

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.57 OF 2000

State of Maharashtra .. Appellant
-Versus-
R.Vyanktेशwar Gopalrao & Ors. .. Respondents

Mr.A.S.Shitole, APP for appellant – State
Mr.M.V.Rawool i/b. A.B.Avhad for respondent Nos. 1 to 7

CORAM : S.B.SHUKRE, J.

DATE : 23rd June 2015.

ORAL ORDER:-

1] This is an appeal against the judgement and order dated 4th November 1999 delivered in Criminal Case No.176 of 1994 by Judicial Magistrate, First Class, Palghar Dist. Thane, thereby acquitting respondent Nos. 1 to 7 of the offences punishable under section 147, 148, 323, 324 and 325 read with section 149 of Indian Penal Code. Briefly stated, the facts of the case are as under:-

Complaint in this case was filed by one Ranjana Vilas Patil against respondent Nos. 1 to 7 who were stated to be belonging to “Bhayya” community by the complainant. These respondents or the

accused persons were neighbours of the complainant. The incident relates to the events that took place in June 1994. On 23rd June 1994 on the occasion of Vad-Savitri (a Hindu religious festival), the complainant along with her friends residing in her neighbourhood viz., Anita, Sangita and Mangala were going to a Banayan tree for performing Pooja. At that point of time, respondent No.5, accused No.5, suddenly appeared in front of them and pulled out a camera and focused it on the face of these ladies and threw flash on their faces so as to illuminate their faces. These ladies were scared but could do nothing as by that time respondent No.5 had left the place. The ladies, however, informed about this incident to their respective husbands later in the evening. About two days later i.e. on 25th June 1994 at about 9.00 p.m. yet another incident took place. This time one Ramchandra Borase was subjected to severe beating by respondent Nos. 1 to 7, after he had just left the house of complainant after television programme.

As some noise and commotion was heard by the complainant and her husband, both of them came outside the house and the husband of the complainant tried to pacify the respondents.

However, respondent Nos. 1 to 7 got even more enraged and turned their attack on the husband of the complainant. They assaulted Vilas Patil by iron rod thereby causing an injury due to which his right leg was fractured. As the noise of quarrel was also heard by other persons, some more persons gathered at the spot of incident. In these onlookers, some were neighbours of the complainant. They were Popat Bagul, Anita Bagul and brother of Popat Bagul one Jibhau Bagul. They also tried to intervene in the quarrel. The respondents did not even spare them. At that time, one lady member from the family of the respondents by name Soni Devi Chavan threw chilly powder with a view to disperse the persons who were trying to rescue Vilas Patil and Rachandra Borase from the assault of respondents. Thereafter, the respondents fled from the spot. Respondents had used sticks as well as one iron rod in launching assault upon Ramchandra Borase, Vilas Patil and Popat Bagul so also Jibhau Bagul. As Vilas Patil, in particular, was seriously injured he was first taken to Philia hospital, Palghar and was admitted.

After administration of medical treatment to Vilas Patil, the

complainant went to Palghar police station and lodged report against all the accused – respondent Nos. 1 to 7 in this appeal. Spot Panchanama was drawn out. One camera, one Bamboo stick and two iron rods were seized. Police statements of witnesses were recorded. After completion of investigation, police filed charge sheet against the respondent Nos. 1 to 7 before the court of Judicial Magistrate, Palghar. As the accused pleaded not guilty to the charges levelled against them, they were tried in accordance with law.

On merits of the case, the learned Magistrate found the evidence of the prosecution sketchy, discrepant and of unreliable nature and, therefore, holding that the prosecution had failed to prove the offences against the respondent Nos. 1 to 7 beyond reasonable doubt, by his judgement and order dated 4th November 1999, he acquitted the respondents of all these offences. Being not satisfied with the same, the Prosecution/State is before this court in the present appeal.

2] I have heard learned APP for State. Nobody appears on

behalf of the respondent Nos. 1 to 7. I have carefully gone through the record of the case and also the impugned judgement and order. The learned APP has submitted that there is some evidence available on record which, if scanned and scrutinised appropriately, would result in a conclusion that the prosecution has reasonably and satisfactorily proved the offences that were charged against the respondent Nos. 1 to 7. In support of the argument, the learned APP has taken me through the prosecution evidence as well as impugned judgement and order. However, in process, he could not convince me as to why in spite of their being material omissions and improvements brought on record in the evidence of prosecution witness, the I.O. was not examined by the prosecution so that these material omissions and improvements could have been proved through his evidence and that as to why the spot panchanama, despite the fact that serious doubts had arisen about the amount of light that was present at the time of the incident, was not proved in evidence by the prosecution. These facts to my mind go to the root of the matter and create a serious doubt about the whole prosecution case.

3] The story of doubts arising in the prosecution case does not end with absence of spot panchanama and rather it goes further. At the first blush it would appear that the main prosecution witnesses i.e. P.W.-1 Ranjana, P.W.-2 Vilas, P.W.-3 Ramchandra, P.W.-4 Anita and P.W.-5 Jibhau are consistent with each other when they speak about the incident. However, on a deeper scrutiny what is revealed is that they are differing on material aspects of the case inasmuch as, none of them has been a witness to the entire incident which consisted of several events starting from catching hold of P.W.-3 Ramchandra and subjecting him to severe beating by respondents while assaulting P.W.-2 by means of stick and iron rod till launching of attack upon P.W.-5 Jibhau who was the last person who arrived at the spot of incident so as to lend a helping hand to the witnesses i.e. P.W.-2 Vilas and P.W.-3 Ramchandra. P.W.-1 Ranjana admits that at the time of incident there was darkness at the spot of incident. Then again changing her stand, she states that at the relevant time lights were on. She also admits that other persons too had gathered at the spot of the incident and this gathering was in the nature of a crowd. In other words, many more persons, according to the prosecution witness, had gathered

at the spot of incident. She again admits that due to darkness prevailing at the spot as also several onlookers who had gathered, she could not see as to who was beating whom. Then she further admits that at the time when P.W.3 Ramchandra was subjected to beating, she was in the house. According to P.W.2 Vilas, when he came out of the house after hearing shouts of Ramchandra, he was beaten up by respondents with iron rod and sickle. Here, I must say that P.W.-1 Ranjana does not say that her husband was assaulted by sickle. P.W.-2, Vilas does not clarify as to which of the respondents had assaulted him. He admits that relations between Ramchandra (P.W.-3) and respondents were already strained even before the incident. Even P.W.3 Ramchandra admits that at the spot of incident, there was darkness prevailing. He also admits that several persons from Bhayya community had gathered at the spot of incident. P.W.-4 Anita admits that at the time of incident of beating, she was in her house. Then, she voluntarily states that after hearing the noise of commotion that she came out of her house. There are also some improvements made by her in her testimony before the court, which were not stated by her, at the time of recording her police statement and these improvements in a way change her

stand, amounting to contradictions and, therefore, were required to be proved through the evidence of I.O. But, they were not proved by the prosecution. Even P.W.-5 Jibhau admits that at the time of incident, he was in his house.

4] So, these lacunae in the testimonies of material prosecution witnesses required court to look for some corroboration from other or independent witnesses which was however, not brought on record by the prosecution. Besides all this, prosecution witnesses being neighbours appeared to be having a common interest in the incident and, therefore, possibility of these witnesses stating exaggerated facts before the court could also not be ruled out.

Then, evidence of P.W.-6 Dr.Abdul Gafar, Medical Officer who had issued injury certificate (Exh.39A and B) does not throw any light upon age of injuries of P.W.-2 Vilas Patil. In a case like this, age of injuries was a material fact and since it was not proved by the prosecution one would have to say that prosecution failed to establish any linkage between the injuries suffered by P.W.-2 Vilas Patil and the assault made upon him in the night of 25th June 1994.

5] The prosecution witnesses have stated that their clothes had sustained blood stains. However, the clothes of these witnesses stated to have had blood stains were not seized and brought before the court. The complainant and prosecution witnesses identified the camera, iron rod and stick but, as observed by the learned Magistrate in the impugned order, no identification marks were found on these articles. Therefore, it could not be said that these articles were used by the respondents for the commission of offences alleged against the respondents.

6] With such evidence available on record and no corroboration from independent witnesses forthcoming, I do not think that the view taken by the Magistrate was an impossible or illogical view as not at all arising from the facts proved in evidence by the prosecution. It is well settled that just because another view is possible, an appellate court exercising its jurisdiction under section 378 Cr.P.C. in an appeal against the conviction cannot substitute its own view with the view taken by the trial court, unless the view of the trial court is shown to be perverse or not based upon the evidence available on

record or is the result of consideration of some extraneous material. That being not the case here, I find that this is not a fit case for interference with the impugned judgement and order. The appeal, therefore, deserves to be dismissed and the same is accordingly dismissed.

(S.B.SHUKRE, J.)