

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 729 OF 1997**

1. Sampat Shankar Jadhav	]	
Age : 31 years	]	
	]	
2. Namdeo Shankar Jadhav	]	
Age : 43 years.	]	
	]	
3. Smt. Kalawati Shankar Jadhav	]	
Age : 63 years	]	
	]	
4. Smt. Sushila Vishnu Chavan	]	
Age : 43 years	]	
	]	
5. Smt. Bhagirathi Jaywant Madane,	]	
Age : 33 years, R/o. Dudhondi	]	
	]	
Kanchan Rangrao Jadhav	]	
Age : 25 years	]	
	]	
7. Manik Bhimrao Adake,	]	
Age : 25 years, R/o Tupari,	]	
	]	
Nos.1 to 4 & 6 r/o. Kundal	]	
Tal. Tasgaon, Dist. Sangli	].....	Appellants

V/s.

State of Maharashtra	]....	Respondent
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Ms.Ameeta Kuttikrishnan, Advocate appointed through Legal Aid Committee as Per Order Dt.03/08/2016 for Appellants

Mrs. Sharmila Kaushik A P. P. for State.

CORAM	: N. J. JAMADAR, J.
RESERVED ON	: 22ND DECEMBER, 2018
PRONOUNCED ON	: 31ST JANUARY 2019

JUDGMENT :

1 This appeal is directed against a judgment and order passed by the Additional Sessions Judge, Sangli dated 12th November 1997 in Sessions Case No.72 of 1993 whereby the appellant No.1 was convicted for the offences punishable under Sections 279 and 307 of the Indian Penal Code, 1860 (IPC) and appellant Nos. 1 to 7 were convicted for the offences punishable under Sections 147, 332, 337, 338 and 353 read with 149 of IPC. For the offences punishable under Section 307 of IPC, appellant No.1 was sentenced to suffer rigorous imprisonment for two years and pay fine of Rs.2,000/-, and under Section 279, appellant No.1 was sentenced to suffer rigorous imprisonment for six months and pay fine of Rs.600/-, with default stipulation. Whereas, for the offences punishable under Section 147, 332, 337, 338, 353 read with Section 149 of IPC, appellant Nos. 1 to 7 were sentenced to suffer rigorous imprisonment ranging from one month to six months with varying amounts of fine along with default stipulation.

2 Shorn of superfluities, the background facts, which led to this appeal, can be summarised as under :-

a] On 31st July 1992, at about 10:45 a.m. the then Superintendent of Police, Sangli was on his way to Kundal Police Station. Ashok Anna Kore (hereinafter referred to as 'the

first informant') was at the wheel the car of the Superintendent of Police. Shivaji Shinde, a Wireless Set Operator, was accompanying them. When the said car came near Ganpati Temple, a jeep approached from the opposite direction. It was noticed that the said jeep was overloaded and the passengers were standing on the foot-board.

b] At the direction of the Superintendent of Police, the driver of the said jeep (Sampat Shankar Jadhav) the accused No.1, was given a signal to halt the jeep. However, Accused No.1 sped away. The Superintendent of Police directed the first informant to chase the said jeep which was proceeding towards Savantpur.

c] As accused No.1 drove the jeep in a high speed towards Kirloskarvadi Railway gate and therefrom towards Kundal Fata (bye-pass), the Superintendent of Police directed Shivaji Shinde, the Wireless Set Operator, to call the Police Sub Inspector and staff attached to Kundal Police Station at Kundal Fata so as to intercept the said jeep. Shri Jagdale, the then Police Sub Inspector (PSI), Kundal Police Station and the staff reached Kundal Fata and tried to intercept the jeep. However, accused No.1 tried to run over PSI Jagdale, who was made to

jump towards roadside to save himself. Accused No.1, thereafter, took the jeep towards the petrol pump. The car followed the jeep.

d] Accused No.1 halted the jeep near the petrol pump and tried to flee away in the adjoining field. The first informant and Shivaji Shinde chased and caught hold of accused No.1. The later resisted the first informant and Shivaji Shinde and gave fist blows to them. In the meanwhile, the police party led by PSI Jagdale came thereat. Suddenly, accused Nos. 2 to 7 came from the nearby house of accused No.1 and started pelting stones upon the members of the police party so as to prevent them from apprehending accused No.1-Sampat. Out of them, deceased accused No.3, Kalawati-mother of accused No.1, and accused No.7, Manik-nephew of accused No.1 were armed with grubbing hoes. Accused No.3 threatened the police party with dire consequences if the accused No.1 was not freed. When PSI Jagdale tried to reason with the accused, Ranga, deceased brother of accused No.1, caught hold of PSI Jagdale, by his throat, and deceased accused No.3-Kalawati and accused No.4-Sushila, the sister of accused No.1, caught hold of the left hand of PSI Jagdale and twisted it backwards

which resulted in dislocation of left shoulder joint.

c] The police party, however, succeeded in apprehending accused Nos.1 and accused No.2-Namdeo Shankar Jadhav and took them to Kundal Police Station. During the course of the occurrence, members of police party including Ashok Anna Kore-the first informant, Shivaji Shinde, Wireless Set Operator, Baburao Mane, Babasaheb Patil, S.Y. Salunkhe, R.A. Omase and Hanmant Jagdale, PSI attached to Kundal Police Station suffered injuries on account of stone pelting and assault by the accused. Ashok Anna Kore, the first informant, thus, lodged report against the accused.

f) Crime was registered against the accused vide C.R. No.84 of 1992. Investigation commenced thereon. The injured were sent for medical examination. The accused Nos.1 to 7 came to be arrested. The weapons of offences, i.e., grubbing hoes and stones, as well as the jeep in question were seized. Panchnama of scene of occurrence came to be drawn. The Investigation Officer interrogated the witnesses and recorded their statements. After finding the complicity of the accused, charge-sheet was lodged against the accused for the aforesaid offences.

g) Upon committal of the case, by the learned Judicial Magistrate, the learned Sessions Judge framed charge against accused Nos.1 to 7 for the offences punishable under Sections 147, 148, 332, 337, 338 and 353 read with 149 of IPC. The accused No.1 was also charged for the offences punishable under Section 279 and 307. The accused abjured their guilt and claimed for trial.

h) At the trial to substantiate the charge against the accused, the prosecution examined in all 14 witnesses, viz., Sindhutai Narayan Davande (PW-1), Smt. Suman Namdeo Gaikwad (PW-2), Sanjay Vishnu Chavan (PW-3), Suryakant Maruti More (PW-4), Shivaji Shankar Sutar (PW-5) and Ashok Vasant Rao Sisal (PW-6), Mahadeo Yeshwant Chavan (PW-12), the public witnesses to the arrest of accused, seizure of articles, and scene of occurrence panchnama; Ashok Anna Kore (PW-7)-the first informant, Shivaji Appasaheb Shinde (PW-8) and Hanmant Kundlik Jagdale (PW-11)- the then PSI, Kundal Police Station as eye witnesses to the occurrence; Dr. Vilasrao Dattatraya Patil (PW-9) Medical Officer, who examined the witnesses at Kundal Public Health Centre and Dr. Ajit Mahadeo Modak (PW-13)-Orthopedic Surgeon, who

attended to Hanmant Jagdale (PW-11); Dnyandeo Dhondiram Mali (PW-10) SHO, Kundal Police Station who recorded the report of first informant and Shri Venimadhav Bhalchandra Sonawane (PW-14) - the investigating officer (IO) who furnished the details of investigation. The accused did not lead any evidence in their defence, which consisted of false implication to pre-empt the action against the police for unjustifiably assaulting the accused party.

i) After appraisal of the evidence, the learned Additional Sessions Judge was persuaded to hold that the prosecution succeeded in establishing that accused No.1 drove the jeep in a rash and negligent manner, so as to endanger human life and attempted to commit murder of PSI Jagdale, by running over him, when the later, tried to intercept the speeding jeep.

j) The learned Session Judge also found that the accused Nos.1 to 7 formed an unlawful assembly and committed the offence of rioting and also used criminal force and caused hurt to the public servant with intention to prevent them from discharging their duties. However, the learned Sessions Judge found that the offence punishable under Section 148, i.e., rioting armed with deadly weapons, was not made out against

accused Nos. 3 to 7. Thus, the accused were acquitted of the offence punishable under Section 148. The accused Nos.1 to 7 were, thus, convicted for the offences punishable under Section 147, 332, 337, 338 and 353 read with Section 149 of IPC and sentenced to suffer imprisonment and pay fine as described above.

k) Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence, the appellants have preferred this appeal.

3 During the pendency of the appeal, it was reported that accused No.1-Sampat, accused No.2-Namdeo and accused No.3-Smt. Kalawati have died. Thus, by an order dated 29th January 2014, this Court recorded that the appeal against accused Nos.1 to 3 abates. The appeal was, however, directed to proceed against accused Nos. 4 to 7.

4 I have heard Smt. Kuttikrishnan, learned counsel appointed by the Legal Aid Committee, for the appellants and Smt. Sharmila Kaushik, learned Assistant Public Prosecutor for the State.

5 At the outset, it is necessary to note that the incident in question can

be conveniently bifurcated into two parts. The gravamen of indictment against accused No.1 was that accused No.1 drove the jeep in a rash and negligent manner, throwing caution to the wind, and did not halt the jeep despite attempt to intercept it. Instead, accused No.1, attempted to run over PSI Jagdale who tried to intercept the jeep at Kundal Fata. The learned Sessions Judge, thus, found accused No.1 guilty of the offences punishable under Sections 279, 307 of IPC. In view of death of accused No.1, the appeal abates. Thus, the legality, propriety and correctness of the impugned order of conviction and sentence against the deceased accused-appellant No.1 is not required to be determined.

6 The accusation against accused Nos. 2 to 7 has its genesis in the events which unfolded after the accused No.1 allegedly came, and halted the jeep, near his house and resistance offered by accused Nos.2 to 7 to the arrest of accused No.1 by the police. The accused Nos.2 and 3 have also died. The controversy, therefore, boils down to the consideration of the evidence and material on record to ascertain whether the conviction of appellant Nos. 4 to 7 for the offences punishable under Section 147, 332, 337, 338 and 353 read with Section 149 of IPC is sustainable.

7 The learned counsel for appellant Nos. 4 to 7 strenuously urged that

the impugned judgment of conviction is wholly unsustainable. According to the learned counsel for the appellants, the learned Sessions Judge committed grave error in evaluating the evidence led by the prosecution. The learned Sessions Judge did not keep in view the fundamental principles of appreciation of evidence. According to the learned counsel for the appellants, the improbability of the prosecution case, which is starkly made out, was conveniently ignored. The glaring omissions and improvements on the part of prosecution witnesses were lightly brushed aside by the learned Sessions Judge. The fact that there was no independent witness to the occurrence, wherein all the injured are shown to be police personnel, coupled with the unexplained injuries on the person of the accused, ought to have put the Court on guard. Instead of giving benefit of the glaring inconsistencies in the prosecution case, the learned Sessions Judge committed a manifest error in downplaying those infirmities in the prosecution case, urged the learned counsel for the appellants.

8 In opposition to this, the learned APP supported the impugned judgment. It was urged by the learned APP that there is ample evidence, especially the medical evidence, which corroborates the ocular account of the injured witnesses. According to the learned APP, the learned Sessions

Judge rightly discarded the minor inconsistencies and infirmities in the prosecution evidence.

9 As the controversy gets restricted to the occurrence near the house of the deceased accused No.1, after he allegedly reached thereat by the jeep, followed by the car of Superintendent of Police and the jeep of Kundal Police Station, it may be apposite to have a brief resume of the evidence of first informant Ashok Anna Kore (PW-7), Shivaji Shinde (PW-8) and Hanmant Jagdale (PW-11), who also claimed to be the injured witnesses. It would be suffice to note that nothing turns on the circumstantial evidence, in this case.

10 Ashok Anna Kore (PW-7) endeavoured to impress upon the Court that the deceased accused No.1, after alighting from the jeep, tried to flee away in the adjoining field. He and Shivaji Shinde (PW-8) chased the deceased accused No.1. They caught hold of him. When they tried to bring deceased accused No.1 towards the police vehicle, accused Nos. 2 to 7 charged upon them. The deceased accused No.3 and 7 were armed with grubbing hoes. Accused No.3 threatened to kill him. As PSI Jadale (PW-11) and his staff came there-at, accused Nos. 2 to 7 started pelting stones on the police party. Ashok Anna Kore (PW-7) claimed to have suffered injuries like the other police staff, namely, Shivaji Shinde (PW-8) and Baburao

Mane. It is pertinent to note that Ashok Anna Kore (PW-7) affirmed that PSI Jagdale (PW-11) also sustained injuries on account of stone pelting.

11 This version of Ashok Kore (PW-7) was sought to be corroborated by Shivaji Shinde (PW-8), Wireless Set Operator. He affirmed that accused No.3 and accused No.4 threatened the police party to free deceased accused No.1 lest they would assault them by means of grubbing hoes, with which they were armed. Shivaji Shide (PW-8) seeks to lend support to the version of Ashok Kore (PW-7) with regard to assault upon PSI Jagdale.

12 PSI Hanmant Jagdale (PW-11), in his turn, wants the Court to believe that he tried to reason with the accused, who were resisting the arrest of the deceased accused No.1. However, accused Nos.2 to 7 started pelting stones. When the deceased accused No.1 was being taken towards the police vehicle, Ranga, the deceased brother of the deceased accused No.1, caught hold of his shirt and the deceased accused No.3 Kalawati and accused No.4 Sushila twisted his left hand backwards resulting in dislocation of the shoulder. Jagdale (PW-11) further affirmed that when the deceased accused No.1 was being taken towards the Police jeep, accused No.3 Kalawati self-inflicted 2-3 blows of the 'grubbing hoes' on her forehead.

13 The manner in which the aforesaid prosecution witnesses fared in

the cross-examination, and how the learned Sessions Judge dealt with the material circumstances elicited in the cross-examination, the admissions and omissions are thereafter, required to be considered. At the threshold, it is imperative to note that no other witness except the police personnel were examined by the prosecution. In the backdrop of the aforesaid evidence, the veracity of the testimony of the aforesaid prosecution witnesses which constitutes the substratum of the prosecution case is required to be appreciated.

14 In the course of the cross-examination of Ashok Kore (PW-7) a material omission was elicited. Though Ashok Anna Kore (PW-7) affirmed that one Ranga caught hold of PSI Jagdale, by his throat, and deceased accused No.3 Kalawati and accused No.4-Sushila twisted the left hand of PSI Jagdale resulting in dislocation of his left shoulder yet it was brought out in his cross-examination that the FIR does not find mention of the said fact. This omission regarding the nature of the injury, i.e., dislocation of left shoulder and its cause, was duly proved.

15 The aforesaid omission cannot be said to be immaterial or inconsequential. It is of critical significance in the sense that Ashok Kore (PW-7) endeavored to impress upon the Court that Jagdale (PW-11) sustained injuries on account stone pelting, whereas Jagdale (PW-11)

conceded in unequivocal terms that he did not suffer any injury on account of stone pelting.

16 The learned Sessions Judge was of the view that this improvement was not of material significance. Though the learned Sessions Judge reckoned that there was a clear improvement in the version of Ashok Kore (PW-7), the said omission was stated to be justified on the ground that the informant had not known about the fact of Jagdale (PW-11) having suffered the said injury and, thus, instead of discrediting the testimony of Ashok Kore (PW-7), the said omission, was a guarantee of the truthfulness of claim of Ashok Kore (PW-7).

17 Whether this approach of the learned Sessions Judge is justifiable ? The manner of the occurrence and the time factor, provide a legitimate answer. It is the case of the prosecution that the occurrence lasted for not more than five minutes. There is material to indicate that deceased accused Nos.1 and 2 were apprehended at the spot, near the house of the accused No.1, and they were taken to the Kundal Police Station in the police jeep. Ashok Kore (PW-7) claimed to have driven the said jeep, wherein accused No.1 and 2 were taken to the police station. The alleged attack upon PSI Jagdale was before accused Nos.1 and 2 could be made to sit in the police

jeep and taken to the police station.

18 Shivaji Shinde (PW-8) conceded in the cross-examination that he was at the spot for about 10-15 minutes. After apprehending accused No.1, they all took accused Nos.1 and 2 to the police station together at about 11:30 a.m. This admission shows that the police party was present at the scene of occurrence for a sufficient period even after accused No.1 came to be apprehended. It would be contextually relevant to note that PSI Jagdale, (PW-11) attempted to impress upon the Court that as he was in pain, constable Raut brought an Auto Rickshaw and took him to Kundal Public Health Centre (Kundal PHC).

19 In the backdrop of aforesaid sequence of events and the time factor, the first informant could not have missed to state the material fact that accused Nos. 3 and 4 assaulted PSI Jagdale by twisting his hand backwards. It is not a case of mere omission. In contrast to this, Ashok Kore (PW-7) asserted in the FIR that PSI Jagdale also suffered injuries on account stone pelting. In this setting of the matter, an apparent contradiction on the core of the occurrence, could not have been lightly brushed aside by the learned Sessions Judge.

20 It is pertinent to note that this version that accused Nos.3 and 4 twisted the hand of PSI Jagdale (PW-11) did not come on record, till the supplementary statement of Ashok Kore (PW-7), and the statements of other witnesses were recorded on the next day. The evidence of Shivaji Shinde (PW-8), other injured witness, does not advance the prosecution's case in this context.

21 It was elicited in the cross-examination of Shivaji Shinde (PW-8), that his statement was not recorded on the day of occurrence, i.e., on 31st July 1992 and it was recorded on the next day, at noon time. Shivaji Shinde, (PW-8), as observed earlier, claimed to have reached Kundal Police Station along with accused Nos.1 and 2 at about 11:30 a.m.. It was further brought out in the cross-examination of Shivaji Shinde (PW-8) that he was at the Kundal Police Station on 31st July 1992 upto 5:00 p.m. Though Shivaji Shinde, (PW-8), an injured eye witness was available in the police station itself from 11:30 a.m. to 5:00 p.m., yet, his statement under Section 161 of Cr.P.C. was not recorded.

22 I am conscious that mere delay in recording statements of witnesses by itself is not fatal. What impairs the prosecution is unexplained delay and existence of concomitant circumstances that indicate that the IO was

marking his time to introduce witnesses and give shape to the prosecution case. The case at hand is impregnated with such concomitant circumstances. The FIR does not contain the grave allegation of assault upon PSI by accused Nos. 3 and 4; it contains a bald assertion that PSI Jagdale (PW-11) also suffered injuries in the stone pelting, which is of a general nature; the injured witnesses were all available in the police station; the first informant affirmed that the FIR was recorded after he reached the police station and the injured witnesses were allegedly sent for medical examination on the very same day at about 2:30 p.m. Yet, the statement of the injured witness Shivaji Shinde (PW-8) was not recorded though he was available in the police station itself. Thus, the testimony of Shri Shivaji Shinde (PW-8), loses corroborative significance.

23 The medical evidence in proof of the stated injury, i.e., anterior dislocation of left shoulder, allegedly suffered by PSI Jagdale (PW-11) is also fraught with infirmities.

24 Firstly, there is a serious infirmity as regards the time at which PSI Jagdale (PW-11) was sent to PHC Kundal and examined by Dr. Vilasrao Patil (PW-9). PSI Jagdale (PW-11) impressed upon the Court that he was sent to PHC Kundal and then the other police staff took the accused to

Kundal Police station in the jeep. PSI Jagdale (PW-11) affirmed that he was moved to PHC Kundal in an Auto Rickshaw and therefrom he was taken to Akshay Hospital Palus and Dr. Patil attached to Akshaya Hospital Palus carried him in his vehicle to Ushakal Hospital at Sangli wherein he was operated upon by Dr. Modak.

25 In this context, Dr. Ajit Modak (PW-13) informed the Court that on the day of occurrence, PSI Jagdale (PW-11) was brought to his hospital with the history of shoulder injury and he was treated for reduction of dislocation and discharged at about 8:15 p.m. A certificate (Exh.64) evidencing the said injury, i.e., anterior shoulder dislocation and close reduction treatment came to be proved in his evidence.

26 It is interesting to note that during the cross-examination, Jagdale (PW-11), expressed his inability to state the time at which he reached Kundal PHC. He had the audacity to state that neither he informed the medical officer about the occurrence in which he suffered the alleged dislocation nor the Medical Officer gave any treatment to him. PSI Jagdale (PW-11) asserted that he was at Kundal PHC for about 5 to 10 minutes. But no case-paper was prepared at Kundal PHC.

27 Had there been no evidence to the contrary, this claim of Jagdale (PW-11) could have been accepted on the premise that having suffered a serious injury, he thought it fit to approach a better equipped medical centre. But in the face of the testimony of Dr. Vilasrao Patil (PW-9), it is difficult to construe the evidence of Jagdale (PW-11), liberally.

28 Dr. Vilasrao Patil (PW-9) informed the Court that he examined PSI Jagdale (PW-11) and found anterior dislocation of left shoulder. He claimed to have issued Injury Certificate (Exh.51) which records the fact that PSI Jagdale was brought with a Police Yadi (Intimation) at about 2:30 p.m. The testimony of Dr. Vilasrao Patil (PW-9) of having examined Jagdale (PW-11) and found the aforesaid injury runs counter to the version of PSI Jagdale (PW-11).

29 The taint qua the medical evidence is not restricted to the examination of Jagdale (PW-11). There is a serious doubt about the precise time at which the injured witnesses were examined at PHC Kundal by Dr. Vilasrao Patil (PW-9). All the injury certificates (Exhs.47 to 50) reveal that the injured police personnel, including informant Ashok Kore (PW-7) and Shivaji Shinde (PW-8), were brought at PHC Kundal at about 2:30 p.m. and thereafter they were examined. The other two police personnel Mr.S.Y. Salunkhe and R.A. Omase were examined at 7:30 p.m. on 31st July

1992 (Exhs. 52 & 53).

30 The learned Sessions Judge discounted this factor also, despite there being a clear admission of Shivaji Shinde (PW-8) that he had gone to PHC Kundal at about 11:45 a.m. and was examined by the Medical Officer present thereat, on the spacious premise that Shivaji Shinde (PW-8) had deposed about the occurrence after about five years and those certificates were issued by Dr. Vilasrao Patil (PW-9) at a later point of time, i.e., 6th August 1992. The learned Sessions Judge brushed aside the said infirmity holding that it appeared to be a mistake on the part of the Medical Officer.

31 This approach of the learned Session Judge does not seem to be justifiable especially in the backdrop of the nature of the accusation and circumstances of the case. In ordinary course, such lapses, if they can be termed so, put the Court on guard. Here the distinctive character of the case, i.e. the allegations are of assault upon the police personnel and there is no independent witness who vouches for the same, ought to have persuaded the trial Court to evaluate the evidence with greater care and caution. The infirmities brought out in the prosecution case, in the said backdrop, could not have been played down by ascribing a reason that there was lapse on the part of the witnesses on account of passage of time.

32 What further accentuates the situation is the fact that even the testimony of Dr. Ajit Modak (PW-13) loses its corroborative significance. No contemporaneous record, in the form of medico-legal certificate, could be produced by Mr. Ajit Modak (PW-13). It was asserted that the relevant case-papers and registers could not be produced on account of shifting of the hospital. Shri Sonawane, IO (PW-14) did not claim that he collected the Certificate (Exh.64) from the hospital of Dr. Modak (PW-13). On the contrary, he feigned ignorance as to who brought the certificate issued by Dr. Modak (Exh.64), at the Police Station. He went on to admit that he did not feel it necessary to collect the medico-legal papers in respect of PSI Jagdale (PW-11), from the concerned doctor. Even if maximum latitude is given to the testimony of Dr. Ajit Modak (PW-13), the medical certificate (Exh.64) is of little assistance as it does not record even the history of the injury, which PSI Jagdale (PW-11) would not have missed to state.

33 The prosecution tried to surmount this impediment by pressing into service injury certificate (Exh.52) issued by Dr. Vilasrao Patil (PW-9), who claimed to have noticed 'dislocation of shoulder', upon clinical examination of Jagdale (PW-11). As observed earlier, the testimony of Jagdale (PW-11) dismantles this claim of Vilasrao Patil (PW-9), as Jagdale (PW-11) asserted that he did not inform the Medical Officer at Kundal PHC about the

occurrence. He was not at all treated at Kundal PHC, even no case-paper was prepared thereat. The aforesaid glaring infirmities erode the corroborative value of the medical evidence.

34 I have considered the medical evidence as regards the injury suffered by PSI Jagdale (PW-11) elaborately, for the reason that the proof of specific overt act attributed to deceased accused No.3 Kalawati and accused No.4-Sushila hinges upon the said evidence. Once the acts attributed to deceased accused Nos.3 and 4 get disproved, the accusation which then remains is of stone pelting, which is of a general nature.

35 The non-examination of independent witnesses in the facts of the instant case is of material significance. It is true that the testimony of an injured witness stands on a higher pedestal. The non-examination of an independent witness, where the testimony of the injured allures confidence is of little significance. However, when the injured witnesses happened to be the police personnel and the medical evidence is found to be of suspicious nature, the non-examination of independent witnesses cannot be said to be inconsequential, especially where the evidence shows that independent witnesses were available.

36 It is pertinent to note that the trigger for chasing accused No.1 by police party, was the fact that he was driving a jeep overloaded with passengers. It is the prosecution case that the jeep halted near the house of accused No.1. The prosecution witnesses do not claim that any of the passengers, who were then traveling in the said jeep, were apprehended by police party. Obviously, when the jeep came near the house of accused No.1, the passengers therein must have alighted. The opportunity for those persons to witness occurrence can hardly be gainsaid. To add to this, PSI Jagdale (PW-11) conceded in cross-examination that he did not notice the passengers in the jeep ran away after alighting from the said jeep. He further affirmed that he cannot state as to whether the accused were amongst those passengers.

37 Ashok Anna Kore (PW-7) was candid enough to concede that many persons had gathered at the scene of occurrence. This seems to be the natural consequence as there must have been a spectacle of the police vehicles chasing the jeep, driven by the deceased accused No.1, if the prosecution case is to be believed that the people were running helter skelter noticing speeding vehicles.

38 The learned Sessions Judge was of the view that the non-

examination of independent witnesses was not fatal to the prosecution as Shri Sonawane, IO (PW-14) affirmed that the witnesses were not ready to give statements as they feared accused No.1.

39 In the totality of the circumstances, this explanation is unworthy of credence. Looking to the nature of the occurrence, indicating indisputable presence of independent witnesses, in the form of passengers who boarded the jeep driven by deceased accused No.1 and the persons who gathered thereat as the occurrence took place barely 40 to 50 paces away from the road, such explanation could not have been accepted. It is more so for the reason that the victim, in this case, was the police party, who could have easily instilled confidence in those persons to come forward. It has not been shown that the deceased accused No.1 carried such a notorious reputation that none could come forward to depose.

40 Lastly, the submission on behalf of the appellants that the prosecution case could not have been believed in its entirety as the prosecution failed to explain the injuries on the person of accused No.3- Kalawati is required to be dealt with.

41 During the course of cross-examination of Dr. Vilasrao Patil (PW-9),

it was brought out that on the very day of occurrence, the deceased accused No.3 Kalawati was examined by him and the following injuries were found on her person :-

*“Nature of wounds :
is c & w on front of area of scalp on left side, antero-posterior, measuring about ½” x ¼”. Skindeep, Bleeding + c Tenderness.”*

42 The aforesaid circumstance of injury to deceased accused No.3 was pressed into service on behalf of the appellants in support of their defence that it was the police party which had assaulted the hapless accused and to pre-empt the action on the part of the accused, a false prosecution was initiated. It is trite that the mere failure to explain the injuries on the person of the accused, if the injuries are of superficial nature, can not be a ground to jettison away the prosecution case.

43 In this context, a reference can be made to the judgment of Supreme Court in the case of **Lakshmi Singh & Ors. Vs. State of Bihar**¹ wherein the postulates regarding failure of prosecution to explain the injuries sustained by the accused were enunciated. The relevant portion read as under :-

“12.....It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the

1 (1976) 4 Supreme Court Cases 394

genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

.....

We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.”

44 In the light of the aforesaid legal principles, it is pertinent to note that in the present case, in fact, an explanation was sought to be offered by Jagdale (PW-11) that when deceased accused No.1 was being taken towards the police jeep, deceased accused No.3 Kalawati had inflicted 3-4 blows of grubbing hoes, with which she was armed, upon her forehead and injured herself. The prosecution witnesses further alleged that the accused No.3-Kalawati and accused No.4-Sushila were armed with grubbing hoes

and they threatened the prosecution witnesses of causing injury by means of those grubbing hoes. At the same time, it was alleged that accused Nos. 3 and 4 caught hold of the left hand of PSI Jagdale (PW-11) and twisted it backward simultaneously.

45 It is pertinent to note that Hanmant Jagdale (PW-11) was confronted with the question as to whether he did not feel it necessary to snatch the grubbing hoe from the hands of deceased accused No.3-Kalawati. The learned Sessions Judge recorded the fact that after taking a lot of time, Jagdale (PW-11) stated that after his hand was dislocated, accused No.3 Kalawati hurt herself by striking grubbing hoe on her forehead.

46 It was brought out in the evidence of the prosecution witnesses that, at the time of occurrence, the deceased accused No.3 was 70 years old. Considering the sequence of events, multiple roles attributed to a 70 year old lady, in the face of a police party, belies the claim of Jagdale (PW-11) that accused No.3 hurt herself by means of grubbing hoe. The question that warrants an answer is how the deceased accused No.3 caught hold of PSI Jagdale and twisted his left hand when she was armed with grubbing hoe?

47 It is not the case that the defence pressed the ground of the injuries on the person of the accused for the first time at the trial. It was brought out in the cross-examination of IO that at the stage of the first remand

itself, accused had made grievance of ill-treatment at the hands of the Police. The Remand Report (Exh.68) and the order of the learned Judicial Magistrate F.C. Tasgaon (Exh.69) were duly proved in evidence. The learned Magistrate had *prima-facie* found substance in the complaint of deceased accused No.3 Kalawati and ordered that she be medically examined to ascertain the truthfulness of the complaint. In the face of such material, in my view, the learned Sessions Judge could not have accepted the explanation offered by the prosecution regarding the injuries found on the person of accused No.3 Kalawati.

48 The evidence does not inspire confidence even on the touchstone of broad probabilities of the case. The prosecution witnesses do not claim that accused were amongst the passengers, who were on board the jeep. The occurrence in question was, in a sense, sudden and lasted for few minutes. Even if it is believed that all the accused rushed towards the police vehicles, to which the deceased accused No.1 was being taken, they must have taken moments to realize as to what transpired. Undoubtedly, common object can be developed at the spur of the moment. However, in the facts of the case, the evidence led by the prosecution does not support such an inference.

49 The upshot of aforesaid discussion is that the prosecution case

blisters with improvements and embellishments on the core of the occurrence. Secondly, there is a serious doubt about the credibility of the medical evidence to support the claim that the accused Nos.3 and 4, (against whom specific overt acts were attributed) had caused injury to PSI Jagdale (PW-11) by twisting his hand backwards. Thirdly, the broad probabilities of the case render the prosecution version unworthy of credence. Fourthly, the explanation regarding the injuries suffered by accused No.3-Kalawati does not appeal to reason. Fifthly, the non-examination of independent witnesses, in the backdrop of inconsistencies in the prosecution case which rests upon the testimony of police personnel only, dents the prosecution case further.

50 To sum up, inconsistencies, improbabilities and infirmities abound. In such situation, it is extremely unsafe to place implicit reliance on the testimony of police personnel, in particular, and prosecution version, in general. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of **Ram Ashrit Ram Vs. State of Bihar** ², wherein the course to be adopted in such cases was indicated in the following words :-

“18. There are many other infirmities and contradictions in the evidence of the prosecution witnesses. It is not necessary to burden this judgment by dealing with all of them. Suffice it to say that in the absence of corroboration to a material extent in

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all material particulars, it was extremely hazardous to convict the appellants on the basis of the testimony of these highly interested, inimical and partisan witnesses, particularly when it bristles with improbable versions and material infirmities.”

51 For the foregoing reasons, the learned Sessions Judge could not have simply brushed aside the serious infirmities in the prosecution case and ought to have given the benefit of doubt, which arose from the aforesaid infirmities naturally, to the accused. Hence I am persuaded to hold that the impugned order of conviction and sentence is required to be interfered with and, consequently, set aside.

52 Resultantly, the appeal succeeds and deserves to be allowed. Hence the following order :-

: O R D E R :

- (i) The appeal stands allowed.
- (ii) The impugned judgment and order stands set aside.
- (iii) The accused Nos. 4 to 7 stand acquitted of the offences punishable under Sections 147, 332, 337, 338 and 353 read with 149 of IPC.
- (iv) Their bail bonds stand cancelled and sureties stand discharged.
- (v) The amount of fine, if paid by the accused, be refunded.

[N.J. JAMADAR, J.]