
(1997) 07 BOM CK 0068

In the Bombay High Court

Case No : Criminal Revision Application No. 71 of 1992

Vilas Bhaskar Sawant

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235, 482

Evidence Act, 1872 — Section 118, 3

Penal Code, 1860 (IPC) — Section 307, 324, 96

Citation : (1998) BomCR(Cri) 188

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : S.G. Samant, for the Appellant; M.I.P. Galieria, (, Assistant Public Prosecutor), for the Respondent

Judgement

Vishnu Sahai, J.—By means of this revision, the petitioner has impugned the judgment and order dated 20-1-1992, passed by the Sessions Judge, Thane, in Criminal Appeal No. 69 of 1980, whereby the judgment and order dated 31-8-1990, passed by the VIth Assistant Sessions Judge, Thane, in Sessions Case No. 422 of 1987, convicting and sentencing him to undergo three years RJ. and to pay a fine of Rs. 500/- in default to suffer R.I. for 3 months, has been confirmed.

2. In short, the prosecution case is that the petitioner on one hand and the victim Bhalchandra Patil, P.W. 1 on the other hand, belonged to rival labour unions and there was an inimical strain between them. On the night of 12th and 13th July, 1986. Bhalchandra, P.W. 1, witnesses Ratan and others were on duty at Raymond Mills. At about midnight, the petitioner along with three co-accused persons namely Dilip AHIRE, Prabhakar Ahire, and Umesh Joshi, came near them; whereas the petitioner was having a knife in his hand, the other three were armed with sticks. It is alleged that seeing them armed with weapons, Bhalchandra tried to run away but, was chased by the petitioner and others. When he had reached near the machine, in the Mill premises, one of the

acquitted accused persons assaulted him with a stick, resulting in his falling down. At that juncture the petitioner inflicted a knife blow which struck on his chest, and resulted in bleeding. The petitioner is alleged to have given a second knife blow which struck him on his right arm. The acquitted accused persons are said to have given stick blows. Apart from Bhalchandra and Ratan, this incident was also witnessed by Suresh Pendhare. After assaulting Bhalchandra, the petitioner and others are said to have run away.

3. The evidence is that Bhalchandra was taken to Civil Hospital, Thane, where he was medically examined at 1.50 a.m. by Dr. Suresh Bhoite, P.W. 3, who found on his person the following two injuries :---

1) Incised stab wound, right side lower chest wall (anterior) directed outside (laterally) 7-8 x 2-3 x 1-2 cm. It was bleeding injury.

2) Incised wound, right forearm 5-6 x 1 x 1 cm. It was horizontal.

The evidence is that Bhalchandra was admitted for one day at the Civil Hospital, Thane and thereafter, was treated by a private doctor who has not been examined in the instant case.

3A. After the usual F.I.R. and investigation, the petitioner and others were charge sheeted for an offence punishable u/s 307 read with 34 I.P.C. In due course, they were put up for trial in the Court of the Assistant Sessions Judge, Thane. It appears that before framing of charge, one of the acquitted persons namely Umesh Joshi died and consequently case against him abated.

The trial Court acquitted the other two co-accused persons namely Dilip Ahire, and Prabhakar Ahire, but, however convicted and sentenced the petitioner in the manner stated in para 1. The petitioner assailed his conviction and sentence by preferring an appeal in the Sessions Court but the said appeal was dismissed by the Sessions Judge vide judgment dated 20-1-1992. Hence this revision.

4. I have heard Mr. S.G. Samant with Ms. Poonam Maria and Mr. G.H. Keluskar, for the petitioner and Mr. M.I.P. Galieria, Additional Public Prosecutor, for the State of Maharashtra respondent. I have also perused the record and proceedings and the impugned judgment. After thoughtfully reflecting over the matter, I am of the view that this revision deserves to be partly allowed in-as-much as the conviction of the petitioner, deserves to be converted from one u/s 307 to that u/s 324 I.P.C. and his sentence also requires to be reduced .

5. Mr. Samant, learned Counsel for the petitioner, first tried to assail the conviction of the petitioner on facts, but realising his limitations, came out with his alternative legal submissions. Before I consider them I would like to observe that I am seized of the matter in my revision jurisdiction. It is well-settled that acting in the said jurisdiction, the High Court only interferes with the concurrent findings of fact, if they are manifestly perverse. In the instant case, the finding recorded by the courts below that on the date and time alleged by the prosecution, the petitioner inflicted two knife blows on the victim Bhalchandra, is

based on the statement of the victim, coupled with corroborative medical evidence, referred to above, The said finding in my view, cannot be castigated as being perverse.

Mr. Samant urged that within 1 1/2 hour of the incident, the petitioner was medically examined by Dr. Suresh Bhoite, P.W. 3 at the Civil Hospital, Thane who found that he had sustained a contused lacerated wound on his left finger of the dimensions of 2 cm. x 2 cm. x 1 cm. In Mr. Samant's contention, the complaint lodged by the petitioner shows that the said injury was inflicted by the victim Bhalchandra with a small sword. Mr. Samant urged that since the petitioner was first attacked by the victim Bhalchandra with a sword, he may have acted in exercise of right of private defence of person. In his contention, the petitioners not stating this, in so many words, would not make any difference because, the benefit of the plea of self-defence can be given, if it is possible to infer from the circumstances that the petitioner may have acted in its exercise. Technically speaking, Mr. Samant may be right but I am not prepared to believe that the petitioner is speaking the truth in his complaint, when he alleges that the victim Bhalchandra with a small sword, caused him the said injury. I have taken this view because, it is common knowledge that a sword would cause an incised injury and not a contused lacerated wound. Apart from it, I find that Dr. Bhoite, also has not stated that this injury could be caused by a small sword.

6. Mr. Samant next urged that at any rate, conviction of the petitioner for the offence u/s 307 I.P.C., is unsustainable in law. He urged that although the victim Bhalchandra received two incised wounds, but only one of them namely injury No. 1 was on the vital part of the body, namely chest. He urged that Dr. Bhoite who examined the injuries of Bhalchandra, did not state that they were either dangerous to life or were capable of causing death. Mr. Samant urged that if the petitioner intended to commit the murder of Bhalchandra, he could have inflicted some more blows with knife on vital parts of his body. He urged that considering the totality of circumstances, it would be hazardous to sustain the conviction of the petitioner for the offence u/s 307 I.P.C. Mr. Galieria, Additional Public Prosecutor on the other hand urged that in as much as the first knife blow inflicted by the petitioner caused an injury on the chest of the victim and the petitioner aimed a second blow with a knife on a vital part of body, he had the requisite intention to commit murder u/s 307 I.P.C. I am afraid, I cannot accede to his submission. The victim Bhalchandra, in para 5 of his deposition, only stated "He was about to give another blow of knife, I tried to avoid it, but the knife had hit me on my right hand." From this statement of the victim, I am afraid, I cannot infer that the second knife blow inflicted by the petitioner, was necessarily aimed on a vital part of the body.

7. In my view, considering the over-all circumstances, the safer course; indeed the prudent course, would be to convert the conviction of the petitioner from one u/s 307 I.P.C. to that u/s 324 I.P.C. It is well settled that even if there is a doubt in respect of the offence, made out, the benefit of the same, has got to go to the

accused.

8. The question which stares me is as to what sentence should be imposed on the petitioner for the offence u/s 324 I.P.C. Mr. Samant urged that in as much as the injuries of the victim were simple in nature; the incident had taken place nearly 12 years ago, and there is nothing to indicate that the petitioner has to his discredit any previous conviction, ends of justice would be amply satisfied if the jail sentence of the petitioner is reduced to the period already undergone by him and instead some fine is imposed. The question is what should be the quantum of fine. Mr. Samant urged that bearing in mind that the petitioner was only an employee in a Mill, the fine should be taken. On the converse, Mr. Galieria, urged that looking to the circumstance that with a lethal weapon like a knife, the petitioner inflicted two injuries on the victim, one being on chest, the quantum of fine should be exemplary, and the said fine should be directed to be paid as compensation to the victim.

After reflecting over the rival submission I am of the judgment that a fine of Rs. 8,000/- to be paid within 6 months from today, and in default a sentence of 18 months R.I. would meet the ends of justice.

9. In the result, this revision is partly allowed and partly dismissed. I acquit the petitioner for the offence u/s 307 I.P.C. and set aside his jail sentence of three years R.I. and fine of Rs. 500/- on that count. I direct that in case the petitioner has paid the fine, it shall stand refunded to him. I instead convict the petitioner for an offence u/s 324 I.P.C. and reduce his sentence to the period already undergone by him on that count, provided he deposits a fine of Rs. 8,000/- in the trial Court within 6 months from today failing which, he would undergo R.I. for a period of 18 months. In case the petitioner deposits the said fine, the whole of it shall be paid as compensation to the victim Bhalchandra Patil, P.W. 1 and in case he is not alive, to his legal heirs. As soon as the petitioner deposits the fine, the trial Court shall inform Bhalchandra Patil P.W. 1 or his legal heirs as the case may be, about this compensation.

In case the petitioner does not pay the fine, within the stipulated time, he would undergo the sentence of 18 months R.I. which has been imposed by me, in default of payment of fine.

Rule is disposed off in the aforesaid manner. It would be open to the trial Court to accept the fine on production of a certified copy of my judgment, which in case an application is made, shall be issued within a period of 8 weeks from today.

10. Revision partly allowed.