

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

CRIMINAL APPEAL NO. 15 OF 2003

State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

Jivan Mahadev Kamble
Age 30 yrs, Occu- Business,
R/o. Aundh, Tal. Khatav,
Dist. Satara.

...Respondent
(Orig. Accused)

...
Mr. S S Hulke, APP for Appellant-State.
Mr. Prakash Gharge for Respondent-Original Accused.

...

**CORAM : S. S. SHINDE &
S. P. TAVADE, JJ.**

DATE : 13th DECEMBER, 2021.

JUDGMENT: [PER S.S. SHINDE, J.]

1. This appeal is preferred by the State against the judgment and order dated 4th January, 2001, passed by the Joint JMFC, Vaduj, thereby acquitting the respondent-original accused for the offence punishable under Section 326 of Indian Penal Code, 1860 (for short 'IPC').

2. The prosecution story in short can be summarized as under-

On 10/10/1998 at about 9.00 am, the injured complainant came near to the Chavadi Chowk in the milk dairy to serve the milk. After serving the milk, he was going from Chavadi Chowk to Grampanchayat road to his house along with one Kisan Ganpat Kadam, and Raju Mahadev Pisal. At that time, accused came from the Grampanchayat side turn and from the behind of complainant assaulted him by knife on hip joint and also on the left hand wrist joint. The complainant immediately turned back and saw that one Jivan Kamble assaulted him and ran away through Chavadi Chowk to his house. Immediately, Kisan Kadam intimated about the incident in the house of the complainant. One Bhagwan Yadav and Pintya Jagdale took the complainant on bicycle to public health care center at Aundh. Thereafter, the injured complainant was transferred from PHC, Aundh to Civil Hospital, Satara for further treatment. Hence, the case was registered against the Jivan Kamble-original accused and after completion of investigation chargesheet came to be filed against the accused for the offence punishable under Section 326 of IPC.

3. The charge was framed against the accused under Section 324 of IPC, but in view of Exhibit-39, the said charge was altered from Section 324 to Section 326 of IPC. The charge was read

over to the accused and explained in vernacular. The accused pleaded not guilty and claimed to be tried. After a full fledged trial, the trial Court acquitted the original accused for the offence punishable under Section 326 of IPC. Hence, this appeal.

4. Learned APP appearing for the appellant-State submits that there is a evidence of injured witness, so also other eye witnesses which gets corroboration from the medical evidence and also there is recovery of knife. The trial Court has not properly appreciated the evidence on record and recorded the perverse findings. Hence, this appeal deserves to be allowed.

5. On the other hand, learned counsel appearing for the contesting respondent invites attention of this Court to the findings recorded by the trial Court and submit that the evidence of eye witnesses suffers from material contradictions and omissions, and therefore, the same is not trustworthy. It is submitted that the alleged eye witnesses who were accompanied the injured Vilas Pawar (PW1) have turned hostile. It is submitted that Mr. Vilas Pawar had filed a revision application taking exception to the impugned judgment and order. The said revision has been rejected

by the bench presided over by learned Single Judge (Coram:- V.C. Daga, J.), on 17th July, 2007.

6. We have given due consideration to the rival submissions. With the able assistance of learned APP appearing for appellant-State and learned counsel appearing for contesting respondent, we have carefully perused the entire notes of evidence. The prosecution has examined Vilas Pawar as PW1. He deposed before the trial Court that the incident took place on 10th October, 1998 at about 9.00 am, in front of house of one Mr. Jaysingrao Deshmukh, which is situated in between Grampanchayat and Chavdi Chowk. He was going towards his house from Chavdi Chowk towards Grampanchayat side. One Kisan Kadam and Raju Pisal were with him. At that time near the house of Mr. Jaysingrao Deshmukh accused came in front of them and turned behind and gave blow of knife on left hip joint and left wrist joint of PW1. He sustained bleeding injury due to knife blow. Accused ran away from the spot. Raju Pisal who was accompanying PW1 went to the house of PW1 to narrate the incident. One Chintya Jagadale, Kisan Kadam, Bhagwan Yadav took him to primary health center for the treatment. He was referred to Satara Civil Hospital by public health center, Aundh. He was indoor patient for 7 days in Satara civil

hospital. He had taken treatment for 1 ½ months. His clothes were blood stained and said clothes were seized by the police. So also, the blood samples from the spot of incident were also collected. The knife was recovered from the accused.

7. During his cross examination, he stated that the family of the accused Kamble has no concern with land gut no. 363. Prior to the alleged incident no quarrel had been taken place between himself and accused. It is also stated that there was no quarrel earlier to the said incident between Baburao Pawar. He further stated that no exchange of words had taken place between him and the accused, prior to the incident or very day of incident.

8. Since, PW1 is injured witness, the entire prosecution case would fall or stand on the basis of his evidence coupled with other evidence on record. In his cross examination, he has admitted that there was no previous enmity between him and the accused or there was no quarrel in past between them. He also stated that there was no altercations or exchange of words before the actual incident. This aforesaid version from the cross examination of PW1 would make it clear that the alleged incident had taken place without any altercation or reason or without having previous enmity

or quarrel with the accused. In this background, naturally question would arise that, why the accused would assault PW1? There has to be some reason for such incident. Apart from this none of the witnesses whose names have been mentioned by PW1 in his evidence have supported the prosecution case. The trial Court upon appreciating the entire evidence on record reached to the conclusion that in the light of evidence of PW1 and other witnesses it is not possible to convict the respondent. The trial Court has also recorded the findings upon appreciating the medical evidence that the injured witness was admitted in the hospital for 7 days but he was not indoor patient. Since, we are not convinced to accept the evidence of star witness of prosecution i.e. PW1, we do not think it necessary to go into the details of other witnesses. In our considered view, the trial Court has properly appreciated the evidence on record and reached to the correct conclusion. The trial Court has taken a plausible view and findings recorded by the trial Court are in consonance with the evidence on record.

9. It is also relevant to mention that Vilas Pawar (PW1) had filed the revision application i.e. Revision Application No. 200 of 2001 (Vilas Mahadev Pawar Vs. Jivan Mahadev Kamble & Anr), which was heard and decided by the bench presided over by learned

Single Judge (Coram:- V.C. Dagar, J.), on 17th July, 2007. We have perused the reasons assigned by the learned Single Judge. The learned Single Judge upon perusal of evidence on record and findings of trial Court dismissed the said revision application.

10. In the light of discussion in foregoing paragraphs, there is no merit in the appeal. Hence, the appeal stands dismissed.

(S. P. TAVADE, J.)

(S. S. SHINDE, J.)