

(2018) 03 BOM CK 0011
In the Bombay High Court
Case No : 583 of 2004

Vikas @ Balu S/o Balwant Thakre

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 147](#), [Section 148](#), [Section 149](#), [Section 436](#), [Section 337](#) - Acts done by several persons in furtherance of common intention - Punishment for rioting - Rioting, armed with deadly weapon - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Mischief by fire or explosive substance with intent to destroy house, etc - Mischief by fire or explosive substance with intent to destroy house, etc - Causing hurt by act endangering life or personal safety of others - Causing hurt by act endangering life or personal safety of others
[Bombay Police Act, 1951](#), [Section 135](#) - Penalty for contravention of rule or directions under sections 37, 39 or 40

Citation : (2018) 03 BOM CK 0011

Hon'ble Judges : V. M. Deshpande

Bench : Single Bench

Advocate : Amol M. Jaltare, Dhananjay M. Sherkar, Amit Madiwale

Judgement

1. By the present appeal, the appellants are challenging their conviction and the sentence imposed upon them by the learned 2nd Ad-hoc Additional Sessions Judge, Wardha, vide judgment and order dated 20.8.2004 in Sessions Trial No. 24/2002.

(a) The appellants are convicted by the Court below for the offence punishable under Section 337 read with Section 34 of the Indian Penal Code and directed them to suffer rigorous

imprisonment for three months and to pay fine of Rs.100/- by each of them and in default to suffer rigorous imprisonment for eight days.

(b) The appellants are also convicted for the offence punishable under Section 436 read with Section 34 of the Indian Penal Code and on that count their sentence is sufferance of rigorous imprisonment for three years and to pay fine of Rs.500/- by each of them and in default to suffer rigorous imprisonment for one month.

2. I have heard Shri A. M. Jaltare, the learned counsel for the appellant and Shri Amit Madiwale, the learned Additional Public Prosecutor for the respondent-State. Both the learned counsel took me through the record and proceedings and the notes of evidence in this case.

3. The present appellants with four others were charged for the offences punishable under Sections 147, 148, 337 and 436 read with Section 149 of the Indian Penal Code by the learned Court below.

Appellant no.1 Vikas @ Balu Thakre is accused no.1, appellant no.2 Ravindra Hele is accused no.3 and appellant no.3 Jaiwant Sao is accused no.6. All the accused persons including the appellants were acquitted of the offences punishable under Sections 147 and 148 of the Indian Penal Code. Except these three appellants, other accused persons were acquitted from all the charges, for which they were charged. No appeal is preferred against their acquittal by the respondent/State.

4. The oral report (Exh.48) is lodged by Jogindersingh Chahal (PW1). It is dated 03.11.2001. On the basis of said report, the offence was registered at Police Station, Arvi of district Wardha vide Crime No. 246/2001 for the offences punishable under Sections 147, 148, 149, 436, 337 and 427 of the Indian Penal Code and under

Section 135 of the Bombay Police Act. The printed first information report is at Exh.49.

5. PW6 Vasant Shende, Police Sub Inspector, who at the relevant time was attached to Police Station Arvi, is the Investigating Officer. He completed the investigation and filed the charge-sheet.

6. P.W.5 Babulal Khairkar, on 02.11.2001 was posted at the Out Post at Talegaon of Police Station, Arvi. He received telephonic message that a quarrel took place at Sangam Dhaba. He, therefore, with his staff rushed to the said dhaba. There he noticed that 20-25 persons were committing mischief to the dhaba. They were beating to the people present in the dhaba. According to the evidence of P.W.5 Babulal, all the seven accused persons were the members of the said mob. His evidence shows that he was only knowing appellant no.1 Vikas by name. As per his evidence, the owner of the said dhaba, that is PW1 Jogindersingh and others sustained injuries. His evidence shows that while taking the injured in the vehicle, the mob committed mischief to the dhaba by setting it on fire.

7. The first information report is lodged by PW1 Jogindersingh, which is at Exh.48. His report Exh.48 and his evidence show that on 02.11.2001, the appellant no.1 and two others came to his dhaba. They demanded liquor. It was informed to them by PW1 Jogindersingh that he did not supply the liquor. On that, they picked up quarrel, extended threat and left the dhaba. As per the report and as per evidence of PW1 Jogindersingh, after half an hour, the appellant no.1 and other 20--25 persons came to dhaba. They were holding stones and sticks in their hands and they started pelting stones. He received injury on his forehead and nose. His relative Sukhdevsingh and his servant Raj Sachdev (PW2) also received the injuries. His evidence further shows that he informed

the happening at dhaba on telephone to the outpost at Talegaon. Within 15 minutes, police came on the spot and when he was removed by the police in their jeep for medical treatment and in that process when they reached to highway, at that time, the mob set the dhaba on fire.

8. Evidence of P.W.2 Raj Sachdev is also on the line of evidence of P.W.1 Jogindersingh. PW.3 Mohd. Karnula Mohd.

Mansur, who was having a repair shop opposite the dhaba, has turned hostile and has not supported the prosecution at all. P.W.4 is one Devidas Raut and through him, spot panchanama (Exh.58) is proved. However, he did not support the prosecution in respect of seizure of weapons from the accused persons in his presence and to that extent, he was declared hostile by the prosecution.

9. If the evidence of the prosecution witnesses is scrutinized minutely, then it is clear that none of the prosecution witnesses was knowing the name of any of the accused, except appellant no.1/accused no.1 Vikas. All the prosecution witnesses state that they were knowing other accused persons and other members of the unruling mob by their faces. In spite of this, no test identification parade was held by the investigating agency. In fact, even the Investigating Officer PSI Vasant Shende (PW6) in his cross-examination has stated that neither the complainant nor his brother or servant or P.W.3 Mohd. Mansur state the names of any of the accused in their statement. Therefore, in my view, holding of test identification parade was imperative for fixing the identity of the persons, who were the members of the mob.

10. Though, P.W.1 Jogindersingh and P.W.2 Raj Sachdev claim that they received injuries on their person in stone pelting and other assault made by the members of the mob and though, they were taken to the hospital and were medically examined, the

prosecution has not examined the doctor, who has medically examined and treated them and did not prove the injuries caused to these two prosecution witnesses.

11. Further, the evidence of P.W.1 Jogindersingh and P.W.2 Raj Sachdev and even the evidence of P.W.5 Babulal, the Head Constable, who rushed to the spot immediately after getting the information and who took P.W.1 Jogindersingh and P.W.2 Raj along with him, states that when they reached to highway that time they noticed that the mob has set the dhaba on fire. Their evidence is totally silent in respect of the specific role of any of the seven accused persons, who were charged. In my view, the learned Judge of the Court below has committed a mistake in convicting the appellants for the same evidence, which was scrutinized by the Court below for acquitting the remaining accused persons.

12. Though, the name of appellant no.1 Vikas is appearing in the testimony of all the prosecution witnesses, all the prosecution witnesses are conspicuously silent that it is this accused Vikas, who has set the dhaba on fire or has facilitated any of the other accused persons for committing the said act.

13. The quality of the evidence as brought on record, in my view, shows that the entire case of the prosecution is surrounded by mist of suspicion. The case does not travel beyond the suspicion. The prosecution has not proved the guilt of the appellants beyond reasonable doubt. Therefore, in my view, the impugned judgment cannot stand to the scrutiny of law, warranting me to pass the following order :

ORDER

1] The criminal appeal is allowed.

2] The judgment and order of conviction passed by the learned 2nd Ad-hoc Additional Sessions Judge,

Wardha, dated 20.8.2004 in Sessions Trial No. 24/2002 is hereby quashed and set aside.

3] The appellants - (1) Vikas @ Balu S/o Balwant Thakre, (2) Ravindra S/o Bhimrao Hele, and (3) Jaiwant S/o Sukhdeo Sao, are acquitted of the offences punishable under sections 337 and 436 read with Section 34 of the Indian Penal Code.

4] Their bail bonds stand cancelled.

5] The criminal appeal is allowed and disposed of.