

(1998) 06 BOM CK 0075

In the Bombay High Court

Case No : Criminal Appeal No. 816 of 1984 with Criminal Revision Application
No. 380 of 1984

The State of Maharashtra

APPELLANT

Vs

Tanaji Dagadu Chavan and others

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 397
Evidence Act, 1872 — Section 105, 3, 45
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (1999) 5 BomCR 84 : (1998) CriLJ 4515

Hon'ble Judges : Vishnu Sahai, J; T.K. Chandrasekhara Das, J

Bench : Division Bench

Advocate : R.Y. Mirza, APP and Y.N. Yande, for the Appellant; Shekhar Ingawale, for the Respondent

Judgement

Vishnu Sahai, J.—Since both these matters arise out of same set of facts and a common judgment, we are disposing them off by one Judgment.

2. Criminal Appeal No. 816 of 1984 has been preferred by the State of Maharashtra against the judgment and order dated 2-7-1984 passed by the Additional Sessions Judge, Kolhapur, acquitting the respondents for offences punishable under sections 302 r/w 34 I.P.C. etc.

Criminal Revision Application No. 380 of 1984 has been preferred by the original complainant against the said order of acquittal passed in favour of the respondents.

3. In short, the prosecution case runs as under:-

On 2-5-1982, there was marriage of the sons of Chandu Kondi and Dagadu Bhau in village Chavanwadi, a hamlet of village Borgaon, Tehsil Panhala District Kolhapur. A marriage pandal had been erected in front of the house of Chandu Kondi and Dagadu Bhau. Lezim was being played by some musicians as also by

Pandurang Maruti and some others. Balu Maruti held a drum. The deceased Maruti Umaji Chavan, Shankar Chavan and Rama Tuka Chavan were watching the playing of lezim. It is alleged that at about 9 p.m. respondent Tanaji Chavan came abusing on the spot and asked the lezim troupe not to play the lezim because, it had not gone to play lezim the earlier day at the time of marriage of his cousin brother. Saying this, Tanaji struck the drum with a knife and stopped the play of lezim. When complainant Pandurang Maruti Chavan intervened, Tanaji assaulted him with a knife on his nose. Thereafter, the remaining respondents came from the house of respondent Pandurang Chavan armed with sticks. Tanaji took a stick from one of them and inflicted a blow on the head of complainant Pandurang Maruti Chavan with the same. When the deceased Maruti Umaji, Shankar Dagadu and Rama Tuka tried to intervene, the respondents inflicted stick blows on their person.

4. Mahadeo Dagadu Chavan P.W. 7 brought a truck and on the same took the victims Pandurang Maruti, Maruti Umaji, Shankar Dagadu and Rama Tuka to C.P.R. Hospital, Kolhapur, where the said victims were admitted.

Dr. Lahudas Vhatkar P.W.5 examined the said victims. On the person of Pandurang Maruti he found the following injuries: -

1. Contused lacerated wound 1 "x 1/4" over left frontal region, scalp deep, bleeding plus.
2. Contused lacerated wound right ala of nose, 2 cms x 1/2 cms skin deep bleeding plus.
3. Contused lacerated wound below right ala of nose 2 cms x 1/2 cm skin deep bleeding plus.
4. Contused lacerated wound lower lip 1 cm x 1cm skin deep bleeding plus.
5. Contusion left forearm laterally tenderness plus.

The said injuries were simple in nature and were attributable to a hard and blunt object.

On the person of Rama Tuka, following injuries were found:-

1. Contusion left forearm lower end, tenderness plus. Clinically fracture of lower end of the radius and ulna,
2. Contusion right thigh, lower third laterally.
3. Abrasion right leg, laterally 2 cms in diameter.
4. Contusion left supra scapular region tenderness plus.

On the person of Shankar Dagadu, following injuries were found:-

1. Contusion with swelling, right shoulder clinically dislocation of the right shoulder.

2. Swelling with deformity, right forearm lower third, clinically fracture radius and ulna lower third.
3. Contused lacerated wound vertex 1" x 1/4" scalp deep.
4. Contusion left thumb tenderness plus, movements painful.
5. Contusion dorsum of the right hand.

Injuries Nos. 1 and 3 were grievous and the remaining were simple.

On the person of Maruti Umaji, a solitary contused lacerated wound 2" x 1/4" x scalp deep was found on left frontal region.

In the opinion of Dr. Vhatkar, the injuries of all the victims were attributable to a hard and blunt object.

5. At about 3 p.m on 3-5-1982, one ward boy Sarnaik of C.P.R. Hospital gave a telephonic message about the admission of the victims in C.P.R. Hospital. The said message was received by P.H.C. Shantaram More P.W. 11 of Laxmipuri Police Station who on receiving it, went to C.P.R. Hospital and recorded F.I.R. of Pandurang Maruti Exhibit 25. Since the place of the incident fell within the limits of police station Panhala, the papers were transferred by the said police station and there a case under sections 147, 148, 323, 504 r/w 149 I.P.C. was registered. The evidence is that Maruti Umaji succumbed to his injuries on 4-5-1982 at about 12.05 am. and on his death, the case was converted to one u/s 302 I.P.C.

At this stage, it would be pertinent to point out that on 3-5-1982 at about 3-30 p.m. respondent Ananda Ganapati Buwa lodged an F.I.R. at police station Panhala alleging therein that Pandurang Maruti, Maruti Umaji, Shankar Chavan and others came and assaulted mother of Tanaji and when he tried to intervene, he was also assaulted. On the basis of Ananda's F.I.R. a case u/s 147, 148, 323 and 504 r/w 149 I.P.C. was registered.

6. It would be useful to mention that the injuries of the respondent Ananda Ganapati Buwa were medically examined on 3-5-1982 at 1 a.m. by Dr. Damodar Patil P.W. 4. He found on his person bleeding injuries on the scalp anterior/posterior oblique in direction. Dr. Patil stated that this injury could have been caused if a person throws a stick and hits a particular portion of the head. In his cross-examination, he stated that considering there was bleeding the said injuries must have been caused with sufficient force. He further stated therein that a person having a fracture of right hand may not be able to throw a stick with sufficient force.

7. The post mortem examination on the corpse of Maruti Umaji was performed by Dr. Vishnu Rajdeep P.W. 6, who found on the same a sutured wound over left parietal region vertically placed about 2 1/2" in length and two minor abrasions on the back. On internal examination, the doctor found fracture of the left parietal bone. He opined that the deceased died due to intra cranial haemorrhage

and shock due to fracture to skull.

8. The case was investigated in the usual manner and thereafter was committed to the Court of Sessions where charges u/s 302 r/w. 34 I.P.C. etc. were framed against the respondents who pleaded not guilty to the said charges and claimed to be tried.

During trial, in all the prosecution examined 16 witnesses. 6 of them namely Pandurang Maruti, Shankar Chavan, Dinkar Chavan, Mahadeo Chavan, Pandurang Nalavade and Pandu Yedurkar P.Ws. 1, 2, 3, 7, 9 and 10 respectively, were examined as eye-witnesses. In defence, no witness was examined.

The learned trial Judge after appraising the evidence on record acquitted the respondents vide the impugned Judgment and the same has been challenged by the State of Maharashtra through Criminal Appeal No. 816 of 1984 and by the original complainant Pandurang Maruti Chavan through Criminal Revision Application No. 380 of 1984.

9. We have heard the counsel for the parties and have perused the entire material on record. At the very outset, we have borne in mind that we are seized of the matter in an appeal against acquittal and a revision against acquittal. The settled law is this Court only interferes in an appeal against acquittal if conclusions on facts are either grossly unreasonable or there is some manifest illegality in the order of acquittal which has resulted in failure of justice.

It is also well-settled that the scope of interference in a revision against acquittal is still narrower than in an appeal against acquittal. In this connection, it would be useful to advert to para 7 of the decision of the Supreme Court reported in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh,

9A. When the said norms for interference are borne in mind, it becomes crystal clear that the order of acquittal warrants no interference. The learned trial Judge in a well-reasoned Judgment have given four main reasons for passing the impugned order of acquittal. They being:-

(i) In the F.I.R. there is no mention that lezim was being played on the place of the incident;

(ii) The categorical case of the prosecution is that the respondent Tanaji inflicted a knife blow on the nose of Pandurang Maruti but his injuries belie this. They have been reproduced in para 4 which shows that Pandurang Maruti only sustained blunt weapon injuries.

(iii) The panchanama of the place of the incident which was prepared on the pointing out of the eye-witness Dinkar Chavan P.W. 3 shows the place of the incident to be exactly opposite the house of respondent Pandurang Chavan and the place of the incident given out by the prosecution namely in front of the house of Chandu Kondi and Dagadu Bhau is thus, belied, and

(iv) there is an unexplained injury on the head of respondent Ananda Buwa.

The trial Judge in para 21 of the judgment has mentioned that the eye-witnesses Pandurang Maruti, Dinkar Chavan, Mahadeo Chavan, Shankar Chavan, Pandurang Nalavade and Pandu Yedurkar did not give any explanation for the said injury of Ananda Buwa and the explanation given by Shankar Dagadu is feeble and unconvincing . His explanation is that he snatched a stick from the respondent Raghunath Buwa and threw the same on the person of the respondent Ananda Buwa. The trial Judge, bearing in mind the evidence of Dr. Damodar Patil who examined the injuries of Ananda Buwa, did not accept such an explanation because, admittedly Shankar Dagadu had sustained a fracture on his right hand and the statement of Dr. Damodar Patil in cross-examination was that the injury of Ananda Buwa can only be caused if a stick was thrown by sufficient force and a person having fracture of right hand may not be having sufficient force.

10. For the said reasons, the trial Judge took the view that it was the party of the complainant which was the aggressor. It is true that no case of right of private defence of person has been pleaded by the respondents nor put forth in the cross-examination to the eye-witnesses but it is well-settled that if there is a reasonable probability of the accused having acted in exercise of right of private defence, the benefit of such a plea can still be given to them.

11. It is also true, as was urged by Mr. Mirza, Additional Public Prosecutor, that the F.I.R. of the respondent Ananda Buwa does not explain the injuries on the prosecution side and neither any explanation been furnished by the respondents in their statements recorded u/s 313 Cr. P.C. but, it is well-settled that the falsity of the defence would not ipso facto establish the correctness of the prosecution case. After all, the legal trite is that the prosecution has to swim on the strength of its own case and not bask in the sunshine of the fragilities of the defence.

12. At any rate, the position which crystallises is that both the prosecution and the defence are coming with untrue versions. But, in such a situation, the gainer is not the prosecution but the defence. In this connection, it would be pertinent to refer to two authorities namely those reported in :--

(i) Jamuna Chaudhary and Others Vs. State of Bihar , see para 12; and

(ii) Subrati v. State.

In Jamuna Chaudhary and Others Vs. State of Bihar , the Supreme Court has thus observed :-

"As neither the prosecution nor the defence have in the case before us, come out with the whole and unvarnished truth so as to enable the Court to judge where the rights and wrongs of the whole incident or set of incidents lay or how one or more incident took place in which so many persons including Laldhari and Ramanandan were injured, courts can only try to guess or conjecture to decipher the truth if possible. This may be done, within limits to determine whether any reasonable doubt emerges on any point under consideration from proved facts

and circumstances of the case."

In 1959 Allahabad Law Journal page 423, Srivastava, J., has observed thus :-

"If both the parties come to Court with untrue facts and conceal the real truth they have themselves to blame and they cannot expect the Court to arrive at any definite conclusion on the unreliable evidence produced either for or against either of the parties. In such a case the Court will certainly attempt to separate the grain from the chaff but only if it is possible to do so. In certain circumstances it may be found to be an impossible task. That is particularly so when the evidence of both the parties is thoroughly unrealisable and cannot be accepted even in part with safety. In such a case it is not open to the Court to make out a third case which is different from the case set up by both the parties. In such a case the Court can only say that the matter is doubtful in the extreme and it is not possible to arrive at any conclusion one way or the other. The result of such a finding may be that all the persons who stand as accused in the case may have to be given the benefit of doubt, But that cannot be helped. The defective investigation and the conduct of the parties themselves are really responsible for that regrettable result. In such a case there can be no question of recording any conviction."

13. For the said reasons, we feel that the view of acquittal of the respondents was a plausible view, and warrants no interference.

14. In the result, Criminal Appeal No. 816 of 1984 and Criminal Revision Application No. 380 of 1984 are dismissed. The respondents are on bail. They need not surrender. Their bail bonds stand cancelled and sureties discharged.

Rule is discharged in Criminal Revision Application No. 380 of 1984.

15. Appeal/revision dismissed.