

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.373 OF 2001

- 1] Sanjay s/o. Annarao Takalgavankar,
Age 31 years, Occ. Service,
Assistant Teacher, Vidyasagar
Vidyalaya, Khanapur Chitta,
Taluka and District Hingoli,
 - 2] Subhash Ashruba Suryawanshi,
Age 31 years, Occ. Service,
Assistant Teacher, Vidyasagar
Vidyalaya, Khanapur Chitta,
r/o. Kalamnoori, Tq. Kalamnoori,
District Hingoli
 - 3] Subhash s/o. Shankarrao Tale,
Age 38 years, Occ. Service,
Assistant Teacher, Vidyasagar
Vidyalaya, Khanapur Chitta,
r/o. Kalamnoori, Tq. Kalamnoori,
Dist. Hingoli
 - 4] Sudhakar Bajirao Malkar,
Age 28 years, Occ. Service,
Assistant Teacher, Vidyasagar
Vidyalaya, Khanapur Chitta,
r/o. Kalamnoori, Tq. Kalamnoori,
Dist. Hingoli
- ..Appellants

Versus

The State of Maharashtra

..Respondent

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Mr.V.P.Kadam, advocate for applicants (appointed)

Mr.P.N.Kutti, APP for respondent - State

CORAM : M.T. JOSHI, J.

DATE : DECEMBER 07, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the impugned judgment and order dated 31st August, 2001 passed by learned Addl. Sessions Judge, Hingoli in Sessions Trial No.4 of 2001, the accused have preferred present appeal. By that judgment, the appellants/accused were directed to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, each, for the offence punishable under Section 147 of Indian Penal Code; and to suffer simple imprisonment till rising of the Court and to pay fine of Rs.500/-, each, for the offences punishable under Section 323 read with 149 of Indian Penal Code.

3] The prosecution case, in short, is as under :-

. That there was enmity between the injured and present appellants along with the acquitted original accused no.3 – Chandrakant and accused no.5 – Gyanoji over the termination of service of the accused no.5. While accused nos.3 and 5 and the appellants were working as Teachers in the school namely, Vidyasagar Vidyalaya, PW 1 – Tukaram Jadhav was the President of said educational society and PW 2 – Bharat Salve was the Headmaster of the said school.

. In the circumstances, while PW 1 – Tukaram Jadhav and PW 2 – Bharat Salve were proceeding by an auto rickshaw and had reached at octroi post at Hingoli, the alleged incident had occurred. In the said incident Sanjay, who was from the group of present appellants and the acquitted accused, had died. Some of the present appellants also

received injuries in the said incident and therefore, counter crimes were registered. Both the counter cases were heard one after another by learned Addl. Sessions Judge.

. In the appeal memo, present appellants has raised a plea that in the counter complaint in Sessions Case No.25 of 1999, PW 1 – Tukaram and PW 2 – Bharat in the present case, were convicted for the offences punishable under Section 302, 324 and 506 of Indian Penal Code and were sentenced to suffer rigorous imprisonment for life.

. In the present case, in all ten witness were examined out of whom, PW 4 – Ramrao and PW 5 – Baliram were proved to be relatives of PW 1 – Tukaram. Rest of the eye witnesses, however, turned hostile. It was proved before learned Addl. Sessions Judge that PW 1 – Tukaram, complainant in the present case, was facing five criminal cases for different offences. The learned Addl.

Sessions Judge has held that since there was no conviction in those cases, he cannot be called as an unreliable witness.

4] Next of the eye witnesses i.e. PW 2 – Bharat Salve was the Headmaster of the school. Certain omissions from his statements were also highlighted by the defence, however, learned Addl. Sessions Judge has held that those are minor. The relationship of rest of the eye witnesses, who have deposed on the prosecution line, was considered by learned Addl. Sessions Judge, but held that it would not hamper the prosecution case.

5] Mr.Kadam, learned counsel for the appellants in the present appeal, submitted that it is an admitted fact that in the counter case, present prosecution witnesses were prosecuted for the offence punishable under Section 302 of Indian

Penal Code with certain other offences. They were convicted for the said offences. There were, admittedly, injuries over the person of some of the present appellants. Still the prosecution or the prosecution witnesses have failed to explain the injuries on the deceased as well as the appellants. He further submitted that though in the present case, six accused including present appellants were arrayed for the offences punishable under Section 147, 323 read with 149 of Indian Penal Code and two of accused persons, as detailed supra, were acquitted, still, learned Addl. Sessions Judge has convicted present four appellants for the offences punishable under Section 147, 323 read with 149 of Indian Penal Code. He submitted that there could not have been any unlawful assembly of the four persons only. The reasoning of the learned Addl. Sessions Judge is flawed. He therefore submitted that present appeal may be allowed.

6] On the other hand, learned A.P.P. for the respondent – State submitted that the injuries on the person of the PW 1 – Tukaram and PW 2 – Bharat proved by the Medical Officer, would corroborate the version of these witnesses and therefore, the conviction of the appellants is proper.

7] On the basis of this material, following point arises for my determination :-

Whether the prosecution has proved that present appellants had, on 18th November, 1998 at about 5:15 pm., at Hingoli formed an unlawful assembly and in prosecution of a common object, said assembly has voluntarily caused hurt to PW 1 – Tukaram and PW 2 – Bharat ?

My findings to the above point is in the negative. The appeal is, therefore, allowed for the reasons to follow.

R E A S O N S

8] The record would show that PW 1 – Tukaram and PW 2 – Bharat were prosecuted for the offences punishable under Section 302 and 326 of Indian Penal Code for the death of co-accused Sanjay and other accused in the present crime in the some same incident. Despite this, the prosecution has failed to explain the injuries on the person of the deceased as well as on the person of the present concerned accused. The glaring fact was that though the enmity between PW 1 – Tukaram and PW 2 – Bharat on one hand and present appellants on the other, is prominent and though the alleged eye witnesses, who supported the prosecution, are interested witnesses being relatives of PW 1, further, though the three independent eye witnesses did not support the prosecution, learned Addl. Sessions Judge did not take into consideration all these facts.

. It was simply held that merely because PW 1 – Tukaram and PW 2 – Bharat were accused in number of cases, it would not make them unreliable witnesses in the present case. The prominent facts, as detailed supra, were lost sight of by the learned Addl. Sessions Judge. In that view of the matter, present appellants deserve to be acquitted.

9] In the circumstances, the following order :-

A] The appeal is hereby allowed.

B] the impugned judgment and order dated 31st August, 2001 passed by learned Addl. Sessions Judge, Hingoli in Sessions Trial No.4 of 2001 thereby convicting the appellants for the offences punishable under Section 147, 323 read with 149 of Indian Penal Code and the consequential directions

to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- and simple imprisonment till rising of the Court and to pay fine of Rs.500/-, respectively, for both the offences, is hereby set aside.

C] Bail bonds of the appellants shall stand cancelled.

D] Fine amount, if any, deposited by the appellants be refunded to them after a period of ninety days from the date of this judgment.

E] Fees of Mr.Kadam, learned counsel appointed for the appellants, is quantified at Rs.5,000/- (Rs.Five Thousand) be paid to him by the High Court Legal Services Sub-committee.

[M.T. JOSHI, J.]