

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

CRIMINAL APPEAL NO.252 OF 2022

1. Mehmood Shaikh Ahemad @ Munna,
Age : 51 years, Occu.: Business,
2. Majid Shaikh Mehmood @ Munna,
Age : 24 years, Occu.: Education,
3. Tipu Shaikh Mukhtar,
Age : 30 years, Occu.: Business,
4. Allahrakha Shaikh Mukhtar,
Age : 27 years, Occu.: Business
5. Javed Shaikh Mukhtar,
Age : 35 years, Occu.: Business

Accused No.1 to 5 :
R/o.: Garib Nawaz Colony,
Shahada, Tq. Shahada,
District : Nandurbar.

6. Sajid @ Prem Shaikh Ahemad,
Age : 39 years, Occu.: Business,
R/o.: Iqbal Chowk, Shahada,
Tq. Shahada, District : Nandurbar.
7. Mukhtar @ Don Shaikh Ahemad,
Age 62 years, Occu.: Business,
R/o.: Garib Nawaz Colony, Shahada,
Tq. Shahada, District : Nandurbar

.... APPELLANTS
(Original Accused)

VERSUS

The State of Maharashtra,
Through Shahada Police Station,
Tq. Shahada, District : Nandurbar

... RESPONDENT

.....
Advocate for Appellants : Mr. Amarjitsing B. Girase
Advocate for Respondent-State : Ms. D. S. Jape
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 13/09/2023
PRONOUNCED ON : 08/11/2023
....

JUDGMENT :

1. By way of this appeal, all the appellants, who are the accused in Sessions Case No. 53 of 2017, have challenged their conviction for the offence punishable under Sections 307, 149, 504, 143, 147, 148 of IPC and under Section 135 of the Maharashtra Police Act, recorded by the learned Additional Sessions Judge, Shahada, District Nandurbar (hereinafter referred to as 'the learned trial court') vide judgment and order dated 16/03/2022. All the appellants / accused are sentence to suffer R. I. for 7 years each and to pay a fine of Rs.5,000/- each, i.d. to suffer R.I. for 3 months each for the offence punishable Section 307 r.w. 149 of IPC. It is to be noted here that the learned trial court has not awarded separate sentence for the minor offences punishable under sections 143, 147, 148, 504 of IPC and Section 135 of the Maharashtra Police Act.

2. The prosecution is claiming that one Saiyyed Sairbee Liyakat Ali, who got elected as a Councilor in Municipal Council, Shahada as a candidate of MIM party, is the mother of informant Saiyyed Muzaffar Ali Sayyed Liyakat Ali (in short Muzaffar), who is the injured and also PW-1 in the instant case. As against this, the present appellant No.1 i.e. accused No.1 got defeated in the said election. According to him, he was defeated since the informant Muzaffar, in that election, had successfully campaigned for MIM party. On that count, there was dispute between the informant and the appellants / accused.

3. On 14/06/2017, at about 1.30 p.m. the informant PW-1 Muzaffar was distributing water through a tanker in Garib Nawaj colony, Shahada near the houses of Kalu Mistri and Imam Mistri. At that time, appellant No.1 Mahemood Shaikh Ahemad @ Munna (for short Munna) came to Muzaffar and asked him to take that tanker in front of his house. When Muzaffar told accused No.1 Munna that he would bring another tanker in front of Munna's house by 3.00 p.m., accused No.2 Majid as well as both sons of accused No.1 Munna, came there and uttered ' मार डालो साले को'. In the meantime, accused No.3 Tipu, accused No.4 Allharakha, accused No.5 Javed, accused No.6 Sajid, accused No.7 Muktar also

came there. At the relevant time, accused No.1 Munna gave a blow of sword on the rear side on the head of PW-1 Muzaffar, which resulted in to bleeding injury. Whereas the other appellants / accused holding weapons like sword and knife, also assaulted the informant - Muzaffar with those weapons. According to the prosecution story, one Sajid Rahim Pinjari i.e. PW-2 and Wahed Rashid Pinjari rescued the informant- Muzaffar and took him to hospital of Dr. B. D. Patel for treatment. On receiving the information from the said hospital, the officer in-charge of Shahada Police Station Mr. Marathe instructed PHC Kishor Badgujar to go to the said hospital and to record the statement of injured Muzaffar. Accordingly, such statement of Muzaffar was recorded after obtaining opinion of the doctor. On the basis of said statement i.e. Exhibit-46, Crime / FIR No. 267 of 2017 was registered in Shahada Police Station against the appellants / accused persons under Sections 307, 143, 147, 148 of IPC and Section 135 of the Maharashtra Police Act at about 5.25 p.m. on the same day. PSI Dnyaneshwar Badgujar PW-8 conducted investigation of the said crime and on completion of investigation, charge sheet was filed against all the appellants / accused.

4. The learned trial court after conducting the trial, convicted the appellants / accused as mentioned above and hence this appeal.

5. The learned counsel for the appellants / accused submits that the investigating officer did not record statements of natural witnesses namely Kalu Mistri and Imam Mistri in front of whose houses the incident took place. The investigating officer also did not record statements of persons gathered at the time of incident but only recorded the statements of interested persons. According to him, PW-4 though cited as an eye witness, but she had not actually witnessed the incident. He pointed out that there was no recovery of weapons like knife and sword and as per the opinion of doctor, injuries sustained by the informant - victim - Muzaffar, were possible only by piece of tile and not the sword. Further, according to him, the prosecution could not establish the incident by way of reliable and trustworthy evidence and therefore, the learned trial court should have acquitted the present appellants / accused by considering the discrepancies and contradictions on record. He pointed out that the C.A. report in respect of tile allegedly used for assault on informant, is negative and therefore, even the use of said tile in commission of crime is doubtful.

6. On the contrary, the learned APP strongly opposed the submissions made on behalf of the appellants / accused. She supported the judgment and order of the learned trial court and thereby the conviction of the appellants / accused. According to her, since the FIR was lodged on the same day at about 5.25 p.m., there was no delay in lodging the same. She pointed out that PW-4 is an independent witness and the injuries sustained by the informant - Muzaffar are well supported by the ocular evidence. She pointed out that PW-1, 2 & 4 have corroborated each other on material aspects and as there was enmity between the appellants / accused and the complainant party, the appellants were having every reason to settle the score with complainant party. She pointed out that as per the C.A. report on record, blood group of PW-1 was found on T-shirt and soil. Thus, according to the learned APP, the prosecution has established the case beyond all reasonable doubts against the appellants / accused and therefore, their appeal is liable to be dismissed.

7. Heard rival submissions. Also perused the entire documentary and oral evidence on record alongwith the impugned judgment and order.

8. As per the case of the prosecution, the informant i.e. PW-1 Muzaffar was engaged in distributing water near the house of Kalu Mistri and Imam Mistri on 14/06/2017 at about 1.30 p.m. and at that time initially, present appellant No.1 Munna abused him and thereafter all the appellants / accused assaulted Muzaffar by means of sword, knife and tiles. The prosecution in respect of the case, has examined in all 10 witnesses and also relied upon certain documents which will be discussed in the judgment hereinafter. It appears from the record that there were so many persons who had witnessed the incident but out of the prosecution witnesses, PW-1 i.e. the informant Muzaffar himself, PW-2 his friend Sajid Pinjari and PW-4 Farhad Bano resident of nearby area, appear to be eye witnesses. Since the learned trial court has given weightage to the evidence of these persons for convicting the appellants / accused, their evidence needs to be scrutinized in the finding of the learned trial court.

9. The learned counsel for the the appellants / accused has already submitted as to how the evidence of aforesaid eye witnesses is not trustworthy and reliable due to so many doubtful circumstances. Therefore, the evidence of aforesaid witnesses, is to be considered afresh. Let us come to the evidence of PW-1

Saiyyed Muzaffar Ali i.e. the informant and also the injured in the instant case. Though he deposed as per the prosecution story, but in the cross-examination it has come on record that he is also having criminal background on account of alleged assault by him on one Farin Khan. The learned counsel for the appellants / accused submits that the informant was not at all concerned with the water distribution in Ward No.2. He also pointed out certain facts which have come on record in the cross-examination of PW-1. However, it is equally important to note that mother of the informant was a councilor of the said Ward and therefore, presence of her own son i.e. the informant at the time of distribution of water in the Ward, cannot be considered as unnatural. However, certain material admissions are given by this informant in his evidence. There are contradictory statements by the informant Muzaffar on the point of obstruction at the hands of accused No.1 Munna at the time of incident. According to the informant, Munna had obstructed his driver Pradhan Pavra but contrary to that he stated as Pradhan Pavra was not serving with him at any time. Significantly this Pradhan Pavra has not been examined. Further, as per the informant, Munna assaulted him on the rear part of his head with the help of sword and therefore, he sustained bleeding injury on the occipital region. It is to be noted that sword is

treated as a sharp edged weapon but during the medical examination of the informant, PW-3 Dr. Patel, who examined after the alleged assault, mentioned in the MLC certificate Exhibit-70 that the injury in form of CLW on occipital region of the informant of size 10 X 2 cm. was caused by a hard and blunt object. Therefore, it appears doubtful that even after assault by sword, the medical officer found that the injury sustained by the informant was caused by a hard and blunt object. It is equally important to note that the sword as well as knives allegedly used in commission of crime, are not recovered. Moreover, it appears from the record that despite sending request letter by investigating officer PW-8 on 10/09/2017 for seeking opinion of the doctor as to whether those injuries were possible by sword, knife and piece of tiles, PW-3 recorded his opinion on 11/09/2017 and as per the said opinion the injuries found on the person of Muzaffar, were caused by a blunt and hard object like piece of tile. Thus, in absence of such weapon like sword and knife, it seems highly impossible that any such weapon was used in assault.

10. So far as assault by another appellants / accused is concerned, the informant Muzaffar has specially stated that Sajid Shaikh assaulted him on middle part of his head as well as on his

ear by means of knife and therefore, he sustained bleeding injuries to his head and left ear. However, if the FIR at Exhibit-46 is perused, the aforesaid statement does not find any place in the same. Thus, it gives an impression that the informant is making improvement and addition. He has specifically stated that he had told that he sustained injuries on his ear by the blow of knife but he could not assign any reason why the said fact was not mentioned in his police statement. Further, it is more surprising that PW-3 Dr. Patel though mentioned this injury in medical certificate Exhibit-70 to the left ear of the informant, but opined that it was caused by a hard and blunt object and not by any sharp edged weapon. Therefore, cause of injury on the left ear of the informant by means of knife as alleged, definitely appears doubtful. PW-3 when asked specifically by PW-8 i.e. investigating officer as to whether that injury was possible by a knife, he opined that the injury was also found to be caused by a blunt and hard object like piece of tile. Therefore, in absence of recovery of any knife or sword, it is highly difficult to hold that the injuries sustained by Muzaffar were caused by sharp edged weapons which were used by appellant No.1 as well as appellant No.6. Therefore, considering all these facts and specially the medical opinion, it

appears that whatever injuries sustained by the informant Muzaffar, were in fact caused by piece of tiles.

11. It is the case of informant that appellant No.1 Munna assaulted him with the help of sword whereas appellant No.6 Sajid Shaikh assaulted with the help of knife and other appellants assaulted him with knives and pieces of tiles. However, the use of sharp edged weapon has already been ruled out in the light of observation of medical evidence. Moreover, those sharp edged weapons also could not be found. Further, despite specific roles of Munna and Sajid, no specific roles of others are stated by the informant Muzaffar. Even the alleged eye witness i.e. PW-4 Farhad Bano made general statements that Munna Shaikh assaulted Majju on his head by means of sword and other assaulted by means of sword, Farsha and knives etc. Thus, she also could not point out the specific role played by the other appellants / accused. Moreover, medical officer has specifically recorded his opinion that all the injuries found on the person of the informant Muzaffar, were caused by a blunt and hard object like piece of tile. There is no specific statement or evidence on record as to who was holding which weapon. Though it is stated by the informant Muzaffar that Majid, Mazar, Allarakkha, Mukhtar and Tipu namely

the appellant Nos.2, 3, 4, 5 & 7 assaulted him by pieces of tiles on his head and face causing bleeding injuries to him, but in the cross-examination he has admitted that the said fact was not mentioned in his police statement. Thus, it can be seen that this is an improvement in the story of the prosecution by the informant. It is extremely important to note that if in all 5 persons are assaulting one person with the help of pieces of tiles, then how the said person can sustain only one injury on his cheek due to that assault. Therefore, the complete story narrated by the informant Muzaffar in respect of sustaining injuries by means of sword, knife and piece of tile at the hands of the appellants / accused, turns doubtful.

12. Though the learned trial court in the impugned judgment, has observed that the version of PW-1 informant - Muzaffar is well corroborated with evidence of other eye witnesses namely Sajid PW-2 and Farhad Bano PW-4 but by way of admission in the cross-examination itself and the other aspects brought on record, the evidence of the informant itself appears doubtful. Therefore, let us go to the evidence of PW-2 Sajid. As per the version of PW-2 Sajid, he alongwith others had allegedly carried the informant to the hospital. According to him, on the day of incident around 1.30

p.m., one Saddam Teli received phone call from the informant Muzaffar and thereafter Saddam Teli told them that Mujju told him on phone that he was being assaulted by the appellants / accused and therefore, when they went to the spot of incident, they saw the appellants / accused were assaulting the informant Muzaffar with the help of sword, knife and pieces of floor tiles. According to him, by noticing their arrival, all the appellants / accused ran away from the spot of incident. In addition to this, there is also evidence of PW-1 Muzaffar on record that Sajid Pinjari and Wahid Pinjari came on the spot and carried him to the Dr. B. D. Patel's hospital. Thus, on the basis of this, the prosecution has cited Sajid as an eye witness. However, there are glaring contradictions in the evidence of this witness, which are brought on record during his cross-examination. Though this witness has stated that when he went to the spot of incident alongwith others, he saw the appellants / accused were assaulting Mujjubhai by means of sword, knife and pieces of tiles, but he has admitted in the cross-examination that he could not assign any reason as to why this fact is not mentioned in his police statement. Further, the informant Muzaffar i.e. PW-1 has given an admission in his cross-examination that he told Saddam on phone about the incident after the incident was over. That means by the time, PW-2 Sajid

reached to the spot of incident alongwith other persons, the incident was already over. Therefore, on this background the statement made by PW-2 Sajid before the court that he actually witnessed the incident, appears false specially when such statement is also not part of his statement before the police. There are further facts on record as to why his evidence is doubtful apparently. It is significant to note that according to this witness, Saddam Teli received call from Muzaffar around 1.30 p.m. Moreover, as per the admission of Muzaffar, the said call was made by him after the incident was over that means the incident which started at about 1.30 p.m. as per the prosecution story must have lasted for 15 to 20 minutes as stated by the informant Muzaffar. Therefore, call from Muzaffar after that was definitely around 1.45 p.m. to 1.50 p.m. Considering this time aspect, the statement of PW-2 that Saddam Teli received call from Muzaffar at about 1.30 p.m., appears doubtful.

13. Further, it is most important to note that the medical certificate of the informant at Exhibit-70 clearly indicates that Muzaffar was examined by PW-3 Medical Officer at about 1.40 p.m. Thus, the story of the prosecution that PW-2 Sajid, who as per the version of the informant Muzaffar had reached the spot around

1.40 p.m. to 1.50 p.m. appears highly doubtful. In the light of admission given by the informant himself that he had called Saddam after the alleged incident was over, no doubt is left that PW-2 Sajid did not witness the actual incident and he must have reached on the spot of incident afterwards.

14. Now the evidence of last eye witness PW-4 Farhad Bano is left. As per the learned APP, this Farhad Bano is an independent witness, who had seen the actual incident. She claims that as she was resident of same Ward, she was knowing the informant Muzaffar as well as the appellants / accused being resident of same area i.e. Garib Nawaz Colony. The learned counsel for the appellants / accused tried to disbelieve the evidence of this witness on the ground that she in the chief-examination itself stated that incident took place on 14/05/2017 and not on 14/06/2017, but it appears that she had mistakenly stated that the incident had taken place on 14/05/2017 as during the cross-examination she recollected that the incident had actually taken place on 14/06/2017 only. However, even otherwise if the mistake committed by her in respect of actual date of incident in the chief-examination is kept aside for a while, then also her version that

she actually saw the incident appears doubtful from other circumstances.

15. It is significant to note that this witness has admitted in her cross-examination that at the time of incident her family was residing in a rented house of one Saiyyed Atarali and the said premise was situated at Sanjeri square (chowk), Shahada, which falls on the eastern side of said rented house. According to her, Shahada - Khetiya road passes from East-West from that square and the houses of Kalu Mistri and Imam Mistri were situated at North-South road. The learned counsel for the appellants / accused pointed out that as per the map in spot panchanama Exhibit-86 road to Sanjeri square is shown. However, the house of this witness is not at all shown in the said map. If the said map is perused, then it contains two perpendicular roads to each other, one is East-West and one is North-South. The crossing of those two roads is also visible. As per the said map, the East-West road runs from Khetiya road to Sanjeri square and the North-South road runs towards Abu Bakar Masjid and Misba Masjid. It is extremely important to note that Sanjeri square is not visible in the said map and therefore, it cannot be determined as to how far was the rented premises situated, wherein this witness was

residing. Most importantly the house of this witness was situated on East-West road of the said map, whereas the spot of incident was shown on the North-South road towards extreme North side. Therefore, considering the geographical situation reflected from the said map, it appears that it was highly impossible for this witness to see the actual incident from her house. It is also not the case of this witness that at the time of incident she had gone to the spot of incident. Therefore, the evidence of this witness that she saw the actual incident near her house, appears highly doubtful. Moreover, as per the statements made by this witness in her cross-exam that around 15 to 20 women had gathered to fetch water from the said water tanker which was kept near her house. However, none from those women was interrogated by the police. Thus, from the evidence of this witness though it appears that the spot of incident was near her house, but actually she was residing far away from the spot of incident and further, it was impossible for her to see the actual incident from her house. Therefore, this witness appears to be a brought up witness as she was acquainted with the informant Muzaffar as per her own admission the cross-examination.

16. Thus, by considering the evidence of PW-1 i.e. the informant as well as the alleged eye witnesses PW-2 and PW-4 it appears that there are so many contradictions and discrepancies in the evidence of prosecution as regards the actual incident. There is no specific role attributed to the other appellants / accused except appellant Nos.1 & 6. Moreover, it is alleged that appellant Nos.1 & 6 had used sharp edged weapon to inflict injuries on the person of the informant, but the medical evidence clearly indicates that the injuries found on the person of the informant were not caused by a sharp edged weapon but a hard and blunt object like piece of tile. Further, it is highly doubtful that when the other appellants / accused in all five in numbers, had assaulted the informant Muzaffar with the help of knives and pieces of tiles. There was only one injury caused by them to Muzaffar. The time element is also not proper. The C.A. report in respect of the tile also does not support the case of the prosecution as no blood was found on the same. Further, according to PW-1 Muzaffar, he was admitted at about 1.10 p.m. but the prosecution story is saying that incident had taken place at 1.30 p.m., which itself falsifies the version of the informant. Moreover, the evidence of the alleged eye witnesses at the time of incident is also doubtful and gives an impression that they had not seen the actual incident. It is also important to

note that the investigating officer did not even care to interrogate Kalu Mistri and Imam Mistri in front of whose houses the incident took place. Moreover, the driver of the said tanker, who was obstructed first and then the incident started, was also not interrogated by the investigating officer. Further, it has already come on record in the cross-examination of PW-4 that around 100 to 150 persons had gathered there but it is surprising to note that the investigating officer did not record statements of those witnesses. This fact is also admitted by the investigating officer. Thus, the prosecution or the investigating machinery did not find it necessary to record statements of witnesses whose presence was natural on the spot of incident. Therefore, considering all these facts and even if it is presumed that there was certain altercation between the informant and the appellants / accused, it is not proved beyond all reasonable doubt that appellant No.1 and appellant No.6 inflicted injuries with the help of sword and knife on the vital parts of body of the informant Muzaffar. On the contrary, the injuries found on the person of the informant, were caused by a hard and blunt object as per the opinion of medical officer and the said hard and blunt object was probably piece of tile. However, there is no reliable evidence coming on record as to who from the appellants / accused gave blows of tile to the

informant. Therefore, in absence of specific role, it highly difficult to hold that who from the appellants / accused had given blows of tile for causing injuries to the informant. Therefore, considering these aspects, the appellants / accused are entitled for benefit of doubt since the prosecution has not established their guilt beyond all reasonable doubts.

17. It is significant to note that the appellants / accused are also convicted for the offence punishable under Section 135 of the Maharashtra Police Act since at the time of incident, there was an order of District Magistrate, Nandurbar under Section 37(1)(3) of the Act in force. However, to secure conviction under Section 135 of Maharashtra Police Act, it has to be established by the prosecution that the said order was given wide publicity for its awareness by public at large. No such evidence is forthcoming and therefore, when the main incident appears to be doubtful, then the offence under Section 135 of the Maharashtra Police Act cannot be established against the appellants / accused.

18. Therefore, by taking into consideration all these facts, it appears that the learned trial court did not consider the material contradictions and omissions and also the discrepancies in the

evidence of the alleged eye witnesses namely PW-2 Sajid Pinjari and PW-4 Farhad Bano and also the evidence of PW-1 the informant - Muzaffar as mentioned above while convicting the appellants / accused. Therefore, interference in the impugned judgment is necessary. In the result, following order is passed.

O R D E R

- I) The appeal is hereby allowed and the judgment and order dated 16/03/2022 in Sessions Case No. 53 of 2017 passed by the learned Additional Sessions Judge, Shahada, District Nandurbar is quashed and set aside.
- II) All the appellants / accused are hereby acquitted from the offences punishable under Sections 307/149, 504/149, 143, 147, 148 of the Indian Penal Code and also under Section 135 of the Maharashtra Police Act.
- III) Their bail bonds stand cancelled.
- IV) The fine amount be returned to them if not paid to the informant - victim - Saiyyed Muzaffar Ali Liyakat Ali being compensation under Section 357(1)(b) of Code of Criminal Procedure.
- V) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)