



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

CRIMINAL APPEAL NO. 792 OF 2004

The State of Maharashtra
Through Police Station,
Ramtirth, Taluka Biloli,
District Nanded

Appellant

Versus

1. Gangadhar Nagoji Gambhire
Age : 48 yrs, occ : agri.,
2. Dashrath Nagoji Gambhire
Age : 50 yrs, occ : agri.,

Both r/o Kumbhargaoon,
Taluka Biloli, District Nanded

Respondents

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Mr. R.D. Raut, A.P.P. for the appellant / State.
Mr. H.I. Pathan, Advocate for the respondents.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 26 FEBRUARY 2025.

JUDGMENT :

1. The appellant-State has filed this appeal challenging the acquittal of present respondents, who are the original accused in Special Atrocity Case No. 4/2000 from the offence under Sections 324, 504 read with Section 34 of the Indian Penal Code (for short, "I.P.C.") and Section 3 (1) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act at the hands of learned Additional Sessions

Judge, Biloli i.e. the learned trial Court under judgment and order dated 18.08.2004.

2. The case of prosecution, in brief, is as under :

The complainant i.e. aggrieved person Kishan Laxman Shelke is a member of Scheduled Caste i.e. 'Matang' caste, whereas the respondents/accused are of other caste i.e. 'Wani'. On 18.05.2000 the complainant alongwith Hanmant, Namdeo and son Laxmikanth went out to cut the Neem trees purchased by them from Ramchandra Patil. While cutting those Neem trees, both the respondents/accused were also present in their field and they were cutting branches of their trees by means of *Katti*. The complainant, after having felt thirsty, went to respondent Gangadhar and lifted water pot belonging to the accused. On that count, the accused hurled caste abuses to him and consequently assaulted the complainant with *Katti*. The persons gathered there somehow rescued the complainant and on filing report, crime was registered against the respondents/accused and after completion of investigation charge sheet was filed against them. The learned trial Court undertake the trial and acquitted the present respondents and hence this appeal.

3. The learned A.P.P. submits that though some of the witnesses have declined to support the prosecution, but the complainant and some of the eye witnesses have corroborated each other on material aspects. Further, the injury certificate of the complainant has already been proved by the concerned Medical Officer. However, the learned trial Court, by ignoring the vital evidence on record, acquitted the respondents/accused erroneously.

4. On the contrary, the learned Counsel for the respondents/accused supported the impugned judgment and pointed out that the accused are also belonging to Scheduled Caste i.e. Lingder. Thus, when the complainant and accused both are from Scheduled Caste, no offence under Section 3 (1) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act can be attracted even if there was utterance of certain words abusing the caste of complainant. As such, the acquittal recorded by the learned trial Court against the respondents/accused under the aforesaid sections, is quite justified.

5. So far as the offences Under Sections 324, 504 read with Section 34 of the I.P.C. is concerned, it is the case of the prosecution that accused No.1, after abusing the complainant

in the name of his caste, assaulted him with the help of *Katti* causing bleeding injuries. Admittedly, the Medical Officer PW-7 Bharat has proved the contents of M.L.C. (Exh.25) indicating that the complainant Kishan had sustained injuries. However, the Medical Officer, in his cross-examination, has opined that such injuries could be possible in case of fall of a person on sharp-edged wood. It is significant to note that the complainant Kishan himself admitted in the cross-examination that there was borewell in the land of one Baba Nagoba attached with hand pump and the same was available at a reasonable distance. As such, there was no need for complainant to go to accused for having water from their water pot. Further, PW-3 Laxmikant i.e. son of complainant has also admitted in his cross-examination that when they went to cut the tree, they had carried with them saw, axe as well as water. Therefore, when they were already having water, there was no reason for the complainant to go to accused asking for water.

6. It is extremely important to note that there was dispute between accused and complainant over the Neem tree which was being cut by the complainant at the relevant time. The accused were claiming to be the owner of the said Neem tree. Therefore, false implication of the accused at the hands

of complainant cannot be ruled out and it was quite possible that while cutting the said Neem tree, there was free fight between the complainant and accused. Though the complainant received injuries as mentioned in the M.L.C. (Exh.25), but some of the eye witnesses have not supported the case of prosecution. Even if it is presumed that there was some beating incident or free fight between the parties, but if the opinion of Medical Officer is considered, then there are two possibilities of having such injuries to the complainant. He might have fallen down and sustained such injuries. It is settled that if two views are possible, then the view favourable to the accused has to be chosen.

7. In the present matter also, it has come on record that there was enmity between complainant party and accused on account of ownership of Neem tree which the complainant and his associates were cutting. Further, from the admission given by son of the complainant that they were already having water at the time of incident, it is evident that there might be possibility of false implication of the accused at the hands of complainant. Further, the memorandum and recovery of alleged weapon used in the crime is also not established. As such, considering all these facts, the acquittal recorded by the

learned trial Court against the respondents/accused from the charge under aforesaid sections of the I.P.C. is well justified. As such, no interference is required in the impugned judgment and accordingly the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)