



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 196 OF 2002

Ramesh s/o. Ghanashyam Wawale,
Age : 46 years, Occupation: Service,
Residing at Ambedkar Nagar, Purna,
Taluka Purna, District Parbhani.

... Appellant

[Orig. Accused]

Versus

The State of Maharashtra,
Through Police Station, Purna.

... Respondent

.....
Mr. S. R. Kolhare, Advocate for the Appellant.
Mr. N. D. Batule, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24th JANUARY 2024

PRONOUNCED ON : 01st FEBRUARY 2024

JUDGMENT :

1. Dissatisfied by the judgment and order of conviction dated 18.02.2002 passed by IInd Ad-hoc Additional Sessions Judge, Parbhani in Sessions Trial No. 06 of 1999, thereby convicting appellant for charge under section 333 of Indian Penal Code, original accused convict has preferred instant appeal.

2. In brief, prosecution case is that, complainant is a police personnel posted at Purna Police station. Accused was arrested in previous crime bearing Crime No. 15 of 1991 for commission of offence under Bombay Prohibition Act. That, present complainant

had taken him for medical test. On 29.03.1991, when complainant and his colleagues were on patrolling duty, accused came there, and he gave blows to complainant, as a result of which his teeth got dislodged. FIR regarding said episode was registered by complainant, which was for offence punishable under section 333 of IPC.

PW5 API Chandrakant Alsatwar, who was entrusted the investigation, carried out the same and charge-sheeted accused.

Accused was made to face trial before Additional Sessions Judge for commission of offence under section 333 of IPC and finally on trial accused was held guilty. Hence the appeal.

3. Learned counsel for appellant would submit that, wrong charge has been framed. Secondly, there is no independent evidence. Prosecution has examined only police witnesses. That, spot has not been proved and panch to spot has not supported the prosecution. Evidence of medical expert also ought not to have been relied by the learned trial Judge, as medical witness has not stepped into witness box. Even according to him, required ingredients to attract the charge being not available in prosecution

evidence and so conviction recorded by learned trial Judge is in absence of cogent and reliable evidence.

4. In answer to above, learned APP would submit that, accused assaulted complainant, who was discharging official duty. Accused was annoyed with complainant for taking him for medical examination after being apprehended for committing offence of Prohibition Act. Since then accused was annoyed and on 29.03.1991, he beat complainant, his two teeth were broken and there was bleeding. PW2 Prabhakar, who was present with the complainant had seen the occurrence is an eye witness. He has resultantly deposed to that extent. Medical evidence corroborates complainant's testimony, and therefore, it is his submission that, judgment of conviction is just, legal and proper and so no interference is warranted.

5. In the light of above submissions and on re-appreciation of evidence, it is emerging that, appellant was charge-sheeted for offence under section 333 of IPC. Before advertng to the evidence it would be desirable to reproduce the said provision and also state the essential ingredients required for attracting said offence, which reads as under:-

“Section 333:- Voluntarily causing grievous hurt to deter public servant from his duty -

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

ANALYSIS

6. Here, prosecution has examined in all 5 witnesses. Crucial evidence is of complainant (PW1 Babu). On going through his testimony, which is at Exh.08, we find him deposing about, he too be on patrolling duty that night and accused coming and giving fist blows on his face, thereby dislodging his teeth and causing bleeding injury. Complainant claims that, he shouted and his colleagues, who were also on patrolling duty, rushed and they all them chased the accused.

On visiting his cross, one does not come across anything adverse on fatal as regards to the version of complainant about assault by accused. On the contrary, suggestions whether blood fell on uniform and whether there was swelling to his upper lip, itself shows that there was no serious challenge to the episode of assault. Nothing has been brought in the cross to doubt version of the complainant.

7. Evidence of complainant is sought to be fortified by examining PW2 Prabhakar also a police personnel and he in his evidence is also stated that, the complainant and their officials were on patrolling duty. They heard noise of shouting of complainant and so they saw towards him and found accused beating complainant and fleeing. He also stated that two teeth of complainant got dislodged and there was bleeding injury and so complaint was lodged.

Nothing has been brought in his cross also to doubt above version.

8. PW3 Dr. Dwarkadas Zanwar, medical expert deposed that, on 29.03.1991, he was working as Public Health Center, Purna. Dr. B. V. Mohalkar his colleague, who is no more, but whose signature he identified, had examined victim and issued injury certificate (Exh.14), wherein following injuries were noticed and noted :-

“(1) Abrasion upper lip inside, measuring about $\frac{1}{2}$ " x $\frac{1}{3}$ " which is simple in nature, caused by hard and blunt object, age of the injury is within 1 to 2 hours.

(2) Fracture of first and second inciser, upper jaw, left side, fresh bleeding from gums present, the injury is grievous in nature, caused by hard and blunt object, age is 1 to 2 hours.

(3) Loose both right incisors, 1st and 2nd upper jaw, bleeding from gum site, grievous in nature, caused by hard and blunt object, age within 1 to 2 hours."

9. There is no effective cross except a suggestion that he is falsely deposing about being acquainted with signature of Dr. Mohalkar.

10. PW4 Tikamdas, spot panch has retracted and has not supported the prosecution. PW5 Chandrakant is the Investigating Officer.

SUMMATION

11. Here, prosecution has clearly established the charges. Testimony of complainant and his colleague PW2 Prabhakar is intact and has remained unshaken in spite cross. Medical evidence is also establishing the incident. Therefore, charges and its essential ingredients are shown to be available and existing in the testimony of PW1 Babu and PW2 Prabhakar. Case of prosecution is that, assault was out of annoyance for taking accused for medical examination after he was apprehended for offence of Prohibition Act. Such case has not been shaken by showing anything contrary. Therefore, considering testimonies of PW1 Babu and PW2 Prabhakar coupled with evidence of PW3 Dr. Dwarkadas Zanwar, case can safely be said to be proved. Mere hostility shown by panch

witness itself would not be sufficient to doubt the remaining prosecution version and evidence.

Resultantly, nothing perverse is brought to the notice of this court regarding findings arrived at by learned trial Judge. No case being made out on merits, I proceed to pass following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)