

(2024) 01 BOM CK 0033
In the Bombay High Court
Case No : Criminal Appeal No. 434 Of 2022

Chetan Deepaksingh Thakur

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Indian Penal Code, 1860 — Section 186, 323, 332, 350, 351, 353, 504, 506

Citation : (2024) 01 BOM CK 0033

Hon'ble Judges : Urmila Joshi-Phalke, J

Bench : Single Bench

Advocate : S.Y. Deopujari, V.A. Thakare

Final Decision : Allowed/Disposed Of

Judgement

Urmila Joshi-Phalke, J

1. ADMIT. Heard finally with the consent of learned Counsel for the parties.
2. By this appeal, the appellant has challenged the judgment and order of sentence passed by the Additional Sessions Judge, Amravati in Sessions Case No.228/2018 dated 24/03/2022 by which the appellant/accused Chetan Deepaksingh Thakur is convicted of the offence punishable under Sections 353 of the Indian Penal Code and sentenced to suffer simple imprisonment for 7 days and fine of Rs.6000/- in default to suffer simple imprisonment for 1 day. He is also convicted of the offence punishable under Section 506 of the Indian Penal Code and sentenced to suffer simple imprisonment for 5 days and to pay fine of Rs.4000/- in default to suffer simple imprisonment for 1 day.
3. Brief facts of the prosecution which are necessary for the disposal of the appeal are as under :

A] In the intervening night of 5th June, 2013 and 6th June, 2013, the informant Dr. Rajesh Ingale was on duty as a Medical Officer in a Casualty Ward of Irwin Hospital, Amravati. On that day at about 1:00 a.m. when he was attending a

patient, the accused came in the hospital along with a lady patient. The accused was under the influence of liquor and he laid the lady on the bed and started shouting and abusing. He caught hold the collar of the informant and pushed him, thereby preventing him from discharging his duty. It was intervened and informant was rescued. After the incident, he lodged the report with City Kotwali police station, on the basis of which the crime was registered.

During investigation, the Investigating Officer after completion of the formality of the investigation submitted charge-sheet against the accused. The trial Court has framed the charge vide Exhibit-4. The contents of the charge are read over and explained to the accused. In support of the charge, prosecution has examined in all 8 witnesses.

1. PW-1 – Dr. Rajesh Namdeo Ingale (Exhibit 8) – informant.
2. PW-2 - Sharda Daulatrao Bhandari (Exhibit-12) – eye-witness.
3. PW-3 - Avinash Atmaram Thaware (Exhibit-13) - Panch on the spot.
4. PW-4 - Shobha Manoj Malviya - (Exhibit 22) - eye- witness
5. PW-5 – Dr. Sachin Ramesh Gondane – (Exhibit-24) - who examined the accused.
6. PW-6 - Ganesh Gulabrao Gadling - (Exhibit 26) - eye-witness
7. PW-7 - Digambar Vishramji Wagh - (Exhibit 32) – Investigating Officer and
8. PW – 8 - Dr. Amol Sadashivrao Narote - (Exhibit 44) – Medical Officer.

4. Besides the oral evidence prosecution placed reliance on the Report-Exhibit 9, FIR-Exhibit 10, Spot Panchnama - Exhibit 14, Medical Report-Exhibit 25, Arrest panchnama - Exhibit 33.

5. All the incriminating evidence is put to the accused who claimed that he is implicated falsely.

6. On the basis of evidence recorded, the learned trial Court convicted the appellant of the offence punishable under Sections 353 and 506 of the Indian Penal Code and acquitted of the offence punishable under Sections 186, 323, 332 and 504 of the Indian Penal Code.

7. Learned Counsel for the appellant submitted that from the entire evidence, offence under Section 353 is not made out as the evidence of witnesses nowhere shows that accused has used criminal force. The definition of Criminal Force given under Section 350 shows that to attract the ingredients of criminal force prosecution has to prove that accused intentionally use the force on any person without that persons consent, in order to committing of any offence or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used is said to use criminal force to that person. He submitted that the

evidence of PW-1 who stated in his FIR that accused has caught hold whereas during his deposition he has only stated that the accused has made hue and cry and abusing. He has not stated the exact abuses uttered by the accused whereas the evidence of PW-2 and PW-4 who are alleged to be an eye-witnesses have not stated about any abuses. They only stated that the person was shouting as "dgk ej x;k MkWDVj" and PW-4 has stated that "dgk gS MkWDVj" whereas PW-6 – Ganesh Gulabrao Gadling who is the another eye-witness has not supported the prosecution case. Thus, prosecution measurably failed to prove the charge against the present accused/appellant. In view of that, the judgement and order passed by the trial Court is erroneous and liable to be quashed and set aside.

8. Learned Counsel for the appellant placed reliance on the following judgments :

(i) Bhagirath Vs. State of Madhya Pradesh [1980 DGLS (SC) 10]

(ii) Kundan Khanderao Dhande Vs. Vasudeo Nivruti Fegde and anr. [2016 DGLS (Bom.) 1446]

(iii) George Cyriac Maruthukunnel Vs. State of Maharashtra [2016 (1) Bom.C.R. (Cri.) 166]

(iv) Shila Deorao Bhagat Vs. State of Maharashtra [2022 DGLS (Bom.) 2534]

9. Per contra, learned Additional Public Prosecutor submitted that the present accused entered into the hospital during the midnight and deterred the informant from discharging his official duty. The evidence of PW-1, PW-2 and PW-4 sufficiently shows that the informant was deterred by the present appellant/accused from discharging his duty. He invited my attention towards Section 351 of the IPC which defines the 'Assault' and submitted that Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. He submitted that thus evidence on record sufficiently prove that in view of Section 351 there was preparation for assault to deter the public servant from discharging his official duty. In view of that the appeal is meritless and deserves to be dismissed.

10. On appreciation of the evidence PW-1 who is the complainant and the victim has stated in his evidence that he was on duty in the Casualty ward wherein PW-2 and PW-4 were as per prosecution evidence present. It is alleged that the applicant entered along with the lady patient and abused the complainant. He testified that he stated that he is a Chetan Thakur, Reporter of Dainik Bhaskar newspaper and continued hue and cry abusing without taking what was happened to the patient and came on his person and tried to assault him. When he was examined the said lady, he was abusing and also tried to assault him whereas the evidence of PW-2 – Sharda Daulatrao Bhandari shows that one person came along with the patient and shouted "dgk ej x;k MkWDVj" When doctor came forward he started altercation the name of the said person was

Chetan Thakur. The evidence of PW-4 is also to the extent that the person was shouting and abusing as "dgk gS MkWDVj" Admittedly, PW-6 Ganesh Gadling who is also one of the eye-witness has also not supported the prosecution case. As far as abuses are concerned none of the witnesses have stated regarding exact abuses which are uttered by the present appellant. Though PW-1 has stated that accused came on his person and tried to assault him but what was the act committed by the present appellant to assault him is not narrated by the witness PW-1. Thus, the evidence of PW-1, PW-2 and PW-4 as far as the alleged attempt of assault is concerned is not consistent. It is pertinent to note that though independent witnesses as per the evidence of PW-2 and PW-4 were present at the time of incident are not examined by the prosecution.

11. Learned Additional Public Prosecutor submitted that the act committed by the present accused would cover under the definition of 'Assault' under Section 351 of the Indian Penal Code. Admittedly, PW-1 has not stated the exact act of the appellant to show that what was the attempt by the appellant/accused to assault him whereas PW-2 and PW-4 have not stated anything about the attempt of assault which is narrated by PW-1.

12. Section 350 of the Indian Penal Code defines Criminal force which reads as under :

"Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

13. Whereas Section 351 defines 'Assault' which reads as under:

"Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault."

Explanation to Section 351 states mere words do not amount to an assault. But the words, which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

The illustration (a) shows that A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

14. A mere faith to use force if a person persists in a course of conduct does not amount to assault. The apprehension of the use of criminal force must be from the person making the gesture or preparation, and if that apprehension arises not from that person but from somebody else, it does not amount to assault on the part of that person.

Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. In the light of the definition of 'Criminal Force' and 'Assault', the evidence adduced by the Prosecution falls short to attract the provision.

From the bare reading of Section 353 of the Indian Penal Code, it will be cleared that the 'Assault' or 'Criminal Force' as defined in Section 350 and 351 respectively of the Indian Penal Code is an essential ingredient to constitute the said offence. As per the explanation given under Section 351 of the Indian Penal Code mere words do not amount to an 'Assault'. In the present case, it is alleged that the accused shouted, and therefore, deterred the informant from discharging his duty. The alleged shouting of the accused is not stated to be coupled with any other gesture. Consequently, his shouting cannot be termed as an 'Assault'. Admittedly, no physical force has been used by the applicant in view of the evidence of the witnesses. If that be so, the ingredients of the offence punishable under Section 353 of the Indian Penal Code cannot be said to have been prima facie disclosed from the FIR.

15. I have carefully examined the evidence, oral report and find that the action attributed to the present appellant would still fall short of the ingredient necessary for invoking Section 353 of the Indian Penal Code. To prove that the informant was deferred from discharging his duty as a Public Servant even if the contents of the oral report and evidence is taken into consideration is not sufficient to prove the charges. In view of above, appeal deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The appeal is allowed.

(ii) The judgment and order of sentence passed by the Additional Sessions Judge, Amravati in Sessions Case No.228/2018 dated 24/03/2022 is hereby quashed and set aside.

(iii) The appellant is acquitted of the offences for which he was charged.

16. The appeal is disposed of in the aforesaid terms.