



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 44 OF 2004

1. Mahadu s/o Motiram Jogdand,
Age 28 years, Occu. Agri.
R/o Warud – Chakrapan,
Taluka Sengaon,
District Hingoli.
2. Motiram s/o Ukandi Jogdand,
Age 55 years, Occu. Agri.,
R/o as above.
3. Shankar s/o Dagdu Jogdand
Age 27 years, Occu. Agri.
R/o as above.

... Appellants
[Orig. Accused]

Versus

The State of Maharashtra
Through Police Station Sengaon,
Tal. Sengaon, District Hingoli.

... Respondent

.....

Mr. B. S. Kudale, Advocate for the Appellants.
Mr. K. K. Naik, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.07.2024

Pronounced on : 09.07.2024

JUDGMENT :

1. The instant appeal arises out of the judgment and order passed by learned Adhoc Additional Sessions Judge, Hingoli dated 29.12.2003 in Sessions Trial No. 01 of 2000, by which present

appellants are held guilty for commission of offence punishable under Section 324 r/w 34 of the Indian Penal Code [IPC].

FACTS IN BRIEF, LEADING TO TRIAL

2. Sengaon Taluka Police Station registered crime on the basis of FIR filed by Ashru (PW6), regarding occurrence taking place on 03.06.1999 at around 7.30 to 8.00 p.m. The genesis of the occurrence is, obstruction of way. Accused persons assaulted complainant and injured by use of articles like stick, axe, fists and kick blows. Injured were referred to Government Hospital. On the statement of Ashru, crime bearing no. 45/1999 was registered for offence under Sections 307, 324, 504, 147, 148 and 149 of IPC against in all 8 accused persons.

3. In support of its case, prosecution adduced evidence of in all 12 witnesses and also relied on documentary evidence. Defence also adduced evidence of DW1, a medical officer. After appreciating the evidence adduced by both sides, learned trial Judge recorded the finding that prosecution has succeeded in establishing guilt of only accused nos. 1 to 3 for offence under Section 324 r/w 34 of IPC and sentenced them to suffer imprisonment for two years and to pay fine,

in default, to suffer simple imprisonment for six months. By same judgment, accused nos. 4 to 8 stood acquitted from all charges.

Above conviction is now taken exception to by convicts-original accused nos. 1 to 3.

SUBMISSIONS

On behalf of the appellants :

4. Learned counsel for the appellants pointed out that admittedly there is previous enmity. There are cross cases. According to him, in the trial court, prosecution could not establish the charges beyond reasonable doubt. He pointed out that though prosecution claims that there is convincing, cogent and reliable direct evidence, it is not so. To buttress such submission, learned counsel took this Court through the observations recorded by learned trial Judge, noting that witnesses are not eye witnesses. He further submitted that on visiting cross of each of the prosecution witnesses, it is found to be full of material omissions, contradictions and variances. He also pointed out that medical evidence also is not concrete and full proof. That, even medical expert failed to bring medical record to show that so called injured were admitted and examined. Lastly, he submitted that

learned trial court, on same evidence, has already acquitted accused nos. 4 to 8 from all charges, but only accused nos. 1 to 3 are chosen, even when there was weak and virtually no evidence against them. That, it being a free fight, roles were not clear. Therefore, he criticizes the judgment passed by learned trial court to be erroneous, bad in law and not sustainable.

5. Learned counsel for the appellants has placed reliance on the decisions of this Court in *Pintya @ Nilesh Govindrao Kokate v. State of Maharashtra* 2008 ALL MR (Cri) 1801 and *Shaikh Baba s/o Shaikh Anis v. State of Maharashtra* 2011 ALL MR (Cri) 1394.

On behalf of the State :

6. In answer to above, supporting the judgment, learned APP pointed out that, there is direct evidence as well as injured witnesses' account. That, witnesses are consistent and each of them has specified and defined the role of convicts. That, they were armed with deadly weapons and there is recovery. That, injured were immediately examined and the doctor, who examined and treated them and issued medical certificates, has also stepped into the witness box. Therefore, according to him, finding all necessary ingredients to attract Section

324 IPC being available, learned trial court has committed no error whatsoever in recording guilty. Hence, he prays to dismiss the appeal for want of merits.

SUM AND SUBSTANCE OF THE PROSECUTION EVIDENCE

7. The role and status of the 12 witnesses examined by the prosecution, and the sum and substance of their evidence is as under :

PW1 Ramji stated that on hearing news of quarrel, he went to the scene of incident and saw Ashruba with bleeding injury. In chief itself, he stated that he was not present at the time of actual quarrel, but he marked presence of accused on that place and claims to have asked accused not to assault. He further stated that accused Motiram gave him axe blow on the frontal part of head, accused Mahadu inflicted him axe blow on his left thumb. When Rahubai came, accused Motiram gave her axe blow from blunt side on right hand and also gave axe blow to Sunita on head. He further deposed about they being taken to hospital.

PW2 Rahubai at Exhibit 41 deposed that her son Ashruba (PW6) was assaulted at around 8.30 p.m. and she learnt about it from small children. She deposed that Motiram, Mahadu and Shankar had axes in their hands. She was given blow from the blunt side of axe on forearm by Motiram and she suffered fracture. Her son Ashruba and brother-in-law were assaulted by

axe. According to her, some assailants had sticks and persons from Sengaon took them to hospital at Parbhani.

PW3 Shantabai, wife of PW1 Ramji, testified that Ashruba is her nephew. After she heard quarrels from her grand-daughter, she went to the spot which was near Admane's cattle shed. According to her, Motiram gave blow with axe on the head of her husband, as well as Mahadu gave blow on thumb of her husband. Shankar assaulted herself. Ashru and her husband fell down due to assault. They were taken to Sengaon.

PW4 Dr. Rodge, in his evidence stated that on 03.06.1999, four injured were brought for examination and treatment. He stated that he examined Sunita who had cut wound on frontal area which was simple in nature. He also examined Rawanabai who had two injuries, i.e. cut wound with query fracture of ulna and multiple contusion on back, and that, as he was not certain about nature of injuries, he referred her to radiology. The third injured examined by him was Ramji who had two injuries, one cut injury with query fracture of skull on the frontal area, but injury was simple in nature, the 2nd injury was cut wound with laceration on left thumb. He also claims to have examined Ashruba and found 2 wounds i.e. a cut wound on left frontal area and a contused lacerated wound on mid-head. He was also referred for radiology. He identified certificates Exhibits 45 to 48.

PW5 Tulshiram acted as pancha to seizure panchanama Exhibits 52 to 57.

- PW6** Ashru, at Exhibit 61 deposed that all accused had obstructed his way while he was proceeding towards field and he was also questioned and abused by Mahadu. Mahadu gave him axe blow on his head. His uncle Ramji came. Motiram gave axe blow to his uncle Ramji on head. His sister Sunita came and she was hit by Motiram on the center of her head. When his mother Rahubai came, Motiram gave axe blow from the blunt side. Then his paternal aunt came. Mohan, Dagdu, Kashiran and others came and all accused assaulted by stick and fist blows. At hospital, police recorded his statement.
- PW7** Sunita, daughter of PW1 Ramji, stated that when they went to the spot on hearing news, she saw Mahadu assaulting Ashru with axe. When her father went to rescue him, Motiram gave him blow on the head and he fell down. Again Mahadu gave axe blow on left thumb. They went to Sengaon.
- PW8** Prakash stated that at the time of incident he was in the house. There was uproar in the village. He went there. He saw Ashru and Ramji being given axe blow. Ramji was fallen down. Sunita was also given blow and Rahubai was given axe blow on her hand from blunt side of axe. All injured were taken to Sengaon.
- PW9** Siddharth, son of PW1 Ramji, stated that he knew accused as well as Ashru. On 03.06.1999 when he was in the house, he learnt from boys about Ashru being assaulted by Motiram, Mahadu and Shankar and their relatives. He went to the spot and saw Mahadu, Motiram and Shankar had axes in their hands. Motiram had hit blow on Ashru's head and on the left side of head of his father Ramji. That time, Mahadu gave axe

blow to his father on left thumb. Motiram gave blow of axe on the left hand of Rahubai. Shankar gave axe blow on the head of Sunita and other persons gave stick blows.

PW10 Sudhakar is pancha to spot panchanama. He did not support prosecution.

PW11 Mohan stated that when he went to the spot, there was quarrel going on. Mahadu, Shankar and Motiram had axes in hand and others had sticks. Mahadu gave axe blow on Ashru. Motiram gave axe blow on Ramji, Shankar gave blow on the head of Sunita. Motiram gave axe blow on Rahubai. Ramji, Ashru and Sunita had suffered bleeding injury and they were taken to the hospital.

PW12 PSI Akoskar is the Investigating Officer.

8. Defence has also examined DW1 Dr. Rodge, who stated that while he was attached to Primary Health Center, Sengaon, he examined accused Mahadu who had suffered abrasion on forehead which was simple in nature. He also examined accused Motiram who had two contusion injuries over left arm and above right ear. According to him, Nandu Motiram Jogdand had contusion on right scapula and accused Shankar had abrasion on right cheek. He issued certificates Exhibits 87 to 89.

ANALYSIS

9. In this appeal, there is challenge to the finding of guilt recorded by learned trial Judge for offence punishable under Section 324 r/w 34 of IPC. For proper comprehension and understanding, Section 324 IPC is reproduced as under :

“Section 324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

10. Here, prosecution has examined as many as 12 witnesses including the Investigating Officer. Out of them, injured are PW6 Ashruba (informant), PW1 Ramji, PW2 Rahubai (mother of informant) and PW7 Sunita (cousin of informant). Rest are claiming that they had visited the spot and seen the occurrence.

11. **PW6 Ashru**, who is informant, has deposed that while he was going to his land, his way was obstructed. First, accused no.1 Mahadu abused him and then gave blow of axe. When his uncle Ramji (PW1) came, he stated that, accused Motiram gave blow of axe on his head. Thereafter, his sister Sunita (PW7) and mother Rahubai (PW2) came. Accused Motiram gave axe blow on the center of head of Sunita, so also hit Rahubai from the blunt side of axe. He named Dagdu, Kashiram, Jijaba, Mahadu Pradhan, Ramesh coming there and beating by sticks and fist blows.

12. **PW1 Ramji** also stated that when he reached the scene of occurrence, he saw PW6 Ashru had bleeding injury. When he requested accused not to assault, he stated that, accused no.2 Motiram gave him blow of axe on the frontal side of head. Accused no.1 Mahadu gave blow on his left thumb and when Rahubai came, accused no.2 Motiram gave her blow from blunt side of axe on right hand. Other accused assaulted Rahubai with sticks. Accused no.2 Motiram gave axe blow on head of Sunita.

13. **PW2 Rahubai** also stated that when she went to rescue her son, she saw Motiram, Mahadu and Shankar to be armed with axes. She sustained injury on the forearm. She attributed blow to Motiram. She

stated that her son Ashruba and brother-in-law were assaulted by axe. She stated that some assailants had sticks in their hands.

14. **PW7 Sunita** also deposed about accused no.1 Mahadu hitting axe on the head of Ashru, accused no.2 Motiram giving axe blow on left side of head of her father Ramji, then accused no.1 Mahadu giving axe blow on left thumb of Ramji. She further stated that stitches were required to be given to herself, Ashru and Ramji.

15. Though **PW3 Shantabai** deposed that Motiram and Mahadu gave blows of axe on head and left thumb of her husband and Shankar assaulted Sunita, she merely stated that all were given stick blows.

Therefore, actual injured Ashru, Ramji, Rahubai and Sunita have categorically defined the roles of accused Mahadu, Motiram and Shankar and they all are consistent about these accused to be armed.

16. **PW4 Dr. Rodge**, medico legal expert, in his evidence deposed about examining Sunita Ramji Jogdand, Rawanabai Baliram Jogdand, Ramji Peeraji Jogdand and Ashru Baliram Jogdand and he identified certificates Exhibits 45 to 48 issued by him. He also stated that injury to Rawanabai is possible by axe blow from the blade side, injury no.1

to Ramji as well as both injuries to Ashruba to be possible by sharp edge of axe. In cross, he answered that injury to Sunita was vertical in direction. Therefore, on the night of occurrence itself, injured witnesses named above were examined by the medical expert and injured witnesses' account is finding support from the medical expert.

17. On carefully going through the entire cross faced by PW1 Ramji, relevant cross regarding occurrence in para 8 goes to show that occurrence of assault is acknowledged and brought on record. Witness is asked, after how much time first blow was given when he reached the spot, after how much time second blow was given and whether blood fell on the clothes of PW6 Ashruba. Witness has answered that he sustained bleeding injury to the left thumb. He is asked which side he was facing when blow was given to him and which side he was facing when second blow was given to him and after how much time he fell unconscious. He flatly denied that first three accused had suffered any injury. He is questioned about the measurement of axe, whether he came running towards the spot from his house and whether he had seen Rahubai and Sunita after suffering blow. Consequently, defence has not disputed the occurrence of assault.

18. Likewise, even in cross of PW2 Rahubai, omissions are merely brought on the point of her son Ashruba going towards the land, about availability of ditch and cattle shed near the spot and about accused persons assaulting anybody coming in their way. These are not material omissions touching to the aspect of overt acts. In para 6 of her cross, she categorically stated that two axe blows were given to Ashruba in her presence and at that time, she was near Ashruba. She admitted that the spot where Ramji was assaulted, was away from the spot where Ashruba was assaulted. Therefore, such manner of cross to this witness categorically shows that occurrence of assault at the hands of accused is not disputed and denied.

19. Nothing adverse is brought in the cross of injured PW7 Sunita as well as PW3 Shantabai, whose husband Ramji was injured.

20. When this Court pointed out above cross to learned counsel for the appellants, he could not refute or offer any explanation as to how and why, when there is categorical admission in the cross regarding occurrence and when the injured witness account is also finding support from medical evidence, the testimonies of PW1, PW2, PW3, PW6 and PW7 should be disbelieved.

21. PW5 Tulshiram has deposed about accused no.1 Mahadu, accused no.2 Motiram and accused no.3 Shankar giving memorandum of disclosure regarding handing over axe. He has further deposed about memorandum given by Kashiram, Dagdu and Jijaba for producing sticks. Therefore, there is recovery of articles, of which pancha's testimony has not been disturbed.

22. **PW8 Prakash** is admittedly an independent witness. Likewise **PW9 Siddharth** has narrated the occurrence and he has testified about visiting the spot and seeing accused and his relatives carrying assault. He claims that he had requested not to assault. He also defined roles of Motiram, Mahadu and Shankar, who were holding axe in their hands. Even **PW11 Mohan** stated that, when he went, there was quarrel. Mahadu, Shankar and Motiram were having axe in their hands. He also attributed roles to these accused. However, his statement was not recorded by police and he directly deposed in the court.

23. Therefore, here, there is overwhelming and clinching evidence of not only injured eye witnesses, who are victims, but even independent witnesses wherein roles of present appellants are consistently coming on record. As stated above, the entire tenor of

cross shows that there is no challenge to the very occurrence of assault.

24. Though defence witness spoke about injuries suffered by accused, it was a matter of distinct sessions case and not a part of present trial faced by present appellants. To sum up, the evidence of prosecution does support occurrence involving offence under Section 324 of IPC.

25. Perused the judgment under challenge. Evidence of injured as well as independent witnesses has been correctly appreciated and the findings are in consonance with the evidence on record as well as the law. No interference is called for. The facts of the cases cited by the learned counsel for appellants are distinct and cannot be applied to the case in hand. Hence, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]