



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 413 OF 2016

1. Suresh s/o Nanumal Tolani
Age: 52 years, Occu.: Business.

2. Vicky s/o Suresh Tolani,
Age: 24 years, Occu.: Business,

Both R/o. Block No.B-3, Room No.7,
Kumarnagar, Sakri Road, Dhule.

.. Appellants

Versus

. State of Maharashtra
Through Dhule City Police Station,
Dhule, Tq. And Dist. Dhule

.. Respondent

...

Mr. Ram. B. Deshpande, Advocate for the appellants.

Mr. S. M. Ganachari, APP for respondent/State.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28.09.2026

Pronounced on : 29.09.2026

JUDGMENT :

1. Appellant - a convict hereby challenges the judgment and order of conviction rendered by learned Additional Sessions Judge, Dhule dated 06.05.2016 in Sessions Case No.01 of 2012, by which appellants stood convicted for offence under Section 323 of Indian Penal Code [IPC].

2. The prosecution story, in brief, is that on 25.05.2011, the informant, who was in the company of his father, saw a quarrel taking place between one Vijendra and Suresh. Accused Vicky was also in the company of one Akash. Suresh and his two sons were abusing Vijendra questioning him whether the way belongs to his father. When the informant and his father went to separate them, it is alleged that Suresh and his two sons hit Vijendra with a stone after his sons had caught hold of him. The informant as well as his father were also assaulted. After Suresh and Vicky caught hold of the hands of the informant's father, Akash dealt a knife blow to his stomach. His father was taken to hospital and report to the above extent was lodged, on the basis of which crime was registered. After investigation, Suresh and Vicky, who were arraigned as accused, tried in the aforesaid Sessions Case, whereas trial of juvenile Akash was separated.

. The above trial ended up in conviction of accused Suresh and Vicky for the offence under Section 323 of IPC and they were sentenced to suffer imprisonment and to pay fine. Hence, instant appeal by them.

3. Learned Counsel for the appellants would point out that there is false implication. According to him, there is no convincing and

credible evidence to attract the conviction. Learned Counsel for the appellants took this Court through the testimonies of the complainant and PW5, the injured witness, as well as their cross-examinations, and submitted that their testimonies are unworthy of credence in view of the answers given by them during cross-examination. Moreover, according to him, there is no independent witness account. There are contradictions on the point of use of article for assault. Though the injured was taken to the Civil Hospital, there is no documentary evidence to that effect. Lastly, he submitted that the alleged occurrence took place in 2011, the trial concluded in 2016, and the appeal is being heard after a decade, i.e., in 2026. He further submitted that there is now no animosity between the parties and that the judgment of conviction has been looming large over the appellants for a long period. He, therefore, urged this Court to extend the benefit of Section 4 of the Probation of Offenders Act instead of confirming the sentence.

4. Learned APP strongly opposed the above appeal by pointing out that there is convincing direct evidence along with injured witness account. There is support from the medical evidence, and according to him, the learned Trial Court having already shown leniency, the appellants do not deserve any further leniency.

5. Re-appreciated the entire evidence. **PW1** seems to be the informant, who set law into motion; **PW2** is the panch to seizure of clothes; **PW3** is the medical expert, who examined injured and issued injury certificates Exhibit-39 and Exhibit-40; **PW4** is the panch to memorandum of disclosure at the hands of accused Akash; **PW5** is the injured; **PW6** and **PW7** are police officials; **PW8** is the injured and **PW9** is an independent eye witness.

6. On carefully going through the informant's evidence at Exhibit-30, it is emerging that, according to him, when he and his father **PW8** went to separate the quarrel which was going on between accused and **PW5**, at that time, accused Suresh and his two sons, namely, Vicky and Akash hit Vijendra by means of stone and thereafter, it is alleged that after incapacitating this witness, his father was stabbed by accused Akash.

. Nothing adverse has been brought in his cross-examination so as to disbelieve his above testimony.

7. Injured **PW5** Vijendra at Exhibit-50 has stated that while he was proceeding on a Scooty, accused Suresh came, intercepted and started abusing him in the backdrop of using way. He further deposed that he was made to fall down and that people gathered at the spot. One Shashikant i.e. **PW8** came to rescue the quarrel, but accused Suresh

threatened him also and at that time, accused Suresh summoned his sons Akash and Vicky, who came and assaulted Shashikant i.e. PW8. According to him, Akash dealt blow with knife in the stomach of Shashikant.

8. **PW8** Shashikant, another injured witness, has also deposed at Exhibit-58 that on 25.05.2011, while he was in the company of his son near Suresh Milk Dairy, he intervened in a heated exchange of words between Suresh and Vijendra. At that time, accused Suresh told him that he had no concern with the matter, picked up a stone and assaulted Vijendra. Thereafter, accused Suresh and Vicky caught hold of him, whereupon Akash dealt a knife blow to his stomach, as a result of which he fell unconscious and was taken to the hospital.

. Even nothing adverse has been brought in his cross-examination on the point of actual assault, except minor omissions.

9. **PW3**, a medical expert, in his evidence at Exhibit-38, testified about examining patient Shashikant as well as Vijendra, who had duly suffered blunt trauma in abdomen and right elbow respectively with abrasions. According to him injuries suffered by Shashikant were grievous in nature and possible by sharp weapon like knife, whereas injuries suffered by Vijendra were simple in nature.

. Though this medical expert was cross-examined, he admitted that the injuries sustained by Vijendra were possible if a person fall from a motorcycle on a hard surface. However, he denied that the injuries sustained by Shashikant could have been caused by a fall. He further denied the suggestion that the said injuries could not have been caused by a sharp weapon.

10. The net result of above analysis is that simple injuries on Vijendra and grievous injuries on Shashikant has been duly proved by prosecution. Eye witness account finds support from medical evidence.

11. However, here, the author of the grievous stab injury is accused Akash, but he was not tried by the trial Court being juvenile and moreover, he reportedly died in another incident.

12. Thus, the appellants, Suresh and Vicky, have been found guilty of the offence punishable under Section 323 of the IPC for assaulting the injured with a stone. Apparently, the incident arose out of a heated exchange of words. There was no previous enmity between the injured and the accused. The injured had merely intervened to rescue the parties and sustained injuries. The occurrence, as pointed out, is of the year 2011. The learned Trial Court convicted both the

appellants for the offence punishable under Section 323 of the IPC and sentenced them to undergo imprisonment for six months. No other crime has been reported against them apart from the present offence. Almost 15 years have elapsed since the occurrence, and almost a decade has elapsed since their conviction. Considering the nature of the offence under Section 323 of the IPC and the absence of criminal antecedents, both the appellants deserve to be extended the benefit of Section 4 of the Probation of Offenders Act. Hence, the following order :-

ORDER

- I. The Criminal Appeal is partly allowed.
- II. The conviction awarded under Section 323 of IPC to the appellants viz., (1) Suresh s/o Nanumal Tolani and (2) Vicky s/o Suresh Tolani in Sessions Case No.01 of 2012 by learned Additional Sessions Judge, Dhule vide judgment and order dated 06.05.2016, is hereby maintained.

HOWEVER

- III. Instead of sentencing appellants to imprisonment, they are directed to be released on probation of good conduct by

entering into a bond with one surety each to appear and receive the sentence when called upon during the period of one year.

IV. The bond for a period of one year shall be executed by him before the trial Court within a period of four weeks from today.

V. The Criminal Appeal is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

scm