



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 669 OF 2005

The State of Maharashtra,
Through Police Station,
Parner, Dist. Ahmednagar.

... Appellant
(Orig. Complainant)

Versus

1. Babaji Bhika Ghogare,
Age : 35 years, Occu. : Agri.,
2. Gangaram Bhika Ghogare,
Age : 50 years, Occu. : Agri.,
3. Rohidas Gangaram Ghogare,
Age : 19 years, Occu. : Agri.

All R/o. Shirsale, Tq. Parner,
Dist. Ahmednagar.

... Respondents
(Orig. Accused)

...
Mrs. Chaitali Chaudhari – Kutti, APP for Appellant – State.
Mr. N.C. Garud, Advocate for Respondent Nos.1 to 3.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19th JUNE, 2024

PRONOUNCED ON : 3rd JULY, 2024

JUDGMENT :

1. By way of instant appeal, State is questioning the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Parner in R.T.C. No. 81 of 2000, acquitting present respondents from offence punishable under sections 323, 324, 325, 504 and 506 read with section 34 of Indian Penal Code (IPC).

IN NUTSHELL CASE OF PROSECUTION IN TRIAL COURT IS AS UNDER

2. Parner Police charge-sheeted present respondent nos.1 to 3 for above offences on the premise that, on 19.05.2000 informant's husband Vishnu was getting land measured through surveyor. Accused, who had visited the spot, initially uprooted the marking, abused informant's husband Vishnu and thereafter, accused Babaji, Gangaram and Rohidas beat Vishnu, pelted stones on informant's nephew Gorakh and Eknath causing all of them severe injuries. They visited police station and were referred to hospital and on report of PW4 Bhamabai, crime was registered bearing No.117 of 2000. The same was investigated by PW9 ASI Dnyandeo Dighe, who was Investigating Officer. Case was tried by learned Judicial Magistrate First Class, Parner, who on appreciating the oral evidence of 9 witnesses and documentary evidence, reached to a finding that case of prosecution is not free from doubt, version of prosecution does not pass test of credibility and prosecution case is not proved beyond reasonable doubt extending benefit of doubt to all respondents herein by acquitting them vide judgment and order dated 15.06.2005, which is now taken exception to by the State by filing instant appeal.

SUM AND SUBSTANCE OF THE EVIDENCE ON RECORD

3. **PW1** Karbhari is the pancha to spot panchanama (Exh.22).

PW2 Eknath deposed that, he has agricultural land in Gut no.236. Land of accused is touching to his land and there is common bandh in between them. On 19.05.2000, measurement was asked for. While marking was being done as per Surveyor, accused came there and uprooted the stones. They objected to the measurement and abused him and his uncle Vishnu. When Vishnu asked them not to abuse, accused Babaji pelted stone on his brother Gorakh, causing him bleeding injury to the left eyebrow. Accused Gangaram pelted stone on Bhimabai and causing her bleeding injury. Accused Rohidas gave kick and fist blows to him. Thereafter, they all approached police.

PW3 Vishnu stated that, on 19.05.2000, around 2:00 p.m., there was measurement at the hands of Surveyor and this witness was putting boundary stones as per measurement. That time, accused came and objected to the measurement, started abusing and when asked not to abuse, accused Babaji pelted stone on Gorakh, causing him bleeding injury to left eyebrow. When his wife came, Gangaram pelted stone on her forehead, causing her bleeding injury. Rohidas gave fist and kick blows to Eknath his

nephew. All accused issued threats and went away.

PW4 Bhamabai informant deposed that, incident took place at the time of measurement. Accused Nos.1 to 3 came and started destroying stone marks. Accused no.1 pelted stone towards Gorakh, which hit him on his frontal bone near left eyebrow. Gorakh fell down. Accused no.2 Gangaram pelted stone on her forehead. When her nephew Eknath came, Rohidas gave him kick and fist blows and also hit him with stones, and therefore, they approached police and she lodged report.

PW5 Gorakh stated that, at the time measurement, accused came and tried to disturb the measurement. That, accused started hurling abuses. Accused Babaji hurled stone on him, which hit him on forehead near eyebrow, causing him bleeding injury. When his aunt came, Gangaram pelted stone, causing her injury to forehead. Rohidas showered fist and kick blows to Eknath. His aunt lodged report.

PW6 Dr. Kashinath Andhale, **PW7** Dr. Smita Mhaske and **PW8** Dr. R. K. Shelke, are medical practitioners, who examined and treated injured witnesses.

PW9 ASI Dnyandeo Dighe is the Investigating Officer.

Defence has also adduced evidence of DW1 Prakash, a Surveyor at Exh.65. According to him, he carried measurement by fixing boundaries in land Gut No.236 and recorded statement. According to him, there was objection to the boundaries. He drew panchanama. Pancha witness refused to sign and so he came back to Parner.

SUBMISSIONS

On behalf of Appellant :-

4. Learned APP would point out that, prosecution had proved the charges beyond reasonable doubt. That, informant herself was injured. Remaining injured too suffered injuries at the hands of accused and they are also examined. That, they all are consistent about role played by each of the three accused. That, their testimonies have remained unshaken. That, medical authorities, who examined injured and issued certificates are also examined by prosecution in trial court. Therefore, all necessary ingredients for attracting charges was very much available in the prosecution evidence in the trial court. However, it is pointed out that, merely accepting defence witness testimony, who was examined at belated stage during trial, acquittal is recorded. According to learned APP, there was injured witness account supported by medical evidence, and therefore, learned trial court ought not to have discarded or doubted such evidence. According

to learned APP, trial court failed to appreciate the evidence as well as law and erred in acquitting the accused and giving benefit of doubt, and hence, she prays to allow the appeal by setting aside the impugned judgment.

On behalf of Respondents :-

5. Per contra, learned counsel for accused respondents pointed out that, there is false implication due to previous enmity. That, there was no occurrence as alleged. According to him, independent witness DW1 Prakash, who was present at the time of incident, flatly denied any occurrence of assault by accused as is reported by informant. That, there is false, afterthought and motivated complaint. That, witnesses are not consistent. That, medical evidence does not tally with injured witness account. That medical witness is not full-proof regarding injuries and thereby according to him, learned trial court committed no error in refusing to accept the case of prosecution. According to him, there is correct appreciation. Learned counsel emphasized that, in view of acquittal passed by learned trial court, there is strong presumption of innocence in favour of accused. That, in appeal, same cannot be disturbed, more particularly, when there is correct appreciation and possible view is taken by trial court. For all above reasons, he prays to dismiss the appeal.

ANALYSIS

6. Informant Bhamabai (PW4) is the wife of PW3 Vishnu. She lodged report at Exh.28 at Parner police station at 16:00 hours on 19.05.2000 and the translated version is as under :-

“
PW 4

Complaint

Exhibit No. 28
Date :19.04.2000

I Sau. Bhagabai Vishnu Ghogare, Age 34, Occupation: Agriculture, r/at Shirsule, Tal. Parner by remaining present at Police station and giving in written that, I am residing with my husband and kids at the above mentioned place.

Today i.e 19.05.2000 at around 2.00 O'clock in the afternoon the demolition of '**Bandh**' situated at Gat No. 234 and 236 at our farm was going on. At that time 1) Babaji Bhika Ghogare, 2) Gangaram Bhikaji Ghogare 3) Rohidas Gangaram Ghogare, were picking up the stones placed by the people and setting them aside. Then my husband, Vishnu Tukaram Ghogare, told them that you should not do that. If you don't like the ad measuring, you return the ad measurement. At that time Balaji Bhika Ghogare 2) Gangaram Bhikaji Ghogare, 3) Rohidas Gangaram Ghogare, beat me and my nephew, Goraksha Kisan Ghogare, also other nephew Eknath Kisan Ghogare, all of us three with stones and abused and beat us and threatened us with insane language. My nephew and I have to go to the hospital because of a blow to the head. Also, nephews Eknath and Goraksh want to go to the hospital as they have been hit by stones in their eyes.

However on 19.05.2000 at around 2.00 o'clock in the afternoon, while the ad measuring of '**Bandh**' in the fields situated at Group No. 234 and 236 in Shirsule was going on 1) Balaji Bhika Ghogare, 2) Gangaram Bhikaji Ghogare, 3) Rohidas Gangaram Ghogare, all are resident of Shirsule abused me and my nephews, 1) Goraksha and 2) Eknath by hitting us three on the head and forehead with a stone and with kicks and punches and threatened us. Hence, this complaint against them.

My complaint is read over to me and it is true.

Before me
Sd/-
Police Station, Parner.

complaint by
Thumb Impression
Bhagabai Vishnu Ghogare

I got the information to file a complaint from the Magistrate.

Before me
Sd/-
Police Station, Parner.

complaint by
Thumb Impression
Bhagabai Vishnu Ghogare

Registration No. 338/2000
IPC sections 323,504 and 506
date 19.04.2000
Time : 16.00 hrs.
sd/-

I.CR. No. I 17/2000
IPC sections 323,504 and 506
Registration Time and Date
20.05.2000 at 10.40 hrs.
Sd/-
Police Station, Parner."

[Translated by Senior Translator, High Court of Bombay Bench at Aurangabad]

7. Here, sum and substance of the prosecution case is that, on 19.05.2000, while measurement of field of complainant in Gut no.236 was in progress, accused Nos.1 to 3 came and started destroying stone marks and pelted stones on informant and her nephew Gorakh and Eknath, causing all of them severe injuries. There is no dispute that, accused are adjoining neighbours. Complainant party and accused party have common bandh.

8. **PW2** Eknath has deposed that, while they were putting stones as per directions of Surveyor, accused respondents came there, uprooted the stones fixed by them. PW3 Vishnu requested Babaji and Gangaram not to remove stones and further stated that, if accused are not agreeing with the measurement, then they should seek measurement, upon which accused Babaji, Gangaram and Rohidas started abusing him and PW3 Vishnu and when asked not to do so, this witness has stated that, accused Babaji took one stone and pelted on the left eyebrow of his brother Gorakh, who sustained bleeding injury. Thereafter, informant Bhamabai (PW4) and his brother's wife Shobha came there and then Gangaram

pelted stone on forehead of informant Bhamabai, causing bleeding injury. Rohidas forcibly made him lie and gave him kick and fist blows.

9. **PW3** Vishnu also deposed that, accused Babaji pelted stone on the person of his nephew Gorakh and hit him on the left eyebrow, causing bleeding injury. When his wife came, Gangaram pelted stone on her forehead, causing bleeding injury. Rohidas forcibly made his nephew Eknath lie and gave fist and kick blows, as a result of which, he suffered injury on his head and back.

10. Informant **PW4** Bhamabai also attributed role to accused no.1 of pelting stone on her nephew Gorakh, which hit him on the frontal bone near left eyebrow. Accused Gangaram pelted stone on her, causing injury on the forehead. Rohidas gave fist and kick blows to PW2 Eknath.

11. All above three witnesses are subjected to cross-examination. Suggestion to PW2 Eknath in cross-examination that, they were fixing boundaries and accused persons were uprooting it, shows that, presence of accused has not been denied or disputed. Dispute over bandh is also brought on record in his cross-examination. He is questioned about nature of injuries and witness

has answered that, he suffered simple injury on the head. Therefore, occurrence is virtually got confirmed. Likewise, on visiting cross-examination of PW3 Vishnu, simplicitor suggestions are given about falsely deposing about the occurrence and remaining cross is not on relevant aspect.

Cross-examination of PW4 informant Bhamabai is on the point of second wife of her husband Hausabai surrounding to the spot. She had denied that, she cannot state as to who caused injury to Gorakh. She stated that, at the time of lodging complaint, she has informed who has caused injury to Gorakh, Eknath and himself, but she is unable to assign why specific role is not appearing in the complaint. In paragraph no.2 of her cross, though she admitted that, two persons from T.I.L.R. office were present, she volunteered that, "after seeing the parties in a quarreling mood, they left the spot of incident", but she is further unable to state at what time they left the spot. She stated that, she suffered two injuries, one on the forehead and second on the nose and further answered that, she cannot state location of remaining two injured persons.

12. **PW5** Gorakh, who attributed role of pelting stone to accused no.1 Babaji, categorically deposed that, the said stone hit him near eyebrow and he raised hue and cry, hearing which, PW4

Bhamabai came there and at that time, accused no.2 Gangaram pelted stone on her aunt, causing her injury to the forehead and accused no.3 gave fist and kick blows to Eknath.

In cross-examination, he stated that, he fell down on the ground and he sustained injury on the left eyebrow and became unconscious. He answered that, he did not see the stone, with which, he was assaulted. He further denied that, he was completely unconscious, but stated that, there was sudden darkness due to stone being hit on the eye. Remaining questions are on the point of when his statement was recorded and distance at which PW4 Bhamabai was at that time working.

13. Therefore, above discussed testimonies of PW2 Eknath, PW3 Vishnu, PW4 Bhamabai and PW5 Gorakh, on careful appreciation show that, these witnesses are consistent about all three accused abusing them and when objected by PW3 Vishnu, accused Babaji hitting stone to Gorakh, which landed on left eyebrow and caused him bleeding injury. When informant came, they all are consistent about Gangaram hitting stone on her i.e. on her forehead. They are all further consistent about Rohidas making PW2 Eknath fall and giving him fist and kick blows. Thus, all are injured witnesses except PW3 Vishnu and they are defining roles of each of the accused and where they suffered injuries. They all

speaking about approaching police and being referred to medical examination. Exh.28 is made on the basis of registration of crime at 4:00 p.m.

14. PW6 Dr. Kashinath Andhale at Exh.34 deposed about three injured being referred by police on 19.05.2000. He narrated following injuries suffered by them :-

“(i) PW4 Bhamabai informant :-

“(a) C.L.W. on forehead at middle 3 x 2 x 1 cm.
(b) C.L.W. on left side forehead 3 x 2 x 1 cm.
(c) abrasion on nose – 3 x 2 cm.”

(ii) PW2 Eknath Ghogre :-

“(a) C.L.W. on vertex 3 x 2 x 1 cm.
(b) Contusion on left 6 x 4 cm.

(iii) PW5 Gorakh Ghogre :-

“(a) C.L.W. on left Supra orbital region 3 x 2 x 1 cm.
(b) Complaints of loss of vision of left eye.

Doctor has described injuries to be within 24 hours and possible by hard and blunt object. As regards to Gorakh is concerned, he deposed that, patient was referred to Civil Hospital at Ahmednagar for further treatment and examination. He identified medical certificates at Exhs. 38, 39 and 40.

Cross-examination of the doctor is that, Exh.53 is X-ray plate and not photograph. There is no inward number over it. He

has not received report from Ophthalmic Surgeon, Civil Hospital. In cross itself it is brought that, Exh.53 bears name of injured Gorakh. Rest of the cross-examination is not on relevant.

15. Therefore, from above discussed evidence of injured eye witnesses i.e. PW2 Eknath, PW4 Bhamabai and PW5 Gorakh coupled with evidence of PW6 Dr. Kashinath Andhale, prosecution has demonstrated that, above three injured had suffered injuries in the occurrence which took place in afternoon of 19.05.2000. After referral by P.H.C. Parner police station, PW6 Dr. Kashinath Andhale examined injured and his evidence has not been rendered doubtful.

16. Prosecution has also adduced evidence of PW7 Dr. Smita Mhaske and PW8 Dr. R. K. Shelke, who had occasion to further examine PW5 Gorakh, while they were working at Ahmednagar Civil Hospital in the capacity of Medical Officer and doctor in Ophthalmic Department.

PW7 Dr. Smita Mhaske has narrated following injuries noticed by her after examination of PW5 Gorakh Ghogre :-

“C.L.W. said C.L.W. was sutured. Said injury was above left eyebrow.”

In cross-examination PW7 Dr. Smita Mhaske deposed

that, she obtained X-ray and admitted that, she did not issue certificate. She issued Exh.46 noting history of assault being referred by P.H.C. Parner and has come across sutured injuries admeasuring 3 x ½ x ½ CMS. She identified said document at Exh.47 certificate. She also noted complaint of "Piminilar of vision of left eye".

17. PW8 Dr. R. K. Shelke, another Medical Officer attached to Ahmednagar Civil Hospital in Eye O.P.D., deposed at Exh.48 about PW5 Gorakh approaching for Disability Certificate. He identified case paper at Exh.49 and claims to have examined patient and noticed that left eye was suffering from optic atrophy with no perception of light. He identified Disability Certificate Exh.50.

In cross-examination, he admitted that, he cannot opined since when patient was suffering from loss of vision.

18. Therefore, above discussion shows that, PW6 Dr. Smita Mhaske initially on being referred by police, examined PW2 Eknath, PW4 Bhamabai and PW5 Gorakh on 19.05.2000 itself and issued medical certificates. PW7 Dr. Smita Mhaske, who was officiating Civil Hospital Ahmednagar, also examined PW5 Gorakh on referral by P.H.C. Parner i.e. by PW9. Likewise, PW8 Dr. R. K. Shelke issued Disability Certificate.

19. Learned counsel for respondents submitted that, there is no independent witness. All witnesses examined are related witnesses. That, informant has not specified, who hit where and who suffered injury where. His thrust is that, ocular account is not finding support from medical account. Number of injuries narrated by witnesses do not tally with medical evidence and defence witness falsified version of prosecution.

20. It is noticed that, occurrence has taken place in the field owned by complainant party and accused party. They are admittedly immediate neighbours of each other and they are sharing common bandh. Therefore, there was no possibility of other neighbour to be present there. Hence, there cannot be an independent witness account.

Here, there is not only direct evidence, but also injured witness account. It is settled position of law that testimonies of injured witnesses always stand at higher pedestal and should not be discarded or disbelieved without sufficient reasons. Here, as discussed above, version of injured witnesses is convincing. There is prompt lodgment of complaint and medical evidence is also forthcoming.

Argument is raised by learned counsel for respondent that, there is variance in the medical evidence and ocular evidence. However, here, this court did not notice any major variances except number of injuries stated by informant. She is a rustic lady, and therefore, might have exaggerated by stating that she suffered three injuries. Merely on such count, the injuries actually suffered by her and her entire testimony cannot be rendered doubtful.

Even law is fairly settled that, when there is variance in the ocular account and medical account, ocular account would prevail unless medical evidence is shown to be inconsistent. In the recent case of *State of Uttarakhand v. Darshan Singh*, (2020) 12 SCC 605, while deciding Criminal Appeal No.1856 of 2013, the Hon'ble Apex Court has expounded elaborately the case law on the subject of conflict between medical evidence and ocular evidence i.e. in the case of *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259, by taking into account the precedent in the case of *Ram Narain Singh v. State of Punjab*, AIR 1975 SC 1727; *State of Haryana v. Bhagirath*; [(1999) 5 SCC 96]; *Solanki Chimanbhai Ukabhai v. State of Gujarat*, AIR 1983 SC 484; *Mani Ram v. State of U.P.* [(1994 Supp.(2) SCC 289]; *State of U.P. v. Hari Chand*, (2010) 1 SCC (Cri.) 1112;

The ratio culled from above is that, where eye witness account is credible and trustworthy, medical evidence which is merely corroborative evidence, ocular account would prevail. In the above referred case ***State of Hari Chand (Supra)***, the Hon'ble Apex court has categorically observed in paragraph no. 13 that, *"in any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."* Similarly, in the case of ***Abdul Sayeed (Supra)***, in paragraph no.39, it is observed that,

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

Here, applying the principle of ocular evidence as the best evidence unless there is reason to doubt it, in the considered opinion of this court, on careful re-appreciation, witnesses are found to be consistent about role of each of the accused. Here, medical evidence also completely supports ocular account. Resultantly, the above arguments put-forth by learned counsel for respondents has no substance and force.

Here, it needs to be noted that, as stated above, witnesses are rustic villagers and agriculturist. Informant is a lady and also an injured witness. They have immediately approached police after the occurrence. It is fairly settled that, FIR is not an encyclopedia. Therefore, meticulous details of occurrence are not expected to be reproduced in its entirety, more particularly, when the informant herself is an injured party. However, she claims that, she did report who did what. Mere specific details of the occurrence not finding place in report at Exh.28 is itself not sufficient to doubt her substantive evidence. Report is lodged promptly and priority is given to refer them for medical examination. Therefore, mere failure of the lady to define roles and who suffered injury where at the time of FIR, cannot be given undue weightage.

21. As regards to testimony of DW1 Prakash is concerned, this witness has deposed that, he carried out measurement and himself fixed boundaries. Kisan Tukaram Ghogare has given statement before him that, four boundaries shown to him are not admitted to him. Therefore, he prepared panchanama. Panchas refused to sign, and therefore, he came back at Parner.

In cross-examination, he admitted that, as measurement was not consented by Kisan and Vishnu, panchas refused to sign. He drew panchanama at Exh.67. He answered

that, in his presence, there was no incident of beating to anybody. That, if at all there is quarrel, then he has to report to Senior Officer.

Relying on above testimony, learned counsel for respondents would strenuously submit that, this independent witness has denied any occurrence. His presence is admitted by prosecution witnesses. Deliberately he has not been examined by prosecution, and therefore, defence examined him as its own witness.

22. No doubt, DW1 Prakash was called upon to carryout measurement and he visited Gut no.236. In his examination-in-chief, he stated that, he paid visit to Gut no.236 on 19.05.2000. His testimony shows that, as boundaries were not admitted by Kisan, he drew panchanama and as panchas refused to sign, he came back to Parner.

It is pertinent to note that, informant PW4 Bhamabai in her cross-examination, in paragraph no.2, has stated that, two persons from T.I.L.R. were present there, but she further categorically **volunteered** that, after seeing the parties in quarreling mood, they left the spot. Here, after quarrel there was abuse. Hence, witness speaks of overt acts by accused Babaji, Gangaram and Rohidas thereafter.

Resultantly, it is apparent from above that the main occurrence of pelting stone has taken place after DW1 Prakash left the spot.

23. To sum up, here, there is consistent injured eye witness account. Medical evidence supports ocular account. Mere failure of injured rustic villagers to depose about single incident of pelting stone and suffering plural injuries, itself is not sufficient to entirely discard their testimonies. Medical witnesses have examined the injured shortly after the occurrence and have issued medical certificates. As stated above, roles of accused are consistently coming from injured eye witness account. Not only one medical expert, but two more medical experts i.e. PW7 Dr. Smita Mhaske and PW8 Dr. R. K. Shelke are corroborating and lending support to prosecution version regarding injuries suffered by Gorakh. He has suffered partial disability.

Consequently, in the considered opinion of this court, on re-appreciation of entire evidence, prosecution did succeed in establishing the charge of section 323 of IPC only. Necessary ingredients to attract sections 324, 325, 504 and 506 of IPC are not shown to be available.

24. This court is mindful of the settled legal position and principles to be borne in mind while dealing with an appeal against acquittal. But, this appellate court also being empowered to independently re-appreciate the evidence in its entirety and when it is noticed that findings reached at by learned trial court while recording acquittal are patently perverse and against the evidence on record, interference becomes necessary. Law to this extent is fairly settled in case of ***Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186***, the Hon'ble Apex Court held that,

“13.The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly.....”

Hence, here on careful re-appreciation, this court having noticed that ocular account is sufficiently corroborated by medical evidence, prosecution story was required to be accepted to the extent of commission of offence under section 323 of IPC.

25. Perused the judgment under challenge. In the considered opinion of this court, there is apparently mis-appreciation of the crucial evidence including that of injured eye witnesses and wrong conclusion has been drawn, holding that, prosecution evidence did not pass test of credibility and that

prosecution failed to adduce clear, cogent and satisfactory evidence or prove the case beyond reasonable doubt.

For above reasons, there being improper appreciation of available evidence, it is a perverse judgment. It is also not a case where two views are possible so as to extend benefit of doubt to the accused. Hence, such findings and judgment cannot be allowed to be sustained. Therefore, interference is called for. Hence, I proceed to pass the following order :-

ORDER

- I) Criminal Appeal is partly allowed.
- II) The impugned judgment and order dated 15.06.2005 passed by the learned Judicial Magistrate First Class, Parner in R.T.C. No. 81 of 2000 is hereby quashed and set aside.
- III) The respondents/original accused Nos.(i) Babaji Bhika Ghogare, (ii) Gangaram Bhika Ghogare and (iii) Rohidas Gangaram Ghogare are hereby held guilty for the offence punishable under section 323 r/w 34 of IPC and are hereby sentenced to suffer rigorous imprisonment for one year each and to pay fine of Rs.1,000/- (Rupees One Thousand Only) each i/d to suffer further rigorous imprisonment for three months by each of them.

- IV) The respondents/original accused shall surrender their bail bonds and they should surrender within a period of three weeks from today.
- V) The respondents/original accused shall be entitled to relief of set off, if any, as prescribed under the provisions of Section 428 of the Code of Criminal Procedure.
- VI) The trial court shall ensure execution of sentence.
- VII) It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)