

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
CRIMINAL REVISION APPLICATION NO. 35 OF 2015

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| <p>1 Rakesh s/o Sudhir Wasnik
Aged about 33 years, Occupation – Labour</p> <p>2 Akash s/o Sudhir Wasnik,
Aged about 22 years, Occupation – Labour</p> <p>3 Sau Baby wd/o Sudhir Wasnik
[Krishna Shamrao Rohankar]
Aged about 50 years, Occupation – Labour
All R/o – Indira Nagar, Tahsil and District -
Wardha</p> | } | .. Petitioner |
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Versus

State of Maharashtra Through Police Station Officer, Police Station Wardha	}	.. Respondents
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Shri. C. B. Dharmadhikari, Advocate for applicants.
Smt. Mayuri Deshmukh, APP for respondent No.1.

CORAM : G. A. SANAP J.
PRONOUNCED ON : 11/04/2023

ORAL JUDGMENT

In this revision application, challenge is to the judgment and order dated 23/02/2015 passed by the learned Sessions Judge Wardha in Criminal Appeal No. 80 of 2013, whereby the learned

Sessions Judge dismissed the appeal filed by the applicants/accused Nos.1 to 3 against their conviction and sentence for the offences punishable under Sections 353 and 332 read with Section 34 of the Indian Penal Code and confirmed the judgment and order passed by the learned Judicial Magistrate First Class, Wardha. By order dated 06/07/2013, learned Magistrate had convicted applicants/accused Nos.1 to 3 for the offences punishable under Sections 353 and 332 read with Section 34 of the IPC and sentenced them to suffer rigorous imprisonment for one year and to pay fine of Rs.3000/- each and in default of payment of fine to further undergo simple imprisonment for three months.

(2) The facts are as follows :-

PW No.3, who is the informant in this case, on 18/12/2012 had received information from the secret informer that Rakesh Wasnik R/o. Indiranagar, Wardha is indulging in the business of selling foreign and illicit liquor from his house. At the relevant time PW No.3, was attached to Wardha City Police Station. PW No.3 in order to conduct the raid, summoned independent witnesses. PW No.3 with the panch witnesses and other police officials by making

entry in station diary proceeded towards the spot at about 21.20 hrs. They reached the house of Rakesh Wasnik accused No.1. At that time he was at home. PW No.3 and the other members of the raiding party explained to accused Rakesh the purpose of their visit to his house. On being apprised of the purpose of raid, the accused started quarreling with the Police. He abused the police. His brother Akash and their mother came on the spot and obstructed police from discharging their duty and restrained them from conducting search. They quarreled with the Police. The accused No.3 caught hold the hair of the lady police constable Vandana and pushed her against wall. Vandana sustained injury to her head near right eye and her fingers. The police party then over powered the accused persons and brought them to the Police Station. PW No.3 lodged the report against the accused. On the basis of this report Crime bearing No.541/2012 was registered against accused persons.

(3) The investigation was conducted by PW No.9 ASI – Shri Suresh Chavan. Police Constable Smt.Vandana was referred for medical examination. After investigation, the charge-sheet was filed against the accused in the Court of Magistrate.

(4) The prosecution has examined 10 witnesses to prove the guilt against the accused. Accused persons have also examined two witnesses in support of their defence. The learned Magistrate found the evidence of prosecution cogent and reliable. On the basis of evidence, learned Magistrate convicted the accused persons and sentenced them as mentioned above. The accused preferred appeal against the judgment and order of the learned Magistrate. Learned Sessions Judge for the reasons recorded in the order, dismissed the appeal. Accused are therefore, before this Court.

(5) I have heard learned Advocate Shri.C.B. Dharmadikari, for the accused persons and Smt. Mayuri Deshmukh, learned APP for the respondent State. Perused the record and proceeding.

(6) Learned Advocate Shri Dharmadhikari submitted that all the witnesses in this case are police officials and as such interested witnesses. Learned Advocate submitted that there is no contemporaneous documentary evidence to substantiate the case of the prosecution that on the given date and time the information of the indulgence of the accused in a liquor business was received and

pursuant to the said information raid was conducted.

(7) The learned Advocate further submitted that ample material has been brought on record in the cross-examination to indicate that when the police did not find any objectionable substance in their house, the police officials felt humiliated and therefore, they assaulted the accused persons. The learned Advocate submitted that the false report was lodged against accused persons. The learned Advocate took me through the evidence of the defence witnesses and submitted that the actual incident occurred on the spot has been stated by the defence witnesses. The learned Advocate further submitted that evidence on record is not sufficient to prove the guilt of the accused Nos.1 to 3. The reasons recorded by the Courts below are not consistent with the evidence on record.

(8) The learned Advocate further submitted that if this Court is not inclined to allow the present revision application, then in that event, the order with regard to substantive sentence may be modified. The learned Advocate submitted that the incident occurred in the year 2012. The accused Nos.1 to 3 have undergone the ordeal of criminal trial for 11 years. This ordeal of criminal trial itself is a

punishment. The learned Advocate submitted that this Court by exercising discretionary jurisdiction may properly modify the substantive sentence.

(9) Learned APP submitted that there is ample oral and documentary evidence to prove the guilt of the accused persons. The learned APP submitted that before proceeding to conduct raid on the basis of the information of indulgence of the accused in the business of illicit liquor, entry was made in the station diary. Learned APP further submitted that the evidence of the police officials who were members of the raiding party is consistent and therefore, their evidence cannot be discarded.

(10) The learned APP further submitted that the panch witnesses and the independent witnesses, have supported the case of prosecution on material aspects. The learned APP submitted that there is no reason to discard and disbelieve the evidence of the prosecution witnesses. The learned APP submitted that the defence witnesses have been fully exposed in the cross-examination. As far as the quantum of a sentence is concerned, learned APP submitted that considering the nature of the offences proved against the accused, no interference is warranted in the well reasoned order.

(11) In order to appreciate the rival submissions advanced by the learned Advocates, I have gone through the record and proceedings. The admitted facts having bearing with the issue involved in this revision need to be considered. In the cross-examination of the prosecution witnesses conducted on behalf of the accused, the presence of the members of raiding party at the house of the accused has been admitted. It is the defence of the accused that when the police officials did not find any objectionable material in the house of the accused, in order to cover up their failure, they started beating the accused persons.

(12) It is further their defence that while assaulting them lady police constable Vandana sustained blow on her hand. In the backdrop of this defence, the evidence of the prosecution witnesses needs to be appreciated. It is the case of the prosecution that at the time of the raid, when the police officials wanted to search the house of the accused, the accused persons did not allow them to conduct the search. They obstructed them in discharge of their official duty. They assaulted and prevented them from conducting raid. It is stated that the accused No.3 caught hold the hair of lady police constable Vandana

and banged her head on the wall and in that process, she sustained injury.

(13) PW No.1 is the panch witness to the spot of incident. Since the accused have admitted the place of the incident, the evidence of PW No.1 has become literally insignificant. However, perusal of his evidence would show that in his presence, the spot panchnama was drawn. PW No.5 is one more panch witness. He has stated that before proceeding to the spot of incident for conducting raid, he was summoned along with another panch. The police officer Rajendra Urade PW No.3 apprised accused persons about the information and the purpose of visit to their house. In his evidence, he has stated that he and another panch accompanied the police. He has further narrated the incident occurred on the spot. It is to be noted that in his evidence, he has stated the overt acts committed by accused Nos.2 and 3, when police wanted to take search of the house. In his cross-examination, except suggestions no other material has been elicited.

(14) It is to be noted that PW No.5 is an independent witness. In his cross-examination, not a single admission has been

elicited to doubt his presence on the spot. Perusal of his evidence would show that he has narrated the incident with necessary details. This fact would further fortify his contention that he accompanied the police and saw the actual incident. It has not been suggested to him that he is a habitual witness for the police. It has also not suggested that he is a stock witness of the police. Therefore, in my view, the submission that there is no independent witness to substantiate the evidence cannot be accepted.

(15) PW No.2 recorded the FIR, on the basis of report lodged by PW No.3. PW No.3 is the informant. He was in-charge of the raiding team. PW No.9 is the Investigating Officer. It is seen that the PW No.3, 4, 6, 7 and 8 are the eye witnesses to the incident occurred on the spot. Perusal of their evidence would show that they are consistent. All these witnesses were subjected to searching cross-examination. Perusal of their cross-examination would show that the core and crux of their evidence has not been shaken.

(16) It is true that the police officials could be said to be interested in the result of a prosecution in their favour. The police officials as such can be branded as interested witnesses. However,

with this label of “interested witnesses”, the otherwise consistent evidence cannot be discarded solely on this ground. In case of an interested witnesses, the Court is required to adopt a careful and cautious approach while appreciating their evidence. The evidence is required to be subjected to minute scrutiny. On minute scrutiny of the evidence, if the Court finds any material to conclude or infer that the presence of the witness on the spot is doubtful, the Court in such a situation can discard such evidence.

(17) PW No.4, lady police constable Vandana had sustained the head injury. The injury sustained by PW No.4 has been proved by PW No. 10 Medical Officer. PW No.4 has deposed about the assault on her by the accused No.3. All the witnesses have stated that when the members of the raiding party were intending to enter into the house for the purpose of search, the accused No.3 caught hold the hair of the lady police PW No.4 Vandana and pushed her and banged her head on the wall.

(18) The evidence of the witnesses is consistent on the role played by each and every accused. Perusal of their cross-examination would show that their evidence has not been shaken at

all. Perusal of their evidence would show that witnesses have narrated the incident consistently. Their evidence appears to be natural. There are no inconsistencies in their evidence. It is therefore, seen that the evidence of the police officials, namely, PW No.3, 4, 6, 7 and 8 cannot be discarded and disbelieved. On the basis of their evidence and corroborated by the evidence of independent witness PW No.5, the prosecution has successfully proved the charge against them.

(19) The accused have examined two witnesses. The defence witnesses have stated that when the police officials did not find any objectionable substance in the house of the accused at the time of search, they got annoyed and started beating with sticks to the accused. Perusal of the cross-examination of the defence witnesses in entirety would show that these witnesses have been fully exposed. It indicates that the defence witnesses are touted witnesses brought before the Court by the accused to substantiate their defence. These witnesses have admitted in their cross-examination that they were not present on the spot when the incident occurred. They have stated that the accused later on narrated the said incident to them. In my view therefore, I do not find any substance in the revision.

(20) It is pertinent to note that the fact finding Courts have appreciated the evidence and found the said evidence cogent and reliable. On the basis of this evidence, Courts below have recorded the concurrent finding of fact. The Courts below have recorded the reasons in support of the findings. It is to be noted that I am considering the grievance made by the accused in a revisional jurisdiction. The revisional jurisdiction is not co-extensive with the appellate jurisdiction. The revisional Court as a matter of course cannot be re-appreciate the evidence. It is to be noted that in order to undertake such exercise, it must be established that the Court below has committed an error apparent on the face of record. It must be demonstrated that the finding is perverse. It must also be demonstrated that the order is perverse because the Court has failed to take into consideration the available evidence or there is no evidence on record to reach such a finding by the Courts below. In the facts and circumstances, on merits, I do not see any substance in the revision application.

(21) Learned Advocate for the accused submitted that the incident occurred in 2012. It is submitted that the accused have

faced the ordeal of the criminal trial for more than 11 years. It is submitted that therefore, substantive sentence is required to be modified. The learned Advocate submitted that this Court in exercise of its discretion may reduce the substantive sentence.

(22) In view of the submissions made by learned Advocate, I am of the view that considering the period taken for adjudication of this matter till date, it would be just and proper to exercise the discretion and modify the substantive sentence. The accused have been sentenced by the Court below to under rigorous imprisonment for one year with a sentence of fine. The accused have deposited the fine amount. The offences proved against them are punishable under Sections 353 and 332 read with Section 34 of the IPC. In my view the substantive sentence of two months would serve the purpose and meet the ends of justice.

(23) Accordingly, the revision application is dismissed.

(24) The substantive sentence is modified. The accused shall undergo rigorous imprisonment for two months.

(25) The copy of the judgment be forwarded to the trial Court. The trial Court shall see that the order is complied in accordance with law.

[G. A. SANAP, J.]

KOLHE