



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 29 OF 2026

Vaijayantabai Vyankat Gaikwad
Age : 67 years, Occ : Labor,
R/o : Hangarga (P.K.), Taluka Mukhed,
District Nanded.

... Appellant
(original Informant)

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station, Mukhed,
District Nanded.
2. Khandu Jalba Gaikwad
Age : 58 years,
Occupation : Agriculture,
R/o : Hangarga (P.K.), Taluka Mukhed,
District Nanded.
3. Nandkumar Khandu Gaikwad
Age : 35 years,
Occupation : Agriculture,
R/o : Hangarga (P.K.), Taluka Mukhed,
District Nanded.
4. Sidharth Khandu Gaikwad
Age : 33 years,
Occupation : Agriculture,
R/o : Hangarga (P.K.), Taluka Mukhed,
District Nanded.

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Mr. Umakant B. Deshmukh, Advocate for the Appellant.

Mr. P. P. Dawalkar, APP for Respondent No.1-State.

Mr. S. M. Kamble, Advocate for Respondent Nos. 2 to 4.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 30.03.2026

Pronounced on : 01.04.2026

JUDGMENT :

1. Appellant-original complainant questions the judgment and order dated 12.08.2024 passed by learned Additional Sessions Judge, Mukhed in Criminal Appeal No. 2 of 2021 arising out of the judgment and order dated 17.02.2021 passed by learned J.M.F.C., Mukhed in R.C.C. No. 132/2016.

2. On complaint of present appellant, Mukhed Police Station registered crime bearing no. 163 of 2016 for offence under Section 452, 294, 354-B, 323, 504 r/w 34 of IPC against respondents-original accused on the premise that on 24.06.2016 accursed persons forced their entry in the house of informant and abused in her in filthy language for filing complaint against them. Her allegations are that, she was caught hold of by her saree, tried to be stripped and then given kicks and fist blows. Accused persons also assaulted her son and therefore she lodged above report, on the strength of which above crime was registered, investigated and accused were chargesheeted vide R.C.C. No. 132/2016.

After appreciating the oral and documentary evidence, learned J.M.F.C. was pleased to acquit them.

Feeling aggrieved by the same, State preferred Criminal Appeal No. 2 of 2021 but the same came to be dismissed vide judgment and order dated 12.08.2024. Hence, instant appeal.

3. Learned counsel for the appellant-original informant would point out that, occurrence dated 24.06.2016 was promptly reported. That, accused persons had entered her house, scuffled with her, dragged her and even by pulling her saree and blouse, they tried to disrobe her. That, there was also abuse in filthy language. Therefore, apart from offence of Sections 452 and 294, there was offence of outraging modesty and causing hurt. However, according to him, learned trial court as well as learned first appellate court failed to consider and appreciate the evidence of complainant and rather recorded a finding that testimony of victim is not corroborating.

4. He further submitted that, learned courts below disbelieved the occurrence on the ground that, as the incident had happened at 7.00 a.m. in the morning, that too in the house of complainant, her husband and other family members must be present, but they being best witnesses are still not examined. It is his submission that, in rural parts, people leave for agricultural activity in the early hours of

morning i.e. around dawn. That, moreover independent eye witness PW2 is examined, but his evidence is also not correctly appreciated.

Thus, for above reasons, he questions the findings of both, learned trial court as well as learned first appellate court.

5. Learned counsel for respondents would justify the orders of both courts below and would submit that there are concurrent findings of both the courts below and he prays to dismiss the appeal for want of merits.

6. Heard. Perused the papers. Admittedly R.C.C. No. 132/2016 was at the instance of Mukhed Police Station, who had entertained complaint of PW1. In trial court it seems that apart from her, prosecution has adduced evidence of one Khanderao (PW2) and one Madhav, but he is spot pancha.

7. Thus, the crucial evidence is that of complainant and PW2. As it is emerging from the prosecution story that occurrence dated 24.06.2016 was a fallout of previous complaint by PW1 against accused, parties are at cross terms. Therefore, enmity being double edged weapon, evidence of prosecution is required to be examined cautiously.

8. Evidence of complainant is at Exhibit 24 and she has deposed that, on the day of occurrence accused persons entered her house, questioned her for lodging complaint and abused her in filthy language which she has deposed in her testimony. She further deposed that, after abuse accused caught her blouse, saree, pulled her inside the room and tried to disrobe her and scuffled with her with malafide intention and assaulted her by means of kicks and blows. Hearing her shouts, she claims that neighbours Rajabai, Sarubai, Khandu, Suryakant and Gunwant came to her rescue. Accused also assault her son and therefore she lodged report.

But while under cross, she admitted that she resides with her family comprising her husband, son and daughter in law. However in spite of occurrence taking place in the early morning, none of the other family members are examined and even trial court as well as first appellate court have rightly taken note of it. Above all, evidence of complainant shows that there are three accused who allegedly entered her house, but allegations are non-specific. Which of the accused played what role is not stated by the complainant. Moreover, when according to her incident had taken place after the accused entered her house, occurrence does not seem to have taken place

outside the house. Therefore, her such evidence does not attract Section 452 IPC. Further, when she complaints of assault to her son also, surprisingly he is not examined.

9. PW2 Khanderao, who is examined as eye witness, deposed about hearing shouts and reaching the spot and already three ladies to be present there. According to him, when he reached, at that time, PW1 was in the house and he himself was in the courtyard. Therefore it is doubtful whether he was witness to the occurrence which is allegedly reported by complainant to have taken place after the accused entered her house. On the point of abuse, his version seems to be exaggerated one. His testimony is apparently an improvised version and does not tally with that of PW1. The three ladies who were already present before this witness reached the spot, are also surprisingly not examined. Though there is charge of Section 323 IPC, medical certificate is not placed on record.

10. To sum up, here, parties are on cross terms in the backdrop of previous complaint. Evidence of complainant does not inspire confidence. There is no corroboration from the testimony of PW2. Family members and persons who allegedly came to her rescue, including three ladies named by her in complaint, are not examined.

Very son of complaint who, according to her, was beaten, is surprisingly not examined. Therefore, there is no corroboration to the testimony of PW1.

11. Perused the impugned orders passed by learned trial court as well as learned first appellate court. Thus, there are concurrent findings on re-appreciation of evidence. Bearing in mind the principles to be applied while dealing with appeal against acquittal, there being no merits in the appeal, the same is required to be dismissed. Hence, following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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