

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 724 OF 1996

The State of Maharashtra] Appellant

Versus

1.	Saturam Ramchandra Vichare	]
		]
2.	Ankush Saturam Vichare	]
		]
3.	Vilas Saturam Vichare	]
		]
4.	Ramkrishna Shivram Vichare	]
		]
	All Residence of Karambeli	]
	Tq. Khalapur, Dist. Raigad.	]....Respondents

Mr. V B Konde Deshmukh APP for the Appellant – State.
Mr. S G Surana for the Respondents.

**CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.
DATE : 05th NOVEMBER 2019**

JUDGMENT (PER S. S. SHINDE, J.) :-

1 The Appellant-State preferred this appeal against the judgment and order passed by the learned Judicial Magistrate First Class, in Criminal Case No. 117 of 1992 on 22.07.1996 thereby acquitting the Respondents - accused under Sections 326, 504, 506 read with Section 34 of Indian Penal Code (for short “IPC”).

2 Brief facts leading for filing the present appeal can be summarized

as under:-

It is the case of the prosecution that, the complainant i.e. the First Informant - Devidas Parshuram Mahadik was residing with his family members at village Chowk, Taluka- Khalapur. One Laxman Katkari was serving on the field of First Informant. By obtaining advance amount he left, and started working with Accused No.1 Saturam Ramchandra Vichare. The First Informant has no talking terms with accused Saturam Ramchandra Vichare and his family members. On 5.10.1992 at about 7.00 to 7.30 p.m. when Laxman Katkari was proceeding from the house of the First Informant, at that time the First Informant stopped him and demanded amount advanced by him. However, Laxman Katkari went to the house of accused Saturam Ramchandra Vichare. Thereafter, accused Saturam Ramchandra Vichare came with sword and assaulted on the head of the First Informant Devidas by it. The First Informant raised shouts for help. Thereon, the brothers of First Informant namely Dilip and Sharad came in the court-yard. Sons of accused Saturam namely Ankush and Vilas and nephew Ramkrishnan came on the spot with sticks and iron bars. They started assaulting the First Informant and his brothers by sticks and iron bars. Accused also abused and threatened the First Informant. Thereon, the First Informant along-with his brothers went to police station Khalapur and lodged First Information Report (FIR). On the strength of his FIR, offence was registered against the accused. First Informant and injured were referred for medical examination and treatment. Offence was investigated by Head

Constable Krishna Pandurang Bhagat. He prepared spot panchnama and recorded statements of witnesses. On the third day, the accused were arrested. Accused Saturam produced weapons used while committing the offence. It was seized by an Investigating Officer by preparing panchnama. After completing the investigation, charge sheet was filed against the accused. The learned JMFC framed charge against the accused for committing offence punishable under Section 326, 504, 506 read with 34 of IPC.

3 Thereafter the charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. To bring home the guilt of the accused, during the trial the prosecution has examined in all ten witnesses in support of its case. The Trial Court has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Magistrate, after considering the evidence on record, came to a conclusion that there are material discrepancies and contradictions in the evidence of First Informant, and the evidence of PW No.4, PW No.6 and PW No.7. The learned Magistrate has also recorded a finding that there appears to be material omission and discrepancies in the evidence of the First Informant and the FIR lodged by him. The learned Magistrate held that the prosecution has failed to bring home the guilt of the accused. As stated herein above, the learned Magistrate, by the impugned judgment and order, acquitted the Respondents – accused for the offences

under Sections 326, 504, 506 read with Section 34 of the IPC. Hence this Criminal Appeal filed by the State against the said order of acquittal.

4 We have heard the learned APP for the Appellant – State and learned counsel for the Respondents – accused. With their able assistance perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the documents produced on record, and the reasons recorded by the learned Magistrate in the impugned judgment.

5 It is submitted by the learned APP that the learned Magistrate has erred in acquitting the accused and not taking into consideration the material on record, and in discarding the evidence led on behalf of the prosecution. He submits that the learned Magistrate has not applied his mind in appreciating the oral as well as documentary evidence on record. It is also submitted that the learned Magistrate has erred in holding that there are material discrepancies and contradictions in the evidence of First Informant and evidence of PW 4, PW.6 and PW 7. He also submits that the learned Magistrate has wrongly recorded a finding that there appears to be material omissions and discrepancies in the evidence of the First Informant and the FIR lodged by him. The learned APP submits that there is nothing on record to discard the evidence of PW 8 on spot panchanama. It is further submitted that, the learned Magistrate has erred in stating that, the prosecution has failed to prove the

memorandum panchnama. It is also submitted that, the learned Magistrate has erred in holding that, the evidence of medical office is not corroborating with the evidence of prosecution witnesses. The learned Magistrate has also erred in discarding the evidence of the witnesses on the ground that they are interested witnesses and there are much discrepancies in their statements. The learned Magistrate has erred in stating that, the evidence led by the prosecution is not just and sufficient to prove the guilt of the accused. The learned APP therefore submits that, the impugned judgment and order passed by the learned JMFC, Khalapur on 22.07.1996 in Criminal Case No. 117 of 1992 is erroneous and is liable to be quashed and set aside.

6 The learned counsel for the Respondents – Accused submits that the prosecution has failed to bring home the guilt of the accused. It is also submitted that there are material contradictions and omissions in the testimony of the First Informant and the prosecution witnesses. The learned counsel for the Respondents – Accused submits that the learned Magistrate after considering the evidence and material on record has rightly acquitted the accused. The impugned order passed by the learned Magistrate is well reasoned order and needs no interference at the hands of this Court. He therefore submits that the Appeal filed by the State may be dismissed.

7 We have also gone through the entire record and proceedings of

the Trial Court. At this juncture, it is necessary to discuss the evidence on record so as to see, whether the prosecution would be able to prove its case against the accused, or there are discrepancies or contradictions in the evidence of the prosecution witnesses. In support of its case, the prosecution has examined in all ten witnesses. The prosecution has examined First Informant Devidas as PW No.1. He has stated that accused No.1 gave blow of sword on his head. The First Informant raised shouts therefore his brother Sharad came there. The accused also gave blows of iron bars and wooden sticks to Sharad. PW 1 also stated that all 4 accused gave the said blows. Sharad was given blows on his back. Thereafter accused fled away to their house. PW 1 stated that his statement was recorded in the police station and thereafter they were sent to government hospital for treatment. In the cross examination the First Informant (PW 1) has stated that they were beaten only because of servant and the said servant was in the courtyard at that time. He stated that only one blow was given on his head. He received injuries on the head due to said blow. Thereafter he fell down and became unconscious. He has admitted in his cross examination that when the blow was given on his head, other three accused were not present. He also stated in his cross examination that accused No.2 gave blow of iron bar on his back due to which a small injury was received to him. PW No.1 has further stated in his cross examination that Accused No.1 had given a blow of sickle on his head due to which he became unconscious. During the course of cross examination this

witness has shown the weapon. He stated that it is a sword and not sickle. The First Informant PW 1 also stated that the blow was given from the front side of the said sword.

8 The prosecution has examined Ramdas Palande as PW No.2. However, he turned hostile. He stated that on 06/10/92 his signature was obtained on the panchanama and he does not know the contents of the panchanama.

9 PW No.3 Vishnu Ramchandra Patil states that he does not know about the panchanama. This witness also turned hostile.

10 PW No.4 Sharad Mahadik stated that accused No.1 gave blow of sword on the head of the First Informant. Rest of the three accused caught hold of him. He stated that he was thrown on the ground and was beaten with iron bar and wooden stick. Thereafter accused no.1 caught his private part. Thereafter he was rescued by Santosh. In his cross examination PW 4 has stated that Laxman was not present at the time of incident, he had gone away. He also stated that when blow of sword was given by accused No.1, remaining accused were also there. PW No.3 also stated in his cross examination that he was given blows of iron bar and wooden sticks on his back by remaining three accused, and accused No.1 caught hold of his private part.

11 The next prosecution witness is Manda Dilip Mahadik (PW 5) who has stated that the said servant went to the house of accused and thereafter accused No.1 came to their courtyard and he gave blow of sword on the head of PW 1. She further stated that her brother in law Sharad also rushed out of the house. At that time accused No.4 came there and accused No.2 also came with him, thereafter accused No.3 came there. She also stated that the accused were armed with iron bar and wooden stick and they assaulted Sharad and Dilip. She states that one Santosh Mahadik rescued them from the accused. However, in her cross examination she admitted that when the incident took place they were inside the house only, and when she came out of the house many people were standing there. She further stated that she cannot assign any reason as to why it is not mentioned in her statement that Santosh Mahadik rescued them from accused.

12 The prosecution has also examined sister in law of the First Informant as PW 6. In her cross examination, PW No. 6 Sharda Sharad Mahadik states that the blow was received on the middle of the head, blood was oozing only from the head. She further states that she heard the talks between the accused and Devidas. Accused No.1 asked Devidas as to why he is demanding money from his Katkari and immediately he took out a sword. She states that accused no.2 was armed with iron bar and wooden Stick. Accused

No.3 was also armed with iron bar and wooden stick. Accused No.4 was also armed with iron bar and wooden stick. She states that the said beating continued for 10-15 minutes and the blows were given on entire body of my husband and brother in law. In her cross examination, PW 6 admitted that at the time of incident she was preparing the food and at that time Manda (PW 5) also was in the house. She further stated in her cross examination that her husband Sharad and her brother in law also were in the house. This witness denied the suggestion given by the defence that she came out of the house after the incident was over. She stated that all members of the house came out, and at that time Devidas was lying on the ground. The blow as received on the middle of the head and blood was oozing only from the head. She further stated that the said beating continued for 10-15 minutes and the blows were given on entire body of her husband and brother in law. She also admitted that there are houses of many persons near the spot of the incident and all those people were watching the incident.

13 The next witness examined by the prosecution is PW 7 Dilip Parshuram Mahadik, who is brother of First Informant Devidas. PW 7 stated that at that time accused No.4 gave blow of sword on the head of Devidas, so he fell down. He started shouting. He stated that Accused No.3 was armed with iron bar, accused No.2 was armed with wooden stick and accused No.4 was armed with wooden stick. He stated that he received injury on the right

side hand. In his cross examination PW No.7 stated that Laxman Katkari also was not there. Blow was given to him on his right thumb. He admitted that he did not receive the injury anywhere-else.

14 The prosecution has examined panch Shankar Balaji Palande (pw 8) to prove spot panchanama. He stated that on 06/10/92 he was called as pancha on the spot. He went to the house of Sharad Mahadik (PW 4). In his cross examination, this witness (PW 8) stated that, he was also present at the time of incident, he has seen the incident, and as the police did not ask him, he did not tell anything to the police. He stated that the panchanama was made on the next day of the incident.

15 To prove the injuries on the person of First Informant Devidas, and injured Sharad Mahadik and Dilip Mahadik, the prosecution has examined Medical officer – Ramesh Vishnu Ghunavat as PW-9. The medical officer in his evidence has stated that he has examined the First Informant. The Doctor found the following injuries on the person of Devidas :-

1. CLW of size 5x1 inches – deep over occiputoparietal part of skull
2. History of pain in left shoulder, with no swelling.

The following injuries were found on the person of Sharad Mahadik during his

examination :-

1. History of pain in frontal part of head. No swelling.
2. History of pain in right first finger of right hand with slight swelling

The Doctor also examined Dilip Mahadik and found the following injuries :-

1. History of pain in right side of scrotum, no any swelling
2. History of pain in left side of scapular region with no any swelling.

The Doctor has stated that the first injury on the person of all three patients is grievous and second injury is simple. In the cross examination the Medical Officer (PW 9) has stated that the history of pain to all three patients was asked by him after examining them. He admitted that unless and until patients explain it cannot be known about the history of pain. He stated that Injury No.1 mentioned at Exhibit 22 can be termed as fatal injury, and if the said injury is to be caused then the object with which it is caused has to be used with force. He further stated that Injury No.1 at Exhibit 23 is not possible if a person falls on a ground. In his cross examination the Medical Officer stated that he did not find any hematoma. He stated that one of the Mahadik is employed as a driver at P H C Chowk.

16 Thereafter Prosecution has examined IO – Krishna Pandurang Bhagat as PW 10. He stated that he investigated the matter, and during the course of investigation he prepared spot panchanama, memorandum panchanama and seizure panchanama in the presence of panchas. He recorded statements of First Informant and witnesses. After completing investigation he filed charge sheet against the accused. He stated that he arrested the accused on 08/10/92. During the course of cross examination he stated that the accused had also filed complaint against First Informant and other injured at P.S. He forwarded the accused persons for medical examination. As accused persons sustained simple injuries, N.C Offence u/section 323 of IPC was registered. He stated that as the offence committed by First Informant and injured was of non cognizable, he had not arrested First Informant and injured. The IO has also stated that First Informant also stated him that so many persons who are residing surrounding to the spot had witnessed the incident. PW 10 stated that he recorded the statement of Laxman Ratan Katkari. In his cross examination the IO has admitted that he has not recorded the statement of any independent witness. The IO has stated that Manda Dilip Mahadik had not stated before him that Santosh Mahadik rescued her from the accused.

17 On careful perusal of the evidence of the prosecution witnesses, it

appears that there are material discrepancies and omissions in the said evidence. At this juncture, it is necessary to scrutinize the said material discrepancies and omissions. In so far as evidence of First Informant Devidas is concerned, there is variance in his testimony and the FIR lodged by him. It is alleged in the FIR that first accused no.1 came with sword and gave a blow of it on his head. It is also alleged that sons of accused No.1 Saturam namely Ankush was armed with stick, Vilas was armed with iron bar and nephew of accused No.1 namely Ramkrishna was armed with stick. In his cross examination First Informant Devidas has stated that accused No.2 Ankush has given blow of iron bar on his back. In the statement before police he stated that accused No.2 was armed with stick, however, in his deposition he stated that accused No.2 has given blow of iron bar on his back. On this aspect there is a variance in the testimony of First Informant and PW 7 Dilip. The First Informant in his cross examination stated that accused No.2 gave blow of iron bar on his back, while PW No. 7 in his evidence stated that accused No.2 was armed with wooden stick. So far as aspect of blow of iron bar on back of the First Informant due to which a small injury was received to him is concerned, the evidence of the medical officer as well as the medical certificate is silent. This is a material discrepancy in the statement of First Informant and his deposition. However, in his deposition, First Informant did not depose as to when rest of three accused came at the spot. In the cross examination, the First Informant admitted that when the blow was given on his head, other three

accused were not present, whereas PW No.4 Sharad, who is a injured, stated in his cross examination that when blow of sword was given by Accused No.1, remaining accused were also there. Therefore on the aspect of presence of other accused at the time of giving blow of sword on the head of First Informant, there is a discrepancy in the evidence of First Informant and injured PW No.4. In the FIR, the First Informant alleged that the accused also abused and threatened the First Informant and other prosecution witnesses, however, the said fact has not been deposed by him in his evidence. Further the First Informant in his FIR alleged that accused No.1 Sataram caught hold of the private part of prosecution witness Sharad and because of that there was swelling on the private part of Sharad. The said fact has also not been deposed by the First Informant in his deposition. It is required to be noted at this stage that though prosecution witness Sharad in his statement before police stated that his private part was caught hold of by accused No.1 and because of that there was swelling on his private part, he only deposed in his evidence that accused No.1 caught his private part, but he did not state anything about swelling on private part. Even the medical certificate of prosecution witness Sharad issued by Medical Officer does not disclose any injury or swelling to the private part of Sharad. It needs to be mentioned here that, if PW 4 Sharad stated in his cross examination that he showed all the places where he had received injuries to doctor, why did he not complain about the paining or swelling of his private part to the doctor. It is important to mention at this

stage that, Injury No.1 mentioned in the Medical Certificate of another prosecution witness Dilip shows that there is a pain in scrotum of the said witness Dilip. However this witness Dilip stated in his statement before police about holding of private part of Sharad by accused No.1. But witness Dilip did not say that there is a pain in the scrotum of witness Dilip.

18 It appears that the Investigating Officer recorded the statement of Laxman katkari, an alleged independent witness, who according to the prosecution was present on the spot of incident. For the reasons best known to the prosecution, why Laxman Katkari has not been examined as an independent prosecution witness. So far as presence of Laxman Katkari at the time of incident is concerned, there are material discrepancies in the testimony of First Informant (PW 1), testimony of Sharad (PW 2) and Dilip (PW 7). In the cross examination, First Informant stated that the said servant (i.e. Laxman) was in the courtyard at that time. However, PW 2 Sharad and PW Dilip in their cross examination stated that Laxman was not present at the time of incident. On the backdrop of contradictory statements of the prosecution witnesses, the prosecution ought to have examined said Laxman Katkari as an independent witness to support its case.

19 In so far as the weapon used in the alleged incident is concerned, the First Informant at one place in his cross examination stated that accused

No.1 had given a blow of sickle, though as per prosecution story the weapon used was a sword. The defence has considerably shaken the testimony of PW 5 Manda. In her cross examination she admitted that she came to know about the incident afterwards as when the incident took place she was inside the house only. Even this witness PW 5 in her deposition has stated that one Santosh Mahadik rescued the First Informant and injured from the accused, however, she cannot assign any reason as to why the said fact has not been mentioned by the police in her statement. Even the Investigating Officer in his evidence has stated that Manda Dilip Mahadik had not stated before him that Santosh Mahadik rescued her from the accused. Therefore the evidence of PW 5 is a hearsay evidence and does not carry much weightage. So far as fact of rescue of First Informant and other injured persons from the accused by Santosh Mahadik is concerned, there is material discrepancy in the deposition of First Informant and the rest of the witnesses. The fact that Santosh Mahadik rescued them from the accused is neither mentioned in the FIR nor did First Informant depose it in his evidence. However the other witnesses stated in their evidence that Santosh rescued the First Informant and other injured persons from the accused. The evidence of PW No.7 Dilip Mahadik is altogether contradictory to the evidence of rest of witnesses. According to the First Informant and PW No.4 Sharad, Accused No.1 gave a blow of sword on the head of First Informant, while according to this witness Dilip, accused No.4 gave a blow of sword on the head of First Informant. This is important

discrepancy in the evidence of First Informant, PW No.4 and PW No.7. There is also one more discrepancy in the evidence of PW No.4 Sharad and evidence of Medical Officer. PW No.4 has stated that 10-15 blows were given on his back and hand and he showed all the places where had received injuries to doctor. He also stated that there are marks on his body. However, the evidence of Medical Officer (PW 9) does not support the said version of PW No.4 Sharad. As per Medical Officer, PW 4 Sharad received only two injuries i.e. pain in frontal part of head and no swelling. It means this injury is not visible injury. The another injury mentioned by the doctor in the certificate is the pain in the first finger of right hand with slight swelling. The Medical officer has notice only one visible injury on the person of PW 5 Sharad. As indicated herein above, the Doctor did not mention about the injury or pain to the private part of PW No.5 Sharad. There is material discrepancy in the evidence of PW No.7 Dilip and the evidence of Medical officer. According to PW 7 Dilip, a blow was given to him on his right thumb, and he has not received injury anywhere-else. Perusal of the medical certificate and the evidence of Medical Officer shows that doctor did not notice any visible injury on the person of PW 7 Dilip. However, the medical officer mentioned in the medical certificate that there is pain in the right side of scrotum of PW No.7. The evidence of medical officer is therefore not corroborating with the evidence of PW No.4 and the evidence of PW No.7.

20 What emerges from the aforesaid discussion is that the evidence of the First Informant and other prosecution witnesses is suffering from material omissions, discrepancies and contradictions. The evidence of the First Informant is not consistent with the contents of the first information report on material aspects. The evidence of other prosecution witnesses is not reliable as there are material inconsistencies and contradictions in their evidence. Even the evidence of the Medical Officer does not lend support to the evidence of alleged eye witnesses whose evidence is full of contradictions and improvements. It is an admitted fact that the alleged eye witnesses examined by the prosecution are closely related i.e. the family members. It is required to be mentioned at this stage that, though the prosecution witnesses admitted in their cross examination some neighbours had witnessed the incident, the Investigating Officer did not bother to record the statement of such an independent witness for the reasons best known to him. Even two panch witnesses have turned hostile.

21 As has been rightly observed by the learned Magistrate, the evidence led by the prosecution is not cogent, reliable and sufficient to accept the prosecution case that the accused in furtherance of their common intention voluntarily caused grievance hurt to the First Informant Devidas and assaulted to other prosecution witnesses Sharad and Dilip by means of wooden sticks and iron bars. The learned Magistrate has observed that, there is no evidence

on record to show that at the relevant time accused intentionally insulted and thereby gave provocation to First Informant and other prosecution witnesses and committed criminal intimidation by threatening the First Informant and others.

22 Thus, based on the evidence on record, the prosecution has failed to prove beyond reasonable doubt that the accused had a common intention of causing grievous hurt to the First Informant, and hurt to other prosecution witnesses Sharad and Dilip. From the aforesaid evidence it is apparent that there is nothing on record to show that the accused has intentionally insulted the First Informant and others and gave provocation to them and committed criminal intimidation by threatening them. Therefore there is not sufficient material/evidence on record to show that, accused person can be held guilty of offence under Section 326 of IPC. Thus, considering the evidence on record in its entirety, the prosecution has failed to prove beyond reasonable doubt that accused persons had committed an offence punishable under Section 326 of IPC. In that view of the matter, we have no hesitation in concluding that prosecution has not proved the case against the accused beyond shadow of doubt.

23 Considering the evidence led by the prosecution and the material produced on record, we are of the opinion that the view taken by the learned

Magistrate is a plausible view . The judgment and order passed by the learned Magistrate is proper and legal. There is no perversity in the impugned judgment and order. At this juncture it is important to note that, even though a second view is possible, that cannot be a ground to interfere with the impugned judgment and order of acquittal.

24 There is no merit in the Criminal Appeal. The Criminal Appeal is accordingly dismissed. Bail bonds, if any, stands cancelled.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)