
(2013) 01 BOM CK 0176
In the Bombay High Court
Case No : Criminal Appeal No. 147 of 2001

Uttam and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2013) ALLMR(Cri) 1344 : (2013) 3 BomCR(Cri) 761

Hon'ble Judges : P.V. Hardas, J

Bench : Single Bench

Advocate : Joydeep Chatterji, for the Appellant; S.G. Nandedkar, Assistant Public Prosecutor, for the Respondent

Judgement

P.V. Hardas, J.—The appellants/original accused No. 1 Uttam and original accused No. 5 Kantrao, who stand convicted for an offence punishable u/s 324 of the Indian Penal Code and sentenced to undergo R.I. for one year and to each pay fine of Rs. 1,000/-, in default to undergo S.I. for one month, while original accused No. 2 Babasaheb stand convicted for an offence punishable u/s 326 of the Indian Penal Code and sentenced to R.I. for two years and to pay fine of Rs. 1,000/-, in default to undergo S.I. for one month by the 3rd Additional Sessions Judge, Aurangabad, by judgment dated 13.3.2001, in Sessions Case No. 148 of 1996, by this appeal question the correctness of their conviction and sentence. It appears that during the pendency of this appeal, original accused No. 1 Uttam died. A death certificate has been produced before me, which is taken on record and marked "X" for the purpose of identification. By virtue of this death certificate, it is clear that original accused No. 1 Uttam died on 1.6.2003. The appeal, therefore, is dismissed as abated so far as accused No. 1 Uttam is concerned.

2. Facts in brief as are necessary for the decision of this appeal may be stated thus:-

P.W. 7 A.P.I. Shriniwas Mundhe, who was attached to the Pachod Police Station

on 21.6.1995 was entrusted with the investigation of Crime No. 46 of 1995 u/s 307 of the Indian Penal Code. The aforesaid crime had been registered on the basis of a report of P.W. 1 Sanjay at Exh. 29. An offence accordingly was registered vide Crime No. 46 of 1995 by the Police Station Officer - Head Constable Dinapurkar. Upon being entrusted with the investigation of the said crime, P.W. 7 A.P.I. Mundhe proceeded to the scene of the incident and in the presence of the panch witnesses drew the scene of the incident panchnama at Exh. 43. From the scene of the incident he seized an iron pipe and stick. On the same day he seized the clothes of injured under seizure memo at Exh. 38. On 22.6.1995 he recorded the statements of four witnesses including P.W. 6 Shaikh Mujib. During custodial interrogation, on 24.6.1995, accused Babasaheb expressed his willingness to point out the place where a sword-stick was concealed. Accordingly his memorandum was recorded in the presence of panchas at Exh. 39. Accused Babasaheb led the police and the panch towards Limbgaon and after excavating at a spot pointed out by accused Babasaheb a swordstick was produced by accused Babasaheb, which was seized in the presence of panchas at Exh. 40. Statements of witnesses were recorded and the injury certificates of the injured were collected. The seized articles were thereafter referred to the Chemical Analyzer under requisition at Exh. 47. Further to the completion of investigation a charge-sheet against the accused was submitted.

3. The injured were examined by P.W. 8 Dr. Anagha Varudkar. She examined P.W. 2 Eknath and noticed stab injuries on his chest and abdomen. The certificate in respect of injuries sustained by P.W. 2 Eknath is at Exh. 61. She had also examined P.W. 4 Sudam. She had noticed a stab injury on his abdomen and on his chest as well as an injury on his thigh. His peritoneum was found torn and, therefore, an operation was performed. The certificate in respect of the injuries sustained by Sudam is at Exh. 62. P.W. 1 Sanjay had also been examined by P.W. 8 Dr. Varudkar. P.W. 1 Sanjay had sustained a stab injury on his chest and his injury certificate is at Exh. 60.

4. On committal of the case to Court of Sessions, Trial Court vide Exh. 3 framed charge against the accused for offence punishable under sections 147, 148, 149, 307, 324 and 504 of the Indian Penal Code. Prosecution in support of its case examined eight witnesses. The defence of the appellants is of denial. The Trial Court upon appreciation of the evidence convicted and sentenced the appellants as aforestated while acquitting the remaining accused.

5. The evidence of injured witnesses, namely P.W. 1 Sanjay, P.W. 2 Eknath and P.W. 4 Sudam indicates that there was a dispute between the complainant party and the accused in respect of 3 Acres of land from out of 18 Acres, which was uncultivated. Both the parties had staked their claim in respect of the said 3 Acres of land. A meeting of the villagers had also been called in order to settle the dispute, but no settlement could be arrived at. The complainant side had decided to plough the uncultivated land on 20.6.1995, but on account of the obstruction

of the accused the ploughing of the land was abandoned. Thereafter on the day of the incident i.e. on 21.6.1995 while the complainant party was ploughing the land, the accused came to the disputed land and obstructed the complainant party from ploughing the land. There was an altercation between them, which resulted in the accused inflicting injuries to the complainant side. According to the injured eye-witnesses, accused No. 1 Uttam had assaulted P.W. 2 Eknath, P.W. 4 Sudam and P.W. 1 Sanjay with a sword-stick, while accused Kantrao had assaulted Sudam and P.W. 1 Sanjay with an iron pipe. Accused Uttam, who was alleged to be armed with a stick is said to have assaulted P.W. 2 Eknath, Ganesh and Ganpatrao. The sword stick came to be seized at the behest of accused Babasaheb. During the pendency of this appeal, original accused Uttam had expired and, therefore, an order has been passed for dismissal of the appeal as against accused Uttam as the appeal had abated. Perusal of the examination-in-chief of the injured witnesses as well as their cross-examination indicates that though there are minor contradictions in the evidence of P.W. 1 Sanjay, the evidence of PW. 2 Eknath and P.W. 4 Sudam proves the offence against the appellants beyond reasonable doubt. Their cross-examination leaves no scope for drawing any inference other than that the accused were the assailants who had inflicted the injuries as alleged. In cross-examination the witnesses have admitted that a counter case had been filed against them at the behest of the accused. It appears that on the same day a report came to be lodged by the appellants claiming that they had sustained injuries at the hands of the complainant. The aforesaid counter case was admitted to be pending when the evidence of injured witnesses was being recorded. The learned Counsel for the parties were unable to state before me as to whether the case had culminated either in conviction or acquittal of the accused.

6. Be that as it may, the evidence of the injured eye-witnesses stands fully corroborated by the medical certificate and, therefore, according to me the Trial Court has rightly convicted the accused for offence punishable under sections 326 and 324 of the Indian Penal Code.

7. Accused No. 5 Kantrao stands convicted for an offence punishable u/s 324 of I.P.C., while accused No. 2 Babasaheb stands convicted for an offence punishable u/s 326 of I.P.C.

8. Mr. Chatterji, learned Counsel for the appellants has urged before me that accused Babasaheb has undergone an imprisonment of one month and nineteen days, while accused No. 5 Kantrao has undergone imprisonment for sixteen days. It is urged by Shri Chatterji, learned Counsel for the appellants, that looking to the fact that there was a dispute in respect of the land where the incident occurred, the accused be convicted for the period of imprisonment undergone by them, while enhancing the quantum of fine. The learned A.P.P. has urged before me for dismissal of the appeal on the ground that the Trial Court has been extremely lenient and has already awarded a lesser sentence.

9. From the evidence of the witnesses it is clear that the incident occurred in the

fallow land ad measuring 3 Acres. Both, the accused as well as the complainant party had staked their claim in respect of the ownership of 3 Acres of land. A meeting of the villagers had been summoned in order to amicably settle the dispute between the accused who are closely related. The dispute between the accused and the complainant, however, could not be settled. The complainant had undertaken ploughing of the disputed land on a day prior to the incident but the ploughing was required to be abandoned because of the obstruction of the accused. No civil suit in respect of the disputed land had been filed by either parties. The parties had permitted the situation to precipitate by each attempting to plough the land and claim ownership. It further appears that a counter case was filed by the accused as the accused had claimed that they had also sustained injuries in the same incident. The filing of the counter case is admitted by the Investigating Officer as well as by the prosecution witnesses, who claimed that the said criminal trial is pending. The learned Counsel for the parties were, however, unable to state before me about the outcome of the said trial. Undisputedly, the accused and the complainant are close relatives and over the ownership of 3 Acres of land the aforesaid incident had occurred. In my opinion, therefore, by enhancing the quantum of fine and convicting the accused for the period of imprisonment already undergone by them would sub-serve the ends of justice. Accordingly, this Criminal Appeal is partly allowed and the conviction of the appellants for offence punishable u/s 324 and 326 of the Indian Penal Code is confirmed. However, the sentence of imprisonment of one year R.I. and two years R.I. respectively, for offence punishable under sections 324 and 326 of the Indian Penal Code is quashed and set aside and instead, the appellants are convicted for the period of imprisonment already undergone by them i.e. one month and nineteen days in respect of accused Babasaheb who stands convicted for an offence punishable u/s 326 of the Indian Penal Code and sixteen days in respect of accused No. 5 Kantrao for an offence punishable u/s 324 of the Indian Penal Code. The quantum of fine of Rs. 1,000/- each as imposed by the Trial Court is, however, enhanced to Rs. 12,000/- each. The appellants shall each pay an amount of Rs. 12,000/- as fine, in default to undergo R.I. for three months. If the fine amount is realized, an amount of Rs. 8,000/- each be paid to P.W. 1 Sanjay, P.W. 2 Eknath and P.W. 4 Sudam.

Appeal is partly allowed as indicated above.