

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

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.172 OF 2005**

The State of Maharashtra,  
Through Public Prosecutor,  
High Court, Bench at Aurangabad.

**...APPELLANT**  
**(Orig. Complainant)**

**VERSUS**

- 1) Sanjay s/o Eknath Shinde,  
Age-34 years, Occu:Agril.,
- 2) Babasaheb s/o Dagadu Shinde,  
Age-28 years, Occu:Agril.,
- 3) Ramchandra s/o Eknath Shinde,  
Age-39 years, Occu:Agril.,

All R/o- Taka, Tq-Ausa,  
Dist-Latur.

**...RESPONDENTS**  
**(Orig. Accused)**

...  
Mr. A.M. Phule, A.P.P. for Appellant - State.  
Ms. Supriya L. Pansambal Advocate h/f. Mr. V.D.  
Gunale Advocate for Respondent Nos.1 to 3.

...

**CORAM: A.I.S. CHEEMA, J.**

**DATE OF RESERVING JUDGMENT : 20TH APRIL, 2016.**

**DATE OF PRONOUNCING JUDGMENT: 4TH MAY, 2016.**

**JUDGMENT :**

1. Respondents-original accused Nos. 1 to 3 (hereafter referred as "accused") were prosecuted before J.M.F.C. AUSA in R.C.C. No.222 of 2001 for offence punishable under Sections 324, 323, 504 read with 34 of the Indian Penal Code, 1860 ('IPC' in brief). The learned J.M.F.C. convicted them of offence punishable under Section 323 read with 34 of IPC but acquitted them of the offences under other Sections. The accused persons filed Criminal Appeal No.21 of 2003 and IInd Adhoc Additional Sessions Judge, Latur acquitted them of the offence under Section 323 read with 34 of IPC also. Thus, this Appeal by the State.

2. The case brought by the prosecution before the trial Court, in brief, was as follows:

A). Complainant Dattu @ Dattatraya Gopinath Bhange (PW-2) filed FIR dated 7th April 2001 with police station Bhada, Dist-Latur. The offence was registered as Crime No.26 of 2001 on 8<sup>th</sup> April 2001 at 6.15 a.m. In brief, the complainant reported to the police that on 6<sup>th</sup> April 2001 at about 4.00 – 5.00 p.m. while he was proceeding towards his field and came near the house of one Dayanand Shinde (PW-3), he saw that there was quarrel going on between Dayanand and accused No.1 Sanjay and he intervened. Later on, he and his brother Ram (PW-5) were in their village at Taka, Tq-Ausa, and at about 7.00 p.m. they were near the bank and proceeding towards their house. At that time accused Nos.1 to 3 came there and called them and asked complainant as to why he intervened in their quarrel with PW-3 Dayanand and started abusing. Accused No.1 Sanjay and accused No.2 Babasaheb held complainant and accused No.3 Ramchandra held PW-5 Ram. Suddenly accused No.1 Sanjay took out

knife and when complainant tried to avoid the assault, the same hit on his right leg and he started bleeding. Accused No.2 Babasaheb hit him by belt on his back and stomach, because of which there were marks of wound. Ram was hit by accused No.3 on nose by stone and was injured on his forehead and nose. At that time one Rajendra Bhangе (PW-4) Gopikishan Nivrutti and Vishwanath Bhangе (PW-6) and others intervened.

B). On receiving such FIR, the offence was registered and police Head Constable Devidas Mali (PW-9) investigated the offence. He prepared Spot Panchnama (Exhibit 36). He seized clothes of the person of the complainant (Exhibit 23). He seized knife (Exhibit 44). Statements of witnesses were recorded and after completing investigation, charge-sheet came to be filed.

3. The J.M.F.C. framed charge under Sections mentioned above. Prosecution brought on record

evidence of 10 witnesses. The defence of the accused persons is of denial. According to them, it was rather the complainant and his witnesses, who had attacked the accused persons causing injuries to accused No.3 Ramchandra, and false case was filed. According to the accused, against the complainant and other witnesses State filed Criminal Case R.C.C. No.221 of 2001.

4. I have heard learned A.P.P. for State. According to him, the Judgment recorded by the trial Court was correct and there was correct appreciation of the facts and the accused had been rightly convicted and Sessions Court could not have interfered with the conviction.

5. Counsel for the accused supported the Judgment of the Sessions Court and according to her, offence was not established.

6. Regarding the incident, complainant Dattu

deposed as PW-2 and proved FIR Exhibit 28. PW-3 Dayanand was called regarding the earlier incident which was the cause of the subsequent incident taking place. He turned hostile. But later on accepted the statement recorded by the police. PW-4 Rajendra Bhangе deposed regarding the incident but claimed to have reached later on. PW-5 Ram Bhangе supported his brother complainant Dattu. Vishwanath Bhangе (PW-6) (the uncle of PW-2 and PW-5) claimed that he had reached the spot after hearing the noise. He supported the complainant PW-2 and PW-5. These are the witnesses regarding the incident.

7. PW-1 Gunwant, the Panch regarding seizure of clothes of the complainant turned hostile. Even otherwise, this Panchnama is dated 18<sup>th</sup> April 2001, much after the offence was registered on 8<sup>th</sup> April 2001. The Panch of the Spot-Panchnama Exhibit 36 PW-7 Balbhim also turned hostile. The seizure of the knife Panchnama Exhibit 44 has been proved by

PW-9 police Head Constable Devidas Mali. The Panch of seizure of kinife Panchnama, PW-10 Hanmant also turned hostile. Apart from this, if the Panchnama Exhibit 44 is perused, it does not state as to from whom the knife was seized. In fact the police Head Constable Devidas even in evidence did not state from where the knife was seized.

8. If the Judgment of the trial Court is perused, it reproduced the evidence of various witnesses in details. The actual reasonings of the trial Court appear from Para 25 of its Judgment and the trial Court was of the view that the statements of PW-4 to PW-6 are consistent to the effect that the accused persons in furtherance of common intention assaulted complainant PW-2 and injured PW-5 with the help of knife, stone and "skin"(?) belt. Trial Court observed that the contention of the complainant and other witnesses PW-4 and PW-6 fully corroborated story of the complainant. It also observed that the medical

officer PW-8 Dr.Sunita corroborated the story of the complainant. Trial Court was of the view that only because independent witnesses were not examined, is not sufficient to discard the testimony of the witnesses examined. However, trial Court observed that as the prosecution failed to prove seizure Panchnama of clothes, Spot Panchnama and seizure Panchnama of knife, essential ingredients of Section 324 were not established and with such observation, concluded that the accused persons deserve to be acquitted for the offence under Section 324 of IPC. Observations of the trial Court show that it noted that there were inimical terms between the complainant and accused and the accused had also filed criminal case against the complainant having R.C.C. No.221 of 2001. Accordingly the trial Court convicted the accused persons for offence under Section 323 and sentenced them to rigorous imprisonment for one month and Rs.500/- fine each.

9. When the matter was carried to the Sessions Court, the Sessions Court firstly took stock of the medical evidence (Para 10 to 12 of its Judgment) and recorded the fact that the medical certificate of complainant PW-2 which was at Exhibit 37 showed that complainant had only one injury which was in the glatal region i.e. buttocks and PW-5 Ram had three injuries as seen in Exhibit 38. All the injuries of these two witnesses were simple injuries. Thereafter the Sessions Court took note of the facts that the seizure of clothes Panchnama, Spot Panchnama and seizure of knife Panchnama were not duly proved. The Sessions Court proceeded to discuss the oral evidence thereafter and has recorded comments regarding the evidence of PW-2 to PW-6 and read the oral evidence along with the medical evidence to find that there were inconsistencies and medical evidence did not match with the oral evidence.

10. I have gone through the evidence of the witnesses. The FIR Exhibit 28 claims with regard to the earlier incident that when the complainant was going to his field, he saw a quarrel between PW-3 Dayanand and accused No.1 Sanjay and intervened and took along Dayanand to his field. In evidence, however, the complainant claimed that accused No.1 went to the house of PW-3 Dayanand "with stick in his hand". The complaint did not say that in that part of the incident, a stick had been used.

11. PW-2 Dattu claimed that he and his brother Ram (PW-5) came to the village and accused No.3 was sitting near the bank and asked complainant why he had interfered in their dispute and soon it is claimed that all the three accused started assaulting the complainant. Although the FIR Exhibit 28 claimed that the complainant and his brother Ram were together when the accused persons attacked them and gave details as to how

they were held and the injuries were caused which I have already mentioned earlier, in oral evidence the complainant PW-2 did not give details regarding the assault on PW-5 Ram. He claimed that accused No.1 Sanjay came with the knife in his hand and that accused No.1 assaulted him with knife. He did not depose anything as to on which part of his body he suffered the injury. In oral evidence, complainant claimed that accused No.2 hit him by belt on his back and stomach. FIR had claimed that he had marks of wound. Medical certificate Exhibit 37 however does not refer to any other injury except incise wound to the glatal region. In oral evidence, complainant claims that when he was being so beaten, his brother came running. Thus, although in FIR he claims that they were together, in oral evidence the brother is shown as coming later on. The complainant claimed that he lay unconscious. Thus he did not give any particulars regarding how PW-5 was injured.

12. Complainant denied that on 6th April 2001 accused No.3 Ramchandra filed complaint against him for assault by an axe for which R.C.C. No.221 of 2001 was filed. Although he denied this, he volunteered to say that false case had been filed. He, thereby, accepted that indeed case had been filed. The evidence of PW-9 the investigating officer Devidas Mali shows that such case was filed on the complaint of accused No.3 Ramchandra and it related to injury caused to Ramchandra on head by an axe and which axe was seized from PW-3 Dayanand and that the accused Ramchandra had been referred to the hospital. This evidence shows that in the present matter, the prosecution suppressed that accused No.3 Ramchandra had also been injured in the incident and genesis of the incident was not brought on record. Thus, the evidence of the complainant and his witnesses must be treated as speaking only one side of the incident which suits them.

13. PW-3 Dayanand, claimed earlier two incidents of the same day although complainant has referred to only one. He claimed that on 6th April 2001 he was near the Bandh and at about 5.00 - 6.00 p.m. he had asked accused to go away from the road. He did not specify which accused he was referring. He claimed that the accused came in front of his plough and started abusing him and at that time only both of them were present. He claimed that accused hit him with stick and put him on ground and sat on his chest and pressed his throat. Then he says he pulled away (?) the accused and ran to his house. Evidence of PW-3 then is that on same day accused No.1 came in front of his bullock cart at about 5.00 - 6.00 p.m. and hit him on his head by stick and at that time also only both of them were present. Then he deposed that PW-2 Dattu came "after" that dispute was over and had given him to understand. This witness accepts that he has disputes of common Bandh with accused persons. Although he claims

that he was hit by stick, he stated in cross-examination that he was not injured and so did not file complaint against accused No.1. He wanted to deny there was cross case R.C.C. No.221 of 2001 pending against him but admitted that they had obtained bail in that case. He admits that he has filed criminal case against the accused persons.

14. PW-4 Rajendra is paternal uncle of PW-5 Ram. His evidence shows that he reached after the incident had taken place. He claimed that he saw persons had gathered and there was assault. He claimed that accused No.1 assaulted PW-2 Dattu with knife. However, he stated that the quarrel had stopped when he reached there. Thus, the evidence of this witness can be stated to be on the basis of assumption or hear-say. He also admits that accused No.3 had lodged criminal case and he and the accused are not having good terms.

15. PW-5 Ram claimed that he and his brother

had gone to the village. His evidence is that he lagged behind. According to him, he saw that there was assault on his brother. His evidence is that when he reached, accused No.3 Ramchandra had hit him by stone on his head and nose and accused No.1 was having knife and accused No.2 had hit by belt. He did not say as to whom accused No.2 Baba hit by belt and what accused No.1 Sanjay did with the knife he had. His cross-examination shows that he reached the spot after ten minutes of the dispute starting and there were already 5-25 people gathered. Although he claimed that he was hit by accused No.3 by stone on his head and nose, medical certificate Exhibit 38 states that he had abrasion on nose, abrasion on left cheek and contusion to his left shoulder. It is not clear as to the manner in which the stone was hit.

16. If the evidence of PW-6 Vishwanath is perused, he is also uncle of PW-2 and PW-5. He claims to have reached the spot after one minute

of accused No.1 assaulting the complainant. His evidence is that hearing the noise he went to the road and at that time accused No.1 had hit knife to Dattu and Dattu had sustained injury on right side of his wrist and was lying down. He claimed that PW-5 Ram came there and accused No.3 hit Ram by stone on his head and nose.

17. In the present matter, although the offence took place on 6th April, 2001, the complaint dated 7th April 2001 was registered on 8th April 2001 and there is no explanation regarding such delay.

18. It is quite clear that the parties had strained relations and although evidence is that there were other people also who had gathered, only interested witnesses, who are relatives or injured, have been examined regarding the incident. The Sessions Court has discussed the evidence of the witnesses in details and recorded

particulars regarding different versions and the evidence not matching with the medical certificates. The Sessions Court considered the enmity between the parties and concluded that offence under Section 323 of IPC was also not established. I find that the view taken by the Sessions Court of the evidence, is a possible view. Apart from that one aspect which does not appear to have been discussed in the Judgments of two Courts below but which is appearing from the medical certificate Exhibit 37 is that medical certificate Exhibit 37 records that complainant Dattatraya was taken to PW-8 Dr. Sunita at rural hospital Ausa by relatives. The time of examination recorded in the certificate is that of 6th April 2000 at "2.50 p.m.". No doubt the doctor deposed that she had examined the complainant Dattatraya at 8.50 p.m. and this evidence was not challenged in the cross examination, but I have checked the original certificate also from the record of the trial Court and find that in

Exhibit 37 the time mentioned was indeed 2.50 p.m. In fact in Exhibit 38 which was issued to PW-5 also there appears over-writing in the time which is apparent to the naked eye. I am aware of the fact that this was not taken up in the trial Court or the first appellate Court and neither any arguments were advanced before me, but having seen such documents on record I am comfortable with the fact that the Judgment of the Sessions Court does not deserve to be interfered with for above and the reasons which the Sessions Court has recorded. The view taken by the Sessions Court of the evidence, is a possible view. The trial Court had strained itself to convict the accused persons for the offence under Section 323 of IPC.

19. I thus do not find substance in the Appeal. The Appeal is dismissed. Bail bonds of the Respondents-accused are cancelled.

**[A.I.S. CHEEMA, J.]**