

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

**Criminal Appeal No. 460 of 2001**

\* The State of Maharashtra,  
Through Police Station,  
Sailu, District Parbhani. **.. Appellant.**

**Versus**

1) Kaba alias Vishnu s/o Panditrao  
Dasalkar,  
Age 22 years,  
Occupation : Agriculture,  
R/o Khupsa, Taluka Sailu.

2) Vaijanath s/o Taterao Dasalkar,  
Age 24 years,  
Occupation : Agriculture,  
R/o Khupsa, Taluka Sailu.  
District Parbhani.

**.. Respondents.**

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Shri. S.D. Ghayal, Additional Public Prosecutor, for the  
appellant.

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**Coram: T.V. NALAWADE &  
S.M. GAVHANE, JJ.**

**Date : 11 SEPTEMBER 2017**

**JUDGMENT (Per T.V. Nalawade, J.):**

1) The appeal is filed to challenge the judgment  
and order of Sessions Case No.54/1996 which was  
pending in the Court of the 1st Ad-hoc Assistant Sessions

Judge, Parbhani. The trial Court has acquitted the respondents of the offences punishable under sections 307, 341, 324, 34 of the Indian Penal Code. Heard learned Additional Public Prosecutor for the State, appellant.

2) The incident in question took place on 8-10-1995 at about 1.00 p.m. on approach road of village Khupsa when the first informant, Vithal Khupsekar was on his motor cycle with his son Ravi and his nephew Shriram. When they had crossed distance of two furlongs from village, accused Kaba (A-1) and other person (A-2) intercepted this motor cycle and all of a sudden accused No.1 Kaba gave blow of axe on right hand of the first informant. The first informant fell with the motor cycle. When he fell on the ground, Kaba gave another blow on right leg. The other person, accused No.2, gave stick blow on the head of the first informant. The two boys, who were in the company of the first informant, started crying and then Kaba gave blow of handle of the axe to Shriram and these two persons ran away.

3) After some time one jeep came by that road and the persons of the said jeep shifted the first informant to Government Hospital Sailu. The F.I.R. was recorded in the hospital in the presence of the Tahsildar Sailu as the first informant had sustained bleeding injuries and on that basis the crime came to be registered at CR No.123/1995 for the aforesaid offences. During the course of investigation the statements of the aforesaid two boys came to be recorded and the statement of one Vijay Kalam, Sub Divisional Revenue Officer, also came to be recorded. During the course of investigation accused No.1 Kaba gave statement under section 27 of the Evidence Act and on the basis of the statement one axe came to be recovered on 10-10-1995. Accused No.2 also gave statement before police under section 27 of the Evidence Act and on the basis of the statement a stick came to be recovered from one field. The clothes of the accused and the aforesaid articles and also the clothes of the first informant having blood stains along with blood samples were sent to CA office. After completion of the investigation charge-sheet came to be filed against the present respondents.

4) In the trial Court respondents have taken defence of total denial. The prosecution has examined as many as 7 witnesses including medical officer who issued MLC. The trial Court has not believed the first informant and the other so called eye witnesses and benefit of doubt is given to the accused.

5) In the present matter, the spot panchanama needs to be kept in mind while appreciating the evidence given by all the prosecution witnesses. The panch witness Ashok Dasalkar, who is examined has turned hostile and with the permission of the Court he is cross-examined by the learned APP. He has however, admitted his signature appearing on the spot panchanama at Exhibit 18. In the evidence Shivram Kadam (PW-7) PSI, who prepared spot panchanama, this document is proved. The incident took place at about 1.00 p.m., in broad day light. The motor cycle was lying in the middle of the road and near the front wheel there was a big ditch and the blood had accumulated in that ditch. At some distance from this ditch also there was blood. One small steel pot, pieces of clothes and a packet containing chilly power were found

near the bushes, situated by the side of the road. On the western side there was field of Panditrao Dasalkar and the name of accused No.1 is Kaba Panditrao Dasalkar. There is direct evidence of the first informant, one of the aforesaid two boys and one more witness but at the time of appreciation of that direct evidence, the MLC prepared by Dr. Sanjay Rodage (PW 1) also needs to be kept in mind. Evidence of this Doctor shows that on 8-10-1995 Police Head Constable of Police Station Sailu gave requisition letter to him for examining the first informant Vithal and the boy Shriram. He has given evidence that he found as many as 7 injuries on the person of Vithal and they are as under :

- (i) Contused lacerated wound 3x1x1/2 inches on frontal region of head.
- (ii) Contused lacerated wound 2x1x1/2 inch on forehead.
- (iii) C.L.W. 4x2x1 inches on temporal region.
- (iv) C.L.W. 4x2x1 inches on occipital region.
- (v) C.L.W. 2x1x1/2 inch on left arm
- (vi) Crush injury with fracture both bones on right forearm.
- (vii) Crush injury with fracture tibia of left leg.

6) The aforesaid injuries show that as many as 4 injuries which were C.L.Ws were found on head portion and the doctor has given opinion that these injuries were caused by sharp and hard object like axe. He has tried to say that even other injuries which are C.L.Ws and injury Nos.6 and 7 which were crush injuries involving fracture of both bones of right forearm and fracture of tibia were also caused by hard and sharp object like axe.

7) The doctor (PW-1) found one C.L.W. on right knee of Shriram which is also said to be caused by hard and sharp object and the doctor has given opinion that this injury can also be caused by axe. This injury, however, is described as simple injury. The age of the injury is given as within two hours when, as per the record, these two witnesses were examined at about 1.30 p.m. and 2.00 p.m. on 8-10-1995. Even without referring to the medical evidence it can be said that the opinion of the doctor with regard to cause of injury Nos.6 and 7 in respect of Vithal as hard and sharp object, by giving blow of axe, is not acceptable. It can be said that the defence has not competently cross examined the doctor on this point.

From the description of the injury itself it is not possible to accept such opinion.

8) It only needs to be seen as to whether the aforesaid medical record is consistent with the direct evidence. Vithal (PW-2) has given evidence that accused No.1 gave axe blow on his right hand and when he fell on the ground, accused No.2 gave blow of stick on his head. He has deposed that accused No.1 then gave blow of axe on right hand while accused gave beating to him. He has given evidence that accused No.2 gave blow of handle of the axe to his nephew Shriram. Thus, he has deposed that blow of stick was given on his head but blow of axe was not given on his head. Thus, there is inconsistency in the opinion given by the doctor and the direct evidence. Further, in the F.I.R. also he had not contended that axe was used and blows were given by using axe on his head. This inconsistency is not at all explained by the prosecution.

9) Ravi (PW 4) was not injured but he is examined. The other boy, who according to the first informant, was

injured is not examined. Ravi has given evidence that in the incident, Kaba gave blow of axe on the hand and leg of the first informant and Kaba gave blow of handle of the axe to Shriram. This evidence is not consistent with the version of Vithal as he has deposed that it is accused No.2 who gave blow of handle of axe to Shriram. When accused No.2 was not holding axe, it does not look probable that he had taken the axe from accused No.1 and he had given such blow. Thus, there is inconsistency in the evidence of these two witnesses.

10) The prosecution has examined one Vijay Kalam, who was working as Sub Divisional Officer at Sailu at the relevant time. He has deposed that by chance he was passing in his official jeep by that road at about 1.00 p.m. He has deposed that the incident took place at the distance of 4 kilometers from Sailu and he witnessed the incident from a distance of 1500 feet. He has deposed that two persons were attacking one person by axe and stick and one boy was standing near the victim. He has deposed that after seeing his jeep the two persons ran away. He has deposed that he noticed that the person who

gave his name as Vithal had sustained bleeding injuries and on inquiry he gave names of two assailants as Kaba and Vaijnath. Here only it needs to be mentioned that the first informant has not given the evidence that this witness had arrived to the spot and he had disclosed the incident including the names of the assailants to this witness. Even in the F.I.R. he had not given the name of Vaijnath. Further as per the version of the first informant, with him there were two boys but this witness has deposed that there was only one boy and that boy had also sustained injury on the leg. It is already observed that the second boy Shriram is not examined by the prosecution and the boy Ravi who had not sustained injury is examined by the prosecution. Ravi has tried to say that one jeep having red beacon came to the spot and that officer helped to shift the injured to the hospital. Firstly the jeep of the Sub Divisional Officer does not have red beacon and at the most it can bear Ambar beacon. In any case, the statement of this witness was recorded on 10-10-1995 and there is no mention of this person in the F.I.R. There are many other inconsistencies in the evidence of this witness which need not be discussed. From the cross-examination

it can be said that he was well acquainted with the first informant and that can be seen in the admissions that he knew that the first informant had enmity with the two persons who allegedly assaulted him. This witness has given evidence that he had informed the police of Sailu Police Station about the incident but there is no record of such kind with the prosecution. The discussion of the evidence of the so called three eye witnesses shows that their versions are not consistent with each other. In the F.I.R. no motive was mentioned by the first informant and that was brought on record only during cross-examination.

11) The prosecution examined one Ashok Dasalkar (PW-5) to prove the spot panchanama and the panchanamas of recovery of weapons and clothes at the instance of the accused persons and also the statements given by them under section 27 of the Evidence Act which led to the recovery of the weapons. This witness has turned hostile. Shivram (PW-7), Investigating Officer has given evidence on these documents and they are exhibited. It can be said that blood was found on the weapons and also on the clothes but the circumstances

have created a serious doubt about the entire case of the prosecution and a clear probability is created of concoction. There are two possibilities creating doubt from the aforesaid circumstances like some other persons had assaulted who were not known to the first informant or he had sustained injuries in accident. There is more possibility of sustaining the injuries in accident in view of nature of injuries already mentioned by this Court.

12) The evidence of the investigating officer and the cross-examination of the aforesaid witnesses show that when the material was collected many things were concealed. There was previous enmity between the first informant and accused No.1. Both sides had filed cases against each other in the past. Many villagers had enmity against the injured Vithal. The aforesaid circumstances are also there. Even when many injuries were found on the head, in the report of the first informant recorded in the presence of the Executive Magistrate, Tahsildar, the particulars of the blows given by anybody on the head were not mentioned. There is a possibility that the injured was not fit to give the statement when the first

information was shown to be recorded. All these circumstances have created possibility of concoction. The trial Court has also held that there is possibility of concoction. The investigation was not fairly made and the witnesses who have given direct evidence also cannot be believed. This Court holds that the trial Court has not committed any error in giving benefit of doubt to the respondents. There is no possibility of interference in the decision given by the trial Court. In the result, the appeal stands dismissed.

Sd/-  
**(S.M. GAVHANE, J.)**

Sd/-  
**( T.V. NALAWADE, J.)**