

Mahendra Kumar Sonker
v.
The State of Madhya Pradesh

(Criminal Appeal No. 520 of 2012)

12 August 2024

**[B.R. Gavai, K.V. Viswanathan* and
Nongmeikapam Kotiswar Singh, JJ.]**

Issue for Consideration

Whether the conviction of the appellant under s.353 of the Indian Penal Code, 1860 (IPC) can be sustained without proving assault and use of criminal force.

Headnotes[†]

Indian Penal Code – s.353 IPC – Complaint against appellant filed regarding demand of Rs. 500/- as illegal gratification – Trap proceedings organised – Appellant charged for offences under ss.7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 along with ss.201 and 353 IPC – Special Judge, Sagar convicted appellant for offence u/s.353 IPC and sentenced him to undergo simple imprisonment for six months and imposed Rs. 1000/- fine – Appeal dismissed by High Court – Present appeal only concerned with conviction u/s.353 IPC – Allegation regarding charge u/s.353 IPC was that appellant, in collusion with his wife, with an intention to obstruct members of the trap team in performing their public duty during trap proceedings, attacked them or exercised criminal force on them:

Held: Use of criminal force or assault necessary ingredients of s.353 IPC – Use of force to any person without that person's consent in order to the committing of any offence required to establish criminal force as defined u/s.350 IPC – Force defined u/s.349 IPC – Assault u/s.351 IPC would mean 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 – On facts – Upon considering oral and medical evidence, prosecution unable to establish that appellant assaulted or used criminal force against trap party –

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Digital Supreme Court Reports

Attempt was made by appellant to wriggle out when apprehended – Jostling and pushing appears to have happened in process of extricating himself from arrest – None of the ingredients of assault or criminal force attracted – Jostling and pushing by appellant with attempt to wriggle out was not with intention to assault or use of criminal force – No evidence to indicate that accused assaulted or used criminal force on the trap party in execution of their duties or for the purpose of preventing or deterring them in discharging their duties. [Paras 15-18, 28-29]

List of Acts

Penal Code, 1860; Prevention of Corruption Act, 1988.

List of Keywords

Penal Code, 1860 – s.353; Criminal force; Assault; Intentional use of force; Public servant; Discharge of duty; Trap proceedings.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 520 of 2012

From the Judgment and Order dated 14.10.2009 of the High Court of M.P. at Jabalpur in CRLA No. 1949 of 2007

Appearances for Parties

Siddharth Aggarwal, Sr. Adv., Ms. Garima Bajaj, Advs. for the Appellant.

Arjun Garg, Aakash Nandolia, Ms. Sagun Srivastava, Ms. Kriti Gupta, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. The present appeal calls in question the judgment dated 14.10.2009 passed by the High Court of Judicature at Jabalpur, Madhya Pradesh in Criminal Appeal No. 1949 of 2007. By the said judgment, the appellant's conviction under Section 353 of the Indian Penal Code, 1860 (for short 'the IPC') and sentence of six months simple

**Mahendra Kumar Sonker v.
The State of Madhya Pradesh**

imprisonment and fine of Rs. 1,000/- imposed by the Special Judge, Sagar has been confirmed. Aggrieved, the appellant is in Appeal.

2. Originally, the appellant along with his wife Mamta stood trial. While the appellant was charged for offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') as well as Sections 201 and 353 of the IPC, his wife Mamta was charged under Section 353 and 201 of the IPC.
3. We are, in this appeal, concerned only with the conviction of the appellant under Section 353 of the IPC. The appellant has been acquitted of other charges and his wife Mamta has been completely acquitted including for the offence under Section 353 of the IPC. Accordingly, only those aspects of the facts which have a bearing on the present appeal are set out hereinbelow.

Brief Facts:

4. The complainant in the original corruption case is one Babulal Ahirwar (PW-1). It appears that on his complaint to the Collector about the irregularities in the work of construction of the Education Guarantee Building, the then President of the Committee constituted for the purpose of construction, Santosh Ahirwar was removed from the President's post.
5. The appellant, who was posted as Patwari in Circle No. 89, Village Naryaoli, District Sagar had been entrusted with the inquiry into a complaint against the said Babulal Ahirwar to the effect that he had made a false complaint against Santosh Ahirwar. It transpires that the appellant, in the inquiry, found the charge against Babulal Ahirwar to be false. When Babulal Ahirwar sought a copy of the report from the appellant, the case of the prosecution is that the appellant demanded a sum of Rs. 500/- as illegal gratification.
6. The said Babulal Ahirwar, on 28.06.2004, filed a complaint with the Superintendent of Police, Special Police Establishment Lokayukt, Sagar against the appellant in this regard. An FIR was registered under Section 7 of the Act and trap proceedings were organized. O.P. Tiwari (PW-4) and M.K. Choubey were co-opted along with the trap party which consisted of Head Constable Niranjan Singh, Constable Raj Kumar, Constable Shiv Shanker Dube and Inspector N.K. Parihar. The case set up by the prosecution was that they

Digital Supreme Court Reports

waited for the accused-appellant and when he arrived at his house, Babulal Ahirwar accosted him and handed over the currency to the appellant and signaled to the trap party. The trap party arrived there to apprehend the appellant.

7. We are directly concerned with what transpired at this point since the only surviving Section under which the appellant has been convicted is Section 353 of the IPC. We will deal with this aspect in detail a little later in the judgment.
8. Special Case No. 20 of 2005 was registered against the appellant and his wife for the offences mentioned hereinabove. The appellant and his wife denied the charges and claimed trial. Prosecution examined thirteen witnesses and the defence examined three witnesses.
9. By the judgment of 05.09.2007, the learned Special Judge, Sagar while acquitting the appellant for offences under Sections 7, 13(1)(d) read with 13(2) of the Act and Section 201 of the IPC, convicted him for the offence under Section 353 of IPC and sentenced him to undergo simple imprisonment for six months. Additionally, a fine of Rs. 1000/- was imposed and the appellant's wife was acquitted of all the charges.
10. Aggrieved, the appellant preferred an appeal to the High Court which has since been dismissed.
11. Insofar as the charge under Section 353 of the IPC was concerned, the allegation was that the appellant in collusion with his wife with an intention to obstruct the members of the trap team in performing their public duty during the trap proceeding, attacked them or exercised criminal force on them. It is this part of the case which has been believed by the courts below.
12. We have heard Mr. Siddharth Aggarwal, learned senior counsel for the appellant and Mr. Arjun Garg, learned counsel for the respondent State.

CONTENTIONS:

13. Mr. Siddharth Aggarwal, learned senior counsel contended that the courts below were not justified in recording the conviction under Section 353 of IPC; that on the same evidence the wife of the appellant, Mamta has been acquitted; that the evidence of PW-1

**Mahendra Kumar Sonker v.
The State of Madhya Pradesh**

Babulal Ahirwar, PW-4 O.P. Tiwari, PW-8 N.K. Parihar, PW-9 Niranjana Singh read with the evidence of PW-13 Dr. H.L. Bhuria, do not make out a case for conviction under Section 353 of IPC against the appellant and that none of the ingredients required to maintain a conviction under Section 353 of IPC have been established. Mr. Arjun Garg, learned counsel for the State defended the conviction and prayed that no case for interference with the concurrent conviction is made out.

14. We have carefully considered the arguments of the parties and have perused the records of the case, including the original records.
15. At the outset, we extract hereinbelow Section 353 of the IPC:

“353.-Assault or criminal force to deter public servant from discharge of his duty. - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

A perusal of Section 353 indicates that whoever assaults or uses criminal force (a) to any person being a public servant in the execution of his duty as such public servant, or (b) with intent to prevent or deter that person from discharging his duty as such public servant, or (c) in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with the imprisonment of either description for a term which may extend to two years, or with fine, or with both.

16. It is important at this stage to notice the definition of criminal force as defined in Section 350 of the IPC.

“350. Criminal force.- 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

Digital Supreme Court Reports

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.”

As would be clear, what is required to establish criminal force is intentional use of force to any person without that person’s consent in order to the committing of any offence.

17. Section 349 of the IPC which defines force is extracted hereinbelow :

“349. Force.- A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other’s sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First. - By his own bodily power.

Secondly. - By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly. - By inducing any animal to move, to change its motion, or to cease to move.”

18. Assault under Section 351 of the IPC would mean 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.
19. In this background, if we peruse the evidence on record, insofar as the charge under Section 353 of the IPC is concerned, it will transpire that none of the ingredients required for convicting a person under Section 353 of IPC were attracted.

**Mahendra Kumar Sonker v.
The State of Madhya Pradesh**

20. PW-1 Babulal Ahirwar, insofar as this part of the event that transpired is concerned deposed as under:

“6.The name and address was asked from the accused and the accused was caught. On being asked from the accused about the money he became uncontrolled and tried to run from there. Taking advantage of the dark, the accused threw away those notes.

7. With much difficulty the accused could be won over. The wife of the accused also came at that time and crowd had also gathered there. Wife of the accused was striking her head on the jeep.....”

(Emphasis supplied)

21. PW-4 O.P. Tiwari has deposed as under:

“3.When we caught hold of the accused he was not having money. The applicant then told that the accused has thrown the money in the dark. Thereafter the Inspector started searching the money by starting the torch. The Inspector found in the light of the torch, one 50 rupees note lying. Inspector Parihar took that note up and gave it to me and asked me to keep it. Other notes were also searched there but notes could not be found there.

4. After that we tried to apprehend the accused patwari and forced him to sit in the vehicle to take him to police station Naryaoli but the accused Patwari objected to it. In spite of the objection taken by the accused anyhow the accused was made to sit in the vehicle. At the same time the wife of the accused arrived and lay down before the vehicle. In such a condition the vehicle was reversed and turned back and we had to go to police station. When the vehicle moved the wife of the accused started her head striking with the bonnet of the vehicle. Other persons present there, caught hold of the wife of the accused and removed her from there only then we people took the vehicle and started for police station Naryaoli....”

(Emphasis supplied)

Digital Supreme Court Reports

22. PW-8 N.K. Parihar has deposed as under:

“6.Therefore the trap team surrounded the accused and tried to apprehend him. The accused objected to it forcefully so they could not catch him all of a sudden.”

7. The accused had shouted so crowd had assembled there. In the meanwhile the accused took out the bribe notes from his pocket and had thrown them. The accused was apprehended. On searching the notes on the ground only one note of Rs.50/- was seen which panch witness Shri Tiwari picked up. Looking to the opposition, we took accused to police station Naryaoli where solution of sodium carbonate was prepared, which was colouring less....

xxx xxx xxx

9.I had given one application in regard to the incident to Station House Officer Naryaoli, photocopy of which is enclosed. On 30.6.2004 I had filled MLC form for getting medically examined the head constable Niranjan Singh, myself & Rajkumar Sen, on which I had signed which are P-22 to P-25 respectively. After that I had handed over the case for investigation to D.S.P. Shri Ranjan Tiwari.”

(Emphasis supplied)

23. We have also perused the original record insofar as the application given to the Station House Officer is concerned, the translated portion obtained officially reads as under:

“To

The PS In-charge

Sic Narayavali (Madhya Pradesh)

Subject - Regarding the accused Mahendra Kumar of trap.(Sic)

Shri Mahendra Sonkar was caught taking bribes on 29/06/03 at 8 O'clock. He called out to his wife. The woman clung to her husband to free him. She put her head on the jeep sic and grabbed the accused's hand and started pulling him out of the jeep. The accused also

**Mahendra Kumar Sonker v.
The State of Madhya Pradesh**

grabbed her hand so that he could escape from the case by taking shelter of his wife. He also threw bribe notes but only one note was recovered in the trap sic. The accused created a lot of ruckus which disrupted the work. Please investigate this case.

Sd/-illegible 29.6.04

Sd/-illegible

29.6.04

(Shyam Bihari Mishra H.C.)”

(Emphasis supplied)

This document however does not appear to have been exhibited.

24. We have also seen Exh.P-22 to Exh.P-25. The translated portions of which read as under:

“Exh.P-22:

To

The Medical Officer,
District Hospital Sagar District
Sagar

Subject: Regarding medical examination of the injuries sustained by Head Constable Niranjn Singh, Special Police Establishment, Lokayukta, Sagar Division, Sagar and submitting a report

During the trap proceedings dated 29-6-2004 in Crime No.0/04 under Section 7, 13(1) 13(2) PC Act 1988, when accused Mahendra Kumar Sonkar and his wife tried to resist, Head Constable Niranjn Singh sustained the following injuries. Please examine and submit a report.

1. Injury with swelling near the right eye
2. Injury with swelling on the ankle of the right foot

Sd/-illegible

30.6.04

Digital Supreme Court Reports

SPL No.20/05

Ex P 22

PW8

21.11.06

(Satyendra Kumar Singh)

Special Judge and

First Additional Session Judge, Sagar

(Emphasis supplied)

Exh.P-23:

To

The Medical Officer

District Hospital

Sir,

It is requested that Mahendra Sonkar accused of Crime No.0/04 and his wife opposed the proceedings, as a result Inspector N.K. Sic sustained injuries in the middle finger of left hand causing swelling. Kindly examine and send report.

Sd/-

30.6.24

SPL No.20/05

Ex P23

PW8

21.11.06

Sd/-

(Satyendra Kumar Singh)

Special Judge and

First Addl Sessions Judge, Sagar

**Mahendra Kumar Sonker v.
The State of Madhya Pradesh**

Exh.P-24:

Illegible

Subject : Constable Rajkumar illegible

It is requested that in Case Crime No. sic 7, 13(1) D, 13(2) PC Act, Mahendra Kumar Sonkar and his wife tried to sic avoid the proceedings and resisted and hence the constable has suffered the following injuries to examine & give the report.

1. Swelling in the wrist of the right hand
2. Small scratches on both hands
3. Many sic injuries

Sd/-illegible

30.6.04

SPL NO.20/05

Ex P24

PW8

21.11.06

(Satyendra Kumar Singh)

Special Judge and

First Additional Session Judge, Sagar

(Emphasis supplied)

Exh.P-25

Sic District

Subject: Constable Shivshankar sic

In the proceedings of Crime No.0/04 u/s 7, 13(1)D, sic PC Act, accused Mahendra Kumar Sonkar sic and his wife resisted in which constable sustained following injuries. Examine and give the report.

Digital Supreme Court Reports

1. There is swelling in the little finger of the right hand.
2. There is pain in the chest and back.

Sd/-illegible

30.6.04

SPL NO.20/05

Ex P.25

P.628

21.11.06

(Satyendra Kumar Singh)

Special Judge and First

Additional Session Judge, Sagar”

(Emphasis supplied)

25. PW-9 Niranjan Singh has deposed as under:

“2. ...After some time the non-applicant Patwari came by his motorcycle and he contacted with the applicant in front of his residence. The applicant gave the amount of bribe to the accused Patwari. He took it in his hand and placed it in the pocket of his shirt.

3. During this time constable Shivshanker and Rajkumar suddenly tried to catch and the accused patwari tried to run away and constable Shivshanker and Rajkumar caught him. At the same time taking advantage of the darkness, the accused threw away the bribe money on the ground and the accused began to swing and jerk ('jhooma-jhatki' as available from the Hindi version). At the same time wife of the accused came out of the residence and began to cry. Enough crowds assembled at the spot of incident and patwari was doing too much swing and jerk....

During the incident I had suffered injuries near my right eye and at the ankle of the right leg. In this regard my medical examination was also done at District hospital Tili Sagar”

(Emphasis supplied)

**Mahendra Kumar Sonker v.
The State of Madhya Pradesh**

26. We have also examined the evidence of Dr. H.L. Bhuria PW-13, who recorded the injuries as mentioned hereinabove and stated that the injuries might have been caused with hard and blunt object.
- (Emphasis supplied)
27. We have also carefully perused the defence witnesses including the evidence of DW-2 Sitaram Chourasia who generally states that three to four persons came and there was pushing and shoving ('dhakka mukki' as is evident from the Hindi deposition) between the accused and those persons.
28. Having considered the oral evidence and the medical evidence, we are constrained to conclude that the prosecution has not established that the appellant has assaulted or used criminal force against the trap party. In fact, what transpires is that when the appellant was apprehended there appears to have been an attempt by the appellant to wriggle out and jostling and pushing appears to have happened, in the process of the appellant trying to extricate himself from the arrest. None of the ingredients of assault or criminal force have been attracted.
29. Further, there is absolutely no evidence to show that the accused used any hard and blunt object. PW-13 Dr. H.L. Bhuria had deposed that the injuries on PW-9 Niranjana Singh, PW-8 N.K. Parihar, Constable Raj Kumar and Constable Shivshankar might have been caused by hard and blunt object. In view of the above, there is no evidence to indicate that the accused assaulted or used criminal force on the trap party in execution of their duties or for the purpose of preventing or deterring them in discharging their duties. In short, none of the ingredients of Section 353 are attracted. The jostling and pushing by the accused with an attempt to wriggle out, as is clear from the evidence, was not with any intention to assault or use criminal force.
30. In fact, it will be interesting here to contrast Section 353 of the IPC with Section 186 of the IPC under which Section the appellant has not been charged. Section 186 of the IPC reads as follows.

“186. Obstructing public servant in discharge of public functions.- Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be

Digital Supreme Court Reports

punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

31. To take cognizance of Section 186, the procedure under Section 195(1)(a)(i) of the Cr.P.C. ought to have been followed. There is not even a complaint by the officer against the appellant for any offence having been committed under Section 186 of the IPC.
32. In view of the above, we have no hesitation in setting aside the judgment of the High Court. The result would be that the appellant would stand acquitted for the offence under Section 353 of the IPC. The Conviction under Section 353 of the IPC and the sentence imposed are set aside. The appeal is allowed. The bail bonds shall stand discharged.

Result of the case: Appeal Allowed.

[†]Headnotes prepared by: Aandrita Deb, Hony. Associate Editor
(*Verified by:* Shadan Farasat, Sr. Adv.)