

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 442 OF 2004

State of Maharashtra
Through Palam Police Station,
District- Parbhani.

..APPELLANT

VERSUS

1. Munjaji Madhavrao Gaikwad
Age: 42 Years, Occp: Agri,
2. Kamaji Madhavrao Gaikwad
Age: 47 Years, Occp: Agri,
3. Girmaji Madhavrao Gaikwad
Age: 37 Years, Occp: Agri,
4. Sangram Kishanrao Gaikwad
Age: 37 Years, Occp: Agri,
All R/o Ainwadi, Tq. Palam,
Dist. Parbhani.

..RESPONDENTS

....
Mr. S.D. Ghayal, A.P.P. for appellant-State.
None for respondents.

....

**CORAM : M.T. JOSHI, J.
DATED : 24th NOVEMBER, 2015**

ORAL JUDGMENT :

None appears for the respondents. Heard learned A.P.P.

2. Being aggrieved by acquittal of the respondents from the offences punishable under Section 447, 323, 324, 504, 506(II) r/w 34 of the Indian Penal Code and under Section 7(1)(d) of the Protection of Civil Rights Act by the Judicial Magistrate First Class, Gangakhed in Regular Criminal Case No. 253/2002 vide judgment and order dated 25th March, 2004, the applicant has preferred the present appeal.

3. According to the prosecution, on 7th July, 2002, at about 6 p.m., the present respondents entered in the field of the wife of brother of the complainant with intent to assault the complainant-Sopan and his companions Kishor and Bhagwan. They, thereafter caused harm to them by weapons like sticks, kicks and fist blows. In the process, they also abused and insulted the complainant and witnesses being member of the Scheduled Caste.

4. Before the learned Judicial Magistrate First Class, Gangakhed, all five witnesses i.e. P.W.1-Apparao, P.W.2-Sopan, the complainant, P.W.3 Kishor-and P.W.4-Kalawati the eye witnesses,

while P.W.5-Pandit is the medical officer, rest of the witnesses who are either panch witnesses or Investigating Officer were examined.

5. It is an admitted fact that F.I.R. was filed after five days of the incident. The complaint was very general that the assault has been made by the respondent while in the examination chief, the complainant P.W.2 has given minute details. One of the witness namely Bhagwan, said to have been injured was not examined.

6. There was vast contradiction between the statement of complainant and the eye witnesses as also the weapons used by the respondents. All the witnesses are closely related to each other. The injuries found by P.W.5-Dr. Pandit, the medical officer were simple in nature. Already there was enmity between the parties. In the circumstances, the learned Judicial Magistrate First Class, Gangakhed extended reasonable benefit of doubt. The learned A.P.P. however submits that injuries found on the person of the complainant and other eye witnesses would corroborate the prosecution case. Learned Judicial Magistrate First Class,

Gangakhed has detailed minor variance in the prosecution case and unnecessarily acquitted the respondents.

7. In absence of learned Counsel for the respondents, with the aid of learned A.P.P., I have gone through the papers and records of the case. On the basis of the above material, the following points arise for my determination.

(I) Whether, the prosecution has proved that on 7th July, 2002, at about 6 p.m., at village Peth-shivni, the present respondents, in furtherance of their common intention, have committed criminal trespass in the field of the wife of brother of the complainant, with intent to commit an offence of voluntarily causing hurt to the complainant and the witnesses Kishor and Bhagwan with sticks and kicks and fist blows and did cause hurt?

(II) Whether the present respondents, in furtherance of their common intention, intentionally insulted the complainant and had given provocation to

him knowing that it would cause breach of the public peace as the complainant and witnesses being the members of the scheduled caste?

My findings to the above points are in the negative. The appeal is therefore dismissed for the reasons to follow.

REASONS

8. The record would show that the complaint, which was vague, despite filing belatedly, has been thereafter exaggerated in the witness box by the witnesses as detailed by the learned Judicial Magistrate First Class, Gangakhed. One of the injured witness-Bhagwan was not examined. The evidence of P.W.2-Sopan does not establish as to which of the respondents has assaulted him or the witnesses. All these witnesses are closely related. Even the name of so called eye witness P.W.4-Kalawati does not find place in the complaint. In the circumstances, since the learned Judicial Magistrate First Class, Gangakhed has taken a reasonable and

probable view of the material placed before him, in the present appeal against the acquittal, no interference is warranted by this Court. Hence the following order :

9. The appeal is therefore dismissed.

(M.T. JOSHI, J.)