidence of fracture upper 3 tibia fibula .

(ii) C.L.W. right side parietal region about 1/2" x 1/4th" x 1/4th"

(iii) C.L.W. occipital region right side about 1/2 x 1/4 x 1/4 inch

(iv) C.L.W. right hand about 1/2 x 1/4 x 1/4 inch

(v) Swelling left forearm middle third, tenderness plus movements restricted. Clinic evidence of fracture, radio ulna.

(vi) Abrasion Lt. Shin of tibia above 1/2 x 1/2 inch

On examination of PW2 Siddhu, following injuries were found on his person by PW7 Dr. Baburao:

(i) Swelling Lt. Elbow region, tenderness plus movements restricted at elbow. Clinical evidence of fracture ulna, Left upper third.

(ii) Contusion left thigh, about 4 x 1 inch.

4. The defence of the respondents was that the very alleged spot of occurrence is, in fact, a field already sold by the brother of PW1 Babu the complainant to respondents No. 1 and 2, vide registered saledeed dated 02.01.1995 and thereafter, by saledeed dated 25.07.1996. PW1 Babu, in cross-examination, has admitted that he had filed a civil suit for share in the well with other relatives against the present respondents No. 1 and 2 and he has also secured injunction regarding share in the well water. He, however, denied that he was attesting witness to those saledeeds. Further, the defence is that in fact, on ascending road, leading to the said field, the bullock cart of PW1 Babu and PW2 Siddhu turned turtle causing the injuries, as detailed above. However, a false show of assault is made.

5. Before the learned Chief Judicial Magistrate, in all seven witnesses were examined. Out of them, except PW1 Babu, PW2 Siddhu and PW7 Dr. Baburao Doiphode - the Medical Officer, all other turned hostile. Those witnesses were, however, related to the drawing of panchanama of spot of occurrence or recovery of the weapons at the behest of respondents No. 1 and 2.

6. Learned Chief Judicial Magistrate did not believe the oral account of PW1 Babu and PW2 Siddhu. Further, the statement of PW7 Dr. Baburao Doiphode - the Medical Officer did show that none of the injuries are possible by using of a sharp side of any axe but are possible by hard and blunt object like the reverse side of axe or due to the fall on a rough substance. In the circumstances, the respondents came to be acquitted of the offences with which they were charged. Hence. the present appeal.

7. Mrs. B.B. Gunjal, learned A.P.P. submitted that when the oral account of PW1 Babu and PW2 Siddhu is corroborated by the medical evidence i.e. finding of the injuries on the persons of PW1 Babu and PW2 Siddhu, the learned Chief Judicial Magistrate ought to have taken into consideration that the enmity over the right of the field would have been the cause for assault as the enmity is double edged weapon. She, therefore, submitted that the judgement passed by the learned Chief Judicial Magistrate be reversed.

8. On the other hand, Mr. S.A. Dhengle, learned counsel for the respondents supports the reasoning forwarded by the learned Chief Judicial Magistrate while acquitting the respondents.

9. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination:

(I) Whether the prosecution has proved that on 4th October, 2000 at about 11 a.m. in a field of village Warwati, all the present respondents, in furtherance of their common intention, caused grievous hurt to PW1 Babu and PW2 Siddhu?

(II) Whether the prosecution has proved that on the given date, time and place, all the present respondents, in furtherance of their common intention, caused hurt to PW1 Babu and PW2 Siddhu?

(III) Whether the prosecution has proved that on the given date, time and place, all the present respondents caused criminal insult to the complainant?

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

REASONS

10. The Complainant was specific in the FIR (Exhibit 15) that the respondents No. 1 and 2 assaulted with the axe on his head but used the reverse side of the axe on his right calf. He thus knew the difference between the axe and the reverse side of the axe at the time of immediate filing of the FIR. The Medical Officer-PW7 Dr. Baburao was, however, sure that none of the injuries suffered by PW1 Babu was possible by any sharp edged weapon. The nature of the injuries, as detailed supra, would show that none of the injuries was caused by sharp weapon.

11. PW2 - Siddhu, the son of PW1 Babu deposed that he was one kilometer away from the spot to graze the catties and upon hearing the shout from the field, he reached there i.e. the field and saw the incident. Thus he was to travel for one kilometer on foot and still according to him, he has seen the assault. He has suffered two injuries as detailed supra. Those are swelling and contusion and therefore, possible by fall.

12. Not only this, PW2 Siddhu suddenly brought on record presence of another eye witness Chandu. This was not only the improvement in the prosecution case as is highlighted in his cross-examination but said Chandu was not examined by

the prosecution. In the circumstances, when the learned Chief Judicial Magistrate has taken reasonable and probable view of the material before him, in the present appeal against acquittal, there is no need to interfere. The appeal is, therefore, liable to be dismissed. In the result, the appeal is hereby dismissed. The bail bonds, if any of the present respondents stand cancelled.