

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 225 OF 2001

Pandurang s/o Jaisingrao Bamne,
age 49 years, occ. Govt.Service,
R/o Mukhed, Taluka Mukhed,
District Nanded

...Applicant
[Orig.Accused no.1]

VERSUS

- 1] The State of Maharashtra,

2] Nagorao s/o Rangnath Raut,
age about 40 years, r/o Hadgaon,
District Nanded

...Respondent

.....
Shri Murar V.Deshpande, advocate for applicant
Shri S.A.Ambad, A.P.P. for respondent no.1
Shri G.N.Chincholkar, advocate for respondent no.2
.....

CORAM : V.M.DESHPANDE, J.

DATED : 13th January, 2015

ORAL JUDGMENT : -

- 1] The present Revision is directed against the judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Hadgaon on 22.12.1992 in Regular Criminal Case No. 153 of 1989, together with the judgment and order, passed by the learned Sessions Judge, Nanded, dated 4.7.2001 in Criminal Appeal No. 113 of 1992.

2] The facts giving rise to the present Revision are enumerated herein below.

A charge was framed in Regular Criminal Case No. 153 of 1989 against the present applicant along with Nanaksing Uttamsing and Ramesh Motiram Rathod, for the offences punishable under Sections 341, 342, 324, 323, 394 r/w 34 of the Indian Penal Code.

The applicant along with the afore said two persons were charged that on 8.6.1989 at 0005 hours at police station, Hadgaon, they wrongfully restrained complainant Nagorao (PW 2) and his father and they voluntarily caused hurt to the father of complainant Nagorao by assaulting him by fist and kick blows and chappal blows and also they were charged for voluntarily causing hurt to the complainant and for removing Rs.75/- from the father of the complainant.

According to the prosecution case, the applicant along with co-accused, who were discharging their duties as police constable at police station, Hadgaon, committed wrongful confinement and caused voluntarily hurt to complainant and his father.

3] All the accused persons denied the charge and claimed for their trial.

4] In order to bring home their guilt, the prosecution has examined six witnesses and also relied upon the injury certificate of Rangnath (PW 3) the father of complainant Nagorao (PW 2).

5] The learned Magistrate vide his judgment, dated 22.12.1992 acquitted Nanaksing Uttamsing and Ramesh Motiram Rathod.

The learned trial court also acquitted the applicant for the offences punishable under Sections 341, 324 and 394 of the Indian Penal Code.

However, the learned Magistrate recorded a finding of guilt against the applicant for the offence punishable under Section 323 of the Indian Penal Code and directed that he shall suffer simple imprisonment for six months and shall pay a fine of Rs.100/-, in default to suffer 15 days simple imprisonment.

The applicant was also convicted for the offence punishable under Section 342 of the Indian Penal Code and on that count he was to suffer sentence of six months and pay fine of Rs.100/-, in default to suffer 15 days simple imprisonment.

6] The prosecution did not file any appeal against acquittal of Nanaksing and Ramesh Rathod. No appeal was also filed against the applicant for his acquittal under Section 341, 323 and 394 of the Indian Penal Code.

7] Being aggrieved by his conviction, the applicant filed an appeal before the Sessions Judge at Nanded. The said appeal was registered as Criminal Appeal No. 113 of 1992. The learned Sessions Judge himself decided the said appeal vide judgment, dated 4.7.2001.

By the said judgment, the appeal filed on behalf of the applicant was partly allowed. The learned appellate court acquitted the applicant for the offence punishable under Section 341 of the Indian Penal Code.

Though the learned appellate court maintained the conviction under Section 323 of the Indian Penal Code, the appellate court modified the sentence. The appellate court directed that instead of serving simple imprisonment for six months, the applicant shall suffer simple imprisonment till rising of the court and shall pay fine of Rs.3,000/-, in default to suffer simple imprisonment for one month.

The appellate court directed that if fine amount is recovered, out of the said amount, Rs.1,500/- shall be given to (PW 3) Rangnath by way of compensation under Section 357 of the Code of Criminal Procedure.

8] Being aggrieved by the order, passed by the learned Sessions Judge, the present Revision is filed.

9] I have heard Shri Murar V. Deshpande, learned counsel for the applicant and Shri S.A.Ambad, learned Additional Public Prosecutor for respondent no.1/State. Since the applicant joined the first informant as party in the Revision, therefore, Shri G.N.Chincholkar, learned counsel on his behalf was also heard. With the able assistance of the learned counsel for the parties, I have gone through the record and proceedings.

10] The first information report was recorded by Nagorao (PW 2) which is at Exh.26. It reveals that on 7.6.1989, his father Rangnath (PW 3) went to Umerkhed to purchase teak wood. He returned to Hadgaon and he was standing at Hadgaon octroi post. They hired a rickshaw of one Abdul Khan (PW 4). When they were returning to their home, at 00.15 hours in front of police station one police, who is described by the first informant in the first information report as 'Sardarji police', stopped rickshaw and he informed the applicant that the teak wood is being transported in the rickshaw. Upon that, the applicant, it is stated in the first information report, asked the rickshaw puller to take the rickshaw in the court yard of police station Hadgaon. The rickshaw was inspected by said Sardar police and the applicant. It is stated in the first information report that, that time the father of the first informant showed the transit pass and other documents, however, the applicant asked

the father of first informant that in that night they should keep the timber wood in the police station. Upon that, the father of the first informant replied that since he has already shown the required papers he should be allowed to take the timber wood to his house. That time, the applicant gave a slap on the cheek of his father and was pushing Rangnath in the police station. At that time, 3-4 other police persons gave fist and kick blows to the father of the first informant resulting into his falling on the ground, due to which blood started oozing from his mouth. It is further stated in the first information report that the first informant had also received one slap on his cheek and he was also assaulted by other 5-6 police by fist and kick blows.

This first information report was filed on 8.6.1989, upon which the offence was registered.

11] The injury certificate of Rangnath (PW 3) is available at Exh.33. The injury certificate shows following injuries to Rangnath.

- “1) Contusion ½” x ½” over right zygomatic region”
- 2) Contusion 1½” x 1” on right side of chest para sternal region at level of 3rd and 4th rib.
- 3] Superficial laceration about 1 cm. X ¼ cm. Irregular over mucosal part of left cheek middle part.
- 4] Vague tenderness allover abdomen clinically nothing abnormal detected
- 5] Tenderness over both side of chest.
- 6] Tenderness 2” x 2” on right back. “

Dr. Shamrao Adkine (PW 5) has proved the injury certificate of Rangnath. He has also examined Nagorao the first informant on 8.6.1989. He noticed following injuries on his person.

“ 1] Abrasion 1 cm. X 1 cm. Anterio lateral aspect of upper part of neck.

2) Contusion 3/4” x 1/4” on posterior part of right shoulder.

3) C/o hit over sacrum.

On examination nothing abnormal detected

4) Tenderness 1/2” x 1/2” on left side of chest

5) C/o pain in abdomen, c/o hit over abdomen vgue tenderness over all abdomen. No garding, no riginity, paristalysis present all four quadoan of abdomen.”

From the evidence of Dr. Adkine, it is clear that the first informant Nagorao was referred to him by police. However, his evidence would disclose that Rangnath was not referred to him by police but he was brought to him by some villagers. It is pertinent to note that the said villagers are not examined by the prosecution.

12] Though the applicant is convicted for assaulting Rangnath and for the injuries which he suffered, it is worth to note the material portion from his evidence, in the examination-in-chief itself he has stated as under :-

“ Accused Rathod gave stick blow on my head and one blow on my shoulder. I raised shouts. Blood was oozing from my mouth.”

In view of the aforesaid evidence, it is clear that the injury can be attributed to Rathod also. Rathod is already acquitted by the court below and there was no appeal filed against his acquittal.

13] Further, in so far as the injuries to first informant Nagorao are concerned, his evidence would disclose as under :-

“ Sardarji policeman and Bamne gave slaps as well as blows of chappal to me. Sardarji policeman also gave some blows with the hand on my chest and back.”

This Sardarji police is Nanaksing Uttamsing and he is already acquitted.

14] Further, it would be useful to reproduce the relevant portion from the first information report, which reads as under :-

“ बामणे जमादार यांनी माझे वडिलांचे गालात एक चापट मारून पोलिस स्टेशन कडे ढकलीत आणत असता वडील पो. स्टेशनच्या पायऱ्यावर आले तेव्हा दुसरे तीन चार पोलिसांनी वडिलास लाथा बुक्यांनी चपलीने मारण्यास सुरवात केली त्या हाणामारीत वडिलास दगडी पायऱ्यावर ढकलून देवून पाडले. त्यामुळे वडिलांचे छातीत मार लागून तोन्डातून रक्त निघाले.”

The injuries as mentioned above are due to hard and blunt substance. The injuries were simple in nature. In that view of the matter, possibility of receiving injuries by Rangnath due to the act by those 3-4 police cannot be ruled out. It is pertinent to note that no role was attributed against the present

applicant in the first information report by the first informant who is the eye witness, that he was one of the said policeman, who pushed Rangnath on the stoni steps.

15] From the perusal of the judgment of the appellate court, it is crystal clear that the learned appellate court has not considered this aspect in its true perspective. Non-appreciation or incorrect appreciation of the evidence appearing in the prosecution case causes miscarriage of justice.

In the present case, perusal of the judgments of the learned Magistrate and the learned appellate court clearly shows that both the courts below misdirected themselves while appreciating the prosecution case. They failed to appreciate the prosecution evidence in its true perspective resulting into the miscarriage of justice warranting interference at the hands of this court while exercising the revisional jurisdiction.

16] The upshot of the discussion leads me to pass the following order.

- (i) Criminal Revision Application is allowed.
- (ii) The conviction of the applicant is hereby set aside.
- (iii) The judgment and order, passed by the learned Judicial Magistrate, First Class, Hadgaon on 22.12.1992 in Regular Criminal Case No. 153

of 1989 as well as the judgment and order, passed by he learned Sessions Judge, Nanded, dated 4.7.2001 in Criminal Appeal No. 113 of 1992 are hereby quashed and set aside.

(iv) The applicant be set at liberty forthwith.

(v) The bail bonds of the applicant stand cancelled.

(vi) Fine amount, if any paid by the applicant, be refunded to him.

(vii) Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]

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