

(2019) 11 BOM CK 0087
In the Bombay High Court
Case No : Criminal Appeal No. 802 Of 1997

State Of Maharashtra

APPELLANT

Vs

Gajendra Vasudeo Patil And Ors

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 323, 324, 504, 506
Bombay Police Act, 1951 — Section 37(1), 135
Code Of Criminal Procedure, 1973 — Section 161, 164, 166

Citation : (2019) 11 BOM CK 0087

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : M.M. Deshmukh, Jaydeep D. Mane, Nitesh Mohite

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This Appeal is directed against the Judgment dated 30th July 1997 passed by the Additional Sessions Judge, Solapur acquitting all the Accused / Appellants from the offence punishable under Sections 302, 325, 324, 323 read with Section 34 Indian Penal Code and Section 37(1) read with Section 135 of the Bombay Police Act.

2. The prosecution case, in brief, is as under:

A. The fact, which is not in dispute is that, the accused and complainant party are distantly related to each other. Other facts are not in dispute that the field in which the incident took place is field bearing No. 189 was purchased in the year 1987 by complainant Ramkrishna Yeshwant Patil and his brother deceased Bhaskar Patil and since that time they are cultivating the same. There is at all no dispute between the parties in respect of possession of the suit filed or purchases of the land. But dispute remains in between the parties in respect of grain cellar i.e. (underground room for storing the grain) situated in that field. It is the case

of the prosecution that as they purchased the suit field and therefore, they are also owners of the grain cellar, and they have right over that grain cellar, while it is the contention of the accused that their ancestors constructed the grain cellar they have every right to store the grain in it though land has been sold to the complainant party. So, on the point of the grain cellar there used to be dispute in between the parties. But facts are not in disputes that till the date of the incident, accused were storing the grain in that cellar.

B. It is the case of the prosecution that, prior to some days of this incident, complainant Ramkrishna, brother deceased Bhaskar, his nephew Rajendra Patil and Shrimant Bhaskar Patil son of deceased Bhaskar asked the accused not to store the grain in that cellar from next year but accused behaved arrogantly with them and insisted in storing the grain in that cellar, as a matter of right. The alleged incident took place on 16.03.1994 at about 8.00 a.m. All the co-accused arrived in the field Gat No. 189 for cleaning the grain cellar. When complainant party came to know this fact the complainant Ramkrishna, his brother deceased Bhaskar, his nephew Rajendra Patil and Shrimant Bhaskar Patil son of deceased Bhaskar reached at the spot. They asked the accused not to clean the cellar and not to store grain in that cellar. That time accused No. 1 Gajendra was armed with sword, accused no. 2 Vishnu was armed with axe, accused No. 3 Keshav was armed with stick and accused No. 4 Santaji @ Dada Gajendra Patil was armed with spade. Accused No. 1 Gajendra and Accused No. 2 Vishnu assaulted deceased Bhaskar by means of sword and axe and caused him injuries on his face and head. Accused No. 4 Dada assaulted on Rajendra Patil with spade and caused the injuries to him. Accused no. 3 Keshav beat to Shrimant by means of stick and caused him injuries. In this way all the accused were assaulting and beating to the deceased Bhaskar, Rajendra and Shrimant. The complainant was asking them not to assault them but accused did not listen. On the other hand, the accused No. 1 chased the complainant armed with axe to some distance. In the mean time some villagers reached the spot hearing the hue and cry and therefore all the accused ran away from the spot with the weapons.

C. The complainant removed the injured Bhaskar in a bullock cart upto village Sawaleshwar. There fortunately he met with P.S.I. Deshmukh of Police Station, Mohol who arrived there for election duty. From Sawaleshwar injured were sent to the Civil Hospital, Solapur. While complainant went to the police station, Mohol along with P.S.I. Deshmukh and lodged report. On the basis of the report offence was registered at about 11.15 a.m vide Crime No. 41/1994 under Section 307, 324, 504, 506 read with Section 34 of the Indian Penal Code.

D. In the meantime accused party also reached at the police station, Mohol at about 9.00 a.m. They were also sent for medical examination. On the report of the accused cognizable offence has been registered vide Crime No. 43 of 1994 of the offences punishable under Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code at about 11.40 a.m. In view of the fact that both the incidents took place at the same time, P.S.I. Deshmukh recorded common spot

panchanama. He noticed blood on the spot. So, he collected the soil where the blood was lying as well as simple soil. P.S.I. Deshmukh arrested accused No. 1 Gajendra and Accused No. 3 and Accused No. 4 Santaji @ Dada on the same day at about 17.15 hours. He seized the clothes which were on their person which were having stains of blood. Formalities were performed such as recording of inquest panchanama and then the body was sent for post mortem. Dr. Beth performed the post mortem and noticed 9 internal injuries on the body of the deceased. He gave opinion that death was due to shock and hemorrhage due to head injuries i.e. fracture of skull.

E. On 17.03.1994 complainant produced clothes of deceased Bhaskar and injured Rajendra. There were stains of blood on those clothes and therefore those clothes were seized in presence of the Panch. In the meantime, statement of the injured Rajendra Shrimant were recorded by Special Executive Magistrate. Accused No. 2 Vishnu was arrested on 18.03.1994. The clothes from his person were also seized.

F. During the investigation on 19.03.1994 accused No. 3 Keshav gave disclosure statement in respect of the sticks and accused No. 4 Santaji gave disclosure statement in respect of spade then police recorded separate memorandum of their statements in presence of the Pancha. On the discovery statement given by the accused No. 3 Keshav stick was taken out by the accused No. 3 Keshav which was concealed in the roof of his cattle shed. There were stains of blood on it. Police recorded seizure panchanama of that stick. Pursuant to statement given by the accused no. 4 Dada, he took out a spade which was concealed in a heap of fodder in his field. There were also stains of blood on that spade. The spade was seized in the presence of panch and seizure panchanama to that effect was prepared. On 20.03.1994 P.S.I. Deshmukh issued letter to the Medical Officer for collecting the blood sample of the Accused Nos. 1 to 4 and accordingly their blood samples were collected.

G. On 21.03.1994 accused No. 2 Vishnu gave disclosure statement regarding axe and on his discovery statement he took out the axe which was lying in his field in the cattle shed. There were stains of blood on it. The axe was seized in the presence of Panch. The seizure panchanama to that effect was prepared. On the same day the accused No. 1 Gajendra also gave disclosure statement in respect of sword and he informed that he concealed the sword in the fodder. Said Gajendra also led the police on the spot. In his field, behind the cattle shed he took out the sword, which was in the heap of the fodder. There were stains of blood on it. The sword was seized in the presence of panch and seizure panchanama to that effect was prepared.

H. During the course of the investigation, all the articles which were seized from time to time were sent to C.A. Pune, for chemical analysis and report. Dy. S.P. Prakash Mutyal conducted part of the investigation. He requested the Chief Judicial Magistrate for recording the statement of some of the witnesses Kamlakar Patil, hari Patil and Chatake under Section 164 of Cr.P.C. It is the case

of the prosecution that at the time of the incident, order promulgated under Section 37(1) of the Bombay Police Act was in force and therefore, that order has also been attached in the case papers. During the course of the investigation P.S.I. Deshmukh and Dy. S.P. Mutyal recorded the statement of the witnesses from time to time and after complying with the necessary formalities police filed chalan against the accused in the Court of Judicial Magistrate, First Class, Mohol, who is in turn committed the case to the Court of Sessions as the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions.

I. Learned Sessions Court framed charge against the accused under Sections 302, 325, 324, 323 of the Indian Penal Code and under Section 37(1) of the Bombay Police Act. The accused pleaded not guilty and claimed to be tried.

J. Defence of the accused is that though the suit land was sold to the complainant and his brother Bhaskar they have right to store the grain in the grain cellar situated in that field. So, under said right they were storing the grains in that cellar and they were in exclusive possession of the same. On the day of the incident also they reached at the field only for cleaning the grain cellar. They had with them agricultural implements like spade etc. While they were cleaning the cellar, Kamlakar Bhaskar Patil son of deceased Bhasakar reached there and asked them not to clean the cellar, on which the Accused No. 1 Gajendra asked him that cellar belongs to them whether the same was constructed by father. It is the defence of the accused that owing to the word by accused Gajendra, said Kamlakar was enraged. He reached at the village Virwade and informed this fact to the complainant and his father Bhaskar. Complainant and his party were enraged and therefore complainant, deceased Bhaskar, Rajendra and Shrimant reached at the spot armed with stick, iron bar and stones. They assaulted all these accused by their weapons. Owing to that assault, accused No. 3 Keshav and Santaji sustained injuries on the vital part of the body i.e. on his head, accused No. 1 Gajendra also sustained injury on his chin. It is the defence of the accused that they apprehend danger to their life and therefore, they defended that attack and used reasonable force. They immediately reached at the police station and narrated the incident and police also sent them for medical examination. But deliberately police registered the offence against the complainant party at a late stage. So, it is their defence that they never assaulted on the complainant party. On the other hand, complainant party assaulted them armed with deadly weapons and therefore, in self defence they used reasonable force which was necessary to defend themselves.

K. The prosecution unfolded its case by examining as many as 18 witnesses. But the star witnesses from the side of the prosecution are eye witnesses Ramkrishna Yeshwant Patil (P.W. No. 5) who is also the complainant. Rajendra Bhimrao Patil (P.W. No. 6) and Shrimant Ramkrishna Patil (P.W. No. 9) who are injured in that incident. Hari Nivrutti Patil (P.W. No. 8) is the eye witness of the incident. Prosecution also relied on the evidence of Hemand Shahaji Chatke (P.W.

No. 4) who only proved the link that the complainant brought the injured at village Sawalneshwar and from there he accompanied with the injured to the Civil Hospital, Solapur. Next set of evidence relied by the prosecution is recovery of the weapons on the disclosure statement given by the accused. On this point prosecution examined Tanaji Pandit Gaikwat (P.W. No. 10) and panch Manohar Salgar (PW. No. 11). On the point of medical evidence prosecution examined Dr. Vijaykumar Beth (P.W. No. 7) who performed the post mortem on the dead body. Prosecution also examined Dr. Prakash Ghatole (P.W. No. 13) who treated the deceased Bhaskar immediately after his admission in the Hospital.

L. Then, prosecution examined other witnesses such as Janardan Bhau Shinde (P.W. No. 1) who is a circle Inspector and who drew the map Exh. 21. Rajendra Nivrutti Patil (P.W. No. 2) who was the panch on the spot panchanama Exh. 23. Dattatraya Tukaram Katake (PW.No. 3) panch in whose presence cloths from the person of the accused Nos. 1 to 3 and clothes of the deceased Bhaskar and injured Rajendra were seized. P.C. Ghaherwar (P.W. No. 12) was examined because he carried all the articles seized in the case for chemical analysis. Dayanand Shrawan Mane (P.W. No. 14) Special Executive Magistrate was examined because he recorded the statement of Hari Nivrutti Patil, and other witnesses under Section 164 of the Cr.P.C. Police Constable, Vajirshah Patel (P.W. No. 15) was examined on the point that the prohibitory order issued by the District Magistrate was published by him at village Virwade. A.S.I. Sugriv Gaikwad (P.W. No. 16) was examined as he carried the sample bottle of the accused C.A. Pune. Last two witnesses examined by the prosecution are P.S.I. Deshmukh and Dy. S.P. Mutyal who carried out the investigation.

M. The defence also examined in their defence Dr. Pathan (D.W. No. 1) who examined the accused Keshav, Santaji and Gajendra on 16.03.1994 and issued the injury certificates. The defence has also examined Shranappa Gurushan Tappa Tarapure (D.W. No. 2) Special Executive Magistrate, who recorded the statements of injured Rajendra and Shrimant at Civil Hospital, Solapur. Prosecution also placed reliance on number of documents. The defence has not denied the genuineness of the documents. After recording the evidence and full fledged trial, the Trial Court acquitted the respondents. Hence, this Criminal Appeal preferred by the Appellant - State.

2. Learned APP appearing for the Appellant - State invites attention of this Court to the evidence of eye witnesses Ramkrishna Yeshwant Patil (P.W. No. 5), Rajendra Bhimrao Patil (P.W. No. 6), Shrimant Ramkrishna Patil (P.W. No. 9) and Hari Nivrutti Patil (P.W. No. 8). It is submitted that, out of these four eye witnesses Rajendra Bhimrao Patil (P.W. No. 6) and Shrimant Ramkrishna Patil (P.W. No. 9) are injured in the said incident. Learned APP invites attention of this Court to the evidence of each of the eye witnesses and also medical evidence and submits that, the prosecution has placed on record cogent, convincing and sufficient evidence of not only eye witnesses but also injured witnesses. It is submitted that, medical evidence corroborates to the evidence of eye witnesses

so also there is other evidence placed on record by the prosecution. Learned APP invites attention of this Court to the injury certificates of the injured witnesses Shrimant Ramkrishna Patil and also Rajendra Bhimrao Patil. Learned APP also invites attention of this Court to the statement of four witnesses recorded under Section 164 of the Cr.P.C by P.W. 14. Learned APP invites attention of this Court to the Chemical Analyzer's report. Therefore learned APP appearing for the Appellant - State prays that Appeal deserves to be allowed thereby setting aside the impugned judgment and order of the Trial Court.

3. Learned counsel appearing for the Respondent submits that, evidence of the witnesses has rightly been discarded by the Trial Court since none of the witness has stated about the injuries suffered by the accused. It is submitted that the prosecution witnesses tried to suppress the genesis of the incident therefore their evidence cannot be accepted since not trustworthy. In support of his contention that omission on the part of the prosecution to explain injuries on the person of the accused assumes much greater importance where the evidence consist of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one; learned counsel appearing for the Respondent relied upon the exposition of law by the Supreme Court in the case of Lakshmi Singh and others etc Appellants v. State of Bihar Respondent reported in 1976 CRI.L.J. 1736. Learned counsel also invites attention of this Court to the evidence of the defence witnesses and also the injuries suffered by the accused. It is submitted that the evidence of the prosecution witnesses suffers from omissions, contradictions and improvements and medical evidence is also not consistent with the prosecution case. The Trial Court has taken a plausible view and the findings recorded by the Trial Court are in consonance with the evidence on record and therefore, Appeal deserves to be dismissed thereby confirming the judgment and order passed by the Trial Court.

4. We have given due consideration to the rival submissions of the counsel appearing for the respective parties. We have carefully perused the evidence of the eye witnesses so also other evidence brought on record by the prosecution from the paper book and also other evidence from the notes of evidence / record received from the Trial Court.

5. It appears that in order to find out whether the death is homicidal or suicidal, the prosecution examined Dr. Vijaykumar Beth (P.W. No. 7) who performed the post mortem. In his evidence he stated that on 17.03.1994 dead body of Bhaskat Yeshwant Patil was referred for post mortem. He stated that, he noted external injuries nos 1 to 9 found on the dead body. In the column no. 19. He noticed that the stomach was empty. He opined that the death is caused after 5 to 6 hours after last meal taken by the deceased. The cause of death is shock and hemorrhage due to these injuries and fracture to skull. The injuries no. 1 to 3 and 4 to 8 must have been caused by hard and rough object and nos. 9 might have been caused by hard and blunt object. He further stated that the injuries were sutured and therefore, he cant opined as to whether they were caused by

sharp and cutting object. It appears that in his cross-examination he stated that, injuries nos. 4 to 8 are simple injuries which are possible by multiple fall. It can safely be gathered from the evidence of P.W. No. 7 that the death of the Bhaskar Patil was homicidal.

6. The spot panchanam and inquest panchanama is not seriously disputed by the defence. The Trial Court has considered evidence of panchas to the said spot panchanama and inquest panchanama in detail.

7. As already observed the prosecution has examined four eye witnesses. The Ramkrishna Yeshwant Patil (P.W. No. 5) has stated in detail about manner in which the incident had taken place. He stated that, on 16.03.1994 accused Nos. 1 to 4 arrived at the spot for cleaning the pit. The accused arrived at spot at about 8.00 a.m. He himself, brother deceased Bhsakar, his son Shrimant and nephew Rajendra told to the accused not to clean the pit because they would deposit the jowar in said pit. That time the accused started abusing him and other prosecution witnesses who were present there. He stated that Gajendra Accused No. 1 armed with Sword, Accused No. 2 Vishnu was armed with axe, Accused No. 4 armed with spade, and Accused No. 3 Keshav was armed with Stick. Accused No. 1 Gajendra and Accused No. 2 Vishnu caused the injuries to the deceased Bhaskar by means of sword and axe. Accused No. 2 caused the injury by axe on the head and accused no. 1 Gajendra caused the injury by sword on his face. Deceased also sustained some injuries on his back. In this way all the accused were beating to each person and saying not to assault. That time the accused No. 2 Vishnu gave threat to him.

During the course of cross-examination he stated that, the said pit is constructed for storing the grains and only one person can enter in that pit at one time. In the said pit quintals of grains like 25 bags to 40 bags can be stored. During his cross-examination he further stated that, it is not true to say that after Kamlakar informed them that the accused were cleaning the pit. He himself, his brother and other prosecution witnesses enraged on the accused then he himself, Bhaskar, Rajendra and Shrimant rushed on the spot with sticks and iron bars and assaulted the accused. He further stated that, it is not true to say that accused no. 1, 2 and 4 were injured. He also denied the suggestion that due to assault by the prosecution witnesses the accused feared to their life and they were shouting 'melo-melo'. However, he admits that, Gajendra Vasudeo Patil lodged case against him for the same incident and same is pending before Court.

After reading the evidence of P.W. No. 5 the incident appears to have happened however, he denied suggestion that accused Nos. 1, 2 and 4 were injured in the said incident.

8. The prosecution examined Rajendra Bhimrao Patil (P.W. No. 6) injured witnesses. His evidence is at Exhibit no. 31. In his evidence he stated that, the incident took place on 16.03.1994 at about 08.00 a.m. He stated that, along with him, complainant Ramchandra, his cousin Shrimant and uncle deceased Bhaskar

were present in the disputed field. His field is adjacent to the disputed field. That time the accused nos. 1 to 4 arrived there for cleaning the pit. His both uncles and cousin Shrimant said to the accused that they purchased the field and therefore, not to clean the pit. But accused insisted for cleaning the same. That time deceased Bhaskar said to them that he will not allow to clean the pit because they purchased the land. This witness have further stated in detail about the manner in which incident had taken place. He stated that, he was also assaulted by Accused No. 4 by spade on his head and on his right arm. The rest of the evidence of this witnesses is more or like similar as is stated by P. W. No. 5. Defence has taken his details cross-examination. However he denied suggestion that the accused also sustained the injuries in the said incident.

9. The prosecution examined injured witnesses Shrimant Ramkrishna Patil (P.W. No. 9) who has also deposed on the similar line like P.W. Nos. 5 and 6. In his evidence he stated that accused arrived at the filed to clean the pit. They asked them not to clean the pit made for storing. But accused insisted that they will clean the same. Accused Nos. 1 to 4 stated abusing them. The accused no. 1 armed with sword, accused no. 2 armed with axe, accused no. 3 armed with stick and accused no. 4 Dada armed with spade. The accused started assaulting to prosecution witnesses. He has given details of the manner in which accused assaulted to deceased and other prosecution witnesses including himself.

10. Upon careful perusal of his cross-examination he admitted that, they did not inform to the Magistrate during the course of recording their statements that the accused obstructed them from storing the grains in the said pit. The evidence of this witnesses was shattered in the cross-examination, in respect of which particular accused assaulted the deceased and other prosecution witnesses. The suggestion was given to this witnesses that the accused were cleaning the pit and therefore he himself and other prosecution witnesses were enraged and rushed to the spot armed with sticks, iron bars and stones and assaulted the accused. He also denied that the accused were injured in the said incident.

11. The prosecution further examined another eye witnesses Hari Nivrutti Patil (P.W. No. 8). In his deposition before the Court he stated that, he knows all the accused. He was in the village, after hearing hue and cry he rushed to the spot. He witnessed the incident from the distance of 150 feet. He stated that accused no. 2 Vishnu was assaulting the deceased by means of an axe. He also stated details about assault given by the other accused to the prosecution witnesses. He has not stated anything about injuries suffered by the accused in the said incident.

12. If the evidence of aforesaid four witnesses is read in its entirety, all of them have denied suggestion given by the defence that the accused suffered injuries in the alleged incident. It is also stated by them that they were not aggressor and the accused were aggressor. The entire prosecution case depends on direct evidence of aforesaid four witnesses. In order to find out, whether these witnesses are really telling the truth about genesis of the incident and factum of

injuries suffered by the accused, it would be necessary to make reference to the evidence of medical examination of the accused so also the evidence of the investigation officer and defence witnesses. One Mr. Chandkhan Nurkhan Pathan was working as Medical Officer in Primary Health Center, Mohol on the relevant date of the incident i.e. 16.03.1994. In his deposition he stated that on 16.03.1994 injured Keshav Vasudeo Patil was produced at 9.55 a.m. He was produced through the letter issued by the police. He found identification marks black coloured mole on left iliac region, black coloured mole on mid abdomen. He noticed the following injuries:

1. Deep C.L.W. on left frontal and parietal region of the size of 2½ cms X 1 cm with Truimtic swelling area 2 cm X 2 cm.
2. C.L.W. on left little finger ½ cm X ½ cm.

He opined that all the injuries were simple in nature and they were caused by hard and blunt substance like lathi and stone within the period of three hours. These injuries are also possible by iron rod. Injury no. 1 is on the vital part of the body. The patient gave history of assault. He also produced copy of the injury certificate before the Trial Court.

13. He also examined Santaji Gajendra Patil. On the same day and the same time. He was referred by the police. He noticed identification marks on his person black coloured mole on mid right iliac region and black coloured more on right intra scapullary region. He examined Santaji and noted the following injuries:

1. C.L.W. on right parietal region with C.T. Truimtic swelling of the size of 2½ X 2 cm bone deep.
2. Abrasion on below left knee 1 cm X ½ cm.
3. Traumatic swelling on right shoulder area. 2 ½ cm. 2 ½ cm on left shoulder are.

He stated that all the injures are simple injuries and might have been caused within three hours by hard and blunt object like lathi, stone and iron bar. Injury nos. 1 and 2 are on the vital part of the body. Patient gave history of assault. He issued injury certificate. He produced the copy of the injury certificate before the Trial Court.

On the same day and time he also examined Gajendra Vasudeo Patil, resident of Virwade brought by the police. He noticed identification mark on his person. Old scar on left infra mammallary region. Second black coloured mole on left shoulder area. He examined and noticed the following injuries on his person:

1. C.L.W. on right side chin area size 1 cm. ½ cm.
2. C.T. Traumatic swelling 3 ½ X ½ cm.

He stated that all the injuries are simple in nature. Might have been caused within three hours by hard and blunt substance like stone. I issued injury

certificate today I am producing the carbon copy of the same. It is at Exh. 95. Original papers were given to the police for filing in another criminal case. He also produced requisition letters issued by the police. He also identified accused nos. 1, 3 and 4 in the Court.

14. We have also carefully perused the arrest panchanama of accused, wherein the injuries received by the accused have been mentioned. Prakash Prabhakarrrao Mutyal (P.W. No. 18) was the investigation officer who stated that he worked as S.D.P.O. Solapur from 01.08.1995. He made investigation in Crime No. 66/1994 of Mohol Police Station. On 18.03.1994 He took investigation of this case from P.S.I. Deshmukh. He recorded statements of injured Shrimant, Rajendra and other 9 witnesses on 18.3.1994. He recorded the statements of Shrimant and Rajendra at Civil Hospital, Solapur. On 22. 9.1994, he requested Special Judicial Magistrate for recording the statements of Kamlakar Patil, Hari Patil and Chatake.

15. In his cross-examination he stated that he recorded the statement of Rajendra Bhimrao Patil as per his narration. He also stated that portion marked A from his statement of Rajendra is as per his version stated in the statement recorded under Section 161 Cr.P.C. Upon reading the portion mark 'A' from the statement of said Rajender under Section 166 Cr.P.C.. It is clear that, on 16.03.1994 at about 8.00 a.m., Gajrindra Vasudeo Patil, Vishnu Vasudeo Patil, Keshav Vasudeo Patil, and Santaji Gajendra Patil were cleaning the pit and knowing the said fact that Rajenndra, uncle Bhaskar his cousin Shrimant Patil went to the filed and uncle Bhaskar told to accused Gajendra that they have purchased the land and pit belongs to them. The accused have no right over the said pit and therefore they should not store jawar grains in the said Pit. Therefore, it is abundantly clear from his portion mark 'A' from his statement made before the police that accused were not aggressor and Rajendendra his uncle, cousin went on the spot and asked accused not to clean and store food-grains in the said pit which gave rise to scuffle and ultimately alleged incident had taken place. Therefore, the Trial Court has rightly arrived at the conclusion that the prosecution has suppressed the genesis of the incident and also which party was really aggressor. The defence successfully proved the said portion mark 'A' through investigation officer.

16. As stated by the Chandankhan Pathan D.W. No. 1 that, the accused suffered injuries in the said incident and one of the injuries is on the vital part of the accused. None of the eye witnesses in his examination in chief correctly stated the genesis of the incident, so also that accused suffered injuries. Even in the cross-examination of the said eye witnesses they denied the suggestion that the accused suffered injuries in the said incident. Therefore it becomes necessary to consider the effect and consequences of suppressing the genesis of the incident so also non explanation of the injuries suffered by the accused in the said incident, by the prosecution witnesses. In this respect it would be apt to place reliance on the exposition of law by the Hon'ble Supreme Court in the case of Lakshmi Singh and Others (Supra). Wherein the Supreme Court after referring to

the various earlier judgments i.e. Mohar Rai v. State of Bihar reported in AIR 1968 SC 1281 and Puran Singh v. The State of Punjab reported in AIR 1975 SC 1674. held as under:

In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

17. In the light of the discussion in forgoing paragraph and in particular that the prosecution witnesses have suppressed the genesis of the occurrence and has thus not presented the true version and that the witnesses have also denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable and consequently the evidence of eye witnesses, which is direct and substantive piece of evidence cannot form the basis of the conviction of the accused applying the aforesaid test laid down by the Supreme Court in the case of Lakshmi Singh and others (Supra).

18. The Trial Court has elaborately discussed the evidence of the prosecution witnesses and arrived at the conclusion that, the prosecution did not examine Kamlakar who could have thrown the light on the genesis of the incident so also, who was the aggressor party and also in respect of the injuries suffered by the accused. The Trial Court also discussed the evidence of all the eye witnesses in depth and arrived at the conclusion that the prosecution has suppressed the genesis of the incident and the prosecution witnesses did not say about the injuries suffered by the accused, and even in cross-examination they denied the suggestion that the accused persons also sustained the injuries during the said incident. Therefore, the Trial Court has rightly arrived at the conclusion that the prosecution has not proved the case beyond reasonable doubts and therefore, the benefit of doubt deserves to be extended to the accused. The view taken by the Trial Court is plausible. The findings recorded by the Trial Court appear to be in consonance with the evidence on record. Even if it is assumed for moment that another view on the basis of evidence on record is possible, is no ground to interfere in the order of acquittal. The order of acquittal cannot be lightly interfered unless the Appellate Court arrives at the definite conclusion that the view taken by the Trial Court was perverse not plausible at all.

19. In that view of the matter following order is passed:

ORDER

- a) Criminal Appeal stands dismissed.
- b) The impugned judgment and order dated 30th July 1997 passed by the learned Additional Sessions Judge, Solapur is hereby confirmed.
- c) The bail bonds of the Respondents, if any, shall stands cancelled.