

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 160 OF 2006

The State of Maharashtra
Through complainant Chandrakant
Kisanrao Pawar, Police Constable,
P.S. Kallam, Tq. Kallam.

....Appellant.

Versus

Mahadu @ Mahadeo Rustum Ghute,
Age 36 years, R/o. Indra Nagar,
Kallam, Dist. Osmanabad.

....Respondent.

Mrs. D.S. Jape, APP for appellant/State.

Mr. S.J. Saluke, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : JUNE 07, 2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed to challenge the judgment and order of Sessions Case No. 108/2002 which was pending in the Court of learned 2nd Ad-hoc Additional Sessions Judge, Osmanabad. The Trial Court has acquitted the respondent of the offences punishable under sections 307, 353 and 333 of Indian Penal Code (hereinafter referred to as 'IPC' for short). Both the sides are heard.

2) In short, the facts leading to the institution of the present proceeding can be stated as follows :-

First informant Chandrakant Pawar was working as Police Constable in the year 2001-2002 in Kallam Police Station. On 14.9.2001 he and his two colleagues like Police Constable Kamble and Police Constable Sakhare were proceeding towards city to collect information in respect of accused persons from C.R. No. 173/2001. At about 22.00 hours the accused came from backside in one auto-rickshaw and he picked up quarrel with Pawar. Accused said that due to Pawar, he was arrested in a case of burning of house and scuffle started between Pawar and accused.

3) It is the case of Pawar that during quarrel, the accused made an attempt to hit a bottle of beer on his head, but bottle missed head and it hit the back and then second bottle was hit by the accused on his head and due to that, he sustained injury to head. It is the case of Pawar that the two bottles were brought in pockets of clothes by the accused. There was scuffle and the other two constables tried to intervene, but after assaulting the first informant the accused started running away. Chase was given by two constables to accused and ultimately the accused was caught when he was running away.

4) Chandrakant Pawar was taken to Government Hospital for treatment. Four stitches were required to be given to head injury.

On the same day, Pawar gave report against the accused and crime at C.R. No. 178/2001 came to be registered in Kallam Police Station for aforesaid offences and also for offence punishable under section 326 of IPC.

5) During the course of investigation, the spot panchanama was prepared and statements of eye witnesses came to be recorded. The chargesheet came to be filed for aforesaid offences. The learned Additional Sessions Judge framed charge. The accused pleaded not guilty. The prosecution examined in all 13 witnesses to prove the offences. The accused took the defence of total denial. No defence evidence is given by the accused. The Trial Court has disbelieved the evidence of eye witnesses including injured first informant and the Trial Court has given acquittal.

6) Three eye witnesses are examined by the prosecution before Trial Court viz. first informant Chandrakant Pawar (PW 6), Rajendra Kamble (PW 7) and Vijayanand Sakhare (PW 13). All these persons were working as Constables in Kallam Police Station at the relevant time. In substantive evidence, the first informant has stated that the first blow did not hit him and the second bottle hit his head and due to that, he sustained injury. In his evidence, the F.I.R. is proved as Exh. 27. He produced clothes which were having blood

stains before police and he has given evidence that he was examined in Government Hospital immediately after the incident. The F.I.R. is consistent with his version that due to bottle hit on his head, he sustained bleeding injury to his head.

7) Rajendra (PW 7) has given similar evidence. In addition to the aforesaid evidence given by the first informant, Rajendra has given evidence that he and Sakhare chased the accused and he was caught on the spot and then they took the first informant to the hospital. The evidence of Vijayanand Sakhare (PW 13) is little bit different. He has given evidence that though, there was scuffle between Pawar and accused, accused had thrown one beer bottle at Pawar and that bottle had hit the back of Pawar. He has given evidence that one more bottle was thrown by accused, but he has not given evidence that second bottle hit Pawar. Thus, he has not given evidence that Pawar sustained injury to his head.

8) The spot panchanama is duly proved and it shows that pieces of bottles were lying there. However, the version of the complainant that two beer bottles were brought by the accused in two pockets of clothes appears to be improbable in nature. The version that there was scuffle between the appellant and Pawar also appears to be improbable. There were atleast three police constables

and they were to handle only one accused. The age of the accused was 36 years and the age of the complainant was 31 years. Other constables were also young. It is their version that accused was caught red handed on the spot after giving chase to him. In that case, some injuries must have been found on the person of accused, but there is no record of medical examination of the accused. This circumstance is lacuna in the case of prosecution.

9) In the F.I.R., there is mention that accused had come in one auto-rickshaw. Though there is such mention, there is no evidence of independent witness to corroborate the version of three constables. The evidence on record of the three witnesses show that on the same day, the accused was released on bail in a case which was filed against him in the past and accused had grievance that he was implicated by Pawar in that case. No record of that case is produced. Similarly, when the prosecution wanted to prove that offence punishable under section 353 of IPC was committed, it was necessary for prosecution to produce some record to show that at the relevant time, Pawar was discharging his official duty. The prosecution could have produced the case diary or station diary to show that the three constables were discharging duty in C.R. No. 173/2001. No record of both the crimes is produced by the prosecution and this is one more lacuna in the present matter.

10) The record of medical examination is proved in the evidence of Dr. Rajendra (PW 10) and his evidence shows that he had examined not only the head portion, but he had examined the back to ascertain as to whether there was other injury, but only one injury was found on occipital region. The injury is described as simple. X-rays were taken and no fracture was detected. Injury is described as C.L.W. and it was bone deep. It was caused within 24 hours and the first informant was examined at 10.15 p.m. of 14.9.2001. In the F.I.R., the time of incident is given as 10.00 p.m. There is traffic on road, but no independent witness is with the prosecution. Further, if the time of incident given in F.I.R. and time of medical examination is compared, it does not look probable that within 15 minutes constable was taken to Kallam Rural Hospital and he was examined there. The evidence is given that the other two constables had given chase to the accused, the accused was then held and then the first informant was shifted to Government Hospital. The age of the injury is given as 24 hours and this circumstance also creates doubt about the version of Pawar. Thus, there is evidence of only interested witnesses and there are aforesaid suspicious circumstances. The doctor has given evidence that such injury can be caused due to accidental fall from the motorcycle. As there is such possibility and there are aforesaid

circumstances, this Court holds that the view taken by the Trial Court is a possible view. This Court holds that it is not possible to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/