

(2014) 07 BOM CK 0083

In the Bombay High Court

Case No : Criminal Revision Application No. 117 of 2001

Uttam

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 325, 34, 504, 506

Citation : (2015) ALLMR(Cri) 2791

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : V.D. Sapkal, Advocate for the Appellant; V.H. Dighe, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The learned Judicial Magistrate, F.C., Court No. 12, Aurangabad vide his Judgment and Order dated 9th June, 1999 passed in Regular Criminal Case No. 724 Of 1991 convicted Applicant Nos. 1 to 3 for the offence punishable U/Section 325 read with 34 of the Indian Penal Code and sentenced them to suffer Simple Imprisonment for three months and to pay fine of Rs. 200/-, each and in default, directed them to suffer Simple Imprisonment for eight days. Applicant No. 4 was convicted for the offence punishable U/Section 325 of the Indian Penal Code and she was sentenced to imprisonment till rising of the court and to pay fine of Rs. 500/- and in default to suffer further Simple Imprisonment for ten days.

Further all the applicants were convicted for the offence punishable U/Section 323 read with 34 of the Indian Penal Code and applicant Nos. 1 to 3 were sentenced to suffer Simple Imprisonment for seven days and applicant No. 4 was directed to pay fine of Rs. 100/- and in default to suffer further Simple Imprisonment for four days.

All the applicants were also convicted for the offence punishable U/Section 504

read with 34 of the Indian Penal Code and applicant Nos. 1 to 3 were directed to suffer Simple Imprisonment for fifteen days; where-as applicant No. 4 was directed to pay fine of Rs. 100/- and in default to suffer Simple Imprisonment for four days.

All the applicants were also convicted for the offence punishable U/Section 506 read with 34 of the Indian Penal Code and applicant Nos. 1 to 3 were directed to suffer Simple Imprisonment for fifteen days and applicant No. 4 was directed to pay fine of Rs. 100/- and in default to suffer Simple Imprisonment for four days.

2. Being aggrieved and dissatisfied by the said verdict, the applicants have preferred Criminal Appeal No. 60/1999 in the Sessions Court, Aurangabad. The learned 1st Ad hoc Addl. Sessions Judge, Aurangabad vide his Judgment and Order dated 16th April, 2001 partly allowed the said Criminal Appeal and the order of conviction and sentence passed by the learned Magistrate against the applicants for the offence punishable U/Sections. 323, 504 read with 34 of the Indian Penal Code was set aside and they were acquitted from the said offences. Vide said Judgment the order of conviction and sentence of applicant Nos. 1 to 3 for the offence punishable U/Section 325 read with 34 of the Indian Penal Code was confirmed. The order of conviction passed by the learned Magistrate convicting Applicant No. 4 for the offence punishable U/Section 325 read with 34 of the Indian Penal Code was set aside. The order of conviction and sentence passed by the learned Magistrate convicting Applicant Nos. 1 to 3 for the offence punishable U/Section 506 read with 34 of the Indian Penal Code was set aside and they were acquitted from the said offence. However, the learned lower appellate court confirmed the conviction and sentenced of Applicant Nos. 1 to 3 for the offence punishable U/Sections. 325 read with 34 of the Indian Penal Code and also confirmed the conviction and sentence of Applicant No. 4 for the offence punishable U/Sec. 506 of the I.P.C.

3. It is against this concurrent finding of holding Applicant Nos. 1 to 3 guilty for the offence punishable U/Section 325 read with 34 of the Indian Penal Code and Applicant No. 4 being convicted for the offence punishable U/Section 506 of the Indian Penal Code, present Cri. Revn. Appln. is filed.

4. I have heard Shri. V.D. Sapkal, learned counsel for the applicants and Shri. V.H. Dighe, learned A.P.P. for the State of Maharashtra.

5. Detail submissions were made by the learned counsel for the applicants to point that both the courts below committed an error in holding the applicants guilty for the offence punishable U/Section 325 read with 34 of the Indian Penal Code. The learned counsel submitted that the conviction of the applicants is based on assumption only. According to him, evidence as brought on record by the prosecution does not inspire confidence warranting interference by this court in its revisional jurisdiction. He further submitted that in view of two different M.L.C. numbers appearing on the injury certificate Exh. No. 23 and other medical evidence, doubt is created about the examination of injured Khandu Laxman

Jethe. He further submitted that there is variance in the ocular evidence and the medical evidence, therefore, he submitted that, this is a fit case wherein benefit of doubt is to be extended.

6. He further submitted that composite questions were put to the accused persons at the time of recording their statements U/Section 313 of the Code of Criminal Procedure thereby entire trial was vitiated. He further submitted that in view of the contradictions appearing in the evidence of prosecution witnesses, it will be very unsafe to base the conviction, therefore, according to him, courts below have committed an error of law. Lastly, he prays for acquittal of the applicants-accused.

7. Per contra, the learned A.P.P. submitted that the evidence adduced on record by the prosecution agency is cogent and consistent. He further submitted that the appellate court has already taken lenient view against the applicants and hence, present Cri. Revn. Appln. needs to be dismissed.

8. Exh. No. 15 is the First Information Report. Said is dated 30th July, 1990. It was filed by Khandu Laxman Jedhe (PW No. 2), who got himself injured in the assault. On the basis of said F.I.R., CR No. 102/1990 was registered with Khultabad Police Station, Dist. Aurangabad for the offences punishable U/ Sections. 325, 323, 504, 506 read with 34 of the Indian Penal Code.

9. It was stated in the F.I.R. that ten days prior to the incident on going civil dispute between the applicants and the first informant was culminated in his favour resulting into nursing grudge against him by the applicants. On 30th July, 1990 at 15.00 hrs. he was returning to his village from Kagzipura. He was passing through the agricultural land belongs to Nasruddin Moimoddin. At the relevant time, said field was under the cultivation of the applicants. The applicants were doing their agricultural work in the said field. When he was proceeding, Applicant Nos. 1 to 3 followed him and started abusing. Uttam Applicant No. 1 was holding rumhne, implement for agricultural work made from solid wood. He gave its blow on his leg causing fracture. That time, applicant Nos. 2 to 3 also gave stick blows on his thigh and on his head. Applicant No. 4 was instigating to finish the first informant. When this was going on, the adjacent agriculturist Tukaram Bhimaji Gore and others came there and they rescued the first informant. The first informant then was carried to the hospital.

10. The investigation was carried by PW No. 8 A.S.I. Baban Balasaheb Deshmukh. Spot panchnama Exh. No. 33 was drawn. The weapons used in the commission of crime were seized vide seizure panchnama Exh. Nos. 19 and 21. After completion of usual investigation, charge sheet was filed in the Court.

11. In the present case, the prosecution agency has examined in all eight witnesses:-

PW No. 1: Saraswati Khandu Jethe.

PW No. 2: Khandu Laxman Jethe [First Informant]

PW No. 3: Sampat Laxman Jethe.

PW No. 4: Tukaram Jethe.

PW No. 5: Sarjerao Krishna Sonawane.

PW No. 6: Dr. Mrs. Mangala Sureshchandra Chavhan.

PW No. 7: Dr. Narendrakumar Kapathia.

P.W. No. 8: Baban Balasaheb Deshmukh. (Investigating Officer)

12. PW No. 2 Khandu Laxman Jethe in his evidence before the Court deposed that on the date of incident when he was passing through the field of Nasruddin, applicant No. 1 Uttam gave blow of rumhne on his left leg due to which he fell down. Applicant No. 3 Raosaheb also gave blow of rumhne on his forehead; where as applicant No. 2 Saubhash gave blow of stick of babool tree on his leg, resulting into fracture to his leg. From his evidence, it is clear that he has attributed specific role to each of the applicants namely applicant Nos. 1 to 3. In the cross examination of injured, nothing could be brought on record to disbelieve the version of this witness. Suggestion was given to this witness that he received injuries due to slipping on the ground, due to mud.

13. In that behalf evidence of PW No. 6 Dr. Mrs. Mangala Sureshchandra Chavhan is important. At the relevant time, she was working as Medical Officer in Government Medical Hospital, Aurangabad. On 30th July, 1990. P.W. No. 2 Khandu was brought to the hospital by Police Constable A.A. Beg, B. No. 832. On his examination, she found following injuries:-

(i) Swelling with fracture on Lt. Leg, lower 2/3rd. Grievous Injury. Age: within 24 hours. Caused by hard and blunt object.

(ii) Swelling cury fracture of Lt. femur, Lt. thigh upper 1/3rd and hip. Grievous injury. X-ray shows fracture on sharp left femur. Age: within 24 hours. Caused by hard and blunt object.

(iii) Contusion on Lt. eye brow laterally. Size 1 cm. x in diameter, red colour. Age: within 24 hours. Nature: Simple injury.

(iv) Multiple contusions on upper half of the back. Reddish blue in colour. X-ray of the chest shows fracture of 4th, 5th and 6th rib. Nature: Grievous injury. Caused by hard and blunt object.

(v) Contusion on Rt thigh, lower 1/3rd. Size 5 cm x 3 cm. Laterally, red in colour. Age: within 24 hours. Caused by hard and blunt object.

(vi) Contusion on Lt hand. Dorsally. Size 2 cm in diameter. Red in colour. Age: within 24 hours. Caused by hard and blunt object. Nature: Simple.

Her evidence show that he was admitted in the hospital on 30th July, 1990 and he was discharged from the hospital on 22nd August, 1990.

14. The submission was made by the learned counsel for the applicants that in Exh. No. 23 injury certificate given by PW No. 6 Dr. Mangala on 30th July, 1990, she has not mentioned the fracture on 4th, 5th and 6th rib. Further according to the learned counsel, P.W. No. 6 Dr. Mangala in her cross-examination has admitted that injury No. 1 may occur if a person fell on hard and blunt substance. The learned counsel for the applicants submitted that the prosecuting agency has completely failed to bring its case beyond the shadow of reasonable doubt.

15. In so far as argument based on the admission given by the Doctor in her cross examination that injury may occur if a person fell on the hard and blunt substance is concerned, that is the opinion of the Doctor that such injury is also possible by such events. However, when specific evidence of PW No. 2 Khandu about sustaining such injuries is available on record that he was assaulted on his leg by the applicants by means of rumhne, the answer to the hypothetical questions put by the learned cross examiner in the cross examination of the Doctor, loses its force.

16. Further the suggestion given in the cross examination of PW No. 2 Khandu that he suffered injury due to fell on the ground due to mud shows that surface was not hard and blunt, therefore, the contention raised by the learned counsel for the applicants to that effect needs to be rejected.

17. In so far as argument that there is no mention in the evidence of PW No. 2 Khandu that he was attacked on his chest and therefore, there was no reason for occurring the fracture on his ribs. When the evidence of injured is consistent, there is no reason to disbelieve his version about the attack merely because he failed to give the detail account of attack on his body of which he received the blow, ipso facto, cannot be a factor to disbelieve the entire prosecution case and his version. In so far as contention of the learned counsel for the applicants that there is no mention of M.L.C. number on the X-ray negatives, the learned trial court has observed that after perusal of the record, he found that the negatives are stuck with chits.

18. It is to be mentioned here that version of the injured is also corroborated by PW No. 4 Tukaram. His presence is also mentioned in the F.I.R. This witness is independent witness. At the relevant time, this witness was present in his agricultural field and after hearing the shout of fighting and quarrel from the field of Nasruddin, he rushed there and that time, applicant Nos. 1 and 2 were beating to PW No. 2 Khandu by means of rumhne. He deposed that, he rescued him. The distance between his agricultural field and place of occurrence is just 100 mtrs. Therefore, his immediate presence on the spot of occurrence on hearing the shout, as claimed by him is most natural one. Though during the course of cross examination some suggestions were given to him in order impeach his testimony, his core evidence has remained unshaken.

19. In the present case there is motive to commit an offence as the civil dispute

was culminated in favour of the First Informant. In fact from the cross examination of the first informant it is brought on the record that dispute between the parties at the relevant time was taken to the this Court. That corroborates the version of first informant that as said dispute was culminated in his favour, the applicants were nursing grudge against him.

20. The learned counsel though raised point that composite questions were put to each of the applicants at the time of recording their statements U/Section 313 of the Code of Criminal Procedure however, before the courts below or before this court, nothing could be point out that it has resulted into prejudice to the applicants. In absence of any prejudice being caused to them, the reported decisions relied by the learned counsel for the applicants needs no consideration, at this stage.

21. It is pointed out by the learned counsel for the applicants that in the seizure panchnama Exh. Nos. 19, 20 and 21 by which the weapons used in the commission of offence were seized at the behest of Applicants Nos. 1 to 3 sans the signature of the applicants and, therefore, recovery is inadmissible. In view of the recent authoritative pronouncement of the Hon''ble Apex Court in case of Dr. Sunil Clifford Daniel Vs. State of Punjab, the Hon''ble Apex court has considered the said issue and held that merely because the recovery memo was not signed by the accused, that will not vitiate recovery itself. Further the learned counsel submitted that weapons were not produced before the court. However, this aspect has rightly considered by the courts below and I see no reason to discard with the reasons supplemented by the courts below, while rejecting the said argument.

22. The quality of the prosecution evidence clearly show and establish that prosecution has proved its case beyond reasonable doubt. Injuries are specifically proved and some injuries are grievous in nature. Further from perusal of impugned judgment passed by the learned lower appellate court, the appellate court has considered the case of the prosecution in detail and found that prosecution has successfully proved its case against Applicants Nos. 1 to 3 for the offence punishable U/Sec. 325 of the Indian Penal Code. I see no reason to interfere with the concurrent findings recorded by the courts below hence, I proceed to pass the following order:-

ORDER

(i) Cri. Revn. Appln. is dismissed.

(ii) Applicant Nos. 1 to 3 are directed to surrender their bail bond and shall surrender themselves to serve out their remaining jail sentence else; the trial court is directed to take necessary steps in that behalf.