



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 596 OF 2004

Machindra S/o. Sadabhau Giri,
Age : 40 Years, Occu. : Service,
R/o. Hayatnagar,
Tq. & Dist. Parbhani.

..... **Appellant**
(Ori. Accused)

Versus

The State of Maharashtra

..... **Respondent**

.....

Advocate for Appellant : Mr. Niraj P. Chudiwal
APP for Respondent-State : Mr. S.B. Narwade

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29th January, 2025
PRONOUNCED ON : 26th February, 2025

JUDGMENT :

1. The appellant takes exception to judgment and order dated 24.08.2004, passed by learned IInd Ad-hoc Additional Sessions Judge, Parbhani, in Special Case No.18/2004, for offence punishable under Section 323 of the Indian Penal Code (hereinafter shortly referred to as "IPC").

IN NUTSHELL, CASE OF THE PROSECUTION IS AS UNDER :

2. PW3 Mr. Ramchandra Kaniram Wanjari, S.D.P.O., Basmath investigated crime No.3098 of 2022, for offence under Section 3(1)(x) of the S.C. and S.T. (Prevention of Atrocities) Act, Section 7(1)(d) of the P.C.R. Act and Section 323 of the Indian Penal Code, on report being lodged by informant PW1 Mr. Narayan Gunaji Davane that, on 02.11.2002, a photographer, who had snapped photographs of a wall constructed over the flowing river had come to the village and had approached the informant stating that photographs are ready and to pay for it. That, the informant told him that Gramsevak is not present and that payment would be made on Monday.

3. The informant further reported that, in the afternoon, when he came in the vicinity of Panchayat Samiti office, Gramsevak Mr. Machindra Giri i.e. present appellant, questioned him for not giving money towards the photographs, upon which the informant told that, he had asked photographer to come on Monday and that payment would be made thereafter. That, the appellant, upon which, initially abused him on caste basis and thereafter rushed over him, removed footwear and started beating him.

4. Above occurrence was separated by other villagers and report to that extent was lodged. On the basis of which, crime was registered and investigated by PW3 Mr. Wanjari.

5. After gathering evidence, the appellant was charge-sheeted and tried by learned IInd Ad-hoc Additional Sessions Judge, Parbhani vide Special Case No.18/2004, who appreciated the oral and documentary evidence and by judgment and order dated, acquitted the appellant from charge under Section 3(1)(x) of S.C. and S.T. (Prevention of Atrocities) Act, but convicted him for offence under Section 323 of IPC and sentenced him to suffer simple imprisonment till rising of the court and to pay fine and in default to suffer one month imprisonment.

6. Feeling aggrieved by the same, the appellant has challenged above judgment and order by filing instant appeal on various grounds mentioned in the appeal.

SUBMISSIONS

ON BEHALF OF THE APPELLANT :

7. Learned counsel for the appellant would submit that, there is false implication. That, there is no independent eyewitness

account. That, occurrence is not substantiated. That, the ingredients of Section 323 of IPC are not met. That, the appellant is already acquitted from other charges. However, without any sufficient and legally acceptable evidence, guilt is recorded for Section 323 of IPC and hence, he criticized the judgment and findings and seeks indulgence.

ON BEHALF OF THE RESPONDENT-STATE :

8. Learned APP supported the judgment by pointing out that, there is injured account supported by independent witness. That, their testimonies have remained intact. That, charge under Section 323 of IPC being made out, learned trial court has correctly held the appellant guilty and hence, he prays dismissal of the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT :

9. In support of its case, the prosecution has examined in all three witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Informant Mr. Narayan Gunaji Davane. In para.1 of his substantive evidence at Exh.11, he narrated as under :

“1. Incident took place on 02.11.2002 Photographs of the wall by which flow of river was holded and accumulated (Bandhara) were taken. Concern photographer came to me for demanding money. I told him that amount will be paid on Monday after taking from village Development officer. Then I went to Basmath for purchasing tube light. One R.N. Khandare was V.D.O. of our village. When I was coming out of Panchayat Samitee office from Basmath accused present in dock came to me. He questioned me as to why I did not pay money of Photographs. Without any concerned accused scolded me by saying Bapache Nakar Ahet Kai, Sarkhe paise Magalaya. Accused by means of foot wear assaulted me absuing me as Dhedgya by saying that Baiko Sarpanch Ahe Mahnun Majla Kai. He uttered that Govt has given more value to the back ward. Because of assault I raised shouts. Maroti Limbaji Kumbhar accompanying me came there and rescued me. One Shivling Baliram Kasbe also rescued me. Above persons in auto rickshaw brought me to Thorava. It was about 5 p.m. I am Baudha by caste. Accused is Gosavi by caste. Next day morning I went to police station and lodged the report. The report now shown to me bears my signature and contents there in are correct. It is at Ex.12.”

PW2 Eyewitness Mr. Maroti Limbaji Kumbharkar. In para.1 of his substantive evidence at Exh.13, he narrated as under :

“1. I know P.W. Narayan. He is Baudh by caste. I know accused. His name is Giri. I do not know his caste. Incident took place on 2nd day of month. My self is grampanchayat member and myself and P.W. Narayan went together to

Basmath for purchasing tube light. We went to Panchayat Samitee while returning. It was about 5 p.m. I heard noise when I was taking tea. Hence, I went there. Accused Giri was assaulting P.W. Narayan. He was saying Maharya Majla Kai. I rescued. Other persons of Basmath also took part in rescuing them. Then in auto we went to village.”

PW3 Investigating Officer Mr. Ramchandra Kaniram Wanjari. He, in his evidence at Exh.16, deposed that, during investigation, he prepared spot panchanama, arrested the appellant, recorded statements of witnesses and filed charge-sheet against the appellant.

ANALYSIS

10. In this appeal, the appellant is taken exception to his conviction recorded under Section 323 of IPC, by learned IInd Ad-hoc Additional Sessions Judge, Parbhani vide Special Case No.18/2004.

11. Evidence of PW1 Narayan and PW2 Maroti is crucial. **PW1** Narayan, in his substantive evidence, has stated that, present appellant assaulted him by footwear and he was rescued by one Maroti Limbaji Kumbhar (PW2). PW2 Maroti also deposed about seeing the occurrence of assault.

12. Initially cross of informant PW1 Narayan is on the point of his political affiliation and his wife also to be in politics, but in para.3 of his cross, occurrence seems to have been admitted as there are questions and suggestions that whether accused was known by face and whether any person other than accused was present. Questioning to him about how long the assault was lasted also goes to show that there is no serious dispute to the assault. Question about number of blows allegedly inflicted by means of footwear are also put to him and he has answered about suffering two blows. Therefore, there is no serious challenge to the occurrence.

13. Other witness is **PW2** Maroti. This witness is named by the informant stating that he had come to his rescue. PW2 Maroti, in his evidence, has stated that, after hearing noise, when he went, he saw the appellant assaulting the informant and he rescued him.

14. Even cross of this witness in para.2 shows that, his above evidence of seeing the assault has remained intact as there are questions as to how long the incident was lasted and who were the other persons who separated the appellant and who has seen the injury to the person of PW1 Narayan. Therefore, the evidence of PW1 Narayan is corroborated by this independent witness.

15. Therefore, on complete re-appreciation of the evidence of above both witnesses, occurrence is proved beyond reasonable doubt. There is no infirmity in the findings recorded by learned trial court. No merits in the appeal so as to disturb. Hence, the appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

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