

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 412/2013

State of Maharashtra,
through Police Station Officer,
Police Station Khandala,
Tal. Pusad, Dist. Yavatmla.

.... **APPELLANT**

// VERSUS //

1. Digambar Nagoji Bhalerao,
Aged about 42 years, Occ. Farmer,
2. Ashok Nagoji Bhalerao,
Aged about 46 years, Occ. Farmer,
3. Sau. Vanmalabai Digambar Bhalerao,
Aged about 27 years, Occ. Private Service,
4. Shivaji Jijabai Bhagat,
Aged about 30 years, Occ. Labour,

All R/o. Fetra, P. S. Khandala,
Tq. Pusad, Dist. Yavatmal.

.... **RESPONDENTS**

Shri S. D. Sirpurkar, APP for appellant/State.

Shri R. R. Gour, Advocate (appointed) for respondent Nos. 2 and 4.

CORAM : VINAY JOSHI, J.

DATED : 15.11.2021

JUDGMENT

Heard.

2. By consent of the learned counsel present for the parties,

appeal is taken up for final disposal.

3. At the instance of report lodged by one Ashok Bhalerao crime was registered for offence punishable under Sections 324, 504, 506(ii) read with Section 34 of the Indian Penal Code. It was a case of prosecution that on 09.01.2006 around 11.00 a.m. accused assaulted informant by means of axe and sticks causing him injury of serious nature. Moreover, the accused abused and threatened him. On the basis of said allegations, accused were tried and were came to be acquitted vide impugned judgment and order dated 19.06.2012 in R.C.C. No. 49/2006 by learned Judicial Magistrate First Class, Pusad, District Yavatmal.

4. The State has challenged the judgment and order of acquittal. It is stated that the Trial Court has not given fair opportunity to the prosecution to lead evidence which resulted into acquittal. Besides that, it is contended that the testimony of sole prosecution witness has supported the case. Still the Trial Court dispensed with the statement of accused and acquitted them.

5. With the assistance of both sides, I have gone through the impugned judgment and the evidence recorded in the proceedings. It

reveals that in the Trial Court, the prosecution led evidence of only panch witness in whose presence spot panchanama was carried. Para 7 of the judgment indicates that despite opportunity, neither the informant nor other eye-witnesses remained present to lead evidence. The prosecution was lodged in the year 2006 and for the period of six years, the matter was dragged. I do not find any reason to state that learned Magistrate has disposed of the case in hasty manner. So far as the merits are concerned, there is no evidence of material witness on the point of occurrence. Any how the ultimate result would be of acquittal since there is no substantive evidence against the accused. Up-till-now, the period of 15 years has lapsed from the occurrence. The impugned judgment and order calls for no interference.

6. In view of above, appeal stands dismissed.

7. Fees of appointed Advocate for respondent Nos. 2 and 4 be paid as per Rules.

JUDGE