

CASE NO.:
Appeal (crl.) 952-953 of 2004

PETITIONER:
State of Maharashtra

RESPONDENT:
Jagmohan Singh Kuldip Singh Anand & Ors.

DATE OF JUDGMENT: 27/08/2004

BENCH:
Y.K. SABHARWAL & D.M. DHARMADHIKARI

JUDGMENT:
J U D G M E N T
[arising out of Special Leave Petition (Crl.) No. 1390-91 of 2004]
With
Criminal Appeal No. 954-955 of 2004
[arising out of Special Leave Petition (Crl.) No. 2320-2321 of 2004]
Satish Kaur SahaniAppellant
- Versus -

Jagmohan Singh Kuldip Singh Anand & Ors.....Respondent

Dharmadhikari J.

Leave granted in all the above cases.
Heard counsel for the parties.

The State and the complainant seek setting aside of the order dated 7.8.2003 of the High Court of Bombay reversing the judgment of conviction of the trial court and the appellate court passed against the respondent-accused for alleged offence under Section 324 and 452 read with Section 34, Indian Penal Code and sentencing them to one month simple imprisonment and fine of Rs.500/-, in default simple imprisonment for seven days.

The facts leading to prosecution of the accused and their conviction and eventual acquittal by the High Court are as follows :-

Complainant Smt. Satish Kaur Sahni and the convicted accused reside in different flats in the same building in Bombay.

It is alleged that on 3.5.1990 there was a quarrel between complainant and the accused on cleaning of drainage. On the same day, i.e., 3.5.1990 at about 8.30 in the night when the complainant was in her house with her son Manpreet Sahni (PW-3), all five accused are alleged to have entered the house of the complainant with stick, aluminum rod and tape-recorder cassettes. They started beating the complainant with fists and rods, tape-recorder and cassettes. Jyoti Ahuja (PW-2) who stays in the neighbour-hood tried to intervene but one of the accused (Bhupinder) gave a blow to her on the nose and she fell down. It is also alleged that the accused dragged the complainant out of her house and repeatedly beat her.

On the same night, at 9.30, a complaint was lodged in Khar Police Station which was registered as FIR. The complainant was referred for medical treatment to Bhabha Hospital where Dr. Kamble medically examined her. Dr. Mahesh Kumar Advani (PW-4) was examined to prove the medical report in which it is recorded that four simple injuries were found on the body of complainant including on her hands, forehead and chest.

The occupants of the building, where the incident had taken place, sent on 6.5.1990 a written complaint jointly signed by them to the Deputy Commissioner of Police requesting for a stern action against the accused for their high-handed acts of trespassing into the house of the complainant and brutally assaulting her. In all, five persons of the family of the accused were alleged to have participated in the incident which included parents, Kuldeep Anand, Bhagwant Kaur Anand and their three sons, Jagmohan Anand, Harminder Anand and Bhupinder Anand. The prosecution examined the complainant (PW-1), Jyoti Ahuja (PW-2), the neighbour who was present at the time of incident, son of the complainant Manpreet Sahni (PW-3) and Dr. Mahesh Kumar Advani (PW-4) who proved the medical report. The Investigating Officer was examined as PW-5. The accused abjured the guilt and took the defence by examining DW-1 Abraham Samson Medhekar of their false involvement in the crime because of the past enmity between the families on a dispute over chit-fund scheme. The accused also attributed motive to the complaint of falsely implicating them with the alleged incident because they were able to purchase a property at a competitive price which the complainant wanted to purchase.

The Trial Court, being the Court of Additional Chief Metropolitan Magistrate, by its judgment 23.1.2001 acquitted the parents i.e. father accused No.1 and mother, accused No.5. On the basis of the evidence before him, the trial magistrate convicted the three accused 2, 3 and 4 and sentenced each one of them to one month of simple imprisonment and a fine of Rs. 500/- with seven days simple imprisonment in default of payment of fine. The magistrate came to the conclusion that the oral evidence of Manpreet Sahani is duly corroborated by prompt FIR and the medical report.

Aggrieved by their conviction and sentence, the accused preferred criminal appeal in the Court of Sessions for Greater Bombay. The Appeal Judge re-examined the evidence and by order dated 25.6.2002 upheld conviction and sentence of the three accused.

The accused thereafter approached the High Court by way of criminal revision under Section 397 CrPC. The High Court by the impugned judgment dated 7.8.2003 minutely re-examined and re-appreciated the whole evidence. It came to contrary conclusion and acquitted the three accused.

Aggrieved by the judgment of acquittal passed by the High Court, State of Maharashtra and the complainant have preferred these appeals by seeking leave. We have heard learned counsel appearing for the State of Maharashtra and learned Senior Counsel Mr. K.T.S. Tulsi for the accused.

On behalf of the State, learned counsel points out from the relevant evidence on record that the High Court has overlooked vital evidence showing full implication of the accused and wrongly acquitted them by entering into re-appreciation of evidence. It is argued that the High Court exceeded its powers of revision under Section 397 of the CrPC.

On behalf of the accused, learned Senior Counsel Shri Tulsi made strenuous effort to support the judgment of acquittal passed by the High Court.

We have heard the learned counsel for the parties at length and looked into the relevant evidence on record. In our considered opinion the learned Single Judge of the High Court of Bombay exceeded his revisional jurisdiction by embarking upon in-depth re-examination of the oral and medical evidence. Most surprisingly, the High Court has come to a conclusion, contrary to the consistent one reached by the two courts, that the happening of the incident, as alleged, appears to be doubtful.

We need not go into all the reasonings and logic adopted by the learned Single Judge in acquitting the accused. In our opinion, mention of only two glaring facts would be sufficient to show that the High Court was apparently in gross error in upsetting the judgment of conviction passed by the Trial Court and confirmed by the Appellate Court who were the courts essentially required to assess the worth of evidence.

There is a copy of the medical certificate on record issued by the doctor in the hospital who examined the complainant. It gives details of the injuries sustained by her. The medical certificate is dated 3.5.1990 recorded

at 8.45 PM. There is clear mention in the certificate of the patient having been referred by Police Constable No. 12219 of Khar Police Station. This medical certificate, as proved by Dr. Mahesh Kumar Advani, is ample proof of happening of alleged incident of mar-peat with the complainant on 3.5.1990.

The learned Single Judge of the High Court, in acquitting the accused, gave great importance to the fact that joint complaint submitted on 6.5.1990 by the occupants of the building under their signatures to the Deputy Commissioner of Police does not stand proved as none of the signatories was examined as a witness in the trial.

The learned counsel for the State points out that the defence witness Abraham Samson Medhekar (DW-1) examined by the accused themselves was one of the twelve signatories to the said complaint made to the DCP. When confronted with copy of the complaint the witness (DW-1) had admitted its contents and his own signature. He, however, denied that the said complaint was forwarded to DCP. The statement of DW-1 in cross-examination itself therefore proves the fact of such incident to have taken place on the date alleged.

Similarly, it is not possible for us to approve the reasoning of learned Single Judge on the aspect of common intention under Section 34 IPC. For establishing 'common intention' in every case it is not required for the prosecution to prove a pre-arranged plot or prior concert. As has been proved by the prosecution witnesses, on the dispute on cleaning of drain which took place in the early hours on the date of alleged incident, the accused party which constitute members of one family barged into the house of the complainant, man-handled her inside and dragged her out where she was beaten repeatedly. The act alleged against the accused clearly makes out a case of 'common intention' against them in committing offence of house trespass and causing hurt to the complainant. Similarly, the High Court after minutely scrutinizing the evidence gave undue importance to minor discrepancies such as use of tape-recorder and cassettes in assaulting and no corresponding injuries from those articles to have been caused to the complainant. There may be some exaggeration of the version of the incident by the complainant as she said that she was given hundred blows. Such exaggeration does not falsify the happening of the alleged incident. Similarly, the neighbour (PW-2) who had intervened and was hit on the nose was not medically examined is also not such a lapse of prosecution to doubt credibility of the whole prosecution case.

The defence of false implication due to alleged incident of the complainant having not been able to purchase some property in competition with the accused party had not taken place in the immediate past. It could not be a ground to falsely implicate the accused after such a long period. Such defence plea based on alleged motive of the complainant is also unacceptable when the specific defence taken through deposition of DW-1 was involvement of complainant in the chit-fund business and alleged grudge over it with the accused party.

In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was

totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 CrPC. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party, i.e. Criminal Appeal No. 523 of 1997 decided on 9.3.2004 [Ram Briksh v. Ambika Yadav]. That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below.

The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

On this aspect, it is sufficient to refer to and rely on the decision of this court in Dulichand vs. Delhi Administration [AIR 1975 SC 1960] in which it is observed thus :-

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned additional Sessions Judge was correct. But even so the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. "

It is necessary to note that in the case of Dulichand (supra) the High Court had re-appreciated the whole evidence and confirmed the findings of the two courts below. This Court, therefore, did not interfere with them.

We, therefore, find that there were no grounds available with the High Court to upset the verdict of conviction and sentence passed by the two courts and direct acquittal of the accused.

In the result, these appeals are allowed, the judgment of acquittal passed by the High Court by order dated 7.8.2003 is set aside and conviction and sentence passed by the Magistrate as confirmed by the Additional Sessions Judge is maintained.

The learned counsel appearing for the accused submitted that the incident is of the year 1990. The parties are educated and neighbours. The learned counsel, therefore, prayed that benefit of Probation of Offenders Act, 1958 may be granted to the accused. The prayer made on behalf of the accused seems to be reasonable. The incident is more than 10 years old. The dispute was between the neighbours over a trivial issue of cleaning of drainage. The incident took place in a fit of anger. All the parties are educated and also distantly related. The incident is not such as to direct the accused to undergo sentence of imprisonment. In our opinion, it is a fit case in which the accused should be released on Probation by directing them to execute a bond of one year for good behaviour.

In the result, the acquittal passed by the High Court is set aside and conviction and sentence passed by the Magistrate, as confirmed by the Sessions Judge, is maintained by directing that the accused be released on Probation on their executing bond for good behaviour for a period of one year, to the satisfaction of the trial judge.

JUDIS