



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 262 OF 2006

The State of Maharashtra,
Through Police Station, Bori,
Tq. Jintur, Dist. Parbhani.

... Appellant.
(Orig. Complainant)

Versus

1. Hanuman Harinarayan Somani,
Age : 36 years, Occu. : Agri.,
R/o. Kausadi, Tq. Jintoor,
Dist. Parbhani.
2. Pralhadrao Vithalrao Ikhe,
Age : 36 years, Occu. : Agri.,
R/o. As above.
3. Pandurang Wamanrao Suryawanshi,
Age : 50 years, Occu. : Agri.,
R/o. As above.
4. Taterao Ramrao Barvkar,
Age : 47 years, Occu. : Agri.,
5. Hanuman Kanhyalal Sharma,
Age : 48 years, Occu. : Agri.,
As above.

... Respondents
(Orig. Accused)

.....
Mr. S. M. Ganachari, APP for Appellant - State.
Mr. Swapnil S. Rathi, Advocate for Respondents.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25 JULY 2025

PRONOUNCED ON : 08 AUGUST 2025

JUDGMENT :

1. State is taking exception to the judgment and order

dated 13.12.2005 passed by the 2nd Ad-hoc Additional Sessions Judge, Parbhani in Special Case No. 02 of 2005 acquitting present respondents from offence punishable under sections 147, 148, 323 read with section 149 of the Indian Penal Code and under section 3(1)(x)(XIV) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

IN BRIEF CASE OF PROSECUTION IN TRIAL COURT AS UNDER

2. Informant Kamalbai and her husband Jagan were returning to their house on 12.01.2004 at around 5:00 p.m. According to prosecution, accused nos.1 to 5 questioned them for occupying the Gairan land and asked them to vacate the same. In above backdrop, it is alleged that, accused persons initially threatened, then hurled on caste abuse. Accused no.1 tried to give a blow of axe on Jagan, but it was prevented by informant Kamalbai by intervening, however, she suffered injury. Thereafter, accused no.4 and other accused used stick for thrashing Kamalbai and Jagan i.e. husband and wife, who were referred for medical examination and on report of PW1 informant Kamalbai crime bearing No.07 of 2004 was registered.

On completion of investigation, present respondents were charge-sheeted and tried vide Special Case No.02 of 2005, during which prosecution is examined in all 5 witnesses. Learned

trial court heard arguments advanced by each of the side and vide judgment and order dated 12.12.2005 acquitted the accused from all the charges.

Aggrieved by the same, State has come in appeal on various grounds raised in appeal memo.

SUBMISSIONS

3. Learned APP would submit that, case of prosecution has been proved beyond reasonable doubt. Informant Kamalbai and her husband Jagan were assaulted by accused persons by means of axe as well as sticks. That, both of them specifically named the accused in their testimonies, which is consistent and lending support to each other. That, in support of the injuries inflicted by accused and suffered by informant and her husband, medical expert who had occasion to treat, is also examined. That, injuries are proved. Therefore, all ingredients for attracting section 323 of IPC are available in prosecution evidence. That, accused persons had formed unlawful assembly with common object. That, there were abuses on caste basis, and therefore, even provisions of Atrocities Act were attracted. He submitted that, investigation was carried out by PW5 S.D.P.O. Vaijapur, who is authorized to investigate such cases. That, evidence of all witnesses has remained intact and core of the prosecution could not get shaken in

spite of extensive cross. Thus, according to learned APP, learned trial court ought to have convicted the accused, but it having failed, learned APP urges indulgence by allowing the appeal.

4. In answer to above, while supporting the judgment of acquittal, learned counsel for respondents would submit that, admittedly, there was long standing dispute over cultivation of land, which was Gairan land. That, informant and her husband have both admitted that they were upset with accused persons and as such complaint is motivated. He submitted that, evidence of informant and her husband is not consistent on material count and they are not lending support to each other on the point of actual occurrence. Even persons, who are not accused are attributed role, therefore, according to learned counsel, case of prosecution has comes under shadow of doubt. Evidence of PW1 Kamalbai and PW2 Jagan is full of material improvements and exaggerations.

Inviting attention of this court to the medical expert's evidence, it is submitted that, doctor has been cross examined and candidly answered that, injury suffered by informant and her husband are not possible by use of axe of which allegations are made for being used. That, in spite of availability of independent witnesses, same are not examined, therefore except the evidence

of interested witnesses there were no other evidence and so learned counsel supports the judgment of acquittal and prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

5. Re-appreciated and reanalyzed the entire evidence. It seems that prosecution has examined in all five witnesses. Crucial evidence is of informant PW1 Kamalbai and her husband PW2 Jagaon only. For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of above witnesses :

PW1 Kamalbai is the informant. Relevant portion of her evidence at Exhibit 26 is as under :-

“1. I know accused No.1 to 5 present before the court. Some of the accused are Marwadi, Maratha and Mali by caste. I am par Pardhi by caste. I along with my husband and children was residing in Gairan land at Kausadi since 8-10 years. We had committed encroachment of that land and therefore a criminal proceeding was launched against us.

2. The incident took place prior to about 2 years on Monday. On the date of incident I was returning from Bazar of Bori along with my husband travelling in auto rickshaw. We alighted from that auto near Mashid situated at some distance from Kausadi. Myself and my husband both started proceeding towards our residence by walk at about 5 p.m. When we had reached near the Pandan, accused no.1 to 5

intercepted us. They abused us in filthy language. They asked us to leave that Gairan land uttering the words 'Gairanatum Nighun Ja Nahiter Tumacha Raktapat Karu', Myself and my husband both had told the accused persons that if the govt allots that encroached portion of land to us then we would stay there and if not we would vacate. They rushed to beat us. We had shown the papers pertaining to our demands for allotment of that encroached land to us by Govt. Accused Taterao tore those papers. Taterao and Hanuman uttered the word's 'Konta Ambedkar Baba Ahe, Amche Kai Shete Wakade Karil.' Accused Hanuman Somani rushed to beat my husband by means of an axe. I immediately rushed there and when I prevented him from giving the blow of that axe, I sustained injury on my right hand, due to which I sustained tow injuries on my right hand. Accused Taterao gave stick blow to me, one Santoba (Gurkha) who is not an accused in this case had given stick blow to my husband. My husband ran away Upon that accused left the spot. Then we went to Bori Police station. I narrated the incident and police men recorded my complaint. During the incident I had thrown the vegetable on the spot. I again say that the accused persons had thrown the vegetable on the spot. I am now shown that complaint bearing my T.I. which I identify its contents are correct. It is at Exh.27. I was sent by the police men top. H.C. Bori where I received treatment. I can produce caste certificate."

PW2 Jagan is the husband of informant. Relevant portion of his evidence at Exhibit 28 is as under:-

"I know accused no.1 to 5 present before court. The complainant Kamalbai is my wife. I am pardhi by caste. All the accused are Maratha by caste. Prior to about 3-4 years I committed encroachment over 4 and 1/2 acres Gairan land situated at Kausadi. Prior to about 2 years the accused persons and villagers from Kausadi had lodged complaint and submitted representations against us and therefore Mr Bharkad Talathi lodged report against us at Bori P.S. on the basis of that complaint we are facing prosecution in the court of Jintoor. After initiation of that criminal case against us the present incident took place. The incident took place on Monday at about 5 p.m. at About 5 p.m, myself and my wife had alighted from auto rickshaw while returning from Bori Bazar near slum area of Kausadi. Thereafter myself and my wife both started to proceed by walk towards Gairan. We noticed accused no.1 to 5 besides 7-8 other persons sitting on the road. The moment we reached near them accused Taterao and accused Hanuman Somani both asked me to vacate the Gairan land. They both had also uttered words. 'Gairan Sodun ja Nahiter Raktapat Hoil'. When I had shown some papers to them. They had torn the same. And abused us uttering the words, 'Tumhi Pardhi Kai Karnar'. They also uttered the words, 'Babasahebchya Mansani kitih Morche Kadhale Tarihi Amache Kahi Wakade Honar Nahi, The Sarpanch Hanuman Somani had tried to give blow of axe to me upon that my wife rushed to prevent that blow because of which the axe had strick on her right hand and she sustained injury. Meanwhile one Santoba Gurakhi was standing behind me gave a blow of stick on my head on my back side because of which I felt gidiness and I ran away. Then I started making hue and cry. Then all the accused ran away.

The vegetables purchased by us were lying on the spot. Then myself and my wife went to police station where she lodged report. Then Hanuman Gaikwad P.S.I. brought us in police jeep to the spot and I had shown him the spot of incident. Police men had sent us to P.H.C. Bori for treatment.”

ANALYSIS

6. On critical re-appreciation of above evidence, it is noticed by this court that according to informant, accused nos.1 to 5 intercepted their way and they abused in filthy language. Therefore, primarily allegations are omnibus and general in nature. There cannot be abuses in chorus. No distinct role is attributed by informant. She has stated that, accused no.1 who was armed with axe, rushed to assault her husband, but she intervened, and therefore, thereby she suffered injury to her right hand. She also attributed stick blow to Taterao as well as one Santoba, but admittedly Santoba is not accused and charge-sheeted or tried.

7. Her husband PW2 Jagan, who is examined at Exh.28 regarding incidence testified that, when he and his wife were returning from Bori Bazar, they saw accused nos.1 to 5 along with 7 to 8 other persons sitting on the road. According to him, only accused Taterao and Hanuman asked him to vacate the Gairan

land and they also alleged utterance of words “Gairan Sodun Ja Nahiter Raktapat Hoil”, such utterance is not stated by his wife PW1 Kamalbai. He stated that, Hanuman tried to give blow of axe on him, but his wife rushed to prevent the blow and as such the axe struck on her right hand. Even she has named Taterao for giving stick blow to her and such role is not crystallized by her husband PW2 Jagan. While under cross, PW1 Kamalbai has admitted that because of repeated complaints by accused, they were annoyed and fed up.

8. PW4 Arun, panch to recovery of axe and spot has not supported the prosecution story. Therefore, recovery also comes under shadow of doubt.

9. PW3 Dr. Prakash Dake is the Medical Expert, but as pointed out, he in his cross examination has denied injury to be suffered by PW1 informant to be possible by axe. Rather he attributes injury to be due to blunt object.

10. Therefore, cumulative effect of above evidence is that, *firstly*, there is previous annoyance and relations are not cordial. PW1 informant Kamalbai and PW2 Jagan are not consistent about utterance of abuse. As regards to role of accused Hanuman and

accused Taterao as stated by PW1 informant is not supported by PW2 Jagan husband. Therefore, as submitted by learned counsel for respondents, here, evidence of prosecution is not full-proof and convincing. Learned trial court has acquitted accused from all the charges. Bearing in mind the law settled while appreciating the case of acquittal, this court does not find any patent infirmity or perversity so as to interfere.

11. No case being made out, the appeal is dismissed.

(ABHAY S. WAGHWASE, J.)