

State of Maharashtra Vs. Bhaskar and Others

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Court : Mumbai Nagpur

Decided On : Jul-30-2014

Judge : M.L. Tahaliyani

Appeal No. : Criminal Appeal No. 523 of 2012

Appellant : State of Maharashtra

Respondent : Bhaskar and Others

Judgement :

Oral Judgment:

1. This is an appeal against acquittal filed by the State against the judgment and order passed by Additional Sessions Judge, Pusad on 18th May, 2012 in Criminal Appeal No.26 of 2008 acquitting the respondents of the offence punishable under Section 324 read with Section 149 of the Indian Penal Code. The said appeal arose out of the judgment and order passed by Judicial Magistrate First Class, Pusad in Regular Criminal Case No.100 of 1998.

2. Respondent Nos.1 to 9 were convicted by the learned trial Court for the offence punishable under Section 323 read with Section 149 and 324 read with Section 149 of the Indian Penal Code. They had been sentenced to suffer simple imprisonment of six months for the former offence and one month for the later offence. The respondent challenged the judgment and order of the Judicial Magistrate First Class in appeal before the Sessions Court. The Sessions Court by

its impugned judgment and order allowed the appeal partly and convicted respondent Nos.1 to 9 for the offences punishable under Sections 147 and 323 read with Section 149 of the Indian Penal Code. The respondents were acquitted of the offence punishable under Section 324 read with Section 149 of the Indian Penal Code. The learned appellate Court directed that respondent Nos.1 to 9 should be released on bond of Rs.Five Thousand each for a period of two years with condition that they should maintain peace and good behaviour for the said period of two years.

3. Learned Additional Public Prosecutor Mr. Mirza has submitted that injured P.W. 1 and other witnesses i.e. P.W. 2 and 3 have clearly stated that respondents had used axe at the time of the offence and therefore, the conviction of the respondents for the offence punishable under Section 324 read with Section 149 of the Indian Penal Code was right.

4. I have gone through the evidence of P.W. 1, 2 and 3. As far as P.W. 1, who is injured witness, is concerned, it is seen that this witness initially did not mention anything about use of axe. In the last line of his evidence, he has stated that he had identified the axe because the axe was used by the respondent. It appears that P.W. Nos.2 and 3 have, therefore, repeated the said evidence later on. The axe was not produced before the trial Court. Therefore, description of the axe was not available. None of the witnesses have stated as to whether the sharp side of the axe was used or blunt side was used. Unless the evidence on this aspect of the case could come, it was difficult for the trial Court to decide as to whether the weapon used was the sharp weapon. Even if we consider it to be the lethal weapon, it was necessary for the witnesses to give description so that the trial Court could have known the weight and size of the axe. The appellate Court, in my opinion, has rightly upset the judgment of the trial Court and converted the conviction to Section 147 and 323 read with Section 149 of the Indian Penal Code.

5. As far as punishment is concerned, the respondents are not hardened criminals. They are villagers. Sending such persons, having families to jail in my opinion, could prove to be counterproductive. The learned appellate Court has taken the right decision and the same does not call for any interference. Before I pass final

order, it may be mentioned here that the probation period of two years is also over.

Hence, the appeal stands dismissed.

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