

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

**CRIMINAL APPEAL NO. 570 OF 2008**

The State of Maharashtra  
Through Police Station,  
Basamba, Taluka Hingoli,  
District Hingoli.

**Appellant.**

Versus

1. Laxman Maroti Ingle  
Age : 50 years, occu.: agri.,  
R/o Sirsam, Taluka Hingoli,  
District Hingoli.
2. Santosh s/o Laxman Ingle  
Age : 24 years, occu.: agri.,  
R/o Sirsam, Taluka Hingoli,  
District Hingoli.
3. Ramdas s/o Laxman Ingle  
Age : 20 years, occu.: agri.,  
R/o Sirsam, Taluka Hingoli,  
District Hingoli.
4. Kashinath s/o Ganpat Naikbal  
Age : 35 years, occu.: agri.,  
R/o Sirsam, Taluka Hingoli,  
District Hingoli.
5. Laxman s/o Krishnaji Naikbal  
Age : 65 years, occu.: agri.,  
R/o Sirsam, Taluka Hingoli,  
District Hingoli.

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Mr. D.S. Jape, A.P.P. for the appellant/State.  
Mr. S.S. Rathi, Advocate for the respondents.

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**CORAM : T.V. NALAWADE &  
SUNIL K. KOTWAL, JJ.**

**DATED : 23 February, 2018.**

**JUDGMENT : (PER SUNIL K. KOTWAL,J.)**

1. This appeal is directed by the State of Maharashtra, challenging the vires of the judgment and order of acquittal of accused Nos.1 to 5 dated 20.09.2007, passed by Ad hoc Additional Sessions Judge, Hingoli in Sessions Case No. 32/2005. Respondents are original accused Nos.1 to 5 respectively.

2. Facts of the prosecution case, in nutshell, are that the informant Sadashivappa Adalkar and his two sons namely Sureshappa (PW-2) and Bharat (PW-10) are the residents of village Digras Wani and on account of agricultural land they are on inimical terms with the accused persons. Since before the occurrence, number of criminal cases and civil suits were filed against each other by the both rival parties. On 15.06.2004 at about 8.00 to 8.30 a.m. informant Sadashivappa (PW-1) and his both sons (PW-2 & PW-10) had been to Sirsam City for purchasing seeds and after finishing the marketing when they were taking tea at the tea stall in front of S.T. Stand Sirsam, that time accused No.1 who noticed the presence of informant and his sons in the hotel, called accused Nos.2 to 4 and they started abusing the informant and his sons on account of cultivation of the land. Accused No.4 Kashinath Ganpat Naikbal and accused No.3 Ramdas Ingle with intention to kill the informant inflicted sickle blows on the neck of informant. However, informant raised his hand, to obstruct the sickle blow and thereby

sustained injuries on his upper arm and wrist. When sons of informant tried to intervene, other accused persons, who were armed with sticks, assaulted them by sticks. As the informant sustained serious bleeding injuries on his body, he was taken to Civil Hospital, Hingoli where Dr. Mrs. Dawas examined the informant and his two sons and treated them. She also informed police regarding the admission of injured informant and his sons. Therefore, Police Constable P.R. Kamble (PW-12) who was present on duty in Civil Hospital, Hingoli recorded the statement (Exh.46) of Sadashivappa Adalkar. That statement was treated as complaint and it was referred to Police Station, Basamba within whose jurisdiction the offence was committed by the accused. In the result, in that Police Station Basamba offence was registered against the accused persons under Sections 147, 148 and 307, 341, 504, 506 read with Section 149 of the Indian Penal Code (For short "I.P.C.").

3. P.S.I. Sayyad Hussain (PW-13) carried out investigation of this crime. He prepared spot panchnama (Exh.106) and seized the sticks from accused Nos.1, 2 and 3 and sickle from accused No.4. After completion of investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class.

4. Offence punishable under Section 307 of I.P.C. being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Hingoli.

5. Charge (Exh.13) was framed against the accused Nos.1 to 5 for the offences punishable under Section 147, 148, 307, 341 and 506 read with Section 149 of I.P.C.

6. After considering oral and documentary evidence placed on record, learned trial Court pleased to acquit the accused of all the charges. In the result, this appeal is preferred by the State against the order of acquittal of these accused. Respondents are referred in accordance with their original status.

7. Learned A.P.P. for the State submitted that testimony of informant Sadashivappa is fully corroborated by the evidence of his sons Sureshappa (PW-2) and Bharat (PW-10) as well as by medical evidence in the form of M.L.C. Register (Exh.93) proved by Dr. Pawar (PW-9). According to A.P.P., except these three witnesses and Police Constable P.R. Kamble (PW-12) and investigating officer (PW-13), other eye witnesses and panch witnesses have turned hostile. According to A.P.P., the oral testimony of informant and his two sons can be relied upon to base the conviction when it is corroborated by medical evidence.

8. In reply, Mr. Rathi, learned Counsel for the respondents/accused raised objection that though parties are on inimical terms with each other on account of dispute of landed property and though independent witnesses were available to the

prosecution, those witnesses are conveniently suppressed by the prosecution. Therefore, according to defence Counsel, the uncorroborated testimony of these inimical witnesses cannot be believed.

9. His next limb of the argument is that the Medical Officer, who examined the injured, could not be examined by prosecution and Dr. Pawar (PW-9) has only proved the M.L.C. Register (Exh.93). According to learned Counsel for the respondents, only on the basis of recitals of M.L.C. Register (Exh.93), prosecution cannot prove the nature of the injuries sustained by informant and his two sons.

10. Learned Counsel for respondents also pointed out that though Police Outpost was available to the informant near the spot of occurrence at Sirsam, the informant lodged report after inordinate delay only when Police approached him at Civil Hospital, Hingoli. His contention is that in the background of inimical terms in between parties, the unexplained delay in lodging F.I.R. creates doubt about truthfulness of prosecution case itself.

11. After going through the evidence on record, it becomes clear that panch Shivaji Jamdad (PW-3), Martand Dhale (PW-6), Madhukar Jamdad (PW-7) and Ramesh Padole (PW-11) have not supported the prosecution case regarding the preparation of spot panchnama or seizure panchnama of the clothes and weapon of the

offence. Even eye witnesses Laxman Wadulkar (PW-4), Shaikh Pashu (PW-5) and Vaijinath Ghodekar (PW-8) have turned hostile and they have not uttered a word against the accused. Despite lengthy cross-examination by learned A.P.P., nothing could be elicited from their cross-examination which is helpful to the prosecution to connect the accused persons with the above said crime.

12. From the testimony of Investigating Officer Sayyad Hussain (PW-13) it becomes clear that no blood stains were found on the spot at the time of preparation of spot panchnama and only one firewood and wooden cover of knife were found lying on the spot. As per prosecution case itself, none of the accused used knife or firewood at the time of the occurrence of the incident. Therefore, even seizure of firewood and wooden cover of knife from the spot is useless piece of evidence. In other words, no circumstantial evidence is available against the accused to connect them with the alleged crime.

13. In the circumstances, we have to examine whether oral testimonies of informant Sadashivappa (PW-1), Sureshappa (PW-2) and Bharat (PW-10) are trustworthy to base the conviction without any other corroboration.

14. It is to be noted that according to Sadashivappa (PW-1), on the date of incident at about 8.30 a.m. near Sirsam Bus Stand initially accused No.1 Laxman threatened the informant (PW-1) and thereafter accused No.4 Kashinath tried to cause hurt on the neck of informant by inflicting sickle blow. However, informant (PW-1) raised his left hand to prevent the blow and thereby sustained fracture injury on his left forehand. According to informant (PW-1), his both sons were assaulted by accused by sticks and fist blows when they tried to intervene. It is to be noted that in F.I.R. (Exh.46) the informant has brought on record somewhat different theory that at Sirsam Bus Stand accused No.1 Laxman Maruti Ingle abused him and thereafter accused No.4 Kashinath and accused No.3 Ramdas inflicted sickle blow due to which he sustained fracture injury on his left forehand. As per recitals of the F.I.R. (Exh.46) thereafter accused No.1 Laxman, accused No.2 Santosh and accused No.5 Laxman Naikbal assaulted his sons by sticks. Thus, obviously oral testimony of informant Sadashivappa (PW-1) is in conflict with recitals of the F.I.R. (Exh.46) as to who assaulted him and his sons and in which manner.

15. On the other hand, according to Sureshappa (PW-2), at the time of occurrence he was talking on phone at S.T.D. Booth near Bus Stop and his father and brother left the hotel and thereafter the incident occurred. According to Sureshappa (PW-2), accused No.1

Laxman shouted "*Mara, Mara*" and thereafter accused Nos.3 and 4 inflicted sickle blow on the body of his father. On the contrary, according to Bharat (PW-1) at the time of occurrence accused No.1 Laxman uttered words "*Yanchi Jirwa*" and thereafter only accused No.4 inflicted sickle blow on the body of Sadashivappa (PW-1). According to this witness remaining accused assaulted him and his brother by sticks.

16. Thus, these three witnesses have brought on record conflicting versions regarding the actual occurrence.

17. It is to be noted that according to these inimical witnesses, Sadashivappa (PW-1) sustained injuries on his left hand due to blow of sickle. The M.L.C. Register (Exh.93) indicates (1) displaced fracture of upper forearm with compound fracture, (2) contused lacerated wound over lateral dorsal aspect of size 2 x 3 cms and (3) contused lacerated wound over middle finger on lateral aspect of size 2 x 2 cms as well as (4) contusion over right L.S. spinal region. Even Medical Officer Dr. Pawar (PW-9), who never examined this patient, though has reproduced these injuries in his oral testimony, he also made it clear that he cannot tell the age of these injuries. Important aspect is that this Medical Officer has admitted in his examination-in-chief itself that these injuries are possible due to hard and blunt object. From the cross-examination of this medical witness it becomes clear that the injuries sustained

by Sadashivappa (PW-1) are not possible due to sharp edge of sickle. It is to be noted that none of the prosecution witness deposed that accused inflicted sickle blow from its blunt side i.e. backside of the blade of the sickle. Therefore, inference can be drawn that medical evidence brought on record by prosecution itself, falsifies the version of informant (PW-1) as well as testimonies of his two sons (PW-2 & PW-10) regarding assault to informant by accused Nos.3 and 4 by sickle blows.

18. From the evidence of Dr. Pawar (PW-9) it also emerges that this medical officer cannot tell the age of the injuries found on the body of Sureshappa (PW-2) and Bharat (PW-10). Thus, the medical evidence placed on record is absolutely useless piece of the evidence and cannot be used for corroboration.

19. The damaging blow to the prosecution case is that, the incident occurred on 15 June, 2004 at about 8.30 a.m. at Sirsam Bus Stand. However, though Police Outpost was available only at the distance of one furlong from the spot as admitted by Investigating Officer (PW-13), neither the informant (PW-1) lodged report against accused to Police Outpost, Sirsam immediately after the occurrence, nor the statement of informant was recorded by police even in the Civil Hospital, Hingoli at the earliest. From the cross-examination of Investigating Officer (PW-13) it emerges that on 15.06.2004 till 6.30 p.m. entry was not taken at Police Station,

Sirsam about the occurrence of offence. No explanation is coming forth from prosecution for this inordinate delay in lodging F.I.R. Thus, in the background of longstanding enmity in between informant, his family and the accused on account of landed property, the possibility of false implication of the accused persons by informant cannot be ruled out. Unexplained delay in lodging F.I.R. creates possibility of concoction of false case against the accused.

20. In the circumstances, we have no hesitation to hold that the uncorroborated testimony of Sadashivappa (PW-1), his sons Sureshappa (PW-2) and Bharat (PW-10) is not trustworthy to base the conviction in absence of even medical evidence in support of their contention. The view taken by learned trial Court while acquitting the accused of all the charges is possible view, and therefore, cannot be interfered in this appeal. Thus, the appeal being devoid of merit, deserves to be dismissed.

21. Hence, the following order.

**ORDER**

1. Criminal Appeal No. 570 of 2008 is dismissed.
2. Bail bonds of the respondents shall stand cancelled.

**( SUNIL K. KOTWAL )  
JUDGE**

**( T.V. NALAWADE )  
JUDGE**

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