



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

CRIMINAL APPEAL NO.825 OF 2005

Bhagwat S/o. Dnyanoba More
Age: 21 years, Occu.: Labour
R/o. Narayanwadi, Tq. Shirur (Kasar),
District Beed.

... Appellant
(Orig. Accused No.1)

Versus

1. The State of Maharashtra
Through Police Station at Chakalamba,
Tq. Shirur (Kasar), District Beed.
2. Mithu S/o Tukaram More,
Age: 32 years, Occu.: Agri.,
R/o. Narayanwadi, Tq. Shirur (Kasar),
District Beed.

... Respondents
(No.2 Orig. Complainant)

.....

Ms. Sharda P. Chate, Advocate for Appellant
Mr. S.B. Narwade, APP for Respondent No.1 – State
Mr. B.V. Thombre, Advocate for Respondent No.2

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 JANUARY, 2025

PRONOUNCED ON : 21 JANUARY, 2025

JUDGMENT :-

1. In this appeal, appellant/convict takes exception to judgment and order dated 24.10.2005 passed by learned 3rd Ad-hoc Additional Sessions Judge, Beed in Sessions Case No.67 of 2005 recording guilt of present appellant for offences punishable under Sections 452 and 325 of the Penal Code (IPC) and Section 25(1) of Arms Act.

PROSECUTION CASE IN BRIEF

2. Present appellant and other three accused were charge-sheeted by Chaklamba Police Station on the premise that, on 23.02.2005, informant Mithu was sleeping in the house with his family members. In the backdrop of previous episode of murder of the father of accused/appellant, all four accused charge-sheeted in the present case, went armed with articles like sword, iron rod and stick. Accused/appellant assaulted informant Mithu as well as his both minor children, causing them grievous injuries. On report of informant Mithu PW-11, crime was registered for offences punishable under Sections 143, 147, 148, 452 read with Sections 149, 307 read with Section 149 of the IPC and under Section 25(1) Arms Act, and after investigation, they were charge-sheeted and finally tried by learned 3rd Adhoc Additional Sessions Judge Beed in Sessions Case No.67 of 2005.

During the trial, prosecution adduced oral and documentary evidence. Present appellant did not adduce any evidence and pleaded innocence and false implication. On appreciation of available evidence, learned Trial Court accepted the prosecution case as proved and after recording guilt of appellant/accused No.1 alone and rest of the accused were acquitted.

Instant appeal is filed in consequence of impugned judgment and order of conviction of appellant/accused no.1.

SUBMISSIONS

On behalf of appellant :

3. Learned counsel for the appellant took this Court through the FIR as well as testimonies of prosecution witnesses and submitted that, there is no independent witness. That, all witnesses are family members. That, there is previous enmity. That, testimonies of prosecution witnesses are full of material omissions, contradictions and variances. Learned counsel submitted that with such quality of evidence, learned Trial Court ought not to have accepted the prosecution case as proved. She emphasizes that on the same evidence, accused nos. 2 to 4 are acquitted. She takes exception to correctness and manner of appreciation of evidence at the hands of learned Trial Court and prays to interfere by allowing the appeal.

On behalf of State :

4. Learned APP as well as learned counsel for respondent no.1/informant canvassing in support of judgment, pointed out that role of the present appellant has been crystallized. That, informant Mithu himself is an eye witness coupled with injured witnesses

Deepak and Seema. That, they have also deposed that they being assaulted by appellant/accused no.1 by means of sword. That, grievous injuries were inflicted, which is confirmed by the medical experts, who were also examined as witnesses. That, prosecution version has remained intact. Therefore, learned trial court has correctly appreciated the available evidence and committed no error in accepting the case against present appellant, and hence, they pray to dismiss the appeal for want of merits.

STATUS AND ROLE OF PROSECUTION WITNESSES

5. In support of its case, prosecution has examined as many as fifteen witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Khaja has acted as pancha to spot panchanama Exhibit 23.

PW2 Babasaheb is

PW3 Suresh is elder brother of informant. He deposed at Exhibit 28 as under :

“Mithu More is my elder brother. Mithu More has three daughters and one son. On 23-2-2005, I alongwith my brother Mithu and his wife and parent have worked in the field. After taking meals, I alongwith my parent and niece Urmila went to another house for sleeping. My elder brother Mithu More and

his wife and two daughters and one son were sleeping in his house. At about 10.30 p.m. I heard shouts, So I came to the house of my elder brother Mithu More. I had seen that my nephew Deepak More and niece Seema More have sustained bleeding injury. Deepak More had sustained bleeding injury on right hand, right cheek. My niece Seema had sustained bleeding injury on her both hands and forehead. One finger of both hands of Seema were amputated. I had seen bleeding injury on the left hand of another niece Kaveri. Mithu More has told me that accused No.1 Bhagwat has assaulted his children by sword. My brother Mithu More has caught hold accused No.1 Bhagwat, who was having a sword in his hand. I had seen accused 2 to 4 and absconding accused Gorakh Pawan standing near the house of my brother Mithu More. My brother Mithu More has handed over accused No.1 Bhagwat to me. After police had come on the spot, I handed over accused No.1 Bhagwat to them. I had sent injured nephew and niece and my mother to civil hospital, Beed by jeep My statement was recorded by the police.”

PW4 Surekha is wife of informant. At Exhibit 29, she deposed as under :

“On 23.2.2005 I alongwith my husband and parents in law and my husband's younger brother Suresh have worked in the field. We returned to the house in the evening. After taking meals, my parent in law and my husband's younger brother Suresh went to another house for sleeping. I alongwith my husband and two daughters and a son were sleeping in our house. Since she goats were crying, my husband woke-up. He had seen accused No.1 standing as with his hands on the back. Accused No.1 asked my husband as to how he was acquitted in the murder case. When accused No.1 Bhagwat tried to run towards my husband Mithu More, and my husband ran away. Then accused No.1 went

inside my house and assaulted my children by sword. My children were shouting. Therefore, we came towards our house. I had seen accused no.1 assaulting my son Deepak by sword on right cheek and right hand. Accused No.1 had also assaulted my daughter Seema on her forehead and hands by sword. Accused No.1 had also assaulted my daughter Kaveri by sword on wrist. My husband Mithu More has caught hold accused No.1 Bhagwat. In the meantime, My parents in law, my husband's younger brother PW.3 Suresh and others came running. My husband Mithu More has handed over accused No.1 in the custody of his younger brother PW.3 Suresh. Then we had taken our children to civil hospital Beed in a jeep. Incident has happened at about 10.30 p.m. I had seen accused 2 to 4 standing near my house. I know accused 1 to 4 present before the Court.”

PW5 Dr. Vijayamala Shinde, was the Medial Officer at Civil Hospital Beed, who had given medical treatment to the informant, is examined at Exhibit 31 wherein she deposed as under :

“Since 13th December, 2004 I am working as Medical officer at Civil Hospital, Beed. On 24.2.2005 at 6.15 p.m. Mithu More, came to civil hospital. He has sustained injuries. I had examined him and given him medical treatment. I had issued certificate. Mithu More has sustained contused lacerated wound on right palm, 1/2 X 1/2 cm and lacerated wound on the right side of abdomen 8X 1/2 cm. Both injuries were simple in nature, and they might have been caused by hard and rough weapon. Exh.32 is medico legal certificate. It is in my handwriting. It bears my signature.”

PW6 Vijay Bagul, Head Constable at Police Station Chakalmba, who registered the offence, is examined at Exhibit 33.

PW7 Dr. Indrakumar Shinde, was the Medical Officer at Civil Hospital Beed, who had examined and given primary medical treatment to the informant and other injured persons. At Exhibit 43, he deposed as under :

“Since last six years, I am working as Medical officer, Civil Hospital, Beed. On 24.2.2005, at 12.00 night Deepak Mithu More, and Seema Mithu More and Kaveri Mithu More came to civil hospital, Beed. They were injured. I had examined them and given them primary medical treatment and referred them to Govt. Medical College, and Hospital, Aurangabad for further treatment, Deepak Mithu More has sustained the following injuries:

1. Incised wound above and below each right cheek size 5 X 2 X 1 and 4 X 2 X 1 cm. It might have caused by sharp weapon. Nature of injury was simple.

2. Incised wound right dorsum of palm. Size 3 X 2 X 1 cm. It was also caused by sharp weapon. Nature of injury was simple.

3. Compound fracture with C.L.W. on right first and second metacarpal, size 2 X 2 X 1 cm, caused by hard and blunt object. Nature of injury was grievous and therefore, he was referred to Govt. Medical College, Hospital, Aurangabad, after taking X-ray of skull. Accordingly. I had issued medical certificate. It is in my handwriting. It bears my signature. Exh.44 is the medico legal certificate.

2. I had examined Seema Mithu More at 12.10 a.m. on examination, I found the following injuries:

1. Incised wound on left frontal area size 3 X 2 X 1 cm. It was caused by sharp weapon. nature of injury was simple.

2. Incised wound on right wrist dorsum size 2 X 2 X 1 cm. It was also caused by sharp weapon, this injury was also simple in nature.

3. Incised wound with fracture proximal phalanx on left index finger size 2 X 2 X 1 cm. It was caused by sharp weapon, nature of injury was grievous, and therefore, X-ray was taken and she was referred to Govt. Medical College and Hospital, Aurangabad for further treatment.

I have issued medico legal certificate. It is in my handwriting. It bears my signature. Exh.45 is the medico legal certificate.

3. On the same night, I had examined Kaveri d/o Mithu More at 12.15 a.m. She has one incised wound with compound fracture on left forearm, It's size was 3 X 2 X 1 cm. It was caused by sharp weapon, nature of injury was grievous and therefore, X-ray was taken and thereafter she was referred to Govt. Medical College and Hospital, Aurangabad for further treatment. Accordingly, I have issued medical certificate. It is in my handwriting. Exh.46 is medico legal certificate. It bears my signature.

PW8 Seema, i.e. daughter of informant, is examined at Exhibit 35

wherein she deposed as under :

“ I know all the accused present before the Court. Incident has taken place on 23rd February, 2005. It was 8.00 p.m. At that time, I was sleeping, alongwith my parent and brother and sister. I heard the noise of she-goats, and therefore, I woke-up.

My father Mithu More went out side the house. My father was talking with some body, Then, my mother went out side the house. Accused No.1 Bhagwat More entered my house alongwith the sword in his hand. Accused No.1 Bhagwat More has assaulted me on my both palms and forehead by sword. I sustained bleeding injuries on my forehead and fingers. Accused No.1 Bhagwat has also assaulted my brother Deepak on his right cheek, right arm and right hand, by sword. He also sustained bleeding injuries. Acoused No.1 Bhagwat has also assaulted my sister Kaveri by sword on her left hand. She also sustained bleeding injury. We started shouting loudly, So, my parent came running inside the house. My father was caught hold accused No.1 Bhagwat alongwith sword. My father sustained injuries on his hand and stomach. My father has given accused No.1 Bhagwat in the custody of uncle Suresh More. Then, my father has brought jeep from the village, and brought us to civil hospital, Beed for treatment. After giving treatment. I alongwith my brother and sister were referred to Govt. Medical college and Hospital, Aurangabad for treatment on the next day. I was admitted in Govt. Medical college and Hospital, Aurangabad for five-six days. Police has recorded my statement while I was admitted in Govt. Medical College and Hospital, at Aurangabad.

PW9 Babasaheb, who is Panch witness to seizure panchanama.. At

Exhibit 57 wherein he deposed as under :

“ I alongwith Shaikh Yunus were present at Bus stand. P.S.I. Syed has called me and Sk. Yunus to the Police Station Accused No.1 Bhagwat has produced one sword and Full Pant and Shirt having stains of blood and same were seized by the police in my presence. Exh.58 is seizure memo and it bears my signature, as e well as signature of other panch Sk. Yunus. Witness is shown

seized sword article No.1, shirt article 2 and full pant article 3, which he identifies to be the same. Police had affixed slips on the seized articles and I have signed on those slips. Sword Article 1 was blood stain. Similarly on the shirt Article 2, there were blood stains, I know accused No.1 who is in police custody. custody.”

PW10 Pandurang, who is Panch witness to seizure panchanama. At Exhibit 59, wherein he deposed as under:

“On 7.3.2005, I was called by the Police at Police out post Umapur. Police has also called one Khaja Pathan of Antarwali. Police has seized clothes of Children of Mithu More, in my presence. Police have seized blood stained clothes of Deepak More and Seema More in my presence. The said clothes were blood stained. Exh. 24 is seizure memo and it bears my signature, as well as signature of Khaja Pathan and P.S.I. Pansambal. Said clothes were produced by Mithu More. Witness is shown seized clothes articles 4,5 and 6 and he identifies to be the same. Slips bearing my signature and signature of other panch we affixed on articles 4 to 06.”

PW11 Mithu, informant, who is deposed at Exhibit 60 as under:

“I am residing at Narayanwadi alongwith my parent, brother, wife, three daughters and a son. Names of my daughters are Urmila, Seema and Kaveri. Name of my son is Deepak. I own and possess 5 Acres of agricultural land at Narayanwadi. I own two houses at Narayanwadi. on 23-2-2005 I alongwith my parent, brother and wife have worked in the field and returned to the house at 6.00 p.m. after taking meals, my parent, my daughter Urmila and brother Suresh went to sleep in another house. I alongwith my wife and son Deepak and two daughters namely Seema and Kaveri went to sleep in the house at about

9.00 p.m. Due to noise of she-goat, I woke- up and came out side the house by opening the door. I had seen accused and Bhagwat standing with his hands behind the back. Accused No.1 Bhagwat asked that whether I was acquitted. I told in affirmative. Hearing my conversation with accused No.1 my wife came out side the house, Immediately accused No.1 went over me alongwith sword in his hand. I alongwith my wife went towards Maruti temple. So, accused No.1 Bhagwat entered in my house and assaulted my children by sword. Due to shouts of my children. I alongwith my wife came running. I had caught hold accused No.1 Bhagwat alongwith sword while he was coming out side my house. Due to scuffle between me and accused No.1, I sustained injury of sword on my stomach and right hand. In the mean time, people assembled there. My cousin brother PW.2 Babasaheb More, Gopinath Narhari Shingte, my mother Radhabal More, my father Tukaram, my brother Suresh More and many others have come on the spot. I had seen accused 2 to 4 standing near my house, alongwith sticks in their hands. They ran away from the spot. I had handed over accused No.1 Bhagwat to my brother Suresh. I had seen my son Deepak injuries on right cheek, right arm, and right wrist. Accused No.1 Bhagwat has assaulted my daughter Seema by sword on her both hands, on forehead. One finger of right hand of my daughter Seema was amputated. Accused No.1 has also assaulted my daughter Kaveri by sword on left hand. So, I went in the village for bringing jeep in order to admit my children in the hospital, Jeep was of Waman Satle. I alongwith my injured daughters and son and my mother and wife went to Civil Hospital, Beed for treatment. Incident has taken place on 23.2.2005 at 10.30 p.m.

2) Police had come in Civil Hospital, Beed. My statement was recorded by police as I was injured. Exh.61 is my report. It bears

my signature. I know all accused present before the Court. On 7.3.2005 I have produced the blood stained clothes of my children to the police and the same were seized by the police in presence of panchas. Witness is shown the seized clothes of his daughters and son- articles 4 to 6. He identifies it to be the same.

PW12 Jagannath has acted as pancha to spot panchanama at Exhibit 65, who does not support the case of prosecution.

PW13 Balabhau has acted as pancha to spot panchanama at Exhibit 67, who also does not support the case of prosecution.

PW14 Jsayyad Shaukatali PSI, Police Station Talwada, has recorded the statement of injured.

PW15 Ghanasham Pansambal, PSI, is the Investigation Officer.

ANALYSIS

6. Evidence of PW-3 Suresh, PW-4 Surekha, PW-8 Seema and PW-11 Mithu is crucial. Their testimonies are reproduced in the aforesaid paragraphs. On placing testimonies of above witnesses in juxtaposition, it is revealed that they are consistent about occurrence taking place on night of 23.02.2005. In the backdrop of previous episode of murder of the father of accused/appellant Bhagwat, he came armed with sword, he entered the house of Mithu and initially

assaulted his children namely, Deepak and Seema. Mithu had caught appellant on the spot, and the entire occurrence was eye witnessed by informant Mithu, his wife Surekha and their injured children, i.e. Deepak and Seema. Injured Deepak and Seema are also examined by prosecution and they have categorically stated about assault made on them by the present appellant by means of the sword. In spite of these witnesses subjected to extensive cross, their testimony about mounting assault and use of sword by appellant Bhagwat and causing injuries to the injured, i.e. children and Mithu himself has not been rendered doubtful and has remained unshaken. Rather manner of cross to these witness clearly suggested that occurrence is accepted.

7. PW-5 and PW-7, who are medical experts and to whom injured were referred for medical examination, are also examined. They have also deposed about examining the injured and issuing injury certificates.

8. There is a seizure conducted at the instance of the appellant in the presence of panchas, who have corroborated the testimony regarding a memo being given and the seizure of a sword being effected at his instance. Therefore, there is overwhelming evidence

about the assault and it is got verified by the the other injured as well as direct eye witnesses, who have apprehended the accused and handed over to police. Independent witnesses like medical experts confirm injuries coupled with seizure. There is direct evidence. Therefore, required essential ingredients for the offence for which appellant is charge-sheeted are borne out from the prosecution evidence.

SUMMATION

9. Perused impugned judgment. Learned Trial Court has arrived to just and proper conclusion on appreciation of evidence. This court do not find any infirmity in the manner of appreciation of the evidence at the hands of learned Trial Court. The view taken by the learned Trial Court is the only possible view that could emerge on the appreciation of the available evidence. Therefore, the appeal being devoid of merits, I proceed to pass following order.

ORDER

The criminal appeal is hereby dismissed.

(ABHAY S. WAGHWASE)
JUDGE