

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

CRIMINAL APPEAL NO.520 OF 1998

- 1) Shrikar Bhujanga Shetty;
- 2) Arvind Lokayya Shetty; and
- 3) Nagesh Koraga Shetty .. Appellants

Versus

- 1) State of Maharashtra; and
- 2) Balvindersingh Pritamsingh Jasar .. Respondents

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Mr.V.B. Tapkir i/b. Mr.Jyotiram S. Yadav, Advocate for the Appellants.

Mr.S.R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 2, 2021.

JUDGMENT :

This Appeal is preferred by appellants challenging the judgment and order dated 2nd May, 1998, passed by 3rd Additional Session Judge, Kolhapur in Sessions Case No.30 of 1998. Appellants (Original accused nos.1 to 3) are convicted for the offence punishable under Section 324 read with 34 of Indian Penal Code ("IPC", for short), and sentenced to suffer rigorous

imprisonment for one year and pay fine of Rs.500/-, each. They were also convicted for the offence under Section 323 read with 34 of IPC and sentenced to pay fine of Rs.500/-, each. They were further convicted for the offence under Section 427 read with 34 of IPC and sentenced to suffer rigorous imprisonment for six months, each, and to pay fine of Rs.500/-, each.

2 The case of the prosecution is as follows:

On 15th April, 1997, the complainant and P.W.3 Ashok Gaikwad entered into hotel "Corner" situated at Taluka Shirol, District-Kolhapur, to take meal. The complainant and P.W.3 placed the order for food. Thereafter, bill was issued to them. The complainant confronted the accused about the quantum of bill and alleged that they have charged excess bill. The complainant paid Rs.110/-, towards the charges and assured to pay balance amount. The complainant and P.W.3 proceeded towards their vehicle which was parked in front of the hotel. The accused followed them. They were armed with sticks in their hands. The accused gave stick blow to the complainant and P.W.3, due to which they sustained bleeding injuries. The police reached the spot. The injured was taken to Primary Health Center (PHC) at Shirol. The accused were referred to Civil hospital, Sangli, to

ascertain whether they had sustained injuries at the time of incident. The injuries suffered by complainant and P.W.3 were sutured at Shirol Primary Health Center. P.W.3 was admitted as indoor patient and complainant was discharged after taking entry. The complaint was lodged with Shirol police station, vide C.R.,No.43 of 1997, under Sections 324, 323, 427 read with 34 of IPC. The case was investigated and charge-sheet was filed. Counter case was filed at the instance of the accused vide C.R.No.42 of 1997. It was numbered as Sessions Case No.95 of 1997. Since the counter case was pending before the Sessions Court, this case was committed to the Court of Sessions for disposal.

3 Charge was framed under Sections 324 read with 34 of the IPC and 323 read with 34 of IPC, by order dated 7th March, 1998. Additional charge was framed against the accused under Section 427 read with 34 of IPC on 29th April, 1998. The accused pleaded not guilty and claimed to be tried.

4 The prosecution examined six witnesses. P.W.1 Dagadu Bhaskar Kurne, is the panch witness. P.W.2 Balvindarsingh Preetamsingh Sasar, is the complainant and injured. P.W.3 Ashok Vitthal Gaikwad, is the injured witness. P.W.4

Vijay Kumar Dattaram Bhoite was attached to Shirol police station. P.W.5 Dr.Govind Anant Lad, is the medical officer attached to PHC Shirol, Taluka Shirol, District-Kolhapur. He examined P.W.2 and P.W.3. P.W.6 Dr. Shahanawaj Shakali Naikwade, was attached to Civil Hospital Sangli. He examined P.W.2, after he was referred to the civil hospital from PHC Shirol.

5 Statements of the accused was recorded under Section 313 of Cr.P.C. The defence of the accused is that the case is false.

6 Learned advocate for the appellant Mr.V.B. Tapkir submitted as follows:

- (i) The case of the prosecution is that the appellants are falsely implicated. Cross complaint was filed against the P.W.2 and P.W.3.
- (ii) The FIR was registered against the opponent under Sections 307, 323, 504 read with 34 of IPC.
- (iii) The evidence of witnesses suffer from contradictions and omissions. The version of the witnesses is doubtful.

- (iv) The weapons allegedly used in the crime were not shown to the medical officer. It is not brought on record that the injuries sustained to the injured are possible by the weapons.
- (v) Although, the crowd had allegedly, gathered at the place of incident, no independent witness was examined by the prosecution.
- (vi) The conclusions drawn by the trial Court are erroneous. The injured had refused to pay the balance amount of bill inspite of request. P.W.3 is the cleaner of the vehicle brought by P.W.2.
- (vii) Assuming that the assault was proved, it was by way of private defence. The right of private defence was not exceeded.
- (viii) The version of the witnesses is not reliable.
- (ix) The complainant and P.W.3 were under influence of liquor which is evident from the certificate issued by PHC, Shirol.
- (x) Counter case was filed at the instance of the applicant

under Section 307 of IPC against the complainant and P.W.3. Appellant no.3 had received injuries on the vital organs. The injuries were attributed to P.W.2.

- (xi) The trial Court has not appreciated the evidence in proper perspective and had drawn erroneous adverse inferences against the appellants, while convicting them.

7 Learned APP submitted that there was sufficient evidence to convict the appellants. Evidence of P.W.2 and P.W.3, was reliable. They are the injured witnesses. There is no reason to discard their evidence. The defence of the accused was not put to the witness during their cross-examination. The medical officer have supported the prosecution case. The injuries sustained by P.W.2 and P.W.3 are proved through the evidence of medical officer. The connection between the assault and the injuries sustained by the witnesses has been established through cogent evidence. The trial Court has appreciated the evidence and convicted the accused. P.W.2 and P.W.3 have attributed overtact of assault to the appellants. The accused are conducting the hotel. The incident had occurred when PW.2 and P.W.3 had visited the hotel for meal. Minor infirmities in evidence cannot

disturb the prosecution case. The conviction of appellant is proper. Appeal may be dismissed.

8 I have perused the documents on record and evidence adduced by the prosecution. P.W.1, Dagadu Kurne is the panch witness. He has deposed that on 19th April 1997, he was called by the police at Shirol police station to act as panch. Accused nos.1 and 2 were in the custody of the police. They produced sticks. He identified the sticks. Panchnama was prepared after attachment of sticks. He identified his signature and signature of other panch on the panchanama. The contents of the panchanama are true. Panchnama was marked as Exh.14. In the cross-examination, he stated that the police had shown him the sticks while recording panchanama. It did not happen that the accused were in the lockup and thereafter they were moved out of the lockup. He do not know second panch. He is not able to state whether the second panch attended the police station prior or after his arrival. The second panch was not present there when he signed the panchanama. The second panch has not signed panchanama in his presence. The evidence of this witness demolishes the case of the prosecution qua recovery of sticks from the accused. The accused were in custody. They were not moved out of the lockup,

and, the sticks were recovered from them. This would mean that the sticks were at the police station. The accused Nos.1 and 2 were in custody of police. Accused Nos.1 and 2 produced sticks. Thus, sticks were produced at police station. It is not disclosed who had brought sticks at police station or whether at the time of arrest of accused sticks were in their possession. It is also pertinent to note that the second panch witness was not examined by the prosecution. According to P.W.1, the second panch was not present at the police station, when he had signed the panchanama. This would indicate that the second panch was not present when the panchanama was executed. After execution was panchanama it is expected to be signed by panchas at the same time. The panchanama Exhibit-14 was recorded on 19th April, 1997. The panchanama mentions that accused were at police station and they handed were sticks used in crime. Two sticks were recovered.

9 P.W.2 Balvindarsingh Preetamsing Sasar, is the complainant. He had stated on 15th April, 1997, he was carrying goods from Nagpur to Kolhapur by public carrier. Ashok Gaikwad was cleaner on the truck. They halted at hotel Corner at 10:30 p.m. He placed order of liquor and meal. He enjoyed drink. P.W.3

was with him. Bill of Rs.160/- was furnished to him. He questioned the accused about the amount on bill. He paid an amount of Rs.110/-, and, assured the accused that he would bring the balance amount from the truck. Both proceeded towards the truck. The accused followed him. The accused Nos. 1 to 3 were possessing sticks. The accused uttered that they should catch him as he ran away while proceeding to truck. All three of them assaulted him with stick. On his back and above eye brow, left hand and leg. They also assaulted P.W.3. They broke front glass and head lamp of the truck and caused damage to the vehicle. About 50 persons gathered at spot. Police came to the spot. They were taken to Shirol hospital. First aid was given to them. Thereafter, they were taken to Sangli civil hospital. X-ray was taken. He was discharged from the hospital. P.W.3 was admitted in the hospital for two days. He lodged complaint with Shirol police station. He identified accused before Court. In the cross-examination, he deposed that there were other vehicles parked in front of the hotel. People were taking meal in the hotel. He had taken two quarters of liquor at the hotel. He denied that he took out dagger after entering the truck and got down from the truck. He denied that he inserted Jambiya (dagger) in the stomach of accused no.3. Nobody tried to rescue the quarrel. The evidence of

this witness discloses that he had visited hotel Corner along with P.W.3, for meal. He ordered liquor and also consumed it. There was quarrel on account of bill amount. P.W.2 and P.W.3 went towards the vehicle, which was parked in front of the hotel, for getting the balance amount. There were several other vehicles parked before the hotel and several people were taking the meals. He did not know whether the cross case was filed prior in time. He had not stated anything about the injury sustained by accused no.3. He do not refer to any incident of assault upon the accused no.3 and others. He is silent about any action initiated against him by accused No.3.

10 P.W.3 Ashok Vitthal Gaikwad is the cleaner on the vehicle. According to him he went to hotel corner with P.W.2 for meal. P.W.2 booked order for one quarter of liquor with soda and meal. The complainant had enjoyed the liquor. Accused no.3 was at the counter. Bill for Rs.150/- was issued. Complainant inquired whether bill was excessive. Accused no.3 had replied that it was proper bill. The complainant paid Rs.110/-, towards the bill, and, assured payment of balance amount offer bringing it from the truck. He was sent to bring the money from the truck. Accused followed them with sticks. They were assaulted. One of the

accused gave blow on his head. He sustained bleeding injury. Police arrived at the spot. They were taken to police station and then primary health centre. He was shifted to civil hospital Sangli along with complainant. He was hospitalized for three days. In the cross-examination, he stated that he also consumed some liquor, and order for chicken biryani was placed by the complainant. He denied that he stated before the police that P.W.2 had ordered two bottles/quarters of liquor and snacks. He cannot say as to why it is written in his complaint. He has not narrated before the police that complainant had caused injury by Jambiya to one of the accused. He is not able to state why the police has written the said averment in his statement. He did not narrate before the police that accused had broken the glass of the truck. There was crowd at the time of incident. He is not able to state as to how much amount was kept in the truck, and, whether the amount was handed over to police. He is involved in Sessions Case No.95 of 1997 along with complainant, filed by the accused. He do not know whether accused no.3 was admitted in the hospital at Sangli prior to his admission. He denied that the complainant has lodged the false complaint to escape from Sessions Case No.95 of 1997. From the evidence of this witness, it is clear that he had contradicted P.W.2. It is pertinent to note

that in the statement before the police, he had stated that P.W.2 had caused injury by Jambiya to one of the accused. The deposition that the accused had broken the glass of the truck, was by way of omission. The version of the witness is that they were proceedings towards the truck to bring the balance amount also appears to be doubtful, as the witness was not aware that as to how much amount was kept in the truck. He had admitted that he is involved in Sessions Case No.95 of 1997.

11 P.W.4 is the investigating officer. He deposed that C.R.No.42 of 1997, had been registered in connection with same incident and accused no.1 Shrikhar Shetty is shown as complainant in the said crime. He had drawn spot panchanama which was common in both the cases. The FIR in the present case was registered vide C.R.No.42 of 1997, for offences punishable under Section 323, 324, 427 read with 34 of IPC. He recorded statements of witnesses. The accused were arrested. In the cross-examination, he deposed that Jambiya was attached under the panchanama in C.R.No.42 of 1997. He had not seen the stick at the spot when he visited the spot. Accused no.3 was sent to medical officer Sangli for treatment. He had not seized the cash amount after attachment of the truck. He do not remember

whether the cash was recovered from the complainant while arresting him. The bills were attached in C.R.No.42 of 1997. The omission from the evidence of P.W.3, was proved to him. From the evidence of this witness, it is clear that C.R.No.42 of 1997, was registered in respect to the complaint lodged by accused no.3 against P.W. No.2 and P.W. No.3. The version of the complainant and P.W.No.3 that they were assaulted while they were proceeding to the truck for bringing balance amount is doubtful, since this witness has stated that no amount was seized from the truck or the complainant. The Jambiya was attached in the cross case. While this witness had visited spot, he did not find the sticks at the spot.

12 Thus, from the evidence of this witness, it is apparent that there are serious infirmities in their evidence. The version of this witnesses appears to be doubtful. Apparently, they were aggressors and case is registered against them for assaulting the accused with Jambiya. The quarrel had ensued at the instance of P.W.2 and P.W.3. They had consumed liquor and meal and created the ruckus on the issue of quantum of bill. The defense of accused that P.W.2 and P.W.3 had sustained certain injuries while the accused were defending them, is probable. The accused were not

armed with any dangerous weapons. The use of sticks in assaulting the witnesses is doubtful as the origin of the sticks and its seizure in the present case, is suspicious. The recovery panchanama is contrary to provisions of law. While sticks were recovered, accused were at police station. The evidence of panch witnesses do not inspire confidence. Panch witness no.2, who had signed panchanama of recovery of sticks has not been examined. In view of evidence of P.W.1, presence of second panch is improbable. No reliance can be place on recovery of sticks.

13 P.W.5 Dr.Govind Lad has deposed that he had examined P.W.2 and referred to the injuries sustained by him which were in the nature of CLW, contusions and abrasions. He gave first aid to P.W.2 and referred him to civil hospital Sangli. He also treated P.W.3, who had sustained CLW, contusions and abrasions. He was also referred to civil hospital at Sangli. In the cross-examination, he deposed that the injuries of P.W.2 can be possible by fall on the ground. These injuries cannot be possible in rolling motion. The injury nos.1 to 3 sustained by P.W.3, is possible in the event he had stuck in the portion to the door of the cabin. He had not issued the certificate, as both the patients were referred to civil hospital. Police did not request him to issue

certificate. There is no recording of giving report in connection with injuries of patient from Sangli hospital. X-ray reports are important to show the nature of injuries. P.W.6 Dr.Naikwade attached to Civil Hospital at Sangli. He stated that P.W.2 was referred to him, and, he has examined him. He referred to the injuries sustained by him. P.W.3 was also referred to civil hospital. He was examined by him. He deposed that in case of referred cases, they do not note down all the injuries of the patient. There was no request from the police to issue medical certificate. He is not able to state the nature of injuries of P.W.3, as it was sutured. Accused no.3 Nagesh Shetty was admitted as indoor patient. He was admitted for injury. It was on the vital part. He would not have survived, if immediate medical aid was not given to him. The injury certificate was produced. From the deposition of these two witnesses, it can be seen that they had examined P.W.2 and P.W.3, as well as accused no.3. It is pertinent to note that both the witnesses have not stated that the injuries sustained by P.W.2 and P.W.3, are possible by sticks. The sticks were not shown to them. Accused no.3 has sustained life threatening injury and in the event medical aid was not given to him, the injury would have been fatal.

14 Thus, the evidence of the witnesses examined by the prosecution falls short of proving the charges under Sections 324, 323,504 and 427 read with 34 of IPC. The version of P.W2 and 3 appears to be concocted. They have suppressed the geneses of the incident. Assuming that they were assaulted, the possibility that they had assaulted accused no.3 with weapons, and, the accused tried to defend themselves, cannot be rule out. In the circumstances, the benefit of doubt ought to be given to the appellant-accused.

:: ORDER ::

- (i) Criminal Appeal No.520 of 1998, is allowed, and disposed of;
- (ii) The impugned judgment and order dated 2nd May, 1998, passed by Additional Sessions Judge, Kolhapur, in Sessions Case No.30 of 1998, convicting the appellants, is set aside and the Appellants are acquitted of all the charges.

(PRAKASH D. NAIK, J.)