



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 607 OF 2005

- 1] Pandurang s/o Kishan Ghogre,
Age : 43 years, Occu.: Agriculture,
R/o : Village Therban, Taluka : Bhokar,
District : Nanded.
- 2] Balaji s/o Kashinath Ghogre,
Age : 22 years, Occu.: Agriculture,
R/o : Village Therban, Taluka : Bhokar,
District Nanded. ... Appellants
[Orig. Accused Nos. 1 & 2]

versus

The State of Maharashtra,
through Police Station, Bhokar,
Taluka : Bhokar, District : Nanded. ... Respondent

.....
Mr. Vishal A. Chavan h/f Mr. Devang R. Deshmukh, Advocate for the
Appellants.
Mr. S. K. Shirse, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.09.2024
Pronounced on : 24.09.2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order passed by the Adhoc Additional Sessions Judge, Nanded dated 16.08.2005 in Sessions Case No. 157 of 2002, thereby recording guilt

of the appellants for commission of offence under Section 326 r/w 34 of the Indian Penal Code [IPC].

PROSECUTION VERSION IN TRIAL COURT

2. On 25.06.2000, procession of Lord Bhimdeo by Nayakde community was passing over the house of informant Ganpat (PW4). Suddenly, participants of the procession started pelting stones which hit the wife of informant. Informant came out and questioned for pelting stones, upon which, accused namely, Chander, Pandurang, Parmeshwar, Kashinath, Balaji and Shivaji again pelted stones towards house of complainant. A stone pelted by accused Pandurang hit on the person of informant and a stone pelted by accused Kashinath hit informant on his back. Thereafter, accused Chander assaulted informant with axe also, causing him bleeding injury. Informant and his wife were taken to hospital. On oral report of informant, crime bearing no. 81 of 2000 was registered for offence under Sections 147, 148, 336 r/w 149 of IPC and under Section 135 of the Bombay Police Act.

3. Investigation was entrusted to PW16 PI Angule and on its completion and on gathering sufficient evidence, accused persons

were duly chargesheeted before learned Adhoc Additional Sessions Judge, Nanded, who conducted trial vide Sessions Case No. 157 of 2002. After appreciating evidence of in all 17 witnesses as well as documentary evidence, learned trial Judge held present appellants, i.e. original accused no. 1 Pandurang and original accused no.2 Balaji, guilty of charge under Section 326 r/w 34 of IPC, whereas accused nos. 3 to 6 were acquitted from all charges. Such judgment rendered by learned Adhoc Additional Sessions Judge, Nanded dated 16.08.2005 is the subject matter of challenge before this Court.

SUBMISSIONS

On behalf of the Appellants :

4. Sum and substance of the argument of learned counsel for the appellants is that there is false implication due to political rivalry. That, eye witnesses are not consistent. Evidence of informant and his wife is full of material omissions. Recovery is doubtful. There are allegations of pelting stones. Roles are not clearly defined and therefore, according to learned counsel, learned trial Judge ought not to have accepted the prosecution version. That, panchas to recovery have not supported. There is delay in lodging report. Statements are also recorded at a belated stage, giving scope for false implication. There is delayed and unexplained seizure. Consequently, learned trial

court has not properly appreciated the evidence and so, learned counsel prays to allow the appeal by setting aside the impugned judgment.

On behalf of the Respondent-State :

5. On the contrary, learned APP, while supporting the judgment, submitted that the incident had taken place in the afternoon during broad daylight. Informant and his wife, who are injured, have specifically named who assaulted with what. Immediately, injured were taken to hospital and there, report was lodged. There are other independent witnesses who have witnessed the incident. Injuries are established through medical experts. There is recovery. Blood stained clothes are also seized. That, informant, his wife and the witnesses who took them to hospital and were present around the spot, have also named appellants and also clearly defined their roles. Therefore, their version was worthy of credence and hence it has been correctly appreciated and accepted and judgment of conviction has been rendered. According to learned APP, there is no need to interfere as no case for interference is made out.

EVIDENCE BEFORE THE TRIAL COURT

6. For proper comprehension, the 17 witnesses examined by prosecution in support of its case, can be categorized as under:

Panchas to spot panchanama, seizure of clothes etc.

PW1 Gangadhar acted as pancha to spot panchanama Exhibit 35.

PW2 Pandurang is the first pancha to seizure of clothes of informant. He did not support prosecution.

PW3 Baswanta is the second pancha to seizure of clothes of informant. He identified the panchanama Exhibit 37 as well as the seized article *banian*.

PW10 Balasaheb is pancha to seizure of clothes vide seizure panchanama Exhibit 52.

Informant and injured witnesses

PW4 Informant Ganpat is the injured, who lodged report Exhibit 40. He identified the report as well as article 'A' i.e. his own *banian*.

PW5 Ratnamalabai is wife of informant (PW4). She is also injured.

PW6 Chandrabai is another injured.

PW7 Vithal is nephew of informant. He is also an injured.

PW8 Sahebrao is a victim and an injured.

PW9 Govind is also an injured eye witness.

PW11 Jagan is injured and a victim.

PW14 Dnyaneshwar is injured victim.

Eye witness

PW13 Sunil is the nephew of PW11 Jagan. He is an eye witness.

Medical Experts

PW12 Dr. Jadhav, medical practitioner, who examined injured Jagan (PW11) and issued discharge summary.

PW15 Mohd. Amjadulla is the medical officer who examined Chandrabai (PW6) and Ratnamalabai (PW5) and issued injury certificates Exhibits 61 and 61.

PW17 Lalita Swami is another medical officer who examined Jagan (PW11) at Bhokar and referred him to Nanded. She also examined injured Dnyaneshwar, Govind, Vithal, Shankar, Ganpat and Digambar and issued injury certificates Exhibits 76 to 82 respectively.

Investigating machinery

PW16 P.I. Angule is the Investigating Officer.

7. On carefully appreciating the evidence of informant and injured named above, the incident seems to have taken place on 25.06.2000, i.e. when the procession belonging to Nayakde community was going on in the village.

8. PW4 informant Ganpat stated that initially he heard about the assault on Jagan and therefore he went to his house and he claims to have seen accused Kashinath, Balaji and Pandurang were assaulting Jagan and seeing him coming, those persons fled. Jagan had suffered head injury and had become unconscious. He stated that when he came home, at that time 7 to 8 persons out of the procession started pelting stones towards his house. One stone hit his wife on the hand and when he went out of the house to inquire, accused Kashinath, Pandurang, Balaji, Parmeshwar, Shivaji, Raghunath and Kondiba started assaulting him. He has alleged that Kashinath assaulted him with axe on head, whereas accused Raghunath pelted stone and accused Shivaji, Balaji, Kondiba and others assaulted by means of sticks, and he received bleeding injury.

In cross para 4 of this witness omissions are brought about assault on Jagan and he saw Pandurang assaulting Jagan and fleeing from the spot; that, he saw Jagan had suffered head injury and had become unconscious and therefore, out of fright, he came home; that, accused Kashinath assaulted him by means of blow of axe; that, he was assaulted by Balaji, Shivaji and Kondiba by means of sticks.

9. PW5 Ratnamalabai, i.e. wife of PW4, stated that when procession was going on, she was watching it. At that time, accused Pandurang, Balaji, Kondiba, Shivaji and others pelted stones which hit her on the left hand wrist. When her husband inquired, at that time, accused Balaji, Pandurang, Shivaji and Raghunath assaulted her husband. Raghunath assaulted by means of stick, Kashinath gave blow with axe on her husband's head. Dnyaneshwar and Vitthal intervened.

In her cross, omissions are only brought about her husband inquiring accused why they pelted stones; that, accused Raghunath was having stick; and that, accused Pandurang, Balaji and Raghunath pelted stones on her left hand wrist.

10. PW6 Chandrabai stated that deceased Kashinath, Pandurang and Balaji pelted stones. She received bleeding injury on her cheek and her son received injury on his forehead and mouth. In cross, omission is brought about Kashinath, Pandurang and Balaji pelting stones on her son and she and her son both suffered injuries.

11. PW7 Vithal, nephew of PW4, stated that he went to the house of his uncle. Procession was going on. Accused Pandurang pelted stone which hit his aunt on the left wrist. When his uncle came out and inquired, Kashinath gave blow with axe on the head of his uncle, whereas rest of the accused i.e. Balaji, Parmeshwar, Shivaji, Pandurang gave blow of stick. His uncle suffered head injury. He also received head injury.

In Para 3 of his cross, omissions are brought about witnessing Pandurang pelting stones on the hand of his aunt and ; accused having sticks in their hands.

12. PW8 Sahebrao stated that accused Balaji, Pandurang, Kashinath, Shivaji, Raghunath and Parmeshwar had assaulted Jagan by stones. He had witnessed the incident from a distance of about 200 feet. When he returned home, accused persons pelted stones on his

house. He named only Balaji for giving blow of stick on his right shoulder. Accused also assaulted Ganpat by axe, but he is unable to state which of the accused assaulted by axe.

In cross para 2, omissions are brought that accused person had assaulted Jagan. He answered that there were about 50 to 100 persons who had participated in the procession.

13. PW9 Govind deposed that Kashinath, Pandurang, Shivaji, Balaji, Parmeshwar, Raghunath assaulted Jagan. Accused persons came towards him in front of G.P. office. Accused Kashinath had axe in hand, whereas Pandurang and Balaji had stones and they beat him continuously. Pandurang, Balaji, Parmeshwar, Shivaji and Kondiba pelted stones on the house. A brick pelted by Balaji hit him on the lips, whereas stone pelted by Raghunath hit him on the back.

In para 2 of his cross, following omissions are brought :

Hearing shouts of quarrel, he came out of house and saw accused assaulting Jagan; while going towards Bhokar, he saw accused persons assaulting Ganpat, Shankar and Dnyaneshwar by axe and sticks.

14. PW11 Jagan stated that he was sitting with his family at around 1.00 to 1.30 p.m. At that time, Pandurang came with stick and gave blow questioning why he took Sarpanch to Bhokar on two-wheeler. He suffered bleeding injury to the head and also injuries to neck and other parts of the body. While his family was separating him, accused Balaji came and hit him with stone. Kashinath also came and declared not to leave him alive and gave him stick blow, as a result of which, he became unconscious and was hospitalized and treated.

In cross, he admitted that he did not file report of the incident after he regained consciousness. Rest is all denial.

15. PW13 Sunil, who is nephew of PW11 Jagan, also stated that his uncle was assaulted by Balaji, Pandurang and Kashinath with stone and sticks. In cross, omissions are brought that, due to pelting of stone by Balaji, which was hit on the head of his uncle and he received bleeding injury and accused Pandurang gave blow of stick on his uncle's shoulder.

16. PW14 Dnyaneshwar has deposed that while he was going by the side of procession, accused Pandurang, Balaji and Kondiba assaulted him by fist and kicks, and also pelted stones. The stone

pelted by accused Pandurang Ghogre hit above his eyebrow. He further deposed that he came to know that Kashinath had assaulted Ganpat by axe. He again corrected himself and said that in his presence Kashinath assaulted Ganpat.

17. PW12 Dr. Jadhav had examined Jagan and he identified his discharge summary. The said discharge summary Exhibit 56 shows that Jagan was diagnosed of head injury with left temporal depressed fracture skull with underlying contusion. According to the Doctor, head injury was grievous in nature and had the patient not been treated in time, injury was sufficient to cause death in ordinary course of nature.

18. PW15 Medical Officer Mohd. Amjadulla, who examined Chandrabai and Ratnamalabai, noticed contusion on back and abrasion on right hand of Chandrabai; contusion and abrasion over left wrist joint of Ratnamalabai. All injuries were simple in nature. He identified certificates Exhibits 61 and 62.

19. PW17 Medical Officer Lalita Swami Examined Jagan, Dnyaneshwar, Govind, Vithal, Shankar, Ganpat and Digambar. She deposed about noticing contusion as well as CLW on left temporal

region of Jagan and both injuries, according to her, were grievous in nature. Dnyaneshwar had CLW on right eye which was simple injury. Govind had one simple injury i.e. contusion on right eye, and two grievous injuries, i.e. cut injury on upper lip and dissected teeth. Vithal and Shankar had CLW on left temporal, CLW on forehead and contusion on right temporal, respectively, and all injuries, according to her, were simple in nature. Ganpat was found to have suffered one CLW on left parietal region which was grievous, and one contusion on occipital region which was simple injury. Digambar was also found to have suffered one simple CLW injury on right mid leg and one grievous injury i.e. dissected teeth. This medical expert has also deposed that injury suffered by Jagan was danger to life and if not treated in time, it was sufficient to cause death of Jagan.

20. Therefore, here, there is not only eye witness account, but injured witness account, and three medical experts who examined them, have also stepped into the witness box. It is fairly settled that injured witness account always stands on a higher pedestal, as held in ***Balu Sudam Khalde and another v. The State of Maharashtra*** 2023 LiveLaw (SC) 279. As regards accused nos. 1 and 2, i.e. Pandurang and Balaji, it is noticed that all witnesses are consistent about they holding stick and stone. What triggered the incident has not come on

record, but it seems to be a fallout of some religious procession which was going on. As regards the remaining accused are concerned, injured witnesses are not consistent and even their evidence is found to be carrying material omissions. Therefore, taking into consideration the evidence against accused Pandurang and Balaji, nature of articles held by them, the injured witness account, more particularly of PW4 Ganpat, PW9 Govind and PW11 Jagan, there is convincing evidence regarding their participation and role. They were in each other's company. Therefore, taking into account the number of injured persons and their testimonies, there is sufficient material regarding these two accused. In occurrence of such nature, wherein several persons are involved and several injured are involved, there are bound to be variances. However, when more than one witnesses are found to be consistent, their testimonies can be relied.

21. Perused the judgment under challenge. Learned trial court has elaborately discussed the substantive evidence as well as the answers given by the witnesses in cross. There is proper appreciation and only accused, against whom there is convincing evidence, are held guilty. Therefore, no fault can be found in the manner of appreciation or findings recorded by learned trial Judge. There is no infirmity or irregularity so as to interfere. However, learned trial Judge has

sentenced accused-appellants to suffer four year's imprisonment. Said judgment is of 2005, i.e. almost two decades back. Therefore, considering such lapse of time and the fear of conviction and sentence looming over their head and considering the submissions to consider modification of sentence, same is required to be modified. Hence, the following order is passed :

ORDER

- I. The appeal is **partly allowed**.
- II. Conviction awarded to the appellants, i.e. appellant no.1 Pandurang s/o Kishan Ghogre and appellant no. 2 Balaji s/o Kashinath Ghogre, by the Adhoc Additional Sessions Judge, Nanded in Sessions Case No. 157 of 2002 for offence punishable under Section 326 r/w 34 of IPC on 16.08.2005, is hereby maintained, however, the sentence is modified and reduced and instead of rigorous imprisonment for four years, **they are sentenced to suffer rigorous imprisonment for a period of one (01) year**. There is no change in fine amount as well as in-default sentence.
- III. Rest of the impugned judgment and order is maintained.

[ABHAY S. WAGHWASE, J.]