

.. 1 .. Sess. Case No.129/2023 Judgt.
CNR : MHTH270009952023
(Old Sess. Case No.211/2021)

MHTH270009952023



Exh. No. 22

Presented on : 08.04.2021
Registered on : 08.04.2021
Decided on : 10.03.2025
Duration : 3 Ys. 11 Ms. 2 Ds.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
AT BELAPUR, DISTRICT THANE
(Presided over by K. R. Deshpande)

Sessions Case No.129 of 2023
(Old Sessions Case No.211/2021)

C.R. No.I-406/2013
Police Station Koparkhairane,
Navi Mumbai

The Prosecution : State of Maharashtra
Represented by : Shri. E. B. Dhamal, learned Addl. P. P.

Accused : 1. Baban Laxman Kamble,
Age 59 years,
R/o N. K. Mhatre chawl, room no.5,
Sector 5, Koparkhairane, Navi Mumbai.
2. Viki Baban Kamble,
Age 27 years,
R/o N. K. Mhatre chawl, room no.5,
Sector 5, Koparkhairane, Navi Mumbai.

3. Vishal Baban Kamble,
Age 27 years,
R/o N. K. Mhatre chawl, room no.5,
Sector 5, Koparkhairane, Navi Mumbai.

4. Ram Laxman Waghmare,
Age 30 years,
R/o Room No.238, SS-II, Sector 8,
Koparkhairane, Navi Mumbai.

Represented by : Shri. Vijay Shinde, learned advocate
for accused persons.

Date of offence : 05.11.2013
Date of F.I.R. : 05.11.2013
Date of charge-sheet : 08.04.2021
before Sess. Court
Date of framing of charges : On 27.03.2018
by J.M.F.C. Court
On 06.01.2024
by Sessions Court
Date of commencement of evidence : 18.04.2018
(in J.M.F.C. Court)
Date on which judgment is reserved : No.
Date of the judgment : 10.03.2025
Date of the sentencing order, if any : No.

Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of section 428 of Cr.PC.

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1)	Baban Laxman Kamble	08.11.2013	08.11.2013	Sec. 143, 147,149, 323,353,33 2 504, 506 of I.P.C.	Acquitted.	No.	No.
2)	Viki Baban Kamble	08.11.2013	08.11.2013	Sec. 143, 147,149, 323,353,33 2504, 506 of I.P.C.	Acquitted.	No.	No.
3)	Viushal Baban Kamble	08.11.2013	08.11.2013	Sec. 143, 147,149, 323,353,33 2504, 506 of I.P.C.	Acquitted.	No.	No.
4)	Ram Laxman Waghmare	09.11.2013	09.11.2013	Sec. 143, 147,149, 323,353,33 2504, 506 of I.P.C.	Acquitted.	No.	No.

A] Lists of prosecution / defence / Court witnesses -

	Prosecution witnesses	
Rank	Name	Nature of evidence
P.W.1	Eknath Lahu Shelkade (J.M.F.C. Court)	The informant
P.W.2	Dr. Misba Shah Alan Khan (J.M.F.C. Court)	Witness
P.W.3	Amit Arun Wankhedkar (J.M.F.C. Court)	Witness
P.W.4	Mohammad Shah Alam Khan (J.M.F.C. Court)	Witness
P.W.5	Dr. Prerana Anant Thakur (J.M.F.C. Court)	M. O.
P.W.6	Santosh Tukaram Jadhav (J.M.F.C. Court)	I. O.

	Defence witnesses	
	Nil.	
	Court witnesses -	
	Nil.	

B] Lists of prosecution / defence / Court exhibits -

	Prosecution exhibits	Description
1.	18 (J.M.F.C. Court)	Complaint
2.	20 (J.M.F.C. Court)	Spot panchnama
3.	33 (J.M.F.C. Court)	Medical certificate
4.	36 (J.M.F.C. Court)	Letter sent to R.T.O.
	Defence exhibits	
	Nil.	
	Court exhibits	
	Nil.	

C] Material Objects (M. O.) -

Sr. No.	Prosecution M. O.	
	Nil.	
	Defence M. O.	
	Nil.	

JUDGMENT

(Delivered on this 10th day of March, 2025.)

The accused are charged for offence punishable under section 143, 147, 149, 323, 353, 332, 504, 506 of Indian Penal Code.

Shortly stated facts of the case below -

2] Informant Ekanth Lahu Shelkande working as a police hawaldar in traffic department, Navi Mumbai. On 05.11.2013 the informant was on duty on Zone Mobile van as a driver from 9.00 a.m. to 9.00 p.m. and at about 9.00 p.m. when his vehicle came near Mahape bridge that time Misba Khan came there and informed that he has made the call to control room and he was asked to approach him. He told that one person under the influence of liquor quarrelling with his father therefore they went there where Baban Kamble by consuming liquor quarreling with Mahavir Hardwares, they tried to calm him however Baban Kamble scuffled with Wankhede and gave kick blow on his stomach. They made sit Baban Kamable in rickshaw to take him at police station. Then four persons came there, they taken out Baban Kamble from rickshaw and sitting on motorcycle ran away. Therefore, he filed F.I.R. on which basis crime no.406/2013 came to be registered.

3] Shri. Santosh Jadhav, P.S.I. investigated the crime. He drawn spot panchnama, recorded statements of witnesses,

secured the information from R.T.O., arrested the accused and after investigation filed charge-sheet against the accused.

4] The learned 10th Joint J.M.F.C. framed charge against the accused, recorded the evidence of prosecution witnesses and found that the case is triable by Sessions Court therefore committed the case to this Court.

5] I have also framed charge against the accused. The prosecution has filed pursis below Exh.13 and requested to read the evidence recorded by the learned 10th J.M.F.C. Court. The accused filed say and gave no objection. Thereafter, I have recorded statements of the accused under section 313 of Cr.P.C.

6] The following points arise for consideration. My findings thereon are as under -

Points	Findings
1) Does the prosecution prove that the accused persons were a member of an unlawful assembly at the time of incident ?	No.
2) Does the prosecution prove that the accused persons, being member of an unlawful assembly, used force or violence in prosecution of common object of said assembly ?	No.
3) Does the prosecution prove that the accused persons, in prosecution of common object, assaulted or used	

criminal force to the informant and his colleague being a public servant in the execution of their duty as such public servant, or with intention to prevent or deter them from discharging their duty as such public servant, or in consequence of anything done or attempted to be done by them in the lawful discharge of their duty as such public servant ?

No.

- 4) Does the prosecution prove that the accused persons, in prosecution of common object voluntarily caused hurt to the informant and his colleague being a public servant in the execution of their duty as such public servant, or with intention to prevent or deter them from discharging their duty as such public servant, or in consequence of anything done or attempted to be done by them in the lawful discharge of their duty as such public servant ?

No.

- 5) Does the prosecution prove that the accused persons, in prosecution of common object voluntarily caused hurt to the informant and his colleague while discharging their public duty ?

No.

- 6) Does the prosecution prove that the accused persons, in prosecution of common object intentionally insulted and thereby gave provocation to the informant and his colleague intending or knowing it to be likely that such provocation would cause them to break the public peace ?

No.

- 7) Does the prosecution prove that the accused persons, in prosecution of

common object did criminal
intimidation by threatening informant
and his colleague ?

No.

8) What order ?

The accused are
acquitted.

REASONS

7] In order to bring home the guilt of accused, the prosecution has examined six witnesses. Produced documentary evidence and closed evidence.

8] The defence of the accused is that the car owner gave dash to the motorcycle of accused no.1 Baban therefore he sustained injuries and fell down, when he asked compensation he called the police and filed this false complaint against them.

9] Heard the learned A.P.P. for the State and the learned counsel for the accused.

As to point no.1 to 7 -

10] All the points are interlinked with each other, therefore I am dealing it jointly.

11] In order to prove the F.I.R. the prosecution has examined P.W.1 Eknath who deposes that he was on duty from 9.00 am. to 9.00 p.m. on 05.11.2023 and at about 9.00 p.m.

when they were near Mahape bridge, one Misba Khan came and informed that one person consuming liquor quarreling with his father therefore they went there and they tried to calm Baban Kamble however Baban Kamble scuffled with Wankhede and gave kick blow on his stomach, when they tried to bring Baban Kamble in rickshaw to police station, time time four persons came and taken out Babn Kamble from rickshaw and ran away on motorcycle. He filed complaint which is below Exh.18.

12] P.W.2 Misba deposes that on 22.05.2013 he along with his father Mohammad Shah went for shopping in Koparkhairane sector 1A and when they were returning by their car his father was taking car reverse, that time one motorcycle came and dashed from back side. He identified Baban Kamble as a motorcycle rider and deposed that he felt that Babn Kamble was under the influence of liquor. He deposes further that Baban Kamble started abusing his father and tried to catch the collar, pushed his father and made him fall, therefore he rushed towards Bit marshal and came along with two policemen, the police also tried to convince however Baban Kamble abused and scuffled with police also. According to him, Baban Kamble made the phone call and called four persons, they came and abused and scuffled with the police. He could not recognize those four persons because of lapse of five years.

13] P.W.3 Amit Wankhedkare deposed that on 05.11.2013 he was on duty on mobile van and complainant was driver of that van. His duty time was 9.00 p.m. to 9.00 a.m., they were in Sector 6, Koparkhairane in front of Mahavir Hardware, that time one motorcycle rider came there and told that some people are assaulting his father therefore he along with informant went to the spot where one person under the influence of liquor was there, they inquired with him however that person gave kick blow on the stomach of informant and also abused him. He deposes further that that person gave slap on his face, that person also gave threat to one old age person who was possessing Innova car, then 4 to 5 persons came there because the person who consumed liquor called them and then they taken that person in rickshaw and left the spot. He identified accused Baban Kamble.

14] P.W.4 Mohammad deposes that on 05.11.2023 at about 9.00 p.m. to 9.15 p.m. when they were returning to home, one motorcycle gave dash from back and then he caught his collar and scuffled with him, his son came there, that motorcycle rider scuffled with his son also therefore he asked him to bring the police and accordingly he came with two police persons however that motorcycle assaulted police also, he called his 3-4 persons they also scuffled with police and gave threat and abused them. He identified only Baban Kamble.

15] P.W.5 Dr. Prerana deposed that on 05.11.2013 at about 12.00 to 12.30 hours Eknath Shelkhande brought by police with history that he was assaulted by 4 – 5 persons by stone, he had sustained injury on chest and back and she examined him and gave medical certificate which is at Exh.33. P.W.6 Santosh deposes that he was given investigation, he got the information from R.T.O., recorded statements of witnesses, secured medical certificate, arrested the accused and after investigation he found that the accused scuffled with the police and quarreled with the witnesses.

16] After considering oral and documentary evidence, it is revealed that the informant though claimed that contents of his F.I.R. are true but it is clear from the evidence of prosecution that there are several contradictions came on record. On perusal of his F.I.R. and evidence of prosecution witnesses, it is revealed that the duty of this informant was over by 9.00 p.m. and then the alleged incidence took place. It is mentioned in the F.I.R. that Misba Shah Khan came and informed that one motorcycle under the influence of liquor assaulting his father and therefore they came to the spot. In F.I.R. below Exh.18, even in deposition of the informant before this Court how that Misba came to the informant. However, this aspect tried to be explained by P.W.3 Amit saying that one motorcycle rider came to them and informed that one person assaulting his father. If the entire prosecution case is considered then it is clear that this Misba and

his father had been to the market in their car. From where this Misba brought motorcycle and went to the informant this aspect is not made clear. This P.W.3 Amit in his cross-examination claimed that the spot of incidence from their place where they were staying and where that motorcycle rider came, was at the distance of 50 kms. and they reached to the spot within ten minutes. I find that distance of 50 kms. cannot be crossed within ten minutes and therefore these aspects creates confusion and doubt.

17] The another aspect is that this P.W.3 Amit deposes that that motorcycle rider came and told that some people are assaulting his father whereas the informant as well as P.W.2 Misba himself claimed that only one person was assaulting his father and then they went there. Another material aspect is that in F.I.R. below Exh.18, even the deposition of informant it has not come that this Baban Kamble gave slap on the face of this Amit Wankhedkare. Therefore, there appear material omission in the evidence of prosecution. According to P.W.3 Amit, his duty time was 9.00 p.m. to 9.00 a.m. on 05.11.2023 on Styking mobile van and the informant was driver on that van whereas as per the informant his duty time was 9.00 a.m. to 9.00 p.m. as a driver. I find that this is absolutely material contradiction came on record. It is not the case of prosecution that after 9.00 p.m. somebody else was to join the duty as a driver in place of the informant. And therefore I find that this is material

contradiction came on record in respect of duty time. Two different versions in respect of duty time came on record, therefore it creates total doubt as to whether provisions of section 353, 332 of I.P.C. will attract in this case or not.

18] According to F.I.R. below Exh.18 the accused who assaulted was taken by other 4 persons in rickshaw and one person has taken his motorcycle and left that place. The informant deposes before the Court that he and other taken Baban Kamble in rickshaw and those 4 persons came and taken away Baban Kamble from rickshaw and they ran away on motorcycle. I find that this is another material contradiction came on record. As far as assault is concerned, the informant did not depose that he saw Baban Kamble while assaulting the owner of Mahavir Hardwares. What he claimed that there was some quarrel, quarrel may be verbal also. As far as giving kick blow on his stomach is concerned, P.W.2 Misba and P.W.4 Mohammad they did not depose specifically that accused Baban Kamble gave kick blow on the stomach of informant. They have not also deposed that Baban Kamble gave slap in the face of P.W.3 Amit and therefore I find that there is material discrepancy, contradiction and omission came on record.

19] P.W.5 Dr. Prerana deposes that on chest and back there were injuries on the person of informant and these injuries were caused by stones. However, neither in F.I.R. nor in the

deposition of any of the witness of the prosecution they have claimed that the accused have assaulted the police persons by stone and therefore I find that this is another material omission came on record. The informant in his F.I.R. nor in the deposition before the Court mentioned that he had sustained injury on chest and back. Therefore, I find that the medical evidence and deposition of prosecution witnesses are absolutely contrary to each other.

20] The learned A.P.P. for State submitted that the accused have assaulted, abused and threatened the informant, other police persons while discharging the duty, accused no.1 was under the influence of liquor, he dashed to the vehicle of owner and assaulted him, there is no dispute about spot, identity, in statement under section 313 of Cr.P.C. it is the defence taken by the accused that the vehicle dashed the accused and caused injury however no complaint against the police is filed, there is no contradiction, omission and the prosecution has established the guilt hence prayed for conviction.

21] The learned counsel for accused submitted that there is no intention, motive to assault the police persons, police were not discharging duty, their duty time was over and therefore provisions of section 353, 332 of Cr.P.C. are not attracted in this case. He submitted that the informant in his cross-examination

admitted that there was no riot, he was performing the duty after office hour and 4 wheeler dashed the motorcycle of accused, there was some verbal exchange of words due to accident and it was found to happen and therefore, it cannot be said that there was obstruction or any offence committed by the accused. He relied on case laws and prayed for acquittal.

22] After considering submissions, I have perused the cross-examination of the informant and find that he admitted that after 9.00 p.m. he was on duty, while taking reverse Innova car dashed to the motorcycle of accused and it always happens that after accident there occur some verbal hot exchange of words, there was no riot and it was not happened that there was fighting took place on the spot. Considering admissions given by this informant, I find that the charges levelled against the accused persons regarding unlawful assembly and riots do not apply in this case. It is revealed that the Innova car dashed the motorcycle of accused Baban while taking reverse and therefore there were some verbal exchange of words. As far as assault part is concerned, the complainant himself admits that there was no riot and no fighting or assaulting took place on that spot.

23] In cross-examination of PW.2 Misba and PW.4 Mohammad they denied that their car dashed to the motorcycle of accused; on the contrary they claimed that the accused Baban himself gave dash to their car from back side because he was

consuming the liquor. I find that the I.O. arrested the accused after 2-3 days and therefore there was no occasion to get medically examined. There is no medical evidence available before this Court to show that accused Baban had consumed liquor at that time. It is to be noted that the I.O. gave evasive answer that accused Baban Kamble sustained injury and therefore he went in rickshaw from that spot. This evasive answer speaks something about the injury claimed by accused Baban due to that dash. There appear probability in his defence.

24] As far as assault to the owner of 4 wheeler is concerned, I find that P.W.1 Eknath admitted in his cross-examination that while taking reverse the car dashed to the motorcycle of accused. Surprisingly the car owner and his son Misba claimed contrary that motorcycle itself dashed to their car from backside. I find that there is no clearcut evidence to that effect brought on record by the prosecution. The defence of the accused that car dashed to motorcycle is admitted by the informant and therefore, there appear probability. In statement under section 313 of Cr.PC. it is claimed that the accused asked compensation however the owner of car called the police and filed false case this defence appear to be probable. P.W.1 Eknath and P.W.3 Amit did not speak about the assault either to P.W.2 Misba or P.W.4 Mohammad, they did not see actual assault on these two persons. I find that P.W.2 Misba being son of P.W.4 Mohammad can be treated as an interesting witness and the

possibility cannot be ruled out that in order to avoid the compensation they claimed that accused Baban assaulted them. I find that no complaint on assault is filed either by P.W.2 Misba or P.W.4 Mohammad. There is no medical evidence brought on record to show that they had sustained any injury. In absence of these evidence on record it is very difficult to accept their contention.

25] The accused have relied on case law reported in **Harenderjit Singh vs. State of M.P** in which it was found that at the time of incidence the complainant was not performing any official duty and nobody restrained him from discharging official duty and assaulted him and therefore the appellants were acquitted for the charge of section 353. In **Mahendra Sonkar vs. State of M.P** it was held that when the appellant was apprehended there appears to have been an attempt by the appellant to wriggle out and jostling and pushing appear to have happened in the process of the appellant trying to extricate himself from the arrest, none of the ingredients of assault or criminal force have been attracted. In this case first of all there is no clearcut evidence to show that what are the duty time of informant and P.W.3 Amit. Irrespective of this, the informant has clearly admitted that his duty time was over by 9.00 p.m. Even it is presumed that the informant was performing his duty after 9.00 p.m. still there appear material contradiction, omissions in respect of assault and all the alleged incidence right from

beginning to end and therefore I find that such type of evidence is not reliable to convict the accused. There are doubts created about the genuineness of the case of the prosecution. The accused have shown the probability in their defence. Considering these aspects I am of the view that the benefit of doubt required to be given to the accused and therefore, I answer point no.1 to 7 in negative and pass the following order -

ORDER

- 1) Accused namely Baban Laxman Kamble, Viki Baban Kamble, Vishal Baban Kamble and Ram Laxman Waghmare are acquitted of the offences punishable under section 143, 147, 149, 323, 353, 332, 504, 506 of Indian Penal Code.
- 2) Bail bonds of accused stand cancelled and sureties are discharged.

Date : 10.03.2025

(K. R. Deshpande)
Additional Sessions Judge, Belapur.