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

CRIMINAL APPEAL NO. 895 OF 2004

The State of Maharashtra

... Appellant
(Orig.Complainant)

Versus

1. Shri. Sanjay Tukaram Hajagolkar,
Age : 24 Years, Occu. : Agriculture,
R/o. : Turkewadi, Taluka : Chandgad,
District : Kolhapur.
 2. Rajaram Tukaram Hajagolkar,
Age : 22 Years, Occu. : Agriculture,
R/o. : Turkewadi, Taluka : Chandgad,
District : Kolhapur.
 3. Sou. Laxmi Sanjay Hajagolkar,
Occu. : Agriculture, R/o. : Turkewadi,
Taluka : Chandgad, District : Kolhapur.
- ... Respondents
(Ori.Accused Nos.1 to 3)

Ms.S.S.Kaushik, APP for the Appellant - State.

Ms.Mrinal Shelar i/b. Mr.S.S.Patwardhan, Advocate for Respondent
Nos. 1 and 2.

CORAM : S. M. MODAK, J.

DATED : 24th NOVEMBER 2022.

P. C. :-

1. Heard learned APP Smt.S.S.Kaushik for Appellant – State and
learned Advocate Ms.Mrinal Shelar for Respondent Nos.1 and 2.
Though in all three Accused were charge-sheeted by Chandgad Police
Station, District : Kolhapur, while admitting the Appeal, leave was
granted only against the Accused Nos. 1 and 2.

Satish Sangar

2. On 12th June, 2000, all of them in furtherance of common intention have assaulted the first informant – Rama Satu Hajagolkar with the help of scythe (a tool with a long curved blade for cutting grass or corn) and stick. The incident took place near Market Yard on on Turkewadi cross road, Chandgad. After that assault, he first went to Chandgad Police Station and then, referred to Civil Hospital. His complaint was recorded in the hospital. Whether it was oral complaint or written complaint is under confusion. During investigation, these three Accused were arrested and charge-sheeted. Their defence is of denial and alibi. Prosecution in all examined 6 witnesses.

3. However, the Prosecution evidence has not appealed to the conscious of the trial Court and all were acquitted. The charge was under Sections 325, 324 read with 34 of the Indian Penal Code. Even this Court made an attempt to call a record, but it is informed by the trial Court that record is destroyed. Learned Advocate for the Respondents is kind enough to place on record copies of evidence of the witnesses. It is taken on record at “X”. Learned APP argued the matter with the help of that evidence.

4. It is true that the offence under Section 325 of the IPC is causing a grievous hurt voluntarily. There has to be a grievous hurt as defined in Section 320 of the IPC. Though the Medical Officer – PW – 6 has stated about conducting the x-rays, they were not produced before the trial Court. So, the trial Court was right in acquitting the Accused persons for offence under Section 325 of IPC. Because, from the evidence of witnesses coupled with medical evidence, injuries do not fall under any of the categories under Section 320. So, now the

issue remains as to whether the Prosecution evidence is sufficient to prove a case for the offence under Section 324 read with 34 of IPC.

5. On the point of incident, the Prosecution has examined three witnesses :-

PW –1 – Rama Satu Hajagolkar – injured,

PW – 2 Sachin Rama Hajagolkar – Minor witness, son of the injured and

PW – 3 – Haiderali Abdul – Rehman Shaikh.

Whereas, PW-4 is Panch to the spot of the incident and arrest of the Accused, PW-5 is the Investigating Officer, whereas, PW-6 is the Medical Officer.

6. After appreciating the evidence, the trial Court finds inconsistency in between the evidence of PW-1 and his son PW-2. That is recorded in Para Nos.13 to 17. Whereas, evidence of PW-3 does not throw any light on the assault by any of the Accused on first informant. He came to the spot after sometime. His evidence was also not believed as mentioned in Para No.18 of the judgment.

7. The trial Court has also noticed inconsistency in between the oral testimony and medical evidence. Though first informant has said about bleeding injuries, Investigating Officer and Medical Officer have candidly submitted that there are no bleeding injuries. Furthermore, the trial Court has noticed about the manner of the assault and the type of injuries noticed. According to Medical Officer, length of injury ought to be more than one centimeter considering the assault, whereas, it is not noticed during the examination. Furthermore, first

informant has admitted about the dispute amongst them on account of land and he has filed various cases.

8. So, it seems that the first informant has improved his version during evidence though there are no bleeding injuries to the extent of exaggerating the incident. It can be believed only when there are corroborating circumstances just like bleeding noticed on the spot or the findings by the Medical Officer. If there is exaggeration on material aspect, it goes to the root of the matter and the reliability of the witness is under suspicion. Merely giving details of the incident is not sufficient, that evidence needs to be believable. Considering the inconsistencies in between the witnesses on one hand and inconsistencies in between the version and medical evidence, the trial Court has rightly disbelieved the Prosecution evidence. The principle of innocence is reinforced. The facts about seizure of weapon from the accused will not fall within the purview of Section 27 of the Indian Evidence Act. Because, it is not as per the statement of the accused.

9. This Court do not find any reason to interfere in that decision. There is no merit in the Appeal. Hence, dismissed.

(S. M. MODAK, J.)