


MHRG030029582024 	Received on	:	28/11/2024		
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	<p style="text-align: center;"><b><u>IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, RAIGAD, AT ALIBAG</u></b></p> <p style="text-align: center;">(Presided Over by M. B. Attar)</p> <p style="text-align: center;"><b>Date : 31/03/2026</b>  <b>Regular Cri. Case No. 170/2024</b>  <b>Exh. No. 46/B</b></p> <p style="text-align: center;">(CNR No. MHRG030029582024)</p>
	Poynad Police Station C.R. No. 128/2024, u/s 118(1), 118(2), 126(2), 238(b) of the Bharatiya Nyaya Sanhita, 2023
Complainant	State of Maharashtra, Through Poynad Police Station, Taluka-Alibag, Dist. Raigad
Represented by	Ld. A.P.P. Shri. Prasad S. Patil
Accused	<b>Ganesh Murlidhar Chavarkar</b> Age : 35 Yrs., Occu. : Service R/at Namdev Nagar, Poynad, Tal. Alibag, Dist. Raigad
Represented by	Ld. Advocate Shri. Piyush Gade

**PART 'B'**

Date of Offence	:	26/07/2024
Date of F.I.R.	:	28/07/2024
Date of Charge-sheet	:	28/11/2024
Date of Framing of Charges	:	11/03/2025
Date of Commencement of evidence	:	14/07/2025
Date on which Judgment is reserved	:	13/03/2026
Date of the Judgment	:	31/03/2026
Date of the Sentencing Order, if any	:	31/03/2026

**Accused Details**

Rank of the accused	Name of accused	Date of Arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.PC.
1.	<b>Ganesh Murlidhar Chavarkar</b>	13/09/24	30/09/24	Offence p/u/sec. 118(1), 118(2), 126(2), 238(b) of the Bharatiya Nyaya Sanhita, 2023	Accused is convicted	For sec 118(2) R.I. for One year, for sec 118(1) R.I. for Six months, for sec. 238(b) R.I. for 6 months, for sec. 126(2) S.I. for One month	13/09/2024 to 30/09/2024

**LIST OF PROSECUTION /COMPLAINANT / DEFENCE / COURT WITNESSES****A. Prosecution :**

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW-1 (Exh.9)	Mahendra Vallabh Patil	Informant/ injured
PW-2 (Exh.11)	Sagar Yashwant Patil	Panch witness
PW-3 (Exh. 17)	Sanjay Vishnu Patil	Witness

PW-4 (Exh. 21)	Dr. Anup Gautam Palsambkar	Medical officer
PW-5 (Exh. 25)	Vaijesh Mahendra Patil	Injured witness
PW-6 (Exh. 32)	Dr. Emad Badiuzzama Alvi	Medical witness
PW-7 (Exh. 34)	Mahek Mahesh Patil	Investigating officer

**B. Defence Witnesses, If any :**

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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**C. Court Witnesses, If any :**

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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**LIST OF COMPLAINANT / PROSECUTION / DEFENCE / COURT EXHIBITS****A. Prosecution :**

Sr. No.	Exhibit Number	Description
1.	Exh. 10 (PW-1)	Complaint
2.	Exh. 12 (PW-2)	Spot Panchanama
3.	Exh. 13 (PW-2)	Seizure Panchanama
4.	Exh. 18 (PW-3)	Memorandum Panchanama
5.	Exh. 19 (PW-3)	Panchanama
6.	Exh. 22 & 23 (PW-4)	Injury certificates of Vaijesh Patil and informant Mahendra Patil
7.	Exh. 35 (PW-7)	Letter issued to Civil Hospital, Alibag

8.	Exh. 36 & 37 (PW-7)	Letters issued to M.G.M. Hospital, Alibag
9.	Exh. 38 (PW-7)	Muddemal receipt
10.	Exh. 39 (PW-7)	Letter issued to Civil Hospital, Alibag
11.	Exh. 40 & 41 (PW-7)	Letter in regarding addition of section 118(2) and 238-B of B.N.S.

**B. Defence :**

Sr. No.	Exhibit Number	Description
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**C. Court Exhibits :**

Sr. No.	Exhibit Number	Description
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**D. Material Objects :**

Sr. No.	Exhibit Number	Description
1.	Material Object-1	Tip of a knife

**JUDGMENT**

(Delivered on 31/03/2026)

01. The accused is facing trial for offences punishable under sections 118(1), 118(2), 126(2), and 238(b) of the Bharatiya Nyaya Sanhita, 2023. The allegations against the accused involve causing

simple as well as grievous hurt to the victims, wrongfully restraining them, and subsequently attempting to destroy or conceal evidence in order to screen himself from punishment.

**02.** The prosecution case which is unfolded from charge-sheet, in nut-shell is as under -

On 26/07/2024, at about 7:00 p.m., at Bandhan Naka, Post Poynad, Taluka Alibag, the accused allegedly intercepted the informant while he was proceeding in his Eco four-wheeler vehicle from Katalpada to Poynad Market. The accused stopped the vehicle and questioned the informant by asking, “Do you know how to drive?” Thereafter, the accused forcibly removed the keys of the vehicle.

**03.** When the informant attempted to reason with the accused and demanded the return of his keys, the accused took out an hard object from his pocket and assaulted the informant on his abdomen, below the ear, and on his back, thereby causing bleeding injuries. Upon hearing the commotion, the informant’s son rushed to his rescue. The accused also assaulted the informant’s son, namely Vaijesh, with an unknown hard object, causing injury to his head. Thereafter, the accused fled from the spot. The said incident forms the basis of the present prosecution.

**04.** The informant, Mahendra Vallabh Patil, lodged the First Information Report, which came to be registered as C.R. No. 128/2024 for offences punishable under Sections 118(1) and 126(2)

of the Bharatiya Nyaya Sanhita, 2023.

05. The investigation was carried out by Police Head Constable Smt. Mahek Mahesh Patil. During the course of the investigation, she visited the scene of offence, prepared the spot panchanama, and seized the tip of a kitchen knife allegedly used in the commission of the offence. She also recorded the statements of witnesses under section 181 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Upon completion of the investigation, it was revealed that the accused had committed the alleged offences. Accordingly, a charge-sheet came to be filed against the accused.

06. My learned predecessor framed charge (Exh. 04) against the accused. The contents of the charge were read over and explained to the accused in the vernacular language. The accused pleaded not guilty and claimed to be tried.

07. The incriminating circumstances appearing in the evidence against the accused were put to him in his statement recorded under section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Exh. 43). The defence of the accused is one of total denial and false implication.

08. After considering the submissions advanced by the learned A.P.P. for the State and the learned defence counsel, the following points arise for my determination, and my findings thereon, along with reasons, are recorded hereinafter.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the prosecution proves that, on 26/07/2024, at about 7:00 p.m., at Bandhan Naka, Post Poynad, Taluka Alibag, the accused voluntarily caused hurt to the informant and his son, Vaijesh, by using a dangerous weapon, namely a kitchen knife, and thereby committed an offence punishable under section <b>118(1)</b> of the Bharatiya Nyaya Sanhita, 2023?	Yes
2.	Whether the prosecution proves that, on the aforesaid date, time, and place, the accused voluntarily caused grievous hurt to Vaijesh, the son of the informant, by means of a weapon, namely a kitchen knife, being an instrument capable of causing injury to the human body and likely to cause death, and thereby committed an offence punishable under Section <b>118(2)</b> of the Bharatiya Nyaya Sanhita, 2023?	Yes
3.	Whether the prosecution proves that, on the aforesaid date, time, and place, the accused wrongfully restrained the informant and thereby committed an offence punishable under Section <b>126(2)</b> of the Bharatiya Nyaya Sanhita, 2023?	Yes
4.	Whether the prosecution proves that, on the aforesaid date, time, and place, the accused, having knowledge or reason to believe that an offence had been committed, deliberately concealed evidence thereof, and thereby committed an offence punishable under Section <b>238(b)</b> of the Bharatiya Nyaya Sanhita, 2023?	Yes

5. What order ?

The  
accused is  
convicted.

**:: REASONS ::**

**AS TO POINT NO. 1 TO 4 :**

09. All the points are interrelated; I propose to consider them together in order to avoid repetition of reasoning and to discuss them concurrently.

**Appreciation of Medical evidence :**

10. In order to establish the injuries sustained by the informant, Mahendra Vallabh Patil, and his son, Vaijesh, the prosecution examined Dr. Anup Gautam Palsambkar (PW-4). He deposed that both the informant and his son were medically examined by him on 26/07/2024. They gave a history of physical assault.

11. Upon examination of Vaijesh Patil, he noticed the injury i.e. a contused lacerated wound measuring 2 cm × 0.8 cm × 0.8 cm over the left parietal region. A CT scan was advised, which revealed a linear metallic foreign body in the left parietal lobe. He opined that the said injury was caused by a hard and sharp object and was grievous in nature.

12. On examination of Mahendra Vallabh Patil, he found the

following injuries: (i) a contused lacerated wound measuring 3.5 cm × 1 cm × 1 cm below the left angle of the mandible; (ii) a contused lacerated wound measuring 1.5 cm × 0.8 cm × 0.8 cm over the left hypochondriac region; and (iii) a contused lacerated wound measuring 3.5 cm × 1.5 cm × 1.5 cm over the lumbar region. He opined that all the injuries were simple in nature and were caused by a hard and sharp object. Both the patients were hospitalized, and Vaijesh Patil was referred to M.G.M. Hospital for neurosurgical management.

**13.** Dr. Palsambkar specifically opined that the injuries sustained by the informant and his son were possible by Material Object-1. Accordingly, he issued injury certificates, which are marked at Exhibits 22 and 23.

**14.** The prosecution also examined PW-6, Dr. Emad Alvi, a Neurosurgeon. He deposed that he examined the patient, Vaijesh Mahendra Patil, aged 18 years, who was admitted to M.G.M. Hospital on 27/07/2024 at about 7:00 p.m., having been referred from Alibag Civil Hospital. At the relevant time, he was posted in the Casualty Department of M.G.M. Hospital. The patient gave a history of assault by an unknown person using a sharp object on his head on 26/07/2024 at about 7:00 p.m.

**15.** He further deposed that, following the incident, the patient initially went to a local hospital and was thereafter referred to Alibag Civil Hospital, where he was admitted. Local exploration of

the wound was carried out; however, the treating doctor was unable to remove the foreign object lodged in the patient's head. Consequently, the patient was referred to M.G.M. Hospital on 27/07/2024.

16. On arrival at M.G.M. Hospital, the patient's vital parameters were stable. He had a sutured wound on the left side of his head and was conscious and oriented. A CT scan of the head was conducted, which revealed a foreign body penetrating the left side of the skull bone.

17. He further deposed that surgery was performed on 28/07/2024 at about 8:30 a.m. During the procedure, a metallic sharp object was found impacted in the left parietal bone. A small craniotomy was performed around the object, and the bone fragment along with the metallic object was removed. The bone fragment was divided into two parts to facilitate removal of the object. There was an injury to the dura mater, and the object had penetrated the brain parenchyma. The dura was repaired, the bone fragment was replaced, and the skin was sutured.

18. He further deposed that the foreign object appeared to be the tip of a kitchen knife measuring approximately  $1.5 \times 1$  cm. The said object was handed over to the police. The patient was thereafter shifted to the ward and discharged on 03/08/2024. He opined that the injury sustained by the patient was grievous in nature.

19. The material object (the tip of a knife), was shown to the witness. He identified the same as the object removed from the patient's skull bone. He further deposed that he had issued a covering letter to the police while handing over the said object, and a xerox copy of the said letter is marked as Article 'B'.

20. The medical evidence adduced by the prosecution through Dr. Anup Gautam Palsambkar (PW-4) and Dr. Emad Alvi (PW-6) is consistent, cogent, and lends substantial corroboration to the case of the prosecution. Dr. Palsambkar (PW-4) examined both the injured witnesses on the date of the incident. His testimony establishes that the informant sustained multiple contused lacerated wounds on vital parts of the body, which he opined to be simple in nature and caused by a hard and sharp object. Insofar as Vaijesh is concerned, the doctor noticed a contused lacerated wound over the left parietal region and, upon radiological examination, detected a linear metallic foreign body lodged in the parietal lobe. He categorically opined that the injury was caused by a hard and sharp object and was grievous in nature. His evidence thus clearly establishes the nature of injury.

21. The testimony of Dr. Emad Alvi (PW-6), the Neurosurgeon, assumes great significance in relation to the injury sustained by Vaijesh. His evidence reveals that a metallic sharp object had penetrated the skull bone and even the brain parenchyma, necessitating surgical intervention by way of

craniotomy. The detailed account of the surgical procedure and the recovery of a metallic object, identified as the tip of a kitchen knife, from the skull of the patient, strongly corroborates the version of PW-4 and the prosecution case.

**22.** Both the medical witnesses have consistently opined that the injuries sustained by the victims were possible by a hard and sharp object, and more particularly by the seized article (Article 'A'/Material Object No. 1). There is nothing brought on record to discredit their testimony. Thus, the medical evidence fully corroborates the ocular version of the prosecution witnesses with regard to the manner of assault, the weapon used, and the nature and severity of the injuries. In particular, the grievous injury sustained by Vaijesh, involving penetration of a sharp object into the skull and brain, stands duly established.

**23.** It further appears from the evidence that the doctor has clearly opined that the injury sustained by Vaijesh is grievous in nature. Upon perusal of Section 116 of the Bharatiya Nyaya Sanhita, 2023, which defines "grievous hurt," it is evident that any hurt which endangers life would fall within the ambit of clause (h) thereof. In the present case, the medical evidence demonstrates that a metallic object had penetrated the skull and entered the brain parenchyma, which required surgical intervention involving craniotomy and removal of a bone fragment. Such an injury, by its very nature, endangers life. Therefore, the injury sustained by

Vaijesh squarely falls within the scope of “grievous hurt” as contemplated under Section 116 of the Bharatiya Nyaya Sanhita, 2023.

**24.** The learned advocate for the accused has argued that the doctor has not produced the medical certificate on record. In this regard, it is to be noted that the neurosurgeon’s certificate is not placed on record. However, it has come in the evidence that the injured was initially treated at Alibag Civil Hospital and was thereafter referred to M.G.M. Hospital for further treatment. Both the medical witnesses have consistently deposed to this sequence of events, and their testimony is duly corroborated by the evidence of the Investigating Officer.

**25.** It also appears from the injury certificate at Exhibit 22 that the doctor has recorded a finding regarding the presence of a metallic foreign body in the parietal bone and parietal lobe. Therefore, even from the evidence of Dr. Anup G. Palsambkar, it clearly emerges that Vaijesh Patil had sustained a grievous injury.

**26.** It further appears from the injury certificate at Exhibit 23 that Mahendra Vallabh Patil had sustained simple injuries. Hence, the prosecution has successfully proved the injuries sustained by both Mahendra Patil and Vaijesh Patil through reliable medical evidence. The only question that now remains for determination is whether the said injuries were caused by the accused.

**Appreciation of evidence of injured witness :**

**27.** Now coming to the ocular evidence on record, both the injured witnesses have been examined by the prosecution, and their evidence is material and relevant on the point of assault and the injuries sustained by them. Hence, their evidence is required to be carefully evaluated.

**28.** To prove its case, the prosecution examined, Mahendra Vallabh Patil (PW-1). He deposed that on 26/07/2024 at about 7:00 p.m., he and his son Vaijesh were traveling in their vehicle towards the market near Bandhan. The accused, Ganesh Pawar, stopped them, questioned his driving, struck their vehicle, and forcibly took away the key. Thereafter, the accused took out an object from his pocket and assaulted him on his waist, below the ear, and on his back, causing bleeding injuries. When his son attempted to intervene, the accused also assaulted him on the head with the same object and then fled from the spot.

**29.** He further deposed that he informed his brother, and while proceeding to the police station, the police directed them to the hospital. They were treated and admitted to the Civil Hospital at Alibag. His statement was recorded there. He identified his complaint (Exh. P-1/10) as well as the weapon fragment (MO-1), which had remained lodged in his son's head.

**30.** In his cross-examination, he admitted that the road was busy, that it was dark at the time of the incident, and that he had

initially lodged a complaint against an unknown person.

**31.** The other key witness examined by the prosecution is Vaijesh (PW-5), the son of the informant. He deposed that the incident took place about one year prior at approximately 7:00 p.m. His father was driving an Eco vehicle at the relevant time. He stated that the accused, Ganesh Chavarkar, obstructed their vehicle near Poynad and started hitting the vehicle with his hands. Thereafter, the accused removed the key of the vehicle. He further deposed that his father got down from the vehicle, approached the accused, and requested him to return the key and allow them to proceed. However, instead of returning the key, the accused took out a chopper (small knife) and assaulted his father by stabbing him in the waist and further inflicting blows on his back.

**32.** He further deposed that when he intervened to rescue his father, the accused assaulted him on his head with the knife and thereafter fled from the spot. He stated that they first went to the police station and subsequently to the Civil Hospital at Poynad. Thereafter, he was taken to Alibag Hospital and was ultimately referred to M.G.M. Hospital, Mumbai, where he underwent surgery.

**33.** He further deposed that during the surgery, a piece of the knife was removed from his head. He identified the accused before the Court as well as the seized article, i.e., the piece of knife (Material Object-1).

**34.** In his cross-examination, he admitted that he sometimes

drives his father's vehicle; however, he denied the suggestion that he himself was driving the vehicle at the time of the incident. He also denied the suggestion that his father remained seated inside the vehicle throughout the incident or that he himself did not alight from the vehicle. He stated that the police had recorded his statement, though he could not recall the exact date as he was unwell at that time. He further stated that the incident lasted for about half an hour and that he had sustained heavy bleeding injuries, due to which his clothes were stained with blood. However, he could not state whether the police had seized those clothes. He further deposed that after the incident, they remained at the spot for about 10 to 15 minutes and thereafter reached the police station within 2 to 4 minutes. From there, they went to the Government Hospital at Poynad. He stated that he had disclosed this fact to the police, though the same is not recorded in his statement, and he could not assign any reason for such omission. He admitted that they are engaged in the business of mandap decoration. He further stated that he cannot say with certainty whether the piece of knife (Article 'A') was removed from his head.

**35.** Upon careful perusal of the evidence of both the injured witnesses, namely Mahendra (PW-1) and Vaijesh (PW-5), it clearly emerges that both have deposed in a consistent and cogent manner regarding the manner in which the incident occurred. Their testimony establishes the presence of the accused at the spot and that he fled from the scene after the assault. Both witnesses have

categorically stated that they were assaulted by a sharp and hard object. Though they could not initially identify the exact nature of the weapon, they have subsequently identified it as a kitchen knife. Their version regarding the manner of assault is consistent and inspires confidence.

**36.** Mahendra (PW-1) has consistently deposed that the accused stopped their vehicle, removed the key, and thereafter assaulted him on his waist, below the ear, and on his back, causing bleeding injuries. His version that when Vaijesh (PW-5) intervened, the accused also assaulted Vaijesh (PW-5) on his head stands duly corroborated by the testimony of Vaijesh.

**37.** Vaijesh (PW-5), being the son of informant and also an injured witness, has supported the prosecution case on all material particulars. He has specifically deposed that the accused assaulted his father with a sharp weapon (chopper/knife), and when he intervened, he too was assaulted on his head. His testimony regarding the removal of a piece of the weapon from his head during surgery lends strong assurance and corroboration to the prosecution case.

**38.** Thus, the evidence of both these witnesses is consistent, cogent, and mutually corroborative on the core aspects of presence of the accused at the scene of offence, obstruction of the vehicle, assault by a sharp weapon and injuries sustained by both witnesses.

**39.** It is a settled principle of law that the testimony of an

injured witness carries great evidentiary value and ordinarily cannot be discarded unless there exist strong and compelling reasons to do so. In the present case, nothing material has been elicited in the cross-examination to discredit their version on the aspect of assault.

**40.** The learned defence counsel has contended that the accused was not known to the witnesses and that there is no independent corroboration. It is further argued that since the incident occurred on a busy road, independent witnesses ought to have been examined, and failure to do so renders the prosecution case doubtful.

**41.** The said contention cannot be accepted. Merely because independent witnesses have not been examined, the testimony of injured witnesses cannot be discarded, particularly when their evidence is otherwise reliable and trustworthy. There must be cogent material to suggest false implication, which is absent in the present case.

**42.** It is pertinent to note that there is no evidence of prior enmity between the accused and the witnesses. The incident appears to have occurred suddenly due to a quarrel relating to driving. In such circumstances, false implication is highly improbable. Though the incident took place on a public road, it is a matter of common experience that independent persons are often reluctant to come forward in criminal matters. Therefore, non-examination of independent witnesses is not fatal to the prosecution case.

43. The learned advocate for the accused argued that both the witnesses are relatives and therefore they are falsely implicating the accused persons. It is pertinent to note that it is settled position of law that merely because the witnesses are related to each other, they cannot be regarded as dis-believable. The Judgment of the Hon'ble Apex court in a case of **Gangadhar Behera & others Vs. State of Orissa (2002) 8 SCC 381**, in para 10 of the judgment Their Lordship laid down that,

“Relationship is not a factor to effect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegation against an innocent person. Foundation has to be laid if the plea of false implication is made”

44. From perusal of the cross examination of the witness it appears that the witnesses were suggested that they have falsely implicated the accused. But no foundation is laid for false implication. The accused and the informant are not known to each other. There is no evidence of previous enmity between them. Why the informant will falsely implicate the accused is not brought on record. Accordingly, no foundation is laid as regard the plea of false implication at the hands of the informant. The accused cannot say that the witness being related to the informant, he is not

creditworthy.

45. The presence of both witnesses at the spot is natural, as they were traveling towards the market at the relevant time. Their testimony is consistent, reliable, and inspires confidence. Hence, the absence of independent witnesses does not affect the credibility of the prosecution case and just because the injured witnesses are related their testimony cannot be discarded.

**Appreciation on the Point of Identification :**

46. The next line of argument advanced by the learned counsel for the accused is that the identity of the accused has not been proved. It is contended that the complaint was initially lodged against an unknown person and, therefore, the Investigating Officer ought to have conducted a Test Identification Parade (TIP). In the absence of such a parade, it is argued that the evidence of the witnesses cannot be relied upon.

47. The learned advocate for the accused relied upon judgment of Hon'ble Himachal Pradesh High Court in the case of **State of Himachal Pradesh Vs. Shakil, Cri. Appeal No. 108/2008**. By relying upon this case he submitted that the Test Identification Parade should have been conducted.

48. Whereas the learned A.P.P. relied upon the judgment of the Hon'ble Bombay High Court in **Prashant Tikaram Tembhumkar vs. The State of Maharashtra, 2008 ALL MR (Cri) 390**. Relying on

the said judgment, the learned A.P.P. contended that an identification parade conducted by the police is not substantive evidence, whereas identification before the court constitutes substantive evidence. He further submitted that the conduct of an identification parade depends on the facts and circumstances of each case and that there is no rigid or uniform procedure applicable in all cases.

**49.** At the outset, it is necessary to consider the evidentiary value of identification and the role of a Test Identification Parade. The law on this aspect has been authoritatively laid down by the Hon'ble Supreme Court in various decisions, wherein it has been held that the necessity of holding a TIP arises only when the accused is not previously known to the witnesses. The object of such a parade is to test the veracity and memory of the witnesses who claim to have seen the offender at the time of the incident.

**50.** A Test Identification Parade is essentially a part of the investigation. Its purpose is to assure the investigating agency that the investigation is proceeding in the right direction and to determine whether the witnesses can be relied upon as eyewitnesses. There is no specific provision in either the Code of Criminal Procedure, 1973 or the Indian Evidence Act, 1872 mandating the holding of such a parade. Therefore, it cannot be claimed as a matter of right by the accused.

**51.** It is a settled principle of law that the substantive evidence of identification is the identification made in Court,

whereas identification in a TIP is only corroborative in nature. Such identification proceedings fall within the scope of section 9 of the Indian Evidence Act, which makes facts establishing identity relevant.

52. However, where identification is made for the first time in Court and the witness is a stranger to the accused, such evidence is considered weak and ordinarily requires corroboration through a prior Test Identification Parade. This is a rule of prudence and not of law. The absence of a TIP is not ipso facto fatal to the prosecution case.

53. In the present case, upon perusal of the First Information Report, it appears that PW-1 had lodged the report stating that he was assaulted by a person whom he knew by face. Thus, it is evident that the accused was not a complete stranger to the informant; only his name was not known at the time of lodging the report.

54. In such circumstances, the contention of the defence that the accused was totally unknown and that a Test Identification Parade was mandatory is not sustainable. When the accused is already known by face to the witness, holding a Test Identification Parade would be a mere formality and its absence does not affect the credibility of the prosecution case.

**Weapon of assault and spot of incident :**

55. The other witness examined by the prosecution is Sanjay

Vishnu Patil (PW-3). He deposed that the accused made a statement before the police stating that he had thrown the weapon used in the offence. Thereafter, the police, along with panch witnesses, proceeded to the place pointed out by the accused. The accused indicated the location where he had allegedly thrown the weapon. A search was conducted; however, the weapon could not be found. It appears that the weapon of assault is not seized by the prosecution.

**56.** The prosecution also examined Sagar Yashwant Patil (PW-2). He deposed that on 02/08/2024, the police called him for the preparation of the spot panchnama. The spot of incident was a road near a junction. The police prepared the panchnama, drew a sketch, and took photographs. Through his evidence the spot of incident is proved.

**57.** PW-2 further deposed that on 31/07/2024, the police had called him to the police station and showed him a metallic sharp object kept in a box. The said object was stated to have been removed from the head of the complainant's son at MGM Hospital. The police sealed the said object and obtained his signature on the label. Through his evidence the seizure panchnama is proved.

**58.** In cross-examination, Sagar Yashwant Patil (PW-2) admitted that the spot is an open place with frequent movement of people. He further admitted that no blood stains were found at the spot, possibly due to rain. He also admitted that nothing was seized from the spot. However, he denied the suggestion that he is a false

witness or that he signed documents prepared by the police without visiting the spot.

59. The prosecution also examined the Investigating Officer, Mahek Patil (PW-7). She deposed that the offence was registered on the basis of the complaint lodged by Mahendra Patil. During the course of investigation, it was revealed that the accused had assaulted the complainant and his son with a sharp weapon. The medical evidence confirmed that the son had sustained a grievous injury. A fragment of the knife was seized; however, despite efforts, the main weapon could not be recovered. After completion of the investigation, a charge-sheet came to be filed.

60. In her cross-examination, the Investigating Officer admitted that the FIR was lodged after a delay of two days and that no reason for such delay was mentioned in the record. She further admitted that no Test Identification Parade was conducted, no independent witnesses were examined, no CCTV footage was collected, and blood-stained clothes were not seized. It is also admitted that the weapon used in the offence was not recovered

**Appreciation on the Point of Non-Recovery of Weapon and Proof of Assault :**

61. The learned counsel for the accused has contended that the weapon of assault has not been recovered and, therefore, the prosecution has failed to prove that the injuries were caused by a dangerous weapon. It is thus argued that the prosecution case is

doubtful.

**62.** Upon careful perusal of the evidence on record, it is true that the entire weapon of assault has not been recovered by the prosecution. However, the mere non-recovery of the weapon is not, by itself, sufficient to discard the otherwise reliable evidence of the prosecution.

**63.** In the present case, it has come on record that a piece of the weapon remained lodged in the skull of the injured witness, Vaijesh (PW-5), and the same was removed during the course of surgery. The said metallic piece has been produced before the Court and duly identified. The medical officer who performed the surgery has also deposed to this effect. Further, the said piece was seized by the Investigating Officer during the course of investigation.

**64.** From this evidence, it clearly emerges that the weapon used was a sharp and hard object. The nature of injuries and the fact that a part of the weapon broke and remained embedded in the skull of PW-5 strongly indicate that the assault was made by a dangerous weapon. Therefore, even though the entire weapon has not been recovered, the prosecution has successfully established the nature of the weapon through reliable medical and ocular evidence.

**65.** It has also been argued that nothing was seized from the spot of the incident. In this regard, it is pertinent to note that both injured witnesses were immediately hospitalized due to the seriousness of their injuries. Consequently, there was some delay in

lodging the First Information Report and conducting the spot panchnama. Such delay is natural and satisfactorily explained in the facts and circumstances of the case.

66. Moreover, the spot of the incident has been duly proved through the testimony of the injured witnesses, who have consistently deposed about the place of occurrence. Therefore, merely because no material objects were seized from the spot, the prosecution case cannot be doubted.

67. The evidence of both injured witnesses is on record, and nothing material has been elicited in their cross-examination to discredit their testimony. There are no circumstances suggesting false implication or prior enmity. Their evidence is natural, consistent, and inspires confidence.

68. The learned advocate for the accused relied upon the judgments of the Hon'ble Supreme Court in **Laxmi Singh & Anr. Vs. State of Bihar, AIR 1976 SC 2263**; **Mohamed Sameer Khan Vs. The State represented by Inspector of Police, Cri. Appeal 2069/2024**; and **Tulsareddi @ Mudakappa Vs. State of Karnataka, 2026 INSC 67**, as well as the decisions of the High Courts in **Arun Kumar Jha @ Arun Jha Vs. State of Bihar, Cri. Appeal No. 223/1994 (Patna High Court)** and **Kamana Harigiridhara Gopalakrishnan Vs. Addigarla Srinu & 6 Ors., Cri. Revision No. 1614/2009 (Andhra Pradesh High Court)**, submitting that the prosecution was required to collect circumstantial evidence, such as blood-stains and the clothes of the

victims. However, the case laws relied upon pertain to offences under Section 302 of the Indian Penal Code, which are based on circumstantial evidence, whereas the present case is founded on the direct evidence of the injured witnesses, and there is nothing on record to indicate that the accused was falsely implicated; therefore, the cited authorities are not applicable.

**69.** In view of the aforesaid discussion, I find no reason to disbelieve the testimony of the injured witnesses. Their evidence is reliable, consistent, and inspires confidence. Therefore, considering the overall evidence on record, this Court holds that the prosecution has successfully proved its case beyond reasonable doubt, including the fact that the accused assaulted the injured witnesses with a sharp and dangerous weapon.

**70.** Considering the evidence and the reasons recorded hereinabove, I hold that the prosecution has proved its case beyond reasonable doubt. The prosecution has established that the accused assaulted the informant and his son, Vaijesh. The evidence on record shows that Vaijesh sustained grievous as well as simple injuries, whereas the informant Mahendra sustained simple injuries.

**71.** It is further established that the accused caused disappearance of evidence by disposing of the weapon of offence. The evidence also indicates that the accused wrongfully restrained the witnesses at the time of the incident.

**72.** Hence, on the basis of the evidence on record, I held that

the prosecution has successfully proved the charges against the accused, and I held the accused guilty of the offences punishable under Sections 118(2), 118(1), 126(2), and 238(b) of the Bharatiya Nyaya Sanhita, 2023. Accordingly, Points Nos. 1 to 4 are answered in the affirmative.

**AS TO POINT NO. 5 :**

**73.** On holding the accused guilty I pause here to hear the accused on the point of sentence.

**74.** I have heard the accused in person on the point of sentence. Accused submitted that he is of young age of 35 years. His mother is old aged and suffering from various ailments. He is only earning member of the family. Hence, lenient view may be taken.

**75.** I have heard Learned Advocate for accused. He submitted that the lenient view may be shown and the accused be given the benefit of probation. He further submitted that the accused is the young man and mercy be shown on him.

**76.** I have heard A.P.P. for the state. He submitted that maximum imprisonment may be imposed upon the accused.

**Order on Sentence :**

**77.** I have given due consideration to the submissions advanced by the accused and his learned advocate on the point of sentence. It is submitted that the accused is of a young age and has

his entire life ahead of him. However, the offence for which the accused stands convicted under Section 118(2) of the Bharatiya Nyaya Sanhita, 2023 is punishable with imprisonment for life or with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine.

**78.** While awarding the sentence, the Court is required to consider the aggravating and mitigating circumstances. The Court must strike a balance between these factors and award a just and appropriate sentence.

**79.** In the present case, it appears that the assault was sudden. However, the nature of the injuries caused is serious. The injured Vaijesh sustained a head injury, due to which he had to undergo surgery, and a metallic piece was removed from his skull. The manner of assault clearly indicates that it was grave and without any justifiable cause. Due to a trivial dispute on the road, the accused assaulted the informant and his son in such a manner that both had to be hospitalized.

**80.** Considering the nature and gravity of the offence, and the impact on society, this Court is of the view that this is not a fit case for granting the benefit of the Probation of Offenders Act, 1958. Moreover, Section 118(2) of the Bharatiya Nyaya Sanhita prescribes a minimum sentence of one year; hence, the benefit of probation cannot be extended.

**81.** Nevertheless, taking into account the age and personal circumstances of the accused, this Court is inclined to take a lenient view in determining the quantum of sentence.

**Sentence :**

**82.** Hence, the accused is sentenced as for the offence punishable under section 118(2) of the Bharatiya Nyaya Sanhita, 2023, the accused is sentenced to Rigorous Imprisonment for a period of one year and to pay a fine of ₹5,000/-, in default to suffer further simple imprisonment of one month. For the offence punishable under section 118(1) of the Bharatiya Nyaya Sanhita, 2023, the accused is sentenced to Rigorous Imprisonment for a period of six months. For the offence punishable under Section 238(b) of the Bharatiya Nyaya Sanhita, 2023, the accused is sentenced to Rigorous Imprisonment for a period of six months and to pay a fine of ₹1,000/-, in default to suffer simple imprisonment for 10 days. For the offence punishable under Section 126(2) of the Bharatiya Nyaya Sanhita, 2023, the accused is sentenced to Simple Imprisonment for a period of one month. All the substantive sentences shall run concurrently.

**Compensation :**

**83.** Considering the injuries sustained by the informant and his son, as well as the medical expenses incurred, it is appropriate to award compensation of ₹5,000/- as per section 395(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023. Accordingly, out of the

fine amount, ₹5,000/- shall be paid to the informant as compensation under law. Accordingly, as to **Point No. 5**, I pass the following order is passed.

**:: ORDER ::**

1. The Accused **Ganesh Murlidhar Chavarkar** is convicted for the offence punishable under section 118(2) of the Bharatiya Nyaya Sanhita, 2023 vide section 271(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and sentenced to suffer rigorous imprisonment for 1 year (One year only) and to pay fine of ₹5,000/- (Rs. Five thousand only) in default to suffer further simple imprisonment for 1 month (One month only).
2. The Accused is further convicted for the offence punishable under section 118(1) of the Bharatiya Nyaya Sanhita, 2023 vide section 271(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and sentenced to suffer rigorous imprisonment for 6 months (Six months only).
3. The Accused is further convicted for the offence punishable under section 238(b) of the Bharatiya Nyaya Sanhita, 2023 vide section 271(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and sentenced to suffer rigorous imprisonment for 6 months (six months only) and to pay fine of ₹1,000/-

(Rs. One Thousand Only), in default to suffer simple imprisonment for 10 days (Ten days only).

4. The Accused is further convicted for the offence punishable under section 126(2) of the Bharatiya Nyaya Sanhita, 2023 vide section 271(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and sentenced to suffer Simple Imprisonment for a period of 1 month (One month only).
5. All the sentences shall run concurrently.
6. Accused to surrender his bail bonds.
7. Accused is entitled to get the benefit of set off vide section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.
8. On receipt amount of fine, ₹5,000/- (Rs. Five Thousand Only) be paid to the informant Mahendra Vallabh Patil in terms of compensation vide section 395(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 after the expiry of appeal period.
9. The muddemal property i.e. a tip of knife "Material Object -1" be destroyed after appeal period is over.
10. Copy of judgment be provided to accused free of cost forthwith.
11. The accused is informed that he has the right to prefer

JUDGMENT

**:: 33/33 :: R.C.C.No. 170/2024**  
(The State Vs. Ganesh Murlidhar Chavarkar)  
**Exh. No. 46/B**

an appeal against this judgment within the prescribed period.

(Judgment dictated and pronounced in open Court.)

Alibag.  
Date : **31/03/2026**.

**( M. B. Attar )**  
Chief Judicial Magistrate,  
Raigad-Alibag.