

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

CRIMINAL APPEAL NO. 660 OF 1997

Vishnu Kisan Lakhe	.. Appellant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL APPEAL NO. 701 OF 1997**

Ravindra Maruti Patil and anr	.. Appellants
Versus	
The State of Maharashtra	.. Respondent

...

Mr. Shekhar Ingawale for the appellant in Appeal No. 660/1997.
Mr. S.R. Ganbavale with Mr. Daljit Bhatia, Mr. Kush M. Lahankar
for the appellant in Appeal No. 701/1997.
Mr. S.R. Agarkar, APP for the State.

**CORAM : BHARATI DANGRE, J.
RESERVED : 3rd OCTOBER, 2023
PRONOUNCED : 2nd JANUARY, 2024**

JUDGMENT :-

1 In the two Sessions Cases, being Sessions Case No.100/1993 and Sessions Case No.126/1997, the Additional Sessions Judge at Kolhapur pronounced two separate judgments on 24/10/1997 and the two Appeals listed before me assail the said judgments.

Criminal Appeal No.660/1997 is filed by one Vishnu Kisan Lakhe who stand convicted in Sessions Case No.100/1993 for offence punishable u/s.304-II of the IPC and is sentenced to

suffer RI for four years along with fine. Along with him, two other persons i.e. Kisan Lakhe and Ravindra Mahipati Lakhe faced trial under Section 302 and Sec. 326 r/w 34 of IPC, but since they are acquitted of the charges, the present Appeal is restricted to Vishnu Kisan Lakhe.

Appeal No.701/1997 is prosecuted by Ravindra Maruti Patil and Shashikant Rajaram Beedkar, who faced trial in Sessions Case no. 126/1997, and who are convicted for committing an offence u/s.324 r/w 34 of IPC and are sentenced to suffer RI for nine months each along with fine of Rs.500/-. They also stand convicted u/s.336 r/w Section 34 of IPC and sentenced to suffer RI for one month along with fine of Rs.100/-, both sentences having being directed to run concurrently.

2 The two Appeals revolve around a common incident, which took place on 7/3/1993 at Venus Corner, Kolhapur, around 12.30 to 1.00 a.m when two set of accused persons engaged themselves in a skirmish, resulting in registration of C.R No.38/1993 and a cross CR No.39/1993, with Shahapuri Police Station, Kolhapur. Vishnu, Kisan and Ravindra Lakhe were arraigned as accused in C.R No.38/1993 which is registered at the instance of one Ravindra Patil who is an accused no.1 in cross C.R No.39/1993, whereas C.R.No.39/1993 is registered against Ravindra Patil by Kisan Lakhe as complainant.

As per the case of the prosecution, on 7/3/1993, the accused Lakhes' were engaged in a dance and musical show in Laxmi Jalsa Theatre. Vishnu, accused no.1 being son of Kisan Lakhe was present in the performance along with their cousin

Ravindra Lakhe, four daughters of Kisan i.e. sisters of Vishnu i.e. Ragini, Kamini, Mangal and Anita. As per the prosecution, in Laxmi Jalsa Theatre such dance and musical shows were arranged by private parties and one of the performing parties was of the Lakhes', who on their performance being over, was in the practice of returning to their residential room located near Apsara Cinema talkies. Private shows were performed at the instance of the parties by the four sisters accompanied by the accused persons.

Diagonally opposite to Apsara Cinema Theatre is the Venus Cinema Talkies, and in the close proximity, there is another cinema theatre and thus, the three theatres and the talkies formed a cluster offering entertainment. The private performance by the Lakhes' was in a room, situated at close distance from Venus Video Parlour. After the night show of the cinema is over, the vendors used to sell food articles on handcarts being parked near Venus Video Parlour and in the lane, leading to the room occupied by the Lakhes'.

The presence of one Chintya @ Chandramohan Killedar, complainant Ravindra Maruti Patil, Shashikant Beedkar and Anil Satvekar, was a normal feature when they used to squat themselves outside Venus Video Parlour, straight opposite to the handcart of Shabbir Chhotumiya Shaikh, where he used to sell omlettes, even after the show timings were over.

3 On the night between 6th and 7th March 1993, after the night show of the cinema was over, Shabbir Shaikh had parked his handcart near the corner of Venus Video Parlour as a

routine business. One unidentified person, after eating the omlette from Shabbir Shaikh proceeded towards the room where the Lakhes' were performing a private show, arranged by one Sanjay Rangole and the show was in progress around mid-night. This unknown person urinated in front of the open door, where the performance was going on. This was the cause of discord between him and the accused no.3, Ravindra Lakhe and the unknown person fled away from the spot. Hearing the commotion, Sanjay Rangole came out of the performance room and asked Shabbir Shaikh, as to who was the person who urinated and where has he gone. Shabbir was unable to answer and it is the case of the prosecution that this irritated Sanjay Rangole, who slapped Shabbir Shaikh. Since Shabbir was on friendly terms with deceased Chintya, complainant Ravindra Patil, Shashikant Beedkar and Anil Satvekar, they all rushed to his aid. Chintya and Ravindra Patil reached from the venus corner, while Shashikant and Anil were squatted in front of Venus Video Parlour and all reached near the cart of Shabbir.

As per the prosecution, thereafter, Sanjay Rangole was taken inside the room where the dancers were performing. However, Lakhes approached the handcart of Shabbir and the prosecution allege that Vishnu was holding a knife and the remaining two persons Kisan and Ravindra were armed with steel rod. It is alleged that Vishnu opened the attack on Chintya, who received two stab injuries; one on the right side of the neck and second on the right region of 8th intercostal space. Vishnu mounted assault by knife on the complainant Ravindra Patil and

Shashikant Beedkar. Ravindra received two incised wounds and Shashikant received two punctured wounds and one lacerated wound. Chintya and Ravindra fell down on account of the attack and one Jeevan Avale rushed to their rescue and took them to CPR Hospital, Kolhapur.

On examination, Chintya was declared dead. The information was transmitted to the Shahapuri Police Station and taking note of the same in the station diary, PI Ingale rushed to the CPR Hospital and obtained the complaint from Ravindra Patil and in the wake of the injuries sustained by him, a statement in form of Dying Declaration given to the Executive Magistrate was also recorded in writing.

This is the genesis of C.R.No.38/1993, which invoked Section 302 and 326 r/w 34 of the IPC against the three accused persons, the C.R being registered at 3.05 a.m.

4 As far as C.R.No.39/1993 is concerned, it is the case of the prosecution that Ravindra Patil, Shashikant Beedkar, Anil Satvekar are on friendly terms and their friendship also involved deceased Chintya.

In the background set out as regards the cluster of theatre/talkies and the performance by the Lakhes' in the room on the said night, with the location of the cart of Shabbir being set out, on the intervening night of 6th/7th March 1993, when one Sanjay Rangole had engaged the musical party of Kisan Lakhe, one unknown person after having omelette from the cart of Shabbir, relieved himself in front of the performance room and Rangole came out, to question Shabbir about the said act. It is

the case of the prosecution that after Sanjay Rangole was taken inside the room by the four lady performers, all the three accused persons rushed to the room, where the programme was ongoing and accused no.1 Ravindra was holding soda water bottles and Chintya was armed with stick, whereas Shashikant Beedkar was holding a knife. Collectively, they assaulted Kisan and Vishnu. Kisan received two incised wounds, whereas Vishnu received eight injuries and both of them were taken to the CPR hospital, Kolhapur, by the four female members of the music party.

On the information received, once again, an entry was taken into the station diary and an offence was registered against the three accused persons by invoking Section 326, r/w Section 336 of the IPC. The injured Vishnu and Kisan were examined by Dr. Zunzarrao Ramchandra Patil at the CPR Hospital, but they got themselves shifted to the hospital of Dr. Sarnaik, where they were treated as indoor patients till 26/3/1993. Dr.Sarnaik found the injuries received by Vishnu and Kisan to be 'grievous injuries'.

5 During the course of investigation of the above C.Rs, the panchnama of the scene of the offence was drawn on the next day and several articles including slippers, chappal, coins, wrist watch, stick, pieces of shirt were seized from the spot. The panchnama also record presence of broken pieces of bottles.

The spot panchnama so prepared was used in both the trials.

On completion of investigation, two distinct charge-sheets were filed by the prosecution and the accused were

subjected to trial in Sessions Case No. 100/1993 and Sessions Case No.126/1997.

6 Two versions have surfaced before the trial Court about the common incident which took place in the intervening night of 6/03/1993 and 7/03/1993 and through the prosecution witness two counter versions are unfolded. In one case, the Lakhes are the accused whereas Ravindra Patil is the complainant and he is also an injured, whereas in the cross-case lodged at the instance of Kisan Lakhe, one of the injured with Vishnu Lakhe, Ravindra Maruti Patil, Shashikant Beedkar and Anil Satvekar faced the trial.

I have heard Leaned Advocate Shri Ingawale representing Vishnu Lakhe in Cr.Appeal 660/1997 and Advocate Shri Ganbavle representing the appellants Ravindra Maruti Patil and Shashikant Beedkar in Cr.Appeal No.701/1997. In both the cases, the State is represented by the learned APP Shri. S.R. Agarkar.

With the able assistance of the respective counsel as well as the learned APP, I have perused the Record and Proceedings in both the Appeals and I heard the arguments advanced by the counsel in favour of their clients as well as the learned APP in support of the case of the prosecution and also in support of the judgments delivered by the Sessions Judge holding the accused to be guilty and imposition of appropriate sentence.

7 The manner in which the cross criminal cases shall be dealt with, is clearly set out by the Hon'ble Apex Court in

case of *Nathi Lal and ors vs. State of U.P and ors*,¹ where a procedure to be followed in cross cases, revolving around the same incident is set out and the insightful observations of the Apex Court, deserve a reproduction:-

“3 We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments.

4 In deciding each of the cases, he can only rely on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

5 We allow this appeal partly to the aforesaid extent and direct the learned Judge to proceed with the police case and the cross case instituted by the respondent – complainant by way of a private complaint and hold the trial in both the matters in the light of the directions given hereinabove. Learned Judge will accord priority to these cross cases and dispose of both the case expeditiously.”

8 In case of *State of M.P Vs. Mishri Lal, (Dead) and Ors*,² the principle laid down in *Nathi Lal*, is applied once again, with an observation to the effect that the cross cases should be tried together by the same Court irrespective, of the nature of offence involved. The rationale behind the principle laid down

1 1990 Supp SCC 145

2 AIR 2003 SC 4089

is noted; being to avoid the conflicting judgments over the same incident because if the cross cases are allowed to be tried by two Courts separately there is a likelihood of conflicting judgments. Recording that when the Investigating Officer had submitted challan against both the parties, both the complaints cannot be said to be right, and either of them must be false, it was held that, in such a situation, legal obligation is cast upon the Investigating Officer to make an endeavor to find out the truth and to cull out the truth from the falsehood.

9 There is no dispute about the fact that the principle laid down in *Nathilal* and *Misrilal* (supra) is followed by the learned trial Judge as the cross-cases are tried separately by him and two separate judgments are delivered. Except one witness Dr.Manohar Sarnaik, whose evidence is relied upon in Sessions Case No.100/1993, separate witnesses in support of the two prosecution cases are examined.

In Sessions Case No.100/1993, where the three Lakhes' were tried, prosecution has examined 13 witnesses and one Medical Officer from the counter case, whereas in Sessions Case No.126/1997 when three accused persons i.e. Ravindra Patil, Shashikant Beedkar and Anil Satvekar, faced the trial, 13 witnesses were examined out of which PW Nos. 1 to 3, the witness on the arrest panchnama turned hostile and did not support the case of the prosecution. The injured Kisan Lakhe and Vishnu Lakhe stepped into the witness box along with several other eye witnesses.

10 I shall now turn my attention to the evidence

rendered in the two sessions trials as the evidence will have to be appreciated separately, though the accusations flung out of the same incident.

In Sessions Case No.100/1993 from which Criminal Appeal No.660/1997 arise, Ravindra Patil, the complainant/injured is examined as PW 6. Apart from this, Shabbir Shaikh, an eye witness to the incident is examined as PW 7 along with one Jeevan Avale (PW 8), who took the deceased and the injured to the hospital.

Ravindra Patil, PW 6 after giving the description of the venue where the incident took place in the night between 6/3/1993 and 7/3/1993, has deposed that while he had parked his rickshaw at Venus corner and was in the company of deceased Chintya, he noticed commotion in front of Apsara talkies and hence proceeded to the spot. He noticed that Rangole was beating Shabbir Shaikh, a stall owner located near Venus video parlour. Ravindra inquired, the cause for thrashing Shabbir. In the mean time, some women came outside and took Rangole inside the room. As per Ravindra, three accused persons rushed towards him, which included Vishnu, who was armed with a knife and the other two were holding steel rod.

According to him, Vishnu assaulted Chintya and himself by the knife and because of the blows, both of them fell to the ground. According to him, accused no.2 and 3 assaulted by a steel rod.

Ravindra Patil (PW6) categorical deposed as under:-

“I had received injuries by knife on my left cheek and

right side of the chest. Chintu also received injuries by knife. After he fell down, my friend Jeevan Avale came there and he took myself and Chintu to CPR hospital in rickshaw. Doctor declared that Chintu is dead. The doctor then started the treatment to me”.

11 PW 6, in his cross-examination, has admitted that Jeevan Avale used to run the video parlour and also admit that till mid-night, there used to be stalls of various articles such as Omlette, Biryani etc at Venus corner and that Shabbir used to carry his business of selling Omelete on a cart situated near Apsara talkies.

Narrating the incident, he state that about 10 persons were seen by him quarreling and amongst them, were Jeevan Avale, Shashikant Beedkar and Anil Satvekar, though he did not see any weapon with them. He admit that he and Chintya were also not carrying any weapon and all the three accused persons were participants in the quarrel. It is admitted by him that Rangole was beating Shabbir.

When specifically asked whether Vishnu had received 10 to 12 injuries, he state that he did not see any injury on the person of Vishnu and Kisan, but categorically state that accused persons had assaulted him and Chintya because they had questioned why Shabbir was being beaten. According to this witness, Chintya received the injuries first and even accused nos.2 and 3 assaulted Chintya with steel rod and gave one or two blows to each of them.

12 Another witness examined in support of the prosecution case, is Shabbir, who depose that when he had taken

his cart near the lamp post, near to Venus Video Parlour, Jeevan Avale, Shashikant Beedkar and Anil Satvekar were inside the Video Parlour and the musical programme was in progress in the room occupied by Sangeet Bari.

Shabbir depose that one of his customers after having omlette, eased himself near the room of Sangeet Bari and some persons came out of the room and there was quarrel between them and his customer, who ran away. Rangole thereafter came from the room and inquired about the said person and assaulted him. Rangole raked a quarrel with him since he was unable to respond to his query about the person who had escaped after relieving himself at the door.

Anil came out of the Video Parlour and from the end of Venus Talkies, Ravindra Patil and Chintya Killedar came. Shashikant Beedkar and his companions questioned Rangole as to why he was being beaten. Thereafter, according to him, the dancers performing in Sangeet Bari came out and took Rangole inside the room. His narration of the actual assault is very specific;

“The accused no.1 Vishnu was having a knife and accused no.2 Kisan and No.3 Ravindra were having a steel rod each. By the help of those weapons they started assaulting deceased Chintya. All the accused also assaulted Ravindra Patil. They also attempted to open the attach on Shashikant Beedkar. The accused no.1 had dealt blows of knife on the person of Chintya. The accused no.1 also assaulted Ravindra by the help of knife. The accused no.2 and 3 have assaulted deceased Chintya and Ravindra Patil by the help of steel rod. The accused no.1 assaulted Shashikant Beedkar. Chintya and Ravindra had fallen down having received the injuries. Jeevan Awale, Chintya and Ravindra took them to the hospital in a rickshaw. I got frightened and took away my cart from that place. There was sufficient light at that place from the source of the municipal

lamp post, the lamps of the video parlour and the gas light at my card. All the three accused before the court are the same persons. Chintu died in the same night.”

13 The witness is subjected to extensive cross-examination, when he depose that he was summoned by police on the next day morning to show the place of incident.

He admit that when the five persons, Jeevan, Shashikant, Anil, Ravindra and Chintya came, none of them were armed with any weapon. He denied the suggestion that these persons were holding the weapons like Stick, soda water bottle, dagger and they threatened the persons responsible for beating him. He admit that when Vishnu Lakhe, accused no.1 and Vasant were assaulted, he was not present there and he denied the suggestion that the five persons had assaulted Vishnu and Vasant.

An omission from his statement is marked through Investigating Officer to the following effect :-

“I did not make a statement that Shashikant Beedkar, Anil Satvekar, Chintya Killedar and Ravindra Patil had also opened the attack by help of knife and sticks.”

In the cross-examination, he re-iterated that accused nos.2 and 3 also dealt a blow with the help of steel rod to Chintya but it did not cause bleeding injury.

14 Jeevan Avale (PW 8) is yet another witness examined by the prosecution, but it is doubtful whether he is an eye witness to the incident.

He deposed that he was sitting in the video parlour along with Shashikant Beedkar and Anil Satvekar on the fateful night at around 12.45 am, when the night show of the cinema was over. According to him, there were some carts selling food articles near the talkies and he heard commotion and therefore, he, along with Shashikant and Anil came out of the Video Parlour. At the same time, Ravindra Patil and Chintya reached the spot from Venus corner and he saw Rangole beating Shabbir.

He corroborate the other two eye witnesses about Rangole questioning Shabbir and the three accused persons i.e. the Lakhes' rushing to the spot. He also corroborate the witness PW 6 and PW 7, that accused Vishnu was holding a knife and remaining two accused were carrying steel rods.

Accused no.1 Vishnu, according to this witness, assaulted Chintya by the knife, causing him injury on the stomach and near the neck and according to him Vishnu also assaulted Ravindra and caused injury on his feet and chest. Though he attempted to assault Shashikant Beedkar, he was able to save himself.

At the same time, accused nos.2 and 3 were assaulting Ravindra and Chintya by a steel rod is his version. Chintya fell down and even Ravindra Patil fell down at a distance and it was he who carried them to the hospital.

In the extensive cross-examination, he admit that none of them were holding any weapon like dagger or knife and there were no carts of soda bottles near the place. He deny the suggestion that his gang proceeded towards the room of Sangeet

Bari, being armed with dagger, sticks and soda bottle and demanded that Rangole should come out of the room. He deny the suggestion that there was a pool of blood and broken pieces of bottle in front of the room of Sangeet Bari.

The above version of the prosecution case has surfaced through these three eye witnesses .

Now, I shall turn my attention to the medical evidence adduced by the prosecution. PW 9 Dr. Zunzarrao Patil, the Medical Officer at CPR Hospital at Kolhapur, is examined by the prosecution as he had conducted the post mortem on deceased Chintya and also examined the complainant as well as accused Vishnu and Kisan.

He conducted post mortem on the deceased and found the two external injuries:-

“1 Stab wound 1 c.m x ½ c.m by deep 2.5 c.m. on the right side of the neck 2 c.m away from the thyroid. Internal examination injury to the carotid conjection and clot were present.

2 Stab wound on the right below memory region on 8th intra costal space 2 c.m x 1 c.m x 3 c.m deep liver lacerated.”

An internal injury to the following effect was also noticed by him;

“injury to the thorasic wall right to the haemothorax. This injury was corresponding to the injury no.2 laceration to the lateral olbe of liver 2.5 x 1.5 cm”

15 PW 9, Dr Patil has deposed that as a result of injury no.1, carotid artery was ruptured. He further clearly expressed that the injuries sustained by deceased Chintya were sufficient in

ordinary course of nature to cause his death. He also opined that the external injury no.1 and 2 could have been caused by hard and sharp weapon and could be caused by knife shown to him (Article 34). The cause of death of the deceased was opined to be 'haemorrhagic shock due to neck and liver injury'.

PW 9 had also examined Ravindra Patil, the complainant and noticed the following injuries:

"1 Incised wound over the left side of face on tempo mandible joint $\frac{1}{2} \times 1$ c.m. bleeding present (++ excessive bleeding).

2 Incised wound over right side of the chest near neple about 2 c.m x 1 c.m skin deep."

It is further testified by the Medical Officer, that the injury sustained by Ravindra could have been caused by the knife (Article 34).

PW 9 is the same doctor, who has also examined Kisan Lakhe, who had sustained two incised wounds and Vishnu Lakhe who was found to have eight incised wounds on his body. About the injuries sustained by them, he has deposed that they could have been caused by hard and sharp object like knife, dagger etc. Injuries sustained by Ravindra Patil were described by him as 'simple injuries' and according to him, he was admitted to the hospital for observation.

The post mortem report (PM report) is exhibited through PW 9. Similarly, Medico Legal Certificate (MLC) of the injured Ravindra, Vishnu and Kisan are also exhibited through him.

Evidence of Dr Manohar Sarnaik, a Medical Officer from the counter case is also relied upon in this case and according to him accused no.1 Vishnu has sustained 8 incised wounds and these injuries were serious and grievous in nature and they were described as dangerous to his life. According to Dr. Sarnaik Vishnu was in the hospital for 19 days.

Investigating Officer Amarnath Ingale also stepped into the witness box witness no.10 and the contradiction in the statement of Shabbir Shaikh (PW 7) being marked as 'A' and 'B' is proved through this witness. PW 12 is the police Head Constable who recorded the FIR lodged by Kisan Lakhe.

On taking note of the aforesaid evidence laid, the learned Sessions Judge appreciated the same, as the accused persons faced the charge of causing death of Chintya, an offence punishable under Section 302 of IPC and causing injuries to Ravindra, the complainant.

16 The learned Judge considered the points that arose for consideration to determine their guilt and the first point which he framed was, whether the three accused i.e. Lakhes' were the aggressors and the accused persons in the counter case were the defenders.

On appreciating the evidence, the learned Judge did not find the Lakhes to be aggressors, but concluded that they were the defenders.

On answering the aforesaid issue, the trial Judge proceeded to determine whether the accused persons in exercise

of their private defence had caused the death of deceased Chintya and caused hurt to Ravindra, Shashikant and Anil Satvekar. As far as the first part is concerned, the conclusion was in the negative, whereas, as far as the second part is concerned, the answer is in the positive.

On appreciating the entire evidence, the conclusion that was drawn and which is recorded in the judgment is to the effect that only Vishnu i.e. Accused no.1 is guilty of causing death of Chintya and the other two accused were absolved of the accusations.

17 In determining whether the accused no.1, Vishnu is guilty of the offence of murder and offence punishable u/s.302 of IPC or whether it would be an offence punishable u/s.304 of IPC, the Sessions Judge has premised his finding on the basis that the Lakhes were not the aggressors but rather Ravindra Patil, the complainant and the accused in counter case were the aggressors. It was, therefore, concluded that no specific intention is attributed to Vishnu – Accused no.1 of causing death of Chintya as the incident took place on the spur of the moment without any pre-mediation plan for commission of murder of Chintya. However, though Chintya's role as an assailant has not surfaced on record, the accused no.1 with the knowledge that such an assault would cause his death, assaulted Chintya. The two injuries sustained by Chintya on vital part of the body are attributed to Vishnu, but in absence of intention or knowledge, of causing his death, instead of convicting him u/s.302 of the IPC, the learned Judge found Vishnu, liable to be convicted u/s.304-II

of IPC and on finding him to be guilty of committing such an offence, he is sentenced to suffer Rigorous Imprisonment for four years.

On perusal of the judgment it can be said that the view taken by the learned Judge is a plausible view as the prosecution case which featured before him through the 13 witnesses did not establish the guilt against accused nos.2 and 3 but the prosecution case was established that Vishnu had assaulted Chintya by a knife and the learned Judge adopted a lenient view by concluding that he was not guilty of offence of murder but under Section 304-II of IPC. Since he also did not agree that the assault on Chintya was by way of private defence, he has rightly recorded a finding of conviction under Section 304-II of IPC and imposed a befitting sentence which in my considered opinion do not warrant any interference as there is no legal lacuna in the finding recorded and the sentence imposed.

18 As far as the counter case, where Ravindra Maruti Patil along with Shashikant Beedkar and Anil Satvekar faced a charge for causing grievous hurt to Kisan and Vishnu Lakhe, Anita Lakhe and Ravi Lakhe is concerned, Ravindra Patil and Shashikant Beedkar have been found guilty of committing an offence u/s.324 and 326 r/w Section 34 of the IPC.

Accused Anil Satvekar was acquitted of both the charges.

19 In order to prove the charge in the sessions case trying the three accused persons, the injured – Kisan Lakhe,

Vishnu Lakhe, Ragini Lakhe entered into the witness box as PW 9, 10 and 11 respectively. Sanjay Rangole came to be examined as PW 12. The 4th injured – Ravindra Lakhe is not examined by the prosecution.

Kisan Lakhe (PW 9) while in the witness box, deposed that his daughter Ragini is a singer and the remaining three daughters are dancers and they give performances under the style name “Nayantara Sangeet Bari, Kolhapur”.

On the night of 6/3/1993, Sanjay Rangole had engaged them for a private performance which started at around 10.30 to 11.00 p.m.

According to him, while the programme was in progress between around 12.30 am to 1.00 am, one boy aged 25 years came in front of the door of their room and urinated. His brother Ravi confronted him, but he ran away. Thereafter, Rangole went out of the room and questioned Shabbir Shaikh who was present with his handcart, about who the boy was. As per PW 9, after some time his daughters went to that place and brought Rangole back and then the programme again started.

As per his version, after about 10 minutes some 10 to 15 persons came there and they threw soda water bottles on the door of the room and demanded Sanjay to be sent out. His son Vishnu stepped out of the house and at that time, accused no.2 Shashikant assaulted him by knife, whereas accused no.1 Ravindra hit him with soda water bottle. When PW 9 stepped out, deceased Chintya and accused no.3 Anil started beating him by sticks. Accused no.1 Ravindra again hit a soda bottle on head

of Vishnu and Vishnu fell down. Accused no.2 Shashikant also hit Vishnu with knife on his head and on his back. On Vishnu falling down, Shashikant rushed towards PW 9 and attempted to hit him, but he managed to evade the blow but a second blow landed on his right buttock. Thereafter, Ravindra hit two soda water bottles on the head of Vishnu and the bottles broke. Accused no.3 Anil was having stick with which he assaulted PW 9 and his daughters Ragini and Anita.

Upon being assaulted, his daughters carried him and Vishnu to CPR hospital, where they were offered treatment. Vishnu and Vasant were shifted to the private hospital of Dr. Sarnaik and remained as indoor patient for 20 to 22 days.

The aforesaid version given by PW 9 to a great extent, is corroborated by PW 10 Vishnu, PW 11 Ragini, the other two injured.

In cross-examination, PW 9 admit that Dr. Sarnaik (PW 7) is their family doctor.

He was subjected to extensive cross-examination on the actual incident of assault and he admit that he did not follow Rangole, who went out of the room after the act of urination by a stranger in front of the door of the room. According to him, his brother Ravindra also did not leave the room and when the programme was going on, none of the persons inside the room went out.

He admit that there was an exchange of words between Rangole and Shabbir Shaikh but Rangole was brought

back within two minutes by his daughters and thereafter, the programme continued.

This statement by him is an omission, as it is not mentioned in his report at Exhibit-41. Several other omissions and on material aspect, are brought on record through his cross-examination. This include the manner of assault on himself as well as his daughters.

The statement of Kisan is exhibited at Exhibit-41 C and this was admitted during the course of evidence.

20 PW 10, Vishnu Lakhe, another injured in the said CR and the accused no.1 in the cross case, has given the following version of the assault:-

“Myself and my father thereafter went out of the room. We saw all the three accused persons present there, along with deceased Chintya. The accused nos.1 to 3 are the same persons who are present in the Court. I was already knowing all the three accused persons. The accused no.2 attempted to give a blow on the person of my father Kisan but the first blow was wared of by him while the second blow was received by him on his right buttock. The accused no.1 Ravindra then hit the soda water bottle on my head. Ragini and Anita had also received the injuries by the soda water bottle. The accused no.3 Anil assaulted us by the help of stick. He assaulted Ragini, Anita, myself and my father Kisan. Having received the injuries, I fell down and was unconscious. I regain consciousness in C.P.R hospital, Kolhapur.”

21 In the cross-examination, Vishnu is confronted with his antecedents which disclose, that he is also an accused in two criminal cases.

There are certain omissions and relevant one, about the assault by accused no.2 Shashikant, which has surfaced in

the cross-examination, apart from the act attributed to Ravindra Patil about hitting soda bottle on the head and also the injuries being sustained by Anita and Ragini.

Ragini, PW 11 has also deposed on similar lines.

22 One another important witness of the prosecution is, Sanjay Rangole, who is examined as PW 12, he deposed that a programme was arranged for him on the night of 6/3/1993 in Sangeet Bari and when some person urinated while the programme was ongoing, he came out of the room and proceeded to the cart of Shabbir, to inquire about him, but he feigned ignorance.

As per Rangole, four to five persons came there and beat him, but the girls in the Bari rescued him and he was taken in the room. Some persons gathered in front of the room and started shouting that he should be send out of the room and thereupon two girls including Anita continued to remain in the room and other persons went outside the room. When he went outside, he saw broken pieces of glass lying outside the room and Kisan and Vishnu being taken to the hospital as they had sustained injuries.

In his cross-examination, he admit to the following effect:

“I did not make the statement that all the three accused persons and deceased Chintya had started beating me by fists and kicks blows. Portion marked ‘A’ now read over to me from my statement is not correct. I did not see Vishnu and Kisan having received the injuries. Portion marked ‘B’ now read over to me from my statement is not correct.”

23 At this juncture, I must refer to the evidence of Amarnath Ingavale PW 13, PI attached to the Shahapuri police station, who investigated into the subject C.R. The omissions in the statement of PW 9 and PW 10 are proved by the Investigating Officer. Similarly, it is he, who recorded the statement of PW 11, Ragini, one of the injured and the portion marked 'A' and 'B' in her statement, according to him are recorded as per her say. He categorically admit that, she did not state that accused no.2 caused injury to the head of Vishnu and accused no.1 had hit Vishnu on the head by a soda water bottle. He also admit that she had never stated that the three accused and deceased Chintya had beaten all the four women including herself.

The omissions in the statement of the eye witnesses which are material to the case of the prosecution are thus proved through this witness and this has materially effected the case of the prosecution. The assault by the 3 accused in CR. No. 39 of 1993 to the Lakhes has further become doubtful in light of the injury certificate produced on record to prove the injuries sustained by them.

24 Turning to the medical examination of the injured in this case, so as to ascertain whether the version of the eye witnesses is corroborated by the medical evidence produced on record, I must now turn to Dr Manohar Sarnaik (PW 7), in whose hospital Kisan Lakhe and Vishnu Lakhe the two injured were admitted on 7/3/1993, he deposed that at the time of admission Vishnu was having bleeding head injuries and he was

vomiting on account of shock to the brain caused by head injuries.

According to him, there were 6 to 7 injuries on his head which were serious and the injury certificate was issued by him (Exhibit 32). The injuries were certified by him as serious (grievous type) and as per his deposition they were incised and lacerated wounds, skin deep and scalp deep, which were dangerous to his life. Vishnu was discharged on 26/3/1993 by him.

Similarly, as far as Kisan Lakhe is concerned, according to PW 7 he was having an injury on his buttock and injury certificate (Exhibit 33) is issued by him, describing the muscle deep injury.

Cross-examination of this witness is interesting to note and is of great significance.

He has admit that the injury certificate issued in case of Kisan did not certify its nature. Apart from this, the certificate do not mention the date of issuance. He also admit that the injury to the buttock can be caused due to fall on ground on sharp object.

When the certificate at Exhibit-33/C which is admitted by the accused persons is carefully seen, it is to the following effect :

CERTIFICATE

This is to certify that Kisan Bhiva Lakhe is under my treatment from 7/3/1993 to 26/3/1993 for injury on buttocks with diabetes mebits with coronary insufficiency patient is advised rest for patient is fit to join the duty

from”

sd/-

Dr.M.M. Sarnaik,

M.S.F.C.P.S.

It is pertinent to note that there is no date on the certificate nor there is any description of the injury.

25 Certificate of another injured Vishnu (Exhibit 32/C) without any date reads thus

CERTIFICATE

This is to certify that Vishnu Kisan Lakhe is under my treatment from 7/3/1993 to 26/3/1993 for serious head injury (grievous type) Patient is advised rest fordays patient is fit to join the duty from”

sd/-

Dr.M.M. Sarnaik,

M.S.F.C.P.S.

26 PW 7 in cross-examination has admitted as under:-

“It is true that in Exhibit-32, there is mention of only one injury and not multiple injuries. It is not specifically mentioned that the injury was dangerous to life. At present, I have no case papers of both the patients. In the absence of the case papers, only on the basis of memory, I can say that vomiting as a result of head injuries”

Another relevant admission of the said witness, which assume significance is as under :-

“In both the injury report Exh.32 and 33, it is not mentioned that both the patients were admitted as indoor patients to the hospital. It is true that if a patient have a buttock injury is not required to be admitted for such a long period. It is not true that there were no 6 to 7 injuries to Vishnu Lakhe.”

The Medical Expert admit that during the period from March 1993 to September 1997, he must have examined about 2000 patients and it is not possible for him to say which patient was having how many injuries.

The medical injuries sustained by the injured Vishnu, and Kisan, has thus surfaced on record in the above manner.

27 Dr. Zunzarrao Patil, Medical Officer on duty at CPR Hospital Kolhapur, who examined injured Vishnu, Kisan, Anita is examined as PW8 and he has given the description of the injuries sustained by them. As far as Kisan is concerned he has found two injuries on right side of his buttock and incised wound over left hand base at right ring finger and opined that it would have been caused by hard and sharp object like knife. On Vishnu, he found 8 incised wounds caused by weapon like knife.

He has however described, the first six injuries to be simple in nature. However, according to this witness, Vishnu and Kisan left the hospital against medical advise and he did not treat them. He also examined Anita and found one minor abbrassion.

In cross examination, PW-8 has given the following admission:-

“before issuing of the injury reports, I have no opportunity to examine the weapon. All the injuries on the person of Vishnu and Kisan were of superficial nature. It was not necessary to admit all the three patient as indoor patient for treatment.”

28 It is this very doctor, who had examined Ravindra Patil and found two incised injuries and issued a certificate

(Exhibit 41) which was placed on record and Sessions Case No. 100/1993. he has also conducted post mortem on deceased Chintya and placed his report in SC No.100/93.

29 The version of the injured eye witnesses examined by the prosecution do not corroborate with the medical evidence as PW-8, who was the first doctor to examine the injured has described the injuries to be simple and superficial and opined that there was no need of any admission however PW-7 has deposed that Vishnu and Kisan were admitted as indoor patient and the injuries sustained by Vishnu were grave and serious but the certificate issued by him do not indicate so.

While appreciating the medical evidence against the ocular evidence of the eye witnesses, nonetheless, the eye witness account if found to be credible and trustworthy, the medical opinion pointing to alternative possibility may not be accepted as conclusive.

“Witnesses” as Bentham has expressed, “are the eyes and ears of justice” and thus of the prosecution and hence, they assume importance in the trial process. Eye witnesses account would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including medical evidence as its sole touchstone. The evidence must be tested for its inherent consistency with the account of other witnesses; consistency with undisputed facts; the credit of the witnesses; their deposition before the court; the power to observe etc. The probative value of such evidence became eligible to be put into

the scales for cumulative evaluation.

30 As far as eye witnesses are concerned, their testimony is full of inconsistencies and contradictions, apart from it suffering from lack of credibility as on the material aspect, there are omissions which are proved through the Investigating Officer. The contradictions in the evidence of the three eye witnesses PW 9, 10 and 11 is apparent and has made the case of the prosecution doubtful to the extent of its incredibility and this inconsistencies appear through the evidence and surface to the following effect:-

(a) *Kisan Lakhe (PW9) states that Sanjay was brought back to room and within 10-15 minutes of, 10-15 persons came there and some of them threw Soda Water Bottles and shouted to send Sanjay Rangole (PW 12) out. Vishnu went out and Shashikant Beedkar (A2) assaulted him with knife. When he (PW9) went out, Chintya (deceased) and Anil Satvekar (A3) started beating him with stick.*

(b) *Vishnu Lakhe (PW10) has stated that Sanjay was brought back to room and within 10-15 minutes, 4-5 persons reached in front of the room and started shouting to send Sanjay Rangole (PW 12) out. Vishnu Lakhe (PW10) and Kisan (PW9) went out and saw all the Accused persons along with deceased Chaitanya.*

(c) *PW 11 has stated that Sanjay Rangole was pacified and brought back to the room and thereafter, all 3 Accused and deceased Chintya came there. They threw Soda Water Bottles on the door and they opened the door, we saw all the 3 Accused and Chintya ahead of the group of 20-25 persons.*

(d) *All the 3 prosecution witnesses (PW9, PW10 and PW11) have given contrary figures of the persons who had allegedly gathered in front of their room. They also say that some of them threw Soda Water Bottles on their door. It is an admitted position that none of them saw the Accused persons throwing the Soda Water Bottles. On this ground, the conviction under Section 336 r/w 34 of IPC cannot be sustained.*

31 There is also inconsistency in the evidence on the aspect of injuries sustained by PW 9 Kisan and PW 10 Vishnu.

Kisan Lakhe (PW9) in his evidence has stated that when he went out of the room, Chintya (deceased) and Anil Satvekar (A3) started beating him with stick. However, no injuries were found on the body of Kisan Lakhe (PW9) which were caused by blunt object like stick. In his statement u/s 161, he had not stated that he was assaulted with Knife. However, in his evidence, he tried to improvise and deposed that Shashikant Beedkar (A2) assaulted him with knife and that portion is an omission and cannot be considered as an evidence.

Vishnu Lakhe (PW10) has deposed in his evidence that Anil Satvekar (A3) assaulted PW10 (Vishnu), Kisan (PW9), Ragini (PW11) and Anita (not examined) with the help of stick. This witness (PW10) also tried to improvise that first attempt of assault by Shashikant Beedkar (A2) avoided by Kisan (PW9) and second blow by Shishikant Beedkar (A2) received by Kisan (PW9) on his buttock with knife. This portion was also not part of his statement u/s 161, and thus the said portion is an omission and cannot be considered as evidence.

Ragini Lakhe (PW 11) in her evidence has stated that Anil Satvekar (A3) and deceased Chintya assaulted Vishnu (PW10) and Kisan (PW9) with the help of sticks, whereas as per Kishan Lakhe (PW9), Vishnu went out and Shashikant Beedkar (A2) assaulted him with knife. After that, Ravindra Patil (A1) hit a Soda Water Bottle on the head of Vishnu and as a result he fell down. Shashikant Beedkar (A2) assaulted Vishnu on his head

with Knife and again on the back of Vishnu.

Vishnu Lakhe (PW10) has deposed in his evidence that Shashikant Beedkar (A2) gave first blow on his forehead of with knife and then gave the second blow. Anil Satvekar (A3) assaulted him, Kisan (PW 9), Ragini (PW11) and Anita (not examined) with the help of stick.

Ragini Lakhe (PW11) however stated in her evidence that Shashikant Beedkar (A2) gave blow on the head of Vishnu (PW10) with knife. Ravindra Patil (A1) hit a Soda Water Bottle on the head of Vishnu (PW10). Anil Satvekar (A3) and deceased Chintya assaulted Vishnu (PW10) and Kisan (PW9) with the help of sticks. Vishnu (PW10) fell unconscious. PW11 and Anita had received injuries from the broken pieces of glass of bottle and stick.

32 The Medical evidence indicate that there are 8 injuries caused by sharp object, whereas, the evidence of the injured himself (PW10) states that Shashikant Beedkar (A2) gave only 2 blows with knife, one on forehead and for other he is silent on which body part he was given second blow. Whereas, Ragini Lakhe (PW11) states that Shashikant Beedkar (A2) gave blow on the head of Vishnu Lakhe (PW10) and thereafter Ravindra Patil (A1) hit a Soda Water Bottle on the head of Vishnu (PW10). However, no injury is found which was caused by blunt object.

33 The case of the prosecution against the two appellants Ravindra Patil and Shashikant Beedkar, therefore, do not inspire confidence and the finding of the Sessions Judge that they were the aggressors, is merely based on assumption and

surmises and it is evident from the following observation recorded in the impugned judgment:-

‘I have relied upon the circumstances to the effect that, since admittedly, Sanjay Rangole was taken to the room of the complainant. In the instant case, there was no reason for the complainant to go to the cart of Shabbir Shaikh in order to quarrel with him. If at all anybody was having feeling of insulted, it was Shabbir Shaikh, who was allegedly assaulted by Sanjay Rangole. There is no dispute on the point that, all these three Accused in the instant case and deceased Chose were in friendly terms with Shabbir Shaikh and hence in all probability, they must be Accused persons who had rushed towards the room of the Complainant for taking revenge’

‘According to the Accused, in the instant case, whatsoever incident took place was near to the cart of Shabbir Shaikh i.e. just in front of the Venus Video Parlour. The accused could not however explain as to in those circumstances, how the blood spot was found in front of the room of the complainant and the broken pieces of soda water bottles. The conclusion which, in this case will be, therefore, the same which has already been drawn by me while deciding the Sessions Case No. 100/93 to the effect that these Accused persons must be the aggressors, while the complainant Kisan Lakhe, his son Vishnu, and their other family members must be the defenders.’

34 The above conclusion, recorded in the impugned judgment, is without any direct or circumstantial evidence. It is pertinent that admittedly the dispute started between Sanjay Rangole (PW12) and Shabbir Shaikh, who is not examined in this case. It is the case of the Prosecution that after the dispute with Shabbir Shaikh, Sanjay Rangole (PW12) was taken inside the room. Shabbir Shaikh remained there and was an eye-witness to the entire incident which

happened between the accused herein and Kisan Lakhe, Vishnu Lakhe and their family members. However, his statement was not recorded by the prosecution in the present matter. The statement of Shabbir Shaikh was recorded in the connected matter (Sessions Case No. 100 of 93), wherein, he has stated that Kisan Lakhe and Vishnu Lakhe started the assault on Chintya and Ravindra Patil.

The Trial Court held that circumstances to the effect that big spot of blood pool and also the broken pieces of the Soda Water Bottles were found in front of the room of Kisan Lakhe (PW9) and the Accused persons could not explain this position as it is their claim that incident took place near the omelet cart of Shabbir Shaikh. The Trial court lost sight of the fact that Tushar Bhosale (PW6), the Spot Panch in his examination in chief has stated that Shabbir Shaikh had shown the place of the incident but is silent as to where the pool of blood was found. Whereas, he has admitted in the cross that the pieces of Soda Water Bottles were lying in front of the exit gate of Usha Talkies, which is about 30 feet from Venus Video parlour.

Thus, the finding of the Trial Court on the basis of presumption that Accused persons must be the aggressors is against the principle of Criminal Jurisprudence. It is for the prosecution to prove its case beyond reasonable doubt. The Trial Court has fallen into grave error in recording the judgment that the circumstances suggest that the Accused persons must be the aggressors.

As far as another incriminating circumstance which has been weighed with the trial Court is the recovery of weapon from Shashikant Beedkar u/s.27 of the evidence Act. It is worth to mention that the same is not proved conclusively as panch witness PW 4 and PW 5 have not supported the case of the prosecution and hence, the alleged recovery of the weapon at his

instance is not a circumstance proved. Apart from this, the weapons are not sent for any forensic examination, to establish conclusively that they are used in commission of the alleged offence.

35 In the wake of aforesaid discussion evidently, the prosecution has failed to prove its case against the appellants and they deserve an acquittal by setting aside the impugned judgment dated 24/10/1997, recording a finding of guilt against them u/s.324 and 326 r/w Section 34 of the IPC.

Resultantly, Criminal Appeal No.701/1997 is allowed.

The judgment and order dated 24.10.1997 in Sessions Case No.126 of 1997 is quashed and set aside. The conviction of the Appellants is set aside by cancelling their bail bonds.

On the other hand Criminal Appeal No. 660/1997 is dismissed by upholding the sentence imposed upon Vishnu Lakhe, the Sole Appellant. He shall surrender himself before the Additional Sessions Judge, at Kolhapur, within period of four weeks from date of the uploading of the Judgment for undergoing the balance sentence.

(SMT BHARATI DANGRE, J)