



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

CRIMINAL APPEAL NO. 698 OF 2022

Amol Suresh Lingayat
Age:27 years, Occu.: Labour,
R/o. Bisen Nagar, Nanded.Appellant

Versus

State of Maharashtra
Through Police Station Incharge,
Shivaji Nagar Police Station,
Nanded.Respondent

.....
Advocate for Appellant : Mr. Mrigesh D. Narwadkar
APP for Respondent : Mr.S.M.Ganachari.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20 FEBRUARY, 2024

PRONOUNCED ON : 26 FEBRUARY, 2024

JUDGMENT :-

1. Aggrieved by the judgment and order of conviction dated 27-04-2022 passed by the learned Additional Sessions Judge-2, Nanded in Sessions Case No.366 of 2019, convict for offence under Section 353, 323, 504 and 506 r/w 34 of the Indian Penal Code (IPC) is taking exception to by filing instant appeal.

CASE OF PROSECUTION IN BRIEF

2. Case of prosecution is that PW1 Vishwanath Babarao

Kalyankar, a Sanitary Inspector, posted in Municipal Corporation, Nanded, was performing his duty on 10-06-2017 in the vicinity of Anandnagar Chowk. He was assigning duties to labour. According to him, at that time, deceased accused no.1 Suresh accompanied by his son present appellant came and beat him and questioned him about assigning work to wife of deceased Suresh i.e. mother of appellant. Therefore, he approached Police and registered report, on the strength of which, crime was registered for offence under Sections 353, 323, 504, 506 r/w 34 of the IPC and same was investigated and after gathering sufficient evidence, accused were chargesheeted. Learned Additional Sessions Judge-2, Nanded, before whom trial was conducted, appreciated oral evidence of three witnesses as well as documentary evidence and on appreciating the same, held charges proved and passed above order of conviction, which is now questioned before this Court.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant would submit that prosecution has miserably failed to establish the charge. According to him, inspite of several people admittedly available on the said

spot, no independent witnesses are examined. He pointed out that PW3 Ramdas Balaji Nilkanthe is examined, but his evidence is ambiguous. It is further submitted that complainant claims to have suffered bleeding injury, but medical expert has not been examined. That with such quality of evidence wherein there are omnibus and general allegations without specifying definite role, learned trial Court ought not to have recorded guilt. Therefore, alleging false implication, he questioned the judgment and order of conviction and prays to allow the appeal.

On behalf of State :

4. On behalf of State, while supporting judgment of the trial Court, learned APP submitted that complainant was a public servant. He was performing his duties. Deceased Suresh and present appellant reached there together and they beat complainant. He suffered injury. He was referred to medical examination. His testimony has remained intact. Eye witness account of PW3 Ramdas Balaji Nilkanthe is also available on record and therefore, he prays to dismiss the appeal for want of merits.

ANALYSIS

5. After considering submissions of both the sides and on appreciating oral and documentary evidence, it seems that appellant

and his father Suresh (deceased) were charge-sheeted for commission of offence under Sections 353, 323, 504, 506 read with 34 of the IPC. In support of its case, prosecution has adduced evidence of complainant himself at exh.11.

6. PW1 Vishwanath Babarao Kalyankar, complainant deposed that he was Sanitary Inspector and he was Incharge of Ward Nos.2, 4, 5 and 6. According to him, on 10-06-2017, while he was on duty in Anandnagar Chowk area supervising duties assigned to other labours, at that time, deceased Suresh and his son i.e. present appellant came there and beat him. He has deposed that wife of deceased Suresh was working as a labour. She used to report late to the work and therefore, she was reprimanded. Therefore, deceased Suresh and appellant beat him. According to him, they hit him on his cheeks resulting into bleeding injury and he suffered tooth loss. He has named several people like PW3 Ramdas Nilkanth, Anitabai, Ramesh, Shantabai, Mohansingh Thakur for intervening. He has alleged obstruction in performing public duty and lodged report.

7. On visiting his cross-examination, in paragraph 3, he is found to be admitting that there is omission on the following points :

(a) Informing superiors about the occurrence while lodging

complaint.

- (b) Being beaten on cheeks, falling of tooth and bleeding.
- (c) Reaching Police Station and being referred to hospital.

Rest are all denial.

8. PW2 Ranjit Narayanrao Patil is a spot pancha, who identified panchanama exh.15.

9. **PW3** Ramdas Balaji Nilkanthe deposed that on 10-06-2017, while he was on duty in Anandnagar area, at that time, he was standing in front of Mahalaxmi Show Room. There was quarrel between deceased Suresh Lingayat and complainant Vishwanath Kalyankar. He also marked presence of Shantabai and Anitabai. Then, he stated that the person, who beat Vishwanath, is present in the Court.

10. In **cross-examination**, he admitted that he is unable to state the reason or exact cause of dispute. Rest is all denial.

11. Above is the only evidence on behalf of prosecution. On carefully going through the evidence, it seems that PW1 Vishwanath is Sanitary Inspector. He has alleged that on 10-06-2017 while he was supervising duties of labours in Anandnagar Chowk area, at that

time, deceased Suresh came alongwith his son i.e. present appellant. According to him, he was beaten on cheeks resulting into loss of tooth and bleeding. However, medical expert has not been examined. His cross-examination shows that there are omissions as regards he being beaten on cheeks, he suffering bleeding injury and his tooth to have fallen. These are infact material omissions.

12. **PW3** Ramdas Balaji Nilkanthe, who is eye witness, in his substantive evidence only speaks about quarrel between deceased Suresh and complainant. He has not defined or specified the exact role of appellant in actual incident of assault. Even complainant does not specify, which of the tooth has fallen or whether both accused hit him on cheeks. Definitely some occurrence has taken place, but there are only allegations against deceased Suresh, who is now no more.

With such quality of evidence, when role of accused appellant is not specified and he has not shown to have prevented complainant from performing duty, on some occurrence, the essential ingredients for offence for which he has charged cannot be said to be available.

Consequently, in the light of above discussion as regards to appellant accused is concerned, there being weak or fragile evidence, he ought not to have been held guilty. Therefore, he succeeds.

Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.698 of 2022 stands allowed.
- II) The conviction awarded to appellant - Amol Suresh Lingayat in Sessions Case No.366 of 2019 by the learned Additional Sessions Judge-2, Nanded on 27-04-2022 for the offence punishable under Sections 353, 323, 504, 506 r/w 34 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 353, 323, 504, 506 r/w 34 of the Indian Penal Code.
- IV) The appellant be set at liberty, if not required in any other case.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

(ABHAY S. WAGHWASE)
JUDGE