



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 78 OF 2009

The State of Maharashtra

...Appellant

Versus

1. Rajendra Namdeo Nikam,
Age: 25 Years, Occu: Agri,
2. Nana Namdeo Nikam,
Age: 34 Years, Occu: Agri,

Both resident of Dhamangaon,
Taluka Chalisgaon, Dist. Jalgaon.

...Respondents
(Ori. Accused)

AND

CRIMINAL REVISION APPLICATION NO. 289 OF 2007

Babanrao Keshavrao Nikam
Age yrs, Occ. Pensionar,
R/o Dhamangaon, Tq. Chalisgaon,
Dist. Jalgaon

...Applicant

Versus

1. Rajendra Namdeo Nikam,
Age 33 yrs, Occ. Agri,
2. Nana Namdeo Nikam,
Age 34 yrs, Occ. Agri
Both R/o Dhamangaon,
Tq. Chalisgaon, Dist. Jalgaon

...Respondents
(Ori. Accused)

3. The State of Maharashtra

...Respondents

- Mrs. P. V. Diggikar, Advocate for the Appellant/State
- Mr. M. S. Karad, Advocate for the Respondent Nos. 1 and 2
- Mr. V. D. Patnoorkar, Advocate for Applicant

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : DECEMBER 09, 2025
PRONOUNCED ON : DECEMBER 11, 2025

JUDGMENT :

1. In this appeal, there is challenge by State to the judgment and order of acquittal dated 11.01.2007 passed by learned Ad-hoc Additional Sessions Judge, Jalgaon in Criminal Appeal No. 60/1999 setting aside judgment and order of conviction dated 18.11.1999 passed by learned JMFC, Chalisgaon convicting the respondent for offence under Sections 323, 324, 325 read with Section 34 of Indian Penal Code vide R.C.C. no. 51/1997.

Even original complainant has preferred revision against order of acquittal passed by First Appellate Court. As both proceedings are arising out of same judgment and order, are decided by way of this common judgment.

2. Facts giving rise to the appeal are that, Mehunbare Police Station, Tq. Chalisgaon charge-sheeted present respondents original accused for above offences on the premise that complainant Babanrao Keshavrao Patil was assaulted on 04.07.1997 by the accused by means of stick and axe causing him grievous injuries and issuing life threats. Based on such report, police registered crime bearing no. 62/1997 for above offences.

At trial, prosecution adduced evidence of Babanrao Keshavrao

Patil at Exhibit 22, PW 2 Ananda Vinayak Pawar at Exhibit 25, PW 3 Ramrao Shamrao Nikam, panch witness at Exhibit 28, PW 4 Kanchanmala w/o Babanrao Nika was examined as eye witness at Exhibit 31 and PW 5 Bapu Gangaram More at Exhibit 32, PW 6 is the investigating officer.

After appreciating the oral and documentary evidence, learned Trial Judge convicted the accused for offence under Sections 332, 324 and sentenced them to suffer RI for six months and to pay fine i.e. by judgment and order dated 11.01.2007.

3. Aggrieved by the above, original accused preferred Criminal Appeal no. 60/1999 questioning the legality and sustainability of the judgment of the Trial Court by invoking section 374 of Cr.P.C. The learned First Appellate Court re-appreciated the evidence and allowed the appeal by setting aside the order of learned Trial Court vide judgment and order dated 11.01.2007.

Feeling aggrieved by the above, State as well as original Complainant have preferred appeal as well as revision respectively.

4. Learned APP would point out that here complaint was lodged promptly on account of being questioned for damaging ridge (common bandh). Complainant had questioned accused i.e. immediate neighbors. On such count, there are allegations that accused Rajendra and Nana, who were armed with stick and axe respectively, had assaulted complainant causing

him grievous injuries. She would further point out that, there was independent eye witness account along with evidence of wife who was present at the time of scene of occurrence. Therefore, there was direct and convincing evidence, which had remained unshaken and, therefore, according to her, learned Trial Court was pleased to accept the case of prosecution and convict the accused and that there was no reason to disturb such sound and reasoned judgment. She would further point out that, learned First Appellate Court overturned the above judgment merely on the ground that there is no medical certificate or examination of doctor. According to her, there was recovery of articles and the same were also before Court and were rather identified. However, such evidence has not been correctly appreciated. That, merely for failure to send seized clothes to the analysis, is made another reason to doubt the prosecution. Hence, she urges to allow the appeal by setting aside the judgment and order of First Appellate Court by restoring the judgment and order passed by Trial Court.

5. Learned Counsel for Revisionist has adopted the submissions of learned APP and he also supports the order of Trial Court and urges to set aside the order of First Appellate Court, which according to him, is not in consonance with the evidence on record.

6. Learned Counsel for the Respondents/Orig. Accused supported the judgment and order of First Appellate Court and urges to dismissed the

Appeal and Revision Application.

EVIDENCE ON RECORD

7. PW 1 Babanrao complainant testified at Exhibit 22 that there is a common bandh between his property and property of accused. On 04.06.1997, he noticed the common bandh to be damaged and, therefore, he asked accused why they damaged it. At that time, it is alleged that both accused abused him followed by heated exchange of words and thereafter, he alleges that accused Rajendra reached the spot armed with stick and axe as well as accused Nana also came with axe. Accused Rajendra inflicted stick blow on his chest, abdomen and so he fell down and thereafter, both accused inflicted axe blows on the knee and so he shouted for help and at that time, Yogesh Walmik, Ananda Vinayak Pawar, Bapu Gangaram More came to his rescue and he was initially went to Mehunbare police station and from there he was referred to Hospital Dhule. He identified complaint at Exhibit 23 and also identified articles axe and stick.

8. PW 2 Ananda Vinayak Pawar did not support prosecution and, therefore, he was cross examined by APP. PW 3 Ramrao who acted as panch to spot Exhibit 29 and panch to seizure of cloth Exhibit 30 and testified to that extent.

PW 4 Kanchanmala at Exhibit 32 testified that complainant is her husband. She deposed that when her husband noticed damaged to the

band, he questioned accused. According to her, accused persons assaulted her husband by axe blows. She claims that hearing cries of her daughter, she came out and saw accused assaulting her husband and he had suffered bleeding injury on back, abdomen and so she raised hue and cry, as a result of which, Bapu, Yogesh and Ananda rushed to the spot.

9. PW 5 Bapu More deposed that while he was working in the field, complainant was assaulted by accused on 02.00 pm on inquiry who broke the bandh. According to him, complainant had sustained bleeding injury and blows of axe were given by accused persons by sharp edged side and, therefore, he rushed to the spot and rescued the accused from the hands of accused and took him to the house. He stated that accused persons threatened complainant to kill.

PW 6 is the investigating officer.

RE-APPRECIATED THE ENTIRE EVIDENCE

10. Accused and complainant seems to be immediate neighbors having lands connected by a common ridge. It is complainant's case that on 04.06.1997 having found damage to the ridge, he questioned accused for the same. It is pertinent to note that, in the examination-in-chief itself, he has attributed abused to accused, who are in all two in numbers, but who abused in what manner has not been clarified by him. According to him,

both accused assaulted him by stick as well as axe causing him grievous injury to chest, abdomen and knee. Omission is brought in his cross about accused inflicting blows of stick on the chest and abdomen. Though he has deposed about stick and axe shown to him to be same, there is no seizure panchnama under Section 27 of the Evidence Act.

11. Another witness PW 2, who was examined as independent witness, has not supported prosecution case. PW 3 is panch to spot panchnama as well seizure of cloths panchnama.

12. PW 4 seems to be wife of complainant and on carefully going through her testimony, it creates doubt that, she was present at the time of actual assault as according to her she merely stated that accused persons assaulted her husband by means of axe, however, she does not record about stick being used as is deposed by her husband. Even her version is that, accused persons inflicted injuries on the back side of her husband, which is not the story of complainant. While under cross, omission is brought about husband sustaining injuries on stomach and back.

13. PW 5 who claims to be acquainted with both has also testified but according to him, with what assault was made is not clarified by him as it is merely stated by him that complainant was assaulted by accused. In chief, he stated that blow of the axe was given by accused with sharp edged

but his cross shows that he had not stated about it in statement to police. Omission is also brought regarding complainant sustaining injury due to said blow. Therefore, these are material omissions.

14. As pointed out, here, firstly witnesses like complainant and his wife are not consistent and are not lending support to each other about actual incident. Though articles are said to be seized, it is not shown to be under memorandum of disclosure even when it is not the case of prosecution that the articles were lying at the spot. Most importantly, when complainant himself has stated about he visiting civil hospital, neither medical certificate nor the treating doctor is examined. Therefore, it is a case of several doubts and, therefore, First Appellate Court committed no error whatsoever in acquitting the accused in spite of Trial Court recording guilt. The view taken by First Appellate Court is the most possible view that could emerge even on re-appreciation.

15. Resultantly, Appeal of State and Revision by complainant deserves to be dismissed. Accordingly, Criminal Appeal as well as Criminal Revision Application stand dismissed.

(ABHAY S. WAGHWASE, J.)

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