SUPREME COURT OF INDIA

Jimmy Homi Bharucha

Vs.

State of Maharashtra

Crl.A.No.506 of 1976

(P. N. Bhagwati and S. Murtaza Fazl Ali, JJ.)

09.02.1977

JUDGEMENT

BHAGWATI, J.:-

1. This is one of those cases where it is impossible to sustain the judgment of the High Court. It is indeed difficult to appreciate itself to reverse the acquittal of the appellant. The appellant was tried before the Metropolitan Magistrate, 30th Court, Kurla, Bombay for offences under Section 323 read with Section 114 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act, 1932.The incident out of which the prosecution arose was a trifling one and according to the prosecution, it had its genesis in a strike which took place in the factory of CEAT Tyres Co. of India Ltd. between November 1973 and March 1974. The complainant was a trainee worker in the factory. While the appellant and one T. S. Sulunke were permanent employees. It appears that the appellant and T. S. Sulunke were active participants in the strike, but so far as the complainant was concerned, he had not joined the strike and was regularly attending the factory. On 19th December, 1973, in the evening, the complainant was returning home in the staff bus and near a place called Sion, he alighted from the bus when it stopped at a road crossing owing to the red traffic signal. The prosecution case was that as soon as the complainant got down from the bus, he was attacked by the appellant, T. S. Sulunke and two other persons whom the complainant did not know and the

appellant and T. S. Sulunke gave him fist blows on his lips and eyes and as he fell down, the two other persons kicked him on the waist with their shoes. The Complainant was injured as a result of this attack and he also lost his gold chain. He then proceeded to his house at Santa Cruz in a taxi and after washing his face and taking a cup of tea, he went to Matunga Police Station to lodge a report. The police recorded the first information report as narrated by him and sent him to the Sion Hospital or treatment. Dr. Chari, who was incharge of the Outdoor Patient Department of the Sion Hospital, found that the complainant had two small injuries on the lower lip and he issued a certificate to that effect on 30th January, 1974. The police thereafter charge-sheeted the appellant and T. S. Sulunke for offences under Section 323 read with Section 114 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act, 1932.

2. The prosecution case against the appellant and T. S. Sulunke rested solely on the evidence of the complainant. The learned Metropolitan Magistrate who tried the case cam to the conclusion that the evidence of the complainant was not acceptable and he accordingly acquitted the appellant and T. S. Sulunke. The State preferred an appeal against the acquittal to the High Court. The High Court re-appreciated the evidence and taking the view that there was no reason to disbelieve the evidence of the complainant, reversed the acquittal of the appellant, convicted him of both the offences charged against him and sentenced him to suffer rigorous imprisonment for one month on each count. So far as T. S. Sulunke was concerned, the complainant compounded the offence under Section 323 of the Indian Penal Code with him and in the result he was acquitted of that offence. But, obviously, there could be no composition in respect of the offence under Section 7 of the Criminal Law Amendment Act, 1932 and the High Court accordingly, on the view taken by it, reversed the acquittal of T. S. Sulunke and convicted him of that offence and sentenced him to pay a fine of Rupees 200/- or in default to undergo rigorous imprisonment for fifteen days. We are concerned here only with the case of the appellant, since he alone has filed the present appeal with special leave obtained from this Court.

3. The entire case against the appellant rests on the sole testimony of the complainant. The learned Metropolitan Magistrate who tried the case found it difficult to accept the testimony of the complainant and acquitted him. The question is whether this view take by the learned Metropolitan Magistrate was so unreasonable and perverse as to merit interference by the High Court in appeal. It is now well settled that if two views of the evidence are possible and the trial Court has taken a view favourable to the accused and acquitted him, the appellate court should not disturb the acquittal merely because it is inclined to take another view.

4. Here there were three circumstances which clearly justified the learned Metropolitan Magistrate in declining to place reliance on the evidence of the complainant. In the first place, it was admitted by the complainant in his evidence that he got down from the bus when it stopped at a road crossing near Sion on account of red traffic signal and when he alighted from the bus, he was attacked by the appellant T. S. Sulunke and two others. Now it is difficult to see how the appellant and his three other companions could have possibly known that the complainant would be getting down at the road crossing so that they could be in wait in order to attack him. The complainant was staying at Santa Cruz which is quite far from Sion and in fact according to his own evidence, he took a taxi for

going from the place of the incident to his residence at Santa Cruz. The place of incident was not the usual place where the complainant would ordinarily be getting down and it was sheer accident that he got down at that place by reason of the bus stopping there on account of the red traffic signal. The story that the complainant was beaten up by the appellant and his three companions at this place where he alighted from the bus, therefore, sounds quite improbable. Secondly, the complainant admitted in his cross-examination that he was prosecuting the case owing to the pressure of the management Obviously, the management was interested in proceeding against the appellant and T. S. Sulunke who were union workers and, therefore, it brought pressure on the complainant to file this case against them. The certificate given by Dr. Chari in regard to injuries sustained by the complainant clearly shows that when the complainant was brought to him for examination, the complainant stated that he had received the injuries accidentally. This statement of the complainant clearly contradicts his evidence that he received the injuries as a result of fist blows given by the accused and T. S. Sulunke. Lastly, the evidence of the complainant was that after he fell down, he was kicked on the waist by the other two persons who were with the appellant and T. S. Sulunke, but if the complainant was given kicks with shoes, it is difficult to understand how he did not receive any injuries on the waist. These three circumstances throw considerable doubt on the veracity of the prosecution story and it cannot be said that the learned Metropolitan Magistrate was in error in rejecting it.

5. We accordingly allow the appeal, set aside the order of the High Court convicting the appellant and acquit him of the offences charged against him. The appellant need not surrender to his bail.

Appeal allowed.