

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 223 OF 2008

State of Maharashtra
Through the Police Station Officer,
Police Station, Amadapur,
Tq- Chikhli, Distt. Buldana

.... **APPELLANT**

// **VERSUS** //

1] S. Haikder Sk. Kadar,
Aged 32 years.

2] Sk. Isak Sk. Kadar,
Aged 20 years.

3] Sk. Abuzar Sk. Kadar,
Aged 20 years.

4] Sk. Riyaz Sk. Kadar,
Aged 20 years.

5] Sk. Ajaj Sk. Kadar,
Aged 21 years.

6] Sk. Budhan Sk. Kadar,
Aged 31 years.

7] Sk. Mazhar @ Sk. Madar,
Sk. Kadar.

All R/o. Amadapur, Tq. Chikhli,
Distt- Buldhana.

.... **RESPONDENTS**

Ms Shamsi Haider, A.P.P. for appellant/State.
Shri A.J. Thakkar, Advocate for respondent Nos. 1 to 7

CORAM : **N.B. SURYAWANSHI, J.**
DATE : **08/03/2021.**

ORAL JUDGMENT:

1. The State by this appeal has challenged the judgment and order of acquittal passed by the learned Additional Sessions Judge, Buldana in Sessions Trial No.70/2000, thereby acquitting the respondents of offences punishable under Sections 307, 147, 148 read with Section 149 and Section 323 read with Section 149 of the Indian Penal Code, under Section 135 of the Bombay Police Act and under Section 3 read with Section 25 of the Arms Act.

2. In brief the prosecution case is that the accused Nos.1 to 7 and the informant Mohd. Taj Mohd. Mobin are the residents of Amadapur and were acquainted with each other. The informant Mohd. Taj and accused No.1- Sk. Haider were on inimical terms with each others since long. On 02/05/2000 at about 11.30 a.m. the informant-Mohd Taj was returning to home on motorcycle after distributing wedding invitations. When he reached in front of gate of Urdu Kanya Shala of Amadapur, accused No.1 Sk. Haider Sk. Kadar and accused No. 2 to 7, who were brothers of accused No.1, assaulted the informant by knives, sticks and sword. Because of the said assault, the informant sustained bleeding injuries. Ejaj Ahamad, Abdul Sattar,

Hamidkha, Wajidkha and Abdul Khalil and Abdul Wajit Kazi had rescued the informant by intervening in the quarrel. While intervening, Ejhar Ahmad also sustained injuries. As per the informant, the incident took place because of old enmity with the accused persons. The informant was admitted in the hospital at Amadapur, where he narrated the incident to the police. On the basis of the said information, Crime No. 22/2000 was registered. Necessary investigation was conducted and charge-sheet came to be filed against the accused persons.

3. The learned Sessions Court framed charge against the accused persons under Sections 147, 148, 307 read with Section 149 of the Indian Penal Code and under Section 323 read with 149 of Indian Penal Code and under Section 37 read with 135 of the Bombay Police Act and under Section 3 read with Section 25 of the Arms Act. The accused pleaded not guilty and their defence was that the informant Mohd. Taj attacked accused No.1-Sk. Haider and abused and threatened him and with a view to save himself from that a false case is registered against the accused persons. The learned Trial Court, after recording the evidence, acquitted the accused persons of all the charges. Hence this appeal against acquittal.

4. It is necessary to mention here that the informant Mohd. Taj had filed Criminal Revision Application No. 289/2007 challenging the judgment and order of acquittal. During the pendency of the present appeal and the revision, Criminal Application No.141/2021 was filed jointly by the informant and the accused persons, bringing on record the settlement between them. It is stated in the application that the parties are resident of same village and had cordial relations. They belonged to the same community. Due to misunderstanding between them, the present dispute had arisen. But due to the intervention of the villagers and respectable persons they have decided to settle the matter amicably. By the application, they sought compounding of the matter in the interest of justice.

5. The informant, therefore, in view of the said application, has withdrawn the Criminal Revision Application filed by him challenging the judgment and order of acquittal.

6. Heard the learned Additional Public Prosecutor for the appellant and the learned Advocate for the respondent.

7. The learned Additional Public Prosecutor vehemently submitted that the learned Trial Court has committed an error by

acquitting the respondents. There is sufficient evidence on record in the form of deposition of PW1, original complainant and PW2 and PW4 who are the eye witnesses. Injury certificate is brought on record which proved the injuries suffered by the informant PW1. The weapons were recovered. The Chemical Analysis report supports the prosecution. Therefore, impugned judgment and order of acquittal is liable to be quashed and set aside.

8. The learned Advocate for the respondents, on the other hand, submitted that admittedly there was enmity between the accused on one hand and the complainant on the other. During the evidence of the prosecution witnesses material omissions and contradictions are proved on record. The evidence of PW1 informant Mohd. Taj does not inspire confidence. The statements of PW2 and PW4, the alleged eye witnesses, were recorded belatedly. Though, independent witnesses were available, not a single independent witness has been examined by the prosecution. He submitted that there is no perversity or error in the judgment of learned Trial Court. He therefore, submitted that there is no merit in the appeal and the appeal is liable to be dismissed by confirming the order of acquittal passed by the learned Trial Court.

9. Heard the learned Additional Public Prosecutor for State and the learned Advocate for the respondents at length. Perused the record.

10. In support of its case, prosecution examined 12 witnesses. PW1 Mohd. Taj is the informant, he has stated in his deposition that on 02/05/2000 they were doing decoration of pandal at Urdu Kanya Shala, Amdapur as there was marriage of his cousin sister on 03/05/2000. He went to Police Station, Amdapur to give marriage invitation card to P.S.I. Dakhore. Thereafter, he returned and reached in front of gate of Urdu Kanya Shala on the motorcycle. The proprietor of the pandal namely Sk. Hamid was there. He called him. At that time, 2 to 3 persons were helping him namely Sk. Rasul Chand, Abdul Khalil, Abdul Jamil. At that time, one Maruti Van bearing No. MH-31-5353 of white colour came there and stopped in the open premises. From the said van, accused No.1 came out with sword. Accused Nos.2 to 7 also got down from the said van. Accused No.1 Sk. Hamid was asking those remaining accused to kill the complainant. All the accused rushed to him. Accused No.3 assaulted him on back with a stick due to which he fell down on the ground. Then accused No.1 assaulted him by sword on his

both legs. The said blow landed on his both knees. Then accused No.1 assaulted on his head. Accused No.5 Sk. Ejaj assaulted him with knife on the neck. He was trying to slit the neck but the said knife hit on his left cheek below ear. Accused No.3 rushed to Maruti Van and brought knife and assaulted on his left arm. Accused No.2- Sk. Ishar, Accused No.4 - Sk Riyaj, Accused No. 7-Sk. Mazar assaulted him with sticks. Accused No.6 lifted a stone and hit him on forehead. When the accused were assaulting, he was shouting and saying, "Save me save me." At that time, Abdul Khalil and Ijahar Ahamad came to the place of incident and they threw themselves on his person and requested the accused not to beat PW1, otherwise he would die. Even then the accused No.4- Sk. Riyaj and accused No.7- Sk. Mazar had assaulted Abdul Khalil with sticks, accused No.5 Sk. Ejaj assaulted Ijahar Ahmad with knife. Thereafter, Sk. Rashul and Mohd. Jamil came there and they intervened in the quarrel and they took him on the handcart to the Government Hospital, Amdapur. Initially, he was taken to police station but considering his serious condition, they had immediately taken him to Government Hospital, Amadapur. He was unconscious. Thereafter, he was shifted to Government Hospital, Buldhana. Thereafter, P.S.I. Chincholkar of L.C.B. Branch came in the

hospital where he narrated the incident to him. Prior to that, his report was reduced into writing by the police in Government Hospital, Amdapur. The said report is at Exh.104. He identified the weapons used in the alleged assault.

11. During the cross, he admitted that accused No.1 had lodged a report against him and his relatives in the Police Station, Amdapur, at the same time in connection with incident dated 02/05/2000. The said report was registered for the offence punishable under Sections 294, 506, 323 of the Indian Penal Code and the same was pending. He was not aware that in that incident, the accused No.3 had sustained injury on his right hand fingers and that accused No. 4 had sustained injury to his right hand fingers. He further admitted that prior to the alleged incident, he and accused No.1 were running luxury buses in partnership for about twelve years and they were having friendship and they used to sit and take meals together. He also admitted that in the year 1998 the accused No.1 lodged a report against him and his relatives at Police Station. On the basis of which, Crime No. 114/1998 came to be registered against them. He admitted that on 23/01/1999 the accused No.1 had again lodged a report against him in the Police Station alleging that he

was cheated and there was commission of criminal breach of trust by PW1. He also contended that PW1 had sold a luxury bus which was belonging to the partnership firm. Both those cases, according to this witness, were pending against him in the Court. He denied the suggestion that due to the pendency of cases, he had lodged a false case against the accused. He denied the suggestion that he was afraid that if the accused No.1 gave the evidence against him he might be convicted. He further denied the suggestion that he started quarrel on 02/05/2000 with the accused Nos.1, 3 and 4 in the hotel. He denied that in the quarrel, a scuffle took place and he suffered injuries due to the sharp edges of the tables and glasses, as he fell on them. He admitted that the printed F.I.R. did not bear his signature.

12. During his cross-examination, following material omissions were brought on record.

“on 2.5.2000 the work of decoration of the pendol was going on at Urdu Kanya Shala Amadapur.”

“I had gone to the police station Amdapur to give a marriage card of my cousin sister to P.S.I. Dakhore.”

“after I gave marriage card to P.S.I. Dakhore I reached infront of the gate of Urdu Kanya Shala on my motor cycle.. and I gave a call and called to Sk. Hamid.”

“at the time Sk. Rashul, Abdul Khalil and Abdul Jamir were helping to Sk.Hamid in decoration work.”

“at that time motor van Maruti bearing no.MH-5353 had come there.”

“accused no.1 came out from the said Maruti car and he was holding a sword.”

“at that time the accused no.2 to 7 had come out from the said Maruti van with accused no.1.”

“that time the accused no.1 was shouting and saying accused no.2 to 7 to kill me.”

“then the accused persons rushed to me and accused no.3 assaulted me by stick on my back.”

“then the accused No.1 assaulted me by sword on my both legs.”

“then the accused no.1 assaulted me by sword on my head.”

“then the accused no.5 assaulted me on my neck and he tried to cut my neck and thereby I sustained injuries.”

“then the accused no.3 rushed to Maruti van and he brought the knife and thereby assaulted me on my left eye.”

“then accused no.6 assaulted me by stone and then I shouted to save me ...save me... and the accused would kill me.”

“Abdul Khalil had come to save me and they laid on my person and said to accused not to beat me and I would die and thereafter accused no.4 and 7 assaulted by sticks to Abdul Khalil and accused no.5 assaulted to Ejaj Ahamad by knife on his

hand.”

“a Maruti van had come there when I was standing in front of the gate of Urdu Kanya Shala and accused no.1 had come out from said van armed with sword and accused no.2 to 7 had also come out from said van with accused no.1.”

“at that time the accused no.1 had said to the rest of the accused to beat me and kill me.”

“accused no.5 tried to cut my neck by knife and at that time the said knife hit on my left cheek.”

“when accused no.3 rushed to the Maruti van and brought a knife and assaulted me near my eye.”

“accused no.6 assaulted me by stone and then I shouted to save me and save me and accused would kill me.”

“at that time Maruti van bearing MH-31-5353 came there.

“accused no.1 came out from the said Maruti van armed with sword and accused no.2 to 7 also came out from said van.”

“at that time accused no.1 said to beat me and kill me and saying say to rest of the accused.”

“accused no.3 assaulted me on my back by sticks.”

“accused no.1 assaulted by sword on my both legs..accused no.1 also assaulted me by sword on my head, that accused no.3 rushed to the Maruti van and brought a knife and assaulted on my left arm.”

“the accused no.6 assaulted me by stone on my head which was hit above my forehead and at

that time I shouted as save me save me and accused would kill me.”

“accused no. 4 and 7 assaulted by sticks to Abdul Khalil and accused no.5 assaulted by a knife to Ejhar Ahamad on his hand.”

He was unable to explain why these statements were absent in his police statement. He was not in a position to tell whether there were any special identification marks on the weapons which he had identified before the Court.

13. PW2, Mohd Jamil is an eye witness. He deposed in the line of PW1. In the cross-examination, he admitted that Sk. Khalil was his father and Mohd. Mobin Kazi was relative of Sk. Khalil. Complainant Mohd. Taj was a distant relative of his father and himself. Jamruddin Kazi was also his distant relative. He stated that his statement was recorded on 08/05/2000. According to him, it was incorrectly mentioned in his statement before the police that Jamruddin Kazi was his uncle. Thus, portion marked ‘A’ from his statement to that effect was incorrect. He was not in a position to assign any reason why police recorded such incorrect statement. He admitted that his statement was read over to him by the police and he did not raise any objection to the said incorrect statement portion mark ‘A’.

He stated that he had informed the incident to police even before 08/05/2000. At that time, police did not record his statement. He denied the suggestion that accused Nos. 1, 3 and 5 were sitting in the hotel in front of Urdu Kanya School and PW1 Mohd. Taj went inside the hotel and purposefully quarreled with them. At that time, the relatives of Mohd. Taj by name Afjal Kazi, Ayaj Kazi, Ajaj Kazi, Mohd. Khalim and Mohd Ajim came there with sticks and they assaulted accused Nos. 1,3 and 5. He denied that during that incident, Mohd. Taj fell on iron benches, table and steel glasses having sharp edges and therefore he sustained injuries. He further denied that Mohd. Taj tried to run away from there on motorcycle. However, he fell down from the motorcycle and thereby he sustained injuries from the same. He was not aware that there was any partnership between accused No. 1 and Mohd. Taj in the business of luxury buses.

14. PW4 - Sk. Rasul Sk. Chand is an eye witness. He deposed same like PW2. In the cross-examination, he admitted that Jamruddin Kazi was uncle of accused persons. His statement was recorded on 08/05/2000. He was called by police on the spot on 08/05/2000 and P.S.I. Dakhore made inquiry with him. However he did not give any statement before him. For the first

time, he gave statement to the police in respect of the incident on 08/05/2000. He admitted that he, along with the villagers, had gone to Superintendent of Police complaining that accused No.1 and P.S.I. Dakhore were having good relations *inter se* and as such investigation of the case should be made over to other police officer. A representation to that effect was given to Superintendent of Police.

In his cross-examination following omissions were brought on record.

“on 02.05.2000 I had been to Urdu school at 9.30 a.m.”

“there is old inimity between accused no.1 and Mohd. Taj.”

“prior to this incident the accused no.1 and his brother had assaulted to Mohd.Taj by going to his house and there is case between them.”

He denied the suggestion that he was not present at Amdapur on 02/05/2000 and that he stated before P.S.I. Dakhore that he was not present at the place of incident and he knew nothing about the incident.

15. PW5 - Ejhar Ahamad also claims to be an eye witness and he gave the description of the incident as was given by PW2 and PW4. He further deposed that he tried to save Mohd. Taj by

falling on his body. Even Khalil Kazi fell on his body so as to save him and they both received stick blows. The knife of accused No.5 struck on his right thumb. Thereafter, they took Mohd Taj to the hospital. He stated that there were strained relations between accused and Mohd. Taj on account of partnership in luxury buses and therefore the incident had taken place.

During the cross-examination, material omissions were brought on record to the effect that he did not state before the police that, "While coming from the field, he stayed at the hotel of Jogale to drink water, then he heard noise as, "beat beat" and at that time, the complainant Mohd. Taj was standing in front of the gate of Urdu Kanya School." He also admitted that he did not state before the police that, "The accused assaulted by stick on the back of Mohd. Taj and he fell down. Then accused No.1 assaulted by sword on the legs and head of Mohd.Taj and then accused No.5 assaulted by knife on the neck of Mohd. Taj and when he avoided the said blow, knife struck on the left cheek of the Mohd. Taj." He further admitted that he did not tell in his police statement that, "Accused No.6 assaulted by stone on the head of Mohd. Taj and that accused No.3 brought a knife and assaulted thereby on hand of Mohd. Taj. At that time, rest of the accused were assaulting Mohd. Taj by sticks." He further

admitted that he did not state before the police that, “He went to the place of incident and he laid on the person of Mohd. Taj and he received the blows of sticks and knife of accused No. 5 struck on his right thumb below.” He stated that it did not happen that complainant Mohd. Taj was sitting on his motorcycle. He did not give any statement before police on 06/05/2000. He specifically denied that he had given a statement before police on 06/05/2000 and thereafter his supplementary statement was recorded on 08/05/2000. He admitted that he was not referred to Medical Officer.

16. PW10 - Dr. Avinash Jadhav is the Medical Officer, who examined PW1 Mohd. Taj and issued injury certificate (Exh.143) which mentions eight injuries on his person. Except injury No.1, a contused lacerated wound of size 3 x 1 x 1 c.m. on the left knee which was grievous, according to him, all other injuries were simple in nature.

In the cross-examination, he admitted that no weapon was referred to him by police for his opinion. He further admitted that he had not mentioned identification marks of the patient in the certificate. He further admitted that he would not be able to identify the said patient if shown to him on that day. He could

not identify PW1 as injured person, whose Medical Certificate (Exh. 143) was issued by him. He was not in a position to explain the meaning of “Butterfly injury” (injury No.2). According to him the word “Butterfly” was referred in injury No.2, at the instance of Resident Medical Officer. He admitted that injury Nos. 3 to 6 and 8 were possible due to fall of person from motorcycle. He admitted that he did not mention in the certificate (Exh. 143) that the injuries suffered by PW1 were having sharp edges. He did not mention colour of injuries in the injury certificate (Exh.143). He was not in a position to tell the depth of injury No.2. He further deposed that when a person falls on head, he would try to save his head and thereby firstly elbow and knee of such person will come in contact of the ground. He, however, denied that injuries mentioned in certificate (Exh.143) were possible by falling from the motorcycle. He did not make any inquiry to find out whether particles of soil were there in the injuries suffered by the injured. He admitted that he did not mention the margin of injuries in certificate Exh. 143. He further admitted that the margin of injury was a decisive factor to determine the nature of the object used. He denied the suggestion that he issued certificate Exh. 143 at the instance of RMO. He further admitted that he had never come across the

Modi's Medical jurisprudence. He stated that he did not agree with the opinion of Modi to the effect that a gitti-stone is a sharp edged object. He had no occasion to see the injuries caused to a person by gitti-stone.

17. PW3, PW6 and PW7 are the panchas. PW3 is pancha to the spot panchanama Exh.109, seizure of article vide seizure memo Exh.110, seizure of dress and stick vide seizure memo Exh. 111. Seizure of stone vide panchanama Exh.112 and seizure of stick having blood stains, vide seizure memo 113, Bamboo stick was seized vide panchanama Exh. 114, pant and shirt were seized vide seizure memo 115, jersey of white colour having blood stains was seized vide panchanama 115 and blood sample was collected vide panchanama Exh.116. He proved all these panchanamas.

During the cross-examination he admitted that he did not read the documents before he put his signature on them. He was not in a position to tell the contents of the panchanama Exh. 109 to 116. He was not in a position to tell from where and when the police had seized stick and bamboo stick. He was not aware from whom and when cloths were seized by police. He was not aware as to whose blood sample it was, which was seized in his presence.

18. PW6, Sk. Usman is the pancha to the seizure of cloths of the complainant Mohd. Taj vide panchanama Exh.124. The cloths of Ejaj Ahamad were seized vide panchanama Exh.125 and cloths of Abdul Khalil were seized vide panchanama Exh.126. He denied the suggestion that he was a stock pancha of the police.

19. PW7 - Sk. Mustaq Sk. Jamal, is the pancha to the seizure of sword and knife from the white coloured Maroti Van, vide panchanama Exh.128.

20. PW9 – Dr. Ganesh Gayakwad, the Medical officer who was working at General Hospital Buldhana. He examined Mohd. Taj on 16/05/2000 and issued Medical Certificate Exh.137.

In the cross he admitted that left knee of person cannot be said to be a vital part. He stated that subluck session means partly dislocation. If a person falls while parking motorcycle on the ground then such dislocation of knee joint was possible. He admitted that in ordinary course of nature injuries mentioned in Exh.137 were not sufficient to cause death of a person.

21. PW11 - Shekhar Chincholkar is the Investigation Officer. He was working as Police Inspector in Local Crime Branch at Buldhana Headquarter. He investigated the Crime No.

21/2000 registered with Amdapur Police Station. During investigation, he noticed the Maruti Van allegedly used in the crime was lying unattended behind Tahsil Karyalaya, Chikhli. Accordingly, he conducted panchanama of search of the vehicle and he found one sword and knife beneath the rear seat of the Maruti Van which were seized vide panchanama Exh.128. He recorded supplementary statement of injured Mohd. Taj on 08/05/2000. During his cross-examination the omissions and contradictions from the evidence of PW2 Mohd. Jamil were proved on record.

22. PW12, P.I. - Dakhore, at the relevant time, was working as Police Station Officer at Amdapur Police Station. He received the report Exh.104 and registered crime on its basis. Thereafter, he arrested the accused persons, conducted panchanamas etc.

In his cross-examination, he admitted that accused No.6 Haider Sk. Kadar had also lodged a report against the complainant Mohd. Taj and a crime was registered on that basis. He also admitted that PW2, PW4, PW5, PW6 and PW7 were related to the complainant. The omissions of PW1 from the report Exh.104 and his supplementary statement were proved during cross-examination of this witness. The omissions from the

statement of PW5, Ijahar Ahamad were also proved on record during his cross-examination.

23. On scrutiny of evidence led by the prosecution, it appears that PW1 Mohd. Taj has substantially improved his version in the Court. Material omissions which go to the root of the matter have been brought on record during his cross-examination. Admittedly, there was enmity between the complainant and the accused persons. Previously Complaints were lodged by the accused against the complainant. Similarly, there are material omissions in the evidence of other eye witnesses i.e. PW2, PW4 and PW5. The prosecution has failed to prove the recovery of weapons from the accused persons. The statements of eye witnesses are recorded belatedly i.e. on 06/05/2000 and 08/05/2000. Admittedly, there was a cross complaint lodged by the accused against the complainant and the eye witnesses. Though there is evidence on record that people had gathered at the time of incident, not a single independent witness is examined by the prosecution. The version of eye witnesses does not inspire confidence. PW3 pancha to the spot panchanama and seizure panchanama Exh. 110 to 117 has stated in his cross-examination that he was not aware as to what was

written in those panchanamas. Though, he has not supported the prosecution, the prosecution has failed to declare him hostile. The seizure of muddemal article therefore was not proved by the prosecution.

24. The medical evidence also does not support the prosecution case, except the grievous injury on left knee, all the other injuries were simple. If the prosecution case is to be believed that PW1 Mohd. Taj was assaulted by not less than seven people with sword, knives, sticks etc. then he would have received more serious injuries in the assault. However, the injury certificate does not support his allegations. The Medical Officer, PW10 has not mentioned any identification marks in the injury certificate Exh.143. He could not identify the injured PW1 in the Court. Therefore, no reliance can be placed on the medical evidence. All the prosecution witnesses since are related to the PW1, there is every possibility that they are supporting the case of prosecution at the instance of PW1.

25. The learned Trial Court in its judgment has properly assessed the evidence of the prosecution and has given plausible reasons. The learned Trial Court has rightly arrived at the conclusion that the prosecution has failed to prove its case

beyond reasonable doubt. The view taken by the learned Trial Court is a possible view and in the facts of the present case, according to me, it is the only possible view. Therefore, there is no merit in the appeal filed by the State and the appeal deserves to be dismissed and the same is accordingly dismissed.

26. Bail bonds of the respondents stand cancelled.

JUDGE

J.Pethe..