



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 639 OF 2005

The State of Maharashtra  
Through Pimpalner Police Station,  
Taluka Sakri, District Dhule.

... Appellant  
[Ori. Informant]

Versus

1. Naval Sukdev Gharate,  
Age 35 years,
2. Madhukar Sukdev Gharate,  
Age 34 years,  
[Appeal is abated against  
Respondent No.2 vide order  
dated 27.02.2025]

Both R/o. Samode, Taluka Sakri,  
District Dhule.

... Respondents

.....  
Mr. N. D. Batule, APP for the Appellant State.  
Mr. A. S. Sawant, Advocate for the Respondent No.1.  
.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 15.07.2025

Pronounced on : 23.07.2025.

**JUDGMENT :**

1. The appellant - State takes exception to the judgment and order passed by II<sup>nd</sup> Ad-hoc Additional Sessions Judge, Dhule dated 29.04.2005 in Sessions Case No. 100 of 2003, which was tried against accused respondents herein for commission of offence punishable under

sections 447, 324, 323, 504, 506 read with section 34 of Indian Penal Code.

### **FACTUAL MATRIX**

2. In brief case of prosecution in trial court is that, informant Amit, an agriculturist had been to the field on 11.02.2002 along with his brother Bhushan. That time, accused no.1 Naval committed criminal trespass and also issued threats by questioning why water was not given to his land and issued threats to cut his legs. Shortly thereafter, accused no.2 Madhukar also committed trespass. He initially abused informant, threw chilly powder in the eyes of both, informant and Bhushan, and thereafter both of them indulged in beating informant and Bhushan by means of fist and kicks blows and stone causing bleeding injuries. Agriculturist labour Madhukar intervened, but he was also given thrashing. Accused also pushed informant and snatched his gold chain. Police was approached, who referred them to hospital and on report lodged by informant, crime was registered vide complaint at Exh.27. PW7 Ahire carried out investigation and after gathering sufficient evidence, charge-sheeted accused and accused persons were made to face trial before II<sup>nd</sup> Additional Sessions Judge, Dhule, who after appreciating oral and documentary evidence and after hearing both sides, acquitted both the accused, resulting into instant appeal.

### SUBMISSIONS

3. Sum and substance of arguments advanced by learned APP is that, prosecution has examined informant as well as his brother Bhushan. That, both of them assaulted that day. That, they both were referred to hospital and were examined by PW4 Dr. Mangesh Barde, who treated them, issued injury certificates and even stepped into the witness box at Exh.36. Learned APP submits that, along with the evidence of such witnesses, there was evidence of Investigation Officer and panchas, but the same has not been appreciated. That, no cogent reasons are assigned for disbelieving the prosecution evidence. He pointed out that, when injured themselves have testified about the events of abuse, throwing chilly powder and assaulting both of them, which was finding support from medical expert's evidence, case of prosecution ought to have been held as proved. That, prosecution had discharged its primary burden. Learned trial Judge erred in acquitting the accused in spite of availability of such quality of evidence and hence he urges for interference by allowing the appeal.

4. Learned counsel for accused supported the judgment of acquittal and finding two points that, firstly, there is previous enmity and secondly, there is delayed FIR and even delayed medical examination rendering the case of prosecution doubtful. He also pointed out that

witnesses are not consistent. Hence, learned counsel urges to dismiss the appeal for want of merits.

### EVIDENCE BEFORE THE TRIAL COURT

5. Prosecution has, in support of its case, examined in all seven witnesses. Their role and status and the relevant portion of their evidence is as under :

**PW1** Amit Kharote is the informant. He is examined at Exhibit 26 wherein he deposed that;

*“1. I have agricultural land bearing Gat No. 590 at village Samode, Taluka Sakri, District : Dhule. My said agricultural land is in the name of my mother. Our Saldar by name Madhukar Uttam Mali and Shivdas Rama Bagul used to look after our agricultural land.*

*2. On 11/2/2002 at about 3-00 p.m. I and my brother Bhushan Chandrakant Kharote had gone to our land. At that time out Saldar Madhukar and Shivdas were working near well fitting of pipes for giving water to onion crop. At that time accused no.1 Naval Sukdev Gharate committed criminal trespass in our agricultural land. Accused No. 1 Naval shouted and threatened to us that we should not give water in his land. At that time, I said to accused no.1 Naval that, my father had entered deed of agreement to sale of said land, with elder brother of accused no.1 by name vasant Sukdev Gharate. Vasant Sukdev Gharate had agreed to sell*

*said agricultural land, in which we were fitting pipes for watering onion crop for consideration amount of Rs.60,000/- to my father. Accused no.1 Naval threatened to us that if we should try to give water to onion crop, then he should cut our legs. We were cultivating said agricultural land since 1997.*

*3. Thereafter accused no.2 Madhukar Sukdeo Gharate came there. He committed criminal trespass in our land. Accused no.2 abused to us. Accused no.2 Madhukar threw chilly powder of his hand faces of me and my brother Bhushan Chandrakant Kharote. Said chilly powder entered in our eyes. Itching irritated. Both accused beat me and Bhushan with fists and kicks. Accused no.1 Naval Sukdev Gharate took stone in his hand and gave blow of said stone on my left ear. At that time accused no.2 Madhukar gave blow of fists on the mouth of my brother Bhushan Chandrakant Kharote. Bhushan received bleeding injury on his lips. At that time our Saldar Madhukar Uttam Mali tried to intervene. At that time both accused beat Madhukar Mali with fists and kicks. Both accused threatened to Madhukar Mali to kill him. At that time of quarrel due to push and pulling, my golden chain fell on the ground. Thereafter we did not find it. Another Saldar Shivdas Bagul came there. Both accused threatened to Shivdas Bagul to kill and to cut his hand. As we frightened, I, Bhushan, Madhukar Mali and Shivdas Bagul ran towards our motorcycle. Thereafter I, Madhukar Mali and Bhushan went to Pimpalner police station on our motorcycle. Police gave memo to us. We went to Rural Hospital, Pimpalner. Prior to going to hospital, I gave complaint to police against both accused. Police reduced into writing my complaint as per my say. Now my complaint is shown*

*to me. It bears my signature. Contents are true and correct. It is at Exh. 27. At the time of incident I had worn check shirt of orange colour. Now shirt at article no.3 shown to me is the same. If a stone by which accused no.2 Madhukar beat me, will be shown to me, I will identify it. Now stone at article no.2 is shown to me is same, by which accused no.2 Madhukar beat me. Blood was oozed from my left ear and fell on my shirt. Both accused present before court are same. I produced my above said shirt in Pimpalner police station in presence of 2 panchas.”*

**PW2** Deepak Bhamare has acted as pancha to spot panchanama Exhibit 29. In his evidence at Exhibit 28, he deposed as under :

*“1. On 12/2/2002 police called me in Samode Shivar. Purushottam Korade was another pancha alongwith me. Complainant Amit Kharote showed spot of incident to we panchas and police. We saw that onion crop was crushed under feet. One plastic bag containing chilly powder was lying on the ground in said onion crop. Said plastic bag was opened. Chilly powder was scattered in the said crop on the ground. Complainant Amit showed said chilly powder, plastic bag and one stone lying on the ground, to us. Police collected said chilly powder along with earth, and said stone. Police seized said chilly powder alongwith earth in our presence. Police wrote which they and we saw. Police obtained our signatures on said writing. Now spot panchanama is shown to me. It bears my signature. We panchas put our signatures on spot panchanama after reading it. Contents of said spot panchanama was true and correct. Said panchanama is at Exh.29.”*

**PW3** Rupchand Chaure acted as pancha to seizure panchanama Exh.34.

**PW4** Mangesh Barde is the Medical Officer, who examined Amit, Madhukar and Bhushan. In his evidence at Exhibit 36, he deposed as under :

*“1. On 11/2/2002 I was on duty in Rural Hospital as Medical Officer at Pimpalner. On that day at 4-45 p.m. injured Amit Traymbakrao Kharote age 24 years, r/o Pimpalner came in hospital. I examined him. I found following injuries on his person :*

- 1) Abrasion on left external Pinna of left ear size 2 x 1 cm bleeding was present.*
- 2) Abrasion in front of tragus of left ear size about 1 cm.*
- 3) Blunt trauma on nail bed of left middle finger.*

*Patient was complaining of itching of eyes and face. Accordingly I issued medical certificate of said patient. Probable weapon used blunt object. Nature of injury simple. Age of injury within one to two hours. Now medical certificate of patient Amit Kharote shown to me. It is same. It bears my signature and stamp and seal. Its contents are true and correct. It is at Exh. 37.*

*2. On very day I examined Madhukar Uttam Mali at 4-50 p.m. I found following injuries on his person :*

- 1) Swelling with abrasion on forehead on right side. Size of swelling 2 cm x 2 cm size of abrasion less than 1 cm.*
- 2) Blunt trauma on left sub postal region, tenderness was present.*

- 3) *Blunt trauma on right scapular region. No contusion but tenderness present.*

*Probable weapon used hard and blunt object. Nature of injuries simple. Accordingly I issued medical certificate of patient. Now it is shown to me. It bears my signature and stamp and seal. Its contents are true and correct. It is at Exh. 38.*

3. *On very day I examined Bhushan Chandrakant Kharote at 4-50 p.m. I found following injuries on his person :*

- 1) *Cut wound on lower lip. Swelling present, bleeding present, size of cut 1 cm x less 0.5 c.m.*
- 2) *Blunt trauma on abdomen left illiac region. There were no contusion.*
- 3) *Blunt trauma near right anterior superior illiac spine. No contusion, tenderness present.*

*Probable weapon used hard and blunt object. Nature of injuries simple. Age of injuries within 1 to 2 hours. Accordingly, I issued medical certificate to patient. Now it is shown to me. It bears my signature and stamp and seal. Its contents are true and correct. It is at Exh. 39. It is true that itching of eyes and face possible if any person throws chilly powder on the eyes and face of patient. It is true that injuries at serial no.1 and 2 of medical certificate of Exh. 37 are possible if any person beat patient with stone, which is now shown to me. Said stone is at article no.2. Injury at serial no.3 of above said certificate at Exh. 37 is possible if it is caused by hard and blunt object like stone. It is true that injuries mentioned in*

*medical certificate Exh. 38 and 39 are possible due to stone, which is at article 2.”*

**PW5** Bhushan Kharote deposed at Exhibit 40 as under :

*“1. Before two years, I am studying B.A. My uncle Kashinath Kharote was working as Asstt. Forest Conservator. Traymbakrao was residing in Shradhanjali Apartment Pimpalner. I know Vasant Sukdeo Gharate r/o. Samode. In the year 1997 Traymbak Kharote executed deed of agreement to sale in respect of land of Vasant Gharate for the consideration amount of Rs.91,000/- Tryambak Kharote paid amount of Rs.60,000/- by cheque as out of said consideration amount of Vasant Gharate. Said deed of agreement to sale was executed on stamp. Madhukar Mali and Shivdas Rama Bagul both Saldars of Traymbak used to work in the agricultural land of Tryambak as Saldars.*

*2. On 11/2/2002 I and Amit went to agricultural land of Tryambak Kharote, for giving water to onion. Saldars of Tryambak Kharote, Madhukar Mali and Shivdas Bagul were fitting pipes to give water to onion crop. Both accused present before court came there at 3-00 to 3-30 p.m. Both accused were abusing. Both accused said to us that we should leave that place. Said agricultural land was owed by both accused. We should not give water to onion crop. Accused no.2 Madhukar Gharate took chilly powder from the pocket of his pant. Said chilly powder was in plastic bag. Madhukar Gharate threw said chilly powder on the faces of me and Amit. Chilly powder went into eyes of myself and Amit. Our eyes were itching. We rubbed our eyes. We did not see*

*anything for 12 to 15 seconds. Madhukar Gharate gave 2 to 3 blows of hand fist on my lips. At that time accused no.1 gave blow of stone on left ear of Amit. Blood oozed from bleeding injury of ear of Amit. At that time our saldar Madhukar Mali came there. Madhukar Mali, our saldar tried to rescue us. At that time Madhukar Gharate hit Madhukar Mali on the ground. Our another saldar Shivdas Bagul came there. He tried to rescue us. Both accused beat Shivdas with fists and kicks. We frightened and ran towards road. Then after, I, Amit and Madhukar Mali went to Pimpalner police station. Amit gave complaint to police. We took memo and went to Government hospital at Pimpalner. Both accused present before court are same. Now stone which is at article no.2 is shown to me, by which accused no.1 Naval gave blow of said stone to left ear of Amit. I had worn full open shirt of white colour having strips, at the time of incident. Now shirt which is at article no.4 is shown to me is same. Which I had worn at the time of incident.”*

**PW6** Nanaji Gharate acted as pancha to arrest panchanama Exhibit 48.

**PW7** Garibdas Ahire, Police Head Constable, is the Investigating Officer.

### **ANALYSIS**

6. State has pressed into service ground that there is convincing and legally acceptable evidence of PW1 Amit and PW5 Bhushan, who are consistent and moreover, prosecution has examined the treating doctor for the injuries suffered by informant.

7. On complete and meticulous re-appreciation, evidence of informant PW1 Amit and his brother PW5 Bhushan is crucial. On visiting Exh.26, it is noticed that, according to informant, accused No.1 Naval after committing criminal trespass issued threats to kill and gave fist and kicks blows both, PW1 Amit and PW5 Bhushan. Further according to him, fist and kick blows were also showered on Madhukar Mali and stone was hit on his left ear. Whereas, regarding role of accused No.2 Madhukar is concerned, PW1 Amit testified about hurling abuses, throwing chilly powder in the eyes of both, PW1 Amit and PW5 Bhushan, followed by giving fist blows on PW5 Bhushan as well as Madhukar Mali.

8. On visiting evidence of PW5 Bhushan as regards to accused no.1 is concerned, allegations are of abuse and hitting stone blow on the left ear of PW1 Amit and giving kicks and fist blows to Shivdas. As regards to accused no.2 Madhukar is concerned, this witness PW5 Bhushan alleged that, he abused him, throwing chilly powder and giving fist blow on him as well as making Madhukar Mali fall on the ground and kicks and fist blows given to Shivdas.

9. On visiting their cross, it is emerging that, previous enmity admitted by both PW1 Amit and PW5 Bhushan. PW1 Amit attributed fist

and kick blows to Madhukar Mali, but such person is not examined. PW1 Amit in his cross has admitted about not reporting police about accused no.2 making Madhukar Mali fall on the ground. PW5 Bhushan in his cross stated that, accused no.1 Naval flung stone on the left ear of Amit i.e. PW1. In para 4 he stated that a stone by which accused no.1 hit PW1 was just like the stone Article 2 and he further candidly admitted that he cannot definitely state by which stone his brother was hit. Omission is brought in his cross about Madhukar Mali coming to rescue and both accused showering fist and kick blows on Shivdas. Omissions and variance are proved through the Investigating Officer in paragraph 3 and 4 of the cross. Investigating Officer also admitted in cross about not filing injury certificate of accused no.2. Another noticeable variance is regarding PW1 Amit testifying about losing gold chain during pushing and scuffling regarding which PW5 Bhushan has not uttered a word.

10. Thus, here, previous animosity is coming on record, only PW1 Amit and PW5 Bhushan are examined and crucial and independent witnesses like Madhukar and Shivdas are not examined for the best reasons known to the prosecution. It is trite at law that, when there is previous animosity and witnesses are related, there has to be corroboration from independent corner, however, here independent witnesses are not examined.

11. Perused the judgment under challenge. The learned trial Judge has dealt with each and every aspect put-forth by prosecution in trial court. In the light of above stated weakness of prosecution case, learned trial court was left with no other alternative, but to hold evidence of prosecution unworthy of credence. There is no infirmity in the findings. Bearing in mind the law while dealing with appeal against acquittal and as this court does not find any patent perversity to interfere, appeal deserves to be dismissed. Hence, the following order is passed :

**ORDER**

The appeal is hereby dismissed.

**(ABHAY S. WAGHWASE, J.)**