



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 338 OF 2006

The State of Maharashtra,
Through PSI Police Station,
Udgir Rural, Dist. Latur.

... Appellant

Versus

1. Someshwar Ishwar Patil,
Age : 20 years, Occu. : Agri.,
R/o. Tadlapur, Tq. Udgir.

2. Ishwar Madhavrao Patil,
Age : 46 years, Occu. : Agri.,
R/o. Tadlapur, Tq. Udgir.

... Respondents
(Orig. Accused)

.....
Mrs. D. S. Jape, APP for Appellant – State.

Mr. S. V. Chillarge, Advocate for Respondent Nos.1 and 2.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29 JULY 2025

PRONOUNCED ON : 08 AUGUST 2025

JUDGMENT :

1. By instant appeal, State is assailing the judgment and order dated 06.01.2006 passed by learned Judicial Magistrate First Class, Udgir in R.C.C. No. 83 of 1999 acquitting accused from offence punishable under sections 323, 324, 504 read with section 34 of Indian Penal Code.

2. Case of prosecution in brief is that, on 16.02.1999,

present respondents, suspecting informant tendering application regarding commission of theft, assaulted him by means of stone, kicks and fist blows. He lodged report, thereby setting law into motion. After investigation, both accused were charge-sheeted and tried before learned J.M.F.C., Udgir, who after conducting trial, by judgment and order dated 06.01.2006 acquitted the accused from all charges.

Aggrieved by the same, State has preferred instant appeal on various grounds mentioned in the appeal memo.

3. Learned APP submitted that, there was clear, cogent and convincing evidence. That, informant, his parents and independent witnesses have been examined by prosecution and all are consistent. That, role of each of the accused is clearly emerging from the very testimony of witnesses. That, their evidence has not been shaken. Moreover, according to learned APP, in support of its case regarding beating, medical expert has also been examined by prosecution. He has also stepped into the witness box and placed injury certificate on record. However, in spite of availability of such overwhelming evidence, learned trial court acquitted the accused. According to learned APP, the findings and conclusion reached at are contrary to the evidence on record. That, there is independent eye witness account, but the same has not been considered

properly and hence, learned APP urges to allow the appeal by setting aside the impugned judgment.

4. Per contra, learned counsel for respondents original accused submits that, prosecution has miserably failed to establish the charge levelled against them. That, prosecution could not at the outset demonstrate who was injured, whether it was Parmeshwar or it was Dayanand. That, witnesses including parents of informant are not consistent. That, there is no recovery of alleged stone. That, there are material omissions and inconsistencies in their testimony and after considering the same, learned trial court was pleased to acquit the accused. There is no infirmity or perversity in the impugned judgment and hence he urges for dismissal of appeal.

EVIDENCE BEFORE TRIAL COURT

5. Prosecution in support of its case has examined following witnesses :-

PW1 Shoobhabai is the mother of informant.

PW2 Gurunath is the panch to spot panchanama;

PW3 Dayanand is the informant;

PW4 Balaji is the father of informant;

PW5 Govind is the independent witness;

PW6 Parmeshwar is the independent witness;

PW7 Dr. Sangram Patwari is the Medical Officer.

6. Evidence of informant (PW3) and that of alleged independent witnesses namely Govind (PW5) and Parmeshwar (PW6) is only crucial. Though parents are examined, they are not party to the incident.

7. Informant PW3 Dayanand in his evidence at Exh.21 stated that occurrence took place on 16.02.1999 at about 9:00 a.m., while he was proceeding to the land along with his livestock. He claims that, accused persons suspected that he had filled an application before M.S.E.B. alleging theft of electricity to reduce the electricity bill. He testified that, both accused assaulted him by means of stone on the head causing bleeding injury and they left the spot. At such time, he fell unconscious. Govind, Babarao Tondare and Parmeshwar Tondare, who were present at the spot, brought him to police station where he lodged report at Exh.22.

In cross examination he answered that, on that day, he met his parents at the bus stand and along with his father, Govind, Babarao Tondare and Parmeshwar Tondare, all went to police station. He denied about first time stating in the court that Babarao brought him to the police station, however, he is unable to assign reason as to why police has not recorded in such manner in his statement. He admitted that, Parmeshwar is son of Vinayak. Rest is all denial.

8. PW5 Govind, the independent witness is examined at Exh.29 and he stated that, while he was proceeding toward his field, there was quarrel going on between informant and accused no.1. Accused nos.1 and 2 were beating the informant by means of fists and stones. He attributed pelting of stone on the head of informant to accused no.1.

While under cross, he answered that, in his statement to police, he stated portion marked "A". He further admitted that, when he rushed to the spot of incident, he had seen accused no.2 and his son accused no.1 abusing and beating Parmeshwar as Parmeshwar had told that accused were using electricity by theft. He again answered that, he had stated the police that accused had beaten Dayanand and his such statement was correct.

9. PW6 Parmeshwar, another panch witness, also claims in his evidence at Exh.30 that after hearing noise about the quarrel, he immediately rushed to the spot. He has seen only accused no.1 beating Dayanand.

In cross examination, he answered that name of 'Dayanand' has been wrongly mentioned as 'Parmeshwar'.

PW7 Dr. Sangram, who had issued medical certificate of Dayanand, is also examined.

10. It is pertinent to note that, as stated above, parents are not party to the occurrence, but they claimed that both accused persons pelted stone on their son. However, there is confusion, more particularly in the light of above answers given by independent witnesses about assault on Parmeshwar and not Dayanand, who is informant here. Therefore, story of prosecution comes under shadow of doubt. Surprisingly, to seek clarification and rectification, Investigation Officer or the person who noted complaint, ought to have been examined. However, none of them seems to have been examined.

11. As case of prosecution has not been proved beyond reasonable doubt, its story cannot be straightway accepted, more particularly in the light of above confusion as to who exactly assaulted and to whom.

12. Perused the judgment under challenge. Learned trial court has considered the evidence of parents, informant and independent witnesses. The conclusion drawn is the only possible conclusion that could emerge even on re-appreciation of evidence. Bearing in mind the settled law while dealing with appeal against acquittal, prosecution has not proved its case beyond reasonable

doubt. No case being made out for interference, I proceed to pass the following order :

ORDER

The Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE, J.)