



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 710 OF 2004**

The State of Maharashtra  
Through Police Station Degloor,  
Taluka Degloor,  
District Nanded.

... Appellant

Versus

1. Shivaji s/o Sayanna Kankante,  
Age 45 years,
2. Ashok s/o Mallu Chintalwar,  
Age 32 years,
3. Raju s/o Rajling Yangulwar,  
Age 30 years,
4. Sopan s/o Vithal Basatwar,  
Age 35 years,
5. Gangaram s/o Sayanna Thankangar,  
Age 68 years,
6. Gangareddy s/o Linguram Yanawar,  
Age 42 years,
7. Ganesh s/o Shankarrao Patil,  
Age 25 years,
8. Venkat Naganna Alure,  
Age 32 years,

All r/o Shahapur, Taluka Degloor,  
District Nanded.

... Respondents  
(Ori. Accused)

.....

Mr. N. D. Batule, APP for the Appellant-State.

Mr. Sanket S. Palnitkar Advocate for Respondent Nos. 1 to 3 and 6 to 8.

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 07.08.2025

Pronounced on : 12.08.2025

**JUDGMENT :**

1. State is hereby assailing judgment and order of acquittal dated 22.07.2004 passed by learned Additional Sessions Judge, Biloli in Special Case No. 02 of 2004, by which present respondents faced trial for commission of offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, SCST Act], 324 r/w 149 of IPC and Section 7(1)(d) of Protection of Civil Rights Act.

2. At the outset, it needs to be mentioned here that, during pendency of this appeal, respondent no.4 Sopan s/o Vithal Basatwar died on 27.04.2021 and respondent no.5 Gangaram s/o Sayanna Thankangar died on 10.10.2006. Original death certificates of both the respondents are placed on record. In view of the same, the appeal stands abated as against such respondents.

**CASE OF PROSECUTION IN BRIEF**

3. Informant Madhav approached Degloor Police Station and lodged report that, on 21.07.2003 while he was cultivating grazing ground, accused persons came armed with sticks. Accused no.8

Venkat, who was armed with axe, hurled caste abuses and even inflicted blow on the head by blunt side of the axe. Accused No.3 Raju gave blow with spade, accused Ashok, Gangareddy, Gangaram gave kicks and fist blows while accused Shivaji instigated all of them. On receipt of such report, FIR was registered bearing No. 88 of 2003. Crime was investigated and on completion of the same, accused persons were chargesheeted.

4. Special case was tried by learned Additional Sessions Judge, wherein prosecution rested its case on the evidence of in all five witnesses apart from relying on documentary evidence like FIR, spot panchanama etc.

5. Defence denied to lead evidence and answered incriminating material posed under Section 313 of Cr.P.C. Arguments advanced by both sides were heard and on analyzing the evidence, learned trial Judge was pleased to acquit accused nos. 1 to 7 from all charges, however, convicted only accused no.8 Venkat for offence under Section 324 of IPC.

Feeling aggrieved by the order of acquittal of accused Nos. 1 to 7, State has come up in appeal.

## SUBMISSIONS

### **On behalf of the Appellant-State :**

6. The sum and substance of the arguments advanced by learned APP is that, victim complainant testified and defined role of each of the accused. He has reiterated contents of FIR. That, nothing adverse was brought in his cross examination. According to learned APP, complainant's testimony found support from the evidence of PW2, who was an independent witness and was working in the adjoining field. Thus, according to learned APP, there was sufficient corroboration.

7. As regards to injury is concerned, learned APP pointed out that the doctor who examined and treated complainant has also stepped in the witness box and has narrated the nature and type of injuries. That, injury certificate is also issued and taken on record. Thus, according to learned APP, occurrence has been substantially proved by prosecution. However, according to him, in spite of availability of overwhelming evidence, learned trial court disbelieved prosecution story opining that, version of complainant and PW2 are exaggerated and improvised. Learned APP would add that there are slight

variances in the testimony, but the core of testimony of both the witnesses has remained intact. Therefore, conclusion drawn by learned trial Judge is faulted at.

8. As regards to caste abuse is concerned, learned APP submitted that, caste certificate is placed on record. The authority which issued caste certificate is also examined. Caste utterance and abuse was in open and public place and therefore, according to him, required ingredients to attract the provisions of SCST Act were very much available, however, the same has been disbelieved, and it is so because of improper appreciation of facts, evidence as well as law and hence, it is prayed that appeal be allowed.

**On behalf of the Respondents-Accused :**

9. Countering the above submissions, learned counsel for the respondents would point out that there is correct appreciation by the trial court. He pointed out that, eight accused were chargesheeted and one is already convicted and for the more reason, he submits that, it is improper to question the impugned judgment on the ground of improper appreciation. He pointed out that, roles are not crystallized; similarly, caste abuse is attributed in chorus and hence it

is rightly disbelieved. He further submitted that, the evidence of PW1-informant and PW2 is not consistent. According to learned counsel, when there are allegations of assault by 8 persons, how could complainant suffer only three injuries. He pointed out that, according to complainant, 20 persons had gathered, but no independent witness has been examined, including, Gangaram and Laxman. For above reasons, canvassing in favour of the judgment passed by learned trial Judge, he prays to dismiss the appeal for want of merits.

### **EVIDENCE BEFORE THE TRIAL COURT**

10. Prosecution has examined in all five witnesses in support of its case. Their role and status and the sum and substance of their evidence can be summarized as under :

11. PW1 Madhav, who is examined at Exhibit 52, gave his caste and stated that he had encroached over grazing land owned by the Government, but there is panchanama about he to be in possession and so he had initiated proceedings before Tahsildar. According to him, on 21.07.2003 while he was ploughing the field, all accused present before the court came. They said to him “Dhedgya Mangadgya” and asked him how he was ploughing the land and

whether it belongs to his father. He testified that Venkat was holding axe, Raju was holding spade. Venkat assaulted him by axe on head from the blunt side causing him bleeding head injury. Shivaji assured to manage police. Sopan hit him with stick on the back and others assaulted him by kicks and fist blows. Hearing his cries, Gangaram and Laxman intervened and he rushed to the police station to lodge report, which he identified to be at Exhibit 53.

12. PW2 Laxman, in his evidence at Exhibit 54, stated that he is brother of complainant Madhav and his land is adjacent to land of his brother. While he was present in his land, accused before the court hurled caste abuses and beat his brother. Venkat hit his brother by blunt side of axe; Raju assaulted by handle of spade and Gangareddy manhandled his brother. He and two to three persons intervened.

13. PW3 Ganesh is the doctor who allegedly examined complainant Madhav and issued certificate Exhibit 59. According to him, Madhav had suffered contusion with abrasion on occipital part as well as right frontal parietal region as well as abrasion on frontal region of scalp. Doctor certified injuries to be simple.

14. PW4 Sub Divisional Officer produced caste certificates Exhibit 67 to 71 and he deposed to that extent.

15. PW5 is the authority who issued caste certificate and he deposed to that extent.

### **ANALYSIS**

16. Thus, here, eight accused are made to face trial. Prosecution adduced evidence of five witnesses. Crucial evidence is only of PW1 and PW2. Rest of the witnesses are doctor and authorities who tendered and issued caste certificate.

17. On critical evaluation of evidence of PW1 Madhav, it is clearly emerging that, though he attributed caste abuse, it is apparently in chorus. Who amongst the eight accused hurled the abuse is not clarified. Witness has stated that “they said to him Dhedgya, Mangadgya”. Therefore, on the aspect of hurling caste abuse, it being in chorus and not directed against any particular accused, cannot be considered.

18. As regards to injuries are concerned, he has alleged assault by Venkat by means of axe. Venkat is already held guilty by trial court. As regards to other accused Raju is concerned, he has only stated about this accused holding spade. No overt act is attributed for using the said article. As regards to accused Sopan for using stick for hitting it on his back is concerned, doctor has not found any injury or mark on the back and it is evident from doctor's testimony and certificate. Even in cross of complainant, omission is brought to the extent of informing police regarding assault by Sopan. As regards to other accused are concerned, again, without specifying or naming accused, allegations are levelled about giving kicks and fist blows. In cross, complainant has answered that, his clothes were blood stained but the same were not before the court.

19. PW2 is also examined but apparently he is brother of complainant and he also testified about accused coming to his brother. However, he merely testified that they hurled caste abuses and beat him. He too has not defined overt act of each of the accused, nor has specified who exactly hurled caste abuses. As stated by his brother, he has also attributed role to Venkat for using blunt side of the axe, but Venkat is already convicted. According to him, Raju

assaulted by handle of the spade, but informant has not stated so. Therefore, brothers are not consistent.

20. Informant in his cross has stated that, over 30 to 40 persons were present at the time of incident. He has named Gangaram and Laxman for intervening and separating, but unfortunately, they too are not examined. Therefore, apart from testimony of PW1 complainant and PW2 brother, which is full of material omissions, there is no trustworthy or convincing evidence. Complainant seems to be cultivating land owned by the Government which was meant for grazing cattle and he has himself stated about encroaching over it. In such backdrop, when objection was said to be raised, some occurrence had taken place resulting into FIR, but for above reasons, testimony of complainant and his brother being ambiguous and non-specific, no credence can be laid on it. As stated above, accused Venkat, to whom role of assault by axe is attributed, is already held guilty. Against accused nos. 1 to 7 who are acquitted, apparently there are general, omnibus allegations.

21. In the light of above discussion, even on complete re-analysis and re-appreciation, this Court is also convinced that there is no material against accused nos. 1 to 7. The view taken by the learned

trial Judge is the only possible view that could emerge with such quality of evidence. Resultantly, no case for interference being made out, the following order is passed :

**ORDER**

The appeal is dismissed.

**[ABHAY S. WAGHWASE, J.]**

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