



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 745 OF 2005

The State of Maharashtra
Through P. S. Ambhora

... Appellant

-VERSUS-

1. Gopala Baburao Walke
Age 40 years Occu. Agri
2. Baba Baburao Walke
Age 50 Occu. Agri
3. Rama Baba Walke
Age 19 years Occul Agri
4. Radhabai Gopala Walke
Age 35 Occu. Household
5. Parubai Baba Walke
Age 45 Occu. Agricultural

All R/o Sayedmir Loni
Tq. Ashti, Dist. Beed

..Respondents

Mr. D.J. Patil, A.P.P. for appellant

Ms. Sayali S. Tekale, advocate for respondents.

CORAM : SANJAY A. DESHMUKH, J.
DATE OF RESERVING THE : 24.01.2025
JUDGMENT
DATE OF PRONOUNCING : 30.01.2025
JUDGMENT

JUDGMENT :

1. This appeal is preferred against the judgment and order

delivered by Judicial Magistrate First Class, Ashti, Tahsil Ashti, District Beed, in Regular Criminal Case No.80 of 2002, dated 13.06.2005. The respondents/ accused were acquitted. It is an appeal against acquittal.

PROSECUTION'S CASE :

2. The informant Sudam Raktate (PW-1) was ploughing his agricultural land situated at village Sayedmir Loni, Tahsil, Ashti, District Beed on 27.03.2002, at about 12 noon. While ploughing, some thorny bushes were likely to cause obstacles to the bullocks eyes, which were existed on the common boundary (bandh) between his land and the land of accused/respondents. To avoid the injuries to the bullocks of the informant, he put some stones on those thorny bushes in order to bend the same. At that time accused No.1 quarreled with the informant. Other accused also came there with weapons i.e. axes, sticks and stones. They all assaulted the informant and his father. At that time, after listening the hue and cry of informant his parents and wife etc. came there to rescue him. The accused also beat them by sticks, stones and axes. The informant and his father was admitted in the hospital. A report was lodged on the same day. Crime No.19/2002 was registered in the Police Station, Ashti and the charge-sheet was filed.

3. Charge was framed against the accused for the offence punishable under Sections 323, 324, 504, 147, 148 read with Section 149 of the Indian Penal Code, 1860 (for short IPC) and Section 135 of the Maharashtra Police Act, 1951. Accused denied the charge and they were tried.

4. Prosecution examined the informant, Sudam Raktate (PW-1), his injured father, Natha Raktate (PW-3), Dr. Balaji Gutte (PW-2) who examined injured persons, panch witnesses Jalindar (PW-4) and Sakharam Walke (PW-5). The prosecution also relied upon the report at Exhibit-31, injury certificates of the informant and his father at Exhibits-35 and 36, X-Ray plates at Exhibits-37 and 38 and the Spot and seizure of sticks Panchanama at Exhibit-44.

5. Learned Trial Court held that prosecution failed to prove the charges against the accused. The accused were acquitted by giving them a benefit of doubt.

6. The grounds of objections of this appeal are that the learned Trial Court failed to appreciate the evidence in its proper perspectives and recorded incorrect findings by giving unacceptable reasons. The evidence of experienced witnesses who were injured, though corroborated, is not properly appreciated. It is lastly prayed to allow

the appeal and sentence the accused.

7. Heard learned A.P.P for the appellant-State and learned advocate for the respondents. Perused the impugned judgment and the record and proceedings.

FOLLOWING POINTS EMERGED FOR CONSIDERATION :

- (i) Was it proved by the prosecution that accused in furtherance of their common object of an unlawful assembly, assaulted the informant and his father and voluntarily caused hurt to them ?
- (ii) Is the impugned judgment illegal, incorrect and requires interference?

8. During the course of argument, learned A.P.P for the appellant-State pointed out the Injury Certificates and submitted that Injury Certificates are materially corroborating to the incident of assault on the informant and his father. The evidence of these two witnesses is not shaken in the cross-examination. The evidence of Sudam (PW-1) and his father Natha (PW-2) is very clear that while ploughing in the agri land, accused No.1 took quarrel with them and assaulted on the left eye

of Sudam (PW-1). Accused No.2 gave blow of an axe on his head. He sustained bleeding injuries. At that time accused Nos.4 and 5 pelted stones on them.

9. Learned A.P.P. for the appellant further submitted that the evidence of injured witnesses is materially corroborated by the Medical Officer/Doctor. The report is immediately lodged and three hours delay cannot be a doubtful circumstance to acquit the accused. He submitted that prosecution case against respondent Nos.1 and 2 is proved beyond all reasonable doubts and therefore, this appeal be allowed by awarding sentence.

10. Learned Advocate Ms. Sayali Tekale argued on behalf of the respondents that the seizure of the axes and stones is not proved. There is no independent evidence of any eye witness to corroborate the testimonies of injured witnesses and the prosecution's case is reasonably doubtful. There was earlier enmity between informant and the respondents/accused and therefore, the respondents were falsely implicated in the crime. The reasons and findings of the Trial Court are legal and correct and there is no scope for interference. It is lastly prayed to dismiss this appeal.

11. Informant Sudam (PW-1) deposed mostly as per the prosecution story that he was assaulted by respondent Nos.1 and 2 by the backside of an axe and sticks. They also assaulted his father Natha (PW-3). Informant, Sudam (PW-1) sustained injuries on his head, forehead and near to right eye and other parts of the body. They both were admitted in the hospital for 10 to 12 days. Natha (PW-3) deposed that he saw that all the accused were beating his son. Accused No.2 - Baba Walke and accused No.1 - Gopala Walke were armed with the axes. Other accused male members were holding sticks in their hands and the ladies were holding stones. He went to rescue his son. He was assaulted by all the accused persons. He also sustained the injuries to his forehead, chest, head and legs. He sustained injury from the backside of an axe.

12. Dr. Balaji Gutte (PW-2) doctor further deposed that he examined Sudam (PW-1) and found following injuries:-

1. C.L.W, right Parietal area of scalp, size 3 x ½ x ¼ c.m., age of injury within 24 hours, caused by hard and blunt object. The nature of injury opinion was reserved. Now I received the X-ray plates from Civil Hospital Ahmednagar. No fracture is noticed. In my opinion the nature of injury simple.

2. C.L.W, Occipital area of scalp, size 2 x ½ c.m. the age of injury within 24 hours, caused by hard and blunt object.

3. C.L.W, right maxilla i.e. below lower eye lid at lateral canthus of eye, size, 2 x ½ C.M.

4. Contusion, left scapula area of chest, size 5 x ½ cm.

Injury no.2 to 4 are caused by hard and blunt object with age within 24

hours. The opinion about nature was reserved. Now X-ray plates is received from Civil Hospital Ahmednagar. No fracture is noticed. In my opinion the nature of injury are simple.

5. Contusion left leg lower end, size 1 ½ x ¼ c.m.

6. Abrasion, right Ala of nose, size 1 x ¼ c.m.

7. Contusion left buttock, size ¼ x ¼ cm.

Injury no.5 to 7 are caused by hard and blunt object, with age within 24 hours. The nature of above injuries are simple.”

13. Dr. Balaji Gutte (PW-2) deposed that he found following seven injuries on the person of Natha (PW-3) :-

1. C.L.W forehead central part of size 4 x ½ x ¼ c.m. The age of injury within 24 hours, caused by hard and blunt object, and nature of injury simple.

2. C.L-W Lateral part of right eye brow, size of injury 1 ½ X ½ c.m. age of injury within 24 hours and caused by hard and blunt object, nature of injury was simple.

3. C.L.W Occipital area of scalp, size of injury 5 x ¼ c.m. age of injury within 24 hours with caused by hard and blunt object. Opinion was reserved. Now I have received the X-ray plates from Civil Hospital Ahmednagar. The X-ray doesn't show any fracture. In my opinion the nature of injury was simple.

4. Contusion, left scapular area of chest extending to infrascapular, size of injury 10 x 1/4th c.m. the age of injury within 24 hours. Caused by hard and blunt object. The nature of injury was simple.

5. Contusion, right scapula area of chest, size 2 x 1/4 c.m., age of injury within 24 hours, caused by hard and blunt object. The nature of injury simple.

6. Contusion, left Palm of the base of 5th finger dorsel aspect, size ¼ x ¼ c.m., age of injury within 24 hours, caused by hard and blunt object. The nature of injury simple.

7. Contusion, left shin dorsel aspect(Leg), size 2 x ½ c.m. age of injury within 24 hours, caused by hard and flunt object, and the nature of injury was simple”

14. Dr. Balaji Gutte (PW-2) lastly opined that the ages of injury is

within 24 hours, caused by hard and blunt object, and the nature of injuries were simple. He proved the Injury Certificates of these two injured at Exhibit-35 and 36.

15. The Panch witness Jalindar Sangule (PW-4) did not support the prosecution case on the point of seizure of weapons etc. Panch witness Sakharam Walke (PW-5) deposed that he was called while drawing the spot panchanama of the spot of incident and 2-3 sticks were seized from that place of incident. He stated that the place of incident is near to the vasti / Farm House of the informant. He proved spot panchanama of place of incident at Exhibit-44.

16. The learned Trial Court held in paragraph No.9 of the impugned judgment that the Police Station is 14 kilometer away from the spot of incident. It was not difficult for the informant and the injured persons to reach to the Police Station from the spot of incident for lodging of the report, which was lodged at 3.15 p.m. There is delay of less than three hours. However, causing of delay for lodging of the report itself is not a reasonable doubt. No explanation is necessary for it. Such a delay caused for lodging the report is not reasonably doubtful as held by the Hon'ble Supreme Court in the case of ***Amar Singh Vs. Balwinder singh and Ors. [MANU/SC/0065/2003]***.

17. As far as occurrence of incident is concerned, two injured witnesses have stated that they were assaulted by accused Nos.1 and 2 by giving blow of an axe. Though they stated that the other accused pelted stones upon them, they have not deposed specifically which of those accused pelted stones on their person. The stones are not seized. Therefore, other accused are rightly held entitled for benefit of reasonable doubt on the said ground.

18. The learned trial court considered the application given by the injured informant to the police dated 6.4.2002 and the complaint filed by him bearing R.C.C. No. 82 of 2002 in which some contradictions are found. The word knife is used in the complaint. However, the injured witnesses are rustic and the facts of the case are generally screened by the advocate while drafting the complaint, which was filed in the court. For the mistake of advocate, the evidence of injured witnesses cannot be disbelieved. It is well settled that contradictions must be material contradictions, which go to the root of the matter to disbelieve the entire case of the prosecution. As far as the admissions are concerned, the law in that respect is settled that the oral admissions are weaker evidence. As per the provisions of section 31 of the Indian Evidence Act, 1872, an admission is not a conclusive proof. As per Section 58 of the Indian Evidence Act, the fact admitted need not be proved. However,

the proviso to Section 58 of the Evidence Act provides that court may in its discretion expects/requires proof of the admitted fact independently. Merely because, there are some admissions, those cannot be termed as material admission contradictory to the prosecution case. The exaggeration as to knife in R.C.C. No. 82 of 2002, is certainly not a material contradiction. It does not wash out the evidence of injured witnesses PW-1 and 3. The test of sufficiency of the evidence is complied with from the evidence of PW-1 to 3.

19. That there is coherency in the evidence of injured Sudam (PW-1), Natha (PW-3) and Dr. Balaji Gutte (PW-2). Their evidences are not shaken in the cross-examination. Proving of spot of incident and seizure of the weapon like axes etc. is not *sine qua non* when there is evidence of injured witnesses, who have experienced the assault. Their evidence is materially corroborated by the independent evidence of Doctor Balaji (PW-2) and injury certificates at Exhibits 35 and 36. There is no necessity of proving of X-rays drawn by particular expert when there is direct evidence of injured witnesses. The Doctor's material evidence was erroneously disbelieved by the learned Trial Court on the ground that identification marks were not noted on the certificates, which is no ground to disbelieve the evidence of the Dr. Balaji Gutte (PW-2). Though the evidence of PW-4 and PW-5 is vague, the spot of incident is proved

from the oral evidence of the informant, as he has deposed that incident took place in the agricultural land where he was ploughing. It is sufficient evidence. The proving of weapon i.e. sticks by pointing out to the injured witnesses is mere irregularity and oral evidence of injured informant (PW-1) and his father Natha (PW-3) is sufficient. Here, the Trial Court has failed to apply the test of sufficiency of evidence.

20. Sterling quality evidence is not possible and expected in such cases. The parrot like statement and testimonies without any defect also some times create reasonable doubt. Accurate evidence without any mistake is not possible in each case. Accused is not entitled for the benefit of suspicious circumstances but benefit of reasonable doubt. It is well settled that accused are entitled for reasonable doubt and reasonable doubt means that doubt which unearths the prosecution's case. There is no reason for the informant (PW-1) and his father (PW-3) to allege that the accused have assaulted and caused injuries to them. If the earlier enmity was there, then it can be the motive and ground for quarrel and assault as well as false implication. It is not the case of the accused that they were not present there and they were elsewhere and somebody else might have assaulted them and injuries sustained to the informant and his father were not caused by them. Burden of proof lies

on the prosecution to prove the charge against the accused. If the entire evidence and matter before this Court is considered together, this Court is of the view that the evidence of informant (PW-1) and his father Natha (PW-3) as well as expert Dr. Balaji Gutte, is not shaken in the cross-examination to disbelieve them.

21. By the evidence of these three witnesses the guilt of the accused/respondent Nos.1 and 2 is proved beyond all reasonable doubts. On re-appreciation of entire evidence, this court found that the prosecution had succeeded in proving its case beyond all reasonable doubt. The onus lies upon accused Nos.1 and 2 to disprove evidence of those three witnesses. They have failed to do so. Prosecution has rebutted the presumption of innocence of the respondent No.1 and 2 by cogent and acceptable evidence. The ingredients of Section 323 of IPC i.e. voluntarily causing hurt are proved beyond all reasonable doubts. The criminal liability of respondent/accused Nos.1 and 2 is proved.

22. For the reasons discussed above, the argument of learned Advocate for respondents / accused is not acceptable. The reasons and findings of the learned Trial Court are partly not legal and correct. It requires interference. Hence point Nos.(i) and (ii) are answered partly in the affirmative in respect of respondent Nos.1 and 2. The appeal

deserves to be partly allowed against respondent Nos.1 and 2. However, the appeal is liable to be dismissed in respect of respondent Nos.3 to 5.

23. Respondent Nos.1 and 2 are held liable under Section 323 of the IPC. They need to be heard on the point of quantum of sentence.

24. Heard accused/respondent Nos. 1 and 2 on the point of sentence. They submitted to take a lenient view. Learned Advocate for the respondents/accused Nos.1 and 2 submits to release them on the bond of good behaviour as per the provisions of Section 4 of the Probation of Offenders Act, 1958 as they have no criminal antecedents.

25. Learned A.P.P. appearing for the State strongly opposed the arguments of learned Advocate for the respondents and submitted that the victims of the crime i.e. informant and his father were admitted in the hospital for 10-12 days who suffered a lot. He, therefore, submitted to award the sentence of one year along with fine and compensation to the injured informant and his father.

26. The respondents/accused nos. 1 and 2 have no criminal antecedents. Considering the peculiar set of facts of the case as well as fact that ages of respondent Nos.1 and 2 are 56 and 68 respectively and

also considering the fact that incident of assault had taken place in the year 2002, it would be appropriate to exercise the discretion under Section 4 of the Probation of Offenders Act, 1958 and to release respondent Nos.1 and 2 on entering into bond of good behaviour for one year with sureties for probation of good conduct. The informant (PW-1) and his father (PW-3) were treated for about 10 days in the hospital. They must have incurred some amount for it. They have certainly suffered by mental agony and pain. Therefore, they are certainly entitled for compensation as per Section 5 of the Probation of Offenders Act, 1958. It would be appropriate to direct respondent Nos.1 and 2 to pay compensation of Rs.10,000/- each to the informant (PW-1) and Natha (PW-3) i.e. total amount of Rs.40,000/- as compensation in addition to execution of bond of good behaviour for one year. This sentence would certainly meet the ends of justice and justice to the victims of the crime. Hence, the following order :-

O R D E R

- I. The appeal is partly allowed.
- II. The impugned judgment is partly set aside and appeal against respondent Nos.1 and 2 is allowed. However, the appeal against respondent Nos. 3 to 5 is dismissed.

III. Respondent Nos.1 and 2 are held liable for the offence punishable under Section 323 of the IPC. They be released on condition to execute bond of good behaviour for one year with surety of Rs.10,000/- each for one year on or before 15.02.2025 before Judicial Magistrate First Class, Ashti, District Beed. If they fail to maintain good behaviour, the learned Judicial Magistrate shall proceed against them as per the provisions of law and award appropriate sentence to them as provided under Section 323 of the IPC without reference to this Court.

IV. Respondent Nos.1 and 2 are also directed to pay compensation under Section 5 of the Probation of Offenders Act, 1958, of Rs.10,000/- each to the informant Sudam Natha Raktate (PW-1) and his father Natha Balaji Raktate (PW-3) i.e. Rs.20,000/- to each i.e. total amount of Rs. 40,000/- as compensation, under Section 5 of the Probation of Offenders Act, 1998 in default to suffer simple imprisonment for one month each. The said amount be deposited in the Court of learned Judicial Magistrate First Class, Ashti, District Beed, within two months from today. If the said amount is not deposited within two months from today, respondent Nos.1 and 2 have to pay interest @ 9% p.a. on it, till its realization. However, if the said amount is not deposited within two months from today, the learned Judicial Magistrate First Class, Ashti, District Beed shall proceed against respondent Nos.1 and 2 to recover

that amount as per the provisions of law without reference to this Court and also proceed further against respondent Nos.1 and 2 and execute the sentence in default, as directed above.

V. After deposit of the amount of Rs.40,000/-, the learned Judicial Magistrate First Class, Ashti, District Beed is directed to inform to the PW-1 and PW-3 about deposit of the amount of Rs.40,000/- and if they pray, the said amount of Rs.20,000/- each be paid to the informant Sudam Raktate (PW-1) and his father Natha Raktate (PW-3) along with interest, if any, accrued on it. If they refuses to withdraw it within three months after intimation about deposit of the amount, that amount be transferred to Ehsaas Matimand Mulanche Balgruh CBCMT. The bank account details of the same are as under :-

Name : Siddharth Samajik Vikas Sanstha.
A/c. No. : 130820110000494 - (Current Account)
Bank : Bank of India.
Branch : Powai Naka, Satara.
IFSC : BKID0001308.

VI. The respondents/accused Nos.1 and 2 are informed that they may proceed against this judgment in the Honourable Supreme Court. If they want to proceed in the Honourable Supreme Court, they have to

furnish surety to the satisfaction of the learned Judicial Magistrate First Class, Ashti, District Beed on or before 15.02.2025.

VII. The Judicial Magistrate First Class, Ashti, Tahsil Ashti, District Beed is directed to provide a copy of this judgment to both the accused while they submit bonds of good behaviour and sureties.

VIII. The record and proceedings be sent back to Trial Court alongwith copy of this judgment.

IX. Rest of the impugned judgment is maintained.

**[SANJAY A. DESHMUKH]
JUDGE**

A.G.Narwade