



Registered on : 29-10-2018
Decided on : 15-10-2020
Duration: 01Y. 11M.16D.

IN THE COURT OF SESSIONS JUDGE, AT AMRAVATI.

Sessions Case No. 229/2018
(CNR MHAM010046342018)

Exhibit No. : 95

Cr. No.97/2012 of Rajapeth police station,
Tq. Amravati, Dist. Amravati.

State of Maharashtra
Through Police Station officer,
Police Station Rajapeth,
Amravati District-Amravati

....Prosecution

Versus

1. Yashomati Bhayyasaheb Thakur
Age - 44 years, Occ.: Social worker ,
R/o Ganediwal Layout, Near Divisional
Commissioner office, Amravati
District- Amravati
2. Sagar Sureshrao Khandekar
Age – 29 years, Occ. Driver
R/o Ganediwal Layout, Near Divisional
Commissioner office, Amravati
District- Amravati
3. Sharad Kashirao Javanjal
Age- 55 years, Occ. Agriculturist,
R/o Kathora Gandhi, Tq. & District
Amravati.
4. Raju Kisanrao Ingle
Age- 48 years, Occ. Agriculturist
R/o Nerpinglai, Tq. Morshi,
District- Amravati.

... Accused.

Charge- Offences punishable U/S 353, 332,186, r/w 34 of the Indian Penal Code and u/s 119 r/w 177 of Motor Vehicles Act.

Shri. M.S.Joshi, learned A.P.P. for the State.
Shri. P.V.Deshpande, learned advocate for accused no.1
Shri. Tamhane, learned advocate for accused nos. 2 to 3.

CORAM :

H.H. THE SESSIONS JUDGE

URMILA S. JOSHI - PHALKE

J U D G M E N T

(Delivered on 15-10-2020)

1. Present accused persons are facing charges on an allegation that they have used criminal force to public servant, a Police Constable Ulhas Raurale to deter him from exercising his lawful duty, voluntarily caused hurt to informant Ulhas, who is a public servant in discharge of his duty, obstructed him and disobeyed the mandatory traffic signals and thereby committed offences punishable under sections 353, 332,186 r/w 34 of the Indian Penal Code and u/s 119 r/w sec. 177 of Motor Vehicles Act.

2. Brief facts, of the prosecution as emerges from the police papers and recorded evidence, are as under:-

On 24-03-2012 Ulhas Balkrushna Raurale has lodged report that he is serving as a police constable. On 24-3-2012 he was attached to traffic branch as a police constable, Amravati. On that day he was deputed on a duty at Chuna Bhatti square from 4.00 p.m. to 9.00 p.m. alongwith police constable Sultan B.No.88. Accordingly, he joined the duty at Chuna Bhatti square at about 4.00 p.m. His

colleague P.C. Sultan has left the post for urinal purpose and he was present at the spot i.e. Chuna Bhatti square. At about 4.15 p.m. one Tata Safari bearing No. MH-14-CC-405 came from Gadre square and was proceeding from Chuna Bhatti square to Gandhi square. But Chuna Bhatti square to Gandhi square was declared as one way and, therefore, he restrained the vehicle and told driver that they cannot proceed from the road Chuna Bhatti square to Gandhi square. In the said vehicle MLA Smt. Yashomati Thakur was traveling. She disclosed to the informant that he should not restrain the vehicle and he should permit them to proceed by the said road. He again respectfully informed her that said road is one way and they should not proceed by the said road. But she got down from the vehicle, hold his collar and slapped him on his cheek. She was followed by the driver and other two persons traveling in the said vehicle and manhandled him and assaulted him. In the mean time his colleague P.C. Sultan came there, rescued him. Said incident is also witnessed by the tea stall owner Shri. Wankhade and other witnesses. Subsequently, all these persons proceeded from Chuna Bhatti square to Gandhi square in the said vehicle by violating the traffic rules. He immediately informed the said incident to his superior. Thereafter, he approached to police station Rajapeth and lodged the report. He alleged that when he was discharging official duty as a police constable all the accused persons used criminal force on him and deterred him from discharging official duty.

3. On the basis of report, police have registered the offence against the accused persons. During investigation, Investigating Officer has visited alleged spot of incident. During spot panchanama Investigating Officer has seized pieces of white button found at the spot

and drawn the spot panchanama. Investigating Officer has also collected the RTO information regarding the vehicle MH.14.CC-405 by issuing a letter. He has collected notification issued by DCP, Amravati city declaring Chuna Bhatti square to Gandhi square road as a one way, duty chart issued by the City Traffic branch, Amravati city. Informant was referred for medical treatment. Investigating Officer has collected the OPD papers and medical certificate. After completion of the investigation, Investigating Officer has submitted the charge-sheet against the accused in the court of Judicial Magistrate First Class, Amravati.

4. As the offence punishable under section 353 of I.P.C. is exclusively triable by the court of Sessions, learned trial Court has committed the case to the Court of Sessions.

5. My predecessor has framed the charge vide Exh. 8. The contents of the charge are read over and explained to the accused persons in vernacular in Marathi and they pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, prosecution has examined in all five witnesses;

PW Nos.	Name of witness	Exh. Nos.
PW 1	Ulhas Balkrushna Raurale, informant	Exh.38
PW 2	Mohd. Sultan Sk. Hannan	Exh. 50
PW 3	Satish Ambadas Wankhade	Exh. 67
PW 4	Pramesh Paikanji Atram, Investigating Officer	Exh. 70

PW 5	Dr. Sunita Ramesh Meshram, Medical Officer	Exh.81
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7. Besides this prosecution relied upon documentary evidence.

Sr. No.	Particulars of document	Exh. Nos.
1	Report lodged by the informant	Exh.39
2	Printed FIR	Exh.40
3	Spot panchanama	Exh.51
4	Letter to RTO	Exh.73
5	RTO information	Exh.74
6	Notification issued by DCP Amravati city	Exh.75
7	Duty List	Exh.76
8	OPD papers	Exh. 82
9	Medical Certificate	Exh.83

8. Besides this prosecution relied upon article 1 i.e. white button.

9. On the basis of said oral as well as documentary evidence, prosecution claimed that prosecution has proved its case beyond reasonable doubt.

10. All the incriminating evidence is put to the accused in order to obtain their explanation in regard to evidence appearing against them by recording their statement under section 313 of Code of Criminal Procedure. Defence of the accused persons is of total denial.

11. Heard learned A.P.P. Shri. M.S.Joshi for the State. He has submitted that accused are facing charge that they in furtherance of

their common intention deterred the public servant from exercising his lawful duty and used criminal force on him and thereby committed offences punishable u/s 353, 332, 186 r/w 34 of IPC and u/s 119 r/w 177 of Motor Vehicles Act. He submitted that to prove the charges prosecution has examined in all 5 witnesses. P.W.1 Ulhas Raurale is the informant. He supported the prosecution case and narrated entire incident. Though P.W.2 left loyalty towards prosecution but he admitted that P.W.1 was on duty alongwith him. He also narrated about the incident that one Tata Safari bearing No. MH-14-CC-405 came at the spot. He supported that accused no.1 MLA Smt. Yashomati Thakur alongwith 3 persons went towards Gandhi Chowk in the said Tata Safari vehicle. It also came in his evidence that in the manhandling shirt of Ulhas was torn and button was broken. He specifically admitted that MLA Smt.Yashomati Thakur has contravened the rules of one way traffic. Thus, though he left loyalty towards prosecution to the extent that MLA Smt. Yashomati Thakur assaulted P.W.1 P.C. Ulhas but he supported the presence of Smt.Yashomati Thakur and other 3 persons and manhandling of P.W.1 by the accused persons. Learned APP submitted that merely because P.W.2 is declared hostile but his evidence cannot be discarded entirely. He corroborated the story of prosecution and supported the incident. P.W.3 has also admitted the presence of police constable at the spot of incident. He left the loyalty towards prosecution regarding rest of the incident. But the presence of P.W.1 is supported by P.W.3. The oral evidence of P.W.1 is also supported by the medical evidence. P.W.5 Dr. Sunita Meshram testified that on examination she found blunt injury on left ear, age of injury was 3-4 hours and she issued the certificate. She also referred P.W.1 to ENT department for clinical examination. Thus, oral evidence of P.W.1 is supported by the medical evidence. Prosecution has also examined

P.W.4 Pramesh Atram, Investigating Officer, who has carried out the investigation. His evidence shows that he has collected the RTO information regarding the vehicle, collected the notification which was issued by the DCP Amravati City. He also collected the duty chart. These all documents are maintained and prepared by the public servant while discharging their official duty and, therefore, they are admissible in evidence. He submitted that thus, prosecution has proved that P.W.1 was discharging his official duty as a police constable on 24-3-2012 at about 4.15 p.m. and while he was discharging the duty, all the accused in furtherance of their common intention deterred him from discharging official duty by using criminal force. Thus, prosecution has proved the charges against the accused beyond reasonable doubt. Hence, accused to be convicted for the charges.

12. Heard Learned Adv. P.V.Deshpande for the accused. He has submitted that to prove the charges prosecution has to prove that informant was discharging his public duty. The evidence on record shows that before entering on the one way vehicle was stopped. Prosecution nowhere clarified where the vehicle was exactly stopped. Spot panchanama shows that barricades were kept at the opening of the road. There is no evidence that barricades were broken. There is no illegal activity by the accused persons. P.W.1 has to show illegal activity. Question arises whether P.W.1 and P.W.2 were on duty. Exh.75 and 76 are not proved properly. Prosecution has not proved whether on 24-3-2012 the notification Exh.75 was in existence. Exh.76 duty chart nowhere shows who has prepared the same. There is no evidence to show that P.W.1 was on duty. Oral evidence and medical evidence is also contradictory. It is surprising to note that though 4 persons have assaulted, P.W.1 has sustained only one injury. There is

no evidence to show that the shirt was seized, sealed and produced. There is no evidence when it was seized and sealed. There is no identification of the accused persons. Test Identification parade was essential but no TIP was carried out. Thus, entire case of the prosecution is doubtful and, therefore, accused persons to be acquitted from the charges.

13. Adv. Shri. Tamhane for accused no. 2 to 4 supported the arguments of learned advocate Shri. Deshpande and submitted that prosecution failed to prove the charges against accused beyond reasonable doubt and hence, accused to be acquitted.

14. Heard rival submissions of both the sides. Perused evidence on record and following points arise for my consideration.

POINTS:

FINDINGS:

- 1) Whether prosecution has proved that on 24-03-2012 at about 4.15 p.m. at Chuna Bhatti Square, Amravati accused persons in furtherance of their common intention used criminal force to P.C. Ulhas Balkrushna Raurale, B.No.74 of P.S. City Traffic Branch, Amravati, who was doing his duty as a public servant to deter such public servant from exercising his lawful duty as a public servant and thereby committed an offence punishable u/s 353 r/w 34 of I.P.C.?

In the affirmative

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|---|---------------------|
| 2) Whether prosecution has proved that on 24-03-2012 at about 4.15 p.m. at Chuna Bhatti Square, Amravati accused persons in furtherance of their common intention voluntarily caused hurt to PC Ulhas Balkrushna Raurale, B.No.74 of P.S. City Traffic Branch, Amravati, a public servant in discharge of his duty as such public servant and thereby committed an offence punishable u/s 332 r/w 34 of I.P.C.? | In the affirmative |
| 3) Whether prosecution has proved that on 24-03-2012 at about 4.15 p.m. at Chuna Bhatti Square, Amravati accused persons in furtherance of their common intention obstructed informant a public servant in discharge of his public function and thereby committed an offence punishable u/s186 r/w 34 of I.P.C.? | In the affirmative |
| 4) Whether prosecution has proved that on 24-03-2012 at about 4.15 p.m. at Chuna Bhatti Square, Amravati accused persons in furtherance of their common intention disobeyed and have not followed the mandatory traffic signs and thereby committed an offence punishable u/s 119 r/w 177 of M.V.Act? | As per final order |
| 5) What order ? | As per final order. |

REASONS

As to Point No.1 to 4 :-

15. As per the prosecution case P.W.1 Ulhas Raurale was serving as a police constable and was posted in City traffic branch (western zone) Amravati. On 24-3-2012 from 4.00 to 9.00 p.m. he was discharging his official duty alongwith P.C. Sultan B.No.88 at Chuna Bhatti square. On that day at about 4.15 to 4.30 p.m. when informant Ulhas was discharging his official duty, one Tata Safari bearing no. MH-

14-CC-405 came from the side of Gadre chowk and was proceeding towards Gandhi square. He restrained the said vehicle as the road from Chuna Bhatti square to Gandhi square was one way. In spite of restraining, the vehicle went ahead and therefore he stopped the vehicle. At that time accused no.1 MLA Smt. Yashomati Thakur, who was sitting in the vehicle got down from the vehicle and slapped him. She also held his collar. She was followed by the driver of the vehicle and other two persons, who manhandled him. Thereafter, all these persons seated in the vehicle and proceeded towards Gandhi chowk by disobeying the traffic rules. P.W.1 has testified regarding the alleged incident as it is. He testified that he was discharging his official duty as a public servant. At that time all the accused persons who came in the vehicle used criminal force on him and deterred him from discharging the official duty. He further testified vide Exh.38 that in the said incident the button of his shirt was broken. Said shirt was seized from him. He identified the shirt as well as button which is marked as article-1. He identified the accused sitting at Sr.No.1 from southern side as a driver of the said vehicle. He also identified the accused no.2 and 3, who were sitting in the court hall. Accused no.1 was not present before the court at the time of recording the evidence but he specifically stated that he can identify her as he knows her being she is MLA.

16. To corroborate his version prosecution also relied upon the evidence of P.W.2 Mohd. Sultan, who was on duty with P.W.1. He testified vide Exh.50 that at the time of incident he was posted in a traffic department. On the day of incident he was posted on duty at Chuna Bhatti chowk. P.W.1 Ulhas was with him on duty. His duty hours were 4.00 p.m. to 9.00 p.m. He was on fixed point duty and his duty was to restrain the vehicle while passing from Chuna Bhatti square

to Gandhi square as there was no entry to the vehicle towards the said direction. On that day at about 4.00 p.m. they both attended their duty and after putting barricades he went to answer the nature's call i.e for urinal purpose beside the place. When he returned he saw crowd. He made inquiry with Ulhas and P.W.1 disclosed that he has a quarrel with one Yashomati Madam. He left loyalty towards the prosecution regarding the incident that he saw accused no.1 while beating Ulhas Raurale. When he left loyalty towards the prosecution, learned APP put leading question in the form of cross-examination and P.W.2 has admitted that when he went towards the crowd he saw Tata Safari MH-14-CC-405. He also admitted that the vehicle was standing towards the direction from Chuna Bhatti square to Gandhi square. He also admitted that MLA Smt. Yashomati Thakur alongwith those two persons went towards Gandhi chowk in that Tata Safari vehicle. He also admitted that on that day there was one way traffic from Chuna Bhatti square to Gandhi square. He also admitted that in the said manhandling shirt of Ulhas was torn and shirt button was broken. He also admitted that after the incident immediately he and P.W.1 made a telephonic call to control room and thereafter went to Rajapeth police station to lodge the report. He specifically admitted that on that day MLA Smt. Yashomati Thakur has contravened the rules of one way traffic.

17. Prosecution has also examined adjacent tea stall owner Satish Wankhade as a P.W.3 vide Exh.67 but he has not supported the prosecution case and left the loyalty towards the prosecution. It has come in his evidence that he runs tea canteen in Gorakshan chowk. He also testified that on that day at about 4.00 to 4.30 p.m. one white colour Tata Safari came at Gorakshan chowk. During cross-examination by learned APP he admitted that his tea canteen by name

'Jai Bhole Maharashtra Shasan Dudh Kendra' was run by him in the year 2012. He used to be remained present in the said shop for whole day. He also admitted that at the relevant time Chuna Bhatti square to Gandhi square was one way. There was a board showing that said road was one way. Barricades were also kept there. He also admitted that one constable came to his canteen for drinking water. He also admitted that the barricades kept on road were visible from his shop. Rest of the prosecution story is denied by him and he left the loyalty towards the prosecution.

18. To falsify the version of the prosecution story P.W.1 is cross examined at length. During cross-examination the topography of the spot of incident is brought on record. P.W.1 has admitted that the road coming from Gadre chowk and proceeding towards Gandhi chowk is upto Chawl of Hanuman Vyayam Prasarak Mandal. It is a T-point junction. From the T-point one road proceeds towards Gandhi chowk and one road proceeds towards Bhuteshwar chowk. He admitted that at that point there is always traffic jam and it is blind turn. In further cross-examination he admitted that the road coming from Gadre chowk towards Chuna Bhatti is not one way. From Chuna Bhatti chowk one can proceed towards the road to three directions. He also admitted that till reaching to Chuna Bhatti chowk by any of these roads, there is no right to prohibit the vehicle coming upto Chuna Bhatti chowk but he denied that the road leading towards Gandhi chowk is not one way for full time. It also came in his cross-examination that in order to prohibit the vehicle on the road, barricades were kept on the road and the vehicle could not pass from such road. He also admitted that vehicle has not broken the barricades on the day of incident. He also admitted that barricades were fixed at Chuna bhatti chowk. He also admitted that he

has not stated to the police where was the vehicle at the time of incident. Thus, defence has tried to bring it on record that as the barricades were kept it is not possible for the vehicle to pass from the said road.

19. Defence has also challenged the P.W.1 on duty and was discharging his duty. P.W.1 has admitted that it is necessary to keep the entry of time at which he has joined the duty. He also admitted that he has stated the approximate time of the happening of the incident to the police. He admitted that there might be plus or minus of 15 or 20 minutes. It has further come in his cross-examination that when the vehicle came from Gadre chowk, he saw that one lady was sitting in the front seat. He also admitted that in order to prohibit the vehicle from proceeding towards Gandhi chowk he was standing ahead of the one way road. He admitted that he has not seen the said vehicle and the persons sitting in it at any time prior to the incident. He further admitted that he told the driver of the vehicle that vehicle cannot be taken ahead. He also admitted that when the driver told him that madam was sitting inside the vehicle, he told him that he did not recognize madam and the rule is same for all. Thus, it is tried to bring on record that P.W.1 was not discharging official duty and he has not restrained the vehicle where exactly the one way starts.

20. In further cross-examination it came on record that he did not give any information in writing to his superior. He told the name of the person sitting in the vehicle to the police. He was not called to identify the accused anywhere. He knows that the lady by name Smt. Yashomati Thakur is MLA of Tiosa constituency. Since last two years photos of Yashomati Thakur were published in newspapers, pamphlets

and flex etc. Thus, it is tried to bring on record that there is no proper identification of the accused persons during investigation.

21. P.W.2 and 3 are also cross examined. During cross-examination of P.W.2 he has admitted that register is to be maintained in respect of fixed point duty. The time of attending the duty is to be mentioned in the said register. Some omissions are brought on record which are material omissions that he has not stated before the police that he was on fixed point duty and his duty was to restrain the vehicle from passing Chuna Bhatti square to Gandhi square. He has also not stated before police that after putting the barricades he went to answer urinal call. He also admitted that prior to attend the duty he went to answer urinal call. He also admitted that to answer the urinal call he has to go to Gandhi chowk from Chuna Bhatti chowk. The distance between Chuna Bhatti square to Gandhi square is 100 meters. When he returned he saw the crowd in Chuna Bhatti chowk. He saw one lady and three gents sitting in the vehicle. He also admitted that when he was inquiring, the vehicle left the spot. Thus, from the cross-examination it is tried to bring on record that P.W.2 has not at all attended the duty at the relevant time.

22. P.W.3 is also cross examined by learned defence counsel. He has admitted that he cannot say in which month the road Gorakshan chowk to Gandhi chowk becomes one way.

23. To corroborate the version of P.W.1 prosecution relied upon the medical evidence. Prosecution has examined P.W. 5 Dr. Sunita Meshram vide Exh.81. She testified that on 24-3-2012 she was on duty as casualty Medical Officer from 2.00 p.m. to 9.00 p.m. One

person namely Ulhas Raurale was brought to the hospital by Rajapeth police. She examined him. On examination she found following injury i.e. blunt injury- left ear, age of injury-3-4 hours caused by hard and blunt object, healing time 7-10 days. She referred him to ENT department. Accordingly, she prepared injury certificate. OPD papers are Exh.82 and injury certificate is at Exh.83.

24. During cross-examination she has admitted that the injury caused to patient Ulhas is possible by forceful slap. She also admitted that in the column of age of injury she mentioned initially as 1-2 hours and later on 3-4 hours. She mentioned age of injury as 3-4 hours as patient told injury caused before 3-4 hours. She admitted that due to lapse of time there may be changes in appearance of injury. She also admitted that in order to determine age of blunt injury she has to see the colour, swelling and edema. She has not mentioned colour, swelling and edema.

25. Lastly, prosecution has relied upon the evidence of P.W.5 Ramesh Atram, Investigating Officer, who has narrated about investigation carried out by him. Prosecution has also proved portion marked A and B of P.W.3 through his evidence. He also testified that he collected the RTO information regarding the vehicle. He also collected the notification issued by the Dy. Commissioner of Police declaring the Chuna Bhatti square to Gandhi square as a one way. He also collected the duty chart by which duty was allotted to P.W.1 and P.W.2. RTO information is at Exh.74, notification is at Exh.75 and duty chart is at Exh.76. During cross-examination he admitted that he did not record the statement of the owner of the vehicle or did not take action to make the owner of the vehicle as accused. He admitted that

Exh.75 is not issued by any of the officers from the office of police commissioner. He denied that he has not filed documentary evidence to show that on 24-3-2012 the said way was one way. He also admitted that during investigation he did not record the statement of the person, who used to prepare the duty chart in the control office. He admitted that Exh.75 does not bear the signature of the person who has prepared it. Thus, from the cross-examination it is tried to bring on record that prosecution failed to prove that at the relevant time Chuna Bhatti square to Gandhi square was one way. Prosecution also failed to prove that P.W.1 and P.W.2 were discharging their official duty on that day.

26. Learned APP Shri. Joshi submitted that the oral evidence of P.W.1 and 2 is sufficient to show that they were deputed at Chuna Bhatti square to discharge their official duty. Their presence is also admitted by P.W.3. There is no reason for both the constables to depose against the accused persons as there is no previous enmity. Presence of all the accused persons is established by the prosecution. He further submitted that oral evidence of P.W.1 is duly corroborated by the medical evidence. Thus, prosecution has proved the charges. Exh.75 and 76 are the public documents which show that Chuna Bhatti square to Gandhi square was one way and P.W.1 and 2 were discharging their official duty.

27. Whereas learned Adv. Shri. Deshpande submitted that to prove the offence punishable u/s 353 of IPC prosecution has to prove that P.W.1 and 2 who are public servant were discharging their official duty and while discharging their official duty criminal force was used on them and they were deterred from discharging their official duty. He vehemently submitted that in the present case basic foundation that

P.W.1 and 2 were deputed as a traffic constables at the Chuna Bhatti chowk itself is not proved by the prosecution. The documents on which prosecution is relying upon is not proved by the prosecution. It is not a public document. In support of the contention he relied upon **Mohd. Kutty .Vs. State of Kerala reported in 2004(5) CRJ 137 Kerala High Court** wherein it is observed by the Hon'ble High Court that it must be proved that who assaulted was in execution of duty as public servant. It is further observed that Sec. 353 of the IPC can apply only when the public servant is discharging the duty imposed by him by virtue of his office and he must be performing an act which is so integrally connected with the duty attached to his office as to form part of it.

28. He also relied upon **Shrawan Kannur .Vs. Anjunabai Kannuar reported in 1997 Cri.L.J.391** wherein it is observed that proof of contents of document, officer who recorded the document must be called for and examined to prove the document. Mere production of document kept in police custody will not be a proof of it as a public document. It is further held that needless to say that if anybody wants to prove the contents of the document, it should be proved by through person who has written the document. Mere production of the document kept in the police custody will not be a proof as a public document.

29. He also relied upon judgment in **Cri. Appeal No. 337/2003 M/s Rahmnia Coffee Works .Vs. State represented by Dy. Superintendent of Police** wherein in it is observed by Hon'ble Madras High Court that secondary evidence as a general rule is admissible only in the absence of primary evidence and that proper explanation for the absence of primary evidence has to be given.

30. Thus, on the basis of catena of decisions relied upon by the defence counsel, it is submitted that prosecution failed to prove beyond reasonable doubt that P.W.1 and 2 were discharging their official duty and while discharging official duty accused persons deterred them from discharging their official duty.

31. After appreciation of evidence, to prove the charge prosecution has to prove that P.W.1 and P.W.2 were serving as a public servant and at the relevant time they were discharging the public duty. Prosecution has to prove while discharging the official duty criminal force was used on them to deter them from discharging the official duty. It is not in dispute that P.W.1 Ulhas Raurale and P.W.2 P.C. Mohd. Sultan are serving as police constables. It is not in dispute that they were serving as a city traffic police at the relevant time. Only the dispute raised by the defence is that whether they were deputed on duty at Chuna Bhatti chowk on 24-3-2012 at about 4.00 p.m. P.W.1 and P.W.2 has categorically stated that they were on duty as police constables and deputed at Chuna Bhatti chowk from 4.00 p.m. to 9.00 p.m. The evidence of P.W.1 and 2 is corroborating to each other regarding duty time i.e. 4.00 p.m. to 9.00 p.m. As per P.W.1 alleged incident has occurred at about 4.15. to 4.30 p.m. P.W.2 has also stated that alleged incident has occurred when after attending the duty he had been to answer the nature's call i.e. for urinal purpose. During cross-examination it is tried to bring on record that they have to take entry in the register after attending the duty. Both the witnesses have admitted that they have to take entry in the register after attending the duty. Admittedly, no register is produced on record but duty chart is produced on record by the prosecution. Defence has raised the objection that said duty chart nowhere bears the signature of the person

who prepared it. Said duty chart is at Exh.76. It is a true copy of the said duty chart collected by the Investigating Officer during the investigation. It shows the signature of the person of city traffic branch and it is certified by senior police inspector City Traffic branch, Amravati city. Learned defence counsel relied upon judgment of Hon'ble Bombay High Court. I respectfully agree with the well settled principle of law stated by Hon'ble Bombay High Court in case of **Shravan Kannur** (cited supra).

Public document has been defined under section 74 of the Indian Evidence Act. Admittedly, Exh.76 is prepared by the concerned office while discharging the official duty. In view of Sec. 35 of Indian Evidence Act, an entry in any public or other official book, register or record stating a fact in issue of relevant fact and made by public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept is itself a relevant fact. Sec. 35 of Indian Evidence Act requires the following conditions to be fulfilled before a document can be admissible under this section.

1. the document must be in the nature of an entry in any public or other official book, register or record;
2. it must state a fact in issue or a relevant fact;
3. the entry must be made by public servant in the discharge of his official duties or in performance of his duties specially enjoined by the law of the country in which the relevant entry is kept.

Two kinds of documents are covered by this section.

1. maintained by public servant;
2. by any person who is duty bound by law to maintain it as per provisions of law.

The first kind of document i.e. entries by public servant become a public document within a meaning of sec. 74 of Indian Evidence Act because sec. 74 says that records of acts of a public officer are public document, if made within discharge of duty. It being a public document, as per sec. 77 of Indian Evidence Act, the proof of contents of such document can be proved by production of certified copy thereof. U/s 114 illustration E of Evidence Act states that it will be presumed that the judicial and official acts have been regularly performed. Now if a public servant makes an entry in discharge of his office duties, it may be presumed u/s 114 that the public servant has acted properly and might have discharged his duty in proper way. Therefore, it may be presumed that the entry made by public servant in discharge of official duty might be a true entry of facts noted therein. Thus, u/s 35 if entries are made by public servant in discharge of his duties, they have some presumptive value of correctness and if there is no evidence contrary to that entry, it can be relied upon by Court in view of the facts and circumstances of the case.

32. In the present case duty chart is prepared by the public servant while discharging the official duty. There is no contrary evidence to show that the said entries are false or not genuine one. Thus, oral evidence of P.W.1 and P.W.2 supported by Exh.76 is sufficient to show that P.W.1 and 2 were discharging their official duty as a public servant at the relevant time. Therefore, the cited case law by learned defence counsel in case of **Shrawan Kannur** (cited supra) is not helpful. The other case law in **Cri. Appeal No. 337/2003 M/s Rahmnia Coffee Works .Vs. State** is also not helpful in the present case. The case law relied upon by defence in **Cri. Revision Petition No. 3031/2015 Datti Kameswar .Vs. Singam Rao Sartha Chandra &**

Anr. is also not helpful.

33. Now it has to be seen whether the available evidence is sufficient to prove that when P.W.1 and 2 were discharging the official duty they were deterred from discharging the official duty by using criminal force on them. P.W.1 and P.W.2 have categorically stated that the Chuna Bhatti road to Gandhi chowk was one way road. This fact is also supported by the notification issued by DCP. Exh.75 specifically shows that the notification was issued on 15-11-2011. The notification shows that Gandhi square to Chuna Bhatti square is one way. The entry to the vehicles from Chuna Bhatti to Gandhi square is banned. Initially, the said notification was applicable from 17-10-2011 from 4.00 p.m. to 9.00 p.m. of 8.11.2011. but the notification further shows that said notification is continued for further period also. Thus, the oral evidence is supported by the documentary evidence to show that Chuna Bhatti square to Gandhi square was one way.

34. The evidence of P.W.1 categorically states that on the day of incident he was deputed on Chuna Bhatti square. He attended his duty at about 4.00 p.m. Alleged incident has occurred in between 4.15 to 4.30 p.m. One Tata Safari vehicle came from Gadre chowk and was proceeding towards Gandhi chowk at that time it was restrained. His evidence further shows that accused no.1, who was sitting in the said vehicle got down from the vehicle and slapped him by holding his collar, though he informed that they could not proceed from said road as it is one way road. He also stated that driver of the vehicle and other two persons also manhandled him. During cross-examination it is tried to bring on record that exact spot of incident is not brought on the record by the prosecution. The barricades were not broken and

therefore the case of the prosecution falsifies. To ascertain exact spot of incident it is necessary to see the spot panchanama. The spot panchanama shows that alleged spot of incident is in front of temple where the barricades were put. The flex was also exhibited there by the traffic police. Police have also found broken pieces of button at that place. Informant has shown the said place as alleged spot of incident. The Pan stall is also shown towards the western side of the spot of incident. The map of the spot of incident also shows that the vehicle came from the Gadre chowk into Chuna Bhatti square and was proceeding towards north towards the Gandhi square. The alleged incident has taken place immediately where the road towards Gandhi square starts. Thus, the contention of the defence that exact spot of incident is not proved by the prosecution is not sustainable. The police have seized broken shirt button article 1 from the said spot. Said spot is exactly at the starting point of the road which proceeds towards the Gandhi square. Thus, the alleged incident has taken place when vehicle was proceeding towards Gandhi square after passing Chuna Bhatti square.

35. P.W.1 has specifically stated the act of accused no.1. He testified that he disclosed to the driver that they cannot proceed by the said road. Driver told him that MLA Smt. Yashomati Thakur was sitting in the vehicle. He also told the madam as the said road is one way therefore they could not proceed by the said road but accused no.1 got down from the vehicle, hold his collar and gave him a slap. This evidence is also supported by the spot panchanama wherein broken pieces of button were found as well as my medical certificate. The medical certificate shows that injured has sustained the blunt injury near the left ear. The age of injury is 3-4 hours back. Learned defence

counsel vehemently argued that oral evidence and medical evidence is contradictory as it is impossible that injured will have only one injury though he is assaulted by four persons but if the evidence of P.W.1 is scrutinized he specifically stated that only accused no.1 has gave him a slap and other accused manhandled him and beat him. He has not narrated the specific role to them. There may not be visible injuries. Visible injury sustained by P.W.1 was near the left ear. It is nowhere evidence of P.W.1 that he was repeatedly beaten by the other accused persons. He only testified that they have manhandled him. Therefore, the contention of defence counsel that medical evidence and oral evidence is contradictory is not sustainable. Though P.W.1 is cross examined at length nothing is brought on record to show that there is any other reason for him to implicate accused no.1 falsely.

36. Learned defence counsel has also raised the issue of identification. Admittedly, accused no.1 was MLA at that time. She was public figure. It has come in the cross-examination that her photographs were published in newspapers, pamphlets and flex etc. Being she was the public figure, it was not difficult for P.W.1 to identify her though he saw her first time. He identified other accused before the court. Identification of other accused before the court is a substantial evidence. Merely because TI parade is not carried out by the Investigating Officer during investigation is not sufficient to discard the evidence of P.W.1 which is otherwise corroborated by P.W.2. Though P.W.2 has left loyalty towards the prosecution initially but during cross-examination of learned APP he admitted that he has witnessed the vehicle bearing No.MH-14-CC-405. He also admitted that he saw the vehicle towards the direction from Chuna Bhatti chowk to Gandhi chowk. It also came in his evidence that in the said manhandling shirt

of P.W.1 was torn and shirt buttons were broken. It specifically came in his evidence that MLA Yashomati Thakur has contravened the rules of one way traffic. Thus, his evidence corroborates the evidence of P.W.1 on material particulars. P.W.3 has also left loyalty towards the prosecution but his evidence shows that police constable was present at the time of incident in the Chuna Bhatti chowk. His evidence also shows that road from Chauna Bhatti to Gandhi chowk was one way. There was a board showing that road was one way. The barricades were kept there. Learned defence counsel has argued that though barricades were kept, no barricade was broken. It is pertinent to note that the vehicle was restrained while it turned towards the road proceeding towards the Gandhi square. The barricade will break when vehicle was in speed. Initially vehicle was restrained before it reached near the barricade and after the incident the vehicle proceeded by the said road itself. The map also shows that the barricades were kept on the road by keeping some portion of the road open. Therefore, question of braking of barricades will not arise.

Learned defence counsel relied on judgment of Hon'ble Kerala High Court in case of **Mohd. Kutty** (cited supra). I have gone through the cited case law. The facts of cited case law shows that the occurrence took place near the check post before the forest guard reached at the check post. Therefore, Hon'ble Kerala High Court held that it must be proved that assault was in execution of duty as a public servant. Facts of the cited case law are not identical with the present case and hence not helpful.

37. After going through the entire evidence, it appears that evidence of informant P.W.1 Ulhas Raurale supported by P.W.2 on material particulars though P.W.2 declared hostile, mere declaring of

hostile is not sufficient to discard his evidence totally. P.W.3 has also supported regarding presence of police constable at the spot. Perusal of the Exh.76 shows that P.W.1 and P.W.2 were deputed to discharge their duties as a public servant and they were discharging their duties. The alleged incident has occurred when the vehicle of the accused persons was restrained by P.W.1. There is no reason as to why police constables P.W.1 and P.W.2 should be speaking against the accused persons. There is nothing to show that they have any enmity or grudge against the accused persons. They have immediately lodged the FIR. Though P.W.2 has left loyalty towards prosecution to the extent of presence of accused no.1. Admittedly, accused no.1 was MLA and that may be a reason for him not to depose against her. But during cross-examination by learned APP he admitted her presence. Thus, entire evidence on record is sufficient to show that when P.W.1 was discharging his official duty as a public servant criminal force was used on him by accused no.1 and other accused persons also shared the common intention and deterred him from discharging his official duty as public servant. Thus, prosecution has proved the charges against the accused persons u/s 353, 332, 186 r/w 34 of IPC. As accused are already held guilty for the offence punishable u/s 353, 332 and 186 r/w section 34 of IPC, no separate punishment is to be awarded for the offence punishable u/s 119 r/w section 117 of IPC.

38. Due to mandate of Section 235(2) of Cr.P.C. I suspend my judgment here to hear the accused on the point of sentence.

Urmila
Sachin Joshi-
Phalke

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Phalke
Date: 2020.10.16
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(Urmila S. Joshi - Phalke)
Sessions Judge, Amravati.

Dt. 15-10-2020

39. Heard accused persons on the point of sentence. Accused no.1 submitted that she has not committed any offence. Leniency be shown to her as there is no criminal antecedents against her. Accused no.2 to 4 also endorsed the same contention.

40. Learned advocate Shri. P.V.Deshpande, for accused no.1 submitted that there is no criminal antecedents against the accused. Considering above all circumstance leniency be shown to her and she be released on good behaviour bond.

41. Heard learned Adv. Tamhane. He also endorsed the same contention.

42. Learned A.P.P. Shri. M.S.Joshi has submitted that accused no.1 was MLA at the relevant time. She is the part of law making process and therefore it is not expected that public figure like accused no.1 should break the law. Considering the act, i.e assault on the police constable is to be taken seriously and maximum punishment be awarded.

43. Heard both the sides. At this stage I have recapitalized the entire episode. P.W.1 police constable, who was discharging his official duty was assaulted by accused no.1 by giving slap to him and deterred him from discharging his official duty. Accused no.1 is a public figure, representative of public. People elected her. She is also advocate by profession. She is aware about the legal provisions and the law. P.W.1 police constable was discharging his official duty. He restrained the vehicle as road towards the Gandhi chowk was one way. In this situation it was duty of accused no.1 to follow the rules and

regulations. It will be duty of every citizen to respect and citizens cannot be allowed to aggravate the situation by using criminal force against police constable, who is discharging his official duty to ensure that law and order is maintained. It is observed by **Hon'ble Apex Court in State of MP .Vs. Kashimram reported in 2009 All MR (Cri) 925 SC** that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine public confidence in the efficacy of law and society could not endure under such serious threat. It is therefore duty of every court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed etc. The Hon'ble Apex court held that the object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and sentencing process has to be stern where it should be.

44. Considering the act committed by accused no. 1 to 4 and in the light of observation of Hon'ble Apex Court it will be just and proper to impose the sentence on the accused persons. For the offence punishable u/s 353 of IPC punishment provided is imprisonment of either description for a term which may extend to three years or with fine or with both. For the offence u/s 332 of IPC punishment provided is imprisonment of either description for a term which may extend to three years or with fine, or with both and for the offence u/s 186 of IPC punishment provided is either description for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both. Legislature has left discretion in the hands of courts while awarding punishment. Therefore, it will be just to impose

rigorous imprisonment of 3 months and fine of Rs. 10,000/- each for the offence punishable u/s 353 r/w 34 of IPC, in default of payment of fine accused to suffer further simple imprisonment for 15 days. Rigorous imprisonment for 3 months and fine of Rs.5000/- each in default of payment of fine further simple imprisonment for 15 days will be just punishment for the offence punishable 332 r/w 34 of IPC. For the offence punishable u/s 186 r/w 34 of IPC simple imprisonment for one month and fine 500/- in default of payment of fine further simple imprisonment for 8 days will be just and proper punishment.

45. P.W.2 who is the public servant has left loyalty towards the prosecution during the evidence. The act of P.W.2 cannot be ignored. It is his duty to assist the court to reveal entire incident because at the relevant time he was on duty. Conveniently he chose not to state the name of accused no.1. Considering his act, it will be just and proper to forward copy of the judgment to Commissioner of Police, Amravati for taking necessary action against P.W.2. In the result, I proceed to pass following order.

ORDER

1. Accused no.1 Yashomati Bhayyasaheb Thakur, accused no.2 Sagar Sureshrao Khandekar, accused no.3 Sharad Kashirao Javanjal and accused no.4 Raju Kisanrao Ingle are hereby convicted under Section 235(2) of Code of Criminal Procedure of the offence punishable under section 353 r/w sec. 34 of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for 3 Months (Three Months) and to pay fine of Rs. 10,000/- (Rs. Ten Thousand Only)each, in default of payment of fine, accused persons to suffer

further simple imprisonment for 15 days.

2. Accused no.1 Yashomati Bhayyasaheb Thakur, accused no.2 Sagar Sureshrao Khandekar, accused no.3 Sharad Kashirao Javanjal and accused no.4 Raju Kisanrao Ingle are hereby convicted under Section 235(2) of Code of Criminal Procedure of the offence punishable under section 332 r/w sec. 34 of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for 3 Months (Three Months) and to pay fine of Rs. 5,000/- (Rs. Five Thousand Only)each, in default of payment of fine, accused persons to suffer further simple imprisonment for 15 days.

3. Accused no.1 Yashomati Bhayyasaheb Thakur, accused no.2 Sagar Sureshrao Khandekar, accused no.3 Sharad Kashirao Javanjal and accused no.4 Raju Kisanrao Ingle are hereby convicted under Section 235(2) of Code of Criminal Procedure of the offence punishable under section 186 r/w sec. 34 of the Indian Penal Code and they are sentenced to suffer simple imprisonment for 1 Month (One Month) and to pay fine of Rs. 500/- (Rs. Five Hundred Only) each, in default of payment of fine, accused persons to suffer further simple imprisonment for 8 days.

4. All the sentences shall run concurrently.

5. Accused persons are entitled for set off under section 428 of Code of Criminal Procedure.

6. No separate punishment is awarded for the offence punishable u/s 119 r/w section 177 of Motor Vehicles Act.

7. Seized muddemal property i.e. shirt etc. being worthless be destroyed after appeal period is over and after obtaining the report from Hon'ble High court regarding the disposal of the appeal, in case any appeal is filed.

8. Copy of this judgment be forwarded to Commissioner of Police, Amravati.

9. Copy of this judgment be given to accused persons free of cost.

(Dictated and pronounced in open court)

Urmila
Sachin
Joshi-Phalke

Digitally signed
by Urmila Sachin
Joshi-Phalke
Date: 2020.10.16
13:47:37 +0530

Dated: 15-10-2020

**(Urmila S. Joshi - Phalke)
Sessions Judge, Amravati.**