



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 695 OF 2002

1. Sopan Janardhan Patil,
Age : 20 years, Occ. : Labour,

2. Sunil Madhukar Koli (Ingale),
Age : 23 years, Occ. : Labour,

Both R/o. Therola, Tq. Muktainagar,
Dist. Jalgaon

... Appellants

(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through – P.S.O., Muktainagar Police
Station, Muktainagar, Dist. Jalgaon

... Respondent

(Ori. Complainant)

...

Mr. S.S. Gangakhedkar h/f. Mr. M.S. Deshmukh – Advocate for
Appellants

Mr. P.M. Kulkarni – A.P.P. for Respondent, State

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 27th OCTOBER, 2023

PRONOUNCED ON : 22nd JANUARY, 2024

JUDGMENT :

1. The appellants, who are the original accused, have preferred this appeal against judgment and order dated 01.10.2002 passed by 2nd Ad-hoc Additional Sessions Judge, Jalgaon (hereinafter referred to as “*the learned Trial Court*”) in Sessions case No.110 of

2001. The appellants – accused were tried for the charge under Sections 307, 341, 504 and 506 read with 34 of the Indian Penal Code (“I.P.C.” for short), however they are convicted by the learned Trial Court only under Section 324 read with 34 of I.P.C. and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/- each, in default to suffer rigorous imprisonment for three months each.

2. The Prosecution story in brief is as under :

On 09.01.2001, one Ishvar Balu Badare i.e. informant in the instant case was coming back to his village Therola from village Kurha at about 05:00 p.m. on his motorcycle. At about 05:45 p.m. when he reached near to temple at the outskirts of village Therola, both the appellants who are also residents of village Therola made signaled to stop him. The informant – Ishvar stopped his motorcycle and enquired with the accused why they asked him to stop. At that time, appellant No.2 told Ishvar for not to become over-smart otherwise he would break his limbs. While this conversation was going on, suddenly appellant No.1 assaulted Ishvar with the help of a knife and gave blows of the knife on left side of chest and abdomen of Ishvar. Therefore, Ishvar left the

motorcycle and started running towards village. He was firstly taken to hospital at Kurha by his brother Pandhari but no Medical Officer was available there and therefore, he was taken to Rural hospital at Muktainagar from where he was sent to Civil hospital, Jalgaon for further treatment. While Ishvar was taking treatment at Civil hospital, Police-Sub-Inspector of Zilla Peth Police Station recorded his statement and on the basis of said statement, offence under Sections 307, 341, 504, 506 read with 34 of I.P.C. was registered against the appellants vide Crime No. 4 of 2001 in Muktainagar Police Station. Assistant-Police-Inspector Mr. Nigot started the investigation and on completion of the same filed charge-sheet against the appellants under the aforesaid sections. The learned Trial Court then proceeded with the trial after committal of the case and convicted the appellants as aforesaid.

3. Learned Counsel for the appellants/accused submitted that, the prosecution story appears completely false as there was no motive to the appellants for assaulting the informant – Ishvar. He pointed out that, there was delay in lodging First Information Report. Conviction of appellant No.2 along-with appellant No.1 is totally illegal. Since there was no overt act from appellant No.2 but

he had only threatened the informant. He further argued that, the Spot Panch as well as Recovery Panch have not supported the case of prosecution and the recovery of weapon for assault was from open place which was accessible easily to everyone. According to him, the learned Trial Court has committed gross error in treating the memorandum of the accused recorded under Section 27 of the Indian Evidence Act as confession of the accused. According to him, the incriminating part of such memorandum cannot be used against the appellants. Thus, he prayed for acquittal of the appellants. Besides his oral submissions, he relied on following judgments :

(a) Hon'ble Apex Court in the case of **Vijay Shankar Vs. State of Haryana** reported in (2015) 12 SCC 644

(b) Hon'ble Apex Court in the case of **State of Maharashtra Vs. Raju Bhaskar Potphode** reported in (2007) 11 SCC 261

(c) Hon'ble Apex Court in the case of **Anter Singh Vs. State of Rajasthan** reported in (2004) 10 SCC 657

4. On the contrary, learned A.P.P. strongly opposed the submissions made on behalf of the appellants – accused and supported the impugned judgment. According to him, there is evidence of informant on record which is well supported by the

medical evidence. Though there are some discrepancies or contradictions in the versions of prosecution witnesses but those are not on material aspects. Therefore, he prayed for dismissal of the appeal.

5. Heard rival submissions and also perused the entire oral and documentary evidence on record along-with the impugned judgment.

6. It is significant to note that the appellants / accused were initially charged for the offence under Sections 307, 341, 504 & 506 r.w. 34 of IPC. However, after conducting the trial, they were found guilty for the lesser offence i.e. under section 324 r.w. 34 of IPC. On perusal of the judgment it appears that the learned trial court has not found the required intention for holding the appellants / accused guilty for the charge under Section 307 of IPC but has observed that both of them in furtherance of their common intention caused grievous injury with the help of knife to the informant Ishvar. Further, it appears that the learned trial court has relied upon the memorandum which led to the recovery of weapon involved in the crime as confessional statement of

appellant No.1 Sopan and therefore, held them guilty. However, it is settled position that the statement of the accused while in police custody recorded for the purpose of recovery of any article related to the crime cannot be considered as confessional statement of the accused for convicting him. The purpose of that memorandum recorded under Section 27 of the Indian Evidence Act is only material for recovery of the article. As such, here the learned trial court has definitely erred in treating the memorandum of the accused recorded under Section 27 of the Indian Evidence Act as his confessional statement.

7. Even if it is so, then also the other evidence on record needs to be scrutinized to ascertain as to whether the learned trial court has rightly convicted the appellants / accused for the offence under Section 324 of IPC. It is significant to note that the informant / injured Ishvar Badre has deposed at Exhibit-23 and according to him on the day and time of the incident both the appellants / accused signaled him to stop when he was coming on the motorcycle. Then appellant No.2 threatened him about breaking of his limbs and appellant No.1 Sopan stabbed him twice or thrice by means of knife. The informant Ishvar has specifically

stated that appellant No.1 gave blows of knife on the left side of his chest and abdomen. Though he further stated that after some time, his brother Pandhari and Gopal Khavle came, but in the FIR Exhibit-24 the informant Ishvar had stated that after the incident took place, he started running towards village and then villagers and his brother Pandhari rushed there and took him to the Civil Hospital. Though the informant Ishvar has not stated so while deposing before the court about his running towards village after the incident by leaving the motorcycle on the place of incident, but this discrepancy is not regarding the main incident of assault and therefore, can be ignored. Admittedly, the recovery punch PW-4 - Baburao Vagh and PW-5- Mahadeo Tayde have not supported the prosecution but the learned trial court has observed that the recovery is established by the investigating officer by relying upon certain judgment in the impugned judgment.

8. The learned counsel for the appellants / accused pointed out that the recovery was not supported by the panch witnesses and it was from open place but still the learned trial court relied upon it. Admittedly, there are judgments on record which show that recovery of weapon used in the crime from a place which is easily

accessible is doubtful but in the instant case the informant has specifically deposed that appellant No.1 assaulted him with the help of knife and he also identified the knife in open court. As such, even if it is assumed that recovery was doubtful for want of supporting evidence of panch witnesses but considering the direct evidence against the appellants in respect of the said knife in the crime it is safe to observe that appellant No.1 had given knife blows to the informant Ishvar.

9. The learned counsel for the appellants / accused pointed out that the prosecution case is silent on the point of reason to assault. Admittedly, the prosecution has not brought on record any reason for causing assault on the informant by the appellants but the defence put up by the appellants / accused by way of cross-examination of the informant Ishwar, indicates that the informant Ishwar was having evil eye on sister of accused No.1 Sopan by name Meera. According to the said defence the informant was harassing Meera and when the appellant / accused No.1 threatened him of lodging a complaint against him in police station for harassing her sister Meera, the informant Ishvar prepared a concocted story of assault. In fact he had slipped from

motorcycle and sustained injuries to his chest and abdomen. However, there is no support to such defence. Nothing is there on record to show that the informant Ishwar had done anything for teasing Meera. Even if the possibility to that effect is presumed, then it was in fact motive for appellant No.1 to knife assault on the informant Ishvar. It is extremely important to note that the appellants / accused had also raised a defence that the informant sustained injuries by falling from the motorcycle. For that purpose the learned counsel for the appellants / accused heavily relied upon the admission given by the medical officer i.e. PW-7 Dr. Balaji Gomsale, wherein he has stated in cross-examination that the injuries sustained by the informant were also possible due to fall from motorcycle. However, it is extremely important to note that PW-7 Dr. Gomsale then specifically stated that in that case there would have been other injuries also. In the instant case only two injuries are found on the person of the informant Ishvar and therefore, the defence of the appellants / accused that the informant - Ishvar might have sustained the injuries by falling from the motorcycle, appears highly improbable.

10. Further, it appears that the FIR lodged by the informant

about the incident was on the second day of the incident and it is important to note that though the incident took place in the evening, the informant immediately was admitted to the hospital because of severe injuries and therefore whatever delay is there in lodging FIR has been properly explained by the prosecution. Therefore, I do not find any force in the submission of the learned counsel for the appellants / accused as regards the delay in lodging the FIR being fatal to the prosecution case.

11. The learned counsel for the appellants / accused also argued that there was no overt act on the part of the accused / appellant No.2 and the main act of causing stab injuries to the informant – Ishvar, was by appellant / accused No.1. However, if the sequence of facts took place before the incident of knife assault is seen, then it appears that both the appellants / accused were present at the place of incident and waiting for informant – Ishvar. It was appellant No.2 – Sunil, who had signaled the informant – Ishvar to stop. He also threatened him about breaking of his limbs and then appellant No.1- Sopan inflicted knife blows on the vital parts of body of the informant – Ishvar. This sequence definitely indicates that both the appellants / accused had acted in furtherance of

their common intention at the time of incident. As such, the learned trial court has rightly held that both the appellants were guilty for the offence as per Section 34 of IPC.

12. Thus, considering all the evidence on record, it appears that the prosecution has established the fact that both the appellants / accused in furtherance of their common intention threatened and assaulted the informant – Ishvar with deadly weapon such as a knife. The ocular evidence i.e. evidence of the informant is well supported by the medical evidence on record. The defence of the appellants / accused also appears highly improbable and therefore, no substance is found in the appeal for interfering with the verdict of the learned trial court. Accordingly, the appeal stands dismissed.

13. The appellants / accused – 1) Sopan Janardhan Patil & 2) Sunil Madhukar Koli (Ingale) are directed to surrender before the learned trial court within a period of two months from today. The appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE