

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

CRIMINAL APPEAL NO. 28 OF 2024

1. Baburao s/o Vitthal More,
Age : 60 years, Occu. Agriculture,
R/o. Ghatnandra Shivar, Tq. Sillod,
Dist. Aurangabad.

2. Yogesh s/o Baburao More,
Age : 33 years, Occu. Agriculture,
R/o. Ghatnandra Shivar, Tq. Sillod,
Dist. Aurangabad.

....Appellants

Versus

1. The State of Maharashtra

2. Rameshwar s/o Sarjerao More,
Age : 29 years, Occu. Agriculture,
R/o. Ghatnandra Shivar, Tq. Sillod,
Dist. Aurangabad.

...Respondents

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Mr. Nilesh S. Ghanekar – Advocate for the Appellants
Mrs. M. L. Sangit – APP for the State
Mr. S. A. Ambilwade – Advocate [appointed through Legal Aid] for
Respondent No. 2/Victim

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AND
CRIMINAL APPLICATION NO. 4254 OF 2025
IN
CRIMINAL APPEAL NO. 28 OF 2024

CRIMINAL APPLICATION NO. 3575 OF 2025
IN
CRIMINAL APPEAL NO. 28 OF 2024

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CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 15TH DECEMBER, 2025
PRONOUNCED ON : 24TH DECEMBER, 2025

JUDGMENT : -

1. This Criminal Appeal under Section 374(2) of the Code of Criminal Procedure [hereinafter referred to as 'Cr.P.C.'] is directed against the Judgment and Order dated 07.12.2023 passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No. 66 of 2020, convicting the Appellants for the offence punishable under Section 307 read with 34 of the Indian Penal Code [for short "IPC"] and sentencing them to suffer Rigorous Imprisonment for ten (10) years and to pay fine of Rs.25,000/- each, in default, to suffer rigorous imprisonment for one (1) year.

2. The Prosecution's case as revealed from the Police Report is as under : -

2.1. The Informant resides with his parents and brother at village Ghatnandra. His family cultivates the agricultural land. Appellant No.1 is the uncle and Appellant No.2 is the cousin brother of the Informant. There was a dispute between both the sides in respect of an agricultural land. On 26.05.2019, at 03:00 p.m., when the Informant and his brother were present in their agricultural field, the Appellants and the acquitted Co-accused came there and started abusing them. The Appellants started beating the Informant. Appellant No. 1 assaulted by use of an axe on the head of the Informant and Appellant No. 2

assaulted by an iron rod. The brother of the Informant intervened and he was also assaulted by the Appellants. On hearing hue and cry, the parents of the Informant came on the spot. The Appellants and the acquitted Co-accused fled from the spot. With the help of one villager, the Informant, who was severely injured, was taken to the hospital. On 28.05.2019, the statement of the Informant was recorded in the hospital and Crime came to be registered against the Appellants and the Co-accused for the offence punishable under Sections 307, 326, 324, 323, 504, 506 read with 34 of the IPC and for the offence punishable under Section 135 of the Bombay Police Act.

2.2. The spot *panchanama* was done. The statements of the witnesses were recorded. The Appellants and the acquitted Co-accused came to be arrested. The *muddemal* articles were seized and sent for chemical analysis. The relevant documents were collected. On completion of investigation, the Charge-sheet came to be filed. On committal, the learned Trial Court framed the Charge for the offence punishable under Sections 307, 504 read with 34 of the IPC and 135 of the Bombay Police Act. The Appellants and the acquitted Co-accused pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all following nine (9) witnesses.

- [i] PW1- Rameshwar Sarjerao More, the Informant and the Injured Witness.
- [ii] PW2 - Krushna Bhikaji Chaudhari, Spot and Seizure Panch.

- [iii] PW3- Sukhdeo Bhavrao Mutrad, the Panch for seizure of clothes of the Appellants.
- [iv] PW4 - Ganesh Sarjerao More, the Injured Witness.
- [v] PW5- Raju Shriram More, the Witness who drove the injured to the hospital.
- [vi] PW6- Ramesh Tulshiram Kajale, a Photographer for the spot of incident.
- [vii] PW7 - Dr. Aniruddha Ramchandra Gaikwad, the Medical Officer of the Government Hospital at Aurangabad, who examined the PW4 the Injured Witness.
- [viii] PW8- Dr. Rama Trimbakrao Mohite, the Medical Officer of the Sub-Divisional Hospital, Sillod, who examined the injured Informant.
- [ix] PW9 - Kakasaheb Maroti Sonawane, the Investigating Officer.

3. In the evidence of the above referred witnesses, the relevant documents, such as, Report, Spot *Panchanama*, Seizure *Panchanama*, Injury Certificates, CA Reports, etc., were brought on record. After the Prosecution filed the 'Evidence Closure *Pursis*', the statements of the Appellants and the acquitted Co-accused came to be recorded under Section 313(1)(b) of the Cr.P.C. They stated that, they were falsely implicated. On appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order acquitting the Co-accused and convicting the Appellants as above.

4. Heard the learned Advocate for the Appellants, learned APP for the Prosecution and the learned Advocate for Respondent No. 2 / Victim. Scrutinised the evidence available on record.

5. It is submitted by the learned Advocate for the Appellants that, the civil dispute was going on between both the sides and the civil suit was pending. There was injunction order in favour of the Appellants. There is no evidence that, the Appellants came on the spot with weapons. There is inconsistency in the testimony of the injured witnesses. The injured witnesses are not the truthful witnesses. They denied that the Civil Court order was in favour of the Appellants. The testimony of the injured witnesses finds no corroboration from the medical evidence. The injuries shown in the Medical Certificate were simple, except the one in the nature of fracture to the leg. No X-ray was brought on record and, therefore, the grievous injury was not proved. The evidence nowhere show that, there were repeated blows so as to prove the intention to kill. The essential ingredients for the offences under which the Appellants are convicted are not made out from the Prosecution's evidence. There was delay in lodging the report to the Police. The Appeal be allowed and the Conviction and the Sentence be set aside. In support of the contentions, he cited the judgments in (i) *Sivamani And Anr. v. State Represented by Inspector of Police, Vellore Taluk Police Station, Vellore District, 2023 supreme(SC) 1180, AND* (ii) *Mangesh S/o. Radheshyam Raut Versus State of Maharashtra, Through Police Station Officer, Police Station, Nagpur, 2023 Supreme(Bom) 682.*

6. It is submitted by the learned APP that, the testimony of the eye-witnesses corroborate each other. The medical evidence corroborate the testimony of the injured witnesses. The spot *panchanama* proved the spot of incident. The reports of chemical analysis show blood on the weapon. The material witnesses supported the case of the Prosecution and the Charge was proved. The learned Trial Court has rightly convicted and sentenced the Appellants and the Appeal be dismissed.

7. It is submitted by the learned Advocate for the Respondent No. 2 / Victim that, the civil dispute was going on and the evidence on record show that, the Appellants had an intention to kill the injured witnesses. The assault was by an axe. The Injury Certificate corroborate the testimony of the injured witnesses. The weapon was seized from the spot of incident. Considering the evidence on record, the learned Trial Court has rightly convicted the Appellants and the Appeal be dismissed.

8. As regards the incident of assault and the injuries suffered by PW1 - Informant and PW4 - Injured witness, the same is established by the Prosecution by bringing on record the relevant evidence. The evidence of PW2 - Krushna Bhikaji Chaudhari show that, he was working as the Health Worker and on 29.05.2020, he was the panch for the spot panchanama below Exh. 37. His evidence show that, the another panch, Hasan Tadv, and the Police were present on the spot of

incident. The spot was shown by PW4 - Ganesh More. There was an embankment, and the spot of the incident was under a tree near the embankment. One iron angle and iron axe were found lying on the spot of the incident. There was blood stains on the mud. The mud on the spot of occurrence became messy [रोंदाळलेली]. The police seized the articles from the spot under the said *panchanama*. PW4 – Ganesh More gave his clothes stained with blood and clothes of PW1 – Rameshwar stained with blood, which were also seized under the *panchanama*. He identified the articles before the learned Trial Court. Though cross-examined, nothing came on record to create any dent in his evidence.

9. The evidence of PW5 – Raju Shriram More show that, he was the resident of the village where the incident took place. He was working as the Driver on one vehicle, which was owned by one Shaikh Mushtaque. He knew the informant and his family members including the parents. On 26.05.2019, in the afternoon at 03:00 pm, he got the phone call from PW4 – Ganesh More asking him to get the vehicle to carry the patient. Accordingly, he reached on the spot. He saw PW1 – Rameshwar lying with blood oozing from his injury. PW1 – Ramesh was then put into the vehicle and taken to the Government Hospital at Sillod. The Doctors present over there referred the patient to the Government Hospital at Aurangabad, and thereafter PW1 – Rameshwar was taken to Aurangabad by Ambulance and he came back. Nothing

came in his cross-examination to disbelieve him.

10. The evidence of PW9 – the Investigating Officer show that, as the investigation was handed over to him, he went to the spot of incident for spot *panchanama* and seized one iron axe, one iron angle, ordinary soil and blood stained soil from the spot. He deposed of seizure of clothes of the PW1-Informant and PW4 - Injured witness. There is no serious challenge to the said evidence.

11. There is medical evidence in the nature of evidence of PW7 - Dr. Aniruddha Ramchandra Gaikwad and PW9 - Dr. Rama Trimbakrao Mohite. The evidence of PW7 – Dr. Gaikwad show that, he was working as the Medical Officer at Sub-District Hospital at Sillod. On 30.05.2019, PW4 - Ganesh was brought to the Sub-District Hospital by the Police for medical treatment. He found three injuries on his person in the nature of Contusion on right shoulder, one CLW on the right wrist and one Contusion on the left knee. The Injury Certificate at Exh. 69 is brought on record in his evidence. His evidence show that, the Medical Certificate was issued on the basis of entries in the MLC.

12. The evidence of PW8 – Dr. Rama Trimbakrao Mohite show that, he was the Medical Officer. On 26.05.2019, he was posted at the Sub-District Hospital, Sillod. On that day, PW1 – Rameshwar was

brought for medical examination and treatment, who gave the history of assault at the farm at Ghatnandra. He examined him and found three injuries which were in the nature of CLW at right leg, CLW at parietal region, and CLW at occipital region. The injury on the right leg was grievous and the other two were simple in nature. The cross is on the nature of injuries and nothing has come to create any dent in his evidence.

13. The above discussed medical evidence on record show that the injuries suffered by PW4 - Ganesh were simple in nature and the two injuries on PW1 - Rameshwar on the parietal region and occipital region were simple in nature, and the fracture to the leg was grievous in nature.

14. The crucial aspect is whether the Prosecution proved that, the said injuries were caused by the Appellants. It is an admitted position as can be seen from the evidence on record that, the Appellants and the Injured witnesses are closely related to each other. It is also an admitted position, as is clear from the record, that there was a dispute between the family of the Injured and the family of the Appellants in respect of an agricultural land and the matter was *sub judice* before the Civil Court. Though PW1 – Informant admitted that, they preferred an Appeal in the court at Aurangabad against the decision of the Court at

Sillod, he and PW4 – Ganesh denied that the Civil Court passed the order against them. Filing of an Appeal from the Informant's side against the decision of the Civil Court at Sillod itself show that, the Civil Court passed the order in favour of the Appellants and against the Injured. However, the denial by both of them that, the order was passed by the Civil Court against them show that, their evidence cannot be accepted as a gospel truth. This being the position, and particularly when the parties were in dispute, the evidence of these two injured witnesses is required to be considered cautiously.

15. Scrutiny of the evidence of PW1 Informant – Rameshwar and PW4 – Ganesh show that, on 26.05.2019, when they were present in the agricultural field, the Appellants along with the acquitted Co-accused persons came on the spot and intimidated them and Appellant No. 1 – Baburao assaulted PW1 – Informant in his head with an axe and Appellant No. 2 – Yogesh assaulted PW1 – Informant with an iron angle. Their further evidence show that, when PW4 – Ganesh intervened to save PW1 - Informant, he was also beaten by the Appellants and the acquitted Co-accused persons. According to PW1 – Informant, Appellant No. 1 – Baburao gave a single blow on his head with an axe, and according to PW4 – Ganesh, Appellant No. 1 - Baburao gave two blows with an axe on his hand. Their further evidence show that, due to hue and cry, their parents reached on the spot of the

incident and the Appellants fled. Thereafter, the injured was taken to the hospital in the vehicle of PW5 – Raju More and treatment was given in the hospital.

16. Undisputedly, the Crime is registered on the statement/report given by PW1 Informant - Rameshwar on 28.05.2019. His evidence that, he was unconscious till 28.05.2019 is not supported by any other evidence. Even it is not supported by medical evidence. Contrary to his evidence that, he was unconscious, the evidence of PW8 – Medical Officer, who examined him show that, PW1 – Informant – Rameshwar narrated the history of assault. This again show that PW1 – Informant – Rameshwar cannot be said to be a trustworthy witness. He admitted in the cross-examination that, for the first time, he narrated the incident to the Police on 28.05.2019. He volunteered that his brother i.e. PW4 - Ganesh informed the Police about the incident on 26.05.2019 over the phone. It has come in his cross-examination that when PW4 – Ganesh made a phone call to the Police, he was with him and the phone call was made at 08:30 am. PW4's evidence show that, his statement was recorded by the Police on 29.05.2019. His evidence in the cross-examination show that, according to him, he informed the Police on 26.05.2019 over the phone which was made at 03:00 pm to Mr. Kakasaheb Maroti Sonawane of Sillod Police Station (PW9). His evidence further show that, at that time, PW1 - Informant was with him.

It has come in his cross-examination that, PW9 - Kakasaheb Maroti Sonawane met them on 28.05.2019 and whatever is stated was recorded by Mr. Sonawane. It has further come in his cross-examination that, the work of writing down took place on 28.05.2019 and 29.05.2019. He went to the Police Station on 29.05.2019 where his statement dated 28.05.2019 was read over to him. The above evidence of two (2) injured witnesses that, the Police was informed on 26.05.2019 and 28.05.2019, finds no corroboration at all. The Appellants sought the explanation for delay in filing the Complaint as seen from the cross-examination from PW9 – the Investigating Officer, wherein, it has come that, he inquired as to why there was delay in making the Complaint. He did not know whether any intimation was received to the Police Station prior to the filing of the Complaint. In clear terms, it has come in his cross-examination that, there was no entry in the Police Station of receiving information as to the incident on telephone. He deposed of the MLC intimation to the Police Station below Exh. 72, which admittedly finds no reference of the names of the Appellants.

17. The above evidence of the injured eye-witnesses clearly show that, the injured PW1 lodged the report or gave the statement to the Police after two (2) days from the date of the incident, and the statement of PW4 – Ganesh, injured witness, was recorded on 29.05.2019, which was after three (3) days from the date of incident. It

is true that, the testimony of the injured witnesses stands on a higher pedestal, but delayed report of the incident to the Police gives an opportunity for embellishment or concoction. Even for the sake of argument it is accepted that PW1 – Injured was unconscious throughout till 28.05.2019, there is no reason as to what prevented PW4 – Ganesh, the another injured witness, to lodge the report with Police. The statements which were given as per version of PW4-Ganesh prior to lodging the FIR finds place nowhere. What was that statement remains a mystery. Further, the evidence of these two witnesses show that, due to the hue and cry, their parents had come on the spot, however, the parents also did not lodge the report against the Appellants. Further, the evidence of PW7 – Medical Officer show that, the MLC Register does not bear the entry in respect of history of the assault. The above-referred unexplained delay makes the version of the injured witnesses in respect of the involvement of the Appellants in the incident doubtful. The said unexplained delay in the facts and circumstances of the case is fatal for the prosecution. The possibility of involving the names of the Appellants in the incident in which the injured witnesses suffered injuries cannot be ruled out. The evidence of these two (2) injured witnesses clearly show that, they had sufficient opportunity to concoct the story against the Appellants, and therefore, their testimony against the Appellants is required to be seen with doubt. It is needless to state that, as per the settled position under the law, unexplained delay in reporting the

incident to the Police, goes in favour of the Appellants and fatal for the prosecution. The judgments cited by the learned Advocate for the Appellants need not be discussed. In this view of the matter, the Conviction and the Sentence recorded against the Appellants require interference. Hence, I pass the following order: -

ORDER

- [i] The Appeal is allowed.
- [ii] Judgment and Order dated 07.12.2023 passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No. 66 of 2020, convicting and sentencing the Appellants, is quashed and set aside.
- [iii] The Appellants are acquitted of the offence punishable under Section 307 r/w 34 of the Indian Penal Code.
- [iv] The Appellants are behind the bars. They be released forthwith, if not required in any other case.
- [v] The fine amount if paid by the Appellants, be refunded to them.
- [vi] The *muddemal* articles be dealt with as per the operative order of the learned Trial Court.
- [vii] Pending Applications stand disposed off.
- [viii] Appeal stands disposed off.

[ix] The fees of the learned Advocate Mr. Ambilwade, appointed to represent Respondent No. 2, is quantified at Rs. 10,000/- [Rupees Ten Thousand], which shall be paid by the High Court Legal Services Sub Committee, Aurangabad Bench.

[NEERAJ P. DHOTE]
JUDGE

SG Punde