

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

CRIMINAL APPEAL NO. 361/2014

APPELLANT : Shamrao Baburao Sewatkar,
aged about 39 years, Occ. Private
R/o. Kamtha, Ward No. 3,
Tahsil Goregaon, District : Gondia

...VERSUS...

RESPONDENT: The State of Maharashtra,
Through Police Station Officer,
Gondia Rural, Police Station Gondia Rural

Ms. S.H.Bhatia, Advocate (appointed) for appellant
Mr. A.R.Chutke, APP for respondent/State

CORAM : AVINASH G. GHAROTE, J.
DATE : 04/07/2022.

ORAL JUDGMENT

1] Heard Ms. Bhatiya, learned appointed counsel for the appellant and Mr. Chutke, learned APP for the respondent/State.

2] The appeal challenges the judgment dated 02.01.2014 rendered by the learned Sessions Judge, Gondia. The appellant has been convicted under Section 326 of the I.P.C and sentenced to suffer R.I. for 4 years and to pay fine of Rs. 5000/-, in default of payment of fine, S.I. for 6 months.

3] The incident is alleged to have taken place on 18.06.2009, when the complainant/PW-1 Sunanda, who is the sister-in-law of the accused, claims that at about 9.00 a.m., the accused Shamrao, who resided in separate room in the same house, suspecting that the complainant was instrumental in the wife of the accused leaving him, assaulted the complainant first by a Trishul (Trident) on her right knee, which was caught hold of by the complainant. It is thereafter alleged that the accused threw chilly powder on the complainant and assaulted her by scissor on her right hand, chest and stomach, as a result of which she suffered injuries, PW-3 - Prakash Sewatkar (page 75), the neighbour, is claimed to have seen the incident and taken the complainant/PW-1 Sunanda to KTS Hospital, Gondia, where she claims to have been admitted for about a month. The complainant/PW-1 Sunanda further submits that after gaining consciousness, report was given to the police, which is at Exh.57 (page 71). Thereafter the matter was investigated into by PW-6/Dinesh Hage, the I.O., who has made the seizure of the said weapons. The complainant/PW-1 Sunanda was also referred to the Doctor, PW-7/Archana Balsaraf, who examined her and gave a report as to her injuries at Exh.85 (page 143). The accused was

arrested on 18.06.2009 and was bailed out on 25.01.2010 and has suffered imprisonment for six months.

4] The prosecution has examined as many as 7 witnesses, which are as under:

Sr.No	Name of witness	Status	Exh.No./ page no.
1	PW-1 Sunanda/complainant		56/67
2	PW-2 Ranwat Mahagu Lilahare (Panch witness for memorandum statement and recovery panchnama of broken Trident (trishul) and its handle and broken scissor	Hostile	58/73
3	PW-3 Prakash Sewatkar, claimed to be the eye witness by PW-1	Hostile	59/75
4	PW-4 Raju Indal Chavan – Panch witness for clothes of injured	Hostile	60/77
5	PW-5 Kiran Govardhan Agrawal – Panch witness for spot and seizure memorandum	Hostile	62/81
6	PW-6 Dy.S.P. Dinesh Girdhar Hage, I.O.		67/85
7	PW-7 Archana Narayan Balsaraf – Medical Officer		84/138

5] In the instant matter, PW-2/ Ranwat Mahagu Lilahare and PW-3/ Prakash Sewatkar have turned hostile. PW-4/ Raju Indal Chavan has been examined for the seizure of blood stained clothes of the complainant and is claimed to have proved Exh.61, the seizure memorandum in respect of the same, however, in the cross

examination, he admits that the police had shown the blouse to him at the relevant time and he was not aware from where the same was brought by the police. He further admits that the police had not read over the contents of Exh.61 to him. His cross examination also indicates that Sunanda, the PW-1 is the sister-in-law of PW-4/Raju Indal Chavan. The evidence of PW-4/ Raju Chavan therefore becomes the evidence of an interested person and even otherwise since he admits in the cross examination that the contents of Exh.61, the seizure memorandum was not read over to him, nor he was aware as to from where the blood stained blouse was seized, the evidence of PW-4/ Raju Indal Chavan is of no assistance to the prosecution case.

6] PW-5/ Kiran Govardhan Agrawal has been examined in respect of the spot panchnama and two seizure memorandum and arrest memorandum of the accused. Though he had identified his signatures on Exhs. 63 to 66, the contents were denied by him, as a result of which he was declared as hostile witness. His cross examination does not elicit anything. PW-6/Dinesh Hage is the I.O., who has been examined at Exh. 67 (page 85). He has carried out the investigation. Though it is contended by Mr. Chutke, learned APP

that the spot panchnama and the seizure memorandum and seizure panchnama have been proved in the evidence of PW-6/ Dinesh Hage, the I.O., in my considered opinion, the evidence of PW-6/Dinesh Hage cannot be the sole basis on which it can be held that the spot panchnama as well as the seizure memorandum are proved. That apart, it is material to note that the seizure in respect of trident (Exh.72, page 106), is from the roof of the temple of Lord Shankar; the seizure of one iron blade of scissor having handle of brass (Exh. 74, page 114) is from the house of Ramabai, sister of the accused; and the seizure of one iron blade of scissor having handle of brass is from the woods of kinhi and babhali kept in the compound of Santosh Bisen. What is material to note is that all the seizure memorandums are dated 19.06.2009 from 17.35 to 18.15 hours. There is nothing brought on record to indicate that these spots are in the immediate vicinity of each other and therefore the identical timings for all these seizures clearly makes them suspect. So also these seizures are all from open spaces. It is for this reason, that the evidence of PW-6/I.O., alone cannot be relied upon to hold that the seizures were correct and proper and therefore reliable.

7] That brings me to the evidence of PW-7, the Medical Officer, who has examined the complainant PW-1/Sunanda on the date of the incident at about 11.45 a.m. PW-7/ Dr. Archana proves the medico legal certificate at Exh.85 (page 143). It is however material to note that though the medico legal certificate at Exh. 85 indicates as many as eight wounds, out of which injury nos. 1, 3, 4 and 8 were said to be stab injuries, requiring Surgeon's opinion, however, nothing has been placed on record to indicate that PW-1/Sunanda was referred to the Surgeon for opinion regarding the aforesaid injuries. PW-1/Sunanda was also advised x-rays, chest PA view; x-ray right knee joint, x-ray standing aldo and x-ray right hand. The record does not indicate that any such x-ray was taken.

8] Though PW-1/Sunanda in her evidence states that she was hospitalized for about a month on account of the aforesaid injuries, the discharge summary has not been placed on record to support this contention. This position is also admitted by PW-6/I.O. That apart, PW-1/Sunanda in her cross-examination (para 5, page 68) states that she gained consciousness after two days of the incident and in para 4 states that she filed the report with the police after she gained consciousness;, the report Exh.57 (page 70) is dated

18.06.2009, the date of incident itself. Further, though in her evidence (para 2 page 67), PW-1/Sunanda states that after the assault by the trishul, the accused had thrown chilly powder on her, as a result of which she did not personally witness the accused assaulting her by scissors, the fact of throwing chilly power by the accused is absent in her statement at Exh. 57/page 70. That apart, the evidence of PW-7/M.O (page 147) categorically indicates that she has not found any deformity in the eyes of PW-1/Sunanda at the time of her examination, which was immediately on the next day and therefore, the plea raised by PW-1/Sunanda in her evidence for the first time regarding throwing of chilly power in her eyes stands falsified.

9] It is thus apparent that, so far as the assault by scissor is claimed, PW-1/Sunanda in her cross examination admits that she did not personally witness the accused assaulting her with scissor. Though she volunteers that the fact of assault by scissor upon her, was told by the other people, there is no person named in that regard. This clearly nullifies that part of the prosecution story which claims that the accused assaulted the complainant by means of a scissor, as except for the evidence of PW-1/Sunanda, there is no

other evidence in that regard coming forth. Thus, since part of the story of PW-1/Sunanda regarding the alleged incident, as admitted by her in her cross examination stands nullified, it would be rather precarious for the Court to place reliance upon the first part of her story of her being assaulted by the trident. As already indicated above, the seizure of the trident has not been proved, as the witnesses to the seizure have turned hostile. That being the position, in my considered opinion, the learned Sessions Court ought not to have relied upon the sole testimony of PW-1/Sunanda to convict the accused for the offence under Section 326 of the I.P.C., that too when the evidence of PW-1/Sunanda coupled with the evidence of PW-7/M.O. and the fact that there is no evidence to support the seizure, makes the prosecution story in so far as assault by a trident doubtful. Once the seizure of the weapons as well as of the clothes has been held not to be proved, as the panchas have turned hostile, in my considered opinion, the reports of the Chemical Analyzer at Exhs.79 to 81 would be of no consequence and more so, for the reason that the blood group of the complainant and that of the accused is the same. Thus in my considered opinion, this is a fit case where the benefit of doubt ought to have been given to the accused.

Though an alibi has been claimed by the accused and the learned Court below has not relied upon it, in view of what has been discussed above, the same pales into insignificance.

10] I am therefore unable to agree with the conclusions recorded by the learned Sessions Court for the reasons stated above. The impugned judgment is therefore quashed and set aside and the accused/appellant is acquitted of the offence under Section 326 of the I.P.C. The bail bond of the appellant stands cancelled and he be released immediately in case he is not required in any other crime.

11] The appeal is accordingly allowed.

12] Professional Fee as per the schedule be paid to the learned appointed counsel.

JUDGE

Rvjalit