

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1306 OF 2018**

|                                             |   |                |
|---------------------------------------------|---|----------------|
| Suraj Chandrakant Aatke                     | ] |                |
| Age – 20 years, Occ: - Nil,                 | ] |                |
| R/o. Indiranagar, Lonand,                   | ] |                |
| Taluka Khandala, District Satara.           | ] |                |
|                                             | ] |                |
| At present lodged at Kolhapur Central Jail, | ] |                |
| District Kolhapur.                          | ] | .....Appellant |

**Vs.**

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| The State of Maharashtra          | ] |                 |
| Through Lonand Police Station,    | ] |                 |
| Taluka Khandala, District Satara. | ] | .....Respondent |

**WITH**

**CRIMINAL APPEAL NO. 190 OF 2018**

|                                             |   |                |
|---------------------------------------------|---|----------------|
| Akshay Kalidas Gaikwad                      | ] |                |
| Age – 28 years, Occ: - Education,           | ] |                |
| R/o. Indiranagar, Lonand,                   | ] |                |
| Taluka Khandala, District Satara.           | ] |                |
|                                             | ] |                |
| At present lodged at Kolhapur Central Jail, | ] |                |
| District Kolhapur.                          | ] | .....Appellant |

**Vs.**

|    |                                   |   |                  |
|----|-----------------------------------|---|------------------|
| 1) | The State of Maharashtra          | ] |                  |
|    | Through Lonand Police Station,    | ] |                  |
|    | Taluka Khandala, District Satara. | ] |                  |
|    |                                   | ] |                  |
| 2) | Nilesh Kisan Gavekar              | ] |                  |
|    | R/o. Koregaon, Taluka Paithan,    | ] |                  |
|    | District Satara.                  | ] | .....Respondents |

**WITH**  
**CRIMINAL APPEAL NO. 688 OF 2017**

|                                           |   |                |
|-------------------------------------------|---|----------------|
| Satish Bhau Kale                          | ] |                |
| Age – 31 years, Occ: - Driver,            | ] |                |
| R/o. Indiranagar, Lonand,                 | ] |                |
| Taluka Khandala, District Satara.         | ] |                |
|                                           | ] |                |
| At present lodged at Satara Central Jail, | ] |                |
| District Satara.                          | ] | .....Appellant |

**Vs.**

|                                   |   |                  |
|-----------------------------------|---|------------------|
| 1) The State of Maharashtra       | ] |                  |
| Through Lonand Police Station,    | ] |                  |
| Taluka Khandala, District Satara. | ] |                  |
|                                   | ] |                  |
| 2) Nilesh Kisan Gavekar           | ] |                  |
| R/o. Koregaon, Taluka Paithan,    | ] |                  |
| District Satara.                  | ] | .....Respondents |

Mr. Veerdhawal Deshmukh, Appointed Advocate for Appellants.  
Mr. R. M. Pethe, APP for Respondent-State.

**CORAM : A. S. GADKARI, J.**

**RESERVED ON : 22<sup>nd</sup> JUNE 2022.**

**PRONOUNCED ON : 12<sup>th</sup> JULY 2022.**

**JUDGMENT:-**

Appellants have impugned Judgment and Order dated 29<sup>th</sup> April 2017 passed by learned Additional Sessions Judge, Satara in Sessions Case No. 112 of 2014, thereby convicting them for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code (for short “IPC”) and sentencing them to suffer rigorous imprisonment for a period of seven years and to pay fine of Rs.30,000/- each, in default of payment of fine to further undergo rigorous imprisonment for 3 months.

Appellants i.e. Suraj Aatke, Akshay Gaikwad and Satish Kale are original Accused No.1 to 3 respectively in the present case.

2. Heard Mr. Deshmukh, learned Advocate, who is on the panel of dedicated pool of 'amicus curie' maintained by this Court to represent and espouse the cause of Appellants and Mr. Pethe, learned APP for the Respondent No.1-State. Perused entire record.

3. It is the prosecution case that, on 13<sup>th</sup> February 2014 the informant, namely, Mangesh Mane (PW.16) had been to see a movie in the afternoon with injured victim namely, Nilesh Govekar (PW.5). After watching the movie they went to their respective homes. Both of them again met in the evening alongwith one Akshay Nevase (PW.8) and all the three went to have dinner at a stall namely " Uttam Chinese Corner ". When they were seated at the said place, Suraj Aatke (A.No.1) and Akshay Gaikwad (A.No.2) came and sat in front of the informant (PW.16) and his associates. The informant (PW.16) asked Akshay Gaikwad (A.No.2) to give his mobile phone, but Akshay Gaikwad refused to accede to the said request. At about 8.45 p.m., Satish Kale (A.No.3) kicked the chair of the informant. Akshay Gaikwad (A.No.2) held hands of the victim Nilesh Govekar (PW.5) and Suraj Aatke (A.No.1) assaulted Nilesh Govekar on his head, both the hands and stomach with a sickle/scythe. Satish Kale (A.No.3) took out a knife and started assaulting Nilesh Govekar (PW.5). Nilesh Govekar was in full of blood and some how managed to escape from

the hands of the accused, however, after crossing a short distance fell down.

It is further alleged that, at that spot also accused persons assaulted Nilesh Govekar (P.W.5) with knife and sickle/scythe. Akshay Gaikwad (A.No.2) shouted at the people who tried to intervene and told them not to intervene in the said fight and threatened them with dire consequences. After assaulting Nilesh Govekar (P.W.5), accused persons fled from the spot of incident. Persons who gathered at the spot of incident took injured victim Nilesh Govekar (P.W.5) to the Government Hospital from where he was taken to Dr. Sawant's Hospital, where primary aid was administered to the victim. Lateron victim Nilesh Govekar (P.W.5) was shifted to Dr. Inamdar's Hospital at Pune for further treatment. Late in the night of 13<sup>th</sup> February 2014 Crime No. 24 of 2014, under Sections 307, 506 read with Section 34 of the Indian Penal Code (for short "IPC") came to be registered at Lonand Police Station, District Satara.

4. During the course of investigation, apart from recording statements of eye witnesses, the Investigating Officer Bharat Kendre (P.W.18) seized various articles including the weapons used by the accused in the present crime by effecting necessary recovery panchnamas. As victim Nilesh Govekar (P.W.5) had suffered grievous injuries and was unconscious for more than 4 days, his statement under Section 164 of Criminal procedure Code (for short "CrPC") came to be recorded belatedly. The victim Nilesh Govekar was in hospital from 13<sup>th</sup> February 2014 till

25<sup>th</sup> March 2014 i.e. for about 39 days. After completion of investigation, the Investigating Officer submitted charge-sheet in the Court of Judicial Magistrate First Class, Khandala, District Satara.

5. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Khandala, District Satara committed the said case to the Court of Sessions at Satara, as contemplated under Section 209 of the CrPC.

In support of its case the Prosecution has examined in all 18 witnesses namely Mr. Harish Bhatiya (PW.1), a panch witness, to the spot of incident panchanama (Exh-43); Mr. Nikhil Kharat (PW.2), an eye witness to the incident; Mr. Umesh Kharat, a panch witness to the recovery of blood stained cloths of Accused No.1 Suraj Aatke (Exh-38); Mr. Ganesh Bhalerao (PW.4), an eye witness; Mr. Nilesh Govekar (PW.5), injured victim; Mr. Vijay Khatal (PW.6), panch witness to the seizure of cloths of victim (Exh-114); Mr. Rakesh Mane (PW.7), a witness accompanied victim to hospital at Lonand; Mr. Akshay Nevase (PW.8), an eye witness; Mr. Nilesh Kamble (PW.9), a panch witness to the recovery to blood stained cloths of A.No.2 Akshay Gaikwad (Exh.120); Mr. Ankush Dhaigude (PW.10), panch witness to the seizure of cloths of victim Nilesh Govekar (Exh.114); Mr. Rohidas Kshirsagar (PW.11), an eye witness and owner of a Pan Shop situated at the spot of incident; Mr. Akshay Dhodke (PW.12), panch witness for recovery of weapons i.e. knife and sickle and cloths from A.No.3 Satish Kale (Exh-117),

Mr. Nitin Lakhe (PW.13), panch witness to the recovery panchanama (Exh.120) of cloths of Akshay Gaikwad (A.No.2); Dr. Kunal Oswal (PW.14), Doctor who performed surgery upon the injured victim Nilesh Govekar; Dr. Mini Chitkara (PW.15), prepared Medical Certificate of injured witness Mr. Nilesh Govekar; Mr. Mangesh Mane (PW.16), first informant; Mr. Keshav Khude (PW.17), Police Officer who registered F.I.R. and Mr. Bharat Kendre (PW.18), Investigating Officer of the present crime.

6. The Trial Court framed charge below Exh.14. The contents and details of it were read over and explained to the Appellants in vernacular language to which they pleaded not guilty and claimed to be tried. After recording evidence of the Prosecution witnesses, the Trial Court recorded statements of Appellants under Section 313 of the CrPC. The defence of Appellants was that of total denial and false implication. Appellants did not examine any witness in their defence. Trial Court after hearing the learned Advocates for the respective parties and perusing entire evidence on record has convicted and sentenced the Appellants as noted herein above.

7. Mr. Deshmukh, learned Advocate appearing for Appellants submitted that, the informant Mangesh Mane (PW.16) has turned hostile. That, the other eye witness namely Akshay Nevase (PW.8) who was accompanying the informant and injured witness has also been declared hostile by the Prosecution. That, from the eye witness Ganesh Bhalerao (PW.4) material omissions have been extracted by Appellants which shakes

the credibility of the other eye witnesses including the injured. He submitted that, though Appellants recorded statements of various other eye witnesses who were present at the said chinese stall and whose names are mentioned in the proforma charge-sheet, the prosecution has not examined the said witnesses thereby causing doubt about the prosecution's case in the mind of the Court. He submitted that, material omissions have been brought on record from the eye witnesses. That, the driver of the tempo from which the injured victim Nilesh Govekar (PW.5) was taken to the hospital initially at Lonand and the persons who were working in the said restaurant have not been examined by the prosecution. He submitted that, Prosecution has examined only interested witnesses and a false case has been foisted upon the Appellants. That, the injured witness Nilesh Govekar (PW.5) is a history sheeter and Appellants were earlier moving around with him. That, due to difference of opinion, the Appellants left his company and therefore have been falsely implicated in the present case at the behest of Nilesh Govekar (PW.5). He submitted that, as Nilesh Govekar was having enmity with various other persons in the vicinity, commission of the present crime i.e. assault on him may be an act of his other enemies, however, certainly not by the Appellants. He therefore prayed that, the impugned Judgment and Order may be set aside by acquitting Appellants from all the charges framed against them.

8. Mr. Pethe, learned APP vehemently opposed these Appeals and

submitted that, though two witnesses namely Mangesh Mane (PW.16) and the informant Akshay Nevase (PW.8) have not supported the Prosecution case, the evidence of other four eye witnesses including the injured victim (PW.5) is fully reliable and trustworthy. The said witnesses have categorically named Appellants as assailants of the injured victim Nilesh Govekar. He submitted that, there is recovery of weapons used in the present crime at the instance of Satish Kale (A.No.3). That, the blood stains found on the said weapons are matched with the blood group of injured victim Nilesh Govekar, who was having blood group "B". He submitted that, the Prosecution has established its case beyond reasonable doubt and therefore, there is no need to interfere with the impugned Judgment and Order convicting and sentencing Appellants.

9. Perusal of entire evidence on record indicates that, out of six eye witnesses examined by the Prosecution, Akshay Nevase (PW.8) and Mangesh Mane (PW.16) have turned hostile, as they did not support the Prosecution case and resiled from their original statements. Therefore, the evidence of injured victim Nilesh Govekar (PW.5), Nikhil Kharat (PW.2), Ganesh Bhalerao (PW.4) and Rohidas Kshirsagar (PW.11) is material and relevant for consideration herein.

Injured victim Nilesh Govekar (PW.5) in his testimony has deposed that, on 13<sup>th</sup> February 2014 between 8.00 p.m. to 8.15 p.m., he alongwith Mangesh Mane (PW.16) and Akshay Nevase (PW.8) had been to

Uttam Chinese Corner and had food there. They were sitting on chairs. At that time Mangesh Mane demanded mobile phone from Akshay Gaikwad (A.No.2) to which Akshay replied that his mobile phone is switched off. The Appellants were sitting on chairs in front of them. After Mangesh Mane demanded phone from Akshay Gaikwad (A.No.2), Satish Kale (A.No.3) got up and gave kick to the chair of Mangesh Mane (PW.16). At that time, Akshay Gaikwad (A.No.2) held Nilesh Govekar (PW.5) and Satish Kale (A.No.3) gave blows with knife on the stomach of the victim Nilesh Govekar. Suraj Aatke (A.No.1) assaulted victim Nilesh Govekar (PW.5) with a sickle used for breaking coconuts, on the hand of the victim. When Nilesh Govekar started running from the scene of offence Suraj Aatke (A.No.1) inflicted a blow of sickle on the neck of the Nilesh Govekar. Nilesh govekar (PW.5) fell on the road as he was soaked with blood. At that time, Akshay Gaikwad (A.No.2) shouted and told the people gathered there that, if anybody comes forward to rescue the said fight, the concerned person will have to face same serious consequences. Nilesh Govekar got unconscious at the said spot and regain consciousness in the hospital.

In his cross examination nothing material has been brought on record by the defence to either disbelieve or discredit his testimony in examination in chief. In his cross-examination the suggestions given, have been denied by him.

10. The other three eye witnesses i.e. Nikhil Kharat (PW.2), Ganesh

Bhalerao (PW.4) and Rohidas Kshirsagar (PW.11) have duly corroborated the version of injured Nilesh Govekar (PW.5) on all counts. Except bringing on record a few omissions which are minor in nature nothing beneficial to the Appellants, have been extracted from their elaborate cross-examination. Thus, the version of injured witness Nilesh Govekar (PW.5) has been duly corroborated by the other eye witnesses.

11. The weapons used in the present crime i.e. knife and sickle have been recovered from Satish Kale (A.No.3) in presence of Akshay Dhodake (PW.12). The said witness has duly proved recovery panchanama (Exh-117). The Chemical Analyzer's report (Exh-132) mentions that, the blood group of victim Nilesh Govekar (PW.5) was "B" and blood group found on the weapons recovered at the instance of Satish Kale (A.No.3) has been tallied. It is also a strong circumstance against accused Satish Kale (A.No.3). Though the witness i.e. Akshay Dhodake (PW.12) has been declared hostile by the prosecution, the said Exhibits i.e. 117 and 132 have been duly proved by the prosecution.

12. This leads me to deal with the most important aspect of the present case. Dr. Kunal Oswal (PW.14) in his deposition has stated that, on examination of injured Nilesh Govekar (PW.5) he found following injuries :-

- (i) Stab wound over the abdomen, which was deep,
- (ii) Multiple C.L.W. injuries over the right wrist, measuring 10 X 2 c.m.; on left shoulder joint, measuring 2 X 2 c.m.; on left arm,

measuring 3 X 2 c.m.; on the left arm lateral side, measuring 2 X 3 X 2 c.m.; on left cubical region, measuring 10 X 3 c.m. and on left forearm, measuring 3 X 3 c.m.,

(iii) Multiple injuries over the neck,

(iv) On frontal region of head, fronto parietal on right and left side.

He has further stated that, there were eight injuries over the hand and contused lacerated wound over the neck. That, the injured Nilesh Govekar (P.W.5) was admitted in his hospital since 13<sup>th</sup> February 2014 and was discharged on 25<sup>th</sup> March 2014. In his cross-examination a vital admission has been brought on record. The said witness has admitted that, such type of injuries are not life threatening.

It is thus clear from the testimony of Dr. Kunal Oswal (P.W.14) that, the offence alleged against the Appellants would not fall within the purview of Section 307 of the IPC, however would certainly fall within the purview of Section 326 of the IPC i.e. voluntarily causing grievous hurt by dangerous weapon or means.

13. In view of the above, the Appellants are held guilty under Section 326 of the IPC. The conviction and sentence awarded by the Trial Court to the Appellants under Section 307 of the IPC is accordingly modified and the Appellants have been convicted under Section 326 of the IPC and are sentenced to suffer rigorous imprisonment for seven years.

The fine amount imposed by the Trial Court upon Appellants is maintained.

The Judgment and Order passed by the Trial Court is accordingly modified to the aforesaid extent.

All the Appeals are partly allowed in the aforesaid terms.

14. Before parting with the Judgment, this Court places on record a word of appreciation for the efforts put in by Mr. Veerdhawal Deshmukh, learned Advocate who is on the panel of dedicated pool of '*amicus curiae*' maintained by this Court for espousing the cause of Appellants as he was thoroughly prepared in the matter and rendered proper assistance to the Court.

15. Record indicates that, Accused No.1 Suraj Aatke and Accused No.3 Satish Kale i.e. Appellants in Criminal Appeal No.1306 of 2018 and Criminal Appeal No.688 of 2017 respectively have undergone sentence awarded to them as they were not released on bail during the pendency of Appeals.

Accused No.2 Akshay Gaikwad i.e. Appellant in Criminal Appeal No.190 of 2018 is on bail. Accused No.2 is directed to surrender before the Trial Court within a period of four weeks from today for undergoing balance sentence.

16. With a view to keep the record straight, Registrar (Judicial-I) is directed to communicate the present Order to the Superintendent of Kolhapur Central Prison, District Kolhapur and Satara Central Prison, District Satara, where Accused Nos.1 and 3 were lodged respectively.

**[A.S. GADKARI, J.]**