

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1026 OF 2024

1. Yogesh @ Babaji Khimgiri Goswami
Age: 45 years, Presently residing at
D'souzawadi, Vrundavan, 1st floor,
r/no. 7, Wagle Estate, Thane.
 2. Manoj Shankarlal Pujani
Age: 50 years, Presently residing,
Varun Mahal Apartment, Kisannagar,
Thane.
 3. Dashrath narayan Madav,
Age: 49 years, presently residing at
Madvi Chawl, Madvi Compound,
Bajiprabhu Deshpande Road,
Vishnu Nagar, Naupada, Thane.
 4. Rameshchandra Sherbahadur Giri,
Age: 40 years, presently residing at,
Bhakti Mandir Road, Tiwari Society,
Panchpakhadi, Naupada, Thane.
- ...Appellants
- Versus***
- The State of Maharashtra
Through Naupada Police Station,
Dist: Thane.
- ...Respondent

Mr. Dushyant S. Pagare with Tushar V. Kadam, for the Appellants.
Mr. R. M. Peth, APP, for the Respondent-State.
Mr. Ganesh Sonne, PSI, Noupada Police Station, Thane, present.

CORAM: R. M. JOSHI, J.

DATED: 14th JANUARY 2026

ORAL JUDGMENT:

REKHA
PRAKASH
PATIL

Digitally signed
by REKHA
PRAKASH PATIL
Date: 2026.01.22
11:57:48 +0530

1. This appeal takes exception to the Judgment and Order dated 9th August, 2024, passed in Sessions Case No. 709 of 2022, whereby the Appellant No.2-Manoj, i.e. Accused No.2, Appellant No.3-Dashrath; i.e. Accused No.3 and Appellant No.4-Rameshchandra; i.e., accused No. 4 are convicted for the offence punishable under Section 324 of the Indian Penal Code 1860 (for short "IPC") and sentenced to suffer one year simple imprisonment with fine of Rs. 1000/- each with default sentence and further they are convicted for the offence punishable under Section 326 of the IPC sentencing them to suffer 7 years simple imprisonment with fine with default sentence. The Appellant No.1-Yogesh i.e. accused No.1 is convicted for the offence punishable under Section 324 r/w 109 of the IPC and sentenced to suffer one year simple imprisonment with fine of Rs.1000/-, so also, the offence punishable under Section 326 with seven years simple imprisonment and fine with default sentence.

2. This case involves peculiar facts. An incident had occurred on 22nd April, 2018 at about 9.30 a.m. at Vishnu Nagar, Naupada, Thane. The first informant Savitri Vijay Singh, who is now deceased, reported to the police while admitted in Life Care Hospital that she went to the spot of the incident to seek refund of the money from one Shumu Tiwari. When she made enquiry about him, Ramesh Giri, Dashrath, Manoj and Babaji started beating her with fiber sticks. There is specific allegation against Ramesh and Dashrath that they caused assault on her with fiber sticks and the allegation against Babji is that he instigated them to

cause the said assault. There is further allegation with regard to her gold chain being snatched in the said incident. On the basis of the said information offence came to be registered with Naupada Police Station vide Crime No. 140 of 2018.

3. The Crime came to be investigated by the Investigation Officer. In the course of investigation, statements of witnesses were recorded including statement of PW-4, who claims to have witnessed the incident of assault. Spot panchanama was drawn, recoveries were made from the spot, so also, clothes of the injured as well as accused were seized. The medical certificate so also other medical papers were included in the investigation papers. On conclusion of the investigation, charge-sheet came to be filed before the competent Court against the accused persons.

4. It is no dispute about the fact that accused No. 5 came to be discharged. Charge was framed against the remaining accused persons vide Exh.7. The accused abjured the charge and hence, they were tried. The prosecution has examined in all following 8 witnesses :

- | | | |
|--------|------------------------------------|---------|
| (i) | PW-1 Deepali Sanjay Singh | Exh. 14 |
| (ii) | PW-2 Sanjay Vijay Singh | Exh. 17 |
| (iii) | PW-3 Prashant Dattatray Londhe | Exh. 18 |
| (iv) | PW-4 Rupesh Hiranman Bhalerao | Exh. 22 |
| (v) | PW-5 Dr. Ramchandran Krishnamurthy | Exh.23 |
| (vi) | PW-6 Kailas Bhimrao Jadhav | Exh. 25 |
| (vii) | PW-7 Avinash Gopal Sondkar | Exh. 29 |
| (viii) | PW-8 Dr. Jayant Sahebrao Jadhav | Exh. 36 |

5. Apart from oral evidence, the prosecution has relied upon documentary evidence, such as, medical certificates, spot panchanama, seizure panchanama etc. Learned Trial Court found the prosecution having proved the guilt of the accused beyond reasonable doubt and hence, though acquitted the accused persons for offence punishable under Section 307 of the IPC and Section 394 r/w 34 of the IPC, conviction was recorded as detailed herein-above.

6. Learned Counsel for the Appellants submits that the evidence of the prosecution is not sufficient to prove the guilt of the accused persons beyond reasonable doubt. It is his submission that there are material inconsistencies in the evidence led by the prosecution with regard to the time at which the incident occurred and also as to who admitted the injured to the hospital. In this regard, a reference is made to the evidence of PW-1 i.e. daughter-in-law of the injured and PW-2 son of the injured. It is argued that there are inconsistencies with regard as to who has informed to whom about the occurrence of the incident and admission of the injured to the hospital. It is submitted that except for the alleged statement of PW-4 Rupesh, there is absolutely no evidence to connect the present appellants with the crime in question. It is his submission that the statement of PW-4 Rupesh came to be recorded after more than 30 days of the occurrence of the incident and having regard to the said facts, no evidentiary value can be attached to his statement. His statement is also assailed by submitting that the spot panchanama

does not indicate existence of any club in the nearby vicinity and this according to him, falsifies the evidence of this witness.

7. Apart from this, it is sought to be argued that if the witness had acquaintance with the injured, conduct of this witness ought to have been that he neither tries to save her nor takes her to the hospital. This conduct of witness is found to be unnatural. To support this submission, he placed reliance on the judgment of the Hon'ble Supreme Court in case of **Vishwajeet Kerba Masalkar vs. State of Maharashtra**¹ and **Kishor s/o. Raghunath Gaikwad vs. The State of Maharashtra**² It is his submission that since the statement of this witness has been recorded after about 30 days of the occurrence of the incident, it can be safely state that his statement is not disclosing the facts but is made at the instance of the police. To support his submission with regard to the credibility of the statement of witness came to be recorded belatedly. He placed reliance on the judgment of the Supreme Court in case of **Harbeer Singh & anr. vs. Sheeshpal & Ors.**³. Reference is also made to the judgment in case of **Ganpat Kondiba Chavan vs. State of Maharashtra**⁴ and **Ganesh Bhavan Patel vs. State of Maharashtra**⁵.

8. It is his submission that apart from the unreliability of the evidence of alleged eye witness, since the accused No.5 at whose

-
- | | |
|----------|----------------------------------|
| 1 | 2024 Supreme (SC)944 |
| 2 | 2018 Supreme (Bom) 1432 |
| 3 | 2016 16 Supreme Court Cases 418 |
| 4 | 1996 Supreme (Bom) 516 |
| 5 | (1978) 4 Supreme Court Cases 371 |

instance the assault has been allegedly caused since discharged by the Trial Court, no motive survives for appellant in the instant case. It is his submission that admittedly there was no motive for the accused persons to cause assault on the injured. He further drew attention of the Court to the evidence of the Medical Officer, which according to him indicates that the witness was examined before the Court was not the one, who had attended the injured at the first instance. It is submitted that two doctors were examined by the prosecution, however, none of them has attended the injured at first instance. Reference is made to the injury certificate, which indicates that the injured was examined two days after the occurrence of the incident and as such, according to him, the said certificate loses its evidentiary value. It is further argued that having regard to the aforestated fact, it cannot be said that the prosecution has proved the guilt of the accused beyond shadow of reasonable doubt. To support his submissions with regard to the credibility of the witness, he placed reliance on the following judgments:

- (i) **Shivaji Dananu Patil vs. The State of Maharashtra⁶**
- (ii) **Vithoba s/o. Balwant Gand vs. The State of Maharashtra⁷**
- (iii) **Pravin Alias Bhangarya Bhimrao Patil & Anr. vs. The State of Maharashtra⁸**

6 1978 Supreme (SC) 323

7 1978 Supreme (Bom) 174

8 AIR Online 2024 BOM 781

(iv) Ramdas Kondaji Pekhale vs. The State of Maharashtra⁹

9. Learned APP supported the impugned Judgment and Award. According to him, since unfortunately injured died during the pendency of the Appeal, she could not be examined, however, the FIR has been duly proved through the police personnel, who recorded the said statement. He drew attention of the Court to the evidence of Dr. Jadhav-PW-8, who was present at the time of recording of the statement and passed endorsement with regard to the consciousness of the injured at the time of recording the said statement. It is his submission that belated recording of the statement of any eye witness by itself cannot become a ground for acquittal of the accused if his testimony is consistent and reliable. He further argued that the cross-examination conducted of PW-4 indicates that even defence does not dispute existence of a club in the vicinity of the occurrence of the incident. It is argued that non reference of the club in the spot panchanama, therefore, does not become fatal to the case of prosecution. In response to the argument of the Counsel for the Appellant with regard to the injury said to have been caused on the forehead by the eye witness whereas, the Medical Officer indicates the said injury on parietal occipital region, it is his submission that the possibility of such statement on the part of the witness, who witnessing the incident, is not ruled out. He drew attention of the Court to the cross-examination of Medical Officer, which according to him, shows that there was not even a suggestion made to the Medical Officer

9 1993 Supreme (Bom) 253

with regard to the possibility of causing of these injuries by way of fall.

10. There can be no doubt with regard to the proposition of law that the burden would be on the prosecution to prove the guilt of the accused persons beyond shadow of reasonable doubt. Herein this case, the informant, who is a lady, in her 50's lodged report while admitted in the hospital about she being assaulted by persons, who are specifically named in the FIR. Obviously, since during the pendency of the trial, she died, the prosecution could have not proved the FIR through her. The prosecution, however, examined the Witness, i.e. PW-3, who recorded the statement of the injured in the hospital. He deposed about having visited the hospital and after ascertaining the condition of the patient recorded her statement as per her say. The prosecution has also led evidence of Dr. Jadhav, PW-8, who states about he having been present at the time of recording of the said statement and examined the patient before and after completion of the statement. The evidence, therefore, more than sufficiently proves that on 23rd April, 2018 the statement of the injured came to be recorded and she has narrated specifically the names of the accused persons, who have caused assault on her, the weapon used therefor and the precise role of each accused.

11. In this backdrop, it is pertinent to see the evidence of the eye witness. PW-4 Rupesh speaks about he having witnessed the incident on 22nd April, 2018. He claimed that he was working in a club of Shamu Tiwari as a helper. He heard noise and commotion

and, therefore, he claimed to have come outside the club. He noticed that the accused-Manoj, Dashrath and Ramesh abusing injured. He also saw that they were assaulting her with fist and kick blows and Dashrath and Ramesh having assaulted her with fiber stick. He claims that both of them were holding fiber sticks in their hands. In the said assault Savitribai fell on the ground and sustained bleeding injury to her forehead. In the cross-examination though it was sought to be brought on record that the witness is related to the daughter-in-law of the injured, not only he denied the said suggestion but deceased was unable to bring any other evidence on record to hold so. As rightly argued by the learned APP, the cross-examination conducted of this witness clearly shows that the witness was present near the spot of the incident and therefore, merely because his statement came to be recorded belatedly, his testimony does not deserve discordance. It is pertinent note that this witness has withstood a searching cross-examination conducted on behalf of the defence.

12. The evidence of PW-5 Dr. Krishnamurthy indicates that he was attached to Life Care Hospital and on 22nd April, 2018, the injured was admitted in the hospital at about 10:30 p.m. There is corroboration to the statement of the witness from evidence of Dr. Jadhav-PW 8. Dr. Krishnamurthy examined the patient and noticed following injuries:-

- (a) Close fracture of left forearm.
- (b) Fracture of left fibula.
- (c) Deep CLW over parietal occipital region size 5 x 2 x1.

- (d) friction abrasion on left side of fact and
- (e) friction abrasion over left knee
- (f) contusion on abdomen and back.

According to him, injury Nos. 1, 2 and 3 were grievous injury and including the fracture caused to the left forearm and fracture to left fibula. Though, this witness was cross-examined, there is no suggestion made to this witness that the injuries caused to the deceased/injured are by fall. In the light of the cross-examination of this witness, it cannot be said that the injuries caused to the injured were for any other reason but for the assault cause on her. This witness also specifically states about the possibility of causing of this fracture with the fiber stick. Though the defence sought to bring on record that the police uses the fiber stick for dispersing the mob and in the process no serious injuries could be caused, it cannot be said that serious injuries are not possible with the said weapon.

13. The prosecution, therefore, by leading evidence of eye witness coupled with the medical evidence has proved that the fracture injuries were caused to the injured. It would be relevant to take note of provision of Sections 320 and 326 of IPC, which reads as follows:

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

326 Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

14. The prosecution has alleged the commission of act of causing assault on the injured by all accused with their common intention. Having regard to the fact that the accused persons were present at the spot with the weapon and all the accused persons were assault, common intention can be inferred from the facts on record. In such circumstances, this Court finds no hesitation to hold that the Trial Court has rightly convicted the accused persons for the offences as narrated herein-above.

15. Having regard to the fact that a lady was assaulted by all persons causing grievous injuries to her neither this is a case for grant of benefit of Probation of Offenders Act nor for reduction of substantive sentence.

16. In view of the above discussion, the Appeal stands dismissed.

17. R & P be sent back to the Trial Court.

(R. M. JOSHI, J.)