



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

CRIMINAL APPEAL NO. 698 OF 2004

1. Sunil s/o Haridas Sugandhe
Age: 32 years, Occu.: Agriculture,
R/o. Chauphuli – Bondgavahan,
Tq.Mahur, Dist.Nanded. ..Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station,
Sindkhed, Tq.Mahur,
Dist.Nanded.
2. Ravindra s/o Babus Gaikwad
Age: Major, Occu.: Agri.,
R/o. Chauphuli – Bondgavahan,
Tq.Mahur, Dist.Nanded. ..Respondents
(R.No.2 Complainant)

.....

WITH

CRIMINAL APPEAL NO. 50 OF 2005

- . The State of Maharashtra
Through Police Station,
Sindkhed, Tq.Mahur,
Dist.Nanded. ..Appellant

Versus

- . Sunil s/o Haridas Sugande
Age: 32 years, Occu.: Agril.,
R/o. Chouphuli, Taluka – Mahur,
Dist.Nanded. ..Respondent
(Ori. Accused)

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Advocate for Appellant - Accused : Mr. B.N.Patil
APP for Respondent - State : Mr.S.M.Ganachari

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 18 SEPTEMBER, 2024

JUDGMENT :-

1. In this appeal there is challenge to the judgment and order of conviction rendered by the learned Sessions Judge, Nanded dated 29-09-2004 in Sessions Case No.77 of 2004 holding present appellant guilty for offence under Section 324 of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for six months and to pay fine.

PROSECUTION CASE IN BRIEF

2. Informant Ravindra on 29-06-2003 was returning from the field after labouring through out day i.e. at around 05:00 p.m. That time, present appellant also came across him carrying green fodder and a sickle in his hand. Appellant initially gave a push to informant and on being questioned to that count, after abusing victim, he assaulted informant with the sickle on the left side of the neck.

Second blow was inflicted on the back when informant had bent down. Informant managed to reach village in bleeding condition. Initially with the help of Ramrao Mujmule and Prabhakar Khadse, he approached Police and therefore, was referred to hospital, where on his statement, report exh.12 was entertained and made basis of registration of crime.

Said crime was investigated by PW9 Maroti Gaynoji Thorat (API) and after gathering sufficient evidence, accused came to be chargesheeted and tried by learned Sessions Judge, Nanded vide Sessions Case No.77 of 2004 i.e. for commission of offence under Section 307 of the Indian Penal Code (IPC).

On appreciating evidence of in all nine witnesses and documentary evidence comprising of report, panchanama, medical papers, learned trial Judge recorded conviction but only for offence under Section 324 of the IPC i.e. vide judgment dated 29-09-2004 and the same is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant pointed out that there is false implication. That there is no convincing independent evidence.

That except testimony of informant, there is no distinct piece of evidence in support of the charge. He pointed out that infact incident had taken place all of a sudden. He pointed out that even appellant had suffered injury. That PW2 Uddhav is a got up witness as he was not named in the FIR and therefore, he questions findings reached at by the learned trial Judge. Consequently, he prays to quash and set aside the impugned judgment. In the alternative, learned Counsel submitted that considering the lapse of time, sentence be reduced to already undergone.

On behalf of State :

4. Taking strong exception to the above submissions and further praying for enhancement of sentence, learned APP pointed out that there is clear, cogent and convincing evidence. According to learned APP, initially there was charge of Section 307 of the IPC. He took this Court through the evidence of injured informant and submitted that there were two blows not one and therefore, intention of appellant was explicit. That deadly weapon like sickle has been used. That sites of injuries are also vital. He pointed out that informant was required to be admitted in hospital and treated for almost 25 days. Therefore, according to him, in view of testimony of PW6

Dr.Kumbhare, Medical Officer's evidence, more particularly, paragraph 3, case infact invited and attracted offence under Section 307 of the IPC, however, learned trial Court acquitted accused from the said charge and even while recording conviction for Section 324 of the IPC, sentence awarded is barely six months, which is meager and hence, he prays to allow the appeal filed by the State for enhancing the sentence.

PROSECUTION WITNESSES

5. In support of its case, prosecution has examined as many as nine witnesses. Their status and role is as under :

PW1 Ravindra Bapus Gaikwad is informant injured. His evidence is at exh.11.

PW2 Uddhav Kachru Ranvir is alleged eye witness. His evidence is at exh.15.

PW3 Sahebrao Amrita Gaikwad is spot pancha. His evidence is at exh.16.

PW4 Suresh Devanna Dhumbadwad is pancha to seizure of clothes exh.19. His evidence is at exh.18.

PW5 Ramrao Govindrao Mujmule is the witness, who took injured to hospital.

PW6 Dr.Naraj Shyamsunder Kumbhare is the Medical Officer, who examined, treated injured and issued medical certificate.

PW7 Bhimrao Yadav Raut is pancha to memorandum of disclosure under Section 27 of the Indian Evidence Act i.e. vide panchanama exh.29.

PW8 Ashok Hussenna Navalkonda is second pancha to memorandum of disclosure and seizure of sickle.

PW9 Maroti Gaynoji Thorat is the Investigating Officer.

APPRECIATION AND ANALYSIS

6. Here evidence of **PW1** Ravindra, **PW2** Uddhav and **PW6** Dr.Kumbhare is crucial.

On careful analysis and appreciating evidence of **PW1** Ravindra, informant, it seems that incident had taken place on 29-06-2003 at around 05:00 p.m. According to informant, while he was returning from field, on his way, he came across accused, who was carrying green fodder for she-goats and was also carrying a sickle. He deposed that while crossing his way, appellant gave him a push and on being questioned to that extent, after abusing in filthy language, a sickle blow was given on left side of the neck of informant. Witness stated that after suffering the blow, he fell giddy

and so he bent down and at that time, second blow was given on his back. His back injury started bleeding. He managed to reach village and to the house of Datta Karamkar. Ramrao Mujmule and Prabhakar Khadse took him to Police Station and from there to Mahur Hospital, where his statement was recorded vide exh.12. He also placed on record discharge card exh.13. He identified clothes on his person on the date of incident.

On visiting his **cross-examination** it shows that initially he is asked about the location of house of accused, about one Gautam, who is brother-in-law and about brother of Gautam namely Suresh and whether there were any illicit relations with another lady to which witness has denied knowing about it. In further cross-examination he has answered that Uddhav Ranvir, who was also grazing she-goats, came to the rescue.

7. **PW2** Uddhav Kachru Ranvir is another star witness for prosecution and he in his evidence at exh.15 stated that at around 05:00 p.m. on 29-06-2003, he saw accused coming with a sickle in his right hand and fodder in the other. That time, informant was coming from his field and proceeding to the opposite direction. He claims that he saw accused giving push to informant while passing

and then he heard informant giving life threats. He saw blow being given by sickle and when informant bent down, another blow was given on the back. He deposed that informant was taken to Police Station in Bullock Cart by Ramrao Mujmule, Madhav Khadse and others and informant was treated as indoor patient.

In **cross-examination** it is brought that at the time of incident it was drizzling. He answered that he saw incident from a distance of 20-25 feet.

8. **PW6** Dr.Naraj Shyamsundar Kumbhare is the medical expert and he is examined at exh.22 and he testified that he examined and treated injured and noticed following injuries :

i) Incised wound over the left side of neck size 10 c.m. x 1/4 c.m. sharp margin age of injury within 24 hours. Type weapon hard and sharp. Injury was grievous.

ii) Stab wound back side of the chest. 7 c.m. x 5 c.m. sharp margin. Age of injury within 24 hours. Weapon sharp, hard. Grievous injury.

He has also opined that injuries are possible by sickle. He has given measurement and dimension of injuries and also identified discharge card. In paragraph 3, he has stated that injuries were

dangerous to life.

In **cross-examination**, medical expert is questioned about history given and he has answered that informant told that accused had caused injuries to him by sickle. He deposed that there being no facility of X-Ray and Sonography, patient was referred to Yeotmal Hospital. Rest is all denial.

9. **PW3** Sahebrao is pancha to spot panchanama. **PW7** Bhimrao and **PW8** Ashok are panchas to memorandum of disclosure and seizure of sickle. Their evidence has also remained intact.

10. Therefore, on complete appreciation of above discussed evidence, here there is positive and convincing evidence that on 29-06-2003, at around 05:00 p.m. both informant and accused crossed each other. Informant was initially given push and on being questioned to that extent, present appellant inflicted two blows of sickle with which he was armed. Testimony of informant PW1 Ravindra that he suffered bleeding injuries is finding support from both PW2 Uddhav and even PW6 Dr.Kumbhare, Medical Officer, who examined and treated him. Recovery of sickle is also at the instance of accused.

11. Learned APP prays for enhancement of sentence and is also aggrieved by acquittal of accused from charge of Section 307 of the IPC. However, no distinct appeal against acquittal of accused from the offence punishable under Section 307 of the IPC is preferred by the State. Therefore, appeal of State only for enhancement remains for consideration.

12. Admittedly, there is nothing on record to consider that there is any previous enmity between informant and appellant. Incident had taken place in the backdrop of informant getting a push while appellant was crossing him in the way and appellant was carrying fodder and a sickle. Therefore, as regards to genesis is concerned, only so much of evidence is of prosecution. No doubt there is injury on neck, but it is not bleeding one and second injury, which was bleeding one is on the back. Though PW6 Dr.Kumbhare in his evidence testified that injury was dangerous, it has not come on record that it was life threatening. Incident having taken place all of a sudden, there does not seem to be specific intention or knowledge, so as to attract charge under Section 307 of the IPC. Considering the background in which incident took place, nature of injuries, article used, offence under Section 324 of the IPC definitely made out by

the prosecution.

13. Perused the impugned judgment. It is noticed that findings recorded by the learned trial Judge are in consonance of evidence. The view taken by the learned trial Court is the possible view even on re-appreciation of above evidence. No case being made out for interference and judgment being infallible, it is required to be maintained. Accordingly, I proceed to pass following order :

ORDER

- (I) Criminal Appeal No.698 of 2004 is dismissed.
- (II) Criminal Appeal No.50 of 2005 is also dismissed.

(ABHAY S. WAGHWASE)
JUDGE