



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 755 OF 2004

Santosh s/o. Jairam Kamble,
Age : 27 years, Occu. : Labour,
R/o. Govindnagar, Nanded,
Dist. Nanded.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

...
Mr. M. P. Bhaskar, Advocate for Appellant
Mrs. Chaitali Chaudhari - Kutti, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16 OCTOBER 2024

PRONOUNCED ON : 21 OCTOBER 2024

JUDGMENT :

1. Convict for offence under section 324 of Indian Penal Code (IPC) vide judgment and order dated 05.10.2004 rendered by the learned Additional Sessions Judge, Nanded in Sessions Case No. 93 of 1997 is taken exception to by filing instant appeal.

2. Prosecution case in trial court is that, on account of previous quarrel and disputes, on 22.11.1996 while PW4 Babar was proceeding towards a hotel, he was intercepted by accused appellants and he was thrashed. Hearing his cries, PW1 Mehboob came to his rescue, but accused Santosh stabbed him in abdomen,

chest and hands, whereas PW4 Babar was also stabbed by accused Ramu by knife on chest and waist. Injured were taken to hospital and admitted. On report of PW1 Mehboob, crime was registered and investigated by PW12 API Deshmukh.

After gathering evidence, accused persons came to be charge-sheeted and finally tried by learned Additional Sessions Judge, Nanded vide Sessions Case No. 93 of 1997 for commission of offence punishable under section 307 r/w 34 of IPC.

On appreciating oral and documentary evidence, learned trial Judge held appellant guilty, but only for offence punishable under section 324 of IPC and acquitted them from charge under section 307 IPC vide judgment dated 05.10.2004.

Precisely above judgment of conviction is subject matter of appeal before this court.

SUBMISSIONS

on behalf of Appellant :

3. Learned counsel for appellant in support of prayers for allowing the appeal submitted that, there is false implication. That, there is no independent witness. That, implication is out of previous disputes and quarrels. That, in fact parties are related to each other. He submitted that though there are allegations of use of knife, the same is not recovered as pancha to the memorandum of

disclosure and recovery, has not supported prosecution. Therefore, case of prosecution for offence under section 307 IPC was not accepted by learned trial Judge also. He further submitted that there is incorrect appreciation and guilt is recorded for offence under section 324 IPC. Even when essential ingredients to attract the said offence were not available, therefore, he questions the legality of the judgment. Lastly, he submitted that, in alternative, as occurrence is of almost two decades back, appellant be let off on sentence already undergone.

On behalf of Respondent - State :-

4. Strongly opposing the above submissions, learned APP took this court through the evidence of prosecution witnesses, more particularly, PW1 Mehboob and PW4 Babar and pointed out that these are two injured witnesses. That, they have narrated entire sequence of events. That, both injured witnesses are corroborating each other and lending support on the very material part of attack. That, roles of accused are crystallized from their evidence. She further pointed out that apart from injured eye witnesses, she took this court through the medical evidence and pointed out that medical expert has categorically stated that there is one grievous injury to vital part are targeted. That, there is use of knife and the same is also recovered and therefore learned APP claims that with such quality of evidence, learned trial court was

justified in recording the guilt. Further according to him, judgment is infallible and need not be disturbed with and rather be upheld.

STATUS AND ROLE OF PROSECUTION WITNESSES

5. The prosecution has examined following 12 witnesses in support of its case. Their role, status and sum and substance are as under :

PW1 Sk. Mehboob in his evidence at Exh.50 stated that, on 22.11.1996 at around 8:00 to 8:30 p.m., his brother Sk.Babar was proceedings towards a hotel for attending night duty. He heard his cries and so came out of the house and saw accused Santosh beating his brother Babar. He questioned him, at that time suddenly accused Santosh stabbed him in his abdomen, chest and hands and the another person, who was with Santosh beat his brother Babar by knife. Their maternal uncle Anwaruddin rushed to the spot and took them to hospital and before being operated, he gave statement vide Exh.51.

PW2 P.S.I. Bhume is the Police Officer, who was the then P.S.O. and he referred injured to civil hospital and registered crime bearing no.248 of 1996 and he identified the complaint Exh.51.

PW3 Dr. Mandakhalikar, Medical Officer, testified about examining Babar and Mehboob and he narrated injuries noticed by

him and identified MLC Exhs.56 and 57 issued by him.

PW4 Babar in his evidence at Exh.58 stated that, on 22.11.1996 while he was proceeding, accused Santosh and his friend caught hold by him and abused and beat him. When he cried loudly, his brother came. His brother was stabbed on chest and abdomen by a knife by accused Santosh. Whereas, he himself was stabbed by Ramu on chest and waist and they both were taken to civil hospital.

PW5 Sk. Amiroddin in his evidence at Exh.59 stated that on 22.11.1996, when he was proceeding on bicycle, he heard quarrel, he went towards spot and saw Sk. Babar and Mehboob had bleeding injuries in their abdomen and also saw accused Santosh and Ramu armed with knives and they were both abusing injured. He took the injured to the hospital.

PW6 Sk. Eashid, in his evidence at Exh.60 stated that, when he visited civil hospital, at that time, Mehboob and Babar told that they were assaulted by Santosh and Ramu by means of knife in abdomen.

PW7 Syed Feroz, pancha testified that in his presence, blood stained clothes of Sk. Mehboob and Sk. Babar were seized vide panchanama at Exh.62, 63 and 64.

PW8 Abdul, pancha to memorandum of disclosure at the hands of accused Santosh Exh.66 and seizure of knife Exh.67.

PW9 Ajgarkhan pancha to memorandum of disclosure by accused Santosh Exh.69 and seizure of Khanjir Exh.70.

PW10 Sk. Jamir in his evidence at Exh.71 claimed that, incident took place in front of house of Amiroddin and on hearing public crying loudly, he rushed to the spot and saw accused Santosh stabbing by a knife to Mehboob and another boy beating Babar. He identified both of them in the court.

PW11 Pratapsingh did not support prosecution.

PW12 API Deshmukh is the Investigating Officer.

ANALYSIS

6. Here, in all 12 witnesses are examined. Crucial evidence is that of informant and injured i.e. PW1 Mehboob and PW4 Babar, and therefore, such evidence is first sifted.

PW4 Babar is the first person to be attacked by accused. He has deposed that, while he was riding on bicycle, accused Santosh and his friend caught him by his collar, abused and beat him. He cried loudly. His brother Mehboob came there. He is PW1 as well as an informant. PW4 Babar testified that Santosh stabbed Mehboob in the abdomen and Ramu stabbed this witness on the chest and waist.

7. PW1 Mehboob in evidence at Exh.50 deposed that, his brother Babar was proceeding to attend duty. He heard loud cries of his brother and so he came out and saw Santosh and one boy accompanying him beating his brother Babar. PW1 informant claims that he questioned why his brother being beaten, upon which Santosh stabbed him in abdomen, chest, hand and below shoulder. Whereas, another person stabbed Babar in the chest by knife. They both were taken to hospital by their maternal uncle Anwaruddin.

8. Both above injured were subjected to cross.

PW1 Mehboob in paragraph no.2 of cross answered that, accused and witnesses are residents of same locality, which comprises of both Muslim and Hindu. He answered that, there was no streetlight in front of the house at the time of incident, but he stated that there was light of bulb in front of the house. He admitted that accused Ramu was identified subsequently. He denied knowing whether Santosh was also admitted in the hospital. Rest is all denial.

PW4 Sk. Babar while under cross answered that incident took place in front of his house. Then he answered that, actually it was the house of his uncle Amiroddin. He also denied knowing about Santosh suffering injury and he lodging report.

9. Above both injured witnesses were examined by PW3 Dr. Deepak, Medical Officer and his evidence is at Exh.55. On examining Babar he noticed following injuries :-

- “1. Stab, external wound 1 cm diameter below right nipple cuscule deep.”
2. External wound of stab of 1 cm diameter below tip of right 12th rib muscle deep.”

According to him, both injuries were by sharp weapon caused within 24 hours and were simple in nature. He identified MLC at Exh.56.

He also deposed about examining Mehboob Jilani and noticed following injuries:-

- “1. External wound of stab of 1 cm diameter below xiphy strunum with internal liver laceration.”
2. Stab external wound of 1 cm diameter on right renal angle muscle deep.”

10. According to him, both injuries were caused by sharp pointed weapon within 12 hours. He issued MLC and he identified injury certificate Exh.57.

While under cross, medical expert answered that, except one injury of Mehboob, rest injuries were simple in nature.

Denied injuries noted on Exhs.56 and 57 are possible on account of fall on sharp substance. He admitted that injured did not name assailants and also admitted that injuries caused by self inflicted. Rest is all denial.

11. PW5 Sk. Amiruddin, maternal uncle of PW1 and PW4, who is named by informant for being shifted to the hospital, in evidence Exh.59 deposed that, his sister's son Babar was proceeding on bicycle to hotel and at that time Mehboob ran towards him and he heard quarrel and so he went to the spot and saw both Mehboob and Babar had bleeding injuries in their abdomen and they had fallen down. He marked presence of both accused at the spot and to be armed with knives. He also deposed that he heard both accused abusing both injured and seeing him they both ran away. He took injured to hospital.

While under cross, he answered that, Santosh had lodged report against him in respect of same incident. He answered that there was counter case, but he was acquitted. He denied that accused did not stab Mehboob and Babar.

12. PW6 Eashid Miya, claims that on receipt of occurrence and quarrel, he visited civil hospital and saw Mehboob and Babar

to be injured and Amiruddin to be present there. He claims that both injured told him that Santosh and Ramu stabbed them by knife.

While under cross he admitted that both injured are his relatives. Rest is all denial.

13. PW7 Syed Feroz acted as pancha to seizure of clothes of blood stained baniyan and nicker vide panchanama Exhs.62 and 63 i.e. of injured Mehboob and Babar.

While under cross, he stated that panchanama were drawn at civil hospital. He is unable to give brand of the baniyan or sweater, but he gave brand of nicker as of Sonal company and he answered that panchanama was drawn in his presence.

14. PW10 Sk. Jamir claims that incident took place in front of house of Amiroddin, hearing public cry, he visited spot and saw accused Santosh stabbing Mehboob and another boy beating Babar. He identified both of them. His cross is of entire denial.

PW11 Pratapsingh did not support the prosecution.

15. PW8 Abdul and PW9 Ajgarkhan are panchas to memorandum of disclosure and seizure of knife/khanjir at the instance of accused Santosh.

16. What can be culled from above discussed evidence is that on 22.11.1996 while Babar (PW4) was proceeding, he was beaten by appellants and when his brother PW1 Mehboob informant hearing his cries went out, and questioned accused Santosh and Ramu for beating his brother, both appellants stabbed Babar as well as Mehboob. Their maternal uncle PW5 Sk. Amiroddin also saw both of them bleeding injury and he also stated about presence of both accused. Their above evidence has not been disturbed in cross. PW10 Sk. Jamir another independent witness has also narrated the incident of assault by knife. PW3 Dr. Deepak Medical Officer, who examined both injured, has narrated the injuries, sites of injures and its probable cause. PW8 and PW9 deposed about memorandum of disclosure regarding recovery of knife/Khanjir. Such articles are apparently sharp and pointed. Medical experts evidence supports injured witness account as well as eye witness account. Therefore, here there is ocular, injured as well as medical evidence. There is recovery of articles like knife and khanjar and therefore authorship of injuries are proved by prosecution.

17. Though initially charge was for section 307 of IPC, in the light of medical evidence, learned trial Judge brought down the

charge under section 324 of IPC which deals with voluntarily causing injury by means of dangerous weapon. Admittedly, knives are said to be used. Injuries are proved and therefore learned trial Judge correctly appreciated the evidence and held appellants guilty for offence punishable under section 324 of IPC.

18. In appeal attempt is made to state that, much time has lapsed since occurrence, considering the nature of injuries and there to be cross cases, leniency is prayed for reducing the sentence to already undergone.

However, taking into consideration the fact that incident is of 1996 and conviction being rendered in 2004 and appeal finally being heard and decided in 2024, conviction and sentence looming over the appellants' head for sufficiently long, sentence deserves to be reduced to six months. Accordingly, I proceed to pass the following order :-

ORDER

- I. The conviction awarded to appellant Santosh s/o. Jairam Kamble by the Additional Sessions Judge, Nanded in Sessions Case No. 93 of 1997 for offence punishable under Section 324 of the Indian Penal Code on 05.10.2004 **is hereby maintained and kept intact.**

However, the sentence is modified and reduced and instead of rigorous imprisonment of two years, **he is sentenced to suffer rigorous imprisonment for a period of six (06) months.**

- II. It is clarified that rest of the operative order passed by the trial Court is maintained.
- III. Set off as provided under Section 428 of the Code of Criminal Procedure, if entitled to, be given to the appellant.
- IV. The appeal is disposed of in the above terms.

(ABHAY S. WAGHWASE, J.)