



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 680 OF 2023

The State of Maharashtra,
Through Police Inspector,
Pathardi Police Station,
Dist. Ahmednagar.

... Appellant

Versus

1. Subhash Appasaheb Markad
Age : 30 years.
2. Baban Dadaba Markad
Age : 45 years.
3. Shivaji Waman Markad
Age: 23 years.
4. Mahendra Baban Markad
Age: 20 years.
5. Deepak Manohar Salve
Age: 40 years.
6. Manohar Deoji Salve
Age: 74 years.
Resp.1 to 6 R/o Madhi, Tq.Pathardi,
Dist.Ahmednagar.
7. Haribhau Bhagwan Salve
Occu.: Agri, R/o. Madhi Shivar,
Tq.Pathardi, Dist.A.Nagar.

...Respondent 1 to 6
(Ori. Accused)

... Respondent No.7
(Informant)

.....
Mr.A.M.Phule, Advocate for Appellant

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

DATE : 20 OCTOBER, 2023

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

1. Vide instant appeal State is taking exception to the judgment and order passed by the learned Additional Sessions Judge, Ahmednagar dated

11-10-2018 in Sessions Case No.26 of 2010 by which all six accused have been acquitted from the charges under Sections 143, 147, 148, 395, 452 read with Section 149, 354 read with Section 149, 324 read with Section 149 of the Indian Penal Code (IPC) and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. According to learned APP, to prove above charges prosecution has examined as many as nine witnesses. It is pointed out that alleged occurrence is of 16-12-2008. Accused persons came in Scorpio vehicles, they initially abused informant and injured on caste basis. There was use of iron rod, wooden sticks and kick blows. That even amount of Rs.20,000/- and odd was snatched alongwith golden Ganthan from injured witness. Report was lodged promptly. There is account of victim as well as injured witnesses. The Doctor, who examined and treated injured, has been examined and injury certificates are duly proved. Therefore, it is his submission that in the light of availability of direct eye witness, injured eye witness and medical evidence, prosecution has established the charges, however, learned trial Court failed to consider and appreciate such evidence on record and has unfortunately disbelieved the case of prosecution and acquitted all the accused from serious offence and hence, the appeal.

3. In the light of above submissions, we have gone through the evidence adduced on behalf of prosecution in the trial Court. Following are the

witnesses examined by the prosecution in the trial Court. Their status is as under :

PW1 Haribhau Bhagwan Salave is informant.

PW2 Ashabai Pandurang Salave is injured witness. Her evidence is at Exh.97.

PW3 Ushabai Uttam Salave is another injured witness. Her evidence is at Exh.99.

PW4 Vishnu Bhagwan Salave is also injured witness. His evidence is at Exh.100.

PW5 Shailendra Balasaheb Bondade is Pancha to spot panchanama. His evidence is at Exh.113.

PW6 Jagannath Bhaguji Kasbe is Pancha to seizure panchanama. His evidence is at exh.115.

PW7 Dattatraya Murlidhar Gaikwad is the Investigating Officer. His evidence is at Exh.119.

PW8 Datta Chandrasen Lokhande is Naib Tahsildar. His evidence is at Exh.130.

PW9 Dr.Sunil Sarjerao Borude is Medical Officer, who examined injured persons and issued injury certificates. His evidence is at Exh.137.

4. Incident seems to have taken place on 16-11-2008 at around 06:00 p.m. Apparently apart from naming present respondent nos.1 to 6, accusation are also raised against some 15-20 unknown persons. Caste abuse is apparently

attributed by informant to accused no.1 and not to others. However, cross-examination of **PW1** Haribhau shows that the following are the omissions :

- (a) Respondent nos.1 to 6 (original accused) and other 15-20 people have assaulted Rekha, Sheetal, Ashabai with fist and kick blows.
- (b) Accused have also assaulted Ratan Salave, Dnyaneshwar Salave, Sanjay Salave, Jagdish Salave and Vishnu Salave.
- (c) That accused and all other unknown persons 15-20 persons fled after assaulting.

5. **PW1** Haribhau has admitted that accused no.1 one had filed report against him and his two sons for commission of offence under Section 395 of the IPC. Therefore, apparently there is some history and animosity between the parties. He claims that he has suffered several head injuries but in the cross-examination at the hands of learned Counsel for accused no.1, he admitted that he was in the house for 2-3 hours before approaching Police Station. He answered that other injured also came to Pathardi but they stayed on the road in front of Police Station but did not enter the Police Station. He admitted that he did not name the persons while giving history to the Doctor.

Therefore, here testimony of very informant is coming under shadow of doubt.

6. **PW2** Ashabai, another injured witness, stated that about four to five months prior to incident, Pradeep Sahebrao Salave (cousin brother of PW1 Haribhau) had filed a case under Atrocity Act against accused No.1 Subhash Appasaheb Markad and therefore, accused no.1 had grudge against his family. Regarding incident, she stated that accused came in three Scorpio and Sumo vehicles. She also gave name of accused and she claims that 15-20 persons also accompanied them. She also stated that accused no.1 Subhash assaulted PW1 Haribhau and abused him on caste. She further stated that she and Sindhubai went to rescue him and that accused no.1 assaulted her by means of stick. Further according to her, accused no.1 Subhash, accused no.4 Mahendra and accused no.5 Deepak entered into house of PW1 Haribhau and on instigation of accused no.6, they caught-hold of this witness, snatched her necklace and purse carrying cash of Rs.20,050 i.e. amount which was of Bachatgat.

However, paragraph no.14 of **cross-examination** of this witness clearly shows that whatever she deposed is totally improvised one.

7. Similarly **PW3** Ushabai has attributed caste abuse to accused no.1. However, according to her, accused no.1 and unknown persons assaulted PW1 Haribhau by iron rod and wooden sticks, which fact is not stated by PW2 Ashabai.

Therefore, here so called important witnesses are not consistent and lending support to each other.

PW3 Ushabai claims that she was assaulted by accused no.3 and two other persons with iron rod and sticks. Paragraph nos.6 and 15 show of this omissions are brought on record.

8. **PW4** Vishnu states that accused no.1 abused PW1 Haribhau and that accused no.1 and rest of the accused and 15-20 persons assaulted PW1 Haribhau. He too was assaulted by wooden stick by unknown person. According to him, golden necklace and amount of Rs.20,000/- was forcibly taken away from Ashabai.

9. Admittedly, there is previous dispute as well as political rivalry and there are previous case under the Atrocity Act. Even witnesses are not consistent about actual spot of incident. Therefore, when regarding one occurrence, witnesses are not lending support to each other and there is background of animosity, false implication cannot be ruled out. Therefore, learned trial Court, in our considered opinion, has committed no error in disbelieving their evidence and thereby acquitting accused. Consequently, no case being made out on merits, Criminal Appeal No.680 of 2023 is dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)