



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 511 OF 2002

1. Shaikh Chotu s/o Shaikh Burhan
Beniwale,
Age 35 years, Occu. Agriculture,
R/o Manjrewadi,
Taluka and District Jalna.
2. Shaikh Mohammed s/o Sk. Jumma,
age 35 years, Occu. Agriculture,
R/o as above.
3. Shaikh Ramzan s/o Sk. Bannu,
age 40 years, Occu. Agriculture,
R/o as above.

... Appellants
[Accused]

Versus

1. The State of Maharashtra
2. Bhaurao s/o Shahurao Borude,
Age 45 years, Occu. Agriculture,
R/o Shindi Kalegaon,
Taluka and District Jalna.

... Respondents.

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Mr. S. S. Kazi, Advocate for the Appellants.
Mr. K. K. Naik, APP for Respondent No.1-State.
Mr. Joydeep Chatterji, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.06.2024

Pronounced on : 05.07.2024

JUDGMENT :

1. The judgment and order of conviction passed by learned 1st Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 152 of 2000 recording guilt for offence punishable under Section 324 r/w 34 of the Indian Penal Code [IPC], is assailed by filing instant appeal.

IN BRIEF, CASE OF PROSECUTION IN TRIAL COURT

2. Land of appellant no.1 Chotu @ Kathhu is adjoining to the land of informant PW1 Bhaurao. There was long standing dispute between both of them on account of use of common *bandh* for storing fodder. The incident in question is of 16.05.2000. In above backdrop, according to prosecution, an application was given by son of informant, i.e. PW10 Shivaji, to police station. Shivaji was questioned by accused persons for tendering such application and he was assaulted. Such occurrence was reported by niece of PW1 Bhaurao and therefore, informant and his other son Ashok (PW4) reached to the field and they questioned Chotu @ Kathhu for assaulting Shivaji. Thereafter, accused no.2 Mohammed, accused no.3 Ramzan and brother of accused no.2, namely, Sk. Hasan (deceased) came and attacked informant as well as his son Ashok by means of stick, axe and stone. Injured Ram, Shivaji and Ashok were taken to hospital and

there, on statement of PW1, crime was registered and it was investigated by PW12 ASI Salve, who carried out investigation and after completion of the same, chargesheeted all three accused-appellants for offence punishable under Sections 307, 324, 506 r/w 34 of IPC and they were tried.

3. In support of its case, prosecution adduced evidence of in all 12 witnesses and also rested their case on documentary evidence like injury certificates, panchanamas etc. On appreciating the oral and documentary evidence, learned trial Judge held charge proved for commission of offence under Section 324 r/w 34 of IPC and accordingly, sentenced present appellants to suffer imprisonment for one year and to pay fine.

Such conviction is taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of the appellants:

4. Learned counsel for the appellants would submit that there is false implication. That, there was previous enmity. According to him, prosecution version is not consistent and rather it is full of material

omissions and contradictions. That, there is no recovery. He further submits that trial court did not appreciate as to who was the aggressor. That, essential ingredients for attracting offence under Section 324 IPC are not available in prosecution evidence. As, according to him, there is improper appreciation of evidence both, oral and documentary, such judgment cannot be allowed to be sustained and hence he prays to allow the appeal by setting aside the impugned judgment.

On behalf of the State and the informant :

5. Learned APP as well as learned counsel for the informant supported the judgment by pointing out that there is direct evidence as well as injured witness account which is reliable, trustworthy and it has remained unshaken in spite of lengthy cross. That, very nature of cross itself confirms that incident had taken place. That, in support of injuries suffered in the assault, medical expert's evidence is available. Medical expert, who himself has treated injured and has issued injury certificates, has deposed in the witness box. That, offence is clearly made out and therefore, according to learned APP, no fault can be found in the conclusion drawn by the learned trial court and hence, they pray to dismiss the appeal.

SUM AND SUBSTANCE OF THE EVIDENCE OF PROSECUTION WITNESSES

6. In order to establish its case, prosecution has examined following witnesses.

PW1 informant Bhaurao stated that on 16.05.2000, his son Shivaji had been to plough the field. His niece Anita came and informed around 8.00 a.m. that, Shivaji was assaulted by Muslim gawalis. Therefore, he and his other son Ashok came there and found Shivaji unconscious and on being questioned, accused no.1 Chotu/Kathhu, accused no.2 Mohammed, accused no.3 Ramzan along with Shaikh Hasan (deceased) reached there and they all assaulted informant Bhaurao and Ashok by means of stick, axe and stone. They all were taken to hospital and there, he gave statement Exhibit 23.

PW2 Chhayabai, wife of PW3 and sister-in-law of PW1, stated that they heard voice of Shivaji from the field and they all went there. Accused no.1 questioned Shivaji why he gave complaint against him at police station. Meanwhile, accused nos. 2 and 3 came there. They all assaulted Shivaji with stick, axe and stone. Her husband Ram and informant Bhaurao came there and approached accused to question why they assaulted Shivaji. That time, all three accused and deceased Hasan suddenly attacked informant Bhaurao, Ashok, Shivaji and Ram by means of stick and axe. Injured were taken to hospital.

PW3 Ram, brother of informant, stated that incident took place at 7.30 a.m. He heard voice from the field of Shivaji and so he went there and heard accused no.1 asking Shivaji why he gave application to police. Hot exchange of words took place. Accused no.1 assaulted Shivaji with stick. Accused nos. 2 and 3 and deceased Hasan came running on the spot and assaulted him also with stick, whereas Hasan and accused no.3 assaulted Shivaji with axe. Informant and his another son Ashok reached there. Accused persons assaulted informant also. Accused no.3 gave blow with axe on the head of informant and also on the head of this witness. He was admitted in the hospital.

PW4 Ashok, son of informant, also stated that after his cousin told about Shivaji being beaten, they all went to the field. His uncle Ram informed about accused nos. 1 to 3 and Hasan beating Shivaji with stick. When his father questioned, accused nos. 2 and 3 and one Hasan came there armed with axe, stick and stone and assaulted his father, uncle Ram, brother Shivaji and him also with axe and stick.

PW5 Suresh stated that he heard noise of quarrel and when he reached the spot, he saw informant Bhaurao and Shivaji lying unconscious and Ram and Ashok to be in injured condition. He and his cousin Dagdu shifted injured to the hospital.

PW6 Ganesh has acted as pancha to spot panchanama Exhibit 31.

PW7 Tulshiram is pancha to seizure of clothes Exhibit 32.

PW8 Girdhari, pancha to memorandum and seizure of wooden stick. He did not support prosecution.

PW9 Hanif, another pancha to memorandum and seizure of stick. He also did not support prosecution.

PW10 Shivaji, son of informant, stated that incident took place on 16.05.2000. Around 6 a.m. he went to the field. At that time accused no.1 questioned him for giving application and thereafter questioned him for keeping fodder on the *bandh*. Thereafter, accused no.1 assaulted him with stick. When his uncle Ram and aunt Chhaya came, accused nos. 2 and 3 and deceased Hasan came there. They assaulted his uncle and again accused nos. 1, 2 and 3 along with Hasan assaulted this witness also. His uncle ran. After 20 minutes, his father, brother Ashok and uncle Ram came. His father asked accused no.1 why he assaulted this witness. That time, all accused assaulted his father by stick, axe and stone. Axe was in the hand of Hasan and accused no.3 Ramzan. Accused no. 2 had stone and stick. Accused no.1 also had stick. This witness was hospitalized for 7 days. His statement was recorded.

PW11 Dr. Ambhore is the Doctor who examined informant PW1 Bhaurao, Ram, Shivaji and Ashok and issued certificates Exhibits 41 to 44 respectively.

PW12 ASI Salve is the Investigating Officer.

ANALYSIS

7. Admittedly incident has taken place on 16.05.2000. There is no dispute that informant party and accused party are neighbours and there is dispute over common *bandh*. As regards the incident in question, on appreciating the evidence of main injured Shivaji (PW10), it is emerging that when he went to the field, at that time, accused no.1 had questioned him for giving application to police and there was also quarrel for keeping fodder on the *bandh*. Shivaji has stated that he was assaulted by stick. Hearing his noise, his uncle and aunt i.e. Ram and Chhayabai came there. Accused nos. 1 and 3 assaulted his uncle and so he ran. 20 minutes later, his father, brother and uncle came, but accused assaulted them also. In the examination-in-chief, he stated that when his father questioned why there was assault on this witness, accused started assaulting him by means of stick, axe and stone. According to him, axe was in the hands of Sk. Hasan and accused no.3 Ramzan, whereas accused no.2 had stick and stone and accused no.1 also had stick. They assaulted this witness, his father, uncle and brother Ashok.

8. PW3 Ram, who is examined at Exhibit 26, was the first one to reach after hearing commotion. He in his evidence stated that he

heard accused questioning Shivaji for giving application, followed by hot exchange of words, and when this witness tried to convince, accused nos. 2, 3 and Hasan came running. Accused no.1 assaulted this witness with stick on knee, back and shoulder and again Sk. Hasan and accused persons assaulted Shivaji with axe on the head. He claims that he ran away. His wife had told Anita to call informant and when he reached there and questioned accused, Sk. Hasan and Ramzan had axe in hand, accused no.2 had stone and they assaulted informant on the head with axe.

9. PW1 informant, who has reached there on being called by Anita, also deposed that when he came, he saw Shivaji unconscious and when he questioned accused, he also deposed that accused nos. 2, 3 and Hasan came there and all three assaulted this witness. They had stick, axe and stone. Hasan gave blow of axe on his head, Ramzan also gave blow with axe on his head. Hasan gave another blow on his arm. They also assaulted his other son Ashok with stick and stone.

10. PW2 Chhayabai, i.e. wife of PW3 Ram, was also present along with her husband Ram. She has also stated that after hearing noise from the field of Shivaji, when she and her husband went there,

Shivaji was questioned by accused no.1 for giving complaint. Accused persons assaulted Shivaji with axe, stick and stone. When informant came and questioned accused, they beat him, her husband, Ashok and Shivaji with stick and axe.

11. Apart from above direct eye witnesses and injured witnesses account, there is evidence of PW5 Suresh and he has shifted informant Bhaurao, Shivaji, his brother Ram and Ashok to hospital.

12. Though above witnesses are subjected to extensive cross, there is very little or almost no cross on the actual occurrence. Whatever suggestions given regarding occurrence are flatly denied. Therefore, testimony of injured eye witnesses has remained virtually unshaken.

13. PW11 Doctor, who examined all injured, has also narrated about the injuries noticed by him and he has issued certificates which are got exhibited. Doctor's evidence about injuries is also not rendered doubtful in any manner. Doctor has very categorically stated that injuries suffered by these persons were simple, superficial in nature, though he has stated that some of the injuries like abrasion and contusion are possible due to fall.

14. Therefore, here, there is cogent, reliable and trustworthy injured witness account. Injured witnesses are consistent. Roles are also consistently stated. Taking medical expert's findings into consideration, offence of only Section 324 IPC is definitely made out.

15. Perused the judgment under challenge. Apparently, learned trial court has correctly appreciated the testimonies of PW1 to 5 and 10 and has held that offence under Section 324 IPC has been made out against all three accused. The appreciation is in consonance with the available evidence and as such, there is no reason to interfere. Hence, I proceed to pass the following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]