



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 823 OF 2003

1. Appasaheb S/o. Ambadas Gawande,
Age : 32 years, Occu. : Agri.,
2. Krushna S/o. Dhondiram Hiwale,
Age : 23 years, Occu. : Agri.,
3. Sudam S/o. Raosaheb Phandade,
Age : 35 years, Occu. : Agri.,
4. Vasant S/o. Dagadu Gawande,
Age : 35 years, Occu. : Agri.,
5. Dnyaneshwar S/o. Kachru Gawande,
Age : 22 years, Occu. : Agri.,
6. Badrinath S/o. Kadu Gawande,
Age : 32 years, Occu. : Agri.,

All R/o. Imampurwadi, Tq. Paithan,
Dist. Aurangabad

... Appellants.

Versus

The State of Maharashtra

... Respondent.

...
Mr. Rohit Patwardhan h/f. Mr. Satej Jadhav, Advocate for Appellants.
Mr. Uma S. Bhosale, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26th JUNE, 2024

PRONOUNCED ON : 5th JULY, 2024

JUDGMENT :

1. Getting dissatisfied by the judgment and order of conviction recorded by learned IInd Ad-hoc Additional Sessions

Judge, Aurangabad dated 29.11.2003 in Sessions Case No.224 of 2003, convicts have preferred instant appeal.

2. Informant and accused are immediate neighbours. There used to be quarrel between them since previous. On 15.10.2002, Kacharu, Dnyaneshwar, Badri, Appasaheb, Krushna, Sudam and Vasant came in front of informant's courtyard getting armed with sticks. On account of letting out water, Kacharu, Badri, Abasaheb assaulted by means of stick. When Bhimabai came to rescue, Krushna and Sudam gave her stick blows, causing her head injury. Therefore, PW2 Hiralal lodged report, on the basis of which, crime was registered and investigated by PW5 P.I. Shivashankar Mundhe, who after gathering sufficient evidence, charge-sheeted accused persons.

Case being exclusively triable by Court of Sessions, case came to be committed to learned Ad-hoc Additional Sessions Judge, Aurangabad vide Sessions Case No.224 of 2003. On conclusion of trial and on appreciating oral and documentary evidence, learned trial court by its judgment and order dated 29.11.2003, held accused persons guilty for offence punishable under sections 147, 324 read with section 149 of IPC and sentenced them to suffer one month simple imprisonment each and to pay fine of Rs.200/- each

and in default to further suffer simple imprisonment for 15 days i.e. for offence under section 324 read with section 149 of IPC.

It is the above judgment and order of conviction, which is now taken exception to, by filing instant appeal.

SUBMISSIONS

On behalf of Appellants :-

3. Learned counsel for appellants pointed out that, admittedly, though parties are neighbours of each other, there were regular quarrels and as such they were on cross terms. That, there was no occurrence of beating by stick by accused persons on 15.10.2002 as is alleged. That, complaint is motivated one. According to him, except testimonies of PW2 Hiralal informant and PW3 Vinayak, who are interested witnesses, there is no independent witness. That, moreover medical expert certified injuries to be simple in nature. That, there was no convincing and cogent evidence, but still conviction has been recorded. In the alternative, learned counsel submits that, parties are immediate neighbours, now, they have resolved all differences and they are now happily residing, and therefore, they be let off by imposing fine.

On behalf of Respondent – State :

4. Opposing the above, learned APP would submit that, occurrence has been proved by examining PW2 Hiralal informant and PW3 Vinayak. That, PW2 Hiralal and PW3 Vinayak are injured witnesses and their testimonies have remained unshaken. That, medical evidence supports informant and injured witness account. That, all essential ingredients for attracting section 324 of IPC being available, learned trial court has correctly recorded the guilt and hence she prays to dismiss the appeal.

5. Heard both sides. Perused the record. Admittedly, trial culminated into conviction for offence punishable under section 324 read with section 149 of IPC. Parties seem to be immediate neighbours.

In support of its case, prosecution seems to have been examined five witnesses i.e. PW1 Dr. Usha Ashturkar - a Medical Officer; PW2 Hiralal - informant, PW3 Vinayak, brother of informant and an injured, PW4 Dinkar, pancha and PW5 P.I. Shivshankar is the Investigating Officer.

Occurrence seems to be of 15.10.2002 and parties are not only related, but are immediate neighbours. Testimony of PW2

Hiralal informant shows that, there used to be quarrel between both parties regularly. On 15.10.2002, Kacharu, Dnyaneshwar, Badri, Appasaheb, Krushna, Sudam and Vasant came armed with sticks. Initially, Kacharu abused Vinayak and questioned him why he was asking Kisan to stop water supply and why he takes his side. On being asked why his name was taken, Kacharu gave stick blow on the head of Vinayak. Badri also gave stick blow on his hand. When informant came for rescue, Appasaheb gave stick blow on his head and when Bhimabai came to rescue, Krishna and Sudam gave her sticks blows, causing her head injury. They also indulging giving blows and scuffle. Therefore, PW2 Hiralal lodged report at Exh.19.

6. Though informant is cross examined, in the initial cross, there are questions about previous disputes and there is little or no cross of the actual occurrence of 15.10.2002.

7. On visiting testimony of PW3 Vinayak, he too has corroborated testimony of PW2 Hiralal informant about accused persons coming with sticks, giving stick blows by the Kachru to his head, Badri giving stick blows on his hand, Dnyaneshwar giving stick blow on his right hand and when informant Hiralal came to rescue, Appasaheb giving stick blow and when Bhimabai came for rescue, Sudam and Krishna inflicted blow on her head with sticks.

8. PW1 Dr. Usha Ashturkar is the Medical officer and she has deposed about examining five persons on referral by Bidkin police station i.e. Hiralal, Vinayak, Kisan, Bhimabai and Sushila. She also narrated injuries noted by him as well as medical certificates (Exhs.13, 14, 15, 16 and 17).

In cross examination she has deposed that, injured Hiralal was referred for surgery ward. She denied that injuries are possible on account of fall.

9. On re-appreciating the complete evidence, here, there is convincing, cogent and consistent evidence of PW2 Hiralal and PW3 Vinayak i.e. informant and injured and roles of present appellants are coming on record. Their version about suffering injuries is finding support from PW1 Dr. Usha Ashturkar. Therefore, required ingredients for attracting sections 324 and 149 of IPC being available, charges can be said to be brought home.

10. With such quality of evidence, in our opinion, learned trial court has committed no error whatsoever in accepting the case of prosecution and handing down judgment of conviction. In appeal, no perversity is brought to our notice. Findings of the trial

court are supported by reasons, and therefore, there is no reason to cause interference. Finding no merits in the appeal, we proceed to pass following order :-

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)