

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT
AURANGABAD
CRIMINAL APPEAL NO. 1004 OF 2019**

Rahul @ Talya S/o Gajanan Thorat	]	
Age : 22 years, Occ. : Labourer,	]	
R/o. Rangali Chawl, Chitod Road,	]	
Dhule, Tq. & Dist. Dhule.	]	... Appellant
V/s.		
The State of Maharashtra	]	
(copy to be served on P.P. in the High	]	
Court of Judicature of Bombay Bench	]	
at Aurangabad)	]	... Respondent

**WITH
CRIMINAL APPEAL NO. 938 OF 2019**

Sagar Chaitram Bhoi	]	
Age : 22 years, Occ. : Education,	]	
R/o. House No.10, Ramedeobaba	]	
Nagar, Dhule, Dist. Dhule.	]	... Appellant
V/s.		
The State of Maharashtra	]	
(copy to be served on Public	]	
Prosecutor High Court of Bombay of	]	
Judicature Bench at Aurangabad)	]	... Respondent

**WITH
CRIMINAL APPEAL NO. 1028 OF 2019**

Mahesh S/o Prakash Pawar	]	
Age : 24 years, Occ. : Labour,	]	
R/o. Swami Narayan Society, Dhule,	]	
Tq. & Dist. Dhule.	]	... Appellant
V/s.		
The State of Maharashtra	]	
Through Police Inspector,	]	
Azad Police Station, Dhule,	]	
Tq. & Dist. Dhule.	]	... Respondent

**WITH
CRIMINAL APPEAL NO. 1029 OF 2019**

**WITH
CRIMINAL APPLICATION NO. 2094 OF 2021**

Santosh Chandrakant Shinde	]
Age : 29 years, Occ. : Labour	]

R/o. Ahilya Devi Nagar, Behind Pratap]
 Mill, Railway Station Road,]
 Tq and District : Dhule.] ... Appellant
 V/s.
 The State of Maharashtra]
 (copy to be served on the Ld.APP in]
 the Hon'ble High Court of Judicature]
 of Bombay Bench at Aurangabad)] ... Respondent

**WITH
 CRIMINAL APPEAL NO. 1043 OF 2019**

Mayur @ Babuwa Suresh Kandare]
 Age : 26 years, Occ. : Labourer,]
 R/o. Ahilyadevi Nagar, Chittod Road,]
 Dhule, District : Dhule.] ... Appellant
 V/s.
 The State of Maharashtra]
 (copy to be served on Public]
 Prosecutor, High Court of Bombay of]
 Judicature Bench at Aurangabad)] ... Respondent

 Mr. C.C. Deshpande for the Appellant in Appeal-1029-2019.
 Mr. C.C. Deshpande instructed by Mr. N.L. Choudhari for the
 Appellant in Appeal-1043-2019.
 Mr. A.B. Girase instructed by Mr. N.L. Choudhari for the Appellant in
 Appeal-938-2019.
 Mr. K.N. Shermale for the Appellant in Appeal-1028-2019.
 Mr. A.B. Girase instructed by Mr. V.P. Raje for the Appellant in
 Appeal-1004-2019.
 Mr. S.P. Sonpawale, APP for the Respondent-State.

**CORAM : N.R. BORKAR, J.
 RESERVED ON : NOVEMBER 23, 2021.
 PRONOUNCED ON : APRIL 4, 2022.**

COMMON JUDGMENT :

1] All these Appeals are filed against one and the same
 Judgment and Order dated 29th August, 2019 passed by the

Additional Sessions Judge, Dhule in Sessions Case No.59 of 2017. All these Appeals were therefore heard together and are being disposed of by this common Judgment.

2] By the impugned Judgment and Order, the Appellants who were accused before the Trial Court have been convicted for the offence punishable under Section 395 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.5000/- each and in default of payment of fine R.I. for one year. The Appellants have been further convicted for the offence punishable under Section 323 r/w. 34 of Indian Penal Code and sentenced to suffer R.I. for six months and fine of Rs.500/- each and in default of payment of fine R.I. for fifteen days. In addition to above, accused No.1-Rahul @ Talya Gajanan Thorat is convicted for the offence punishable under Section 152 of the Maharashtra Police Act and sentenced to suffer R.I. for one year and fine of Rs.200/- and in default of payment of fine further R.I. for two months.

3] The Trial Court acquitted the accused for the offence punishable under Sections 504 and 506 r/w. 34 of Indian Penal Code.

4] It is the case of the prosecution that PW-2 : Sharad Bhila Hembade was working as a driver with Swapnil Agro & Poultry, Wadala and PW-8 : Sagar Arun Sonawane was working as a delivery boy with the said Swapnil Agro.

5] The incident took place on 29th December, 2016. On the day of incident, the employer of PW-2 and PW-8 instructed them to transport and deliver the chicks at Talasari, Dahiwal, Taluka : Chalisgaon, Biladi, Taluka : Dhule, Ranjwal, Taluka : Malegaon. Accordingly, they left Swapnil Agro at about 4.00 p.m. by truck bearing registration No.MH41-G-7442. According to the prosecution, PW-2 and PW-8 after delivering the chicks at Village-Dahiwal and Talasari, at about 3.00 to 3.30 a.m., reached near the bridge of Village Warkheda on Mumbai-Agra National Highway. As PW-2 was not aware of the location S.K. Poultry farm of Village Biladi where he was supposed to deliver the chicks he made a phone call to the owner of S.K. Poultry i.e. DW-1 Sudhir Patil who told him to stay near Warkheda bridge and wait for him. It is alleged that while PW-2 and PW-8 were waiting for DW-1 to come, at that time, accused came there on two motorcycles. According to prosecution, the accused assaulted PW-2 and PW-8 by a knife. They snatched about Rs.2500/- from PW-2 and about Rs.200/- from PW-8. According to the prosecution, when the alleged incident was going on, DW-1 reached there. On seeing DW-1 the accused started running away. According to the prosecution, accused-Rahul @ Talya Gajanan Thorat was however, apprehended at the spot and the other accused succeeded in running away from the place of incident.

6] The intimation of the incident was given to Azad Police Station. After arrival of police, the custody of accused - Rahul @ Talya Gajanan Thorat was handed over to them.

7] The report in relation to the incident was lodged, on the basis of which, Crime No.45 of 2016 for the offence punishable under Sections 395, 323, 504, 506 r/w. 34 of Indian Penal Code was registered. On completion of investigation, charge-sheet was filed against the accused.

8] The accused were charged and tried for the offence punishable under Sections 395, 323, 504, 506 r/w. 34 of Indian Penal Code. The Trial Court as stated earlier convicted the accused for the offence punishable under Sections 395 and 323 r/w. 34 of the Indian Penal Code and Section 152 of the Maharashtra Police Act. The Trial Court, however, acquitted them of the offence punishable under Sections 504 and 506 of the Indian Penal Code.

9] Heard Mr. Girase, Mr. Deshpande and Mr. Shermale, the Learned Counsel for the Appellants and the Learned APP Mr. Sonpawale for the Respondent-State.

10] The Learned Counsel for the Appellants submits that the Trial Court was not justified in convicting the accused on the basis of uncorroborated testimony of PW-2. It is submitted that according to PW-2, PW-8 was accompanying him at the time of incident. It is submitted that PW-8 has, however, not supported the prosecution case. It is submitted that according to PW-2, while incident was going on DW-1 Sudhir Patil came there and with the help of DW-1, Rahul @ Talya Gajanan Thorat was apprehended. It is submitted that the prosecution has, however, thought it fit not to examine DW-

1 on it's behalf. It is submitted that accused were thus constrained to examine him as defence witness. It is submitted that according to DW-1 no phone call was made by PW-2 on the day of alleged incident nor he had gone to the place of incident on that day.

11] It is further submitted that according to PW-2, he was assaulted by knife because of which he sustained bleeding injury to his left forearm. However, during medical examination except abrasion no other injury was found on the person of PW-2. It is submitted that considering these facts and circumstances, the Trial Court was not justified in concluding that the prosecution has proved its case beyond reasonable doubt. It is submitted that the impugned Judgment and Order of the Trial Court thus needs to be set aside and the accused be acquitted.

12] On the other hand, the Learned APP for the State submitted that there is no material on record to infer false implication. It is submitted that there is a recovery of incriminating articles at the instance of the accused. He submitted that considering the evidence on record, the Trial Court was justified in convicting the accused for the alleged offence.

13] Admittedly, according to PW-2 at the time of incident PW-8 was with him. PW-8 : Sagar Sonawane has, however, denied that while they were at the place of incident, the accused assaulted and robbed them. PW-8 was declared hostile and was cross-examined by the Learned APP. However, nothing incriminating could be

elicited during the cross-examination. There appears to be no reason for PW-8 to turn hostile in a case of such a serious nature and thus it casts doubt on the prosecution case.

14] Admittedly, according to PW-2, while the incident was going on DW-1 Sudhir Patil came there. If this is so, then it is not understood as to what was the reason for not examining him as prosecution witness. According to DW-1, on the day of incident neither he received phone call from PW-2, nor he had gone to the place of incident. DW-1 was cross-examined. However, again nothing incriminating could be elicited during the cross-examination.

15] According to PW-2, he was assaulted by knife and even his shirt was stained with blood. Admittedly, after the alleged incident, PW-2 was taken for medical examination and he was examined by PW-1 : Dr. Siddharth Udai Patil. According to PW-1, at the relevant time he was serving as a Medical Officer with S.B.H. Govt. Medical College and General Hospital, Dhule. On 30th December, 2016 at about 8.00 a.m. he examined PW-2. According to PW-1, on examination he found that there was abrasion on left forearm of PW-2. He has admitted that injury found on the person of PW-2 was simple. It is thus apparent that even the medical evidence is not consistent with the version of PW-2.

16] There are lot of omissions and contradiction in the evidence of PW-2. At the time of lodging of FIR he had not given the description of assailants.

17] Considering the above facts and circumstances, the Trial Court was not justified in convicting the Appellants/accused for the offences punishable under Sections 395 and 323 of the Indian Penal Code and Section 152 of the Maharashtra Police Act. In the result, the following order is passed :

ORDER

a] Appeals are allowed.

b] The impugned Judgment and Order dated dated 29th August, 2019 passed by the Additional Sessions Judge, Dhule in Sessions Case No.59 of 2017 is set aside.

c] The Appellant/Original accused No.1 - Rahul @ Talya Gajanan Thorat, Appellant/Original accused No.2 - Mayur @ Babuwa Suresh Kandare, Appellant/Original accused No.3 - Sagar Chaitram Bhoi, Appellant/Original accused No.4 - Mahesh Prakash Pawar and Appellant/Original accused No.5 - Santosh Chandrakant Shinde are acquitted of the offence punishable under Sections 395 and 323 read with 34 of Indian Penal Code and Section 152 of the Maharashtra Police Act.

d] Bail bonds of the Appellant/accused No.3 - Sagar Chaitram Bhoi shall stand cancelled.

e] The fine, if any, paid by the Appellant/accused No.3 - Sagar Chaitram Bhoi be refunded to him.

f] The Appellant/Original accused No.1 - Rahul @ Talya Gajanan Thorat, Appellant/Original accused No.2 - Mayur @ Babuwa Suresh Kandare, Appellant/Original accused No.4 - Mahesh Prakash Pawar and Appellant/Original accused No.5 - Santosh Chandrakant Shinde are in jail, they be released forthwith unless they are required to be kept in custody in connection with any other crime.

g] In view of disposal of Appeals, Criminal Application No.2094 of 2021 does not survive and the same is disposed of.

(N.R. BORKAR, J.)