

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

CRIMINAL APPEAL NO.691 OF 2002

Gunwant s/o Chandrakant Kohale
Age 24 years, Occu. Agriculture,
R/o Haregaon, Tq. Ausa, District Latur ... APPELLANT

VERSUS

The State of Maharashtra
through Police Officer,
Killari Police Station, Latur
(Copy to be served on the
Public Prosecutor, High Court of
Judicature at Bombay,
Bench at Aurangabad) ... RESPONDENT

.....
Shri V.D. Salunke, Advocate for appellant
Shri M.M. Nerlikar, A.P.P. for respondent / State
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CORAM: SUNIL K. KOTWAL, J.

Date of reserving judgment : 7th February, 2018

Date of pronouncing judgment: 23rd February, 2018.

JUDGMENT :

1. Vires of the judgment and order dated 31.10.2002, passed by learned Additional Sessions Judge, Latur in Sessions Case No.9/2000, convicting the appellant (accused No.14) for the offence punishable under Section 324 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for one year,

is challenged by the convicted accused in the present Appeal. Respondent is the State of Maharashtra.

2. The facts leading to institution of this appeal are that, total 19 accused were prosecuted for the offences punishable under Sections 326, 324, 323, 147, 148 and 149 of the Indian Penal Code. Prosecution case in brief is that, on 12.12.1998, at about 7.00 a.m., informant namely Sugriv Kohale (P.W.1) was intimated by his nephew Dhanaji Kohale that one Pratap Babruwan Kohale was removing soil by tractor from the field of informant. Therefore, Sugriv (P.W.1) rushed towards his field near Limbala village along with Ganesh Mudbe, Mohan Kovhale, Prabhakar Kovhale, Vasant Kovhale and Dhanaji. They found that, the laboures of Pratap Kovhale were loading soil in the tractor. Sugriv (P.W.1) requested them not to remove that soil. Therefore, those labours stopped their work and Pratap Kovhale took those labours towards village and informed the informant Sugriv (P.W.1) that he would return with 3-4 respectable villagers to show the ownership of the said soil. Therefore, the informant Sugriv (P.W.1) waited in the same field along with his companions. At about 9.00 a.m., Pratap Kovhale came to the spot by his tractor along with accused Nos.1 to 19. One Govind Kovahle asked Sugriv (P.W.1) as to why he prevented the removal of soil. That time, the accused No.14, who was sitting in

the tractor, inflicted iron pipe blow on the head of Sugriv Kohale. The informant Sugriv sustained bleeding injury on his head and, therefore, he fell down. Thereafter, the other accused persons assaulted the companions of Sugriv by stick and iron pipes. They all sustained bleeding injuries. Therefore, on the same day, Sugriv (P.W.1) lodged F.I.R. Exh.71 to Police Station, Killari.

3. Above said offences came to be registered vide Crime No.148/1998. The injured were referred to Rural Hospital, Killari. Dr. Gurbas Shete (P.W.2) examined the injured persons. Spot panchanama of the scene of offence was prepared. After completion of the investigation, P.S.I. Popat Gaikwad (P.W.8) filed charge sheet against the accused persons in the Court of Judicial Magistrate, First Class, Ausa. As counter Sessions case was pending before the Sessions Court, Latur, this case was also committed to Sessions Court, Latur.

4. During pendency of the trial, accused No.19 died and proceeding against him was abated. Charge Exh.3 was framed against all the 18 accused persons for the offences punishable under Sections 326, 324, 323, 147, 148 and 149 of the Indian Penal Code

5. After considering the oral and documentary evidence placed on record, learned trial Court convicted only accused

No.14 for the offence punishable under Section 324 of the Indian Penal Code. Rest of the accused were acquitted. The judgment of acquittal is not challenged by State by filing separate appeal. Only accused No.14 has challenged his conviction under Section 324 of the Indian Penal Code.

6. Heard strenuous arguments submitted by Shri V.D. Salunke, learned counsel for the appellant (original accused No.14) and learned A.P.P. for the State. Hereinafter the appellant is referred as per his original status as accused No.14.

7. Learned counsel for the appellant assailed the judgment of conviction on the ground that no independent witness is examined by prosecution though available. His next objection is that, the injuries sustained by the accused persons at the hands of informant and his friends are not explained by the prosecution and, therefore, the genesis of the occurrence is suppressed. In the alternate, he requested the Court to extend the benefit of Probation of Offenders Act in favour of accused No.14 as he was never convicted in the past for any criminal offence. He pointed out that, accused No.14 was young at the time of occurrence and, therefore, after passage of 15 years from the date of conviction, it will not be proper to send this young person in jail.

8. Learned A.P.P. for the State submitted that, Sugriv (P.W.1) and Mohan (P.W.5) are the injured witnesses and, therefore, their presence on the spot cannot be doubted. Learned A.P.P. pointed out that, Ganesh Mudbe (P.W.4) is independent witness and he has also supported the testimony of P.W.1 and P.W.5 about the occurrence. The learned A.P.P. pointed out that the evidence of trustworthy prosecution witnesses is also corroborated by medical evidence of Dr. Shete (P.W.2). Learned A.P.P. submitted that, considering the injuries sustained by informant and Mohan Kohale (P.W.5), benefits of Probation of Offenders Act need not be extended in favour of accused No.14.

9. Trite law is that, the testimony of injured eye witnesses cannot be disbelieved unless the defence can point out substantial reasons for the same. In the case at hand, Sugriv (P.W.1) has deposed on oath all the details of the occurrence and he has categorically stated that accused No.14 Gunwant inflicted iron pipe blow on his hand from the tractor. Despite lengthy cross-examination of this witness, nothing could be elicited from the cross-examination of Sugriv to disbelieve his testimony regarding assault to him by accused No.14 by iron pipe. Even Dhananjay Kohale (P.W.3) and Ganesh Mudbe (P.W.4) have categorically deposed before the Court that, at the time of

occurrence, initially there was talk in between informant Sugriv and one Govind about removal of soil from the spot of incident and thereafter immediately accused No.14 Gunwant inflicted iron pipe blow on the head of Sugriv (P.W.1). Even Mohan Kohale (P.W.5), who is one of the injured witness deposed before the Court that, at the time of occurrence accused No.14 Gunwant inflicted iron pipe blow on the head of Sugriv and the same accused also inflicted iron pipe blow on the head of this witness himself. Even Prabhakar Kohale (P.W.6) has also fully corroborated the version of Sugriv (P.W.1). No doubt, except Ganesh Mudbe (P.W.4), other witnesses are relatives of informant Sugriv (P.W.1). However, on that count alone the consistent testimony of these truthful witnesses cannot be doubted when in their cross-examination nothing could be elicited by prosecution to disbelieve their version regarding assault to Sugriv (P.W.1) and Mohan (P.W.5). Otherwise also, Ganesh (P.W.4) is independent witness and, therefore, the defence cannot say that the independent witness is suppressed by the prosecution.

10. It is to be also noted that, accused persons have not denied their presence on the spot, but they have taken self defence. As from the evidence on record it emerges that, for no reason accused No.14 started assaulting the informant and other

persons, it cannot be said that he acted in his self defence.

11. Otherwise also, the testimony of informant and other eye witnesses is fully corroborated by Dr. Shete (P.W.2), who has proved one contused lacerated wound caused within 24 hours when he examined Sugriv on 12.12.1998 at Rural Hospital, Killari and issued injury certificate Exh.63. This witness has also proved contused lacerated wound on the right parietal region of the skull and second contused lacerated wound on occipital region of the head of Mohan Kohale (P.W.5), which was also caused within 24 hours from the time of examination. In the cross-examination of this Medical Officer, he has specifically denied that the injuries sustained by Sugriv as well as injury No.1 sustained by Mohan Kohale are possible due to fall on the ground. He has also ruled out the possibility that those injuries were self inflicted injuries. Therefore, I have no hesitation to hold that the oral testimony of all prosecution witnesses regarding assault to Sugriv (P.W.1) and Mohan (P.W.5) is fully corroborated by medical evidence of Dr. Shete (P.W.2). In the circumstances, I have no hesitation to hold that on the basis of above discussed evidence of injured eye witnesses and Medical Officer, prosecution has proved beyond reasonable doubt that on the date and time of the occurrence, accused No.14 Gunwant voluntarily caused simple hurt to Sugriv Kohale and Mohan

Kohale by iron pipe which is deadly weapon, and thereby committed offence punishable under Section 324 of the Indian Penal Code.

12. As defence has not brought on record the injury certificates to show that accused No.1 Gunwant sustained any injury on his body, defence cannot prove that, genesis of the occurrence is suppressed by the prosecution. Therefore, the objection raised by learned counsel for the appellant regarding not giving explanation of the injuries found on the body of accused No.14 holds no substance.

13. In the result, conviction of the accused No.14 for the offence punishable under Section 324 of the Indian Penal Code is just, proper and needs no interference.

14. However, during pendency of the appeal, report of the District Probation Officer, Latur was called and he has reported that, in the past accused No.14 was not convicted and he does not carry criminal history. He opined that, the benefit of Section 4(1) of the Probation of Offenders Act can be extended in favour of accused No.14.

15. At the time of occurrence, accused No.14 was only 22 years old. Even the injuries sustained by informant Sugriv (P.W.1) and Mohan (P.W.5) are simple in nature. After the date

of judgment, for about 15 years, the sword of conviction is hanging on the neck of accused No.14. This would be sufficient punishment to the accused No.14. Otherwise also, considering the young age of the accused No.14 and his past clean history, it is desirable that benefit of Section 4(1) of the Probation of Offenders Act, 1958 can be extended in favour of appellant – accused No.14 instead of sentencing him to undergo imprisonment.

16. Therefore, though the conviction of the appellant – accused No.14 under Section 324 of the Indian Penal Code is confirmed, the sentence of rigorous imprisonment for one year deserves to be set aside and instead, the appellant – accused No.14 deserves to be released on his entering into good behaviour bond for the period of one year from the date of this order, under Section 4(1) of the Probation of Offenders Act, 1958. This appeal, therefore, deserves to be partly allowed. Hence, I pass the following order :

ORDER

- (i) Criminal Appeal No.691/2002 is partly allowed.
- (ii) The judgment and order of conviction of the appellant – accused No.14 under Section 324 of the Indian Penal Code in Sessions Case No.9/2000, passed by learned Additional Sessions Judge, Latur dated 31.10.2002 is

confirmed.

- (iii) However, the sentence of rigorous imprisonment for one year is set aside and the appellant – accused No.14 Gunwant s/o Chandrakant Kohale is released under Section 4(1) of the Probation of Offenders Act on his entering into bond of Rs.5000/- (Rupees five thousand) without surety, to appear and receive sentence when called upon during the period of one year from the date of this judgment. In the meantime, the appellant shall keep the peace and be of good behaviour.
- (iv) The appellant to furnish the good behaviour bond before the trial Court within one month from the date of passing of this judgment.
- (v) A copy of this judgment be forthwith furnished to the appellant.
- (vi) Bail bonds of the appellant – accused No.14 shall stand cancelled.

(SUNIL K. KOTWAL)
JUDGE

fmp/