



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 701 OF 2004

The State of Maharashtra
(through Pathardi P.S. Pathardi
District Ahmednagar.

... Appellant

Versus

1. Bhagwan Raghunath Ware
Age : 50 years,
2. Suman Bhagwan Ware
Age : 45 years,
3. Aarunabai Murlidhar Dahifale
Age : 35 years,
4. Satish Bhagwan Ware
Age : 18 years,
All R/o Bhose, Taluka Pathardi,
District Ahmednagar.

... Respondents
[Orig. Accused]

.....
Mr. S. M. Ganachari, APP for the Appellant-State.
Mr. K. D. Bade Patil, Advocate for the Respondents.
.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 23.02.2024

JUDGMENT :

1. The State has come up in appeal against the judgment and order dated 29.06.2004 passed in Regular Criminal Case No. 24 of 2003 by learned J.M.F.C., Pathardi, acquitting respondents herein

from offence punishable under Sections 324, 447 r/w 34 of the Indian Penal Code.

FACTS IN BRIEF

2. PW1 Pralhad lodged complaint alleging that on 06.02.2003, his son Ashok questioned accused Bhagwan for damaging the ridge while ploughing, upon which, he was abused and beaten by means of axe. He has further alleged that when he questioned accused about beating to his son Ashok, accused persons beat him also by fist and kick blows. On the strength of report, crime was registered by Pathardi Police Station for offence under Sections 324, 447, 323, 504 r/w 34 of IPC.

3. Pathardi police chargesheeted accused respondents before learned JMFC, who on appreciating the oral and documentary evidence, held that prosecution failed to establish the charges and by judgment and order dated 19.06.2004, accused respondents came to be acquitted.

Hence said acquittal is not questioned by filing instant appeal.

SUBMISSIONS

4. Learned APP would submit that prosecution had adduced evidence of informant along with evidence of injured son Ashok. Testimony of Ashok had remained unshaken. He had been assaulted by means of deadly weapon. There was bleeding injury. He was treated at hospital. Even wife of injured has been examined. Medical expert PW4 Dr. Sucheta, who examined and treated Ashok, has also stepped into the witness box and therefore there was sufficient evidence. But the learned trial court has failed to appreciate the oral and documentary evidence and in stead of accepting the case of prosecution as proved, has acquitted the accused. For all above reasons, he prays to set aside the impugned judgment by allowing the appeal.

5. On the other hand, learned counsel for respondents-original accused would submit that informant has lodged FIR on the basis of hearsay information. There is inconsistency in the evidence of informant as well as injured. There was already previous enmity. Independent witnesses like pancha had not supported prosecution. Thus, according to learned counsel for the respondents, there was no

cogent and reliable evidence and case being weak, learned trial court has correctly appreciated the same and committed no error in refusing to accept the case of prosecution.

EVIDENCE BEFORE THE TRIAL COURT

6. It seems that prosecution has, in order to prove its case, examined six witnesses. Their role and status and sum and substance of their evidence is as under :

PW1 Pralhad is the informant and father of injured Ashok. His evidence is at Exhibit 24. According to him, on 06.02.2003 while he was in the house around 7.00 p.m., his son Ashok returned from the field in injured condition and informed that accused Satish, Suman and Arunabai assaulted him by means of fist and kick blows, whereas accused Bhagwan hit him with axe on head. This witness has further deposed that when he questioned accused upon their return to village, accused beat him by fist and kick blows Therefore, he lodged FIR at Pathardi Police Station. He also deposed about they being referred to Rural Hospital Pathardi and the doctor of Rural Hospital referring this witness to Civil Hospital, Ahmednagar. He identified accused.

PW2 Ashok (injured) is examined at Exhibit 26 and according to him, the incident took place on 06.02.2003 around 7.00 p.m. in land gat no. 239. That, according to him, accused persons damaged the common ridge and on being questioned by him, he narrated that, accused Bhagwan assaulted him by axe on the head whereas Satish assaulted him by iron bar on his back and remaining accused used fist and kick blows. According to him, he sustained bleeding injury. He further deposed that when his father had been to accused, they beat his father.

PW3 Vijaya, wife of injured Ashok (PW2) also deposed that while she was in the house, her husband came in injured condition and he informed about assault by accused persons. She deposed that, thereafter when accused Bhagwan was coming from the field, she herself and her in-laws went to accused to question them, accused persons again assaulted them by kick and fist blows.

PW4 Dr. Sucheta, who examined Ashok on referral, narrated three injuries and gave its measurement. Further, according to the doctor, injuries were by use of hard and blunt object and were simple in nature. Injury certificate issued by her is also at Exhibit 33.

PW5 PHC Ramesh is the Investigating Officer.

PW6 Maruti is the pancha to spot panchanama Exhibit 36.

ANALYSIS

7. On re-appreciating the entire evidence, taking into account the nature of allegations and charge, evidence of PW2 injured Ashok and PW4 doctor, followed by spot pancha and Investigating Officer, are of relevance.

8. PW1 informant Pralhad and PW3 Vijaya, i.e. wife of PW2 injured, were admittedly in the house and it is so emerging from their testimonies that PW2 reached home and informed about occurrence. Therefore they both are having hearsay information.

9. PW2 injured Ashok, who is examined at Exhibit 26, claims that on 06.02.2003 around 7.00 p.m. he was in land gat no. 239. He further deposed that accused had broken the common bandh by ploughing and when he questioned, he alleged that accused persons came in his land. He attributes assault by axe to accused Bhagwan, assault by iron bar to accused Satish, and to remaining accused he attributes role of giving fist and kick blows.

In cross, he admitted that at the time of incidence he was also in his own land and ploughing. He gave distance between village Bhose and land gat no. 239 to be 2 kms. He further admitted that accused were residing in village whereas he was residing in field.

In cross he is unable to state what accused nos. 2 and 3 were doing in the field. According to him, first Bhagwan came, followed by Satish and thereafter Suman and Arunabai. He admitted that in his statement to police, he has not stated about assault by Satish with iron bar on the back. However he answered that he suffered injury on his back and according to him, he suffered six injuries. But again he answered that he suffered single blow with axe and four blows by iron rod but he is unable to state on which portion accused gave blow with axe.

10. In the light of above substantive evidence of injured, evidence of examining and treating doctor needs to be visited. She is PW4. She stated that on examination of Ashok she came across one CLW over left parietal region, another one on left ear pinna and one contusion on chest. Doctor has denied about coming across visible injury on the back and that injury could be on account of fall.

11. Therefore, on carefully analyzing evidence of PW2 and PW4, injured claims that there was a single blow with axe on head, but in cross he is unable to state on which part he suffered blow. He claims to have suffered six injuries. But doctor has noticed only three injuries. He is specific about iron bar blows being given on back but doctor PW4 did not notice any injury on the back, rather she has shown one contusion injury on the chest. Therefore, above discussed material creates doubt about very assault.

12. The genesis alleged is damage caused to the common ridge. According to informant, he learnt from his son PW2 that accused persons damaged ridge while ploughing. Here, there are as many as four accused persons. Who amongst them was actually responsible for damaging ridge is not getting clear. Cross of PW2 shows that accused Bhagwan came first, thereafter Satish came followed by Suman and Arunabai. Therefore, who is actually responsible for damaging ridge is also not getting clear.

13. As pointed out by learned counsel for accused, actual scene of occurrence is not proved. If evidence of PW2 injured Ashok is examined to ascertain the above, it is revealed that according to PW2,

he had been to land gat no. 239 on that day and he was assaulted. He is very categorical about going home and informing his father. PW1 father and PW3 wife both are very specific that they were in the house and PW2 came there in injured condition. In cross, PW2 answered that the distance between village Bhose and land gat no. 239 is 2 kms. PW1 informant gave his residence as Bhose and he does not speak about they residing in field itself. Whereas in cross, PW2 admitted they reside in the field which is in land gat no. 239. If this is what is coming from the mouth of informant, injured and wife of injured, where did the actual incident took place is also not getting clear. Investigating Officer has not draw distinct panchanama regarding damage caused to the ridge. He is unable to state which side of the ridge was damaged. Therefore, as pointed out by learned counsel for accused, even spot of occurrence is not cogently proved.

14. Admittedly, informant admits about they to be on cross terms. Therefore possibility of false implication cannot be ruled out. Evidence of informant is apparently improvised one and is carrying material omission.

15. Therefore, the sum total of above discussed evidence, injured witness account and medical account are not in harmony with each

other. Exact scene of occurrence is not clearly established. Therefore, case can not be said to be proved beyond reasonable doubt. It is fit case for extending benefit of doubt. No infirmity can be found in the view taken by the learned trial Judge. Findings and conclusion reached are in consonance with the evidence on record. Prosecution having failed, this court does not find any merit in the appeal. Hence, I proceed to pass the following order:

ORDER

The criminal appeal is dismissed.

[ABHAY S. WAGHWASE, J.]