

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Appeal No. 83/2009

Manohar Narayanrao Bhoyar,
Aged about 30 years,
R/o.-Kurzadi (Fort), Tah. Arvi, Dist-Wardha.

.... Appellant
(Ori. Accused)

Versus

The State of Maharashtra,
thr PSO Pulgaon, Tah Deoli, Distt. Wardha.

.... Respondent.
(Ori. Complainant)

Shri R.M. Patwardhan, Advocate for the appellant.
Shri I.G. Damle, APP for State.

CORAM : N.B. Suryawanshi, J.

DATE : 02.03.2021.

Oral Judgment

The appellant-original accused was convicted by the Ad hoc Additional Sessions Judge-2, Wardha in Special Case No.22/2007 for the offence punishable under Section 354 of the Indian Penal Code and was sentenced to suffer simple imprisonment for three months and to pay a fine of Rs. 1000/- with a default clause. This conviction is questioned in the present appeal.

2. The prosecution case in short is that, on 19-08-2007, at about 8.00 pm, when PW-1 standing in front of the house, the accused came there

and he caught her by his both hands with an intention to outrage her modesty. PW-1 shouted and therefore her brother-in-law-Manohar came there and he rushed towards the accused along with stick, her sons Akash and Shailesh also rushed towards the accused. However, the accused ran away. PW-1 then went to the Police Station and lodged report (Exhibit-15). On the basis of the report, First Information Report (FIR) No.179/2007, for the offences punishable under Section 354 of the Indian Penal Code and Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, was registered. After investigation, chargesheet came to be filed and the accused was charged for the offences punishable under Section 354 of the Indian Penal Code and Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The accused denied the charge and his defence was of total denial and false implication.

3. After recording the evidence, the learned trial Court acquitted the appellant of the charge under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but convicted him under Section 354 of the Indian Penal Code. Hence, this appeal.

4. The learned Advocate for the appellant has vehemently argued that the appellant is falsely involved in the present crime. The appellant was assaulted by the brother-in-law of PW-1 and due to this enmity he had gone to lodge the report to the Police Station. Because of that, he is falsely

implicated in the present offence. He urged that though there were independent witnesses available, they were not examined by the prosecution and only interested witnesses that is the family members of the PW-1 were examined. According to him, the evidence of PW-1, (PW-4) Manohar and (PW-5) Akash is inconsistent with each other and therefore the conviction recorded by the trial Court is unsustainable and the same is liable to be set aside and the appellant is entitled for the acquittal.

5. On the other hand, the learned APP submitted that the evidence of PW-1 is corroborated by (PW-4) Manohar (brother-in-law) and her son (PW-5) Akash. Their evidence could not be shattered during the cross examination. No report was lodged by the appellant against the brother-in-law of PW-1. Therefore, his contention that because he went to lodge a report he has been falsely implicated cannot be believed. He, therefore, supported the judgment of the learned trial Court and contended that there is no merit in the appeal and the same may be dismissed.

6. Heard learned Advocate for the appellant and the learned APP for the State at length. Perused the record.

7. In support of its case, the prosecution has examined six witnesses. PW-1 is the first informant/victim. According to her, she belongs to a Scheduled Caste community. She knew the accused. The incident took place

at Kurzadi (Fort) at about 8.00 pm. At that time, she came out of the house for urination. The accused suddenly came and forcibly caught her. At that time, she shouted. On hearing her shout, her brother-in-law-Manohar came there. He rushed to assault the accused/appellant. The accused/appellant ran away. Her son also came there. He also chased the accused, but the accused ran away. The accused belongs to Kunbi caste. She then went to the Police Station and lodged the report (Exhibit-15). (Exhibit-16) is the printed copy of FIR.

8. During cross examination, she stated that accused used to reside in front of their house. Then in the next breath on her own, she stated that only the mother of accused used to reside in front of her house and accused and his wife used to reside in different area of village. She admitted that there were residential houses nearby her house, and near the house of the accused. Due to her shouting, 7 to 8 persons from the locality had gathered. She stated that there were 10 to 12 houses in their locality. The omission regarding 8 to 10 persons gathered on the spot was brought on record in her cross examination. She stated that besides the statements of her relatives, the statement of Pravin Bhoyar was also recorded by the Police. She admitted that her house was outside the village and there used to be darkness around her house. She stated that they had never quarreled either with the accused or his mother and they had no concern with the accused. In 1995, she was the President of Darubandi Mahila Mandal. One Deepak Dable was the resident

of her village and she had lodged a report against him that he had abused her in drunken condition. She denied that she had lodged a report against one Sahebrao, resident of her village. She further denied that she was in the habit of lodging false reports against the villagers. She was unable to explain as to why the statement "I felt insulted" did not appear in her written report lodged with the Police. She admitted that at the time of incident her brother-in-law gave one stroke of stick on the hand of the accused, therefore the accused had gone to the Police Station to lodge a report against her brother-in-law. She denied the suggestion that because the accused went to lodge report, she lodged a false report against him.

9. (PW-4) Manohar is the brother-in-law of PW-1. He deposed that they are residing in the joint family. The incident took place one year back at about 8.00 pm. At that time, he was watching television. Husband of PW-1 had gone to purchase medicines. PW-1 had gone out of the house for urination. Suddenly they heard her noise. She was saying that " धावा रे मला पकडले ". Hence, he came out of the house. At that time, he found the accused holding PW-1. After seeing him, the accused released PW-1 and ran away. Because of the incident, he was annoyed and took a stick, assaulted on the hand of the accused. Then he ran away. Vinod and Sanju, cousins of the accused, abused them. Thereafter, he brought PW-1 inside the house and they went to the Police Station and lodged the report.

10. In the cross examination, he admitted that there were no electric lights near their house and after 7.00 pm there used to be darkness on the road in front of his house. The house of the mother of the accused was by the side of his house. The accused was not staying with his mother. He used to reside in the village. He denied that several times there was dispute between the accused and his brother Vinod. He also denied that they did not have good relations with the accused since long. He stated that after hearing the noise of PW-1 only he came on the spot. He denied the suggestion that he was in drunken condition and no incident as alleged by him had taken place. He further denied that in drunken condition he assaulted the accused with stick, without there being any fault on the part of the accused. He admitted that because of his assault the accused also had been to the Police Station to lodge a report. He denied the suggestion that because the accused went to lodge report against him, he has falsely implicated the accused.

11. (PW-5) Akash is the son of PW-1. He deposed that at the time of incident he, his brother and uncle Manohar were watching television. While his mother went outside for bathroom, suddenly they heard a noise. Hence, they rushed towards her. At that time, they found the accused holding his mother. At that time, his uncle Manohar picked up a stick and rushed to assault the accused. At that time, the accused ran away. In the meantime, his father returned. The incident was narrated to his father, then they went to the Police Station and his mother lodged the report.

12. In the cross examination, he admitted that since the beginning they had dispute with the accused. He did not know whether previously the accused had lodged reports against his mother and father. He stated that their house was at one corner of the village and there was no facility of electricity in their house. He denied that since there was a agricultural land by the side of his house the incident was not visible from the house. He admitted that the mother of the accused stayed by the side of their house and the accused used to reside in the locality of the village. He admitted that accused had gone to the Police Station to lodge report against them because his uncle had assaulted the accused by stick. He denied the suggestion that his mother lodged false report against the accused.

13. (PW-2) Pravin is the panch to the spot panchanama Exhibit-19. He proved panchanama (Exhibit-19). In the cross examination he has stated that he was not called in the Police Station. He did not know what was written in the spot panchanama. He had signed the spot panchanama on the say of the Police. He admitted that he had good relations with PW-1. He denied the suggestion that he was deposing at the instance of PW-1.

14. As per the spot panchanama, the spot was on the cart-track between the fields leading from Kurzadi to Kawala at mouza Kurzadi (Fort) and the same was near the wall in front of the bathroom constructed with

bricks and cement concrete adjacent to the thorny compound ahead of the courtyard. In front of the house of PW-1, Neem tree was adjacent to the bathroom and besides it there was a Tuti tree. The courtyard of PW-1 was 30 ft and beyond it there was house.

15. (PW-3) Wasudeo is also panch to the spot panchanama (Exhibit-19). He denied the contents of the spot panchanama. In the cross examination, he stated that the panchanama was not scribed in his presence and his signature was obtained on 02-09-2007.

16. (PW-6) Vinod Pathak, is the Investigating Officer. He admitted in his cross examination that there were residential houses around the house of victim and he had recorded the statements of the neighbourers.

17. In the arrest panchanama of the appellant there was injury of stick ('उबारी') on his right hand. He was sent for X-ray examination. Medico Legal Report dated 30-08-2007 also mentions about the injuries suffered by the appellant and that he was forwarded for medical examination and treatment.

18. From the evidence on record, it appears that there was dispute between the appellant and his mother on one hand and the prosecution witnesses on the other hand. Though PW-1 and (PW-4) Manohar denied the dispute, (PW-5) Akash is the son of PW-1 has candidly admitted about the dispute. The evidence of the prosecution witnesses on the point sequence of

events of the actual incident appears to be inconsistent. PW-1 has stated in her evidence that when she went out of the house for urination, the appellant suddenly came and held her forcibly. When she shouted, her brother-in-law (PW-4) Manohar came there and he rushed to assault the appellant. At that time, the appellant ran away. Her son also came there. He rushed towards the accused, but the accused ran away. If this version of the victim is to be accepted, then the assault by stick on the hand of the accused by (PW-4) Manohar would not have been possible. She has also admitted in her cross examination that on hearing her shout 7 to 8 persons from the locality had gathered, but not a single independent witness examined by the prosecution and only interested witnesses i.e. (PW-4) Manohar, brother-in-law and (PW-5) Akash, son, have been examined.

19. Though the prosecution witness nos. 4 and 5 have deposed that they were watching television at the time of incident in their house, (PW-5) Akash has admitted in his cross examination that there was no facility of electricity in their house. It, therefore, appears that the witnesses are not telling truth before the Court and they are contradicting each other. All the prosecution witnesses have admitted that there used to be darkness around the house of Victim. (PW-4) Manohar has admitted in his cross examination that there were no electric lights near their house and after 7.00 p.m. there used to be darkness around the house. In the light of these admissions, the version of PW-1 that accused caught her from behind and when she shouted he left and

ran away, is to be accepted, then the possibility cannot be ruled out that the prosecutrix had no occasion to see the face of the accused in the dark. The prosecution witnesses (PW-1) Victim, (PW-4) Manohar and (PW-5) Akash have admitted that the accused had gone to the Police Station to lodge the report against Manohar as Manohar gave one stroke of stick on the hand of the accused. The arrest panchanama shows that there was injury of stick on the hand of the accused and the accused was sent for X-ray examination. In these circumstances, the defence appears to be probable that as Manohar gave stroke of stick on the hand of accused, the accused went to lodge a report against him and therefore he was implicated in the present case by the prosecutrix.

20. The evidence of prosecution witnesses is inconsistent on the material particulars and the evidence does not inspire confidence. Taking into consideration the facts of the case, false implication of the appellant cannot be ruled out. On overall evaluation of the evidence, I am of the view that the prosecution has failed to prove the offence beyond reasonable doubt and the appellant is entitled for the benefit of doubt.

21. In the light of aforestated reasons, the following order is passed:-

ORDER

- i) Criminal Appeal No.83/2009 is allowed.

- ii) The impugned judgment and order of conviction passed by the learned Ad hoc Additional Sessions Judge-2, Wardha in Special Case No.24/2007 is hereby set aside.
- iii) The appellant is acquitted of the charge under Section 354 of the Indian Penal Code.
- iv) The bail bonds of the appellant stand cancelled.
- v) The fine amount deposited by the appellant to be refunded.
- vi) The appellant to execute P.R. Bond in the sum of Rs. 10,000/- with one surety in the like amount in terms of Section 437-A of the Code of Criminal Procedure.

JUDGE