



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.455 OF 2016

Bhagwan s/o Shrirang Chormale
Age: 61 years, Occu.: Agril.,
R/o. Laxmipur, Tq. Wadwani,
Dist. Beed.

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Sudarshan J. Salunke, Advocate for Appellant.
Mr. S. M. Ganachari, APP for respondent/State.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25.08.2026
PRONOUNCED ON : 27.08.2026

JUDGMENT :-

1. Appellant/original accused/convict hereby takes exception to challenge the judgment and order dated 01.07.2016 passed by learned Additional Sessions Judge, Majalgaon in Special Case (Atrocity) No.04 of 2016, by which he came to be convicted for offence under Section 323 Indian Penal Code [IPC] and sentenced to suffer rigorous imprisonment for one year and also to pay fine.

2. In short, case of prosecution in trial Court was that on 01.08.2015 when informant was returning after answering nature's call, at that time, accused/appellant came across with axe in his hand

and questioned him, as to why two days back informant had talked with him about the flow of water. It is alleged that there was abuses on caste basis followed by use of axe in assaulting on the head and hand. On receipt of complaint to that extent, crime was registered bearing No.65 of 2015 for offence under Sections 324, 504 of IPC and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short "Atrocities Act"].

. After investigation, PW8 Investigating Officer charge-sheeted accused, who was tried vide above Special Case by learned Additional Sessions Judge, Majalgaon.

. At trial, prosecution adduced evidence of as many as eight witnesses and also relied on documentary evidence like panchnama and injury certificate. After hearing both sides, learned Trial Court accepted the case of prosecution as proved beyond reasonable doubt and convicted accused vide above judgment and order, which is now sought to be challenged in the instant appeal.

3. Learned Counsel for the appellant pointed out that there is false implication due to previous enmity. That, no such occurrence had taken place on 01.08.2015. He pointed out that though the prosecution has adduced evidence of as many as eight witnesses,

there is no independent eyewitness. He emphasized that though there are allegations of use of an axe, the same was not produced before the Court and, further, there is no link evidence on the point of use of the said axe in any assault. He pointed out that even injuries suffered by informant were simple in nature. He took this Court through the length and breadth of prosecution witnesses and also the answers given in cross-examination and would also question the story of prosecution. He pointed out that though the medical expert has been examined, the said witness was not confronted with the alleged articles seized while securing the opinion.

. Lastly, he submitted that even otherwise, at the time of judgment, the accused was 60 years of age and now, almost a decade has passed since the judgment and order of conviction. Now, the appellant is almost 70 years of age and, in the alternative, he submitted that the benefit of Section 4 of the Probation of Offenders Act be extended to the appellant.

4. Learned APP would oppose on the ground that prosecution has proved the case beyond reasonable doubt. Informant's evidence has remained intact and is convincing. There is no reason to discard the testimony of other witnesses also. That, regarding injury suffered by victim/informant, prosecution has adduced testimony of medical

expert, who has not only examined and treated victim, but also issued injury certificate. Thus, according to him, charge of voluntarily causing hurt has been substantiated by the prosecution. For said reason, he prays to dismiss the appeal for want of merits.

5. Sum and substance of the evidence before trial Court :

. **PW1** informant has been examined at Exhibit-12. After giving his caste and community, he stated that he had been to answer nature's call. When he stopped near Government Borewell at that time accused came along with she-goats and started hurling abuses on caste basis and thereafter, accused hit him with axe on the backside of head as well as hand. He shouted, as a result of which, his wife and son came and took him to police station, where he gave report Exhibit-13.

. In his cross-examination, the location of his residence and the relatives residing in the neighbourhood were elicited. He denied that he dislikes joint residence of accused with Champabai. He admitted that he himself and other villagers have made encroachment and were grazing cattle, of which crime was registered. He admitted that panch witness and PW2 happens to be his relative and almost all prosecution witnesses are his close relatives. Omission is brought to

the extent that his son Indrasen had come to the spot along with the wife of informant; after the incident he went to police station and lodged report. Rest is all denial.

6. **PW2** is the panch to the seizure panchanama i.e. seizure of clothes of victim vide Exhibit-16.

. In cross-examination, he admitted to be the relative of informant. Rest is all denial.

7. **PW3** is the spot panch, who identified spot panchanama Exhibit-18.

. While under cross-examination, he admitted that writing of panchanama was going on when he reached the spot and he also admitted that Mariba is his relative.

8. **PW4**, wife of the informant, deposed that on 01.08.2015, she heard shouts of her husband, so she went to the borewell and noticed that her husband had suffered a bleeding injury. Thereafter, she, as well as her son, took him to the police station. In the examination-in-chief itself, she has stated that a quarrel took place between her husband and the accused on account of letting wastage water from the house.

. While under cross-examination, she admitted that she is not

witness to the incident. Rest is all denial.

9. **PW5** is the panch to the seizure of axe vide panchnama dated 06.08.2015, which was allegedly recovered on memorandum of disclosure of accused under Section 27 of the Indian Evidence Act. Nothing damaging has been brought in his cross-

10. **PW6** is the Investigating Officer, who narrated all steps taken by him during investigation.

11. **PW7** is the medical officer, who examined and treated informant and issued certificate Exhibit-29 about injuries to be simple in nature.

. While under cross-examination, he admitted that he did not possess record of the hospital and that medical certificate is issued on the basis of MLC register. He admitted that age of the injury, probable weapon and nature of injury is not quoted in the MLC register. Except the admission that injury Nos.1 and 2 are possible on coming in contact with sharp weapon of borewell, rest is all denial.

12. **PW8** is the second Investigating Officer, who charge-sheeted accused.

13. Re-appreciated the above entire evidence, more particularly, informant's evidence. He has narrated that when he had been for

answering nature's call, accused, initially, in the backdrop of previous incident regarding letting of water, hurled caste abuses and thereafter, hit the informant with an axe on the back of head and hand. The evidence of this witness finds support from the evidence of PW7, the medical expert, who had occasion to examine and treat the informant. Though the informant and this witness were cross-examined, nothing adverse has been brought on record in their cross-examination. Indeed, as submitted, the prosecution in the Trial Court failed to confront the seized weapon to the medical expert while seeking his opinion, but on account of such lapse alone, the cogent and reliable evidence of complainant cannot be doubted, more particularly when there is recovery of axe under the memorandum of disclosure of accused himself. Therefore, indeed, as submitted by learned APP, the offence of voluntarily causing hurt is substantiated by the prosecution.

. In the alternative, it is submitted that the accused be given the benefit of Section 4 of the Probation of Offenders Act, considering his age and the fact that he has no criminal antecedents.

14. Perused the papers. Admittedly, in the judgment of conviction, age of accused is noted as 60 years. The judgment was rendered in 2016. The appeal has taken almost a decade to be heard and decided.

Therefore, as on today, appellant must be 70 years of age. There are no criminal antecedents against the appellant.

15. The Hon'ble Apex Court in the case of **Sitaram Paswan and ors. vs. State of Bihar, [AIR 2005 SC 3534]** also, in an appeal arising out of order of conviction for offence under Section 323 of IPC, on plea and ground of securing benefits of Section 3 and 4 of Probation of Offenders Act, 1958, extended the benefit of Section 4 of the probation of offenders Act 1958.

. Likewise, the Hon'ble Apex Court, in the case of **Jagat Pal Singh and others v. State of Haryana 1999 SCC (Cri) 1313**, wherein also there was conviction under Sections 323, 452 and 506 r/w 34 of IPC, has permitted invoking Section 4 of the Probation of Offenders Act, 1958 in a case of similar nature.

16. Therefore, considering his age as on today and relying on the above referred judgments of the Hon'ble Apex Court, as the sword of conviction has been looming large over the head of the appellant for almost a decade, instead of sentencing him to suffer imprisonment, this Court is inclined to extend the benefit of Section 4 of the Probation of Offenders Act by issuing following consequential directions. Hence, the following order is passed :-

ORDER

- I. The Criminal Appeal is partly allowed.
- II. The conviction awarded under Section 323 of IPC to the appellant – Bhagwan Shrirang Chormale in Special Case (Atrocity) No.04 of 2016 by learned Additional Sessions Judge, Majalgaon vide judgment and order dated 01.07.2016, is hereby maintained.

HOWEVER

- III. Instead of sentencing appellant to imprisonment, he is directed to be released on probation of good conduct by entering into a bond with one surety to appear and receive the sentence when called upon during the period of one year.
- IV. The bond for a period of one year shall be executed by him before the trial Court within a period of four weeks from today.
- V. The Criminal Appeal is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]