



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 937 OF 2022

Shaikh Akef Shaikh Farooqe Husain
Age : 37 years, Occu. Service,
R/o. Aqsa Colony, New Shahinshah Nagar,
Beed, Tq. and Dist. Beed.

... Appellant.

Versus

1. Shaikh Aslam Shaikh Mubarak,
Age : 24 years, Occu. Business,
R/o. Ajmer Nagar, Belepir Beed,
Tq. and Dist. Beed.
2. Shaikh Mukaram Shaikh Mubarak,
Age : 28 years, Occu. Business,
R/o. Ajmer Nagar, Belepir, Beed,
Tq. and Dist. Beed.
3. Sayyed Mustafa Sayyed Mehaboob,
Age : 38 years, Occu. Business,
R/o. Ajmer Nagar, Belepir, Beed,
Tq. and Dist. Beed.
4. Sayyed Sadia Sayyed Mustafa,
Age : 36 years, Occu. Business,
R/o. Ajmer Nagar, Belepir, Beed,
Tq. and Dist. Beed.
5. Shaikh Amina Begum Shaikh Mubarak,
Age : 52 years, Occu. Nil.,
R/o. Ajmer Nagar, Belepir, Beed,
Tq. and Dist. Beed.
6. Shaikh Shahin Shaikh Aasef,
Age : 38 years, Occu. : Household,
R/o. Ajmer Nagar, Belepir, Beed
Tq. and Dist. Beed.
7. The State of Maharashtra

... Orig. Accused.

... Respondents.

...
Mr. Sayyed Tauseef Yaseen, Advocate for Appellant.
Mr. S. D. Ghayal, APP for Respondent – State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 12th OCTOBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. By invoking the provisions under section 372 of the Code of Criminal Procedure (Cr.P.C.), appellant - victim is assailing judgment and order passed by learned Additional Sessions Judge, Beed in Sessions Case No. 103 of 2016, acquitting present respondent nos.1 to 6 from charges under sections 147, 148, 353, 332, 307, 120, 427, 324 and 504 read with section 149 of the Indian Penal Code (IPC) and under section 37(1)(3) punishable under section 135 of the Bombay Police Act.

SUBMISSIONS

2. Learned counsel for appellant - victim would submit that, on 29.06.2015, around 8:30 a.m., 15 to 20 unknown persons forced their entry in school premises getting armed with articles like sticks. They beat and dragged appellant to the office of Headmaster - informant and again mounted assault on him. Headmaster set law into motion as he was witness to the occurrence. It is pointed out that, on the information by

Headmaster, FIR was registered and investigation culminated into filing of charge sheet. That, statements of eye witnesses got recorded under section 164 of Cr.P.C. Victim was examined by doctor. Such doctors have appeared as witnesses. Offence for which appellant was charged is made out. However, according to learned counsel for appellant, learned trial Judge has not accepted the evidence. There is improper appreciation. Eye witness account has been surprisingly disbelieved. Therefore, it is submitted that, judgment under challenge is patently illegal. 12 witnesses examined by prosecution are disbelieved by learned trial Judge without assigning proper reasons, and therefore, it is prayed that, there is need for re-appreciation and re-analysis. Learned counsel pointed out that law has also not been properly appreciated, and therefore, such judgment passed by learned trial Judge cannot be allowed to be sustained and hence relief as prayed is sought.

3. In the light of above submissions, we have considered the evidence of prosecution as well as gone through the impugned judgment under challenge. It transpires following is the status of 12 witnesses :-

PW1 Sayyed Jahir Husen Sayyed Mohmad Husen is the informant, who set law into motion as he was witness to the occurrence.

- PW2** Shaikh Akef Shaikh Faruq Husen is the victim. His evidence is at Exh.57.
- PW3** Shahanawaj is a pancha to memorandum of disclosure and seizure of wooden stick (Exhs.72, 73 and 74)
- PW4** Mohamad, pancha to the spot panchama at Exh.81.
- PW5** Dr. Pratibha Rakte is the first Medial Officer who has attended the PW2 Akef at District Hospital, Beed.
- PW6** Dr. Milind Dunakhe is the treating doctor of Dunakhe Hospital, Aurangabad. His statement is at Exh.106.
- PW7** Dr. Sangeeta Deshmukh is the Radiologist, who has done CT scan and issued C.T. scan report (Art.-A).
- PW8** Sayyed Rubina and **PW9** Sayyed Mustafa, who are the teacher and peon respectively and are eye witnesses.
- PW10** PSI Balkrushna Pawara, **PW11** P.I. Shrikant Haragbal and **PW12** PSI Ramesh Gaikwad are the police officials and Investigating Officers.

4. Here, there is charge for the commission of offence punishable under sections 147, 148, 353, 332, 307, 120, 427, 324 and 504 read with section 149 of the Indian Penal Code (IPC) and

under section 37(1)(3) punishable under section 135 of the Bombay Police Act. Informant PW1 Sayyad Jahir Husen has deposed that, on relevant day, while he was in his office, 15 to 20 persons entered his office and questioned him whereabouts of present appellant-victim. He stated that, 5 to 6 persons came along with the victim in his chamber, abused victim and beat him with sticks on his head. They also beat this witness by wooden stick on his shoulder, neck, hand and nose. He has named accuses Aslam and Mukram to be amongst the accused persons. He identified the report.

Cross of this witness shows that, present accused no.4 had filed report against informant as well as appellant - victim for outraging modesty of his daughter. He has admitted that the incident in his office had taken place suddenly and he was unable to understand anything. He admitted that his staff was also present there and that 15-20 unknown persons had entered his chamber. In cross at the hands of accused nos. 5 and 6, he has answered that, he is unable to state that there are CCTV cameras in the premises. Therefore, apparently only two accused are identified, but report is against 15-20 unknown persons.

5. The next crucial witness seems to be appellant himself.

He is examined as PW2 Shaikh Akef. According to him, while he was teaching, Akram, Mukram, Aslam, Mustafa entered his class armed with sticks and rods. They beat him and dragged to the cabin of Headmaster. Then he stated that 10 to 15 persons, namely, Shaikh Yusuf, Shaikh Riyaiz Yusuf, Shaikh Irfan Yusuf, Amina Shaikh Shahin and Sadiya were amongst those persons. He claims to have suffered injuries on the head and that he became unconscious. He stated that the persons who assaulted him are present in the court. In paragraph 7, he is unable to state whether out of 7 to 8 persons, Shaikh Yusuf, Shaikh Riyaz Shaikh Yusuf and Shaikh Irfan Shaikh Yusuf were amongst them. He answered that he did not know whether he informed name of these three persons to police. He is unable to give reason for portion mark 'A' of his statement to police. Even omissions are brought about threat to kill in paragraph Nos. 8, 9 and 10.

6. Doctors are examined as PW5 Dr. Pratibha Rakte, PW6 Dr. Milind Dunakhe and PW7 Dr. Sangeeta Deshmukh. According to PW5 Dr. Rakte, he examined appellant with history of physical assault and he noticed blunt trauma to head and right thigh.

In cross, Exh.94 certificate issued by her is confronted to her and she admits that column regarding age of injury and nature of injury are kept blank.

7. PW6 Dr.Dunakhe, a Neurosurgeon has admitted that, in Exh.108, MRI of brain and X-ray need not revealed any significant abnormality.

8. PW7 Dr. Deshmukh is a Radiologist who has done CT scan.

9. On *prima facie* going through the above evidence, here, apparently report is against 15-20 unknown persons. PW1 Sayyed Jahir Husen and PW2 Shaikh Akef, who are crucial witnesses, have admitted previous animosity for committing some offence of outraging modesty of daughter of one of the accused. No staff or independent witness is examined, even no student of the class where alleged incident took place is examined. Medical evidence merely suggest blunt trauma. Out of 17-20 persons, who actually assaulted and where has not stated by both PW1 Sayyed Jahir Husen and PW2 Shaikh Akef consistently. Even no T.I. parade is conducted, even when it was essential in view of report being against unknown persons. Therefore evidence of prosecution cannot be said to be full proof or worthy of credence. Case has not been beyond reasonable doubt, and therefore, in our opinion, in view of quality of evidence on record, the opinion and conclusion

reached at by learned trial court cannot be faulted at. No perversity or illegality has been brought to our notice in the appeal and therefore there is no reason for us to overturn or interfere in the judgment under challenge. Hence, we proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)