



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 754 OF 2003

Bhimrao S/o. Maroti Shisode,
Aged : 32 years, Occu. : Agril.,
R/o. Hivra, Tq. Phulambri,
Tq. Kannad, Dist. Aurangabad

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra
Police Station Pishor,
Tq. Kannad, Dist. Aurangabad.

... Respondent
(Orig. Complainant)

...
Mr. Yogesh B. Bolkar h/f. Mr. B. K. Jadhav, Advocate for Appellant.
Mr. Rajdeep D. Raut, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04th JULY, 2024

PRONOUNCED ON : 10th JULY, 2024

JUDGMENT :

1. In this appeal, there is challenge by convict to the judgment and order dated 30.09.2003 in Sessions Case No. 137 of 2002, by which appellant stood convicted for offence punishable under section 323 of IPC and is directed to suffer one month rigorous imprisonment and to pay fine.

PROSECUTION STORY IN TRIAL COURT IN NUTSHELL IS AS UNDER

2. First wife of PW6 Subhash, namely, Manda had affair

with accused appellant. Injured Arjun had seen both of them in compromising position. On 09.11.2001, Arjun was intercepted by appellant Bhimrao and Keshav near house of Shankar. According to prosecution, appellant gave axe blow on the head of Arjun, whereas, accused Keshav gave blow with wooden handle. Arjun ran to save himself i.e. in the house of Shankar Ganpati and later on approached police, lodged report against present appellant and Keshav. PW9 Dr.Gurwale examined and treated him. On his report PW8 PSI Kendre carried out investigation and charge-sheeted both accused.

3. Both accused were made to face trial before IIIrd Ad-hoc Additional Sessions Judge, Aurangabad, who on appreciating the oral and documentary evidence, reached to a finding that prosecution failed to make out case against Keshav, however, charges for commission of offence under section 323 of IPC as against present appellant Bhimrao stands proved and accordingly he was held guilty by judgment and order date 30.09.2003.

Said judgment and order is now questioned by way of instant appeal.

SUBMISSIONS

On behalf of Appellant :-

4. Criticizing the judgment, learned counsel for appellant

pointed out that, there is improper appreciation of evidence. Findings are not supported by sound reasons and are moreover against the evidence as well as law. He pointed out that, in same occurrence, accused Keshav has been acquitted, however, appellant Bhimrao alone is held guilty. He would strenuously submits that, admittedly there is previous enmity and as such there is deliberately false implication. That, only close relatives are examined. According to him, thought seizure is shown, there is no supportive forensic evidence or scientific evidence. Resultantly, it is his submission that, case has not been proved beyond reasonable doubt, he prays to indulge by allowing the appeal.

In support of above submissions, learned counsel seeks reliance on the following rulings :-

- 1] *Boini Mahipal and Anr. v. State of Telangana*,
(2023) 8 SCC 398
- 2] *Nand Lal and Others v. State of Chhattisgarh*,
(2023) 10 SCC 470
- 3] *Chhote Lal v. Rohtash and Ors.*,
(2023) SCC OnLine SC 1675
- 4] *Dalip Singh v. State of Punjab*, (1953) 2 SCC 36
- 5] *Santosh alias Bhure v. State (G.N.C.T.) of Delhi*,
2023 SCC OnLine SC 538
- 6] *Eradu v. State of Hyderabad*, 1955 SCC Online SC 98

On behalf of Respondent - State :-

5. In answer to above, learned APP, who supported the judgment submitted that, there is injured witness account. Independent witness, who gave water and other independent witnesses, who were around and had seen the occurrence, have deposed and categorically defined role played by appellant. That, medical evidence supports complainant's version and independent eye witness account. That, there is recovery and as such finding cogent, reliable and trustworthy evidence, learned trial Judge rightly convicted appellant for section 323 of IPC and for want of merits, he prays to dismiss the appeal.

EVIDENCE ON RECORD

6. **PW1** informant Arjun in his testimony at Exh.9, stated that, he was passing over the house of Shankar Ganpati, at that time, accused Bhimrao and Keshav abused him. Appellant Bhimrao gave axe blow on right side of his head. Accused Keshav gave wooden handle blow on his right wrist and back. He ran in the house of Shankar, who offered him water and therefore he approached police and lodged report at Exh.10.

PW2 Shankar in his testimony at Exh.11 stated that, incident took place at around 7:00 p.m. to 8:00 p.m. while he was standing on the platform of his house, that time, he saw Keshav

and Bhimrao beat Arjun. Bhimrao gave axe blow on the head and Keshav hit Arjun on the wrist. He personally saw the incident.

PW3 Kachru testified that, in his presence police drew spot panchanama at Exh.13 and also seized clothes of Arjun vide panchanama at Exhs.14 and 15.

PW4 Digamber deposed that, while he was passing towards the road to attend Haripath, he saw Bhimrao and Keshav obstructing Arjun and assaulting him. According to him, incident took place in front of house of Shankar. Bhimrao gave blow on the head of Arjun with axe and Kehsav gave blow of stick and both ran away.

PW5 Syed Babbu, pancha to memorandum of disclosure at the instance of Bhimrao and seizure panchanama at Exhs.19 and 19A respectively and in his presence Keshav gave also memorandum of disclosure and handed over stick. The said panchamas at Exhs.20 and 20A, respectively.

PW6 Subhash, brother of Arjun stated that, his first wife Mandabai had illicit intercourse with appellant Bhimrao and they had illicit relations. His brother Arjun had seen them in compromising position and on that count his brother was beaten.

PW7 PSO Pundlik Chavan, who noted report at Exh.10.

PW8 PSI Vithal Kendre is the Investigating Officer, who narrated all steps taken by him during investigation till filing of charge-sheet.

PW9 Dr. Vaijinath Gurwale and **PW10** Dr. Sureshchandra Chavan, Medical Officers, who examined and treated Arjun and issued medical certificate and papers.

ANALYSIS

7. Learned trial court acquitted Keshav for want of sufficient evidence, but convicted present appellant Bhimrao only for offence punishable under section 323 of IPC. Fundamental objection of learned counsel for appellant is that, *firstly*, there is only interested witness account. *Secondly*, there was previous enmity and hence there is false implication. *Thirdly*, no scientific evidence.

8. On critical appreciation of available evidence, it is emerging that, PW1 informant Arjun has categorically stated that, on that day, while he was in front of house of Shankar, both accused obstructed him. Present appellant Bhimrao gave blow with axe and Keshav gave blow with wooden handle on his wrist. He ran in the house of Shankar, who offered him water.

On visiting his cross, above occurrence has not been dislodged or rendered doubtful, neither there are any material omissions or contradictions.

9. Shankar PW2 is a witness, who claims that, while he was on the platform of his house, he saw the occurrence. He also defined role of both the accused. Similarly, PW4 Digamber claims to have seen the occurrence. He too has attributed specific role to Bhimrao and Keshav. He also asserted that he personally saw the assault. He in fact claims to have accompanied injured to the police station as well as hospital. Their testimonies to the above extent are not rendered doubtful in spite of lengthy cross. Therefore, there is sufficient, reliable and trustworthy evidence regarding occurrence.

10. Above oral account is also finding support from two doctors PW9 Dr. Vaijinath Gurwale and PW10 Dr. Sureshchandra Chavan. They have described the injuries with measurement. However, only Arjun has been examined and he has received treatment at the hands of PW9 Dr. Gurwale, who has also issued injury certificate at Exh.33 on same day. PW10 Dr. Chavan also examined Arjun and was treated after his admission in surgical ward. Therefore, there is supportive medical evidence. That, there is no medical evidence as regards to Keshav is concerned. There is

overwhelming evidence about bodily injury suffered by Arjun. Charges for infliction of injury as regards to Arjun are not cogently established.

11. Learned counsel raised above objection. Merely because witnesses are near and dear once, their testimonies cannot be discarded. Only precaution to be taken is that their testimonies should be cautiously scrutinized. Here on doing so, there is no reason to disbelieve that they had witnessed the occurrence. Their cross does not suggest they falsely deposing or they to be not eye witnesses.

As regards objection of previous enmity is concerned, injured Arjun had stated that, since previously there were threats. He had seen appellant in compromising position with first wife of his brother, who is also examined here as PW6 Subhash. Therefore, there is reason for mounting assault. Even otherwise, enmity is a double edged weapon. Here, it is not demonstrated that there is false implication. Consequently, above ground and objection does sustain.

As regards to objection of no scientific evidence, it is fairly settled that even in absence of scientific evidence, when there is other convincing trustworthy evidence, case of

prosecution can be accepted here. There is both, injured witness account as well as direct evidence, to which medical evidence is lending support. Therefore, mere failure of prosecution to adduce CA report, is not sufficient to discard or doubt prosecution version.

12. Learned counsel for appellant specifically pointed out that there is sentence of one month and appellant was already behind the bars for 17 days. That, now relations are restored to normalcy and harmony and both are residents of same village. Statement is made across the bar that, parties have buried their differences. For all above reasons, he prays to let off appellant on already undergone sentence.

13. Learned APP objected for the same.

14. Here, prosecution has succeeded in establishing the charges by adducing clear and cogent evidence. However, taking into account the above submissions and in the totality of the circumstances in which incidence took place, coupled with the fact that parties are residents of same locality and their relations having been restored to normalcy, though conviction and fine amount are confirmed and maintained, in view of above, substantive sentence is reduced to period already undergone of around 17 days. The judgment and order of trial court is required

to be modified to that extent only. Hence, I proceed to pass the following order:

ORDER

- I. The conviction of the appellant Bhimrao S/o. Maroti Shisode for offence punishable under section 323 of IPC by learned III Adhoc Additional Sessions Judge, Aurangabad dated 30.09.2003 in Sessions Case No. 137 of 2002 is affirmed and hereby kept intact.

HOWEVER

- II. The sentence awarded to the appellant to suffer rigorous imprisonment for one month is hereby modified as under :

“The appellant Bhimrao S/o. Maroti Shisode is sentenced to suffer imprisonment already undergone by him.”

- III. Bail bond of appellant stands cancelled.
- IV. It is clarified that rest of the operative order passed by the trial court is maintained.
- V. The appeal is disposed of in the above terms.

(ABHAY S. WAGHWASE, J.)