



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

CRIMINAL APPEAL NO. 330 OF 2005

1. Syed Altaf Syed Fasioddin
Age: 37 years, Occu.: Agril,
 2. Syed Fasioddin Syed Mirasab
Age: 65 yrs., Occu.: Agril.,
Both r/o. Shiraskhod, Tq.Dharmabad,
Dist.Nanded.
- ..Appellants
(Ori. Acc.Nos.1 & 4)

Versus

. The State of Maharashtra ..Respondent

.....
Advocate for Appellants : Mr. Vivek Bhavtankar
APP for Respondent : Mr.N.B.Patil
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 SEPTEMBER, 2024

PRONOUNCED ON : 24 SEPTEMBER, 2024

JUDGMENT :-

1. In this appeal, there is challenge to judgment and order of conviction rendered by 2nd Adhoc Additional Sessions Judge, Biloli on 21-04-2005 in Sessions Case No.56 of 2003 holding present appellants guilty for commission of offence under Section 324 read with 34 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. Informant PW3 Syed Ashraf lodged report while undergoing treatment at hospital, that on 24-08-2002 in previous quarrel for letting out and draining water in the field, accused namely Fasioddin, Syed Altaf, Siraj and Pasha assaulted his father, uncle and brother by means of sticks causing them bleeding injuries. On his such statement, crime was registered and investigated and accused were duly chargesheeted by PW12 Mundhe (PSI).

Accused were tried by the learned 2nd Adhoc Additional Sessions Judge, Biloli vide Sessions Case No.56 of 2003 for offence under Sections 307, 324 read with 34 of the IPC.

Rendering judgment on 21-04-2005, learned trial Judge acquitted accused from offence under Section 307 read with 34 of the IPC, but conviction was recorded against present appellants i.e. original accused nos.1 and 4 for offence under Section 324 read with 34 of the IPC. Hence, instant appeal.

SUBMISSIONS**On behalf of appellants :**

3. Pleading innocence and false implication, learned counsel for appellants submitted that prosecution failed to prove charges beyond

reasonable doubt. According to him, only interested witnesses are examined. That there is no convincing independent evidence. That recovery pancha has not supported prosecution. That family members, who are interested witnesses, are not consistent and their evidence is full of variance on material counts. That there is improper appreciation of evidence and non-consideration of answers given in cross-examination by the witnesses. That evidence of eye witnesses, injured witnesses and medical witness does not tally and therefore, he questions the maintainability and sustainability of the impugned judgment.

On behalf of State :

4. Per contra, learned APP, while supporting the impugned judgment, would submit that there is injured eye witness account. That all injured have consistently and categorically named accused for assaulting on injured witnesses. That recovery is proved through Investigating Officer. That there is prompt lodgment of report. That injured witness account tallies with medical account. That finding the case and evidence of prosecution convincing, it is submitted that learned trial Court has rightly accepted prosecution version as proved and according to him, no fault can be attributed to finding and

manner of appreciation of evidence and ultimately he prays to dismiss the appeal for want of merits.

STATUS OF WITNESSES AND THEIR ROLE

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

PW1 Rafioddin Fakroddin Pathan, Pancha to scene of occurrence exh.23, did not support.

PW2 Dr.Mrs.Vijaya Trimnak Burande is Medical Officer, who examined Syed Nazir, Syed Sadar Miyasab, Syed Ayub Nazir, and Syed Altaf and issued certificates exh.25, 26 and 27.

PW3 Syed Ashraf Syed Nazir is informant. His evidence is at exh.30.

PW4 Syed Farooq Syed Abdul Ali is neighbour of informant and he is alleged eye witness.

PW5 Vithal Potanna Sajjan is Pancha to memorandum of disclosure. He did not support prosecution.

PW6 Isakali Sadatali is an acquaintance of accused and complainant. He is an alleged eye witness.

PW7 Syed Abdul Ali Syed Mehboob Ali is neighbour and alleged eye witness.

PW8 Syed Ismile Syed Miyasab is brother of injured PW11 Syed Nazir. He is alleged eye witness

PW9 Sayed Sadak Ali s/o Syed Miyansab is brother of injured PW11 Syed Nazir. He is injured.

PW10 Syed Ayub s/o Syed Nazir is son of PW11 Syed Nazir. He is injured.

PW11 Syed Nazir Miyasab is injured.

PW12 Tukaram Manaji Mundhe is Investigating Officer.

PW13 Dr.Ruturaj Narendrakumar Jadhav is private practitioner.

EVIDENCE ON RECORD

6. Here out of 13 witnesses, **PW9** Sayed Sadak Ali Syed Miyansab, **PW10** Syed Ayub Syed Nazir and **PW11** Syed Nazir Miyasab are **injured witnesses**.

PW4 Syed Farooq Syed Abdul Ali, **PW6** Isakali Sadatali, **PW7** Syed Abdul Ali Syed Mehboob and **PW8** Syed Ismile Syed Miyasab

are **independent eye witnesses**.

PW2 Dr.Mrs.Vijaya Trimnak Burande and **PW13** Dr.Ruturaj Narendrakumar Jadhav are **medical witnesses**.

Rest are Panchas and Investigating Officers.

Injured Witness Account :

7. **PW9** Sayed Sadak Ali, brother of Nazir deposed that while he was in the house of Nazir, Fasioddin and his sons came and called out Nazir. When he went out, Nazir shouted as “*Melo Melo*” and so he came out. Siraj was possessing axe and stick. Altaf was having a stick. Farad was having stone. Altaf assaulted by stick on head and hand. Farad threatened to assault him and Nazir. He identified accused in the Court.

In **cross-examination** at the hands of accused nos.1 to 3, he answered that he had informed Police that Farad was possessing stone but he is unable to answer that why Police did not note this. Omission is brought about he fainting and falling down. Rest is all denial.

While under **cross-examination** at the hands of accused nos.4 and 5, he admitted that there is dispute between Nazir and Fasioddin regarding water in land and there were talks in that regard. **He**

stated about occurrence to have taken place at around 3.00 to 3.30 p.m.

8. **PW10** Syed Ayub stated that at around 3.00 p.m. incident took place in front of his house. Fasioddin called Nazir, who went out. His father shouted "*Mayo*". His uncle Sadak came running. He also ran behind his uncle. **Altaf** assaulted his **uncle** by stick. Uncle sustained injuries to head and hand. **Yakub** caught hold of this witness. **Pasha** assaulted him by stick. He, his uncle and father fell down. Accused ran away. On dispute about water in land, they were assaulted.

While under **cross-examination** at the hands of accused nos.1 to 3, he answered that on the day of incident, **there was quarrel between him, Altaf and Siraj**. It took place at around 2:30 p.m. Omission is brought about Yakub calling his father, **Siraj assaulted him and Yakub caught hold of him**. Rest is all denial.

While under **cross-examination** at the hands of accused nos.4 and 5, there is complete denial except **stating that when he came out of his house, he saw his father fallen down**.

9. **PW11** Syed Nazir is injured. Regarding the occurrence he stated that incident took place at around 2.00 to 3.00 p.m. That when his son Ayyub had been to the land, 4-5 persons encircled him

for assaulting. His son told that on dispute about water, those persons were intending to assault him. He and his brother Sadat were in the house at that time, accused Fasioddin came and gave call to him as Nazir. Witness claims that he also came out on the road. All accused were possessing sticks. They assaulted him with sticks. He fell down on the ground. Fasioddin pelted stone on him. He became unconscious.

While under **cross-examination** at the hands of accused nos.1 to 3, he answered that he does not remember when Police recorded his statement. Then answered that before few days it was recorded. Omission is brought about 4-5 days back, there was dispute over water. Dispute over water was referred to Panchas. He stated that Police seized his blood stained clothes. He stated that it was raining at that time and there was tin shade over the house but he denied that due to heavy wind and rain, stones and wooden logs fallen on him. Rest is all denial.

While under **cross-examination** at the hands of accused nos.4 and 5, he is unable to give date when his statement was recorded. Omission is brought that Fasioddin pelted stone on him. He admitted that his son and others were prosecuted for assaulting Altaf.

Eye Witness Account :

10. Informant **PW3** Syed Ashraf gave evidence that water from the house of accused was entering their land. There were talks but even after 15 days of such talks, water continued to enter in their land. His brother Ayyub had been to the land and he questioned Syed Siraj and Syed Altaf. These both persons assaulted his brother Ayyub, who came and reported it to father of informant. Thereafter, all five accused before the Court came to their house at around 3:30 p.m. Fasioddin called his father. **Sayad Altaf, Pasha and Siraj assaulted his father.** When his **uncle Syed Sadak came to separate, however accused also assaulted him with sticks.** Accused also assaulted his brother **Ayyub.** Persons came and separated the quarrel. All three injured were taken to the hospital. He lodged report and he identified exh.31.

In **cross-examination** at the hands of accused nos.1 to 3, he answered that their land is adjacent to land of Fasioddin. He denied erecting bandh. He admits that complaint is silent regarding that. He admitted that his complaint is also silent about heavy rains at the time of incident. He answered that his uncle already come to their house from his house which is 500 feet away. **Incident of assault lasted for about 30 to 45 minutes.**

Rest is all denial.

While under **cross-examination** at the hands of accused nos.4 and 5, he answered that after hearing shouts, persons gathered. It was raining that time. Following omissions are brought :

Fasioddin called his father; that his brother questioned Siraj and Altaf for erecting Katta; Yakub also assaulted.

11. **PW4** Syed Farooq, neighbour deposed that around 3.00 to 3.30 p.m. there were shouts in front of his house and so he ran and saw Nazir, Sadak and Ayyub fallen on the road. They had injuries on head. Ayyub also had head injury. Accused were returning after assault.

In **cross-examination** at the hands of accused nos.1 to 3, he stated that Police did not record his statement nor made enquiry with him and that he is nephew of Nazir.

12. **PW6** Isakali also deposed that at around 3.00 to 3.30 p.m. he heard shouts and so he went towards the road and saw Nazir, Sadat, Ayyub lying down. They were injured. They had head injuries and he saw accused going towards their house from the house of Nazir.

In **cross-examination** at the hands of accused nos.1 to 3, he answered that 10-12 persons had gathered. Omission are brought

that all five accused were having sticks; he saw accused going towards their house from house of Nazir.

13. **PW7** Syed Abdul Ali testified that he knew Nazir. His house is 20-30 feet away from house of accused. At around 3.00 to 3.30 p.m. incident took place on the road in front of house of Nazir. Accused assaulted Nazir. Thereafter, Sadat, brother of Nazir came out of the house. Sadat was also assaulted by four accused by sticks. **All five accused assaulted Nazir by sticks.** They also assaulted Ayyub by sticks. All three were lying on road. They were having head injuries.

While under **cross-examination** at the hands of accused nos.1 to 3, he answered that complainant and others did not assault by sticks, which are before the Court. Omissions are brought regarding his house 20-30 feet away from house of Nazir; he was in the house and hearing shouts he came out. Rest is all denial.

14. **PW8** Syed Ismile testified that Nazir is his brother. At around 3.00 to 3.30 p.m. while he was sitting in the house of Nazir, Fasioddin gave call to Nazir and so he went out. **He was assaulted by sticks by Altaf, Siraj and Pasha.** He was observing the assault. Accused also assaulted Ayub and Sadat. All three were lying down and he saw accused running away.

While under **cross-examination** at the hands of accused nos.1 to 3, he is unable to give date of incident. He answered that Police has not recorded his statement.

While under **cross-examination** at the hands of accused no.4 and 5, he stated that he carried all three accused to hospital. Rest is all denial.

Medical Witness Account :

15. **PW2** Dr.Mrs.Vijaya Trimnak Burande stated that on 24-08-2002 she examined **Syed Nazir** and noticed following injuries.

1. CLW on left parietal region of skull of size 3 cm. X 1/4th x 1/8th.
2. Haematoma on right frontal region of size 4 cm x 4 cm.
3. Haematoma on right forearm of size 4cm. 4cm.
4. Abrasion on forehead in centre of size 1cm. X 1/4th cm.
5. Abrasion on right ankle joint of size 1 x 1/4th cm.

Said injuries were within six hours and possible by hard and blunt object. Injury nos.4 and 5 to be simple in nature. Patient had head injury and being unconscious, he was referred to Civil Hospital Nanded.

On same day, she examined **Syed Sadar Miysab** and noticed following injuries :

1. CLW on left parietal region of skull of size 6x1/2x1/4th.
2. Haematoma on right forearm of size 4x4 cm.
3. Haematoma on left forearm of size 4x4 cm.

Injuries were simple in nature and might have caused by hard and blunt object within six hours.

She also examined **Syed Ayub Nazir** and noticed following injuries.

1. CLW near bregma of skull 4x1/2x1/4 cm.
2. Haematoma on right shoulder joint of size 2 cm. X 2 cm.
3. Haematoma on left wrist joint of size 4 x 4 cm.

All three injuries were caused by hard and blunt object within six hours. Injury nos.2 and 3 to be simple. This injured was also referred to Civil Hospital.

Witness identified certificates at exhibits 25, 26, 27 and opined that injuries are possible by sticks.

While under **cross-examination** at the hands of accused nos.1 to 3, medical expert stated that injured Syed Nazir was brought on 24th at 04.00 p.m.. That he was referred to Civil Hospital by referral letter. After going through treatment card, she issued exh.25. She denied injuries to be possible on account of fall on stone from tin roof. However, she admitted that injury no.1 in exh.25 is possible.

Injuries as per exh.26 are not possible due to fall on stone due to storm, but injury no.1 in exh.26 is possible by fall of stone and injury no.1 in exh.27 to be possible by fall on stone in scuffle. On perusal of record, witness stated that she also examined Altaf and noted following injuries.

1. CIW on right parietal region of skull 6x1/2x1/4.
2. Bruises on right upper arm 4cm. X 1cm.
3. Bruises on left upper arm 6cm. X 1cm.
4. Bruise on right forearm 6cm. X 1cm.
5. Bruises on left shoulder joint 2 cm. X 1cm.

Above injuries were simple. She is unable to state due to which injury, Nazir became unconscious.

16. Second medical witness and a private medical practitioner is **PW13** Dr.Ruturaj Narendrakumar Jadhav, who testified that on 24-08-2002, Syed Nazir was admitted in his Yashoda Hospital with history of assault at around 4 p.m. There was vomiting and nasal bleeding and history of convulsion. Patient was in comatose stage. Patient was taken for emergency surgery as scanning suggested right fronto parietal subdural haematoma with mid line shift and crack to right parietal bone. He identified exh.59 and 60.

While under **cross-examination** he answered that there were no

Police papers and that patient was not referred to him by Civil Hospital. He answered that patient was unconscious for two weeks. He admitted that he had not handed over papers at exh.59 to Police but those were given to patient. He admitted that he had not informed Police about the discharge. Rest is all denial including suggestion that head injury was not dangerous to life.

ANALYSIS

17. Main objections and main plank of argument made before this Court are that only interested witnesses are examined, recovery not proved, there is variance in the testimony and lastly, only simple injuries are caused.

On complete appreciation of evidence of informant **PW3** Syed Ashraf and eye witnesses **PW4** Syed Farooq, **PW6** Isakali, **PW7** Syed Abdul Ali and **PW8** Syed Ismile, it is demonstrated that occurrence took place between 3.00 to 3.30 p.m. Witnesses, who are neighbours claim to have heard shouts and come and seen the occurrence. They have stated about three injured lying and accused leaving the scene of occurrence. Omissions in the considered opinion of this Court are not vital as are not material. Occurrence is witnessed in broad day light. When several persons are involved in the form of assailants

and injured, there are bound to be variances but that itself would not be sufficient to cast doubt on the entire occurrence. Evidence of above eye witnesses regarding assault has not been disturbed so as to disbelieve their version.

18. Evidence of injured witnesses **PW9** Sayed Sadak Ali **PW10** Syed Ayub and **PW11** Syed Nazir also carries names of accused arriving to the house of Nazir and summoning him out. Injured Syed Ayub and his uncle Sayed Sadak both have also joined Syed Nazir in going out. They have narrated assault on Syed Nazir and on both of them by means of sticks. Syed Nazir seems to have suffered grievous injuries and reported to be unconscious and his discharge summary showed the impact caused on his head. Injured witness account also has virtually remained unshaken and names of accused appellants has categorically and consistently stated by them. Witnesses are consistent about assault by sticks. It is fairly settled that injured witness account always considered at higher pedestal.

19. Medical witnesses **PW2** Dr.Mrs.Vijaya and **PW13** Dr.Ruturaj, who examined injured have also described the nature of injuries, nature of object probably put to use. Injury certificates exhibits 25, 26, 27 and discharge summary exh.59 issued by each of the Medical

Experts have been brought on record by prosecution.

20. Therefore, here there is convincing and consistent ocular account and even injured witness account is getting fortified from medical evidence.

21. As regards to objection of recovery pancha not supporting prosecution case, is of no significance as recovery is shown to be proved through Investigating Officer PW12 Mundhe (PSI), who in his evidence at exh.53 deposed about memorandum of disclosure and recovery caused from the house. Accused are members of one family and therefore, recovery from their house is easily attributable to them.

SUMMATION

22. To sum up, here there is not only trustworthy eye witness account but also injured witness account finding support from medical evidence. Very submission advanced, at the outset, by learned Counsel for appellants that there are simple injuries, itself goes to show that there is no serious dispute about the incident of assault. Even otherwise, in cross-examination of prosecution witnesses, there are suggestions, which are of such nature, that

virtually incident has been not denied and is rather got confirmed. Hence, prosecution version stood proved through above quality of evidence.

23. Perused the judgment under challenge. There is just and proper appreciation of evidence of each of the witnesses. The view taken by the learned trial Court is the most possible view that could emerge even on re-appreciation of evidence. There being no infirmity or error in the impugned judgment and consequently no merit in the appeal, appeal is required to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.330 of 2005 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE