

**IN THE HIGH Court OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 443 OF 2003

- 1) Manoj Tulshiram Yadav,
Age 26 years, Occ. Business,
R/o. behind Yiyani Complex,
Old Mondha, Nanded.
- 2) Bhima Chagan Solanke,
Age 20 years, Occ Business,
R/o. Lohar Galli Old Mondha,
Nanded.

APPELLANTS.

VERSUS

The State of Maharashtra

RESPONDENT.

Mr. A.A. Mukhedkar, Advocate for the appellants.
Mr. M.M. Nerlikar, A.P.P. for the State/respondent.

CORAM : SUNIL K. KOTWAL,J.

**Date of Reserving Judgment : 14th March, 2018.
Date of Pronouncing Judgment : 24th April, 2018.**

JUDGMENT :

1) This appeal is directed against the judgment and order of conviction punishable under Section 324 read with Section 34 of the Indian Penal Code, passed by the learned Sessions Judge, Nanded, in Sessions Case No. 47/2001. Appellants are the original accused Nos. 1 and 2. The respondent is the State of Maharashtra.

2) Facts leading to the institution of this appeal, in brief,

are that the informant Hardayalsingh (PW 1) was on friendly terms with accused No. 2 Bhima. At about 5 to 6 months prior to the incident, accused No. 2 Bhima had borrowed Rs. 1,000/- from the informant Hardayalsingh and as that amount was not refunded, on 13th August 2000 the informant met accused No. 2 at about 10.00 a.m. at the tea stall of his father situated at by-lane of Mondha Chowk at the road side. That time, accused No. 1 Manoj was also present at the said spot. When the informant demanded repayment of hand loan from accused No. 2, both accused started quarreling with informant and assaulted him by dagger on his right palm, wrist and near abdomen. The informant sustained bleeding injury and fell down. Looking to this situation, both accused started running away from the spot. Anyhow, the informant managed to board on a auto rickshaw which was passing from nearby road and reached to the Civil Hospital, Nanded. The informant was admitted for medical treatment in Civil Hospital at Nanded. On intimation to the Police Station, Police reached the Civil Hospital, Nanded and recorded the statement of the informant which is treated as the F.I.R. Crime No. 141/2000 was registered at Police Station Vazirabad, Dist. Nanded under Section 307 read with Section 34 of the Indian Penal Code.

3) By that time, police on patrolling duty came to know about the occurrence of incident and they immediately apprehended

accused persons. A.P.I. Patil (PW 6) conducted the investigation of this crime. During the course of investigation, he prepared spot panchanama (Exh. 30) and seized the blood stained pieces of papers and blood stained stone from the spot of incident. As per the disclosure statement given by accused No. 1 Manoj, a dagger, which was used at the time of commission of offence, was seized from the roof of Tapari of the accused No. 1 Manoj. The seized muddemal was referred to the Chemical Analyser, Aurangabad. After completion of the investigation, charge-sheet was submitted against both accused in the Court.

4) The offence punishable under Section 307 of the Indian Penal Code being exclusively triable by the Court of Sessions, this case was committed to the Court of Sessions, at Nanded.

5) The charge (Exh. 12) was framed against both the accused for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code.

6) Prosecution examined in all seven witnesses. The defence of the accused is of total denial.

7) After considering the evidence placed on record, the

learned Trial Court convicted both the accused for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 1,000/- each and in default rigorous imprisonment for four months. The said judgment of conviction and sentence is challenged in the present appeal.

8) Heard Mr. A.A.Mukhedkar, learned counsel for the Appellants and the learned APP for the State. For the sake of convenience, hereinafter the appellants are referred as accused Nos. 1 and 2.

9) Learned counsel for the Appellants submitted that in first information report (Exh. 18) it is not mentioned as to exactly which accused had inflicted dagger blow. He pointed out that even in the testimony of informant Hardayalsingh (PW 1), he has vaguely described the weapon of the offence and part played by each accused. His next submission is that, there was no motive behind the attack and no independent eye witness is examined by the prosecution. He also pointed out that, there is some delay in lodging the F.I.R.

10) Next limb of the argument of the learned counsel for the

appellants is that the Medical Officer, though examined by the prosecution, the medical evidence does not corroborate the testimony of Hardayalsingh. The contention of the learned counsel for the appellants is that the genesis of the occurrence of the offence is suppressed by the prosecution, therefore, the benefit of doubt goes in favour of the accused. In the alternative, he prayed for giving the benefit of the Probation of Offenders Act to the accused. He placed reliance on **Bapu Vithalrao Jadhav and Others Vs. The State of Maharashtra and Others [2016 (1) Bom. C.R.(Cri.) 190]**, wherein *“Though accused were convicted under Section 325 read with Sections 149, 147, 148 of the IPC, they were released by extending the benefit of Section 4 of the Probation of Offenders Act”*.

He also placed reliance on **Bhagwan Sahai and Another Vs State of Rajasthan** reported in **[2016 (3) Bom. C.R. (Cri.) 350]**, wherein the Hon'ble Apex Court ruled that, *“when the origin of genesis of the occurrence is suppressed by the prosecution, having injuries on the body of accused are not explained by the prosecution, the benefit of doubt goes in favour of the accused.”*

11) In reply, the learned APP for the State rightly pointed out that in the present case the defence has not proved that any injury

was found on the body of accused Nos. 1 and 2. Therefore, the question of explanation of said injuries does not arise. According to the learned APP, when the cogent evidence of the informant Hardayalsingh (PW 1) is fully corroborated by the medical evidence, then the corroboration by any independent witness is not at all necessary. He also pointed out that the genesis of the occurrence is nowhere withheld by the prosecution.

12) In the case at hand, undisputedly the informant Hardayalsingh (PW 1) and accused were on friendly terms since before the date of occurrence of the incident. The only cause behind the occurrence is that, accused No. 2 Bhima refused to repay the hand loan borrowed by him. Therefore, false implication of both accused by informant Hardayalsingh is not at all probable.

13) Though the learned defence counsel submitted that the genesis of occurrence is suppressed by the prosecution, by examining Hardayalsingh (PW 1), the prosecution has brought on record in clear terms that on 13/08/2000 when he met to both the accused at tea stall of the father of accused No. 2 Bhima, that time quarrel took place between accused and informant (PW 1) because, accused No. 2 refused to repay the hand loan amount. At the time of occurrence of incident, both the accused pounced on the

informant and assaulted him by weapon like a sword and knife. No doubt, the informant Hardayalsingh (PW 1) has fairly admitted in his evidence that he could not see the nature of weapon used by accused and also who was holding which of the weapon. However, such admission does not vitiate the testimony of Hardayalsingh (P.W.1), because Dr. Askash Kulkarni (P.W.7) who examined the informant Hardayalsingh on 13/08/2000 at about 10.40 a.m. noticed the following injuries on his person :

- 1) Incised wound of 5 x 3 x 2 c.m. over left forearm on upper part.
- 2) Incised wound, 4 x 1 x ½ c.m. over right palm,
- 3) Contused lacerated wound 3 x 2 x 1 c.m. over left forearm, lower part,
- 4) Stab wound, 3 x 2 x 3 c.m. over epigastric region.

The Medical Officer opined that the injuries were simple in nature and the injury Nos. 1 and 2 were caused by sharp object. The injury No. 4 was caused by sharp object with pointed tip. Thus, the contention of the informant is fully corroborated by the medical evidence regarding the assault to the informant by a dagger like weapon. The Medical Officer has made it clear that none of the above injury was on vital part of the body of the informant.

14) It is to be noted that despite searching cross-examination of Hardayalsingh (PW 1) by defence counsel, nothing could be elicited from his cross-examination which creates doubt about the truthfulness of his version. The defence has raised the objection regarding the delay in lodging the F.I.R. After going through the F.I.R. (Exh. 18), it emerges that the crime was registered on the basis of the F.I.R. at 1.00 p.m. on 13/08/2000. The above said incident occurred at about 10.00 a.m. and the informant reached the Civil Hospital, Nanded at about 10.40 a.m. when Dr. Kulkarni (PW 7) examined him. After his admission in the hospital, Police Station was informed and thereafter, police recorded the statement of the informant in the hospital which was treated as the F.I.R.. Thus, the registration of the offence at about 1.00 p.m. cannot be treated as inordinate delay in lodging the F.I.R. which requires explanation. Otherwise also, when on record there is no other reason to the informant to falsely implicate the accused in the present case. Merely on the ground of delay in lodging the first information report, the prosecution case cannot be disbelieved, when the testimony of Hardayalsingh is fully corroborated by prompt F.I.R. (Exh.18) and the medical evidence.

15) As no injury was caused on the vital part of the body of the informant, the learned Trial Court rightly held that there was no

intention to kill the informant by accused and accordingly, accused were rightly convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code. I do not find any reason to interfere with the order of conviction of both accused under Section 324 read with Section 34 of the Indian Penal Code.

16) However, after going through the judgment of the Trial Court, it becomes clear that the trial Court has neither called the report of the District Probation Officer, nor has considered the point regarding awarding of the benefit of The Probation of Offenders Act in favour of the accused. Only because, accused took law in their hand, the trial Court sentenced accused persons to undergo the aforesaid rigorous imprisonment. According to me, sentencing of accused to imprisonment is not proper without considering whether benefit of The Probation Offenders Act is extended in favour of the accused or not.

17) Therefore, the report of The District Probation Officer, Nanded is called in the matter. District Probation Officer submitted report that, except this case no previous conviction is recorded against the appellants. Since 2001 they are not involved in any criminal case or activity. The District Probation Officer has made recommendation for giving benefit of Section 4 (1) of the Probation

of Offenders Act, 1958.

18) Circumstances of this case are that due to repayment of hand loan dispute arose in between the friends which resulted into commission of above said offence. At the time of commission of offence, appellant No. 1 was 26 years old and appellant No. 2 was only 20 years old. In view of the bar imposed under Section 6 of the Probation of Offenders Act, 1958, while sentencing the appellant no. 2 to imprisonment, reasons ought to have been assigned by the trial Court. However, trial Court nowhere considered even the provisions of the Probation of Offenders Act, 1958 while sentencing the accused to imprisonment. Thus, obviously the order of the trial Court regarding sentencing the accused to imprisonment is illegal. Considering the above circumstances of this case and report of the Probation Officer, I hold that, benefit of Section 4 (1) of the Probation of Offenders Act, 1958 deserves to be given to the both appellants. It follows that, this appeal deserves to be partly allowed. Hence following order :

ORDER

- 1) Criminal Appeal No. 443/2003 is partly allowed.
- 2) Conviction of appellants for the offences punishable under Sections 324 read with Section 34 of the I.P.C. passed by Sessions Judge, Nanded in Sessions Case No. 47/2001 is confirmed.

- 3) Instead of sentencing the appellant Nos. 1 and 2, they are directed to be released under Section 4 (1) of the Probation of Offenders Act, 1958 on their entering into a bond in the sum of Rs. 5,000/- (Rs. Five Thousand Only) each with one surety in the like amount to appear and receive sentence whenever called upon by this Court within the period of one year and in the mean time, keep the peace and be of good behaviour.
- 4) Appellant Nos. 1 and 2 are directed to execute a bond in the sum of Rs. 5,000/- (Rs. Five Thousand Only) each with one surety each in the like amount before the Trial Court, within 15 days from the date of this order.
- 5) The bail bonds of the appellant Nos. 1 & 2 are cancelled.
- 6) The fine amount deposited by appellant Nos. 1 and 2 before the Trial Court be refunded to them after the period of appeal is over.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/