

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

CRIMINAL APPEAL NO.710 OF 2008

- 1] Prashant alias Parasram Dashrathrao
Dongre, Aged about 37 years,
Occupation-Agriculturist.
- 2] Anil Narayanrao Bhoyar,
Aged about 38 years,
Occupation-Agriculturist (Police Patil),
Both R/o. Pimpalgaon (Lute),
Tahsil-Deoli, District-Wardha. ... Appellants

.. Versus ..

State of Maharashtra,
through Police Station Officer,
Deoli, District-Wardha. .. Respondent

.....

Shri Mayank M. Agnihotri, Advocate for the Appellants,
Shri I.J. Damle, APP for the Respondent-State.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 10.02.2021.

JUDGMENT

1. The appellants are convicted by the learned Sessions Court, Wardha in Special Case No.11/2007 for offences punishable under Sections 447, 324 and 427 of the Indian Penal

Code and are sentenced to suffer simple imprisonment for 1 (one) month and to pay a fine of Rs.500/- each for the offence punishable under Section 447 of the Indian Penal Code and rigorous imprisonment for 3 (three) months and to pay a fine of Rs.2,000/- each for the offences punishable under Sections 324 and 427 of the Indian Penal Code. This conviction is challenged in the present appeal.

2. The prosecution case, in short, is that on 14.2.2007 the first informant PW-2 Shalu Dukre lodged a report alleging that both the appellants, in furtherance of their common intention, committed trespass in her house and demanded liquor. On her refusal, they abused her in the name of caste. Thereafter, they took a bamboo from her house and hit her on head. They threw utensils around and broke them. They also damaged husband's scooter and left the house threatening her that she would be killed if she lodged a report against them. Accordingly, Crime No.21/2007 for offences punishable under Sections 447, 427 and 323 r/w 34 of the Indian Penal Code and under Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short

‘the said Act’) was registered. The investigation was conducted and chargesheet came to be filed and the case was numbered as Special Case No.11/2007. Both the appellants were charged for the offences punishable under Sections 447, 427 and 324 r/w 34 of the Indian Penal Code and under Section 3 (1) (x) of the said Act. The accused denied the charge. Their defence was that the husband of the PW-2 was having illegal liquor business. Wives of both the appellants were members of Mahila Mandal of the village Pimpalgaon (Lute), who complained about illegal liquor business, due to which, on 14.02.2007 a raid was conducted at the house of the PW-2 and liquor was seized and, therefore, they were falsely implicated in the crime.

3. The learned Sessions Judge, after recording the evidence, acquitted the appellants for the offence punishable under Section 3 (1) (x) of the said Act, however, convicted them for the offences punishable under Sections 447, 324 and 427 of the Indian Penal Code. Hence, the present appeal.

4. The learned Advocate for the appellants strenuously urged that the prosecution has failed to prove the charges

levelled against the appellants and there was no material on record to warrant the conviction of the appellants. By taking me through the evidence of the prosecution witnesses, he submitted that their evidence is inconsistent on the point of incident and the manner in which the incident had taken place. Material omissions and contradictions brought on record were ignored by the learned trial Court while recording the conviction. According to him, the prosecution has failed to prove the charge against the appellants and the appellants are entitled for acquittal.

5. *Per contra*, the learned APP supported the decision of the learned trial Court by contending that the learned trial Court has properly evaluated the evidence and has given cogent reasons while recording the conviction. The prosecution has proved the charge beyond reasonable doubt and therefore, the learned trial Court was justified in convicting the appellants.

6. Heard the learned Advocate for the appellants and the learned APP for the respondent at length. I have perused the record.

7. The prosecution, in support of its case, examined fifteen witnesses. PW-1 Praful Kamble is a panch to the spot panchanama Exh.22. He admitted that he was on visiting terms with the complainant and on the day of preparation of panchanama, the police had obtained his signature on two papers. He did not read the contents of both the documents and he signed both of them at about 1.00 pm at the same time one after the other. He also admitted that he signed the panchanamas which were already prepared by the police.

8. PW-2 Shalu Dukre, is the informant, who deposed that she belonged to a particular scheduled caste community. She stated that both of the accused came to her house at 12.00 noon and demanded liquor and when she told them that she had no liquor, they threatened to beat her. They abused her in the name of caste. Thereafter, both the accused persons broke the roof and took out bamboo sticks from the roof. Appellant no.1 inflicted a blow of bamboo on her head, because of which, she was injured. Both the accused broke the utensils, engine of the Scooter, TV. Antenna. At that time, some persons gathered there

and, therefore, both the accused left her house. She immediately lodged a written report Exh.25 at Deoli Police Station, accordingly FIR (Exh.26) was registered. She was referred for medical examination. After examination, Doctor obtained her signature on the MLC report.

During the cross-examination, she deposed that Vishal Lokhande, her neighbour, came with her to the Police Station for lodging the report. Before lodging the report in the Police Station, she along with Vishal Lokhande, went to the Tahsil office at Deoli and got the report prepared from one Maihskar, who was a scribe at the Tahsil office. She admitted that her husband was doing illicit liquor business. 10 to 12 cases were pending against him under Prohibition Act in the JMFC Court, Wardha. She also admitted that on 14.2.2007 at about 12.30 pm, police conducted a raid on her house in connection with prohibition crime and instituted a criminal case against her husband for the prohibition offence. She also admitted that the said raid was conducted on the basis of information given by Mahila Mandal to the police. She further admitted that the wife of appellant no.1 was a member of the Mahila Mandal. The

following omissions were brought on record in her cross-examination - (i) she did not mention her caste in the FIR; (ii) both the accused were Kunbi by caste; (iii) both the accused called her in the name of her caste; (iv) roof of her verandah was broken and (v) she had no liquor at her house. She was unable to explain as to why those facts were not mentioned in her police statement. She stated that she did not read the contents of the report after scribing it. She admitted that the appellant no.2 was the Police Patil of their village. She further stated that she was not aware as to whether at the time of the raid on 14.2.2007 at her house, appellant no.2 was present along with the police and that he was helping the Mahila Mandal for detecting prohibition crimes. She admitted that on 12.2.2006 police seized illicit liquor from her house and filed a case against her husband. She denied that appellant no.2 was assisting Mahila Mandal for conducting prohibition raid at her house and, therefore, he was falsely implicated in the present crime.

9. According to the prosecution, PW-8 Anita Godbole, PW-9 Baliram Lokhande, PW-10 Prashant Kamble and PW-11 Vikas Lokhande were eyewitnesses.

10. PW-8 has deposed that incident had taken place before 4 to 5 months at about 12.30 pm. At that time, she was in the courtyard of her house. The complainant used to reside in front of her house. She saw both the accused assaulting the complainant and pelting stones on the scooter and breaking the dish antenna. The accused were abusing the complainant in the name of her caste.

In the cross-examination, she denied that the husband of the complainant namely, Pramod Dukre was dealing in illicit liquor. She was not aware as to whether on that day the police conducted a raid on the house of the complainant's husband and seized illicit liquor. She admitted that Mahila Mandal was established in their village for taking action against the dealer and the consumers of liquor. She did not know who the wives of both the accused were. She was not aware whether twice or thrice Morcha of Mahila Mandal had come to the house of the complainant. She stated that the entire incident occurred within one to one and half hours and she was present there for the initial half an hour witnessing the incident from her courtyard.

She contended that no one gathered at the house of the complainant at the time of the incident and she did not intervene or pacify the quarrel. She informed about the incident to Baliram Lokhande (PW-9). Her statement was recorded on the next day of the incident. Omission about the accused addressing the complainant in the name of her caste was brought on record in her cross-examination. She could not explain as to why the said fact was not mentioned in her police statement.

11. PW-9 Baliram Lokhande deposed that he was watching TV at his home. PW-8 Anita Godbole came and informed about quarrel going on at the house of PW-2, he therefore went there. At that time, the appellants were throwing stones on the scooter and they had broken the dish antenna. Both the accused pushed the door of the house of the PW-2 and pulled her out of the house and both abused her in the name of caste. Though he tried to persuade both the accused, they told him not to intervene.

In the cross-examination, he admitted that his statement was recorded at the house of the complainant (PW-2).

He deposed that, except him, no other person was present on the spot. He was unable to tell, as to why, in his police statement, the fact that the appellant pushed the door of the complainant and pulled her out of the house, was not mentioned. He further stated that he did not know whether appellant no.1 had lodged a report against him regarding the burning of pipeline in his field.

12. PW-10 Prashant Kamble deposed that he was having his meal at his home. When he heard the commotion, he reached to the house of PW-2. Both the accused were beating PW-2 with a bamboo stick. Appellant no.1 broke the dish antenna of the complainant. On hearing the commotion, the neighbouring boys came there and the appellants fled from the spot.

In the cross-examination, he admitted that he knew the complainant and her husband and he had good relations with them. He came to the court along with the complainant and her husband on that day. He then stated that the complainant and her husband came first to the court and he came afterwards. He deposed that from the last three months,

he had come to reside at Wardha to work as a driver. When he reached the spot, except him no other person was present there. According to him, on the date of the incident in the evening, police came to Pimpalgaon, however, he did not meet the police. On the next day, he went to the Police Station on his own accord and gave his statement. His statement was not recorded at Pimpalgaon. According to him, the statement 'portion mark A' to that effect was not correct. He was confronted with the omissions that "on hearing the commotion, the neighbouring boys came there" and that "accused no.1, at the time of the incident, addressed PW-2 in the name of her caste". He was unable to explain as to why the said statements were not there in his police statement.

13. PW-11 Vikas Lokhande deposed that on the day of incident, he was watching cricket at his house on Television. PW-8 came to his house and told him that both the appellants were beating PW-2, therefore, he went to the house of PW-2. Appellant no.1 had broken the dish antenna and utensils. He also threw stones on the scooter belonging to PW-2's husband. He intervened to pacify the quarrel, but the appellants rushed on

his person. Appellant no.1 abused PW-2 in the name of her caste and, thereafter, both the appellants ran away.

In the cross-examination, he categorically stated that after the incident PW-2 alone went to the Police Station and he did not accompany her. He further deposed that Sandip Kamble, Prashant Kamble (PW-10) and Baliram Lokhande (PW-9) were watching cricket match with him and they all went to the house of the complainant. Omissions that “appellant no.1 throwing the stones on the scooter of PW-2’s husband” and “the appellant Prashant had broken Gund and Charvi (utensils) of the complainant”, “the appellant no.1 abused the complainant in the name of her caste”, “since PW-2 did not give liquor, therefore, the accused abused her” and “after he and others reaching on the spot, the accused went away” were brought on record in his cross-examination. He was unable to explain as to why those statements were not there in his police statement. He denied that the husband of PW-2 namely, Pramod Dukre was doing business of illicit liquor. He admitted that wives of both the accused were the members of Mahila Mandal of his village. He was not aware whether the police had raided the house of

Pramod Dukre two to three times prior to the incident with the help of members of Mahila Mandal. He denied that the police seized illicit liquor from Pramod Dukre. He was on visiting terms with Pramod Dukre. A contradiction was brought on record in his cross-examination that “it did not happen that when I reached on the spot, the quarrel was going on between the complainant and the accused persons on account of demanding liquor.” He deposed that it did not happen that after they reaching on the spot, both the accused left the spot. He also deposed that it did not happen that since PW-2 did not give liquor, so the accused persons abused her. He admitted that he did not state in police statement that “since Shalu did not give liquor, therefore, accused abused her and “after reaching us on the spot, the accused went away”.

14. PW-13 Namdeo Kote is the Investigating Officer, who conducted the investigation, prepared the spot panchanama Exh.22, obtained caste certificate of husband of the complainant from Pramod Dukre. PW-14 Vinod Pathak was the Investigating Officer, who arrested both the appellants and submitted chargesheet against them.

15. On careful evaluation of evidence on record, it is apparent that according to the first informant-PW-2, the incident had taken place on 14.2.2007 at 12-12.30 pm. Admittedly, on the same day, there was a raid and illicit liquor was seized from her house. As per Exh.70 on record, Deoli Police Station registered offence against Pramod Dukre, husband of PW-2, under Section 66 (1)(b) and 77 (a) of the Bombay Prohibition Act. The information was received by the said police station at 12.45 hours through the Mahila Mandal and the accused no.1. Thus, if at all the incident as alleged by PW-2 had really taken place, she would have informed the incident to Deoli Police Officers who conducted raid at her house and there was no occasion for her to proceed to the Tahsil office to prepare a written complaint through the scribe and lodge it in the Police Station. The FIR was lodged by PW-2 on 14.2.2007 at 14.30 hours. It is a matter of record that the raid was conducted at the house of PW-2 at the instance of Mahila Mandal and the appellant no.1 had taken active part in the said raid. It is also brought on record that wives of both the appellants were the members of Mahila Mandal which was against the liquor

business in the village. All these aspects create suspicion about the version of PW-2.

16. The prosecution witnesses have contradicted each other on material particulars. Their presence at the time of incident is doubtful as PW-2 has not stated about the presence of the alleged eyewitnesses. The eyewitnesses have gone to the extent of denying the raid conducted at the house of PW-2 on that day. They have also denied that the husband of PW-2 Pramod Dukre was conducting illicit liquor business. Thus, it is clear that they are not telling truth before the Court. The evidence of PW Nos.8, 9, 10 and 11 does not inspire confidence and these witnesses are not reliable.

17. As per the medical certificate (Exh.28), PW-2 had a contusion over her scalp on mid parieto occipital region, size 1 x 1 cm. No history of alleged assault was given by PW-2 at the time of medical examination. The Medical Officer PW-3 has admitted in his cross-examination that the injury suffered by PW-2 was possible while entering through a door and if the frame hits the head.

18. During the spot panchanama (Exh.22), two big bamboo sticks were recovered from the spot. The prosecution has recorded memorandum statement (Exh.63) of the accused no.1 and in pursuance of the same, recovered one bamboo stick ad-measuring 2¼ ft. in length having five nodes and it was cracked up to three nodes, from the sitting room of the house of appellant no.1, vide seizure panchaname (Exh.64). The alleged weapon was not shown to PW-2 at the time of recording her evidence to show that it was the weapon of assault.

19. Considering the evidence of the prosecution, in my view, the prosecution has failed to prove the offence against the appellants beyond reasonable doubt. There are serious lacunae in the prosecution case and the prosecution witnesses are not trustworthy. The learned Sessions Court has failed to appreciate the discrepancies of the prosecution evidence and has erroneously convicted the appellants. The impugned conviction is unsustainable and appeal deserves to be allowed. Hence, the following order :

ORDER

1. Criminal Appeal No.710/2008 is allowed.

2. The conviction of the appellants recorded by the learned Sessions Judge, Wardha in Special Case No.11/2007 under Sections 447, 324 and 427 of the Indian Penal Code is hereby quashed and set aside and the appellants are acquitted of all the charges.

3. The bail bonds of the appellants are cancelled. Fine, if any, deposited by the appellants, to be refunded.

4. The appellants to furnish personal bond in the sum of Rs.10,000/- each with one surety in the like amount before the learned Trial Court in terms of Section 437-A of the Code of Criminal Procedure Court.

(N.B. Suryawanshi, J.)