



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

**CRIMINAL APPEAL NO. 956 OF 2023**

1. Somesh @ Somnath S/o. Sukhdeo Bomble,  
Age : 27 Years, Occu. : Agril,  
R/o. Karjule Pathar, Tq. Sangamner,  
Dist. Ahmednagar.
2. Shubham S/o. Pandurang Gunjal,  
Age : 24 Years, Occu. : Driver,  
R/o. Karjule Pathar, Tq. Sangamner,  
Dist. Ahmednagar.
3. Shubham S/o. Sukhdeo Bomble,  
Age : 26 Years, Occu. : Private Job,  
R/o. Karjule Pathar, Tq. Sangamner,  
Dist. Ahmednagar.  
Presently Residing at Dalvai Nagar,  
Katraj, Pune, Dist. Pune.

..... **Appellants**

**VERSUS**

The State of Maharashtra  
Through Police Station Officer,  
Ghargaon Police Station,  
Ghargaon, Tq. Sangamner,  
Dist. Ahmednagar.

..... **Respondent**

.....

Advocate for Appellants : Mr. S.S. Dixit  
APP for Respondent-State : Mr. S.S. Dande  
Advocate for Respondent No.2 : Mr. Jitendra S. Jain (Appointed)

.....

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 10<sup>th</sup> February, 2025**

**PRONOUNCED ON : 26<sup>th</sup> February, 2025**

**JUDGMENT :**

1. By instant appeal, convicts take an exception to the judgment and order dated 05.09.2023, passed by District Judge-2, and Additional Sessions Judge, Sangamner in Sessions Case No.76 of 2019, for offence under Sections 353 and 323 read with 34 of the Indian Penal Code, 1860.

**IN NUTSHELL, CASE OF THE PROSECUTION IS AS UNDER :**

2. That, on 11.06.2016, informant was working as a bus conductor of a bus which was travelling from Sangamner to Sakur. He was issuing ticket on the payments for travelling. One passenger demanded ticket and paid only Rs.44/-, even when the journey charges were Rs.46/-. When Rs.2/- were demanded, it is alleged that the appellants beat the informant. Therefore, he lodged report with Ghargaon Police Station, resulting into registration of crime bearing No.53 of 2016, for offence under Sections 353, 323, 504, 506, 427 read with 34 of the Indian Penal Code, 1860.

3. The said crime was investigated by Police Constable Mr. Gorkshanath Shinde and after gathering sufficient evidence, he filed charge-sheet against the appellants. The appellants were tried by District Judge-2, and Additional Sessions Judge, Sangamner vide

Sessions Case No.76 of 2019, who, on appreciation of oral and documentary evidence, recording guilt of the appellants for offences under Sections 353 and 323 read with 34 of IPC.

4. Feeling aggrieved by the same, the appellants have challenged above judgment and order by filing instant appeal on various grounds mentioned in the appeal.

### **SUBMISSIONS**

#### **ON BEHALF OF THE APPELLANTS :**

5. Learned counsel for the appellants submitted that, the appellants were charge-sheeted by Ghargaon Police Station, Tq. Sangamner, Dist. Ahmednagar and they have been held guilty by learned District Judge-2, and Additional Sessions Judge, Sangamner in Sessions Case No.76 of 2019, for above offences. Learned counsel pointed out that, case is based only on evidence of three witnessess i.e. informant, one eyewitness and investigating officer. He further pointed out that, there are allegations of obstruction in duty of the informant, who was said to be conductor. Rather there is delay reporting, even the appellants have been implicated on the statement of one witness i.e. PW2 Dattatraya Vasantrao Waman, Bus Driver, who was not known to the appellants and has merely identified in

first time in the court. That, on the basis of said evidence, learned trial court has accepted the prosecution case.

6. Learned counsel further pointed out that, PW1 Mr. Kisan Shrihari Ghumre, informant, himself in cross-examination, has admitted that name of the appellants was allegedly informed by one of the passenger and he learnt from police that the present appellants are the same person. Therefore, according to learned counsel, with such quality of evidence, learned trial court ought not to have held the appellants guilty and hence, he seeks indulgence.

7. Learned counsel seeks reliance in case of Jayan Vs. State of Kerala, reported in (2021) 20 SCC 38.

**ON BEHALF OF THE RESPONDENT-STATE :**

8. Learned APP opposed on the ground that, there is cogent, convincing and reliable evidence. That, investigation has been carried out. That, taking the testimony of the informant and independent witness, case of prosecution is accepted and hence, according to him, there is no infirmity in the appreciation or reasoning assigned by learned trial court while convicting the appellants. Consequently, he prays to dismiss the appeal.

9. Learned counsel for the original complainant also opposed on above similar grounds as put forth by learned APP.

**EVIDENCE BEFORE THE TRIAL COURT :**

10. In support of its case, the prosecution has examined in all three witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

**PW1** Informant Mr. Kisan Shrihari Ghumare. In his substantive evidence at Exh.14, he narrated as under :

*“1. I have been working as a bus conductor at Sangamner depot since 2014. The incident took place on 11<sup>th</sup> June 2016. On that day, I was on duty as a conductor on a bus going from Sangamner to Sakur. Dattatreya Vaman was working as the driver on that bus that day. That day, our bus left the depot around 2.30 p.m. I was giving tickets to the passengers in the bus. Then a passenger demanded 2 tickets to go to Sakur. The total amount of their tickets was Rs.46/-. But those two students gave me only Rs.44/-. So I asked them for the remaining two rupees. Those students told me to give them Rs.2 /-.*

*2. Later, when our bus reached Sakur, some passengers got off the bus. At Sakur, some people boarded the bus and beat me up. The beating was for returning the Rs.2/- for the ticket. Three to four people kicked me on the chest and face with sticks. During the beating, my ticket machine fell down and my shirt was torn. Rs.893/- in my pocket fell out and went*

*missing. The students in the bus who had given me Rs.2/- less than the ticket were also involved in that beating. The passengers learned the name of one of the people who beat me up, his name was Somnath Bombale. All three accused sitting in the court had kicked me up that day. Therefore, I went to Ghargaon Police Station and filed a complaint about the incident. The accused had obstructed the government work I was doing. The first complaint I filed has my signature on it. The mark is 15. The police had sent me to the doctor for treatment.”*

**PW2** Mr. Dattatraya Vasantrya Waman (Eye Witness). He, in his substantive evidence at Exh.17, stated as under :

*“1. I have been working as a driver in ST Corporation since 2012. On 11<sup>th</sup> June 2016, I and the complainant were doing government work in a bus near Sakur. The complainant was the conductor on that bus at that time. That day, our bus left from Sangamner at 2.30 pm to go to Sakur. Our bus reached Sakar Phata. Then 2-3 passengers in the bus also boarded the bus. Those people started beating the conductor. Those people kicked the complainant in the face and chest and the complainant’s ticket machine broke in that beating. I and the other people resolved the fight. One of the people who beat him that day was named Bombale. Today I saw three accused.*

*2. Later, when our bus reached Sakur, some passengers got off the bus. At Sakur, some people boarded the bus and beat me up. The beating was for returning the Rs.2/- for the ticket. Three to four people kicked me on the chest and face with sticks. During the beating, my ticket machine fell down and my*

*shirt was torn. Rs.893/- in my pocket fell out and went missing. The students in the bus who had given me Rs.2/- less than the ticket were also involved in that beating. The passengers learned the name of one of the people who beat me up, his name was Somnath Bombale. All three accused sitting in the court had kicked me up that day. Therefore, I went to Ghargaon Police Station and filed a complaint about the incident. The accused had obstructed the government work I was doing. The first complaint I filed has my signature on it. The mark is 15. The police had sent me to the doctor for treatment.”*

**PW3** Mr. Gorakshnath Sayaji Shinde, Police Constable, Ghargaon Police Station. In para.1 of his substantive evidence at Exh.20, he narrated as under :

*“1. In the year 2016, I was posted as a police constable at Ghargaon Police Station. I had investigated the Cr. Reg. No.53/2016. It was related to section 353 of the IPC. While investigating the crime, I first went to the scene of the incident and prepared a scene report in front of the magistrate. The scene of the incident was near Sakur Phata on the Nashik Pune Highway. That scene report is on Exhibit No.18. Later, I recorded the statements of the witnesses. During my investigation, I found that the accused had beaten me with kicks and punches due to an argument with the S.T. conductor/plaintiff, so I filed a charge-sheet, all three accused are present in the court.”*

*(Evidence of PW1 to PW3 is translated by Senior Translator, High Court of Judicature at Bombay, Bench at Aurangabad).*

**ANALYSIS**

11. Re-appreciated the evidence of all above witnesses.

12. It is emerging that that present crime on the basis of report lodged by informant **PW1** Mr. Kisan Ghumre and he claims that, on 11.06.2016, when he was officiating as a conductor in a bus travelling from Sangamner to Sakur, one passenger demanded ticket and price of journey was Rs.46/-. However, he was given Rs.44/- only. When he demanded further Rs.2/-, it is alleged that, the student assured to pay later on, but subsequently, on demanding the same, PW1 Kisan was pulled down and given beating.

13. On above report, Ghargaon Police seems to have registered above crime. However, as pointed out and on going through the cross of informant PW1 Kisan, he has admitted that, he learnt the name of person beating from one of the passenger and it is the police who showed him to be person assaulting him. Therefore, taking above testimony into consideration, it is clear that, identity of the appellants is not got confirmed through police machinery after arrested by conducting T.I. parade.

14. **PW2** Mr. Dattatraya Waman, eyewitness, also seems to have deposed about identifying the present appellants for the first time in the court.

15. Learned counsel for the appellants has rightly relied upon the ruling of the Hon'ble Apex Court in case of **Jayan (Supra)**, wherein the Hon'ble Apex Court held that, the identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence.

16. Remaining witness is investigating officer **PW3** Mr. Gorakshnath Shinde. His evidence is formal one. **PW3** Mr. Shinde deposed that, he investigated the crime and prepared spot panchanama and on completion of investigation, filed charge-sheet against the appellants for above offence.

17. Taking the above material into consideration, it is a fit case for extending benefit of doubt. Hence, the appeal deserves to be allowed. In the result, following order is passed.

**ORDER**

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant i) Somesh @ Somnath S/o. Sukhdeo Bomble, ii) Shubham S/o. Pandurang Gunjal and iii) Shubham S/o. Sukhdeo Bomble, in Sessions Case No.76 of 2019, by learned District Judge-2, and Additional Sessions Judge, Sangamner on 05.09.2023, for offence under Sections 353 and 323 read with 34 of the Indian Penal Code, 1860, stands quashed and set-aside.
- III) The appellants stands acquitted of the offence punishable under Sections 353 and 323 read with 34 of the Indian Penal Code, 1860.
- IV) The bail bonds of the appellants stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- VII) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2 is to be paid by the High Court Legal Services Sub-Committee, Aurangabad as per rules.

**[ABHAY S. WAGHWASE, J.]**