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Duration :- 09 Y. 11 M. 07 D.
Exh. :- 19

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
RAILWAY MOBILE COURT, ANDHERI, MUMBAI.**

(PRESIDED OVER BY IMRAN R. MARCHIYA)

(JUDGMENT U/SEC. 355 OF CODE OF CRIMINAL PROCEDURE)

- (a) The serial No. of the case; : 1221/PW/2011
- (b) The date of commission of the offence; : 25/11/2010
- (c) The name of the complainant (if any); : The State (Andheri Railway Police Station in C. R. No. 91/2010).
- (d) The name of the accused person and his parentage and residence; : Amit Vithhalrao Shirsat,
Age :- 37 Years, Occ. :- Advocate.
R/o. Room No. 16, Plot No. 208,
209, Sector – 10, Vashi, Navi
Mumbai.
- (e) The offence complained of or proved ; : Under Sections 324 and 504 of the
Indian Penal Code.
- (f) The plea of the accused and his examination (if any); : The accused pleaded not guilty.
- (g) The final order; : The accused is convicted for the
offence punishable under section
323 of the Indian Penal Code and

acquitted for the offences punishable under sections 324 and 504 of the Indian Penal Code.

(h) The date of such order; : 09/04/2021

Mr. Gosavi, APP for the State.
Mr. M. R. Ranganekar, Advocate for the accused.

J U D G M E N T
(Delivered on 09/04/2021)

1] The accused is prosecuted for the offences punishable under Sections 324 and 504 of the Indian Penal Code.

2] In brief, it is the case of the prosecution that the informant Mahesh Patil is a Police Head Constable. In morning of 25/11/2010 the informant had gone to Goregaon for his personal work. On that day at about 12.06 hours the informant caught Churchgate slow local train from Goregaon Station for going to his duty at Churchgate. The informant was travelling in second class compartment by standing in gangway. At about 12.15 hours said local train reached at Andheri Station. When passengers were getting down at Andheri Station, in crowd one passenger gave push to the informant and made him to get down on platform. Due to which argument took place between the informant and that passenger. Thereafter said passenger gave blow of one hard object towards left side of head of the informant. Due to which the informant became giddy. The informant sustained bleeding injury to his head. The passenger also hurled abuses against the informant. Meanwhile on duty police came there and they took the informant and said passenger to police station. On inquiry in police station said passenger stated his name as Amit

Vitthalrao Shirsath (hereinafter referred as 'the accused'). During treatment three stitches were applied to the head injury of the informant. In Cooper hospital the informant gave report of the incident to police.

3] On the basis of the report given by the informant, crime no. 91/2010 came to be registered against the accused. The accused came to be arrested. P.S.I. Babasaheb Bansode conducted investigation of the crime. He recorded statement of witnesses and collected injury report of the informant. After completion of investigation, he filed charge-sheet.

4] My learned predecessor framed charge against the accused for the above mentioned offences. The accused pleaded not guilty and claimed to be tried. The prosecution has examined three witnesses. The statement of the accused under Section 313 of the Code of Criminal Procedure came to be recorded at Exh.11. The defence of the accused is that of denial.

5] The points for determination alongwith my findings thereon are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1] Does the prosecution prove that the accused voluntarily caused hurt to the informant by means of dangerous weapon ?	Yes, but not by dangerous weapon.
2] Does the prosecution prove that the accused intentionally insulted the informant with intent to provoke breach of the peace ?	No.
3] What order ?	The accused is convicted as per final order.

REASONS

6] The prosecution has examined three witnesses to prove guilt of the accused and they are the informant Mahesh Patil (P.W.1) (Exh.5), Dr. Parag Adkar (P.W.2)(Exh.7) and I.O. API Baba Bansode (P.W.3) (Exh.9). The F.I.R. of the crime is at Exh.6. In support of his defence the accused has examined himself at Exh.15.

AS TO POINT NO. 1 :-

7] The informant Mahesh Patil (P.W.1) deposes at Exh. P-05 that the incident took place on 25/11/2010 at about 12.00 to 12.15 p.m. at platform of Andheri railway station. At that time he was Police Head Constable and was posted at C.B.I., B.S. and F.C., Mumbai. At the time of the incident he was going from Goregaon to Churchgate by local train and was travelling in second class compartment. At the time of the incident one passenger gave push to him and he made him to go forward. He stopped on the gate of the local train and hold the bar situated on the gate of the local train. Said passenger alighted at platform of Andheri railway station and he pulled him by holding his bag which was on his person and he pulled him on the platform. Due to which he fell down on the platform. Said person started to beat him. He also assaulted on his head by means of some hard object. In the incident he sustained bleeding injury to his head. His clothes were stained with blood. The police came there. They apprehended said passenger. They took him and said passenger to police station. He was not fully conscious. The police referred him to Cooper hospital for medical treatment. During treatment three stitches were put on his head. He lodged F.I.R. (Exh. P-06) against the said passenger in police station. He can identify the said passenger. The accused is said passenger.

8] In order to prove that in the incident the informant sustained injury to his head, the prosecution has examined Dr. Parag Adkar (P.W.2). He deposes at Exh. P-07 that in December – 2010 he was working as Surgical Registrar at Dr. R. N. Cooper Hospital, Juhu, Mumbai. On 25/11/2010 he examined one patient by name Mahesh Vasant Patil. As per history given by the patient there was head injury due to assault. On medical examination of the patient he found one injury of CLW 2 X 0.5 X 0.5 c.m. on left frontal scalp. The injury was fresh and simple. The injury was possible due to blunt force. On the basis of his medical examination he issued injury report (Exh. P-08).

9] The learned A.P.P. argued that the evidence of the informant is supported by medical evidence. The evidence of the informant and medical officer establishes that in the incident the informant sustained bleeding injury to his head. The informant and the accused were not knowing to each other prior to the incident. There was no any reason for the informant to lodge false report against the accused. The evidence of the prosecution witnesses is consistent and trustworthy. The evidence on record is sufficient to prove guilt of the accused. Hence, the accused may be convicted.

10] Per contra, the learned advocate of the accused argued that no any incident took place as stated by the informant. The informant himself beat the accused. The informant sustained head injury because his head hit to rod of the gate of railway compartment when he was getting down at platform in the rush. Dr. Parag Adkar (P.W.2) has also admitted in his cross examination that the injury is possible if head of any person is hit on the middle rod of the railway compartment while getting down from the train in rush. Though the alleged incident took place on railway platform, the prosecution did not examined any independent witness. The prosecution also did not produced CCTV footage of the platform. I.O. also did not collected the alleged blood stained clothes of the informant. All these facts shows that no any incident

took place as alleged by the prosecution. The evidence on record is not trustworthy. The prosecution failed to prove guilt of the accused. Hence, the accused may be acquitted. In support of his argument the learned advocate of the accused cited following decisions :-

1. **Puneet Dalmiya Vs. Central Bureau of Investigation, Hyderabad (2020 CRI.L.J.1034).**
2. **Krishnegowda and others Vs. State of Karnataka (MANU /SC/ 0321/ 2017),** in which the Hon'ble Supreme Court observed that once there is clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear latches in investigation, then the benefit of doubt has to go to the accused.
3. **Rajesh Gulabrao Lihitkar Vs. State of Maharashtra (1995 CRI.L.J. 4063),** in this case the Hon'ble High Court set aside the order of conviction of the accused for the offence punishable under Section 324 of the Indian Penal Code and acquitted the accused by observing that sole testimony of the complainant that he sustained injuries at the hands of the accused is not corroborated and guilt of the accused is not proved beyond reasonable doubt.
4. **Rajesh and others Vs. State of Haryana (MANU/SC/0818/2020),** in this case the Hon'ble Supreme Court set aside the judgment of conviction passed against the accused by the Hon'ble Sessions Court and confirmed by Hon'ble High Court for the offence punishable under Section 302 of the Indian Penal Code by holding that the prosecution failed to establish its case beyond reasonable doubt.
5. **Suraj Mal Vs. The State (Delhi Administration) (AIR 1979 S.C. 1408),** in which Hon'ble Supreme Court held that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes

unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

6. **Sarwan Sing Rattan Sing Vs. State of Punjab (AIR 1957 SC 637)**, in which Hon'ble Supreme Court held that every person who is a competent witness is not a reliable witness and test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is considered by criminal courts.
7. **Gayanand Yadav and others Vs. State of Bihar (2009 CRI.L.J. 1816)**, in this case the Hon'ble Patna High Court observed that evidence of the informant is not compatible with evidence of other witnesses. The prosecution appears to have not come up with true version of occurrence. Non – explanation of injuries sustained by accused persons are fatal to prosecution. Therefore the accused persons are entitled to benefit of doubt.
8. **Dhoorat Singh Vs. State of UP (2008 CRI L.J. 2353)**, in this case the Hon'ble Uttaranchal High Court observed that solitary evidence of the complainant is not cogent and reliable and it is self contradictory with statement made in F.I.R. and therefore, order of conviction was not justified.
9. **Varis Ali Vs. State of Rajasthan (1992 CRI L.J. 1249)**, in this case there was identification of the accused was only from voice and therefore considering the facts of the case the Hon'ble Rajasthan High Court held that the evidence adduced by the prosecution is not sufficient to prove guilt of accused beyond doubt.

11] I have gone through the evidence of the informant and Dr. Parag Adkar (P.W.2). The evidence of the informant that at the time of the incident he sustained injury to his head and during treatment three stitches were put to

his head injury, has not been denied by the defence side. In his evidence Dr. Parag Adkar (P.W.2) stated that there was bleeding injury to the patient. His evidence is also not denied by the defence side. The defence side only tried to bring on record that the injury was possible if during rush any person's head is hit to the middle rod of the door of the train. So the evidence of the informant and Dr. Parag Adkar (P.W.2) establishes that at the time of the incident the informant sustained bleeding injury to his head. Now the question that remains to be considered whether the accused caused injury to the informant or not.

12] The evidence of I.O. API Baba Bansode (P.W.3) is very formal in nature. He deposes at Exh. P-09 that on 25/11/2010 he was posted at police station Andheri as PSI and he was working in crime detection branch. On 25/11/2010 one crime no. 91/2010 for the offences punishable under Sections 324 and 504 of the Indian Penal Code was registered against the accused on the basis of the F.I.R. given by the informant Mahesh Patil. On the same day in evening investigation of the crime was assigned to him. He recorded statement of two witnesses. He collected injury report. After completion of investigation he filed charge-sheet.

13] In his defence the accused has examined himself. He deposes at Exh.15 that on 25/11/2010 he had been to M.M. 43rd Court, Borivali. At about 11.30 a.m. he caught a train from Borivali station for coming to Andheri. He was travelling in second class compartment and it was full. At the time of alighting at Andheri Station there were many persons standing on gate of the compartment of train. One person was standing near the gate and he was holding the gate and he was not getting down. Said passenger was not giving space to other passenger to get down at station. The passengers were giving push to other passengers. Said passenger was also pushed by somebody and thereafter he started to beat the passengers and he was questioning the

passengers as to why they are giving push to him ? That passenger also beat him. He asked that passenger as you are beating me and others ? He replied him that he is a police constable and he know where to stand. That passenger was arguing with him and other 4 – 5 passengers. Thereafter said passenger alighted at the station and told the passengers as to how they can give push to him. In argument said passenger hurled abuses against him and other passengers. Said passenger also started to beat him. He told him that he is also an advocate and he know everything. He had sustained injury at that time. Some boys in khaki uniform took him to police station on the say of that passenger / informant. In police station the informant realized that there is some injury at backside of his head. The police took him to Cooper hospital. He also went to hospital as he was injured. He was not medically examined by the doctor. At about 7.30 p.m. he was taken to police station. Two brothers of the informant came in police station and they asked him whether you have beat the informant ? His answer was no. Thereafter he obtained bail from night duty Magistrate. The brothers of the informant had checked his fingers and pocket to see whether there was any weapon.

14] There is only evidence of the informant on the point of the incident. Therefore, I have carefully scrutinized his evidence. The evidence of the informant is corroborated by the contents of the F.I.R. (Exh.6) lodged by him. The learned advocate of the accused cross examined the informant at length, but nothing could be brought on record to disbelieve his evidence. So far as defence of the accused is concern, it is in two parts. The first part is from the evidence of the informant till the statement of the accused recorded under section 313 of the Code of Criminal Procedure. The second part of the defence is during evidence of the accused at the stage of final argument. Record shows that till his statement under section 313 of the Code of Criminal Procedure, the defence of the accused was of simple denial. During cross

examination of the informant it was the defence of the accused that the informant sustained injury as his head hit to the middle rod of gate of railway compartment when he was getting down from the local train and he lodged F.I.R. against the accused only on suspicion. During his statement under 313 of the Code of Criminal Procedure recorded at Exh.11 when the question was asked to the accused as to why prosecution witnesses have deposed against him, his answer was he don't know the real reason.

15] Record shows that at the time of evidence of the informant, the accused was absent and it was submission of his advocate that he will not dispute the identity of the accused. However, when at the time of final argument the learned advocate started denying identity of the accused, the court passed the order on Exh.1 and recalled the informant under section 311 of the Code of Criminal Procedure on the point of identification of the accused. In his re-examination the informant only stated that he can identify the passenger who beat him and the accused is said passenger. The learned advocate of the accused also cross examined the informant after his re-examination. Record shows that thereafter the accused started to change and improve his defence. The accused filed an application for permission to record his further statement under section 313 of the Code of Criminal Procedure on the point of the re-examination of the informant. Considering the re-examination of the informant, the court recorded additional statement of the accused. In his additional statement the accused submitted that he wants to examine himself. Accordingly the court recorded his evidence. At the time of original statement under section 313 of the Code of Criminal Procedure it was the stand of the accused that he does not want to examine himself or any defence witness. In his evidence the accused stated that the informant himself beat him and other passengers and he (the accused) sustained injury. I have considered the evidence of the accused. Except bare words of the accused,

there is nothing on record to substantiate his defence. At the time of final argument the accused produced one NC report dated 25/11/2010 filed against the informant for the offences punishable under Sections 323, 504 and 506 of the Indian Penal Code. The accused did not produced said NC report before the stage of final argument. The NC report filed by the accused is not proved and accordingly not exhibited. Further, even if it is considered that the accused also filed NC report against the informant, that does not mean that the F.I.R. lodged by the informant is false. The defence side has nowhere explained as to why till the re-examination of the informant they did not came with the defence that the informant beat the accused and the accused sustained injury in the incident. Moreover, had this been the factual position, the accused would have immediately approached to higher police authorities and he would have got examined himself from any private doctor. The accused is not a layman. He is an advocate. In this case the accused did not approached the higher police authorities, he did not produced any evidence to show that he sustained any injury and he also did not filed any complaint case against the informant. Therefore, the evidence of the accused seems to be afterthought. Considering all these discussion, I do not find the evidence of the accused as convincing and reliable.

16] I have given due consideration to the submission of learned advocate for the accused. He submitted that in his evidence the informant has stated that the passenger pulled him by holding his bag and due to which he fell down on the platform and the passenger beat him when he fell down. According to the learned advocate of the accused these facts are not mentioned in the F.I.R. and it shows that evidence of the informant is not trustworthy. I have gone through the evidence of the informant. In his cross-examination, the informant stated that police might have written his statement in short, therefore, said sentences are not written in F.I.R. It is well settled that F.I.R. is

not supposed to be an encyclopedia of events. The fact that minute details are not mentioned in F.I.R. should not be taken to mean the non-existence of fact stated. It is the specific allegation in F.I.R. that the passenger made the informant to alight at platform and thereafter he beat him. So the informant has not made any contradictory or new statement in his evidence. He has only stated the incident in detail. Therefore I find no force in the above submission of learned advocate of the accused. The learned advocate of the accused also argued that during investigation I.O. neither seized the alleged blood stain clothes of the informant nor he seized the alleged weapon used by the accused. I.O. also did not seized the CCTV footage of the platform. Admittedly, in this case I.O. did not seized anything. It is well settled that mere laches on the part of investigation officer cannot be a ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the investigation officer. Considering said well settled principle the evidence of the prosecution witnesses cannot be disbelieved only because the investigation officer did not seized the blood stain clothes of victim and weapon of offence. Further, there is no cross examination of I.O. API Baba Bansode (P.W.3) on the point of weapon of offence and CCTV footage. In his cross examination no any opportunity was given to I.O. by the defence side to explain anything on the point of non seizure of weapon of offence and CCTV footage. Therefore, I do not find the submission of learned advocate of the accused as considerable.

17] The learned advocate of the accused further argued that it is the specific defence of the accused that head of the informant hit to the middle rod of the gate of local railway compartment when he was getting down at the platform and due to which he sustained injury. Dr. Parag Adkar (P.W.2) has also admitted that the injury mentioned in the injury report (Exh.8) is possible in that way. I have considered the submissions of learned advocate of the accused and also the evidence of medical officer. Any particular injury may be

possible by many alternate possible ways. If medical officer has admitted that the injury sustained by the patient was possible by the particular alternate possible way, that does not mean that the patient sustained injury in that alternate possible way only. In this case it is the specific evidence of the informant that the accused assaulted on his head by means of some hard object and due to which he sustained bleeding injury to his head. Therefore, I do not find force in the submission of the learned advocate of the accused that the informant sustained injury only because his head hit to the middle rod of railway compartment. The learned advocate of the accused also argued that though the alleged incident took place on busy railway platform, the prosecution has not examined any independent witness and it shows that no any incident took place as alleged by the prosecution. In a city like Mumbai everybody is busy in his or her life. It is very common experience that many persons witnesses the incident which took place on railway station, but nobody has time to visit police station to be a police witness in the matter of unknown person. Further, it is very obvious that nobody will wait till police come there to inquire with him or her. Therefore, not recording statement of any independent witness by I.O. is very natural in this case.

18] I have respectfully gone through all the above decisions cited by the learned advocate of the accused. The above first judgment is regarding personal attendance of the accused during trial, which is not at all relevant for the decision of this case. The above sixth judgment is regarding creditability of evidence of approver, which is also not relevant to his case. In other cases considering the evidence on record, the Hon'ble Supreme Court and the Hon'ble High Courts did not found the accused as guilty. In criminal cases it is for the court to appreciate the evidence of prosecution witnesses. In one case ten witnesses may not be sufficient to prove guilt of the accused, but in other case sole testimony of the victim may be sufficient to prove guilt of the

accused. The facts and circumstances of the above cited decisions are all together different from the present case. Therefore, the above cited decisions are not helpful for the accused.

19] In this case the informant has stated that the accused beat on his head by some hard object and caused bleeding injury to his head. The evidence of the informant is supported by the medical evidence. As stated above, it is admitted that at the time of the incident the informant sustained injury to his head. Nothing could be brought on record by the defence side to create doubt about the evidence of the informant. The first part of the defence of the accused is that the informant lodged F.I.R. against him on suspicious. However, I do not find it convincing and believable that the informant lodged false F.I.R. against a innocent person only on suspicion and he reiterated same allegations in his evidence after about 8 years of the incident. The second part of defence of the accused is also not convincing and believable as discussed above. I find the evidence of the informant as fully trustworthy and dependable. The evidence of the informant without any doubt establishes that the accused caused hurt to him by beating him. Admittedly, no weapon came to be seized during investigation. The evidence of the informant also shows that he is not sure that which weapon was used by the accused at the time of the incident. Therefore, it cannot be said that the accused caused hurt to the informant by means of dangerous weapon. The evidence on record establishes that the accused voluntarily caused hurt to the informant by beating him, which is punishable under section 323 of the Indian Penal Code. As per section 222 (2) of the Code of Criminal Procedure, when a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. In this case, though the accused is charged for the offence punishable under Section 324 of the Indian Penal Code, the evidence on record establishes that

he has committed an offence of voluntarily causing hurt to the informant punishable under section 323 of the Indian Penal Code. Hence, I answer point no.1 accordingly.

AS TO POINT NO. 2:

20] The evidence of the informant is silent on this point. The informant has not stated that the accused hurled abuses against him or intentionally insulted him. There is no evidence at all on record to show that the accused intentionally insulted the informant. Hence, I answer point no.2 in the negative.

AS TO POINT NO. 3:

21] The prosecution has established guilt of the accused for the offence punishable under Section 323 of the Indian Penal Code. The prosecution failed to prove guilt of the accused for the offences punishable under Sections 324 and 504 of the Indian Penal Code. Hence, the accused is liable to be convicted of the offence punishable under Section 323 of the Indian Penal Code. Here I stop to hear the accused on the point of sentence.

22] The accused submitted that leniency may be shown while giving punishment. The learned advocate of the accused also prayed for leniency. I have considered the submissions of the accused and his advocate. The accused has no repentance. Therefore, considering the offence committed by the accused, I am not inclined to extend the benefit of the Probation of Offenders Act to the accused. Considering the offence committed by the accused, I am of the view that the accused should be sentenced to suffer rigorous imprisonment for three months in respect of the offence punishable under Section 323 of the

Indian Penal Code. While punishing the accused the victim of the incident cannot be ignored. He should be adequately compensated. In my view, it would be just and proper if the accused is ordered to pay the amount of Rs. 5,000/- for being paid to the informant as compensation. In the result, in answer to point no.3, I pass the following order.

ORDER

- 1) The accused is convicted for the offence punishable under section 323 of the Indian Penal Code vide Section 248(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for three months.
- 2) The accused is acquitted for the offences punishable under sections 324 and 504 of the Indian Penal Code vide Section 248 (1) of the Code of Criminal Procedure.
- 3) The accused shall deposit Rs.5,000/- as compensation for being paid to the informant Mahesh Vasant Patil vide section 357(3) of the Code of Criminal Procedure.
- 4) The accused shall surrender to his bail bonds.
- 5) Copy of the judgment be given to the accused immediately free of cost.

sd/-

Place :- Mumbai.
Date :- 09/04/2021.

(Imran R. Marchiya)
Metropolitan Magistrate,
Railway Mobile Court, Andheri, Mumbai.

Dictated On :- 09/04/2021

Transcribed On :- 09/04/2021

Checked and Signed On :- 09/04/2021