

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

CRIMINAL APPEAL NO.349 OF 2014

Irgonda s/o Makugonda Yelpalwar,
R/o. Narangal, Tq. Degloor,
Dist. Nanded.

...Applicant

versus

1. Yadavrao s/o Saygonda Yerpalwar,
Age: 35 years, Occ: Agri.,
2. Ramgonda s/o Saygonda Yerpalwar,
Age: 30 years, Occ: Agri.,
3. Ramesh s/o Saygonda Yerpalwar,
Age: 25 years, Occ: Agri.,
4. Parmesh s/o Madhavgonda Yerpalwar,
Age: 25 years, Occ: Agri.,
5. Ramesh s/o Madhavgonda Yerpalwar,
Age: 25 years, Occ: Agri.,

All above R/o. At Narangal,
Tq. Degloor, Dist. Nanded.

6. The State of Maharashtra,
Through Police Station Officer,
Degloor.

...Respondents

.....
Mr. R.B. Dhakane, Advocate for applicant (absent)
Mr. N.T. Bhagat, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 14th MARCH, 2016

ORAL ORDER :

This is an appeal by the complainant under Section 372
of Code of Criminal Procedure claiming to be victim.

2. It is the case of appellant that accused Nos. 1,2 and 3 came to his house and took him out and accused Nos. 4 and 5, who were armed with sticks, assaulted him. From the record, it depicts that after present appellant lodged the complaint vide Crime No. 88 of 2004 came to be registered against respondents for the offence punishable under Sections 147, 148, 149, 325, 324, 323 of Indian Penal Code and Section 135 of the Bombay Police Act.

3. The prosecution, in all examined seven witnesses. The claim was that the appellant was assaulted by axe, stick, stone. Based on the medical certificates Exhibits-34, 57 proved by PW-3 Dr. Bendigude and by PW-6 Dr. Anmod, learned Magistrate convicted accused Nos. 1 to 4 for the offence punishable under Section 325 read with Section 149 of Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs.500/- each, in default to suffer further rigorous imprisonment for one month.

4. In appeal before learned Sessions Billoli, the respondents came to be acquitted. As such, present appeal.

5. The matter was first called out on 17/07/2015 when the appellant and his Counsel was absent, however, this Court was

pleased to call for Record and Proceedings. After receipt of the Record and Proceedings, the matter was adjourned to 04/01/2016, 25/01/2016, 22/02/2016, however, the appellant and his Counsel were absent.

6. When this matter is called out today, upon second call, the Counsel for the appellant is absent. In this background, having regard to the scope of interference in an appeal against acquittal, this Court has examined view expressed by learned Sessions Judge. Learned Sessions Judge noted that there are omnibus allegations and no specific attributions could be proved as against each of the accused. Learned Sessions Judge noted that the witness to the spot panchnama was unable to depose in support of the spot of incident, as he has not disclosed boundaries of the spot. Learned Sessions Judge then considered the evidence of PW-1 Gangadhar., Learned Sessions Judge noted that the said witness was unable to narrate the spot of incident, dispute of accused with the complainant in respect of land, nature of injuries suffered, as was caused by accused Ramesh by means of stone.

7. Another witness Mahadabai, wife of present appellant, stated that she heard shouts and therefore, she followed her husband with her son and saw the accused assaulting her husband.

It is claimed that one Gangadhar Koli rescued the appellant. The said witness has also not specifically stated about injuries caused by each of the accused and nature of injuries. Learned Sessions Judge then noted that Doctors though stated about injuries, however, while evaluating the evidence of Dr. Anmod, noted that the nature of injuries suffered to the teeth had already history of some problem. The dispute between the complainant and the accused persons about boundaries of the land was also prevailed before learned Sessions Judge to acquit the accused.

8. With the assistance of learned A.P.P., I have again perused the record.

9. In my opinion, the view taken by learned Sessions Judge appears to be probable view. No illegality could be noticed. The appeal, as such, fails, stands dismissed.

[N.W. SAMBRE, J.]