

Trupti
Bhamne

Digitally signed
by Trupti
Bhamne
Date: 2020.10.26
18:41:05 +0530

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

CRIMINAL APPEAL NO. 843 OF 2000

State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

1. Devendra Jeevan Pawar, Age : 35 years.
2. Narayan Jeevan Pawar, Age: 36 years.
3. Laxman Jeevan Pawar, Age : 32 years
4. Mohan Dattatray Pawar, Age: 60 years
5. Jaywant Mohan Pawar, Age: 38 years
6. Sou. Sindhu Laxman Pawar, Age: 60 years
7. Sou. Draupadi Jeevan Pawar, Age: 60 years
8. Sou. Sulan Narayan Pawar, Age: 35 years
9. Sou. Indumati Devendra Pawar, Age : 28 years
10. Sayawati Jaywant Pawar, Age : 35 years.

All R/o. Irle, Tal. Barshi, Dist. Solapur

...Respondents
(Orig. Accused 1 to 10)

.....
Mr.H.J.Dedhia, APP for the Appellant -State.
None for the Respondents.

.....

**CORAM : PRASANNA.B.VARALE &
V.G. BISHT, JJ.**

DATE : 25TH SEPTEMBER, 2020

JUDGMENT (PER: V.G.BISHT, J.)

1. This appeal is filed by the State challenging the judgment of acquittal dated 10th April, 2000 passed in Sessions Case No. 62 of 1999 by learned Additional Sessions Judge, Solapur for the offences punishable under Sections 147, 148, 149 and 307 of the Indian Penal Code, 1860 (for

short “the IPC”) and under Section 37 (1) of the Bombay Police Act (for short “the said Act”).

2. The factual matrix of the case is that, on 12th December, 1998 at about 3.00 p.m. as the bullock cart of sugarcane belonging to Devendra Jeevan Pawar (A-1) was passing through the house of Maruti Dure (PW-8), the wife of said Maruti Dure, namely, Rupabai (PW-5) objected and asked not to take bullock cart from there space. As a result of which, an exchange of words and abuses took place between the women.

3. The prosecution then contends that on 13th December, 1998 while Maruti Dure (PW-8) was proceeding towards village Irle, accused Narayan Jeevan Pawar (A-2), Devendra Jeevan Pawar (A-1), and Laxman Jeevan Pawar (A-3), keeping in mind the incident of 12th December, 1998, started assaulting him by means of sickle used in the cutting of sugarcane crops. Because of the commotion, informant, Rajaram Waman Pawar (PW-1), Vijay Maruti Dure (PW-3), Prabhawati Rajaram Pawar (PW-7), Kalawati Waman Pawar and Rupabai Maruti Dure (PW-5) went there. However, A-1, A-2, A-3, Mohan Dattatray Pawar (A-4), Jaywant Mohan Pawar (A-5), Sulan Narayan Pawar (A-8), Indumati Devendra Pawar (A-9), Sindhu Laxman Pawar (A-6), Sajavati Jayvant Pawar (A-10) and Draupadi Jeevan Pawar (A-7) abused and assaulted them.

4. The prosecution then alleges that the informant was assaulted by A-1, A-2 and A-3 on his left hand and head by means of sickle and all the women accused hit the stones on his back. Similarly, Maruti Dure (PW-8) was also assaulted by means of sickle by A-1, A-2 and A-3 on his head and rest of the women accused by means of stone. As a result of which, he sustained injuries on right arm and back. When the son and wife of Maruti Dure, namely, Vijay (PW-3) and Rupabai (PW-5) went to the rescue of Maruti Dure (PW-8), they were also assaulted by all the above said accused by means of sickle and stone.

5. The prosecution further alleges that the informant's mother Kalawati and wife Prabhavati (PW-7) were also assaulted by all the accused by means of sickle and stone leading to injuries on the left hand and on back of his wife and injuries on the head and the left hand fingers of his mother. When Narayan Dure (PW-6) and Narayan Maruti Phadtare (PW-11) came to their rescue, they were also assaulted by the accused by means of sticks. Narayan Phadtare sustained injury on his head while Narayan Dure on his right hand.

6. The informant, accordingly, lodged the First Information Report (for short "the FIR") vide Crime No. 107 of 1998 with Vairag Police Station, Solapur for the offences punishable under Sections 147, 148, 149, 323, 324, 504 and 307 of the IPC, under Section 135 of the said Act and under

Section 25 (1) of the Arms Act. The investigation was firstly taken up by PW-13 Mohan Vitthalrao Kulkarni, who during the course of investigation, prepared spot panchnama, seized sticks and stones from the place of incident and sent it to the Forensic Science Laboratory. He also recorded the statements of the injured witnesses, namely, Rajaram, Narayan Ambrushi Dure, Narayan Maruti Phadtare, Kalawati Waman Pawar and Prabhawati Pawar. He also seized blood stained clothes of A-1 to A-5 and thereafter handed over the investigation to PW-14 Ajay Nanasaheb Jadhavrao.

7. It appears that PW-14 recorded the supplementary statements of prosecution witnesses, seized sickles under Section 27 of the Evidence Act pursuant to the statement given by A-1, collected the medical certificates of prosecution witnesses and after completion of investigation forwarded the chargesheet against the accused.

8. To substantiate the charges against the respondents-accused, the prosecution has examined as many as 14 witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of the Code of Criminal Procedure, 1973 (for short “the Cr.PC”) about the incriminating evidence and circumstances and they denied all of them as false. All the respondents-accused stated that the prosecution witnesses have deposed against them because in Gram Panchayat election

dated 25th October, 1997 they had voted against Prabhawati Rajaram Pawar i.e., daughter of Maruti Dure (PW-8).

9. By way of additional written statement given under Section 313 of the Cr.PC, accused submitted that on 25th October, 1997, Prabhawati Rajaram Pawar (PW-7) i.e., daughter of injured, namely, Maruti Birmal Dure had contested Gram Panchayat election as a candidate and against whom they canvassed and voted. This enraged the informant and others. On 13th December, 1998, A-1 had gone to fetch water from a small tank situate near the house of Maruti Dure(PW-8). Maruti Dure and his other relatives, namely, Rajaram Pawar, Vijay Dure, Narayan Phadtare, Bhavati Pawar, Rupabai Dure, Chandrakala Phadtare and Surekha Dure came together. When Devendra (A-1) reached near his house, other people gathered at that time. Rajaram Pawar (PW-1) was armed with an iron pipe while Vijay Dure (PW-3) was armed with a sword. Vijay Dure (PW-3) assaulted Devendra (A-1), Laxman (A-2) and Narayan (A-3) and injured by means of sword. At that time because of shovings Maruti Dure and others sustained injuries. As in the said election they did not vote in favour of Prabhawati, they all got annoyed and assaulted Devendra, Laxman and Narayan and filed a false case against them.

10. The learned trial Court, after hearing the prosecution and also defence counsel, has acquitted the accused of the charges leveled against them. Hence, this appeal.

11. Mr.Dedhia, learned APP for the appellant –State, has strongly taken exception to the impugned judgment of acquittal by submitting that the learned trial Court wrongly disbelieved the injured witnesses whose testimonies have been consistent throughout. Apart from it, the medical evidence duly proves the injuries sustained by prosecution witnesses including informant. Thus, despite there being overwhelming evidence, the learned trial Court committed illegality in rejecting the prosecution case. Therefore, the appeal deserves to be allowed, argued learned APP.

12. When the matter is called out, none appears for the respondents.

13. We have carefully gone through the record with the able assistance of learned APP. At the very outset, the notable feature of the prosecution case is that whatever the so called material witnesses examined by prosecution are the witnesses who allegedly suffered injuries at the hands of respondents –accused. It further appears to us that arising out of the same incident, a cross complaint by the accused also came to be filed against the prosecution witnesses and on that count, there is no dispute from the side of prosecution. It is also not disputed that the relations between the prosecution witnesses and that of accused are not cordial and both of them are on cross-terms.

14. Keeping all these factual aspects in mind, we would like to tread cautiously through the prosecution evidence.

15. PW-1 Rajaram Waman Pawar, informant, states in his evidence (Exh. 34) that he knows all the accused. There is a distance of 50 feet in between his house and the house of accused. A-1, A-2, A-3 and A-5 are his cousins. A-4 is his real uncle. Rest of the accused are also related through brotherhood.

16. PW-1 then states that he knows about the incident dated 13th December, 1998 and 12th December, 1998. There was a quarrel in respect of carrying bullock cart loaded with sugarcane on the road between land of Maruti Dure (PW-8) and Devendra Pawar (A-1). According to him, the prosecution witness Rupabai (PW-5) told not to carry the bullock cart from the road side which is in front of her house. According to this witness, it is Gram Panchayat road. PW-5 told the accused not to carry the bullock cart from the premises belonging to her ownership which is abutting the road. This led to a quarrel in between ladies, namely, Dhrupadabai Pawar (A-7) and others on one hand and Rupabai (PW-5) and others on other. Prior to the alleged incident dated 12th and 13th December 1998, there were other criminal cases pending in between both the parties but they were amicably settled.

17. It is his further evidence that on 13th December, 1998 at about 6.15 a.m. he heard hue and cry of Maruti Dure (PW-8). At that time, this witness was in his house. He immediately rushed towards the house of

Devendra Pawar (A-1). He, his wife Prabhawati (PW-7) and mother Kalawati were with him. Vijay Maruti Dure (PW-3) was also with him. Rupabai Maruti Dure (PW-5) also accompanied them. They were also accompanied by other prosecution witnesses, namely, Narayan Dure (PW-6) and Narayan Maruti Phadtare (PW-11).

18. Deposing further, according to him, when they reached there, they found A-1, A-2 and A-3 were armed with sickles used for cutting the sugarcane crop. They also witnessed that they were causing blows of sickle on the head of Maruti Dure (PW-8). A-4 and A-5 were causing blows of sticks which were in their possession on the person of Maruti Dure. Rest of the accused persons from serial Nos. 6 to 10 i.e., women accused, were pelting stones on the person of Maruti Dure (PW-8)

19. This witness also noticed that blood was oozing out from the head of Maruti and had spread over on his wearing clothes as well as on the ground. They tried to rescue the Maruti from the hands of accused but the accused started attacking them.

20. It is his further evidence that A-1 to A-3 assaulted him with the help of sickles and caused injuries on his left hand and also on his head. The women accused pelted stones on his person. When Vijay Dure and Rupabai Dure tried to intervene in order to save the life of Maruti Dure from the hands of accused, Vijay was assaulted and injured by A-2 and A-

3 and sustained injuries on his head because of blows of sickle and stick. Rupabai was assaulted by the women accused with the help of stones. His wife Prabhawati was assaulted by means of sickle by A-1 and rest of the women accused pelted stones on her person. Narayan Phadtare and Narayan Dure also sustained injury in the said incident in the same manner. Narayan Dure sustained injury on his fingers of the right palm. Kalawati also sustained head injuries because of pelting of stones and as also on left hand index finger.

21. The evidence of PW-1 informant then shows that he also witnessed that Maruti Dure was unconscious and he was lying on the ground because he was seriously injured. The accused persons ran away from the place of incident by throwing the incriminating articles nearby the place of incident. All the injured were then taken to the Primary Health Centre, Vairag. Thereafter, he approached the police station and lodged the report. He then proved his FIR at Exh. 36.

22. From the cross-examination, we find that PW-1 informant is related to Maruti Dure (PW-8) inasmuch as latter is his father-in-law. He admits in his cross-examination that there is a public road in front of house of Maruti Dure and this being an admitted position, we fail to understand as to why and for what reason the wife of Maruti Dure, namely, Rupabai (PW-5) objected to the bullock cart loaded with sugarcane crop passing

through the said road and raised the quarrel.

23. This in itself goes to show that passing of said bullock cart was not likened by PW-5 and as a sequel the incident in question dated 13th December, 1998 took place. The conduct on the part of PW-5 also reflects an element of aggressiveness. Otherwise, there was no reason for her to quarrel with the women from the side of accused or for that matter with the accused.

24. This whole background of dated 12th December, 1998 will have to be kept in mind while dealing with the evidence of prosecution witnesses who are related with each other.

25. The evidence of PW-1 informant at the very beginning shows that after hearing the commotion, he along with Vijay Maruti Dure (PW-3) and his family members rushed towards the house of Devendra Pawar (A-1). However, the FIR nowhere shows that this witness along with his family members and PW-3 had rushed towards the house of A-1. Similarly, PW-3 also does not corroborate the version of this witness that he along with informant and informant's family members had rushed towards the house of A-1.

26. As far as the version of informant showing that he saw A-1, A-2 and A-3 assaulting by means of sickle on the head of Maruti Dure is concerned, it gets corroboration from the FIR. However, the version of

this witness showing that A-4 and A-5 were also inflicting blows of sticks on the person of Maruti Dure doesn't find corroboration from the contents of FIR. So also the evidence showing that rest of the women accused pelted stones on the person of Maruti Dure lacks corroboration. The FIR nowhere shows that at the relevant time A-4 and A-5 were armed with sticks and that they inflicted blows on the person of Maruti Dure. Similarly, the FIR does not show specifically that A-6 to A-10 had pelted stones on the person of Maruti Dure. All that FIR shows is that the women accused had beaten Maruti Dure by means of stone.

27. The evidence of PW-1 informant then shows that he noticed oozing of blood from the head of Maruti Dure and spreading over on the clothes and as also on the ground. Again, this material fact is nowhere alleged in the FIR.

28. His evidence then shows that he was also attacked with the help of sickle by A-1 to A-3 and caused injury on his head and left hand. Similarly, A-6 to A-10 pelted stones on his person. The so called injury sustained by him is nowhere established or supported by medical evidence.

29. We say so because although prosecution has examined PW-10 Medical Officer who does say that he medically examined this witness on 13th December, 1998 but throughout his evidence it has not been

elaborated as to the nature of injury allegedly sustained by him and by what means. Therefore, except his bald statement as to the alleged injury, there is nothing on record to substantiate the same.

30. His evidence then shows that Vijay Dure and Rupabai when tried to intervene and save the life of Maruti Dure were also assaulted. Vijay was assaulted by A-2 and A-3 on his head by means of sickle and stick while Rupabai was assaulted by women accused with the help of stones. So also his wife was assaulted by means of sickle by A-1.

31. The FIR, on the other hand, is not so specific as is the substantive evidence of this witness. The evidence clarifies the specific role played by A-1, A-2 and A-3 and the women accused and the specific weapon used by them whereas the FIR makes a general accusation that all the accused used sickle and stones while assaulting Vijay and his wife and as also the wife of informant.

32. Having regard to the above appreciation of the evidence of this material witness and the glaring shortcomings and inconsistencies and as also lack of medical evidence, the evidence of informant does not instill confidence in our mind.

33. We now propose to go through the evidence of main injured witness, namely, PW-8 Maruti Birmal Dure.

34. PW-8 Maruti Birmal Dure states in his evidence (Exh. 65) that the accused are his close relatives and are related to him through his son-in-law. The previous litigations and cases were compromised in between him and accused and the matter was practically ended. At that time their relations were cordial. According to him, one day prior to the alleged incident, A-1 and his wife Indumati (A-9) had quarreled with his wife Rupabai (PW-5) because A-1 was directed by his wife not to remove the boundary stones while carrying bullock cart from the road side and by crossing through courtyard and this fact was not appreciated by A-1 and therefore, he got annoyed and a quarrel took place between his wife and A-1.

35. On the day of incident, according to him, he was proceeding towards village Irle at about 6.00 a.m. While he was crossing the house of accused, the accused apprehended him and encircled in order to see that he did not escape. According to him, he then enquired as to why the wife of A-1 picked up quarrel with his wife on 12th December, 1998. The accused started abusing in filthy language. He raised hue and cry. A-6 to A-10 started pelting stones on his person whereas A-1 to A-3 started assaulting on his head with the help of sickle. He sustained injuries on his head on account of blows of the sticks and blood was spread over on his clothes and also on the ground. A-4 and A-5 beat him with the help of sticks on his back and on his shoulder of right hand. When he was being

beaten, he was rescued by his son Vijay Dure, wife Rupabai and daughter-in-law Surekha, his daughter Prabhawati and her husband Rajaram Pawar and others. Thereafter, he fainted and became unconscious and doesn't know anything thereafter.

36. From the evidence of this witness, it is seen that on the day of incident, A-1 to A-3 assaulted on his head by means of sickle while A-6 to A-10 pelted stones on his person. So also A-4 and A-5 beat him with the help of sticks on his back and on his shoulder of right hand. It is also clear from his evidence that he sustained injuries on his head on account of blows of sticks.

37. The evidence appears to be quite confusing inasmuch when this witness says that he sustained bleeding injuries on his head because of the blows of the sticks, however, the evidence nowhere makes it clear as to who had assaulted on his head by means of stick.

38. What evidence shows is that it were A-1 to A-3 who had assaulted on his head by means of sickle but then his evidence does not make it clear that because of infliction of blows of sickle on his head by A-1 to A-3, he sustained bleeding injuries. Further, it is also his evidence that A-4 and A-5 had beaten him with the help of sticks on his back and on his shoulder of right hand but then no such case is made out in the FIR and this fact is already pointed out by us while discussing the evidence of PW-1 informant.

39. The evidence of PW-10 Medical Officer also needs some comments.
40. PW-10 Medical Officer states in his evidence that on 13th December, 1998 he examined Maruti Dure and referred him, his son and wife Rupabai to Civil Hospital, Solapur for their medical treatment because there was no facility of X-ray machine and other advanced technical machines in order to understand the gravity of injuries on the head of Maruti and others. The physical condition of Maruti was serious and he had sustained injuries on his head.
41. According to this witness, the head injuries were caused by hard and blunt substance like that of iron rod and the sticks. In respect of the injuries mentioned in the medical certificate (Exh.39) by him, he states that the injuries mentioned by him were not grievous one but they were shown as simple injuries and the reason behind it was that he clinically examined Maruti Dure and it was for this reason, he mentioned the above said fact in the certificate.
42. Thereafter, there was difference of his opinion and opinion of expert after X-ray of the brain portion of Maruti was taken. When muddemal property, namely, sickle was shown to him, he opined that it is not a sickle at all but just like a chopper used for cutting of sugarcane crop and the same was hard and blunt without any sharpness from either of the side.

43. The testimony of this witness needs to be questioned for more than one reason. Firstly, if he had some doubts about the nature of injuries sustained by Maruti Dure, then even after he having examined clinically could have reserved his opinion subject to the result of X-ray and other tests which were not available in the hospital. His evidence clearly shows that there was difference of his opinion and opinion of the expert after the X-ray of the brain of Maruti Dure was taken out. It may be at once mentioned here that the concerned Doctor who took the X-ray of the brain of Maruti Dure is not brought before the Court by the prosecution for the reasons best known to it.

44. Similarly, there is also difference of opinion regarding the nature of weapon allegedly used. We have already pointed out from the evidence of this witness about the anomaly appearing in the version of this witness when he says that he sustained injuries on his head on account of blows of sticks but then it is nowhere made clear as to who had assaulted on his head by means of stick.

45. The prosecution case all along has been that sickle was used by A-1 to A-3 but when the alleged weapon was shown to PW-10 Medical Officer, he opined that it was a chopper and not a sickle because it was not having sharpness on either of side. Thus, oral evidence as well as the medical evidence if read in conjunction then certainly it lacks cohesion and do not further the case of prosecution.

46. The next witness is son of Maruti Birmal Dure, namely, PW-3 Vijay Maruti Dure.

47. PW-3 Vijay Maruti Dure states in his evidence (Exh. 49) that on the day of incident, he had been to attend nature's call. He heard hue and cry of his father Maruti Dure and rushed towards his house. He witnessed that his father was being beaten by the accused persons in front of door of house of accused. A-1 and A-3 were assaulting his father by means of sickle. A-4 and A-5 were beating by means of sticks and other accused persons, namely, A-6 to A-10 were pelting stones on the person of his father.

48. It is his further evidence that when he intervened, A-1 gave a blow of sickle on his head from it's sharpen side and caused bleeding injury. His mother Rupabai and sister Chandrakala were assaulted by means of sticks by A-4 and A-5.

49. Before we appreciate the evidence of this witness, we would like to point out from his cross-examination where he states that he is accused in a counter case bearing No. 222 of 1999. It may be noted at the cost of repetition that a counter case arising out from the present incident came to be registered at the instance of accused persons.

50. First of all taking into consideration his examination-in-chief, we note that this witness nowhere, like PW-1, states that he along with PW-1

and his family members had rushed after hearing the commotion. His evidence then shows that he found A-1 and A-3 assaulting his father by means of sickle whereas not only it is the case of prosecution but as also the evidence of PW-1 informant that A-1 to A-3 at the relevant time were assaulting PW-8 by means of sickle. Needless to note that PW-3 pertinently nowhere attributes the role played by A-2 as is the case of prosecution.

51. His evidence further shows that A-4 and A-5 were also beating his father by means of sticks while A-6 to A-10 were pelting stones on the person of his father. Again, as has already been pointed out by us this is not at all the case of prosecution put forth by the informant in the FIR.

52. The last part of his evidence shows that when he intervened, he was assaulted by A-1 on his head by means of sickle from its sharpen side whereas, according to PW-1 informant, when this witness intervened, he was assaulted by means of sickle and stick by A-2 and A-3. Thus, the versions of these witnesses are very contradictory to each other. Similarly, his evidence showing that his mother Rupabai and sister Chandrakala were assaulted by sticks by A-4 and A-5 do not find mention in the FIR nor get support from the mouth of PW- 1 informant.

53. Above all assuming for the sake of argument that this witness during the course of melee and when he tried to intervene in order to

rescue his father also sustained injuries on his head by means of sickle and stick at the hands of named accused, no specific medical evidence is forthcoming to substantiate the alleged injuries by means of alleged weapons. This being the nature of evidence and the fact that this witness is also an accused in a counter case, we are not prepared to place any implicit reliance on his testimony.

54. The next witness is PW-5 Rapawati (Rupabai) Maruti Dure i.e., wife of Maruti Birmal Dure (PW-8) and the mother of Vijay Maruti Dure (PW-3).

55. PW-5 states in her evidence (Exh. 61) that she knows the accused. One day prior to the incident, there was a quarrel in connection with unloading of bullock cart in front of her house as accused removed some stones from her premises in order to bring the bullock cart in the court yard of her house. There was exchange of words in between her and the wife of A-1 i.e., A-9. Her evidence further shows that the incident took place on Sunday at about 6.15 a.m. and her husband was on the way to go to Irle. She heard hue and cry of her husband who was shouting and it was coming from the side of house of A-1. Thereafter, she, her daughter-in-law Surekha immediately rushed to the place of incident. The other prosecution witnesses, namely, Prabhawati, Vijay, Kalawati, Narayan and Rajaram were present. According to her, A-1 to A-3 were armed with

sickles and A-4 and A-5 were armed with sticks. A-6 to A-10 were armed with stones. She witnessed that A-1 to A-3 were giving blows of sickle on the head portion of her husband Maruti Dure from its sharpen side and on account of it, he sustained bleeding injuries. At that time, A-4 and A-5 also gave blows of sticks on his head and back and the prosecution witnesses named by her tried to rescue Maruti Dure from the hands of accused.

56. It is her further evidence that accused also beat her when she tried to intervene in the matter and sustained injury on her left ear i.e, pinna of her left ear because of blow of sticks. She also sustained a blow of sticks on her back and towards the left side nearby the chest i.e., infra-axillary region. At the same time, Vijay Dure also sustained head injury because of sickle blow at the hands of A-1. Surekha was also found injured on account of pelting of stones by A-6 to A-10. At the same time, Narayan Dure, Narayan Phadtare, Kalawati and Prabhawati were also injured at the hands of accused.

57. This witness clearly spells out two incidents. First incident took place on 12th December, 1998 and secondly, the main incident of 13th December, 1998. As far as first incident is concerned, this witness has given altogether different story which is absolutely not in consonance with the contents of FIR.

58. Coming to the main incident of 13th December, 1998. Her evidence showing that A-4 and A-5 were armed with sticks while A-6 to A-10 with stones is again something which is nowhere alleged in the FIR. Next, according to her, A-1 to A-3 had given blows of sickle on the head of her husband from it's sharpen side does not get support from her own husband (PW-8). Apart from PW-1 and PW-3, all these witnesses have nowhere deposed in their substantive evidence that A-1 to A-3 had given blows of sickle on the head of PW-8 from it's sharpen side of the sickle.

59. Further, her evidence suggests that A-4 and A-5 had also given blows of stick on the head and back of her husband, lacks support and corroboration from the mouth of PW-1 apart from being the fact that no such case is made out through FIR.

60. Her examination-in-chief then shows that she was beaten by all the accused when she tried to intervene leading to the injury on her left ear and on the left side near the chest. Interestingly, this version does not get any kind of support either from the mouth of PW-1 or from the mouth of her son, namely, PW-3. So is the case regarding the alleged injury sustained by her daughter-in-law Surekha. Her evidence lastly shows that the prosecution witnesses, namely, Narayan Dure (PW-6), Narayan Phadtare (PW-11), Kalawati and Prabhawati (PW-7) were also injured at the hands of accused.

61. This is a very generalised statement. Her evidence does not throw light as to in what manner and at whose hands these prosecution witnesses sustained injuries. She being an eye witness ought to have stated the nature of injuries, weapon used in inflicting those injuries and authorship of the same. Over all, we do not find ourselves encouraged to accept the testimony of this witness.

62. No specific medical evidence is forthcoming to substantiate the alleged injuries by means of alleged weapons.

63. PW-6 Narayan Dure is also an eye witness, who according to prosecution was very much present at the time of incident and had also intervened.

64. PW-6 states in his evidence (Exh. 63) that at the time of incident, he was at a distance of 400 feet from the place of incident i.e., house of A-1. He heard hue and cry from the southern side of one person. He heard hue and cry from the side of house of A-1 and when he went there, he found prosecution witnesses, namely, Rajaram Pawar, Maruti Birmal Dure, Vijay Dure and other female persons from their family were present. The accused were also present. The accused were assaulting Maruti Dure. A-1 to A-3 were armed with sickles whereas A-4 and A-5 were armed with sticks. A-6 to A-10 were armed with stones. A-1 to A-3 assaulted Maruti Dure by means of sickle and there were number of injuries on the head of

Maruti Dure and blood was oozing out. A-4 and A-5 assaulted Maruti Dure with the help of sticks on different parts of his body including head. They tried to rescue injured witness Maruti Dure from the hands of accused and they sustained injuries at the hands of accused. According to this witness, he was injured on account of pelting of stones by A-6 to A-10 and he sustained injuries on his left hand and other parts of the body.

65. According to testimony of this witness, at the relevant time, A-1 to A-3 were armed with sickles, however, when confronted in cross-examination vis-a-vis his statement recorded under Section 161 of the Cr.P.C., it was found that there was omission in respect of A-2 having armed with a sickle. Still this witness insisted that he had stated before police that A-2 was also armed with a sickle but this material omission is duly proved by PW-13 in his cross-examination by stating that this witness had not stated regarding holding of sickle by A-2.

66. The evidence of this witness then next shows that A-4 and A-5 were armed with sticks and A-6 to A-10 were armed with stones. Further, A-4 and A-5 assaulted Maruti Dure with the help of sticks on different parts of his body including head.

67. All these pieces of evidence are not the part of FIR and rather it would be apt if we may say so that no such case was ever put forth by the prosecution through FIR.

68. As far as injury sustained by this witness is concerned, his evidence does not get corroboration either from PW-1 informant or for that matter from PW-3 and PW-5. We have hereinabove already pointed out a general statement made by PW-5 that this witness and others were also injured at the hands of accused sans any specific details.

69. The alleged injuries sustained by this witness is also not substantiated by medical evidence. For all these satisfying reasons, we distance ourselves from the testimony of this witness.

70. The next witness in line is PW-7 Prabhawati Rajaram Pawar i.e., wife of PW-1 informant. PW-7 states in her evidence (Exh. 64) that accused are cousins of her husband. They reside just 50 feet away from her house. Rupabai (PW-5) is her mother. The name of her father is Maruti Dure Patil (PW-8). It is her evidence that the incident took place at about 6.15 to 6.30 a.m. two years back. She heard hue and cry in a loud tone of her father from the side of house of Devendra (A-1). She immediately rushed to the place of incident. When she reached to the place of incident, she witnessed that her husband Rajaram, his mother Kalawati and her mother Rupabai and her husband's brother's wife were also present. Her brother Vijay was also present so also Narayan Dure.

71. According to her, A-1 to A-3 were armed with sickles and were assaulting her father and A-4 and A-5 were armed with sticks and

assaulted on the back, head and right hand of his father. A-6 to A-10 were pelting stones on the person of her father. She and others when intervened, they were also assaulted. Her evidence then goes to show that her brother Vijay was assaulted with the help of sickle and sustained bleeding injuries on his head. Her husband was assaulted by Laxman (A-3). Jaywant (A-5) and Devendra (A-1) assaulted her with the help of stick and sickle.

72. Her evidence lastly shows that the incident took place because A-1 tried to remove the boundary stones of courtyard of her premises for the purpose of carrying bullock cart loaded with sugarcane which was a daily problem before her father-in-law Maruti Dure (PW-8) and therefore, her mother Rupabai told Devendra (A-1) not to remove the boundary stones and on account of it there was hot exchange of words in between A-1 and her mother. This incident had taken place on Saturday i.e., one day prior to the incident.

73. The examination-in-chief of this material witness also does not sound very convincing. It is quite apparent from her evidence that when she reached at the place of occurrence, the witness, namely, her husband and others were also there whereas the FIR and as also the evidence of PW-1 informant show that this witness along with informant and others had been together to the place of incident. This is a material inconsistency

between the version of this witness and that of informant husband and the contents of FIR.

74. Like others and as pointed out by us from time to time, it is not at all the case of prosecution which is tried to be introduced by this witness like others, that at the relevant time A-4 and A-5 were armed with sticks and had assaulted Maruti on his back, head and right hand by those sticks. So also A-6 to A-10 were found pelting stones on the person of Maruti Dure. Therefore, this piece of evidence is required to be excluded altogether as the same is not a part and parcel of the FIR.

75. The evidence of this witness vaguely shows that her brother Vijay was assaulted with the help of sickle and on account of it he had sustained bleeding injury on his head. Her evidence nowhere clears the picture as to who was an assailant. Then it is her own case when she deposed that Jaywant (A-5) and Devendra (A-1) had assaulted her with the help of stick and sickle. This piece of evidence is in sharp contradiction as to what is alleged in the FIR and deposed by PW-1 informant- husband.

76. In the FIR it is alleged that this witness was assaulted by sickle and stones by all the accused. The evidence necessarily is not in that fashion. Similarly, PW-1 informant-husband states in his evidence that his wife i.e., present witness was assaulted with the help of blows of sickle by A-1 and

A-6 to A-10 had pelted stones on her person. Inconsistency between the versions of these witnesses is quite glaring and cannot be simply brushed aside like other witnesses. Medical evidence is also not forthcoming to substantiate the alleged injuries sustained by her by means of alleged weapons. Suffice to say, this witness also, like others fails to muster the confidence of this Court.

77. The last witness PW-11 Narayan Maruti Phadtare is also an injured witness. He states in his evidence (Exh. 69) that on 13th December, 1998 at about 6.15 a.m. he heard hue and cry of Maruti Dure (PW-8). He went to the place of incident and saw A-1 to A-3 were armed with sickles. The said sickles are used for cutting the sugarcane crop and were having sharp edges on one side like that of muddemal article Nos. 22 and 23 at Exh. 26. He even identified those articles before the Court.

78. According to him, A-1 to A-3 caused injuries on the head of Maruti Dure by said sickles. A-4 and A-5 were armed with sticks and were found beating Maruti Dure on his back, head and on his shoulder. A-6 to A-10 were pelting stones. He also witnessed that Vijay Dure sustained a blow of sickle on his head at the hands of A-1. When he tried to rescue Maruti Dure from the hands of accused, he sustained injury on his head because of blow of stick by A-5. As far as injury sustained by PW-8 is concerned, though this witness supports the theory of prosecution but we have

already discussed this aspect while dealing with the testimony of the said injured witness, namely PW-8 Maruti Dure. However, remaining part of his evidence is on the same lines as that of earlier witnesses. New theory has been introduced when this witness states that A-4 and A-5 were armed with sticks and were found beating Maruti Dure by those sticks.

79. Similarly, A-6 to A-10 were seen pelting stones. This is something which is not at all canvassed by the prosecution at the time of lodging of FIR. Concluding part of the evidence of this witness then shows that Vijay Dure had also sustained sickle blow on his head at the hands of A-1. Quite contradictorily, the FIR shows that Vijay Dure was assaulted by all the accused by means of sickle and stones. In this regard, PW- 1 has also something different to offer. According to PW-1 informant, Vijay Dure was assaulted and injured at the hands of A-2 and A-3 by means of blows of sickle and stick.

80. Lastly, the evidence of this witness shows that when he tried to rescue Maruti Dure from the hands of accused, he also sustained injury on his head because of blow of stick by A-5.

81. Again, the FIR attributes the role of all the accused by contending that all the accused assaulted this witness by means of sticks, which is not at all deposed by this witness. Similarly, according to PW-1 informant, this witness was assaulted by all the accused by means of sickle and

stones which again is not deposed by this witness.

82. As far as injury sustained by this witness is concerned, we find no medical evidence to establish the same. For all these reasons, we are, therefore, not satisfied with the testimony of this witness.

83. Apart from above, the prosecution has also placed reliance on the discovery statement given by A-1 pursuant to which the weapon of offence, namely, sickles came to be seized at his instance. In this regard, the prosecution has examined PW-2 Laxman Vithal Dure.

84. PW-2 states in his evidence (Exh. 46) that he was called by police to act as a panch at Vairag Police Station along with another panch Pratap Devkate. A-1 was in police custody, who told the police that he would produce the incriminating articles which were kept in a hidden condition at the backside of front door of house and would produce the same on his accord. Accordingly, his statement (Exh. 47) came to be recorded.

85. Later on, he along with others went to the house of A-1 from where he produced the muddemal articles which are marked at serial Nos. 22 and 23, which came to be seized under seizure panchnama (Exh. 48). From cross-examination it is clear that this witness is related to Maruti Dure (PW-8).

86. PW-14 Investigating Officer, on his part, (Exh.72) has also proved the discovery statement and consequent seizure of sickle thereto. The evidence on the point of so called discovery statement cannot be read with a sense of satisfaction for the simple reason that PW-1 informant in his examination-in-chief itself very clearly deposed that after the incident, accused ran away from the place of incident by throwing the incriminating articles nearby the place of incident.

87. It must be remembered at once here that as per prosecution theory, the accused were armed with sickles and stones. Obviously, these incriminating articles which the accused allegedly used while committing an offence, if they had thrown away just nearby the place of occurrence while fleeing away from the place of incident, after incident was over, which is as per evidence of none other than PW-1 informant himself, then we do not see any question of seizure of those sickles at the instance of A-1 pursuant to the alleged discovery statement purportedly made by A-1 under Section 27 of the Evidence Act. Therefore, we do not attach any evidentiary value to the testimony of either PW-2 or that of PW-14 Investigating Officer on the point of discovery.

88. The prosecution has alleged that it were accused who were aggressors in the whole episode.

89. PW- 14 Investigating Officer also stated in his examination-in-chief that the accused persons were found to be aggressive. However, it is not made clear whether there is any specific evidence to that effect as to on what basis he reached to such a conclusion, particularly and admittedly, when accused had also sustained injuries leading to a cross case against the present prosecution witnesses. In this regard, the evidence of PW- 10 Medical Officer is worth mentioning.

90. PW-10 Medical Officer states in his cross-examination that on the same day i.e., the date on which he examined injured witnesses, he examined Devendra Pawar (A-1) and others, who were injured and brought to Primary Health Centre, Vairag.

91. It is quite surprising to note from his further examination that he did not file the medical certificates pertaining to A-1 and others. It is also not made clear the nature of injuries sustained by A-1 and others and by what means. An important aspect which requires our consideration is non-explanation of the injuries on the body of A-1 and others. Non-explanation of the injuries on the person of A-1 and others, as per the evidence of PW-10 Medical Officer, by the prosecution is fatal in this case. The prosecution was duty bound to explain the injuries on the person of A-1 and others. This lapse is certainly fatal.

92. Having regard to all these circumstances and the factual background of the case, which we have already commented upon at the very beginning of our reasoning, we are of the considered view that the prosecution has not been able to satisfy that it were accused and accused alone who were aggressors.

93. In the aforesaid premise, we conclude that the learned trial Court has taken into consideration all the material aspects of the case. The prosecution has not been able to make out good grounds for interference at the hands of this Court. The impugned order being in accordance with law and being neither perverse nor illegal, the Appeal is liable to be dismissed. Hence, the Appeal is dismissed accordingly.

94. Bail bonds, if any, shall stand cancelled.

(V. G. BISHT,J.)

(PRASANNA.B.VARALE, J.)