



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

CRIMINAL APPEAL NO.794 OF 2005

The State of Maharashtra,
Through Police Station, Kopargaon,
Ramesh Kisan Adhav
Age : 45 years, Occu.: Agriculture,
R/o.: Mohinirajnagar, Tq. Kopargaon,
District : Ahmednagar

.... APPELLANT
(Original Complainant)

VERSUS

1. Sanjay Yeshwant Jadhav,
(Dead, hence abated as per
order dated 09/12/2009)
2. Chandrakant Dattatraya Adhav,
Age : 59 years, Occu.: Agril.,
3. Rahul Dattatraya Adhav,
Age : 34 years, Occu.: Agriculture,
4. Pintu @ Gokul Chandrakant Adhav,
Age : 34 years, Occu.: Agriculture,

All R/o.: Mohinirajnagar, Kopargaon,
Tq. Kopargaon, District : Ahmednagar RESPONDENTS
(Original Accused)

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Mr. D. J. Patil, APP for the Appellant-State
Mr. Shubham S. Kate h/f Mr. A. V. Hon, Advocate for respondent
Nos.2 to 4

....

CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 27/02/2025
PRONOUNCED ON : 25/04/2025**

JUDGMENT :

1. The appellant – State has preferred this appeal challenging the acquittal recorded against the present respondents / accused by the learned 3rd Judicial Magistrate (First Class) i.e. the learned trial court, in Regular Criminal Case No.110 of 2000 from the offence punishable under Sections 325, 504 & 506 read with Section 34 of the Indian Penal Code.

2. As per the prosecution case, complainant Ramesh Kisan Adhav at about 9.00 p.m. on 24/02/2000, was tying his cow. However, at the relevant time, on account of previous dispute over the land, all the respondents / accused abused him as to why he had filed a civil suit against them. They also assaulted him on his calf of right leg, thigh, back, upper side of right eye and head with an iron bar and kicks and fists. All the respondents/ accused gave threats to kill him. Therefore, the complainant – Ramesh lodged a report against them as per Exhibit-25 while taking treatment in the hospital. The investigating officer after completion of the investigation, charge sheeted the respondents / accused for the offence punishable under Sections 325, 323, 504 & 506 read with 34 of IPC. However, the learned trial court after conducting trial, acquitted all the respondents / accused.

3. The learned APP strongly submitted that the complainant as well as eye witnesses have deposed against the respondents / accused. Moreover, the Medico-legal Certificate in respect of the injuries sustained by the complainant, also indicated that the complainant had suffered from grievous injury such as fracture to his right leg. As such, he prayed for recording conviction against the respondents / accused.

4. On the contrary, the learned counsel for the respondent Nos.2 to 4 / accused submits that though the evidence on record of the eye witnesses is against the respondents / accused, but those eye witnesses were in fact close relatives of the complainant. According to him, all the witnesses examined by the prosecution, were interested witnesses and no independent witness has been examined by the prosecution even after recording the statements of such witnesses. According to him, the panch witness- Balasaheb Navghare (PW-5) did not support the prosecution and the Medico-legal Certificate had in fact indicated all the injuries as simple in nature. Therefore, he supported the acquittal of the respondents / accused and prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused documents on record alongwith the impugned judgment.

6. Admittedly, the complainant and some of the witnesses being an eye witnesses, have deposed as per the prosecution story. The complaint (Exhibit-25) indicates that as per the complainant, he was tying his cow at the time of the incident and at that time the respondents / accused beat him with iron rod and also threatened to kill him. In the complaint itself the complainant is saying that all these respondents / accused beat him with iron rod. However, while deposing before the court, he has changed his version and stated that only respondent No.1 – Sanjay beat him with iron rod on his right leg, right thigh, back and over right eye brow. He has clearly deposed before the court that the rest of the respondents / accused beat him with kicks and fists only. Admittedly, the Medico-legal Certificate (Exhibit-37) in respect of the injury sustained by the complainant indicates following injuries.

- i) *C.L.W. on right parietal region, size 1 ½ X 1 C.M. by skin deep bleeding was present*
- ii) *C.L.W. on right eye-brow, size 1 X ½ c.m. by muscle deep bleeding is present*
- iii) *Contusion on right scapular region, size 10 X 2 c.m.*

- iv) Contusion on lumber region, size 10 X 2 c.m.*
- v) Abrasion on left eye posterior lower 1/3rd size 1½ X 1 c.m. and*
- vi) C.L.W, on right shin (leg middle 1/3rd), size 2 X ½ wound deep.*

7. Moreover, it appears that one of the eye witnesses namely Vinayak (PW-2) has stated that when he was going to Mohinirajnagar on his motorcycle, he saw the respondents / accused beating the complainant – Ramesh. However, he did not state that one of them was having iron rod. It is significant to note that this witness appears to be relative of the complainant. Nandu (PW-3), who is a panch witness on the seizure panchanama of iron rod with which respondent No.1 had allegedly beaten the complainant, has not supported the prosecution case. Ashok Singar (PW-4) has also deposed as per the complainant and according to him, only respondent No.1 -Sanjay was having iron rod and other respondents / accused were beating Ramesh with kicks and fists. As such, Vinayak (PW-2) is not saying that respondent No.1/ accused No.1- Sanjay was having iron rod, but the other witnesses are saying that only he was having iron rod and other respondents / accused beat the complainant with kicks and fists.

8. It is extremely important to note that if we go through the evidence of the complainant, it appears that the injuries sustained by the complainant on the part of body mentioned in Medico-legal Certificate Exhibit-37, are on the exact parts of his body where respondent No.1 Sanjay had beaten him with iron rod. Though the learned trial court found it unbelievable that those injuries caused by iron rod and held that those might have sustained by fall on the land while chasing the cow by the complainant, but as per the own version of the complainant, the other respondents / accused had beaten him only by kicks and fists. Further, there is no specific role attributed to rest of the accused except accused No.1 – Sanjay in the beating. Only general statements by prosecution witnesses, are made while deposing before the court that the remaining accused beat the complainant with kicks and fists. Even the prosecution story is taken as truth, then also the remaining accused i.e. respondent Nos.2 to 4 cannot be convicted under the charge of Section 325, 504 & 506 r.w. 34 of IPC since the main accused / respondent No.1 – Sanjay, who allegedly assaulted the complainant with iron rod, is now no more. He has died during the pendency of this appeal and proceeding has already been abated against him. Further, there is nothing on record to show that respondent Nos.2 to 4 had shared common intention with

respondent No.1-Sanjay for causing grievous injuries to the complainant with the help of iron rod. Under such circumstances, the charge under Section 325, 504 and 506 of IPC could have been established only against respondent No.1- Sanjay, even if the evidence of eye witnesses and the complainant, was considered in positive manner. However, on the death of respondent No.1- Sanjay the aforesaid charge does not sustain against the remaining respondents / accused Nos.2 to 4. Further, it has already come on record that there was enmity between the complainant and all the respondents / accused as number of civil and criminal disputes were pending between them. Therefore, the possibility of roping respondent Nos.2 to 4 alongwith respondent No.1- Sanjay, who is no more, cannot be ruled out. Therefore, even the evidence of the complainant is taken as truth, then also the present respondents, for the reasons mentioned above, cannot be convicted under the charge framed against them. In view of the same, the acquittal recorded by the learned trial court against the present respondent Nos.2 to 4 / accused needs no interference. Accordingly, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)