



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

CRIMINAL APPEAL NO. 478 OF 2024

Irfan Sharif Khan

Age: 32 years, Occu. : Labour,

R/o. Irani Galli, Shivaji Nagar,

Parli (V), Tq.Parali (V),

Dist.Beed.

....Appellant

Versus

The State of Maharashtra

.....Respondent

.....

Advocate for Appellant : Mr.Sudarshan J. Salunke

APP for Respondent : Mr.PK.Lakhotiya

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17 APRIL, 2025

PRONOUNCED ON : 25 APRIL, 2025

JUDGMENT :-

1. Convict in Sessions Case No.24 of 2016 is hereby taking exception to judgment and order dated 04-05-2024 passed by learned Additional Sessions Judge, Ambajogai, Dist.Beed, by which present appellant was held guilty for offence punishable under Sections 353, 332, 336 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. A team of Bhagyanagar Police Station, Nanded approached

Parali City Police Station on 17-01-2015 and sought their assistance and aid in apprehending a suspected accused (present appellant) wanted in a crime. A joint team was constituted, which proceeded in search of suspect at destination of which secret information was received. According to prosecution, appellant noticed arrival of Police and to escape and evade arrest, he pelted stones and bricks over the team from the terrace of the building causing injuries to the Police personnel. On above premise report was lodged by the injured Police personnel thereby setting law into motion and its crime being registered and investigated by PW6 Gholve (PSI), who after gathering sufficient evidence, chargesheeted appellant, who was tried vide Sessions Case No.24 of 2016 by learned Additional Sessions Judge, Ambajogai, District Beed, who appreciated oral evidence of six witnesses and documentary evidence and accepted the case of prosecution as proved and consequently, by judgment and order dated 04-05-2024, held appellant guilty for offence under Sections 332, 353 and 336 of the IPC and sentenced him to suffer rigorous imprisonment for three years, two years and three months respectively and to pay fine. It is the said judgment, which is impugned herein by way of instance appeal.

SUBMISSIONS**On behalf of appellant :**

3. Apprising this Court about the background of the FIR, it is submitted that all witnesses examined by prosecution are Police personnel and are interested witnesses. That, inspite of alleged occurrence taking place in residential locality, no independent witness has been examined. That, there are allegations of pelting of stones and bricks, but such articles are not before the Court. He would submit that answers given by prosecution witnesses in cross-examination, more particularly, by PW6 Investigating Officer, clearly shows that a case has been developed for false implication. That, there is no cogent and reliable evidence. That, essential ingredients for attracting the charges were patently missing, however, learned trial Judge failed to consider the same and erred in returning the guilt and hence, he seeks indulgence at the hands of this Court by allowing the appeal.

On behalf of State :

4. Learned APP took this Court through the evidence of injured witnesses PW1 Yele. He pointed out that, all prosecution witnesses are consistent. That, their testimonies in substantive evidence has

remained intact and undisturbed. He submitted that, merely because witnesses are Police personnel, they cannot be termed as interested witnesses, rather it is his submission that the circumstances in which the incident took place, there are hardly be any independent witness as absconding and wanted accused appellant was to be apprehended. He further pointed out that there was obstruction in performing official duty. That, Police personnel are injured in the said incident. That, medical evidence support harm and injuries caused to them. Therefore, necessary ingredients for attracting the charges being available, it is his submission that there is no infirmity or perversity in the findings reached at by the learned trial Judge and consequently, he prays for dismissal of the appeal for want of merits.

EVIDENCE IN TRIAL COURT

5. In support of its case, prosecution has adduced evidence of in all six witnesses. Sum and substance of their evidence is as under :

PW1 Amol Ankushrao Yele is the Police Head Constable, who lodged report exh.28. He deposed at exh.27 as under :

“01. On 17/01/2015, I was attached to the Parli City Police Station as Police Naik. I was member of team of detection branch which consists of PHC Dolas, PC Sanap, Police Naik

Pawar. While I was present on duty, the team from Bhagyanagar, Police Station Nanded visited our police station. The said team aided by PSI Pradeep Palewal. The said team visited Parli for search of suspected accused in the offence committed u/sec 392 of IPC within their jurisdiction They were suspecting accused Irfan Sharifkhan R/o Irani Galli in the said offence.

02. Thereafter, PI Chavan from our police station directed the team of D.B. to accompany and assist the said team of Bhagyanagar Police Station. Thereafter, the team of Bhagyanagar and team of D.B from our police station proceeded to the Irani Galli towards to the house of accused Irfankhan Sharifkhan At that time, we noticed accused Irfankhan. After noticing the team, the accused rushed on terrace. The accused started pelting brick pieces on me from the terrace. Out of which, one brick caused injury on my head and due to which, I fell down by fainting. Thereafter, the members of both the team rushed awards me. Thereafter, police naik pawar took me to the Govt. Hospital, Parli.

03. Thereafter, I have taken the treatment in the Govt. Hospital. After discharge, I have flied complaint against accused for commission af offence punishable u/sec. 353, 332 of I.P.C. The complaint produced on record now shown to me is the same. It bears my signature. The contents are true and correct, it is marked as Ext. 28. can identify the accused, if shown to me. The photograph of accused available on arrest form is the same. I was knowing the accused Irfankhan as he was suspected accused in the offence of similar nature of our police station also.”

PW2 Dinesh Apparao Kurme is the Medical Officer, who examined informant PW1 Yele. At exh.33 he deposed as under :

“01. On 17/01/2015, I was attached to the Sub-Dist. Hospital, Parli as a Medical Officer. I was having duty from 9.00 p.m. of 16/01/2015 till 9.00 a.m. of 17/01/2015. While I was present on duty. the injured Amol Ankushrao Yele came to the hospital. I have examined the injured. On examination I have found C.L.W. Parietal bone. Size. 4 x 2 cm, the cause of injury - hard and blunt. The age of Injury was within four hours, the nature of injury is simple. Accordingly, have issued medico legal certificate The said certificate produced en record now shown to me is the same. It bears my signature. The contents are true and correct. It is marked as Exn. 34 Such type of injuries are possible if person is assaulted by means of stone and brick.”

PW3 Rahul Dolas is Assistant Sub-Inspector, who is an eye witness. He deposed at exh.35 as under :

“01. In the year 2015, I was attached to the City Police station Parli Vajjnath as Police Head Constable. On 17/01/2015 Police Inspector Pradeep Palewal from Bhagyanagar Police Station, Nanded came to our police station for arrest of the accused required in C.R.No 7/2015 registered u/sec. 392 r/w 34 of IPC with their police station Therefore, PI. Chavan from our police station deputed the staff from DB team to assist the said staff from Bhagyanagar Police Station. I alongwith police staff Yele,

Pawar and Sanap accompanied with the team of Bhagyanagar Police station. Thereafter, I alongwith the team of our D.B. and Bhagyanagar Police station went to the Irani Galli, Parli to the house of accused. The accused closed the door after noticing us. Thereafter, he went on terrace by hurling abuses. He started pelting stone from the terrace on police staff. Thereafter, the accused pelted stone on the head of the complainant Shri.Yele. At that time, Shri Yele sustained head injury. Therefore, police staff Pawar took the complainant to the hospital. Meanwhile, the crowd from the Irani Galli gathered at the spot. Therefore, we returned to the police station Thereafter Yele filed complaint against accused. My statement was recorded during course of investigation. I can identify the accused, if shown to me. Today, accused is present in the Court.”

PW4 Ramsing Jaypalsing Bayas is the Police Head Constable.

He is also an eye witness. He deposed at exh.38 as under :

“01. I was working as a Police Head Constable at Bhagyanagar Police Station Nanded from 2009 to 2016. The incident took place on 17/01/2015. On that day I alongwith P.1. Pradeep Palewar, API Dubal, PHC Khandare, Police Naik Rathod, P.C. Kamble, P.C. Dhawle, PC Damekar came to Parli City Police Station in search of accused Thereafter, we asked for assistance from Parli City Police Station. At that time, police staff Yele, Pawar, and Sanap proceeded to the Irani Galli, Parli in search of the accused in C.R. No.7/2015 u/sec 392 of IPC registered with Bhagyanagar Police Station. When we reached at the spot, at that time, the accused Irfan Shanfkhan after noticing Police staff went on roof of the house. He started pelting stones in the

direction of police staff. At that time, police staff Yele sustained grievous injury over his head due to pelting of stone. Thereafter, with the help of Police staff Pawar, he was taken to the Govt. Hospital. Thereafter, we caught the accused Irfan Sharifkhan and brought him to the Police Station, Parli Police Station. Thereafter, police staff Yele filed complaint against accused for obstructing while discharging official duty as public servant. My statement is recorded during course of investigation. I can identify the accused, if shown to me. Today, accused produced from the jail. Accused before the court is same.”

PW5 Sakharam Gampu Pawar is Police Naik, who is also an eye witness. He deposed at exh.39 as under :

“01. On 17/01/2015 I was attached to the Parli City Police station. On that day Police Inspector Pradeep Palewar, API Dubal and other police staff from Bhagyanagar Police station came to Police Station Parli City in search of accused. Thereafter, as per the instructions given by our P.I., I have accompanied with them alongwith PHC Dolas, Police Naik Yele, PC Sanap proceeded to the Irani Galli, Parli. When we reached at the spot, at that time, the accused Irfan Sharifkhan started pelting stones in the direction of police staff. At that time, one stone hit on head of police Naik Yele. Due to which, he sustained injury. Hence, I alongwith PC Sanap took Shri Yele to the Govt. Hospital. After taking preliminary treatment, we returned to the Police Station. Thereafter, Police Naik Yele filed complaint. My statement is recorded during course of investigation. I can identify the accused, if shown to me. Today, accused produced from the jail. Accused before the court is same.”

PW6 Chandrakant Limbraj Gholve is the then Police Sub-Inspector. He is the investigating Officer, who visited the spot, conducted spot panchanama and after gathering sufficient evidence, arrested the accused. His evidence is at exh.42.

ANALYSIS

6. Re-appreciated and re-analyzed the evidence. The sum and substance of prosecution story is that a team of Bhagyanagar Police Station, Nanded were to arrest wanted accused (present appellant) in a crime bearing no.07 of 2025 for offence under Section 392 read with 34 of the IPC and on information about appellant available in jurisdiction of Beed Police Station, they all duly approached Parali Police Station first, sought their help and a joint team went to the destination and after seeing Police arrived, to evade arrest, appellant ran on the terrace and thereafter, pelted stones targeting Police personnel causing injuries.

PW1 Yele is examined at exh.27 and he is injured informant.

PW3 Dolas (ASI) and **PW4** Bayas (PHC), who were also members of team are eye witnesses and their evidence is at exhibits 35 and 38 respectively. On analyzing their evidence, it is emerging that they are consistent that when the team visited Parali in search of

suspect in Irani Galli, they noticed appellant, who after noticing the team, allegedly rushed on the terrace and started pelting bricks / stones from the terrace. A brick struck PW1 Yele on his head and he was required to be taken to the hospital. While in hospital, PW1 Yele lodged report setting law into motion. PW3 Dolas and PW4 Bayas also duly supported to the above story of PW1 Yele.

PW3 Dolas (ASI), who was also in the company of PW1 Yele, stated about a team of Bhagyanagar Police Station, Nanded approaching City Police Station, Parali Vaijinath, they being part of the team, which was prepared for apprehending wanted accused appellant, they all approaching Irani Galli, where appellant was residing and on seeing Police, appellant rushing towards terrace and to evade and avoid arrest, appellant pelted bricks on the Police party causing injury to PW1 Yele.

On visiting **cross-examination**, nothing adverse or nothing damaging to the prosecution version has come on record.

7. Apart from evidence of PW1 Yele, PW3 Dolas and PW4 Bayas, prosecution has also examined PW2 Dr.Kurme, who in his evidence at exh.33 has deposed about examining PW1 Yele. He has issued injury certificate exh.34.

Therefore, there is injured witness account, eye witness account supported by medical evidence. Patently and evidently essential ingredients for attracting charges are available and therefore, learned trial Judge has not committed any error in holding charges to be proved.

8. Perused the impugned judgment. Learned trial Judge has appreciated available evidence in correct perspective. Both substantive evidence as well as answers given in cross-examination are put to minute scrutiny and on noting availability of essential ingredients to attract the charges, guilt has been recorded. Therefore, the view taken by the learned trial Judge is the correct view and is the only possible view that could emerge even on re-appreciation of evidence. No case being made out for interference, appeal deserves to be dismissed. Hence, following order is passed.

ORDER

Criminal Appeal No.478 of 2024 is hereby dismissed.

(ABHAY S. WAGHWASE)
JUDGE