

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.143 OF 1996**

The State of Maharashtra

**.. APPELLANT**  
[Orig. Complainant]

**VERSUS**

Sahebrao Laxman Dahiwal,  
Age 29 Yrs., R/o. Kokamthan,  
Shivar, Tinchari, Kopargaon.

**..RESPONDENT**  
[Ori. Accused]

...  
Mrs. P.J.Bharad, APP for Appellant – State  
Mr. Yuvraj Kakade, Advocate holding for  
Mr. N.J.Pahune Patil, Advocate for Respondent  
...

**CORAM : S.S. SHINDE &  
A.M.BADAR, JJ.**

**RESERVED ON : 24.02.2015  
PRONOUNCED ON: 05.03.2015**

**JUDGMENT** [Per S.S.Shinde, J.] :

1] This Appeal is filed by the State, being aggrieved by the Judgment and Order dated 07.09.1995 passed by the 5<sup>th</sup> Additional Sessions Judge, Ahmednagar in Sessions Case No. 97/1992.

**The case of the prosecution, in brief, is as under:**

2] The complainant Shantaram Bavaskar and accused knew each other. Accused had a Jewellery Shop in Kopargaon. It is the case of the prosecution that, the complainant had given Rs.85,000/- to the accused. Since the complainant was in need of money, on 28<sup>th</sup> November, 1990, he requested the accused to pay back amount. The accused assured the complainant part repayment on 4<sup>th</sup> December, 1990. The complainant went to the shop of the accused on 4<sup>th</sup> December, 1990 at about 8.30 a.m. to 9.00 a.m. However, accused was not present in his shop. His nephew told the complainant that, the accused is not feeling well, and therefore, he is taking rest at his home. As per the prosecution case, house of the accused was situated at Teen Chari location. The complainant went to the house of the accused on bicycle, which was taken from one Ashok Patil. He reached to the house of the accused at about 10.00 a.m. He kept his bicycle outside the door of the house of the accused. When the complainant entered in the house of the accused, the accused was lying on the cot. According to the complainant, some family members of the accused were present there, including sister of the accused. The complainant did make an enquiry about the illness of the accused. When sister and other family

members of the accused went outside the room and when complainant made demand of money, the accused stabbed complainant by knife. The complainant covering the injury with his hand ran away from the room towards road going to Manmad, without taking shoes and bicycle. When the complainant reached to the high way, he requested one motorcycle rider to take him to the Khiloshiya Sweet Mart in the city of Kopargaon. Then the complainant went to Dr. Kothari's Hospital, who was complainant's family Doctor. Dr. Kothari called the complainant's wife and other persons, and then complainant went to the Government Hospital at Kopargaon with wife and other persons, wherein he was admitted. Police recorded the statement of the complainant.

3] The investigation was set in motion, the Police Officer filed the charge sheet and thereafter after recording the evidence and full-fledged trial, the trial Court acquitted the accused. Hence this Appeal.

4] It appears that, the prosecution examined as many as 12 witnesses in support of its case. PW-2 to

PW-10 turned hostile. PW-2 Anwar Ahmed Maniyar was examined to prove seizure of shoes of the complainant, however, he turned hostile. Another panch for the said panchanama namely Karbhari Pandharinath Katkade also turned hostile. PW-4 Ramesh Nandram Lakare, panch to seizure panchanama also turned hostile. PW-5 Tukaram Namdeo Tupsaundkar was panch of spot panchanama also turned hostile. PW-6 Ashok Namdeo Chavan was panch of specimen signature, turned hostile. PW-7 Ravindra Jagannath Udavant, panch to panchanama for attachment of cheque book, turned hostile. PW-8 Arun Shravan Chaudhari was another panch for attachment of cheque book turned hostile. PW-9 Raju Rama Pawar was panch to panchanama of cheque also turned hostile, and PW-10 Ashok Babanrao Patil was also turned hostile. PW-11 Dagdu Runjaba Dising was working as Revenue Circle Inspector and prepared a map of spot. PW-12 Dr. Subhash Rangnath Shinde was examined as Medical Officer.

5] The entire prosecution case rests upon the evidence of PW-1 Shantaram Rambhau Bavaskar i.e. complainant. The complainant in his deposition before the

Court stated that, he is doing wholesale business of saree. He had cordial relation with the accused. He had given Rs. 85,000/- to the accused prior to 7-8 months of the incident. The accused had delivered some cheques. The accused had given three cheques of Rs.40,000/-, Rs.25,000/- and Rs.85,000/- respectively. According to the complainant, because of earlier two cheques amounting of Rs.40,000/- and Rs.25,000/- were destroyed, and therefore, third cheque of Rs.85,000/- was given. According to the complainant, he was called by the accused at his shop on 4<sup>th</sup> December, 1990 to receive the amount. Accordingly, he went to his shop in between 8.30 a.m. to 9.00 a.m. The nephew of accused had opened the shop, and he was sitting in the shop of accused. PW-1 waited for arrival of the accused in the shop, however, his nephew told PW-1 that, since accused is ill, he is at his house. The house of the accused is at Teen Chari locality. The house of the accused is at a distance about 5-7 kilo meters from his shop. The shop of the accused is located in the market place at Kopargaon. The complainant had no bicycle, therefore, he started going towards his house. On the way he met Ashok Patil. He had requested Ashok Patil to give his bicycle for sometime. Accordingly, Ashok Patil had

delivered his bicycle to him. Then, he went to the house [vasti] of the accused on the said bicycle at 9.00 a.m. The accused was resting on the cot inside his house. The complainant removed his shoes near the door of the house of the accused. He enquired about the illness of the accused. Sister of the accused offered him a tea. He sat on the cot of the accused where he was resting. He demanded amount from the accused. The accused told him that, he will pay money after two days. In the meantime, brother of the accused namely Raju came at the house of the accused. The brother of the accused Raju wanted to live the said place by motorcycle, however, he could not start his motorcycle and then complainant helped him. Again complainant went inside the house of the accused and sat on his cot. The accused told him to come in the evening and take him to Dr.Gujrathi at Kopargaon. Thereafter, complainant just wanted to get up from the cot, accused converted his position, he got up and while in sitting position dealt a blow of knife on the left rib of the complainant. When accused dealt blow of knife, complainant's face was towards the opposite direction of accused, and therefore, complainant could not see the action of accused. The accused after giving a blow of knife

immediately took out the knife. The complainant sustained bleeding injuries to his left rib. He tried to cover up the injury with his hand, and started running so as to come outside the house of the accused. He could not take his shoes and also bicycle, since he was apprehending second attack from the accused. When the complainant was running, he saw on his backside and noticed that, accused was following him with holding knife in his hand. When complainant came on Shirdi-Manmad main Road, he requested to two motorcycle riders to help him, however, there was no response from the said motor cycle riders. Thereafter, third Rajdoot motorcycle rider had stopped his motorcycle. Complainant requested to him to take him to the Hospital at Kopargaon. During their journey, said rider did ask the complainant about the injury sustained by him. The complainant stated entire incident to him. Upon hearing the incident the rider of the said motor cycle was frightened and told the complainant that, he will not take him to Hospital but he will live him in Kopargaon. Accordingly, at one place in Kopargaon, motorcycle rider left the complainant. Then complainant went to Dr. Kothari's clinic, who is his family Doctor. However, Dr.Kothari advised the complainant to go to the

Government Hospital. Dr. Kothari called the wife of the complainant at his Hospital, and after her arrival, wife of the complainant and other persons took complainant to the Government Hospital at Kopargaon. At about 11.30 a.m. he reached at Government Hospital, Kopargaon. He was as indoor patient for 10 days in the Government Hospital, Kopargaon. Police recorded his statement in the Government Hospital at Kopargaon. When his first statement was recorded by the Police at that time Doctor was stitching his injury, and therefore, his signature was not taken on first statement. On the same day again second statement was recorded by the Police Officer. The complainant's signature was obtained on said statement. The complainant clothes were seized by the Police.

6] The complainant was cross examined by the Advocate for the accused. In his cross examination, he stated that, his house is at a distance of about 150 feet from the shop of accused. He is residing in the said house since about 15-20 years. The businessmen doing their business in the market of jewellery where shop of accused is situated. He visited the house of the accused several

times. There are no houses situated near the house of the accused. He further stated that, Shirdi-Manmad Road is at a distance of about 2 kilo meters from the house of the accused and near that road there are many houses. He admitted that, he filed case under Section 138 of Negotiable Instruments Act in respect of dishonour of cheque of Rs.85,000/- issued by the accused in his favour and to that effect his evidence is recorded before the Judicial Magistrate First Class, Kopergaon in Criminal Case No. 21/1991. He stated that, he paid Rs.85,000/- to the accused on 12.11.1990 and on the same day, the accused issued a cheque for that amount. He has also narrated details about the proceedings in Case No.21/1991, which were tried by the Judicial Magistrate First Class, Kopergaon. He has further stated that, he has also filed Civil Suit for recovery of Rs.85,000/- against the accused in Civil Court at Kopergaon. He further admitted that, there is no evidence to show that, on 28<sup>th</sup> November, 1990, he had been to accused and demanded money. The complainant admitted in his cross examination that, there is no evidence that, he visited the house of the accused on 4<sup>th</sup> December, 1990. However, he denied the suggestion that, he did not go to the house of the accused on 4<sup>th</sup> December, 1990 and no

incident had taken place as alleged. He further stated that, blood stains from injury was not fallen on the bed of accused or in his house. He further admitted that, though he saw one Sharad Thorat on Manmad Road, but he had no talk with him. He further admitted that, he has not noted number of the Rajdoot motorcycle. He further stated that, Dr. Kothari did not give him any medicine or treatment for his said injuries. He took 45 minutes to reach to the Government Hospital. He further stated that, about for 1 and 1 ½ hours he was in the house of accused. Suggestion was given to the complainant that, he has lodged false report with an intention to take revenge with the accused, however, he denied said suggestion.

7] Upon careful perusal of the evidence of this witness, it is abundantly clear that, he himself has stated that, there is no evidence to suggest that, actually he went to the house of the accused on 4<sup>th</sup> December, 1990, except his statement. He stated in his examination in chief that, when he started to go towards his house on 4<sup>th</sup> December, 1990 from the shop of the accused on the way he met with Ashok Patil and requested him to give bicycle for some

time, and accordingly, Ashok Patil had delivered his bicycle to him and then on the said bicycle he went to the house of the accused. Ashok Babanrao Patil was examined by the prosecution as PW-10. He did not support the prosecution case. He deposed before the Court that, he knows the complainant who is residing in his locality. He had seen accused at Kopargaon in his shop. The complainant Shantaram did not take bicycle from him on the day of incident. At about 12 noon of the day of incident, he heard in his locality about admission of complainant Shantaram in the Hospital, and therefore, he went to Municipal Hospital, Kopargaon and saw complainant Shantaram had sustained bleeding injury near his stomach. Again, he went to his house and again came to Municipal Hospital, Kopargaon at about 4 p.m. on the same day. However, Shantaram did not disclose the details about how he sustained the injury. This witness was declared hostile and then he was cross examined by the Additional Public Prosecutor. In his cross examination, he stated that, on 4<sup>th</sup> December, 1990 i.e. on the date of incident, he went to Sanjivani Factory at about 8.00 a.m. and returned back at 11.30 a.m. He always use motorcycle. Therefore, if the evidence of PW-10 is considered, he stated that, he went to the Sanjivani Factory

at 8.00 a.m. and returned back at 11.30 a.m. Therefore, story of the prosecution as reflected through the version of the complainant that, he met Ashok Patil when he was returning from the shop of the accused and then took bicycle from Ashok Patil is completely demolished by the evidence of PW-10.

8] The prosecution examined Dr. Subhash Rangnath Shinde as PW-12. In his deposition, he stated that, on examination of Shantaram Bavaskar, he found following injuries:

- i] Incised wound over chest lower lateral part left side, obliquely placed wound. Size approx. 2 ½ cm x ½ cm. x Bony deep.*
- ii] Fracture rib left lower lateral aspect of chest. Tenderness positive.*

He has issued the injury certificate. However, he stated that, injury Nos. 1 and 2 are not sufficient in ordinary course to cause death. In his cross examination, he stated that, if any person fall on sharp pointed object both injuries are possible.

9] In the light of the discussion herein above, there is no corroboration to the version of the PW-1. As already observed, all panchas turned hostile. Recovery of alleged shoes from the field is also not supported by the prosecution witnesses. As already observed, Ashok Patil has stated that, he did not give bicycle. He did not meet the complainant as stated by the complainant in the morning hours on the day of incident and had not given bicycle. No any blood stains found in the house of the accused.

10] Upon re-appreciating entire evidence, we are of the opinion that, the trial Court has taken plausible view. No interference is called for in the acquittal order. Appeal sans merit, and hence dismissed.

Sd/-

**[A.M.BADAR, J.]**

Sd/-

**[S.S. SHINDE, J.]**

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