

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 625 OF 2002

The State of Maharashtra,  
Through Police Station Officer,  
Police Station, Thalner.

**....Appellant**

**Versus**

1. Rehman Titanya Pawara  
Age 39 years, Occu. Agri.
2. Khumsingh Khandu Pawara  
Age 25 years, Occu. Agri.
3. Totaram Samdha Pawara  
Age 35 years, Occu. Agri.
4. Shivdas Gajarya Pawara  
Age 35 years, Occu. Agri.
5. Vaharya Laxman Pawara  
Age 35 years, Occu. Agri.
6. Magan Verangya Pawara  
(Since dead abated)
7. Indal Rehamn Pawara  
Age 18 years, Occu. Agri.
8. Gorashya Samdha Pawara  
Age 25 years, Occu. Agri.

All R/o village Mahadev Dondwada  
Tahsil Shirpur, Dist. Dhule.

**...Respondents.**

Mr. V.S. Badakh, APP for appellant/State.

Mr. A.J. Patil h/f. Mr. M.S. Deshmukh, Advocate for respondent Nos. 1 to 5.

WITH  
CRIMINAL REVISION APPLICATION NO. 301 OF 2002

Arjun s/o Shamrao Koli,  
Age 52 years, Occu. Agriculturist.  
R/o Hisale, Tal. Shirapur,  
Dist. Dhule.

**....Petitioner**

**Versus**

1. State of Maharashtra.
2. Shri Rehman Titanya Pawara  
Age 39 years, Occu. Agriculturist.
3. Shri Khumsingh Khandu Pawara  
Age 25 years, Occu. Agriculturist.
4. Shri Totaram Samdha Pawara  
Age 35 years, Occu. Agriculturist.
5. Shri Shivdas Gajarya Pawara  
Age 35 years, Occu. Agriculturist.
6. Shri Vaharya Laxman Pawara  
Age 35 years, Occu. Agriculturist.
7. Indal Rehman Pawara,  
Age 18 years, Occu. Agriculturist.
8. Shri Gorashya Samdha Pawara  
Age 25 years, Occu. Agriculturist.

All accused No.2 to 8 resident  
of village Mahadev Dondwada, Tahsil  
Shirpur, Dist. Dhule.

**...Respondents.**

Mr. Pravin S. Patil, Advocate for petitioner.

Mr. V.S. Badakh, APP for respondent/State

**CORAM : T.V. NALAWADE AND  
ARUN M. DHAVAL, JJ.**

**DATED : 08/12/2017**

**JUDGMENT : [PER T.V. NALAWADE, J.]**

- 1) The appeal is filed to challenge the decision given by the

learned 2<sup>nd</sup> Additional Sessions Judge, Dhule in Sessions Case No. 49/1995 by which the present respondents are acquitted of the offence punishable under section 307 r/w. 149 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and also of the offence punishable under section 148 of IPC. Criminal Revision Application No. 301/2002 is filed to challenge the same decision, but the proceeding is filed by the original complainant. Both the sides are heard.

2) In short, the facts leading to the institution of the present proceedings, can be stated as follows :-

First Informant – Arjun Koli is resident of village Hisale, Tahsil Shirpur, District Dhule and he is also the President of one Labour Association. The incident took place on 24.11.1994 at about 8.00 a.m. According to him, when he was returning from field and when he was at Hisale S.T. stand, accused No. 1 Rahman Pawara obstructed him and started questioning as to why the first informant had asked Baliram Jadhav to give report to police. When Arjun Koli said that he had no concern with the report, Rahman took out knife and started assaulting the first informant. After seeing the knife, Arjun caught hold of the knife and then other accused, seven in numbers came forward. They were having sticks. According to Arjun, there were in all 25 persons with Rahman and all of them assaulted him by using sticks and caused fracture injuries to both his legs. He became unconscious and then the

accused persons ran away. This incident was witnessed by Ramesh Vanjari, who owns the hotel near the S.T. stand. Arjun was shifted to cottage hospital Shirpur where his report came to be recorded by police. The crime at C.R. No. 54/1994 came to be registered on the basis of this report for offence punishable under section 325 r/w. 149 of IPC and also for offences punishable under sections 147 and 148 of IPC. Police collected the injury certificates and recorded statements of witnesses who include Ramesh. Some persons, who had shifted Arjun to the hospital came forward to give statements. After completion of investigation, the chargesheet came to be filed for aforesaid offences.

3) Charge was framed for the aforesaid offences against eight accused persons, the present respondents from appeal. Accused pleaded not guilty. Prosecution examined in all nine witnesses to prove the offences. The Trial Court has not believed the witnesses and has given benefit of doubt to all the accused.

4) Arjun (PW 1) has given evidence on oath as per aforesaid contentions made by him in the F.I.R. According to him, in all 25 persons assaulted him by using sticks and they caused fractures of both his legs. According to him, as he held the weapon knife, which Rahman wanted to use, he sustained bleeding injuries to his hand, palm. He has given evidence that after assaulting him all the accused

left the place in one Ambassador car. He has given evidence that Dashrath Sardar, Bhivsen Shyamrao shifted him to the hospital where his report at Exh. 46 was recorded by police. The accused persons were known to him and he identified them in the Court.

5) Ramesh Vanjari (PW 2), hotel owner has given evidence that initially all the accused persons were sitting in his hotel and after seeing Arjun, they went out and they picked up quarrel with Arjun. He has given evidence that all the accused had come in one Ambassador car. He has given evidence that Rahman used knife, but Arjun held that knife and then others assaulted him by using sticks.

6) In F.I.R., Exh. 46, Arjun had not named Ramesh as eye witness. When Arjun has deposed that 25 persons had attacked him, Ramesh has given evidence that only eight persons assaulted Arjun.

7) Baliram (PW 4) is examined as other eye witness by prosecution. He has given evidence that by chance, he was present at the spot and he noticed that five persons were giving beating by fist and kick blows to Arjun and they were Rahman Titaniya, Guman Titaniya, Bhagwan Gajariya and others. He is the person due to whom aforesaid incident took place as per the version of Arjun. Thus, he is an interested witness. He has given name of only accused No. 1 Rahman

as the persons involved in the incident of beating. Dashrath (PW 3) has given evidence that when he reached to the spot, the incident was over and he learnt that Rahman Titaniya was involved in the incident and he had assaulted Arjun. Thus, he is not taking the names of other accused persons when his evidence is relevant under section 6 of the Evidence Act.

8) Prosecution has examined Dr. Surekha (PW 7) to prove that Arjun had sustained injuries on 24.11.1994. She has described the injuries found on the person of Arjun as follows :-

- (i) CLW over right tibia fibula right lower leg with fracture 3x2x1 cm.
- (ii) CLW over the left lower leg tibia fibula left side 3x2x1 cm.
- (iii) Contusion over left mammary region 3x3 cm.
- (iv) Contusion over left frontal region scalp 3 x 3 cm.
- (v) Contusion over right thigh 7 x 3 cm.
- (vi) Contusion left lower leg 3 x 2 x 1 cm.
- (vii) CLW over right palm 2 x 1 x 1/2
- (viii) CLW over the right palm 2 x 1 x 1/2 cm.

She has given evidence that the injuries were sustained within 24 hours and all the injuries were caused due to hard and blunt object. She has deposed that she has advised X-ray in respect of injury Nos. 1

and 2 and there was suspected fracture and she has referred the injured to Civil Hospital, Dhule. The M.L.C. prepared by her is duly proved as Exh. 60.

9) Dr. Bhalchandra (PW 8) is examined by prosecution to prove that on 24.11.1994 itself X-ray in respect of injury Nos. 1 and 2 were taken and it was found that there was fracture of bones of both the legs. The certificate is duly proved as Exh. 70. There was the fracture of tibia fibula right and tibia left. Doctor has given evidence that the injuries were caused within six hours. When it is not the evidence of Dr. Surekha, Dr. Bhalchandra has given evidence on the injuries which he noticed on palm and he has deposed that those two injuries were possibly caused due to sharp object like knife.

10) The aforesaid evidence shows that there was some previous dispute between atleast accused Nos. 1 and two prosecution witnesses including the first informant. It can be said that six injuries were caused by sticks, but the first informant has tried to say that as many as 25 persons assaulted him. This shows that the first informant wanted to settle the score by implicating others. Fortunately, supplementary statement of first informant was not recorded and the case was not filed against other persons. In any case, considering the number of injuries found on the person of first informant, it does not

look probable that as many as 7 persons had assaulted him by using sticks. Further, the case that as many as eight persons had come in one Ambassador car and they left in one Ambassador car with sticks does not look probable in nature. No specific role is attributed to accused persons except accused No. 1. Thus, it is not possible to ascertain as to which accused inflicted particularly the fracture injuries on the legs of first informant. Due to these circumstances, the Trial Court has given benefit of doubt to all the accused persons, considering the possibility of exaggeration of false implication. This Court holds that the view taken by the Trial Court is possible view and interference is not possible in the decision given by the Trial Court. During arguments also, the learned counsels of both the sides submitted that the parties have settled the dispute. In view of these circumstances, both the proceedings are dismissed.

**[ARUN M. DHAVALÉ, J.]**

**[T.V. NALAWADE, J.]**

ssc/