



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 663 OF 2005

The State of Maharashtra
Through Police Station,
Nanded (Rural),
Taluka and District Nanded.

... Appellant
(Ori. Complainant)

Versus

1. Jagannath Kishanlal Kutiyawale
Age 51 years, Occupation Labour,
R/o. Wajegaon,
Taluka and District Nanded.
2. Narayan Kishanlal Kutiyawale
Age 40 years, Occupation Labour,
R/o. Wajegaon,
Taluka and District Nanded.
3. Parasram @ Guddu Jagannath Kutiyawale
Age 21 years, Occupation Labour,
R/o. Wajegaon,
Taluka and District Nanded.

... Respondents
(Ori. Accused)

.....
Mr. S. M. Ganachari, APP for the Appellant-State.
Mr. Mrigesh D. Narwadkar, Advocate for the Respondents.
.....

**WITH
CRIMINAL REVISION APPLICATION NO. 28 OF 2005**

Gangaram s/o Chotulal Bhatawale
Age 44 years, Occupation Agriculturist,
R/o Vasarni, Taluka and District Nanded.

... Applicant
(Ori. Complainant)

Versus

1. The State of Maharashtra
through Police Station Nanded
(Rural), Taluka and District Nanded.
2. Jagannath Kishanlal Kutiyawale
Age 51 years, Occupation Labour,
R/o. Wajegaon,
Taluka and District Nanded.
3. Narayan Kishanlal Kutiyawale
Age 40 years, Occupation Labour,
R/o. Wajegaon,
Taluka and District Nanded.
4. Parasram @ Guddu Jagannath Kutiyawale
Age 21 years, Occupation Labour,
R/o. Wajegaon,
Taluka and District Nanded. ... Respondents

.....

Mr. R. D. Biradar, Advocate for the Applicant.

Mr. S. M. Ganachari, APP for Respondent No.1-State.

Mr. Mrigesh D. Narwadkar, Advocate for Respondent Nos. 2 to 4.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 30.07.2025

Pronounced on : 11.08.2025

JUDGMENT :

1. The State takes exception to the judgment and order dated 30.11.2004 passed by learned JMFC, III Court, Nanded in RCC No. 859 of 2001, thereby acquitting the present respondents from charge under Sections 324, 506 r/w 34 of IPC.

2. The original complainant has also preferred separate revision application challenging the acquittal as above.

FACTS GIVING RISE TO THE PROCEEDINGS IN TRIAL COURT

3. On 16.06.2001, complainant Gangaram, while was in the company of his two sons, namely, Pawan and Nitin, was questioned by the accused for coming into the land and in such background it is alleged that complainant was assaulted. When his sons came to his rescue, they were also assaulted and therefore he filed FIR resulting into registration of crime bearing no. 166/2001 for offences punishable under Sections 324, 323, 504, 506 r/w 34 of IPC. After completion of investigation, all three accused were chargesheeted and tried by learned JMFC vide RCC No. 859 of 2001.

4. In support of its case, prosecution adduced evidence of in all six witnesses, including the medical expert.

Oral and documentary evidence was appreciated and after hearing each side, learned trial court, by judgment and order dated 30.11.2004, acquitted the accused. Hence the appeal.

SUBMISSIONS

On behalf of the Appellant-State as well as the Revisionist-complainant :

5. Learned APP as well as learned counsel for the revisionist, who is the original complainant, took this Court through the evidence of complainant PW2 and would submit that, the FIR was promptly lodged by this witness. That, he had categorically stated in the witness box that accused persons initially questioned him and his sons for coming to the land. Thereafter, when he and his sons went into the office of one Maroti Nalge, all accused persons came there, dragged complainant out of the office and, it is alleged that, he was beaten by means of chain, kicks and fist blows by accused Jagannath and Guddu. They pointed out that complainant has deposed that even his sons, who came to save him, were beaten. That, they were taken to the hospital and examined. Report was lodged promptly. According to learned APP and learned counsel for the revisionist, the core of the testimony of complainant regarding assault has remained unshaken in the cross. They further pointed out that, there is support to the testimony of PW2 complainant through his sons, who were also examined. They pointed out that injuries were severe and therefore, complainant as well as his sons were referred to medical expert who

has also stepped into the witness box. Thus, according to them, all the ingredients for attracting the charges were available, but only due to improper appreciation, the trial has ended up in acquittal, and hence they seek indulgence by allowing the appeal and the revision.

On behalf of the Respondents-accused :

6. In answer to above, learned counsel for the respondents-original accused would submit that prosecution miserably failed. That, witnesses are not consistent. That, medical expert has expressed possibility of injury due to fall, There being civil dispute, parties were on cross terms and hence, there is false implication. Therefore, according to him, there is no infirmity or perversity in the appreciation at the hands of the trial court. He therefore prays to dismiss the appeal as well as the revision for want of merits.

ANALYSIS

7. Respondents-original accused were chargesheeted for commission of offence punishable under Sections 324 and 506 of IPC. Here, though prosecution has examined as many as six witnesses, crucial evidence is that of complainant PW2-Gangaram and his two sons i.e. PW3-Pawan and PW4-Nitin.

8. On re-analysis and re-appreciation, it is emerging that case set up by complainant is that, when he and his sons were taking round in their field around 5.00 p.m. on the relevant day, accused persons questioned him for coming to the field and then, it is alleged that, he was assaulted by accused causing him bleeding injuries. Even report is lodged on the same day and prosecution has also, in support of case of injury, examined medical expert PW6.

9. Specific defence taken by respondents-accused in trial court is that, there being civil dispute and animosity, there is false implication; there was no assault as alleged and rather, injuries suffered by complainant could be self inflicted and complainant contradicts himself regarding site of alleged assault and injury. That, no independent witness, in spite of availability, is examined and though PW3 and PW4 are examined, it is their case in trial court that, they were not present at the time of alleged occurrence and are thus got up witnesses and being interested witnesses, case of prosecution comes under shadow of doubt.

10. On above lines, if evidence of PW2, PW3 and PW4 is put to minute scrutiny, as submitted, it does emerge that in the FIR,

complainant has reported that while he alone was roaming in the field, accused questioned him and thereafter assaulted him by dragging him out of the office of one Maroti Nalge. At least in the complaint, he does not refer about his both sons accompanying him at the time of assault. He has named his son Pawan only to have come to his rescue and not the other son Nitin. No doubt, it is settled position that FIR not being encyclopedia and on mere failure to name other witnesses, case of prosecution cannot be doubted, however, here, peculiar facts are that, complainant has in his evidence at Exhibit 24 testified about he and his both sons taking round in the field and that time accused questioning them and initially assaulting him and thereafter even assaulting his sons. Therefore, there being specific allegation of assault not only to him, but also to his sons, it was expected of him to even refer about their presence in the FIR. However, the same is not appearing so.

11. Even on close scrutiny of complainant's evidence, it is clearly emerging that he has attributed questioning to all accused persons who are in fact three in number. He has not given details about which amongst the three accused questioned him. There cannot be questioning in chorus. He, in his evidence, has further stated that because accused Jagannath was maneuvering cycle chain in his hand,

out of fright, he went to the office of Maroti Nalge, but accused came there also and he was allegedly taken out of the office and then accused assaulted him. He has stated that accused Jagannath, Narayan and Guddu lifted him and flung him on the floor, accused Jagannath hit him by means of chain on the right side of his head whereas, accused Guddu hit him by means chain on the left side of his head.

In cross, omissions are brought to the extent of he being accompanied by his sons Pawan and Nitin i.e. PW3 and PW4; accused persons asking why he came to the land; accused Jagannath maneuvering or rotating chain; he being pulled out of the office and flung on the floor. These are material omissions. He claims that his clothes were also blood stained but unfortunately the same are not seized and there is no CA report of the same.

12. PW3 and PW4 are sons of complainant and they are examined at Exhibits 26 and 27 respectively. On scrutiny of evidence of these two witnesses, it is noticed that PW3 Pawan has not stated about his father being lifted and then banged on the floor. Though he stated that accused Jagannath assaulted his father by cycle chain, he has stated about Guggd taking the chain from Jagannath and assaulting

his father and thereafter, he and his brother also were assaulted by fists and blows and they were threatened to kill. Such part of being threatened to kill is not stated by his father complainant. Even in his cross, omissions are brought about he accompanying his father and brother, about Narayan making his father fall.

Likewise, in cross of PW4 Nitin, omissions are brought about he and his father roaming in the field; accused Jagannath to be armed with chain and therefore, out of fear, they going to the office of Maroti Nalge.

13. Therefore, from above evidence of father and his two sons, their evidence is found to be full of material omissions. As stated above, complainant had not informed police about he to be accompanied by his both sons. In the light of their testimony discussed above, it is doubtful whether they were accompanying their father.

14. Though learned APP harped on the availability of medical evidence, according to the complainant, he was assaulted by means of chain on the right and left side of the head. However, medical evidence shows injuries suffered on the right frontal region and mid

parietal region. Therefore, as stated by learned counsel for the respondents, though there is medical evidence as well as injury certificate, it is contrary to the evidence of complainant.

15. As stated above, witnesses have admitted about civil dispute and previous animosity. There is failure on the part of prosecution to examine independent witness Maroti Nalge, exactly at whose office alleged assault is stated to have occurred. No independent witness is examined. Due to failure of complainant to refer presence of his two sons PW3 and PW4 in the FIR, there is reason to hold that they are not party to the alleged occurrence.

16. It is incumbent upon prosecution to discharge the primary burden of establishing its case beyond reasonable doubt. A slightest doubt, if crops up, is sufficient to extend benefit to the accused. Here, as stated above, evidence of complainant and his two sons is not consistent. Medical evidence does not lend support to the prosecution version. Recovery of alleged chain is at the instance of accused no.2 Guddu, that too, after two days. Spot is also not proved. Therefore, there are several aspects which brings case of prosecution under shadow of doubt.

17. Perused the judgment. The learned trial court has considered each and every aspect of the prosecution case as well as the legal requirements for bringing home the charge, and has rightly reached to the conclusion about failure of prosecution to prove its case beyond reasonable doubt and thus, entitlement of accused for benefit of doubt. Bearing in mind the law laid down by the Hon'ble Apex Court while dealing with appeal against acquittal, this Court finds no merit in the appeal.

18. Learned counsel for original complainant has also preferred revision against acquittal. However, for above reasons, this Court finds no reason to interfere in revision. Hence, following order is passed :

ORDER

The Criminal Appeal as well as the Criminal Revision Application are hereby dismissed.

[ABHAY S. WAGHWASE, J.]