

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

CRIMINAL APPEAL NO. 388 OF 2002

The State of Maharashtra
through Police Station, Gangakhed.

... Appellant

VERSUS

1. Sitaram S/o Bhojaji Devade,
Age : 50 years, Occu. Agril.,
R/o. Kaudgaon, Tq. Gangakhed,
Dist. Parbhani.
2. Mahadu S/o Bhojaji Devade,
Age : 35 years, Occu. Agril.,
R/o. As above.
3. Apparao S/o Taterao Devade,
Age : 22 years, Occu. And R/o. As above. ... Respondents

.....
Mr R. V. Dasalkar, APP for the appellant/State
None for the respondents.
.....

CORAM : A. M. DHAVAL, J.
DATE : 10TH NOVEMBER, 2017.

ORAL JUDGMENT :-

. The respondents herein were prosecuted for offences punishable u/s 324 and 7(1)(d) of Protection of Civil Rights Act and by judgment dt. 09.04.2002 in RCC No. 44/2001 (Old RCC No. 319/98), the Id. Judicial Magistrate First Class, Gangakhed, acquitted all the accused. Aggrieved thereby, the State has preferred this appeal against acquittal.

2. Ld. APP has stated that as per FIR Exh. 27 lodged immediately after the incident, some cattle of the accused had entered the field of PW1-Nagorao on 01.08.98. PW1 told accused No. 1-Sitaram to prevent such entry. The accused Sitaram, his son Apparao, Namdeo and one Mahadu on the same evening at 7:00 p.m. came in front of house of PW1 Nagorao and abused him as 'महा-या, मांग्या, धेडगे हो तुमची आमचे समोरे अपत काय आहे'. The FIR shows that, PW1 Nagnath belongs to Bouddha-Mahar whereas; the accused belong to Dhangar community. After abusing to PW1-Nagorao in such manner, all the accused assaulted PW1 Nagorao by axe and sticks. Accused No. 3 gave axe blow on his skull. When brother Nivrutti intervened accused no. 1 Sitaram and accused no. 4 Namdeo assaulted him with stick and Sitaram inflicted axe blow on his skull. On hearing the shouts, PW1 Nagorao's wife - PW2 Padmini and daughter Sunita rushed to the spot but all the accused assaulted them as well by means of stick. The witnesses were rescued by Datta Kadam and Sheshabai. Accordingly FIR was lodged and crime was registered at C.R. No. 179/98 at 11:45 at Police Station, Gangakhed. Earlier to it, the injured witnesses were referred to Rural Hospital at Gangakhed where they were examined and treated. After carrying out the investigation, the charge-sheet was submitted in the court. The ld.

trial Judge framed the charge u/s 324/34 IPC and 7(1)(d) of Protection of Civil Rights Act. The ld. trial Judge, in absence of APP, examined seven witnesses. The defence of the accused is that, the prosecution witnesses had assaulted them for which they have filed counter cases. They denied the allegations of assault by them. The ld. JMFC acquitted all the accused. Hence, this appeal.

3. Heard Shri. R. V. Dasalkar, learned APP for the appellant/State.

4. The points for consideration with my findings thereon are as follows :

Sr. No.	Points	Findings
1	Whether the prosecution has proved that accused nos. 1 to 4 in furtherance of their common intention voluntarily caused hurt to PW1, PW2, deceased Nivrutti and deceased Sunita?	Not proved.
2	Whether the prosecution has proved that, accused nos. 1 to 4 in furtherance of their common intention intentionally insulted complainant and thereby committed offence u/s 7 of Protection of Civil Rights Act?	Not proved.
3	What order?	The appeal is dismissed.

REASONS

5. The prosecution has examined seven witnesses only and produced the following documents.

- (i) PW1-Nagorao-injured witness.
- (ii) FIR Exh. 27.
- (iii) PW2-Padminibai, wife of PW1 and injured witness.
- (iv) PW3 – Dr. Kendre, who gave medical certificates of PW1-Nagorao (Exh. 30), PW2-Padmini (Exh.33), Nivrutti (Exh.31) and Sunita (Exh. 32).
- (v) PW4-Ram Mhatre, panch to the seizure of axe used by accused No. 1 – Sitaram, who turned hostile.
- (vi) PW5-panch to the seizure. Panchanama Exh. 35 to 38, turned hostile.
- (vii) PW6-Panch to the spot panchanama Exh. 41, formal.
- (viii) PW7-Eye witness – Sheshabai.
- (ix) The prosecution has not examined the IO.

5. As per evidence of PW1 Nagorao, on the day of incident, in the morning accused Sitaram was grazing his cattle in his field which was objected by him. He deposed that, at that time, all the accused came to his field and abused him as 'धेडग्या, मांग्या' etc. In the first place, this is contrary to his FIR Exh. 27. As per the FIR, the incident of abusing took place at 7:00 p.m. and not in the morning. Secondly, PW1 Nagorao stated that, he had submitted a report about the first incident at the Police Station but the said report is not on record.

6. Similarly, PW2 Padmini has deposed that, abusing in the name of caste took place in the morning. She stated that, she was also abused as 'धेडग्या, मांग्या'. According to PW1 Nagorao, his wife was not present at the time of incident in the morning. She also deposed that, a written report about the morning incident was lodged at Gangakhed Police Station but it was not brought on record.

7. Thus, evidence of PW1 and 2 on the point of intentional insult with regard to their caste is materially different. According to the prosecution case, it took place in the evening at 7:00 p.m. They deposed that, it took place in the morning. They stated that, a separate report to that effect was lodged but it was not produced in the court. Therefore, the incident of intentional insult with regard to their caste cannot be said to be proved.

8. The evidence of PW1 and PW2 shows that, on the same day, in the evening all the accused persons came with sticks and axe in their hands and they had beaten PW1, PW2 and PW1's cousin Nivrutti.

9. With regard to assault, the prosecution has not examined PW1's cousin Nivrutti. PW1 has deposed that, after lodging the

report, when he came back all the accused persons assaulted him first and thereafter his wife Padmini and thereafter Nivrutti. He stated that, he sustained injuries at 5-6 places due to beating by the accused by sticks and axe. He has accordingly lodged FIR Exh. 27. He did not depose about assault on his daughter Sunita.

10. Contrary to his evidence, PW2 Padmini has stated that the accused came to her house and started assaulting her with sticks and axe in their hands and thereafter her husband and daughter Sunita came and thereafter they were assaulted. She stated that, accused no. 1 – Sitaram had pushed her outside the house and accused no. 1 inflicted a stick blow on her back. She deposed about assault on Nivrutti and her daughter Sunita and intervention by Sheshabai. Her evidence is materially different than the evidence of PW1 as to the place of incident. According to her, assault took place inside the house whereas; according to PW1, it took place outside the house. The sequence in which PW1, PW2, Nivrutti and Sunita were assaulted is also changed. According to PW1, he was first assaulted whereas; PW2 stated that, she was first assaulted and then her husband came. Both have admitted that, the accused have filed report at the Police Station against them for which they were prosecuted.

11. Evidence of PW3 - Dr. Bhagwan Kendre shows following injuries on the person of PW1-Nagorao (Certificate Exh. 30).

1. Contusion lacerated wounds having size 3 x ½ x ¼ cm. over right paratal area.
2. CLW having size x 3 x ½ cm. on frontal area.
3. CLW having 2 x ½ cm. on left parietal area.
4. Contusion left scapula area 6 x 2 cm.
5. Contusion right scapula area 6 x 2 cm.
6. Abrasion right shoulder having 1 x 1 cm. over right shoulder.
7. Contusion having size by 1 x 1 cm. over thy.

. He examined Sunita, who had two contusions (certificate Exh. 32).

1. Contusion having size of 5 x 2 cm. over the left scapula area.
2. Contusion having size 3 x 2 cm. over right thy.

. He examined PW2 Padmini, who had one contusion (certificate Exh. 33).

1. Contusion 4 x 2 cm. on left infra scapular area. Injury was simple in nature seems to be caused hard and blunt object. The age of injury within 24 hrs.

. He also examined Nivrutti, who sustained 2 contusions (certificate Exh. 31).

1. Contusion lacerated would having size 3 x ½ x ¼ cm. over occipital region.
2. Contusion left scufaulaer area having size 4 x 2 cm.

12. The evidence of PW1 & 2 is vague. It does not disclose which accused was carrying which weapon, who gave blows of which weapon and on which part of the body. PW2 stated that, she was assaulted by sticks and axe but she has suffered only one contusion and no injury by axe. Another injured witness Sunita is also not examined. Panchas have turned hostile. PW7 Sheshabai has supported PW1 and PW2 but her evidence is equally vague.

13. It is necessary that the trial Court judges should conduct the evidence in presence of APP, but in this case, APP was absent. It has therefore resulted into vague evidence. The material witnesses Nivrutti and Sunita are not examined. Investigating Officer has also not been examined. There are *inter se* contradictions between the evidence of PW1 and PW2. Since the incident has taken place on 01.08.98, it will not be proper to remand the matter at this stage. Considering the evidence on record, I find that, the view taken by the ld. trial Judge is reasonable and probable view and, therefore, no interference is warranted.

14. The appeal is dismissed. The bail bonds of the accused stand cancelled.

[A. M. DHAVAL]
JUDGE

sgp