



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 318 OF 2019

. Ankush s/o Asaram Garad,
Age : 26 years, Occupation : Business,
R/o Surdi Najik, Taluka Majalgaon,
District Beed.
... Appellant
[Original Complainant]

Versus

1. The State of Maharashtra
Through Police Officer,
Majalgaon (Rural),
District Beed.
2. Atmaram s/o Uttamrao Kale,
Age : 43 years, Occupation : Agril.,
R/o Surdi Najik, Taluka Majalgaon,
District Beed.
3. Baliram @ Balishor s/o Atmaram Kale,
Age : 21 years, Occupation : Agril.,
R/o as above.
... Respondents
[R.No.2&3 Orig. Accused]

.....
Mr. Akash Rodge, Advocate h/f Mr.P.N.Muley, Advocate for the
Appellant.

Mr. N.D. Raje, APP for Respondent No.1-State.

Ms. Ashwini P. Patil h/f Mr. S.J. Salunke, Advocate for Respondent
Nos. 2 and 3.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 20-08-2026

Pronounced on : 21-08-2026

JUDGMENT :

1. The instant appeal challenges judgment and order of acquittal dated 07-03-2018 passed by the learned Additional Sessions Judge, Majalgaon in Criminal Appeal No.11 of 2015, arising out of judgment and order of conviction dated 05-02-2015 rendered by learned Judicial Magistrate First Class (JMFC), Majalgaon in R.C.C. No.16 of 2014.

BRIEF FACTS OF THE CASE

2. Before learned JMFC, prosecution was launched against present respondent Nos.2 and 3 on the premise that, on 11-12-2013, while informant Ankush Asaram Garad was proceeding to Majalgaon by the road, accused Atmaram Kale and Baliram @ Balishor Kale came from opposite side. Informant questioned them for making his brother-in-law drink liquor, who after getting drunk, beat her sister. It is alleged that, accused assaulted informant by means of rod and also issued threats to kill. On above accusations, report was lodged with Majalgaon Police Station (R), who registered Crime bearing No.141 of 2013 for offence under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code (IPC). After investigation, both accused were chargesheeted and tried by learned JMFC vide R.C.C. No.16 of 2014.

At trial, case of prosecution was rested on in all seven witnesses i.e. PW1 Ankush Garad, complainant, PW2 Dnyaneshwar Garad, PW3 Dattatraya Sandipan Ghatul, PW4 Bajrang Garad, PW5 Ankush Ramrao Garad, PW6 Dr.Rupali Solanke, Medical Expert and PW7 Subhash Pawar, Investigating Officer.

The learned JMFC appreciated both oral and documentary evidence and recorded guilt of the present respondent Nos.2 and 3 for offence under Sections 323, 324 read with Section 34 of the IPC vide judgment and order 05-02-2015.

Feeling aggrieved by the same, convicts preferred appeal before the Court of Additional Sessions Judge, Majalgaon, who re-appreciated the evidence and allowed the appeal by setting aside the order of trial Court. Dissatisfied by the same, informant has preferred instant appeal.

SUBMISSIONS

On behalf of the Appellant-Original Informant :

3. Learned counsel for the appellant/informant would point out that, there was cogent, convincing evidence on the point of occurrence. That, injured himself was a star witness. That apart, prosecution has adduced evidence of two other witnesses. That, there was use of iron rod and the said rod is recovered. That, Medical

Expert has confirmed injury due to said article and therefore, learned trial Court has rightly convicted the accused.

4. He next submitted that, the learned First Appellate Court, misread the evidence on record. That, undue importance is given to minor contradictions in the testimony of witnesses and learned First Appellate Court erred in holding that there is no independent witness. According to learned counsel, in fact when the evidence of informant injured itself was convincing, there was no need for corroboration, however, there are two witnesses, who had seen the occurrence and have duly deposed. According to him, learned First Appellate Court also erred in attributing delay, which was merely of seven hours. He also criticized the finding of First Appellate Court that seized article was not confronted to Medical Expert.

On account of non-appreciation of evidence in its correct perspective, he seeks reliance on Judgment of the Hon'ble Apex Court in the cases of *Namdeo v. State of Maharashtra, 2007 AIR SCR 1835*; *State of U.P. v. M.K. Anthony, AIR 1985 SC 48* and Judgment dated 14-09-2010 passed in the case of *Abdul Sayeed v. State of Madhya Pradesh* in Criminal Appeal No.1243 of 2007 with Criminal Appeal No.1399 of 2008 and Criminal Appeal Nos.1363-1365 of 2010.

On behalf of Respondent Nos.2 and 3/Original Accused :

5. Learned counsel for respondent Nos.2 and 3/original accused would support the judgment and order of First Appellate Court. She pointed out that, prosecution has miserably failed to establish the charges. Taking this Court through the testimony of informant, she pointed out that the same is ambiguous and non-specific on the point of actual assault. She pointed out that, to whom actual assault is attributed is not proved by prosecution. She further pointed out that, witnesses PW4 and PW5, who are claimed to be independent witnesses, are not consistent and are at variance on material counts. On this court, she took this Court through the testimony of these two witnesses. Alleging false implication due to enmity, she canvasses in favour of judgment of acquittal and prays to dismiss appeal for want of merits.

On Behalf the Respondent No.1-State :

6. Learned APP has adopted the submissions advanced by learned counsel for informant.

BRIEF ACCOUNT OF EVIDENCE AND ITS ANALYSIS

7. Re-appreciated the evidence. Case of prosecution seems to be

rested on seven witnesses. Crucial witnesses are informant PW1 Ankish Asaram Garad and eye witnesses PW4 Bajrang Garad and PW5 Ankush Ramrao Garad.

As pointed out, it does emerge from testimony of PW1 complainant that he is unable to state which out of the two accused actually assaulted because he merely stated that accused assaulted on his head with iron rod but who indulged in the overt act is not getting clear.

8. Though PW4 and PW5 are examined as eye witnesses, it is noticed that according to PW4, it is Atmaram who assaulted by iron rod whereas PW5 attributes assault to accused Kale. Therefore, though both claiming to be together at the relevant time, they are not consistent.

9. As pointed out, according to informant, incident had taken place on road, but above witnesses named the spot as in front of shop. Therefore, actual spot is not proved by leading cogent evidence.

10. Again as submitted, PW6 Medical Expert has expressed possibility of injuries on account of fall.

11. Such aspects do not seem to have been appreciated by learned JMFC and therefore, learned Additional Sessions Judge has rightly intervened. There is no illegality or perversity in the manner of appreciation of evidence at the hands of First Appellate Court. Though learned counsel for appellant relied on above referred rulings, facts in those cases and the one in hand are clearly distinguishable.

No case being made out to interfere in the impugned judgment, appeal deserves to be dismissed. Accordingly, I proceed to pass following order.

ORDER

Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

SPT