

CNR NO. MHSN170009332020	Received on : 14.07.2015
	Registered on : 14.07.2015
	Decided on : 15.11.2025
	Duration : Ys. Ms. Ds. 10 04 01

IN THE SESSIONS COURT, VITA, AT VITA
(Presided over by U.V. Indapure, Addl. Sessions Judge,)

CRIMINAL APPEAL No.40 OF 2024
(Old Cri. Appeal No. 118/2015)

Exh. No.

1. State of Maharashtra)
) **Appellant**
) (Ori. complainant)

VERSUS

1. Manoj Adinath Upadhye)
Age – 28 yrs. Occu.- Service)
R/o. Ashta, Tal. Walwa,) **Respondents**
Dist. Sangli.) (Ori. Accused)
)
2. Ravindra Mahaveer Awati)
(dead))

Appeal U/s.378 (1)(a) of the Code of Criminal Procedure.

For the Appellant : APP. Smt.V. K. Murchite
For the respondent : Adv. Shri. S. G. Mane

JUDGMENT

(Delivered on 15.11.2025)

The appellant has preferred this appeal against Judgment and order passed by Ld. Magistrate, Palus, in Regular Criminal Case No.102/2009 dt.11.02.2015 wherein Ld. Magistrate acquitted the accused for the offence punishable under sections 352,384,504 and 506 r.w. 34 of Indian Penal Code.

2. In brief, facts of the case of the prosecution are as under :-

On 06.06.2009 at about 2.30 p.m. in front of house of the informant at Ankalkhop incident took place. The accused persons in their common intention went to house of informant by motorcycle No.MH-10-D-8655 and demanded Rs.2,000/- from the informant. At that time, informant Suhas Patil told them that he has no money, then accused Ravindra Awati came towards him with the knife in his hand. The informant and other tried to convince accused persons but they were abusing and threatening them. Accused Manoj Upathye removed a sword put under the seat of motorcycle and proceeded towards Suhas, at that time the informant and his brother Sachin caught the accused. Someone called police. Police came and took them to police station as well as motor cycle and weapons. Thereafter the informant lodged complaint to Bhilawadi outpost.

3. On that basis FIR was lodged in Bhilwadi outpost which comes within the jurisdiction police station Palus. In the police station Palus Crime No.59/2009 came to be registered. API R. M. Bhosale investigated the crime and submitted charge-sheet against accused persons in the Court.

4. The Learned Magistrate framed charge of accused No.1 Manoj Upadhye below Exh.36 u/s. 352, 384, 504 and 506 r/w 34 of the I.P.C..Due to death of accused No.2 Ravindra Awati case is abated against him. The prosecution has adduced evidence of witnesses. Thereafter, considering evidence of the prosecution and submissions of both sides, the Learned Magistrate came to conclusion that, prosecution has failed to prove the guilt of the accused and accordingly acquitted accused for the offences pun. u/s.352, 384, 504, and 506 r/w 34 of I.P. C.

5. Being aggrieved prosecution/state has preferred this appeal against the impugned judgment and order of Ld. J.M.F.C. Palus on the ground that the judgment and order passed by learned Trial Court is against Law and contrary to evidence on record. The court wrongly comes to conclusion that there is delay for lodging FIR. The learned trial court wrongly considered minor contradictions as material in nature, while those contradictions are minor in nature do not affect on prosecution case. The learned trial court has not appreciated the

evidence of P.W. No.4 and wrongly considered evidence of related witnesses as interested witnesses. The learned trial court itself creates doubt as to recovery of the weapon. The learned Trial court wrongly considered that police have not recorded statement of independent witnesses. Hence, it is prayed, appeal be allowed setting aside judgment and order of learned Trial court and accused be punished by awarding maximum punishment of imprisonment and fine as provided by the Law.

6. After considering rival contentions following points arise in my determination. The points along with my findings thereon are as under -

Sr. No.	Points	Findings
1.	Does the prosecution prove that on 06.06.2009 at about 2.30 p.m. at Ankalkhop in front of house of the informant, accused No.1 Manoj Upadhye, in furtherance of common intention with deceased accused No.2 Ravindra Awati assaulted or used criminal force to the informant Suhas Patil and thereby committed an offence punishable u/s. 352 r.w. 34 of Indian Penal Code ?	In the negative.
2.	Does prosecution prove that, on the above date, time and place accused No.1 Manoj Upadhye, in furtherance of common intention with deceased accused No.2 Ravindra Awati, intentionally put informant in fear of an injury and thereby dishonestly induced him to deliver the property i.e. money and thereby committed an offence punishable u/s. 384	In the negative.

	r.w. 34 of Indian Penal Code ?	
3.	Does prosecution prove that, on the above date, time and place accused No.1 Manoj Upadhye, in furtherance of common intention with deceased accused No.2 Ravindra Awati, intentionally insulted informant Suhas Patil and thereby gave provocation to him intending or knowing to be likely that such provocation will cause him to break public peace or commit any other offence and thereby committed an offence punishable u/s. 504 r.w. 34 of Indian Penal Code ?	In the negative.
4.	Does prosecution prove that, on the above date, time and place accused No.1 Manoj Upadhye, in furtherance of common intention with deceased accused No.2 Ravindra Awati, committed criminal intimidation by threatening the informant Suhas Patil with injury to his person, with intend to cause alarm to him or cause to do an act which he is not legally bound to do or to abstain him from doing any act which he is legally bound to do and thereby committed an offence punishable u/s. 506 r.w.34 of Indian Penal Code ?	In the negative.
5.	Whether impugned Judgment and order need interference ?	No
6.	What order ?	As per final order.

REASONS

7. Learned APP Smt. V. K. Murchite for the appellant has submitted at length. It is submitted that prosecution has examined total six witnesses and proved the ingredients of the offences leveled against the accused. Accused No.1 was

acquainted to the informant. The accused admitted that two brothers of the informant were present at the time of incident. The defence has not brought anything which is fatal to the case of prosecution. The prosecution has proved the offences leveled against the accused by adducing corroborative evidence on record. The learned trial court has not properly appreciated and assessed evidence and came to wrong conclusion, therefore the judgment and order passed by learned magistrate need to be set aside by allowing the appeal.

8. On the other side learned advocate Shri. S.G.Mane for the accused has submitted that, the learned trial court has come to right conclusion as the prosecution failed to prove the offences charged against the accused beyond reasonable doubt. The offence punishable under the Arms Act is not leveled against the accused, therefore it is doubtful to consider that accused was having sword with him. Learned Advocate has prayed to dismiss the appeal.

AS TO POINT NO. 1 TO 5.

9. In order to avoid repetition and points are interlinked with each other, hence taken together for consideration.

10. Suhas (PW-1) has deposed on 06.06.2009 at 2.30 a.m. he sat outside of his house, at that time both accused came there

and accused Manoj asked handloan of Rs.2,000/-. He asked him to repay amount of Rs.8,000/- which was given at the time doing work with him. On that count both accused threatened and accused Ravindra Awati came on his person with a knife. Thereafter, Manoj Upadhye came on his person with sword. The informant and other caught both of them and thereafter police took them to police station. In the cross-examination, he has admitted various persons were gathered on the spot of incident. Accused was not working with him on 06.06.2009. He had given all documents about his work of distributor to the police. He was maintaining record of his work of distribution. When he was giving handloan, he was keeping written record of it. The incident lasted for one hour. The distance between Ankalkhop to Bhilwadi is 2 k.m..

11. Satish (PW-2) is the panch witness, who has stated that in front of house of Suhash Patil crowd was gathered, he went to see what was happened. Police prepared panchanama of that spot and he signed it. The prosecution proved spot panchanama by way of evidence of this witness. In the cross examination, he has admitted, he knows Suhas Patil and he is his relative. He does not know whether accused and Suhas Patil working together.

12. Satish Sarjerao Patil (PW-3) has deposed, police seized one button knife and sharp sword, motorcycle of Hero-Honda

Company in his presence and prepared seizure panchanama. In the cross-examination, he has admitted his house is in same lane in which house of Suhas Patil is situated. There are many Patil families in village Ankalkhop and Suhas Patil is his relative, being relative they help each other. The panchanama was prepared during 4.40 p.m. to 5.10 p.m.

13. Avinash (PW-4) has deposed, in the year 2009-10 in the afternoon, there was incident of fight between Upadhye, Suhas Patil and one Awati at Zenda Chowk, Ankalkhop. He went away and again returned after 15 minutes. He saw knife in the hand of Awati and snatched it from his hand. They took Awati, Upadhye and Suhas Patil to police station. Police came on the spot. Suhas Patil, his brother Sachin Patil and other persons beat Awati. In the cross-examination conducted by prosecution, the witness is supported to the case of prosecution but again he is supported to the defence by admitting that being brother, he himself and the informant helped each other in difficult time.

14. Vithal (PW-5) has deposed after getting information on phone from unknown person, he himself and police Naik Yadav went to Ankalkhop. Two persons were caught by the mob. One of them was Ravindra Awati who was having knife with him and another one was Manoj who was having sword in his hand. They took both the accused with motorcycle at police station. he handed over knife, sword and motorcycle to the investigating

officer. In the cross-examination, he is unable to tell exact timing when seizure panchanama was prepared. He did not remember whether entry was taken in the station diary regarding the phone call. He has admitted, after preparing arrest panchanama accused is to be arrested. He did not know who had given intimation about preliminary report to the I.O. Seizure panchanama prepared by I.O. on the spot of incident.

15. Ramesh (PW-6) Investigating Officer has deposed about investigation. He has deposed, after getting investigation of the crime, he prepared spot panchanama. Police constable Patil had produced the motorcycle and weapons taken into custody. At Bhilwadi outpost those things were seized and panchanama was prepared. In the cross-examination he admitted, he did not collect documents during investigation showing that informant is authorised distributor of Idea Mobile. He did not investigate whether accused is liable to pay Rs.8,000/- to the informant. The spot of incident is near main chowk in Ankalkhop and people passed frequently from that spot. I.O. has stated, if any information is given by unknown person by phone about happening of any incident, the police leave immediately and after returning take entry of it.

16. The prosecution has adduced evidence of aforesaid 6 witnesses. If we considered evidence of the informant Suhas, it transpires on the count of demand of money given to accused

Manoj, incident took place. It is boundan duty of the I.O. to collect evidence whether accused Manoj was liable to pay handloan amount to the informant. Moreover, it is duty of the informant to give documents available with him to show that accused Manoj was working with him and he had given handloan to accused Manoj. The material admission of I.O. about not collecting documents of informant in respect of his distributorship of Idea Mobile and about working of accused Manoj with him, creates doubts about the proper investigation. Here it is to be stated that, there should be an intention or motive of accused persons to commit an offence. Due to lack of evidence regarding doing job of accused Manoj with the informant and about giving handloan to the accused, it cannot be held that there was an intention of accused to commit an offence.

17. Witness Avinash has not deposed in the examination in chief that both accused came on the person of informant with weapons. He deposed that he saw knife in the hand of Awati and snatched from his hand. They took both accused and Suhas Patil to police station. This testimony of witness Avinash is contrary to the testimony of the informant. The prosecution has conducted cross examination of this witness and the witness has stated about the incident and corroborated to the evidence of the informant. The prosecution has not challenged in his cross-examination that the informant, his brother Sachin and other

persons beat Awati. In the cross-examination conducted by the defence, he has admitted being brothers, the informant and he himself were helping each other in difficult time. If the evidence of this witness is considered minutely, he is helping to prosecution when cross conducted by prosecution and helping to defence in the cross-examination of the defence, therefore the testimony of witness Avinash is not acceptable and reliable.

18. From the complaint, it seems FIR lodged on 04.05 p.m. on 06.06.2009 and the incident took place at 2.30 p.m. The informant has admitted that the distance between Ankalkhop to Bhilawadi outpost is 2 k.m. and 5 to 10 minutes required to go to Bhilwadi outpost. Witness Vithal reached on spot within 10 to 15 minutes after getting information and thereafter, police took both accused to police station, Palus. This fact clearly shows that there is delay to lodge FIR, which is not explained satisfactorily by the informant.

19. So far as seizure panchanama is concerned, witness Vithal has admitted seizure panchanamaa was prepared by I.O. on the spot of incident. On the otherside the I.O. has stated at Bhilawadi outpost weapons were seized and panchanama was prepared. Witness Vithal and I.O. have stated different place of seizure of muddemal, therefore doubt creates about the preparing seizure panchanama.

20. According to the case of prosecution, the informant and his brother caught accused persons and unknown person informed the police about the incident. The police reached on the spot within 10 to 15 minutes, then is it possible that a persons holding weapons in their hands kept as it is till arrival of the police. 25 to 30 persons were gathered on the spot, but none of them tried to snatch weapons from the hands of accused. Thus, this story of the prosecution is not at all acceptable.

21. The I.O. has not recorded statements of independent witnesses though available on the spot. The panch witness Satish Balasaheb Patil and Satish Sarjerao Patil are relatives of informant Suhas Patil and being relatives, they are helping to case of prosecution. Witness Satish Balsaheb Patil has no knowledge whether accused was working with the informant and witness Satish Sarjerao Patil is unable to tell length and width of the knife and sword. If the muddemal seized in presence of panch witness, then he is in a position to tell description of seized articles. As the panch witnesses are relatives of the informant, therefore they are supporting to the informant. In these facts and circumstances, it is not safe to rely on their evidence.

22. Witness Avinash who is resident in same lane of the informant, has told that he snatched knife from the hand of

Awati, they took Awati, Upadhye and Suhas Patil to police station. He has also stated that Suhas Patil, his brother Sachin Patil and others beat Awati. The informant has not stated said facts in his evidence. Though witness Avinash has admitted in cross-examination of the prosecution about the incident but he has specifically denied that Manoj Upadhye took out sword which was kept below the seat of motorcycle. The evidence of Avinash is not corroborated to the evidence of informant that Manoj Upadhye came on the person of informant with sword. There are material contradictions in the evidence of informant and Avinash about taking the accused to police station. If witness Avinash was present on spot then his evidence ought to be corroborated to the evidence of informant.

23. Thus, the overall evidence of prosecution does not inspire confidence to rely on their testimony, because both panch witnesses, witness Avinash are relatives and helping to the informant. witness Vithal and I.O. have stated different places of preparing seizure panchanama.

24. The prosecution tried to prove that an incident took place as alleged in the complaint, but the investigating officer has not investigated material fact about the liability of accused to repay money to the informant. The prosecution has failed to prove the intention of accused to commit an offence. The prosecution has also failed to prove the charges leveled against

accused beyond all reasonable doubt, therefore, it would be appropriate to give benefit of doubt to the accused.

25. The learned Trial Court has properly appreciated the evidence of prosecution witnesses and came to right conclusion. Hence, there is no need to interfere in the judgment and order passed by learned Trial Court.

26. In view of above discussion, I accept submission of learned Advocate for respondent and answer points Nos.1 to 4 in the negative, point No.5 as above and in answer to point No.6, I pass the following order :-

ORDER

1. Cri. Appeal No.40/2024 is dismissed.
2. Impugned Judgment and order dt. 11.02.2015 passed in Reg. Cri. Case No.102/2009 by Ld. J.M.F.C., Palus, Dist.Sangli is hereby confirmed.
3. The Bail bonds stand cancelled.
4. Accused shall furnish P.R. Bond of Rs.20,000/- and surety bond in the like amount for the compliance of provisions of Section 437-A of the Code of Criminal Procedure.
5. Original record and proceeding of RCC No.102/2009 shall be sent back to the learned Trial Court.
6. Copy of Judgment and order of this Criminal Appeal be sent to learned Trial Court, Palus for information.

7. R and P be sent to learned Trial Court, Palus.
8. Cri. Appeal No.40/2024 is disposed of accordingly.

(Dictated and pronounced in open court)

Vita
dt.15.11.2025

(U. V. Indapure)
Additional Sessions Judge,
Vita.

CERTIFICATE

I affirm that, the contents of this P.D.F. file, are same word to word, as per the original order.

Name of Stenographer	: A. B. Kamble (Steno Grade-I)
Court	: Addl. Sessions Judge, Vita
Date of order	: 15.11.2025
Signed by Presiding officer on	: 24.11.2025
Uploaded on	: 24.11.2025