



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 77 OF 2024**

Kavi Hiralal Choudhari,
Age: 26 years, Occu: Student,
R/o. Mhada Colony, Jalna,
Dist. Jalna.

.... Appellant

VERSUS

The State of Maharashtra,
(CR. No.393/2022 registered with
Sadar Bazar Police Station, Jalna)

..... Respondent

Appearance :

Mr. Kiran P. Rathod, Advocate for the Appellant.

Mr. C. V. Bhadane, APP for the Respondent – State.

CORAM : NEERAJ P. DHOTE, J.
Reserved On : 9th October, 2025
Pronounced On : 4th November, 2025

JUDGMENT :

1. This is an Appeal under Section 374 [2] of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.P.C'] against the Judgment and Order dated 17/08/2023, passed by the learned Sessions Court, Jalna [hereinafter referred to as 'the learned Trial Court'], in Sessions Case No.133/2022, convicting the Appellant for the offence punishable under Section 324 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'], and sentencing him to suffer Imprisonment for one [01] year and to pay fine of Rs.6000/-, in default, to suffer Simple Imprisonment for six [06] months.

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

[I] Sarthak A. Gajre [Injured], who is the resident of Vyankatesh Nagar, Jalna, was talking with his friend [Informant] in the late evening on 18/05/2022 in front of the house of Baban Bhartiya in the same locality. The acquitted Accused No.2 - Sachin was seen wandering in the area for no reason. The Injured asked him not to wander in the area as the girls were playing. He said to the Injured that, he will show him. After some time, the Appellant and acquitted Accused No.3 – Yogesh came on a motorcycle. The acquitted Accused No.2 – Sachin came by walk. The Appellant got down from the motorcycle and inflicted a blow by knife in the stomach of the Injured. Because of the chaos, the people gathered and caught hold of the Appellant. The parents of the Injured reached on the spot. The Injured was taken to the hospital for treatment. The Informant, who was present at the time of incident, went to the Police Station and lodged the report against the Appellant and two [02] acquitted Accused. The Crime came to be registered. The Investigating Officer conducted the Spot Panchnama and took the Appellant in custody and arrested. The knife was seized from the spot of the incident. The statements of the witnesses were recorded, and the statement of injured was recorded in the hospital. The Co-accused came to be arrested. The clothes of the Injured and the Accused were seized. The seized articles were sent to the Chemical Laboratory. The relevant documents and the reports from Chemical Analyst (CA) were collected, and Charge-sheet came to be filed.

[II] On committal, the learned Trial Court framed the Charge against the Appellant and the two [02] acquitted Accused below Exhibit – 14, to which, they pleaded not guilty and the claimed to be tried. To prove the Charge, the Prosecution examined in all nine [09] witnesses as under :

- [PW-1] Vinit Ranjit Kulthe - the Informant, below Exhibit – 41 ;
- [PW-2] Nilkanth Madhavrao Uphad - Panch for the Spot Panchnama, below Exhibit – 44 ;
- [PW-3] Yoganand Krushnrao Mande - Panch for seizure of the knife and the clothes of the injured, below Exhibit – 46 ;
- [PW-4] Sarthak Ashokrao Gajre - the injured, below Exhibit – 50 ;
- [PW-5] Ashok Gajanan Gajre - the father of injured, below Exhibit – 51 ;
- [PW-6] Vishwas Janardhan Dodke - the Panch Witness for seizure of clothes of the Appellant and the acquitted accused, below Exhibit – 56 ;
- [PW-7] Bhagwan Balu Narwade - the Investigating Officer, below Exhibit – 62 ;
- [PW-8] Dr. Vaijanath Prabhakar Rathod, who examined the injured, below Exhibit -72 ;
- [PW-9] Dyaneshwar Shamrao Payghan - the Police Officer, who registered the Crime, below Exhibit – 79 ;

[III] The relevant documents, such as Reports, Panchnamas, Medical Reports, CA Reports etc., are brought on record in the evidence of the above-referred witnesses.

[IV] After filing of the evidence closure pursis by the Prosecution, the statements of the Appellant and the two [02] acquitted Accused came to be recorded. They denied the case and the evidence of the Prosecution. Thereafter, the learned Trial Court passed the impugned Judgment and Order, acquitting the two [02] accused persons and convicting the Appellant as above.

3. It is submitted by the learned Advocate for the Appellant that, the Informant, who was present on the spot of incident, did not support the case of Prosecution. The testimony of the Injured is not sufficient to prove the Charge, as there are inconsistencies in the testimony of all the witnesses. The Co-accused are acquitted. The Appellant has already undergone the sentence imposed by the learned Trial Court and deposited the fine. The Appeal be allowed.

4. It is submitted by the learned APP for the Respondent – State that, PW – 1 was an eyewitness to the incident. The spot of incident is proved. The knife used in the Crime is seized from the Appellant. There is testimony of the Injured witness. The father of the Injured is examined. The medical evidence supports the case of Prosecution. Hence, the Appeal be dismissed by maintaining the conviction. In support of his arguments, he relied on the following Judgments.

[i] **State of Uttar Pradesh Vs. Naresh and Others; [2011] 4 SCC 324 ;**

[ii] **Balu Sudam Khalde and Another Vs. State of Maharashtra; [2023] 13 SCC 365 ;**

5. Heard both the sides. Scrutinized the evidence on record.

6. The testimony of PW – 1 show that, he witnessed the incident, wherein, one boy out of three [03] stabbed the Injured. He rescued the Injured and took him to the Hospital and he was called to the Police Station. However, he did not identify any of the Accused, including the Appellant before the learned Trial Court. He was cross-examined by the learned APP, wherein, except that, he rescued the Injured, nothing has come in his evidence. His cross-examination done by the defence show that, it was dark at the time of the incident. The evaluation of evidence of this witness show that, the incident of stabbing the Injured had taken place in the late evening of 18/05/2022, when he was talking with the Injured.

7. The PW – 4 is an Injured witness. His evidence show that, in the late evening of 18/05/2022, when he was talking with PW – 1 - Informant in his locality, the acquitted Accused No.2 – Sachin was wandering on the road for no reason. He objected to his wandering, as the girls were playing. The acquitted Accused No.2 – Sachin left by saying that, he shall show him. After some time, the Appellant and acquitted Accused No.3 – Yogesh came on a motorcycle and acquitted Accused No.2 – Sachin followed them. The Appellant got down from the motorcycle and gave blow by knife in his stomach. PW – 1 - Informant took

him to the side. On hearing the chaos, his father and the people gathered on the spot. The Appellant was caught hold by the people. His parents took him to the Hospital, where he was operated. His statement was recorded by the Police. His evidence show that, as he objected the roaming of Accused No.2 – Sachin in the area, the incident took place. He identified the Appellant before the learned Trial Court and also identified the knife - Article-A and his blue jeans pant – Article-B.

8. The evidence of PW – 4 – Injured further show that, he knew the Appellant, as he was residing in the nearby area. This aspect got fortified in the cross-examination. The cross-examination is on the aspect that, the place of incident was a public place and Police Station was at the distance of three [03] to four [04] kilometers etc. Nothing material has come in his cross-examination so as to create any dent in his testimony. His evidence in respect of the identity of the Appellant and the assault by the Appellant in stomach by knife remained unshaken. His evidence show that, his testimony was consistent with his previous statement. The only improvement in his evidence is that, some people caught hold the Appellant. Nothing has come in his evidence to show that, he had any reason to falsely implicate the Appellant.

9. The evidence of PW – 5 show that, in the evening of 18/05/2025, when he was at home, he heard chaos and so, he came out and saw PW – 4 – Injured shouting, as he had injury in his stomach. The Appellant was seen with knife in his hand. People gathered on the spot. He and his wife took PW – 4 –

Injured to the Hospital. He identified the Appellant before the learned Trial Court. His evidence that, he saw the knife in the hand of the Appellant was an improvement. Apart from this, nothing has come in his evidence to disbelieve him. As the spot of incident was very near to his house, his reaching there on hearing the chaos was natural.

10. The evidence of PW – 8, the Medical Officer, show that, he was attached to the Deepak Hospital from 2014 and was a qualified Surgeon. On 18/05/2022, PW – 4 - Injured was brought to the Hospital. In the CT Scan, the injury to his liver was found. There was acute bleeding from the said injury. He examined the patient and found the following injuries :

- “i) Penetrative injury, having size 4 cm x 1 cm, intraperitoneal penetrating over right hypochondriac region, are of injury within 24 hours.
- ii) Tenderness all over abdomen, guarding present, distension present, age of injury was less than 24 hours, caused by sharp weapon.”

11. Further evidence of the Medical Officer show that, surgery of the patient was done. He issued injury certificate at Exhibit – 73. In response to the query by the Investigating Officer as to whether the injury to the Injured was possible by Article – A – knife, he opined in the affirmative. His evidence remained unshaken in the cross-examination. The Medico Legal Certificate brought on record in his evidence corroborate his testimony in respect of examination of PW – 4 – Injured and the injury caused to him. He deposed that, the injury was possible by Article – A – knife.

12. The evidence of PW – 2, the Spot Panch, show that, on 19/05/2022, the Spot Panchnama was carried. The spot was the public road. The evidence of PW – 3, the Panch, show that, the knife was seized by the Police under the Panchnama below Exhibit – 47. Though in the cross-examination, it has come that, the Police seized the knife from the Appellant, his cross-examination show that, the knife was lying on the road. In the cross-examination, it has come that, the knife was sealed in an envelope. His further evidence show that, the clothes of the Injured was seized under the Panchnama below Exhibit – 48.

13. The evidence of PW – 9 show that, on 19/05/2022, he was the Police Station In-charge of Sadar Bazar Police Station. PW – 1 – Informant came to the Police Station and lodged the report and he registered the Crime No.393/2022 and marked the same for investigation to PW – 7.

14. The evidence of PW – 7 show that, he conducted the investigation of the Crime. He visited the spot after he received the information about the incident. The people had already caught hold the Appellant and so he took him in his custody and asked the Informant to go to the Police Station for lodging the report. He brought the Appellant to the Police Station. The Appellant had suffered some injuries as the people had beaten him, and therefore, he sent him for medical examination. He seized the knife from the spot, arrested the acquitted Accused, recorded the statement of the Injured, seized the clothes of the Injured, of the Appellant and of the acquitted Co-accused, forwarded the Articles to the Chemical Analysis vide Exhibit - 66, collected the medical

papers, reports of Chemical Analyst (CA reports) and filed the Charge-sheet. In his cross-examination, the sealing of knife is fortified and it has come that, an entry of knife was taken in the Muddemal Register. The trivial improvements in the evidence of the Injured and his father are proved. Nothing has come in the cross-examination to disbelieve him.

15. The further evidence of PW – 7 show that, vide Panchnama at Exhibit – 63, the clothes of the Appellant came to be seized. In his evidence, the CA reports are brought on record at Exhibits – 67 to 70. The CA report at Exhibit – 67 is in respect of blood group of the Injured, clothes of the Injured, clothes of the Appellant and the knife. The said CA report show the reference number of communication at Exhibit – 66, by which, the said Articles were sent for chemical examination. This CA report show that, the blood group of the Injured was ‘AB’ and the blood stains of the said blood group were found on the clothes of the Appellant, which were seized during the course of investigation. The other CA report at Exhibit – 68 show that, the blood group of the Appellant was ‘B’. The said CA report further show that, human blood was found on the knife (Article – A). It is needless to state that, the said CA reports are admissible pursuant to Section 293 of Cr.PC.

16. The above-referred Judgments relied by the learned APP are on the settled legal positions in respect of the evidence of an Injured eyewitness. The relevant Paragraphs from the said Judgments are reproduced below :

[I] In State of Uttar Pradesh Vs. Naresh and Others (*Supra*) :-

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

[II] In Balu Sudam Khalde and Another Vs. State of Maharashtra (*Supra*) :-

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the Accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally

creep due to loss of memory with passage of time should be discarded.”

17. The above discussed evidence on record show that, the Prosecution’s case, that the Appellant stabbed the Injured witness is proved through the testimony of the Injured witness. The injured knew the Appellant. His evidence withstood the cross-examination and remained unshaken. His evidence show no contradictions. The medical evidence corroborate the testimony of the eyewitness, and the CA report further fortifies the testimony of the Injured witness. The testimony of Injured witness is well corroborated by the medical evidence and CA report. The case of Appellant is that of total denial and false implications. On re-appreciation of the evidence on record, no fault can be found with the impugned Judgment and Order convicting and sentencing the Appellant for the offence punishable under Section 324 of IPC. In this view of the matter, the Appeal fails. The papers show that the Appellant has deposited the fine and has already undergone the sentence, and is set free from the Jail. Hence, the following order:

ORDER

- [I] The Appeal is dismissed.
- [II] Record and Proceedings be sent back to the learned Trial Court.

[NEERAJ P. DHOTE, J.]

Sameer/-