
(2011) 04 BOM CK 0098
In the Bombay High Court
Case No : Criminal Appeal No. 131 of 2001

Sanjay Suryawanshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 354, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2012) BomCR(Cri) 800 : (2011) 113 BOMLR 1705 : (2011) 3 Crimes 74

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : C.R. Deshpande, for the Appellant; Y.M. Kshirsagar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—This appeal is directed against the judgment and order, dated 28.2.2001, rendered by the learned Additional Sessions Judge, Nilanga in Sessions Case No. 10 of 2000, thereby convicting the Appellant herein i.e. original accused No. 1 for the offence punishable u/s 354 of the Indian Penal Code and sentencing him to suffer R.I. for one month with fine of Rs. 300/, in default of payment of fine to suffer further R.I. for seven days; and also convicting him for the offence punishable u/s 323 of the Indian Penal Code and sentencing him to suffer S.I. till rising of the court with fine of Rs. 50/and for non payment of fine amount further to suffer S.I. for one day, and also directing that both the substantive sentences to run concurrently, and the Appellant herein questioned the said convictions and sentences in the present appeal.

2. In fact, the Appellant herein (original accused No. 1) and his wife, namely Kachrubai i.e. original accused No. 2 faced the trial for the offences punishable under Sections 354, 324 and 323 of the Indian Penal Code, on the accusations

that accused No. 1, namely Sanjay i.e. Appellant No. 1 herein allegedly used criminal force against aggrieved woman Ambikabai with intent to outrage her modesty and also voluntarily caused hurt to her by means of piece of sugar cane; whereas original accused No. 2, namely Kachrubai has voluntarily caused hurt to said victim Ambikabai by means of teeth bite, and original accused No. 1 i.e. Appellant herein came to be convicted and sentenced as afore stated; whereas original accused No. 2, although convicted for the offence punishable u/s 324 of the Indian Penal Code, but instead of sentencing her at once to any punishment, it was directed that she be released on her entering into a bond of Rs. 3,000/to appear and receive sentence when called upon, for the period 28.2.2001 to 27.2.2002 and in the mean time, she was directed to keep peace and observe good behaviour.

3. Since, the Appellant herein, namely Sanjay allegedly assaulted Ankush i.e. son of the victim woman, namely Ambikabai on 21.1.1996, Ambikabai went to the field of Keshav Zarkar, master of accused No. 1, situated at village Dongargaon on 22.1.1996 at about 10.00 a.m. and questioned the Appellant, namely Sanjay, who was accompanied with his wife i.e. accused No. 2 Kachrubai, why he assaulted her son, namely Ankush, but thereupon the Appellant herein caught hold of her breast and manhandled her. Hence, Ankush intervened and pushed the Appellant herein and thereby the Appellant fell and sustained invisible injuries. However, accused No. 2 Kachrubai rushed towards Ambikabai and voluntarily caused hurt to her by means of piece of sugarcane and also caused hurt to Ambikabai by teeth bite. Hence, said Ambikabai went to police station Shirur Anantpal and lodged the first information report on the same day i.e. 22.1.1996, which came to be registered on 23.1.1996 at 8.35 a.m. and offence was registered against the accused persons vide C.R. No. 10 of 1996 under Sections 354, 324, 504 r/w 34 of the Indian Penal Code and thereafter they went to the hospital at Sakol, where the Medical Officer examined her and Ankush and gave treatment to them. The Appellant herein Sanjay also lodged report against Ambikabai, Ankush and three others raising accusations against them in respect of the commission of the offences of rioting and intentional insulting to them on their caste i.e. Mahar and causing hurt to them and the said cross case pertained to the offences punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, besides the other offences under the Indian Penal Code, and therefore, the said case was committed to the court of Sessions and since it arose out of the same incident, it also was committed to the court of Sessions.

4. Accordingly, the learned Additional Sessions Judge, Nilanga framed charge under Exh. 14 on 7.7.2000, against the Appellant i.e. original accused No. 1 for the offences punishable u/s 354 and 323 of the Indian Penal Code and against original accused No. 2 for the offence punishable u/s 324 of the Indian Penal Code, but accused Nos. 1 and 2 pleaded not guilty to the same and claimed to be tried. The defence of the accused persons was of total denial and they claimed to be innocent and it is their case that Ambikabai and her son Ankush and other

three persons assaulted them by means of stick and abused them on their caste i.e. Mahar, and therefore, they have lodged the report in that respect, and hence, the complainant has filed the present case falsely implicating them as a counter blast.

5. To substantiate the charges levelled against the accused persons, the prosecution examined in as much as 7 witnesses, as mentioned below:

PW1 Dr. Dinkar Dajirao Dandade - Medical Officer, who examined Ambikabai and Ankush and issued the injury certificates Exhs. 22 and 23 respectively.

PW2 Ambikabai Shelke - complainant - victim, who lodged the first information report Exh.25 on 22.1.1996 under C.R. No 10 of 1996 at Shirur Anantpal police station.

PW3 Ankush Shelke, another injured person and son of Ambikabai.

PW4 Keshavrao Zarkar, owner of field in question and master of accused No. 1, eye witness - turned hostile.

PW5 Dagadu Laxman Gaikwad - eye witness turned hostile.

PW6 Prakash Mohite - eye witness, who arrived at the place of incident during the quarrel.

PW7 P.H.C. Uttam Dattatraya Solapur, Investigating Officer.

6. After assessing and scrutinizing the evidence on record and also considering the rival submissions advanced by the parties, the learned Additional Sessions Judge, Nilanga convicted and sentenced the Appellant herein i.e. original accused No. 1 as afore stated. Hence, being aggrieved and dissatisfied by the said conviction and sentence, the Appellant herein has challenged the same in the present appeal and prayed for quashment thereof.

7. Before advertng to the submissions advanced by the learned Counsel for the parties, it is necessary to scrutinize the material evidence adduced/produced on record by the prosecution. In the said context, coming to the deposition of PW2 Ambikabai Shelke i.e. the complainant, who stated that accused No. 1 Sanju was serving with Keshav Zarkar at the relevant time, who assaulted her son Ankush, and therefore, she went to the field of Keshav Zarkar to questioned Sanju about the said assault. At that time, accused No. 1 Sanju and his wife Kachrubai were bringing sugarcane in a bullock cart and at that juncture, she asked Sanju i.e. accused No. 1 why he quarrelled with her son. However, thereupon both the accused quarrelled with her and accused No. 1 Sanju addressed her in ill words and caught her breast and stated to her that, "Tuzya Ijjatichi Beijjat Karto". At that time, her son Ankush came there from a short distance, where he was present, and asked Sanjay i.e. accused No. 1 as to whether he was going to outrage the modesty of her mother and pushed Sanju and thereupon Sanju i.e. accused No. 1 fell on the ground and sustained injury. At that juncture, accused No. 1 Kachrubai came there and caused injury by teeth bite over right hand of

Ambikabai and also inflicted blow by means of piece of sugarcane over right cheek of Ambikabai. Accused No. 2 Kachrubai also injured Ankush over his little finger or right hand by means of small sickle. She also stated that other persons, namely PW6 Prakash Mohite, Satish Jadhav and PW4 Keshav Zarkar came there and rescued them. Thereafter she went to police station Shirur Anantpal and lodged first information report Exh.25 and further went to the hospital at Sakol and the Medical Officer examined them and gave treatment. She also stated that the cause of quarrel between Sanju and Akush was a mat prepared by bags of fertilizers.

8. During cross-examination, she stated that police recorded her statement twice as per her narration. Suggestion was given to her that she herself and her daughter-in-law assaulted accused No. 1 Sanju on the ground of earlier quarrel and lodged present case falsely, but same was denied by her. It is also suggested to her that in that event her son inflicted blow on elbow joint of accused No. 1 Sanju resulting in his fall on the ground, but same was denied by her. She also denied that accused No. 2 Kachrubai came to intervene and she also was assaulted by her. However, she admitted that on the report filed by accused No. 1 Sanju, the prosecution i.e. cross case is pending against her. Hence, suggestion was given to her that she filed the present case falsely against the accused persons as a counter blast, but same was denied by her. She also denied that accused No. 1 Sanju has not uttered ill words against her and also not caught her breast. She further denied that accused No. 1 Kachrubai has not caused hurt to Ankush by means of small sickle. It has come in her testimony that she did state before police that hurt was caused by means of small sickle, but there is no reference thereof in her police statement amounting to vital omission.

9. Pertinently, considering the deposition of complainant PW2 Ambikabai, wherein she stated that she lodged the first information report Exh. 25 against the accused persons on the same day i.e. 22.1.1996 in respect of the alleged occurrence of incident, but the very first information report Exh. 25 discloses that the same was lodged on 23.1.1996 at 8.35 a.m. under C.R. No. 10 of 1996 for the offences punishable under Sections 354, 324, 504 r/w 34 of the Indian Penal Code and there is no plausible explanation given by the prosecution in respect of the said delay of almost about 23 hours.

10. Moreover, the two eye witnesses to the occurrence of the incident, as stated by PW2 Ambikabai, namely PW6 Prakash Mohite and PW4 Keshavrao Zarkar have turned hostile and did not support the case of prosecution. Moreover, another eye witness to the occurrence of incident, namely Satish Jadhav, as stated by PW2 Ambikabai was not examined by the prosecution for the reasons best known to the prosecution. Moreover, there is vital omission in her testimony in respect of causing injury to little finger of right hand of her son Ankush by means of small sickle, which goes to the root of the matter, since alleged weapon sickle is not recovered and the same paralyzes the case of the prosecution in that respect. Moreover, PW2 Ambikabai has also stated in her deposition that police

recorded her statement twice as per her narration and another statement has not been brought by the prosecution before the court, creating suspicion regarding the first information report that whether the first information report is the first statement or the another statement, which is not brought by the prosecution before the court, is the first statement given by the complainant PW2 Ambikabai, more particularly considering the fact that no convincing explanation is coming forth by the prosecution in respect of delay in lodging the first information report Exh. 25, as mentioned herein above.

11. That takes me to the testimony of PW3 Ankush Shelke, who stated that quarrel took place between himself and accused No. 1 Sanjay at about 8.00 p.m. in January, 1996 in respect of mat prepared of bags of fertilizers (Chavale) and during the said quarrel accused No. 1 Sanjay had assaulted and abused him and the said quarrel had taken place in the field of Keshavrao Zarkar. He also stated that he disclosed the said incident to her mother in the morning and thereafter they came together in the field of Keshavrao Zarkar to question accused No. 1 Sanjay and when his mother Ambikabai was questioning accused No. 1 Sanjay about the same, he abused and manhandled her. He also asked his mother to wait and he will outrage her modesty and caught her breast and shook it, and at that time he was at a distance of less than 5 feet. During the course of said incident, he pushed accused No. 1 Sanju and thereupon he fell down on his hand and sustained invisible hurt. He further stated that at that time, accused No. 2 Kachrubai came there and she assaulted him by means of a piece of sugarcane and a sickle; whereas accused No. 1 Sanju assaulted him over his left leg just above a heel by means of piece of sugarcane and accused No. 2 Kachrubai assaulted his mother over left hand by means of piece of sugarcane as well as pw2 Kachrubai caused teeth bite to his mother over right hand on wrist. He further stated that Dagdu, Prakash and Satish intervened the said assault and thereafter he himself and his mother went to Shirur Anantpal police station, where they submitted an application, from where they were sent to the hospital at Sakol.

12. During cross-examination, PW3 Ankush stated that accused No. 1 Sanju was servant of PW4 Keshav Zarkar on yearly salary basis and accused were residing in the field by erecting a temporary hut. The accused put their case to the present witness that when the accused were sleeping in the temporary hut, PW3 Ankush and his mother went there on the pretext of requirement of Chavale i.e. mat prepared by bags of fertilizer and they pulled the said mat on which they were sleeping, and for that reason Ankush assaulted them on the ground that why they had been there at odd hours, but same was denied by PW2 Ankush. Suggestion was given to him that in order to conceal the event of night, he called his mother in the morning and and assaulted Sanju, but same was denied by him. It was further suggested to him that he assaulted accused No. 1 Sanju by means of cross bar of cart when he was untying the bullocks from the cart, but same was denied by him. Suggestion was given to him that because of severe beating to Sanju by means of cross bar of cart, he fell on the ground, but same

was denied by him. A specific question was put to him that accused No. 2 Kachrubai was present in standing crop of sugarcane when accused No. 1 Sanju fell on the ground, but he replied that when accused No. 1 Sanju fell on the ground because of push, accused No. 2 Kachrubai was not in the crop of sugarcane, but she was near the place of preparation of jaggery (Chulvan). Suggestion was given to him that accused No. 1 Sanju neither abused nor manhandled her mother PW2 Ambikabai, but same was denied by him. As regards the assault by sickle to PW3 Ankush, he deposed that he did state before police regarding the assault upon him by sickle, but there is no such mention in his police statement, amounting to vital omission, and he could not assign any reason therefor. Hence, it was suggested to him that by way of counter blast to the prosecution initiated by accused No. 1 Sanju, present case was filed against him, but same was denied by him.

13. Apparently, there is variance in the testimonies of PW2 Ambikabai and PW3 Ankush in respect of very occurrence of incident, since PW2 Ambikabai stated that accused No. 1 Sanju caught her breast, but she did not utter single word about shaking thereof, but PW3 Ankush stated in his deposition that accused No. 1 Sanju caught the breast of her mother and shooked it. Moreover, there is vital omission in his testimony in respect of assault upon him by sickle and as mentioned herein above, sickle has not been recovered and has not been produced on record, and hence, suspicion is created in respect of assault upon PW3 Ankush by sickle. Moreover PW3 Ankush is son of PW2 Ambikabai and PW2 Ambikabai has nowhere stated in her deposition that PW3 Ankush was present at the time of occurrence of incident at a distance of 5 feet, but she stated that he was present at short distance. Moreover, PW2 Ambikabai stated in her deposition that accused No. 2 Kachrubai caused injury by teeth bite over her right hand; whereas PW3 Ankush stated in his deposition that accused No. 2 Kachrubai caused teeth bite to his mother PW2 Ambikabai on wrist of right hand, and accordingly, there are variances in both the said testimonies.

14. Coming to the deposition of PW4 Keshavrao Zarkar, who was master of accused No. 1 and owner of the field in question, who stated in his deposition that at about 10.00 a.m. on the relevant day, accused No. 1 Sanju was bringing sugarcane in bullock cart and at that juncture, he was sitting beneath a tree reading news paper. He stated that PW3 Ankush assaulted accused No. 1 Sanjay by means of wooden rod of yow (khil), when accused No. 1 Sanjay was untying the bullocks of cart, and thereby accused No. 4 Keshav Zarkar stated that he intervened in the said quarrel. However, since the said witness did not support the case of prosecution, he was declared hostile and learned A.P.P. cross-examined him, and stated that he did not state the contents of portion marked "A" and "B" in his statement to the police personnel and could not assign any reason why police recorded the same in his police statement.

15. In substance, nothing much beneficial could be elicited from the cross-examination of this witness by learned A.P.P. to the case of prosecution, and

therefore, testimony of PW3 Keshavrao Zarkar, who turned hostile, is not of much aid and assistance to the case of prosecution.

16. Turning to the testimony of PW5 Dagdu Gaikwad, another eye witness, who also turned hostile to the case of prosecution, who categorically stated that he has not witnessed the incident and he did not know about the same, and therefore, he was cross-examined by the learned A.P.P. and he denied the contents of portion marked "A" and "B" in his police statement. Hence, the said testimony of PW5 Dagdu Gaikwad also cannot be of any help to the case of prosecution, since nothing much beneficial could be elicited from his cross-examination by the learned A.P.P. to the case of prosecution.

17. That takes me to the testimony of PW6 Prakash Mohite, who also is eye witness to the occurrence of incident, who stated that the incident took place in the field of Keshavrao Zarkar about 4 to 5 years back and at that time, he himself, Sanjay Suryawanshi i.e. accused No. 1 servant of Keshavrao Zarkar, Ankush Shelke, Pravin Gaikwad, Keshav Zarkar and Satish Jadhav were present there, and they were working in "Gural" i.e. process of preparation of Jaggery in the field of Keshavrao Zarkar. He stated that he and Satish Jadhav were cutting sugarcane and loading the same in a bullock cart and accused No. 1 Sanjay Suryawanshi took the bullock cart towards a big oven. Thereafter he and Satish Jadhav came on the boundary of the field and at that juncture, quarrel was going on amongst Sanjay Suryawanshi, PW2 Ambikabai and PW3 Ankush and scuffle was going on between them, which they saw. He also stated that by the time they reached there the quarrel was already intervened by Dagdu and Kshav Zarkar. He further stated that the blouse of Ambikabai was torn and on questioning by him to Ambikabai, she informed him that accused No. 1 Sanjay caught her breast and torn her blouse, and Ambikabai sustained injury over her hand.

18. During cross-examination, he stated that he did not recollect as to which hand of Ambikabai had sustained injury. He categorically stated that the blouse of Ambikabai was torn from front side. However, he deposed that he did not state before police that blouse of Ambikabai had been torn. Hence, suggestion was given to him that no event had taken place and that he was deposing falsely at the instance of Ambikabai, but he denied the same also.

19. Pertinently, PW6 Prakash Mohite has stated in his deposition that Satish Jadhav was also present at the time of incident, but the prosecution has not examined the said material witness for the reasons best known to it, as mentioned herein above, who could have thrown light on the occurrence of the incident clearly, since he was one of the eye witness, as the other eye witnesses have turned hostile, and therefore, nonexamination of the said material eye witness, namely Satish Jadhav, hampers the case of the prosecution.

20. Moreover, it is material to note that this witness PW6 Prakash Mohite has categorically stated in his deposition that blouse of Ambikabai was torn during

the afore said quarrel and it was torn from the front side, which he did not state in his police statement, amounting to omission in his police station and improvement in his testimony and further pertinently PW2 Ambikabai as well as PW3 Ankush nowhere stated in their respective testimonies that blouse of Ambikabai was torn, more particularly from front side; whereas PW6 Prakash Mohite stated so in his deposition amounting to material variance in their respective depositions, which also diminishes the credibility of the prosecution case.

21. That takes me to the testimony of PW1 Dr. Dinkar Dajirao Dandade, who stated in his deposition that on 23.1.1996, he was posted as Medical Officer at Primary Helath Centre, Sakol, and he examined PW2 Ambikabai and found three injuries on her person, i.e. an abrasion over lower 1/3rd of right forearm, by teeth bite; a contusion to lateral side of right elbow, as well as an abrasion to right side of cheek, which injuries were simple in nature, and accordingly, he issued injury certificate, which is produced at Exh. 22 He further stated that he examined PW3 Ankush and found two injuries, namely an incised wound to little finger of right side hand and an abrasion to the back of lower 1/3rd of left leg, which were of simple nature. He also stated that probable weapon used for injury No. 1 was sharp object and as regards injury No. 2 it was hard and blunt object and the age of the said injuries was within 24 hours. Accordingly, he issued injury certificate regarding injuries on the person of PW3 Ankush, which is produced at Exh. 23. He also stated that he noted down the history in respect of PW3 Ankush as assault by two persons by means of sugarcane and a Katti on 22.1.1996 at about 11.a.m., and the history in respect of PW2 woman Ambikabai as assault by two persons with stick and teeth bite on 22.1.1996 at 11.00 a.m. However, during cross-examination, PW1 Dr. Dandade stated that injury No. 2 sustained by PW2 Ambikabai was possible in case of fall by slip and dashing on ground at the time of giving wash of cow dung and that injury No. 3 is also possible if one gets injured while working in house. He further stated that injury No. 1 is also possible in case of sustenance of injury at the time of eating of sugar cane. He further stated that injury No. 2 was possible in case of fall on a way made by arranging loose stones.

22. Accordingly, it is apparent that PW1 Dr. Dandade examined injured PW2 Ambikabai and PW3 Ankush and ascertained the injuries on their persons and issued injury certificates at Exh. 22 and 23 respectively, but stated in cross-examination that the injuries sustained by PW2 Ambikabai and PW3 Ankush were possible by reasons and causes mentioned therein.

23. On the back ground of afore said material evidence adduced/produced by the prosecution, the learned Counsel for the Appellant canvassed that although the alleged incident took place at 10.00 a.m. on 22.1.1996, the first information report came to be registered at 8.35 a.m. on 23.1.1996 and the prosecution has not given any plausible and convincing explanation in respect of the said delay of almost about 23 hours, and therefore, possibility of concoction of the false story

against the accused by the complainant and lodging of false first information report, after such a delay of 23 hours, against the accused persons cannot be ruled out.

24. According to learned Counsel for the Appellant, the pendency of cross case regarding the said incident has been admitted by the prosecution, and therefore, it is submitted that filing of the present after thought case by the complainant against the accused persons as a counter blast to the said case filed by the accused persons, also cannot be ruled out. It is further submitted that PW2 Ambikabai and PW3 Ankush both are related to each other, since PW3 Ankush is the son of PW2 Ambikabai and both are interested witnesses supporting each other and the other independent eye witnesses i.e. PW4 Keshavrao Zarkar and PW5 Dagadu Gaikwad have turned hostile and have not supported the case of prosecution.

25. Moreover, it is also canvassed by the learned Counsel for the Appellant that another material eye witness to the occurrence of incident, namely Satish Jadhav, although available was not examined by the prosecution without assigning any reason therefor, and therefore, the prosecution case paralyzes for the independent witness and there are variances in the testimonies of PW2 Ambikabai and PW3 Ankush, who, in fact, are interested to the causes of each other, and hence, their said testimonies cannot be believed to connect the Appellant with the alleged crime.

26. Learned Counsel for the Appellant also submitted that there is no recovery of the weapon i.e. sickle, by which allegedly PW3 Ankush was assaulted, as well as stick of sugarcane and the same have not been produced before the court. It is further submitted that the blouse of PW2 Ambikabai, which was allegedly torn, as stated by PW6 Prakash Mohite, eye witness, has not been seized, and accordingly, nonrecovery of the said weapons as well as blouse go to the root of the matter and hampers the case of prosecution. It is further submitted that there are vital omissions and contradictions in the testimonies of PW2 Ambikabai, PW3 Ankush and PW6 Prakash Mohite and there are variances in the said testimonies, and therefore, same cannot be accepted, and consequently, believed to connect the Appellant with the alleged crime, and hence, the Appellant deserves to be acquitted for the offences with which he is convicted and sentenced by allowing the present appeal.

27. Learned Additional Public Prosecutor countered the said arguments and opposed the present appeal vehemently and submitted that the evidence of PW1 Dr. Dinkar Dandade corroborates with the testimonies of PW2 Ambikabai and PW3 Ankush and the injuries sustained by them, as well as injury certificates Exhs. 22 and 23 issued by PW1 Dr. Dandade corroborate with the injuries sustained by PW2 Ambikabai and PW3 Ankush. Moreover, it is also submitted that the testimonies of PW2 Ambikabai and PW3 Ankush are in consonance with each other, which have been supported by the testimony of PW6 Prakash Mohite and the said evidence, coupled with the evidence of PW1 Dr. Dandade connects

the accused with the alleged crime. Accordingly, learned A.P.P. submitted that the learned Trial Judge, after assessing and scrutinizing the evidence before it, has rightly convicted and sentenced the Appellant and there is no glaring deformity to reverse the said finding and allow the present appeal, and accordingly, learned Additional Public Prosecutor supported the impugned judgment and order and submitted that the present appeal bears no substance and same is devoid of any merits, and therefore, same be dismissed.

28. I have perused the oral, the documentary and the medical evidence adduced/produced by the prosecution, as well as perused the impugned judgment and order, dated 28.2.2001 and also considered the submissions advanced by the learned Counsel for the parties, and at the out set, there is delay in lodging the first information report of almost about 23 hours, since the alleged incident occurred at about 10.00 a.m. on 22.1.1996; whereas the first information report came to be registered at 8.35 a.m. on 23.1.1996 and although PW2 Ambikabai lodged the first information report on the same day i.e. 22.1.1996, no explanation has come forward by the prosecution how and why the first information report came to be registered at 8.35 a.m. on 23.1.1996, and ultimately, fact remains that the first information report came to be registered after delay of 23 hours i.e. at 8.35 a.m. on 23.1.1996, and there is no plausible and convincing explanation in respect of the said delay put forth by the prosecution, and hence, suspicion is certainly created in respect of lodging of the first information report after such a delay of 23 hours and the possibility of concoction during the said period and filing of false case against the accused persons, as a counter blast, cannot be ruled out, since particularly the pendency of cross case filed by accused persons against the complainant has been admitted by the prosecution.

29. Moreover, as discussed herein above, there are omissions and contradictions in the testimonies of PW2 Ambikabai and PW3 Ankush. In fact, they are close relatives of each other, since PW3 Ankush is the son of PW2 Ambikabai, and therefore, apparently, they are interested in respect of causes of each other. Further there are variances in the said testimonies of PW2 Ambikabai and PW3 Ankush on one hand and testimony of PW6 Prakash Mohiteeye witness on the other, as PW6 Prakash Mohite stated in his deposition that blouse of PW2 Ambikabai was torn during the occurrence of incident from front side, but testimony of PW2 Ambikabai and PW3 Ankush is totally silent in that respect and even there is no whisper by PW3 Ankush in respect of tearing of blouse of PW2 Ambikabai during the occurrence of incident, and further, pertinently, the prosecution has not seized the said blouse of PW2 Ambikabai, for the reasons best known to it. Apart from that, although it is stated by PW2 Ambikabai and PW3 Ankush that PW2 Ankush was assaulted by a small sickle, no such sickle was seized by the prosecution and there is vital omission in the testimony of PW3 Ankush in that respect, which goes to the root of the matter and nonseizure of the said sickle as well as stick of sugarcane, amounts to vital lacuna and shortcoming in the prosecution case to connect the Appellant herein with the

alleged crime.

30. Besides that, the other two eye witnesses i.e. PW4 Keshavrao Zarkar and PW5 Dagdu Gaikwad have turned hostile to the case of prosecution and did not support the prosecution and considering the totality of the said testimonies, it is amply clear that nothing much could be elicited from the cross-examinations of the said witnesses by the learned Additional Public Prosecutor, beneficial to the case of prosecution, and therefore, same do not support the case of the prosecution.

31. Moreover, it is also important to note that although the prosecution witnesses, namely PW2 Ambikabai, PW3 Ankush and PW6 Prakash Mohite stated in their respective depositions that another eye witness Satish Jadhav was present at the time of occurrence of incident, but the prosecution has not examined the said material witness, who could have thrown much light on the occurrence of the incident and no reason has been assigned by the prosecution for nonexamination of the said witness, which also amounts to lacuna and set back to the case of the prosecution.

32. As regards the testimony of PW1 Dr. Dandade and injury certificates Exhs. 22 and 23 issued by him in respect of alleged injuries to PW2 Ambikabai and PW3 Ankush, PW1 Dr. Dandade stated in his cross-examination that the said injuries are possible due to the causes mentioned therein.

33. Hence, having the comprehensive view of the matter and considering the very aspect that the independent witnesses, namely PW4 Keshavrao Zarkar and PW5 Dagdu Gaikwad, have not supported the case of prosecution and the prosecution has failed to examine another independent witnesses, namely Satish Jadhav, it is unsafe to rely upon the interested testimonies of PW2 Ambikabai and PW3 Ankush, since more particularly, there is variance in the testimonies of PW2 Ambikabai and PW3 Ankush and the testimony of PW6 Prakash Mohite, and more particularly, in the scenario that counter case is pending against the complainant, which is filed by accused persons, as admitted by the prosecution, but the learned Trial Judge has relied upon the said testimonies of two interested witnesses i.e. PW2 Ambikabai and PW3 Ankush and based the conviction and sentence upon the same against the Appellant herein, which is erroneous and unsustainable, which would result into miscarriage of justice, and therefore, the impugned judgment and order deserves to be quashed and set aside allowing the present appeal.

34. In the circumstances, considering the totality of the evidence, I am inclined to accept the submissions advanced by the learned Counsel for the Appellant, and accordingly, present appeal filed by the Appellant herein deserves to be allowed, quashing and setting aside the impugned judgment and order, dated 28.2.2001.

35. In the result, present appeal is allowed. The impugned judgment and order, dated 28.2.2001, rendered by learned Additional Sessions Judge, Nilanga, in

Sessions Case No. 10 of 2000, inflicting the conviction and sentence against the Appellant herein, for the offences punishable under Sections 354 and 323 of the Indian Penal Code stands quashed and set aside and the Appellant herein i.e. original accused No. 1 is acquitted thereof, and fine amount, if any, paid by the Appellant be refunded to him. The bail bonds of the Appellant shall stand cancelled.