



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 293 OF 2005**

The State of Maharashtra  
Through  
The Police Station Mukhed,  
Taluka Mukhed, District Nanded.

... Appellant

Versus

1. Madhav Baliram Kadam,  
Age : 38 years,
2. Tukaram Baliram Kadam,  
Age : 34 years,
3. Balaji Baliram Kadam,  
Age : 31 years,
4. Sheshrao Baliram Kadam,  
Age : 42 years,

All Occupation : Agriculture,  
R/o Billali, Taluka Mukhed,  
District : Nanded.

... Respondents  
[Orig. Accused]

WITH  
**CRIMINAL APPEAL NO. 975 OF 2025**  
WITH  
**CRIMINAL APPLICATION NO. 3232 OF 2019**  
IN CRIMINAL APPEAL NO. 975 OF 2025

Vyankatrao Sambhajirao Kadam,  
Age : 73 years, Occ. Agriculture,  
R/o : Bilalli, Tq. Mukhed,  
District Nanded

... Applicant  
[Orig. Informant]

Versus

1. The State of Maharashtra  
Through Police Inspector,  
Police Station, Mukhed,  
District Nanded.
2. Madhav Baliram Kadam,  
Age : 52 years,  
Occupation : Agriculture,  
R/o : Bilalli, Tq. Mukhed,  
District Nanded.
3. Tukaram Baliram Kadam,  
Age : 48 years,  
Occupation : Agriculture,  
R/o: Bilalli, Tq. Mukhed,  
District Nanded.
4. Balaji Baliram Kadam,  
Age : 45 years,  
Occupation : Agriculture,  
R/o: Bilalli, Tq. Mukhed,  
District Nanded.
5. Sheshrao Baliram Kadam  
Age : 56 years,  
Occupation: Agriculture,  
R/o : Bilalli, Tq. Mukhed,  
District Nanded.

... Respondents  
[R.2 to 5 Ori. Accused]

.....

Mr. S. A. Gaikwad, APP for the Appellant State in Cri. Appeal No. 293 of 2005 and Respondent No.1 in Cri.Appeal No. 975 of 2025 and Cri.Application No. 3232 of 2019.

Mr. A. M. Gaikwad, Advocate for Respondent Nos. 1 to 4 in Criminal Appeal No. 293 of 2005.

Mr. U. B. Deshmukh, Advocate for Appellant/Applicant in Cri.Appeal No. 975 of 2025 and Criminal Application No. 3232 of 2019.

Mr. Nikhil N. Narlawar, Advocate h/f Mr. B. N. Gadegaonkar, Advocate for Respondent Nos. 2 to 5 in Cri.Appln. No. 3232 of 2019.

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 11.12.2025

Pronounced on : 22.12.2025

**JUDGMENT :**

1. In these appeals, there is challenge to the judgment and order dated 16.12.2004 passed by learned Additional Sessions Judge Kandhar in Criminal Appeal No. 18 of 2003 (New)[Criminal Appeal No. 19 of 2002 (Old)] acquitting the accused from offence under Section 325 r/w 34 of IPC.

2. Charge was framed against four accused before learned Judicial Magistrate First Class, Mukhed on accusation that on 24.08.1994, in furtherance of common intention, accused persons voluntarily caused grievous hurt to the complainant Vyankatrao as well as Kamalbai in the backdrop of previous animosity. Therefore, offence under Section 325, 324 r/w 34 was registered and charge was framed against accused. Learned J.M.F.C. appreciated the evidence and by judgment and order dated 12.08.2002, convicted the accused for offence under Section 325 r/w 34 of IPC. Feeling aggrieved by the above conviction, the accused moved the Additional Sessions Judge, who re-appreciated the entire evidence and recorded finding that prosecution had in fact failed to prove the case beyond reasonable doubt and thereby

acquitted the accused, overturning the judgment and order of conviction.

Dissatisfied by the above, the State as well as the complainant have questioned the judgment of acquittal by filing distinct appeals on various grounds raised in respective appeal memo.

3. The complainant has also filed Criminal Application No. 3232 of 2019 seeking condonation of delay in filing the appeal. For the reasons mentioned in the application, the same is allowed. Delay stands condoned. The appeal filed by the complainant is heard along with the instant appeal by the State and decided together by the common judgment and order.

### **SUBMISSIONS**

#### **On behalf of the State :**

4. Learned APP pointed out that prosecution had rested its case on the evidence of nine witnesses. According to him, evidence of complainant, his nephew PW2 and his sister PW3, which was relevant, is consistent. That, their testimonies have remained unshaken in the cross, however, the same has not been considered properly. He pointed out that there was evidence of injured

complainant himself. Presence of his sister was natural and she has also witnessed the assault and even she was victimized by the accused. He pointed out that, learned first appellate court had discarded their evidence only on the ground that they are interested persons. However, according to learned APP, learned first appellate court failed to appreciate the settled law that mere being interested witnesses is not sufficient to discard the evidence and rather, it is only required to be appreciated carefully.

5. He pointed out that, learned trial court had correctly appreciated the evidence and convicted the accused and there was no reason for the first appellate court to disturb such findings by noticing some minor omissions and contradictions which, according to him, are bound to happen when evidence of witnesses is recorded after lapse of time.

6. He also criticized the observations and findings of the first appellate court while refusing to accept the medical evidence. On this count, he invited attention of this Court to the cross faced by the Doctor and would submit that, there was no reason to discard such testimony. Consequently, according to him, on the strength of evidence of PW1, PW2 and PW3, coupled with the medical evidence,

prosecution had proved the case beyond reasonable doubt and was rightly accepted by the trial court, but the same is unnecessarily interfered with by the first appellate court, and so he urges to allow the appeal.

**On behalf of the Complainant :**

7. Even learned counsel for the original complainant adopted the above submissions and would point out that undue importance has been given to the minor discrepancies which were not at all material.

**On behalf of the Respondent-Accused :**

8. Per contra, learned counsel for the respondents would support the judgment and order of the first appellate court by criticizing the judgment and order of the trial court. According to learned counsel, here, apparently, witnesses have not given consistent count of the occurrence, thereby rendering it doubtful. That, whatever was stated by the injured complainant does not find support from his own sister whose presence is rendered doubtful and who has rather given a contrary version. He pointed out that PW3 sister gave contrary version to that of the complainant by stating that complainant had come on bicycle, when complainant himself had not come with such story. He also questions the testimony of PW2 Nilkant, who is nephew

of complainant, and PW5 Sushilabai, for whom complainant stood surety in the proceedings under the Bombay Prohibition Act, and would submit that their testimony shows that they had reached the scene of occurrence after the altercation was over. Learned counsel support the observations and conclusion drawn by the first appellate court, more particularly by inviting attention of this Court to para 16 of the impugned judgment. Thus, attributing delay and false implication, learned counsel support and canvass in favour of the judgment and order of the first appellate court and pray to dismiss the appeal for want of merit.

#### **EVIDENCE BEFORE THE TRIAL COURT**

9. Prosecution has examined in all nine (9) witnesses in support of its case. Their role and status and the sum and substance of their evidence can be summarized as under :

**PW1** Vyankatrao is the informant, who is examined at Exhibit 87. The relevant portion of his testimony is as under :

“.... The said incident was taken place prior to 7 years and some months ago. The said incident was taken place at Bilhali S.T. stand at about 3.00 P.M. on the very day early in the morning had gone to attend to village Jahoor bazar. While I

was returning therefrom came on the spot and incident was taken place. After completing bazar operation, I came at S.T. stand. Accused no.4 threw chilly powder on my eyes. Accused nos. 1, 2, 3 beat me up by means of stone. My left hand was therefore fractured. Bone of my both jaw sole were dislocated. I sustained severe injuries on my leg, thigh, hands, back and waist. My sister Kamalbai came on the spot. While she was coming towards me, accused persons beat my sister Kamalbai up severely. She sustained injuries on her leg, her bangles were also broken down. Nilkant, son of my sister rescued us. I was not in a position to move therefrom and that therefore I told my sister to make further arrangement. My sister Kamalbai had therefore gone to Mukhed police station and narrated the incident orally. Police had initially come on the spot and I was brought therefore by them to Mukhed. I was asked by the police about the incident. I accordingly narrated whole incident to the police. My statement was reduced into writing by the police. I am now read over contents of the complaint in open court. I say that those are correct. It bears my signature. It is therefore placed on record at Exh. 88. ....”

**PW2** Nilkant is the nephew of the informant, and an eye witness. Regarding the incident, he deposed at Exhibit 92 as under :

“... The said incident was taken place at about 3.00 P.M. on the very day accused no.1 to 4 beat complainant Vyankat. At the time of incident I was beside the school which is located near the spot. I was 100 meters away from the spot at the time of incident. I heard hue and cry and that therefore came to know

the incident. I reached on the spot. Vyankat Sambhaji and Kamalbai were being beaten up by accused nos. 1 to 4. Chilli powder was found on the face, eyes and head of Vyankat Sambhaji. Both of them were being beaten seriously by means of sticks and stones. Other persons also rushed on the spot. They rescued the said altercation. Vyankat Sambhaji was being injured was initially brought to the Hospital and then his house. I again say that he was initially brought at the house from S.T. stand and then to the hospital.

I know the accused no.1 who is present in dock. I can identify the accused no.2 to 4 who are today absent in dock and whose personal attendance is sought to be exempted if they are shown to me. These are the accused persons by whom complainant Vyankat and Kamalbai were beaten up.”

**PW3** Kamalbai, sister of the complainant, has deposed at Exhibit 95 as under :

“I know the incident. I know complainant Vyankatrao. I also know the accused persons. I say that accused no.2 to 4 are today present in dock. I say that I can identify the accused no.1 who is today absent in dock and whose personal attendance is sought to be exempted if he is shown to me. On 24.08.1994 incident was taken place among I myself, my brother Vyankatrao and the accused persons. The said incident was taken place at about 3.00 PM on Billali road. At the time of incident, I was returning from by Anganwadi school. I was just away from the spot at that time. At the time of incident, by

brother came from my backside on bicycle and went ahead to me. He went on Billali road, which was leading to village Billali. Accused no.4 inserted a stick in the cycle of my brother and caused to him fallen down. Accused Sheshrao and accused Tukaram beat my brother Vyankatrao by means of stick. Accused Balaji and accused Madhav beat my brother Vyankatrao up by means of stones. Accused persons suddenly came outside of cattle shed which is on the road. Rushing on the spot I was fallen down on the person of my brother. I found that chilli powder sprinkled on the face of my brother Vyankatrao. Accused Tukaram Beat me by means of stick, accused Balaji and Madhav pulled my hairs. The accused Balaji and Madhav beat me up by means of stones. I therefore made hue and cry. Nilkant who was just beside the spot at S.T. stand came and rescued the altercation. Sushilabai gave drinking water to Vyankatrao. I made hue and cry as left hand of my brother was fractured, his right leg, jaw and claw was also dislocated. Marks of the stones and stick were there on the person of my brother Vyankatrao. I also sustained injuries on my left hand, left leg, ankle and waist. I again say that I sustained injury on the right side of my waist. I screamed loudly. I also could not get up from the ground being injured. I again say that my brother could not get up from ground being injured. Dashrath, Gangadhar & Atmaram came on the spot and Vyankatrao was brought to house on their back. Leaving my brother at home, I went to the police station. Bringing police jeep there we were brought to Mukhed town in it. We were admitted in hospital at Mukhed town. We were kept there for whole night at Hospital and early in the morning on the

very next day we were referred to the hospital. We were medically treated by the medical officers. I can identify the sticks by which I myself and my brother were beaten if those sticks are shown to me. I have submitted today discharge cards in court. These are the same. The accused no.2 to 4 who are present in dock are the same persons by whom we were beaten up. One accused is today absent in dock out of 4 accused. I can identify the accused no.1 who is today absent in dock if he shown to me.

**PW4** Balaji acted as pancha to spot panchanama Exhibit 100.

**PW5** Sushilabai claims to be the eye witness. She, in her evidence at Exhibit 102, has deposed as under :

“The incident was taken place prior to 7 years ago. The said incident was taken place at S.T. stand in Billali village. The said incident was taken place at about 3.00 P.M. At that time I was at S.T. stand with a desire to go to Jahoor Bazar. I again say that I was coming by walking from Jahoor towards Billali village. Accused Keshavrao and Tukaram were beating to Vyankat by means of stick. Accused Madhavrao and accused Balaji were also beating him by means of stone. Kamalbai sister of Vyankatrao Kadam was also present there. Nilkant son of mother of Venkat was also present there. Nilkant and Kamalbai rescued the said altercation. Water was being provided by me from *hapsa* to Vyankatrao. Nothing was seen by me thereafter. Chilli powder was also seen on mouth of Vyankatrao Kadam. I have personally seen the incident by my own eyes. Accused

Balaji Kadam who is today absent in dock and whose personal attendance is sought to be exempted, I can identify to him if he shown to me. Accused nos. 1 to 3 are the same person and absent Balaji is also same person by whom altercation was being committed.

**PW6** ASI Kishan Barulkar, who recorded complaint Exhibit 88 and referred the matter to the PSO for registration of crime.

**PW7** Shivkant acted as pancha to seizure panchanama Exhibit 108. He deposed at Exhibit 107 as under :

“On 26/8/1994, I was called by police for drawing seizure panchanama at about 11.30 a.m. at Mukhed Station. Maulana Fakirsab was also present there as another pancha. Tukaram Sheshrao Kadam and Sheshrao were present there. Our signatures were obtained there. Our signature were obtained on seizure panchanama. I am now shown said panchanama. I say that it is the same, which bears my signature. I am now read over contents of panchanama in open court, I say that those are correct. It is therefore placed on record at Exhibit 108. I can not identify those sticks if they are shown to me as I did not fluently see them at that time. I cannot exactly recollect at this juncture. Sheshrao and Tukaram are present in dock. But I cannot identify them on the strength of their names.

**PW8** Namdeo Surner was the Investigating Officer.

**PW9** Haribhau Gadekar, Medical Officer, who is examined at Exhibit 118. He deposed that since July 1992 till September 1997, he had been working at Mukhed Rural Hospital. That, on 25.08.1994 at about 10.00 a.m. one patient namely Vyankatrao Sambhaji Kadam was referred to him by the PSI, Police Station Mukhed with the history of assault by lathi which took place on 24.08.1994 at about 3.00 p.m. He claims to have examined Vyankatrao and found 11 injuries, which he narrated in his deposition, and to have issued medical certificate 119.

### **ANALYSIS**

10. Here, trial court, i.e. Court of learned J.M.F.C., Mukhed, has accepted the case of prosecution as proved and has recorded guilt of the accused for offence under Section 325 r/w 34 of IPC awarding sentence of imprisonment as well as fine. On appeal being preferred by convicts, the learned Additional Sessions Judge, Kandhar was pleased to allow the same, setting aside the order of conviction and granting acquittal. It is in the above backdrop, the State has come up in appeal. There is also appeal by informant original complainant against same judgment.

11. Before advertng to the merits of the appeal, it would be desirable to give a brief account regarding principles to be borne in mind while dealing with appeal against acquittal. By catena of judgments, law is made loud and clear that appellate court has power to re-appreciate the evidence on record. That, appellate court should interfere with the order of acquittal only when there is perversity of fact and law and when there are substantial and compelling reasons. It is also fairly settled position that, if two views are reasonably possible on the basis of evidence on record, the view which favours the accused should be adopted. However, it is also settled position that while dealing with appeal against acquittal, if the view taken by the trial court is not legally sustainable, the appellate court has ample powers to interfere with the order of acquittal. Law to this extent has been expounded in judgments viz, *Bhagwan Jagannath Markad v. State of Maharashtra* (2016) 10 SCC 537; *Arulvelu v. State* 2010 (68) ACC 5 (SC); *State of Rajasthan v. Shera Ram* AIR 2012 SC 1; *Ayodhya Singh v. State of Bihar* 2005 (2) SCJ 650; *Khem Ram v. State of Himachal Pradesh* (2018) 1 SCC 202; *State of Uttar Pradesh v. Wasif Haider and others* (2019) 2 SCC 303; *Sham Lal v. State of Haryana* AIR 2019 SC 1898; *Dilawar Singh v. State of Haryana* (2015) 1 SCC 737 and *State of Karnataka v. Suvarnamma* (2015) 1 SCC 323.

12. Thus, the principles to be kept in mind by the appellate court while dealing with appeal against acquittal could be summarized as under :

- i. Firstly, there is no limitation on the part of appellate court to review the evidence upon which the order of acquittal is founded and come to its own conclusion
- ii. Secondly, the appellate court can also review the trial court's conclusion with respect to both, facts and law.
- iii Thirdly, while dealing with appeal by State, it is the duty of appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons, may set aside the judgment of acquittal.
- iv. Fourthly, an order of acquittal is to be interfered only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is compelling reason for interference.
- v. Fifthly, when the trial court has ignored the evidence or misread the material evidence or has ignored material like dying declaration, report of experts etc., the appellate court is competent to reverse the decision of trial court depending on the material placed before it.

The above principles are enunciated in the case of ***Ganpat v. State of Haryana*** (2010) 12 SCC 59; ***Khem Ram v. State of Himachal Pradesh*** (supra) and ***Raja v. State of Karnataka*** (2016) 10 SCC 506.

13. Keeping in mind above settled law and principles, evidence in hand is re-appreciated and re-analyzed.

14. Though as many as nine witnesses are examined, crucial evidence is of PW1 Vyankatrao, PW2 Nilkant, PW3 Kamalbai and PW5 Sushilabai. Rest are either panchas or police officials who recorded report and carried out investigation respectively.

15. Analyzed the substantive evidence of above four witnesses. According to PW1, alleged incidence took place while he was in the vicinity of bus stand around 3.00 p.m., i.e. after he had returned from bazar. He has named accused no.4 Sheshrao for throwing chilli powder in his eyes followed by beating at the hands of accused Madhav, Tukaram and Balaji by means of stick and stone inflicting him fracture injury, dislocation of jaw bone and other injuries. He has also deposed about his sister Kamalbai coming to his rescue and she also being beaten by accused persons.

On carefully going through his cross, it is emerging that, the manner of questions put clearly suggest that occurrence is not disputed at all. Cross examination in paragraphs 3, 4, 5 and 6 shows that there is no dispute at all regarding the alleged occurrence of assault to PW1.

16. As PW1 has claimed his sister Kamalbai to be coming to his rescue, it is desirable to re-appreciate the evidence of PW3 Kamalbai and it is her testimony that, while she was returning from her job at Anganwadi, she saw her brother PW1 passing by her on bicycle and she has narrated that, initially accused no.4 inserted stick in the tyre of the bicycle causing her brother fall and thereafter she has alleged that Sheshrao and Tukaram beat her brother by stick whereas Balaji and Madhav used stones and she rushed and fell upon her brother to save him. She claims to have come across chilli powder on the face of her brother. She testified that she too was hit by means of stick by Tukaram whereas accused Balaji and Madhav pulled her by her hair. She too claims to have sustained injury on the right side of waist, left hand and left ankle. She has deposed about approaching police. She has indentified accused persons in the court and noted that one of the accused was absent.

Even in her cross para 3, there are questions only about reaching at the spot, informing police orally and time spent in approaching police. Para 7 of the cross shows that her version about chilli powder being thrown on the face of her brother and beating given to her brother and to her is surprisingly got confirmed by the manner of cross examination. Her evidence to the extent of occurrence has thus virtually remained unshaken.

17. Learned counsel for respondents would point out that there is variance in the testimony of PW1 and PW3. It is tried to be put forth that they are brother and sister and moreover, PW3 has deposed about PW1 coming on cycle, but PW1 himself has not stated about he arriving at the spot on cycle. Thus, it is tried to be submitted that there are inconsistencies. However, though there is inconsistency to above extent, mere failure of informant to depose that he was on cycle, itself would not be sufficient to hold that witnesses are inconsistent. PW3 being walking, had occasion to see her brother passed by her on bicycle and therefore she has deposed to that extent. Therefore, above submissions raised by learned counsel for respondents has no force. Mere omission by PW1 to state the mode of his arrival at the scene of occurrence, is not fatal.

18. Here, prosecution has come with a case about availability of other eye witnesses i.e. PW2 Nilkant and PW5 Sushilabai, and they are examined at Exhibits 92 and 102 respectively.

19. According to PW2, hearing hue and cry, he reached the spot. According to him, Vyankatrao and Kamalbai were being beaten by accused nos. 1 to 4. He also deposed about coming across chilli powder on the face and eyes of Vyankatrao. He has further stated that they were beaten by means of sticks and stones. He has also identified accused no.1 in the dock. Accused nos. 2 to 4 were absent.

While under cross, nothing damaging has been elicited.

20. Likewise, PW5 Sushilabai has also, in her evidence at Exhibit 102, stated that while she was walking from Jahoor towards Billali village, she saw accused Sheshrao and Tukaram beating Vyankat by means of stick whereas accused Madhav and Bajaji used stones. She also marks presence of Kamalbai. She also confirms seeing chilli powder on the mouth of Vyankatrao and she asserted that she has personally seen the incidence with her own eyes.

On visiting her cross, she has admitted that PW1 had stood as a surety for her in some proceedings in Mukhed Court. Manner of questioning and answers given by her in paragraphs 3 and 4 again shows that occurrence is rather got reaffirmed from this witness.

21. Learned counsel for respondents would point out that, witnesses PW2, PW3 and PW5 are related witnesses and therefore learned first appellate court has rightly refrained from relying on their testimony being interested witnesses.

22. In case of witnesses who happen to be related witnesses, law is fairly settled that their testimony cannot be discarded on such sole count. Court is rather expected to be cautious and careful in appreciating their evidence to ascertain whether there is false implication. Only abundant precaution is expected from the Court while evaluating evidence of related witnesses. Law to this extent is clarified in *State of Madhya Pradesh v. Chhaakki Lal* AIR 2019 SC 381; *Ganpathi and another v. State of Tamil Nadu* (2018) 5 SCC 549; *Bhagwan Jagannath Markad and others v. State of Maharashtra* (supra) and *Dhari and others v. State of U.P.* AIR 2013 SC 308.

23. Here, this Court, on re-appreciation of evidence of PW2, PW3 and PW5, noticed that their presence at the scene of occurrence is not rendered doubtful and moreover, they are consistent regarding assault on Vyankatrao by accused persons by means of stick and stone which is core of prosecution version. Kamalbai-PW3 is not only an eye witness, but also an injured witness. Merely because there is no medical evidence to show that she suffered injury, her ocular account cannot be discarded. Her testimony is consistent with her own brother, except the part of her brother arriving on bicycle. As stated above, the manner of cross to the above witnesses clearly show that occurrence is not doubted, rather it is got confirmed.

24. Injured complainant Vyankatrao was examined and treated by PW9 and his testimony is also available at Exhibit 118 where he has stated about arrival of PW1 and he has narrated the nature, length and breadth of the injuries. This Doctor in witness box has testified about history of assault. He has narrated about contusions with fracture to radius, meta tarsal and multiple contusions and abrasions on other parts of the body. However, while under cross, he has admitted that no police constable was accompanying and that patient had come walking.

25. The above testimony of Doctor has not been correctly appreciated by learned first appellate court and testimony of this independent witness has been doubted on the count that, it is doubtful whether accused came on his own accord or on referral by police. Even undue importance seems to have been given by learned first appellate court to the aspect of appellant coming walking. In the considered opinion of this Court, mere fracture would not cripple or disable a person from walking. For above reasons, the findings of first appellate court does not appeal to the consensus.

26. On perusal of the impugned judgment, it is noticed that learned first appellate court has picked up some of the inconsistencies in the testimony of prosecution witnesses, but the same do not go to the root or dismantle the core of prosecution case regarding assault by accused in the backdrop of previous animosity. Here, there is credible account of assault in the testimony of complainant himself, finding support from his sister's evidence coupled with evidence of two other independent witnesses, who, at later point of time in cross seem to have admitted their relation with accused. But mere interested-ness or to be a relative, would not be sufficient to cast out on their testimonies which, on careful analysis, are otherwise worthy of

credence. Witness like Sushilabai, even if shown to have reach after the occurrence is concerned, is very categorical about assault being made on Vyankatrao and Kamalbai by accused persons who are identified by this Witness in the dock.

27. Carefully studied the evidence, comprehended the rival contentions and perused the impugned order. Witnesses PW1, PW3 and PW5 are giving consistent version of the incident. Consequently, on complete re-appreciation of the evidence, there are compelling reasons as stated above, to interfere in the order of acquittal. The first appellate court has failed to apply settled law. On the contrary, learned trial court has correctly appreciated the prosecution evidence and by assigning sound reasons, has accepted the case of prosecution for convicting the accused. There was no reason or occasion for the first appellate court to disturb such well reasoned order.

28. Here, there is evidence suggesting commission of offence under Section 325 of IPC. Even learned trial court has recorded conviction for said offence and has directed accused to suffer imprisonment for one year and to pay fine. The said occurrence is admittedly of 24.08.1994 i.e. more than two decades back. Considering the nature of articles put to use and nature of injury, as well as taking into

account the long duration of time having lapsed since occurrence, the sentence awarded by trial court is liable to be reduced.

29. However, learned trial court does not seem to have invoked provisions under Section 357 of Cr.P.C. for awarding compensation to the victim even when it was a fit case to invoke the same. Consequently, this Court in appeal proposes to invoke this provision and direct the accused to pay compensation to the victim. Hence the following order :

#### **ORDER**

- I. Both the Appeals are partly allowed.
- II. The judgment and order dated 16.12.2004 passed by the Additional Sessions Judge, Kandhar in Criminal Appeal No. 18 of 2003 (new) is hereby quashed and set aside.
- III. Conviction of accused nos. 1 to 4 for offence under Section 325 r/w 34 of IPC awarded by the learned trial court by its judgment and order dated 12.08.2002 in R.C.C. No. 172 of 1994 is maintained. However, the sentence is reduced to the effect that, accused nos. 1 to 4 are sentenced to suffer Rigorous Imprisonment for three (03) months in stead of one (01) year.
- IV. The sentence of fine amount and in-default sentence is kept intact.

V. Accused-respondents shall surrender their bail bonds, if any.

VI. Accused nos. 1 to 4 shall also pay compensation of Rs.10,000/- each to the complainant under Section 357 of the Cr.P.C. The compensation amount shall be deposited in the trial court and shall be then paid to the complainant.

VII. Trial Court shall take steps to give effect to the order passed by this Court.

VIII. Both the appeals are accordingly disposed off.

IX. Criminal Application No. 3232 of 2019 also stands disposed off.

**[ABHAY S. WAGHWASE, J.]**

vre.