



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 58 OF 2006

The State of Maharashtra,
Through Police Station,
Jafrabad, Dist : Jalna.

... Appellant
(Orig. Informant)

Versus

1. Santosh S/o. Shamrao Dalve,
Age : 25 years,
2. Gumfabai W/o. Tanaji Dukre,
Age : 30 Years,
3. Sukhdeo S/o. Motheba Dalve,
Age : 35 years,
4. Ganesh S/o. Shrirang Dalvi,
Age : 25 years

All R/o. Yeota, Tq. Jafrabad,
Dist. Jalna

... Respondents.
(Orig. Accused)

.....
Mr. S. S. Dande, APP for Appellant – State.
Mr. Anil H. Dhupe, Advocate for Respondent Nos.1 to 4.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16 JULY 2025

PRONOUNCED ON : 28 JULY 2025

JUDGMENT :

1. State is hereby assailing the judgment and order of acquittal dated 31.08.2005 passed by learned Judicial Magistrate First Class, Jafrabad in R.C.C. No.1 of 2003 acquitting respondents from offence punishable under section 324 read with section 34 of Indian Penal Code.

FACTUAL MATRIX

2. Prosecution was launched against respondents on report lodged by PW1 Baliram stating that on 17.11.2002, around 8:00 a.m., accused persons picked up quarrel over common ridge in between their fields and accused no.1 Santosh gave blow of chain on his head. Accused No.3 Sukhdeo gave kick blows on his face, due to which informant dislodging his teeth. His father and nephew came to rescue and that time accused persons gave blow on private part of his father. Around 20 accused persons gathered there to assault him, his father and nephew, and therefore, he lodged report Exh.21 and in consequence to which crime was registered bearing No. 67 of 2002 for offence punishable under section 324 read with section 34 of IPC. Investigating Officer carried out investigation and after gathering evidence, charge-sheeted accused persons, who were tried vide R.C.C. No. 1 of 2003, wherein prosecution adduced in all six witnesses and relied on documentary evidence like FIR, injury certificate and pancha etc.

After recording statement under section 313 of Cr.P.C., and on hearing both sides, learned trial court by its judgment and order dated 31.08.2005 acquitted accused from the above charges, which is now the subject matter of appeal on behalf of State.

RIVAL CONTENTIONS

3. Learned APP would point out that, initially informant was alone with whom dispute was raised by accused persons and he was duly assaulted by accused Nos.1, 3 and 4 by means of stick and fist blows. That, they are specifically named by informant. He further pointed out that, when informant's father and nephew came to rescue, his father was also beaten that too on private part. That, doctor, who provided treatment, is examined by prosecution and he has placed on record injury certificates. Thus, according to learned APP, all ingredients for attracting charges are available. That, there is recovery of stick. That, informant's evidence is supported by not only his wife, but even independent witnesses who intervened. Role of Santosh, Sukhdeo, Ganesh and Gumfabai is clearly coming on record. That, witnesses are consistent and therefore, in spite of availability of evidence of sterling quality, learned trial court has awarded acquit without assigning just and proper reasons. According to learned APP, case of prosecution was not proved beyond reasonable doubt as there was independent eye witness account also.

In support of his contention, learned APP sought reliance on the judgment of this court in the case of ***State of Maharashtra v. Gopala Baburao Walke and others*** reported in MANU/MH/0560/2025.

4. In answer to above, learned counsel for respondents accused would submit that, prosecution has miserably failed to bring home the charges. That, evidence of witnesses, more particularly, informant (PW1) and his wife (PW6) is not consistent. That, there are material omissions, contradictions and variances that cross of Medical Officer (PW5) gives rise to another possibility of injuries. Learned trial court has appreciated the entire evidence meticulously and not finding the convincing case, trial court refused to accept the case of prosecution. For above reasons, he prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD

5. For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of relevant witnesses i.e. informant PW1 Baliram and his wife PW6 Vandana and PW5 Dr. Anil Gaikwad, Medical Officer in verbatim as has been stated in witness box in trial court.

PW1 Baliram informant is the informant. Relevant portion of his evidence at Exhibit 20 is as under:-

“1. I know all the accused. Incident took place prior to two years at about 7.00 a.m. in the field of accused Santosh. My residential house is situated in my agricultural field. I was

going to village Yeota from my house for purchasing grossary materials. The accused persons called me from the way on account of dispute of common banch. Accused persons away me in their field. The sister of accused no.1 named Gumphabai was seated at the spot of incident.

She asked me what I had did with her. On which I told that I had not did anything. On which accused no.1. assaulted me by means of chain on my head. Accused Ganesh landed blow of stick on my head. Accused Sukhdeo landed kick blow on my face due to which I lost my three teeth. I became unconscious. Thereafter, my father and my nephew rushed to the spot. My father asked accused why they are beating on which accused told my father cast the vote to others. Accused persons landed kick blow on private part of my father. My nephew Ganth lakas bring the water he given said water to me thereafter I was brought in the hospital at Jafrabad.

2. In all 20 persons were present at the spot. These accused assaulted me and remaining persons were present around me. All they were intending to kill me. Thereafter I filled report in police station. The report now shown to me bears my signature contents in it are true and correct. It is marked at Exh.21. I was created as a UPD patient in Jafrabad Hospital. Thereafter police arrested me and sent to Harsool jail. I was sent for medical examination through Horsool jail.”

PW5 Dr. Gaikwad is the Medical Officer, who examined PW1 informant, narrated the injuries and identified the injury certificates. In his testimony, he deposed as under :-

“1. On 17.11.2002 Police of police station Jafrabad referred Baliram S/o. Sitaram Dalvi for his medical examination and treatment. I examined said injured at about 11:45 a.m. and found following injuries on his person.

- (i) Contusion lacerated wound over Temporal region on posterior aspect size $1\frac{1}{2}$ x $1\frac{1}{2}$ direction of injury verticle age of injury within 24 hours caused by hard and blunt object nature of injury is simple.*
- (ii) Abrasion over posterior aspect over right Ear $\frac{1}{2}$ x $\frac{1}{2}$ verticle in direction within 24 hours caused hard and blunt object simple in nature.*
- (iii) Contusion lacerated wound over left side of the chin size $\frac{1}{2}$ x $\frac{1}{2}$ verticle in direction cased by hard and blunt object nature of injury is simple within 24 hours.*
- (iv) Contusion lacerated would over little finger of right hand size 1 x $\frac{1}{2}$ x $\frac{1}{2}$ vertile in direction age within 24 hours simple in nature caused by hard and blunt object.*

I have issued medical certificate accordingly.

The medical certificate now shown to me is the same, it is in my own handwriting contents in it are true and correct it bears my signature and seal of Rural Hospital Jafrabad. I have mention Identification marks of the patient. I can identify the injured on the basis of identification marks note down by today. I have brought MLC record with me the contents of

medical certificate are true and correct as per record. It is marked at Exh. 35.”

PW6 Vandana is the wife of informant. Relevant portion of her evidence is as under:-

“1. Complainant Baliram is my husband. I know all accused. Incident took place in the year 2002 in winter season at about 7:00 a.m. I myself and my family members residing in our agricultural land and our residential house is situated in our land. Accused Santosh came and told to my husband to come towards common bandh as there is dispute between accused and us on account of common bandh.

When my husband went though said bandh accused Gumphabai assaulted my husband by chappal and accused Santosh assaulted to my husband by chain. Accused Sukhadeo landed blow of stick on the head of my husband. Ganesh landed blow of stone on my husband. My husband sustained with bleeding injuries. I myself my father in law and my nephew rescued my husband. “Accused persons also assaulted to my father in law. Accused Santosh again assaulted to my husband by means of fist to my husband, my husband loosed teeth. Then we came to Jafrabad. We went to police station out of accused two accused are present before the court.”

6. Re-appreciated the evidence and visited the impugned judgment. In short, case of prosecution is that, PW1 Baliram was rendering agricultural work in his field on 17.11.2002, accused

persons initially abused him and assaulted him by means of articles like chain and sticks.

7. Informant has narrated the incident in his evidence at Exh.20, wherein he attributed use of stick to Ganesh and kick blow to accused Sukhdeo. However, regarding allegations of hitting his father on the private part he has not named specific accused. Later on, in witness box, he stated that, 20 accused persons had gathered there to assault him and kill him.

8. Attention of this court was invited by learned counsel for respondents to the FIR at the instance of Baliram, wherein he had stated that, Santosh, Gumfabai, Sukhdeo and Ganesh initially abused him. What were the abuses is not elaborated. Who amongst the four exactly abused is also not clarified. There cannot be abuses in chorus. Further, it is specifically mentioned in the FIR that, accused Ganesh hit informant by means of stone. However, in witness box PW1 informant stated that Ganesh hit informant by means of stick. Therefore, there is variance in the contents of FIR and substantive evidence which in fact prevails.

9. Perused the impugned judgment. Learned trial Judge has considered and appreciated evidence as required under law

and findings have been supported by sound reasons. No infirmity or perversity is brought to our notice in appeal so as to interfere in the judgment and order under challenge. Hence, the following order is passed :

ORDER

Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE, J.)