



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 421 OF 2005

1. The State of Maharashtra
Through Shivsharnyya Basayya
Swami, Age : 51 years, Occ. : Agri.,
R/o. : Begda, Tq. Omerga,
Dist. Osmanabad

... Appellant
(Ori. Respondent)

VERSUS

1. Basayya Revanappa Swami (*Abated*)
Age : 35 years,
R/o. : Begda, Tq. Omega
2. Mallinath Bandayya Swami,
Age : 25 years,
R/o. : as above
3. Shivayya Revanayya Swami,
Age : 28 years,
R/o. : as above
4. Bandayya Karbasayya Swami
R/o. : as above

... Respondents
(Ori. Accused)

...
Mr. R.D. Raut – APP for Appellant, State
Mr. G.D. Jain (*Appointed*) – Advocate for Respondent Nos.2 to 4
....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 12th February, 2025
PRONOUNCED ON : 13th February, 2025

JUDGMENT :

1. The appellant/State has challenged the judgment and order dated 01.02.2005 passed by the learned Judicial Magistrate First

Class, Omerga, Dist. Latur (*hereinafter referred to as “the learned Trial Court”*) in Regular Criminal Case No. 203 of 2001 whereby the present respondents/accused have been acquitted by the learned Trial Court from the charge punishable under Section 323, 324, 504, 506 read with 34 of the Indian Penal Code.

2. According to the prosecution case on 02.07.2001 at about 02:00 p.m. near water tank of village Bedga the complainant Shivsharnyya Basayya Swami had asked all the accused as to why they were obstructing the way of his agricultural field. At that time all the accused abused him and threatened to kill him. Accused No.1 had also assaulted the complainant by pelting stone resulted into head injury. The learned Trial Court after conducting the trial acquitted all the accused who were present respondent Nos.1 to 4.

3. Heard rival submissions and also perused the documents on record alongwith record and proceeding of the impugned judgment.

4. On going through the record, it is significant to note that, though the complainant has stated that accused Nos.2 to 4 caught hold of him and accused No.1 hit the stone on his head resulting into head injury. However, rest of the witnesses namely P.W. 2 to 4

who are cited as a eye witnesses were silent on the aspect of holding the complainant at the time of incident when accused No.1 hit him with stone. On the contrary, only witness by name Kalpana Swami i.e. P.W. – 4 stated that, accused Nos.2 to 4 were quarreling with the complainant. On the other hand, P.W. 2 and 3 are silent in respect of role played by accused Nos.2 to 4. Further, nothing has been stated by these witnesses including complainant as to which words were used by the accused for insulting him and abusing him and giving threat to him. It is extremely important to note that, the main allegation constituting offence under Section 323 or 324, is only against accused No.1 i.e. respondent No.1. However, the appeal is already abated against him as he died during the pendency of appeal. Thus, there is absolutely no evidence against other respondent Nos.2 to 4 in respect of ingredients of charge against them. The contradictions among the version of eye witnesses definitely indicate that, they were not possessing common intention for obstructing and insulting the complainant. As such, there is no need to interfere with the acquittal recorded against them by the learned Trial Court. In view of the same, the appeal is devoid of merits and accordingly stands dismissed.

5. The legal fees to appointed advocate – Mr. G.D. Jain for respondent Nos.2 to 4 is quantified as Rs.5,000/- (rupees Five Thousands only).

[SANDIPKUMAR C. MORE]
JUDGE