

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 44 OF 2025
(For Leave to file an Appeal)

The State of Maharashtra .. Applicant

Versus

Swapnil Chandrakant Yadav and ors .. Respondents

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Ms.Sangeeta D. Shinde, APP for the applicant/State in ALS 44/2025 and for respondent/State in Appeal No. 1246/2024.
Adv Aleema Bohra i/b Vikas Shivarkar for the appellant in Appeal No. 1246/2024.

**CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ**

DATED : 1st DECEMBER, 2025

P.C:-

1 The State has challenged the judgment of the Sessions Court in Sessions Case No.165/2014, thereby acquitting the accused persons, being four in number, of the charge under sections 143, 147, 148, 307, 324, 325, 427 of the IPC.

2 Heard learned APP Ms.Sangeeta Shinde for the State.

With her able assistance, we have perused the impugned judgment of acquittal.

The prosecution case arise out of a report lodged by the informant Haridas Khade, an Advocate by profession, alleging that he is resident of Somwar Peth, Pune along with his family, and is owner of the place.

According to him, Ganesh Yadav was illegally residing in one of the room, since last six years prior to the filing of the report and on 2/6/2012, he demolished the room for construction of new room. The informant therefore, filed a Civil Suit in the Court of Pune and also lodged a complaint with the Samarth police station. The Civil Court, by an order, restrained Ganesh Yadav and his brother from making any construction on the disputed place.

Despite the aforesaid order, an attempt was made by him to raise a temporary shed, which resulted into another complaint being filed with the Corporation.

Referring to the incident of 30/5/2013, as per the informant PW 2, when he was present at his home at 1.00 p.m, he could see the accused persons along with some other boys coming to the place and found them in an attempt to erect iron pillars at the disputed site.

Despite being made aware that there is an injunction order against the said construction, and the informant apprising them of the same, it is alleged that the accused persons became aggressive as Meena Yadav (Accused

no.2) caught hold of his collar and tried to pull him out. At the same time, accused Bharati More (Accused no.3), her sister caught hold of his hands from back side and Swapnil Yadav, one of the accused lifted Bamboo lying at the place and gave 5 to 6 blows on the back side of his head causing serious bleeding injuries.

3 In the whole wrangle, he also sustained injury on his index finger which was fractured.

When his wife Vidya Khade came to rescue, accused Priti (Accused no.4) picked up a brick from the place and hit her on the right shoulder and on her chin, which resulted in injuries. When his mother Yashodabai and his son came to their rescue, his mother was assaulted by wooden stick and sustained injuries on both hands and her right thumb was fractured. Stones were also pelted at his son who sustained muffle injuries to his right wrist and his right finger.

4 In this background, C.R.No.61/2023 was registered against the accused persons and on completion of investigation, when the charge-sheet was filed, all the four accused were put to trial.

In support of its case, the prosecution examined 10 witnesses, which include the informant himself being examined as PW 2, Vidya Khade, one of the injured and two other eye witnesses Akhilesh Khade, son of the informant as well as Ganesh Mahadev Navale, an independent eye witness.

5 Appreciating the evidence brought on record through these witnesses, the learned Judge in depth, dealt with the evidence of the aforesaid witnesses and in the wake of the argument advanced that accused nos. 2, 3 and 4 are from the same family and therefore they are interested witnesses examined the evidence with caution. However, it is pertinent to note that PW 5 is a completely independent witness.

From the evidence brought on record, it is evident that informant who was injured in the incident was admitted in K.E.M. hospital on 31/5/2013 and was discharged on 6/6/2013. The Discharge Card reflected that he was diagnosed with crush injury to the left index finger with neuro vascular damage and amputation of distal phalanx. Apart from this, the injury certificate from Sassoon Hospital (Exhibit-83) also reflected CLW on Parieto occipital region with CLW on left index finger along with swelling over right forearm.

In order to corroborate the injuries sustained and to conform the narration given by PW 2, Medical Officer is examined as PW 6 and PW 7, who supported the version of the prosecution.

6 The learned trial Judge in an attempt to find corroboration of the version of PW 2, then turned to the evidence of PW 3 and PW 4. On detail scrutiny and appreciation of the evidence including the admissions/statements that have been brought on record through their cross-examination, admittedly, certain inconsistencies had come

on record and this is what has been relied upon by the learned Judge to infer that the version of PW 2 is not fruitful.

7 When we have examined the judgment, we find that the inconsistencies/variations are minor in nature and do not have any impact, so much so, to result into acquittal.

We find that the learned Judge was mostly impressed by the fact that there are material contradictions in the evidence of PW 2, 3 and 4, and based on which a conclusion is drawn that the witnesses attempted to support the prosecution case. Apart from this, the testimony of PW 5 was also looked at with doubt, by observing that he was a client of the informant, an Advocate and the fact that he was near the spot of incident for site inspection in the late night, is also doubtful and therefore it is inferred that the evidence of PW 5 is doubtful, as he witnessed the incident from a distance of 15 feet and not tried to rescue it.

It is in the wake of the aforesaid observations in the impugned judgment, apart from the fact of existence of a previous dispute about the rented premises, the informant being the landlord and the accused persons being the tenant, the learned Judge recorded that enmity is double edged weapon which can be used on either side and it is possible that the informant has used a sharp side of the weapon against the accused and since this possibility cannot be ruled out, the benefit of which must accrue to the accused persons.

8 On going through the judgment which is impugned before us, we find that minor inconsistencies in the version of the prosecution evidence could not have rendered the entire case of the prosecution doubtful, particularly, when the presence of the accused persons on the spot as well as the injuries sustained by the injured, could not be doubted and this would be proved by the prosecution by examining the doctors.

 The benefit of doubt, granted in favour of the accused persons, despite sufficient evidence being brought on record, establishing their presence as well as the assault being mounted on the injured, convince her to prima facie find that the judgment of acquittal, calls for interference. We are quite conscious of the scope in dealing with the Appeal against acquittal, but at this stage, we deem it appropriate to grant leave as we find that the judgment has completely ignored and most important fact that the informant along with other two injured persons have sustained injuries which are brought on record through the Medical Officers and therefore, minor inconsistency in the sequence of the events that have taken place, resulting in the injury, is not of much significance.

9 For the aforesaid, we deem it appropriate to grant leave to the State to file Appeal under Section 419(3) read with Rule 19 of Chapter XXVI of the Bharatiya Nagarik Suraksha Sanhita, 2023. Leave granted.

Registry is directed to register the Appeal.

Notice on behalf of respondents is waived by the learned counsel Shri Aleema Bohra, who is present.

Rule. Admit.

Call for Record and Proceedings.

Appeal No.1246/2024 is directed to be tagged along with.

(SHYAM C. CHANDAK,J)

(BHARATI DANGRE, J.)