

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

CRIMINAL APPEAL NO.806 OF 2003

Sudhakar s/o Pralhad Kulkarni
Age 63 years, Occ. Now Retired,
R/o Gaikwad Colony,
Ahmednagar

... APPELLANT
(Original Complainant)

VERSUS

1. Suresh s/o Baburao Talekar,
Age 38 years, Occ. Service,
R/o Saikrupa Colony,
H. No. 45/1, Sahakar Nagar,
Ahmednagar.

2. State of Maharashtra
(Copy to be served on the
A.P.P., High Court of Bombay,
Bench at Aurangabad)

... RESPONDENTS
(No.1 Original Accused)

.....
Shri P.B. Shirsath, Advocate for appellant
Shri P.N. Kutti, A.P.P. for State
Shri V.S. Bedre, Advocate for respondent No.1
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 12th April, 2016.

Date of reserving judgment : 4th April 2016.
Date of pronouncing judgment: 12th April 2016.

J U D G M E N T :

1. This is appeal against acquittal, which has been admitted to the extent of offence under Section 323 of the Indian Penal Code, 1860 (I.P.C. in brief) only. The appellant - original complainant has claimed that he filed R.C.C. No.158/2000 in the Court of Chief Judicial Magistrate, Ahmednagar. According to him, the respondent No.1 Suresh Baburao Talekar - original accused (hereinafter referred as accused) voluntarily caused hurt to him and also provocatively insulted and committed criminal intimidation by threatening to kill. The incident occurred on 6.5.2000. The complainant was going on his moped and came near Hotel Oberoi at Ahmednagar, where when he was waiting to take turn, the accused came from behind on motorcycle and

dashed it against the moped of complainant. The accused verified identity of complainant and claimed that the complainant had failed his son and for such reasons, beat the complainant. The complainant filed complaint in the Police Station, which was registered as N.C. No.267/2000. The complainant was also medically examined. He later on filed the private complaint. Initially, evidence before charge was recorded and thereafter charge was framed under Sections 323, 504 and 506 Part II of the Indian Penal Code. Trial Court, after conducting the trial, acquitted the accused. The evidence of P.W.4 - Shrinivas Shirsagar was discarded on the basis that he was Peon in the school of which the complainant was Secretary. Another ground raised is that, the medical evidence of P.W.2 Dr. Rajendra and P.W.5 Dr. Vishnu was discarded on the basis that it was not proved that the injuries were direct result of the assault by the accused. The certified copy of N.C. was wrongly ignored on the basis that the original N.C. register was not called. Taking exception to such reasonings recorded by the trial Court, this appeal was filed against the acquittal.

2. I have heard learned counsel for the appellant and the learned counsel for respondent - accused.

3. It is argued for the appellant that, the appellant - complainant was Professor in Sarda College, Ahmednagar and was Secretary of the Vidya Prasarak Mandal, Ahmednagar. On the day of incident, the accused took up the quarrel with the complainant, claiming that his son had been failed by the complainant and for such reasons, fought with the complainant, causing him injuries. A crowd had gathered on the road near Hotel Oberoi and P.W.3 Prashant and eye witness and P.W. Shrinivas Shirsagar, the Peon from the school where complainant is Secretary, happened to be there in the crowd and they rescued the complainant from the accused. There was medical evidence, brought on record by examining P.W.2 Dr. Rajendra and P.W.5 Dr. Vishnu Yadkikar. It is argued that, the trial Court wrongly ignored the N.C. report, certified copy of which had been filed on the reasoning that original of the register was not

called from police station. According to the learned counsel for the complainant, there was sufficient evidence to hold the accused guilty for offence under Section 323 of the Indian Penal Code.

4. Against this, the learned counsel for the accused has submitted that, there were various contradictions and omissions in the evidence and the trial Court has rightly acquitted the accused. Although crowd had allegedly gathered, only P.W.3, who is friend of the complainant and P.W.4, who is Peon in the school where complainant is Secretary, have been examined and they are interested witnesses. The certified copy of N.C. was not tendered in evidence although copy had been filed. For such reasons, the counsel for accused claimed that the acquittal is proper and needs to be maintained.

5. This appeal is against acquittal. When judgment of acquittal has been recorded by the trial Court after recording evidence, the presumption of innocence of

accused being innocent till found guilty gets emboldened. With the help of counsel for both sides, I have gone through the oral evidence as well as the judgment of the trial Court. If the judgment of the trial Court is seen, the trial Court referred to the evidence of complainant Sudhakar and for corroboration, referred to the other evidence. It found that, there were various discrepancies in the oral evidence. The trial Court has noted :-

- (i) That, P.W.1 Sudhakar deposed that nobody rescued him while P.W.3 Prashant had deposed that he tried to rescue the quarrel.
- (ii) P.W.4 Shriniwas Shirsagar stated that he was on the spot for 1 1/2 hour, whereas, according to the trial Court, the incident was in narrow compass;
- (iii) P.W.4 Shriniwas deserved to be disbelieved as he was serving in the same school where the complainant was Secretary and so according to the trial Court, the evidence adduced appeared to be concocted.
- (iv) Referring to the evidence of doctors, the trial Court

found that, although injuries were mentioned by the doctors, it did not mean that it was direct result of the assault.

- (v) Although certified copy of N.C. is produced, original N.C. register is not called from the police station to prove the F.I.R. and merely bringing certified copy is not enough.
- (vi) The incident took place on 6.5.2000 and private complaint is filed on 17.6.2000, which is after more than one month and there is inordinate delay.

6. For such reasons, the trial court recorded the judgment of acquittal.

7. Going through the evidence which has been brought, I also find that there are material contradictions and omissions and on the basis of evidence brought, it would be risky to convict the accused. I make brief reference to such contradictions, omissions etc.

(a) The complaint (Exh. 1) filed by the complainant claims that the complainant, on 6.5.2000, at about 11.30 a.m., was proceeding towards his house and came near Oberoi Hotel, where he had to take a turn and had stopped, at which time, the accused came on motorcycle from behind and the front wheel of the motorcycle was with force, kept pushed against the rear wheel of his moped and when complainant turned back, accused asked if he was S.P. Kulkarni and when the complainant said "Yes", accused gave a severe slap on the back of complainant, because of which he fell down.

Against this, in the verification recorded by the complainant below the complaint, he claimed that, the accused came from behind and asked if he was S.P. Kulkarni and when he said "Yes", suddenly started beating him. In the verification, no claim is made that the motorcycle was pressed against the moped. In his evidence, complainant deposed that, when he was taking turn, one motorcycle came from behind and given a "dash"

to his moped from the back side and because of that dash, he fell down. Further, what was claimed in the complaint as a slap on the back by the accused, was converted into a fist blow at the time of evidence.

(b) In the complaint, complainant claimed that, at the time of incident, the injuries inflicted were:

- (1) Accused gave severe slap on his back;
- (2) Accused caught him by his neck and made him to stand;
- (3) Gave fist blows in his stomach;
- (4) Fist blows on his chest; and
- (5) Gave severe fight on his left cheek near left ear.
- (6) The person who was with accused, beat complainant on his back and
- (7) That person gave kick blows to the complainant.

(c) In verification statement below the complaint,

the complainant had claimed that, when the accused came on motorcycle from behind, after verifying name of complainant, he started beating him. Details given were that :

- (i) The accused gave fist blows on chest,
 - (ii) Fist blow on stomach,
 - (iii) Gave a fight near left ear,
 - (iv) The person with accused boxed back of complainant and gave kick blow.
- (d) In oral evidence, the complainant claimed that, after the accused came behind on motorcycle and dashed the motorcycle, he fell down and thereafter :-

- (i) Accused gave fist blow on his back.
- (ii) held his collar and made him to stand up and abused him.
- (iii) Gave fist blows on his chest.
- (iv) Fist blow on his abdomen, and
- (v) Gave slap on left cheek.

(e) In oral evidence, complainant did not claim that the other person was there with accused and that the other person also boxed or kicked him. His witness P.W.4 Shriniwas Shirsagar, Peon, however, has deposed that, there were two persons who were beating the complainant. Thus, there is no consistency in the evidence.

(f) Although the complainant counted various blows given to him, when he had gone to the hospital taking Police Yadi on 6.5.2000, P.W.2 Dr. Rajendra examined him and there were only two injuries shown to the doctor at that time. They were :-

- (i) Linear abrasion on chest 8 cm. x 1 cm.
- (ii) Abrasion on back, right side 1 cm x 5 cm.

The injuries were recorded as simple and possible by hard and rough object. Such injuries are not possible by slap can be seen from evidence of doctor. Realising this in the evidence of doctor, it was brought on record that the injuries were possible due to nail touch when fight blow is

given. It is not necessary that only because the doctor has said "Yes", the opinion should be blindly accepted. The oral evidence of incident is of either giving slap or fist blows on the back and fist blows on the chest. When a fist blow is given, ordinarily the thumb and fingers are folded. There is no evidence that the fist was so formed that nail would protrude and come into contact. Again it is not the case that the first blows were given after the upper clothes of the complainant were removed. When the upper clothes are on the person, even if fist blows are given, how linear abrasion and abrasion would be found is a matter of consideration. The number of injuries claimed by the complainant also do not match with this medical certificate.

(g) The other evidence is of Dr. Vishnu (P.W.5), to whom the complainant went after six days of the incident and who has deposed that the complainant had traumatic haematoma with contusion on chest wall. This doctor was not shown any other injuries.

(h) In the complaint, the complainant had claimed that he had Rs.5000/- in his pocket before the incident occurred. In oral evidence, he claimed that he lost that amount in the incident. However, there is nothing to show that he reported the loss of such amount.

(i) In oral evidence, the complainant further exaggerated to claim that there was bluish injury to his eyes and he took treatment from Dr. Sudrik. Such alleged injury to the eye was not claimed in the complaint filed by him although it was claimed that fight was given on the left cheek near the ear.

(j) P.W.3 Prashant Kulkarni examined by the complainant, in his examination-in-chief claimed that the accused came on motorcycle from behind and dashed the motorcycle against Sunny Moped of the complainant, causing him to fall and thereafter the accused gave fist blows on the back of complainant, and on his stomach. Although this evidence referred to the presence of another accused with the

accused, this witness did not attribute any acts of assault by that person to the complainant. P.W.3 admitted that he was friend of complainant. His cross-examination shows that, when he went to the spot, there was "scuffle" going on between the complainant and the accused. He further deposed that, at the concerned time, "pushing to each other was going on". No such thing has been claimed by the complainant that for saving himself he went into scuffle with the accused. The complainant deposed as if it was a one-sided attack by the accused and he was only asking as to why the accused was beating him and that the accused gave reason of complainant failing his son. The cross-examination of P.W.3 shows that there was actually a scuffle and pushing around between the complainant and the accused. The details and genesis of the incident are thus not clear.

(k) The Peon of complainant P.W.4 Shriniwas Shirsagar has deposed to favour the complainant. He claims that, when he saw, there was already a crowd

gathered at the spot and he deposed that accused beat complainant on his stomach and back by fist blows and that accused gave one slap on the face of complainant. According to this witness, there were two persons who were beating the complainant.

8. Looking to the above discussion, I find that there are various contradictions and omissions. The medical evidence does not fit in with the details of the incident as claimed by the complainant. If the complainant was to be believed, there would have been much more injuries than the two abrasions recorded in medical certificate (Exh.30) by P.W.2 Dr. Rajendra. Although the certified copy of N.C. was filed in the Court, the same was not tendered in evidence by the complainant or by calling any police witness. Even if I ignore the reasoning of the trial Court that in spite of certified copy original register must necessarily be called, still in the absence of tendering of the certified copy in evidence by witness, only because with other documents a certified copy has been tagged, does not

mean that the accused gets notice that the prosecution wants to rely on it. It is necessary to tender the certified copy in evidence when the question of its admissibility could be considered and the accused gets opportunity to question the same. The fact remains that without going into such procedure, it has to be held that first version which was given to the police has not come on record and the private complaint filed is more than one month after the incident and thus, there has been a delay.

9. For above reasons, I do not find any reason to interfere with the acquittal recorded by the trial Court in this appeal which was admitted on 9.12.2003.

10. I decline to interfere with the judgment and order of acquittal. There is no substance in the appeal. The appeal is dismissed.

(A.I.S. CHEEMA, J.)