



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 384 OF 2002

1. Ramesh S/o. Jagannath Tribhuvan
Age : 39 years,
2. Balu Jagannath Tribhuvan,
Age : 29 years,
3. Pintya @ Kailas S/o. Jagannath Tribhuvan,
Age : 28 years,
4. Jagannath s/o. Chokha Tribhuvan,
Age : 59 years,

All are - Occu - Agril.
R/o. Chor Waghalgaon,
Tq. Vaijapur, Dist. Aurangabad

... Appellants.

Versus

The State of Maharashtra

... Respondent

...
Mr. S. S. Shete, Advocate for Appellants.
Mr. S. M. Ganachari, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 APRIL 2024

PRONOUNCED ON : 10 APRIL 2024

JUDGMENT :

1. Appellants convict for offence punishable under sections 325 and 323 of Indian Penal Code read with Section 34 of Indian Penal Code (IPC) is taking exception to judgment and order dated 17.06.2002 passed by learned IIIrd Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No. 296 of 1998.

FACTS LEADING TO TRIAL ARE AS UNDER

2. Virgaon Police Station, Tq. Vaijapur charge-sheeted appellants on accusations that, on 14.10.1997 all eight accused entered the premises of informant PW1 Dattu and mounted assault for being released on bail in a complaint. There was use of sticks, iron bar, axe and also given blows. When son and wife of informant came to intervene, they were also assaulted and therefore he approached police and lodged complaint. On the strength of which, crime was registered bearing No. 75 of 1997 for offence punishable under sections 143, 148, 149, 307, 504 and 506 of Indian Penal Code (IPC) and were made to face trial, but the same resulted into conviction only for offence punishable under sections 325 and 323 of IPC, awarding sentence as well as directing to pay fine.

It is the above judgment and order of conviction which is now assailed before us.

SUBMISSIONS

On behalf of Appellants :

3. According to learned counsel for appellant, there is false implication. That, prosecution miserably failed to establish the charges beyond reasonable doubt. He pointed out that, there is no independent witness. He further pointed out that, parties are already on inimical terms and therefore there is apparently false

implication. According to learned counsel, ocular account does not support medical account. Moreover, witnesses are related one are not supporting each other on material count and rather their testimonies are full of material omissions, contradictions and improvements, but, still learned trial court has recorded conviction. According to him, there is improper appreciation, no sound reasons for conclusion are assigned, and therefore, according to him such judgment needs to be set aside. Lastly, he submitted that, if at all this court is not inclined to interfere, then considering the laps of long time and good relations having been restored, sentence of mere fine being maintained.

On behalf of Respondent – State :

4. In answer to above, learned APP supporting the judgment pointed out that, occurrence has taken place in bright day light. Almost all family members have been assaulted. They have suffered grievous injuries. That, there is prompt compliant. Medical witnesses, who examined and treated injured have been examined. Charge of section 325 and 323 of IPC is completely brought home, and therefore, he prays to dismiss the appeal for want of merits.

GIST OF THE EVIDENCE

5. **PW1** Dattu examined at Exh.38, narrated that, on 14.10.1997 around 6.30 a.m., while he and his son Tatya were tying bundles of harvested Bajra crop, at that time, accused Ramesh, Balu, Pintya, Jagannath, Gorakh, Mandabai and Jayabai all came there. Initially, Ramesh abused in filthy language and thereafter, he and Balu assaulted by means of iron bar. Pintya used stick. Jagan had axe. Ramesh and Balu gave him blows on his hands, legs and back. Balu gave blow with iron bar on the head of his son Tatya. When his wife intervened, she was also assaulted. Jagan had given axe blow on the head of his son Tatya. Thereafter they were taken to hospital, he lodged complaint.

PW2 Tatya, son of PW1-Dattu, stated that, while he and his father in their field around 6:30 a.m. accused came, attacked his father and when he tried to rescue, he was hit by means of axe on his head by Jagan. His mother came and she was also assaulted. According to him, one Ramesh and Balu used iron bar, whereas Pintya used stick. They reached police station and thereafter they were sent to hospital.

PW3 Nayanabai, wife of PW1-Dattu, also stated that, around 6:30 a.m., accused beat her husband and her son and when she went to rescue, she was also beaten by Ramesh and Balu by

means of iron bar, whereas Pintya used stick and Jagan had axe. She stated that, one of the lady had iron bar and another lady had stick.

PW4 Popat is the pancha to spot panchanama.

PW5 Sangeeta, daughter of PW1-Dattu and PW3-Nayanabai also stated about hearing shouts and beating to his father and brother by accused.

PW6 Dr. Govind Narwane is the Medical Officer, who examined PW1 Dattu, PW2 Tatyaa and PW3 Nayanabai and narrated the injuries and identified the injury certificates.

PW7 Dattu, pancha to seizure panchanama of clothes, seizure of articles stick and axe (Exhs.53 and 54).

PW8 Shivaji Patil is the Investigating Officer, who narrated all steps taken during investigation till filing of charge-sheet.

ANALYSIS

6. Carefully re-appreciated the evidence. In the light of charge, evidence of informant PW1 Dattu, his son PW2 Tatyarao and informant's wife PW3 Nayanabai is crucial on the aspect of occurrence of assault. Evidence of doctor PW6 Dr. Govind Narwane is equally of significance on the point of injuries. Therefore, said testimonies are meticulously analyzed.

7. On doing so, it is emerging that, occurrence is of 14.10.1997 in the early hours of the day around 6:30 a.m. PW1 Dattu, PW2 Tatya and PW3 Nayanabai all are consistent about all accused entering the agricultural field owned by appellants. First assault is made on informant, thereafter on PW2 Tatya and on intervention by PW3 Nayanabai, she is said to be targeted. According to informant, accused Ramesh initially abused him in filthy language, questioning how he got released when the complaint was lodged. Then, he attributes assault by Ramesh and Balu by means of iron bars, blow of stick by Pintya and Jagan for using axe. He speaks of blow given on the head of his son Tatya and wife was hit on the leg.

On visiting his cross, more particularly paragraph no.4, actual occurrence as narrated by PW1 Dattu has not been shaken. Questioning about how many blows were given clearly shows that there is no dispute about assault.

PW2 Tatya another injured, also attributed attack on his father and about blow given on his head, when he went to rescue of his father i.e. by Jagan by means of axe. He claims that his mother was also beaten. Role of Ramesh and Balu for using

iron bar and Pintya using stick is also finding place in his chief. Therefore, he is lending support to informant father about the role and articles used. Even in his cross, nothing is brought so as to disbelieve his above version. He is merely asked for how much time the incident. Then there are questions about other dispute and visit of one constable. Therefore, even his testimony has remained intact.

PW3 Nayanabai mother also deposed about her husband and son being beaten. Even according to her, Ramesh and Balu used iron bars, Pintya used stick and Jagan used axe. She attributed blow of iron bar by one lady and stick by another lady. In cross, only contradiction is brought that blow being given on right leg.

Consequently, above is the evidence of injured eye witnesses and their testimonies have remained virtually unshaken as regards to occurrence at 6.30 a.m. is concerned. Nothing adverse or doubtful is brought in their cross so as to disbelieve or doubt their version.

8. According to learned APP, injured witness account find support to the testimony of PW6 Dr. Govind Narwane. On visiting evidence of Medical Officer PW6 Dr Godind Narwane (Exh.47), he has found to be deposing regarding examining Dattu, Nayanabai

and Tatyarao. He has narrated nature of injuries with measurement and location and he has identified injury certificates issued by him. Doctor has flatly denied about injuries to be possible on account of fall. Thus, medical expert confirms assault by hard and blunt object. Consequently, injured witness account gets fortified from medical witness.

9. Evidence of PW7 Dattu pancha shows that, there is recovery of axe from Ramesh, whereas others produced sticks and iron bar. Seizure panchanama at Exh.54. In cross, he has denied relations with witness. He has denied false deposition. He has denied that he is regularly called by police. Though, he answered that recovery is from open, in view of remaining part of his evidence, mere such aspect will not cast doubt on the entire other incriminating material.

10. To sum up, occurrence has been established by prosecution through evidence of informant and very injured witnesses. Their evidence has remained intact and unshaken. Medical evidence supports assault. There is recovery and therefore prosecution has in fact established the charges. There is nothing on re-appreciation to doubt the prosecution version.

11. Learned counsel for appellant submitted that occurrence is of almost two decades back. Relations have been restored to normalcy. He prays to inflict only sentence of fine instead of imprisonment.

12. Considering the nature of occurrence and the fact that accused have gone to the field of informant and have mounted assault with articles like iron bar, blunt part of axe and sticks, the sentence awarded by trial court seems to be appropriate and there is no need to reduce the sentence.

13. Perused the judgment. Findings, reasons and conclusion arrived at by learned trial court is in consonance with the evidence on record. No illegality or perversity is brought to the notice so as to interfere. Hence, there being no merits in the appeal, I proceed to pass the following order :-

ORDER

The criminal appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)