

IN THE HIGH COURT OF BOMBAY AT GOA

1. Vishram, s/o Ravji Gawas.

2. Sunil, s/o Vishram Gawas,
both residents of House
No. 91, Kulagarwado,
Nadora, Bardez, Goa. ... Applicants.

VERSUS

S T A T E.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe,
Advocate for the Applicants.

Mr. S.N. Sardessai, Public Prosecutor for the State/
Respondent.

CORAM: D. G. DESHPANDE, J.

DATE: 31ST JANUARY, 2003.

ORAL JUDGMENT:

Heard Mr. Lotlikar, learned Senior Advocate for the Accused/Applicants and Mr. Sardessai, learned Public Prosecutor for the State/Respondent.

2. The accused were prosecuted for offences punishable under Sections 341, 323, 504, 506 r/w Section 34 I.P.C. They are convicted under Sections 523 and 504 read with Section 34 of I.P.C. and sentenced with simple imprisonment till the rising of the Court on both the counts and were fined Rs.400/- each and Rs.500/- each under Sections 323 and 504 respectively. They preferred appeal against the said

order before the Sessions Judge, Panaji. The appeal was dismissed by the IIND Addl. Sessions Judge by his Order dated 6th February, 2002. Hence this revision.

3. Mr. Lotlikar, learned counsel for the accused, contended that this is a revision and the scope is limited. There is sufficient material on record to hold the accused not guilty or that the benefit of doubt should have been given to the accused. He contended mainly that even though the incident has occurred on 4.8.1997 at about 6.15 p.m., there was delay of more than 26 hours in lodging the F.I.R. for which there was no explanation at all. He therefore contended that the case itself was doubtful on this ground. Secondly, according to him all the eye witnesses were close relatives of the victim/complainant and the only allegation against the accused was that both of them were going on the scooter and that for no rhyme or reason the accused no.2 who was driving the scooter, stopped the scooter in front of the complainant, abused her, caught hold of her hair and abused others. According to him in view of the strained relationship between the parties, it was easy to make such allegation against anybody and therefore considering the delay the case becomes doubtful and the accused were entitled for benefit of doubt. But the Courts below did not take this aspect

at all into consideration.

4. On the other hand, the learned Public Prosecutor, contended that the evidence of the witnesses were consistent and the enmity was double edged weapon and what was required was careful scrutiny of the evidence and since that has been done, this Court should not interfere.

5. As stated by me above, according to P.W.1 the incident has occurred on 4.8.1997 at about 6.15 p.m., while she was returning from her field along with four other ladies namely Smt. Sharad Gawas, Smt. Gandhali Gawas, Smt. Premavati Gawas and Smt. Lalhawanti Gawas. The name of P.W.1 is Smt. Chandrawati Gawas. She lodged the report on the next day vide Exh.PW.1/A. In the cross-examination she admitted that the place where the incident took place there is a road and about 10 to 11 buses are passing to go to Mapusa where the Police Station is situated from the said road everyday. She also admitted further in the cross-examination that the first bus from her village to Mapusa is at 6.00 a.m. in the morning. If this is so, she has no explanation why the report was not lodged promptly or why there is delay in lodging the report which, according to the accused, is more than 24 hours.

6. Thirdly, about the enmity between the parties, she was questioned in the cross-examination. According to the accused, accused no.2 had lodged a complaint against her son Devdas for threatening to kill him on 30th September, 1996. But her answer to the question is that she does not know anything about this complaint. It is difficult to believe that a mother would not be knowing about the complaint lodged by her son for such a serious charge. The denial of P.W.1 indicates that the complaint is lodged, but she does not want to make any positive effort in that regard.

7. The next contention of Mr. Lotlikar was that the other witnesses examined by the prosecution were P.W.2 Premavati Gawas and P.W.3 Smt. Sharad Gawas. So far as P.W.2 is concerned, there appears to be strong enmity between her and accused no.1. According to the accused, a question was put to her in that regard that her sons Kishore and Sanju were charge-sheeted by the Police on the allegation that both her sons along with others, assaulted the son of accused no.1 and others prior to the present incident and the Case Number is 100/S/1967 and that it was fixed before the Court on the earlier day of her examination in Court. To this question, the witness answered that she has no knowledge or she does not

know about the same. This denial of knowledge has to be inferred as avoidance to give the correct reply, at least in the background of this case. It is therefore clear that P.W.2 is not giving the correct answers and not coming out with the truth before the Court.

8. P.W.3 is Smt. Sharad Gawas. She is related to P.W.1 who is her sister-in-law being her husband's brother's wife.

9. There is substance in the submissions of Mr. Lotlikar in this background that P.W.3 being the direct relative and P.W.2 and P.W.1 being on inimical terms, the likelihood of false implication cannot be ruled out. Apart from this, there are material contradictions in the testimony of all the witnesses namely P.Ws.1, 2 and 3 in the manner the incident took place. For example, P.W.3 did not remember whether her statement was recorded by the Police or whether it was recorded eight days after the incident or after 15 days of the incident. She does not remember also whether she stated to the Police that the accused No.2 pulled the saree of P.W.1 as that fact is absent in the statement, but she had no explanation whether she has stated to the Police or not. This is a material omission in the evidence of P.W.3. Regarding the utterances by P.W.2 and giving abuses, she has

contradicted her statement and also there is an omission. Similarly, the so called slap given by the accused no.2 to P.W.2, there is also an omission by way of contradiction. She admitted that transport is available after 6.15. p.m. from the place of incident to Mapusa and P.W.1 has a scooter which belongs to the family.

10. Same is the case with the evidence of P.W.2. She has also been confronted with her statement to the Police and a number of contradictions have been brought on record. They are all pertaining to the material part of the story of P.W.1.

11. Both the Courts below show that they have not taken into consideration these aspects. Generally a Revisional Court will not interfere with the concurrent findings of facts, but when the case of the prosecution creates a strong doubt, then the benefit is required to be given to the accused. The Trial Court disbelieved the case of the prosecution about the accused obstructing or restraining the complainant by putting his scooter across the road and also disbelieved the case of the complainant about the giving of threats with dire consequences to kill. As per the judgment of the Sessions Court, the time mentioned in Exh.P.W.1/A is 20.30 hours and therefore

it has to be taken that the F.I.R. was lodged at that time and not in the morning as stated by P.W.1. The delay of more than 24 hours in the circumstances of the case and particularly looking to the trifling nature of the circumstances goes a long way against the prosecution and therefore for all these reasons, both the judgments of the Courts below are quashed and set aside.

12. The Revision is allowed. The accused are acquitted of the offences under Sections 323 and 504 read with Section 34 of the Indian Penal Code. The fine, if any, paid by them shall be returned to the Accused. The Bail Bonds given by them stand cancelled.

D. G. DESHPANDE, J.

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