



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1 OF 2005

1. Sopan s/o Keshav Sangle
Age: 44 years, Occu.: Agri.,
R/o. Sanglewadi,
Tq.Gangakhed, Dist.Parbhani.
 2. Saw. Ashabai Sopan Sangle
Age: 23 years, Occu. :
R/o. As above.
-Appellants
(Ori. Accused no.1 and 3)

Versus

- . The State of Maharashtra
Through Police Station Gangakhed,
Gangakhed, Dist.Parbhani.
-Respondent

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Advocate for Appellants : Mr. S.S.Rathi
APP for Respondent : Mr.K.K.Naik

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 03 OCTOBER, 2024

PRONOUNCED ON : 09 OCTOBER, 2024

JUDGMENT :-

1. In this appeal there is challenge to the judgment and order dated 23-12-2004 passed by II Adhoc Additional Sessions Judge, Parbhani in Sessions Trial No.176 of 2002, recording guilt of appellants for offence under Sections 307 r/w 34 and 452 r/w 34 of

the Indian Penal Code (IPC) respectively.

FACTUAL MATRIX

2. In brief, case of prosecution in trial Court is that, PW4 Urmila, wife of appellant Sopan, questioned him for performing second marriage. In such backdrop, it is alleged that husband appellant no.1 Sopan, Ramrao, appellant no.2 -Ashabai and Godawari went to house of brother of Urmila, where she was put up after being driven out by appellant Sopan. She was dragged out of house and then husband Sopan dealt blow by stone on her head causing bleeding injury saying that he would kill her. She was shifted to hospital and treated. On her statement recorded at hospital, Ambajogai Police registered Crime bearing no.54 of 2002.

On gathering evidence, all four accused named in the FIR were chargesheeted for offence under Sections 307, 452, 323, 506 r/w 34 of the IPC and made to face trial conducted by learned II Adhoc Additional Sessions Judge, Parbhani vide Sessions Trial No.176 of 2002. Accused Sopan and Ashabai were held guilty for offence under Sections 307 r/w 34 and 452 r/w 34 of the IPC. Accused nos.2 and 4 stood acquitted from all charges. Consequently, convict Sopan and Ashabai, as held guilty for above charge, have preferred instant

appeal on various grounds raised in the appeal memo.

SUBMISSIONS

On behalf of appellants :

3. Learned Counsel for the appellants questioned the conviction by submitting that case has not been proved beyond reasonable doubt. According to him, necessary ingredients for attracting charges are missing. Learned Counsel took this court through the evidence of informant Urmilabai and also through the report lodged by her and would submit that her evidence and report are at variance. There are material omissions and improvements. He would strenuously submit that, that apart, FIR is after six days after the occurrence and as such there is possibility of false implication on false and afterthought complaint due to strained relations between informant and appellants.

4. Learned Counsel took this court through the evidence of PW2 Suryakant, PW3 Balaji and PW7 Sumitrabai and would submit that though they claimed to be eye witnesses, they are not consistent and are not lending support to each other. Even their evidence is full of variance, material omissions and contradictions and as such it is his

submission that with such quality of evidence, guilt ought not to have been recorded by learned trial Judge.

5. Learned Counsel took this Court through the medical evidence and would submit that medical experts have admitted that injuries suffered by informant Urmilabai are possible on account of fall. That there was only single blow, but multiple injuries are noticed and noted by medical expert. Except placing discharge summary, other treatment medical papers are not brought on record. Therefore, learned Counsel questions credibility of such medical evidence also.

6. Taking this court through the impugned judgment, he would submit that all above crucial aspects are overlooked by learned trial Judge. That there was no incriminating or convincing material. That on same evidence, learned trial Judge has already acquitted accused nos.2 and 4. Consequently, according to him, case being not proved beyond reasonable doubt, it is a fit case for benefit of doubt and prays to grant the same by allowing the appeal.

On behalf of State :

7. Countering the above submissions, learned APP would submit

that there is not only convincing, cogent, reliable injured witness account but also overwhelming eye witness account finding support from medical evidence. Therefore, the only conclusion that could be drawn on appreciation is that offence has been committed. That learned trial Judge has correctly appreciated the available evidence and rightly relied on the same. According to learned APP, there is no need to interfere as no ground is made to do so.

STATUS AND ROLE OF THE PROSECUTION WITNESS

PW1 Bhagwan s/o Venkatrao Kendre is Doctor at Rural Hospital, Gangakhed and author of exh.24.

PW2 Suryakant Patloba Murkute is cousin of informant. His evidence is at exh.25.

PW3 Balaji s/o Sambhaji Digole is brother of informant. His evidence is at exh.29.

PW4 Urmilabai w/o Sopan Sangale is injured informant and wife of appellant no.1. Her evidence is at exh.33.

PW5 Meghraj s/o Jaitantilal Chavala, is Medical Officer at Medical College, Ambajogai. His evidence is at exh.38.

PW6 Deorao s/o Kathalu Take is Police Official, who noted report

lodged by PW4 informant. His evidence is at exh.41.

PW7 Sumitrabai w/o. Babu Mundhe is sister of informant. Her evidence is at exh.50.

PW8 Shivaji s/o. Narsing Bhendekar is Sport pancha. His evidence is at exh.51.

PW9 Shrikrushna Pandurang Mundhe (PSI) is the Investigating Officer.

SUM AND SUBSTANCE OF EVIDENCE

8. Here as many as nine witnesses were examined by prosecution. Admittedly, evidence of injured **PW4** Urmilabai, and evidence of **PW2** Suryakant, cousin of informant, **PW3** Balaji, brother of informant and **PW7** Sumitrabai, sister of informant, who are said to be eye witnesses is only of relevance and significance as regards to occurrence is concerned. As regards to injuries are concerned, medical evidence is of relevance and hence, such evidence is put to re-appreciation and minute scrutiny.

Evidence of Informant, injured :

9. First let us deal with evidence of **PW4** Urmilabai, informant and injured, who is examined at exh.33. After deposing that she was married to appellant no.1 Sopan and had two children, she stated

that, she was driven out of the house after making allegations. That appellant no.1 performed second marriage. Regarding the incident, she deposed in para 2 is as under :

2. Incident took place before 2 years 3 months. At the time of incident I was in the Wada of my brother. Accused Ashabai came there, she pulled me and brought me near Paar of village. Accused Sopan, accused Ramrao and other persons were there. I was dragged by holding my hair by Ashabai. Accused Sopan delat stone on my head. (Witness has pointed out left side of her head near ear by her left hand). I was assaulted as after performing marriage by Sopan I questioned him and had asked him to maintain me also. Accused uttered that if I am killed there will be no question of maintaining me. Incident occurred at about 11 to 11.30 p.m. Accused Ramrao was standing there. Because of the stone blow I sustained giddiness and had fallen down on the ground. I become unconscious. While bringing myself to Gangakhed, I was in semi-conscious condition. I regained consciousness in the hospital at Ambajogai. Police came to the hospital. I was interrogated by Police and my narration was recorded. My thumb impression was also obtained. The report now shown and read over to me is same report and the contents therein are correct. It is at Ex.34.”

While under **cross-examination**, she is questioned about her children and with whom they are staying and with whom she is staying. In paragraph 4 of the cross-examination, she is questioned about the location of the house of her brother, nature of construction and its surroundings. Relevant cross-examination regarding

occurrence is in paragraph 7 and she has answered that when accused Asha entered, her mother was present; she was dragged by holding hair. She denied that at such time, she fell. She answered that she did attempt to rescue herself, but stated that she was overpowered by accused. She answered that she regain consciousness after three days and talked with Sumitra and brother. Rest is all denial.

Eye Witness Account :

10. Another witness, who is important in chronology, is brother of informant with whom victim allegedly stayed and he is **PW3** Balaji, who in his evidence at exh.29, after testifying that Urmila is his sister, and that she is staying with him, deposed as under :

“Accused Sopan, Ramrao, Godabai and Ashabai came to our house. Above two ladies caught hold my sister Urmila and brought her in the open space near Paar. Accused Sopan dealt stone blow on left ear of Urmila. Accused Ramrao assaulted Urmila on her back by stone. Then accused ran away from the spot. Because of the blow of stone there was bleeding from the head near left ear of Urmila. In the bullock cart I brought Urmila till village Akoli. From Akoli I brought Urmila in the hospital at Gangakhed in auto.”

Above witness is also subjected to **cross-examination** initially

about marriage of his sister with Sopan, there to be marital discord, Court cases, attempts of compromise. In paragraph 3, he is questioned about his house, its location, height, surroundings and number of houses around his house. He answered that they resisted both female accused while pulling Urmila but accused did not listen. In paragraph 4 of the cross-examination, it is brought that some construction activity was in progress, labours were present there. To a question witness answered that assault was made by Sopan by standing near Urmila. He denied that he came to the spot after the assault was over. Remaining cross is on other aspects.

11. **PW2** Suryakant, cousin of informant in evidence at exh.25 after stating that Urmila is daughter of his aunt, her marriage to be 17 years back, stated that accused Sopan started suspecting her character and that he drove her out of house and since then she was staying with brother Limbaji. His sister used to question her husband Sopan for performing second marriage and that his sister also intending to lodge report for performing second marriage. Regarding the incident, he deposed as under :

“2. Incident took place before 2 years 2 months. On the time of incident I was in the bazar at Gangakhed. Real sister of Urmila by

name Sumitra and one Sindhubai accompanying her met in bazar. Sindhubai told me that Sopan and his second wife assaulted P.W. Urmilka by stone on head and she is admitted in the hospital. I went to Govt. hospital at Gangakhed. Urmila was lying on bed and was unconscious. There was injury on the left of her head near ear and blood oozing from her both ears. P.W. Urmila was referred to hospital at Ambajogai. Myself and Sumitra in a hired vehicle carried Urmila to hospital at Ambajogai. At about 11 a.m. Urmila was admitted in the hospital of Ambajogai. Her condition was serious and she was unconscious. I remained present in the hospital with Urmila. Urmila disclosed before Police that she was assaulted by all the accused. She disclosed names of four accused to Police present in the hospital.”

While under **cross-examination** in paragraph 3, questions are put regarding previous complaint, this witness to be in Politics and to be acquainted with Police. He admitted that he himself did not lodge report and he volunteered that statement of Urmila was recorded by Police. Rest all suggestions are denied.

Following omissions are brought about Urmila staying with brother since 2-3 years, she working on wages, questioning husband for performing second marriage.

12. **PW7** Sumitrabai, sister of informant, after testifying that Sopan performed second marriage and on its count, there used to be quarrel between him and Urmila. Regarding the occurrence, she deposed in

para 2 of examination in chief as under.

2. Incident took place before 2 years 5 months. At the time of incident my mother was ill and in order to see her I came to Wagdewadi at the house of my brother. At the time of incident, myself, PW. Urmila were present. Accused Ashabai came and pulled Urmila by holding her hair. Accused Ashabi brought her near Par of village. Accused Sopan was present near Par. viz. terrece of the temple. Accused Sopan dealt stone on left ear on heard of Urmila. Because of the stroke of stone blood was oozing from nose and ear. Urmila fell unconscious. Then I took her to hospital. Myself and my brother Balu were together while going to hospital. First we brought her at Akoli Phata. From that place in auto rickshaw Urmila was brought to Gangakhed. From Gangakhed Urmila was shifted to Ambajogai. For the period of 3-4 days Urmila was not talking and her health was serious.”

In paragraph 4 of her **cross-examination**, she is questioned **whether on entry by Ashabai, Urmila raised shouts, whether Urmila fell, whether attempt was made to rescue her, whether call was given to the neighbours, where was she when Urmila was pulled.** She is questioned whether she herself informed Police and how many times Police made enquiry with her. Rest of the cross-examination is not pertaining to the incident.

Medical Evidence :

13. Apart from above evidence, prosecution is also heavily relying

on evidence of medical experts i.e. **PW1** Dr.Kendre and **PW5** Dr.Chavala.

PW1 Dr.Kendre, seems to be Doctor at Rural Hospital Gangakhed and he is the author of injury certificate exh.24. He deposed about Urmila being referred, being examined and noticing following injuries :

1. Contusion 5 x 2 c.m. left temporal region. It was grievous nature. It was caused due to hard and blunt object.
2. Incise wound 2 x ½ x ½ c.m. vertically in direction to injury no.1.
3. Incise wound 2 x ½ x ½ c.m. oblique in direction behind injury no.2.

Injury nos.2 and 3 to be simple, possible by sharp object within 24 hours. He opined that injury no.1 to 3 were connected with each other and are possible by blow with stone and further stated that in case of blow of stone on head, and injury occurring, it could result into death due to hemorrhage.

While under **cross-examination** he admitted that, in case of fall on stone on head from height of 8-10 feet, injury no.1 is possible, whereas injuries nos.2 and 3 are possible due to sharp object.

14. **PW5** Meghraj, Medical Officer at Medical College Ambajogai in his evidence at exh.38 testified that, while he was on duty in casualty ward, patient namely Urmila was admitted on 27-04-2002 and was discharged on 02-05-2002. He testified that discharge card exh.39 is in his handwriting. He deposed that there was CLW over left temporal region and contusion on right parietal region, palpable fracture underline contusion over the temporal region and patient was in semi comatose state with drowsiness. That patient was conscious but disoriented and she regain consciousness on 30-04-2002. He also opined that injuries are possible due to blow of stone.

While under **cross-examination** he answered that he is producing all copies of medical papers exh.40. He admitted that due to fall, abrasion, contusion, CLW can occur. He answered that in single stroke, both injuries are not possible, but he volunteered that there was injury to scalp and it was not likely to cause due to fall.

ANALYSIS

15. On appreciating above evidence comprising of PW4 injured Urmilabai and her relatives PW2 Suryakant (cousin) PW3 Balaji (brother) and PW7 Sumitrabai (sister), they all are consistent about

accused driving Urmila out of the house and she put up with her brother. They all are consistent about incident taking place in the house of her brother comprising of dragging around after holding informant by hair and being hit by stone by appellant no.1. These witnesses are categorical about Urmilabai suffering bleeding injuries to the head and she being taken to Rural Hospital first and thereafter, to Ambajogai. After gaining consciousness, injured Urmilabai seems to have given statement. Therefore, there is plausible reason for delayed reporting. The manner of cross-examination by defence to above witnesses in trial Court itself shows that there is no serious challenge to the occurrence. Though there are omissions, they do not seem to be so material so as to go to the root of the prosecution version.

CONCLUSION

16. Ocular account is sufficiently corroborated and supported by independent not one but two medical experts. Their testimonies as regards to nature of injury is concerned, has remained unshaken. One of the medical experts has flatly denied injury to be possible by fall, one expert has categorically stated that injuries are connected. Consequently, ocular account supported by medical evidence, is sufficient to accept the prosecution version. There is background to

the occurrence. That much part is not at all challenged by defence.

17. Perused the judgment under challenge. Findings are in consonance with the evidence. Reasons are assigned for reaching to the conclusion and as such there is no infraction or error in the appreciation so as to disturb the findings. As there is no merit in the appeal, same deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.1 of 2005 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE