

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 506 of 2001

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

.. APPELLANT
(Ori. Complainant)

VERSUS

1. Babasaheb Vishwanath Adhav,
Age : 18 years,
2. Bhausahab Rangnath Adhav,
Age : 30 years,
3. Haridas Vishwanath Adhav,
Age : 24 years,
4. Ramdas s/o Vishwanath Adhav,
Age : 28 years,
All resident of Manori,
Tq. Rahuri, Dist.Ahmednagar.

.. RESPONDENTS
(Ori. accused)

Mr.S.J.Salgare, APP for Appellant/State
Mr. S.S.Bora, Advocate, for respondent Nos. 1 to 4.

CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.

RESERVED ON : 12th September, 2017
PRONOUNCED ON : 19th December, 2017

JUDGMENT : [PER : S. M. GAVHANE, J.]

This appeal is directed against the Judgment and Order dated 17-08-2001 passed by Ad-hoc Assistant Sessions Judge, Ahmednagar, in Sessions Case No. 81 of 2000, thereby acquitting the respondents-accused No. 1 to 4 of the offences punishable under Sections 307, 323, 504 and 506 (I) read with Section 34 of the Indian Penal Code (For short, 'the IPC')

2] Facts of the prosecution case are as under :-

(A) The complainant Jamsheer Gulab Shaikh (P.W.3), at the relevant time of the incident, was residing at Manori, Taluka Rahuri, District Ahmednagar with his father Gulab, mother Madinabi, brother Mansoor Shaikh (P.W.6), his wife, brother's wife, nephew and niece in the joint family and was doing agricultural work. The accused are also residence of the same village.

(B) It is alleged that Mansoor Shaikh (P.W. 6) had given Rs. 2,500/- to one Bharat Ramnath Wagh from village Manori to bring T.V. Set. Accordingly, said

Bharat Wagh had given portable T.V. The said T.V. had become out of order within twenty days. Therefore, Mansoor Shaikh (P.W.6) said to Bharat Wagh to take away said T.V. as it was out of order. As Mansoor Shaikh demanded money back from Bharat Wagh, he had come to the complainant with accused No.1 Babasaheb Vishwanath Adhav. At that time, accused No. 1 on intervening said Mansoor Shaikh that he would get money within 2 to 3 days and went away. Even after 8 to 9 days there from, Bharat Wagh did not give money to Mansoor Shaikh. On 23-03-2000, there was marriage procession of one Thorat and at that time accused No. 1 met Mansoor Shaikh and Mansoor Shaikh said accused No. 1 that he (accused No.1) had taken guarantee of returning money of T.V. but still Bharat Wagh has not given money. On that count, there was hot talk between Mansoor Shaikh and accused No.1 and accused No. 1 said Mansoor Shaikh that he would not get money of T.V. and he could do, whatever he can do and said that he would see him and the complainant was present at that time. The complainant said accused No. 1

why he was quarreling and said him that he should tell Bharat Wagh to give money of T.V. Thereupon, the complainant and his brother Mansoor Shaikh went to their house.

(C) It is further alleged that on 24-03-2000, the complainant and his mother worked in the field throughout day and they had come to house in the evening at 7.30 p.m. and while they were sitting in front of their house at about 08.15 p.m., their neighbour Kabir Mohammad Yakub Shaikh had come to their house and said that he was called by accused No.1 in front of Grampanchayat Office on account of quarrel between his brother Mansoor Shaikh and accused No. 1 on account of money of T.V. Thereupon, the complainant alongwith said Kabir Mohammad Shaikh went towards Grampanchayat Office. Accused Nos. 1 to 4, Bhausahab Vithal Adhav, Bharat Wagh and Gorakh Tailor were present there. He asked accused no. 1 why he has been called and while he was saying so, his (complainant's) mother came there and she said accused No. 1 to give money of T.V. When she said so,

accused No. 1 reacted arrogantly, and therefore, the complainant caught hold neck of accused No.1. Therefore, accused No. 1 gave kick blows on his stomach and fell him down. Meanwhile, accused No. 1 gave Gupti blow on his stomach which was on his waist. Thereupon, the complainant sat down and while he was sitting, accused No. 1 gave Gupti blow on left shoulder of the complainant. So also, accused No. 3 Haridas Adhav hit dumbbells of chain on his head, accused No. 2 Bhausahab Adhav abused and slapped him and Gokuldas Vishwanath Adhav gave him fist and kick blows. When the complainant's mother was fallen on the person of the complainant and started shouting, the assailants ran away. There was bleeding from the stomach of the complainant. His brother Mansoor Shaikh (P.W.6) came there and he had taken the complainant to Rahuri Police Station on motor-cycle. Immediately, he was taken to Hospital of Municipal Council, Rahuri, by police jeep. Doctor treated him and he was taken to the Government Hospital, Ahmednagar, by Ambulance as he was conscious.

It appears that Police Head Constable of Rahuri Police Station had come in the Government Hospital, Ahmednagar, in the night on 24-03-2000 and recorded complaint as above of the complainant. Said complaint was sent to Police Station, Rahuri and on the next day i.e. on 25-03-2000 at 11.00 a.m., Crime No. 45 of 2000 for the offences punishable under Sections 307, 323, 504 read with Section 34 of the IPC was registered against the assailants and the investigation was started.

(D) During the investigation, A.P.I. Gaikwad (P.W.12) went to village of the complainant/injured and prepared panchanama of spot of incident (Exh.32). He seized one magnet beads, chain from the spot, which was shown by Fakir Mohomad Yakub Shaikh. On 26-03-2000 while accused No. 3 Haridas was in police custody, the Investigating Officer seized clothes on the person of said accused as well as clothes on the person of accused No. 1 Babasaheb under separate panchanamas. The clothes on the person of complainant/injured having blood stains were seized on 27-03-2000 under panchanama (Exh.18). On

28-03-2000 accused No.3 Haridas while in custody, made statement that he would produce dumbbells from his house as per Exh. 46 and it was seized under panchanama Exh.47. On the same day, accused No. 1 in presence of panchas made memorandum statement Exh. 48 that he would produce the knife from his house, and said knife was seized under panchanama Exh.49. Statements of witnesses were also recorded.

(E) It appears that when the complainant had been to the police station Rahuri on 24-03-2000, he was referred to the Medical Officer in Rahuri Municipal Hospital and he examined the complainant and after providing him first aid issued the certificate (Exh.42) describing the injuries on the person of the complainant. The Investigating Officer sent the seized articles to the Chemical Analyser with letter for analysis and opinion . He also issued letter to the Tahsildar to depute competent person to draw a map of spot of incident.

3] After completion of the investigation, the Investigating Officer API Gaikwad submitted the charge-

sheet in the Court of Judicial Magistrate First Class, Rahuri, against the accused for the offences punishable under Sections 307, 323, 504 and 506 (I) read with Section 34 of the IPC. The learned Magistrate committed the case to the Sessions Court, Ahmednagar, as the offence under Section 307 of the IPC was exclusively triable by the Court of Session, which was then made over to the 4th Adhoc Assistant Sessions Judge, Ahmednagar.

4] Charge was framed against the accused for the offences punishable under Sections 307, 323, 504 and 506 (I) of the IPC individually and in furtherance of their common intention read with Section 34 of the IPC, to which the accused pleaded not guilty and claimed to be tried. Their defence is denial. They have not examined any witness in defence.

5] To prove charge against the accused, the prosecution has examined in all twelve witnesses and relied upon the panchanamas and injury Certificate of the complainant referred to above. Considering the evidence

adduced by the prosecution, the Trial Court held that the prosecution has failed to prove the offences against the accused with which they were charged and acquitted them of the said offences by the Judgment and Order dated 17-08-2001. Therefore, this appeal against acquittal by the appellant/State.

6] We have heard the learned APP appearing for the appellant and the learned advocate appearing for the respondents/accused and with their assistance, we have perused the evidence adduced by the prosecution. We have also perused the impugned Judgment and Order.

7] Since this is an appeal against the acquittal it is necessary to refer the law laid down by the Apex Court regarding approach of the appellate Court in dealing with the appeal against the acquittal in the case Of Murlidhar alias Gidda and another Vs State of Karnataka reported in (2014) 5 SCC 730, wherein in para No.12 the Apex Court has held thus:

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by

this Court in Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K, (1997) 7 SCC 677, Sambasivan Vs State of Kerala, (1998) 5 SCC 412, Bhagwan Singh Vs State of M.P., (2002) 4 SCC 85, Harijana Thirupala Vs Public Prosecutor, High Court of A.P., (2002) 6 SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka Vs K. Gopalkrishna, (2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, Chandrappa Vs State of Karnataka, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court

in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

8] Case of the prosecution is that, on 24-03-2000, accused No. 1 in furtherance of common intention with accused Nos. 2 to 4 assaulted the complainant-Jamsher Shaikh (P.W.3) with Gupti on his abdomen, head and shoulder and caused him injuries, that accused No. 2 in furtherance of common intention with other accused assaulted the complainant by means of dummies of chain

and accused Nos.3 and 4 in furtherance of common intention of other accused assaulted the complainant with fist blows, the accused in furtherance of their common intention intentionally insulted the complainant and they had threatened the complainant with injury to his person with intent to cause alarm to him.

9] To prove the above facts, the prosecution has relied upon evidence of following categories ;

(a) The evidence of the complainant-Jamsher Shaikh (P.W.3), his brother Mansoor Shaikh (P.W.6), their mother Madina Shaikh (P.W.7), PHC Dattatraya Shirke (P.W.9) and Shaikh Mohd. Yakub (P.W.10).

(b) The evidence of Dr. Rajendra Vairagar (P.W.11) and Injury Certificate (Exh.42) of the complainant.

(c) Memorandum Statement (Exh.48) of accused No. 1 Babasaheb Adhav and panchanama (Exh.49) regarding seizure of knife at his instance, and Memorandum Statement (Exh.46) of accused No. 3 Haridas and seizure of iron dumbbells of chain at his instance as per panchanama

(Exh.47) .

(d) Panchanamas of seizure of clothes on the person of accused No. 1 Babasaheb, accused No. 3 Haridas and the complainant and report of the Chemical Analyser (Exh.64).

10] Now coming to the oral evidence, the evidence of the complainant Jamsher Shaikh (P.W.3) who is injured is that, he knows all the accused. They are from his village. Mansoor Shaikh (P.W.6) and Madinabhi (P.W.7) are his brothers and mother. The incident took place on 24-03-2000. His brother had given money to Bharat Wagh for purchasing portable T.V. of Rs.2500/-. Bharat Wagh had provided T.V. and he had given guarantee of said T.V. But within twenty days the said T.V. became out of order, Therefore, his brother Mansoor made a demand of money to Bharat Wagh to pay the amount and take back the T.V. After 7-8 days Bharat Wagh had come to his house alongwith Babasaheb Adhav (accused No.1) to settle the dispute. On 23-03-2002 his brother Mansoor met accused No. 1 in the procession and demanded money from accused

No. 1 but there was settlement on that day.

11] As regards the incident in question P.W. 3- the complainant has stated that on 24-03-2000 he reached to his house from the field in the evening. At about 8.15 p.m. Fakira Mohd. Yakub Shaikh (P.W.10) came to his house. He informed him that some dispute is going on between Mansoor (P.W.6) and Babasaheb (accused No.1) on the ground of refund of T.V. amount and he (witness) was called in front of Grampanchayat. Therefore, he reached in front of Grampanchayat. Talk took place between accused No. 1 and him. He suggested accused No. 1 to pay the amount of T.V. His brother had come there from backside. His mother also told accused No. 1 to pay the amount. Accused No. 1 told his mother, "to remove what she wants to remove". Therefore, he caught hold neck of accused No.1. Accused No. 1 gave him kick blow of his abdomen. Accused No. 1 then fell him down and inflicted a knife blow on his left side on the stomach and on backside of left shoulder. The brother of accused No. 1

i.e. Haridas (accused No.3) assaulted him by dumbbells of chain. The brothers of accused No.1 abused him. Ramdas Vishwanath (accused No.4), Gokul Gangadhar and Raosaheb Gangadhar abused him. Accused No.1 slapped him on his face. P.W. 1 further stated that he had received the bleeding injury on his stomach. He stated that his father fell on his person to save him. His mother was saying not to assault him. Mansoor (P.W.6) came there and they came to Rahuri police station on motor-cycle. He informed name of accused No. 1 who assaulted him to P.S.I. and thereafter he was shifted to Municipal Hospital, Rahuri and he was kept there for 15 minutes, after providing first aid he was shifted to Civil Hospital, Ahmednagar and he was in the said Hospital till 03-04-2000.

12] P.W. 3 further deposed that while he was admitted in Civil Hospital, Ahmednagar, police inquired to him about the incident and information given by him was reduced into writing and said writing/complaint

(Exh.20) shown to him is the same. On that day he was wearing greenish colour pant, shirt having white lining, brown coloured banian and due to incident his shirt (Article-1), banian (Article-3) had a cut and they had blood stains/marks. So also, he identified said articles and knife (Article-4).

13] In the cross-examination of P.W.3 admitted that, it did happen on that day that Bhausahab Rangnath (accused No.2) and Ramdas Vishwanath (Accused No.4) abused him and beat him and therefore, he sustained injuries on his abdomen, on the shoulder of left hand and on his head. He stated that he told the names of such persons who assaulted him to Mr. Gaikwad who recorded his statement. But he could not assign the reason why the said fact is not mentioned in his complaint Exh. 20. He also admitted that transaction which took place with Bharat Wagh in respect of T.V. is not financially connected with the accused persons and that prior to intervention of the accused he had a good and cordial

relations with the accused persons. He stated that Babasaheb (accused No.1) had told that Mr. Bharat Wagh would pay the amount and if he did not pay, he would pay the same. He stated that at the time of incident Bharat Wagh was standing near grampanchayat and he and his relatives did not ask Bharat Wagh in respect of refund of the amount. He stated that when the scuffle took place 10 to 15 persons were present there. Out of them some were the shopkeepers and some persons had gathered from the village. He denied that he and his brother started beating Babasaheb (accused No.1) and that he was fallen down during scuffle and received injuries to his abdomen due to piece of glass or tin piece. So also he denied that, he was fallen down for 2 to 3 occasions and received injury to his shoulder. He admitted that, at the time of lodging complaint Exh. 20, he had told Gupti as a weapon. He denied that he is deposing false that first Babasaheb (accused No.1) gave kicks on his abdomen and then inflicted a blow of gupti on his abdomen and shoulder. So also he denied that he is deposing false

that Haridas Vishwanath (accused No.3) assaulted him by dumbbells on his head. He has denied that he is deposing false that Babasaheb and another accused slapped on his face and abused him.

14] The complaint/F.I.R. Exh. 20 which is statement of P.W.3 recorded in Civil Hospital while P.W. 3 was admitted in the said Hospital in injured condition shows that the incident took place on 24-03-2000 at about 8.15 p.m. and the material recitals of the said complaint are that P.W. 3 had caught hold neck of Babasaheb (accused No.1) and immediately accused No. 1 gave kick blows on his abdomen and, therefore, he was fallen down. Then accused No. 1 gave blow of sword stick on his (P.W.3's) abdomen and so also he gave blow of sword stick on his left shoulder. So also Haridas Vishwanath (accused No.3) gave blow of dumbbells on his head. Bhausahab (accused No.2) abused and assaulted him and Gokuldas Vishwanath Adhav started giving him fist blows. As referred earlier, P.W. 3 has deposed in accordance with above contents of

the complaint as regards assault on him by accused Nos. 1 and 3. However, as referred earlier in the cross-examination he admitted that accused No. 2 Bhausahab and accused No. 4 Ramdas abused him and beat him and therefore he sustained injuries on his abdomen, on the shoulder of left hand and on his head. As referred earlier he also stated that he has told in respect of said role of accused Nos. 2 and 4 to Mr. Gaikwad when police recorded his statement. Therefore the evidence of P.W. 3 is not consistent as to who assaulted him and caused him injuries on abdomen, shoulder and head. Naturally, therefore, his evidence is not believable to hold that either accused Nos. 1 and 3 assaulted him as deposed by him in examination-in-chief or that accused Nos. 2 and 4 assaulted him as deposed by him in the cross-examination. So also as referred earlier, he stated that he was assaulted by knife whereas in the complaint Exh.20, he stated that he was assaulted by accused No.1 by gupti. There is difference between knife and gupti. Therefore, also evidence of P.W. 3 is not

sufficient to infer that either accused Nos. 1 and 3 or accused Nos. 2 and 4 assaulted him and caused him injuries.

15] The evidence of Mansoor Shaikh (P.W.6) who is brother of P.W.3 is that incident took place on 24-03-2000 at about 7.30 p.m. in front of grampanchayat office, Manori. He came there. He demanded his money to Babasaheb accused No. 1. Accused No. 1 told him that he would not pay the amount and to do whatever he likes. Hence, he went ahead. Accused No. 1 asked Fakir Mohammad Yakub Shaikh (P.W.10) to call his brother. After 10 minutes his brother came there. His brother (P.W.3) told accused No. 1 to pay amount of T.V. as he had acted as a mediator. When the talk was going on between accused No. 1 and P.W. 3 his brother, he was standing at a distance of 100 to 150 ft. At that time his mother (P.W.7) was present there. Further he deposed that, thereafter he heard the shouts. Hence he reached on the spot of incident on motor-cycle, he noticed his brother Jamsher (P.W.3) with bleeding injuries and he also noticed

injuries on his left abdomen, left shoulder on backside, left side of the head and left cheek. His brother had bleeding injuries on his abdomen, head and shoulder. Then he lifted his brother and sat him on the motor-cycle with the help of 2-3 persons and took him to Rahuri Civil Hospital on motor-cycle. After some first aid treatment in the Municipal Hospital, Rahuri, he was taken to Civil Hospital Ahmednagar by Ambulance.

16] In the cross-examination P.W.6 could not assign reason regarding absence of above facts in his statement before police and therefore, his above referred evidence amounts to material omission in his statement before police and an improvement while deposing before the Court. Moreover, in the cross-examination, he stated that he did not take part in the actual scuffle and stated that it was not happened that he received injury during actual scuffle. In such circumstances and when he has not stated that he had seen either accused No. 1 Babasaheb or accused No. 3 Haridas in assaulting his brother P.W. 3 or accused No. 2 Bhausahab or accused No.

4 Ramdas in assaulting his brother P.W. 3 and when he has only stated that he had seen injuries to abdomen, shoulder and head of his brother P.W. 3 his evidence is not sufficient to infer that any of the accused has caused injury either on abdomen, shoulder or head of P.W.3 as alleged by the prosecution. Admittedly, he is brother of P.W.3, and therefore he is an interested witness. Therefore, his evidence is not believable.

17] Madina Shaikh (P.W.7) who is mother of P.W. 3 complainant has stated that P.W.3 and P.W. 6 are her sons. Incident took place prior to 1,1/4 years in front of grampanchayat of village Manori. She deposed that Yakub Fakir (P.W.10) had come to call and hence Jamsher (P.W.3) had gone and she followed him. She stated that she noticed Jamsher while talking with accused No.1 Babasaheb. Accused No. 1 Babasaheb told P.W. 3 that he would not pay amount and to do whatever he likes. Accused No. 1 caught hold neck of P.W. 3 and gave blows of knife to P.W.3. P.W. 3 received injuries on his left abdomen and left shoulder. She stated that she

intervened and she was assaulted by Haridas (accused No.3) by dumbbells. Said accused also assaulted her son (P.W.3) by dumbbells. She deposed that Bhausahab (accused No.2) assaulted her by blows and kicks. P.W. 3 sustained bleeding injuries.

18] In the cross-examination, P.W. 7 has stated that she stated to police that Babasaheb (accused No.1) told her son (P.W.3) that he would not pay amount and to do whatever he likes. She could not assign reason of absence of said facts in her statement before police. Moreover, she stated that she stated to police that accused No. 1 caught hold neck of her son (P.W.3). But she could not assign reason of absence of same in her statement before police. Moreover, she stated that at the time of recording her statement by police, she had disclosed to police that Haridas (accused No.3) assaulted her by dumbbells and Bhausahab (accused No.2) gave her hand blows and kicks, but she could not assign reason of absence of said fact in her statement before police. Thus, evidence of P.W. 7 in respect of above facts is

omission in her statement before police and improvement while deposing before the Court. Therefore, her evidence that accused No.1 said P.W.3 that he would not pay amount, he caught hold neck of P.W. 3 and regarding involvement of accused Nos. 2 and 3 in assaulting her is not believable. Another aspect to be noted is that according to her Babasaheb (accused No.1) assaulted her son P.W. 3 with knife while as referred earlier P.W. 3 in his cross-examination stated that it did happen that Bhausahab (accused No.2), Ramdas (accused No.4) abused and beat him and, therefore he sustained injuries on his abdomen, on the shoulder of left hand and on his head. Therefore, there is no consistency in the evidence of P.W. 3 and P.W.7 as regards the involvement of accused in causing injuries to P.W.3, and, therefore, evidence of P.W. 7 that Babasaheb (accused No.1) caused injuries to abdomen, shoulder and head of P.W. 3 is not believable.

19] Dattatraya Shirke (P.W.9) is Police Head Constable who was attached to Rahuri Police station at the time of incident. His evidence is that, he recorded

complaint Exh.20 of the injured P.W. 3 Jamsher in Civil Hospital, Ahemednagar. According to him, contents of complaint Exh. 20 are correct. He is not eye witness to the incident. Therefore, his evidence is of no help to the prosecution.

20] Shaikh Fakir Shaikh Mohammad Yakub (P.W.10) has deposed that he knows complainant P.W. 3 and the accused persons. The incident took place in front of Manor Grampanchayat. The dispute was going on between Babasaheb (accused No.1) and Mansoor (P.W.6) in respect of T.V. amount. At that time Mansoor called him and directed him to go to his house and call P.W. 3 Jamsher. Accordingly he went to inform Jamsher. Jamsher (P.W.3) went with him in front of grampanchayat office. As regards incident he deposed that at that place the talk was going on between Babasaheb (accused No.1) and Jamsher (P.W.3), accused no. 1 told P.W. 3 that he would not pay the money. The mother of Jamsher (P.W.3) had also come there. She also asked Babasaheb (accused No.1) that he acted as a mediator in the transaction and he should pay amount of

the T.V. Babasaheb (accused No.1) told Madina, mother of P.W. 3 that he would not pay amount and to do whatever she likes. Jamsher (P.W.3) became angry and caught hold neck of Babasaheb (accused No.1) , other accused persons at once started to beat P.W.3. Haridas (accused No.3) assaulted by knife and Ramdas (accused No.4) and Bhausahab (accused No.2) gave fist blows. Accused No. 1 Babasaheb took out a knife from his pocket and inflicted it on the abdomen of Jamsher (P.W.3) and P.W. 3 received injuries on left side of abdomen and left shoulder.

21] In the cross-examination he (P.W.10) stated that, since the time of the incident till 28th, he was in Civil Hospital, Ahmednagar, with Jamsher (P.W.3) and during that period police had come to Civil Hospital on many occasions to record their statement. He admitted that police did not inquire to him prior to 28th and prior to said date he did not inform anything to police on his own accord. He admitted that complainant Jamsher (P.W.3) is the son of his maternal uncle and the niece of complainant is his wife. He admitted that, at the

relevant time of incident the other villagers were also present and witnessed the incident. He admitted that when accused Nos. 2 to 4 assaulted complainant (P.W.3) he did not try to intervene in the quarrel. He stated that in the scuffle first accused Nos. 3 and 4 i.e. Haridas and Ramdas started beating the complainant and thereafter Ramdas (accused No.4) assaulted the complainant. He denied that, no incident has taken place in his presence and, therefore, he did not inform police immediately. It is clear from the evidence of this witness that he is close relative of P.W. 3 injured, P.W.s' 6 and 7 and he did not disclose incident to police at his own when he was in the hospital with P.W. 3 from 24-03-2000 till 28-03-2000. In fact, he should have disclosed the incident to police at his own prior to 28-03-2000. He is interested witness and being relative of P.W.s' 3, 6 and 7. Moreover, his evidence that, accused No. 1 caused injuries to abdomen and left shoulder of P.W. 3 is not consistent with the evidence of P.W. 3 in the cross-examination that Bhausahab (accused

No.2) and Ramdas (accused No.4) caused injuries on his abdomen, shoulder and head. Therefore, no inference can be drawn on the basis of evidence of this witness that either Babasaheb (accused No.1), or Bhausahab (accused No.2) caused injuries on abdomen and shoulder of P.W.3 by sword stick as alleged by the prosecution.

22] Admittedly, the prosecution has not examined other villagers and shopkeepers who were present at the spot of incident and who had opportunity to witness the incident. Admittedly P.W.s' 3, 6, 7 and 10 are relatives. In such circumstances, as there is no consistency in the evidence of these witnesses as observed earlier, their evidence is not sufficient to infer that any of the accused individually or the accused in furtherance of their common intention caused injuries to abdomen, left shoulder and head of P.W.3.

23] Now coming to the medical evidence, Dr. Rajendra Vairagar (P.W.11) has deposed that on 24-03-2000 he was working as a Medical officer at Rahuri Municipal Hospital

and he examined Jamsher Gulab Shaikh (P.W.3) at about 10.00 p.m. on that day. He stated that P.W. 3 was brought as a emergency case with the history of stab injury at 08.00 p.m. and on examination, he noticed following injuries on the person of P.W. 3 :-

Injury No. 1 :- Stab injury on left hypochondria region, incised wound edges were clean cut of size 6" x 1" x abdomen deep with intestine popins outside with omentum.

Injury No.2 :- Incised wound left scapular region 4" x ½ " x ½". Edges were clean cut.

23-A] Dr.Vairagar further deposed that first injury was grievous and can be caused by sharp edged weapon and within 4 hours. So he transferred P.W. 3 to Civil Hospital, Ahmednagar and issued certificate Exh.42. According to him first injury was sufficient to cause death if not treated earlier. He stated that both the injuries can be possible due to article No. 4 knife which was shown to him. In the cross-examination, he stated

that injury No. 1 is simple in nature. He stated that the injury No. 1 was not possible if a person falls on a sharp edged piece of tin against abdomen, because unless and until sufficient perpendicular blow is given such type of injury is not possible. He stated that injury No. 2 is also not possible due to piece of tin or piece of glass. He has denied that intentionally he is saying that above injuries are not possible due to fall against a piece of glass or piece of tin. Thus, nothing is found in favour of the accused in the cross-examination of Dr. Vairagar. Exh. 42 injury Certificate issued by Dr. Vairagar also shows that injuries referred to above were noticed by said doctor on the person of P.W.3. Thus, on the basis of evidence of Dr. Vairagar and injury Certificate Exh. 42, it can be said that on 24-03-2000 i.e. on the date of incident at the relevant time i.e. at about 08.00 p.m. P.W. 3 sustained injuries mentioned in the Certificate Exh. 42 and injury No. 1 referred to above was sufficient to cause death if not treated earlier. As observed earlier, oral evidence of P.W.s' 3,

6, 7 and 10 is not believable and sufficient to infer that either accused No. 1 Babasaheb or accused No.2 Bhausaheb caused injuries to abdomen, and left shoulder of P.W. 3. Therefore, above referred medical evidence is of no help to the prosecution to state that injuries as deposed by Dr. Vairagar and as mentioned in Certificate Exh. 42 were caused to P.W. 3 by the accused individually or in furtherance of their common intention.

24] Now coming to the circumstantial evidence as per prosecution case, accused No. 1 made memorandum statement Exh. 48 in presence of panchas Ramdas Bhingardive (P.W.8), Ramesh Anna Gaikwad (P.W.4) and Laxman Gaikwad, API Rahuri (P.W. 12) that he would produce knife which was kept in wooden box in his house and then it was seized at his instance as per panchanama Exh. 49. Both P.W.s' 4 and 8 have not supported the prosecution case as they have denied that accused No. 1 made statement as above and at his instance, knife (Article No.4) was seized. P.W. 12 API Gaikwad, then PSI Rahuri has stated about memorandum statement Exh. 48

allegedly made by Babasaheb (accused No.1) and seizure of knife (Article-4) at his instance as per panchanama Exh.49. However, as both panchas P.Ws. 4 and 8 have not supported the prosecution case, the prosecution has failed to prove memorandum statement (Exh.48) made by accused No. 1 and seizure of knife at his instance as per panchanama Exh.49. Therefore, it cannot be said that knife Article No. 4 was used in the offence by the accused No. 1 to cause injury to P.W.3.

25] The next circumstance relied upon by the prosecution is that accused No. 3 Haridas Vishwanath Adhav made statement Exh.46 that he would produce dumbbells kept in his house and then at his instance dumbbells was seized as per panchanama Exh. 47 in presence of panchas by API Gaikwad (P.W.12). Panchas Ramdas (P.W.8) and Ramesh Gaikwad (P.W.4) have not supported the prosecution case as they have denied that accused Haridas made statement as per Exh. 46 and at his instance dumbbells was seized. API Gaikwad (P.W.12) has of course stated regarding abovesaid memorandum statement

of accused No. 3 Haridas and that at his instance dumbbells was seized from the house of said accused. But as panchas P.W.s' 4 and 8 have not supported the prosecution case the interested testimony of API Gaikwad is not believable and sufficient to infer that the accused No. 3 Haridas made memorandum statement Exh. 46 and at his instance the dumbbells was seized as per panchanama Exh.47.

26] The next circumstance relied upon by the prosecution is regarding seizure of clothes on the person of accused No. 1 Babasaheb, accused No. 3 Haridas and P.W. 3 the complainant Jamsher. As per panchanama Exh. 18 in presence of P.W.2 and other panch API Gaikwad seized pant, banian and shirt of P.W. 3 on production of the same by his brother P.W. 6 Mansoor Shaikh. Exh. 44 panchanama shows that clothes i.e. pant and shirt of Haridas (accused No.3) were seized in presence of panchas Vinayak Ohol and Vilas Shinde and Exh. 45 panchanama shows that clothes i.e. pant, banian and Manila of

accused No.1 were seized in presence of abovesaid panchas by PSI Gaikwad. P.W. 12 API Gaikwad has stated regarding seizure of abovesaid clothes. Thus, seizure of above clothes is proved. Exh.64 shows that human blood was detected on Exhs. 1,2,3,4,5,8 and 9 i.e. knife, full pant, Sando banian, full open shirt (torn), full pant, sando banian and full Manila. But there is no material to show that said human blood was of P.W.3, so as to connect the accused with the injuries to P.W. 3 to say that the accused are responsible for causing injuries to P.W.3 Therefore, mere finding of human blood on the abovesaid weapon and clothes as per C.A. report Exh.64 is of no help to the prosecution to connect the accused with the alleged offence.

27] For all the reasons discussed above, we hold that the evidence adduced by the prosecution is not sufficient to infer that on 24-03-2000 at about 08.15 p.m., the accused No. 1 in furtherance of common intention with accused Nos. 2 to 4 caused the injuries on abdomen, head and left shoulder of P.W. 3 Jamsher, the

accused No, 2 in furtherance of common intention with accused Nos. 1, 3 and 4 voluntarily caused hurt to P.W. 3 and that the accused in furtherance of their common intention intentionally insulted the complainant (P.W.3) and that the accused in furtherance of their common intention threatened complainant with injury to his person with intent to cause alarm to him and as such prosecution has failed to prove offences under Section 307, 323, 504 and 506(I) individually or in furtherance of their common intention read with Section 34 of the IPC against the accused beyond reasonable doubt. The Trial Court has rightly held so and rightly acquitted the accused of the aforesaid offences by the impugned judgment and order. The view taken by the Trial Court is reasonable and possible view. There is no error in appreciating the evidence by the Trial Court. Therefore, there is no justifiable ground to interfere with the impugned judgment and order. Therefore, appeal being devoid of merits the same is liable to be dismissed. Accordingly we dismiss the same. Bail bonds of the

accused stand cancelled.

28] Mr.S.S.Bora, Advocate was appointed to represent the accused/respondents. We appreciate his sincere efforts in rendering able assistance during the course of hearing the appeal, so as to arrive at proper conclusion. We quantify his fees at Rs. 7500/- (Rupees Seven Thousand Five Hundred only).

[S. M. GAVHANE, J.]

[T. V. NALAWADE, J.]

shp