



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 25 OF 2016

1. Nagya @ Nagesh s/o Wachya Bhosale
Age: 60 years, Occu.: Labour,
R/o. Dokewadi, Tq. Bhoom,
Dist. Osmanabad.
2. Jahalya @ Jalindar s/o Dagdu Bhosale,
Age: 55 years, Occu.: Labour,
R/o. Ieet, Tq. Bhoom,
Dist. Osmanabad.

... Appellants

Versus

- . The State of Maharashtra,
Police Station Washi,
Through Tanya Wachya Bhosale,
Age: 40 years, Occu.: Labour,
R/o. Dokewadi, Tq. Bhoom,
Dist. Osmanabad.

... Respondent

.....
Mr. Vilas M. Humbe, Advocate for the Appellant.
Mr. V. V. Jahagirdar, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.09.2026

Pronounced on : 11.09.2026

JUDGMENT :

1. Appellants, who have been convicted by the learned Adhoc Additional Sessions Judge, Bhoom in Sessions Case No,114 of 2014 for offences punishable under Sections 147, 148, 323, 504, 506 read

with Section 149 of Indian Penal Code [IPC], have preferred instant appeal.

BRIEF FACTS OF THE PROSECUTION CASE

2. Prosecution was lodged on FIR steaming from the statement of PW5, who gave statement that for questioning accused for throwing waste in the well water, accused persons formed unlawful assembly and they mounted assault in him by means of knife. On his such statement, crime was registered, which was duly investigated and accused persons were charge-sheeted. In all five accused were charge-sheeted, but except appellants, other accused were absconding. Trial came to be separated and present appellants came to be convicted for offences under Sections 147, 148, 323, 504, 506 read with Section 149 of IPC.

SUBMISSIONS

On behalf of appellants/original accused Nos.1 and 2 :

3. Learned Counsel for the appellants submitted that almost all prosecution witnesses have turned hostile, including informant. That, even recovery panch did not support prosecution. Only based on testimony of injured and his son and taking into account the evidence of medical expert, conviction has been recorded.

On behalf of respondent/State :-

4. Learned APP would support the judgment and order of conviction by pointing out that, here, there is evidence of injured himself as well as his son, who was in his company. That, injuries were suffered by victim and he was taken to the hospital and he was examined and treated. Said doctor was also examined by prosecution. That, presence of all the accused is marked by above witnesses. They have stated that there is common object to carry out assault and therefore, such evidence has been taken into account by the learned Trial Court, while convicting the accused. Learned APP further pointed out that as learned Trial Court had acquitted accused from charges under Section 307 of IPC, there is correct appreciation. Therefore, as charges for offence under Sections 147, 148, 323, 504, 506 read with 149 are made out, the judgment and order may not be disturbed, as it is a well reasoned judgment.

BRIEF ACCOUNT OF EVIDENCE BEFORE THE TRIAL COURT

5. Prosecution evidence comprises of as many as 12 witnesses. **PW1** is the panch to recovery panchanama, which is at Exhibit-32; **PW2** is the panch witness; **PW3** is the independent witness; **PW4** is the panch to spot panchanama and spot map; **PW5** is the victim/injured; **PW6** is the son of injured; **PW7** is the wife of injured;

PW8 is the police constable, who recorded statement of informant; **PW9** is the PSO, who registered crime; **PW10** is the medical expert, who examined and treated injured, **PW11** is the Investigating Officer; and **PW12** is the informant.

6. Re-appreciated the entire evidence. As pointed out, it is noticed that almost all the witnesses, except the injured, his son, the doctor and the Investigating Officer, including the very informant, have resiled *en bloc*. Therefore, what remains for consideration is the testimony of informant, his son, Investigating Officer and medical expert.

7. **PW5** is the injured, who has been examined at Exhibit-39. According to him, incident took place three years back. His son had been to village. Incident took place in front of Dr. Mane hospital and according to him, he questioned accused, why waste was thrown in the well. He deposed that, on this count, Jahalya Bhosale and Anil Bhosale beat him by means of knife. He identified Jahalya to be present in the Court, who assaulted him.

. While under cross-examination, he admitted that accused Nagya is his brother and accused Jahalya is his uncle. He is unable to state whether all accused persons gathered on the day of weekly bazaar at village Iet. He answered that incident took place at 7.30

p.m. and he also admitted that there was darkness at the time of incident. He is unable to state the distance of the electric pole and the spot of the incident. He denied suffering injuries after fall from a cow. He **admitted** that accused Nagya had not assaulted him.

8. **PW6** is the son of PW5 and he stated that injured is his father. The incident took place in July 2012 in front of Dr. Mane hospital. **That, according to him at that time he was also with his father.** That, incident took place at 7.30 p.m. He testified that his father asked accused as to why waste was thrown in the well and so accused Anil assaulted his father by means of knife, whereas others assaulted his father by means of fists and kick blows. Then, he stated that Anil, Jahalya, Garvya were also present at the spot and other accused were not present. He identified article 1 with which his father was assaulted.

. While under cross-examination, he admitted that, the well, in which waste was thrown, does not belong to them. He admitted that incident took place during bazaar day. He too admitted that at the time of incident there was darkness and it took place at 7.30 p.m. and that, there was electric pole near the place of incident. He denied that he was not present with his father as well as accused Nagesh was not present at the time of incident. However, he admitted that even

persons, who were not present at the spot, are named as accused. Rest is all denial.

9. **PW7**, wife of PW5, in her evidence at Exhibit-41, stated that while she was in the house when she made phone call to her son, she learnt that accused assaulted her husband by knife and accused Nagesh was not present there. Police took her husband to hospital.

. While under cross-examination, he admitted that she was not present at the spot.

10. **PW8** is the police constable, who recorded statement of informant, which he identified to be at Exhibit-43.

11. **PW9** is the PSO, who, on the strength of the statement, registered crime.

12. **PW10** is the medical expert, who in his evidence at Exhibit-46, deposed about Prakash being brought with history of assault and he examining him. He described the four injuries in his testimony.

. While under cross-examination, he answered that he did not mention the colour of the injures in the injury certificate, but mentioned age of the injuries. He denied that such type of injures are possible on account of fall on hard surface. Rest is all denial.

13. **PW11** is the Investigating Officer, who has narrated all the steps taken by him during investigation till filing of the charge-sheet.

14. **PW12** is the informant, who merely stated that Prakash and Nagesh were his brothers and Jalinder was his uncle. In examination-in-chief itself, he stated that he does not know about the incident between accused and complainant.

. Thereafter, he was subjected to cross-examination, however, all the suggestions were denied, except the suggestion that Prakash was admitted for treatment at Osmanabad Hospital and that he had gone to see him in the hospital.

ANALYSIS

15. On re-appreciation and analysis of the above discussed evidence, here, it is emerging that PW12 informant, who is brother of injured Prakash, flatly denied any occurrence taking place in his presence. PW5 injured Prakash, in his evidence, as stated above, has merely named Jahalya and Anil for beating him by means of knife. Thus, who amongst them inflicted blow is not clarified by him. Then he stated that Jahalya was present in the court, who assaulted him. Beating and assault is attributed to two persons, but there is use of only one article and, therefore, overt act was expected to be attributed to one of them. In cross-examination, injured has admitted

that accused Nagya did not assault him at all.

16. PW6 son of PW5 claims to be the eye witness, however, PW5 has not stated or marked about the presence of his son PW6 at that time. Be it so, PW6 stated that in the incident, which took place at 7.30 p.m. when his father asked accused why waste was thrown in the well, according to him, accused Anil assaulted his father by way of knife. Thus, he contradicts his own father, because his father PW5 has attributed assault to Jahalya and not Anil. He merely named Jahalya and Garvyia to be present there.

17. Therefore, primarily, the presence of five accused persons at the spot has not been established so as to attract Section 149 of the IPC. Unless the assembly of five or more persons is established, the rigours of Section 149 of the IPC cannot be attracted.

18. Moreover, it is noticed that present appellant Nagya is held guilty by the learned Trial Court, but as stated above, very informant has in his cross-examination admitted that Nagya did not assault him. His own son PW6 also in his cross-examination admitted that even persons, who were not present at the spot, are mentioned to be accused.

19. Admittedly, wife of PW5 was in her house and she has hearsay information and she also admitted that she was not present at the spot.

20. Indeed, there is evidence of PW10, but he has merely noted history of assault.

21. Charge-sheet was filed against as many as five persons and three are shown to be absconding, but above discussed evidence, as stated, is ambiguous on the point of assault. When injured himself has admitted that there was no assault by Nagya i.e. appellant No.1, learned Trial Court ought not to have convicted him.

. As regards appellant No.2 Jahalya, though PW5 has named him, the alleged eyewitness, i.e. the son of PW5, attributes the assault on his father with a knife to accused Anil and not to either Nagya or Jahalya.

22. For the aforesaid reasons, the case of the prosecution has not been proved beyond reasonable doubt. The injured witness and his son have attributed the assault with a knife to different accused. Though an attempt has been made to show that there was a recovery at the instance of accused Nagesh, and though the witness to the memorandum has not supported the prosecution, neither PW5 nor his

son PW6 attributes the role of inflicting the knife blow to Nagesh. Consequently, the appellants succeed. Hence, the following order is passed :-

ORDER

- I. The Criminal Appeal is allowed.
- II. The conviction awarded to the appellants i.e. 1) Nagya @ Nagesh s/o Wachya Bhosale and 2) Jahalya @ Jalindar s/o Dagdu Bhosale, by learned Adhoc Additional Sessions Judge, Bhoom in Sessions Case No.114 of 2014 on 27.11.2015 for offence punishable under Sections 147, 148, 323, 504, 506 read with Section 149 of IPC, stands quashed and set aside.
- III. The appellants i.e. 1) Nagya @ Nagesh s/o Wachya Bhosale and 2) Jahalya @ Jalindar s/o Dagdu Bhosale stand acquitted of the offences punishable under Sections 147, 148, 323, 504, 506 read with Section 149 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]