

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

CRIMINAL APPEAL NO. 639 OF 1998

Daulat Kondaji Jadhav

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 2311 OF 2025**

Mr. K. P. Shah a/w. Sandeep Patade for Appellant.

Ms. Ranjana D. Humane, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 13 AUGUST 2025

PC :

1. The Appellant has challenged the Judgment and order dated 14.07.1998 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.247 of 1997. The Appellant was the original Accused No.1. The Accused No.2 was his father Kondaji. The Accused No.2 was acquitted from all the charges. The Appellant-Accused No.1 was convicted and sentenced as under:

- i) He was convicted for commission of the offence punishable U/s.324 of the I.P.C. and was sentenced to suffer R.I. for six months and to pay a fine of Rs.500/- and in default to suffer R.I. for one month.

- ii) He was convicted for commission of the offence punishable U/s.504 of the I.P.C. and was sentenced to pay a fine of Rs.200/- and in default to suffer R.I. for 15 days.
- iii) He was convicted for commission of the offence punishable U/s.506 of the I.P.C. and was sentenced to suffer R.I. for one month and to pay a fine of Rs.200/- and in default to suffer R.I. for 15 days.

The substantive sentences were directed to run concurrently. The Appellant was given set off U/s.428 of the Cr.P.C. The Appellant was acquitted from the charges of commission of offence punishable U/s.307 of the I.P.C.

2. The prosecution case is that, the complainant Chandrakant Kadam was having his house beside the hotel known by the accused. The drainage water from the Appellant's hotel used to cause nuisance to the complainant and his family. On 29.01.1997, the first informant's mother tried to tell the accused to do something about the drainage water, however, the accused did not listen to her and started abusing her. In the meantime, the first informant came at that spot. He tried to reason with the Appellant, but the Appellant got angry. The Appellant went inside the hotel, brought an iron rod and gave a blow on the informant's

head. Similarly, the Accused No.2 also brought an iron rod and gave a blow on the back of the informant. The informant fell down and then he was taken to a hospital at Pune. Then the F.I.R. was lodged. The accused were arrested on the same day. The investigation was carried out. The statements of the witnesses were recorded and at the conclusion of the investigation the charge-sheet was filed. The case was committed to the Court of Session.

3. During the trial, the prosecution examined eight witnesses including the informant and his mother who had suffered injuries in the incident. There were two eye witnesses – PW-5 Mahadeo Borkade and PW-6 Fayazz Khan. Two Medical Officers were examined. One pancha for recovery of rods at the instance of the Appellant was examined and finally, the I.O. was examined. The prosecution also produced the spot panchanama, seizure panchanama of the clothes of the victims and the C.A. certificate, on record. The learned Judge considered the evidence.

4. The defence of the Appellant was of total denial.

According to him, he was implicated because of political rivalry. The eye witnesses were close assistants of the informant. Therefore, they deposed against him. The learned Judge considered this defence, as well. He concluded that, though, the prosecution had proved that the incident had taken place, however, the injuries were simple and, therefore, the offence U/s.307 of the I.P.C. was not made out. There was no intention to make an attempt to commit murder. On these reasons, the learned Judge convicted the Appellant, as mentioned earlier, but acquitted him from the main charge of commission of offence U/s.307 of the I.P.C. The Accused No.2 was acquitted from all the charges.

5. PW-1 Chandrakant Kadam was the first informant. He was the main injured person in this case. He deposed that he knew the accused. He ran a beer bar near his house. The accused also ran their own beer bar and hotel. The accused's hotel's drainage line was towards the road side. The drainage water used to accumulate in front of PW-1's courtyard and it used to cause nuisance because of bad odor. His mother requested the Accused No.1 to make proper arrangement for the drainage water, but they

did not pay any heed. On the day of the incident, PW-1 saw exchange of words between the Appellant and PW-1's mother. PW-1 intervened and told the Appellant not to abuse his mother. The Accused No.2 pushed PW-1's mother. The Appellant brought an iron rod from his beer bar which was kept near the counter and gave a blow on the right side of PW-1's head. PW-1 sustained bleeding injury. PW-1 fell on the ground. The Accused No.2 gave a blow of iron rod on his back. PW-1's mother gave support to PW-1. At that time, the others namely Sharad Nangare, Mahadeo Borade and Macchindra Kadam were present there. PW-1 was taken to a hospital in police van. Then he was referred to Jahangir Nursing Home at Pune. PW-1's injury was initially sutured by the Medical officer at Junnar. His clothes were seized by the police under panchanama. PW-1 gave his F.I.R. It was reduced into writing. It is produced on record at Exhibit-21. PW-1 was at Junnar Hospital till 2:00p.m. and then he was shifted to Jahangir Nursing Home. He was in the hospital for two days. Some scans were performed. He identified the Appellant before the Court.

In the cross-examination, he deposed that, he ran a

Cinema theater in his name and a country liquor shop in his mother's name. He was a Corporator since past 15 years. He was also the President of a co-operative credit society. PW-5 Mahadeo was one of the members of his society. He did not know whether the Appellant had filed any complaint in respect of PW-1's construction. There was a metal road between the tar road and his house. But he denied that these injuries were caused due to a fall from the steps. He denied that, there was political rivalry. He was admitted to Kulkarni Hospital on 31.01.1997 after he was discharged from Junnar Nursing Home. He was in Kulkarni Hospital till 02.02.1997.

6. PW-2 Sushila Kadam was the mother of PW-1. She described the dispute between both the parties. She described the incident in exactly the same manner as deposed by PW-1. She added that, both the accused pushed her. She fell down on the ground and she became unconscious.

In the cross-examination, she denied having any knowledge about the political rivalry between the informant and

the Appellant. She admitted that, she might not have told the police that the Accused No.2 pushed her and she fell on the ground.

7. PW-5 Mahadeo Borkade and PW-6 Fayyazz Khan are the eye witnesses. They have also described the incident in exactly the same manner as described by PW-1 and PW-2. There is hardly any material brought in his cross-examination in favour of the defence. He denied that he was a member of any co-operative society. He denied that he and the informant were from the same group. PW-5 had his house situated near the house of the informant.

8. PW-6 Fayyazz Khan has also supported the prosecution case in the same manner. He had his hotel near the house of the informant. He denied the suggestion that because of his friendly relations with the complainant he was deposing falsely.

9. PW-7 Gajanan Ganeshkar was a pancha in whose presence the Appellant showed his willingness to produce the iron rods used in the incident. The accused took the police and the panchas to his hotel and produced both the rods from behind the

tin-sheets. The panchanamas are produced on record at Exhibit-38A and 38B.

10. PW-3 Dr. Nana Sonawane was attached to cottage Hospital, Junnar. At 8:45a.m. PW-1 Chandrakant and PW-2 Sushila were brought by the relatives for the treatment. He noticed the following injuries:

Injury on PW-1 Chandrakant.

- i) CLW on vertex of the size 3" x ½" x ½" caused by hard and blunt object.

He has stated that the injury was simple. It was a bleeding injury. He was referred to Sassoon Hospital. The medical certificate is produced on record at Exhibit-24.

Injury on PW-2 Sushila Kadam

- i) One contusion on right shoulder of size ½" diameter.
- ii) Contusion on right arm of the size 1" in diameter.

The injury was simple. The injury certificate is produced on record at Exhibit-25.

PW-3 also examined the Accused No.2 Kondaji. He had suffered the following injuries:

- i) Minor two abrasions on left chest.
- ii) Minor linear abrasion on left scapular region of the back of 4mm in length.
- iii) Contusion on 2nd metacarpophalangeal joint of right hand posterior.

The medical certificate is produced on record at Exhibit-28.

11. PW-4 Dr. Chandrakant Kulkarni was the incharge of Kulkarni Hospital. On 31.01.1997, PW-1 Chandrakant was admitted to his hospital as an indoor patient for three days. He came with the complaint of giddiness with the history of trauma to the head.

In the cross-examination, he admitted that giddiness was a personal feeling. He produced the certificate at Exhibit-32.

12. PW-8 Bharat Tambe was the Circle Police Inspector at Junnar. He took over the investigation from PHC Mandke on

29.01.1997. He registered the offence vide the C.R.No.7 of 1997. He conducted the spot panchanama, seized the clothes of both the injured and recorded the statements of the witnesses. He arrested both the accused. The muddemal was sent to C.A. The investigation was handed over to API Bandgar. On the conclusion of the investigation the charge-sheet was filed. The C.A. certificate is produced on record at Exhibit-18. The clothes of PW-1 and PW-2, of both accused and the iron rods showed presence of blood of 'O' group.

This, in short, is the evidence led by the prosecution.

13. Learned counsel for the Appellant submitted that the prosecution story is not true. The prosecution witnesses are not telling the truth. This can be seen from the fact that the Accused No.2 has suffered injuries. None of the witnesses has explained the injuries suffered by the Accused No.2. It appears that, there was a free fight and the Appellant is falsely implicated. He submitted that, if the informant's friends were present at the spot, they could have easily intervened in the fight and restrained the Appellant

from inflicting blow on the head of PW-1. He further submitted that there was a major discrepancy in the evidence of PW-1 Chandrakant and PW-2 Sushila. PW-1 deposed that when he fell down, his mother PW-2 took him in her lap. Whereas, PW-2 Sushila the mother of PW-1 deposed that at the time of the incident, because of the assault, she herself became unconscious. This is a major discrepancy which shows that both of them were not telling the truth. He further submitted that the eye witnesses who are examined by the prosecution are not mentioned by their names in the entire F.I.R. The recovery evidence is doubtful. On all these counts, the Appellant deserves to be acquitted. The Accused No.2 is already acquitted on the basis of same evidence and, therefore, the benefit of doubt should have been given to the Appellant, as well. Learned counsel submitted that, even if the conviction is upheld by this Court, leniency be shown to him and instead of sending him to jail after about 28 years from the incident, the fine can be enhanced.

14. Learned APP opposed these submissions on merits. According to her, there are four witnesses who have deposed about

the incident. Out of them, two were the independent witnesses and, therefore, there is no reason to disbelieve them. She relied on the C.A. certificate showing presence of 'O' group blood on all the articles i.e. clothes of PW-1 Chandrakant and PW-2 Sushila, clothes of the accused and on the weapons.

15. I have considered these submissions. I have also perused the Judgment. As far as the merits of the matter are concerned, though there is a discrepancy in the evidence of PW-1 Chandrakant and PW-2 Sushila about PW-1 Chandrakant falling on the lap of PW-2 Sushila, rest of the incident is described consistently not only by PW-1 and PW-2, but also by PW-5 Mahadeo and PW-6 Fayyazz. The main core incident about giving blow on the head of PW-1 by the Appellant is consistently deposed by all the witnesses. Similarly, the blow given to PW-1 Chandrakant is narrated by PW-2 Sushila herself. This ocular evidence is supported by the medical evidence, discussed herein above. The learned Judge has rightly considered the effect of ocular evidence supported by the medical evidence. It is also important to note that, there is no evidence to show that PW-1 Chandrakant and PW-2 Sushila had suffered any

grievous injury. Again, the learned Judge has given cogent reasoning and restricted the conviction to one U/s.324 of the I.P.C. and acquitted the Appellant from commission of the offence punishable U/s.307 of the I.P.C. As discussed earlier, the Appellant had given a blow with an iron rod on PW-1's head causing a bleeding injury. It is reflected in the certificate issued by the doctors in that behalf. However, it was not a grievous injury. The Medical Officer has explained that it was a simple injury.

16. Though, there was a suggestion that the Appellant is falsely implicated because of political rivalry, but, it is a case of direct evidence supported by the medical evidence. The fact remains that the Appellant had given a blow with an iron rod on PW-1's head. Moreover, this evidence is supported by the C.A. certificates showing presence of blood of 'O' group on all those articles. There is no infirmity in the evidence regarding recovery of iron rods at the instance of the Appellant. Thus, the prosecution has proved its case in respect of an assault on PW-1 Chandrakant, in particular, by the Appellant. I do not find any infirmity in the conclusion reached by the learned Judge in that behalf.

17. However, I have seriously considered the submissions of learned counsel for modifying the sentence. The Appellant has filed I.A. No.2311 of 2025 in the present Appeal. He has annexed his latest medical certificates. It showed that the Appellant is now 67 years of age. He is suffering from restrictive lung disease and its complications leading to lack of cerebral perfusion and cerebral hypoxia. He is also having uncontrolled diabetes mellitus type 2. He is not able to do his daily activities. The incident is quite old. It had taken place on 29.01.1997. There are no allegations of further escalation of dispute between the parties or that the Appellant has committed any other offence. Therefore, I am inclined to show leniency in modifying the sentence and deleting the substantive sentence of R.I. altogether. At the same time, fine amount is required to be enhanced which can be withdrawn by the informant; considering that he had to take treatment in two hospitals. Considering this background, the fine can be enhanced to Rs.25000/-; which can be withdrawn by the first informant.

18. Hence, the following order:

O R D E R

- i) The Judgment and order dated 14.07.1998 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.247 of 1997, convicting the Appellant U/s.324 of the I.P.C. is maintained. However, the sentence is modified.
- ii) His sentence of R.I. for six months is set aside and instead of sentence of payment of fine amount of Rs.500/-, the Appellant is sentenced to pay a fine of Rs.25000/- and in default of payment of fine to suffer R.I. for one month.
- iii) The conviction and sentence of the Appellant U/s.504 of the I.P.C. are maintained.
- iv) The conviction of the Appellant U/s.506 of the I.P.C. is maintained, however, sentence of R.I. for one month is set aside. The sentence of payment of fine of Rs.200/- and in default of payment of fine to suffer R.I. for 15 days are maintained.
- v) The fine amounts shall be deposited within a period of three months from today.
- vi) The informant is at liberty to withdraw the fine amount, if deposited by the Appellant before the Trial Court.

- vii) The Trial Court shall inform the first informant Chandrakant Kadam that he is entitled to withdraw the fine amount deposited by the Appellant in this case.
- viii) The Appeal is disposed of in the aforesaid terms.
- ix) With disposal of the Appeal, the connected interim application is also disposed of.

(SARANG V. KOTWAL, J.)