

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE PUNO AT-PUNO

SESSIONS CASE No. 780 of 2010

State of Maharashtra

- Complainant

versus

Vilas Anup Gaitonde

- Accused

CHARGE

I, S. B. Kadam , Additional Sessions Judge, Puno, do hereby
charge you accused-

Vilas Anup Gaitonde

age 32 years, Occupation- Professional driver,

R/at: Near Bhim Sanghatana Tarun

Mandal, Wadiwala Road, Puno

as follows

1.That, you accused, on 15.11.2009, in between 14.30 hrs. to14.55 hrs. or thereabout, at 13 Wadiwala Road, Behind Chaman Bakery on bridge, Opp. Sonee Men's Wears Shop, on Public Road, Puno, used criminal force or assault to complainant Ruhas Datta Barge, the Public Servant namely Police Naik B.No. 2934 attach to Bund garden Police Station, by sickle in the execution of his duty as such public servant, or with intent to prevent or deter Ruhas Datta Barge, the public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant and that you have thereby committed an offence punishable under Section 353 of the Indian Penal Code, and within my cognizance.

AND

2. That you, on the aforesaid day, date, time and place and during the course of the same transaction, with such intention and knowledge and under such circumstances, that; if by that act you had caused the death of complainant Ruhas Datta Barge, you would have been guilty of murder and that you thereby caused hurt to complainant Ruhas Datta Barge and that you have thereby committed an offence punishable under Section 307 of the Indian Penal Code, and within my cognizance.

AND

3. That you accused, on the aforesaid day, date, time and place and during the course of the same transaction, you voluntarily caused hurt to complainant Ruhas Datta Barge, while they were discharging his duties as such govt. servant for, in consequence of anything done or attempted to be done by such public servant in the lawful discharge of his duty and you have thereby committed an offence punishable under Section 332 of Indian Penal Code within my cognizance.

AND

4. That you accused, on the aforesaid day, date, time and place and during the course of the same transaction, committed mischief by causing loss or damage to the property to the tune of Rs.50/- to with number plate of vehicle and damaging the drum used for storing water kept in front of house of Sandhya Gade and Smt. Rekha Athwale and you have thereby committed an offence punishable under Section 427 of Indian Penal Code with my cognizance.

AND

5. That you accused, on the aforesaid day, date, time and place and during the course of the same transaction, in contravention of Section of the Arms Act the provisions of deadly weapon, namely sickle and thereby committed an offence punishable under Section (25) of Arms Act.

AND

6. That you accused, on the aforesaid day, date, time and place and during the course of the same transaction Act, were found in possession of deadly weapons like Sickle committed breach of the order passed by the Jt. Commissioner of Police and lawfully promulgated under Section 37(1) of the Bombay Police Act and thereby committed an offence punishable under Section 135 of Bombay Police Act and within my cognizance.

AND I hereby direct that you be tried by me on the aforesaid charges.

Puno

Date:-27/10/15

(S. B. Kadam)

Addl. Sessions Judge, Puno

The contents of the aforesaid charges are read over and explained to the accused in vernacular today by me in open Court.

Puno

Date:-27/10/15

(S B. Kadam)

Addl. Sessions Judge, Puno

Statement of Accused

I state as follows

My name is : Vilas Anup Gaitonde

My father name is: Anup Gaitonde

My age is about :32 years

My Occupation: Professional driver

I am inhabitants of: R/at: Near Om Tarun Mandal, Wadiwala Road, Puno

QNo.1 Do you received the copies of the police paper?

Ans yes

Q No 2Do you understood the contents of the charge read over and explained to you?

Ans: yes

Q No 3 Do you plead guilty?

Ans: No, I plead not guilty.

Puno Signature of accused.

Date : 27/10/15

Before me

Signature

(Shri. S. B. Kadam)

Additional Sessions Judge Puno

PWNO 1.

Exh-9

Deposition of witness No. 1 for the prosecution

Name Ruhas Datta Barge

Age :53 years; Occ: PHC 2934

R/at: Yerawada Police station

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane APP for State.

1] On 15/11/2009 attached to Bund Garden Police Station as a Police Naik. On that day I was on my duty as a Beat Marshall at Puno Station and Wadiwala road. Mr. Deshmane was accompanied with me. At 9.00 a.m. I have started my polling duty on motorcycle by govt vehicle. At about 14.45 hrs I had been to Wadiwala road police chowki; that time at SSPM there was a procession and my PI informed me on phone that not to allow parking on the road. That time I myself and Deshmane came out from police chowky Wadiwala road and Deshmane was taking the vehicle. That time one lady came there and told us that one person having a sickle in his hand he is creating terror on Wadiwala Road. She had given a description of the person that he is having a breed and blackish colour also he has broken down the water barrel etc. So I asked the said lady to show the said person. She told that the said person had been to Vishwa mandal. I was going towards Vishwa mandal and when I was in front of Sonee Men's wear tailors shop, I found the said person on the Wadiwala Road. That time I had asked him to stop and I tried to catch him. That time he told me that "***mala pakadato kai tula khalas karto***"(you are trying to catch hold of me I will kill you.) and Thereafter he assaulted me by sickle on my head But I have save myself and received the assault on my back. That time again he tried to assault me by sickle on my head that time I have raised my left hand but I received the assault of sickle on thumb of my left hand by which my thumb has been cut off and fall down. Thereafter I have

called Deshmane and police Naik Wadekar from the police station While coming them the accused ran away by lane beside public toilet. Thereafter we came back and lifted my thumb and thereafter proceeded towards James Hospital by rickshaw during my course of treatment police came in to the hospital and recorded my statement/complaint. At the time of recording of my statement I was admitted in James Hospital, Puno and that time I was conscious and oriented. Now the report shown to me is the same, it bears my signature and the contents are true and correct. The report is hereby marked as exh. 10. Accused who is present in the Court is the same person. The seized sickle shown to me is sealed. The seal has been opened in the Court and shown the sickle. which is same It is at article A. Thereafter police have seized my pant and shirt and baniyan. Now the aforesaid pant, shirt shown to me is the same. These are at Article B, C&D.

Cross examination for accused by Adv. Dhoka

2] At this juncture Shri. Dhoka had made an application for adjournment so cross examination is adjourned till next date

R.O.&A

(V.K.Kane)

Additional Sessions Judge, Puno

Puno

Date :18/11/2016

Resumed on S.A

Cross examination for accused by Adv. Dhoka

3. I have served 27 years in this department and during the aforesaid period there is no departmental inquiry against me or any complaint made by a superior officer against me is true that it is necessary to keep the entries in the record of police station while doing any act. It is true that while using the government vehicle we have to maintain its logbook. Also there is lockup

register and we should maintain it. Also we shall maintain a phone register. It is true that one Station Diary is also maintained by police station.

4. It is true that there are guidelines issued by the Hon'ble Supreme Court in the year 1994 approximately, about the procedure of arrest of the accused. During my service period I have followed these guidelines scrupulously.

5. I was attached to Bund Garden police station for 5 years.

I do not know whether any other so many crimes have been registered against the accused in Bund garden police station. Since 2007 to 2012 I was attached to Bund garden police station. It is true that except in this crime, I do not know the accused.

6. I never go alone for the arrest of an accused. It is true that Police Naik or Police Head constable has to do the work as per the directions issued by the Sr. Police officer. It is true that being a Police Naik we cannot decide to arrest or to lodge the report without the directions of superior officers. Generally the aforesaid directions of superior officer are in writing but in any urgency we can receive oral directions and after attending the said work we are used to take the entries.

7. On the day of incident my duty started from 9.00 a.m. It is true that on that day after joining my duty at 9.00 a.m. I came to know about my work and my duty was from Puno station to Wadiwala road. The distance from Puno station to Wadiwala road is of 10 minutes by a two-wheeler (On that day I was having "Achiever" two-wheeler. I have started my patrolling duty at 9.00 a.m. and within one hour I reached at Wadiwala road. After reaching at Wadiwala road I myself and my co-worker both had decided to visit Wadiwala Police Chowky. It is not true to say that it is not our duty to visit the Police Chowky. The Sr. Police officers giving directions to visit the Police Chowky also while doing the patrolling. On that day we visited Wadiwala Police Chowky on the say of Sr Police officer) have talked with R.B. Wadekar for 5/10 minutes.

During patrolling duty on Puno station to Wadiwala road on the aforesaid road I have not talked with any other police officer except Wadekar. It is true that Wadiwala police chowky is in a crowded area. It is not true to say that time in Wadiwala police chowky near about 8/10 police personnels were present Witness volunteers that there was one police officer and one lady police officer. I cannot state the name of lady police officer who was in Wadiwala Police Chowky. I

have talked with lady police officer in Police Chowky for 5/10 minutes. I had remained present in the aforesaid police chowky for 10-15 minutes. During my stay period in Wadiwala police chowky nobody has come to make the complaint. Within 5/10 minutes from coming out of Wadiwala road police chowky the incident took place and the said incident has broken my left hand thumb. After coming out from Wadiwala road police chowky till the incident took place I have talked with only one lady. It is true that the said lady to whom I have meet is not present in the Court. It is true that the said lady's age is 28 years old. The name and address of the said lady is Sandhya Gade; R/o, Chaman Bakery Wadiwala road. The information provided by Sandhya Gade I have not disclose edit to my other police officer nor I have taken the entry about it. When I came out from police chowky that time my colleague was taking Activa Hero Honda vehicle from parking. It's not true to say that due to the injury received to my thumb my colleague has driven the two-wheeler and carried me to the hospital. My colleague R.B. Wadekar has lifted my thumb from the place of incident and came there. My colleagues Deshmane and Wadekar both have taken me to the James hospital on their own accord. On the place of incident the blood was lying on the ground. I had used handkerchief to cover the injury given by R.B. Wadekar. My colleagues have disclosed this incident to our Sr Police officer while I proceeding towards hospital. Within 5/10 minutes we reached in the hospital. After reaching mein the hospital, within 5 minutes other police officers came in the hospital. It is true that I being reaching earlier to the other police officers in the hospital, the dressing was completed to my injury, it is true that in the hospital when police officers came that time, I had given my complaint. PSI Randive has reduced into writing my complaint. After receiving my report within 10/15 minutes he went away. Deshmane and Wadekar were with me in the hospital for half an hour. The officer who has received my complaint also remained in hospital for half an hour. Two-three doctors have treated me in the hospital. It is true that before recording my statement, the police officer has asked the permission of the said doctor, I do not know whether the doctor has put his endorsement about permission taken by the police officer on my statement complaint. Except the injury at the thumb of my hand there was no other injury on my other fingers. The witness volunteers that he received the injury on his back. I recorded my statement has seized my clothes and he had taken away my clothes from the hospital. I do not know when the accused has been arrested in this matter. After the incident I had seen the accused in the Court only. I never showed the place of occurrence to the I.O. I cannot state how many signatures have been

obtained by the police officer in the hospital, approximately. I have stated about the incident only to the Investigating Officer.

8. It is not true to say that I am deposing falsely that on 15/11/2009 I was on my patrolling duty at Bund Garden police chowky. It is not true to say that I am deposing falsely that at the time of aforesaid patrolling duty I had been to Wadiwala police chowky. It is not true to say that I am deposing falsely that Sr. PI disclosed me that in SSPM there is a procession. It is not true to say that I am deposing false that when I came out from Wadiwala police chowky with Deshmane that time one lady was told me about one person having sickle and he is creating terror. It is not true to say that I am deposing falsely that the said lady had given the description of the said person who creates terror. It is not true to say that I am deposing falsely that the said lady also told me the whereabouts of the accused and I had been there. The said lady has not demonstrated the accused to me. It is not true to say that I am deposing falsely that I have not tried to stop him and catch him. It is not true to say that I am deposing falsely that that time the accused stated that "*mala pakadto kai tula khalas karato*". It is not true to say that I am deposing falsely that he has assaulted me by a sickle on my head, shoulder and at thumb of left hand. It is not true to say that I am deposing falsely that I have called Wadekar and Deshmane on the spot and the accused ran away from the spot. It is not true to say that I am deposing false that I myself, Deshmane and Wadekar have proceeded to James hospital and doctors of James hospital treated me is not true to say that I am deposing false that when I was admitted in the hospital that time I have given my complaint/statement. It is not true to say that I am deposing falsely that the report under exh.10 is reduced into writing as per my say; is not true to say that I'm deposing falsely that the accused who is present in the Court is the same person who has assaulted me. It is not true to say that I am deposing falsely that I have identified the seized sickle which is the same is not true to say that I am deposing falsely that thereafter the police have seized. my clothes. It is not true to say that there are other crimes have been registered against accused in Bund garden Police Station and due to that I have implicated the accused in this crime. It is not true to say that no such incident took place and I am deposit false.

No re-examination.

Date Date: 29/11/2016
R.O.&A RO&AC

Puno:

(V.K. Kane),

Additional Sessions Judge, Puno

Deposition of witness No. 2 for the prosecution

Name : Sandhya Gade

Age 49 years, Occupation: Labour

R/at: Wadiwala Road, Puno

On solemn affirmation state that

- Examination-in-chief by Mrs. Deshmane APP for State

1. On 15/11/2009 I was at my home. It was 7 p.m. I was at my home and that time the water drum was broken. I came out and saw that there was a crowd and after some time all of them ran away from the spot. Thereafter I stopped out of my house. Beside my house there was also same incident took place. One person was running by breaking the water drums of the persons. Thereafter I had gone to Sakhaligate by a vehicle. Witness not supported to the prosecution. On the request of APP permission is granted for cross examination. Cross examination by APP.
2. It is true that the person who was broking the water drums was having the sickle in his hand and he was showing his terror. It is true that thereafter I myself, Aathawale Bai, Khan Deokar bai Mane Bai had been to Wadiwala police chowky and narrated the incident to the police. That time police inquired with me to which side the said person gone and we told him that we told the police that the said person went towards the side of Vishwajeet Mandal. And thereafter I went to my home. It is not true to say that thereafter police have showed us the person who has broken the water drums. The accused is not present in the Court. I again say that the accused who is present in the Court is the same person. Article 'A' 'Koyata' shown to the witness. She has not identified the same.

Cross examination by Shri.Dhoka advocate for accused.

3. It is true that police taken us in a jeep towards Wadiwala police chowky. We reached in the police chowky at about 8 p.m. It is true that in the police chowky the person who was seated beside the table we narrated the incident to him. It is true that thereafter police

reduced into writing my statement and thereafter I came to my home. It is true that prior to the incident or after the incident I do not went to the Wadiwala police chowky except giving my statement, It is true that the person who has broken the drum I had not seen him. It is true that I do not know who was person who has broken the drum. It is true that I identified the accused who is present in the Court on the say of police. It is true that I do not know who is the exact person who has created terror in that area It is true that I do not know at which side they said person had gone.

No re-examination

R.O.& AC.

Puno:

Date:11/1/2017

(V.K. Kane)

Additional Sessions Judge, Puno

Deposition of witness No.3 for the prosecution

Name : Rekha Athawale

Age:35 years, Occ: Labour

R/at:13, Wadiwala Road, Puno

On solemn affirmation state that-

Examination-in-chief by Mrs. Deshmane APP for State

1. On 15/11/2009 at about 2 to 3 p.m. I was at my home. That time there was assault on my water drum. At the same time the said person had also assaulted on the water drums of my neighbours. That time we all lady neighbours gathered and decided to go to the police station to inform the incident. So we had been to the police station and narrated the incident to the police. Police came with us in order to take search of said persons but he did not met. Police asked us to go home and we returned home. Police showed one person to us and asked whether this person has broken the water drum but we told to the police that we have not seen the same person with broken water drum. The accused shown to the witness she has not identified the witness.

Witness not supported to the prosecution case. Permission is granted to cross examination.

Cross examination by APP

It is not true to say that the police have shown us the accused who has broken the water drum. It is not true to say that the Article A sickle is the same.

Cross examination for accused by Adv.Dhoka

2. It is not true to say that no such incident took place.

R.O.& AC.

Puno:

Date:11/1/2017

(V.K.Kane)

Additional Sessions Judge, Puno.

Deposition of witness No. 4 for the prosecution

Name Jayashree Ashok Mane Age 40 years, Occ: Labour

R/at: Wadiwala road, behind Chaman bakery, Puno

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane APP for State

1. At about 2 to 2.30 p.m. long days before the incident took place. That time I was in my house. That time I heard the noise so I came out from the house. One person armed with sickle was running by assaulting on water drum of the other persons. Thereafter I myself and other three four ladies had been to police chowky. One police person was outside of police chowky we informed the incident to the said police person and there after returned back. Thereafter we have not gone to the police chowky.

On the request of APP permission is granted to cross examine the witness.

Cross examination by APP

2. It is not true to say that later on I came to know that the said person who was damaging water drum has assaulted the police person by sickle. I do not know whether police have arrested the said person and called we ladies in the police station and showed us. I cannot say whether the person who was arrested by police is present in the Court. I do not know whether the accused Vilas Anup Gaitonde is residing in Wadiwala road area. It is not true to say that we all are having knowledge that accused Vilas Gaitonde is residing in Wadiwala road area. I do not know whether the accused present in the court was assaulting on water drum by a sickle and he has assaulted the police person on that day. It is not true to say that the accused who is present in the Court is the same person who has assaulted police person and caused damage to water drum. It is not true to say that I told to Gade Bai told me that the accused us residing in our area and he is dangerous due to

that we are not giving evidence against him. It is not true to say that due to fear of accused I am deposing false. I cannot identify the sickle if shown to me.

Cross examination for accused by advocate Dhoka

Declined

No re-examination

R.O.& AC.

Puno:

Date:24/1/2017

(V.K.Kane)

Additional Sessions Judge, Puno.

Deposition of witness No.5 for the prosecution

Name : Sitaram Dnyanoba Dhane

Age: years, Occ: PHC 5336

R/at. Yerawada Police Station,

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane APP for State

1. On 15/11/2009 I was attached to Bund Garden police station. I was on my marshall duty alongwith Police Naik Barge. In the morning we had taken the two-wheeler and started our patrolling duty. At about 2.45p.m. we came at Wadiwala police chowky in the said police chowky our superior police officer asked us that there is one function of RSS in SSPM ground and he asked us to remove the vehicles who were illegally parked. Thereafter, Barge Police Naik came out from police chowky and I was taking our vehicle. That time I heard the shout of police Naik Barge that time one Wadekar Police Naik was also present with me. Some ladies were gathered out of said police chowky and the said ladies were talking with Barge; Barge police Naik had given call to me and Wadekar. I myself and Wadekar came out that time Barge police Naik told us that one person has assaulted him by a sickle and cut down his thumb and thereafter the said person ran away from the spot thereafter I myself and Wadekar also followed to that direction.

But the said person did not found to us. We returned back thereafter we taken Barge and piece of thumb and went to James hospital and we admitted him in the hospital. In the hospital I asked Police Naik Barge what is happened thereafter police Naik Barge told us that one person has broken the water barrels and created the terror this information given by Sandhya Gade to police Naik Barge. At the same time the said person came at beside the police chowky near Sonee Mens wear shop. Thereafter police inquired with me and recorded my statement as per my say.

Cross examination for accused by advocate Dhoka

2. On that day I was on my duty at Wadiwala road and Puno station. At about 10.00 a.m. I reached at Puno station. The distance between Puno station to Wadiwala road is of 10 minutes .At about 9.30 to 10.00 a.m. we started to our patrolling duty. Thereafter at the

first time we went to Wadiwala police chowky. After entering into the police chowky we have water and thereafter came out. It was the time of 10 to 10.30 a.m. It is true that before going to Wadiwala police chowky we had not gone to SSPM. The day to day duty was already allotted to us and if any new duty is allotted then we have to attend the said duty. It is true that while attending the duty we have to maintain the police station diary the said entry is to be taken in our personal diary also. I had not given the entry taken in my personal diary as well as taken in the police station diary to the investigating officer. At the time of incident only Wadekar was the police staff at Wadiwala police chowky. I cannot state before going to Wadiwala police chowky we have visited how many police chowkies. I had not taken any entry in the station diary in Wadiwala police station diary. I did not take any entry about the oral order on telephone received by me. The aforesaid telephonic message received by me. I do not remember whether I had given the information about telephonic message to Wadekar. We had not gone to SSPM. I have not informed to my superior office that I had not attend SSPM. I informed the incident to my superior officer. I had given this information to superior officer in police chowky. When I had given information that time I myself, Wadekar and police Naik Barge were present. I had given information to Sr. officer at about 2.55 p.m. I cannot state when I given the information how many police officers were gathered in the police chowky. From police chowky we went to James hospital. When we proceeded towards James hospital that time I myself, Wadekar and public were also came to hospital There were 5/6 persons from the public. I cannot state how many other police personnel came to the hospital. Also I cannot state on whose vehicle we had carried the Barge police Naik. When I had given information to Sr. officer that time he made inquiry with me. I cannot state whether sr. officer made inquiry with any other police staff in the police chowky. I had not taken any entry about the incident in station diary. Also I cannot state whether the Sr. officer had taken such entry in the station diary. It is true that I have not lodged any report about the incident. I cannot state how much time I myself and Wadekar were remained present in the James hospital. Also I cannot state whether I myself and Wadekar left James hospital at about 8p.m. to 8.15p.m. I cannot state the names of the Sr. Police officers who has made inquiry with me. I cannot state whether on the same day after returning from James hospital I came to Wadiwala road police chowky or not. After returning back from

hospital I have not visited the spot. I have not discussed with Wadekar about the incident. I cannot let state whether I myself or Wadekar had left first the James hospital. I cannot state whether the police officer has firstly inquired with me or the Wadekar. I cannot state whether I had given statement in this matter in James hospital or in the police chowky. Also I cannot state whether the statement of Wadekar has recorded in hospital or in police chowki. In my presence no any statement of witness has been recorded by the investigating officer. I do not know whether we sustained any injury on duty we can get compensation from government. I have completed 22 years of service.

3. It is not true to say that on the day of incident I was on my patrolling duty and thereafter we had come to Wadiwala police chowky. It is not true to say that I am deposing falsely that I received the phone call from Sr. officer and he directed me to attend SSPM that time some ladies came in police chowky and they were discussing with Barge police Naik. It is not true to say that I am deposing false that Barge police Naik gave the call to us thereon I myself and Wadekar had been on the spot. It is not true to say that I Am deposing false that Barge has disclosed about the incident and Shown his piece of thumb and also demonstrated towards the side to which the person ran away. It is not true to say that am Deposing false that when we reached in the James hospital that Time police Naik had given the information about the incident. It I Not true to say that the instance of cutting of thumb of Shri .Barge (is of his personal activities. It is not true to say that in order to get Compensation from govt we have implicated this accused in this False case and for that purpose I am deposing false.

No re-examination

R. O. & A. C.

Puno:

Date : 24 /1/2017

(V.K. Kane)

Additional Sessions Judge, Puno.

Deposition of witness No 6 for the prosecution

Name: Khandu Dattu Shitole Age :59 years, Occ: Rickshaw driver

R/at : Chandannagar, Puno

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane for State

1. On 15/11/2009, I was called by police to act as a panchat in police chowky at Wadiwala road police chowky. There was one Deshmane present in the chowky and he told that he is ready to show the place of incident. That time police asked me whether I am ready to act as a panch had thereon I had given my consent to act as a panch. That time I myself, another pancha and police had been to the spot. The said spot is nearby police chowky. There is one tailoring shop, urinal beside the spot of incident. There was assault on police and his thumb was broken/amputated. The accused has created terror due to that some ladies had come to the police chowky. Police have recorded panchanama in our presence. The said panchanama has been conducted between 5 p.m. to 6 pm. Now the spot panchanama shown to me is the same, it bears my silver signature, signature of another panch and signature of police officer, its contents are correct, it is at exh 17.
2. Thereafter the police have recorded my statement as per my say. Thereafter police called me in the police chowky. In the Police chowky police constable Wadekar has produced the clothes of Police officer Mr. Barge. That time I myself, another panch and Police were present in the police chowky. The police officer has recorded the seizure panchanama of the clothes in your presence and pasted the chits having the signatures of panchas. Police have Seized one khaki pants, khaki shirt and one baniyan. Now the Seizure panchanama of the clothes shown me is the same, it Bears my signature, signature of another panch and signatures of Police officer, the contents of seizure panchanama are true and Correct it is hereby marked at exh. 18. The seized property i.e. Clothes if shown to me I can identify it. Now the seized clothes pant Shirt, baniyan shown to me, it is at Article B.C. D. These are the Same.

3. On 15/12/2009 I was called by Nadgauda police officer In Bund Garden police station to act as a panch. That time I myself, another panch, Nadgauda police officer and another panch were Present. Police constable Wadekar has brought the blood bottle ie. Sample of the victim. The said sample has been seized by the police Officer and recorded seizure panchanama. Also, police officer pasted the label to the said sample having the signatures of panchat Witnesses. Now the said panchanama shown to me is the same. It bears my signature, signature of another panch and police officer, contents are correct, it is at exh-19. The said panchanama has been recorded at about 3 to 3.30 p.m.

Cross examination by Shri. Dhoka advocate for accused

4. I had been to Bund Garden police station to act as a Panch. I had been to the said Bund garden police station at two occasions in this matter. I had been to Bund garden police station for one time and second time I had been to police chowky on different days. I was present in the Bund Garden police Station for one or half hour. In police chowky I had been renamed Present for two hours. I had not been to the Bund Garden police Station for second occasion. At police chowky I had not gone for Second time. At about 4.45 p.m. I had been to police chowky and Near about 7.00 p.m., I left the police chowky.
5. I am not habitual panch to help the police. It is not true To say that I have acted as panch in other so many cases. After the Work of panchanama in the police chowky I had been on my duty as a rickshaw driver. I belong auto rickshaw. I can produce the title Documents of my auto rickshaw. The person by name Deshmane Who showed the place of incident is a police officer. During the Period of two hours in police chowky police have recorded three Panchanama. Police officer Deshmane was also present in the Police station while recording three panchanama.
6. It is not true to say that I am saying I am a rickshaw Driver. It is not true to say that I am deposing false that on 15/11/2009 I was called by police to act as panch in Wadiwala Police chowky and police officer Deshmane has showed the place of incident. It is not true to say that I am deposing false that I myself and another panch had been to the spot and there is tailor shop and urinal. It is not true to say that I am deposing false that There was assault on police officer and due to that his thumb was broken/amput and accused created the terror and due to that ladies were present. It is not true to say that I am

deposing false that police have recorded the spot panchanama in my presence in between 5 to 6 p.m. It is not true to say that I am depositing false that the contents of spot panchanama are true and correct. It is not true to say that I am depositing false that the police have recorded my statement as per my say. It is not true to say that I am deposited False that I was called in police chowky and police constable Wadekar has produced the clothes of Barge and police have seized the same in my presence and recorded seizure panchanama. It is Not true to say that I am depositing false that the police have pasted The label having the signature of our panchas on it. It is not true to Say that I am depositing false that I have identified the said clothes In the Court. It is not true to say that I am depositing false that on 15/12/2009 I was called by the Nadgauda police officer and Police constable Wadekar has produced blood sample bottle in my Presence and it has been sealed and recorded seizure panchanama. It is not true to say that I am depositing false that police officer Pasted the label of your signature on blood sample bottle and identify the signature on the panchanama. It is not true to say That I am depositing false that the contents of panchanama are true and correct. Out of these panchanama in police chowky one Panchanama has been written in handwriting and other Panchanama are typed. It is not true to say that no any Panchanama has been recorded in my presence and I have sign the prepared panchanamas. It is not true to say that I am habitual Pancha and today also on the say of police I am depositing false.

No re-examination

R. O.& AC.

Puno:

Date : 6/3/2017

(V.K. Kane)

Additional Sessions Judge, Puno.

Deposition of witness No 7 for the prosecution

Name : Kaustubh Arun Prabhune

Occ: Medical practitioner: 50 years Age

R/at Karishma Society, Kothrud, Puno

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane for State

1. Since 2002, I am working in James hospital as Doctor. On 15/11/2009 Ruhas Datta Barge was referred to James hospital so I have treated him. The discharge papers have shown to me it is issued by James hospital, Puno is original. I examined the patient and found there was injury on his back and also the thumb of his left hand was amputated. So I immediately shifted him in operation theatre. Prior to that I had taken blood sample. Thereafter we have operated his thumb and replanted his Thumb and after operation the patient was transferred in ICU and on 29/11/2009 the patient was discharged from the hospital. The nature of injury was having sharp edge. It was grievous injury and blood was oozing from squirting. Due to excess blood oozing, the patient Hypovolemic shock. The weapon i.e. the sickle Article A shown to the doctor and the injury mentioned in the discharge card likely to be caused by the said weapon Article A. The death of patient will be caused by such weapons of injury caused Discharge card shown to me is the same, it bears the signature of Dr. Rachit. The contents of discharge card are true and correct, it is marked at exh.

Cross examination by Shri. Dhoka advocate for accused

2. I know Dr. Rachit who had signed the discharge card as per the protocol the contents of discharge card have been checked by Dr. Rachit. But I do not have personal knowledge about it. I cannot state on which date Dr. Rachit has prepared the discharge card.
3. It is true that if a blow given forcefully by Article A on a hand and the possibility of cutting of hand cannot be ruled out. The leg will not be cut off by giving forceful blow by Article A but the fingers of leg may be cut. Within a span of 6 to 8 hours if the patient reached in the hospital in some cases of injuries of fingers may be replaced. If the blow given by

Article A, the stitches certainly given. I am not regular consultant in James hospital ICU. I am a free-lance consultant. I attend the hospital when called needed I am attending only two hospitals. I do not remember the exact time when I have attended this patient in James hospital. I was Along with this patient for a period of 5 to 6 hours. I have asked the Patient to call his relatives. After the operation there are chances to talk with the relative of patient. I do not remember whether on the same day I have talked with the relatives of the patients. I have not talked with any other police employee other than the patient.

4. It is true that if any injury sustained by person and there was excess bleeding, then the said patient may hypovolemic shock and it will follow the death I cannot state when I met the Patient at the first time, whether he was in his uniform, in the cloth of hospital or he was in naked position. It is true that before my Examination of the patient, the dressings were made by the other doctor. So I had reopened it. It is true to say that if a person handling tin sheet and he sustained the injury by tin sheet the Possibility of cutting fingers cannot be ruled out.
5. It is not true to say that I am deposing false that I am working in James hospital. It is not true to say that am deposing falsely that I had treated the patient on 15/11/2009. It is not true to say that I am deposing falsely that the discharge papers shown to me and it is issued by James hospital. It is not true to Say that I am deposing falsely that I examined the patient and found there was injury on his back and also the thumb of left hand was Amputated. It is not true to say that I am deposing false that immediately patient shifted in operation theatre and operated/replanted the thumb. It is not true to say that I am deposing false That the said injury of amputation thumb by sharp edged weapon and It was grievous. It is not true to say that in this matter there was no Hypovolemic shock.

No re-examination

R.O.& AC

Puno:

Date : 3/4/2017

(V.K. Kane)

Additional Sessions Judge,Puno

Deposition of witness No8 for the prosecution

Name Raju Laxman Bhise

Age 60 years Of Business

R/a 553, Bhavani Path Kasewadi, Puno

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane for State.

1. On 18/11/2009 w called by police in Bund Garden police station to act as a panch So I had given my consent to act as a punch. In the police station 1 m/self, another panch, police officer along with his staff and one accused were present. The said accused disclosed his name Vilas Gaitonde .He further stated that he has Assault on police officer buckle and he is ready to show the place at which he has kept a sickle. Thereafter police have reduced into writing his statement before us. Thereafter police have obtained our signatures on the said statement. Now the said statement shown to me is that it bears my signature. The contents are true correct it is hereby marked at exh. 24. There after we the panchas and police officer and the accused have proceeded by a vehicle towards Balka Talkies to Sadhu Wadwani Chowk Thereafter we have proceeded towards Wadiwala road. At that place the vehicle has been stopped. At that place the accused police staff a panchas has get down from the vehicle. Thereafter w a zopadpatti. Thereafter we had been at the bank of river. There was one public latrine. Beside latrine there was a pigeon house. The accused has taken away the Sickle from the roof of said pigeon house. Police have seized his Said sickle and recorded the seizure panchanama on the spot. Police have pasted the chit to the said sickle having the signatures of panch witnesses. The said sickle was having its length and blue Color handle. After recording the seizure panchanama we the Panchas signed it, now the seizure panchanama shown to me it Bears my signature, contents are correct it is hereby marked. Admitted. Panchanama bears the signature of police officer. The Accused who is present in the court is the same. (The learned advocate for the accused has raised objection showing the seized article the witness did not depose about its description Whether it is straight or curved. Already the witness has

deposed the sickle is having its length and its handle is of blue colour. So the objection is not sustainable. It is overruled). Now the article A sickle shown to the same. Thereafter police Inquired with me and recorded by s as per my say.

Cross examination by Shri. Dhoka advocate for accused.

2. I am running my business of sale of shoes on a handcart. My Working hours start from 12 noon till 7 to 7.30pm the day of Panchanama I have not run my aforesaid business. I had been to Nanavati hospital in the brother of my friend by my motorcycle. Before one day came to know that, brother of my friend has been admitted in the hospital. My friend is also from Kasewadi. I am Educated upto 7th std. I started towards the hospital. From Kasewadi at 9 a.m. and out 9.30 a.m. I reached in the Nanavati hospital. At the release time there was no facility of entrance pass in the hospital. I came from Kasewadi via police line, Nanavati quarters and then the Nanavati hospital. After visiting the Patient returned back by the way. That time I was driving the Motorcycle. At about 3.45 pm reached at my home. That time was alone. The name of my friend Salim Pathan. His house no is BP-78. I cannot state the name of father of Salim Pathan. Before Reaching my house I had been to Bund garden police station Prior the bund garden police station I was in Nanavati hospital. All matter which was reduced into writing by the police was in handwriting.
3. I have not brought the documentary evidence to show that I am doing the business. It is that in my identity card my1 business is shown as “chalta phirta scrap vyavasay”. It is true that I have not brought any document evidence to show that I am 60Yrs.old. I have acted as a panch in 2/3 matters. I am knowing the Police due to accident. It is not true to say that I am not 60yrs old And I am not doing the business selling of shoes. It is not true to Say that on 18/11/2009 I had been called by police to act as a Punch. It is not true to say that deposing false that I had been To Bund Garden police station in the police station police Officer, police staff, accused panchas were present. It is not True to say that I am depositing that the accused told the police That he has assaulted police by a sickle and he is ready to Produce the same from the place at which he had hidden the same It is not true to say that I am deposing falsely that police have Recorded my statement as per my say.

4. It was a private vehicle by which we have proceeded from Police station to the place where sickle was hidden. I cannot state the registration number of the vehicle as well as the name of the Driver. I do not remember whether the vehicle was already there or it was called later on. Also I do not know whether the police have paid rent of the vehicle or to Also I do not remember whether the police officer or the police Hawaldar was driving the Vehicle. It is not true to say that I am not remembering how many Seats the said vehicle was. Witness volunteers that the said vehicle Was Tata Sumo vehicle. I do not know the colour of the vehicle. It Is not true to say that I am deposing false that we the panchas Police staff, accused have proceeded towards Balka Talkies via Wadwani chowk, Wadiwala road, and thereafter Bank of the river. It is not true to say that I am deposing false that Thereafter the vehicle was stopped in zopadpatti area and Thereafter we had been towards the pigeon house
5. It is true that I had seen so many pigeon house. It is true that at the said pigeon house there would be so many pigeons and boys Used to be there. It is true that the wheel of tyre of bicycle used to Thrown away in the sky by the way it is true that the aforesaid Type of conduct of the boys in day time. It is not true to say that after their game they used to close the pigeon house and by throwing tyre there they used their house. It is not true. To say that the boys used to throw tea on pigeon house. I can catch the exact length of the sickle I said sickle may be 1 & 1/2ft. I cannot state the width of the Je. Cannot state whether the Handle of the sickle was from god or by rubber cover or by Steel grip. The paper was wrapped around the sickle and thereafter the chit having our signatures was pasted. It is true that the sickle Article which is shown to me not having wrapped the paper And having the label. I cannot say the thickness of the blade of the sickle. It is not true to say that I am deposing false that the Accused bring sickle from the pigeon house. It is not true to say That I am deposing falsely time police have seized the sickle Thereafter pasted the chits of signature on it and recorded Seizure panchanama.
6. Police recorded my statement in the Police station and the Police have reduced into writing my statement in their pen. It is not true to say that Police have not recorded my Statement. It is not true to that police have obtained my Signature on the panchanama

which was already prepared by Them. It is not true to say that the say of police I am deposing False against accused.

No re-examination

R.& A C

Puno:

Date : 19/4/2017

(V.K. Kane)

Additional Sessions Judge,Puno

Deposition of witness No 9 for the prosecution

Name Sitaram Laxman Dubal

Age :48 years, Occ: P.I. Shahapur Police Station,

Dist:Tolapur

R/at

On solemn affirmation state that

Examination-in-chief by Mrs. Deshmane for State

1. In the year 2009 I was attached to Bund Garden police station as API. PSI Randive has registered the crime no. 457/09 for the Offences punishable under section 307332427325 of 1 Indian Penal code and under section 4(25)of Arms Act, Cr Law Amendment act under section 3 & 7 and the investigation has been handed over to me. Thereafter immediately I visited the spot and Recorded the spot panchanama. Now the spot panchanama exh.17 Shown to me is the same. It bears my signature and signatures of two pancha witnesses. Thereafter I have recorded the seizure Panchanama of the clothes of the complainant in presence of two Panchas. The said panchanama exh. 18 shown to me is the sameIt bears my signature and signatures of panch witnesses. Thereafter I have recorded the statements of witnesses as per their say. On the same day at about 22.00 hrs I have arrested the accused and Recorded the arrest panchanama. Now the said panchanama shown

To me is the same, it bears my signature and signatures of panch Witnesses contents are true and correct it is marked at exh. 28. Thereafter I have handed over further investigation towards P Nadgauda. The accused who is present in the court is the same. Now the muddemal shirt, pant and baniyan shown to me is the Same

Cross examination by Shri. Dhoka advocate for accused

2. The statement of complainant as well as three forms have been received me when I had taken my investigation. The crime has been registered at about 16.45 hrs. That time was present in the police station. That time the PSO has informed me that the Crime has been registered and investigation has been allotted to Me. At that time I was in the jurisdiction

of Wadiwala police Chowky on my patrolling duty, I received the phone call from PSO So I directly I had been to police station. I had taken the entry in Case diary about going towards police chowky in order to receive Investigation by leaving patrolling duty. Except this I had not taken Any entry in any other record. At the time of patrolling only one Another employee was along with me. I have not delegate my Power/charge of patrolling duty to any other officer. I came to Know about the incident took place when I was on patrolling duty on phone. When PSO gave me phone call that time I came to know from him about the spot also. That time I was not having report and other case papers due to that I do not went to the spot directly I reached the police station within 2/3 minutes after receiving the Phone. It is not true to say that the distance between Wadiwala Police chowky to Bund garden police station is about 20 to 25 Minutes. It is a distance of 4 to 5 minutes. After registration of Crime immediately I received the case papers. There is Endorsement that the FIR send in the Court at about 17.45 hrs I do Not know personally whether said FIR has been sent exactly at About 17.45 hrs or not nor I have made any inquiry about it I Alone had been towards Wadiwala police chowky after taken the Case papers. At Wadiwala police chowky there were police staffs. Thereafter I had been to the spot that time one Deshmane Constable showed me the place of incident. I have called the two Panchas from the choke for panchanama. I myself and other two Constables were with me at the spot. The distance between spot of Incident and police chowky is of half minute. I had taken two Panchas together directly on the spot without going to police Chowky. When I was calling the panch witnesses I have informed the incident to them. I had given this information to the panchas within one minute. The panch witnesses had given their consent to Act as a panch. Tanaji Gole the panch is having his saloon shop in the said chowk and another panch Khandu Shitole is the rickshaw Driver and his working place is also there. After recording the Panchanama I have released the panch witnesses and thereafter I had called them in police chowky. At about 7.30 p.m. I have recorded the statement of witness Police constable Deshmane. On the same day I have recorded the statement of 11 witnesses. Have not taken the sample of blood of complainant.

3. The accused found near his house so we had taken him in our custody. At about 8.30 to 9 p.m. we had been to the house of accused. The distance between police chowky and

house of Accused is 300 to 400 fts and it is a distance of one minute. I have not recorded statements of adjoining persons of accused. But I Have recorded statements of neighbours of accused by calling them in police station. Approximately 1 have recorded statements of Three neighbours of accused. They were the ladies. After 9 p.m. I have recorded the statements of aforesaid witnesses. Thereafter I Have recorded the arrest panchanama I have shown that I have Arrested the accused at 10 p.m. Due to recording the statements of The witnesses have not arrested the accused in his house. Without going through the record I cannot state to whom I have given information about the arrest of accused. I have recorded the Arrest panchanama in the printed format. I myself along with other three members was with me to arrest the accused. I have not taken the papers in order to record the arrest panchanama near the House of accused.

4. It is not true to say that I am deposing false that on the Day of incident was on my patrolling duty. Also, I am deposing All that at about 16.45 hrs I received the case papers for Investigation. It is not true to say that I am deposing false that I Recorded all three panchanamas in presence of panch witnesses. It Is not true to say that I have prepared all panchanama in absence. Of panch witnesses and later on I had obtained their signatures on It. It is not true to say that being a police officer to favour the Prosecution, I am deposing false.

No re-examination

R.O.& AC.

Puno:

Date : 19/6/2017

(V.K. Kane)

Additional Sessions Judge, Puno

Deposition of witness No 10 for the prosecution

Name Suhas Madhukar Nadgauda

Age :53 years, Of: Dy.SP Anti-corruption Bureau, Satara

R/at : 435 Vera Park , Wadiwala Road Puno 11

On solemn affirmation state that

Examination Examination-in-chief by Mrs. Deshmane for State

1. In the year 2009. I was attached to Bund Garden police station As a Sr. Police Inspector. I received the case papers in crime number 457/2009 for investigation. On 15/11/2009 when I was present in the police station Bit Marshall Wadiwala road police chowky Shri.Deshmane and Police Constable Wadekar have informed me on Phone that one person has committed attack on Police Naik Shri Barge. In the said attack the thumb of Barge was amputated and we are carrying him in the hospital. So, I have directed strive to Visit James hospital and record the statement Accordingly he has visited James hospital and record the Statement of injured Police Naik Barge. In the statement of injured it was found out that, that offence Very Sound Cognizable. This information given by PSI Randive to see Randive has come to the police station and immediately registered the crime and put his endorsement on the statement complaint. Thereafter had given the directions to API Dubal to receive the Case papers and start investigation immediately. API Dubal Started Investigation he has visited the spot recorded spot panchanama arrested the accused and recorded arrest panchanama. Also he has recorded the statements of witnesses on the spot. Also he has recorded the seizure panchanama of the clothes of the injured. He had taken the entry to the station diary about the arrest of the Accused. The copy of station diary entry shown to me is the same. Taking into consideration the Seriousness of the offence I had taken further investigation with me that time I received all aforesaid documents for investigation. On the next date produced the accused in the court and the court has granted the police custody. While making interrogation with the accused on 18/11/2009 the accused has showed his willingness to

give the important information. So I asked my staff to call two Pancha witnesses. After some time my staff carried two Panchas Towards me. Thereafter I introduced the accused and two Panchas To each other. Thereafter have made inquiry with panchas Whether they are ready to act as panch and they had shown their Willingness Thereafter I asked accused to make his statement The Accused has made his memorandum statement in presence of two Panchas and stated that, he is ready to show the place at which he Has hidden the sickle the weapon and he is ready to produce the same. Accordingly have recorded the said statement at about 11.30 am to 11.40 am. After recording the statement, I have put my signature. Thereafter the panchas had gone through the Contents and put their signatures, Thereafter I showed the Statement to the accused and he had also signed it. Contents are correct. Thereafter I myself, Police staff and panchas and accused have started to proceed per the directions of accused by private vehicle. We proceed via James chowk, vanappa chowk, thereafter towards left side Towards Siddheshwar chowk and thereafter we turn towards Right side towards Maruti temple, thereafter we turned towards left Side towards Bhimtola mandal. When we came near Bhimtola Mandal that time accused asked us to take the vehicle to the right Side. The accused asked to stop the Vehicle and asked us to get down from the vehicle. Thereafter the Accused started to proceed towards left side he was ahead is and we were following him. Thereafter we passed from zopadpatti area and thereafter we went at the bank of Mula Mutha river. There was A public latrine and behind the said latrine there was Pigeon Dabal' (Shed). From the tin shed of pigeon Dabal, the Accused Bring one sickle and produced before us. The description of the Said sickle is it was having blue colour handle, having legit 20 inch, blade 13.5 inch and the length of handle was 6.5 inch one Sided sharp edge. So I have seized it in presence of two panchs and pasted the chit having signatures of panch witnesses and Recorded the seizure panchanama on the spot. Now the said Panchanama exh.25 shown to me, is the same it bears my Signature panch witnesses. The contents are true and correct Thereafter I have seized the clothes i.e. bluish colour full pant, faint Yellowish colour cheques full shirt of the accused in presence of Panchas and thereafter recorded the seizure panchanama and Pasted the label of signature of panchas. Now the said seizure Panchanama shown to me, is the same, it bears my signature and Signatures of panch witnesses' contents are true and correct Thereafter I have recorded the

Statements of panch witnesses who were present at the time of Seizure of weapon and clothes. Thereafter I had issued a letter to Medical Supdt. Of James hospital for receiving blood sample of Injured Barge. Now the copy of said letter shown to me is the same it bears my signature, contents are correct. Also it Bears the endorsement of Medical officer of James hospital. While collecting the blood sample of police Naik Barge two panch Witnesses have been called and in their presence I have collected the blood sample and recorded the panchanama, shown to me is the same, it bears my Signature, signature of panchas, contents are correct. Thereafter I Issued a letter dated 9/12/2009 to the Medical officer James Hospital for issuance of medical certificate of injured Barge. Now The copy of said letter shown to me is the same it bears my Signature. contents are correct I received the Medical certificate so I submitted it along with documents. The said Certificate is discharge summary certificate. On 30/12/2009 I have forwarded the muddemal proof for Chemical analysis through PC Gaikwad along with letter. In my investigation I found that the accused has committed the alleged offence so I have presented the charge sheet in the court. Thereafter we received the CA certificates so the Certificates produced in the record. It is same. It is at exh. 30 (The learned counsel has raised his objection that, during the course of evidence of investigating officer, CA report can be Exhibited without examining concerned Chemical Analyzer This objection kept open.) The accused is present in the court. The sickle seized by me is in Straight shape but the point was sharp and curved I again dharna it was only sharp. The seized article shown to me it is same

Cross examination by Shri. Dhoka advocate for accused

2. When I received the investigation in this case that the Investigation in other cases was also with me s h on Exact numbers of the crimes in which the investigation with Me even though approximate. It is true that I have deposed the Court on going through R & P. I have not taken the permission of The Court prior to going through the R & P. If the injured person is conscious and if he is willing to lodge the report then Judge the report. I have discussed with my superior officer Present attack was on the police officer. I have more Documentary evidence to show that I have discussed with my Superiors. It is not true to say that I had not given directions to the Investigating officer to visit the spot. At

about 3 p.m. I received the Phone about the information of the incident. Was engaged in another work due to that I have not personally visited the spot at the relevant time I have not taken entry in the phone register about the receiving the phone to me. I had taken the account about the investigation for a day. On the day of incident I have made Inquiry with the complainant about the incident in the hospital. That time the other police staffs were present in the hospital. I cannot state the exact number of police staff in the hospital. On the Day of incident also I had taken the information from the police Officer who was accompanied with the injured. I have not submitted any statement about the inquiry made by me with the Police officer who was accompanied with the injured and the Injured. On my own accord I had taken the investigation towards me in this matter.

3. It is not true to say that on the day of incident I was not Present in the police station nor Deshmane and Wadekar had given Me a phone call and informed the incident. It is not true to say that I have not sent API Randive to James hospital and he has not Recorded statement of Injured.
4. After arrest of the accused I have seen him at the first time. On the day of incident at the night time I had seen the accused at the first time. It is not true to say that I am deposing false that API Dubal has arrested the accused and recorded arrest panchanama Is not true to Say That all panchanama in this matter has been Prepared in the police station and only obtain signature of Panchas on it. It is not true to say that I am deposing false that Dubal has recorded statements of the witnesses on the spot . it is not true to say that I am deposing false that consider Seriousness of offence, I had taken the investigation toward . Cannot state the exact reason why I have not seized the clothes of The accused on 16/11/2009 It is not true to say that I am deposing False that the accused voluntarily made his statement and has Produced the sickle before us. During the police custody the Accused told me that he is ready to confess I have not informed The judicial Magistrate the accused is ready to confess and one State its reason I again say that I had taken entry about nothing Station diary. It is not true say that I am deposing false that I had Taken entry in station diary(I have not recorded statement any Witness on 16 /11/2009 & 17/11/2009 under section 161of Cr P.C. It is not true to say that I have not investigated this Matter upto the alleged statement of accused. It is not true to say that I have not

investigated in the matter upto the alleged statement of accused. It is not true to say i have prepared the false panchanama and statement of us the investigation was not completed due to that have ne Sample, weapon clothes for CA purpose on very day Shine 20/11/2009 to 15/12/2009 the investigation was continued in this Matter, but I have not produced the documents to that effect I had investigated in this matter from 15/12/2009 to 29/12/2009 But I not produced any document to that effect. After 30/12/2009 to 11/2/2010 the investigation was continued and I have Submitted the documents to that effect.

5. I can state the handle of sickle is wooden. It is not true to say that in order to get benefit from government to police officer I have wrongly investigated and implicated accused in this case. I do not know whether so many crimes have been registered in my Police station against the accused. It is not true to say that I have made the accused scapegoat.

No re-examination

R.O.& AC

Puno :

Date : 29/7/2017

(V.K. Kane)

Additional Sessions Judge, Puno.

Statement of Accused No U/s.313 of Cr.P.C

Name of accused:-

Q1: Have you heard the prosecution evidence and do you Understand it?

Ans:Yes

Q2. It has come in the evidence of Pw no.1 PHC Ruhas Datta Barge that on 15/11/2009 he was attached to Bund Garden police station as a Police Naik and was on his cult As a Bit Marshall at Puno Station and Wadiwala road along with Mr. Deshmane. What do you want to say about this?

Ans: I do not know

Q.3: He further deposed that at about 9 am, he started his Patrolling duty on motorcycle by govt vehicle. At about 1 45Hours he had been to Wadiwala road police chowky. That time at SSPM there was a procession and due to that police inspector informed him on phone that not to allow parking on the road What do you want to say about this?

Ans: It is false.

0.4 He further deposed that he himself and Deshmane came Out from police chowky, Deshmane was taking the vehicle that one lady came there and told them that one person having The sickle in his hand is creating terror on Wadiwala road, she Had given description of the said person that he is having Breed, he is blackish colour also he has broken down the liter Barrel. What do you want to say about this?

Ans: It is false

Q5. He further deposed that he asked the said lady to show the said lady to show the said person has been to Vishwadeep Mandal. So was Sales person and she told that the said we had been to Mandal. He was going towards Vishwa deep Mandal and when he was in front of Sonee Mens Wear tailor ShopHe found the sales person on Wadiwala road. What do you want to say about this?

Ans: It is false

Q6. He further deposed that he asked the said person to stop And tried to catch him that time the said person stated main Pakdto ka tula khalas karto and thereafter the sales person Assaulted him by a sickle on his head What do you want to say About this?

Ans: It is false

Q.7 He further deposed that but he saved himself and he Received the assault on his back That time the said person again I tried to assault him by sickle on his head that time he raised His left hand and due to that he received the assault of sickle on his left hand thumb. What do you want to say about this?

Ans: It is false

Q8 : He further deposed that due to the assault, his thumb has been cut off and fell down. So he called Deshmane and police Naik Walker from the police station. What do you want to say about this?

Ans: I do not know.

Q9 : He further deposed that when Deshmane and police Naik were coming you the accused ran away beside public Toilet. What do you want to say about this?

Ans : It is false

Q10 He further deposed that, thereafter they lifted thumb from the spot and proceeded to James hospital by rickshaw. During the course of treatment police came to the hospital and recorded his complaint. What do you want to say about this?

Ans It is false

Q11 : He further deposed that the accused who is present in The court is the same person. What do you want to say about this?

Ans: It is false.

Q.12 : It has come in the evidence of Pw no.2 Lata Nana Gardens That on 15/11/2009 she came out from the house and saw There was a crowd and after some time all of them ran away What do you want to say about this?

Ans:It is false

Q.13 : She further deposed that one person was running by breaking the water drums of persons. What do you want to say About this?

Ans: I do not know

Q.14 It has come in the evidence of PW no 3 that on 15/11/2009 there was assault on her water Drum and at the same time the said person had assaulted on the water drums of her neighbours. So all lady members gathered together and decided to go to the police station to inform the incident. What do you want to say about this?

Ans:It is false

Q.15 she further deposed that they went to the police station and narrated the incident to the police. Police came with them in Order to take search of the said person But he did not see what do you want to say about this?

Ans: It is false

Q.16 It has come in the evidence of Pw no.4 That she heard the noise so she came out from the house no Person armed with sickle was running by assaulting on water Drums of other persons So she herself and other 3 /4 ladies Had been to police chowky. What do you want to say about This?

Ans: It is false

Q.17 She further deposed that one police person was outside of the Police chowky, They informed the said incident to said police. What do you want to say about this?

Ans: It Is false.

Q.18 :It has come in the evidence of PW no 5 that on 15/11/2009 he was on Marshall Duty along with police Naik Barge In the morning he has started Their patrolling duty on two wheeler and at about 245 p.m. the Came at Wadiwala police chowky What do you want to y you have to say About this?

Ans: I do not know

Q19.: He further deposed that their superior police officer asked Them to remove the vehicles which were Illegally parked as there Was function RSS in SSPM ground. So Police Naik Barge came Out from police chowky and he himself was taking the vehicle What do you want to say about this?

Ans: I do not know

Q.20 He further deposed that that time he heard the shout of Police Naik Barge. That time one police Naik Wadekar was also Present with him. Some ladies were gathered out of police Chowky. They were talking with Barge. Barge had given call toHim and Wadekar. What do you want to say about this?

Ans: It is false

Q.21 He further deposed that, that time police Naik Barge told Them that one person has assaulted him by sickle. So, his thumb Has cut out and the sales person ran away from the spot. So, he Himself and Police Naik Wadekar followed the direction but the Said person did not find. What do you want to say about This?

Answer I do not know

Q 22 He further deposed that they returned back and piece of Thumb has taken and went to James hospital and admitted Police Naik Barge. What do you want to say about this?

Ans:I don't know

Q.23 He further deposed that he made inquiry with police Naik Barge in the hospital and he told them that one person has Broken the water barrels and created the terror the Information given by Sandhya Gade to Police Naik Barge What You want to say about this

Answer It is false

Q.24 He further deposed that the said person came beside Police chowki near Sonee Mens wear shop. What do you want you about this?

Answer It is false

Q. 25 It has come in the evidence of PW no.6 that an 15/11/2009 he was called by police to act Punch in Wadiwala road police chowky What do you want of Say about this ?

Ans: It is false

Q.26 He further deposed that on police inquiry he had given Concrete to act as a punch thereafter he himself other people And police had been to the spot which is nearby police chowky The one tailoring shop, urinal beside the spot What do you want to say about this?

Answer I do not know

Q.27 He further deposed that police have recorded the Panchanama In his presence Also recorded Statement as per his say What do you want to say about the

Answer It is false

Q.28 He further deposed that police have called him in Face Chowky and police constable Wadekar has produced These of police officer Shri Bare that time he himself, another panch and police were present Police have seized one Inch Pant, khaki shirt and one baniyan thereafter recorded screening Panchanama. What do you want to say about this?

Ans: It is false

Q. 29 He further deposed that on 15/12/2009 he was called by Nadgauda police officer in bund garden police station. That time Anther panch, police officer Nadgauda were present Police Constable Wadekar has brought the blood sample of the victim and the salt sample seized by police under seizure panchanama What do you want to say about this?

Answer It is-fuse.

0.30 It has come in the evidence of Pw no.7 then on 15/11/2009 Ruhas Datta Barge was referred to James hospital and he treated him. He found there was injury on his back and also the thumb of his left hand was amputated What do you want to say about this?

Answer I do know

Q.31 He further deposed that immediately he shifted Shri Bare in operation theatre. Prior to that he had taken blood Sample thereafter he operated his thumb and replanted his Thumb and on 29/11/2009 patient discharged What do you Want to say about this?

Answer I Do - know

Q.32 : It has come in the evidence of Pw no.8 that on 18/11/2009 he was called by Bund garden Police To act as a panch so he had given his consent What do you Want to say about this ?

Answer Its false

0.33 He further deposed that he himself, another panch police Officer and staff and one accused were present. That time the said accused has disclosed his name Vilas Gaitonde What do You want to say about this?

Ans: It is false

Q.34 He further deposed that he is ready to show the place which he has kept the sickle. So the police reduced into writing His statement before the panchas. What do you want Say about this?

Ans : It is false

Q35 :He further deposed that thereafter the panch witnesses Police officers and accused have proceeded by vehicle Town Balka Talkies to Sadhu Wadwani chowk, thereafter town Wadiwala road. At that place the vehicle e Has stopped and they all get down from the vehicle. Thereafter they went in the zopadpatti and thereafter they had been to the bank of the river, there was one public latrine, beside the latrine the earth Was a pigeon house. What do you want to say about this?

Ans: It is false

Q.36 -He further deposed that you the accused has taken by The sickle from the roof of said pigeon house Police have said The said sickle and recorded seizure panchanama What Do you want to say about this?

Ans: - It is false

Q.37:-It has come in the evidence of Pw no.9 that in the year 2009 he was attached to Bund Garden police station as API and PSI Randive has registered crime no 157/2009 What do you want to say about this?

Ans I do not know

Q..38 He further deposed that he visited the spot and record the panchanama in presence of two panchas What do You want to say about this?

Ans It is false

Q.39 -He further deposed that thereafter he recorded the Seizure panchanama of the clothes of the complaint in presence of two panchas. What do you want to say about is

Ans It is false

Q.40-further deposed that on the same day at about 22:00hours He has arrested you the accused and recorded arrest Panchanama What do you want to say about this

Ans: It is false

9.41-It has come in the evidence of PW no.10 that in the year 2009, he was attached in Bundgarden police station as a Sr. Police Inspector and he Received the case papers for investigation What do you want to Say about this?

Ans: I do not know

Q42:-He further deposed that on 15/11/2009 he was present In the police station. Bit Marshall Wadiwala road Police chowky Shri Deshmane and P.C. Wadekar informed him about the Incident on phone and in the said attack the thumb of Barge Was amputated and they are carrying him in the hospital What do You want to say about this?

Ans I do not know

Q.43-He further deposed that, he directed PSI Randive in James hospital and record the statement of injured Recorded the same. What do you want to say about this?

Ans- I do not know

Q.44-He further deposed that PSI Randive has registered Crime. Thereafter he had given instruction to Dugal to stay Investigation. What do you want to say about this?

Ans I do not know

Q.45-He further deposed that he has received the investigate And while making interrogation with you accused on 18/11/2009 you showed your willingness to give the import Information So he asked to call panch witnesses What do Want to say about this ?

Ans it is false

Q.46-He further deposed that his staff called two panel Witnesses. Therefore he made inquiry with you and that the you made your statement that you are ready to show the place where you had hidden the sickle the weapon and ready to Produce the same. Accordingly he had recorded the sound a Presence of panchas. What do you want to say about this?

Ans It is false

Q.47-He further deposed that, thereafter he himself, police Panch witnesses and you accused have started to proceed as Your directions by private vehicle to James chowk., thereafter Siddheshwar chowk. What do you want to say About this?

Ans it is false

Q.48-He further deposed that when they came the accused asked to take the vehicle to ho Right side there is a and you asked to stop the Vehicle. Thereafter you all get down What do you want to say About this?

Answer it is false

Q. 49:-He further deposed that, you the accused started to Proceed towards left side, you were ahead them and they are Following you. They passed from zopadpatti area and went at he Bank of Mula Mutha river. What do you want to say about this?

Ans:- It is false

Q.50 He further deposed that there was public latrine behind the said latrine there was a pigeon Dhabal (Shed) From The tin shed of pigeon house you the accused bring one sickle And produced before them. So, he seized it in presence of 1Panchas and pasted the chit having the signature of Panchas What do you want to say about this?

Answer It is false

Q.51-He further deposed that he recorded the he recorded the seizure Panchanama of sickle. What do you want to say about this?

Ans: it is false

Q.52-He further deposed that he seized bluish colour full paint faint yellowish colour full shirt of accused in presence of Panchas and recorded seizure panchanama What do You want to say about this ?

Ans: It is false

Q.53-He further deposed that he issued a letter to the Medical Superintendent of James hospital for receiving blood samples Of Barge. What do you want to say about this?

Answer i do not know

Q.54:-He further deposed that on 30/12/2009 he forwarded the muddemal property for chemical analysis through PC Gaikwad. What do you want to say about this?

Answer I do not know

Q..55-He further deposed that you the accused who is present In the court is the same person What do you want to say about This?

Answer it is false

Q.56-Why the witnesses are deposing against you?

Answer :- no

Q. 57:- Whether you want to examine yourself on oath ?

Answer no

0.58:- Whether you want to lead defence evidence ?

Ans no

0.59 – Whether you want to say anything else?

Ans:- no

(VK.Kadam)

Date: 23/08/2017

Additional Sessions Judge, Puno

CERTIFICATE

Certified that the examination of accused is taken in Presence and hearing and that the record contains a full and True account of the statement made by the accused.

Date: 23/08/2017

(V.K. Kane) 137

Additional Sessions Judge

Puno

S.C.No 26220100

Received on 11/02/2010

Registered on: 11/02/2010 Decided on 09/10/2017

IN THE COURT OF ADDITIONAL SESSIONS JUDGE PUNO AT PUNO

(Presided over by V.K. Kane).

Sessions Case No. 262/2010

Exhibit No. 51

State of Sharastra

(Through Bund garden)

Police Station)

.... Complainant

Versus

Vilas Anil Gaitonde

Age: 28 yrs., Occu: Driver

Wadiwala Road, Puno

..... Accused

Appearances:1] Mrs. S.N. Deshmane, APP for complainant.2] Mr. Dhoka, Adv. For accused

JUDGMENT (Delivered on this 9h day of October 2017)

S.C.No 26220100

1]The accused is facing this trial for the offence Punishable under section 307,353,332,427 of IPC and under Section 4(25) of Arms Act, under section 37(1) pursuant 135 of Bombay Police Act.

2] Briefly stated the prosecution case is that: The complainant Pw no.1 Ruhas Datta Barge police Naik lodged his report/statement dated 15/11/2009 on the allegation that, on 15/11/2009 at about 9.00 a.m. he had come To the Bund Garden police station on his duty. On that day he was Allotted patrolling duty on Wadiwala road and Puno station area Along with Police Constable Deshmane B.No. 5336. So, he had Given BET Marshall motorcycle No. MH 12 AH 8433. The

Police Constable Deshmane had taken Carbine gun from the police station and both have started to their patrolling duty. They came To Puno station area, thereafter Wadiwala road and at about 2.45p.m. they came at Wadiwala road police chowky and that time he received the phone message from Senior police Inspector that, at SSPMS college ground, there is a procession of RSS and he Directed not to allow the persons to park the vehicles on the road And if they parked, the said vehicles be removed. So the Complainant and P.C. Deshmane came out of Wadiwala Road police Chowky. P.C. Deshmane was taking the vehicle from the parking Place and the complainant was stopped in front of the police Chowky. That time one lady came there and told that her name is Sandhya Gade R/o 13, Wadiwala road, behind Chaman bakery. She further told that one blackish colour person is having sickle in His hand and he has broken the water drums which were kept in Front of her house and also in front of the other house. He has Created terror by showing sickle to the public. Thereon the Complainant asked her to which direction he had gone. The: time Said Lata Gade told the complainant that, that person had gone Towards Vishwadeep Mandal. Thereafter the complainant started To proceed towards Vishwadeep mandal and when he came Infront of Sonee Mens wear tailoring shop, that time the person Came there having the same description given by Sandhya Gade and in His hand there was a sickle. So the complainant asked him to stop And he tried to catch him. That time he replied the complainant "*Tu Mala Pakadtos kai me tula khalach karto* 'Thereafter he had given a Sickle blow on his head but he has saved it and said blow is Received on his back. Thereafter again the said accused have given Another sickle blow on his head. That time he has raised his left Hand between his head and the sickle and tried to save himself but the said sickle blow was received on the thumb of his left hand and due to that the thumb of left hand has broken and fall down. Thereafter the complainant gave call to P.C. Deshmane and Wadekar. Thereafter the accused ran away from the spot towards the lane of public latrine. Accordingly, the crime has been Registered. This complaint has been lodged in the James hospital as the patient has been admitted

3. The Investigating Office (I.O). Has received the case papers for investigation. He has visited the spot, recorded spot panchanama. Thereafter he recorded the statements of witnesses. He arrested the accused and recorded arrest panchanama. During the course of Police custody, the applicant has made his memorandum Statement exh. 24 and thereafter produced the sickle which was Used as a weapon. So, the I.O. Has seized it and recorded

seizure Panchanama of the weapon exh. 25. After arrest the I.O. has Seized the clothes of the accused under seizure panchanama. Also he seized the clothes of the injured complainant and recorded the seizure panchanama. Thereafter referred the seized Property for medical analysis by his letter exh. 35. After Completing the investigation he found that, there is ample Evidence against the accused person. So he presented the Chargesheet in the court of JMFC Court no. 3, Puno on 11/2/2010.

4] As the alleged offence punishable under section 307, 332, 333 are exclusively triable by the court of Sessions, the Learned JMFC Puno Court no. 3 has committed this case for trial to The Court of Sessions, Puno as per the provisions of section 209 of CRPC by his order dated 17/3/2010.

5] The charge has been framed by my predecessor Shri. S.B Kadam Addl. Sessions Judge. It appears that the Contents of charge were read over and explained to the accused in Vernacular to which he has pleaded not guilty and claimed to be tried. It is his defense that, the complainant may be received the Injury anywhere but in order to claim the compensation from the Government and the accused being the habitual offender on police Record has implicated him, in this false case.

6]The accused came to be examined under section 313 of Cr.P.C. in which he has taken the same defence. No oral as well as Documentary evidence placed on record in defense.

7] At the trial, the prosecution has examined Pw no.1 Complainant Ruhas Datta Barge at exh. 9, Pw no. 2 Sandhya Gade at exh. 12, Pw no.3 Rekha Aathawale at each 13, PW no.4 Jayashree Ashok Mane at exh. 14, PW no.5 Sitaram Dnyanoba Deshmane PHC at exh. 15, Pw no.6 Khandu Dattu Shitole the panch witness at exh. 16, Pw no.7 Kaustubh Arun Prabhune Medical practitioner at exh. 20, Pw no.8 Raju Laxman Bhise the panch witness at exh.23, Pw no.9 Sitaram Laxman Dubal P.I. at exh. 27, Pw no.10 Dy.S.P. Suhas Madhukar Nadgauda at Exh. 30, the report of Spot Panchnama admitted, the spot panchanama exh.17, the Seizure panchanama of the clothes of the complainant. Blood sample, the discharge certificate exh.21, the Memorandum statement of accused is at exh.

24 and seizure Panchanama of sickle is at exh. 25, the arrest panchanama of the Accused is at exh. 28 and the seizure panchanama of the clothes of the accused is at exh. 32.

8] Heard the arguments advanced by the learned APP Mrs. Deshmane and learned advocate Shri. Dhokane for the Accused in considerable length.

9] During the course of argument, the learned APP has Pointed out that, the evidence of PW no.1 complainant Suhas Barge, Pw no.2 Sandhya Gade, Pw no.3 Rekha Aathawale, Pw no.4 Jayshree Mane, Pw no. 5 PHC Sitaram Deshmane, Pw 10.6Khandu Shitole, Pw no.7 Kaustubh Prabhune the medical Practitioner, PW no.8 the panch witness Raju Bhise and Pw no.9 And I.O ie. P.I. Sitaram Dubal and Dysp Suhas Nadgauda both Are the Investigation officers, goes to show that, the accused Having the intention to assault the complainant to kill him Particularly when the complainant being a public servant and was Discharging his duty as a public servant as such She further Submitted that, the prosecution has led the sufficient evidence and Proved the guilt of the accused. Therefore, accused is deserves to Be convicted.

10] On the other hand, the learned advocate Shri. Dhoka for the accused has vehemently submitted that, there is a false Implication of the accused in crime. He had given much stress Against the working method of the police department. He Submitted that; the accused is on police record. Due to that they Have implicated him in a false case. He has not committed any Offence. He further submitted that, Pw no.2, Pw no.3 and PW no.4 have not Supported to the prosecution case. They turned hostile. He further submits that, the station diary is not maintained by the police Officer which is his prime duty to maintain it. It is further Submitted that, there is no any eye witness to support to the Prosecution case or the testimony of PW no.1. He further submits that, the seized weapon is not on record lodged by the Prosecution. He further submits that, no any panchanama have been recorded on the spot as alleged by the prosecution. Only with Intent to implicate the accused in this case, the false complaint Has been filed against the accused. The conduct of Pw no. 1 is not natural. He was not on patrolling duty. The evidence led by the Prosecution is not sufficient to bring home the guilt of the accused Therefore, the accused deserves to be acquitted.

11] On the submissions advanced by both the parties, the Following points arise for my determination and my findings are

POINTS	FINDINGS
<p>1. Does the prosecution prove that the accused on 15/11/2009 in between 14:30hrs to 14:45hrs or thereabout at 13 tadiwala road, behind chaman Bekary on bridge, Opp. Sonee Men's wear shop, on public road used criminal force or assaulted to complainant Ruhas Barge the public servant namely police Naik attached to Bund Garden Police Station by sickle in the execution of his duty as such public servant, or with intent to prevent or deter Ruhas Barge the public servant from discharging his duty or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such as public servant and that there by committed an offence committed u/s353 of the IPC?</p>	<p>Yes.</p>

<p>2. Does the prosecution proves that the accused on the aforesaid date, time and place during the course of the same transaction with such intension and knowledge and under such circumstances, that if by that act he had caused the death of the complainant Barge he would have been guilty of murder and that he thereby caused hurt to complainant and committed an offence punishable u/s 307 of IPC?</p>	<p>Yes.</p>
<p>3. Does the prosecution proves that the accused of the aforesaid date, time and p[lace and during the course of same transaction voluntary caused hurt to the complainant while he was discharging his duty as such government servant for in consequence in anything done or attempted to be done by such public servant in the lawful discharge of his duty thereby commits an offence u/s 332 of IPC ?</p>	<p>Yes.</p>
<p>4. Does the prosecution proves that the accused of the aforesaid date, time and p[lace during the course of same transaction committed mischief by causing loss or damage to the property to the tune of Rs.50 to with number p0late of vehicle and damaging the drum used for storing the water kept in front of house of Gadde & Athawale and thereby commits an offence u/s 427 of IPC ?</p>	<p>Yes.</p>

<p>5. Does the prosecution proves that the accused of the aforesaid date, time and p[lace during the course of same transaction in contravention of the provisions u/s 4 of the Arms Act found in possession deadly weapon namely Sickle, which is prohibited under Arms Act and thereby commits an offence u/s (25) of Arms Act ?</p>	<p>Yes.</p>
<p>6. Does the prosecution proves that the accused of the aforesaid date, time and p[lace during the course of same transaction was found in possession of a deadly weapon like sickle and committed a breach of the order passed by the Jt.Commissioner of Police and lawfully promulgated u/s 37(1) of Bombay Police Act and thereby commits an offence punishable u/s 135 of Bombay Police Act?</p>	<p>No.</p>

Reasons

As to point number 1-6.

12. The point number 1-6 being interlinked therefore it can be treated by giving common reason.

13. it has come in evidence of PW of no.1 PHC Barge that, on 15/11/2009 he was on his duty as Bet Marshall in the area of Puno Station Area & Wadiwala road and Police HQ, Deshmane has accompanied with him. He started his patrolling duty on motorcycle at about 9 a.m. and at about 14.45 hours he had been to Wadiwala road police chowky. He further deposed that, that time at SSPMS college there was a procession and his C5 police inspector informed him on phone that, not to allow parking at the road. So he himself and Deshmane came out from the police chowky

Wadiwala road and Deshmane was taking his vehicle in the parking. That time one lady by name Lata Gade came towards him and told that, one person having the sickle in his hand is creating terror on Wadiwala road. She had given description of the said person that he is having the breed and blackish colour Also He has broken the water barrels. So he has asked her to show the said person. She told that he had been towards Vishwadeep mandal. He was going towards Vishwadeep mandal and when he came near Sony men's wear tailoring shop, he found the said person at Wadiwala road. So he asked him to stop and he has tried to catch him. That time they said person told him that.... Thereafter, he has assaulted by sickle on his head but saved it and received the assault on his back. He again tried to assault the complainant by sickle on his head, that time he has raised his left hand but he received the assault of sickle on thumb of his left hand, by which his thumb has been cut and fall down. Thereafter, he gave call to police constable Deshmane and police Naik Wadekar. While coming them, the accused ran away by a lane beside public toilet. He further deposed that, thereafter they came back and lifted his thumb and proceeded towards James hospital by rickshaw. During his course of treatment police came in the hospital and recorded his statement. He further deposed that, he identified the accused who is present in the court, seized sickle shown to him which is sealed. The seal has been opened in the court and shown the sickle, which is same, it is at Article A. He further stated that, police have seized his pant and shirt and baniyan which is at article B, C and D

14] During the searching cross of Shri Dhoka advocate for the accused, it has come on record that, the complainant has Served 22 years in police department and there is no any Complaint against him towards the superior officer. He admitted that it is necessary to keep the entries in record of police station While doing any act and while using the government vehicle he Shall maintain its log book. Also there is lockup register and he shall maintain it. He does not know whether any other so many Crimes have been registered against the accused in the Bund garden police station since 2007 to 2012. This suggestion Had been given to the complainant, Pw no.5 Sitaram Deshmane PHC, Pw no. 9 P.I. Sitaram Dubal and Pw 10 Dy.S.P. Suhas Nadgaur but they have stated that, they do not know whether the accused is habitual offender on record. In this regard, the Accused has also not produced on record any document to show That so many crimes have been registered/pending against him at Bundgarden police station. So it has not come on record that the Accused is habitual offender on police record. Except this, no any Material contradiction /omission came on record in the evidence Of Pw no,1.

15] During his cross examination, it has come on record that, his colleagues have disclosed this incident to his senior police officer while proceeding towards hospital and within 5 to 10 minutes, they reached in the hospital and thereafter police came in the hospital. He further admitted that, before recording his statement, the police officer has asked the permission of the said doctor but he do not know whether there is any endorsement of doctor about his permission. On perusal of report ,it appears that, there is no such endorsement of doctor on the report In this regard, it has not come on record whether the complainant was became unconscious and he was very serious.

16] As per the evidence of PW no. Gade. It has come on record that, on 15/11/2009, she was at her home at about 7 p.m. That time the water drum was broken. She came out and saw that there was a crowd and after some time all of them ran away from the spot. She stopped out of her house and beside her house there was also the same incident took place. One person was running by broking the water drums. This evidence corroborated the contents of the complainant that, Gade met her at the gate of police chowky and disclosed the incident about broking the water drums. Further in her evidence she stated that it was 7 p.m. The learned advocate Shri. Dhoka has given much stress on this point that, as per the complainant the incident took place at about 2.45 p.m. the charge has been framed and it has been mentioned that the incident took place at about 2.55 p.m.

17] On going through the charge it reveals that, it is mentioned that, the incident took place in between 2.45 to 2.5 p.m. not exact on 2.55p.m. So it is a technical objection of the learned counsel for the accused. This Pw no.2 not fully supported to the prosecution case. So the learned APP after taking permission crossed her. During the cross, Pw no 2 has admitted that, thereafter she herself, Aathawale bai, Khandekar bai Mane bai had been to Wadiwala police chowky and narrated the incident. During the searching cross of Shri. Dhoka the learned advocate for the accused, this Pw no 2 has admitted that, in police chowky the person who was seated beside the table they narrated the incident to him. She further admitted that, thereafter police reduced into writing her statement and thereafter he came to her house. They reached in police chowky at about 8 p.m. These are the suggestions which have been admitted by the Pw no.2. So it is Crystal clear that, the police have made inquiry and recorded the Statements of these ladies in the police station. She further Admitted that, prior to the incident or after the incident she do not Went to

the Wadiwala police chowky except giving her statement. She further admitted that, she has not seen the person who has Broken the drum. In her chief examination also, she has stated that Anybody has broken the drum of water and she came out of her House and saw it.

18] As per the evidence of PW no.3, it has come in her evidence that, on 15/11/2009 at About 2 to 3 p.m. she was at her home that time there was assault on her water drum. This witness has corroborated the prosecution Story about the breaking the drum at about a p. She further deposed that; at the same time the said person has also assaulted on the water drums of her neighbours. That time they all Neighbours gathered together and decided to go to the police Station to inform the incident. So, they had been to police station and narrated the incident to the police. Police came with them in Order to search the person but he did not meet. As per the Evidence of Pw no.3 only it is a corroboration That at about 2 to 3 p.m. the breaking of water drum has been Took place. She also not identified the accused. So, the learned APP Crossed this witness in length but could not bring further Corroboration.

19] As per the evidence of Pw no.4, It has come on record that, at about 2 to 2.30 p.m. long days Before the incident took place. That time she was in her house that Time she heard the noise. So she came out from the house. One Person armed with sickle was running by assaulting on water Drum of the other persons. Thereafter she herself and other $\frac{3}{4}$ Ladies had been to police chowky. One person was outside of Police chowky. They informed the said incident to the said police Person and thereafter returned back. This evidence of PW no.4 Has also corroborated to the testimony of Pw no. 1 that one person Has broken the water drums and the said ladies have informed to the police person i.e. the present complainant Pw no This Witness had also not identified the accused. So, the learned APP After getting permission crossed the said witness but could not Bring the corroboration about the identification of the accused.

20] As per the evidence of Pw no.5 Sitaram Dnyanoba Deshmane, PHC he has deposed that, on 15/11/2009 he was Accompanied with Pw no.1 on their patrolling duty and at about 2.45 p.m they came at Wadiwala police chowky. Their superior Officer asked them that, there is one function of RSS in SSPMS Ground and he asked them to remove the vehicles which are Illegally parked and thereafter Barge Police Naik came out from Police chowky and this Pw no.5 was taking his vehicle from the Parking. That time he heard the shout of Police Naik Barge. One Wadekar police was also present with them. Some ladies were Gathered out of the said police

chowky and those ladies were Talking with Barge He further deposed that, he himself and Wadekar came out. That time Barge police Naik told them that, one Person has assaulted him by a sickle and cut down his thumb and Ran away. Admittedly, this Pw no.5 PHC Sitaram Deshmane is not A eye witness. Only his evidence is circumstantial evidence. He Further deposed that, thereafter they had taken Barge and piece of Thumb and went to the James hospital and admitted him in the Hospital.

21] As per the evidence of this Pw no.5 PHC Deshmane He has corroborated that, Barge and he himself were on patrolling Duty on 15/11/2009 and at about 2.45 pm they came at Wadiwala road police chowky. Thereafter they came out. He was Taking the vehicle and that time the incident took place. During The searching cross of Shri. Dhokane advocate for the accused, there are admissions in respect of maintaining the police station Diary, personal diary, which is not maintained by him He Admitted that, he informed the incident to his superior officer and Gave information in the police chowky. He further stated that When he had given information that time he himself, Wadekar and Police Naik Barge were present. He had given information about it at about 2.55 p.m. As per the prosecution case, the incident took Place nearby the police chowky and before going to the hospital Might be this Pw no.5 in presence of Wadekar and police Naik Barge Given the information to the police officer in police chowk. Pw No.1 Police Naik Barge has not stated that directly from the spot He went to the hospital and not went to the police chowky So this Admission not get much importance and shaken the credibility of The prosecution case.

22] The learned counsel had given suggestion to this Pw No.5 PC Sitaram Deshmane that, the incidence of cutting of thumb Of Barge is because of his personal activities and in order to get Compensation from government, they have implicated this Accused. This suggestion have been denied by this Pw no.5. While Advancing the argument the learned APP Mrs. Deshmane submitted that, this suggestion was not given to Barge who is the Victim in this case.

23] As per the evidence of Pw no. 9 Sitaram Laxman Dubal It has come in his evidence that, PSI Randive has registered the Crime no. 457/2009. Thereafter immediately he visited the spot And recorded the spot panchanama exh. 17. In order to prove the Spot panchanana, the prosecution has placed its reliance on the Evidence of Pw no.6 Khandu Dattu Shitole. It has come in his Evidence that on 15/11/2009 he was called by police to act as a Panch in police chowky

Wadiwala road. One Deshmane was Present in the chowky and he showed the place of incident. At About 5 p.m. to 6 p.m. the panchanama was recorded. The Evidence of PW no.6 has corroborated to the evidence of Pw no.9 P.I. Sitaram Dubal and the prosecution has proved that the LOSitaram Dubal has recorded the spot panchanama exh. 17.

24] Pw no. 9 Sitaram Dubal, P.I. further stated that, he Recorded the seizure panchanama of the clothes of the Complainant exh. 18 in presence of panchas and as per the Evidence of Pw no.6 Khandu Shitole, he has corroborated that the P.I. Dubal has seized the clothes of police officer Barge who has Produced it by police constable Wadekar. The said seizure Panchanama of the clothes is at exh. 18. He has identified the Clothes of Shri. Barge i.e. Pant, Shirt Banian which are at article B,C & D. Pw no.9 further deposed that, on the same day at about 22.00 hours he has arrested the accused and recorded the seizure Panchanama exh. 28. During the searching cross of Shri Dhokane Advocate for the accused no any contradiction or omission had Been came in the evidence of PW no.9 P.L. Sitaram Dubal.

25] As per the evidence of Pw no.10 Dy.S.P. Suhas Nadgauda it has come on record that, in the year 2009 he was Attached to Bundgarden police station as a Sr. Police Inspector. On 15/11/2009 when he was present in the police station, Bit marshal Wadiwala Road police chowky Shri. Deshmane and PC Wadekar had Informed him on a phone that, one person has attacked on Police Naik Barge In the said attack the thumb of Barge was Amputated/broken and they are carrying him in the hospital. So he Directed PSI Randive to visit James hospital and recorded the Statement of the injured. Thereafter he recorded the statement of Injured in the hospital and due to the statement he came to knowThat the offence is very serious and cognizable. Thereafter PSI Randive came to the police station immediately and registered the Crime. Thereafter Suhas Nadgauda had given directions to API Dugal to receive the case papers and start investigation. So, API Dugal has visited the spot and recorded the spot panchanama, Arrested the accused and recorded arrest panchanama. API Dugal Had taken entry to the station diary about the arrest of the Accused. The copy of station diary is placed on record.

26] Taking into consideration the seriousness of the Offence this Sr. P.I. S. Nadgauda himself has taken the Investigation towards him. On the next day, he has produced the Accused before the court and Court has granted the Police Custody. While making the investigation with the accused on 18/11/2009, the accused has shown his willingness to give the important information.

So he called two panchas through his staff and thereafter he introduced the accused and two panchas each Other. Thereafter he made inquiry with panchas about their Consent and they showed their willingness. Thereafter the accused Made his memorandum statement in presence of two panchas and Stated that he is ready to show the place at which he has hidden The sickle, the weapon and he is ready to produce the same Accordingly, he recorded the said statement Thereafter he Himself, two panchas and the accused has signed the statement .

27] He further deposed that, thereafter at the instance of the accused, he has discovered the fact leading to the case that The accused has kept the sickle at the shed pigeon house (Dhabal) And seized it. He Further deposed that, the description of the said sickle is, it was Having blue colour handle, having length 20 inch, blade 13.5 inch And the length of the handle was 6.5 inch, one side sharp edge The said panchanama is at exhited..

28] In order to prove the testimony of Pw no.10 Dy. S.P.Suhas Nadgauda, the prosecution has relied on the evidence of Pw No. 8 Raju Laxman Bhise. He deposed that on 18/11/2009, he was Called by police in Bund Garden police station to act as a punch and I He had given consent about it. In the police station he himself, Another panch, police officer along with the staff and the accused Vilas Gaitonde were present. The said accused has stated that, he assaulted one police officer by sickle and he is ready to show the Place at which he has kept the sickle. Thereafter police have reduced into writing his statement before the panchas. Thereafter The panchas signed the said panchanama. He further deposed that, Thereafter the panchas, police officer and accused have proceeded by vehicle towards Balkatalkies to Sadhu Wadwani chowk Thereafter they proceeded towards Wadiwala road. That place the vehicle has been stopped. The Accused, police staff and panchas get down from the vehicle and they proceeded towards zopadpatti. They had been at the bank of River. There is one public latrine. Beside the latrine, there was a Pigeon house. The accused has taken away the sickle from the roof of said pigeon house. Police have seized the sickle and recorded the seizure panchanama on the spot.

29] He further deposed that, police has pasted the chit on Said sickle having the signatures of panchas. The said sickle was having its length and blue colour handle. After recording the Panchanama, the panchas signed it. The panchanama shown to the witness and he identified his signature and deposed that the Contents are true and correct .The said seizure panchanama of the Sickle is admitted and present.

30] As per the evidence of this Pw no.8 he has corroborated the testimony of Pw no.10 Dy.S.P. S.Nadgauda the in this crime and the prosecution has proved that the accused In presence of panchas have made his memorandum statement Exh. 24 and as per the statement made by the accused, the Discovery and recovery has been held at the instance of the Accused. The prosecution has proved his statement exh. 24 and Recorded panchanama exh. 25 as provided under section 27 of Indian Evidence Act. The confession by accused about the crime is Exception under section 27 and all requirements under section 27 have been completed/proved by the prosecution.

31] During the searching cross of Shri. Dhoka advocate for the accused he admitted that, he has not brought: the Documentary evidence to show that, he is doing the business. He further admitted that, in his identity card his business shown as Chalta Phirta scraps Vyawasay. In this matter, it is not in issue that what the business of this witness Pw no.8 is. It is immaterial The Material thing is that, what witness has deposed before the court as per the evidence of Pw no.8, he has corroborated the testimony Of Pw no.10. He further admitted that, he cannot state the exact Length of the sickle. The sickle may be 1 &½ ft. He cannot state the width of the sickle also he cannot state, whether the handle of the sickle was from wooden or by rubber cover or by steel grip. Some minor discrepancies came on record, which cannot be taken into consideration. He has corroborated to the prosecution case.

32] It has come in the evidence of Pw no.10 Suhas Nadgauda that, thereafter he seized the clothes i.e. bluish colour Full pant, faint yellowish colour cheques full shirt of the accused in Presence of the panchas. The said panchanama is at exh. 32. Thereafter he issued a letter exh. 33 to the Superintendent of James hospital to collect the blood sample and after receiving Sample, he had recorded the panchanama of the sample. In order to prove the said panchanama, the prosecution Also examined Pw no.6 Khandu Shitole and he has corroborated the said fact. Thereafter, also he issued a letter dated 9/12/2009 Exh. 34 to the Medical officer James hospital for issuance of Certificate and the issued the said certificate. Thereafter as per his Letter exh. 35, he has forwarded the muddemal property for Chemical analysis (CA). The CA report has been placed on record by the prosecution. For marking exhibit to CA report the learned Advocate for the accused has taken objection that without examining the chemical analyser, the CA report

cannot be marked as exhibit. The report of C.A. is a public document. So there is no Need to examine the chemical analyser. It can be read in evidence.

33] During the searching cross of this PW No.10, no any Major contradiction or omission came on record. The learned Advocate Shri. Dhoka has given much stress on the point that, When the accused was ready to make his memorandum statement He has not produced before the JMFC to record the statement but As per the law, the I.O. has also the right to record the confessional Statement of accused under section 27 of Evidence Act as I already Observed this fact in aforesaid paras So I do not find any Substance in this objection raised by learned advocate for Recording the confessional statement of the accused .

34] In order to prove the injuries sustained by Pw no1 Complainant Police Naik Ruhas Barge, the prosecution has relied on the evidence of Pw no.7 Kaustubh Arun Prabhune, Medical Practitioner. It has come in his evidence that, since 2002 he is Working in James hospital as a doctor and on 15/11/2009 Ruhas Barge was referred and he treated him. He examined the Patient and found there was injury on his back and also the thumb of his left hand was amputated. So immediately he shined in Operative theatre. Prior to that he had taken the blood sample. Thereafter they operated his thumb and replanted his thumb. After Operation the patient was transferred to ICU. On 29/11/2009 the Patient was discharged from hospital. The nature of injury was Grievous and blood was oozing from the spurting. Due to excess Blood oozing, the patient hypovolemic shock The weapon i.e Sickle shown to the doctor and the injury mentioned is likely to be Caused by the said weapon Article A The death of patient would Be caused by the sickle. The discharge card shown to him and it Bears the signature of doctor. The evidence of Pw No.7 Dr. Prabhune has also supported to the prosecution case.

35) During the searching cross of the learned counsel Shri. Dhoka for the accused, it has come on record that as per the Protocol, the contents of discharge card have been mentioned by Dr. Rachit and he does not have personal knowledge about it. This Admission cannot make any difference on the case of the Prosecution. He further admitted that, before his examination of the patient, it was already dressing made by other doctor. So he had reopened it. He further admitted that, if a person handling tin Sheet and he sustained injury by tin sheet, the possibility of cutting Fingers cannot be ruled out. No doubt if while handling sharp Substance like tin sheet sustained the injury, the injury may be caused like in this matter. However, the learned counsel has not

given any suggestion to the complainant that, he was handling tin Sheet nor any circumstances bring on record that, at the relevant Time, the complainant was handling the tin sheet and he sustained the injury. Mere suggestion to the doctor is not sufficient to Disbelieve the theory of injury to the complainant Medical Evidence placed on record by the prosecution is corroborated to the evidence of Pw no.1 Police Naik Ruhas Barge.

36] While advancing the argument, the learned advocate has submitted that, the prosecution has miserably failed to prove the case beyond the reasonable doubt. Here is no corroboration By Pw no.2 to 4. The police have not taken entry in station diary The natural conduct of complainant shows that, no such incident Took place He further submitted that, there was no intention to Kill the complainant He further submits that, there was no injury To skull after thumb. No injury on back in the shape of weapon but as per the evidence of PW no.7 Dr. Prabhune, he has Corroborated to the prosecution case.

37] The learned counsel for the accused placed his reliance on the following judicial precedent in the case of Punjab s/o Motiram Waghmare Vs. State of Maharashtra reported in 2014 All MR (Cri.) 3926. Their Lordship have observed that Penal Code(1860), S.307-Attempt to murder-Appeal against conviction Allegedly accused-appellant attempted to inflict axe blow-However, he could Succeed in inflicting blow by means of spade X-ray plate showed that there was Depressed skull fracture to injured/complainant and it was sufficient to cause Death in ordinary course of nature-In chemical analysis report blood or injured Was detected on clothes of injured and on spade-Injured admitted that there was Dispute between him and accused-But he denied that there was scuffle-Pw 2 Claiming to be eye witness, admitted in cross examination that there was scuffle However, PW2 failed to appreciate admission made by Investigating officer that Accused had also made complaint against injured and he was also sent for Medical examination and had sustained two contusions Prosecution could not Give explanation as to why two other eye witnesses were not examined Evidence Of PW 2 is doubtful. It is also possible that during course of scuffle injured had Fallen and sustained said injuries-Accused is entitled to benefit of doubt. Ongoing through the keen observations of the facts of the Ruling, the facts of the cited judicial precedent are not identical.

38] On going through the entire evidence placed on record It appears that, Pw no.1 Ruhas Datta Barge, Police Naik was a Public servant and on 15/11/2009 since 9 a.m. till 9,p.m. he was On

patrolling duty alongwith PC Deshmane. While discharging the Duty, the accused has attacked on complainant and assaulted him by a sickle. So the prosecution has proved that, on 15/11/2009 in Between 14.30 to 14.55 hours at Wadiwala road, behind Chaman Bakery, opposite Sonee Mens wear shop, on public road, Puno the Accused used criminal force and assaulted the complainant Barge, the public servant Police Naik B.No. 2934 by a sickle in the Execution of his duty as such public servant. It is further held that The prosecution has proved beyond doubt that, during the same Course of transaction, with such intention and knowledge and Under such circumstances that, if by that act he had caused the Death of complainant Ruhas Barge, the accused would have been Guilty of murder and that the accused has caused hurt to the Complainant. It is further held that during the course of same Transaction, the accused voluntarily caused hurt to the Complainant while he was discharging his duties as such Public Servant for, in consequence of anything done or attempted to be done by such public servant in the lawful discharge of his duty It Is further held that, the prosecution has proved that, the accused Had committed mischief by causing loss or damage to the property i.e. damaging the drum used for storing water kept in front of the house of Sandhya Gade and Rekha Athawale. It is further held that accused during the course of the same transaction, in contravention of section 4 of Arms Act found in possession of deadly weapon i.e. sickle and thereby committed an offence punishable under section 353,332.307, 427 of IPC and under section 4(25) of Arms Act.

39] The prosecution has alleged that, the accused was Found in possession of deadly weapon like sickle and committed Breach of the order passed by the J. Commissioner of Police and Lawfully promulgated under section 33(1) of Bombay Police Act However, the prosecution has produced any copy of the said Order passed by the Jt. Commissioner of Police nor it has come in The residence of Pw no.1,5,9 and 10. So the prosecution has Miserably failed to prove that, the Jt. Commissioner of Police has Lawfully promulgated the order under section 37(1) punishable Under section 135 of Bombay Police Act. I therefore answer point Na to in the affirmative and point a 6 inch the negative.

Here I take pause to hear the accused on the point of Sentence.

Puno:

Date: 09/10/2017

(V.K. Kane)

Additional Sessions Judge

40] On the point of sentence, I have heard the accused. He Craves mercy. Also, I have heard advocate for the Accused. He submits that, the minimum sentence be awarded as it Is his first offence. Also I have heard the learned APP Deshmane and she said that, the police officer was on his Duty as a public servant and was discharging his official duty. So the matrix punishment is awarded so as to go the message to the society.

41] The offence punishable under section 307 of Indian Penal Code prescribes the sentence of punishment of 10 years and to pay a fine. The offence punishable under section 332 o IPC Prescribes the punishment to 3 years imprisonment and to Pay a fine For the offence punishable under section 353 of IPC the sentence of two years or with fine or with both.

The offence punishable under section 427 of IPC prescribes the Punishment to suffer 2 years or with fine or with both.

42] Taking into consideration the submission advanced by Both parties, I proceed to pass the following order.

ORDER

1] Accused Vilas Anup Gaikward R/o: Wadiwala Road, Puno Is hereby convicted under section 235 (2) of Criminal Procedure Code for the offence punishable under section 307 of Indian Penal Code and he is sentenced to undergo R.I. for 7 years and to pay a Fine of Rs.5000/ /d he shall suffer two months simple Imprisonment

2] The accused is further sentenced to suffer for the Offence punishable under section 332 of Indian Penal Code to Suffer 1 year Rigorous Imprisonment and to pay a fine of Rs. 1000/- 1/ he shall further suffer one month Simple Imprisonment

3] The accused is further sentenced to suffer for the Offence punishable under section 353 of Indian Penal Code to Suffer 1 year Rigorous Imprisonment and to pay a fine of Rs. 1000/ 1/ he shall further suffer one month Simple Imprisonment.

4] The accused is further sentenced to suffer for the Offence punishable under section 427 of Indian Penal Code to Suffer 1 year Rigorous Imprisonment and to pay a fine of Rs 1000/- 1/d he shall further suffer one month Simple Imprisonment

5] The accused is hereby acquitted for the offence Punishable under section 37(1).w.(135) of Bombay Police Act

6] All sentences run concurrently.

7] The accused is entitled to set off under section 428 of Cr.P.C, if any.

8] The muddemal property i.e. sickle Article 'A' be sent co Collector for disposal according to law after appeal period is over

9] The muddemal property i.e. Clothes Articles B to F Being worthless be destroyed after appeal period is over.

10] The copy of judgment shall be provided to the accused Forthwith free of cost.

Puno:

Date: 09/10/2017

(VK.Kane) Additional Sessions Judge Puno.