

(1957) 03 BOM CK 0040

Bombay High Court

Case No: None

Sayyed Husan Sayed Husen and
Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: March 28, 1957

Acts Referred:

- Penal Code, 1860 (IPC) - Section 149, 395

Citation: (1958) CriLJ 749

Hon'ble Judges: Vyas, J; Shelat, J

Bench: Division Bench

Judgement

Vyas, J.

The appellants in this appeal were accused Nos. 1 to 18 in Sessions Case No. 40 of 1956 which was heard and decided by the learned Additional Sessions Judge, East Khandesh, at Jalgaon. They have been convicted by the learned Judge of an offence u/s 395 and an offence u/s 435 read with Section 149 of the Indian Penal Code. In addition, the learned Judge has convicted accused Nos. 1, 6, 8, 12, 15 and 18 of an offence u/s 354 read with Section 149 of the Indian Penal Code. For an offence u/s 395 of the Indian Penal Code the learned Judge has sentenced all the 18 accused persons to suffer seven years" rigorous imprisonment. u/s 435 read with Section 149 of the Indian Penal Code the learned Judge has imposed a sentence of three years" rigorous imprisonment upon all the 18 accused persons. u/s 354 read with Section 149 of the Indian Penal Code the learned Judge has passed a sentence of 18 months" R. I. upon accused Nos. 1, 6, 8, 12, 15 and 18. Besides passing the substantive sentence of 18 months" rigorous, imprisonment upon accused Nos. 1, 6, 8, 12, 15 and 18 the learned Judge has passed a sentence of fine of Its. 500 upon accused Nos. 1 and 12, a sentence of fine of Rs. 100 upon accused No. 6 and a sentence of fine of Rs. 1,000 upon accused No. 18 u/s 354 read with Section 149 of the Indian Penal Code. It is against this order of convictions and sentences that all

the 18 accused persons have appealed and this is that appeal.

2. Before stating the facts of the case, as contended by the prosecution, I may point out that the complainant Raghunath is an old man, 65 years of age, and is a retired school Head Master. He is also a registered Medical practitioner. At the material date he was residing in the village Kurhe. He had been residing there since 7 years or more before the date of this incident which occurred on 24th July 1956. The prosecution witness Yamunabai is a tonsured widow. She was 46 years of age at the date of the incident. She is the grand-daughter of the sister of the complainant's father. It may be noted that in the house of the complainant on the material date there were no other inmates except the complainant himself and Yamunabai.

3. During the course of his money lending business the complainant Raghunath used to purchase movables belonging to the inhabitants of the village Kurhe. As a registered medical practitioner he used to sell tinctures to his patients. He was also doing a small grocery business in his house. According to his evidence, he was possessed of movables purchased by him in the manner stated above from the residents of the village Kurhe, of the value of 4,000/5,000 rupees at the date of the offence. He had also in his possession documents showing that people owed moneys to him to the extent of one thousand rupees. In his house, on the date of the incident, there were certain pension papers and licences also.

4. One incident may be noted before I proceed to state the facts of the case as contended by the prosecution and that incident is that a certain young man of the name of Kashinath Ravji Chaudhari, who was aged only 30 or 32, happened to die some three days before 24th July 1956, the date upon which the incident which is the subject-matter of the prosecution took place. A rumour went round the village that his death was due to the tinctures which were said to have been supplied to him by the complainant Raghunath and which were consumed by him. It is necessary to remember this incident because in our view, and also according to the case of the prosecution, it supplies a background to the incident which occurred on 24th July 1956 about noon time.

5. Now, the prosecution story in this case is that on 24th July 1956 Raghunath had his morning meal. Upon that day he intended to go to Bhusaval by bus. So he was proceeding towards the motor stand, his intention being to catch a bus from the motor stand and proceed to Bhusaval. While he was on his way to catch a bus for Bhusaval, accused No. 1 met him and told him that the members of the Gram Panchayat of the village and Rajaram Dhondur wanted him to go to the motor stand. Thereupon Raghunath went to the motor stand and there he noticed that all the accused persons and certain others were present. Amongst the people present at the motor stand, besides the 18 accused, were Trivikram Hari, Bauskar and Govinda Totaram. When Raghunath went to the motor stand, accused No. 1 and others threatened him and asked him to quit the village (Kurhe) as Kashinath Ravji Chaudhari had died on account of the tinctures supplied to him. Raghunath asked

for sometime within which he might be able to pack his belongings. The prosecution contention, however, is that he was told that he would be given no time and that he must quit the village on the same day. Thereupon Raghunath returned home. It was about 11-30 O clock in the morning. He told Yamunabai that persons of the village (Kurhe) were insisting upon him to quit the village and therefore they must pack up. Accordingly Yamunabai and Raghunath started packing their belongings. While they were packing the'r belongings, says the prosecution, the IS accused persons accompanied by 7 or 8 other people went to Raghunath's house. After entering the house of Raghunath, accused No. 1 held Raghunath's throat and beat him as a result of which Raghunath sustained a bleeding injury on his left eye. Some of the accused persons entered Raghunath's house through the rear door whereas the others entered from the front door. Govind Totaram stood near the door of the house of Mohan Shet and from there he instigated the accused persons and asked them to destroy the account books of Raghunath, Govind Totaram said that Raghunath was a dangerous person and therefore all his account books must be burnt. The prosecution contends that upon that instigation given by Govind Totaram the 18 accused persons, who were inside the house of Raghunath, ransacked the house, took out the documents, (piled them out of the house and burnt them. The licence of Raghunath which Raghunath had obtained for practising as a registered medical practitioner, his pension roll and other documents relating to his money lending business were all taken by the offenders who had got into the house of Raghunath and they were all burnt. The prosecution contends that the 18 accused persons looted the house of Raghunath, took away a safe which was in that house, broke open the cupboards and removed the contents¹ thereof, demanded the keys of the safe fn which there were the gold and silver ornaments, hand loan chits etc. When the keys of the safe were not supplied to the miscreants, they bodily lifted the safe and took it to the other of the Gram Panchayat and kept it there. The prosecution contends that this was not the only thing which the miscreants did in the house of Raghunath. According to the prosecution, accused Nos. 1, 6, 8, 12, 15 and 18 molested Yamunabai and did various acts to outrage her modesty. Accused Nos. 1 and 12 pulled her saree. Thereupon Yamunabai managed to leave the house and went as far as the cattle pound which was situate near the Gram Panchayat's office. But, says the prosecution, accused No. 15 happened to meet her there and asked her where she was going. He asked her to return to her house upon an assurance that he would protect her as a son would protect his mother. That is how this oldish woman Yamunabai was taken in. She relied upon the assurance given to her by accused No. 15 and accompanied by him she returned home. No sooner she arrived near the threshold of her house, accused No. 15 pushed her into the house and shouted to the other miscreants who were already in the house "These people have footed us. Now you loot them and beat them". The prosecution case thereafter is that the accused Nos. 1, 6, 8, 12, 15 and 18 started demanding keys from Yamunabai as they suspected that she had the keys in the folds of the saree which she was wearing. Accu ed No. 12 held her arm and pulled her breasts. Accused No.

15 went up in the meantime to Yamunabai and he also held her breasts and demanded the keys of the safe from her. Accused Nos. 6 and 8 pulled her saree and stripped her naked. Thereupon accused No. 18 shouted and said that Yamunabai should be kicked on her private parts and a pole should be inserted into her private parts. After these words were uttered by accused No. 18, says the prosecution, accused No. 1 gave her two kicks with shoes on and the kicks were given on the inner part of her thighs. The prosecution contends that accused No. 6 placed his hand near the private parts of Yamunabai and moved it round those parts. After Yamunabai remained in a naked condition for sometime she picked up a torn Pitambar (a kind of garment) which was lying upon the floor and she attempted to cover herself with it. In the meantime accused No. 12 attempted to set fire to the quilt which was lying near Yamunabai. Articles Nos. 9 to 19 and 22 to 46 belonged at one time to accused No. 9. During the course of his money lending business Raghunath had purchased these articles from accused No. 9. On the material date all these articles were in the house of Raghunath. The prosecution contends that all these articles were taken away from the house of Raghunath by accused Nos. 8 and 9. Article No. 48 belonged once to accused No. 13 and article No. 49. at one time belonged to accused No. 10. It is alleged that these accused persons had sold these articles to Raghunath, During the course of the loot accused Nos. 5, 10, 13 and 16 threatened Raghunath and Yamunabai and asked them to return these articles. The three Panchpatris which are alleged to have belonged to accused Nos. 10, 13 and 16 and which are said to have been sold by these accused persons to Raghunath were in the houses of Rupla, Narmadabai and Ramji respectively. The prosecution contends that accused Nos. 10, 13 and 16 insisted upon having these Panchpatris back and they threatened Yamunabai with the result that Yamunabai took accused No. 10 to the house of Rupla, accused No. 13 to the house of Narmadabai and accused No. 16 to the house of Ramji, obtained the Panchpatris from Rupla, Narmadabai and Ramji and handed them over to accused Nos. 10, 13 and 16. An oil engine, article 50, belonged at one time to accused No. 10 and the prosecution says that accused No. 10 had sold it to Raghunath during the course of the latter's money-lending business. On the date of this incident this oil engine was lying in the house of Raghunath. As a result of the loot the oil engine was looted and carried away by accused No. 10 in a bullock-cart from the house of Raghunath and placed outside on the road near a shed behind the accused's (accused No. 10's) house. After the loot was completed, Raghunath was taken forcibly by accused No. 10 and other persons to the office of the Gram Panchayat where the safe, article 8, had been carried and was lying. An attempt was made to have the safe broken open, but the attempt did not succeed. The loot was completed by about 2-30 p.m. Thereafter the complainant went to the Police Patil and the Police Patil gave him a piece of paper and asked him to write down his complaint upon it, and this is what the complainant wrote out upon it:

Today all persons looted my house and took away all goods by force. I was beaten. I received an injury on the left cheek. My money etc. are also taken away. Cupboards and utensils also are taken away. The safe is taken out of my house. It is on the Ota of the office. Everything of mine is taken away. Hasan Hussien held me and beat me. The Note Books are taken away. The persons concerned were encouraged to loot the property. The incident took place at about 12 noon. I lost everything. Necessary inquiry may be made in this respect.

I went to Police Patil after I regained my consciousness.

This was the complaint which Raghunath made before Police Patil Narayan at 3 p.m. on 24th July 1956. The Police Patil noticed that Raghunath was in a frightened condition. He was in such a nervous state that his body was shaking. He had an injury on his left eye which was bleeding. It was in that frightened and injured state that immediately after the occurrence Raghunath went to the Police Patil and told him that everything which was in his house was removed by accused No. 1 and others. The Police Patil did not go to Raghunath's house immediately. Instead he drafted his own Khabri report which is Exhibit No. 25 on the record of this case and despatched both the Khabri report and the information, which was committed to writing by Raghunath, to the Police Station of Bhusaval. The information which Raghunath had committed to writing is Exhibit 11 on the record of this case. After the two documents Exhibits 11 and 25 were despatched by the Police Patil to the Police Station of Bhusaval, the Police Patil went to the house of Raghunath and he saw for himself the state of Raghunath's house. When he went to Raghunath's house he noticed that Yamunabai was not present in that house and the prosecution contention is that Yamunabai had been so frightened of what had happened on that day that she had taken shelter in the office of the Gram Panchayat after the offence was committed. The Police Patil saw that burnt documents and burnt papers were lying in front of Raghunath's house. Upon the receipt of the Khabri report of the Police Patil and the information given by Raghunath to the Police Patil, the Police Head Constable Dattatraya attached to the Bhusaval Police Station arrived at the scene of the offence. He arrived at about 5-30 p. m. and registered the offence. It was registered under Sections 451 and 394 of the Indian Penal Code. In the meantime Police Sub-Inspector Pandit arrived and took over charge of investigation. He arrived at about 6 O' clock in the evening. This was the evening of the same day, 24th July 1956.

6. While stating the prosecution case I should have said that one Kanhayalal had seen accused Nos. 1, 8, 12, 16, 18 and other persons at the motor stand at 10-45 O' clock in the morning on that date, 24th July 1956. He had also seen the complainant Raghunath at the motor stand at that time. Be it noted that I am stating the case as contended by the prosecution. The prosecution contends that at that time, 10-45 morning, Kanhayalal heard accused Nos. 1, 8, 12, 16 and 18 and other people demanding of Raghunath to leave the village Kurhe and the reason which was given

by them for making that demand upon Raghunath was that a certain person had died in the village by reason of his having consumed tincture gin-gerberri supplied by Raghunath. Upon such a demand being made by the abovementioned accused persons upon Raghunath, Raghunath asked Kanhayalal to arrange for a truck from Bhusaval so that he might be able to remove his belongings from Kurhe to Bhusaval. Kanhayalal promised to arrange for a truck and Kanhayalal's evidence is to the effect that he had secured a truck belonging to Gurmalsing. The amount of the charges fixed in that connection was Rs. 20 out of which Rs. 14 were to be paid to the driver Gurmalsing and Rs. 6 to the motor agent as his commission. The prosecution case is that Kanhayalal arrived back in Kurhe with the truck driven by Gurmalsing at about 2-30 p. m. on that day, 24th July 1956. When Kanhayalal arrived in the village at 2-30 p. m., he and the driver of the motor truck, Gurmalsing, saw for themselves that a pile of burnt papers was lying just outside Raghunath's house and that there was none in the house. Kanhayalal and Gurmalsing saw that a safe was lying upon the cat of the office of the Gram Panchayat and they also saw that the complainant and Yamunabai were in the office of the Gram Panchayat in a frightened state. The loot of the complainant's house was carried out to such a devastating extent that he did not have sufficient moneys left with himself even to be able to pay the hire of the truck. The result was that Kanhayalal was requested to pay the driver of the truck and also the commission of the motor agent Jaganji. Thereafter during the course of the investigation several material panchanamas were made and Kanhayalal was a panch at those panchanamas.

7. On 25th July the Sub-Inspector searched the houses of all the 18 accused persons. While the house of accused No. 10 was being searched, it was found that an oil engine which is article 50 in this case was found lying under a Neem tree on the road near a cattle shed behind the accused's house. It is significant to note that this oil engine was covered up with chaff. During the search of the house of accused No. 13 a Deg, article 48, was found and it was attached under a panchanama which was drawn up in the presence of accused No. 13. As a result of the search of the house of accused No. 9 articles 9 to 47 were found and they were attached. It may be noted that the house of accused No. 9 consists of two rooms. The front room consists of four Khans and the rear room of three Khans. In the rear room there was a stool and upon that stool there was a box. That box is article 20. In that box there was a gunny bag and in that gunny bag the various articles were found kept. On 25th July the Sub-Inspector recorded statements of as many as 74 persons including Kanhayalal and on the next day he recorded the statements of 9 more persons. The Sub-Inspector noticed that Raghunath had an injury on his eye. Accordingly the Sub-Inspector sent Raghunath to the Bhusaval dispensary for the treatment of that injury. This took place on 25th July 1956. On the next day, 26th July, Yamunabai was sent to the Bhusaval dispensary as she complained of pain. Dr. Mhaske, Medical Officer in charge of the Bhusaval dispensary, examined Raghunath on 25th July and Yamunabai on 26th July and upon the person of Raghunath he noticed two injuries.

One was a contused lacerated wound just below the left eye and the other was echhymosis on the left lower eyelid. Dr. Mhaske has deposed in his evidence that Raghunath complained to him of pain on the left arm and pain in the left chest. In the Doctor's opinion the complainant Raghunath's injuries were 24 hours old when he examined him. Upon the person of Yamunabai Dr. Mhaske found two injuries and those injuries were (1) contusion 2" x 1 1/4" on the inner and upper most part of left thigh and (2) contusion 2 1/2" x 1" on the inner and upper most part of right thigh. Both these contusions were "darkish brown discolouration". In Dr. Mhaske's opinion these injuries might have been caused by a hard and blunt substance having come in contact with both the thighs of Yamunabai. The Doctor's evidence is to the effect that Yamunabai's injuries were 48 hours old when he examined her. On 25th July at about 9 O'clock at night the Sub-Inspector arrested all the 18 accused persons and got them on remand. On 4th August 1956 the safe which had already been attached previously during the course of investigation was opened and in the presence of panchas articles 57 to .77 which were contained therein were attached. Upon these facts the prosecution contention is that all the 18 accused persons conjointly committed dacoity in the house of Raghunath and Yamunabai, that they also conjointly committed an offence of mischief by setting fire to the papers and documents which were in that house and that accused Nos. 1, 4, 8, 12, 15 and 18 conjointly and individually outraged the modesty of Yamunabai. This, shortly stated, is the case of the prosecution against the accused.

8. The charges which the prosecution has brought against these accused persons have been resisted by them. Their contention is that the evidence led by the prosecution against them in respect of these charges is false evidence. They deny that they were present at the motor stand in the morning of 24th July 1956. They also deny having entered the house of Raghunath or having looted the belongings of Raghunath or having burnt the papers and documents of Raghunath on that day. Accused Nos. 1, 6, 8, 12, 15 and 16 deny further that they had molested or dishonoured Yamunabai or had outraged her modesty. Accused No. 1 denies having caused an injury upon the left eye of Raghunath and he says that his name might have been falsely mentioned in the complaint Exhibit 11 by Raghunath at the instance of the Police Patil and Kanhayalai, Accused No. 2 has denied the allegation that Raghunath had purchased from him a Ghagar some 2 or 3 months before the date of this incident or that the Ghagar was looted and taken away from the house of Raghunath on 24th July. Although accused No. 3 did not say so specifically in his statement before the Court, it was suggested in the cross-examination of Raghunath that on 24th July 1956 he had gone out of Kurhe to skin a bull which had died. It was further suggested in the cross-examination of Raghunath that at the material time on 24th July accused No. 4 was working in the hotel of Dayaram Ganpat at the motor stand. Accused No. 5 denies the allegation that in the presence of accused Nos. 10, 13 and 16 he had threatened Yamunabai to return the Panchpatris, His contention is that he was not even present in the village Kurhe at

the alleged time of the incident and that he had gone to the forest and he had returned home in the evening with the skin of a dead animal. Accused No. 6 denies having caught (he complainant Raghunath. He also denies having beaten Raghunath or having joined in stripping Yamunabai of her saree. He also denies having moved his fingers round the private parts of Yamunabai. Accused No. 7, who is lame and unable to walk properly denies having been present at the scene of the incident. It was suggested in the cross-examination of Raghunath that accused No. 7, was attending a certain construction work in the village school up to 5 O'clock in the evening on that day. So far as accused Nos. 8 and 9 are concerned, their contention is that the complainant Raghunath had a suspicion against them that his house was searched for an offence under the Prohibition Act at their instance. It is suggested that on account of the enmity resulting from this suspicion Raghunath has involved them falsely in this case. Accused No. 9 denies having pledged articles 9 to 10 and 22 to 46 with Raghunath for Rs. 50. He also denies having pledged articles 17, 28, 29, 36, 40 and 44 with Raghunath in the year 1947. He also denies that articles 9 and 10 and 22 to 46 were in the house of Raghunath on 24th July 1956. Accused No. 10 denies having removed the oil engine, article 50, from the house of Raghunath. His contention is that since 5 or 6 years prior to the date of this incident this engine had been lying along the road behind his house near the cattle shed as it was a broken engine and it had become unserviceable. This accused (No. 10) further denies the allegation that he had removed the Handa or a packet of Paitham's or a Baguna from the house of Raghunath on 24th July. In fact he has denied the allegation that he was even present in the house of Raghunath on that day. In the cross-examination of Raghunath it was suggested, so far as accused No. 11 is concerned, that he was attending a construction work of a school in the village till 5 O'clock in the evening. It is in the case of accused No. 11 in his statement that he is a panch in the Gram Vikas and that on behalf of the Gram Vikas he was supervising the construction work of the village school on 24th July and that he was busy with that work from 8 O'clock in the morning till 5 O'clock in the afternoon. Accused No. 11 further denies the allegation that he had taken away a Deg from the house of Raghunath. Accused No. 12 has denied having removed from a cupboard from the house of Raghunath a cigarette tin, article No. 5, in which the prosecution allegation is that there were gold and silver ornaments. It is contended by accused No. 12 that in a certain case Kanhayalal, a prosecution witness here, was convicted and sentenced to imprisonment and that he (accused No. 12) had given evidence against Kanhayalal in the Court at Bhusaval. It is contended for this accused that on that occasion Kanhayalal had threatened to take revenge upon the accused. In these circumstances, says accused No. 12, Kanhayalal, the Police Patil and the complainant Raghunath have combined together to take revenge upon him and it is for that reason that they have falsely involved him in this case. Accused No. 13 says that at the material time (noon on 24th July 1956) he was working in his field till 12 O'clock in the afternoon. In respect of the fee, article 48, the contention of accused No. 13 is that this article was voluntarily returned to him by Raghunath because he had paid

Rs. 10 to Raghunath and had-promised to pay the further amount of Rs. 6 to him within 3 or 4 days. It is further denied by accused No. 13 that he was one of the persons who had removed the safe, article No. 8, from the house of Raghunath to the cat of the Gram Pancha-yat"s Office. Accused No. 14 says that on 24th July he had gone to his field to collect leaves and branches for fodder for his sheep and that he was not present in the village. He denies having gone to the house of the complainant Raghunath on that day. Accused No. 15 denies having broken open the lock of a cupboard in Raghunath"s house. He denies having looted the ornaments which were contained in that cupboard. He also denies the allegation made by Yamunabai against him that he had brought her back from near the office of the Gram Panchayat to her own house, had pushed her into that house and had molested her and outraged her modesty by pulling her breasts. It is contended by accused No. 15 that at the date of this incident there was a prohibition case pending against Raghunath and that in that case one Namdeo Dhande, a nephew of the accused, was a panch-witness. It is suggested for accused No. 15 that on account of enmity, arising out of that circumstance Raghunath and Yamunabai have falsely involved him in this incident. He says that on 24th July he had seen Yamunabai going out of her house whereupon he had asked her where she was going. Thereupon she had told him that there was a crowd or people at her house and had inquired of him whether he would accompany her to the house. It was upon the request of Yamunabai, says accused No. 15, that he had gone to her house and when he had gone there he had found Govind Totaram near that house. He was abused by Govind Totaram and he was asked to go away. So he says that he left Yamunabai in her house and went to the place of a carpenter. It may be noted at this stage that if this statement of accused No. 15 were to be a true statement, it would corroborate the story of the prosecution that at about noon On 24th July 1956 a crowd of people had assembled in the house of Raghunath, whereupon Yamunabai had felt the necessity of going out apparently in search of help. Accused No. 16 has denied having sold any Panchapatri to Raghunath. He denies having threatened Raghunath or Yamunabai or having asked them for the return of the Panchpatri. He says that he paid Rs. 12 to Yamunabai for the Panchpatri and took it away with the consent of Yamunabai. So far as his-presence at the scene of the offence on 24th July is concerned, this accused (No. 16) has denied it. His contention is that on that day he had gone to his field at 9 O"clock in the morning and had returned home only at about 4 O"clock in the afternoon. According to accused No. 17 he had been ill since 3 or 4 days before the date of this incident and was therefore in the house of one Bhanu Vana Mahar as he was staying in that house, his own house-having fallen down. Accused No. 18 says that he did not visit the house of Raghunath at all on the date of the incident. He says that he has a cousin of the name of Damiv Kalu Patil. This Damu is alleged to be a friend of Kanhayalal. It is alleged that at one time Damu was in the service of Kanhayalal. The accused (No. 18) further says that he was-not on good terms with Damu and that there used to be quarrels between him and Damu over the matter of a bandh. He suggests that it

was at the instance of Damu who had instigated Kanhayalal that his name came to be falsely involved in this case. Briefly stated, it is upon these contentions that all the accused have denied the charges which the prosecution, has brought against them. (After discussing, the evidence, the judgment proceeded :)

9. What I have just said would explain-the non-mention of the morning incident at the motor stand in the First Information. The motor stand incident was only a prelude to what happened later. It was relatively a small matter. Nothing in particular .happened at the motor stand. Raghunath was asked to leave the village and that by itself was no offence. Mr. Tarkunde contended that even in his police statement Raghunath did not say that accused Nos.- 2 to 17 were present at the motor stand. For making this submission Mr. Tarkunde relied on the following statements of Raghunath in paragraph 26 of his evidence:

I cannot say why in my police statement the names of accused Nos. 2 and 17 are omitted "as being present at the motor stand when I went there being called by accused No. 1.

Now, in our view this was an irregular and objectionable way of proving a contradiction between the witness" evidence in the Court and his police statement. It was a misleading way. It would mislead the witness. If a witness, without an extract from his police statement being read out to him, were to be told in the witness-box that he had not made a certain statement before the police, he would assume that that might be so. But that would not legally prove that the witness had not in fact made that statement before the police. The witness might be certain in his mind that he stated a particular fact before the police and might wonder when he is told in the witness-box, without an extract from his police statement being read out to him, that he had not stated so. I might illustrate this better by referring to paragraphs 46 and 47 of Raghunath's evidence. In paragraph 46 Raghunath said: It is not true that I have omitted to implicate accused Nos. 6 and 18 in the matter of outraging modesty of Yamunabai. I cannot say why such an omission appears in the police statement. However, I have given the names of accused Nos. 6 and 18 to the police.

In paragraph 47 Raghunath said:

I have told before the police that accused No. 10 carried away from my house the oil engine, Deg containing pulses, one Baguna and one bundle of Paithanis. I cannot say why police have not so taken it down.

This would show that Raghunath was certain in his mind that he had stated before the police that accused No. 10 had carried away the oil engine, Deg, Baguna etc., from his (Raghunath's) house. He was also certain that he had mentioned before the police that accused Nos. 6 and 18 had participated in the act of outraging the modesty of Yamunabai. When he was asked whether he could say why these

averments were not found in his police statement he answered that he could not say. But it is obvious that such a question put to him is no legal proof that in fact Raghunath had not mentioned in his police statement that accused No. 10 had removed the oil engine etc, from his house and that accused Nos. 6 and 18 had joined in molesting Yamunabai. The absence of these averments in Raghunath's police statement must be legally proved and unless it is legally proved, there cannot be said to exist any contradiction or omission as between Raghunath's evidence and his police statement on these points. In this context it is noteworthy that even after stating that he could not say why in his police statement there was an omission of the names of accused Nos. 6 and 18 in regard to the molestation of Yamunabai, he reiterated his conviction that he had mentioned the names of accused Nos. 6 and 18 to the police in that connection. That being so, unless the police officer who had taken down the witness' statement during investigation is examined and unless he says in his evidence that the witness had not made a particular statement in his police statement, it would be wholly irregular and unfair to the witness to attempt to establish contradictions or omissions in the manner above stated as between his evidence and the police statement. The correct way and the proper way of proving a contradiction or omission is to ask a Sub-Inspector about it in his evidence as to whether a certain statement was made before him by a witness. If such a procedure is not adopted, as it invariably ought to be, then, in any event, unless the record shows, by a Judge making a note about it, that the witness' police statement was read out to him and his attention was drawn to the non-existence of a certain statement therein, it could not be said that there was proof that in fact the statement concerned was not made by the witness. In this connection, be it noted that when the learned Judge did look into the police statement of Yamunabai regarding a certain alleged act of accused No. 15, he did make a note about it (vide Exhibit 30). There is nothing to show that in the matter of the alleged omissions of Raghunath in his police statement, regarding the above alleged acts of accused Nos. 6, 10 and 18 the learned Judge had looked into his police statement. We are, therefore, unable to agree with Mr. Tarkunde that Raghunath had not mentioned in his police statement that accused Nos. 2 and 17 were present at the motor stand, that accused No. 10 had removed an oil engine etc. from his house and that accused Nos. 6 and 18 had joined in molesting Yamunabai. We have dealt in this judgment with the point of contradictions or omissions as between the witness' evidence in Court and his police statement, because we feel that a necessity has arisen to emphasise the correct way of proving the contradiction or omission. A contradiction or omission means that a certain statement made by a witness in his evidence in Court was not made by him when he was examined by the police. Such non-existence of a statement in a witness' police statement must be proved in the first instance, and the legal way of proving it is to ask the Police Officer in his evidence whether a particular statement was made by the witness before him. An Advocate's knowledge of the non-existence of a certain averment in the witness' police statement, derived from a perusal by him of the said Police statement cr. take

the place of proof that such an averment was in fact not made by the witness before the police. We are pointing this out to avoid the danger of bringing upon the record of a case answers to questions which might be mis-leadingly obtained and incorrectly utilised at the time of arguments for proving contradictions or omissions. (After discussing the evidence further, the judgment proceeded:)

10. The net result, therefore, is that the appeal of accused Nos. 1, 6, 10, 12, 13, 16 and 18 fails and is dismissed so far as the order of convictions against them is concerned. The convictions of accused Nos. 1, 6, 10, 12, 13, 16 and 18 for an offence u/s 395 and for an offence u/s 435 read with Section 149 are confirmed. In addition, the conviction of accused Nos. 1, 6, 12 and 18 for an offence u/s 354 read with Section 149 is also confirmed. The appeal of the remaining accused, viz., accused Nos. 2, 3, 4, 5, 7, 8, 9, 11, 14, 15 and 17 is allowed. They are acquitted and ordered to be discharged.

11. On the point of sentence it may be noted that the learned Judge, u/s 395 of the Indian Penal Code, has imposed a sentence of 7 years rigorous imprisonment. We are of the view that this is an excessive sentence and we are disposed to reduce it. Accordingly, while sentencing accused Nos. 1, 6, 10, 12, 13, 16 and 18 u/s 395 of the Indian Penal Code we direct that each one of them shall suffer rigorous imprisonment for five years. The sentence of three years" rigorous imprisonment passed u/s 435 read with Section 149 against accused Nos. 1, 6, 10, 12, 13, 16 and 18 is confirmed. We also confirm the sentence passed u/s 354 read with Section 149 against accused Nos. 1, 6, 12 and 18. The sentences of fine which the learned Judge has imposed u/s 354, read with Section 149 are also confirmed. The substantive sentences of imprisonment passed u/s 395 and u/s 435 read with Section 149 of the Indian Penal Code are ordered to run concurrently. The sentence imposed u/s 354 read with Section 149 shall be suffered consecutively i.e., after the substantive sentences of imprisonment u/s 395 and Section 435 read with Section 149, which have been ordered to run concurrently, have been suffered.

12. The bail-bonds of accused Nos. 3, 4 and 7 are cancelled and accused No. 13 is ordered to surrender to his bail. The compensation order passed by the learned Judge is confirmed.