



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

CRIMINAL APPEAL NO.180 OF 2006

1. Tejrao S/o Dharba Ghule,
Age: 45 years, Occ : Agri.,
R/o Dhamdham, Tq. Jintur,
Dist. Parbhani.
2. Shivaji S/o Nanduji Sonune,
Age: 35 years, Occ : Agri.,
R/o Barda, Tq. Sengaon,
Dist. Hingoli.
3. Smt. Anjanbai Tejraro Ghule,
Age: 44 years, Occ : Household,
R/o Dhamdham, Tq. Jintur,
Dist. Parbhani.
4. Smt. Dagdabai Aba Ghule,
Age: 45 years, Occ : Household,
R/o Dhamdham, Tq. Jintur,
Dist. Parbhani.

... Appellants
(Orig. accused No.1, 7, 6 & 6)

Versus

The State of Maharashtra

...Respondent

...
Mr. M.P. Kale, Advocate for Appellants
Ms. Ashlesha S. Deshmukh, APP for Respondent/State
...

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 21st OCTOBER, 2024
PRONOUNCED ON : 13th NOVEMBER, 2024**

JUDGMENT :

1. In instant appeal there is challenge to the judgment and order dated 31/01/2006, passed by learned 1st Adhoc Additional Sessions Judge, Parbhani, in Sessions Case No.187/2003, rendering judgment of guild against present appellants for offence punishable under Sections 147, 323 r/w 149 of Indian Penal Code.

PROSECUTION CASE IN BRIEF

2. In all seven accused were booked and charged by Bamani Police Station, Taluka Jintur, District Parbhani, on report lodged by PW3 alleging that he owns agricultural land. Accused No.1 Haribhau and Aba are his neighbours. They used to obstruct PW3 from cultivating land as they were interested in purchasing the same. They used to damage the ridge to persuade him to sell the land. On 21/05/2001, at around 11:00 a.m., accused persons came to his field and started damaging the ridge to which informant obstructed. As a result of which he and his son Prakash were beaten. Vishrantibai, Gokarnabai and Sumanbai intervened and they also suffered injuries. Therefore, informant approached Bamani Police Station and lodged report (Exhibit-61), on the basis of which crime was registered for offence punishable under Sections 147, 148, 326 r/w 149, 323 r/w 149 and 506 r/w 149 of I.P.C.

3. After investigation at the hands of PW8, accused were duly charge-sheeted and were made to face trial before learned 1st Adhoc Additional District Judge, Parbhani, vide Sessions Case No.187/2003. After appreciating the oral and documentary evidence, learned Trial Judge accepted the prosecution version and held accused Nos.1 to 7 guilty for offence punishable under Sections 147 and 323 r/w 149. However, except present appellants rest of the accused were given benefit of Probation of Offenders Act, vide

judgment dated 31/01/2006. Appellants Tejrao, Shivaji, Anjanbai and Dagdabai have preferred instant appeal on various grounds mentioned in the appeal.

SUBMISSIONS

On behalf of Appellants :

4. In brief, learned counsel for appellants pointed out that the occurrence is admittedly result of civil dispute. Parties are neighbours of each other. According to him, there is no convincing or legally accepted evidence in support of the accusation. He pointed out that merely by applying Section 149, prosecution story has been developed, which indicates that there is no legally acceptable evidence. That, there is no independent witness. He pointed out that accused Nos.5 and 6, in spite of being women, were not beneficiaries of Probation of Offenders Act, even when there are no criminal antecedents.

5. Learned counsel pointed out that learned Trial Judge in paragraph No.55 of it's judgment is itself reached to the finding and conclusion that there is no evidence about use of any deadly weapon and even held that prosecution has failed to prove offence of Section 326 and 506, but still guilt has been recorded for offence punishable under Section 323.

6. Learned counsel took this Court through evidence of

PW7 Medical Officer and would submit that injuries are merely abrasions and contusions and are simple in nature and could be possible in scuffle. There was no intention to commit offence. For all above reasons, he prays to extend the benefit of Probation of Offenders Act, even to accused Nos.5 and 6 as it has been extended to other accused. In the alternative it is submitted that, matter being decades old, he be let off on sentence already undergone.

On behalf of the State :

7. While opposing above appeal, learned APP submitted that there is cogent, reliable and convincing evidence. All injured are witnesses. They have deposed and crystalised the role of appellants. Medical evidence supports injured witnesses version and therefore, she supports the conviction rendered by Trial Court and prays to dismiss the appeal.

EVIDENCE BEFORE TRIAL COURT

8. The sum and substance of the evidence of seven witnesses examined by prosecution in support of its case, and their role and status can be summarized as under:

PW1 – Panch to Spot Panchanama (Exhibit-54);

PW2 – Panch to Memorandum of disclosure and seizure (Exhibit-56)

PW3 – Informant Ashroba Namdeo Ghule deposed that,

“I own 20 Acres land in Dhamdham "shivar". I had purchase land of 01 Hec.70 R, from the brother of accused No.1

Sheshrao Dharba Ghule, about three yrs. before the incident, for Rs.90,000/-. The adjacent owners of this land purchased by me are accused No.1 Haribhau Dharba and Aba Dharba. Accused were not allowing me to cultivate the land and used to say that, they would not allow me to cultivate the land in spite of my purchase. The accused used to damage the common bund and used to throw the soil in my land. I, Gajanan, Gokarna, Vishwrantabai, Prakash were proceeding to the field on 21.5.2001 at 11.00 a.m. At that time, all the accused were damaging the common bund and throwing the lumps into my field. I tried to persuade the accused not to damage the common bund. The accused soon thereafter started abusing. Thereafter all the accused came there and accused Nagnath delivered a blow of age on the head of Gajanan due to which Gajanan fell down, when my son Prakas had gone to the rescue of Gajanan, all the accused beat Prakash by sticks and exe. Prakash sustained injuries on his head and on his hand. Accused Anjanabai pushed Vishrantibal due to which she fell down and sustained injury on her elbow. Accused Datta beat Gokarna by means of stick. Gokarna sustained contused injuries on her hand and back. I had also sustained injury on my head. Bhagwan and Mankarna came there. They were taking us to the village in the bullock-cart. We reached the entrance of "Pandan". At that time, accused No.1 Tejrao, Aba Dharba, his daughter-in-law Sumanbai w/o Nagu and Shivaji came there and stopped our bullock-cart. Thereafter accused Nos. 2 to 6 followed us in the bullock-cart. Accused Teja held my hand and the deceased accused Aba delivered the blow of stick on my head, accused Nos. 2 to 6 started beating us. I Court not know in that jelley as to who was beating whom. We rushed towards the bullock cart and went to the village in it. And thereafter went to the police station. I went to Bamani P.S. with Gajanan at about 7.30 to 8.00 p.m. Since we had serious injuries, we were referred to the hospital at Jintur by the police directly, Dr. Weghmare sutured my wound and referred me to Jintur and from there I was referred to Parbhani. On reacting Jintur at 9:30 p.m. I did not go to Parbhani for want of money. On the next day, I collected the money from my relatives and went to Parbhani. Witness again states that after collecting money from the relatives on the next day, I went to Bamani lodged the report and then went to Parbhani."

PW4 – Son of Informant PW3, Prakash Ashroba Ghule deposed that,

“The incident took place about four years ago. On that day the accused were damaging the common bund and throwing the soil in our land. We had left for the field at 10.00 a.m. My brother, my parents and my wife were with me at that time. All the accused were damaging the common bund and throwing the soil in our land. Gajanan said to the accused that they should not damage the common bund and they would settle the matter amicably as the villagers are coming. Accused Anjanabal delivered a blow of stick on the head of Gajanan. When my mother Vishrantibai came there, accused Anjana and Shobha pushed her. Gajanan fell unconscious because of beating. There after all the accused started beating us. Accused Santosh and Shobha were holding axes and the remaining accused were holding sticks. My wife had sustained injury on her head. Accused beat on my head, back and waist. Accused had beaten me with the handle of the axe. Thereafter accused went away and we were returning to our village. Thereafter we were returning to our village by the Pandan. Thereafter when we reached near the village, accused Tejrao, Aba and Shivaji Sonwane came there and intercepted our bullock cart. Accused Tejrao delivered a blow of stick on the head of my father. Accused started beating us from our front and back side. Gajanan was lying unconscious in the bullock-cart. He was also beaten with handle of axe by the accused. To save ourselves we tied the bulls to the bullock-cart and went home. Dr. Ghuge from our village treated Gajanan and thereafter we went to Bamni Police Station. Dr. referred us to Jintur as Gajanan was vomiting and Gajanan was thereafter referred to Parbhani.”

PW5 – Second son of Informant PW3, Gajanan Ashroba Ghule deposed that,

“The incident took place four years ago. On the day of the incident, I left the house at 10.00 a.m. and reached the field at 11.00 a.m. I, Prakash, Gokarnabai and Ashroba had gone to the field for carrying our agricultural operations called "Paali". Santosh, Anjanabai, Geetabai, Nagnath, Dagdabai, Sunita, Datta and Shobha were destroying the common bund and throwing the mud in our land. I said to them that would settle the dispute of common bundh in the presence of some respectable persons of the village. Thereupon, all these

people said to me that it was their land and they would not allow us to cultivate it. soon, thereafter, accused Nagnath delivered a blow of stick on my head. Accused Anjanabai delivered a blow of my arm by means of stick. I fainted and fell down. Thereafter I was taken to the hospital, where I regained my consciousness. At that time, Ashroba, Gokarna, Prakash Vishrantabai were noticed by me in injured condition. I asked them as to who had beaten them, they told me that accused Tejmal, accused Sonune, deceased and others beat them at the entrance of the Pandan from both the sides. Thereafter, we went to Bamni P.S."

PW6 – Wife of informant PW3, Vishrantabai Ashroba Ghule deposed that,

"The incident took place about four years ago. At that time, the accused were working in the field. Accused Datta, Sanotsh and Anjanabai were damaging the Dhure and throwing the mud into our land. Gajanan went to the accused to dissuade them from doing so. Accused said that it was their land and they would not allow us to cultivate it. The accused Datta delivered a blow of stick on the head of Gajanan. Anjanabai and Santosh were also beating Gajanan. Gajanan fell down due to injury. When I had gone for rescue of Gajanan I was pushed by accused Anjana and Santosh. When my daughter in law Gokarna had come to our rescue, she was also beaten by Datta, Shobha, Geeta, Dagdabai, Anjanabai. Prakash was also beaten. Accused beat my husband also. Since Gajanan was unconscious, we put him in to the bullock cart and took him to the village. Near "Pandan" accused Tejrao, Aba, Suman and one relative from Barda by name Sonue came there and they were saying as to why your relatives were abused. All these persons stopped our bullock cart. Accused Tejrao delivered a blow of stick on the head of my husband. I also beaten by the accused on my back and on my wrist. Gajanan was unconscious but accused Tejrao delivered two blows of stick to him also. When Gokarna had gone for rescue. She was also beaten by axe on her head. At the same time, some accused person came from behind and all of them started beating by means of stick and handle of axe. Thereafter we took the bullock cart to village Dhamdham, after providing treatment to Gajanan, we went to police station Bamani after one or two hours."

PW7 – Medical expert who examined injured Dr. Ganpat Jainkiram

Waghmare deposed that,

"1. I was working as M.O. in Rural Hospital Jinture on 22.5.2001. Police constable B.No.462 of Bamani P.S. had brought Dynydeo Bapurao Sangle, Gajanan Ashroba Ghule, Ishrantabai w/o Ashroba Ghule and Prakash s/o Ashroba Ghule all r/o Dhamdham. I examined all of them on 22.5.2001. at 7.30 p.m.

2- I examined Dyandeo Bapurao Sangle, age 30 years, r/o Vazar, and noticed following injuries.

1. C.L.W. of $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$ cms, near left mastoid area, caused by hard and blunt weapon age within 12 hours. It is was simple in nature.

3. I examined Gajanan Ashorba Ghule, age 23 years, r/o Dhamdham and found following injuries.

1. Abrasion $1 \times 2 \times \frac{1}{2}$ cms. on scalp, age within 12 hours caused by hard and blunt object which was simple in nature.

2. Contusion of 2×2 cms. in size, left hand dorsal, with tenderness and swelling, caused by hard and blunt object age within 12 hours.

3. Contusion 1×1 cm. on right forearm caused by hard and blunt object, age within 12 hours simple in nature.

Patient was referred to civil hospital. Parbhani for injury No.2

4. Accordingly I issued the certificates. It bears my signature. Their contents are correct. The certificate of Dhnyandeo is at Exh.71 and certificate of Gajanan is at Exhibit 72

5. I examined Ishrantabai w/o Ashroba Ghule, age 45 yrs. r/o Dhamdham and following injuries:

1. Abrasion $1 \times 2 \times \frac{1}{2}$ cm. Right wrist area, caused by hand and blunt object, age within 12 hrs. simple in nature.

2. Abrasion $1 \times 2 \times \frac{1}{2}$ cm, left elbow area, caused by hard and blunt object, age within 12 hours simple in nature

3. Contusion 3×1 cm, right lumbar area, caused by hard and blunt object age within 12 hours simple in nature

Accordingly I Issued the certificate. It bears my signature. It contents are correct. It is at Exhibit-73

6. Thereafter I examined Prakash s/o Ashroba Ghule, 25 years, r/o Dhamdham and found following injuries.

1. C.L.W. $4 \times 1 \times 1$ cms on scalp, caused by hard and blunt object, age was within 12 hours, simple in nature.

2. Abrasion 1×1 cm. left fore-arm caused by hard and blunt object age within 12 hours, simple in nature,

3. Abrasion 3 x 2 cm. left shoulder area caused by hard and blunt object age within 12 hours, simple in nature.
 4. Contusion of 1 x 1 cm in size, left scapular area, caused by hard and blunt object age within 12 hours. Simple in nature.
 5. Abras of ½ x ½ cm left clavicular area caused by hard and blunt object age was within 12 hours and simple in nature.
 6. Contusion 1 x 1 cm. right wrist area, caused by hard and blunt object age was within 12 hours and simple in nature.
 Patient was referred to Parbhani owing to injuries No.6. Accordingly I issued the certificate. Its contents are correct. It bears my signature. It is at Exh.74. Such types of injuries are possible by stickas and by the blow of blunt side of axe. Abrasion in Exh.73 at serial No.1 can be caused if a person is pushed and falls on the ground.”

PW8 – Investigating Officer

ANALYSIS

9. The case of prosecution apparently rested on evidence of in all eight witnesses, amongst them the evidence of informant PW3, his son Prakash PW4, second son Gajanan PW5 and wife Vishrantabai PW6 is relevant. On studying their depositions in witness-box, they have all consistently testified that accused are their adjacent land owners and they were not allowing them to cultivate their land and were damaging the field by various modes. They all speak that at around 11:00 a.m. on 21/05/2001, initially accused hurled abuses and thereafter they started beating. Roles of all accused have come on record. Two sons and wife of informant were present at the time of incident and as such they are natural witnesses and their presence cannot be disputed.

10. In the cross-examination of informant and PW5 occurrence of two incidents is virtually got confirmed. In paragraph No.9 of informant's deposition, mere suggestions regarding assault by means of axe and it being hit on the head of Prakash are given, but they are not shown to be omissions or contradictions.

11. Similar thing has happened while Prakash PW4, his brother Gajanan PW5 and mother Vishrantabai PW6 are cross-examined. Suggestion about previous case is brought in cross-examination of all witnesses.

12. Therefore, on complete re-appreciation, witnesses are apparently consistent. Though there are certain variances and minor discrepancies, the same can be attributable to failure to reproduce events after gap in the witness-box and witnesses more particularly being from rural background, face unusual circumstances in the Court atmosphere and they faced piercing cross-examination. Therefore, there is possibility of some discrepancies or failing to depose on some aspect. However, when the core case of prosecution about occurrence of dispute and assault having remained intact, there is no reason to doubt their version. All witnesses, though related, are natural witnesses and their presence is bound to be there in their own field.

13. When the alleged incident has taken place in the agricultural field possessed by complainant, accused party has to be aggressor. In the case in hand, testimonies of PW3, his sons and wife as stated above are virtually remained unshaken about accused persons indulging in abuse and thereafter mounting attack. Evidence of PW7 confirms injuries. There is injured account supported by medical account. Considering the nature of injuries and the aspect of simple injuries being suffered, offence of Section 323 is rightly held to be attracted by the Trial Court.

14. Learned counsel for appellants pointed out that appellant Nos.3 and 4 are women and other accused by virtue of age stood beneficiaries of Section 4 of the Probation of Offenders Act. The occurrence is almost more than two decades old and being neighbours all appellants need to be extended the similar benefit.

15. On going through the judgment, it is emerged that learned Trial Judge has extended benefit of Probation of Offenders Act, to accused Nos.2, 3 and 4 to whom roles are distinctly attributed. As regards present appellant Nos.3 and 4 are concerned, admittedly they are ladies and they too have clear antecedents. Therefore, the Trial Court ought to have extended similar benefit even to these two ladies. As regards to appellant No1. Tejrao and appellant No.2 Shivaji are concerned, their roles are crystallised and considering their age and roles played by them, they do not deserve

benefit of Probation of Offenders Act, however, considering the long journey undertaken since commencement of trial to it's conclusion and till decision of this appeal, more than two decades have been lapsed. Therefore, sentence inflicted to them deserves to be modified, particularly in the background that the parties are neighbours. Hence, I proceed to pass following order:

ORDER

- (I) Criminal Appeal is partly allowed.
- (II) Conviction of all accused is maintained, however, benefit of Probation of Offenders Act, be extended also to appellant Nos.3 and 4, Smt. Anjanbai Tejrao Ghule and Smt. Dagdabai Aba Ghule, on similar conditions stipulated by the Trial Court while extending the benefit to accused Nos.2, 3 and 4.
- (III) Sentence of appellant Nos.1 and 2, Tejrao S/o Dharba Ghule and Shivaji S/o Nanduji Sonune is reduced to one month instead of six months. Rest of the order remains intact.

(ABHAY S. WAGHWASE, J.)