

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

CRIMINAL APPEAL NO. 45 OF 2021

Amar s/o Govindappa Bhakre,
Aged about 42 years, Occ-Business,
R/o Near Raja Tower, Chikhali, Tq. Chikhli,
District – Buldana (In Jail) **APPELLANT**

...V E R S U S...

State of Maharashtra,
through Police Station Officer,
Police Station Chikhli,
District – Buldana. **RESPONDENT**

Mr D.V. Chauhan (Appointed), advocate for appellant.
Mrs Shamsi Haider, APP for respondent.

CORAM: N.B. SURYAWANSHI, J.
DATE: 12-02-2021.

ORAL JUDGMENT

1] **ADMIT.** Since appellant is in jail vide order dated 19.01.2021, the matter was directed to be fixed for final hearing. Heard finally by the consent of the learned advocates appearing for both the parties.

2] The appellant (hereinafter referred to as “the accused”) is convicted for the offence punishable under Section 324 of the Indian Penal Code and is sentenced to suffer six months

rigorous imprisonment and to pay a fine of Rs. 2000/- in default to suffer simple imprisonment in one month. His conviction is impugned in the present appeal.

3] The prosecution case, in short, is as under :-

The PW No.1 - informant-was the Chairman of the Chikhli Urban Co-operative Bank Ltd., Chikhli. On 29.04.2017 at about 08:40 p.m., PW No.1 - informant along with other directors and employees of the Bank namely, Purushottam Divate, Umesh Zanwar, Rajendra Shete and his Personal Assistant - Abhijit Netke came outside of the main entrance of the Bank, after completing the work. The vehicle of the informant was waiting in front of the main gate. The informant Purushottam Divate and Rajendra Shete went towards the vehicle. The accused suddenly came on the motor-cycle bearing No. MH-28-AE-6975, applied brakes and stopped the vehicle near the legs of the informant. He got down from the vehicle and said to the informant that “तू माझे कर्ज मंजूर होवू दिले नाही व त्यानंतर मी केलेल्या हल्ल्यात तू एकदा वाचलेला आहे व आज तेरेकू खतम कर डालूंगा”. After saying so, with an intention to kill, the accused pressed informant's neck. Purushottam Divate pushed the accused aside. He then went to his vehicle and removed one sharp sickle from the dicky and assaulted the informant. The sickle

struck his left hand and caused a injury. Abhijit Netke, P.A. of the informant and Subhash Raut-Driver, caught hold of the accused. The blood pressure of the informant increased due to which he was taken to the hospital by Rajendra Shete and Purushottam Divate. The accused escaped from the hands of Abhijit Netke and Subhash Raut and fled from the spot. The matter was reported to the police station.

4] According to the prosecution, before this incident, the loan proposal of the accused was rejected. Therefore, previously the accused had damaged the vehicle of the informant. On the basis of the information, offence at Crime No.190/2017 under Section 307 of the Indian Penal Code was registered with Chikhli Police Station. During the course of the investigation, the Investigating Officer seized the motor-cycle and sickle from the house of the accused. After conducting the investigation, charge-sheet was filed.

5] The accused was charged for the offences punishable under Sections 307 and 506 Part II of the Indian Penal Code. The defence of the accused was of total denial. In support of it's case, the prosecution examined eight witnesses. After recording the

evidence, the learned trial Court acquitted the appellant of the offence punishable under Section 307 of the Indian Penal Code, however, convicted him under Section 324. Hence, the present appeal.

6] Heard Shri D.V. Chauhan, learned advocate for the appellant and Ms. Shamsi Haider, learned Additional Public Prosecutor for the State. Perused the record.

7] Learned Advocate for the appellant assailed the conviction submitting that there are material omissions in the evidence of the prosecution witnesses which are lightly brushed aside by the learned trial Court by stating them to be minor. According to him, the medical certificate does not support the case of the prosecution. The Driver- Mr Subhash Raut and Director – Mr Umesh Zanwar were not examined by the prosecution. Hence adverse inference needs to be drawn against the prosecution. He submitted that though the CCTV footage of the incident was available, the same was not produced by the prosecution. For that reason also, adverse inference needs to be drawn against the prosecution. He submitted that all the interested witnesses were examined and their evidences does not inspire confidence.

According to him, the assault, so also criminal intimidation is not proved by the prosecution. Hence the conviction of the appellant is unsustainable and the same is liable to be quashed and set aside and the appeal deserves to be allowed.

8] Learned Additional Public Prosecutor, on the other hand, supported the judgment of the Trial Court. According to him, the evidence of the eye-witnesses supports the evidence of the injured informant. The medical evidence also supports the case of the prosecution. The first information report was promptly lodged, which rules out the possibility of false implication. She submitted that the FIR is not an encyclopedia of the incident and minor omissions in the same, would not help the defence. She, therefore, submitted that the conviction recorded by the trial Court is proper and the appeal is without merit and hence it is liable to be dismissed.

9] PW-1 is the informant/injured. He deposed that on the date of the incident, there was a meeting of the Board of Directors at Chikhli Urban Co-operative Bank at Chikhli. The meeting started at 4.00 pm. and finished at 08:00 to 08:30 p.m. Thereafter, he along with other directors and his PA Abhijit Netke

came out of the Bank towards the main gate from the staircase. His vehicle was brought by Driver-Subhash Raut. When he started proceeding towards the vehicle, the accused came on the motorcycle and abruptly applied brakes near his legs. The accused alighted from his motorcycle and caught hold of the informant. Accused stated that the informant had rejected his loan and was saved once and on that day he would not leave the informant and would kill him. Thereafter, the accused started pressing the throat of the informant. Meanwhile, his Driver, Netke and other directors came there. At that time, the accused left him and took out a sickle from the dicky of his motorcycle and struck the informant with the sickle. The informant obstructed the attack with his left hand, due to which the informant sustained an injury on his hand. Thereafter, some persons gathered there. Netke and Driver-Raut caught hold of both the hands of the accused. At that time, the informant's blood pressure shot up, and therefore, he was required to be admitted to the hospital. When the informant was being taken to the hospital in the vehicle, the accused escaped from the clutches of Netke and Raut. The accused kept the sickle in the dicky of the motorcycle and fled from the spot. The incident was informed by Netke and Raut to the police. He further deposed that before this incident, in 2013, in front of the

Mauni Baba Ashram, the accused had damaged his vehicle by pelting stones. The accused had a grievance about the rejection of his loan proposal by the Bank. In the year 2017 also, the accused had assaulted the informant with the preparation to kill him and the informant lodged a report in the police station on the same day. He further deposed that the CCTV footage of the assault was available and he was in a position to submit the CCTV Footage of the bank and of his house too. On the same day of the said incident, at about 2.00 p.m., the informant had found that the accused had come to his house and made reckless.

10] In the cross-examination, he admitted that after 2013 till 2019, the accused had not applied for a bank loan. He thereafter volunteered that the accused applied for a bank loan in 2013. Omissions that “on 29.04.2017 there was a meeting of the Board of Directors in the Chikhali Urban Co-operative Bank which started at 04.00 p.m. and completed at 08.00 to 08.30 p.m.”, “after the completion of the meeting, he and other directors came outside of the Bank”, “he obstructed the blow of the sickle with his left hand”, “some persons gathered and Abhijit and Raut caught hold the hands of Amar” were brought on record during his cross-examination. He was unable to give any reason as to why those

statements were not recorded in his police statement. He admitted that the sickles are not of a branded company and they are prepared by a black smith. He admitted that he did not state in his police statement about the finding of the accused in the CCTV footage of the bank as well as of his house. He denied the suggestion that no such incident had taken place.

11] The other directors were examined in support of the prosecution case. PW-3 Purushottam Divate and PW-4 Rajendra Shete deposed in terms of the deposition of PW-1. PW.3, however, stated that at the time of the incident, the accused gave a blow of the sickle to PW-1 and at that time, PW-1 moved aside and the sickle stuck on his left hand. Omission that "there was a meeting of the Board of Directors on 29.4.2017 - he was present in that meeting – the meeting was concluded around 8:30 p.m. and thereafter they came outside of the bank for going to their houses" was put to him. He could not assign any reason as to why the word “meeting” was not recorded in his previous statement.

12] In the cross-examination of PW-4 - Rajendra Shete, the omission to the effect that "there was a meeting of the Board of Directors on 29.4.2017, it was held in the meeting hall of the

Bank, it was started at 4:00 p.m. and concluded around 8:15 to 8:30 p.m. and after meeting we came”, and accused “shouted” were brought on record. He could not give any reason as to why these facts were not mentioned in his previous statement.

13] PW-6 Abhijit Netke, P.A. to PW-1 was examined who narrated the same facts about the incident as were narrated by PW-1, 3, and 4. In respect of the actual incident, he deposed that the accused tried to press the neck of PW-1 and at that time, PW-3 Divate moved him aside. Thereafter, the accused went towards the motorcycle and removed one sickle from the dicky of his motorcycle and he gave a blow of sickle on PW-1, as PW-1 moved aside, the blow struck on the left hand of PW-1 instead of the head. PW-1 sustained injury by that blow. His blood pressure went high, he was sweating, so they took him to the hospital. The accused escaped from that place. He stated that PW-6 lodged the report.

14] During his cross-examination, the omission about “the meeting” was brought on record. He admitted that as the B.P. of PW.1 was high, he was admitted in the hospital on 29.04.2017 and on the next day, he was discharged. They went to the police

station on the same day for lodging report. He admitted that there was a CCTV camera in front of the Bank and that CCTV footage of 29.04.2017 was not produced before the Court. He denied that since the accused shouted on PW-1, therefore, PW-1 lodged false report against the accused. He denied the suggestion that as he was PA of PW-1, he was giving false evidence in support of PW-1.

15] PW.7 - Medical Officer proved medical certificate (Exhibit No.37). On examination of PW-1, the medical officer found the following injuries :-

“(i) History of blunt trauma to the neck and right wrist joint. On examination, no external injury was found.

(ii) Abrasion on the left forearm on middle third part on the anterior aspect of size 1 1/2 x 1/4 cm. Both the injuries were simple, caused by a hard and blunt object.”

During the cross examination, the medical officer admitted that there was neither injury nor any sign of swelling on the neck of PW-1. He further admitted that if a person is assaulted by the sharp side of sickle, cut injury is caused. He volunteered that if the blunt side of the sickle was hit, in that case, blunt trauma could be possible. He further admitted that if a pointed

part of the sickle hits the body, a cut injury could be possible. He also admitted that both the injuries were not cut injuries. He admitted that if the person hits a hard and blunt object or falls on the rough surface, both the injuries were possible. He also admitted that both the injuries were simple injuries.

16] PW-8 is the Investigating Officer. He admitted that he did not collect the CCTV footage of the day of the incident from the bank. He seized the motorcycle and the weapon (sickle) from the house of the accused. He proved on record medical certificate (Exh. No.49) issued by Dr. Bharat Pangole to the effect that PW-1 was admitted in the hospital on 30.04.2017 at 01.00 a.m. and was discharged on 01.05.2017 at 10.00 a.m. He was suffering from hyper tension. The patient was discharged in good condition and he was advised to complete bed rest for two weeks. He admitted that in the certificate (Exhibit No.49), injuries on the neck, hand and shoulder were not mentioned.

17] In the cross-examination of the Investigating Officer, the omissions in the evidence of the witnesses were proved. He also admitted that there was a CCTV camera fixed at the bank. He also admitted that the spot of the incident was having heavy traffic

and it was surrounded by some shops which used to remain open till 9 to 9:30 p.m.

18] Careful analysis of the prosecution evidence reveals that the alleged incident of assault took place on 29.04.2017 at 8.00 to 8.30 p.m. and the same was informed by the PW-6 to the Police Station on mobile phone. Since it was the information in respect of the commission of the cognizable offence, the investigation had to commenced on the same day. It ought to have been recorded in the police station diary and the police ought to have rushed to the spot. The written report (Exhibit 23) was lodged by the PW-1 on the basis of which Crime No. 190/2017 was registered at Buldhana Police Station printed FIR (Exhibit 24) was registered on 30.04.2017 at 0.30 hours. As per the evidence of PW-1, due to the assault, his B.P. shot up and he was required to be admitted for medical treatment. In this situation, the lodging of a written report on the part of PW-1 creates doubt about the version of prosecution.

19] Material omissions are proved on record from the evidence of prosecution witnesses including the first informant-PW-1. A medical certificate issued in respect of the injuries

suffered by the PW-1 also does not help the prosecution. The medical certificate clearly states that there was no external injury on the neck and right wrist joint and only an abrasion on the left forearm on middle third part on anterior aspect of 1/2 x 1/4 cm was noticed during the examination and according to the Medical Officer, the same was a simple injury. If the prosecution's case, that PW-1 was assaulted with a sickle is to be accepted, there ought to have been a more serious injury on the person of PW-1. The evidence of the prosecution witnesses is inconsistent with each other and it does not inspire confidence. Though the CCTV footage of the incident was available, the same was not produced on record by the prosecution, for which adverse inference needs to be drawn against the prosecution under Section 114 (g) of the Evidence Act. Similarly for non-examination of the Driver-Raut, adverse inference needs to be drawn against the prosecution. The I.O. has admitted in his cross-examination that the spot of the incident was having heavy traffic and shops surrounding the spot of the incident used to remain open till 9.30 in the night. Non-examination of any independent eye-witness also renders the prosecution's case doubtful and for that purpose also adverse inference needs to be drawn against the prosecution. Since the evidence of the prosecution witnesses is contradictory to each

other on material particulars, in my opinion, the prosecution has failed to prove its case beyond reasonable doubt and the appellant is entitled for acquittal by giving him benefit of doubt. I am of the considered view that the appeal deserves to be allowed.

Hence, the following order is passed:-

ORDER

- i] Criminal Appeal No. 45/2021 is **allowed**.
- ii] The impugned judgment and order of conviction recorded by the learned Sessions Judge, Buldana in Sessions Case No. 75/2017 thereby convicting the appellant/accused under Sections 324 and 506 Part-II of the Indian Penal Code is hereby set aside.
- iii] The appellant/accused is acquitted of all the charges.
- iv] The accused, who is in jail shall be released forthwith, if not required in any other offences/case.
- v] Fine amount, if any, deposited by the appellant be refunded to him.

vi] The appellant shall furnish bail bond of Rs. 15,000/- (Rs. Fifteen Thousand) with one or two sureties in the like amount in terms of Section 437-A of the Code of Criminal Procedure.

vii] The fees of Advocate Shri D.V. Chauhan appointed for the appellant is quantified at Rs. 7500/-.

viii] At this stage, the learned appointed advocate Shri D.V. Chauhan graciously states that he intends to donate the fees to High Court Bar Library, Nagpur.

ix] The High Court Legal Services Sub-Committee, Nagpur therefore shall deposit the amount of Rs. 7500/- payable to the learned advocate Shri D.V. Chauhan with the High Court Bar Library, Nagpur within a period of twelve weeks from today.

JUDGE