

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.152 OF 2009

Balu s/o Sitaram Jawale,
Age : 26 years, Occu.: Jeep Driver,
R/o.: Patoda Mauli Nagar, Behind
Bus Stand Patoda, Tq. Patoda,
District Beed

..APPELLANT
(Ori. Accused No.1)

VERSUS

The State of Maharashtra
Through PSO Police Station,
Patoda, Tq. Patoda, through
Sow Asha w/o Bhagwan Kamble,
Age : 38 years, Occu.: labourar,
R/o. Patoda, Mauli Nagar,
Behind Bus Stand Patoda,
Tq. Patoda, District Beed

.. RESPONDENT
(Prosecution)

WITH
CRIMINAL APPEAL NO. 568 OF 2009

The State of Maharashtra,
Through Police Station Officer,
Patoda, through: Sow. Asha w/o
Bhagwan Kamble, Age : 38 years,
Occu.: Labour R/o. Patoda Mauli Nagar,
Behind Bus Stand Patoda,
Taluka Patoda, District Beed

.. APPELLANT
(Prosecution)

VERSUS

1. Balu s/o Shitaram Javale,
Age : 26 years, Occu.: Jeep Driver,
R/o. Patoda, Mauli Nagar,
Behind Bus Stand, Patoda,
2. Sarubai w/o Sitaram Javale,
Age : 56 years, Occu.: Household,
R/o. As above,

3. Sitaram s/o Tulshiram Javale,
Age : 61 years,
Occu.: Pensioner-Teacher,
R/o. As above,
4. Meena w/o Balu Javale,
Age : 32 years, Occu.: Household,
R/o.: As above,
5. Ravindra s/o Sitaram Javale,
Age : 21 years, Occu.: Household,
R/o.: As above,
6. Rekha w/o Ravindra Javale,
Age : 22 years, Occ.: Household,
R/o. As above

**..RESPONDENTS
(Ori.Accused)**

Mr. N.L. Jadhav, Advocate for the appellant in Criminal Appeal No.152 of 2009 and for the respondents in Criminal Appeal No.568 of 2009

Mr. S.N. Morampalle, A.P.P. for the respondent/prosecution in Appeal No.152 of 2009 and for the Appellant/State in Criminal Appeal No.568 of 2009

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 3rd NOVEMBER, 2017
PRONOUNCED ON : 10th NOVEMBER, 2017**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Criminal Appeal No.152 of 2009 has been filed by the original accused No.1 in Sessions Case No.51 of 2008, against the judgment and order dated 27.02.2009,

passed by the learned Additional Sessions Judge-3, Beed, whereby he has been convicted for the offence punishable under Section 324 of the Indian Penal Code ("IPC", for short) and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, while Criminal Appeal No.568 of 2009 has been preferred by the State/Prosecution, challenging the same judgment whereby the original accused No.1 has been acquitted of the offences punishable under Sections 147, 148, 307, 504, 506 read with 149 of the IPC and original accused Nos.2 to 6 have been acquitted of all the offences.

2. Since both the appeals have arisen out of the same judgment, they are being decided by this common judgment.

3. For the sake of convenience, the parties are hereinafter referred to by their original nomenclatures, by which they were referred to in the judgment passed by the trial Court.

4. Accused No.1 – Balu and accused No.5- Ravindra are the sons of accused No.2 – Sarubai and accused No.3– Sitaram. Accused No.4 – Meena is the wife of accused No.1, while accused No.6 – Rekha is the wife of accused

No.5.

5. The informant namely Ashabai Bhagwan Kamble is a resident of Patoda, District Beed. She was residing behind bus stand of Patoda. To the backside of her house, there is the house of accused Nos.1 to 6. Prior to about the four days of the incident that took place on 25.10.2005, the kids of she-goats of the informant had swallowed "Udid" belonging to the accused persons. Therefore, accused No.2 had got annoyed. On 25.10.2005, at about 8.30 a.m., accused Nos.1, 2, 3 and 5 beat the son of the informant namely Parmeshwar by means of sticks, when he was near the bus stand. Her another son namely Nilesh tried to rescue Parmeshwar. At that time, he also was beaten by the said four accused persons. Thereafter, they went to the house of the informant. Accused No.1 gave a stick blow on the forehead of the informant and caused her a bleeding injury. Accused No.5 also beat her by means of stick and caused invisible injury on her right forearm and back. Accused Nos.2 and 3 abused her and beat her with fists and kicks. One Akka Bhalerao, a neighbour, and Yashodabai, the mother of the informant, pacified the quarrel.

6. On being informed by somebody about the incident, Parmeshwar, the son of the informant, came back to his house and saw the informant lying in a pool of blood. He took her to Police Station, Patoda in an auto-rickshaw. Police referred her to Rural Hospital at Patoda. She was given preliminary treatment there and was referred to the Civil Hospital at Beed, where she was admitted for treatment for seven days. On the 3rd day of the incident i.e. on 27.10.2005, PHC Shete of Police Station, Patoda, visited the Civil Hospital at Beed and recorded the statement of the informant in respect of the incident as per her say. The said statement was treated as the First Information Report ("FIR", for short). On the basis of that FIR, Crime No.95 of 2005 came to be registered against the above referred four accused persons in Patoda Police Station, for the offences punishable under Sections 147, 148, 307, 324, 504, 506 read with Section 149 of the IPC.

7. The investigation followed. The spot panchanama was prepared. Two sticks came to be seized from the spot of the incident itself. The statements of witnesses were recorded. After completion of the investigation, the above referred four accused persons came to be

chargesheeted for the said offences in the Court of Judicial Magistrate, First Class at Patoda, on the basis of which Regular Criminal Case No.309 of 2005 came to be registered on 21.12.2005.

8. The informant filed a complaint case before the learned Judicial Magistrate, First Class at Patoda, bearing Criminal Case No.271 of 2005 on 11.08.2006, against the above referred accused Nos.1, 2, 3 and 5 and also against accused Nos.4 and 6, in respect of the same incident, which was subject matter of criminal case No.309 of 2005. She added that accused No.1 gave axe blow on her forehead and accused No.4 and 6 also beat her alongwith accused Nos.1, 2, 3 and 5 by forming an unlawful assembly. She further alleged that the accused persons had intention to cause her death and accordingly attempted to cause her death and thereby committed the offence punishable under Section 307 besides offences punishable under Sections 324, 504, 147, 148 read with 149 of the IPC. The learned Magistrate directed the police to conduct investigation vide Section 156(3) of the Code of Criminal Procedure ("the Code", for short).

9. ASI Javale, conducted the investigation and

submitted "B" Summary Report against the informant on the ground that R.C.C.No.309 of 2005 was already registered on the FIR lodged by the informant against the four of the accused persons and despite that she maliciously filed a false complaint. The learned Magistrate did not accept that report. He conducted further enquiry under Section 202 of the Code and after recording statements of the informant and her witnesses found sufficient ground to proceed against all the six accused persons, for the offences punishable under Sections 147, 148, 307, 324, 504, 506 read with 149 of the IPC. Accordingly, he issued bailable warrants against accused Nos. 1 to 6 and after their appearance, committed the case to the Sessions Court for trial as per the order dated 05.05.2008, since offence under Section 307 of the IPC was exclusively triable by the Court of Session. The case was assigned to the learned 3rd Additional Sessions Judge for trial.

10. The learned Trial Judge framed charges against all the six accused for the above-mentioned offences vide Exh.6 and explained the contents thereof to them in vernacular. The accused pleaded not guilty and claimed to be tried. Their defence is that of total denial and

false implication.

11. The prosecution examined in all eight witnesses before the trial Court. After scrutinising the evidence of the prosecution, the learned Trial Judge found sufficient evidence to hold accused no.1 only guilty for the offence punishable under Section 324 of the IPC. He did not find sufficient and dependable evidence to hold accused No.1 guilty for rest of the offences and accused nos. 2 to 6 for all the offences. Accordingly, he convicted and sentenced accused No.1 only for the offence punishable under Section 324 of the IPC only and acquitted accused No.1 of the rest of the offences and accused Nos. 2 to 6 of all the offences.

12. The learned counsel for accused No.1 submits that the evidence on record is not at all believable. The informant is not a trustworthy witness. She has disowned authorship of her own FIR that was lodged by her when she was admitted in the Civil Hospital after two days of the incident. He submits that there are many vital omissions and improvements in the evidence of the informant and other ocular witnesses, who are none other than the close relatives of the informant. Though the

spot of the alleged incident was situated in thickly populated area and many persons were alleged to have gathered at the time of the incident, who were residing in the vicinity, none of them has been examined without assigning any reason. The alleged incident took place on 25.10.2005, while informant filed complaint before the Magistrate on 11.08.2006. The delay in filing complaint has not been properly explained. He submits that the learned Trial Judge wrongly believed the case of the informant and wrongly convicted accused No.1. He supports impugned judgment acquitting accused No.1 of the rest of the offences and accused Nos. 2 to 6 of all the offences.

13. As against this, the learned A.P.P. submits that the evidence of the informant is supported by the evidence of the ocular witnesses. The medical evidence also supports her version that she sustained bleeding injury on her forehead by means of hard and sharp weapon like an axe. According to him, there was no reason for the informant to make false allegations against the accused persons. The evidence on record is sufficient, cogent and believable to hold all the accused guilty of all the offences, with which they have been charged. He

submits that the learned Trial Judge committed grave mistake in acquitting accused Nos. 2 to 6 of all the offences and accused No.1 of other offences other than the offence under Section 324 of the IPC.

14. The informant deposes at Exh.21 that all the six accused persons came to her house on 25.10.2005 at about 9.30 a.m. to 10.00 a.m., they hurled abuses against her. Accused No.1 caught hold of collar of her blouse and gave axe blow on her forehead. Accused No.3 gave stick blow on her waist, while accused No.5 gave stick blow on her calf. All of them made her to fall on the ground and assaulted her by means of sticks. She sustained injuries on her hands, feet, stomach and fingers. After hearing her shouts, her mother Yashodabai (PW-3) (Exh.23) came to rescue her. The accused persons pushed Yashodabai aside. Her father Keru (PW-6) also come for her rescue. The accused assaulted him. She was lying in the pool of blood. She become unconscious. Somebody informed about that incident to her son Parmeshwar (PW-5) (Exh.26). Parmeshwar (PW-5) brought an auto-rickshaw and took her to Police Station, Patoda. The police referred her to Rural Hospital at Patoda for treatment with a requisition letter. The Medical Officer

extended primary medical treatment to her and referred her to Civil Hospital at Beed. Accordingly, she was admitted in the Civil Hospital, Beed for seven days for treatment.

15. The informant further states that when she was in the Civil Hospital on the day of the incident, two persons came there at about 4.00 p.m. and threatened her not to lodge the report. After she was discharged from the Civil Hospital, she went back her house. There also, the accused persons threatened her for not lodging the report. Then, after about five days, she went to the Police Station, Patoda, but the police did not take cognizance. Thereafter, she complained against the police to the Tahsildar, Superintendent of Police, Collector. However, nobody took cognizance of her complaint. Thereafter, she filed complaint case in the Court of the Judicial Magistrate, First Class, Patoda.

16. The informant states that prior to the incident, accused no.1 had taken away a kid of her she-goat and killed it on the say as to why she had set it free. On that count, the accused persons assaulted her.

17. PHC Shete (PW-4) (Exh.24) deposes that on 27.10.2005 Police Inspector Gaikwad of Police Station, Patoda directed him to visit the Civil Hospital, Beed and record the statement of the informant. Accordingly, he went there. He asked the informant whether she was in a position to give statement. When she answered in the affirmative, he recorded her statement i.e. FIR (Exh.25) as per her say and took her thumb impression thereon. He states that on the basis of FIR (Exh.25) he registered Crime No.95 of 2005 against accused Nos. 1 to 3 and 5 for the offences punishable under sections 324, 147, 148, 307, 325, 504, 506 read with Section 34 of the IPC. It has come in his evidence that the informant had not stated before him the facts that accused No.1 caught hold of collar of the her blouse, all the accused made her to fall on the ground, accused No.1 gave an axe blow on her forehead, the accused pushed Yashobdabai (PW-3) aside when she tried to rescue the informant, the accused assaulted Keru (PW-6) and accused No.1 killed a kid of her she-goat prior to the incident. These are material omissions.

18. ASI Javale, (PW-7) (Exh.28), who conducted the

investigation in Crime no. 95 of 2005, states that involvement of four accused persons only was transpired in the alleged incident in his investigation. It is, thus, clear that the informant falsely involved two more accused persons while filing of complaint before the learned Magistrate. The chargesheet (Exh-29) filed by Javale (PW-7) does not whisper about the ingredients of Section 307 of the IPC. There is no reference of use an axe by any of the accused. It is, thus, clear that the informant, in order to aggravate the nature of the crime, inserted the ingredients of Section 307 of the IPC in that complaint and for the first time stated that axe was used for causing injury to her at the time of the incident. It is very strange to note that the informant is totally silent about her FIR (Exh-25) on recorded by PHC Shete (PW-4) 27.10.2005. There was no reason for PHC Shete (PW-4) to depose false that he recorded FIR (Exh.25) as per the say of the informant in the Civil Hospital at Beed on 27.10.2005 and registered Crime No.95 of 2005 in Police Station, Patoda, against four accused persons for the offences punishable under Sections 324, 504, 506, 147, read with Section 34 of the IPC. There was no reason for ASI Javale (PW-7) to

conduct a false investigation on the basis of FIR (Exh.25). The informant did not explain as to why she disowned authorship of FIR (Exh.25).

19. Yashodabai (PW-3) states that accused No.1 dealt with an axe blow on the head of the informant, while accused Nos.3 and 5 gave stick blows on her body. When she tried to intervene, she was pushed aside by the accused. She states that Keru (PW-6) also was pushed aside by the accused persons. She does not at all whisper about the presence of accused nos. 2, 4 and 6 at the time of the incident. This fact also clearly shows that the informant wrongly involved accused Nos. 2, 4 and 6 in the alleged incident.

20. In the cross-examination of Yashodabai (PW-3), she admits that the facts that accused no.1 gave axe blow on the head of the informant and that the accused persons pushed aside Keru (PW-6) and herself, are not mentioned in her statement before the police. These omissions have been duly proved through the evidence of ASI Javale (PW-7). These material omissions make it clear that axe blow was not given by accused No.1 on the head of the informant.

21. Keru (PW-6) specifically states that at the time of the incident, his wife Yashodabai (PW-3) and himself were inside their house, which was at the backside of the house of the informant. He then states that after hearing shouts, Yashodabai (PW-3) and himself went out of their room and saw that the informant was lying on the ground and that she had become unconscious. This evidence clearly shows that neither Yashodabai (PW-3) nor Keru (PW-6) actually saw the incident. In his cross-examination also Keru (PW-6) admits that he had not personally witnessed the incident and that he came to know about the incident from Yashodabai (PW-3). The evidence of Yashodabai (PW-3) and Keru (PW-6) would not be helpful to the prosecution to connect the accused persons with the incident in question.

22. Parmeshwar (PW-5) (Exh.26), who is the son of the informant, admittedly, was not present at the time of the incident that is subject matter of this case. Whatever, he has stated about the earlier incident that incident took place near the bus stand, is not the subject matter of the charges levelled against the accused persons. However, from his evidence, one thing

is clear that on 3rd day of the incident, police had been to the Civil Hospital, Beed to make an enquiry with the informant. This fact itself is sufficient to show that PHC Shete (PW-4) visited the Civil Hospital on 27.10.2005 and as stated by him, he recorded the FIR (Exh.25) as per the say of the informant. It is, thus, clear that the informant is not a trustworthy witness.

23. Sudhir (PW1) (Exh.18) happened to be a panch to the spot panchanama (Exh.19). He states that there are houses situate around the spot of incident and that it is a crowded place. The informant also states that there are houses of five to six persons adjacent to her house where the alleged incident took place. There are other houses situate at the distance of about 50 feet towards northern and eastern sides of her house. She states that the incident lasted for about 30 minutes and the neighbours had come to the spot of the incident after hearing her hue and cry. If that be so, it was necessary for the prosecution to examine the neighbours/independent witnesses, more particularly when the informant exhibited the tendency to state the facts far from the truth. The prosecution has not explained as to why any of these witnesses has not been examined.

24. The informant states that the incident took place at about 9.30 a.m. to 10.00 a.m. After the incident, she was taken to the police station and then to the Rural Hospital at Patoda. She must have consumed some time in reaching Civil Hospital. Dr. Khandade (PW-8) (Exh.37), who examined the informant, also must have taken some time to see the informant. The injury certificate (Exh.38) of the informant shows that Dr. Khandade (PW-8) examined her at 9.30 a.m. on 25.10.2005. If that be so, it cannot be accepted that the incident occurred at about 9.30 a.m. to 10.00 a.m. This medical evidence also shows that the informant did not sustain the injuries at the time when she claims to have sustained them.

25. As seen from the evidence of Dr.Khandade (PW-8) there was an incised wound over frontal area of the informant, having size 5x0.5 c.m. Its margins were clean and sharp, with tapering on both the ends. It was caused within 24 hours by hard and sharp weapon. He further found abrasions over right forearm and left knee of the informant. It has come in his cross-examination that the injury on the frontal area of the informant was

possible if a person falls on sharp stone on head.

26. As stated above, the evidence of the informant is not believable, since she has considerably improved her version to implicate even the innocent persons. She has denied her own FIR (Exh.25). Yashodabai (PW-3) and Keru (PW-6) are the parents of the informant, they are interested witnesses. Moreover, their evidence, as stated above, does not corroborate the case of the prosecution in view of the omissions brought in their cross-examination. Considering the tendency of the informant to involve even the innocent persons and exaggerate the facts, it was very risky and hazardous to rely on her corroborated testimony.

27. The informant lodged complaint before the Magistrate on 11.08.2006, in respect of the alleged incident that took place on 25.10.2005. No plausible explanation has been assigned by the informant for such an inordinate delay. This delay certainly would be fatal to the prosecution.

28. There is no independent corroboration to the evidence of the informant. In the circumstances, the evidence of the prosecution certainly cannot be said to

be sufficient and dependable to hold even accused No.1 guilty for the offence punishable under section 324 of the IPC.

29. The learned Trial Judge did not appreciate the evidence on record correctly and properly while holding accused No.1 guilty for the offence punishable under Section 324 of IPC is concerned. Accused no.1 is liable to be acquitted of the said offence. The judgment and order of acquittal recorded by the learned Trial Judge in favour of accused No.1 in respect of rest of the offences so also acquittal of accused Nos.2 to 6 of all the offences do not call for any interference, in view of the discussion made above. In the result, we pass the following order:-

O R D E R

(i) Criminal Appeal No. 152 of 2009 is allowed.

(ii) The impugned judgment and order convicting and sentencing accused No.1-Balu s/o Sitaram Jawale, for the offence punishable under Section 324 of the Indian Penal Code, are quashed and set aside.

(iii) Accused No.1 is acquitted of the offence punishable under Section 324 of the Indian Penal Code.

(iv) Fine amount of Rs.500/- deposited by accused No.1 be refunded to him.

(v) Appeal No.568 of 2009 is dismissed.

(vi) Bail bonds of accused Nos.1 to 6 are cancelled. They are set at liberty.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**SUNIL P. DESHMUKH**]
JUDGE

sam/criapl152-568-09