

MHNG010014682020 	Presented on : 29.01.2020 Registered on : 29.01.2020 Decided on : 09.03.2021 Duration : Y M D <u>01 01 10</u>
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IN THE COURT OF ASSISTANT SESSIONS JUDGE-11, NAGPUR.
(Presided over by S.G.Adake)

SESSIONS TRIAL NO.83 of 2020.

Exh. No. 23

The State of Maharashtra,
Through Police Station Officer,
Police Station Ramtek, Nagpur.
Dist. Nagpur.

....Prosecution.

-Versus-

- 1] Laxman Madhaorao Mohare,
Aged-54 years. Occ.: Agriculturist.
- 2] Mahesh Laxman Mohare,
Aged 25 yrs. Occ. Agriculturist,
Both R/o. Mahatma Fule Ward, Ramtek,
Tahsil Ramtek, Distt. Nagpur.

.... Accused.

Appearance :

Shri. Shoel Ahmed, learned A.P.P. for the State.
Shri.O.K.Masurke, learned Advocate for both accused.

**Offence P/U Section 353, 332, 504, 323 &
506 R/w.34 of I.P.C.**

J U D G M E N T

(Delivered on 9th day of March, 2021)

The both accused are facing prosecution for the offences punishable under Sec.323, 332, 353, 504 and 506(b) R/w.34 of Indian Penal Code.

2] The case of the prosecution can be summarized as under :

According to the prosecution, the accused Nos.1 and 2 are the owners of Rice Mill situated at Chinchala Shivar, Taluka Ramtek, District – Nagpur. That on or about 07/03/2017 at about 15:30 to 16:00 hrs. informant namely Yogesh Aarikar being working as Assistant Engineer with MSEDCL Division, Ramtek, Nagpur went to the Rice Mill of accused for taking meter reading. At that time, he found that, accused No.1 and 2 had connected illegal wire from agricultural pump meter and thereby using electricity supply for other illegal activities, such as construction work and other instruments for construction.

3] Due to this, the informant started conducting spot panchanama and inspection report. At that time, accused Nos.1 and 2 started verbally abusing the informant in filthy language and also threatened him as “मादरचोद लवडे के बाल, रामटेक मे रहना है क्या नही, तेरे समान बहोतसे अधिकारी देखे है यहा से निकल जल्दी साले तेरे को ऑफीस मे आके जिंदा मार डालुंगा”. The accused No.2 also tried to assault the informant with the help of brick. Thus, the accused Nos.1 and 2 physically and verbally abused the informant and other MSEDCL staff who were accompanying with him. When informant told the accused that, he is going to lodge the complaint against them, at that time

accused No.1 and his daughter threatened him that, they will file false complaint against the informant that, he demanded Rs.20,000/- and rice bag from accused and he also outraged the modesty of daughter of accused No.1 by holding her hand.

4] The informant immediately went to the Police Station and filed complaint. The said complaint came to be registered as F.I.R. No.152/2017. The investigation of the crime was handed over to P.S.I. Jangwad. The Investigation Officer went to the spot and recorded the spot panchanama. He also recorded the statements of eye witnesses. The Investigation Officer also collected necessary documents, such as medical certificate and other details. Both accused were arrested and produced before the learned Judicial Magistrate First Class. Subsequently, both accused were released on bail.

5] After conducting due and complete investigation, Investigation Officer filed charge-sheet against both accused for the offences under Sec.323, 332, 353, 504 and 506(b) R/w.34 of Indian Penal Code. The offence under Sec.353 of I.P.C. is exclusively triable by the Court of Sessions therefore, the learned Judicial Magistrate First Class, Ramtek committed this case by way of order dated 6/1/2020.

6] After committal, both accused appeared before this Court. After considering necessary papers, the charge under Sec.228 of Cr.P.C. for the offences under Sec.323, 332, 353, 504 and 506 R/w.34 of I.P.C. framed against both accused below Exh.2. The charge related statements are at Exh.3 to 6. The charge was explained to both the accused in vernacular, to which both the accused pleaded not guilty and claimed to be tried. The

defence of the accused is of false implication due to personal rivalry. The statement under Sec.313 of Cr.P.C. for both accused were recorded below Exh.21 and 22.

7] After considering the charge-sheet and oral and documentary evidence, following points for determination arose for my consideration and after appreciating evidence and hearing of learned advocate for both accused and learned A.P.P., I have recorded my findings for those points for the reasons to follow :

Sr.No.	Points	Findings
1]	Whether the prosecution prove that, on 7/3/2017 at about 15:30 to 16:00 hrs. at Chinchala shivar, Tah. Ramtek, Dist. Nagpur accused in furtherance of their common intention assaulted or used criminal force to the informant Yogesh Shamraoji Aarikar (Engineer MSEDCL department) a public servant in execution of his duty as such public servant while lawfully discharging his duty and thereby committed an offence punishable under Sec.353 R/w.34 of the Indian Penal Code ?	... In the negative.
2]	Whether the prosecution further prove that, on above mentioned date, time and place accused in furtherance of their common intention voluntarily caused hurt to the complainant a public servant in discharge of his public duty and thereby committed an offence punishable under Sec.332 R/w.34 of Indian Penal Code ?	... In the negative.
3]	Whether the prosecution further prove that, on above mentioned date, time and place accused in furtherance of common intention intentionally abused the complainant and insulted him and thereby gave provocation intending to break the public peace and thereby committed an offence punishable under Sec.504 R/w.34 of I.P.C. ?	... In the negative.

Sr.No.	Points	Findings
4]	Whether the prosecution further prove that, on above mentioned date, time and place accused in furtherance of common intention voluntarily caused hurt to the complainant by means of brick and thereby committed an offence punishable under Sec.323 of Indian Penal Code ?	... In the negative.
5]	Whether the prosecution further prove that, on above mentioned date, time and place accused in furtherance of their common intention committed criminal intimidation by threatening the informant to kill him and thereby committed an offence punishable under Sec.506 R/w.34 of Indian Penal Code ?	... In the negative.
6]	What order ?	...As per final order.

REASONS

8] In order to prove the guilt of the accused persons, prosecution has examined as many as four witnesses, which are as follows and proved the documents accordingly :

No.	Particulars	Exhibits
1]	Deposition of witness Yogesh Shamrao Aarikar (P.W.No.1) Informant	Exh.10
2]	Report	Exh.11
3]	F.I.R.	Exh.12
4]	Deposition of witness Sagar Nandram Ahirkar (P.W.No.2)	Exh.14
5]	Deposition of witness Amit Punjaram Rokde (P.W.No.3)	Exh.15
6]	Deposition of witness Manohar Marotrao Jangwad (P.W.No.4) Investigation Officer.	Exh.16
7]	Arrest panchanama	Exh.17 & 18

As to Point Nos.1 to 5 :-

9] As the point Nos.1 to 5 are interconnected with each other, therefore, in order to avoid the repetition of facts and discussion, all points are discussed together.

Submissions by learned A.P.P. :

10] The learned A.P.P. Shri.Shoel Ahmed forcefully argued that, the testimony of P.W.No.1 Shri.Yogesh Aarikar had categorically narrated the exact incident which took-place on 7/3/2017. Though, the remaining witnesses had turned hostile however, the testimony of P.W.No.1 (informant) and P.W.No.4 (Investigation Officer) are sufficient enough to show that, the accused No.1 and 2 physically and verbally abused the informant on the date of incident, as both the accused were obtaining illegal electricity supply for their agricultural electricity pump. So, with all these submissions the learned A.P.P. prayed for convicting both the accused.

Submissions by learned Advocate for accused :

11] As against this, the learned advocate for accused Shri. Masurke, forcefully argued that, the sole testimony of informant is also not sufficient to prove the charge against the accused. There are much inconsistent statements about the exact incident stated by the informant in First Information Report. Moreover, even the staff members from the office of M.S.E.D.C.L. did not support the prosecution case. Though, they were allegedly shown as eye witnesses to the incident, there are material discrepancies in the spot panchanama. So, on these grounds the learned advocate for accused prayed for acquitting the accused.

12] I have carefully scrutinized the oral and documentary evidence adduced by the prosecution. It is pertinent to note that, except the informant, all remaining eye witnesses had turned hostile. Therefore, only the testimony of P.W.No.1 and P.W.No.4 is available for scrutiny. According to the prosecution that, on 7/3/2017 at about 3:30 hours when informant went to Jailaxmi Rice Mill, the alleged incident took-place. The main facts narrated by the prosecution is that, when informant went to the spot, he found that, accused were obtaining illegal electricity supply for their construction work from the agricultural electric meter by inserting black colour wire in the agricultural electric meter. However, the First Information Report below Exh.11 is not having any reference about any such illegal connection with the help of black coloured wire. It was also admitted by the P.W.No.1 in his cross-examination that, he did not seize or recover any such black coloured wire. The very factum of use of black coloured wire for obtaining the illegal electricity supply from the agricultural electric meter for other activity was not sufficiently narrated in the First Information Report.

13] The prosecution also did not produce any material on record, as to whether the informant made any entry in their office register for visiting Jailaxmi Rice Mill on 7/3/2017 or not. The prosecution also did not examine any independent witness, though it was admitted by the Investigation Officer as well as the informant that, in the month of January to March there were large number of peoples, as rice mill activities are in operation.

14] The main task or job of the informant was to take electric meter reading and also to verify the proper electricity supply. It was stated by the informant at the time of filing First Information Report that, what was the meter reading when he found illegal activity of accused i.e. electricity theft. The spot panchanama recorded by the Investigation Officer below Exh.13 no where reflects any such traces about obtaining electricity supply from the agricultural connection by inserting black wire. Moreover, the spot panchanama below Exh.13 also no where reflects any construction activity which was allegedly going on, on 7/3/2017 for which the illegal electricity supply was obtained. The Investigation Officer or the informant could not point out as to why no such construction activity was found on the spot of the incident. The testimony of P.W.No.2 and 3 is of no use for the prosecution, as they have turned hostile. It was simply stated by both the witnesses that, they never visited any site of Rice Mill, so they are not having any knowledge about any such incident. The prosecution also did not produce any such details about Omni vehicle taken on hire basis by the MSEDCL.

15] Now, I will turn to the important aspect of alleged threats given by the accused No.1 and his daughter to the informant. The Investigation Officer also did not collect any information about the name of daughter of accused, who alleged threatened the informant. So, in absence of any such information or investigation, these aspects also cannot be taken into consideration.

16] The defence of the accused in the instant case that, though they were having independent transformer, still the informant illegally provided

the electricity supply to the Cluster Company, which situated immediately on the back side of Jailaxmi Rice Mill. The answers given by the informant about this aspect are sufficient enough to accept the probable defence version of the accused.

17] In view of above discussion, only on the testimony of P.W.No.1, prosecution could not succeed in establishing the guilt of the accused. All the important eye witnesses had turned hostile. There are material contradictions and omission about the exact cause (alleged act of theft of electricity) by accused by inserting black coloured wire in agricultural connection is not duly proved by the prosecution. The spot panchanama immediately recorded after the incident also does not indicate any such act on the part of the accused.

18] So, in view of above discussion, the prosecution has miserably failed to establish that, accused No.1 and 2 allegedly threatened the informant and obstruct him in discharge of his public duties. So, **the point Nos.1 to 5 are answered in the negative.**

As to Point No.6 :-

19] In view of negative findings as to point Nos.1 to 5, **the point No.6 is answered as per final order.**

20] Hence, I proceed to pass the following final order :

ORDER

1. The accused namely Laxman Madhaorao Mohare and Mahesh Laxman Mohare Both R/o. Mahatma Fule Ward, Ramtek, Tah. Ramtek, Distt. Nagpur are hereby acquitted under Sec.235 of Cr.P.C. for the offences punishable under Section 353, 332, 323, 504 and 506 R/w.34 of the Indian Penal Code.

2. The personal bond and surety bond of the both accused are hereby discharged.
3. The accused namely Laxman Madhaorao Mohare and Mahesh Laxman Mohare are hereby directed to furnish the surety and personal bond of Rs.15,000/- each under Sec.437A of Cr.P.C. with a direction to appear before the Higher Court in respect of any appeal or petition filed against this judgement and such bail bonds shall be in force for six months from the date of this order.

Dictated, transcribed , pronounced and signed in open Court.

N A G P U R
Dated : 09.03.2021.

(S.G.Adake)
Assistant Session Judge-11,
Nagpur.

Endorsement

Case Argued on	... 03-03-2021
Judgement dictated on	... 09-03-2021
Transcription ready on	... 10-03-2021
Judgement checked and signed on	... 15-03-2021

CERTIFICATE.

I affirm that the contents of this P. D. F. file of judgement are word to word, as per original judgement.

(Ajay P. Bothe)
Stenographer (Gr.1)