



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

CRIMINAL APPEAL NO.770 OF 2004

Sugreev S/o. Sakharam Haral,
Age : 23 years, Occu. : Agri.,
R/o. Waghala, Tq. Parali,
Dist. Beed.

... Appellant

Versus

The State of Maharashtra

... Respondent

....
Mr. S. G. Ladda, Advocate for Appellant.
Mr. S. M. Ganachari, APP for Respondent – State.
....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 SEPTEMBER 2024

PRONOUNCED ON : 10 SEPTEMBER 2024

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order of conviction recorded by learned Additional Sessions Judge, Ambajogai dated 06.11.2004 in Special Case No. 06 of 2003 recording guilt of the appellant for offence punishable under section 324 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. In short prosecution case is that, on 18.10.2003, informant Milind was rendering agricultural work in his land. Around 11:00 a.m., accused Dattu and Sugreev entered his land and started grazing in the tur

and cotton crop. Informant questioned both of them, resulting into heated exchange of words and abuses. There was also catching hold of each other, but on intervention of brother of informant, namely Gangadhar, they were separated. One hour thereafter, around 12:00 noon, while complainant was doing work in the field, accused nos.1 to 4 came there, hurling abuses on caste basis and again parties caught hold of each other. That, accused Sugreev armed with axe, accused Rashim and Balbhim i.e. accused nos. 3 and 4 caught hold of informant and accused Sugreev gave blow of blunt side of axe causing him bleeding injury. Informant was taken to hospital and while undergoing treatment, he gave report. On the basis of which, crime was registered for commission of offence under sections 324, 323, 504, 506, 435, 427 of IPC r/w section 34 of IPC and under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "*SC & ST Act*").

3. Investigation was carried out by PW11 S.D.P.O. Arun Sadikar, who after gathering sufficient evidence, charge-sheeted accused for above offences and they were tried by learned Special Judge/Additional Sessions Judge, Ambajogai vide Special Case No.06 of 2003 and on conducting trial and appreciating evidence, he acquitted accused nos.1, 3 to 6.

Present appellant alone was held guilty for offence under section 324 of IPC. He and others were all acquitted from the charges of SC & ST Act.

Said judgment and order of learned Additional Sessions Judge, Ambajogai dated 06.11.2004 is subject matter of appeal before this court.

SUBMISSIONS

On behalf of Appellant :-

4. Learned counsel submitted that, in all six persons were charge-sheeted, but on same set of evidence, only one i.e. accused no.2 appellant herein is held guilty, whereas, rest all are acquitted. He pointed out that, in the incident, there was scuffle and fall on the ground wherein there were stones. Therefore, possibility of injury on account of fall or landing on stone cannot be ruled out. He submitted that, even otherwise single blow is attributed and that too from blunt side of the axe causing simple injury and even incident had erupted all of a sudden on the petty count of grazing cattle. There was no previous enmity and occurrence was also not premeditated. He also questioned the manner of investigation by submitting that Investigating Officer has admitted that, statements of some witnesses were recorded, but they had not supported

the prosecution version, and therefore, it is pointed out that, investigation has been carried out with prejudice mind and with sole intention of bringing forward only evidence that suits prosecution. According to him, this amounts to suppression of fact necessitating drawing adverse inference against prosecution. At the end, he submitted that incident is almost 20 years back, parties are of same village and neighbours. At that time, appellant was young boy of 20 to 22 years of age. He had no bad antecedents. His involvement was shown in a sudden occurrence, and therefore, according to him, he deserves benefit of probation.

In support of such case, he seeks reliance on ruling of *Hansa v. State of Punjab*, AIR 1977 SC 1991 and *Jagat Pal Singh and Ors. v. State of Haryana*, AIR 2000 SC 3622(1).

On behalf of Respondent State :-

5. Strongly objecting to the above submissions and canvassing in favour of judgment passed by learned trial Judge, learned APP pointed out that incident cannot be said to be suddenly. He took this court through the evidence of PW3 Milind informant and submitted that, first incident of quarrel, abuse on account of grazing cattle, has taken place around 11:00 a.m.. Matter was settled. However, after one hour, accused persons came armed with article like axe. That, there was caste abuse

and again after injured was caught hold of, blow was inflicted. That, fortunately, it was warded off averting serious injury. However, according to learned APP, injury is on occipital part. Therefore, learned trial court has correctly recorded guilt of appellant alone as he was responsible for said injury and he had put to use deadly weapon like axe. Therefore, he opposes appeal as well as relief of Probation of Offenders Act.

EVIDENCE ON RECORD

- PW1** Bhagoji, pancha to spot panchanama at Exh.22;
- PW2** Pramod, pancha to memorandum of disclosure and seizure at the instance appellant Sugreev (Exh.24);
- PW3** Milind, informant and injured, who narrated the events placed in the field at 11:00 a.m. as well as 12:00 noon of 18.10.2003.
- PW4** Dr. Sk. Arshad, Medical Officer, who examined injured and issued medical certificate at Exh.31.
- PW5** P.S.O. Ashok Thakur, who entertained the report and registered crime.
- PW6** Gangadhar, cousin of informant and an eye witness.
- PW7** Dhondiba, father of informant and also an eye witness.
- PW8** Pandurang, neighbour of informant and also an eye witness.
- PW9** Dr. Vijay, another doctor and Medical Officer, who treated PW3 informant.
- PW10** A.S.I. Nivratti and **PW11** S.D.P.O. Arun, Police Officer and Investigating Officer.

ANALYSIS

6. After considering the submissions of both side and on going through the papers, admittedly, in all six accused were charge-sheeted by Parali Police Station for commission of offence under sections 324, 323, 504, 506, 435, 427 r/w section 34 of IPC and under section 3(1)(x) of SC & ST Act. After trial, five were acquitted for all offences of IPC and under the provisions of SC & ST Act, but accused no.2 Sugreev alone is held guilty for commission of offence under section 324 of IPC.

7. Though 11 witnesses are examined, crucial witnesses are that of PW3 Milind informant, his cousin PW6 Gangadhar, father of informant PW7 Dhondiba and immediate neighbour PW8 Pandurang. According to prosecution, they are the eye witnesses.

8. On minute scrutiny of evidence of PW3 Milind at Exh.27, it is emerging that, incident took place on 18.10.2003 around 11:00 a.m. while he was working in his field. The buffaloes of accused Dattu and Sugreev had entered his crop and were grazing and in spite of they both present, they did not prevent, and therefore he questioned them, which resulted into some verbal altercation. His evidence suggests that, his cousin brother PW6 Gangadhar was in adjoining field, on hearing quarrel, came, intervened and separated them. Again according to

informant, at around 12:00 noon, four accused persons came. He has stated that, after accused Rashim and Balbhim caught hold of him, accused Sugreev, who was armed with axe gave blow on his head and when he warded it off, he suffered injury on the head resulting into bleeding injury. He has category stated that, the blow was given from the blunt side of the axe. He was later on allegedly hit by Dattu with stone and Rashim and Balbhim made him fall. When brother and parents of this witness came, they were also given beating. He was taken in injured condition to police station, then referred to hospital i.e. initially at Parali and then to Ambajogai, where he while undergoing treatment, lodged report.

On visiting his cross, it is clearly emerging that the manner of cross, more particularly, questions pertaining to duration of buffalo grazing in the field, whether accused were asked in loud voice to protect the damage to the crop, that after how much time his parents came, when he was caught hold of and for how long incident lasted; from what distances he spotted accused and by what mode his parents were beaten, all such manner of cross examination clearly suggests that not only presence, but even occurrence is candidly admitted.

9. Likewise, PW6 Gangadhar, cousin of informant, who is also

examined at Exh. 34 has apparently lends support to the informant's version as he has also stated that around 11:00 a.m. he heard shouts of Milind and so he went there and saw she buffalo of Dattu and Sugreev and Milind told them to drive their buffaloes, about seeing conversation and altercation between Milind on one hand and Dattu and Sugreev on the other hand. He claims to have intervened and separated them. He further deposed that, after one hour, he again heard shouts of Milind and so he again went there and the witness Milind being held by Rashim and Balbhim, and Sugreev hitting him with blunt side of the axe on the head. He claims that he intervened and separated them.

10. Even in his cross examination, more particularly in paragraph no.3, entire occurrence of cattle of accused entering the field of informant, altercation, abuses and occurrence of beating are categorically brought on record. Therefore, he is also an eye witness, who has also intervened to separate the parties. His cross in paragraph nos.3 and 4 confirms the presence as well as occurrence of assault.

11. PW7 Dhondiba, father of informant has also deposed about hearing shouts of his son and his son being beaten by accused and when he went, he too being beaten by accused. Nothing serious as regards of occurrence of assault are brought. Certain omissions are brought on

caste abuse, but there is already acquittal of accused for the said charge.

12. Immediate neighbour PW8 Pandurang also has deposed about hearing shouts at 12:00 noon and he had seen PW3 Milind being beaten by accused persons. He has named them and marked their presence. He has also attributed role of blow of axe given to Milind by present appellant. He claims that he and cousin of informant namely Gangadhar, both shifted injured to the police station as well as hospital. Nothing damage is brought in his cross.

Therefore, on analyzing evidence of PW3 Milind, PW6 Gangadhar, his father PW7 Dhondiba and immediate neighbour PW8 Pandurang, prosecution has firmly and cogently established the incident of assault. PW4 Dr. Sk. Arshad, who examined PW3 Milind has stepped in the witness box and has recounted the injuries noticed by him on examination and identified the medical certificate i.e on the same day. He referred injured to Ambajogai and even doctor at Ambajogai PW9 Dr. Vijay, who conducted surgery has confirmed injury on PW3 Milind.

13 By examining pancha PW2 Pramod, recovery at the instance of present appellant is also demonstrated and established.

14. Learned counsel for appellant has strenuously submitted that incident was fall out of a sudden quarrel on a petty count. It is true that the initial incident at 11:00 a.m. can be said to be sudden occurrence, however, as pointed out by learned APP, when accused persons returned after one hour, two of the other accused facilitated the assault at the hands of present appellant, who gave blow of axe though from blunt side that too on the head. Injuries suffered on occipital part. Fortunately, it did not turn out to be fatal.

15. Learned counsel for appellant in the alternative, set up a proposal that now two decades have passed since the occurrence. Complainant and accused are neighbours. Currently there is peace and harmony, moreover at the time of incident, appellant was a young boy of around 23 years of age. There were no bad antecedents and therefore, he deserves benefit of Probation of Offenders Act. He also placed reliance on above rulings. He further added that, said penal section also provides for awarding fine instead of sentencing and as such he is ready to pay more fine amount.

16. Learned trial Judge has recorded the guilt for section 324 of IPC and has awarded sentence of one year. Taking into consideration the manner in which the incident took place, the genesis of the occurrence though initially was of minor in nature and on petty count, the second

episode which took place at 12:00 noon was definitely planned one. Appellant had come armed with axe and he had also put to the same to use by inflicting injury on vital part like occipital part. Fortunately, he suffered simple injury.

17. Therefore, taking such material into consideration, though Hon'ble Apex Court in above referred cases had extended the benefit of Probation of Offenders Act, 1958, in the considered opinion of this court, the circumstances like returning back getting armed with article like axe shows that, appellant was determined to use it and he did succeed in the same after being facilitated by others. His role is prominent and therefore this court is not inclined to extend benefit of probation as claimed. However, taking into account the fact that the occurrence is almost two decades old, the aspects of conviction and sentence looming over his head for long time and also taking into consideration the statement made across the bar that peace and harmony between the parties is restored, substantive sentence deserves to be reduced to period already undergone. It is also noticed that learned trial Court has not awarded separate compensation to the victim. Therefore, taking the same into consideration and the submissions made before this appellate court in paragraph no.15, the substantive sentence deserves to be reduced to already undergone and fine awarded by trial court being meager, can be

increased and can be directed to be paid to the victim by way of compensation. This would subserve the purpose of justice. Consequently, the judgment and order of trial court is thus required to be modified to above extent. Hence, the following order:

ORDER

- I. The conviction awarded to the appellant Sugreev S/o. Sakharam Haral for offence punishable under section 324 of Indian Penal Code by learned Additional Sessions Judge, Ambajogai dated 06.11.2004 in Special Case No. 06 of 2003 is hereby maintained and kept intact.

HOWEVER

- II. The jail sentence is reduced to already undergone.
- III. Appellant to pay fine of Rs.10,000/- (Rupees Ten Thousand Only) and on it being deposited, it be paid to the injured Milind by way of compensation within a period of three months. On failure to pay fine amount, he shall suffer imprisonment of two months.”
- IV. Bail bond of appellant stands cancelled.
- V. It is clarified that rest of the operative order passed by the trial court is maintained.
- VI. The appeal is disposed of in the above terms.

(ABHAY S. WAGHWASE, J.)