



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 110 OF 2025

Mohanlal s/o Babulal Bassaiye,
Age : 85 years, Occu : Nil,
R/o Sanjay Nagar, Lane No. C-7,
Near Amar High School,
Chhatrapati Sambhaji Nagar-431 001.

... Applicant
[Orig. Informant]

Versus

1. The State of Maharashtra,
2. Ravindra Radhakisan Bassaiye,
Age : 47 years, Occu : Business,
R/o Sanjay Nagar, Aurangabad.

... Respondents
[R.No.2 orig. Accused]

.....
Mr. Rahul Joshi h/f Ms. Kirti Joshi, Advocate for the Appellant.
Mr. N. R. Dayma, Advocate for Respondent No.1-State.
Mr. Somnath G. Ladda, Advocate for Respondent No.2.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.01.2026

Pronounced on : 28.01.2026

JUDGMENT :

1. Original informant, who set law into motion by virtue of crime no. I-121/2012 for commission of offence under Sections 323, 325, 504 r/w 34 of IPC, is hereby taking exception to the judgment and order of acquittal passed by learned Additional Sessions Judge, Aurangabad dated 19.06.2024 passed in Criminal Appeal No. 161 of 2017.

2. On above referred crime, City Chowk Police Station, Aurangabad conducted investigation and chargesheeted present respondent for above referred offences. After appreciation of evidence of six witnesses, learned J.M.F.C. convicted only accused no.1 and acquitted rest of the accused by judgment and order dated 06.09.2017. Against the same, convict Ravindra preferred appeal before learned Additional Sessions Judge, Aurangabad vide Criminal Appeal No. 161 of 2017 and the said first appellate court was pleased to set aside the order of learned J.M.F.C. and allow the appeal. Feeling aggrieved by the same, original complainant has preferred instant appeal.

3. Learned counsel for appellant would submit that, there was dispute over shop. On relevant night, four accused persons assaulted informant while he was in the company of his daughter. Assault was carried out by means of wooden *danda* inflicting injury to complainant. Prompt complaint was lodged. That, before learned trial court, prosecution adduced evidence of six witnesses including that of daughter of complainant who was party to the occurrence. Medical witness, who examined complainant, had also stepped into the witness box and therefore, charge of Section 324 IPC was made out

and conviction was recorded by trial court against accused no.1. Said judgment and order was just, legal and proper and needed no interference. However, according to him, learned first appellate court overturned the above reasoned findings doubting the cause of injury. That, in fact, learned trial court had scrupulously examined testimonies of each and every witness. Only on offence being made out and there being direct evidence, conviction of accused no.1 was rightly recorded. Thus, it is his submission that, first appellate court ought not to have interfered and therefore, he prays to set aside the order of first appellate court and enforce the order of trial court.

4. Per contra, learned counsel Mr. Ladda would point out that, there was false implication due to dispute over ownership of shop. That, there are admissions by complainant as well as his daughter regarding dispute over ownership of shop. He pointed out that, complainant and his daughter are not consistent with each other regarding the occurrence. He further pointed out that, according to complainant, the alleged incident lasted for one hour which was apparently an exaggerated version as his very own daughter deposed about occurrence lasted for five to four minutes. Thus, it is his submission that, there is exaggeration and improvisation.

5. He further pointed out that, admittedly in the cross complainant himself had admitted that he had fallen down. Therefore, according to him, though there was injury to the left hand, it was attributable to such fall. He pointed out that, allegations of assault by wooden *danda* are not substantiated as, according to him, very pancha to recovery of *danda* under Section 27 of the Evidence Act had not supported prosecution. Consequently, when even medical officer in cross admitted injury to be possible on account of fall, it is his submission that, learned trial court has committed no error whatsoever in allowing the appeal by setting aside the order of trial court wherein there was erroneous appreciation and non-consideration of cross of the medical witness. He pointed out that, even complainant PW1 and his daughter PW2 were not consistent regarding the actual occurrence also. For above reasons, he supports the order of learned Additional Sessions Judge and prays to dismiss the appeal.

6. After considering above submissions, and on going through the record, it seems that, on report of PW1 above crime was registered at City Chowk Police Station, Aurangabad and after investigation, trial was conducted by learned J.M.F.C., who acquitted accused nos. 2 to 4 but convicted accused no.1 alone, that too for offence under Section

324 IPC only. In appeal before the court of Additional Sessions Judge, he seems to have succeeded. In trial court prosecution seems to have adduced evidence of in all six witnesses i.e. PW1 complainant, PW2 daughter of complainant, PW3 pancha to spot panchanama, PW4 pancha to recovery panchanama, PW5 Investigating Officer and PW6 medical expert.

7. Re-appreciated the entire evidence. PW1 complainant in his evidence at Exhibit 11 testified that, ancestral property shop which was given on rent was got vacated one year back. According to him, on 17.07.2012 at around 8.00 p.m. while and he his daughter were cleaning the shop, at that time, accused Ravindra, Manoj, Vinod and Sanjay came and claimed ownership of the shop and after abusing him, he claims that, he was made to fall down. He testified that accused Ravindra hit him by means of *danda* on left hand as well as on legs causing him fracture injury and so he reported police who referred him for medical.

While under cross, he answered that the incident lasted for almost one hour and admitted that at the time of incident, he had fallen on the spot. He admitted that, when he was opening lock of the shop, he was requested by accused not to open the shop. He admitted

that, at the time of incident, only he and his daughter were present, but subsequently added that his daughter-in-law was also present.

8. PW2 Rina, who was examined at Exhibit 19, also stated that while she was in the company of her father that night, and while her father was opening the shop, accused nos. 1 to 4 came there, claimed ownership of the shop, prevented him from opening it and after abusing, she claims that, all accused made her father fall down and accused Ravindra hit her father with *danda*. According to her, rest of the accused gave her father slaps also and therefore report was lodged by her father.

Initial cross of this witness is on the point of her own occupation, her husband's occupation and regarding dispute over the shop. In para 6 of the cross, she answered that the incident lasted for ten minutes and actual beating was for five minutes. She answered that, other persons present at the spot intercepted in separation.

9. PW3 is the pancha to spot panchanama, whereas PW4 is the pancha to recovery, but he has apparently not supported prosecution.

10. PW6 is the medical expert and he is examined at Exhibit 46, wherein he stated that on 17.07.2012, on referral, he examined Mohanlal and noticed four blunt injuries and therefore he issued certificate Exhibit 47.

While under cross, medical expert has admitted that injuries noticed by him are possible by fall from steps in a pit.

11. On complete re-appreciation, here, occurrence seems to be a fall out of dispute over shop. PW1 and PW2, i.e. complainant and his daughter have deposed about the occurrence. However, it is pertinent to note that after they mentioned arrival of accused, none of them spoke about accused to be armed with *danda* or even it being picked up from the spot to assault complainant. Pancha to recovery of *danda* has unfortunately not supported prosecution. Medical expert PW6 has noticed four blunt injuries, but in cross has admitted that the same are possible on account of fall. Even complainant and his daughter admit that during the occurrence, complainant had fallen down. Therefore there are other possibilities for injuries on the person of complainant. In the light above discussion, doubt creeps in regarding actual use of *danda* by sole convict accused. Learned J.M.F.C., on the same set of evidence, has already acquitted remaining accused.

Learned first appellate court has again re-appreciated the evidence and has set aside the order of J.M.F.C. Even this Court, on complete re-appreciation, for above reasons finds it a fit case for benefit of doubt. Therefore, as there is no case on merits, following order is passed :

ORDER

Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

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