

Presented on - 17/12/2014
Registered on - 17/12/2014
Decided on - 06/09/2025

Y – M -Ds.

Duration

IN THE COURT OF 2ND ADDL. DISTRICT JUDGE, AT ANJAR.
(Shri K.K.Shukla)

SESSIONS CASE NO.156 of 2015

Ex. __

COMPLAINANT: -

State of Gujarat,

Versus

ACCUSED PERSONS: -

1. Naran Devji Dhua,
Age : 35 years,
R/o. Moti Nagalpar, Tal : Anjar - Kachchh.

2. Leenaben W/o. Naranbhai Dhua,
Age : 32 years
R/o. Moti Nagalpar,
Tal : Anjar - Kachchh.

APPEARANCE: -

Ld.AGP Mr. M. R. Jadeja for the prosecution.
Ld.Adv. Mr. G. S. Shekh for Accused.

:: J U D G M E N T ::

[1] The facts of the present Atrocity Case is that before two days of 06/07/2013, at about 1:15 p.m. in Afternoon, accused came and quarrel with the complainant that why you have removed the trees and accused No.1 came with Lathi with his Honda and assaulted on right leg and fingers and right side of west and leg and caused fracture

injury and also assaulted on brother of complainant Kasamali and caused injuries to him and accused No.2 also beaten the Kasamali and and thus both the accused committed an offence punishable under Section 323, 325 and 114, 506(2) of IPC. So after filing of complaint by the complainant, the police has filed the charge-sheet against the accused for the offence punishable under Secs. 323, 325 506(2) and 114, of IPC.

- [2] I have heard the Ld. AGP Mr. M. R. Jadeja. He has argued that prosecution has proved his case beyond reasonable doubt and complainant and others have also supported the story of the prosecution. Hence, considering the evidence on record, he prayed for convicting the accused.
- [3] I have heard the Ld. Advocate Mr. G. S. Shekh on behalf of accused. He has given written argument. In which he has stated that cross complaint was there against the accused and accused Mr. Naran Devji and Leenaben has assaulted, threatening abuse and also complainant was injured etc. facts in the case. At Ex.72, complainant was examined. As per the say of the complainant on 06/07/2013, between 1:15 to 1:30 offence was happened. Complaint was given at about 19:20. Hence, 18 hrs. complaint was late. No any special reason for it. PS0 has also admitted that no any explanation about the late complaint was given by the complainant. This facts was also admitted by the

I.O. Hence, complaint is concocted was proved on record. At Ex.72, complainant Shamimben was examined and there is a difference between the deposition of her and complaint and no any facts that Leenaben has assaulted with the Lathi and Kasamali has got injuries. Main dispute about the way and encroachment of land. No facts that complainant has taken treatment in the hospital and other facts was also not in the complaint. It is also on record that, the accused was the member of the village panchayat and he has done work as a member of village panchayat and no any proof that, accused wants to encroach of land of the complainant. Place of panchnama was produced at Ex.97 and Damar road was there. Plantation was made on the public land that facts was also admitted by the IO and other. It was also say of the complainant that, accused and her husband was came and assaulted with Lathi and some other person came and stop the quarrel and given the threatening etc. facts was stated. 50 trees were planted as per say of the complainant as per Ex.72 outside the farm and on the way and it was removed because, it is on the way. At that time, accused Naranbhai came and assaulted with Lathi and injured was shifted to the hospital etc. facts was said by him. But, the Ex.114 witness Magan Naran has not supported the story of the prosecution and also Kasamali witness has not supported the story of the complainant. Doctor was examined at Ex.122. He has given a treatment. Fracture was found to the injured. No any operation was preferred by him. But, the complainant has not said who has

assaulted on him and given any name of accused. Treatment was given on 07/07/2013 and injury was fresh as per say of the doctor. But, the incident was happened on 06/07/2013 as per say of the complainant. So, also complaint was not proved. Panchas Ex.92, 93, 94, 96 and 97 were not supported the facts of the panchnama. There is also difference between the police complaint and deposition of witness at Ex.102 of Kasamali. Facts of the panchnama was not supported by the I.O. and it also from the evidence that small thin Lathi was used by the Leenaben and trees were planted and why it was removed that facts was not proved by the I.O. Other witness Ex.114 was not supported the story of prosecution. Complainant and original witness Kasamali doing work. So, the case of the complainant is not proved. It also no any evidence from the witness at Ex.115 Mr. Virendra Singh. He has said that as per panchnama, nowhere it found that complainant has planted the trees. PS0 and others witness deposition are differ. No any history given by the injured about the weapon and accused. One another I.O. has only filed the charge-sheet. NO any further statement of complainant was taken by him. It also proved that trees were planted near the farm and gate of complainant. Definition of IPC Section 325 and 506(2) was not proved. Also not proved other section. Hence, Ld. Advcoate has prayed for acquittal of present accused against the charge levelled against them.

[4] The prosecution has produced the following

evidence in support of his case:-

Documentary evidence :-

- Ex.73 - Original Complaint.
- Ex.74 - Certificate of Orthopedic
- Ex.93 - Arrest Panchnama
- Ex.94 - MLC Certificate
- Ex.97 - Panchnama of place
- Ex.117 - Depute Yadi

Oral evidence :-

Complainant :-

- Ex.72 - Deposition of complainant S. S. Khoja

Witnesses :-

- Ex.104 - Mr. K. S. Khoja.
- Ex.114 - Mr. M. N. Mistri

Panch Witnesses :-

- Ex.92 - Mr. H. R. Maheshwari, panch of arrest panchnama.
- Ex.94 - Mr. U. I. Manka, panch of panchnama of Arrest
- Ex.96 - Mr. D. K. Maheshwari, panch of panchnama of Place of offence.

Medical Witness :-

- Ex.122 - Dr. V. D. Toshnival, medical witness.

Police witnesses :-

- Ex.115 - Police Witness Mr. V. H. Yadav.
- Ex.116 - Police Witness Mr. A. R. Solanki.
- Ex.124 - Police Witness Mr. G. G. Jadeja.

No any other documents or person are examined on behalf of the prosecution side.

[5] To decide the present Case, the following issues are required to be framed for the determination:-

- (1) Whether the prosecution proves that before two days of 06/07/2013, at about 1:15 p.m. in Afternoon, accused came and quarrel with the complainant that why you have removed the trees and accused No.1 came with Lathi with his Honda and assaulted on right leg and fingers and right side of west and leg and caused fracture injury and also assaulted on brother of complainant Kasamali and caused injuries to him and accused No.2 also beaten the Kasamali and and thus both the accused committed an offence punishable under Section 323, 325 and 114, 506(2) of IPC. So after filing of complaint by the complainant, the police has filed the charge-sheet against the accused for the offence punishable under Secs. 323, 325 506(2) and 114, of IPC.
- (2) What order ?

[6] The decision of the above points are as under:-

- (1) In the negative.
(2) As per final order.

R E A S O N S

[7] **POINT NO.1** :-

On behalf of the prosecution side, following witnesses were examined by it :-

Prosecution Witnesses :- **[Complainant]**

At Ex.72, Complainant Samimben Khoja was examined. She has stated on oath that, she was

residing with her brother Kasamali and her father was expired. Incident was happened before 6 years on 06/07/2013. At that time, she and her elder brother Kasamali was at the farm at Vill : Moti Nagalpar and that farm knows as Hiravadi and they are passing, at that time, some trees were planted. It is was about 50 trees and some of trees were planted on the way and obstruct in the walking on the way. Hence, they wish to plant the trees on other side. AT that time, Mr. Naranbhai was came with his motorcycle and said that we have plant the trees and become angry and he has assaulted with Lathi on right hand, plam, shoulder and backside of west and knee. AT that time, her brother Kasamali came and tried to stop teh quarrel. But, Naranbhai has also assaulted with lathi on him. Hence, he was fallen down. At that time, Leenaben came and she was the Sarpanch of the village panchayat. She was also assaulted with Lathi on Kasamali. Hence, Kasamali also fallen down. Leenaben has also assaulted with Lathi on backside of body of him. At that time, Mr. Maganbhai was came and they have also tried to stop the quarrel. Naranbhai has threatening and Leenaben was also with him. The intention of the accused was to encroach the land and then she went for the treatment at CHC Anjar and also taken the treatment of her brother from the Orthopedic doctor. At that time, police came and said that Naranbhai and Leenaben has given complaint against them and lady police come and taken a

treatment at Leelavati Hospital and doctor has opined that, there is a fracture in the finger and operation is require. Hence, the operation was made and she was discharged. She has given the complaint against the leenaben and Naranbhai. The complaint was produced at Ex.73. Also identified the muddamal motorcycle and Lathi and accused.

In her cross-examination, she has said that she has graduate and panchayat has planted the trees. Small tree was there. It was about 5 to 7 feet and 50 trees were there of various kind. It is true that, plant was there and near his way to enter in the farm house. She has said that planted in the way. She do not know what is distance between the trees or whether any water arrangement was there. Some trees were also planted same day or before one day. It is true that, the day ago tree was planted and no any water was found. Police took them at 3'0 Clock from the hospital. She has denied that, trees were not planted and she has denied taht trees were not planted at her land. She do not know distance between the police station or hospital. Police has taken a complaint on Evening at 7'o Clock. Incident was happened on 06/07/2013. First taken the treatment at Government hospital then, police took them and she has given the complaint then, went to the hospital and taken the xray. She has denied that, the xray of left hand was taken. She said that right hand xray was taken. Whole side of right side of xray was not taken. Same day

treatment was given. Accused was also of their village. She also admitted that, complaint was filed against her and they are released on bail on same day at police station. She injured and taken a treatment on the same day. Doctor has make the inquiry. Hence, facts of incident was said to him. Other facts that, she was not injured or not taken a treatment or accused has not assaulted on her or some facts of threatening etc. was not said to the police etc. facts was denied by her.

Witnesses :-

At Exh.104 – Brother of complainant K. S. Khoja was examined. He has said that, he was running his family and doing agriculture work. On 06/07/2013 between 1 to 1:30 incident was happened. Because, before one day, Naranbhai and Sarpanch has planted the tree on public way of his farm and obstruct them. Hence, he went to see it on next day. At that time, trees are planted on his way. Hence, it was removed and planted nearest other place. At that time, Leenaben Sarpanch and Naranbhai came and said that, why the trees were removed and then, Naran has assaulted with Lathi on him and also asaulted on his sister and get the injury on neck, hand, backside of west etc. part of body. Hence, he was fallen down. At that time, Leenabne came and also she was assaulted with thin lathi. He Kicked and Leenaben was fallen down and also said that, why the said trees was removed. At that time, Magan Mistri came and stop them. They have threatening and police has

taken the statement etc. facts was stated. In his cross-examination, he has admitted that, Mr. Magan Mistri was doing work in his farm up to 2013. He is denied that, not taken the treatment. Also admitted that, accused has filed the complaint against him and released on bail. Also admitted that, no any permission of the village panchayat for plantation of trees was taken. He is residing at farm and doing agriculture work. Accused was also of his village and they know each other. He has denied that, he has not said facts to the police that, the trees were planted on the way. Hence, it was removed or thin Lathi was with Leena and assaulted. Hence, it was broken down or accused has filed the complaint hence, this complaint was filed to pressurize the accused etc. facts was denied by him. He is admitted that residential area was around of place of incident. Other person was also gathered at the time of incident. Other facts was denied by him.

Deposition of other witness :-

At Ex.114 Mr. M. N. Mistri was examined. He has said that, incident was happened on 06/07/2013. The farm of Kasam was situated at Moti Nagalpar village and there Naranbhai has planted trees. At that time, Kasamali stop him because of damage of his agriculture crops. Hence, there is a quarrel between the Kasamali and Naranbhai. AT that time, he was passing and tried to stop the quarrel and then they have went to his house etc. facts was stated by him.

In his cross-examination, he admitted that, accused was of his village. Hence, he know them. Other facts about the incident and plantation of trees etc. was denied by him.

Depositions of Panch Witnesses :-

Ex.92 - Mr. H. R. Maheshwari panch of panchnama of muddamal recovery and Arrest was examined and he has stated that police has taken the signature on ready made panchnama Ex.93. Nobody was arrested in his presence. No any person or muddamal was recovered in his presence.

Ex.94 - Mr. U. I. Manka panch of above panchnama of muddamal recovery and Arrest was examined and he has stated that police has taken the signature on ready made panchnama Ex.93. Nobody was arrested in his presence. No any person or muddamal was recovered in his presence.

Ex.96 - Mr. D. K. Maheshwari, panch of place of offence was examined and he has stated that police has taken the thumb impression on ready made panchnama Ex.97.

The above panchas are not supported the story of prosecution, hence, they are turned hostile and in the cross-examination of prosecution side, they have not supported the story of prosecution. Not only that in the cross-examination of defence side, they have admitted that they have only signed in the panchnama and they do not know about the place

of incident and nobody was arrest in their presence and not known about the recovery of muddamal etc. facts were stated.

Depositions of Medical Witness :-

At Ex.122, Dr. V. D. Toshnival was examined. He has stated that, on 07/07/2013, he was on his hospital. AT that time, Shamimben was came for the treatment about the assaulted on 07/07/2013. He has examined her and found the fresh injury and given the injury certificate Ex.74 and injury may be happened from the Lathi. In his cross-examination, he has admitted that, he has given treatment to patient and discharge her and not referred to any hospital. Warm plaster was made to her. No any operation was made. No need of any operation and said that on 07/07/2013 she was injured and on same day she got injury. Patient was not given the name and address of the accused or about the weapons and they have not taken the treatment from the other hospital. Injury may be happened due to fallen down on earth and so many types of fractures etc. facts was stated by him.

Police Witness :-

PSO :-

At Ex.116 Mr. A. R. Solnaki was examined. He has stated that he was on duty on 06/07/2013 at Anjar Police Station. AT that time, complainant Samiben came and given a complaint against the accused. Hence, he has registered it and depute the investigation etc. facts was stated by him.

In his cross examination he has admitted that, complainant and his brother Kasamali was arrested from the hospital and then complainant has given the complaint was not happened and complainant was not taken to the private hospital and no any primary inquiry was made by him. Some other facts was denied by him.

I. O. :-

At Ex.115 I. O. V. H. Yadav was examined. He has said that, investigation was given to him and he has prepared the panchnama. In his cross examination he has admitted that, no any facts in the panchnama that, complainant has planted the tree near the door of farm of complainant. One tree was there and it was in the open public land etc. facts was said by him.

I.O. :-

At Exh.124, Mr. G. G. Jadeja Investigation Officer was examined and he has made the investigation of said crime, prepared the panchnama and taken the statement of concerned witnesses and produced the documents. Arrest the accused and collect the muddamal and sent the yadi for taking the certificate. He has collected the sufficient evidence against the accused, hence filed the charge-sheet, etc., facts were stated by him. In his cross-examination he has admitted that, complaint was not given before him. 18 Hrs. complaint was late and no further statement of complainant was taken. As per the panchnama nowhere mentioned that, farm or on the way or gate, tree was planted and as per place of

panchnama , 30 feet away one tree was on the open public area and three trees were removed. Nowhere mentioned in the complaint that, around 50 trees were there and complainant has not also said that she removed the tree and plant it on another place and also complainant has not said in the complaint that, Lathi lies with the Leenaben and assaulted on Kasamali by her and also not mentioned that the intention of Leenaben and Naranbhai was to encroach the land of his farm. Also nowhere mentioned in the complaint or the statement of the Kasamali that, they have taken a treatment in the CHC hospital went through Rixa. Police came there and taken them at police station or Lady policy has taken them to the private hospital and right hand finger was operated. Fracture was happened to her and police has not taken Kasamali from hospital to police station. Kasambhai has also not said that small lathi lies with the Leenaben and it was broken down because of assaulted. Residential area was around the place of incident and no statement of nearest residential person was taken by him etc. facts was stated by him.

- [8]. So, considering all the facts and circumstances of this case, it transpires from the record that, as per the story of the prosecution that, incident was happened for removing of the trees. Because, the tree was planted by the accused and the accused Leenaben was the Sarpanch of the village and Naranbhai is her

husband and they have assaulted with Lathi and threatening etc. case of the prosecution. Now, considering the above deposition of complainant Ex.72, she has said that, there is a also cross complaint and released on bail on police complaint. She got injuries on hand and taken a treatment of same day. She has denied that, police taken her at the hospital for treatment. She admit that, doctor has made the inquiry and all the facts of incident was said to him. She also admitted that, before one day of incident, trees was planted. But, no any water was there. Police taken them on 3'0 Clock at hospital. She has taken a treatment at Government Hospital and then in the private hospital Leelavati and taken the xray. She also admit that, there is a way where trees were planted etc. facts was said. Now, so far the medical evidence is concerned, considering the deposition of doctor at Ex.122, he has admitted that fracture was on the right hand of the Shamiben and injury was serious and fresh. In his cross-examination, he has admitted that same day she was discharged and plaster was made. No any operation was requiried and patient said in history that, incident was happened on 07/07/2013 and treatment was also taken on the same day. But, no any name of accused and weapons was said by her and no any history that, she has taken the treatment previously from any hospital. So, considering the above medical evidence, it transpires that, as per say of the complainant that she has taken the

treatment at Government Hospital then referred to the private hospital. But, the doctor of private hospital has denied that complainant has taken any treatment previously in any hospital. Not only that, incident was happened on 06/07/2013. But, the doctor has said that injured came on 07/07/2013 same day of the incident. Not only that, it is also proved on record that the complainant and accused know each other and they belong to same village. But, the complainant injured has not given the name of any accused and also about the use of the weapons. No any story of fracture on the record. Injury was simple was said by the doctor. One witness Mr. Kasamali was examined. he has said that, accused has assaulted with Lathi and others. Quarrel because of plantation of trees etc. facts were said. He has also admitted that, Mr. Magan Mistri was doing work with him and also admitted that, he has not taken any treatment and cross complaint was filed against him and released on bail. No any permission was taken for the plantation of trees from the panchayat. The residential area around the place of incident and some other person was also gathered at the time of incident. Other witness Mr. Maganbhai examined at Ex.114 and he said that, he was passing at that time and there is a quarrel between accused and complainant and he has tried to stop the quarrel and after that, he comes to know that this person was assaulted on the Kasamali. So, it also transpires that this

witness was not seen whole incident. Because there is quarrel between accused and complainant was said by him but, from which weapon who has assaulted, this facts was not said by the above witness. Not only that, as per say of the witness at Ex.104, the incident was happened in the residential area. some other person was also gathered. But, no any statement of those persons are on reocrd. So, independent witness was not in this case. So far the panchas are concerned, they are turned hostile and have not supported the story of prosecution. This is the PSO who has only registered the complaint and depute the nvestigation. Also admitted that, Shamiben and Kasamali taken to the hospital and he has given complaint was not happened and police has not taken complaint to the hospital. so, it also contradictory version of the complainant and PSO. Because, the complainant has said that, they are taken by the police to the private hospital from the Government Hospital. AT Ex.115, Mr. V. H. Yadav was examined who has preferred the panchanama of place of offence and also admitted that, no any facts was mentioned in the panchnama that, trees were planted near the gate of complainant farm. Also admitted that, from the panchnama, one tree was in the public place. Other facts was denied by him. At Ex.124, I.O.was examined and he has taken the statement of witness and prepared the necessary Yadi filed the charge-sheet etc. facts was said by him. Also admitted that,

complaint was 18 hrs. late and no any further statement of complainant was taken by him. Also admitted that, no any facts mentioned in the panchnama that, the trees were planted on the way of complainant's farm. On the open land of 30 feet, one tree was there. So many trees were also around the farm. Also complainant has not said in his complaint that, Leenaben has also assaulted with Lathi and also complainant has not said that accused want to encroach the land. Some other facts was not said by the complainant etc. facts was admitted by the I.O. So, considering the above deposition of IO and evidence on record, there is huge contradiction between the deposition of complainant and other witnesses and injury was also not proved. Incident was not proved and the threatening given by the accused to the complainant was also not proved and the starting route of quarrel, place of plantation of trees was also not prove by the prosecution side. Without doubt, no any conviction evidence on record leaving the accused for conviction.

So, considering all the facts and circumstances, this Court gives answer of Issue No.1 in the negative and pass the following final order for issue No.2 in the interest of justice.

O R D E R

- The Accused No.1. **Naran Devji Dhua** and 2. **Leenaben W/o. Naranbhai Dhua** are hereby acquitted u/s.235(1) of Cr.P.C. for the charges levelled against them for the offence punishable under

Secs. 323, 325 506(2) and 114, of IPC.

- The muddamal recovered by the IO if any, and interim order passed for it is hereby confirmed or the muddamal Hero Honda Splender No. GJ.12.AC.5396 is to be given to its registered owner after making necessary verification and so far the other muddamal is concerned, same is requires to be disposed off as per the procedure of criminal manual after completion of appeal period.
- Accused have to give bail bond u/s.437(2) of Rs.15,000/- (Rs. Fifteen Thousand Only) each for appeal period.

Signed and pronounced today in open Court.

Date:06/09/2025
Place:Anjar.

(K.K.Shukla)
2nd Addl.Sessions Judge,
Anjar-Kachchh.
(Code: GJ00547)

//GJ Vaishnav//