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Decided on : 03/11/2023
Duration : YY MM DD
12 06 14

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
49TH COURT, VIKHROLI, MUMBAI.
Judgment u/sec. 355 of Cr. P. C.**

- (a) The serial number of the case : 390/PW/2011
(b) The date of commission of offence : 23-01-2011
(c) The name of the informant : The State(Ghatkopar p.stn.)
C.R. No. 35/2011
(At the instance of Rohit Chandrakant Borhade)
(d) The name of the accused, his parentage and residence if any : 1] Kumar Nanabhau Kokane
(Trial is separated)
2] Mangesh Namdeo Pawale
Age : 37 yrs. Occ : Service
R. of : Ganesh chawl Committee,
room no. 2, R.B.Kadam Marg,
Bhatwadi, Ghatkopar(W),Mumbai
(e) The offence complained of or proved : Under Sections 326, 504 r/w 34
of the Indian Penal Code.
Proved u/sec. 324 of I.P.C.
(f) The plea of accused : Accused no. 2 pleaded not guilty.
(g) The final order : Accused no. 2 is convicted
u/sec. 324 r/w 34 of I.P.C.
(h) The date of final order : 03/11/2023

JUDGMENT

- 1] The accused no. 2 is prosecuted for the offence punishable under sections 326, 504 r/w 34 of the Indian Penal Code.

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2] The prosecution case in the nutshell is as under :-

That on 23-01-2011 the informant Rohit Chandrakant Borhade resident of Sai Ganesh Co-op society, A wing, 601, Bhatwadi, Ghatkopar(W), Mumbai informed to the Police station Ghatkopar that, on 22-01-2011 at about 22:00 p.m. he was playing cricket alongwith his friends. At that time the accused Kumar Kokane and Babu Powale came near them and asked them whether they tease the girls and they started to beat them unnecessary. Accused Babu Powale had assaulted her with the stump on the left hand of informant and caused injury to him and accused Kumar Kokane beat Suhas Thorat on his head by means of bat and caused injury to him. Thereafter accused went away. The people had taken both of them to Rajawadi hospital for medical treatment. Informant had sustained injury to his bone of left hand elbow. Thereafter he came to police station.

3] On this information the offence was registered vide C.R.No. 35/2011 under section 326, 504 r/w 34 of the Indian Penal Code. The Investigating officer submitted chargesheet against accused after completion of his investigation.

4] Meanwhile accused no. 1 is absconded. Hence, his trial is separated and my Ld. Predecessor framed charge against accused no. 2 under section 326 r/w 34 of the Indian Penal Code. Contents of the charge were read over to the accused in his vernacular. He pleaded not guilty and claimed for trial. After completion of evidence of Prosecution witnesses, statement of the accused no. 2 under section 313 of the Code of Criminal Procedure was recorded at Exh.44. His defence is of total denial and submitted that due to dispute they are deposing false.


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Accused did not examine himself, nor any witness on his behalf.

5] Heard learned A.P.P. Smt. Nirupa Kamble on behalf of Prosecution and Learned Counsel Adv. N.M.Shetty for accused no.2.

6] Considering the allegations and material on record, following points arose for my determination, which I decided as follows.

POINTS

FINDINGS

i) Whether prosecution proves that on 23-01-2011, at about 23:00 p.m. at Sangharsh Krida Mandal, near Kailas society, Bhatwadi, Ghatkopar(W), accused no. 2 alongwith absconded accused no. 1, in furtherance of their common intention, voluntarily caused grievous hurt to the informant Rohit Chandrakant Borhade by means of bat and stump on his head and left hand, weapons which are likely to cause death and thereby committed an offence punishable u/sec. 326 r/w. 34 of the Indian Penal Code ?

In affirmative
only under
section 324 r/w
34 of I.P.C.

ii) What order ?

As per final
order.

REASONS

7] In order to prove the guilt of accused persons, prosecution examined in all four witnesses. PW.1 Rohit Chandrakant Borhade (informant and injured), PW.2 Suhas Gopal Thorat (injured), PW.3, Sanket Chandrakant Borade, and PW.4 Dr. Jagdish Balaram Jadhav, (Medical officer).

As to point no.1 :-

8] It has come in the evidence of PW.1 Rohit Chandrakant Borhade deposed in his evidence that he knows both accused present in the court

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and they are resident in his locality. Incident took place on 18-01-2011 after 10:00 p.m. At that time program of recitation of the Ramayana was going on in their locality. He himself and his friend were playing cricket on the ground of Sangharsha Krida Mandal, Bhatwadi. At that place, both accused came and they asked him as to why they teased the girls. Then, they started to beat him. Accused Kumar slapped him on his cheek below the ear. Then accused Mangesh @ Babu gave blow of stump on his left hand. Accused Kumar beaten his friend Suhas on his head by means of a bat. Both accused ran away. They both went to Rajawadi hospital. Doctor took X-ray of his left hand and they told him that there was fracture at his left hand elbow. They went to P.S.Ghatkopar where he lodged report. He proved FIR at Exh10. He is left handed person, but he had to sign FIR with his right hand due to injury to his left hand. The witness identified the bat and stump. They are marked at Article-A and Article B. He identified both accused present in the court. He further deposed that he immediately went to the P.S.Ghatkopar after taking treatment at Rajawadi Hospital.

9] To support his version, it has come in the evidence of P.W.4 Dr. Jagdish Balaram Jadhav that in the year 2011 he was working at Rajawadi hospital as Medical Officer in Casualty Department. On 23-01-2011 injured came at hospital at about 12:15 am. Injured was brought by his friend Navnath Shejwal. There was alleged history of assault with stump on index finger at right hand and elbow of left hand. There was injury on upper lip and congestion of right eye. He referred him for X ray and referred for Orthopedic treatment. Injury is possible with assault by blunt object. He had mentioned reference to Orthopedic treatment in his register. He had brought original register, which shows

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that he examined the informant on 23-01-2011 in Casualty department. It is at Exh43. The witness is cross examined by the Advocate of accused no.2. he admitted that he did not issue medical certificate, but he further submitted that injured was OPD patient. Prima facie, he did not see fracture on the body of informant. He also admitted that injury to elbow can be caused the person playing on the ground.

10] PW.2 Suhas Gopal Thorat deposed that he knows the informant. He knows accused no. 2 Mangesh Povale and he identified him present before the court. He also knows accused no. 1 Kumar Nanabhau Kokane. He further deposed that incident took place on 22/01/2011 at around 10:30 p.m. to 11:00 p.m. at Sangharsh Krida Mandal, Bhatwadi, Ghatkopar(W). At that time the accused persons came on the spot and asked the informant as why he use to tease the girls. Thereafter, they started to beat him. The accused no. 1 slapped the informant. Thereafter the accused no. 2 gave blow of stump over left hand of the informant. He tried to intervene and at that time, accused no. 1 Kumar Kokane gave blow of bat over his head. He fell down due to the same. Thereafter accused persons fled away from the spot. Then, himself and the informant went to Rajawadi Hospital where they received medical treatment. Thereafter the informant went to P.S.Ghatkopar and lodged report against the accused persons. He identified the bat with which the accused no. 1 had assaulted him as the same. It is at Article-A. The stump is at Article-B.

11] It appears that in the cross examination Ld. Advocate for accused put the specific questions to this witnesses but this witness denied all the questions put by the advocate in the negative and fully supported to

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the version of P.W.No.1. It is clear from his evidence that the incident was occurred on that day and he was also present with the informant at the time of incident. This witness has supported to the version of P.W.1 informant.

12] P.W.No.3 Sanket Chandrakant Borade deposed in his evidence that the informant is his elder brother. He knows accused no. 2 Mangesh Povale and he identified accused present before the court. He also knows accused no. 1 Kumar Nanabhau Kokane. He further deposed that the incident took place on 22-01-2011 at around 10:00 p.m. at Sangharsh Krida Mandal, Bhatwadi, Ghatkopar(W). At that time he himself, the informant and P.W.2 Suhas alongwith three other members of their mandal were playing cricket on the spot. At that time, the accused persons came on the spot and asked the informant as why he used to tease the girls. The accused no. 1 had slapped the informant. Thereafter they started to beat him. Thereafter the accused no. 2 gave blow of stump over left hand of the informant. P.W.2 Suhas tried to intervene and at that time accused no. 2 Mangesh Povale gave blow of bat over his head causing bleeding injury. He fell down due to the same. P.W.3 further deposed that he also tried to intervene in the quarrel. At that time both accused persons slapped him. Thereafter accused persons fled away from the spot. Then P.W.2 Suhas and the informant went to Rajawadi hospital where they received medical treatment. He also accompanied them to hospital. Thereafter the informant, himself, P.W.2 Suhas and three other members of their Mandal went to P.S.Ghatkopar and the informant lodged report against the accused persons. The bat and stump with which the accused no. 1 had assaulted them is identified by him as the same, which is at Article-A. The stump is at


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Article-B. In the cross examination Ld. Advocate for accused put many questions to this witnesses but this witness denied all the questions put by the advocate in the negative and fully supported to the version of PW.No.1 and 2. It is clear from his evidence that the incident was occurred on that day and he was also present with the informant at the time of incident and the accused persons have assaulted the informant and other witness. This witness has supported to the version of PW.1 informant.

13] Ld. A.PP argued that, considering the evidence of all prosecution witnesses, prosecution has proved its case beyond reasonable doubt that accused no.2 in furtherance of their common intention, caused voluntarily hurt to the informant by means of stump, bat and hands. She argued that, though there is no documentary evidence on record to show that, informant received grievous hurt i.e. fracture injury, accused no.2 can be convicted under section 324 r/w 34 of the Indian Penal Code vide section 222 of the Code of Criminal Procedure. She further argued that, there is no delay in lodging the FIR. Lastly, she argued that, considering prosecution evidence, accused no. 2 liable to be convicted according to law.

14] On the other hand, Ld. Counsel for accused no. 2 Shri N.M.Shetty submitted that in the present case the injured was not admitted in the hospital. Secondly the alleged medical certificate is of PW.1 only and PW.2 & 3 they went to hospital with PW.1 but there is no explanation regarding medical treatments of PW.2 and PW.3. The witnesses 1 and 3 are brothers and no. 2 is their close friend. Witness also admitted one Police constable Yende was in their Sangharsh Krida Mandal, according

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to accused false complaint was filed against them at his instance. The advocate for accused further argued that in the statement PW.1 stated that the incident took place on 18-01-2011 at about 10:00 p.m. PW.2 stated that incident took place on 22-01-2011 at about 11:00 p.m. There are various contradictions and omissions in their statement. It is further argued that accused is falsely implicated in the above offence as there was enmity between the witnesses and accused and therefore false complaint is filed against accused persons. Therefore, it is prayed that accused be acquitted in the above offence.

15] On perusal of the evidence of informant supported by evidence of Medical officer and other two injured and eye witnesses. It seems that, there is no delay in lodging FIR. As per above evidence of PW.1 informant Rohit Borhade, he was assaulted by bat and stump and hands. Thereafter PW.1 alongwith PW.2 and PW.3 went to the Rajawadi hospital. He was examined by Medical officer supported by the reference letter of nature and cause of injury at Exh. 43, which proves that informant had sustained injuries on that day and he was referred by the doctor for X-ray. His evidence is very well corroborated by PW.4 Medical officer that informant was examined by him on the same day.

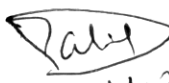
16] Furthermore, the evidence of PW.2, PW.3 and PW.4 are very well corroborated to the evidence of PW.1. It is also very well corroborative evidence led by the PW.1 to PW.3 that they were assaulted by the accused no. 1 and 2 by means of stump, bat and hands. They have identified the said seized property before the court. They have also identified the accused person before the court. It appears that the evidence of the PW.1 informant, PW.2 and PW.3 is cogent, corroborative


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and credible. It inspires confidence in prosecution case that the incident was occurred. Considering the evidence on record, there is no reason before me on record to show that the evidence of informant is not trustworthy and unreliable.

17] It appears that minor discrepancies in this case, but it cannot be given too much importance unless they goes to root of the matter. It appears that the omissions appeared in the evidence of prosecution witness have been of minor nature and they do not go to the root of the case. These types of contradictions and omissions are bound to happen due to passage of time more than 12 years. So also, they do not shake the credibility and reliability of prosecution case. Hence, the said contention raised on behalf of accused is devoid of any merit.

18] Therefore, considering the above evidence, prosecution proved that accused no. 2, in furtherance of their common intention alongwith accused no. 1 voluntarily caused hurt to the informant and witnesses by using stump and bat, which are weapons that can cause death or grievous injury. Now question before me is that, whether informant sustained grievous hurt ? There is no documentary evidence on record to show that informant received grievous injury. So also, PW.4 Dr. Jagdish deposed that prima facie he did not see any fracture in the body of the informant. In absence of X-ray sheet and report one can not say surely that grievous hurt was caused to the informant. Therefore, in absence of clear evidence regarding grievous hurt, this court is very well empowered to hold accused guilty under minor section of Indian Penal code i.e. 324 r/w 34 of I.P.C as provided u/sec. 222 of Code of Criminal Procedure. Therefore, I hold Point no. 1 in affirmative u/sec. 324 r/w


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34 of the Indian Penal Code.

19] As to point no.2 :-

As I hold Points no 1 in the affirmative, the accused no. 2 is liable for punishment according to Law. Therefore in order to hear him on the point of sentence, I here stop to hear accused on the point of sentence. Ld. Counsel for accused submitted that the accused no. 2 is sole earning member of his family. If he is sent in jail, it will bring hardship to his family members. He prayed that leniency may be shown to him and he be released on execution of Probation bond by giving benefit under Probation of Offenders Act. On the other hand, Ld. A.P.P submitted that, maximum punishment may be awarded to them according to Law.

20] It seems that, the fracture injury of the informant Rohit Borade is not proved on record, hence the elbow of informant was fractured due to assault by accused is not proved by the prosecution beyond reasonable doubt. But it is proved on record that the informant has sustained injuries due to assault of accused no. 2 in furtherance of common intention of accused no.1. The prosecution has proved the offences u/sec. 324 of I.P.C. charged against the accused no.2. Therefore, considering the mental and physical agony of informant to award Rs.10,000/- compensation to the him will suffice the end of justice. Therefore, I pass the following order :-

ORDER

- 1] The accused nos. 2 Mangesh Namdeo Pawale is hereby convicted for the offence punishable under section 324 r/w 34 of Indian Penal Code vide Section 248(2) of Code of Criminal Procedure and he is sentenced to suffer one year (01 year) Rigorous

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imprisonment and to pay fine of Rs.15,000/- (Rs. Fifteen Thousand only) in default of payment of fine he shall suffer Simple Imprisonment for 15 days.

- 2] Accused no. 2 shall surrender his bail bonds.
- 3] The seized property i.e. stump and bat be kept in safe custody for trial of accused no. 1.
- 4] The compensation of Rs.10,000/- be given from fine amount to the informant Shri Rohit Chandrakant Borhade, R/o. Sai Ganesh Co-op society, A wing, 601, Bhatwadi, Ghatkopar(W), Mumbai after expiry of appeal period.
- 5] After depositing of compensation, the said amount be paid to the informant as per rule after appeal period.
- 6] The Sr. P. I. of Ghatkopar Police Station is directed to file separate chargesheet against accused no. 1 whenever he will be traced out.
- 7] Copy of the Judgment be provided to accused no. 2 free of cost.
(Dictated and pronounced in open court.)

Date
3.11.2023

(D. T. Patil)

Metropolitan Magistrate, 49th Court,
Vikhroli, Mumbai

Date :- 03-11-2023

Dictated on : 03/11/2023
Transcribed on : 03/11/2023
Signed on : 03/11/2023

pck.

Fine paid Rs. 5000/-
R.no. 0236573
Q
03/11/23

ARCA
Rs. 10000/-
R.no. 1389178
Q
03/11/23

[Signature]
03/11/23

