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Court : Mumbai Aurangabad

Decided On : Aug-03-2016

Judge : A.I.S. Cheema

Appeal No. : Criminal Appeal No. 568 of 2003

Appellant : Rangnath and Another

Respondent : State of Maharashtra

Judgement :

1. The appellants -original accused (hereafter referred as "accused") have been convicted in Sessions Case No.161 of 2002 by IVth Ad-hoc Additional Sessions Judge, Beed on 5th August 2003 for offence punishable under Section 307 and Section 324 read with 34 of the Indian Penal Code, 1860 ("IPC" in brief).

2. The case of prosecution, in short, is as follows:-

A). On 23rd February 2002 PW-2 Jakuram Dahale (hereafter referred as "complainant") was admitted at Civil Hospital, Beed. PW-11 Sukhdeo Landge, A.S.I. attached to the police out-post, Civil Hospital, Beed received M.L.C. letter from the doctor and he went and recorded statement in the nature of dying declaration (Exhibit 31) of the complainant. The statement was forwarded to the police station, Georai, Dist-Beed and Crime No.35 of 2002 came to be registered on 24th February 2002 at 8.30 p.m. The complainant gave statement claiming that he was resident of Kumbharwadi, Tq. Georai and was working as a truck driver.

He gave details about his family. It is stated in Exhibit 31 that his mother did not have a brother or sister and her father had 17 acres land. Her father expired in 1993 and for 21 years his land was being cultivated by the complainant and his family. The cousin-brothers of his mother had nothing to do with the field property and they were not heirs of his maternal grandfather. Still, the accused persons who are cousin maternal uncles, forcibly started cultivating the said field. His maternal grand-mother Sarubai Jagannath Jadhav filed complaint to police station against them and case was filed in the Sessions Court. There were orders that nobody should enter the land. Still, the accused were violating the Court orders and cultivating the land. They have sown Cotton, Jawar, Bajra in the filed and had come to cut the crop.

On 23rd February 2002, the complainant and his brother Arjun (PW-3) went there and told them why they are cutting the crop and they should not cut the same. Both the accused abused the complainant and his brother. Accused No.1 Rangnath with the help of sharp axe which he had, gave blow on neck of complainant to his right side causing deep injury. Similarly, accused No.2 Radhakisan with the help of stick hit complainant on the head, right hand arm, thigh of right leg and calf, causing invisible injuries and also gave blow on nose and lips causing injury. At that time his brother Arjun intervened. Accused No.2 Radhakisan hit him on the head, left hand, left leg by stick and injured Arjun. One Bappasaheb Ramu Bhate, Vitthal Nivrutti Jadhav (PW-7) saw the incident and intervened. His parents then came there and seeing them the accused persons ran away taking the axe and stick. The persons who had intervened and his parents brought him and Arjun to the civil hospital and admitted them at 8.00 p.m. Thus, the statement.

B). On receipt of above statement recorded as dying declaration, PW-8 Baliram Jadhav (Head Constable) registered the offence. There after P.I. Gautam Fasle (PW-12) investigated the crime. The accused were arrested. The P.I. went to the spot on 25th February 2002 and did spot panchnama. The accused persons were in police custody and they agreed to give discovery of the axe and stick which they had used in the incident. The concerned memorandums were recorded and discovery of the axe and stick was done at the instance of the accused persons,

regarding which panchnamas Exhibit 34 to 37 came to be recorded on 26th February 2002. On 27th February 2002 clothes of the complainant came to be seized (Exhibit 38) which had blood stains. The clothes of the accused persons were seized (Exhibit 39) on 28th February 2002. Their clothes had blood stains. At the hospital Doctor Vinod Ostawal (PW-1) had examined both the accused on 23rd February 2002 at 8.00 p.m. Their Medical Certificates Exhibit 28 and 29 came to be collected. Statements of witnesses were recorded. The seized articles were sent to C.A. and C.A. reports were obtained. After the investigation, charge-sheet came to be filed.

3. The accused persons pleaded not guilty to the offence. Their defence is of total denial. According to them Tukaram Jadhav and Sarubai had filed Civil Suit against them which was decided in their favour and rather the complainant had stolen their crop for which they had filed criminal case. The complainant is a worker of Shiv Sena and brought about false case against them.

4. In the trial Court evidence of twelve witnesses was recorded. The trial Court considered the State case and the defence and convicted the accused as mentioned above.

5. I have heard the counsel for Appellants-accused as well as learned A.P.P. for State. It has been argued by the learned counsel for the Appellants-accused that although the offence is stated to be of 23rd February 2002, the F.I.R. was registered only in the evening of 24th February 2002. Apart from Exhibit 31 which was recorded as if it is a dying declaration, in the record of the trial Court, there was yet another document, copy of which was available in the record, which was dying declaration dated 24th February 2002. In that dying declaration, the injury to the neck was alleged to have been caused by hitting from behind. In that dying declaration, there were no details like PW-3 Arjun being there as part of the incident and Arjun also being injured. It is argued that the medical certificates relied on in favour of the complainant and his brother Arjun were issued after more than a month of examination. The original record on the basis of which such certificates were issued, was not brought before the Court. The witnesses gave different versions regarding alleged assault and even different spots were stated

regarding the incident taking place.

PW-6 Gangubai Dahale, minor sister of the complainant was got-up witness as she could not have been on the spot when alleged incident took place. The complainant admitted that persons with surname Jadhav in the village were all from Shiv Sena and it was admitted fact that there were two groups and the accused did not belong to Shiv Sena and the complainant and others managed to bring about false case, it is stated. The injuries of PW-3 Arjun were possible by fall. The doctor accepted that stick is hard and blunt object while the injuries of Arjun were caused by hard and rough object. False discoveries of axe and stick were shown. Even the property sent to C.A. was once returned as it was not properly wrapped and sealed. Thus the investigation on this count deserves to be ignored. The record showed that the copy of F.I.R. was sent to the Court after a delay of three days and there was no explanation. Looking to Exhibit 31 and the other dying declaration available in record, there was reason to doubt as to the manner in which F.I.R. was registered. The complainant had minor injury to his neck and it could be self inflicted. According to the counsel there was reason for the complainant to falsely implicate the accused looking to the property dispute which the complainant and his family lost.

6. Against this, the learned A.P.P. supported the Judgment of the trial Court. According to him, there were two injured in the incident and four persons were speaking regarding the incident. Although the suit has been decided against the family of the complainant, at many times the actual possession is with the other party and which requires execution etc. and thus fault can not be found with the complainant and his brother if they objected to the cutting of the crop. Learned A.P.P. submitted that the evidence on record is reliable and the trial Court has rightly convicted the accused persons.

7. On record, firstly there is evidence of PW-2 complainant Jakuram. He is supported regarding the incident by PW-3 Arjun, his brother. PW-6 Gangubai, the sister of the complainant has been examined, who also claimed to have reached the spot after hearing about starting of the incident and claimed that she also saw the whole incident. There is yet another witness PW-7 Vitthal Jadhav who also

claimed to have seen the incident. One PW-5 Zungaram has been examined for corroborative evidence. It is claimed that after the incident the intervenors put the complainant and his brother in a truck and while they were proceeding to take them to the hospital, on the way they picked up PW-5 Zungaram so that he could accompany them to the hospital. They told incident to him at that time. Thus, these are the witnesses regarding the incident and its follow up.

8. Complainant PW-2 Jakuram claimed that on 23rd February 2002 he and his brother namely Arjun had gone to their field. He deposed that they asked both the accused persons not to remove the Jawar crop. This led to exchange of abuses and quarrel started. Complainant deposed that accused No.1 Rangnath then assaulted him on his right side of neck by axe and accused No.1 also assaulted on his nose by blunt side of the axe. He deposed that accused No.1 assaulted him on his left hand and right leg also. Complainant further claimed that his brother Arjun rushed to the spot and at that time accused No.2 Radhakisan assaulted his brother on his head, left hand elbow by means of stick. One Bappasaheb and PW-7 Vitthal rushed to the spot, it is claimed.

Keeping the above evidence of complainant in view, if the evidence of PW-3 Arjun is read, he states that on 23rd February 2002 he and his brother asked the accused not to remove the crop from the field, and quarrel took place.

Thereafter, according to this PW-3 Arjun the accused went away. The evidence is that after that both the accused came back armed with axe and stick. Thus he gives different details. He deposed that accused No.1 assaulted complainant Jakuram by axe on his neck and handle of axe on his nose and also gave blows on his back and mouth. This brother Arjun claimed that he went to rescue, at which time accused No.2 Radhakisan assaulted this Arjun by stick on his left forearm, head, back and leg. He claimed that they shouted and Bappasaheb and PW-7 Vitthal came there as well as their parents came and both the accused ran away.

9. Thus, both these witnesses i.e. PW-2 Jakuram and PW-3 Arjun claimed that accused No.1 Rangnath gave the axe blow on the neck as well as nose and mouth of the complainant and accused No.2 Radhakisan beat only PW-3 Arjun.

This is contrary to the complaint Exhibit 31, where it was claimed that accused No.1 Rangnath with the help of axe gave blow to the complainant on the neck by the sharp side and then accused No.2 Radhakisan by stick gave blow on the head of the complainant as well as on his right arm, right thigh, calf as well as hit him on the nose and lips. The evidence of PW-1 Doctor Vinod recorded only incise wound over right side of neck extending posteriorly and to be muscle deep and the other injury recorded was of contusion over the nose of the complainant. PW-1 Doctor Vinod proved injury certificate of the complainant at Exhibit 28 and his evidence is that the injury No.1 which was on the neck, was possible by hard and sharp object but that it was simple in nature while the injury to the nose was possible by hard and blunt object but that it was grievous one. Thus, the oral evidence of both these witnesses PW-2 and PW-3 read with the F.I.R. Exhibit 31 shows that the evidence and F.I.R. do not match. There is major contradiction regarding who caused the grievous injury.

10. Even regarding the injury to the neck of Jakuram the complainant, he deposed in the cross-examination that same was caused from back side. The complainant was confronted with his dying declaration and accepted that it was not mentioned in the same that accused No.2 Radhakisan had assaulted his brother Arjun and that it was also not mentioned that Accused No.1 Rangnath assaulted him on his nose by blunt side of the axe. Although, in evidence complainant clarified that injury given to his neck was from the back side, the evidence of PW-1 Doctor Vinod is that on the basis of injury No.1, position of victim and assailant might be face to face.

11. The evidence of PW-1 Doctor Vinod, in certificate issued as regards PW-3 Arjun, Exhibit 29 recorded the following 3 injuries :-

"1) C.L.W. (Contused lacerated wound) over the vertex (center of scalp), size 2 x 3 cm.

2) Contused Lacerated wound over the left forearm 1 x 1 cm.

3) Contusion over the left leg, anteriorly middle 1/3rd, 2 x 2 x 1 cm. and oval in shape."

The Doctor stated that the injuries were possible by hard and rough object. Now, the case of prosecution is that the injuries were caused to PW-3 Arjun by stick which was before the Court, and the Doctor admitted that the stick was "hard and blunt object" and what is meant by "hard and rough object" would be rocky or stony surface. Doctor admitted in cross-examination that the injury on person of Arjun was possible by fall on hard and rough surface. Keeping the above three injuries mentioned in the medical certificate by PW-1 Vinod in view, if the evidence of PW-2 complainant Jakuram and PW-3 Arjun is seen, much more assaults are claimed in the evidence than what reflected in the medical certificates.

12. If the evidence of PW-3 Arjun is perused, in cross-examination he stated that when they had gone to the field only accused No.1 Rangnath was present in the field. This is against what the complainant claimed. The evidence of the complainant was that he along with his brother went to the field when the accused persons were there and incident took place.

13. Although, PW-2 Jakuram claimed that he and his brother went to the field and incident took place there, PW-3 Arjun stated that they were not assaulted in the field. PW-6 Gangubai, who wanted to corroborate her brothers, claimed that when she reached the spot, the accused were assaulting the complainant on the side of road in the ditch and PW-3 Arjun was on the upper side of the ditch and that Arjun ran away. There is yet another version which is of PW-7 Vitthal Jadhav. He claimed that the incident took place at the cattle-shed of the accused. PW-9 Keshav Jadhav, Panch of the spot turned hostile. The spot panchnama Exhibit 55 has been proved by P.I. Gautam Fasle. This P.I. PW-12 wants this Court to believe that for incident which took place in the evening of 23rd February 2002, and when the accused were arrested only on 24th February 2002, he went to the spot on 25th February 2002 in the morning and still he found the spot undisturbed and the blood stains etc. on the spot. This is difficult to accept. However, reference may be made to the spot panchnama Exhibit 55. It shows that the spot was shown by Sarubai, the maternal grand-mother of the complainant and the spot and sketch shows that the accused persons have a house there and the blood stains were shown to the east of the road which was going north-south. The road appears to be to the west of the field concerned. The blood stains were shown to the east

beyond the boundary of the road. As per the spot panchnama the spot was in the Khud to the east of the road. From the blood stains towards north at about 17 feet there is Babool tree and beyond that at 50 feet there is house of the accused persons.

Thus, the witnesses gave different versions even regarding the exact spot. It is material to note that where it is alleged that blood was still found by the police, from there at about 67 feet the house of accused is there. To recall, PW7 Vitthal claimed that incident took place at the cattle-shed of the accused. PW-7 Vitthal claimed in cross-examination (Para-3) that the cattlesheds of the accused are on the road. The spot panchnama does not show any such thing. Thus, there are different versions as to where exactly the incident took place.

14. The cross-examination of complainant Jakuram shows that there was dispute regarding land between him and the accused. He accepted that his mother namely, Gayabai and grandmother Sarubai had filed suit bearing No.305 of 2000 against the accused and Jagannath. He accepted that the suit was decided against him on 18th October 2001 and it was thereby dismissed. He also accepted that accused No.1 Rangnath had filed criminal case of theft of Cotton against him, his brother and his mother on 8th November 2001. This is before the present incident dated 23rd February 2002. He accepted that he had earlier tried to commit suicide in Court premises at Georai on 3rd November 2001, and for that a case is pending against him. The F.I.R. and cross-examination of PW-3 Arjun shows that the concerned crop in the field had been raised by the accused. This evidence read with the spot panchnama shows that the accused were even residing near the spot.

15. It is quite apparent that the accused had earlier filed criminal case against the complainant regarding theft of crop. The complainant had lost the civil suit regarding the field property in the Court. There is also evidence that before the present incident, this complainant had tried to commit suicide. As such, the suggestion of the accused in the cross-examination to this complainant that he had himself inflicted the injury by blade to his neck, although denied by the complainant, cannot be said to be baseless defence. The evidence of doctor

shows that it was a simple injury. The opinion of the doctor is that the injury was possible when the assailant was in front of the injured. This is not in rhyme with the evidence of the complainant that the injury was inflicted from behind. There is reason to doubt if the genesis of the incident has come on record.

16. The reason why I have observed that there is reason to doubt about the genesis of the incident is that the complainant PW-2 Jakuram and his brother PW-3 Arjun deposed that they had gone to the field and asked that the crop may not be cut, without showing the reason for the same when it is admitted position that they have lost in the civil suit and the crop concerned was raised by the accused.

17. PW-6 Gangubai deposed that she was at the village when she came to know that the incident was taking place and she claimed that she rushed to the field. Her evidence is that she reached the field within 15 minutes of her getting the information. This is against what PW-3 Arjun deposed. He deposed that incident continued for 5-10 minutes. PW-6 Gangubai however deposed as if the complete incident unfolded in her presence. It is not possible that PW-6 Gangubai could have witnessed the incident in the manner in which she claims. It is material however to see that in her evidence she has deposed that when she reached the spot, scuffling was going on. Apart from her, PW-7 Vitthal also claimed that when he reached the spot grappling was taking place between the complainant Jakuram, PW-3 Arjun and the accused persons. This is not deposed to by complainant PW-2 and Arjun PW-3. In fact, PW-7 Vitthal deposed that PW-3 Arjun had fallen on the ground and that he suffered injuries by stick after he fell down. He further deposed that the complainant had also fallen down and that he sustained two injuries after falling down, on his neck and nose. PW1 Doctor Vinod had noticed only these two injuries on the person of the complainant. Thus, keeping the whole evidence in view, it becomes difficult to accept the evidence of the prosecution and there are serious doubts as to the manner in which the incident took place. Looking to the earlier discussion, there is reason to doubt that the complainant and his brother themselves may have been the aggressive party.

Evidence of PW-5 Zungaram is not of much help as he merely claimed what he was told when asked to come along to the Hospital.

18. Coming to the evidence of investigating officer PW-12 Gautam Fasle, I have already observed that the spot panchnama is not without doubts. Secondly, if his evidence is seen and read with the evidence of PW-4 Panch Vaijinath, there is room to doubt as to the manner in which the investigation was done. To recall, it appears that there was a statement of the complainant recorded as dying declaration, on 24th February 2002, original of which has been suppressed and in the record of the trial Court only a carbon copy is found, which does not match with the statement Exhibit 31 which was treated as F.I.R. Although Exhibit 31 claimed to be recorded on 23rd February 2002 which would be a day prior to 24th February 2002, the F.I.R. contains more details. Had F.I.R. Exhibit 31 been recorded on 23rd February 2002 and the other statement was recorded on 24th February 2002, one would expect the repetition of the details in the subsequent statement. Reading two statements which were basically recorded as dying declarations, there is room to doubt that every thing was not being fairly done. This is so specially in the circumstance where the injuries of the complainant could not be said to be such that he was in expectation of death.

19. Coming back to the investigating officer PW-12 Gautam Fasle and the evidence of Panch PW-4 Vaijinath, the cross-examination of the investigating officer shows that this Vaijinath was known to this investigating officer since before and although this investigating officer accepted once that the Panch had earlier acted as Panch, the investigating officer again changed his version. It is interesting to see that this investigating officer PW-12 called this PW-4 Panch Vaijinath constantly from Kumbharwadi where he was living to Georai. The discovery panchnamas Exhibit 34 to 37 were recorded on 26th February 2002. The seizure of clothes of complainant panchnama Exhibit 38 was recorded on 27th February 2002 and again Panch PW-4 Vaijinath was called for seizure of the clothes of the accused Exhibit 39 on 28th February 2002. Although the discoveries of stick and axe were shown as from the house of the accused persons on 26th February 2002, this investigating officer did not seize the clothes of the accused on that day but seized the same only on 28th February 2002 and it was shown that the clothes had blood stains. If the accused had been arrested on 24th February 2002 and the police went with them to their house on 26th February 2002, there was no reason why the clothes worn by the accused also were not seized at that time. The

investigating officer was asked regarding this in his evidence and he had no answers. The investigating officer deposed (Para-16 of his evidence) that the clothes of the accused were seized from their person.

If the accused had been arrested on 24th February 2002 and for alleged discoveries they had taken police to their residence on 26th February 2002, there is no reason why the police should not have given these accused opportunities to change their clothes and seized their clothes on 26th February 2002 itself. It would be inhuman treatment to the accused to let them be miserable in the same clothes for so many days. The approach of the investigating officer to the investigation is clearly unacceptable. There is further -fauxpas. This investigating officer who showed seizure of so many articles, when he sent them to the C.A., they were returned as they did not have proper wrapping and sealing. He had to admit this in the cross-examination (Para-14). The evidence of this investigating officer read with the evidence of carrier head constable Bansi Jadhav (PW-10) shows that earlier the articles were sent to C.A. on 22nd April 2002 and then it appears that same were returned by the C.A. without accepting and thus they were required to be re-sent on 14th May 2002. Looking to such evidence, it is apparent that there was no proper wrapping and sealing and sending the articles. In such situation, the C.A. reports and their results would simply required to be ignored.

20. The evidence of the investigating officer read with the evidence of PW-4 Vaijinath regarding alleged discovery of axe and stick will also have to be discarded. The memorandum recorded by these two accused itself showed that before the police at the police station itself they had stated as to where exactly the said axe and stick were. Discovery is to be done of some thing which is hidden and which nobody else would know or find other than the person who hides the same. Here this investigating officer showed that accused No.1 Rangnath took the police and Panchas to his house and gave the axe hidden near the Ranjan (water storage tank). It is claimed that it was stained with blood. If accused were not arrested for more than 24 hours after incident and if there was time to hide the axe near water storage, what prevented washing of the same? The stick is said to have been seized from the roof of the house of accused No.2 Radhakisan. This can be found even by simple search. Such "discoveries" have no value as shown

in the present matter. Then there was delay in sending copy of F.I.R. to Court. Even the Medical Certificates of two injured (PW-2 and PW-3) with same time of examination got done by them on their own, were collected only after about a month. The investigation does not appear to be truthful.

21. I have gone through the Judgment of the trial Court. I do not find that the Judgment of the trial Court can be maintained. For reasons discussed above, it must be held that the prosecution has totally failed to prove the guilt of the accused persons. Consequently, the Appeal deserves to be allowed. Hence I pass following order:-

ORDER

(I) Criminal Appeal is allowed.

(II) The impugned Judgment of conviction and sentence as passed by IVth Adhoc Additional Sessions Judge, Beed in Sessions Case No.161 of 2002 on 5th August 2003, is quashed and set aside.

(III) Both the Appellants -accused are acquitted of the offence punishable under Section 307, 324 read with 34 of the Indian Penal Code, 1860.

(IV) Fine if paid shall be returned to these Appellants.

(V) Bail Bonds of both the Appellants accused shall stand cancelled.

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