

State of Maharashtra Vs. Omprakash

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Court : Mumbai

Decided On : Nov-27-2003

Reported in : 2004CriLJ982

Judge : K.J. Rohee, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 325

Appeal No. : Criminal Appeal No. 8 of 1991

Appellant : State of Maharashtra

Respondent : Omprakash

Advocate for Def. : M.B. Naidu, Adv.

Advocate for Pet/Ap. : Y.B. Mundape, Addl. Public Prosecutor

Disposition : Appeal dismissed

Judgement :

K.J. Rohee, J.

1. The State has preferred an appeal against the acquittal of the respondent/original accused for the offence punishable under Section 325 of I. P. C. by the 2nd Additional Sessions Judge, Wardha in Criminal Appeal No. 20/1988 decided on 15-9-1990 whereunder the conviction and sentence passed against

the appellant by Judicial Magistrate, First Class, Arvi in Criminal Case No. 47/1981 decided on 6-5-1988 was set aside.

2. The facts about which there is no dispute in this appeal are that the complainant namely PW-1 Motilal Dhulchand Rathi (hereinafter referred to as 'the complainant') is the Editor of 'Arvi Times' and the accused is the Editor of 'Yuwa Samuha'. There has been professional rivalry between the complainant and the respondent.

3. The case of the prosecution in brief is that on 20-1-1981 the complainant had gone to Food Office situated in Tahsil Kacheri for obtaining sugar permit. The complainant was leaving the office on his bicycle around 6.15 p.m. At that time the respondent at once came near the complainant and bit the left ear of the complainant. A piece of left ear of the complainant was cut because of the bite. The shirt of the complainant was stained with blood. The staff in the Food Office namely PW-2 Bapurao Shankarrao Chauhan; PW-3 Balwant Punjaji Gondhane; PW-6 Shyamrao Tulsiram Shendre and other persons who were present there saw the assault. The respondent, however, escaped with the piece of ear in his mouth. Thereafter the complainant went to Police Station, Arvi and lodged oral report. He was immediately sent for medical examination. PW-7 Dr. Divre, Assistant Surgeon, Civil Hospital, Arvi examined the complainant and referred him to Civil Hospital, Wardha. Subsequently, the complainant was referred to Government Medical College, Nagpur. PW-11 Dr. Vaidya operated him. The complainant was admitted on 21-1-1981 and was discharged from the Hospital on 3-2-1981. In the meanwhile, Crime No. 19/81 under Section 325 of I. P. C. was registered against the respondent by PW-10 H. C. Kamble. The statement of eye-witnesses were recorded and after usual investigation, the respondent was charge-sheeted.

4. The prosecution examined the complainant and as many as seven eye-witnesses. The prosecution also examined Dr. Divre and Dr. Vaidya in support of the allegations made against the respondent.

5. The learned trial Judge accepted the evidence adduced by the prosecution, and held that the offence punishable under Section 325 of I. P. C. was proved against the respondent. He, therefore, convicted the respondent for the said offence and

sentenced him to suffer R. I. for 6 months and also to pay a fine of Rs. 2000/- and in default to suffer imprisonment for one month.

6. The respondent preferred appeal against his conviction and sentence to the Sessions Court. The learned 2nd Additional Sessions Judge found that the evidence of the complainant as well as the eye-witnesses was not trustworthy. He held that the medical evidence also does not corroborate the version of the complainant. He, therefore, set aside the conviction and sentence of the respondent and acquitted him. The present appeal is directed against the said order of acquittal.

7. The learned Additional Public Prosecutor assailed the impugned judgment of acquittal. He submitted that the testimony of the complainant is found corroborated by as many as three eye-witnesses. Not only that the same is also supported by medical evidence of PW-7 Dr. Divre and PW-11 Dr. Vaidya. The learned Additional Public Prosecutor submitted that the learned Additional Sessions Judge did not properly appreciate the evidence of the complainant and other witnesses. He committed an error in discarding their evidence and thus there has been miscarriage of justice. He, therefore, submitted that the impugned judgment of acquittal is liable to be set aside and the judgment of the learned trial Magistrate is required to be restored.

8. The learned counsel for the respondent on the other hand justified the judgment passed by the 2nd Additional Sessions Judge and submitted that there has been proper appreciation of evidence, the prosecution failed to point out any perversity in the impugned judgment and that it needs to be confirmed.

9. I have carefully gone through the judgment delivered by the learned J. M. F. C. as well as the judgment of 2nd Additional Sessions Judge. It may be noted that as many as seven eye-witnesses were examined by the prosecution in support of the version of the complainant. Out of them, four eye-witnesses namely PW-2 Bapurao Shankarrao Chauhan (retired Jamadar in the Food Office), PW-3 Balwant Punjaji Gondhane (retired peon in the Food Office), PW-8 Harishankar Nandkishore Sharma and PW-9 Sukhdeo Jangluji Kalbande did not support the testimony of the complainant. It may be noted that PW-8 Sharma was having his

Pan Shop inside the premises of Tahsil Kacheri and PW-9 Kalbande was having his Tea Canteen in front of the gate of the Tahsil Office, Arvi. Thus PW-8 Sharma and PW-9 Kalbande can be the most natural witnesses to the alleged incident. In fact they are the independent witnesses and not interested in the complainant. They deposed that they do not know anything about the incident.

10. A perusal of the testimony of PW-4 Nana Pandurangji Bhumre shows that he heard shouting while taking tea and after finishing tea, he went to see as to what was the matter. He saw that about 50 to 60 persons had gathered at the place of the incident and they had encircled the accused and the complainant. It is thus obvious that he has not seen the accused assaulting the complainant and cutting the ear of the complainant by bite.

11. The testimony of PW-5 Madanlal Paliwal also reveals that he went there to separate the accused and the complainant and that the complainant was saying that his ear was cut by the accused. It is thus obvious that he has also not seen the accused cutting the ear of the complainant by bite. It may further be seen that PW-5 Madanlal Paliwal stated that he had accompanied the complainant to the Police Station for lodging report and he had also accompanied the complainant to the Hospital at Nagpur. Both these facts were denied by the complainant. This shows that the complainant wants to hide his relations with PW-5 Madanlal Paliwal.

12. The testimony of PW-6 Shyamrao Shendre who was working as Upper Division Clerk in Food Office shows that he came out of the office because he heard shouting. He saw that many persons had gathered on the spot and they were saying that there had been quarrel between the accused and the complainant. When PW-6 Shendre inquired with the complainant, he was told that the accused cut his ear. PW-6 Shendre observed that there was bleeding from the ear of the complainant. During cross examination PW-6 Shyamrao Shendre stated that he went to verandah in the office when he heard that there had been quarrel. He further admitted that when he came in verandah the accused was not there. At the end of the cross-examination, he admitted that he did not see the incident.

13. It would thus be seen that the testimony of the eye-witnesses supporting the prosecution is of no help to the prosecution.

14. The complainant admitted during his cross-examination that he gave fists blows on the stomach of the accused. There is evidence on record to suggest that there had been some sort of scuffling between the complainant and the accused, the complainant failed on his bicycle and was injured. PW-2 Dr. Divre who examined the complainant soon after the alleged incident, admitted that he has not mentioned the cause of injury in the certificate (Exh. 39). He admitted that the cut injury could have been caused due to sharp object. During cross-examination, he stated that he was never questioned by the Police regarding the cause of injury and particularly the injury No. 1. He further stated that the injuries caused by teeth bite have special marks. However, his evidence is silent as to whether he observed that injury No. 1 was because of teeth bites.

15. PW-11 Dr. Vaidya came to know from the complainant himself that the injury to his left ear was caused because of human bites. However, Dr. Vaidya did not find anything of that sort when he operated the complainant.

16. It was tried to be shown by the defence that the brother of the complainant was not having an ear since birth. The defence perhaps wanted to indicate that the complainant too had no left ear. In this regard the photographs of the complainant were produced but they have not been proved, hence they cannot be taken into consideration.

17. It may be noted that the prosecution did not try to find out the piece of the ear of the complainant which was cut. Secondly though the shirt of the complainant was stained with blood, it was not seized.

18. From the evidence on the record, the possibility of the ear of the complainant having been cut due to forceful fall on sharp chain of his bicycle cannot be overlooked. The learned 2nd Additional Sessions Judge has discussed the oral and documentary evidence on record in details and has come to the conclusion that the possibility of false involvement of the accused by the complainant because of professional enmity cannot be ruled out. I find no perversity in the impugned

judgment. Hence the order :

The appeal is dismissed. Bail bonds stand cancelled.

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