



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 356 OF 2005

1. Suman W/o. Bhikaji Mali,
Age : 46 years, Occu. : Service,
R/o. P.H.C. Katneshwar, Tq. Purna,
Dist. Parbhani.
2. Nirmalbai W/o. Shivilal Thakare,
Age : 29 years, Occu. : Labourer,
R/o. Near Khanapur Naka, Parbhani.
3. Shivilal S/o. Kashiram Thakare,
Age : 31 years, Occu. : Labourer,
R/o. Near Khanapur Naka, Parbhani. **... Appellants**

Versus

State of Maharashtra

... Respondent

...
Mr. S. D. Hiwrekar, Advocate for Appellants.
Mr. K. K. Naik, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 OCTOBER 2024

PRONOUNCED ON : 23 OCTOBER 2024

JUDGMENT :

1. In this appeal, there is challenge to judgment and order dated 23.05.2005 passed by 1st Ad-hoc Additional Sessions Judge, Parbhani in Sessions Trial No.132 of 2005 recording guilt of the appellants for offence punishable under section 323 read with section 34 of Indian Penal Code (IPC).

2. In brief case of prosecution in trial court is that, daughter of informant Ramprasad was suffering from Diarrhea and vomiting. Therefore, on 05.05.2000 at about 7:00 p.m., he visited Primary Health Center, Yerandeshwar to collect medicine. Accused no.1 refused to give medicine. Accused no.3, who was under influence of liquor as well as accused nos.1 and 2 mounted assault by means of sticks as well as fist and kick blows. Informant PW1 Ramprasad was admitted in hospital and there on his statement, crime Exh.16 was registered.

After being charge-sheeted and tried by learned 1st Ad-hoc Additional Sessions Judge, Parbhani, guilt of appellants was held to be proved. Hence the instant appeal.

SUBMISSIONS

On behalf of Appellants :-

3. Learned counsel for appellants submitted that, there is false implication. That, there are cross complainants. That, there is no independent and convincing evidence. That, there is no seizure of any articles. That, there is only evidence of informant and there is no corroboration from independent corner. It is pointed out that, learned trial Judge has accepted the prosecution version as proved. That, there is improper appreciation of evidence. That, answers in the cross-examination are not

appreciated, and therefore, learned counsel prays to allow the appeal by setting aside the impugned judgment.

On behalf of Respondent – State :

4. On the other hand, learned APP submitted that, injured was assaulted by appellants by means of stick, kicks and fist blows. That, he was required to be admitted due to injuries. That, police recorded his statement while he was undergoing treatment. That, medical expert confirms injury by examining PW2 Gangadhar is an independent witness. Therefore, as there is convincing evidence, learned APP submitted that, learned trial Judge has correctly recorded the guilt and he prays to dismiss the appeal.

EVIDENCE ON RECORD

5. Prosecution case is rested on in all four witnesses, i.e. **PW1** Ramprasad, informant; **PW2** Gangadhar, independent witness; **PW3** Dr. Pandit, Medical expert and PW4 ASI Gajbhar, Investigating Officer.

6. On appreciating the evidence of informant **PW1** Ramprasad at Exh.15, he seems to have deposed that on 05.05.2000, he went to P.H.C. Yerandeshwar to collect medicine for his ailing daughter. He has deposed that he approached accused no.1 and demanded the medicine, but she refused to give and then

he testified that he was beaten by accused no.1 and accused no.3, who was in a drunken state by means of stick on his head, shoulder and leg and he fell down. Then, he alleged blows showered by accused nos.1 and 2. He deposed about his statement recorded in hospital while undergoing treatment.

While under cross, he has stated that, house of accused and hospital are in the same building. He answered that, he did not take his daughter. He answered that there was no previous quarrel with accused. He answered that on 8:00 p.m. he was unconscious in his home. He is unable state whether there was any doctor on duty. He answered that he identified voice of Dnyanoba and Gangadhar. He answered that, while he was hospitalized, police came there. Rest is all denial.

7. Again witness was called by virtue of order passed by trial Judge on Exh.29 and this time he stated that he was beaten by stick due to which he sustained injuries on head and below the eyes. His clothes were blood stained, but police did not seize it.

8. **PW2** Gangadhar in evidence at Exh.17 stated that, on 05.05.2000 at about 7:00 p.m. while he was returning from temple, he saw quarrel between accused and complainant and then accused no.1 was beating complainant, whereas daughter and son-

in-law of accused no.1 were also beating complainant. He intervened and separated them. He and Dnyanoba took complainant in his house. He identified accused in the court.

While under cross he stated that, there was commotion in front of house of accused no.1 and in front of it there is temple. He again stated that accused nos.1 to 3 were beating complainant and he also questioned them for beating. At that time complainant had fallen unconscious.

9. **PW3** Dr. Pandit, deposed about noticing following injuries on the person of informant Ramprasad :-

- “1. C.L.W. size 3x1 cm. occipital region, caused by hard and blunt object.*
- 2. Abrasion 2x1 cm. on left cubital fossa.*
- 3. Abrasion 1x1 cm. on right forearm.*
- 4. Abrasion 2x1 cm. on right shoulder.*
- 5. Abrasion 2x1 cm. on right lion.”*

According to him, the injuries were within 12 hours. He was admitted and discharged on 10.05.2000. He identified injury certificate at Exh.25.

10. Fourth witness **PW4** ASI Gajbhar is the Investigating Officer.

ANALYSIS

11. On complete appreciation of evidence of informant, his version is that, he went to P.H.C. and demanded medicine for his daughter and accused no.1 refused to give and moreover she, her daughter and son-in-law beat complainant, has not been shaken. By way of re-examination, prosecution has brought on record that beating was by means of fist and kicks blows. PW2 Gangadhar, who has intervened and separated, is an independent witness and he has corroborated complainant's version. PW3 Dr. Pandit confirms examination and admission and noticing injuries on the person of complainant. Testimonies of PW2 Gangadhar and PW3 Dr. Pandit have also remained unshaken. Consequently, offence under section 324 of IPC is apparently made out.

12. Perused the judgment under challenge. Findings are in consonance with the evidence, there is no infirmity or perversity so as to interfere. Hence appeal deserves to be dismissed. Accordingly, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)