

UNION OF INDIA

v.

BALI RAMU PAWAR & ORS.

(Criminal Appeal No. 733 of 2002)

OCTOBER 15, 2008

**[DR. ARIJIT PASAYAT AND MUKUNDAKAM SHARMA,
JJ.]**

Penal Code, 1860 – ss. 120B, 143, 147 and 148 and ss. 302, 307, 323, 324, 427 and 506 (II) r/w s. 149 – Prosecution under – Trial Court convicting accused Nos. 1 to 4 for all the offences and acquitting them u/s. 120B – Rest of the accused (accused Nos. 5 to 9) acquitted of all the charges – Appeal challenging acquittal order in respect of all the accused – High Court summarily dismissed the appeal with reference to accused Nos. 5 to 9 only – On appeal, held: Order of High Court not maintainable – It was passed without discussing reasons for concurring with the view of trial court and without reference to the accused Nos. 1 to 4 – Matter remitted to High Court.

Respondents-accused (Accused Nos. 5 to 9), alongwith four other accused (Accused Nos. 1 to 4) were prosecuted u/ss. 120 B, 143, 147 and 148 and u/ss. 302, 307 323, 324, 427 and 506 (II) r/w s. 149 IPC. Trial court acquitted the respondents-accused of all the charges, and convicted accused Nos. 1 to 4 for all the charges except u/s. 120B IPC. State filed appeal against acquittal of the respondents-accused and against acquittal of accused Nos. 1 to 4 u/s. 120 B IPC. High Court dismissed the same holding that acquittal of respondents-accused did not call for interference. Hence the appeal.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: High Court has simply referred to the conclu-

A sion of the trial Court to come to a conclusion that the same cannot be termed to be unreasonable or perverse. The appeal has been dismissed so far as accused Nos. 5 to 9 are concerned, by holding that it was a possible view. There was no discussion as to why it is so. High Court
B has only referred to the acquittal of accused nos. 5 to 9. The appeal filed by the State also related to the acquittal of accused Nos. 1 to 4 of the charges relating to Section 120B IPC. No finding was recorded so far as the other four accused persons are concerned and, in any event,
C accused Nos. 1 to 4 have questioned their conviction, and appeal is pending. Investigation by CBI was directed as the investigation by the local police was found to be not fair. That being so, the order of the High Court is not maintainable. [Paras 5, 6 and 7] [493-B-C-E]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 733 of 2002

From the final Judgment and Order dated 14.3.2001 of the High Court of Judicature at Bombay in Criminal Appeal No. 926 of 2000

E Harish Chandra, Kiran Bhardwaj, B.K. Prasad and P. Parmeswaran for the Appellant.

Shdharth Luthra, Sanjeev Sachdeva and Ravindra Keshavrao Adsure for the Respondents.

F The Judgment of the Court was delivered by

G DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court dismissing the appeal filed by the appellant questioning the correctness of the judgment rendered by learned Sessions Judge, Dadra And Nagar Haveli and Silvassa in Sessions Case No.24/1999. The appeal was filed on the ground that acquittal as recorded was uncalled for.

H 2. Prosecution version as unfolded during trial is as follows:

One Mohan Delkar had contested the election for the post of M.P. on behalf of B.J.P. On 6/3/1998, while one Uttam Patel contested the said election on behalf of Shiv Sena in Dadra and Nagar Haveli Constituency. During the said election Uttam Patel was defeated and Mohan Delkar won the election. After declaration of the said election results, there were incidents of violence and 'shop premises' of Shiv Sena workers were destroyed by the workers of Mohan Delkar. The car of Dr. Gulab Patel (P.W.5) who was the main supporter of Uttam Patel was also destroyed by the supporters of Mohan Delkar. Some of the present accused were also involved in the said incident of burning the car. It is further case of the prosecution that during the election period, complainant Kumar Shanmugam, the owner of the hotel used to serve eatables to the workers of Uttam Patel, Shiv Sena candidate for M.P. A threat was also given to said Kumar Shanmugam for the same by the supporters of Mohan Delkar.

On the fateful day i.e. on 7/6/1998 at about 10.15 a.m., 10 to 12 persons came in two rickshaws and entered in the hotel of Kumar Shanmugam after breaking the glass of windows. The customers who were sitting in the hotel went running towards the kitchen and one of the customers closed the shutter of the rear side. The complainant Shanmugam was inside the kitchen while the hotel manager Virendra Choudhary was sitting on the counter and other employees namely Vasu Pillai (P.W.12) and Kumar Ganpati (P.W.15) were in the main hall. The assailants were armed with sword, Iron bar, hockey sticks etc. As the complainant Kumar Shanmugam was not found there, they assaulted the other employees present there. His employees particularly Virendra Choudhary and Vasu Pillai were severely beaten and sustained serious injuries. Meanwhile, the complainant Kumar Shanmugam contacted Dr. Gulab Patel (P.W.5) on phone and requested him to inform the police and to arrange for vehicle. The complainant Kumar Shanmugam (P.W.11) simultaneously contacted Control Room for help. Then Dr. Gulab Patel (P.W.5) arranged vehicle and sent two friends namely Shri Aslam

- A Khutliwala (P.W.3) and Ronald Couttho (P.W.18) in Maruti car. Then these injured were taken to Cottage Silvassa where the statement of Kumar (P.W.11) came to be recorded as FIR vide Exh.54. In view of the serious conditions, Choudhary and Vasu Pillai were shifted to Handa hospital at Vapi. Virendra
- B Choudhary who was unconscious since beginning was then taken to civil hospital, Surat. However, he succumbed to the injuries and reported dead on 8.6.1998.

- Meanwhile on the basis of FIR Exh. 54 offence came to be registered under Cr. No.1-171/98 initially for attempt to murder and rioting. Then as per the direction of P.S.I. Manoj Patel (P.W.22) the investigation was taken over by P.S.I. Rohit (P.W.23). The spot panchanama was recorded at about 3.45 P.M. on the same day only and some places of wooden handle of Tikam lying on the spot namely Article Nos. 5, 6 and 7 were
- D seized under the said panchnama Exh. 52. On the same day the statements of certain witnesses were recorded. On 8/6/1998 after getting the information of death of Virendra Choudhary, the inquest was drawn at Surat by P.S.I. Umra Police Station Surat vide Exh. 78. Some of the accused namely accused no.
- E 2, 5, 6 and 7 came to be arrested on 8/6/1998 at the hands of P.S.I. Manoj Patel. On 13/6/1998, when these accused were under the police custody, certain weapons including sword and wooden places of handle of Tikam were recovered from them pursuant to their statement under section 27 of the Indian Evidence Act., 1872 (in short 'Evidence Act'). During the course of
- F investigation the local police also recorded statements of various witnesses, seized rickshaw bearing No GJ 15.V 6474 on 2/9/1998 from the courtyard of one Babubhai Shanker under panchnama Exh. 16.
- G It appears that being not satisfied by the investigation of the Local Police, the complainant Kumar Shanmugam had filed Writ Petition bearing No. 6904/98, in the Bombay High Court making grievances for not arresting the accused nos. 1, 3 and 4 in spite of their names appearing in the FIR. The High Court
- H vide its order dated 16/9/1998 transferred the investigation of

the case to C.B.I. In pursuance of the directions, Dy. S.P. Sinha (P.W.28) took charge of the matter in the middle of October, 1998 and the case was re-registered under RC. No.C(S)/98-SCN-II/DLI in a Special Branch of C.B.I. under Sections 302, 307, 506 read with 149 of I.P.C. etc. Then he with the assistance of other officers recorded statements of some more witnesses including Dr. Gulab Patel (P.W.5), Aslam Khutliwala (P.W.3), besides supplementary statement of complainant Kumar Shanmugam (P.W.11), Vasu Pillai (P.W.12), Kumar Ganpati (P.W.15). Then he arrested the accused Nos. 1, 3 and 4 on 26/7/1999 and accused No. 8 and 9 in October, 1999. The identification parade was also held on 8/8/1999 for identifying the accused Nos. 8 and 9. After completing the investigation charge sheet was filed against 12 persons including accused Nos. 1 to 9 on 23-10-1999 in the Court of Chief Judicial Magistrate, Silvassa.

The Chief Judicial Magistrate in turn committed the case for trial to Court of Sessions. During the pendency of the trial a bail application came to be filed by some accused. Directions were given for expeditious hearing of the trial. After recording the evidence of 3 to 4 witnesses during the course of trial, a Writ Petition was filed on behalf of the complainant to transfer the venue of trial to Mumbai apprehending danger to the life of the witnesses. With consent of both the parties, the High Court directed Sessions Court to hold a sitting at Bombay for recording the evidence. Accordingly most of the evidence was recorded at Mumbai.

Nine persons faced trial for alleged commission of offences punishable under Sections 120B, 143, 147, 148, 302, 307, 323, 324, 427, 506(II) read with Section 149 of Indian Penal Code, 1860 (in short the 'IPC'). After completion of investigation charge sheet was filed and accused persons faced trial as they pleaded innocence. By order dated 29.9.2000, learned Sessions Judge held that the accused persons 1 to 4 were guilty, and convicted each for the offences punishable under Section 147 and Section 302 read with Section 149 IPC and sentenced

- A to rigorous imprisonment for life and fine. Accused Nos. 1 to 4 were also found and convicted for offence punishable under Section 307 read with Section 149 IPC. Similar was the position in respect of offence punishable under Section 324 read with Section 149 IPC, Section 323 read with Section 149 IPC, B 427 read with Section 149 IPC, 453 read with Section 149 IPC and 506(II) read with Section 149 IPC. Each was also convicted for the offence punishable under Section 148 IPC.

- After dealing with various offences purported to have been made against accused Nos. 1 to 4 the trial Court found them C guilty and imposed sentences. Accused Nos. 1 to 4 were acquitted of the charges relating to Section 120B IPC. Accused Nos. 5 to 9 the present respondents were found not guilty and were acquitted from all the charges levelled against them. Aggrieved by the order of learned Sessions Judge, the appellant D filed an appeal before the High Court challenging the acquittal of Accused Nos. 1 to 4 for offence punishable under Section 120B IPC and accused Nos. 5 to 9 from all the charges. The High Court dismissed the appeal and observed as follows:

- E "Heard counsel for the parties.

- We are satisfied that the order of acquittal passed in favour of accused Nos. 5 to 9 does not call for any interference. On the basis of the material on record, the conclusion reached by the trial Court cannot be said to be F unreasonable or perverse. In fact the view taken by the trial Court is a possible reasonable view on the evidence on record.

This appeal is therefore dismissed."

- G 3. According to the learned counsel for the appellant the appeal is still pending so far as the appeal filed by accused persons 1 to 4 is concerned. By a cryptic and practically non-reasoned order the High Court has dismissed the appeal.

- H 4. Learned counsel for the respondents submitted that the High Court found the evidence to be not believable so far as the

present respondents are concerned and therefore was justified in dismissing the appeal. A

5. It is to be noted that the High Court has simply referred to the conclusion of the trial Court to come to a conclusion that the same cannot be termed to be unreasonable or perverse. It is pointed out that no finding was recorded so far as the other four accused persons are concerned, and in any event the accused Nos. 1 to 4 have questioned their conviction and appeal is pending. B

6. It is to be noted that investigation by CBI was directed as the investigation by the local police was found to be not fair. The appeal has been dismissed so far as the present respondents are concerned, by holding that it was a possible view. There was no discussion as to why it is so. C

7. It is to be noted that the High Court has only referred to the acquittal of accused Nos. 5 to 9. The appeal filed by the present appellant also related to the acquittal of accused Nos. 1 to 4 of the charges relating to Section 120B IPC. D

8. That being so, the order of the High Court is also not maintainable. E

9. Undisputedly, as pointed out above, the appeal of Accused Nos. 1 to 4 who are convicted is pending. It would be appropriate to take up the appeals together for disposal in accordance with law. Accordingly, we set aside the impugned order and remit the matter to the High Court for fresh consideration. The appeal shall be taken up along with the appeal filed by the convicted accused persons. F

K.K.T.

Appeal disposed of.