

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 2 OF 2003

S T A T E

... Appellant.

versus

Sandeep s/o Manguesh
Kanolkar, r/o Bamanwadda,
Nanoda, H.No.74, Bicholim,
Goa.

... Respondent.

Mrs. Winnie Coutinho, Additional Public Prosecutor for
the State.

None for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 30TH SEPTEMBER, 2003.

ORAL JUDGMENT

State being aggrieved by the acquittal of the Respondent for an offence punishable under Sections 341, 323, 504, 506(ii) of the Indian Penal Code as recorded by the Judgment of the learned Judicial Magistrate First Class, Bicholim, dated 21st August, 2002, in Criminal Case No. 50/S/2000/B, has filed the present Appeal assailing the said acquittal.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

P.W.6, Babu Gaonkar, A.S.I., recorded a complaint on 28th August, 2000, of P.W.1, Damodar Gawas, against the present Respondent/Accused. On the basis of the said complaint, P.W.6, Babu Gaonkar, registered an offence punishable under Sections 341, 323, 504 and 506(ii) of the Indian Penal Code. On the same day, P.W.6, Babu Gaonkar, drew the scene of offence panchanama in the presence of P.W.2, Satyawar Parab. The said panchanama is at Exh.PW2/A. The injured were referred for medical examination to the Primary Health Centre, Bicholim. The injured namely P.W.1, Damodar Gawas and P.W.3, Kema Parab were examined by P.W.5, Dr. Damodar Narvenkar. In respect of P.W.3, Kema Parab, P.W.5, Dr. Damodar Narvenkar, found the following injuries:-

1. A large tense swelling 10 x 10 cms over the left angle of mandible(jaw bone) and tenderness i.e. pain on the touching. There was also a superficial abrasion of 3 x 3 cms.
2. A large tense swelling over lateral aspect of lower(left) leg. Tenderness was present and swelling was extending over full length of leg.
3. Mild bleeding over lower gum near incisor teeth. There was no other injury or no loss or dislocation of teeth.

3. P.W.5, Dr. Damodar Narvenkar, opined that the above injuries were simple in nature subject to the X'ray of jaw and leg. In respect of P.W.1, Damodar Gawas, he found the following injuries:-

1. A lacerated wound 3 cms by 5 cms. over left temporal region, just behind the lateral angle of left eye.
2. A Ecchymoses i.e. bruise of 10 cms x 4 cms. in the oval shape over lateral aspect of left thigh, just above knee joint.
3. An Ecchymoses 5 x 2 cms. oval shape just above the left knee posteriorly just above popliteal fossa i.e. just above the region behind the knee joint.

4. The opinion of all these injuries was reserved for want of X'ray report. The Certificate of examination is at Exh.PW5/A. On 8th September, 2000, a wooden stick(danda) came to be seized vide panchanama at Exh.PW2/B in the presence of P.W.2, Satyawar Parab. The X'ray reports in respect of P.W.1, Damodar Gawas and P.W.3, Kema Parab are at Exh.PW6/A colly. Both these reports show that neither P.W.1, Damodar Gawas nor P.W.3, Kema Parab had suffered any fracture. After completion of the investigation, a charge-sheet against the Respondent/Accused came to be filed. The learned Trial Court vide Exh.3 explained the substance of accusation against the Accused. The Respondent/Accused pleaded not guilty and claimed to be tried. The prosecution examined

six witnesses in support of its case. The learned Trial Court acquitted the Respondent/Accused as the learned Trial Court found (1) that there were interse discrepancies in the evidence of P.W.1, Damodar Gawas, P.W.3, Kema Parab and P.W.4, Ravi Raut. The learned Trial Court also found that in respect of the offence punishable under Section 504 of the Indian Penal Code there were no allegations to that effect in the substantive evidence. (2) In respect of an offence punishable under Section 506 of the Indian Penal Code the learned Trial Court found that in view of the discrepant evidence, it was unsafe to rely on the testimony of the three witnesses. The learned Trial Court, thus by giving the benefit of doubt to the Accused acquitted him. The State, therefore, has filed the present Appeal assailing the acquittal of the Respondent/Accused.

5. It would be useful to advert to the evidence of P.W.1, Damodar Gawas. P.W.1, Damodar Gawas, states that he knows the Accused as he was working with him as a cleaner on a passenger bus operating on the Panaji-Ibrampur route. He also states that the Accused was employed on daily wages. P.W.1, Damodar Gawas, further states that he had terminated the services of the Respondent/Accused. On the day of the incident, when the bus, which was being driven by P.W.1, Damodar Gawas, was proceeding from Panaji to Ibrampur, at about 1.45 p.m.,

the Accused boarded the said bus after the bus had reached at Assonora. At the time of boarding of the bus, the Accused was armed with stick(danda) and had entered the bus and tried to assault P.W.1, Damodar Gawas and had also tried to assault the conductor, P.W.3, Kema Parab. P.W.1, Damodar Gawas, further states that after showing the stick, the Accused got down and the bus proceeded further. When the bus reached Nadora and as the passengers were alighting and the conductor, P.W.3, Kema Parab was collecting money near the rear door of the bus, the Accused suddenly came from the rear side and started assaulting the conductor, P.W.3, Kema Parab with a danda on his legs. On learning about this incident, P.W.1, Damodar Gawas, alighted from the cabin and went to the rescue of P.W.3, Kema Parab. As he had gone to the rescue of P.W.3, Kema Parab, the Accused hit two stick blows on his forehead resulting in bleeding injuries. The Accused also assaulted him with dandas when he tried to go to telephone the Police. The Accused obstructed him threatening to assault him and threatened to drag the bus and make all the passengers to get down from the bus. P.W.1, Damodar Gawas, further states that thereafter, he came walking to Assonora and caught a bus to Bicholim and lodged a report. In the cross-examination, omission is brought out in respect of the Accused entering the cabin and trying to assault him. Similarly, omission has been brought out regarding the Accused showing the stick and

then getting down. Omission in the said report is also brought out in respect of the assault on P.W.3, Kema Parab when the bus reached Nadora. Omission is also brought out in respect of the Accused obstructing P.W.1, Damodar Gawas, when he tried to go to telephone the Accused. In the cross-examination, P.W.1, Damodar Gawas, has further admitted that the Accused was a cleaner on his bus and since the Accused had not reported for duty on the previous day, the Accused was told not to join duty. On the day of the incident, P.W.3, Kema Parab, had joined as conductor as well as cleaner.

6. P.W.3, Kema Parab, states that on reaching Assonora, the Accused stopped the bus and thereafter, the Accused entered the cabin and started arguing with P.W.1, Damodar Gawas. He also told P.W.1, Damodar Gawas, to give him Rs.10,000/- else he will assault P.W.1, Damodar Gawas and P.W.3, Kema Parab. He also states that the Accused threatened to kill him. He also states that P.W.1, Damodar Gawas, said that he will give him Rs.10,000/- and thereafter the bus proceeded to Ibrampur. He states that the Accused also boarded the bus. According to P.W.3, Kema Parab, when the bus reached Nadora the Accused asked the passengers to get down from the bus and thereafter the Accused got down from the cabin and caught hold of P.W.1, Damodar Gawas's collar and asked him to give a sum of

Rs.10,000/- otherwise he would assault him. According to P.W.3, Kema Parab, when he tried to intervene and requested the Accused that he would inform the owner of the bus to give the Accused Rs.10,000/- the Accused started assaulting P.W.3, Kema Parab with a stick. According to him, after receiving the injuries he became unconscious. According to him, P.W.1, Damodar Gawas, was assaulted when he had come to his rescue. In the cross-examination, he has stated that his statement was recorded by the Police after 15 days of the incident. Omissions have been brought out in respect of the Accused entering in the cabin and asking P.W.1, Damodar Gawas, to give Rs.10,000/- else he would assault both P.W.1, Damodar Gawas and P.W.3, Kema Parab. Similarly, omissions have been brought out in respect of the Accused asking P.W.1, Damodar Gawas, to pay him Rs.10,000/- when the bus reached Nadora. Omissions have also been brought out in respect of the Accused asking the passengers to get down from the bus. Omissions have also been brought out in respect of the Accused assaulting P.W.1, Damodar Gawas with a stick.

7. Thus, from the evidence of these two witnesses, it would be apparent that the versions of P.W.1, Damodar Gawas and P.W.3, Kema Parab are discrepant. Moreover, the statement of P.W.3, Kema Parab, appears to have been recorded after 15 days of the incident. P.W.6, Babu

Gaonkar, has not offered any explanation for the delay in recording the statement. The omissions on material aspect in the evidence of P.W.1, Damodar Gawas and P.W.3, Kema Parab makes it difficult for the Court to accept their evidence and, therefore, according to me, the learned Trial Court has rightly disbelieved the versions of P.W.1, Damodar Gawas and P.W.3, Kema Parab.

8. Adverting to the evidence of P.W.4, Ravi Raut, it would be seen that P.W.4, Ravi Raut had boarded the bus for going to Kasarpal. According to him, the Accused had boarded the bus. Immediately as the bus was proceeding to Ibrampur, the Accused entered the cabin and started quarrelling with the driver P.W.1, Damodar Gawas on account of some money. When the bus reached Nadora, the Accused got down from the bus and came in front of the bus and started obstructing the bus from proceeding forward. Thereafter, the conductor, P.W.3, Kema Parab, alighted from the bus and requested the Accused not to obstruct the bus and to allow them to proceed further. According to P.W.4, Ravi Raut, he also alighted from the bus and saw the Accused assaulting P.W.3, Kema Parab on his leg. Thereafter, P.W.1, Damodar Gawas, came to the rescue of P.W.3, Kema Parab and the Accused also assaulted P.W.1, Damodar Gawas on his forehead. In the cross-examination, he has also admitted that his statement was recorded by

the Police after 15 days of the incident. He has further admitted that he was supposed to get down at Kasarpal which comes after Nadora. Perusal of the evidence of this witness shows that he has introduced a different story. Thus, there is no thread of consistency in the evidence of P.W.1, Damodar Gawas, P.W.3, Kema Parab and P.W.4, Ravi Raut. In the background of the inconsistent testimonies, according to me, the learned Trial Court was right in refusing to act on such discrepant testimony. There is absolutely no evidence in respect of the alleged abuses said to have been given. The evidence in respect of threat to kill is also discrepant. P.W.1, Damodar Gawas, states that he was obstructed when he went to telephone the Police. However, the evidence of P.W.3, Kema Parab, is that the Accused stood in front of the bus. There is hardly any reliable evidence in respect of the charge under Section 341 of the Indian Penal Code.

9. I have given my anxious consideration to the evidence and the findings recorded by the learned Trial Court and I am of the considered opinion that there is no perversity in the reasoning of the learned Trial Court to warrant any interference in the Appeal. The view taken by the learned Trial Court is a possible view on the basis of the evidence on record and, therefore, no interference is warranted in the Appeal against acquittal.

10. In the result, Criminal Appeal No.2 of 2003 is dismissed.

P. V. HARDAS, J.

RD.