



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.672 OF 2004

The State of Maharashtra,
Through Poice Station,
Ardhapur, District : Nanded

.... APPELLANT
(Ori. Complainant)

VERSUS

1. Ashok Marotirao Tekale,
Age : 40 years, Occu.: Agriculture,
R/o.: Bamni, Tq. Ardhapur.

2. Balaji Marotrao Varpade,
Age : 25 years, Occu.: Agriculture,
R/o.: Dabhad Shivar

.... RESPONDENTS
(Original Accused)

...
Mr. R. B. Dhaware, APP, Advocate for Appellant
Mr. A. M. Gaikwad, Advocate for Respondent Nos.1 & 2
....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 06/03/2025.

JUDGMENT :

1. The appellant – State has filed this appeal for challenging the acquittal of respondent / accused in RCC NO.110 of 2001 from the charge under Sections 324, 504, 506(2) read with Section 34 of the Indian Penal Code, recorded by the learned Judicial Magistrate (First Class), Nanded i.e. learned Trial Court.

2. As per the prosecution story, the agricultural fields of accused No.1 / respondent No.1 - Ashok Tekale and that of complainant Motiram Kachru Tekale, were adjacent to each other. On 08/12/2000, the complainant was giving water to his field through canal, which was also the source of water for accused – Ashok. Ashok was also in his field alongwith servant – Balaji Marotrao Varpade i.e. accused No.2. Ashok had obstructed flow of water to the field of complainant with the help of tin sheet. The complainant had also raised grievance with the Irrigation Officer, but the said Officer instructed Motiram to get the water by removing the said tin sheet from the canal (Chari). At about 5.30 p.m. on the same day, when the complainant tried to remove the said tin sheet, respondent No.1 Ashok came there with a spade in his hand and started abusing complainant. He then assaulted the complainant with wooden handle of spade and inflicted injuries on the waist, legs and hand of the complainant. Respondent No.2 – Balaji also assaulted the complainant and beat him with fists and kicks. The accused when left the spot, complainant went to police station from where he was referred to hospital. On the basis of his statement recorded by the police, a crime was registered against the respondents / accused for the aforesaid offence. The learned trial Court after conducting the trial, acquitted both the accused / respondents of the charge levelled against them.

3. The learned APP strongly submits that the learned trial court did not appreciate the evidence on record in proper manner. According to

him, the material evidence of complainant – Motiram as well as other eye witness – Ananda Sambhaji Pawar, was ignored by the learned trial court. Further, there was also evidence in respect of injuries sustained by the complainant, from the medical officer, according to which the complainant had sustained injuries by a hard and blunt object like a spade. He further submitted that though the other eye witnesses have not supported the prosecution case, but the learned trial court should have discarded their evidence in its entirety. Thus, he prayed for reversal of the judgment of acquittal.

4. On the contrary, the learned counsel for the respondent / accused supported the impugned judgment and pointed out that the entire story of the prosecution is highly doubtful in the light of admissions given by complainant – Motiram in his cross-examination. Further, according to him, the evidence of Motiram and the Investigating Officer in respect of recording the statement of Motiram on the very day of incident, is also not convincing and trustworthy. He pointed out that mother of Motiram i.e. Sarjabai (PW-2) though cited as an eye witness, but she had not seen the actual incident as she reached the spot of incident, after the incident was over. He pointed out that the own brother of complainant did not support the prosecution story and stated in the cross-examination that he had been to Ardhapur on the day of incident and came back in the night at 8.00 p.m., and thereafter he got knowledge of the incident

through his mother i.e. Sarjabai (PW-2). As such, he prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused record and proceedings of the original case.

6. It appears that prosecution has examined in all eight witnesses to establish the guilt of the respondents / accused. According to the prosecution, the incident had taken place at about 5.30 p.m., in the field of complainant when he was trying to remove the tin sheet from the canal for watering his field. It is alleged that respondent No.1- Ashok at that time beat accused with the help of a spade and respondent No.2 Balaji with fists and kicks. Though the Dr. Dilip Bhaskar Dange (PW-4) has proved MLC in respect of injuries sustained by the complainant and opined that those were possible due to a hard and blunt object like spade, but it has also come in his evidence that those injuries are possible due to other hard and blunt material also.

7. It is significant to note that Sarjabai (PW-2), who is also the mother of the complainant though stated about the incident, but her evidence suggests that she had not seen the actual incident as she herself stated that when she reached the spot of incident on hearing shouts, only Motiram was laying on the ground and thereafter she got the knowledge of incident through him. However, in the cross-examination she had come with different story that she got the knowledge of incident only at

the dinner time. She has clearly stated that either she or her husband did not witness the actual incident, wherein respondents / accused beat the complainant. Same is the case with Baliram (PW-3), who is in fact a real brother of the complainant. Though he stated in his chief examination that he saw both the respondents / accused running away by the road after hearing shouts and when he went to the spot of incident, the complainant was laying on the ground, but in the cross-examination he has clearly admitted that on the day of incident he had gone to Ardhapur and came back at about 8.00 p.m., and then his mother told him about the incident. Thus, evidence of both these witness is not helpful to the prosecution case.

8. Now we are having the evidence of complainant – Motiram (PW-6) and the eye witness – Ananada Sambhaji Pawar (PW-5). Complainant – Motiram has stated as per the prosecution story. He has specifically stated that after the scuffle was resolved by Ananda (PW-5), he remained in the field for about two hours and thereafter, they started from Dabhad to Police Station Ardhapur, where the report the Exhibit-24 was lodged at 10.45 p.m. However, the evidence of Investigating Officer i.e. ASI Govind Chakradhar (PW-8) is somewhat different in respect of lodging of FIR. It is to be noted that according to the complainant – Motiram, when he went to police station after the incident, he was referred to the hospital, wherein his statement was recorded by the ASI Govind Chakradhar (PW-8) and the crime was registered against the respondents / accused.

However, Chakradhar (PW-8) has stated in his evidence that Motiram was brought to the Ardhapur Police Station at 6.00 p.m. by the relatives, but at the relevant time, he was unable to speak. Further, according to him, the complainant – Motiram had regained consciousness on the next day i.e. on 09/12/2000 in the hospital itself and then he recorded his statement. As such, the Investigating Officer has falsified the entire evidence of Motiram as regards the recording of his statement i.e. FIR Exhibit-24. Therefore, this very aspect is definitely hazardous to the prosecution case and inference can safely be drawn that the actual incident could not have taken place as narrated by the complainant.

9. It is highly important to note that the another eye witness i.e. Ananda (PW-5) posing a servant of the complainant though stated that he saw the respondents / accused beating complainant – Motiram by spade handle, fists and kicks and that he separated the quarrel, but in the cross-examination he stated that he was not there when Motiram was taken to hospital. It has come on record that this witness Ananda was in fact brother-in-law of Motiram and therefore, it appears highly doubtful that even after such incident of beating, he did not accompany Motiram to the hospital. As such, it indicates that he might not have there at the time of incident.

10. Further, it is extremely important to note that though it is stated by the complainant – Motiram that he sustained bleeding injuries due to the beatings by the respondents / accused, but no blood has been seized

from the spot of incident. It is to be noted further that the charge against the respondents / accused is under Section 324 of IPC i.e. voluntarily causing grievous hurt, but the Medical Officer, who has proved the injury certificate Exhibit-21, has not stated anything about the nature of injuries. The column in respect of the same is blank. Further, this witness has also admitted that till his deposition before the court, he did not give final opinion about injuries. Further, he admitted that he personally did not see any fracture injury to complainant – Motiram. In absence of such evidence, it cannot be inferred that complainant – Motiram sustained grievance injuries. Though complainant – Motiram stated that he had to remain in the hospital for a long duration, but there is no supportive evidence in respect of the same. As such, in absence of nature of injury it is highly difficult to hold that the ingredients of Section 324 of IPC are attracted in the instant case. Further, there is no satisfactory evidence on record as how and in what manner the respondents / accused abused and insulted the complainant. The lodging of FIR appears highly doubtful due to the contradictions between the evidence of complainant as well as evidence of Investigating Officer on that aspect. Therefore, considering the entire evidence on record, it appears that the prosecution has not established the guilt of accused / respondents beyond reasonable doubt. On the contrary, considering the discrepancies in the evidence of eye witnesses, benefit of doubt needs to be given to the respondents / accused. The learned trial court has already appreciated the evidence on record in

proper perspective and ultimately acquitted the respondents / accused. As such, there is no reason to interfere with the impugned judgment and accordingly, the appeal stands dismissed and disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-