

MHCC050057702019



Presented on	:	22/10/2019		
Registered on	:	22/10/2019		
Decided on	:	22/04/2024		
Duration	:	4Y	6M	D

J U D G M E N T**Part 'A'**

	IN THE COURT OF SESSION, BORIVALI DIVISION, DINDOSHI, GOREGAON (EAST), MUMBAI Present : Tushar T. Aglawe, Addl. Sessions Judge. [Date of the Judgment 22/04/2024] [Session Case No.690/2019] (C.C. No.2808/PW/2008)		
	(Details of FIR/Crime and Police Station) FIR No.79 of 2006 Under Section 332 r/w 34 of the Indian Penal Code, registered with Samta Nagar Police Station.		
Prosecution		THE STATE OF MAHARASHTRA (Through PSO, Samta Nagar Police Station)	
REPRESENTED BY		Addl.P. P. Smt. Poornima Rathod.	
ACCUSED		1) Suresh Maruti Salunkhe (Abated). 2) Shivbai Maruti Salunkhe. Age : 55 years, Occ.: Housewife. 3) Sharda Mukund Salunkhe. Age : 30 years, Occ.: Housewife. Accused Nos.2 & 3 are residing at: Labour	

		Society, Hanuman Nagar, Wadarpada No.1, Kandivali, Mumbai-101.
REPRESENTED BY		Adv. Chetan Bhosale with Adv. Shrutika Jadhav, for all Accused.

Part 'B'

Date of Offence	09/03/2006
Date of FIR	10/03/2006
Date of Charge-sheet	31/07/2006
Date of Framing of Charge	12/03/2020
Date of commencement of evidence	17/11/2015 [By M.M. Court] 13/01/2020 [By Sessions Court]
Date on which judgment is reserved	07/12/2023
Date of the Judgment	22/04/2024
Date of the Sentencing Order, if any	--

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P. C.
1)	Suresh Maruti Salunkhe.	10/03/06	Abated.	U/Sec 332 r/w 34 of the	Acquitted	---	---

2)	Shivbai Maruti Salunkhe.	17/03/06	17/03/06	IPC.			
3)	Sharda Mukund Salunkhe.	17/03/06	17/03/06				

Part ' C '**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Dnyaneshwar Soma Patil.	Informant (Exh.5)
PW2	Bapu Shivram Bhandalkar.	Investigating Officer (Exh.20)
PW3	Rajendra Narayan Kurtadkar.	Eye witness (Exh.34)
PW4	Ramdas Shankar Chavan.	Eye witness(Exh.35)

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. Prosecution :**

Sr. No.	Exhibit Number	Description
1.	Exhibit-6.	Report.
2.	Exhibit-21.	Arrest panchnama of accused no.1.
3.	Exhibit-38.	Arrest panchnama of accused no.2.
4.	Exhibit-39.	Arrest panchnama of accused no.3.

B. Defence :

Sr. No.	Exhibit Number	Description
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C. Court Exhibits :

Sr. No.	Exhibit Number	Description
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D. Material Objects :

Sr. No.	Material Object Number	Description
1.	--	--
2.	--	--

1. Accused above named faced trial for the offence punishable under Section 332 r/w 34 of the Indian Penal Code.

2. The case of prosecution in brief is that, the incident occurred on 09.03.2006 at about 22.15 hours at Wadarpada, In front of Triveni Cooperative Housing Society, Kandivali (East), Mumbai. An offence was registered vide Crime No.78/2006 against one Sukhdev Salunkhe. Therefore, the SHO sent the police party to Wadarpada to apprehend said Sukhdev Salunkhe. When the police party reached the spot, accused Suresh Salunkhe, Shivbai Salunkhe and Sharda Salunkhe assaulted and scuffled with the police party obstructing them to arrest said Sukhdev Salunkhe. The accused beat the informant Dnyaneshwar Patil a Police Head Constable by fist blows. It resulted in Sukhdev Salunkhe ran away. Therefore, the informant lodged report to Police Station. Accordingly, offence came to be registered vide Crime No.79/2006 under Section 332 r/w 34 of the Indian Penal Code. It followed the investigation.

3. The Investigating Officer arrested the accused. He recorded the statements of witnesses. On completion of investigation, the Investigating Officer filed charge-sheet before the Metropolitan

Magistrate Court. By virtue of amendment in criminal law, the forum for trial of offence under Section 332 of IPC got changed. Therefore, learned Metropolitan Magistrate committed the case to this Court of Session.

4. My learned predecessor has framed the charge against accused below Exhibit-22 for the offence punishable under Section 332 r/w 34 of the Indian Penal Code. The contents thereof were read over and explained to the accused, to which they pleaded not guilty and claimed to be tried. The defence of accused is of total denial and false implication.

5. Following points arise for determination and I record my findings against them for the reasons to follow:-

Sr. No.	POINTS	FINDINGS.
1.	Does, prosecution prove that, the accused in furtherance of their common intention alongwith deceased Suresh Salunkhe voluntarily caused hurt to the informant while he was discharging his public duty?	No.
2.	What order?	As per final order.

::REASONS::

AS TO POINT NO.1:

6. To establish its case, the prosecution has examined in all four witnesses. The prosecution has examined the informant before the Metropolitan Magistrate Court. Both the parties have filed joint pursis adopting the evidence of Dnyaneshwar Soma Patil [PW-1] in the sessions trial. Dnyaneshwar Soma Patil [PW-1] is the informant. Rajendra Narayan Kurtadkar [PW-3] and Ramdas Shankar Chavan [PW-

4] are the eye witnesses. Bapu Shivram Bhandalkar [PW-2] is the Investigating Officer.

7. The evidence of informant Dnyaneshwar Soma Patil [PW-1] is that, on 09.03.2006 at about 22.15 hours Thane Amaldar Bhandalkar directed him to apprehend Sukhdev Salunkhe in Crime No.78/2006. Thane Amaldar deputed other police staff also with him. Thereafter, at about 22.25 hours they reached to Wadarpada. They saw accused Sukhdev Salunkhe there. When they proceeded to arrest him, the accused obstructed them from the arrest. Accused then assaulted and scuffled with them. Accused beat them by fist blows. Therefore, Sukhdev Salunkhe managed to escape. Thereafter, they returned back to Police Station and lodged report Exhibit-6.

8. Rajendra Narayan Kurtadkar [PW-3] and Ramdas Shankar Chavan [PW-4] supported the evidence of Dnyaneshwar Patil [PW-1] stating that, they accompanied the informant to Wadarpada to apprehend Sukhdev Salunkhe. The accused questioned their authority of arrest and started quarreling. Said Sukhdev Salunkhe took disadvantage and ran away. Thereafter, the accused scuffled and beat the informant.

9. The Investigating Officer has testified that, on 09.03.2006 he was on SHO duty. The informant lodged report. Accordingly, he registered the offence and carried out the investigation himself. He arrested the accused Suresh Salunkhe and recorded arrest panchnama Exhibit-21. Then he recorded the statements of witnesses. Thereafter, further investigation was handed over to PSI-Mulla. The prosecution has failed to secure the presence of second Investigating Officer.

10. The defence has admitted the arrest panchnama of accused nos.2 and 3. Those are marked as Exhibits-38 and 39.

11. Learned defence advocate has cross examined the prosecution witnesses in detail.

12. All the incriminating material came on record in the evidence of prosecution's witnesses was put to accused and their explanation thereon is sought. The statements of accused recorded under Section 313 of Cr.P.C. are at Exhibits-43 and 44.

13. Heard learned Addl. P. P. for the State and learned defence advocate.

14. To establish guilt of accused for the offence punishable under Section 332 of IPC, following ingredients must be established :-

- i] Informant was discharging his duty as public servant;
- ii] Accused voluntarily caused hurt to informant while he was discharging such duty.

15. In the present case, so far as actual occurrence is concerned, the prosecution is relying on the evidence of informant and two eye witnesses. All three witnesses are the police officials. Therefore, their evidence needs to be closely scrutinized.

16. As per the prosecution story, the genesis of occurrence is that the informant and police party went to the spot to arrest wanted accused Sukhdev Salunkhe. Witnesses have deposed that, they reached to Wadarpada at about 22.20 to 22.25 hours. In his cross examination,

the informant has admitted that earlier Crime No.78/2006 was registered against Sukhdev Salunkhe and therefore they went to the spot to arrest Sukhdev Salunkhe. The informant has further admitted that, as per FIR in Crime No.78/2006 the offence was registered at 23.15 hours. It is also seen and admitted that, the offence vide Crime No.78/2006 was registered against Sukhdev Salunkhe for the offences punishable under Sections 509 and 504 of IPC. Thus, the offences registered against Sukhdev Salunkhe were bailable one in the crime registered at 11.15 p.m. Therefore, the theory that the police party went to the spot at 10.15 p.m. to arrest a person against whom bailable offences were registered at 11.15 p.m., is doubtful.

17. It has come in the evidence of prosecution witnesses that, a mob of men and women was already gathered there when they reached to the spot. Accused Suresh Salunkhe is dead and case is abated against him. According to the witnesses, they were 3-4 police persons in uniform. In this situation the allegation that two lady accused assaulted and scuffled with the men police officials in uniform is also doubtful.

18. When the charge against the accused is under Section 332 of IPC, the prosecution has not examined the medical witness. Rather, no medical certificate is on the record though the informant deposed that he went to the hospital for medical treatment. For all these reasons, the evidence adduced by prosecution witnesses falls short to establish guilt of accused for the offence charged beyond reasonable doubt. I, therefore answer Point No.1 in the negative.

AS TO POINT NO.2:

19. In view of foregoing discussion, the accused are entitled to

be acquitted. Hence, in answer to Point No.2, I proceed to pass following order.

ORDER

1. Accused namely **Shivbai Maruti Salunkhe** and **Sharda Mukund Salunkhe** are hereby acquitted of the offence punishable under Section 332 r/w 34 of the Indian Penal Code, vide Section 235 of the Code of Criminal Procedure, and are set at liberty.
2. The bail bonds of accused stand cancelled and their sureties are discharged.
3. Accused to furnish P. R. and S. B. of Rs.15,000/- each in compliance of Section 437 [A] of the Code of Criminal Procedure.

Judgment is dictated and pronounced in open Court.

22/04/2024

(Tushar T. Aglawe)
Addl. Sessions Judge,
Borivali Division, Dindoshi,
Mumbai.

Dictated on : 22/04/2024
Transcribed on : 22/04/2024
Checked & Signed by HHJ on : 23/04/2024

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER." UPLOADED ON 23/04/2024 AT 04.45 PM	
Mrs. J.S. Gawai NAME OF STENOGRAPHER	
Name of the Judge (with Court Room No.)	HHJ Shri. T. T. Aglawe, C.R. No.16.
Date of Pronouncement of Judgment/Order.	22/04/2024
Judgment/Order signed by P.O. on	23/04/2024
Judgment/Order uploaded on	23/04/2024