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

CRIMINAL APPEAL NO.426 OF 2002

1. Ramrao Sambharao Mane
Aged 40 years (Accused No.1)
2. Ramchandra Tukaram Mane,
Age 65 years (Accused No.5)
3. Ganesh Sambharao Mane,
Age 49 years (Accused no.7)
4. Kailash Jayantrao Mane,
Age 49 years, (Accused No.12)

(Respondent No.4 dead, appeal abated)

5. Bhagwan Ganpati Mane,
Age 45 years (Accused No.22)
6. Pralhad Sambhaji Mane,
Age 32 years (Accused No.29)
7. Dagdu Narba Jadhav,
Age 49 years (Accused No.31)

All Resident of Waipana (Kd.),
Taluka Hadgaon, District Nanded ... APPELLANTS

VERSUS

The State of Maharashtra
through Police Station, Tamsa
Taluka Hadgaon, District Nanded
through Public Prosecutor,
High Court, Aurangabad ... RESPONDENT

.....
Mrs. A.N. Ansari, Advocate for appellants
Mrs. Y.G. Gujarathi, A.P.P. for respondent
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CORAM: SUNIL K. KOTWAL, J.

Date of reserving judgment : 14th December, 2017

Date of pronouncing judgment : 19th December, 2017

J U D G M E N T :

1. This appeal is directed against the judgment and order of conviction dated 23.7.2002, passed by 2nd Additional Sessions Judge, Nanded in Sessions Case No.116/1997, convicting the original accused No.1, 5, 31, 22, 12, 7 and 29 for the offences punishable under Sections 143, 147, 148, 326 read with Section 149 of the Indian Penal Code. The appellants are original above referred convicted accused. The respondent is the State of Maharashtra.

2. The facts leading to institution of this Criminal Appeal are that, including the convicted accused, total 36 persons were prosecuted for the offences punishable under Sections 147, 148, 307 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act. Prosecution case in brief is that, on 23.5.1996 at about 8.00 to 8.30 p.m., when informant Shri Panjabrao Ganpat Mane (P.W.2) was sitting in front of his house at Mouze Waipana (Khurd), Taluka Hadgaon, that time, including the convicted accused, total 36 persons came to that

house and they assaulted the informant by sticks, axe and stones. The informant sustained grievous and simple hurt. On 24.5.1996, the informant lodged F.I.R. (Exh.103) to Police Station, Tamsa. Crime No.33/1996 was registered against 36 persons under Sections 147, 148, 149, 324, 307 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The complainant was referred to Primary Health Centre, Tamsa where he was examined by Dr. Balkrishna Bhanegaonkar (P.W.1) and issued injury certificate (Exh.101). During the course of investigation, investigating officer P.S.I. Shankar Mali (P.W.9) prepared spot panchanama and seized blood stained banian from the spot. During the course of investigation, sticks were seized from the possession of accused persons under different seizure memos. After completion of the investigation, charge sheet was filed before the Judicial Magistrate, First Class, Hadgaon.

3. Offence punishable under Section 307 of the Indian Penal Code being exclusively triable by Court of Sessions, the case was committed to the Sessions Court, Nanded. The then Additional Sessions Judge framed charge (Exh.37) against 36 accused persons for committing offences punishable under Sections 147, 148, 307 read with Section 149 of the Indian Penal Code and Section 135 of the Bombay Police Act. As accused pleaded not guilty, prosecution examined total 9 witnesses. After

considering the oral and documentary evidence placed on record, learned trial Court convicted the accused under Sections 143, 147, 148, 326 read with Section 149 of the Indian Penal Code and sentenced them to suffer simple imprisonment for six months and to pay fine of Rs.1000/- each, in default to suffer simple imprisonment for one month each for the offence under Section 143 of the Indian Penal Code; rigorous imprisonment for one year and fine of Rs.2000/- each, in default to suffer simple imprisonment for two months each under Section 147 of the Indian Penal Code; rigorous imprisonment for two years and fine of Rs.3000/- each, in default to suffer simple imprisonment for three months under Section 148 of the Indian penal Code and rigorous imprisonment for seven years and fine of Rs.5000/- each, in default to suffer simple imprisonment for six months under Section 326 of the Indian Penal Code. Trial Court directed that all the substantive sentences shall run concurrently. Against that judgment and order of conviction, the convicted accused have preferred this appeal.

4. Heard Smt. A.N. Ansari, learned counsel for the appellants and Shri Y.G. Gujarathi, learned A.P.P. for the respondent. Learned counsel for the appellant assailed the judgment and order passed by the trial Court on the ground that, unexplained delay in lodging F.I.R., conflict in between medical

evidence and oral testimony of informant Panjabrao (P.W.2) and lack of corroboration by independent witnesses.

5. Learned A.P.P. for the State supported the judgment passed by the trial Court on the ground that, on account of time spent by prosecution for medical examination of the informant, the delay in lodging the F.I.R. cannot be viewed with suspicion. He fairly conceded that, except the informant (P.W.2) and medical officer (P.W.1) as well as investigating officer (P.W.9), almost remaining prosecution witnesses have turned hostile. Contention of the learned A.P.P. is that, even the sole testimony of Panjabrao (P.W.2), which is corroborated by evidence of medical officer (P.W.1), is sufficient to establish guilt of the accused under Sections 143, 147, 148, 326 read with Section 149 of the Indian Penal Code.

6. In the case at hand, inimical terms in between informant (P.W.2) and the convicted accused is not disputed. Even the informant Panjabrao (P.W.2) has admitted in his cross-examination that, he is facing prosecution along with other 45 persons. In addition to this, it emerges that, the incident occurred due to enmity in between informant and accused persons as well as out of village politics. Even in this appeal, copy of the judgment delivered by the Judicial Magistrate, First

Class, Hadgaon in R.C.C. No.306/1996 is filed. On perusal of this judgment, it becomes absolutely clear that, even the informant and eye witnesses were prosecuted for causing hurt to the convicted accused persons on the said date of the incident. Thus, it is evident that, on the basis of one and the same incident, cross criminal cases were filed against the party of informant Panjabrao Mane as well as against the convicted accused and other persons. In this backdrop, when prosecution witnesses are on inimical terms with accused persons, their oral testimony must pass the test of close scrutiny. However, merely on the ground of inimical terms in between accused and the prosecution witnesses, the testimony of these witnesses cannot be discarded if otherwise it is trustworthy.

7. To substantiate charges against the accused persons, apart from oral testimony of Dr. Balkrishna (P.W.1) and Panjabrao (P.W.2), prosecution has examined Pandit Mande (P.W.4), Narayan Kadam (P.W.5), Rangrao Mane (P.W.6), Madhav Mane (P.W.7), as eye witnesses of the incident. These all witnesses have flatly denied the alleged occurrence. Though these witnesses were declared hostile and subjected to lengthy cross-examination by learned A.P.P., nothing could be elicited which is helpful to establish the link in between convicted accused persons and assault to informant Panjabrao (P.W.2).

Therefore, the oral evidence of these eye witnesses, placed on record by prosecution deserves to be discarded in toto.

8. Venkatrao Vasurkar (P.W.3) is examined by prosecution as panch witness on panchanama (Exh.105). Though this witness has duly proved the preparation of spot panchanama (Exh.105) and seizure of one banian lying on the spot, his evidence is useless piece of evidence for the simple reason that the seized banian was not referred to informant Panjabrao (P.W.2) and it was not identified by Panjabrao (P.W.2) as his own banian. Even Panjabrao (P.W.2) nowhere deposed in his evidence regarding the so called banian found to be lying on the spot of the incident. Therefore, the evidence placed on record by prosecution in the form of spot panchanama is of no help to establish guilt of the accused.

9. Panch Pandurang Pawar (P.W.8) has merely proved the seizure of four sticks from the accused persons and preparation of panchanama (Exh.121 to 124). However, seizure of article like sticks from the villagers is at all not useful to establish link in between accused and assault to Panjabrao for the simple reason that stick is most common article found in the houses of villagers. None of these articles are referred to Chemical Analyser to establish that it bears the blood stains of

the informant Panjabrao (P.W.2). Even these seized sticks were neither referred to Panjabrao (P.W.2) nor he identified it as weapon of offence. Therefore, the evidence placed on record in the form of seizure of sticks from the possession of the accused persons is also useless piece of evidence and deserves to be ignored.

10. In view of above discussion, except the oral testimony of Panjabrao (P.W.2) and Medical Officer (P.W.1), no other evidence is available against the accused persons. In the circumstances, I have to examine whether sole testimony of Panjabrao (P.W.2) is trustworthy without any corroboration. Panjabrao (P.W.2) deposes before the Court that, on the date of the incident at about 8.00 to 8.30 p.m., accused persons visited his house and they assaulted him by sticks and axe on his head and, therefore, he lodged report to police station. From the testimony of this witness, it further emerges that he was referred for medical examination. This witness has duly proved his F.I.R. (Exh.103).

11. However, after going through the oral testimony of Panjabrao (P.W.2), it reveals that, he has made vague statement that accused persons came to his house and assaulted him by sticks and axe. He nowhere made it clear which accused were

holding sticks and which accused were holding axe in their hands. Even in examination-in-chief itself Panjabrao (P.W.2) nowhere deposes that axe blow was inflicted on his head by anyone of the convicted accused. On the other hand, from the testimony of Dr. Balkrishna (P.W.1), it emerges that, injury No.9 found on the occipital region of the informant is incised wound which is not possible by the stick. Thus, the oral testimony of informant before the Court is not consistent with injury No.9 proved by Dr. Balkrishna (P.W.1). Even during investigation, no sharp edged weapon is seized by the investigating officer from anyone of the accused person. Thus, it can be safely said that the oral version of Panjabrao (P.W.2) is not consistent with medical evidence.

12. Otherwise also, the testimony of Dr. Balkrishna (P.W.1), who examined the informant at P.H.C., Tamsa is of no help to the prosecution to connect the accused with the injuries found on the body of informant for the simple reason that, injury Nos.1 to 7 are contusions and injury No.8 is lacerated wound. Colour of these injuries is not mentioned by the Medical Officer in the injury certificate Exh.101. Even in deposition, Balkrishna (P.W.1) nowhere deposed regarding colour of the injury Nos.1 to 8. Without colour of the contusions and lacerations, age of such injuries cannot be ascertained. Even from the testimony of

Balkrishna (P.W.1), it emerges that he himself is not certain as to what was the probable age of the injuries found on the body of Panjabrao (P.W.2). In examination-in-chief, Balkrishna (P.W.1) says that the age of the injury was within 10 to 14 hours. However, in cross-examination, he admits that the age of the injuries can be within 24 hours also. Such type of vague evidence of Medical Officer cannot be relied upon as trustworthy testimony to connect the accused with the so called injuries found on the body of Panjabrao (P.W.2).

13. The damaging blow to the prosecution case is that, though Dr. Balkrishna (P.W.1) deposed that the injury No.6 found on the body of Panjabrao (P.W.2) is grievous, he nowhere deposed that injury No.6 is dislocation of any bone. In the deposition, this witness has described injury No.6 only as contusion at left thumb of the size 1/4 x 1/4 cm. Thus, obviously this injury No.6 – contusion does not fall within the four corners of the definition of 'grievous hurt' under Section 320 of the Indian Penal Code.

14. Learned A.P.P. tried to take support of M.L.C. Certificate Exh.101, wherein note is taken regarding X-ray examination and dislocation of bone. However, such note cannot be read as substantive evidence unless Balkrishna (P.W.1)

deposes that there was dislocation of metacarpophalangeal joint of left thumb. Only oral evidence of medical officer is substantive evidence and not the M.L.C. Certificate. Another important aspect is that, though according to Dr. Balkrishna (P.W.1) grievous hurt i.e. contusion was found on 'left thumb' of informant Panjabrao, Panjabrao (P.W.2) deposes otherwise that during the incident he sustained injuries on his 'right thumb' and the climax is that the F.I.R. Exh.103 spells out that, Panjabrao (P.W.2) sustained injury on his thumb when he fell on the ground. If Panjabrao (P.W.2) sustained injury to his thumb due to fall on the ground, it cannot be said that it was voluntarily caused hurt to Panjabrao by any of the accused person. Thus, obviously, the oral testimony of Panjabrao (P.W.2) is not consistent with medical evidence of Dr. Balkrishna (P.W.1) as well as with his own F.I.R.

15. Important point is that, in the backdrop of inimical terms in between informant and accused persons as well as filing of cross criminal cases against each other, the delay in lodging F.I.R. needs to be explained by the prosecution. As per prosecution case, the incident occurred on 23.5.1996 at about 8.00 p.m., but the F.I.R. is lodged on 24.5.1996 at 8.15 a.m. to Police Station, Tamsa. Thus, there is delay of 12 hours in filing the F.I.R., which is not explained by the prosecution in any manner. Thus, in the background of inimical terms in between

the parties, the unexplained inordinate delay in lodging the F.I.R. creates the possibility of concoction of false case against the accused.

16. In the circumstances, when oral testimony of Panjabrao (P.W.2) is in conflict with medical evidence as well as his own F.I.R., the unexplained delay in lodging F.I.R. is certainly fatal to the prosecution case to extend the benefit of doubt in favour of the accused.

17. In the result, I hold that the conviction recorded by learned trial Court ignoring all the above discussed important aspects of the case, is bad in law and deserves to be set aside. Accordingly, I pass the following order :

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The conviction and sentence imposed by learned 2nd Additional Sessions Judge, Nanded in Sessions Case No.116/1997 against accused No.1 Ramrao Sambharao Mane, accused No.5 Ramchandra Tukaram Mane, accused No.7 Ganesh Sambharao Mane, accused No.22 Bhagwan Ganpati Mane, accused No.29 Pralhad Sambhaji Mane and accused

No.31 Dagdu Narba Jadhav for the offences punishable under Sections 143, 147, 148, 326 read with Section 149 of the Indian Penal Code is set aside.

- (iii) The accused No.1 Ramrao Sambharao Mane, accused No.5 Ramchandra Tukaram Mane, accused No.7 Ganesh Sambharao Mane, accused No.22 Bhagwan Ganpati Mane, accused No.29 Pralhad Sambhaji Mane and accused No.31 Dagdu Narba Jadhav are acquitted of the offences punishable under Sections 143, 147, 148, 326 read with Section 149 of the Indian Penal Code.
- (iv) Bail Bonds and surety bonds of the accused stand cancelled.
- (v) The accused be set at liberty forthwith.
- (vi) Fine amount deposited by these accused, if any, be refunded to them after the period of appeal is over.
- (vii) Fine amount deposited by accused No.12 Kailash Jayantrao Mane be refunded to his legal representative/s after due verification.
- (viii) Accused No.1, 5, 7, 22, 29 and 31 shall execute before the trial Court bail bonds with sureties for the amount of Rs.5000/- (Rupees five thousand) each to appear before the Supreme Court as and when

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notices are issued to them in respect of any proceedings filed against this judgment vide Section 437-A of the Code of Criminal Procedure and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

fmp/