

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

CRIMINAL REVISION APPLICATION NO.365 OF 2005

Radhakisan Rambhau Chakkar,
Age 50 Years, Occu. Agriculture,
R/o. Kohler, Tq. Georai,
Dist. Beed. **.. APPLICANT**

VERSUS

1. The State of Maharashtra.
2. Santosh s/o. Asaram Yeole,
Age 24 Years.
3. Asaram s/o. Nagu Yeole,
Age 52 Years.
4. Radhakisan s/o. Ramrao Mane.
Age 34 years.
5. Sakharam s/o. Ramrao Mane,
Age 26 years.

All Occu. Agriculture
and R/o. Kohler, Tq. Georai,
Dist. Beed.

.. RESPONDENTS

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Mr.V.D.Salunke, Advocate for the applicant.
Mr.A.A.Jagatkar, Additional Public Prosecutor
for the respondent—State.
Mr.Vivek Dhage, Advocate for respondent nos.2
to 5.

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**CORAM: V.M.DESHPANDE, J.
DATE : 10.04.2019**

ORAL JUDGMENT:

1] By this Revision Application, the first informant, namely, Radhakisan Rambhau Chakkar, questions the correctness of the judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Georai, District Beed, dated 14.07.2005 in R.C.C. No.202 of 2001, whereby the learned Magistrate acquitted the respondent nos.2 to 5 for the offences punishable under Sections 324, 323, 504, 506 r/w. 34 of the Indian Penal Code.

2] I heard Shri V.D.Salunke, learned counsel for the applicant, Shri A.A.Jagatkar, learned Additional Public Prosecutor for the respondent-State and Shri Vivek Dhage, learned counsel for the respondent nos.2 to 5 – original accused, and also perused the record with their able assistance.

3] According to the prosecution, the incident has occurred on 31.03.2001 and the present applicant—original complainant lodged the First Information Report against respondent nos.2 to 5. According to him, the dispute arose in respect of demolition of bund. According to the complaint and the evidence of the complainant, he was assaulted by the present respondent nos.2 to 5, so also, his brother Shrimant, his sons Dnyaneshwar and Dattu, and his father Rambhau were also assaulted by means of stick. According to the complainant, he sustained bleeding injuries on his head. Before the learned Magistrate, in all four witnesses were examined, namely, PW-1 Shahubai w/o. Sonaji Sutar, who is examined as eye witness to the incident, PW-2 Radhakisan Rambhau Chakkar – original complainant, PW-3 Dadarao Rangnath Chakkar – independent eye witness

and PW-4 Baliram Sukhalal Jadhav,
Investigating Officer.

4] Perusal of the evidence of PW-1 Shahubai allows me to record stamp of approval on the finding recorded by the learned Magistrate, she is got up witness and she cannot be termed as eye witness for the reason that according to her evidence, the incident in question has occurred in the agricultural field owned by PW-2 Radhakisan, situated at village Revki, in between 2.00 to 2.30 p.m., which is contrary to the prosecution case. According to the prosecution case, the incident has occurred at village Kolher and even according to the first informant - Radhakisan, the incident has occurred at 11.00 a.m. In that view of the matter, the evidence of PW-1 Shahubai has no use rather she is got up witness. Though it is claimed by the first informant that he sustained bleeding injuries similarly his

brother Shrimant, son Dnyaneshwar and father Rambhau were also assaulted by the present respondent nos.2 to 5, for the reasons best known to the prosecution, the prosecution did not examine the Doctor, who has clinically examined the first informant and his brother and sons, resultantly, the injury alleged to have occurred are remained to be proved. Further the prosecution has not examined the brother, sons and father of the complainant, who were also assaulted according to the version of the prosecution.

5] The Court below has also found that there are serious lapses on the part of the Investigating Officer. After acquittal, the State did not prefer any Appeal challenging the judgment and order of acquittal passed by the Court below.

6] The scope of the Revision is much narrow than the Appeal against acquittal.

Once it is noticed that the injuries alleged to have been suffered by Radhakisan, are not proved by the prosecution and the best possible evidence is not brought on record by the prosecution, therefore, the view taken by the learned Magistrate cannot be disturbed. Consequently, the Revision Application fails and the same is dismissed. Rule stands discharged.

[V.M.DESHPANDE]
JUDGE

DDC