

MHJN010028512023



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Decided on 25-04-2025

Duration 01Y: 07M: 05D

Exh.

Part 'A'

IN THE COURT OF ADDL. SESSIONS JUDGE, JALNA

Present : A.G.Joshi, Additional Sessions Judge

[Date of judgment : 25/04/2025]

Sessions Case No.280 of 2023

(Crime No.461/2023, Police station Sadar Bazar, Jalna
Dist.Jalna)

Prosecution	:	The State Of Maharashtra,
Represented By	:	Smt.J.B.Solanke, APP for the State.
		Versus
Accused	:	1. Shivraj alias Shiva Gulabsing Bhurewal, Age: 19 years, R/o: In front of Pushkar Hospital Kalikurti, Jalna 3. Yash Rajesh Pahadiya, Age: 22 years, R/o: Near Mission Hospital, Jalna

Represented by	:	Mr.S.M.Chate Advocate for accused No.1 and Mr.M.S.Raut, Advocate for accused No.3
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Part-B

Date of Offence	04.06.2023
Date of FIR	04.06.2023
Date of Charge-sheet	30.08.2024
Date of Framing of Charges	09.07.2024
Date of commencement of evidence	14.10.2024
Date on which judgment is reserved	25.04.2025
Date of the Judgment	25.04.2025
Date of the Sentencing Order, if any	Nil.

Accused Details

Name & Rank of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Benefit of Section 428, Cr.PC.
1. Shivraj alias Shiva Gulabsing Bhurewal	05.06.23	U.T.P	U/s.307 326, 323, 504, 506 r/w sec.34 of IPC	Acquitted	--	--
3. Yash Rajesh Pahadiya	05.06.23	21.06.23	U/s.307 326, 323, 504, 506 r/w sec.34 of IPC	Acquitted	--	--

Part 'C'

(List of Prosecution/Defence/Court Witnesses)

A. Prosecution :

Rank	Name	Nature of evidence
PW-1	Musharaf Mazhar Khan	Informant
PW-2	Manoj Maruti Dahale	Spot and seizure panch
PW-3	Anil Bapurao Gaikwad	Seizure panch
PW-4	Sunil Harichandra Yadav	Panch witness
PW-5	Dr.Govind Eknath Patil	Medical Officer
PW-6	Police Constable Anil Gangadhar Kakde	Muddemal carrier
PW-7	P.H.C. B.No.939 Damu Kashinath Pawar	Muddemal carrier
PW-8	P.S.I. Nitin Khushalsing Kakarwal	Investigating Officer
PW-9	Shaikh Arbaj Shaikh Nawab	Injured

B. Defence Witnesses, if any :

Rank	Name	Nature of evidence
Nil	Nil	Nil

C. Court witnesses, if any :

Rank	Name	Nature of evidence
Nil	Nil	Nil

List of Prosecution/Defence/Court Exhibits**A. Prosecution :**

Sr.No.	Exhibit Number	Description
1.	Exh-P1/PW1	Report

2.	Exh-P2/PW1	Printed F.I.R.
3.	Exh-P3/PW2	Written order
4.	Exh-P4/PW2	Spot panchnama
5.	Exh-P5/PW2	Seizure panchnama of clothes of injured
6.	Exh-P6/PW2	Seizure panchnama of clothes of accused
7.	Exh-P7/PW3	Letter dated 06.06.2023
8.	Exh-P8/PW3	Memorandum panchnama
9.	Exh-P9/PW3	Seizure panchnama of knife
10.	Exh-P10/PW3	Signature on seizure panchnama of Activa vehicle
11.	Exh-P11/PW5	Letter dated 06.06.2023
12.	Exh-P12/PW5	Letter dated 05.06.2023
13.	Exh-P13/PW5	Letter dated 08.06.2023
14.	Exh-P14/PW5	Statement of injured dated 08.06.2023
15.	Exh-P15/PW5	Query letter dated 12.06.2023
16.	Exh-P16/PW5	Letter dated 19.06.2023
17.	Exh-P17/PW5	M.L.C.
18.	Exh-P18/PW6	Letter dated 03.07.2023
19.	Exh-P19/PW6	Acknowledgment slip
20.	Exh-P20/PW7	Letter dated 16.06.2023
21.	Exh-P21/PW8 to Exh-P22/PW8	MLC reports
22.	Exh-P23/PW8 to Exh-P24/PW8	Arrest memos
23.	Exh-P25/PW8	Letter dated 05.06.2023
24.	Exh-P26/PW8	Muddemal receipt
25.	Exh-P27/PW8	Letter dated 06.06.2023

26.	Exh-P28/PW8	Muddemal receipt
27.	Exh-P29/PW8	Letter dated 12.06.2023
28.	Exh-P30/PW8	Letter dated 15.06.2023

B. Defence :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

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

(Delivered in open court on 25.04.2025)

Both the accused are facing trial for the offences punishable U/s.307, 326, 323, 504, 506 r/w sec.34 of the Indian Penal Code (here-in-after referred as IPC for short) on being charge-sheeted vide charge sheet No.235/2023 arising out of Crime No.461/2023 registered with police station Sadar Bazar, Jalna, Dist. Jalna.

2. There are in all 4 accused, one of which is child in conflict with law in respect of whom separate charge sheet is filed before the Board concerned. Accused charge-sheeted before the Court are Shivraj alias Shiva Gulabsing Bhurewal, Sagar Vilas Mule and Yash Rajesh Pahadiya accused Nos.1, 2 and 3 respectively. Accused Sagar Mule having absconded the trial against accused No.1 and 3 stood separated.

Brief facts of the prosecution case is summarized as under :-

3. The informant is one Musharaf Mazhar Khan. He gave report at the police station on 04.06.2023 alleging that at 5.00 p.m. he alongwith his friend Amer Shaikh Matin and Arbaj Nawab Shaha were standing in the lane behind his house in front of Ganga Building near the garbage box at Kalikurti, Jalna. At that time, on count of earlier quarrel Shiva Bhurewal acquainted with him resident of Kalikurti Jalna came alongwith child in conflict with law and Sagar on scooty. Shiva said to him “क्यो रे (xxx) के, मस्ती में आया क्या” on which, he questioned them about hurling abuses to which, Shiva asked him to wait there

only and three of them went back on scooty and immediately came back. Yash Pahadiya came behind them by foot. All the 4 came towards him and without saying anything started assaulting with fist and kick blows. His friend Arbaj Shaha and Amer Shaikh were stopped the quarrel at which time, Shiva Bhurewal pierced knife in the stomach of Arbaj Shaha with intention to kill and then all of them went away on the scooty and by foot. People started running in that area because of terror of said person, Arbaj Shaha being injured was bleeding.

4. It is further alleged that informant and his friend Aamer Shaikh took Arbaj Shaha on the informant's vehicle to police station Sadar Bazar, Jalna. Police immediately issued medical memo and sent them to Government Hospital, Jalna. Informant's father also came to the police station by car. Injured was taken in the said car to Niramay Hospital, Jalna which was nearby and admitted him. The treatment being given on. Informant gave the report against the aforesaid 4 persons. Sugriv Chate P.S.I. Sadar Bazar Police station took the report vide entry No.38 at 20.59 hours and registered offence

u/sec.307, 326, 323, 504, 506 r/w sec.34 of I.P.C. The investigation was made over to P.S.I.Kakarwal.

5. The investigation having ensued, P.S.I. Kakarwal searched for all the accused and arrested 3 of them after having they undergone pre-arrest medical examination. He then conducted spot panchnama of the spot of occurrence on 05.06.2023 in presence of 2 government panchas. Same was followed by seizure of clothes of injured. On the same day, clothes of accused persons were also seized. The police on 04.06.2023 itself had sought inquiry from the Medical Officer about recording statement of injured which was answered in the negative. Again on 05.06.2023 same was the position. On 06.06.2023 from accused Shivraj, knife used in the crime came to be recovered u/sec.27 of the Evidence Act. Medical samples of accused persons were obtained. Scooty used in the crime was seized on being produced by one Vinod Yadav were seized. On 08.06.2023 again letter was given to the Medical Officer for recording statement of injured and for condition of injured for recording his statement. The Medical Officer opined positively.

Statement of injured came to be recorded in presence of Medical Officer. On 12.06.2023 the Investigating Officer made weapon query and obtained query report. On 15.06.2023 he obtained blood samples of injured witnesses. On 16.06.2023 muddemal was sent to C.A. Laboratory however, there was discrepancy in form pertaining to blood sample of accused Shivraj and it was returned. The said blood sample was again sent on 02.07.2023 by making compliance. Statements of other injured and other witnesses were recorded. On completion of investigation, charge-sheet came to be filed before the learned Chief Judicial Magistrate, Jalna who committed the case as the offence u/sec.307 of I.P.C. being triable by the Court of Session.

6. The case being made over to this Court, presence of the accused persons was sought as accused Sagar Mule was not remaining present, the trial against accused Nos.1 Shivraj and accused No.3 Yash has been taken-up separately. Accordingly, I have framed charge against accused Nos.1 and 3 at Exh.22 for the offences u/sec. 307, 326, 323, 504, 506 r/w sec.34 of I.P.C. to which they have vide their pleas recorded at Exh.23 and

Exh.24 respectively, abjured to their guilt claiming to be tried.

7. The prosecution to prove its case has examined in all 9 witnesses and closed its case vide closing pursis Exh.64. The statements of both the accused u/sec.313(1)(b) of Cr.P.C. have been recorded at Exh.65 and 66 respectively. Their defence is of denial and false implication due to quarrel of Musharaf with the child in conflict with law who is cousin brother of accused No.1. Accused have not led any defence evidence.

8. Having heard the learned APP Smt.J.B.Solanke for the State and learned advocate Shri.S.M.Chate for accused No.1 and Shri.M.S.Raut for accused No.3 and upon perusal of the ocular and documentary evidence on record, on the points that emerge for my determination; I have recorded my findings with reasons there on as under:-

POINTS

FINDINGS

1. Whether the prosecution has proved that both accused alongwith absconding accused No.2 Sagar Vilas Mule and child in conflict with law in furtherance of their common intention, on 04.06.2023 at about 05.00 p.m. in front of Ganga Building, Kalikurti, Jalna, Tq. & Dist. Jalna, did an act to wit to attempt to commit murder of

In the negative.

informant and prosecution witnesses, accused assaulted by means of an knife, such intention or knowledge and under such circumstances, if by that act, accused had caused the death of informant, accused would have been guilty of murder and thereby committed an offence punishable under Section 307 r/w 34 of I.P.C.?

2. Whether the prosecution has proved that on aforesaid date, time and place of incident, both accused alongwith absconding accused No.2 Sagar Vilas Mule and child in conflict with law in furtherance of their common intention, voluntarily caused grievous hurt to informant and prosecution witnesses by means of knife, which is instrument for shooting and stabbing and thereby committed an offence punishable u/sec.326 r/w sec. 34 of I.P.C.? In the negative.
3. Whether the prosecution has proved that on aforesaid date, time and place of incident, both accused alongwith absconding accused No.2 Sagar Vilas Mule and child in conflict with law in furtherance of their common intention, voluntarily caused hurt to informant and prosecution witnesses and thereby committed an offence punishable u/sec.323 r/w sec. 34 of I.P.C.? In the negative.
4. Whether the prosecution has proved that on aforesaid date, time and place of incident, both accused alongwith absconding accused No.2 Sagar Vilas Mule and child in conflict with law in In the negative.

furtherance of their common intention, intentionally insulted and thereby gave provocation to informant and witnesses intending it to be likely that such provocation would cause to break the public peace and thereby committed an offence punishable u/sec.504 r/w sec. 34 of I.P.C.?

5. Whether the prosecution has proved that on aforesaid date, time and place of incident, on aforesaid date, time and place of incident, both accused alongwith absconding accused No.2 Sagar Vilas Mule and child in conflict with law in furtherance of their common intention, committed criminal intimidation by threatening to informant and prosecution witnesses or property with intent to cause alarm to them and thereby committed an offence punishable u/sec.506 r/w sec. 34 of I.P.C.? In the negative.
6. What order? As per final order.

:: REASONS ::

As to point no.1 to 5 :-

9. All the points are taken up together for determination to avoid repetition of narration of evidence. Smt. J. B. Solanke the learned APP has contended that informant has deposed as per the report and has proved the report and printed F.I.R. and the signature on the printed F.I.R. The identity of the

accused persons to him was not disputed by the learned counsel for the accused. As such, the accused being not present at the time of evidence, question was not put. She contends that though the injured has not supported the prosecution, the portion admitted by him should certainly be considered in favour of the prosecution.

10. The learned APP further argues that there is evidence of PW-2 Manoj Dahale towards proof of spot panchnama Exh.P4/PW2, seizure of clothes of injured Exh.P5/PW2 and seizure of clothes of accused persons Exh.P6/PW2. It is then pointed out that evidence of PW-3 is towards proof of discovery and seizure panchnama u/sec.27 of the Evidence Act showing proof of discovery and seizure of knife from the accused Shivraj at Exh.P8/PW3 and Exh.P9/PW3 memorandum and recovery panchnama respectively. It is argued by the learned APP that PW-4 Sunil Harichandra Yadav on seizure of black coloured Activa vehicle, has not supported the prosecution but has admitted signature at serial No.2. Towards medical evidence, the evidence of Dr.Govind Eknath Patil for

proof of medical examination of injured informant, towards recording statement and MLC query report of knife has been led. Further evidence of PW-6 Anil Gangadhar Kakde Police Constable B.No.762 and PW-7 Damu Kashinath Pawar P.H.C. B.No.939 towards carrying muddemal to C.A. laboratory and evidence of PW-8 Nitin Khushalsing Kakarwal being the Investigating Officer to corroborate the above aspects of investigation. It is pointed out that injured Shaikh Arbaj Shaikh Nawab examined as PW-9 though did not identify the accused and did not support the version of prosecution, certain admissions are given by him which should be relied.

11. Per contra, the learned advocate Shri.S.M.Chate for accused No.1 argued that informant has not supported the prosecution in material particulars. He has denied the entire statement and it has been admitted by him that he had mentioned in Hindi and not in Marathi to the police and he does not understand Marathi and police did not read over the statement to him. It is pointed out that he has also denied to identify the knife. Pausing for a moment, it must be noted that

despite sufficient adjournments, reminders, the C.A. report and muddemal is not produced before the Court, before that, it was also ordered vide Exh.1 dated 13.02.2025 that persons responsible will have to be named in the judgment as the fate of each trial depends on important aspects of investigation. The learned APP argued that she has several times reminded the police officers to have compliance and report but no C.A. report is furnished and muddemal has been deposited and no compliance is reported.

12. Going further, it is argued by the learned advocate Shri.S.M. Chate for the accused No.1 that the panch on the seizure has also not identified the accused as person identified by him was Yash Pahadiya whereas recovery, discovery and seizure is alleged to be from Shivraj. He argued that the knife has been seized from the heap of the garbage and from open place after 2 days, which is not believable. It is further argued by him that prosecution has failed to prove exact spot of occurrence also as though the spot of occurrence is alleged to be behind the house of the informant, the informant states about

the incident in front of the house and states about the different incident and not one alleged by the prosecution. He therefore contends that prosecution has utterly failed to prove its case beyond reasonable doubt. Shri.M.S. Raut the learned advocate for accused No.3 has adopted the argument of learned advocate Shri.S.M.Chate.

13. Appreciating the rival arguments, it would be apt to see the evidence of informant first, followed by the evidence of injured who are material witnesses in this case. So far as factum of incident is concerned, the material witnesses so far as recovery of weapon are the panch on discovery and seizure and corroborative evidence of the Investigating Officer.

14. Informant PW-1 Musharaf Mazhar Khan deposed that incident occurred at 5.00 p.m. It took place behind his house. Amer Shaikh and Arbaj Shaha his friends had come to his house. All the three were standing in front of the house. He deposed that after sometime Shiva Bhurewal came there and hurled abuses. He has not deposed what abuses were hurled. He deposed that he questioned back for hurling abuses and then

Shiva got the vehicle and started assaulting him. Arbaj was rescuing him, Shiva Bhurewal took out knife and assaulted Arbaj with knife and ran away. They took Arbaj to hospital, i.e. he and Amer and admitted him at Niramay Hospital and then he gave report at Sadar Bazar police station against Shivraj Bhurewal, Yash Pahadiya and Sagar Mule. He has proved report Exh.P1/PW1, identified his signature on printed F.I.R. Exh.P2/PW1. As already discussed towards identification by him there was no dispute by the accused persons, hence question was not asked that accused were not present in the Court.

15. In cross-examination, PW-1 answered that he was at Niramay Hospital upto 9.00 p.m. Doctor had called the police. He denied that police came at 9.00 or 9.15 p.m. and answered that police came at around 6.30 to 7.00 p.m. but had not inquired from Arbaj Shaha as he was unconscious. It is elicited from him that police did not inquire with him upto 11.30 p.m. He volunteered that he had already given report at Sadar Bazar police station. Shri.Chate the learned advocate has pointed out the fact that as per printed F.I.R. Exh.P2/PW1 information is

received at the police station at 20.59 hours and F.I.R. has been registered at 21.15 hours while PW-1 deposed that he was at the Niramay Hospital upto 9.00 p.m. and therefore it is not possible that he personally went to police station to give report. The learned APP Smt.J.B.Solanke has opposed this argument. He is right to contend that witnesses may falter with the time and minute details may not be deposed and cannot be expected to be recalled by the witness.

16. Going further in cross-examination, PW-1 answered that he had picked-up the injured, injured was bleeding, blood had stained on his clothes and that of Amer, but police did not seize their clothes. This lapse is being argued as material lapse. Further witness denied that due to previous report by Shivraj against them, false report was lodged. Considering denial in cross-examination, it can be seen that informant is some what stick-up in his cross-examination. The identity of the accused persons with the informant has not been disputed and defence of the accused persons is also of previous enmity and false implication arising out of same. It needs to be seen whether

informant is corroborated by the injured.

17. PW-9 Shaikh Arbaj Shaikh Nawab deposed that he does not understand Marathi. The incident is of 4th. He does not remember the month and year and time of the incident. The place of the incident was in Kalikurti area. At around 5.00 to 5.30 p.m. he and Amer had gone to meet Musharaf at his house at Kalikurti. He deposed that accused persons came on scooty, Musharaf and Shiva were fighting. They were having old dispute. While stopping quarrel of both, they assaulted him and ran away. He deposed that Shiva had assaulted. Further he deposed that when he and Amer had gone to meet, they were standing at Musharaf's house talking with Musharaf in front of the house in the lane and after that, Shiva and two persons came on scooty. He does not know the names of those two persons. He had also seen Shiva for the first time on that day. He does not know whether Shiva is in Court today. As such, he had not identified accused Shiva before the Court. He further deposed that police read over the statement in the hospital. It was correctly recorded and had signed and he identified his

signature, but answered that fact mentioned therein that he knows Shivraj is incorrectly mentioned. In this vein, he having given his version, the learned APP declared him as not supportive witness and put questions u/sec.154 of the Evidence Act.

18. PW-9 has admitted that his statement was recorded on 08.06.2023. He did not remember whether it was recorded in presence of Doctor. He admitted that it was recorded at Niramay Hospital. Further admissions are that incident occurred on 04.06.2023, they were standing behind the house of Musharaf, Shivraj hurled abuses saying that “ क्यू रे (xxxx) के, भरतीमे आया क्या, ” then they asked him “असे का बोलतो.”, Mushraf said him “शिबीगाळ का करतो ”, Shivraj said “यही रुक मै अभी आया ”, saying this all the three went back on scooty and immediately all the three came back, behind them Yash Pahadiya came by foot, all the four without saying anything started to assault Musharaf with fist blows, then he and Amer went to stop the quarrel, Shiva Bhurewal took out knife from his pant pocket and pierced in the stomach, blood started coming out from his

stomach, then he got unconscious. He also admitted that he regained consciousness on 08.06.2023 and at that time he came to know that he was admitted in Niramay Hospital. However, he denied about knowing name of 3 accused in the report. He also denied that can identify the knife. He denied that he was already knowing Shivraj. The colour of the clothes was put to him being night pant. The colour of Night pant was of black colour and T-shirt was of orange colour.

19. In the cross-examination by the accused it was elicited from PW-9 that whatever he stated to the doctor and police was in Hindi. He has no concern with Marathi, as also he did not state the names of all the 4 persons and how they looked. He however denied that police did not tell him the names of all 4 persons stated in the statement. He volunteered that he stated the appearances and the police told him the names. He admitted that persons whose appearance was stated by him to the police, did not meet him lateron till today. He denied that he did not state to the police how the incident occurred and police told him. He feigned ignorance whether

police had written in Hindi what he stated in Hindi. He admitted that police read over to him in Marathi and he does not understand Marathi. He also admitted that when police came to meet on 8th, Musharaf was also with him and was sitting there at the time of statement.

20. Thus, from the above evidence it appears that informant deposed before the Court that he understand Marathi. The injured deposed before the Court that he does not understand Marathi and police did not read over his statement in Hindi but read over it over in Marathi. There is no endorsement below his statement that it was read over to him in vernacular i.e. in the language understood by him. Now, so far as identification of accused is concerned, he has not identified accused Shivraj before the Court. As such, there is lack of corroboration on the role of the accused in the evidence of informant Musharaf Mazhar Khan and injured Shaikh Arbaj Shaikh Nawab interse.

21. So far as argument of learned APP that portion admitted by injured should be considered. The law regarding

the same is no more res integra. It is trite law as held by the Hon'ble Apex Court in **Vadevelu Thevar Vs. State of Madras AIR 1971 SC 614** that portions admitted by witness can be considered in evidence. However, there are certain riders that witnesses are classified in three categories. It would be apt to reproduce the observations of the Hon'ble Apex Court in this regard which are as under:-

“It is sound and well established rule of law that the court is concerned with the quality and not quantity of the evidence necessary for proving or disproving a fact and categorized the oral testimony of witness in three categories namely : (1) Wholly reliable (2) Wholly unreliable, (3) Neither wholly reliable nor wholly unreliable. The Hon'ble Apex Court observed that, “In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. It was observed that, in the second category, the court equally has no difficulty in coming to its conclusion. Further it was observed that, in the third category of cases, the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. It was undisputed that, there is danger in insisting on plurality of witnesses.”

22. In a very recent decision also, Hon'ble Apex Court held that merely because the witnesses are hostile, is not ground to discard the evidence and hostile witness' credible evidence

can form base for conviction in criminal trial as held in **Hari & Anr. Vs. The State of Uttar Pradesh Criminal Appeal No. 186 of 2018 decided on November 26, 2021**. It was a case of honour killing. In that case it was argued that no reliance can be placed on the evidence of eye-witness PW-1 Shanti, who has turned hostile, rejecting this contention Hon'ble High Court was of the opinion that the evidence of PW-1 cannot be eschewed from consideration only on the ground that though turned hostile, it was observed by the Hon'ble Apex Court that the relevant portion of their testimony was rightly relied upon by the Hon'ble High Court after recording the compelling reasons prompting said prosecution witnesses including PW-1, to turn hostile.

23. It was noted by the Court that evidence of PW-1 was adjourned, there was a stay for a period of 6 years by the Court. The witness was being recalled. The witness turned hostile. The reasons for which being that she belonging to a lower-strata of the society, living in a village dominated by the caste to which accused persons belong. Noting the same, it was observed by the Hon'ble Apex Court as under:-

“25. *It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and cross-examined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. Radha Mohan Singh v. State of UP, (2006) 2 SCC 450. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it. Syad Akbar v. State of Karnataka, AIR 1979 SC 1848.*

26. *Even if the witnesses have turned hostile, their evidence can be accepted, if they are natural and independent witnesses and have no reason to falsely implicate the accused. In Mrinal Das and Others v. State of Tripura (2011) 9 SCC 479 this Court observed that credible evidence even of a hostile witnesses can form the basis for conviction in a criminal trial.*

27. *In the present case, the evidence of PW1 finds complete corroboration from the evidence of PW13, PW14, and PW15 who are also the reliable eye-witnesses of the incident. The testimony of PW1 is unshaken and it was only after a long period of stay of trial for 6 years, that she turned hostile. The Courts below were right in placing reliance on the testimony of PW 1, who is also a reliable witness, for the conviction of the accused persons even after she was declared hostile.*

28. *Right to testify in Courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in Courts due to threats or other pressures, then it is a clear violation of Article 19 (1) (a) and*

*Article 21 of the Constitution. Right to life guaranteed to the people of this country also includes in its fold the right to live in a society which is free from crime and fear and the right of witnesses to testify in Courts without fear or pressure. It needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorise or intimidate the witnesses because of which these witnesses either avoid coming to Courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measures to ensure the safety of these witnesses, commonly known as “witness protection”. **Mahender Chawla & Ors. v. Union of India & Ors. (2019) 14 SCC 615.***

29. *The State has a definite role to play in protecting the witnesses, to start with, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens, it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom the witness had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. **Zahira Habibullah Sheikh and Anr. v. State of Gujarat & Ors. (2006) 3 SCC 374.***

30. *While taking note of these exigencies with respect to safeguarding the rights of the witnesses deposing before a court, the Witness Protection Scheme, 2018 which was drafted by the Ministry of Home Affairs was approved by this Court in*

Mahender Chawla & Ors. v. Union of India & Ors. (supra). Thereafter, in Ashwin Kumar Upadhyay v. Union of India and Anr.,(2020) SCC OnLine SC 1228 a direction was given by this Court to the Union of India and the State Governments to strictly enforce the Witness Protection Scheme, 2018.

31. The present case squarely falls under the situations contemplated by this Court while necessitating the formulation of scheme/guidelines/programmes for protection of witnesses. Implementation of the Witness Protection Scheme at the time when the witnesses were deposing in the present case, would have prevented the prosecution witnesses from turning hostile. If the material witnesses were relocated from the village and escorted to the courtroom, they would have deposed freely in court.”

24. Going by the ratio of aforesaid decision, it is clear that even the portion admitted by the witness can be considered after classifying the witness. The witness Shaikh Arbaj Shaikh Nawab PW-9 needs to be put in the category of neither wholly reliable nor wholly unreliable witness. Thus, when he is put in this category, corroboration would be required. Since it is found that the fact that some quarrel occurred and the fact that he was injured is admitted by him only he is denying identity of the accused persons. He has denied that because of fear of accused persons, he was deposing false. The prosecution has chosen not to examine other friend who was also present i.e. Amer who could have corroborated further and strengthened the case of

prosecution. Even PW-9 Arbaj was not attending the Court, to Amer also Non Bailable Warrant was issued, however, that has not been executed and it was reported that he has gone out of station. Actual persons responsible for the assault is therefore not proved beyond reasonable doubt by virtue of aforesaid evidence. What other evidence is there is to be seen.

25. The available evidence regarding spot panchnama, there is evidence of PW-2 Manoj Maruti Dahale. He has proved written order Exh.P3/PW2 nominating him to act as a panch being signed by Office Superintendent. Said witness is health worker. He has deposed about going to Kalikurti area with Police Officer Shri.Kakarwal and another panch Shrikant Balurkar. He has deposed the four boundaries of the spot of incident and proved spot panchnama Exh.P4/PW2. It is elicited from him in cross-examination that the area is in located which are, there is Ram Mandir on the main road, Khardekar Coaching Class to the south. It is also elicited that the said road runs north-south. Shri.Kakarwal did not give any other information or was not told Irshad and he has his house at that place. It shows that spot

panchnama is not much disputed.

26. Further PW-2 has deposed about Irshad having brought the full sleeves T-shirt of injured having blood stains and one night pant of black and red colour having blood stains which were seized in separate plastic carry bags. He has proved seizure panchnama Exh.P5/PW2. He denied the suggestion in cross-examination that said seizure was at the place of spot panchnama itself. As such, evidence regarding this is also not much in dispute. The clothes however cannot be got identified for want of muddemal. Similar is the evidence regarding seizure of clothes of all the three accused persons.

27. Further evidence is regarding discovery and seizure panchnama, PW-3 Anil Bapurao Gaikwad, Canal Inspector, Irrigation Department, Jalna has deposed in this regard. He has deposed that on 06.06.2023 he and another Canal Inspector Dipali Tidke were ordered to go to Police station, which they accordingly went and in their presence accused Shivraj gave memorandum statement that he will show the knife hidden by him at the spot of incident. He has proved memorandum

panchnama Exh.P8/PW3. Further his evidence regarding accused leading them in government vehicle to the spot of incident from there taking out a knife from the heap of garbage. He deposed that the knife was having black coloured handle, having design on one road, length of the handle was being 12 c.m. The total length of the knife was 22 c.m. and blade of the knife having blood stains. He deposed that he cannot tell anything else about the knife and deposed that police seized that knife and he has proved seizure panchnaa Exh.P9/PW3. He went ahead on identification of accused, but failed to identify him as the person identified by him before the Court was accused Yash Pahadiya and not accused Shivraj. This discrepancy is certainly put finally by the learned counsel for the accused urging to disbelieve this witness.

28. PW-3 has denied most of the suggestions in the cross-examination. He admitted that in the memorandum panchnama, place of memorandum statement has not been mentioned. All other suggestions were denied by him. Apart from facts of non identification of the accused, there is another

circumstance being the spot from where the knife has been seized and the location of the blood stains on the knife. As per the seizure panchnama, blood stains are mentioned to be on the handle of the knife while witness deposed that blood stains were on the top portion of the blade of the knife. This is an another discrepancy. Apart from that, there is evidence of the Doctor PW-5 Dr.Govind Eknath Patil who had deposed about admission of injured to his hospital, repeated efforts of police to take statement but injured being unconscious and finally statement being recorded on 08.06.2023.

29. Regarding weapon query report, PW-5 Dr.Govind Patil deposed that it was sought on 12.06.2023, weapon was received in sealed condition and it was opened by the police and shown to him. Normally it should have been opened by the Doctor himself. That apart, he has deposed about examining the weapon and giving query report under his signature and stamp that the injury on the injured was possible by the knife examined by him. He proved query report Exh.P15/PW5. He further deposed about issuing injury certificate Exh.P17/PW5.

Nowhere in his evidence he has deposed about presence of the blood on the blade or on the handle of the knife and blood like stains being seen by him.

30. Further in the cross-examination PW-5 Dr.Govind Patil has admitted that in the query report he had not mentioned the length and width of the knife, its blade, handle design etc. He cannot tell whether there was blood stains on the blade of the knife seen by him. The weapon query report when seen would show that the Medical Officer has not even attempted to draw a diagram of the weapon. In many other cases apart from this case, are seen police officers are committing lapses in this regard for insisting the Medical Officers to give diagrammatic representation on the query report of the weapon examined by them. The presence of such diagrammatic representation aids in adding corroboration to the proof required for weapon being received in sealed condition, seal being opened by the Medical Officer and weapon being resealed by him. That apart, there are certain other lapses in the case being the acknowledgment from the C.A. Laboratory i.e.

printed acknowledgment having mention of date of receipt, outward number of the letter, date of the letter, proof of the seal etc. being not filed. The receipt being filed at Exh.P19/PW6 which is having date of the receipt of the muddemal on 03.07.2023 which goes to suggest that blood sample might have been submitted. The letter Exh.P20/PW7, this is marked subject to prove the contents, signature and stamp of the inward clerk of the C.A. Laboratory and at the bottom there is endorsement of the Head Constable that Exhibit-A is being returned as name in the medical form is having discrepancy. The specific acknowledgment about other articles being received has not been furnished and reason has not been furnished before the Court for the same.

31. All such lapses could have been ignored had the evidence of informant and the injured being of sterling quality and corroborating with each other, that is not so the case here. Even the knife which is alleged to be seized from the accused is after 2 days of the incident and from heap of garbage which further raises question regarding detection of blood and its

corroboration by the C.A. Laboratory as certainly there is possibility of the same being prone to organic reaction on the heap of garbage. That is even not the case that the knife was hidden inside the heap of garbage. A specific question was asked to the panch in this regard and by way of Court question, he answered from above heap of garbage the knife has been seized. Thus, the question arises whether for 2 days it was from open spot that it has been seized that whether it is not implanted and lying unattended in the said locality having residential place. All these questions remained unanswered. I therefore I find that for above reasons certainly it will have to be said that evidence led before the Court is not of a conclusive nature. Point No.1 to 5 are therefore answered in the negative.

As to point No.6:-

32. In view of my answers to point Nos.1 to 5 above, the prosecution case fails. The prosecution case fails as primary witness the injured has resiled from his version and has not identified the accused persons and the portion admitted by him does not find sufficient corroboration from the other pieces of

evidence led by the prosecution. In view of the same, accused persons will have to be given benefit of doubt and acquitted. They will have to be directed to furnish surety for compliance in terms of sec.437-A of Cr.PC. for ensuring their presence before the Hon'ble High Court in case of appeal. The necessary order regarding muddemal will have to be passed. Thus, in answer to point No.6, I proceed to pass the following order:-

ORDER

- 1] Accused No.1 Shivraj alias Shiva Gulabsing Bhurewal and accused No.3 Yash Rajesh Pahadiya, are hereby acquitted of the offences punishable under Section 307, 326, 323, 504, 506 r/w sec.34 of the Indian Penal Code, vide section 235(1) of the Cr.PC.
- 2] The bail bond of accused No.3 stands cancelled.
- 3] Accused Nos.1 and 3 are directed to furnish bail bonds for the sum of Rs.25,000/- each in terms of Section 437-A of Cr.PC. for securing their attendance before the Hon'ble High Court, if appeal is filed.
- 4] Accused Shivraj alias Shiva Gulabsing Bhurewal is under trial prisoner, he be released forthwith, if not required in any other crime.

- 5] Since the trial against accused No.2 Sagar Mule was separated, issue standing NBW against him and case be kept in Dormant File.
- 6] The muddemal property be preserved till the completion of trial against accused No.2 Sagar Mule.

Date :- 25.04.2025

(A.G.Joshi)
Addl.Sessions Judge-1,
Jalna

Certificate

I affirm that the contents of this PDF File are word to word as per original judgment.

Name of the Steno : T.A.Bakshetti

Name of Court : District Judge-1 & Addl. Sessions Judge, Jalna

Date : 30.04.2025

Sd/-
Stenographer