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	CNR-MHTH-1200-3546-2016	

(PART - "A")

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS,

CBD BELAPUR, NAVI MUMBAI

(PRESIDED OVER BY : Shri. O. A. Sane)

R.C.C.No. 1080 OF 2016

Exh No.

(APMC Police Station C.R.No.0142/2016)

Prosecution - State of Maharashtra
Through- Asst. Police Inspector,
APMC Police Station,
Tal. Navi Mumbai, Dist. Thane.

Represented by – Public Prosecutor Smt. S. B. Poojari.

V/s.

Accused - 1. Harshal Rajendra Harhare.

Age – 37, Occ. – Car sale

**R/o. Siddhikalp, Plot No.287, Sector-31,
Vashi Gaon, Navi Mumbai.**

2. Yashraj Mahendra Wagh,

Age – 30, Occ. –Education

**R/o. C-16, Shanghrila, Plot No.44/45
Vashi, Navi Mumbai.**

3. Anil Shekhar Sahani.

Age – 35, Occ. – Education

**R/o. Room No.311, Aatma Shanti Nivas,
Near Pooja Jewelers, Sector-31A,
Vashi Gaon, Navi Mumbai.**

Represented by – Advocate Shri. Tapan Sarkar

(PART – “B”)

Date of Offence	05-07-2016
Date of F.I.R.	05-07-2016
Date of Charge-sheet	08-08-2016
Date of Evidence	01-03-2019
Date of Judgment Reserved	23-06-2025
Date of Judgment	20-06-2025

Date of Probation, if any.	NA
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Details of Accused

Sr. No.	Name of Accused	Arrest Date	Date of Release d on bail	Charge Sec.	Convicted/ Acquitted	Conv iction	Period of convic tion
1	Harshal Rajendra Harhare	06-07-2016	06-07-2016	326,324, 323,504, 506	Acquitted	-	-
2	Yashraj Mahendra Wagh	06-07-2016	06-07-2016	326,324, 323,504, 506	Acquitted	-	-
3	Anil Shekhar Sahani	06-07-2016	06-07-2016	326,324, 323,504, 506	Acquitted	-	-

J U D G M E N T

(Declared on 25-06-2025)

The accused persons are in the dock for the offences punishable under sections 326, 323, 504, 506 r/w 34 of the Indian Penal Code, 1860 (IPC).

Prosecution Case

2. On 05-07-2016, at about 1:00 p.m., an incident took place at Auto Scare India Pvt. Ltd., Vashi, Navi Mumbai. The accused had brought his car, bearing registration number MH43-AJ-7772, for repairs on 27-04-2016. The victim, Rahul, was employed at the said workshop. The repairs to the car were not completed within the stipulated time. On 5th July 2016, at around 10:00 a.m., accused Harshal arrived at the workshop to collect the car. However, as the car was not ready, the victim requested him to collect it after a few days. At this, accused Harshal began abusing the victim using filthy language and then left the premises. Later, at about 1:00 p.m., accused Harshal returned to the workshop along with his friends. They again started quarrelling with the informant. The quarrel soon escalated into a physical altercation. Accused Harshal abused the manager, Nitin, and assaulted him. Subsequently, Harshal's friend, Yash, assaulted the informant Rahul using a wiper rod, causing bleeding injuries to his head. Another friend of Harshal, Anil, struck the informant on the face and chest. Thereafter, all the accused fled the scene. The informant then went to the police station and reported the incident. The police referred both the informant and his colleague Nitin to the Municipal Hospital for medical treatment. After receiving initial treatment, Rahul lodged the FIR.

3. On the report given by the informant, PSO, APMC police station, Navi Mumbai registered the FIR bearing C.R. no. 142/2016. Investigation was assigned Shri. B. N. Lature, PSI. In the investigation, he seized the weapon, carried out the seizer & spot panchanama. He obtained Medical Certificates. He arrested the accused persons. At the end of investigation PSO APMC police station, Navi Mumbai filed final

report on 08/08/2016.

4. Accused persons were summoned & the charge was framed below Exh.52 for the offence punishable under Section 323, 504, 506 r/w. 34 of IPC. Charge was explained in vernacular to which accused persons pleaded not guilty and claimed to be tried. Later on, on the application of prosecution, the additional charge for the offence punishable under Section 326 was framed and plea was recorded accordingly. Statement of the accused persons were recorded under section 313 of the Code of Criminal Procedure (Cr.P.C.) vide Exh. 45 to 47. Defense of accused person was of total denial and of false implication.

5. Therefore, following points raised for my determination along with their findings and reasoning thereof are as under.

Sr. No.	Points for Determination	Findings
1	Whether the prosecution has proved that on 05/07/2016 at about 13:00 hours, at Auto Scare India Pvt. Ltd., Sector-19, Vashi, Navi Mumbai, the accused persons, in furtherance of their common intention to assault the informant, one of the accused, Yashraj, voluntarily struck the informant on the head with a wiper rod, causing a grievous injury likely to cause death?	No
2	Whether the prosecution has proved that on the above-mentioned date, time, and place, the accused persons, in furtherance of their common intention to assault the informant, voluntarily beat the informant and the witness with fists and blows, causing simple injuries?	No
3	Whether the prosecution proved that on above date time	

- and place accused persons in furtherance of their common intention, to assault the informant, intentionally insult and gave provocation that such provocation will cause any other offence ? No
- 4 Whether the prosecution proved that on above date time and place accused persons in furtherance of their common intention, to assault the informant, threatens the informant to cause injury and thereby committed offence of criminal intimidation ? No
- 5 Which offences are proved? No
- 6 What order? As per final order.

:- REASONING :-

(PART C)

LIST OF WITNESSED EXAMINED BY THE PROSECUTION

Sr. No.	Name	Exh.	Nature of evidence
1	Rahul Ramdas Pokhakar	15	Witness
2	Sunil Suryakant Shaha	20	Witness
3	Nitin Krushkant Sagwekar	23	Witness
4	Dr. Sajay Uttamrao Yamgar	25	Doctor
5	Birappa Nagappa Lature	27	IO
6	Dr. Rajaram Narayan	38	Doctor

Patil

7 Swapnil Gopichand Thorat 42 Witness

Documents produced/proved by the prosecution

A. Documentary Evidence

Sr. No.	Exhibit Number	Details
1	16	FIR
2	17	Printed FIR
3	21	Spot Panchanama
4	26 & 27	Medical Certificates
5	28	Muddemal receipt
6	29,30,31	Letter
7	32 to 34	Arrest form
8	35	Arrest Panchnama
9	36	Medical Certificate
10	39 & 40	Medical Certificate
11	43	Certificate

D. Articles

Sr. No.	Article number	Details
1	A	Wiper Stand

2	B	Color Photographs
3	C	DVD

LIST OF WITNESSED EXAMINED BY THE ACCUSED

Sr. No.	Name	Exh.	Nature of evidence
Witness no. 1	Harshat Rajendra Harhare	51	Witness

Arguments

6. The Ld APP submitted that the prosecution has proved the entire case beyond reasonable doubt. The evidence of informant is corroborated by other witnesses. The medical reports are clear enough to show that the accused beat the informant and witness. The Latin maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is not a strict rule of law in India. Minor discrepancies or contradictions in witness testimonies typically do not significantly impact the prosecution's case. If these inconsistencies don't go to the heart of the matter or undermine the core of the prosecution's version of events, they are generally overlooked. Courts must consider the overall credibility of the witness and the extent to which the contradiction affects the central facts of the case. Hence, the Ld APP submitted that the accused persons be convicted and sentenced as per law.

7. On the contrary, the Ld Advocate for accused persons submitted that prosecution's case is based on the false pillars. prosecution failed to prove any of the ingredients of the sections charged. There are discrepancies in the evidence of informant and medical documents. There are inconsistencies among the evidence of prosecution witnesses. Accused successfully proved the contradictions and omissions. The investigation in the matter is not properly conducted. Accused were falsely implicated in the case. Accused proved the defense. Hence, it is clear that the prosecution failed to prove his case beyond reasonable doubt. Accused persons are entitled to get the benefit of doubt. Hence, the Ld advocate for accused prayed for acquittal of accused persons.

8. I have heard both the sides and perused the record.

Relevant Law

9. In order to prove the offence punishable u/s 326 and 323, the prosecution has to prove following ingredients.

For section 326-

The essential ingredients to attract Section 326 are:

- (1) Voluntarily causing a hurt;
- (2) Hurt caused must be a grievous hurt; and
- (3) The grievous hurt must have been caused by dangerous weapons or means.

The essential ingredients to attract Section 323 are:

- (1) Voluntary Act
- (2) Causing Hurt

(3) Physical Contact

(4) Absence of grave and sudden provocation,

In order to appreciate the evidence, the guideline provided by Hon'ble Supreme Court in **Balu Sudam Khalde And Another Criminal Appeal No. 1910 of 2010 dated 29-03-2023** are very important. It is held that

"Appreciation of injured eye-witness -

(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.

10. It is a case of prosecution that on 5th of July 2016, accused beat the informant and the witness. His friend Yashraj beat the informant by means of wiper rod. Due to which the informant sustained grievous injury. On the contrary, the accused persons have raised the defense that, the informant failed to the repair the car in time. He brought the informant to the police station. Therefore, in order to avoid the litigation, this false case has been filed.

Appreciation

11. In order to substantiate, the charges, the prosecution has examined the informant, Rahul PW No.1 Exh.15. In the evidence he deposed that, on 05/07/2016 at about 1:00 pm accused and his friends arrived in the workshop. They beat the manager named Nitin and they have also beat the informant by means of wiper rod. Due to which informant sustained head injury. In the cross-examination, questions were asked to bring out contradictions. In the FIR, the informant stated that accused Harshal beat the informant and the manager, Nitin, with fists and blows, and that accused No. 2, Yashraj, assaulted the informant with a wiper rod. However, in his testimony, the witness deposed that all the accused persons assaulted him and the manager, without attributing specific roles to each accused in the commission of the offence. Thus, the informant's evidence is not specific enough to establish the individual acts of each accused person.

12. Further, he admitted in cross-examination that he had failed to repair and deliver the car to the accused within the stipulated time. The APMC Police Station is located just 5 to 6 minutes away from the place of

the incident. The accused had taken the informant to the police station due to the delay in repair and delivery of the car. He also admitted in cross-examination that accused Harshal had remained at the spot of the incident while the other accused had fled. However, in his testimony, the informant deposed that all the accused persons had fled from the spot. Whether the accused fled or remained at the spot is a fact shrouded in doubt, as the witness did not depose in accordance with the FIR and his previous statement. Moreover, it is difficult to believe that the same accused persons who allegedly assaulted the informant and the manager would subsequently drag the informant to the police station. Such conduct is inconsistent with the behaviour of a prudent person. Additionally, the informant did not clearly depose about the status or conduct of the accused immediately after the incident. Therefore, the testimony of the informant regarding the immediate behaviour of the accused after the incident is not credible.

13. Further, the witness deposed that during the medical examination, he informed the doctor that 8 to 9 persons had assaulted him. He did not mention the name of accused Harshal to the doctor. Subsequently, he was referred to Dr. Patil, to whom he stated that 4 unknown persons had assaulted him. The informant also deposed in court that 8 to 9 persons beat him. However, according to the prosecution, only 3 persons, including accused Harshal, were involved in the alleged incident. It is evident from the record that the accused and the informant were well acquainted with each other. Despite this, the informant did not disclose the name of accused Harshal during his medical examination. The prosecution has not provided any explanation as to why the informant referred to the assailants as "unknown persons," particularly when the informant and the accused were known to each other. He could have at least mentioned that a customer had assaulted him. This conduct of the informant immediately after the incident is

significant and casts doubt on the prosecution's version of events.

14. Further, the informant admitted in cross-examination that, during the incident, blood oozed from his nose onto his clothes, and also fell on the workshop floor and the car. However, the Investigating Officer did not seize the blood-stained clothes of the informant. Nor did the IO collect samples of the blood stains from the workshop floor or the car.

15. Further, the informant deposed in the evidence that the muddemal rod showed to him in the evidence is not the same which was used in the crime. There was no any specific identification mark on the article seized vide spot and seizer panchnama. When the weapon was seized, the informant was in the hospital.

16. The spot panchnama was prepared, and the Investigating Officer seized a rod. On perusal of the spot panchnama at Exh. 21, it is seen that a person named Omprakash Mourya showed the spot of the incident to the police, as the informant was admitted to the hospital at the time. However, on examining the evidence of the informant and the contents of the FIR, it is clear that there is nothing on record to show that Omprakash Mourya was present at the time of the incident or that he witnessed the accused using the rod that was later seized by the police. As the informant was in the hospital when the spot panchnama was prepared, the authenticity of the panchnama and the seizure becomes doubtful. This doubt is further strengthened by the fact that, during cross-examination, the informant admitted that the weapon shown to him was not the same weapon used in the crime.

17. Therefore, there is a reasonable doubt regarding the involvement of the accused in the crime and the use of the seized weapon. There is also uncertainty as to how and by whom the alleged

weapon was shown to the police, and whether it was actually the weapon used in the incident. Since the informant failed to identify the weapon allegedly used in the crime, there is sufficient ground to question the legitimacy of the seizure.

18. In order to prove the injuries, the prosecution examined Dr. Yamgar (PW-4, Exh. 25) and Dr. Patil (PW-6, Exh. 38). It is seen that Dr. Yamgar issued medical certificates at Exh. 26 and 27, while Dr. Patil issued certificates at Exh. 39 and 40. On perusal of the medical certificates (Exh. 26, 27, 39, and 40), it is evident that the victims, Rahul and Nitin, sustained only simple injuries namely, contusions and abrasions. In the medical certificates at Exh. 26 and 27, there is no mention of any bleeding from the head of the informant, contrary to his testimony that blood was oozing from his head and had stained his clothes, the floor, and the car. If the injury was indeed so severe as to cause visible blood stains, such a detail should have been noted in the medical certificate, or at least an injury consistent with such bleeding should have been recorded. However, no such observation is made. Further, the certificate at Exh. 39 issued by Dr. Patil mentions nasal bleeding in the informant. However, the informant did not depose in his evidence that he suffered nasal bleeding. Thus, the medical certificate issued by the government doctor, Dr. Yamgar, and the one issued by Dr. Patil appear to contradict each other. This inconsistency raises serious doubt about the credibility of the medical certificates, particularly Exh. 39 and 40, which appear to have been prepared as an afterthought, possibly to falsely implicate the accused. Therefore, in light of these discrepancies, the testimony of the informant does not inspire confidence and cannot be considered trustworthy.

19. It has come in the evidence of Nitin (PW-3, Exh. 23) that on 05/07/2016 at about 8:00 p.m., accused Harshal came to the workshop

and started abusing Rahul. Accused Yash picked up a wiper rod and struck Rahul on the head, due to which blood started oozing from his head and nose. The witness further stated that he intervened and tried to resolve the matter. However, accused Anil assaulted him with fists and blows. He also stated that accused Harshal dragged the informant to the police station. On perusal of his evidence, it is seen that the testimony of Nitin is contrary to that of the informant. The informant did not state that he was hit on the nose with a wiper rod, nor did he mention that blood was oozing from his nose. The informant also did not state that accused Anil assaulted the witness, Nitin. Therefore, in view of the contradictions between the testimonies of the informant and the witness Nitin, the evidence of Nitin cannot be considered trustworthy.

20. It has come in the evidence of Sunil Shaha (PW-2, Exh. 20) that on 05/07/2016, he had visited the workshop. Omprakash Morya showed him the spot of the incident. The weapon was seized, and the spot panchnama (Exh. 21) was prepared. On perusal of the informant's evidence, it is observed that there is nothing on record to indicate that Omprakash Morya was present at the time of the incident. Therefore, there is a doubt as to whether the correct spot of the incident was shown to the police and whether the police actually seized the weapon used in the crime. Furthermore, the informant did not identify the weapon used in the offence. Hence, the spot panchnama does not inspire confidence and cannot be considered reliable.

21. It has come in the evidence of Swapnil PW No.7 Exh.42. It is seen that, he installed the CCTV Camera. He identified the DVD. He filed section 65 b certificate. It is seen that the certificate has to be filed by the person who is in the responsible person of the computer system. This witness who installed the CCTV is not in a responsible position to issue section 65 b certificate. The IO has not produced hash value

panchnama. The panchnama was not prepared during seizer of CCTV hard drive. On perusal of record, it is seen that the prosecution has not proved the CCTV footage as per the norms late down by Hon'ble Supreme Court. In **Kishan Tripathi @ Kishan Painter vs The State 2016 230 DLT CN 3 DB**, Hon'ble Delhi High Court laid down two tests. It is held that

“Per force, we must rule out any possibility of manipulation, fabrication or tampering. The hard-disk CCTV footage must pass the integrity test. It is a two fold test, system integrity and record integrity.”

22. In **Naresh S/O Samadhan Bhange (In Jail) vs The State Of Maharashtra**

2019 1 AIR Bom R Cri 787, held that

“How to prove electronic evidence is given in Sections 65-A and 65-B of the Indian Evidence Act. As per Section 65-A, the contents of electronic records may be proved in accordance with the provisions of Section 65-B. As per Section 65-B, if the printout etc prepared from the original electronic records, then there should be certificate about the genuineness. In fact, the printout of CCTV footage is not admissible in evidence.”

23. In **Vaijinath v. State of Maharashtra, 2019 SCC OnLine Bom 1357**, it is held that

“Whenever any electronic record of like nature is to be taken over, it is necessary for Police Officer to take the record under Section 65B of Evidence Act and seize it in presence of panch witnesses. The record like transcript of such record needs to be prepared by the Police Officer in presence of panch witnesses at the same time (See para 24 of the

Chapter VI of Criminal Manual). If subsequently, Police Officer wants to prepare transcript, then the same panch witnesses need to be used and in their presence material can be opened and transcript of the footage can be made. Invariably, such transcript needs to be prepared on the first occasion when material is to be seized by the Police. Such material is always necessary as the Court wants to go through the contents of CCTV footage, even at the time of consideration of bail application.

“While preparing compact disc(CD) in three copies mirror effect hash available on hard disc or hard drive as well as that on CD and pen drive be prepared so as to ruled out possibility of tampering at any stage. Whenever, the copies are required to be sent to the Court or to expert or when they are to be viewed or heard the proper procedure needs to be followed invariably and chain of the custody of all evidence transported to each and every authority be created and such record be preserved.”

24. Thus, it is clear that the prosecution has not followed the proper procedure to make the CCTV footage admissible in the evidence. Further section 65 B certificate was not also proved as per the provisions of the law. Therefore, the evidence of Swapnil Exh. 42 is not admissible.

25. It has come in the evidence of Shri Lature (PW-5, Exh. 27) that he conducted the investigation. He prepared the spot panchnama (Exh. 21) and also seized the alleged weapon from the spot of the incident. He further stated that he obtained a DVD containing CCTV footage and found evidence against the accused. However, on perusal of the investigation conducted by the Investigating Officer, it appears that the investigation was not carried out properly. The spot of the incident was shown by Omprakash Morya, whose presence at the scene is doubtful. It was he who also pointed out the weapon to the Investigating Officer. The Investigating Officer did not confront the informant or the

witnesses with the wiper rod after its seizure. As a result, during his testimony before the court, the informant did not identify the weapon allegedly used in the crime. Furthermore, the Investigating Officer failed to prepare a hash value panchnama of the DVD containing the CCTV footage. He also did not seize the blood-stained clothes of the informant, nor did he collect blood samples from the workshop floor or the car. Thus, it is evident that the Investigating Officer did not conduct a proper and thorough investigation.

26. In order to prove the defence, the accused examined a witness named Harshat Harhare (DW No.1, Exh. 51). In his evidence, he deposed that at about 1:00 p.m., he was at the workshop. As the car was not repaired in time, the accused took the informant to the police station. In the cross-examination, a question was asked to the witness, which is important to reproduce below.

“हे म्हणणे खरे नाही की, दि.०५/०७/२०१६ रोजी सकाळी १०:०० वाजताचे दरम्यान वाहन न मिळाल्याने फिर्यादी व आमच्यात बाचाबाची झाली व त्यामुळे मी नितीन यास शिवीगाळी करून मारहाण केली व माझा मित्र यश याने फिर्यादीच्या डोक्यास दोन फटके मारले व अनिल याने देखील नितीन यास हाता बुक्याने व तोंडावर फटके मारले व त्यानंतर आम्ही तेथून पळून गेलो.”

27. On perusal of the suggestions put forth by the learned APP to the witness, it clearly appears that no case was made out regarding the alleged beating of the informant with a wiper rod, injuries to the nose, or bleeding. It was the duty of the learned APP to cross-examine the witness called by the accused in a proper manner in order to test the credibility of said witness. The suggestions themselves indicate that the informant was not assaulted with a wiper rod. Therefore, it is evident that nothing has been brought on record to discredit the evidence of the witness produced

by the accused. Accordingly, the evidence of the said witness is found to be credible.

Conclusion

28. Prosecution has not proved essential ingredients of section 323 and 326. Further, the prosecution has not proved the abusive words and threatening. Thus, the reasonable doubt raised in favor of accused persons. The meaning of reasonable doubt has been defined by Hon'ble Supreme court in **Suresh Thipmappa Shetty Vs The State Of Maharashtra Criminal Appeal No. 1541 Of 2010 Date 26 July 2023.**

“Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”

29. Thus, considering the matter, the prosecution has miserably failed to prove the charges. Hence, I extend the benefit of reasonable doubt in favor of the accused and answer **point Nos. 1 to 4 in the negative.**

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State V/s
Harshal Rajendra Harhare & Ors.

Point no. 5 & 6

30. From evidence on record no offense is proved against the accused persons. Therefore, I answer point no.5 in the negative. Prosecution failed to prove the charges beyond reasonable doubt. Hence, the accused persons are entitled to get the benefit of doubt. The muddemal is worthless. Hence, it be destroyed after appeal period. I have already answer point no. 1 to 5 in the negative. Therefore, accused are liable to be acquittal. In the result and to answer point no. 6, I pass following.

ORDER

1. The accused no. 1 Harshal Rajendra Harhare, accused no.2 Yashraj Mahendra Wagh and accused no. 3. Anil Shekhar Sahani are hereby acquitted for the offence punishable under section 326, 323, 504, 506 r/w 34 of Indian Penal Code vide section 248 (1) of Code of Criminal Procedure Code, 1973.
2. Bail bonds of accused stands canceled.
3. Accused shall execute personal bond of Rs. 15000/- and furnish surety of like amount each in compliance of section 437 A of the Code of Criminal Procedure, 1973.

4. Seized muddemal wiper rod being worthless be destroyed after appeal period is over.

(Judgment dictated, delivered and pronounced in open court.)

Date –25/06/2025

Place – CBD Belapur

Sd/-

(Shri. O. A.Sane)

2ndJudicial Magistrate First Class,
CBD, Belapur, Navi Mumbai.