

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

Criminal Appeal 775/2008

1. Naga @ Ragho s/o Soma Bodhalkar,
Aged about 41 years, Occ.-Cultivation.
2. Amol @ Bhurya s/o Naga Bodhalkar,
Aged about 21 years, Occ.-Cultivation,
3. Vijay s/o Naga Bodhalkar,
Aged about 26 years, Occ.- Cultivation,
All R/o.- Borda Zullurwar, Police Station Pombhurna,
Tal. Pombhurna, District Chandrapur. ... Appellants.

Versus

State of Maharashtra,
through P.S.O. Pombhurna, District Chandrapur ... Respondent.

Mr. R.M. Daga, Advocate for appellants.
Mr. N.R. Rode, APP for State.

CORAM : ROHIT B. DEO, J.
DATE : August, 26, 2021.

Oral Judgment

The applicants stand convicted for offences punishable under Sections 509 and 323 read with Section 34 of the Indian Penal Code (for short "I.P.C.") vide judgment dated 20-10-2008 rendered by the Sessions Judge, Chandrapur in Special Case 5 of 2007, and are sentenced to suffer simple imprisonment for one year and to payment of fine of ₹ 500/- for offence punishable under Section 509 of the IPC and to suffer simple imprisonment for six months each and to payment of fine of ₹ 500 each for offence punishable under Section 323 read with Section 34 of the I.P.C.

2. The case of the prosecution is that appellant 1 Naga Bodhalkar perceived that his grand daughter was the victim of 'Black Magic' practiced by PW 1 - Yashwant Gedam. At 7.00 p.m. on 03-11-2006, Yeshwant Gedam was resting in his courtyard and his wife Mrs. Rekha was cooking food. Appellant 1 Nago and his two sons Amol and Vijay, appellants 2 and 3 respectively arrived in front of the house. Appellant 1 Nago started uttering abuses of castiest nature and then accused Yeshwant Gedam of practicing black magic on his grand daughter. Nago then challenged Yeshwant Gedam to step outside the courtyard. Yeshwant Gedam and his wife Mrs. Rekha stepped out of the courtyard, and came on the road, and attempted to calm Nago but in vain. It is alleged that Nago heaped filthy abuses on Yeshwant and Mrs. Rekha. It is then alleged that the accused Vijay assaulted Yeshwant on the left knee with a Bamboo stick and accused Amol assaulted Nago on the right shoulder, again with a Bamboo stick. Amol allegedly assaulted Mrs. Rekha with a Bamboo stick on the right wrist and right thigh. Yeshwant Gedam's son attempted to intervene and was assaulted on the left shoulder with stick.

3. Investigation proceeded on the usual lines and after completion thereof final report under Section 173 of the Criminal Procedure Code, 1973 (for short 'Code') came to be filed in the jurisdictional Court.

4. The learned trial Judge framed charge (Exhibit 27). The appellants, who shall be hereinafter referred to as, 'the accused', abjured guilt. The prosecution examined seven witnesses to bring home the charge.

The text and tenor of the cross examination and the responses in the statement recorded under Section 313 of the Code indicate that the defence is of false implication. The accused did not step in the witness box nor is any witness examined in defence. The learned trial Judge was pleased to convict the accused as aforestated.

5. With the assistance of the learned Counsel for the accused Mr. R.M. Daga and the learned Additional Public Prosecutor Mr. Rode, I have scrutinized the material on record and the reasons recorded by the learned Judge, and having done so, I am of the considered view, that the conviction suffers from no infirmity. The learned trial Judge has believed the testimony of (PW 1) Yeshwant Gedam and (PW 3) Mrs. Rekha on the premise that the testimony of (PW 1) is in consonance with the contents of the First Information Report and that there are no material discrepancies. The trial Judge found (PW 1) to be trustworthy witness. On reappraisal of witness, I do not see any reason to take a different view.

6. Similarly, (PW 3) Mrs. Rekha appears to be a natural and truthful witness. Her version is to a substantial degree consistent with that of (PW 1) Yeshwant. The testimonies of (PW 1) and (PW 3) receive corroboration from the testimony of (PW 5) Vijay Dhonge.

7. The learned trial Judge has rightly recorded a finding that the charge punishable under Section 509 and Section 323 of the I.P.C. is brought home. The conviction shall have to be upheld.

8. The incident occurred in the year 2006. The report of the Probation Officer was called. The report recommends grant of benefit of probation to all the accused. Accused 1 is 72 years old and accused Amol and Vijay are happily married and have the responsibility of looking after their respective family comprising wife and children. Considering that nobody was very seriously hurt, and 15 years have passed since the date of incident and particularly the fact that the applicants are not hardened criminals with adverse antecedents as such and deserve an opportunity to reform, I am satisfied that a case for granting benefit of the Probation of Offenders Act, 1958 (for short, 'Act of 1958') is made out since sending the accused to jail at this stage shall only be counterproductive.

9. While the conviction is of the accused under Sections 509 and 323 of the I.P.C. is upheld, the sentence of imprisonment is set aside and the accused are granted the benefit of Section 4 of the Act of 1958.

10. The Probation Officer has recommended that the conduct of the accused for the next two years be monitored. It is, therefore directed that the accused be released on entering into a bond, to appear and receive sentence if as and when called upon to do so, during the next two years and in the meanwhile to keep the peace and be of good behaviour.

11. It is further directed that the accused shall remain under the supervision of the concerned Probation Officer for the next two years.

12. The accused shall enter into a bond, to permanently reside within the territorial jurisdiction of the District Probation Officer, Chandrapur and to furnish to the Probation Officer their phone numbers and permanent addresses. The accused shall further undertake not to involve themselves in any criminal or otherwise undesirable activities.

13. The implication of the order is explained to the accused, who are present in Court.

14. The appeal is partly allowed.

JUDGE