



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 210 OF 2004

1. Deorao S/o. Bhaurao Poul,
Aged : 26 years, Occu. : Agriculture,
R/o. Kalgaon, Tq & Dist. Hingoli.
 2. Nilkanth S/o. Bhaurao Poul,
Age : 20 years, Occu.and R/o. As above
- ... Appellants**

Versus

State of Maharashtra

... Respondent

.....
Mr. Vishal Amritlal Bagdiya, Advocate for Appellant.
Mrs. Chaitali Chaudhari Kutti, APP for Respondent - State.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 DECEMBER 2024

PRONOUNCED ON : 19 DECEMBER 2024

JUDGMENT :

1. Getting dissatisfied by the judgment and order dated 06.03.2004 passed by learned Ad-hoc Sessions Judge, Hingoli in Sessions Trial No. 57 of 2003, appellants have preferred instant appeal.

2. In nutshell, on report of PW1 Narayan, Hingoli Rural Police Station charge-sheeted present appellants, on the premise that, on 14.10.2002 around 6:00 to 6:30 p.m. in the backdrop of obstruction to PW7 Uttam and his wife and they approached present

complainant a police patil, who accompany them to the police station. On the way, it is alleged that, present appellants intercepted complainant, questioned him for accompanying Uttam and they both beat him. Allegations were levelled that, accused Deorao gave blow with stone on the left eye, whereas accused Nilkanth hit stick on the ear pinna causing him injury. On lodgment of report to that extent by Narayan, crime was registered and was investigated by PW9 P.I. Patil, who after gathering evidence, charge-sheeted appellants.

3. Case was tried by learned Ad-hoc Additional Sessions Judge, Hingoli vide Sessions Trial No. 57 of 2003 and after appreciating oral and documentary evidence, appellants are held guilty for offence punishable under section 324 read with section 34 of Indian Penal Code.

It is the above judgment and order of conviction, which is subject matter of appeal in this court.

STATUS AND ROLE OF PROSECUTION WITNESSES IN TRIAL COURT

4. **PW1** Narayan informant, who lodged report at Exh.13 and narrated the incidence.

PW2 Dr. Pawar is the Medical Officer, who examined injured informant and issued certificate (Exh.16).

PW3 Syed Khamruddin is the P.S.O., who entertained the complaint and registered crime and handed over investigation to PW9 P.I. Patil.

PW4 Bajirao is the independent eye witness.

PW5 Siddharth, pancha did not support the prosecution.

PW6 Yeshvantrao, second pancha did not support the prosecution.

PW7 Uttam, another pancha did not support the prosecution.

PW8 Sakharam, an acquaintance of accused and complainant, did not support prosecution.

PW9 P.I. Patil is the Investigating Officer.

ANALYSIS

5. On re-appreciation of substantive evidence of informant Narayan PW1 at Exh.12, it seems that, incident is of 14.10.2002. According to informant, around 6:00 to 6:30 p.m., while he was sitting on his platform, at that time, PW7 Uttam and PW8 Sakharam came and informed him that Uttam and his wife were abused and beaten by appellants Deorao, Nilkanth and Bhaurao Poul. On their request, he was accompanying them to police station and on the way informant claims that in front of house of Ganeshrao Poul, Deorao Poul, Nilkanth Poul and Bhaurao Poul obstructed his way questioned him for accompanying Uttam and it is alleged that Deorao gave blow

with stone on left eye, whereas Nilkanth gave him stick blow on right ear-pinna causing him injury to his right ear and Bhaurao had caught hold of his collar and kicked him on abdomen. As a result of which, he first visited police station and was referred to hospital and thereafter report Exh.13 was lodged.

While under cross, initial paragraph nos.3, 4 and 5 are not relevant and these are pertaining to location and geographical directions. Relevant cross is in paragraph no.6, but the manner of cross and the suggestions put therein, clearly shows that occurrence is not all disputed. Questions are put in what manner and tone Uttam informed. Whether he questioned Uttam why there was occurrence of abuse and beating. Witness in paragraph no.7 has categorically answered that he has seen accused coming from the distance of 10 ft. Further cross in paragraph no.7 about nature and extent of injuries, its impact, all such questioning shows that there is no serious challenge to the occurrence of beating to Narayan by Nilkanth and other accused.

6. Another crucial witness is PW4 Bajirao and he has also deposed that, around 6:00 to 6:30 p.m., Uttam and Sakharam had been to police patil PW1 Narayan reporting assault to Uttam and his wife and therefore police patil PW1 accompanying them, and on the

way Deorao giving blow with stone and Nilkanth hitting stick blow on the ear causing injury. He is an independent eye witness.

Though he subjected to extensive cross, manner of questions, more particularly in paragraph no.4 that occurrence seems to be admitted and questions are directed in that regard. There is no challenge to the occurrence. Similarly, manner of question in paragraph no.7 also clearly shows that, infliction of injury is not all disputed as it is asked, whether it was forceful blow or not. Therefore, evidence of PW1 finds complete supports from independent witness PW4 Bajirao.

7. Admittedly, other witnesses, namely PW7 Uttam and PW8 Sakharam, who were in fact important witnesses have unfortunately not supported prosecution. But, here, as stated above, informant's evidence finds complete corroboration and support from independent witness PW4 Bajirao regarding occurrence and injury being caused to complainant.

8. Evidence of PW2 Dr. Pawar, who deposed at Exh.15, has stated that, PW1 Narayan was brought to civil hospital by police and he noted two injuries on left maxillary area and on right ear-pinna. He has defined injury no.2 in simple in nature and he has referred injured to hospital for X - ray examination. Then he stated that, injury is possible on account of blow by stone and stick.

In cross medical expert has answered that he recorded the history of the patient. Further questioning to Medical expert is on medical jurisprudence. However, medical expert has demonstrated that on examination, he noticed injury on the person of informant Narayan. Therefore, coupled with injured informant account, there is independent account in the form of PW4 and their testimonies are finding complete support from medical account. Therefore, there is ocular account coupled with medical account and as such charge under section 324 of IPC is cogently and convincingly proved.

9. Perused the impugned judgment, learned trial court has correctly appreciated the evidence adduced by prosecution, more particularly, evidence of PW1 informant, PW4 Bajirao and medical account. There is no infirmity in the appreciation. The view taken by learned trial court is the possible view with such quality of evidence on record.

No case for interference being made out, appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

10. After pronouncement of judgment, learned counsel for

appellants seeks time to surrender as he is intending to approach the Hon'ble Apex Court.

11. Learned APP strongly opposes.

12. In view of above submissions, six (06) weeks time is granted to the appellants to surrender.

(ABHAY S. WAGHWASE, J.)