

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

CRIMINAL APPEAL NO. 260 OF 2005

Vasant s/o Balaji Abhare,
Aged 35 years, R/o Chitegaon,
Tah. Mul, Dist. Chandrapur.

..... **APPELLANT**

...V E R S U S...

The State of Maharashtra,
Through Police Station Officer,
Police Station, Mul, Dist. Chandrapur.

..... **RESPONDENT**

Shri P.R. Agrawal, Advocate for Appellant.
Shri H.D. Dubey, A.P.P. for Respondent/State.

CORAM: **Z.A. HAQ, J.**
DATE: **1st October, 2018.**

ORAL JUDGMENT

1] Heard.

2] This appeal is filed by the accused to challenge the judgment passed by the learned Sessions Judge convicting the accused for the offences punishable under Section 325 and Section 323 of the Indian Penal Code.

3] The case of the prosecution is :-

On account of dispute regarding partition of the agricultural land between the accused and his father, the accused assaulted his father by stick over his head and on the left hand. The father of the accused suffered fracture on his left hand and a bleeding injury was caused over his head. The father of the accused was hospitalized and died after three days. On complaint lodged by Bhayyaji (step brother of the accused), first information report was registered, investigation was undertaken and charge-sheet came to be filed. The Sessions Court framed charges against the accused for the offences punishable under Section 302 and Section 325 of the Indian Penal Code, read over and explained the charges to the accused. The accused did not accept the guilt and claimed to be tried.

4] After the trial, the learned Sessions Judge has recorded that the prosecution has failed to prove that Balaji (father of the accused) died homicidal death. The learned Sessions Judge has recorded that the prosecution has proved that the accused has voluntarily caused grievous hurt to the complainant. On the basis of its conclusions, the Sessions Court convicted the accused for the offences punishable under Section 325 and Section 323 of the Indian Penal Code.

5] Shri P.R. Agrawal, learned Advocate for the appellant / accused has pointed out the evidence of Kamalbai – P.W.5 (mother of the accused and widow of the deceased), and also the evidence of Bhayyaji- P.W.2 (step brother of the accused) and has submitted that admittedly there was some dispute between the parties regarding partition of the agricultural land owned by Balaji (father of the accused). Kamalbai has deposed that Balaji wanted to give one and half acre of land to the accused however, she was opposing it. The evidence on record has to be examined keeping in mind these undisputed facts.

6] In the cross-examination, Kamalbai has admitted that the accused was residing separately after about five years of his marriage. Kamalbai has admitted in the cross-examination that on the day of the incident i.e. 8th August 2002, during evening hours she was present in her house and at that time Balaji had told her that he would give one and half acre of land to the accused and then Bhayyaji went to his Pan Thela and then came back and informed Kamalbai that Balaji had sustained injuries, and therefore she had gone to the spot and then she went alongwith Bhayyaji to the house of Police Patil. Kamalbai stated that Bhayyaji had told her that the accused had assaulted Balaji.

7] Bhayyaji (PW-3) has deposed that in the evening hours on 8th August 2002, Balaji had been to Marai Chowk where Bhayyaji was having his Pan Thela and Kamalbai was also present there and at that time the accused came there with a stick and gave two - three blows on the person of Balaji.

8] The variance in the evidence of Bhayyaji and Kamalbai are significant and create a doubt about the veracity in the case of the prosecution.

9] Bhayyaji has stated that he suffered fracture of his left hand and he was referred by the Police to Government Hospital at Mul. Ganpat Lungaji Nimsarkar (PW-9) -- the Assistant Sub-Inspector has deposed that on 9th August 2002, he was on Station Diary duty and he had received oral report from Bhayyaji alongwith his medical certificate and he registered the Crime No. 110/2002 against the accused relying on that document. Surprisingly, the prosecution has not produced the alleged medical certificate showing injury on the person of Bhayyaji.

10] Most disturbing feature is that the statement of Balaji was not recorded by the Investigating Agency. The incident

occurred on 8th August 2002 in the evening. Kamalbai has deposed that she had gone alongwith *Balaji* to the house of Police Patil. Balaji was in the hospital till he died on 11th August 2002. It is not the case of the prosecution that Balaji was not in a position to give statement.

11] The stick (weapon) alleged to have been used by the accused for commission of the offence is produced before the Investigating Agency by Bhayyaji. The evidence of Bhayyaji shows that after Balaji was assaulted, Bhayyaji took Balaji to the Hospital and subsequently some people handed over the stick to Bhayyaji. The evidence on record is that those persons had snatched the stick from the accused. Thus admittedly recovery of the stick is not from the accused.

12] After the evidence on record is examined in the light of the undisputed background that there was dispute about partition of the agricultural land, in my view, the prosecution has not been able to establish its case beyond doubt. The Sessions Judge has failed to appreciate the above relevant aspects and therefore, I find that the impugned judgment is unsustainable and the conviction of the appellant / accused is unjustified.

Hence the following order :-

- i] The impugned judgment passed by 6th Adhoc Addl. Sessions Judge, Chandrapur in Sessions Case No. 149/2002 is set aside.
- ii] The conviction of the appellant / accused [Vasant Balaji Abhare] for the offences punishable under Section 325 and Section 323 of the Indian Penal Code is quashed.
- iii] The appellant/ accused [Vasant Balaji Abhare] is acquitted of the charge framed against him for commission of the offences punishable under Section 325 and Section 323 of the Indian Penal Code.
- iv] The Bail bond of the accused shall stand cancelled.
- v] The Muddemal property be destroyed after the appeal period is over.
- vi] The appeal is allowed in the above terms.

As recorded above, there has been manifest negligence on the part of the Investigating Agency in not recording the statement of Balaji Junka Abhare who was alive for about three days after the incident. As recorded earlier, it is not the case of the prosecution that Balaji was not in a position to give statement.

The Superintendent of Police, Chandrapur shall cause an inquiry against the Investigating Officer who had undertaken the investigation, and take suitable action in the matter. The Superintendent of Police, Chandrapur shall place action taken report on record of this appeal within six months.

The learned A.P.P. to communicate this order to the Superintendent of Police, Chandrapur and file affidavit of compliance immediately.

JUDGE

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