2026:BHC-AUG:51073

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 492 OF 2006

The State of Maharashtra
At the instance of Subhash
Malhar Deshpande, Through
PSO Tophkhana Police Station,
Ahmednagar .... Appellant

Versus

Milind Govind Kshirsagar
Age: 38 years,
R/o. Gaikwad Colony,
Sanman Apartment, Savedi,
Ahmednagar ....Respondent
(Ori. Accused)

.....

Shri G.O. Wattamwar, APP for the Appellant/State.
Shri R.N. Dhorde, Senior Counsel, a/w Shri Harshvardhan A. Shinde i/b. Shri V.R. Dhorde, Advocate for Respondent.
Shri Pravin G. Patil, Advocate for Informant (Assist to APP)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 21-10-2026
Pronounced on : 22-10-2026

JUDGMENT :

1. State hereby questions Judgment and order dated 14-03-2006 passed by the Chief Judicial Magistrate, Ahmednagar, in Regular Criminal Case No.276 of 2004 acquitting present respondent from charge under Sections 324, 504, 506 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. Before trial Court, case of prosecution was that, on 03-08-2004 when informant had been to take Darshan at Temple of Lord Datta, accused, a priest of the Temple, questioned him for making false allegations against him amongst the society. After initially manhandling informant, it is alleged that, accused went inside a nearby room and returned with an iron rod with which he allegedly dealt blow on the head and right hand, as a result of which he suffered bleeding injury and being taken to Civil Hospital, after which Police arrived, recorded his statement resulting into registration of FIR.

After chargesheeting accused, trial was conducted on the evidence of five witnesses. Learned trial Court appreciated oral and documentary evidence and acquitted accused. Hence, instant appeal.

SUBMISSIONS

On behalf of appellant State :

3. Shri Wattamar, learned APP would submit that, occurrence is proved through the injured informant account. That, there is independent eye witness account. That, regarding injury, medical expert has been examined. That, spot panchanama is proved and therefore, according to him, there was ample evidence to convict the

accused, but as learned trial Court failed to do so, he prays to allow the appeal by setting aside impugned judgment and order.

On behalf of respondent/original accused :

4. In answer to above, Shri Dhorde, learned Senior Counsel submitted that, there is false implication on the ground of rivalry in two groups in the Deosthan. That, moreover occurrence is rendered doubtful as there was no reporting of history to the medical officer and secondly, the timing of occurrence is rendered doubtful in view of cross-examination faced by medical expert. Lastly, he submitted that, view taken by the learned trial Court being possible view and in view of law laid down by the Hon'ble Apex Court in the case of *Tota Singh and another v. State of Punjab, AIR 1987 SC 1083* regarding dealing with an appeal against acquittal, he prays to dismiss the appeal for want of merits.

BRIEF ACCOUNT OF EVIDENCE

5. Prosecution has adduced evidence of five witnesses in the trial Court. Sum and substance of their evidence is as under :

PW1 Suhas Malhar Deshpande, complainant in his evidence at Exhibit 12 deposed that on 03-08-2004, when he had been to take darshan at Temple of Lord Datta, at that time, accused, who was a

priest, questioned him for levelling false allegations and that, after manhandling him, he allegedly hit him with iron rod on the head as well as on right hand.

While under **cross-examination**, he admitted that Temple was closed between 12 Noon to 3 p.m. and that, 4-5 devotees were present in the premises. He admitted that, due to bleeding injury his clothes were not blood stained. He admitted not lodging complaint at Police outpost. Omissions are brought that accused manhandled him and slapped him and that, incident was witnessed by Waikar and Pradhan. Rest is all denial.

6. **PW2** Dr.Raosaheb Gangadhar Todmal, is the Medical Officer, who at Exhibit 15 deposed about examining PW1 informant at 6.45 p.m. and he noted and narrated the injuries noticed by him. According to him injuries were within 8 hours and were simple in nature. He identified injury certificate Exhibit 16 issued by him.

However while under **cross-examination**, he admitted that history of assault was of 06:00 p.m. on 03-08-2004. He also admitted that there was overwriting in Exhibit 16 in timing and he admitting not putting initials over the scoring.

7. **PW3** Chandrashekhar Shriram Mudgal is an eye witness and he

in his evidence at Exhibit 19 claims that, on 03-08-2004 at around 06:00 p.m. he heard commotion and quarrel and rushed to the spot and saw accused beating one devotee and he tried to separate them. That, accused thereafter went in adjacent room, returned with an iron rod and dealt blow on the head of devotee as a result of which devotee received bleeding injury. He claims that he accompanied injured to Civil Hospital.

While under **cross-examination**, he admitted that, till the date of incident he was not knowing injured and he learnt his name from injured himself. He admitted that, he was the first person to reach the spot.

PW4 Rajendra Mohan Pandharpote is pancha to spot panchanama Exhibit 21.

PW5 Arun Vasant Kakade is the Investigating Officer, who narrated all the steps taken by him during investigation.

ANALYSIS AND CONCLUSION

8. On re-appreciating entire evidence, it is noticed that alleged evidence is of 03-08-2004. Informant, in his deposition as well as in his complaint Exhibit 12, gave timing of occurrence as 06:00 p.m. in Lord Datta Mandir. Here, there is an eye witness account in the form

of PW3 Chandrashekhar, who has also in his evidence testified about hearing commotion at 06:00 p.m. on 03-08-2004 and he going there and seeing accused beating one devotee and therefore, he interfering. That, accused, whom he identified in the Court, allegedly went in a room and returned with an iron rod and dealt blow on the head of devotee who received bleeding injury and he accompanied him to Civil Hospital. PW2 Dr.Raosaheb, Medical Officer has also deposed about examining victim at around 06.45 p.m. and he narrated the injuries. Indeed, in cross-examination, Medical Officer has admitted that, name of the assailant was not reported and that, there is overwriting as regards to timing on Exhibit 16, but the same can safely be attributed to inadvertence. Said Medical Officer confirms injury on the person of PW1 informant. He examined informant at 06:45 p.m. and he deposed to that extent. Resultantly here, there is convincing evidence of informant, independent witness and there is medical evidence supporting injury.

9. Perused the Judgment under challenge. Primarily learned trial Court seems to have failed to consider and appreciate above evidence in its correct perspective and therefore, indulgence is called for. In view of above discussed evidence, charge under Section 324 of the IPC is proved beyond reasonable doubt, but the charges under

Sections 504 and 506 of the IPC are not cogently proved.

However, it is to be noted that, alleged occurrence is of 03-08-2004, judgment of acquittal is rendered in 2006 and finally appeal is heard by this Court in 2026. Therefore, more than 22 years have been lapsed since occurrence and hence, instead of at once sentencing accused to imprisonment, there being no criminal antecedent and taking into account lapse of time, accused deserves benefit of Section 4 of the Probation of Offenders Act. Accordingly, following order is passed :

ORDER

I. The Criminal Appeal is partly allowed.

II. The impugned Judgment and order dated 14-03-2006 passed by Chief Judicial Magistrate, Ahmednagar in Regular Criminal Case No.276 of 2004, is hereby quashed and set aside.

III. The respondent/original accused Milind Govind Kshirsagar is hereby convicted for the offence punishable under Section 324 of the Indian Penal Code.

HOWEVER

IV. Instead of at once sentencing respondent/original accused to imprisonment, he is directed to be released on probation of good conduct by entering into a bond with one surety to appear and receive the sentence when called upon during the period of one year.

V. The bond for a period of one year shall be executed by him before the trial Court within a period of four weeks from today.

VI. The Criminal Appeal is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

Later on :

10. On pronouncement of this Judgment, learned counsel for respondent seeks stay to present Judgment and order for six weeks so as to enable him to approach the Hon'ble Supreme Court.

11. In view of above request, to enable respondent to approach the Hon'ble Supreme Court, effect and operation of present Judgment and order is stayed for six weeks from today.

[ABHAY S. WAGHWASE, J.]

SPT