



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 130 OF 2004

1. Balu S/o Umaji Shep
Age: 28 years, Occu.: Agri.,
R/o. Shepwadi, Tq.Ambejogai,
Dist.Beed.
 2. Bharat Vishnu Karad
Age: 24 years, Occu.: Education,
Ambajogai, Tq.Ambajogai, Dist.Beed.
-Appellants
(Orig. Accused)

Versus

- . The State of Maharashtra
Through Police Station Officer,
Police Station, Ambajogai,
Tq.Ambajogai, Dist.Beed.
-Respondent

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Advocate for Appellants : Mr. N.P. Patil Jamalpurkar
APP for Respondent : Mr.A.A.A.Khan

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 JULY, 2024
PRONOUNCED ON : 30 JULY, 2024

JUDGMENT :-

1. In this appeal, convicts for offence under Section 307 and Section 506 (II) read with Section 34 of the Indian Penal Code (IPC), have taken exception to the judgment and order passed by learned II Ad-hoc Additional Sessions Judge, Ambajogai in Sessions Case No.60 of 2001 dated 21-02-2004.

FACTS GIVING ARISE TO SESSIONS TRIAL

2. A programme known as “Natrangi Nar” was held in Auditorium of Yogeshwari College, Ambajogai on 11-04-2001. Informant Venkatesh, joined by his friends Hemant Kapse, Dhananjay Pawar, Raviraj Kale were attending the programme. Accused no.2 was also one of the audiences. While appreciating the performance, accused no.2 was raising his hands thereby obstructing vision of Hemant Kapse. Heated exchange of words took place, after which accused no.2 left the auditorium issuing threats to see Hemant. Shortly he returned with accused no.1. Accused no.2 inflicted knife blow in the abdominal part of Hemant whereas accused no.1 pushed and made Raviraj Kale fall. Thereafter, accused no.1 again inflicted blow on the back of Hemant, who suffered bleeding injury. Accused nos.1 and 2 also showered kick and first blows on Venkatesh and Dhananjay. Injured were taken to the hospital and meanwhile, informant Venkatesh rushed to Police Station, reported the occurrence, on the basis of which, Crime bearing no.72 of 2001 was registered by Police.

PW10 Gaikwad (PSI), who was entrusted with investigation, carried out the same and on gathering evidence, accused were chargesheeted. Case being exclusively triable by Sessions Judge, it came to be committed on the file of learned II Adhoc Additional

Sessions Judge, Ambajogai, who framed and explained charge and conducted trial, which ended in above conviction. Hence, the present appeal.

SUM AND SUBSTANCE OF THE ARGUMENTS

On behalf of appellants :

3. Learned Counsel for the appellants submitted that prosecution had miserably failed to establish charges beyond reasonable doubt. According to him, at the outset, charge itself was misplaced. That there was no occurrence to attract offence under Section 307 of the IPC. He further pointed out that accused were unknown to informant as well as so called injured. That no TI Parade has been conducted. Therefore, identification of accused is doubtful. That on this point, he further emphasized that incident took place when some Folk dance was in progress and there was light arrangement only on stage whereas remaining part of the Auditorium, where audiences and spectators were sitting, was dark. Therefore, identity of accused alleged assailants, is not proved beyond doubt.

4. He further pointed out that so called recovery is doubtful. That Pancha to recovery has not supported. That there is no full-proof

scientific evidence and moreover, he emphasized that seized muddemal was despatched for analysis after inordinate delay. Therefore, there is doubt about safe custody of the muddemal thereby raising possibility of tampering. He added that there is no proper custody or linked evidence thereby rendering prosecution case of recovery and seizure doubtful.

5. Criticizing the judgment passed by learned trial Judge, learned Counsel would submit that there is incorrect appreciation of evidence. That material omissions, contradictions, improvements, which are brought on record in cross-examination, are brushed aside. Therefore, according to him, findings and conclusion not being supported by sound reason, such judgment cannot be sustained and he prays to interfere by setting aside the same. Learned Counsel seeks reliance on the decision in the case of *State of Maharashtra v. Genu Yeshwant Divate*, 1989 Mah.LR 534.

On behalf of State :

6. On the other hand, learned APP submitted that there is clear, cogent convincing evidence. That informant is a direct eye witness. That there is injured eye witness account. That they all are

consistently deposing the events that took place in the Auditorium. That presence of accused has not been denied or disputed. That evidence of informant and injured has remained unchallenged and unshaken. That there is recovery of deadly weapon like knife of which witnesses are deposing about its use. That role of both accused are distinctly and consistently coming on record. That medical expert's evidence corroborates ocular and injured account and so he supports the judgment passed by learned trial Court and prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE TRIAL COURT

7. In support of its case, prosecution has adduced evidence of in all eleven witnesses. Sum and substance of their evidence is as under:

PW1 Ranghnath Venkatrao Khogare is pancha to seziure panchanama of clothes of injured. Seizure Panchanama is at exh.22.

PW2 Deelip Bhanudas Bhalekar is pancha to spot panchanama. Spot Panchanama is at exh.26.

PW3 Chimaji Pandurang Dhotre is pancha to seizure of knife on body search of accused Balasaheb. Seizure panchanama is at exh.29.

PW4 Venkatesh Dhondiram Thakur is informant. He deposed about he attending programme in the Auditorium of college on 11-04-2001. He named friends accompanying him and also deposed that accused no.2 Bharat Karad was sitting in their front side and was raising hands due to which Hemant Kapse was unable to see the event and was therefore, questioned. Accused no.2 left issuing threat to see and brought two boys. Accused no.2 gave knife blow on abdomen of Hemant and accused no.1 gave knife blow on back of Hemant. Injured went to hospital and this witness went to Police Station and lodged report exh.32.

PW5 Dhananjay Achutrao Pawar deposed about occurrence between accused and Hemant Kapse dated 12-04-2001, exchange of words between Hemant Kapse and accused no2., accused no.2 leaving by issuing threats and he returning with accused no.1, both accused nos.1 and 2 inflicting knife blows on Hemant Kapse and injured being taken to hospital.

PW6 Hemant Kashinathrao Kapse injured stated that while watching programme in the Auditorium of the college, accused no.2 was raising hands and was so requested to not to do so as he could not see the programme properly. Exchange of words taking place between both of them. Accused no.2 leaving after issuing threats and

returning with accused no.1. First accused no.2 gave blow of knife in his stomach whereas accused no.1 gave knife blow on the back of this witness. This witness suffered bleeding injury and he was taken to S.R.T.R. Hospital, Ambajogai.

PW7 Dr.Rahis Rashid Hashmi is Medical Officer, who examined injured and issued medical certificate exh.39.

PW8 Ram Lala Dhotare is pancha witness for body search of accused.

PW9 Dr.Sudhir S/o Bhaskar Deshmukh is Medical Officer, who conducted surgery and placed papers exh.53 on record.

PW10 Manik Shrirang Gaikwad (PSI) is the Investigating Officer.

PW11 Maruti Eknathrao Chandanshiv (PHC) is the Police Officer, who recorded report of informant.

ANALYSIS

8. Sum and substance of **PW4** Venkatesh / informant's evidence at exh.31 is that incident took place in the premises of Yogeshwari Science College, Ambajogai. A folk dance program was in progress. Informant claimed that he had been to attend such programme alongwith **PW6** Hemant Kapse, Raviraj Kale and **PW5** Dhananjay

Pawar. That when the song was in progress, accused no.2, who was also attending the programme, was raising hands, obstructing the vision of PW6 Hemant and was therefore, requested not to do so and this triggered quarrel. Accused no.2 left issuing threats and returned with accused no.1. According to him, accused no.2 gave blow of knife in the stomach of PW6 Hemant whereas accused no.1 initially pushed Raviraj Kale and inflicted blow of knife on Hemant near waist resulting into bleeding injury. According to him, Hemant, Raviraj and Dhananjay went to hospital and he reported occurrence to Police.

On visiting **cross-examination** of above witness, it's tenor goes to shows that there is no denial of the function and even it is so evident from paragraph 5 of the cross-examination. Similarly paragraph 8 further shows that presence of accused and victim is got confirmed. Who was sitting where is also got confirmed. Paragraph 9 also shows that presence and occurrence is admitted. Omissions brought in paragraph 10 do not seem to be material omissions. Even paragraph 13 marks presence of accused nos.1 and 2 therefore, testimony of informant has remained steadfast regarding occurrence of assault and presence of accused.

9. Even **PW5** Dhananjay in paragraph 3 narrated about the incident, venue of incident, which was attended by himself, PW6 Hemant and informant PW4 Venkatesh. Even he stated about exchange of words taking place between accused no.2 and Hemant Kapse and accused no.2 leaving after issuing threats to see and returning with accused no.1. Even he defined the role of accused nos.1 and 2 i.e. accused no.2 inflicting knife blow on the stomach of Hemant and accused no.1 inflicting knife blow on the back of Hemant and he suffering injuries and he himself and Raviraj, Hemant visiting S.R.T.R. Hospital.

Paragraph 6 of **cross-examination** of above witness shows that there is no dispute or challenge about accused no.2 leaving the programme to call his friends. Only omission brought in paragraph 7 is that after threatening Hemant, accused no.2 left. Description of the scene of occurrence is brought in paragraph 8 of the cross-examination. Manner of cross-examination in paragraph 8 also shows that overt act and implication of the same is rather got confirmed. Cross-examination in paragraph 9 and the answer that accused nos.1 and 2 did not make more attack after instigation also shows that there is no serious challenge to the role and assault.

10. **PW6** Hemant, injured in paragraph 2 deposed about requesting

accused no.2 not to raise hands as he was unable to see the programme properly and thereafter, accused no.2 quarreling with him, and then leaving by issuing threats to see him and returning with accused no.1. He deposed that first accused no.2 gave blow of knife on his stomach i.e. navel part whereas accused no.1 gave blow on the back at right side. When his friend Raviraj tried to intervene he was pushed and made to fall. He deposed about sustaining bleeding injury and being taken to S.R.T.R. Hospital Ambajogai and taking treatment for 26 days.

Only omission brought in paragraph 8 of cross-examination is about accused no.2 sitting in his front and uttering words like “*Too majala ahes*”. Paragraph 9 of cross-examination shows that there is omission about bending at the time of first blow, his friend Raviraj coming to his rescue and accused no.1 pushed him and he fall down. Except such omission, testimony of PW6, more particularly, paragraphs 2 and 3 of examination-in-chief has not been touched or disturbed.

11. Therefore, sum total of above evidence is that PW4 Venkatesh, PW5 Dhananjay and PW6 Hemant demonstrates and substantiated that in the night of 11-04-2001, they had been to attend a function,

which was also attended by accused no.2. All are consistent about heated exchange of words taking place between injured and accused no.2. All are also consistent about accused no.2 leaving after issuing threats to see and returning with accused no.1. Roles of both accused are consistently stated by not only informant PW4 Venkatesh but also by PW5 Dhananjay and very injured PW6 Hemant. Both accused are identified by the witnesses in the court.

12. Testimonies of Medical Officers PW7 Dr.Hashmi and PW9 Dr.Deshmukh confirm injuries, its nature and treatment. Medical evidence has also remained intact.

Therefore, here there is convincing, reliable cogent evidence of direct eye witness PW4 Venkatesh / informant and injured witnesses finding support from medical evidence.

13. Learned Counsel for appellants would strenuously and fervently submit that there is no independent evidence. According to him, function was at night hours, there was light only on stage and rest of the place was dark and therefore, identity fo actual assailants is doubtful. He submitted that TI parade is not conducted. Further according to him, there was no intention to kill so as to attract attempt to commit murder. He seeks reliance on the case of *Genu*

Yeshwant Divate (supra).

14. Here learned trial Judge has held both accused guilty for offence under Section 307 read with 34 of the IPC and under Section 506 (II) read with 34 of the IPC. Admittedly and apparently, incident seems to be a fall out of heated exchange of words that too only between accused no.2 and PW6 Hemant. At the time of quarrel, only accused no.2 was present in the Auditorium. But he left issuing threats to see PW6 Hemant and returned with accused no.1 and they both returned that too getting armed with knives, which are deadly weapons.

15. **PW7** Dr.Hashmi, examining Doctor noticed incised wound on Epigaspic region and mid back on the person of PW6 Hemant. Doctor termed the injury to be grievous and to be by sharp weapon. He referred him to the Surgeon. This Doctor has also identified knife and according to him, injuries are possible by articles 4. He further stated that patient would have succumbed to death had he not been brought to the Hospital and the injuries noticed by him was sufficient to cause death.

In **cross-examination** he has denied injuries to be simple. There is mere failure to mention in the injury certificate regarding

injuries to be dangerous to life. There is no requirement for issuing such certification or remark.

16. **PW9** Dr.Deshmukh, a Surgeon, who conducted operation is examined at exh.49. According to him, patient was restless and serious and needed urgent surgery. Even he stated that injury was grievous and the patient might have succumbed to death if operation would not have been conducted within 48 hours. Even he described second injury to be grievous in nature.

17. Therefore, both medical experts are categorical about injuries to be grievous in nature.

18. Taking into consideration the sequence of events, background of the occurrence, circumstances in which incident took place, nature of article used and site of injury, this is a case, which squarely attract offence under Section 307 of the IPC.

The evidence of PW4 Venkatesh, informant and PW6 Hemant, injured shows that when the incident took place, the unknown person accompanied with accused nos.1 and 2 was giving call to cause death of injured PW6 Hemant. Apart from this, PW6 Hemant, in his evidence at exh.35, stated that accused no.2 gave him threat to kill. Therefore, offence under Section 506 (II) also gets attracted.

19. Perused the citation relied by the learned Counsel for the appellants. The facts in the case relied by the learned Counsel and the facts in the case in hand are quite distinguishable. Therefore, the ratio laid down in the said case cannot be made applicable in the present case.

20. I have gone through the judgment under challenge. In the considered opinion of this Court, there is correct appreciation of both evidence as well as law. No illegality or perversity is brought to the notice of this Court so as to interfere. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.130 of 2004 is dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE

21. On pronouncement of this Judgment, learned Counsel for the appellants prays for six weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

22. Learned APP strongly opposes the same.

23. Considering the above request made by learned Counsel for the appellants, six weeks time is granted for the appellants to surrender.

(ABHAY S. WAGHWASE)
JUDGE

SPT