



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 674 OF 2005

The State of Maharashtra
Through PSO, Pathardi Police Station,
Pathardi, District Ahmednagar.

... Appellant

Versus

1. Arjun Dnyandeo Darade,
Age 30 years,
2. Raju Dnyandeo Darade,
Age 33 years,
3. Navnath Dnyandeo Darade,
Age 40 years.
[Abated as per Court's order
dated 27.02.2005]
4. Murlidhar Paraji Shirsath,
Age 54 years.
5. Sudamati Murlidhar Shirsath,
Age 42 years.
6. Mangal Rajendra Darade,
Age 33 years.
7. Asarabai Dnyandeo Darade,
Age 58 years.
8. Dnyandeo Karbhari Darade,
Age 73 years.
[Abated as per Court's order
dated 07.01.2009]

All R/o Pagori Pimpalgaon,
Taluka Pathardi, District Ahmednagar.

... Respondents
[Ori. Accused]

.....
Mr. S. S. Dande, APP for the Appellant-State.
Mr. Y. V. Kakade, Advocate for the Respondents.
.....

WITH
CRIMINAL APPLICATION NO. 2247 OF 2025
IN
CRIMINAL APPEAL NO. 674 OF 2005

1. Murlidhar Paraji Shirshat
Age : 23 years, Occ: nil,
2. Sudamati Murlidhar Shirsath
Age : 23 years, Occ: nil,
3. Asarabai Dnyandeo Darade
Age : 82 years, Occ : nil,
All R/o: Pagori Pimpalgaon,
Tal. Pathardi, District Ahmednagar. ... Applicants
[Orig. Resp. 4, 5 & 7]

Versus

The State of Maharashtra
Through PSO Pathardi Police Station,
Pathardi, District Ahmednagar. ... Respondents

.....
Mr. Y. V. Kakade, Advocate for the Applicants
Mr. S. S. Dande, APP for the Respondent-State
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.07.2025

Pronounced on : 16.07.2025

JUDGMENT :

1. The respondents in appeal were chargesheeted and tried for commission of offence punishable under Sections 143, 147, 148, 325,

324, 323, 504, 506 r/w 149 of IPC. Five witnesses seem to have been examined in trial. There is no dispute about the complainant party and accused persons to be immediate neighbours having lands adjoining to each other and secondly, there to be civil disputes as well as criminal complaints against each other.

2. Re-appreciated and re-analyzed the evidence on record. Alleged incident seems to have taken place on 17.07.1997. Law is set into motion by Govindrao (PW1). He claims that on the said date, accused persons, getting annoyed by the order of Tahasildar in his favour, caused damage to his crops and therefore he questioned accused Arjun and Rajendra and further, according to him, after initially abusing him, Arjun and Murlidhar apprehended him and he was assaulted by means of kicks and fist blows, whereas Raju assault on his right rib by means of handle of axe causing fracture to his bone. Hearing his cries and shouts, his family members namely Aprukabai, Sanjubai, Babanbai, Meenabai and Sampat (nephew of informant) came to his rescue and at that time, he has alleged that, accused Sudamati and Dnyandeo caught hold of Aprukabai and accused Arjun assaulted Aprukabai with knife on her left hand. One Raosaheb Nagare and Vinayak Landge, who had arrived there, also intervened. According to him, they initially approached police station and were

referred to hospital and while undergoing treatment, police approached on the next day and reduced his complaint into writing (Exhibit 70)

3. PW2 Sampat, who is nephew of informant PW1, has also deposed in his evidence at Exhibit 75 that, when his paternal uncle Govindrao questioned accused for cutting bajara crop, he heard cries and therefore he himself, his wife Meenabai, his mother Aprukabai, aunt Babanbai, his brother's wife Sanjubai rushed there to intervene. According to him, accused Arjun, Navnath, Rajendra, Murlidhar, Sudamati, Dnyandeo and Ashrabai assaulted them by means of kicks and fist blows. According to him, accused Raju assaulted his uncle by means of handle of axe and accused Arjun assaulted his mother by means of knife on the left hand. His uncle lodged report.

4. PW3 Aprukabai, in her evidence at Exhibit 81, stated that when she reached hearing talks, accused Raju assaulted Govindrao by means of handle of axe causing fracture to his hand. Accused Arjun assaulted her by means of knife on her left wrist, whereas accused Sudamati, Mangal, Ashrabai have assaulted Sanjubai, Babanbai and Meenabai by means of kicks and fist blows. Raosaheb and Vinayak came to intervene.

5. PW4 Raosaheb is the pancha to spot panchanama. In fact, he was the person who allegedly intervene, but unfortunately, if at all he was the eye witness, he ought to have been examined as an eye witness and not as a pancha.

6. PW5 Ramprasad Kulkarni is the doctor who had examined Govindrao and Aprukabai on 17.09.1997 and had issued medical certificates Exhibit 100 and 101 respectively. He claims that after examining Govindrao, he was referred to General Hospital, Ahmednagar for X-ray examination and further treatment. Likewise, even Aprukabai was treated for two injuries and was referred to General Hospital.

7. Learned APP has submitted that there was injured eye witness account. That, witnesses are consistent. That, parties are on inimical terms. That, there was use of handle of axe to cause fracture injury, and use of knife in assaulting PW3. That, medical expert who treated and examined injured and issued medical certificates, is also examined and therefore, there was more than convincing evidence. Hence, he urges to allow the appeal by setting aside the impugned order.

8. Learned counsel for the respondents has vehemently submitted that there is false implication due to the civil disputes as well as previous criminal complaints. That, there was no such occurrence and moreover according to him, firstly, the witnesses are not consistent, i.e. Govindrao, Sampat and Aprukabai. According to him, there versions are distinct as to who assaulted with what. Govindrao has leveled general and omnibus allegations without specifying the role of each of the accused. He also doubts veracity of the complaint on the ground of delay in lodging FIR and failure of prosecution to produce articles allegedly used, so also prosecution failing to examine the very Investigating Officer thereby depriving defence from bringing on record the material improvements, contradictions and omissions.

9. On re-appreciation and re-analysis of the evidence on above lines, it is emerging that, as stated above, parties being neighbours, do have civil dispute and/or are on cross terms. Secondly, occurrence which is stated to have taken place in the afternoon of 17.07.1997, is reported in the afternoon of 18.07.1997. No explanation is given for the delay. However, though it is coming on record that after being referred to the Civil Hospital, Ahmednagar, policemen approached Govindrao for recording his statement, his own evidence suggests that he had, at first point of time, allegedly visited police station and there

was referral to the Civil Hospital. Why complaint was not lodged at that very point of time at the Pathardi police station, is not explained. Apparently, there is delay.

10. Again, as submitted by learned counsel for the respondents-accused, versions of PW1, PW2 and PW3 are not consistent on the point of assault as, according to PW1, while he objected accused, at that time, he was abused but he has not stated in what form and what filthy words were used. PW2 Sampat has also named Arjun, Navnath, Rajendra, Murlidhar, Sudamati, Dnyandeo and Ashrabai for assault by kicks and fist blows, regarding which PW1 has not uttered a word. PW3 Aprukabai has also attributed role of kicks and fist blows to Mangal, who is not named either by PW1 or PW2.

11. Therefore, as pointed out, witnesses are not lending support to each other about roles of each of the accused persons. No doubt PW5 has been examined to show giving treatment to Govindrao and Aprukabai and he has issued medical certificate. However, as pointed out, unfortunately the articles are not seized. Law is, though settled that mere failure to recover article is not fatal, but here, another interesting aspect is that the very Investigating Officer who conducted investigation and chargesheeted accused, has not stepped into the

witness box in spite of being summoned by prosecution. This also creates serious doubt on the prosecution. On the other hand, by not examining the Investigating Officer, defence is deprived of bringing on record the omissions, contradictions and variances.

12. Learned trial court has already acquitted accused persons disbelieving prosecution case. Bearing in mind the settled law while dealing with appeal against acquittal, no strong case being made out, appeal deserves to be dismissed. Accused/respondents in Criminal Appeal have preferred Criminal Application No. 2247 of 2025, praying therein to cancel the bailable warrant issued against them. The same needs to be allowed. Hence, the following order is passed :

ORDER

- I. The Criminal Appeal No. 674 of 2005 is dismissed.
- II. Criminal Application No. 2247 of 2025, seeking cancellation of bailable warrant, stands allowed. The order dated 30.04.2025 passed in Criminal Appeal No. 674 of 2005, directing issuance of bailable warrant against the respondents, is recalled.

[ABHAY S. WAGHWASE, J.]