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Exh. No. 45

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, YAVATMAL,
DISTRICT YAVATMAL.

(Presided over by S.U. Baghele)

Criminal Appeal No.16/2018

Nitin Shankarrao Pawar,
Aged about 36 years,
Occupation : Agriculturist,
R/o : Gurudeo Ward, Ghati,
Tq. Ghatanji, District Yavatmal.

.....Appellant/
Original accused No.1

..Vs.

The State of Maharashtra,
Through Police-station Officer,
Police-station Ghatanji,
Tq. District Yavatmal.

.....Respondent/
Original prosecution.

Learned advocate for the appellant : Shri M. G. Thakare
Learned A.P.P. for the respondent : Shri. C. R. Dahe

ORAL JUDGMENT**[Delivered on 28/07/2026]**

1. This appeal came to be preferred against the judgment and order, delivered and passed in Regular Criminal Case No. 43/2013, on 30.01.2018, by the learned Judicial Magistrate, First Class, Ghatanji, Tq. Ghatanji, District Yavatmal, whereby the learned Magistrate convicted the appellant/original accused No.1 of the offence punishable under Section 324 of the Indian Penal Code, 1860 (Hereinafter referred to as 'the IPC' for the sake of brevity) and sentenced him to undergo rigorous imprisonment for a term of one month, apart from the fine of Rs. 1000/-, together with a default clause. The parties herein are being referred to hereinafter, as per their original designations before the learned trial court, as 'the prosecution' or 'the accused', as the case may be, for the sake of convenience.

2. The case of the prosecution before the learned trial court, in brief, can be narrated as under:-

On 01/12/2012, around 7.30 p.m., while informant Sachin Gawande was present at his residence at Ghati, Tq. Ghatanji, Distt. Yavatmal, the accused No. 1 approached him and asked him to come out of the house. At that time, the accused No. 1 leveled an allegation against the informant that the informant had committed the theft of his cable. The accused No. 1 caused the informant to accompany him on his bike, and carried the informant to Gavthan. Upon reaching over there, all the accused persons commenced to beat the informant. At that time, the accused No. 1

inflicted the blow of a stick on the head of the informant, thereby causing a bleeding injury. The informant fell down on the ground. PW No. 5 Shankar Gawande, the father of the informant helped the informant to stand up. Thereafter, a report was lodged by the informant/injured with police station Ghatanji, on the strength whereof a crime, bearing crime No. 101/2012, came to be registered, for the offences punishable under sections 324 and 506 read with 34 of the IPC. The informant was examined by PW 6 Dr. Leena Musale, a medical officer. PW 7 PSI Murlidhar Raut investigated into the crime. He proceeded to the scene of occurrence and prepared a spot panchanama in the presence of panchas. He seized the clothes of the informant in the presence of panchas, vide a seizure panchanama. He sought for certain queries from the medical officer. He recorded the statements of witnesses. He arrested the accused. On the completion of the investigation, the accused came to be charge-sheeted before the court of JMFC, Ghatanji, for the offences punishable under sections 324 and 506 read with 34 of the IPC. Charge came to be framed against the accused for the offences punishable under sections 324 and 506 read with 34 of the IPC. The contents therein came to be read over and explained to the accused in vernacular, whereupon they pleaded to be not guilty, and preferred to face the trial.

3. The defence taken by the accused, in the suggestions put to the prosecution witnesses and the statements of the accused, recorded under Section 313 of the Code of Criminal Procedure, 1973, (Hereinafter referred to as 'the Cr.P.C.' for short) was that of

total denial. It was their specific defence that the informant fell down from a bicycle and got injured. As the accused No. 1 lodged a report about the theft of cable against the informant, the accused came to be falsely implicated.

4. Upon considering the respective contentions of the parties, the oral and the documentary evidence, and upon hearing the arguments advanced, the learned trial court convicted and sentenced the accused No.1, as mentioned hereinbefore, vide the impugned judgment and order, which is impugned in this appeal, *inter-alia* on the grounds that the learned trial court failed to appreciate the facts, the evidence and the legal provisions, in proper perspective. The accused No.1 was acquitted of the offence punishable under section 506 of the IPC, whereas the other accused persons were acquitted of all the offences.

5. Looking to the contrary contentions, the evidence led and the arguments advanced, on behalf of both the parties, the following points cropped up for my determination, and I record my findings thereon, with the reasons to follow thereunder.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
(1)	Whether the prosecution proved that the accused No.1 voluntarily caused hurt to informant Sachin Shankarrao Gawande by means of a stick, which is a dangerous object ?	In the affirmative.
(2)	Whether the impugned judgment and order warrants any interference ?	Partly in the affirmative.

(3) What order?

As per the final order

: REASONS :

AS TO THE POINT NOS.1 TO 3 :-

6. Heard Shri. Thakare, the learned counsel for the appellant/original accused, and Shri. Dahe, the learned A.P.P. for the respondent/original prosecution.

7. It is submitted by Shri. Thakare, the learned counsel for the appellant/original accused, that suggestions are given to the witnesses about the sustaining of injuries due to falling down. Prejudice is caused to the accused due to a faulty charge. Stick is not a deadly weapon. Only one injury was sustained by the injured, though the allegations of assault are levelled against all the accused. Hence, there is variance in the ocular and the medical evidence. The stick was not shown to the witnesses. The seizure of blood stained clothes is not proved. The clothes are not shown to the informant. The clothes were not seized immediately. There is a material omission in the testimony of PW3, in respect of the alleged cause of dispute. PW3 is not believable, as he did not state anything against the other accused persons. PW4 merely signed the seizure panchanama, as per his cross-examination. PW5 did not state about the use of stick. As per the report (Exh.32), the father of the injured came later, due to which, he is a got up witness. PW6 stated that the injury is possible by fall. There is variance in the testimonies of

the witnesses. The accused came to be falsely implicated. He submitted that the prosecution failed to prove its case. He relied upon the following authorities:

- 1) **The State of Maharashtra Vs. Swenjita Sanjeet Goraksha and another in criminal appeal No. 345 of 2004, decided on 20/12/2024**, wherein the witnesses were interested witnesses, and they were found to be unreliable, due to substantial improvement and inconsistencies in their depositions. No independent witness had supported the case of the prosecution. The alleged weapon was not recovered. In those circumstances, it was observed that the prosecution failed to prove its case beyond reasonable doubt.
- 2) **State of Maharashtra Vs. Deorao Sampatrao Hiwase in Criminal Appeal No. 280/2000, decided on 27/06/2012**, wherein the testimony of the complainant was not consistent with the medical evidence. The seizure panchanama in respect of the clothes of the injured was not produced on record. In those circumstances, the case of the prosecution was found to be doubtful, due to which, the benefit of reasonable doubt was extended to the accused.
- 3) **State of Maharashtra Vs. Arjun Dnyandeo Darade, Criminal Appeal No. 674/2005 with Criminal Application No. 2247/2025 in Criminal Appeal No.**

674/2005, decided on 16/07/2025, wherein there were inconsistent testimonies of witnesses. There was delay in the lodging of FIR. Material evidence was not produced. Weapons were not seized. Investigating officer was not examined. In those circumstances, the acquittal of the accused was upheld.

4) **Sanjay Fakirchand Fatelashkar and other Vs. The State of Maharashtra and others, Criminal Appeal No. 262/2011, decided on 01/04/2025**, wherein the evidence of injured witnesses was found to be unreliable. The medical evidence was contrary, as regards the claim of assault with sharp edged weapons. No identification parade was conducted, although the assailants were unknown. No independent witnesses were examined. The independent witnesses to the recovery of weapons did not corroborate the case of the prosecution. In those circumstances, the conviction of the accused was set aside.

5) **State of Maharashtra Vs. Subhash Appasaheb Markad and ors, Criminal Appeal No. 680/2023, decided on 20/10/2023**, wherein the testimonies of witnesses were inconsistent. There was the history of animosity, on account of prior disputes and political rivalry. There was the lack of corroborative evidence. In those circumstances, it was observed that the possibility

of false implication cannot be ruled out.

8. *Per contra*, it is submitted by the learned APP for the respondent/original prosecution, that no prejudice is caused to the accused, due to any defect in charge. There is no contradiction in the evidence. The stick is proved. There is an ocular evidence in respect of use of stick. The doctor supported the ocular evidence. The evidence of PW3 is consistent. PW4 is a natural witness. A single testimony is sufficient. There is no error in the judgment.

9. Coming to the evidence. PW 1 Dilip Bharshankwar and PW 2 Ashok Mohije turned to be hostile. PW1 Dilip Bharshankar stated that no spot panchanama was prepared in his presence, whereas PW2 Ashok Mohije stated that no seizure panchanama was prepared in his presence. The efforts taken by the learned APP to put leading questions to them, by getting them declared hostile, could be futile.

10. PW6 Dr. Leena Musale testified in her examination-in-chief that she examined the informant/injured on 01/12/2012 and found a CLW, with bleeding, over the forehead of the injured, admeasuring 1x0.5x0.5 inch, caused by hard and blunt object. She stated about the issuance of a medical certificate Exh. 32 by her. She opined that the injury is possible with a stick of Bamboo. She admitted in her cross-examination that the injury is possible by fall. She denied the suggestion that she did not examine the injured.

11. Though a suggestion has been put to the doctor that the injured has not been examined by her, her testimony could not be shattered in her cross-examination. Even otherwise, there is absolutely no suggestion put to the doctor that the injured did not sustain the injuries mentioned by her. Moreover, as per the overall defence taken, the *factum* of sustaining of the injury by the injured is not in dispute.

12. The testimony of PW7 PIS Murlidhar Raut, the investigating officer, is mostly formal in nature, as he testified merely to the extent of the investigation having been conducted by him. He deposed that he prepared the spot panchanama Exh. 56 in the presence of panchas. He seized the clothes of the injured in the presence of panchas, vide the seizure panchanama Exh. 58.

In the cross-examination, he stated that PW3 Sachin Gawande, the informant, did not state in his statement that the accused No. 1 asked him to come out of his house, by leveling the allegation of theft of cable. He further stated that witness Shankar Gawande did not state in his statement *ab verbatim* that the accused No. 1 assaulted on the head of the injured and caused him an injury. He denied the adverse suggestions.

13. Before proceeding ahead, it would be convenient to pen down that the omission, as regards the cause of incident, is not a material omission, as the same does not have any direct influence over the facts in issue. Moreover, the other omission cannot also be said to be an omission *sensui stricto*, though the same is not

contained in the statement *ab verbatim*. The testimony of the investigating officer is unshaken.

14. PW3 Sachin Gawande, the informant/injured, testified in his examination-in-chief that on the fateful day of the incident at 7.30 pm, while he was present at his residence, the accused No. 1 approached him, and asked him to come out of his house, by leveling the allegation of theft of cable. Thereafter, the accused No.1 carried him at Gavthan, where the informant came to be beaten up with fists and kicks. Thereafter, the accused No.1 inflicted the blow of a stick on the forehead of the informant. He stated about the lodging of a report Exh. 32 and an FIR 33 with the police. He denied all the adverse suggestions given to him as per the defence taken.

15. Upon the perusal of the testimony of PW 3 Sachin Gawande, the informant/injured, it can be seen that his testimony could not be shattered in his cross-examination, as to the material particulars deposed to by him.

16. PW5 Shankar Gawande, the father of the informant, corroborated the testimony of the informant, by testifying that the accused No 1 carried the informant near Hanuman temple from his house, whereafter, this witness learnt that the informant was being beaten up. Thereafter, this witness rushed to the scene of occurrence, whereupon he witnessed the accused No. 1 assaulting the injured on his head, thereby causing a bleeding injury. He

identified the stick and the shirt Articles A and B. He denied the various adverse suggestions put to him in the cross-examination.

17. The testimony of PW5 Shankar Gawande is also unshaken in the cross-examination.

18. PW4 Shankar Thakare deposed to the extent that, upon hearing shouts, he rushed out of his house, and witnessed that some dispute was in operation *inter se* the accused and the informant/injured. The accused No. 1 carried the informant with him. He further stated about the seizure of a blood stained shirt from the house of the injured. He admitted in his cross-examination that he merely signed the seizure panchanama Exh. 29. He denied the other adverse suggestions put to him.

19. The testimony of PW4 Shankar Thakare, *qua* the *factum* of seizure of a blood stained shirt, is of no legal consequence *vis a vis* the controversy in question, for the simple reason that the *factum* of sustaining of the injury by the informant is no more in dispute. The only fact, as deposed to by this witness, is as regards the *factum* of a dispute having been witnessed by him *inter se* the accused No. 1 and the injured. Thus, he corroborated the testimony of PW 3 Sachin Gawande, to the extent of the existence of the dispute relating to the alleged theft of cable, prior to the alleged incident of assault.

20. Though the doctor opined that the injury was possible with a stick as well as by fall, the testimony of PW3 Sachin

Gawande, the informant/injured is unshaken. He appears to have deposed in clear and convincing manner, thereby inspiring the confidence of this court. His testimony is duly corroborated by PW5 Shankar Gawande and PW4 Shankar Thakare, as dealt with hereinabove. Though the accused No. 1 came up with the defence that he came to be implicated falsely, as he lodged a report against the informant with the police, as regard the commission of theft, no copy of the said report has been produced by the accused on the record. Moreover, the perusal of the statement of the accused No. 1, recorded under Section 313 of the Cr. P. C., reflects that he stated that he was not aware, as to why the witnesses deposed against him. In the light thereof, also, it is crystal clear that the testimonies of the witnesses examined by the prosecution can be relied upon, *in toto*, more particularly, in the light of the foregoing reasons. The authorities, as sought to be pressed into service, are not squarely applicable to the facts and circumstances of the case at hand, in the light of the peculiar facts and circumstances therein, as unveiled hereinbefore.

21. For the foregoing reasons, I do not find any error having been committed by the learned trial court, in arriving at the conclusion that the prosecution could establish that the accused No. 1 voluntarily caused hurt to the informant with a stick. A stick can be said to be a dangerous object, as it can endanger human life, if it is used as a weapon of offence.

22. In the light of the foregoing observations, I am in

agreement with the submission made by the learned APP for the respondent that there is no error in the impugned judgment, as regards holding the accused No.1 to be guilty, as held. I am not in agreement with the submission made by the learned counsel for the appellant that prejudice is caused to the accused No.1 due to a faulty charge. Neither any fault could be pointed out, nor any prejudice relating thereto. There is no substance in the submission that a stick is not a deadly weapon. There is no substance in the submission that there is variance in ocular and medical evidence. There is no substance in the submission that the stick must have been shown to the injured, to prove the commission of crime. There is no substance in the submission that the blood stained clothes must have been shown to the injured. It would not be out of the place to mention here that the sustaining of the injury is not in dispute, *de hors* the cause thereof. There is no substance in the submission that the father of the injured came to the scene of occurrence, subsequent to the occurrence, as per the report Exh. 32. The language embodied in the said report can, by no stretch of imaginations, be construed, in the manner, the same is sought to be construed. *Per contra*, what is contained in the report is merely to the extent that the father of the injured helped the injured to stand up, after the injured fell down. There is no substance in the submission that there is variance in the testimonies of the witnesses.

23. As regards the question of sentence, the learned trial court appears to have observed that it is not just to show much

leniency in such cases, and ultimately the sentence of rigorous imprisonment for one month, apart from the fine of Rs.1000/-, appears to have been passed.

24. The learned trial court does not appear to have considered the provision contained in the Probation of Offenders Act, 1958. The dimensions of the CLW sustained by the injured were 1x0.5x0.5 inches only, which *ipso facto* speaks that the intensity of the blow was not sever at all. That apart, no further blows are said to have been inflicted by the accused No.1. That apart, the accused No.1 is not said to be having any criminal past. This court is of the considered view that the benefit of probation under Section 4 of the Probation of Offenders Act, should have been extended to the accused No.1, instead of sentencing him, in the light of the foregoing circumstances. The impugned judgment and order deserves to be modified to that extent, only.

25. In the light of the foregoing observations, I answered the point No.1 in the affirmative and the point No. 2 partly in the affirmative, and I proceed to pass the following order.

: ORDER :

- 1] The appeal is hereby partly allowed.
- 2] The judgment and order, passed in Regular Criminal Case No. 43/2013, on 30.01.2018, by the learned Judicial Magistrate, First Class, Ghatanji, District Yavatmal, is hereby modified to the following extent only.

i) The conviction of the appellant/original accused No.1 for the offence punishable under Section 324 of the IPC is hereby maintained.

ii) The order of sentence, passed against the appellant/accused No.1, is hereby quashed and set aside.

3] The appellant/original accused No.1 shall be released on probation, on his entering into a PR bond of Rs. 25,000/- with a surety to the tune of Rs. 25,000/-, to appear and receive sentence when called upon, within the next two years from today, and in the meantime, to keep the peace and be of good behaviour.

4] The record and proceedings be sent back to the learned trial court, together with an authenticated copy of this judgment.

Date: 28/07/2026
Place: Yavatmal.

(S.U. Baghele)
Additional Sessions Judge,
Yavatmal.