

A

PANDURANG SITARAM BHAGWAT

v.

STATE OF MAHARASHTRA

DECEMBER, 17, 2004

B

[N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

Penal Code, 1860; Ss. 323, 354, 504, 506 r/w Section 34 :

C

Landlord and three others allegedly assaulted tenant and outraged the modesty of his wife—Trial Court found the landlord guilty, convicted and sentenced him but acquitted other accused persons—Affirmed by the Appellate Court and High Court—On appeal, Held : No independent witness examined and witnesses named in the Panchnama declared hostile—Exact place of occurrence and the manner of commission of the offence materially differ—Since Trial Court observed that most of the statements made by the prosecution witnesses as incorrect and unreliable, statements should have been examined with regard to commission of the offence keeping in view the extent of falsity therein—Observations made by the Appellate Court based on surmises and conjectures—In the facts and circumstances of the case, accused entitled to benefit of doubt—Thus, impugned judgment set aside—Code of Criminal Procedure, 1973—Section 397.

D

E

F

Revisional Jurisdiction of the High Court—Exercise of—Held : Could be exercised since correctness, legality or propriety of the findings of the Courts below fall for consideration as all the three accomplices who have shared common intention except the main accused acquitted by the Court.

Doctrines :

Doctrine 'falsus in uno, falsus in omnibus'—Applicability of.

G

Complainant is wife of one of the tenants of the Appellant, the landlord. The complainant alleged that the appellant along with three other accomplices entered into her room forcibly and outraged her modesty, when she was watching a movie on T.V. along with her two sons, and later her husband was also assaulted by the accused persons.

H

On the basis of First Information Report lodged by the complainant,

appellant and three other accused persons faced trial for committing offences punishable under Sections 323, 354, 504, 506 r/w Section 34 IPC. Trial Court acquitted all the accused persons except the appellant and convicted him for committing the offence of outraging modesty of the complainant (PW2) and sentenced him accordingly. Appellate court dismissed the appeal and Revision petition was dismissed by the High Court. Hence the appeal.

It was contended by the appellant that the High Court failed to consider the merit of the case; and that he was falsely implicated.

Allowing the appeal, the Court

HELD : 1.1. The strained relationship between the parties is not in dispute. If the contention of the complainant and her husband to the effect that they had already taken a decision to shift from the premises is believed, there does not appear to be a plausible reason as to why the Appellant and three other accused would trespass into the house and assault them. No independent witness has been examined by the Trial Court and the witnesses of the Panchnama have been declared hostile. The approach of the Trial Judge that ordinarily a lady would not "put her character at stake" may not be wrong but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. [1051-H, 1052-A-B-C]

1.2. In the instant case, allegation of house trespass was made but no specific charge in relation thereto was made. Charges for causing hurt, along with other charges were specifically disbelieved. The charges of making false allegations by the victim at the instance of her husband, the tenant who is working in the Police Department cannot be totally brushed aside. No case was also made out that the incident of threatening, abusing or beating took place outside the house of the Appellant. [1052-E, F]

1.3. Though the doctrine '*falsus in uno, falsus in omnibus*' is not applicable in India but the evidence led by the parties must be appreciated keeping in view the entirety of the situation. The trial Judge came to the conclusion that most of the statements made by PW-2 the complainant and PW-3 her son were incorrect and no reliance could be placed thereon. The statements of these witnesses with regard to com-

A mission of an offence by the Appellant under Section 354 IPC should have been considered keeping in view the extent of falsity in their statements. The statement of these witnesses should have been accepted with a pinch of salt and keeping in view the admitted animosity between the parties. The background of the case *vis-a-vis* continuous animosity between the complainant and her husband, on the one hand, as also and the Appellant and his other tenants could not have been lost sight of by the Trial Judge. [1052-G-H; 1053-A-B]

C 1.4. The exact place of occurrence and the manner in which the purported offence of outraging the modesty was committed by the Appellant materially differ. The observations made by the appellate court is based on surmises and conjectures. The discrepancy even if ordinarily could not have been the basis of passing a judgment of acquittal, but in this case the conduct of both PW-2 and PW-3 being suspect, it would not be safe to rely on a part of their statements as prosecution witnesses. [1053-C-D]

E 3. The High Court should not have refused to exercise its revisional jurisdiction on the ground that no question of law had arisen therein inasmuch as in terms of Section 397 of the Code of Criminal Procedure, the correctness, legality or propriety or any finding, sentence or order may fall for consideration of the Revisional Court and in particular having regard to the fact that the prosecution case should have been tested from the angle that the Trial Judge had acquitted all the three accused persons who have shared a common intention with the Appellant not only in relation to the offences under Sections 323, 504 and 506 IPC but also in relation to the offence committed by the Appellant under Section 354. Having regard to the totality of the facts and circumstances of the case, the Appellant is entitled to be given the benefit of doubt. Hence, the impugned judgment is set aside and the Appellant is discharged from the bail bond. [1053-E-F-G]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1513 of 2004.

H From the Judgment and Order dated 27.1.2004 of the Bombay High Court in Crl.R. Application No. 219 of 1996.

Shivaji M. Jadhav, Himanshu Gupta and Brij Kishore Shah for the Appellant. A

Mukesh K. Giri and Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by B

S.B. SINHA, J : Leave granted.

This appeal is directed against the judgment and order dated 27.01.2004 passed by the High Court of Bombay in Criminal Revision Application No. 219 of 1996, whereby and whereunder the revision application filed by the Appellant herein was dismissed *ex parte*. C

The Appellant herein is a Constable in the State Reserve Police. He was charged for alleged commission of an offence punishable under Sections 354, 323, 504, 506 read with Section 34 of the Indian Penal Code. One Dilip Phadtare was a monthly tenant under the Appellant in one of the rooms in his house situated at Sarpanch Vasti, Dund. It is not in dispute that quarrels used to ensue between other tenants on the one hand and the said Dilip Phadtare and his wife on the other. It is also not in dispute that the Appellant had asked Dilip to vacate the tenanted premises. He was also said to have in search of other premises. D E

His wife Alka Dilip Phadtare is the complainant. On 10.04.1993, at about 5.15 p.m., the Appellant is said to have entered into the said tenanted premises, when Alka (PW-2) was watching a movie in the television with her sons Shivaji and Amol. He enquired about her husband. Alka (PW-2) told him that he was not at home. He thereupon allegedly entered into the room, closed the door and outraged her modesty by embracing her from backside and touched her breasts. At that time PW-3, Dilip came back and found Alka abusing the Appellant. On his questioning as to what had happened; he was assaulted by fists and kicks. The other three accused thereafter also allegedly came there and assaulted both of them. Dilip allegedly was also assaulted with stones and bricks. F G

The Appellant and the other three accused persons stood their trial for commission of offences punishable under Sections 354, 323, 504, 506 read with Section 34 IPC on the basis of a first information report lodged by PW-2 in relation to the aforementioned alleged incident. H

A The prosecution besides the informant (PW-2) also examined her husband (PW-3) and son, Shivaji (PW-4).

B The Judicial Magistrate, First Class, Daund, by a judgment and order dated 25.05.1995 disbelieved the story as disclosed in the First Information Report as regard threatening given to her husband, Dilip (PW-3), on the premise that no such allegation was made in her earlier statement. The court also disbelieved the allegation that Alka and her husband were abused by the accused persons. It furthermore negatived the case of the prosecution that the accused persons voluntarily caused hurt to Alka and her husband. The accused persons were, therefore, acquitted of the charges for commission of the offences punishable under Sections 323, 504, 506 read with Section 34 of the Code. However, the Appellant alone was found guilty of commission of the offence of outraging modesty of Alka by the learned Magistrate holding :

D "As regards the submission of probability of false implicating of the accused, I find it difficult to digest that a woman will prefer to put her character at stake only in order to take revenge or in order to implicate the accused falsely, particularly when her husband serves in police department. Alka and her husband could have easily made false charge of house trespass, causing of hurt etc. to lodge prosecution and it was not necessary for them to put to stake character of Alka by making false accusations of outraging of modesty by the accused No. 1..."

F On the aforementioned finding, the Appellant was convicted under Section 354 IPC and sentenced to suffer R.I. of three months and also to pay a fine of Rs.1,000. A sum of Rs.500 was directed to be paid to the complainant Alka by way of compensation, out of the aforementioned amount of fine. The Appellant preferred an appeal thereagainst. By reason of a judgment and order dated 31.08.1996 passed in Criminal Appeal No. 10 of 1995, the Additional Sessions Judge, Baramati, dismissed the said appeal. The learned Appellate Court noticed the discrepancy in the evidences of PW-2 and her son Shivaji as regard the manner of occurrence but maintained the judgment of conviction and sentenced passed by the Trial Judge, stating :

H "...There was nobody to watch the said incident. No doubt, the other incident of beating, abusing by appellant and his other relatives to

Alka and her husband took place outside the house but main incident of outraging modesty of the woman having taken place in the drawing hall itself, there was no person, who could see the incident and therefore, non-examination of independent witness from the neighborhood of Alka and her husband, cannot be said to be a minus point for the prosecution. A minor discrepancy has been occurred in the evidence of mother and son. Shivaji testified that when mother was going towards kitchen and was in standing position, her breasts were caught by the accused, coming behind her, whereas Alka stated that her breast were caught, when she was watching T.V. However, this discrepancy is very minor in nature, if a woman is assaulted in this fashion. The very next moment, she would stand up and would not continue to sit in the same position before she was criminally assaulted. So, if natural one and it cannot shake credibility of either of the witnesses to the occurrence."

A Revision Application filed by the Appellant was dismissed by the High Court in terms of the impugned judgment holding that both the courts below have appreciated the evidence on record and on appreciation found the accused guilty and there was no error of law committed by any of the Court.

It is not in dispute that the High Court passed the said judgment in absence of the counsel for the Appellant.

Mr. Jadhav, the learned counsel appearing on behalf of the Appellant, would submit that the High Court committed a manifest error in passing the impugned judgment, insofar as it failed to consider the merit of the matter. Had the merit of the matter been gone into by the High Court, the learned counsel would contend, the Appellant could have shown that he had been falsely implicated owing to dispute between him as the landlord and Dilip as the tenant.

The learned counsel appearing on behalf of the Respondent, however, supported the judgment of the courts below.

Keeping in view the nature of the case, we are of the opinion that the matter should be finally disposed of by this Court upon consideration of the materials on record.

The strained relationship between the parties is not in dispute. If the

A contention of the first informant and her husband to the effect that they had already taken a decision to shift from the-said premises is believed, there does not appear to be a plausible reason as to why the Appellant and three other accused would trespass into the house and assault them. Some photographs showing the injuries of PW-2 and PW-3 were produced before the Court, but no reliance thereupon was placed by the learned Trial Judge.

C The Trial Judge, as noticed hereinbefore, disbelieved the prosecution case as regard: (i) threatening of the first informant and her husband by the accused persons, (ii) hurling abuses to them, and (iii) assaulting them by bricks and stones. No independent witness has been examined and the witnesses of the Punchnama were also said to have been declared hostile.

D The approach of the learned Trial Judge as noticed supra that ordinarily a lady would not "put her character at stake" may not be wrong but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions where charges under Sections 376 and 354 of IPC have been found to have been falsely advanced.

E In this case, allegation of house trespass was made but for reasons best known to the investigating agency no specific charge in relation thereto was made.

Charges for causing hurt, along with other charges as noticed hereinbefore were specifically disbelieved.

F The charges of making false allegations by Alka at the instance of her husband, who is working in the police department cannot be totally brushed aside. No case was also made out that the incident of threatening, abusing or beating took place outside the house of the Appellant.

G We are not oblivious that the doctrine '*falsus in uno, falsus in omnibus*' is not applicable in India but the evidence led by the parties must be appreciated keeping in view the entirety of the situation. The Trial Judge, as noticed hereinbefore, came to the conclusion that most of the statements made by PW-2 and PW-3 were incorrect and no reliance could be placed thereon. The statements of the said witnesses with regard to commission of an offence by the Appellant under Section 354 IPC should have been considered keeping in view the extent of falsity in their statements. PW-2

and PW-3 not only failed to substantiate the allegations as regard commission of offences under Sections 323, 504, 506 read with Section 34 IPC but also implicated the three persons falsely. The statements of the said witnesses should have been accepted with a pinch of salt and keeping in view the admitted animosity between the parties. The background of the case *vis-à-vis* continuous animosity between the complainant and her husband, on the one hand, as also and the Appellant and his other tenants could not have been lost sight of by the learned Trial Judge.

The exact place of occurrence and the manner in which the purported offence of outraging the modesty was committed by the Appellant, furthermore, materially differ. Whereas PW-2 asserted that the Appellant came inside the house and embraced her from the back, when she was watching T.V. sitting; PW-4 stated that the incident took place when she was proceeding towards the kitchen. The observations made by the learned appellate court is based on surmises and conjectures. The said discrepancy even if ordinarily could not have been the basis of passing a judgment of acquittal, but in this case, as noticed hereinbefore, the conduct of both PW-2 and PW-3 being suspect, it would not be safe to rely on a part of their statements as prosecution witnesses.

The High Court, in our considered opinion, should not have refused to exercise its revisional jurisdiction on the ground that no question of law had arisen therein inasmuch as in terms of Section 397 of the Code of Criminal Procedure, the correctness, legality or propriety of any finding, sentence or order may fall for consideration of the Revisional Court and in particular having regard to the fact that the prosecution case should have been tested from the angle that the Trial Judge had acquitted all the three accused persons who are said to have shared a common intention with the Appellant not only in relation to the offences under Sections 323, 504 and 506 of the Indian Penal Code but also in relation to the offence committed by the Appellant under Section 354 thereof.

We, therefore, are of the opinion that having regard to the totality of the fact and circumstances of the case, the Appellant is entitled to be given the benefit of doubt.

For the reasons aforementioned, this Appeal is allowed, the impugned judgment is set aside and the Appellant is discharged from the bail bond.

S.K.S.

Appeal allowed.