



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

CRIMINAL APPEAL NO. 242 OF 2006

1. Balu S/o Laxman Nikam
Age: 40 years, Occu.: Agri.

2. Bapu S/o Gorakh Nikam
Age: 33 years, Occu.: Agri.

Both R/o. Tambewadi,
Tq.Paranda, Dist.Osmanabad.

....Appellants
(Ori. Accused)

Versus

. The State of Maharashtra
Through Mahavir Machindra Nikam
Age: 30 years, Occu.: Agri.,
R/o. Tambewadi, Tq.Paranda,
Dist.Osmanabad.

.....Respondent
(Ori. Complainant)

.....
Advocate for Appellants : Mr.Akshaykumar Jairam Mete h/f.

Mr.V.G.Mete

APP for Respondent : Mrs.Chaitali Chaudhari - Kutti

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 NOVEMBER, 2024

PRONOUNCED ON : 18 NOVEMBER, 2024

JUDGMENT :-

1. In this appeal, there is challenge to judgment and order of conviction dated 04-03-2006 rendered by III Adhoc Additional Sessions Judge, Osmanabad in Sessions Case No.46 of 2001 holding

present appellants guilty for offence under Sections 326 and 324 of the Indian Penal Code (IPC) respectively.

CASE OF PROSECUTION IN BRIEF

2. On 30-05-2000, when informant Mahavir and his brother Dattatraya were digging a pit for laying water pipeline for their house, at that time, accused Balu Laxman Nikam and Bapu Gorakh Nikam came armed with articles like sword and sickle. Previous to the incident in question, there was heated exchange of words and altercation between appellants and informant. Accused Balu, who was armed with sword, gave blow on the head of informant and when his brother Dattatraya came to his rescue, accused Bapu hit him on hand by sickle causing both of them bleeding injuries. They initially visited hospital at Mankeshwar and thereafter, when Police came to the hospital, PW1 Mahavir gave statement on the basis of which, crime bearing no.37 of 2000 was registered and the same was investigated by PW9 Dhone (API).

Trial was conducted by learned III Adhoc Additional Sessions Judge, Osmanabad vide Sessions Case No.46 of 2001, who on appreciating oral and documentary evidence, held charges proved against accused nos.1 and 2 for offence under Sections 326 and 324

of the Indian Penal Code respectively.

SUBMISSIONS

On behalf of appellants :

3. Learned Advocate for the appellants pointed out that story of the prosecution is not substantiated. According to him, only interested witnesses are examined. That injured witnesses, though named in the evidence and FIR, they are not examined. That it was essential on the part of the prosecution to examine injured witnesses as there was previous enmity. He pointed out that even otherwise witnesses are not supporting each other and rather contradicting each other. He pointed out that account of injured witnesses is not finding support from very medical evidence. Coupled with above discrepancies, learned Counsel submitted that there is delay in filing complaint. That alleged eye witnesses are also not examined and therefore, with such quality of evidence, learned Counsel submits that learned trial Court ought not to have accepted prosecution case as proved and ought not to have held appellants guilty.

On behalf of State :

4. Supporting the impugned judgment and praying to dismiss the appeal for want of merits, learned APP pointed out that admittedly

there was previous quarrel, however, on the relevant day, incident had taken place in the afternoon. That after visiting hospital, FIR has been lodged in the same evening and therefore, there is no delay. Learned APP pointed out that occurrence has taken place in broad day light. That two brothers are assaulted by means of articles like sword and sickle. That injuries inflicted are on the vital parts like head and hand. That there is imputation of finger. Thus, there is use of deadly weapon. That medical expert, who examined and treated injured is also examined. That independent witness, who saw the incident, is also examined and therefore, according to learned APP, there is overwhelming evidence regarding the occurrence. That testimonies of none of the witnesses are rendered doubtful. Therefore, testimonies have not been shaken or disturbed in any manner on the point of occurrence and hence, according to her, there is no infirmity or perversity in the appreciation of evidence and conclusion reached at by the trial Court and so she prays to dismiss the appeal.

WITNESSES IN TRIAL COURT

5. In support of its case, prosecution has adduced evidence of in all ten witnesses. Their status and role is as under :

PW1 Mahavir Machindra Nikam is informant and injured. His evidence is at exh.27.

PW2 Dattatraya Machindra Nikam is brother of informant. He is injured witness. His evidence is at exh.29.

PW3 Santosh Sahebrao Gund is eye witness. His evidence is at exh.30.

PW4 Nanasaheb Ajinath Nikam is independent witness. His evidence is at exh.31.

PW5 Chandbibi w/o Husen Shaikh (ASI) is Police Officer, who registered complaint.

PW6 Navnath Raosaheb Ghadge is pancha witness. He did not support prosecution.

PW7 Arun Bhimrao Shinde is pancha to seizure of clothes of informant. He did not support prosecution.

PW8 Bapurao Bhagwan Jogdand is pancha to seizure of clothes of informant and his brother Datta. His evidence is at exh.50.

PW9 Kondiba Ladappa Dhone is the Investigating Officer. His evidence is at exh.54.

PW10 Dr.Sudhakar Vishwanath Bangar is the Medical Officer, who examined and treated injured informant and his brother. His evidence is at exh.66.

SUM AND SUBSTANCE OF EVIDENCE

In the present case, evidence of **PW1** Mahavir, informant and injured, **PW2** Dattatraya, injured, **PW3** Santosh, eye witness, **PW4** Nanasaheb, independent witness and **PW10** Dr.Bangar, Medical Officer, is of importance.

6. **PW1** Mahavir is informant and injured. He deposed as under :

“I know the accused present before the court being my villager. Incident took place before 4 years at 2 pm. At the time of incident I myself and my brother Datta were digging for pipeline construction in our house. At that time, accused Balu and Bapu were sitting in the Samaj Mandir. I again say that I myself and my brother Datta were doing the work of digging for pipeline near our house. Accused Balu and Bapu came to us. Previously an altercation took place between I myself and accused on account of the land. Accused Balu assaulted me with sword on my head. I kept my palm on my head but I sustained injury on my middle finger of left hand due to the sword of accused Balu. My middle finger of left hand was cut. I cried loudly. My brother Datta rushed towards me. At that time, blood was

oozing from my head and my brother Datta tried to stop it by keeping his hand on my head. Accused Bapu came on spot with sickle (Koyata) and assaulted my brother Datta with sickle on left hand. Then I myself and my brother Datta started running to my house. At that time accused Balu threw his sword towards us from our back side. Due to it, I sustained bleeding injury on the ankle. Then I myself and my brother Datta went to our house. At that time, Mahadeo Rudrappa Kakde and Chandrakant Ranba Sakrate came to our house. Then Hanmant Pralhad Kakde took me and my brother Datta to the hospital at Mankeshwar on motor cycle. Dr.Bangar examined us and referred to Civil hospital Osmanabad. Police recoded my statement in the hospital at Osmanabad. I signed my statement. Statement/complaint now shown to me is the same and it bears my signature. Its contents are correct. It is at Ex.28.”

7. **PW2** Dattatraya is brother of informant and he is also injured witness. He deposed as under :

“Accused are my cousin brothers. Incident took place before 4 years at 2 pm. I myself and complainant were digging pit near our house for taking tap connection. We were digging the pit infront of Samaj Mandir. Complainant was doing the work of fitting of pipes. I was excavating the earth. Accused Balu and Bapu came from Samaj Mandir towards us by consuming liquor. My cousin brother Nana Nikam and Santosh Gund were sitting in the Samaj Mandir. Accused Balu showed the sword holding by him. At that time, Santosh Gund told complainant to see up. Complainant saw up and received a stroke of the sword of accused Balu on head. I rushed to rescue the complainant. Accused Bapu assaulted me with sickle (Koyata) on my left hand. I myself and complainant started running. Accused Balu assaulted complainant with sword on the leg from back side of complainant. Santosh Gund and Nana Nikam rescued us and took us to our house. I myself and complainant sustained bleeding injury. Hanmant Kakde took me and complainant on motor cycle to the hospital at Mankeshwar.

Doctor examined us and referred us to the hospital at Osmanabad, Doctor gave us medical treatment at civil hospital Osmanabad.”

8. **PW3** Santosh is eye witness. At exh.30, he deposed as under :

“I know complainant and his brother Dattatraya. I know accused present before the court. Incident took place before 4 years. I was sitting in Samaj Mandir. It was 2 pm. Accused Balu beat complainant Mahavir with sword on head. At that time, complainant was doing the work of digging pit for pipeline. Complainant was digging at the distance of 5-6 feet from Samaj Mandir. The complainant and his brother Datta went to their house. Dattatraya was in his house and he rushed to the spot when a quarrel took place between complainant and accused. Accused Bapu beat Dattatraya with sickle (Koyata). Complainant and Dattatraya went to their house. I also went to my house. Hanmant Kakde took complainant and Dattatraya to the hospital at Mankeshwar on motor cycle.”

9. **PW4** Nanasaheb is independent witness and at exh.31, he deposed as under :

“I know complainant Mahavir and his brother Dattatraya. I know the accused present before the court. Incident took place before 4 years. On that day I was working as laborer on the tractor of Prakash Mahajan. I came to my house at 2 pm. for lunch. I proceeded towards the tractor at about 2.30 pm. I saw complainant Mahavir and Dattatraya in injured condition near Samaj Mandir and they were proceeding to their house. I saw accused while standing near Samaj Mandir. Accused Balu was holding sword while accused Bapu was holding sickle (Koyata). I went to the house of complainant along with complainant and Dattatraya. Complainant sustained bleeding injury on head while Dattatraya sustained bleeding injury on left hand. I made enquiry with complainant and Dattatraya about their injury and they told that accused beat them near Samaj Mandir when they were digging pit for tap connection. Hanmant Kakde took complainant

and Dattatraya at Mankeshwar in hospital on motor cycle. I myself, Balaji Prakash Mahajan, Santosh Gund went on tractor to bring the father of complainant from land. We took the father of complainant. Accused came across us near water reservoir. The father of the complainant ran away to the house of Anna Sakrate. Accused Balu and Bapu rushed towards the father of complainant and at that time, accused Balu was holding sword while accused Bapu was holding Koyata. The father of complainant went to the house of Anna Sakrate. Anna Sakrate told accused not to beat the father of complainant in his house. The accused went away to their land.”

10. **PW10** Dr.Bangar is the Medical Officer, who examined and treated informant Mahavir and his brother Datatraya. He deposed at exh.66 as under :

“On 30.5.2000 I was working as Medical Officer at P.H.C. Mankeshwar Tal. Bhoom. On that day Mahavir Machindra Nikam and Dattatraya Machindra Nikam came to Primary Health Centre Mankeshwar on 30.5.2000 at 4.30 p.m. in injured condition.

At first I examined **Mahavir** Machindra Nikam at 4.30 p.m. and found following injuries on his person.

1. C.L.W. - 4 inch x 2 inch x 1 inch and 2 x 1 inch x 1 inch on occipital bone region caused by any sharp and cutting instrument and age of injury is within 6 hours. The said injury is grievous in nature. There is severe fresh bleeding from cut surface.
2. Amputation of third phalanx of size of 3/4” inch of index finger. Index finger last phalanx caused by any sharp and cutting instrument within 6 hours. The said injury is grievous in nature.

Accordingly I issued injury certificate. Injury certificate now shown to me is the same and it bears my signature and its contents are correct and it is in

my handwriting and it is at Exh.67.

2. I examined patient **Dattatraya** Machindra Nikam on 30.5.2000 at 4.45 p.m. and found following injury on his person.

1. Lacerated wound 2 x 1 inch on left wrist joint caused by any blunt and hard object, within 6 hours. Said injury is simple in nature.

Accordingly I issued injury certificate. Injury certificate now shown to me is the same and it bears my signature and its contents are correct and it is in my handwriting and it is at Exh.68.

3. As the patients were serious, so I referred them to civil hospital Osmanabad. I issued letter to P.S.I. Paranda Police Station for information about shifting of the patient to civil hospital Osmanabad. The letter now shown to me is the same and it bears my signature and it is in my handwriting. Its contents are correct. It is at Exh.69.

4. Injuries shown in the injury certificate Exh.67 are possible by the muddemal sword now shown to me. The injuries mentioned in injury certificate Exh.67 are dangerous to life. I have mentioned the identification marks of the patients. I can identify the patients if shown to me. (At this stage complainant Mahavir is shown to the witness and the witness has identified said complainant as the same patient to whom he examined.)

5. Injury shown in the injury certificate Exh.68 is possible by the but end of muddemal Koyata now shown to me.”

ANALYSIS

11. Though as many as ten witnesses are examined, evidence of

PW1 Mahavir and **PW2** Dattatraya, who are injured and evidence of **PW3** Santosh, who is alleged eye witness is crucial. Unfortunately, Panchas have not supported case of prosecution. Equally important is the evidence of medical expert **PW10** Dr.Bangar. Rest are Police Officials.

12. This Court has already reproduced the evidence of **PW1** Mahavir , **PW2** Dattatraya, **PW3** Santosh and **PW10** Dr.Bangar in aforesaid paragraphs.

On visiting **cross-examination** of **PW1** Mahavir, which is commencing from paragraph 2, it is noticed that previous dispute is brought on record and criminal case is also said to be pending between the parties. Questioning and suggestions given in paragraph 2 goes to show that there is no serious challenge about the incident of assault while **PW1** Mahavir and **PW2** Datatraya were digging pit for laying water pipeline.

Similarly, as regards **PW3** Santosh is concerned, questions and suggestions are put in such a manner that there is no challenge to the occurrence.

Omission brought in cross-examination of **PW2** Dattatraya in paragraph 3 about Santosh telling informant to look up and then

received a stroke of sword is not material omission.

Therefore, apparently on complete re-appreciation of evidence of **PW1** Mahavir and **PW2** Dattatraya, who are injured, there is credible, trustworthy account, which has remained unshaken.

13. **PW3** Santosh seems to be eye witness and he has also testified at exh.30 that while he was sitting near Samaj Mandir at around 02:00 p.m., accused beat complaint and his brother, who were digging near Samaj Mandir. He has named both the accused as well as narrated about the articles held by them and put to use.

Likewise **PW4** Nanasaheb, another independent witness has also stated that he saw both injured, who were proceeding towards their house and he has marked presence of accused persons and also narrated, who was holding what. Immediately after the incident, he had visited house of informant and had learnt about assault and had seen bleeding injury.

PW10 Dr.Bangar, who is examined at exh.66 also speaks of examining injured and issuing certificates. Such medical evidence has remained intact on point of examination and injury noticed.

Therefore, evidence on behalf of prosecution does reveal that occurrence is proved. There is injured as well as eye witness account

which has remained intact and the same is finding support from medical evidence.

14. Fundamental grounds raised in the appeal are that, independent witnesses are not examined and persons present at the spot are not named in the FIR.

Law does not require corroboration from independent corner in each and every case, more particularly, when there is trustworthy and credible injured witness account. Moreover, here injured witness account is supported by PW3 Santosh and PW4 Nanasaheb, who are independent witnesses. Therefore, above submission has no force.

Merely not naming a person in the FIR to be present at the spot is also not fatal to the case of prosecution because FIR is not an encyclopedia so as to carry names of all persons, who were present around the spot. Previous enmity is itself admitted while cross-examining the witness. Therefore, none of the grounds put forth has any substance or force.

15. With such quality of evidence, no fault can be found in the view taken by the learned trial Court. Taking the nature of articles put to use into consideration and the nature of injuries inflicted, offence under Sections 326 and 324 are squarely proved. Hence, no

case being made out, appeal deserves to be dismissed. Accordingly I proceed to pass following order :

ORDER

Criminal Appeal No.242 of 2006 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE