



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 299 OF 2002

1. Laxman Jagannath Suryawanshi, }
Age : 57 years, Occu. : Service, } **... Abated**

2. Bhilabai W/o. Laxman Suryawanshi,
Age : 50 years, Occu. : Household,

3. Prakash s/o. Laxman Suryawanshi,
Age : 28 years, Occu. : Education,

All R/o. Dondaicha, Tq. Sindkheda,
Dist. Dhule.

... Appellants.
(Accused Nos.1 to 3)

Versus

1. Nathmal Kisanlal Jain,
Age : 67 Years, Occu. : Business,
R/o. Dondaicha, Tq. Sindkheda,
Dist. Dhule.

2. The State of Maharashtra **... Respondents.**

...

Mr. U. S. Malte, Advocate for Appellants.

Mrs. Siddhi Kothari h/f. Mr. S. G. Ladda, Advocate for Respondent No.1.

Mr. N. D. Batule, APP for Respondent No.2 – State.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14th MARCH, 2024

PRONOUNCED ON : 22nd MARCH, 2024

JUDGMENT :

1. Judgment and order passed by Additional Sessions Judge, Dhule dated 10.05.2000 in Criminal Appeal No.8 of 1994, thereby convicting appellant nos.2 and 3 for offence punishable

under section 323 of Indian Penal Code (IPC) and accused no.1 for offence punishable under sections 342 and 323 of IPC, thereby confirming the judgment and order passed by learned IInd Joint Judicial Magistrate First Class, Sindkheda, is hereby assailed by filing instant appeal.

FACTUAL MATRIX

2. Complainant a trader, who ran grocery shop in municipality market, was available in his shop around 8:00 a.m. to 8.15 a.m. on 06.01.1990. There was previous verbal squabbles between complainant and accused on account of fall of water in his tin roof. In that background, accused persons came to complainant and abused him in filthy language. Shortly thereafter, accused again came accompanied by policeman and he was taken to police station. At the doors of police station, accused and his brother Motilal were again abused and beaten. According to him, he and his brother were confined in a room by accused no.1 police constable and again beaten by means of kicks and fists blows. When his son Mahendra and his friend Prithaviraj came their to rescue, they were also beaten. Finally report to that extent was lodged, resulting into registration of crime.

On completion of investigation, crime was registered against all five accused persons and they were charge-sheeted for

commission of offence under sections 323, 341 read with section 34 of IPC.

They were made to face trial before learned Judicial Magistrate First Class, Sindhkhedra, vide S.T.C. No. 187 of 1990 and on appreciation of evidence, learned trial court passed following order :-

“1. Accused no.2 Bhilabai Laxman Suryawanshi and Accused No.3 Prakash Laxman Suryawanshi are convicted for the offence punishable under section 323 of I.P.C. and sentenced to pay Rs.500/- (Rs. Five Hundred) each and i/d suffer S.I. for one month. Both accused acquitted for the offence punishable under section 341 of I.P.C.

2. The Accused No.1 Laxman Jagannath Suryawanshi convicted for the offence punishable under section 323 of I.P.C. and sentenced to suffer R.I. three month and also sentenced to pay fine Rs.500/- i/d suffer R.I. for one month. He is also convicted for the offence punishable under section 342 of I.P.C. and sentenced to suffer three month R.I. and sentenced to pay fine of Rs.500/- and in default he should suffer R.I. for one month. The both punishment should suffer concurrently.

3. Their bail bond stand cancelled.”

SUBMISSIONS

On behalf of Appellants :

3. Learned counsel for appellants submitted that, there is false implication. Admittedly, complainant and accused had inimical terms since previously. There is no witness to abuse the

complainant by visiting his shop in the morning in spite of it being commercial area. Similarly, alleged beating has taken place in police station, but no witness has been examined. He pointed out that, witnesses are also not consistent and their testimonies are full of material omissions and contradictions. Medical evidence does not support ocular account. That, there is no independent witness corroborating versions of complainant. Incident is blown out of proportion to simply implicate accused persons. Learned trial court has not considered that none of the ingredients for attracting the charges were available, still conviction has been recorded. That, there being improper appreciation of evidence, he prays to allow the appeal by setting aside the impugned judgment and order.

On behalf of respondents :

4. In answer to above, learned APP for State as well as learned counsel for original complainant would submit that occurrence has taken place in the early hours of the morning. Accused persons were regularly abusing complainant. Father accused no.1 is in police department. Disadvantage of the same is tried to be taken. That, after abuse and threat at shop, accused persons brought police personnel, took complainant to the police station, beat him as well as his brother in the police station

premises. They both suffered injuries. Son of complainant and one Prithviraj, who came to rescue, they were also beaten. They were examined by Doctor on same day. Doctor has deposed and issued injury certificates. Therefore, all necessary ingredients being available, supported the findings of the learned trial court and both learned counsels prayed to dismiss the appeal for want of merits.

EVIDENCE ON RECORD

5. **PW1** Nathumal in his evidence at Exh.35 deposed about the incident that, while he was in his shop between 08:00 to 8:30 a.m. accused nos.2 and 3 came and abused in filthy language, questioning him whether premises belongs to his father. They threatened to see him and went, but came back with two policemen and he and his brother were taken to police station. Their accused nos.1 to 3 started beating him and his brother with kicks and fist blows on his check, necks and private part. When his son and Prithviraj came in police station, they were also beaten by accused nos.1 and 3. Accused no.1 then confined them in a room behind police station and was again beaten. Only when mob gathered, they were allowed to go. He and others were taken to hospital for examination and he lodged report.

6. **PW2** Suresh, a neighbouring shop owner deposed that,

he saw accused nos. 2 and 3 abusing complainant. Later on, two police constables came and took complainant and his brother to police station. Witness claims that he also followed. According to him, accused no.1 beat the complaint and his brother in police station. Accused no.1 and other police confined the complainant and his brother Motilal in one room behind the police station. Accused no.2 beat the complainant and Motilal with fists and kicks. On arrival of some respectable persons, accused no.1 was asked to release complainant and other.

7. **PW3** Mahendra, son of complainant deposed that, accused Nos.2 and 3 came and abused his father. Later on, his father and uncle were taken to police station and he and Prithviraj followed them. When complainant and his uncle entered police station, all accused beat them and when he and Prithviraj went to rescue, they were also beaten and further taken in a room and confined.

8. **PW4** Dr. Santosh Avad deposed about examining Nathumal, Mahendra, Pruthviraj, Motilal and he narrated the injuries noticed by him and identified injury certificates (Exh.43, 44, 45 and 46.

9. **PW5** Motilal, brother of complainant also stated about accused nos.2 and 3 initially abusing, he and his brother being taken to police station and at the doors of police station, he and his brother being beaten by kicks and fist blows and confined in the room behind police station.

ANALYSIS

10. Primary criticism against judgment is that, firstly, there is no independent witness. Secondly, due to previous quarrels there is false implication. Thirdly, witnesses are inconsistent and fourthly ocular account not finding support from medical account.

11. On the lines of above arguments, if the testimonies are put to minute scrutiny, it is noticed that, complainant was available in his shop around 8:00 a.m. to 8:30 a.m. He is categorical about arrival of accused nos.2 and 3 and abusing him. Immediate neighbour Suresh lend support to his version. They both are consistent about complainant and his brother Motilal being taken by two policemen. Complainant and his brother Motilal are consistent about being initially beaten by accused no.1 and thereafter by all accused in the premises of Police station. Complainant is very categorical about arrival of his son Mahendra and Prithviraj. They were also targeted and beaten for intervening.

12. Thus, both brothers as well as son and one Prithviraj are given thrashing in the police station premises. Nothing adverse has been brought in the cross so as to disbelieve their versions. Mere failure of prosecution to examine independent police witness is no good ground to disbelieve their version, more particularly when it is inspiring confidence. There seems to be a reason from police for not giving statement as only on arrival of a mob, complainant was let loose from the room. Probably for such reason, police have not made them as a witness. However, doctor has deposed about examining complainant and others on 06.01.1990 itself on being referred by police itself. He has described the nature and size of the injuries. He has issued and placed medical certificates on record. Though injuries are simple, he has opined the same to be possible on account of assault by fist and kicks blows. In cross he has answered that, though injuries can be self inflicted, but also possible on account of contact with hand and blunt object. There is no suggestion about injuries due to fall.

Resultantly, here there is consistent ocular account of injured of not only complainant, but other injured witnesses.

13. Learned trial court and first appellate court have rightly appreciated and inflicted sentence only for those offences

for which there is evidence. It is the possible view that could emerge on even re-appreciation of the evidence. Therefore, no fault can be found in the appreciation of evidence and conclusion drawn by learned trial Court as well as appellate court. No case on merits being made out, I proceed to pass following order : -

ORDER

- i) The criminal appeal stands dismissed.
- ii) The Judgment and order passed by Additional Sessions Judge, Dhule dated 10.05.2000 in Criminal Appeal No.8 of 1994 is hereby maintained.

(ABHAY S. WAGHWASE, J.)