

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

CRIMINAL APPEAL NO.130 OF 2000

The State of Maharashtra **APPELLANT**
[Ori. complainant]
VERSUS

1. Mohan s/o.Gokulrao Ranjwan,
Age: 22 Yrs., Occu: Student,
R/o. Shahunagar, Majalgaon,
Dist.Beed.
2. Ashok s/o. Gokulrao Ranjwan,
Age: 23 Yrs., Occu:Agri.
R/o. as above.
3. Suresh s/o.Vithalrao Alminar,
Age: 30 Yrs., Occu:Service,
R/o.Yegaon, Tq.Chiplun,
Dist. Ratnagiri,
At present Majalgaon.
4. Shravan s/o.Gangadhar Pable,
Age: 26 Yrs., Occu: Service,
R/o. Shirasmarg., Tq.Georai,
At present : Majalgaon,
Shivajinagar, Majalgaon,
Dist. Beed.
5. Sambhaji s/o.Shankar Jogdand,
Age: 25 Yrs., Occu:unemployed,
R/o. Javalban, Tq.Kaij,
At present Majalgaon.
6. Sk. Najjam @ Mustafa s/o. Sk.Mohmad,
Age: 20 Yrs., Occu: Education,
R/o. Deokheda, Tq.Majalgaon. **RESPONDENTS**
[ori.accused]

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Mr.R.V.Dasalkar, APP for the Appellant—
State.

Mr.S.J.Salunke, Advocate for respondent nos.3
and 4.

Mr.S.J.Salunke, Advocate holding for
Mr.B.R.Sable, for respondent nos.1, 2, 5 & 6.

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WITH

CRIMINAL REVISION APPLICATION NO.429 OF 1999

Rajendra s/o. Subhash Taur,
Age: 26 years, Occu : Agril.
R/o. Changatpuri, Tq.Partur,
Dist. Jalna.

PETITIONER

[Ori.complainant]

VERSUS

1. The State of Maharashtra.
2. Mohan s/o.Gokulrao Ranjwan,
Age: 22 Yrs., Occu: Student,
R/o. Majalgaon, Dist.Beed.
3. Ashok s/o. Gokulrao Ranjwan,
Age: 23 Yrs., Occu:Agriculture,
R/o. as above no.2
4. Suresh s/o.Vithalrao Alimkar,
Age: 30 Yrs., Occu:Service,
R/o.Yegaon, Tq.Chiplun,
At present Majalgaon.
5. Shravan s/o. Gangadhar Pable,
Age: 26 Yrs., Occu: Service,
R/o. Shirasmarg., Tq.Georai,
At present : Majalgaon,
6. Sambhaji s/o. Shankar Jogdand,
Age: 25 Yrs., Occu:unemployed,

R/o. Javalban, Tq.Kaij,
At present Majalgaon.

7. Sk. Najjam @ Mustafa s/o. Sk.Mohmad,
Age: 20 Yrs., Occu: Education,
R/o. Deokheda, Tq.Majalgaon. **RESPONDENTS**
[Resp.nos.2 to 7
are ori.accused
nos.1 to 6]

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petitioner served.

Mr.R.V.Dasalkar, APP for respondent No.1 —
State.

Mr.S.J.Salunke, Advocate holding for
Mr.B.R.Sable, for respondent nos.4 to 7.

Mr.V.D.Salunke, Advocate for respondent nos.2
and 3 [absent].

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 22.06.2017

Pronounced on : 04.07.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Criminal Appeal No.130 of 2000 is
filed by the appellant-State, challenging the
judgment and order of acquittal passed by the
IVth Additional Sessions Judge, Beed on 13th
August, 1999 in Sessions Case No.83/1997, and
Criminal Revision Application No.429 of 1999
is filed by the original informant.

2. The prosecution case in nutshell is as under:

Victim Narayan and deceased Subhash are paternal cousins, resident of village Changatpuri, Taluka Partur, District Jalna. On the morning of 06.06.1997, both of them along with other relatives went to village Gadhe-Pimpalgaon for settlement of an alliance. They started traveling for Changatpuri in the evening by jeep, and at Majalgaon victim Narayan and deceased Subhash stayed back on the pretext of some work, while others proceeded back to Changatpuri.

3. On the next day morning i.e., on 07.06.1997, victim Narayan returned alone to Changatpuri in an injured condition, and directly went to his house. On getting information about the condition of Narayan, his relations viz. paternal uncle Balasaheb, Ganesh and others went to his house, enquired

about the cause of his condition, upon which he told them that while he himself and Subhash had gone to take meals at Amar Permit Room at Majalgaon, altercation took place between them and the owner of the permit room over excessive charging of the bill. The said altercation culminated into incident of assault on them by the owner and waiters of the permit room. The accused assaulted them by stick and iron bars. On account of this incident, both of them sustained injuries. The witness Narayan further informed them about admitting Subhash in the Government Hospital, Majalgaon. On getting this information, informant Rajendra son of deceased Subhash along with his paternal uncle Ganesh went to the Majalgaon to enquire about Subhash. They, after reaching Majalgaon, directly went to Amar Permit Room and Ganesh Taur, paternal uncle of informant Rajendra enquired with accused no.1 Mohan,

who was sitting at the counter, regarding the whereabouts of the person i.e., Subhash, who was injured in the incident of the previous night, and he told them that the said injured was not admitted by the Doctor of Primary Health Center, Majalgaon, and therefore, he was taken to the Civil Hospital, Beed and he has been admitted in the Civil Hospital, Beed.

4. Accordingly, the informant Rajendra and his uncle Ganesh proceeded to Beed and went to Civil Hospital, Beed. The nurse on duty at Civil Hospital, Beed, informed them about admission of injured Subhash and about his demise.

5. Informant Rajendra then lodged the First Information Report about the incident with Head Constable Gode [PW-12], who was on duty at the Civil Hospital, Beed at that

time. The inquest panchnama was drawn by the Head Constable Gode. The requisition letter was issued to the Medical Officer on duty to conduct the postmortem of the dead body of Subhash. After the postmortem, the dead body came to be handed over to the informant Rajendra, and his uncle Ganesh. They accordingly brought the dead body to Changatpuri and the last rites were performed. The Head Constable Gode forwarded the relevant papers, comprising inquest panchnama, postmortem notes, FIR to Majalgaon Police Station.

6. PSI Gadekar registered offence under penal sections mentioned above vide Crime No.69/1997, and after completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, who in turn was pleased to commit it to the learned Sessions Court in a usual manner.

7. The charge under Sections 147, 148, 302, 324 of the IPC and Section 149 of the IPC came to be explained to the accused at Exh.27. They claimed to be tried raising the defence in their statements under Section 313 of the Criminal Procedure Code, that they have been falsely implicated in the crime by the witness Narayan on account of strained relations with maternal uncle Nakalgaonkar, residing at Majalgaon and also on account of the differences over the Ganesh Mandal.

8. Accused nos.1 and 2 also denied the fact of running and owning Amar Permit Room while accused nos. 3 to 6 denied the fact of working as waiters in that permit room. The accused thus disown the responsibility and liability for the alleged incident asserting that they are not involved in it. Regarding the injuries sustained by the victims, it is contended by them that they were sustained in

accident and as injured Narayan was accompanying Subhash, and apprehending that he would be held responsible for the injuries sustained by his cousin Subhash, unjust prosecution came to be foisted on them. Accused thus prayed for clean acquittal.

9. After full-fledged trial, the accused were acquitted by the Sessions Court at Beed. Hence this Appeal filed by the appellant-state.

10. Learned APP appearing for the appellant-State submits that the evidence of Narayan [PW-4], who witnessed the incident and suffered injury, ought to have been believed by the trial Court. His evidence gets corroboration from the medical evidence. He also invites our attention to the evidence of other prosecution witnesses, and submits that the appeal deserves to be allowed.

11. On the other hand, learned counsel appearing for respondents—accused invites our attention to the findings recorded by the trial Court, and submits that the said findings are in consonance with the evidence brought on record. It is submitted that the evidence of Narayan [PW-4] cannot be accepted, since it suffers from serious contradictions, omissions and improvements. The medical evidence does not support prosecution case, and there is no corroboration to the evidence of Narayan [PW-4]. Therefore, he submits that the appeal may be dismissed.

12. We have given careful consideration to the submissions of the learned APP appearing for appellant—State, and the learned counsel appearing for the respondents—accused. With their able assistance, carefully perused the entire evidence brought on record by the

prosecution. It appears that the prosecution examined Dr.Suryakant Arjunrao Sable as PW-14, who was working as Medical Officer, Primary Health Centre, Majalgaon. On examination of injured Narayan [PW-4], he noticed as many as 5 injuries, which are as under:

1. Contusion with abrasion at upper lip of size 3x2 cm, irregular shape and margins.
2. Contusion on left shoulder 5'x2' transverse direction, edges parallel.
3. Contusion on left elbow, 2'x2' irregular margins and shape.
4. Contusion on right elbow, 2'x2' irregular shape and margins.
5. Contusion with abrasion with avulsion of nail, 1st toe of left foot (great), 2x2 cm. irregular shape and margins.

13. He stated that the injuries were

more than 48 hours, simple in nature caused by hard and blunt object like stone, stick. He is now shown the weapons articles 19 to 21. Injury no.2 is possible by the stick article no.19 while the remaining injuries are not possible by the iron bars articles 20 and 21. The remaining injuries are possible by stones or stick. Accordingly, he had issued the certificate, which is shown to him, is the same. It is in his writing. He has signed it. The contents read over by him are correct. It is at Exh.90. The injured was treated as an outdoor patient.

14. During his cross examination, he stated that the colour of the injuries is not mentioned in the certificate Exh.90. The stick article no.19 is long in breadth and small in width. If injury is caused by such stick it would form a linear injury. It is correct to state that injury nos.1 to 5 are also possible by fall on the ground. Injury

no.2 is linear injury. This fact is not mentioned in the Certificate Exh.90.

15. It is crystal clear from reading his evidence that except injury no.2, no any other injuries are stated to be possible by the iron bars i.e. article nos.20 and 21. The remaining injuries are stated to be possible by stones or stick. It appears that Narayan [PW-4] suffered simple injuries. In his cross examination, he further stated that, injury nos.1 to 5 are also possible by fall on the ground.

16. The prosecution examined Dr. Vijaykumar Shamrao Kulkarni as PW-9, so as to prove whether death of Subhash was homicidal or otherwise. Upon careful perusal of his evidence, he stated that Subhash was brought to the Civil Hospital, Beed, by one Vijay Bahir, and the history of injury by accident

was given by him. He came with reference letter issued by the Medical Officer, Primary Health Centre, Majalgaon at Exh.67. Dr.Vijaykumar Kulkarni [PW-9] informed the police on duty about the medico-legal case under the requisition letter [Exh.68], in which the cause of injury of Subhash was given as due to the accident. It is true that he clarified in his examination in chief that though he had written earlier that Subhash suffered multiple injuries were not found on account of the accident, but were due to the assault as he could give positive and certain opinion about cause of injuries on conducting postmortem only. According to Dr. Kulkarni [PW-9], he noticed 14 external injuries and 5 internal injuries while examining deceased Subhash. In his examination in chief, he stated that, Vijay Bahir had narrated the story to him. Further according to him, when the injured Subhash was brought to the

Hospital, he was fully conscious, however, he did not record his statement in the form of dying declaration. He also testified that the injuries were possible by stick and two iron bars articles 19 to 21, but he again contradicted himself when the same question was repeated to him in the cross examination that if a person is assaulted by long stick small in width then the nature of the injury would be linear contusion. He was also confronted with the proposition under the chapter of cerebral poisons page 199 of Modi's Medical Jurisprudence [21st Edition] and was asked as to whether he agreed with the same proposition or not. He stated that he agrees with the said proposition which pertains to pharmaco logical effects of alcohol and at page no.199 of the book it is mentioned that alcohol disappears very slowly and is found in the blood for about 20 hours after it is drunk. Obviously, the analytical

report of the blood of the deceased Subhash showed that no alcohol was detected in it [Exh.72].

17. As already observed, the star witness of the prosecution case is Narayan [PW-4], who claimed that he was eye witness to the incident, and he also suffered injury during the said incident. During recording of his evidence, he stated that they own agricultural lands in two villages i.e. Raulgaon and Changatpuri. He has three step brothers and two real sisters. His father is residing at village Raulgaon, while he along his mother reside at Changatpuri. His maternal uncle resides at Nakalgaon. His uncle has one house at Majalgaon also. Narayan [PW-4] has studied upto 12th Standard at Majalgaon from 7th to 12th standard. He knows all accused present before the Court, since from time of his education in

Majalgaon. Accused no.1 and 2, Mohan and Ashok, own their house adjoining to house of his maternal uncle. Accused nos.1 and 2 own Amar Permit Room at Majalgaon, and he used to go there. Accused nos.3 to 6 are working as waiters in Amar Permit Room. The deceased Subhash was his paternal cousin. Subhash used to reside at Changatpuri. The incident occurred on 6th June, 1997. On that day he himself, Subhash, Balasaheb, Babasaheb, Ramrao, Bharat Trimbak, Vithal had gone to Gadhe-Pimpalgaon to settle the alliance. They started from Changatpuri around 10.00 a.m. and reached Gadhe-Pimpalgaon 00 hours in the noon. They took their meals at Gadhe Pimpalgaon at 1.00 p.m. They started back at 7.00 p.m. and reached Majalgaon via Telgaon route at 9.00 p.m. As their jeep had broke down at Telgaon, therefore, they looked for another jeep at Majalgaon. He himself and Subhash stayed behind while others proceeded

back to village by jeep. Then at around 10.30 p.m., he himself and Subhash went to dine at Amar Permit Room. They placed an order or quarter of Royal Gold with accused no.4 Shravan [witness identified the said accused in the dock], and also other refreshment. They further placed an order of two more quarter of Royal Gold and then asked the waiter accused no.4 Shravan to get the bill.

18. He further stated that he himself and Subhash then went to the counter to make the payment. Accused no.1 Mohan was sitting at the counter. The bill charged was of Rs.149/-, therefore, they enquired with Mohan as to how the charges were made. As per their calculation, the bill ought to have been of Rs.134/-. Accused no.1 Mohan said that the bill is correct, and started abusing them. He himself and Subhash told Mohan that there was no reason to give abuses and to explain

the bill. Upon it accused no.1 Mohan slapped Subhash. Accused no.2 Ashok standing near the counter rushed to Subhash. Accused no.1 Mohan and accused no.4 Shravan started assaulting him by stick and iron bar. Accused no.1 Mohan was carrying iron bar and accused no.4 Shravan was carrying stick. They dragged to him while assaulting to lane near the cabin. Accused no.2 Ashok started assaulting Subhash by iron bar while the two waiters accused no.5 Sambhaji, accused no.6 Mustak gave fist, kick blows to him [witness identified the said two accused in the dock]. All the accused then dragged him and Subhash out of the shutter and continued to assault him, and Subhash by stick, iron bars and fist kick blows. He sustained injuries on his back, abdomen, face, leg. He had not seen injuries of Subhash, as he was under his own fear and tension. On noticing injured condition of Subhash he got nervous and while attempting

to run away from there, saw accused no.1 Mohan, accused no.2 Ashok dragged Subhash to nearby drainage. He himself then started running away from there, and all accused chased him and caught hold him near the arch of the bar, and started assaulting him by iron bar and fist kick blows. Subhash was during that time lying in injured condition near the drainage. He while being assaulted got himself free and ran towards S.T. stand. On the next day morning, he himself by S.T. bus came to his village. Since he had severe injuries, he went to his home and stayed there itself. Balasaheb and Ganesh came to meet him. He narrated the incident to them. He informed Balasaheb that Subhash was lying in a injured condition near the bar. Balasaheb then sent Rajendra and Ganesh to look for Subhash at Majalgaon. After the dead body was brought to village, he learnt that Subhash on account of the injuries died. He

learnt that Subhash was admitted to Civil Hospital, Beed and he died there. Since he had severe pains, his brother took him to Sailu for the treatment. He was not admitted in private hospital as he had injuries. Therefore, they went to Government Hospital at Sailu. The Doctor said that since it was a case of assault, therefore, he should get the police report. Since he was having his house at Sailu, they returned there, Majalgaon Police immediately followed them, and brought him to Majalgaon Primary Health Centre. The Doctor treated him, and then he was brought by the police to the Police Station. The police made him to identify the four accused i.e. 3 to 6. He identified them.

19. The police seized on the next day the bill of Amar Permit Room issued by accused no.1 Mohan under panchanama. The bill shown to him is the same. It is at Exh.47.

Thereafter, the Police seized his torn, blood stained cloth shirt and pant under panchnama. The police then took him to bar room for drawing the panchanama. He pointed out the spot of the incident to the Police. He can identify his clothes seized by the police if shown to him, which are at articles nos.5 and 6. The police also collected the blood from the shutter and also from the wall near the drainage. He would not be in a position to identify the sticks and iron by which he was assaulted, as he was perturbed and frightened on account of the assault.

20. During his cross examination, he admitted that he is fully aware about the Government offices and Hospital in Majalgaon town. He stayed there for considerable period since the time of his education. He has thorough knowledge about the Majalgaon town. Even his maternal uncle is residing at Majalgaon. He did state the location of the

Amar Permit Room. He further admitted that nearby the Amar permit room there is another permit room called 'Girja' and on the west of said permit room at a distance of 100 feet there is a new bus stand. The said road, which goes to the bus stand, is important road of Majalgaon as all the shops, public offices, hotels are on the said road. There is flow of the vehicle on the said road even during night time. In his cross examination, he stated that while returning from Gadhe-Pimpalgaon, he himself and Subhash decided to stay at Majalgaon and to go to the Permit Room, and therefore, they told others that they wanted to stay back for taking meal. They had no intention to take meals and wanted to take drinks only as they had their food at their host's house at Gadhe-Pimpalgaon. They only took drinks, and did not take meals. He stated that they went to the Amar Permit Room. He stated details about

the infrastructure in the said permit room. He stated that the permit room remains open upto 11.00 p.m. He admitted that they had only consumed the first quarter of Royal Gold and the other two quarters were taken with them, which were to be consumed at the house of his maternal uncle. They took about 15 minutes time in consuming the first quarter booked by them. While going to the counter, they had taken two quarter bottles with them. He was carrying both bottles. He did not pay bill. He was not willing to pay the bill. He was willing to pay the bill, but according to him, the bill given was exorbitant, therefore, they did ask the permit owner about the said exorbitant bill. However, after 5-10 minutes, accused started assaulting them, and they got frightened and started raising cries. The incident of assault lasted for 15-20 minutes. According to him, during the said period neither any

person from the permit room nor neighbourhood came there. He was not able to state how many blows of iron bar or stick blows were given by accused to him. He ran away from the spot. At that time Subhash was lying near the drainage. Narayan [PW-4] ran away to save his life. He further stated that he was at the S.T. stand throughout the night. However, he did not disclose this incident to anybody at the S.T. stand. He could not sleep. He did not pay attention as to whether there were 100 to 200 passengers at the S.T. stand. He did not pay any attention as to whether the buses were coming and going with passengers getting down and boarding it. He did not pay any attention as to whether there were auto-rikshaws, jeeps near the S.T. stand or not. At that time he did not get any memory either of his maternal uncle or friends at Majalgaon. He did not make any attempts to go to them till morning. He did not go to the

hospital as he was frightened. Even after reaching to his village, he was frightened due to severe injuries. He had neither gone to Majalgaon Police Station nor meet the Police at S.T. stand Majalgaon. He had not spoken any of the co-passengers of his bus. For the first time he disclosed the name of the accused to his paternal uncle Balasaheb. On that day, after he came to his house, he did not go anywhere, and went to Sailu on the next day i.e. 8th June, 1997. He went to the private nursing home of Dr.Rodge, but he did not treat him. Then he went to the Government Hospital, Sailu, but he cannot tell the name of the Doctor, who treated him. He stated that he was wearing the same clothes, worn on the day of the incident till Majalgaon Police brought him to the Police Station. Even after noticing the blood stained on his clothes, nobody at Majalgaon, or at S.T. Stand, or any passenger made any enquiry about how blood

stains are appearing on his clothes.

If his [PW-4] cross examination is perused carefully, it creates doubt in mind that whether the alleged incident took place in the said permit room or somewhere else. His conduct appears to be unnatural. The injuries suffered by him were simple in nature. As already observed, the Medical Officer, who examined him stated that, such injuries sustained by him can be possible due to fall. If the cross examination of Dr.Kulkarni [PW-9] is carefully perused, he stated that, in his admission papers he did not mention the age of the injuries, and also in P.M. notes. In column no. 20 against the column of additional remark, he did mention that the death must have occurred within 6 hours of taking the last meal. The patient expired at 8.50 a.m., therefore, he by approximation might have taken his meal

around 2.30 a.m. In normal person who has taken vegetarian food, the processing of his stomach emptying time is 4 to 6 hours. A food with carbohydrate is taken the emptying of the stomach is fast and if it is rest with proteins then it is slow. A food is taken with alcohol it does not facilitate emptying of stomach, more fast.

21. If the evidence of Narayan [PW-4] is considered, it reveals that the incident had taken place around 11.00 p.m. However, from the evidence of the Medical Officer as stated herein above, Subhash died at 8.50 a.m. and he by approximation might have taken his meal around 2.30 a.m., in that case the entire alleged incident as stated by Narayan [PW-4] appears to be completely concocted story built by him. As already observed, the conduct of Narayan [PW-4] to run away from the spot, not to go to his uncle house, not

to tell anybody till he reached to home, put the question mark about his awareness and reality of the incident.

22. The prosecution is trying to suppress genesis of the incident. As already observed, the medical history suggests that the injuries suffered were accidental. Vijay Bahir who brought the deceased to the Hospital was not examined by the prosecution, who could have thrown light on the prosecution case.

23. We have carefully considered the evidence brought on record by the prosecution. The prosecution has not brought on record the evidence showing that the accused persons are running permit room and owners of the said permit room, and the some of them are working as waiters in the said permit room.

24. Upon appreciation of the entire evidence, the trial Court in para 28 has narrated about the silent features of unnatural conduct of Narayan [PW-4]. Upon scrutiny of the evidence, we find that the findings recorded by the trial Court, and the conclusion reached in para 28 are in consonance with the evidence brought on record by the prosecution. The trial Court, upon minute scrutiny of the evidence brought on record, has taken correct and possible view, and reached to the conclusion in para 39 that, with the serious lacunas in the medical evidence regarding the cause of death, serious lapses and lacuna as regards the injuries sustained by Narayan [PW-4], the most perfunctory manner of investigation, creates doubt about the occurrence of the alleged incident as such, and therefore, the respondents accused are entitled for the benefit of doubt, and accordingly, the

respondents accused have been acquitted by the trial Court.

25. In the light of discussion in the foregoing paragraphs, we are of the considered view that, the trial Court has correctly appreciated the evidence brought on record by the prosecution and reached to the conclusion that the respondents accused are entitled for acquittal.

26. In that view of the matter, we do not find any merit in the appeal filed by the State, hence appeal stands dismissed.

27. For the same reasons, the Criminal Revision Application No.429 of 1999 filed by the informant also stands dismissed.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE