

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.276 OF 1999

The State of Maharashtra

(Through : Police Station Officer Tuljapur,

Police Station District Osmanabad.

... **APPELLANT**
(Ori. Complainant)

Versus

1. Saudagar Yeshwant Gambhire, Age 20 years,
2. Bajrang Shrirang Sonwane, Age 42 years,
3. Mahadeo Changdeo Gambhire, Age 42 years,
4. Dhondiba Eknath Wagh, Age 43 years,
5. Arun Chandrakant Bhise, Age 38 years,
6. Rajendra Rupnath Gambhire, Age 26 years,
7. Mukesh Youraj Bhise, Age 23 years,
8. Shashikant Dhondiba Wagh, Age 21 years,
9. Santosh Bajrang Sonwane, Age 19 years,
10. Gunwant Manik Wagh, Age 25 years,
11. Nagnath Vishwanath Survase, Age 27 years,
12. Jaypal Limbaji Gambhire, Age 20 years,
13. Anil Jotiba Gambhire, Age 22 years,
14. Jitendra Mahadeo Gambhire, Age 21 years,
15. Ajit Ramchandra Gambhire, Age 19 years,
16. Nand Kumar Nivrati Gambhire, Age 19 years,
17. Rupnath Namdeo Gambhire, Age 50 years,
18. Nandkumar Mahadeo Gambhire, Age 19 years,
19. Balaji Namdeo Gambhire, Age 20 years,
20. Shivaji Ranaba Gambhire, Age 20 years,
21. Maharudra Rupnath Gambhire, Age 19 years,

22. Vijay Youraj Bhise, Age 26 years,
 23. Youraj Bhaurao Bhise, Age 48 years,
 24. Vitthal Shripati Sonwane, Age 38 years,
 25. Bhimrao Shrirang Sonwane, Age 35 years,
 26. Shankar Manik Wagh, Age 33 years,
 27. Mehaboob Ismail Shaikh, Age 48 years,
- Accused Nos.1 to 26 are R/o Shiradhon,
Taluka Tuljapur.

Accused No.27 is S.T.Depot, Tuljapur... **RESPONDENTS**

(Ori. Accused)

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Mr. R.V.Dasalkar, APP for State/Appellant

Mr. Suresh Kulkarni, Adv. for Respondent Nos.4, 12 to 14, 18 to 21

Mr. R.T.Nagargoje, Advocate for Respondent Nos.1, 2, 9, 10, 15, 24
and 26.

Mr. V.R.Dhorde, Advocate for Respondent Nos.5, 7, 11, 22, 23, 25

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CORAM : T.V.NALAWADE AND

SUNIL K. KOTWAL, JJ.

DATED : 13th July, 2017

JUDGMENT : (Per Sunil K. Kotwal, J.) :-

1. Present appeal is directed by State of Maharashtra against the judgment and order passed by the learned Additional Sessions Judge, Osmanabad in Sessions Case No.125 of 1995, acquitting the accused for an offences punishable under Sections 120-B, 147, 148, 307, 324, 326, 504 read with Sections 149 and 397 of the Indian Penal

Code, under Section 25 of Indian Arms Act as well as under Section 135 of the Bombay Police Act. Accused Nos.1 to 5, 7, 9, 13 and 15 to 27 were also acquitted of the offence punishable under Section 323 of the Indian Penal Code. Only Accused Nos.6, 8, 14, 26 were convicted for the offences punishable under Section 323 read with Section 34 of the Indian Penal Code and they were sentenced to suffer Simple Imprisonment, till rising of the Court and to pay a fine of Rs.1,000/- (Rupees One Thousand Only). Though order of conviction is not challenged by these accused, only acquittal of the above referred accused is challenged by the State. Respondent Nos.1 to 27 are original accused Nos.1 to 27 respectively. During pendency of this appeal Respondent / accused No.2 died and therefore, proceeding against him is abated.

2. Facts leading to institution of this Appeal are that, Respondent Nos.1 to 27 were prosecuted for the offences punishable under Sections 120-B, 147, 148, 307, 324, 326, 504 read with Sections 149 and 397 of the Indian Penal Code and for the offence punishable under Section 25 of Indian Arms Act as well as under Section 135 of Bombay Police Act.

3. Appellant's case in brief is that, all accused and most of

the witnesses are residents of Shiradhon, Taluka Tuljapur. On 22.10.1993, at about 12.45 a.m. informant Shri Baban Rangnath Sonwane boarded Mirzanpur to Tuljapur S.T. Bus along with Subhash Vitthal Sonwane, Vishwanath Manik Sonwane, Sahebrao Namdeo Wagh, Shankar Chandan Sonwane, Arun Chandan Sonwane, Prabhakar Abarao Sonwane and Raosaheb Salunkhe. Out of these accused Shankar Manik Wagh, Gunwant Manik Wagh, Shashikant Dhondiba Wagh, Umakant Dhondiba Wagh, Rajendra Rupnath Gambhire, Maharudra Rupnath Gambhire, Ajit Ramchandra Gambhire, Nandkumar Nivrutti Sonwane, Jitendra Mahadeo Gambhire, Nandkumar Mahadeo Gambhire, Saudagar Yashwant Gambhire, Vijay Youraj Bhise, Santosh Bajrang Sonwane, Vitthal Shripati Sonawane, Anil Jyotiba Gambhire, Bajrang Shrirang Sonwane, Bhimrao Shrirang Sonwane, Dhondiba Eknath Wagh and Mahadeo Changdeo Gambhire and other persons also boarded in the bus from the Bus Stop Shiradhon. When that bus reached to the farm of Shri Jagtap, Advocate, accused No.26 Shankar Manik Wagh and other accused persons started abusing the informant Baban Sonwane (P.W.3) and Shankar Sonwane. The bus was stopped by accused Bhimrao Shankar Sonwane. That time, Shashikant Wagh (accused No.8) assaulted Shankar Sonwane by sword stick. Accused Rajendra Rupnath Gambhire assaulted Shankar Sonwane by sword and accused

Gunwant Wagh assaulted Shankar Sonwane by chain and sword stick respectively. They pulled down Shankar Sonwane below the bus and started beating him. Shankar Sonwane sustained injuries and therefore, when Baban Sonwane (P.W.3), Arun Sonwane, Prabhakar Sonwane and Raosaheb Salunkhe tried to rescue Shankar Sonwane, at that time accused Maharudra Gambhire, Ajit Gambhire and Nandkumar Sonwane assaulted Arun Sonwane by an axe and chain. Prabhakar Sonwane was also assaulted by Vitthal Sonwane and Anil Gambhire by weapons like sattur and knife respectively. Informant Baban Sonwane was also assaulted by Nandkumar Gambhire and Vijay Bhise by chain and knife respectively. Other accused persons assaulted Shri Raosaheb Salunkhe. Even amount of Rs.2000/- was lost by Baban Sonwane, during that assault. Thereafter, informant Baban Sonwane (P.W.3) lodged F.I.R. Exh.84 in the Police Station Tuljapur against the accused. In the result, Crime No.162 of 1993 came to be registered under Sections 307, 324, 323, 504, 147, 148, 149 of the Indian Penal Code and under Section 135 of Bombay Police Act. During investigation the accused were arrested and weapons of the assault as well as stolen articles were recovered at the instance of statements of the accused persons. Panchanama of the bus Exh.93 was prepared. Even spot panchnama was drawn at Exh.95. After completion of investigation, charge sheet was filed in the Court

for the offence punishable under Section 307 of Indian Penal Code, being exclusively triable by Court of Sessions. This case was committed to the Court of Sessions, Osmanabad for trial.

4. The learned Additional Sessions Judge framed charge at Exh.30 against the accused No.1 to 27 for the offences punishable under Sections 120-B, 147, 148, 307, 324, 326, 504 read with 149 and 397 of the Indian Penal Code. Charge was also framed under Section 25 of the Indian Arms Act and under Section 135 of Bombay Police Act. Accused pleaded not guilty and claimed to be tried. Defence of the accused was of total denial.

5. Prosecution has examined in all 19 witnesses. After considering the evidence placed on record by the prosecution, the learned Trial Court was pleased to convict only accused Nos.6, 8, 14, 26 for the offences punishable under Section 323 read with Section 34 of the Indian Penal Code. All accused were acquitted of the offences punishable under Sections 120-B, 147, 148, 307, 324, 326, 504 read with 149 and 397 of the Indian Penal Code and offence punishable under Section 25 of Indian Arms Act as well as under Section 135 of Bombay Police Act. Accused Nos.1 to 5, 7, 9 to 13, 15 to 27 were acquitted of the offences punishable under Section 323 of the Indian

Penal Code. Against the order of acquittal Appellant / State has preferred this appeal.

6. Learned APP for the State submitted that all injured prosecution witnesses have consistently deposed against the accused Nos.1 to 27 regarding assault to them by dangerous weapons like sword, sword stick and cycle chain. The oral testimony of these witnesses is fully corroborated by medical evidence. According to the learned APP, prosecution has established guilt of all the accused persons beyond any reasonable doubt.

7. In reply, learned counsel for the Respondents supported the judgment passed by the Trial Court on the ground that the evidence of all prosecution witnesses is self contradictory as well as totally in conflict with the medical evidence. According to defence counsel, the learned Trial Court rightly awarded benefit of doubt in favour of the accused persons.

8. During the course of arguments, one fact is made absolutely clear that, the accused persons are on inimical terms with the informant and other so called injured witnesses. However, that cannot be a sole ground to disbelieve the evidence of prosecution

witnesses. The legal principle is that the enmity is double edged weapon and it cuts off both the sides. Therefore, evidence of inimical witnesses is to be scrutinized with extreme caution and care by the Court of Law.

9. Out of these 19 prosecution witnesses Arun Sonwane (P.W.2), Baban Sonwane (P.W.3), Shankar Sonwane (P.W.5) Raosaheb Salunkhe (P.W.6) are the persons who stated that, they were assaulted and injured by the accused persons. Dr. Sambhaji Avhad (P.W.1) is a Medical Officer, who has proved the injury certificates of Shankar Sonwane (Exh.77), Arun Sonwane (Exh.78), Prabhakar Sonwane (Exh.79), Raosaheb Salunkhe (Exh.80), Baban Sonwane (Exh.81). Though Medical Officer (P.W.1) opined that, the age of the injuries sustained by these injured persons was within 24 hours, in his substantive evidence he has nowhere deposed as to which time he examined each of the accused persons. Therefore, in absence of age proof of injuries, the medical evidence placed on record has become useless piece of the evidence, to connect the injuries sustained by prosecution witnesses, with the incident of assault.

10. On analyzing oral testimony of prosecution witnesses it emerges that, though Arun Sonwane (P.W.2) deposed on oath that on

the date and time of the incident in the S.T. Bus initially accused No.8 Shashikant Wagh inflicted blow of Sattur on the head of Shankar Sonwane. That time accused No.24 Vitthal stopped the S.T.Bus. Thereafter, accused No.6, 8, 14 pulled Shankar Sonwane below the bus. Accused Vijay Bhise inflicted chain blow on the body of Arun Sonwane (P.W.2). Accused No.5, 11, 21 reached on the spot from one field. At that time, Accused No.5 was armed with sword. Accused No.6 took the sword from Accused no.5 and inflicted it's blow on the leg of Shankar Sonwane. Accused No.8 inflicted Sattur blow on the right hand of Shankar. Accused Nos.12 and 15 inflicted chain blows on the body of Arun Sonwane (P.W.2). According to this witness, Accused No.18 assaulted him by stick and Accused No.15 took away his gold chain, watch of Allwyn Company and Accused No.14 snatched Rs.1900/- from this witness. However, when this witness was subjected to cross-examination, it emerged that most of the portions of his statement regarding assault by accused No.8 by Sattur, assault by Accused Nos.6 and 14 as well as assault by Accused No.12 by chain, are proved to be material omissions. Even the act of Accused No.24 regarding stopping of the S.T. Bus and the version of this witness regarding assault by Accused No.15 and 22 by chain is also proved as material omission. Thus as the statement of this witness before the Court is totally in conflict with the statement before

the police, on every material particulars, the testimony of Arun Sonwane (P.W.2) cannot be relied upon to base conviction of the accused.

11. Baban Sonwane (P.W.3) is the person who lodged F.I.R. (Exh.84) to Police Station Tuljapur. This witness has brought on record altogether a different story by deposing that, accused No.24 inflicted Sattur blow on the head of Prabhakar and Accused No.26 pulled down Shankar Sonwane from the S.T. Bus. According to this witness, Accused No.6 Rajendra inflicted sword blow on the leg of Shankar, as well as Shankar was assaulted by Accused No.8 by knife and by Accused No.14 by chain. According to this witness, Accused No.24 also assaulted Shankar by Sattur. However, from the cross-examination of this witness, it emerges that the major portion of his statement before the Court is proved as material omission. So also the oral testimony of this witness is in conflict with medical evidence as injuries sustained by Shankar, as proved by Dr. Avhad (P.W.1) are in conflict with the ocular evidence of this witness. The total nine injuries on the body of the Shankar Sonwane are Contused Lacerated Wound, which are not possible by sharp cutting weapon like sword, Sattur or sword stick. Therefore, otherwise also, evidence of Baban Sonwane (P.W.3) is of no help to the prosecution to convict the

accused.

12. Sadashiv Shinde (P.W.4) was the Bus Conductor of the S.T. Bus related to the above incident. However, this witness, nowhere deposed a single word against the accused persons. Therefore, the testimony of this witness is of no help to the prosecution.

13. The star witness Shankar Sonwane (P.W.5) has brought on record a somewhat different story, which is in conflict with evidence of P.W.2 and P.W.3. According to Shankar Sonwane, when the S.T. Bus came near farm of Advocate Jagtap, Accused No.6 suddenly started quarreling with this witness and Accused Nos.8, 10, 14 and 26 assaulted this witness by chain and other weapons. His statement is vague, as to which other weapons were used by these accused persons at the time of assault inside the bus. According to Shankar, when he was pulled down the bus by Accused No.3, 4, 6, 8, 14 and 26 at that time Accused No.5, 11, 17 and 20 came from the sunflower field. Accused No.6 inflicted sword blow on the right leg and two sword blows on the left leg of this witness. According to Shankar, Accused No.8 inflicted sword stick blow on his right hand near wrist and Accused No.10 inflicted sword stick blow on his right leg. According to this witness, Accused No.8 also inflicted sword

stick blow on his left leg. However, as observed above, no injury was found on the body of this witness, which was caused by sharp cutting weapon like sword or sword stick. According to Shankar Sonwane, Accused No.26 took away cash of Rs.2,000/- from his pocket. However, informant (P.W.3) has nowhere mentioned this occurrence in the F.I.R. (Exh.84). Shankar Sonwane (P.W.5) has also improved his version by deposing that, Accused No.6, Rajendra snatched his golden heart shaped pendent as well as wrist watch of Allwyn Company. According to this witness, Accused Nos. 14 and 10 took his two gold rings. However, such important facts are not mentioned in F.I.R. (Exh.84). Even other prosecution witnesses have not supported this contention. On the other hand, from the cross-examination of Shankar Sonwane it emerges that, he is habitual offender and externment proceeding was pending against him. The testimony of Shankar Sonwane (P.W.5) cannot be relied upon as it is self contradictory as well as in conflict with Medical Officer and testimony of other eye witnesses.

14. Raosaheb (P.W.6) though posed himself as one of the eye witness, from his evidence on record, it emerges that he did not get down from the bus during entire occurrence. This witness has also deposed regarding assault on Shankar Sonwane by accused persons by

sword, chain and assault to this witness by Accused No.22 by chain and by Accused No.14 by knife. The Medical Certificate of this witness (Exh.80) shows only contusion and abrasion on the body of this person. No chain injuries were found on the neck of this witness. Contusion and abrasion cannot be caused due to assault by knife as deposed by this witness. The testimony of this witness is in conflict with his statement before the police and proved as material omission. Thus, otherwise also evidence of this witness, being in conflict with medical evidence and testimony of other witnesses, cannot be relied upon.

15. Thus, as observed above all the eye witnesses including the injured witnesses examined by prosecution are not reliable because their oral version is in conflict with medical evidence as well as all the witnesses are contradicting each others on material particulars. Even evidence of Archana Sonwane (P.W.5) is of no help to the prosecution for the reason that, her testimony is totally in conflict with above discussed oral version of prosecution witnesses. This witness, no where deposed about the assault on other persons by accused except her brother Baban Sonwane. On the other hand, in her examination-in-chief, Archana (P.W.5) has shown her ignorance regarding the injuries to Arun Sonwane, Shankar Sonwane and

Prabhakar Sonwane, who were traveling by the same bus. The statement of this witness that, her brother Baban was assaulted by Accused No.7 Mukesh Bhise is proved as an omission. Thus, evidence of this witness being totally unreliable is of no help to the prosecution. In the circumstances, the direct evidence placed on record by prosecution of all inimical witnesses cannot be relied upon to base the conviction of the accused.

16. Circumstantial evidence is placed on record in the form of recovery of incriminating articles as well as blood stained clothes of the accused persons. However, the seizure panchnamas show that, the seized clothes were not wrapped in paper or envelopes at the time of sealing. Even the seized weapons were not sealed by wrapping any protecting cover, so as to rule out the possibility of tampering of muddemal by sprinkling blood on the seized weapons and clothes. Therefore, the circumstantial evidence in the form of recovery of blood stained weapons and clothes from the possession of the accused is also useless piece of the evidence.

17. As per the prosecution case, wrist watch of Allwyn Co. and gold pendent were snatched by accused persons from Shankar Sonwane and these articles were seized as per disclosure statement of

accused Rajendra Gambhire and Anil Gambhire. However, from the testimony of panch witness Dilip Ghuge (P.W.10) it emerges that, he has nowhere deposed as to at which place the Accused Anil had hidden the knife and at which place Accused Rajendra had hidden the wrist watch and ornaments. Vague statement of panch witness that the accused took out incriminating articles from their respective houses is not sufficient to establish the discovery of fact as contemplated under Section 27 of the Evidence Act. Otherwise also these seized articles had no identification marks. In absence of identification marks the exact identity of these articles cannot be established, when such articles are easily available in the market. For the same reason, the recovery of cycle chain from the house of Accused Jaipal is not reliable.

18. Panch witness Shatrughna (P.W.11) tried to prove recovery of wrist watch from Accused Mukesh and recovery of sword stick from accused Shashikant. However, from the examination-in-chief of Shatrughna it emerges that, both accused have nowhere deposed as to exactly at which place the wrist watch and sword stick were hidden. Rest of the statement of this witness that accused took him to his house and produced wrist watch and sword stick is not sufficient to establish recovery of these incriminating articles under

Section 27 of Evidence Act, when these articles are also easily available in the market and cannot be identified on the basis of any specific identification mark.

19. Other panch Vilas (P.W.8) and Gautam (P.W.9), Shahaji (P.W.13) and Pawan Ingle (P.W.14), Bapu Wagh (P.W.17) turned hostile. So also testimony of panch Kashinath Rathod (P.W.18) regarding recovery of knife from Accused No.14 Jitendra, chain from Accused No.15 Ajit and knife from Accused No.18 Nandkumar is useless for the reason of vague version of this panch witness regarding recovery. Even the statement of API, Suryakant Shelke (P.W.19) regarding recovery of incriminating articles from the accused as per their disclosure statements is absolutely vague. This important witness has nowhere deposed as to what exactly the statement was given by each of the accused. He cannot even tell the exact time of preparation of each panchanama. Thus, the evidence placed on record in the form of recovery of article from the accused is not helpful to the prosecution to establish a link between the accused and assault on the complainant and injured persons.

20. After careful examination of above discussed lengthy evidence placed on record by the prosecution, we are fully satisfied

that the prosecution has miserably failed to prove that, on the date and time of the incident accused persons were members of unlawful assembly and in furtherance of the common object of that assembly they committed attempt of murder or they caused any type of hurt to any prosecution witnesses by deadly weapons. Therefore, no offence is established against any accused and they were rightly acquitted by the learned Trial Court. It follows that, this appeal being devoid of merits, deserves to be dismissed.

21. In the result, the appeal is dismissed.

(SUNIL K. KOTWAL, J.)

(T.V.NALAWADE, J.)

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