



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 692 OF 2025

Sarjerao Narayan Kharad,
Age : 69 years, Occupation : Agril.,
R/o. Narala, Taluka Paithan,
District Chh. Sambhajinagar.

... Appellant
(Original Complainant)

Versus

1. The State of Maharashtra,
Through Police Officer,
Police Station, Paithan,
District : Chh. Sambhajinagar.
2. Sanjay Jagannath Kharad,
Age : 40 years, Occupation : Agril.,
R/o Gopewadi, Taluka Paithan,
District Chh. Sambhajinagar.
3. Vijay Jagannath Kharad,
Age : 35 years, Occu. Agril.,
R/o Gopewadi, Taluka Paithan,
District Chh. Sambhajinagar.
4. Kesarbai wd/o Jagannath Kharad,
Age : 59 years, Occ : Agril.,
R/o. Gopewadi, Taluka Paithan,
District Chh. Sambhajinagar.

... Respondents

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Mr. Sanchit Sudhakar Patunkar, Advocate for the Appellant
Mrs. Saie Swapnil Joshi, APP for Respondent No.1-State.
Mr. Jitendra Jain, Advocate for Respondent Nos. 2 to 4 (appointed)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 26.03.2026

Pronounced on : 30.03.2026

JUDGMENT :

1. Original complainant challenges the judgment and order of acquittal passed by learned Additional Sessions Judge, Aurangabad in Criminal Appeal No. 37/2020 confirming the judgment and order passed by learned J.M.F.C., Paithan in R.C.C. No. 358/2007 by which, though accused (respondents herein) were convicted for offence under Section 323, they were given benefit of Section 4 of Probation of Offenders Act, 1958.

2. In short, R.C.C. No. 358/2007 was tried by learned J.M.F.C., Paithan on charge that, accused namely Sanjay, Vijay and Kesarbai assaulted complainant on 16.05.2007. On report of present appellant-original complainant, crime was registers bearing no. 60/2007 at Paithan Police Station for offence under Sections 326, 323, 504, 506 r/w 34 of IPC and all three were duly chargesheeted and tried vide above R.C.C. Learned J.M.F.C. was pleased to acquit the accused from offence under Sections 326, 504, 506 of IPC, but convicted them for offence under Section 323 of IPC. However, by extending benefit of Section 4 of the Probation of Offenders Act, in stead of sentencing them at once, they were directed to be released on probation of good conduct for a period of of one year.

3. Above order was questioned before learned Additional Sessions Judge, Aurangabad vide Criminal Appeal No. 37 of 2020, but the same came to be dismissed by judgment and order dated 17.07.2025. Hence, the instant appeal.

4. Learned counsel for the appellant-original complainant would point out that, before trial court, case was proved beyond reasonable doubt. That, there was evidence of five witnesses, including informant and independent witnesses, but the same has been incorrectly appreciated. It is further submitted that, accused nos.1, 2 and 3, who are immediate adjacent land holders, picked up quarrel on account of branches of tree falling on sugarcane crop. All three accused indulged in abusing and issuing life threats. They scuffled with informant and put to use handle of the axe causing fracture injury. That, medical evidence has not been correctly appreciated. That, there was clinching evidence establishing the guilt of accused. That, there was prompt complaint. According to him, evidence of witnesses had remained intact, and there were no material omissions and contradictions. There was ocular injured witness account, but still there is acquittal from charge under Sections 326, 504, 506 of IPC and according to learned counsel, it is a result of incorrect appreciation of evidence.

5. It is further submitted that, even when trial court was convinced that offence of Section 323 was made out and in spite of convicting accused for the same, still, for no reason, accused are not sentences to jail but are given benefit of Probation of Offenders Act. That, even first appellate court failed to appreciate the contentions in appeal and in stead of allowing the appeal, dismissed the same without assigning sound reasons, and for all above reasons, both orders of trial court as well as the first appellate court are urged to be set aside.

6. Per contra, learned counsel for respondents would support the order of both the courts below and would justify the extension of benefit of Probation of Offenders Act.

7. Here is an appeal, but by complainant who is aggrieved by acquittal of accused from charges under Sections 326, 504 and 506 of IPC. Complainant is also dissatisfied by extension of benefit of Probation of Offenders Act given to the accused.

8. This being an appeal against acquittal, before adverting to merits, it would be fruitful to reproduce the settled law on this point. In the case of ***Babu v. State of Kerala*** (2010) 9 SCC 189 the Hon'ble

Apex Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 of Cr.P.C. In paragraphs 12 to 19, it has been observed by the Hon'ble Apex Court as under :

“12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4. SCC 17. Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10

SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445).

13. *In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404)*

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. *The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)*

15. *In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42)*

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court."

5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

"20. an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)

"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial

In paragraph 20 of the said judgment, when the findings of fact recorded by a court can be held to be 'perverse' has been dealt with and considered, which reads as under :

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636).” (emphasis supplied)

It is further observed, after following the earlier decision in ***Kuldeep Singh v. Commissioner of Police*** (1999) 2 SCC 10 that, if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions

would not be treated as perverse and the findings would not be interfered with.

In the recent decision of *Vijay Mohan Singh v. State of Karnataka* (2019) 5 SCC 436, by referring to the earlier decisions in *Umedbhai Jadavbhai* (1978) 1 SCC 228, *Sambasivan v. State of Kerala* (1998) 5 SCC 412, *K. Ramakrishnan Unnithan v. State of Kerala* (1999) 3 SCC 309, *Atley v. State of U.P.* AIR 1955 SC 807 and *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355, the Hon'ble Apex Court has dealt with the principles to be borne in mind while dealing with an appeal against acquittal.

9. Bearing above settled principles in mind, the evidence in the case in hand is re-appreciated.

10. PW1 Sarjerao gave evidence that, while he was proceeding to the field with PW2, accused threw branches of babhool tree in their field where there was standing sugarcane crop. On being questioned, it is alleged that, accused started abusing. Here, there are three accused. Who abused and in what manner does not seem to have been stated and thereby vague allegations are levelled that there were abuses by accused. Allegation of assault by stick is attributed to

accused Sanjay i.e. blow being given on the left wrist whereas, allegations are levelled against accused Vijay for hitting by danda on back of Sarjerao and then it is alleged that Kesarbai slapped him. According to PW1, blows were inflicted by Kesarbai on his son PW2 and the above incidence was resolved by one Kishor Vansare and Salim Shaikh.

11. PW2 also in his evidence stated that on 16.05.2007 while he and his father were proceeding to the field, accused persons came and abused and assaulted him and his father. Again, even he did not specify or crystallize the role of three accused persons. He merely stated that, accused Vijay and Kesarbai gave stick blows and fist blows respectively to his father and himself. Be it so, but both PW1 and PW2 are consistent on the point of beating to them and as such, occurrence has indeed been brought on record.

12. Here, there was allegation of causing fracture injury, but medical expert, who issued medical certificate, does not seem to have been examined. Moreover it seems that x-ray film or report is also not placed on record. Prosecution has failed to adduce evidence of medical expert. Therefore, in absence of medical evidence, allegation of committing grave injury cannot be said to be substantiated.

13. However, as there are consistent versions of PW1 and PW2 about bearing, there is evidence suggesting hurt being caused to PW1 as well as PW2 in the above incident. Thus, learned trial court rightly held that offence of Section 326 has not been proved by prosecution for want of supportive and corroborative medical evidence, and rather offence of Section 323 is shown to be made out.

14. Even learned first appellate court re-appreciated the evidence. Hence, there being concurrent findings of trial court as well as first appellate court, in the light of above quality of evidence, there is no reason to interfere with regarding finding of conviction for only offence under Section 323 and acquittal from rest of the offences.

15. There is also serious challenge to the grant of benefit of Probation of Offenders Act when charges are said to be proved for offence under Section 323 IPC. In the light of above objection, impugned judgment passed by the trial court is visited. It is noticed that, there is discussion to that extent in para 36 wherein it has been held that parties are residents of same locality and that incident was not premeditated and it had taken place in the rage of anger. Young age of accused nos. 1 and 2 as well as old age of lady accused no.3 seems to have prevailed over the trial court which found it to be a fit

case to extend the benefit of Section 4 of the Probation of Offenders Act, as apparently it was first time of incident and there were no bad antecedents against any of them.

16. Consequently, taking into consideration the nature of charges proved and the nature of occurrence and its background, in the considered opinion of this Court, learned trial Judge was justified in giving benefit of Probation of Offenders Act in stead of sentencing them to imprisonment. There is no error or illegality while extending above benefit so as to interfere. Resultantly, even learned first appellate court declined to disturb the findings of learned trial court and dismissed the appeal. For above reasons, there being no merits in the present appeal, following order is passed :

ORDER

- I. The criminal appeal is dismissed.
- II. Fees of learned counsel appointed to represent respondent nos. 2 to 4 be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

[ABHAY S. WAGHWASE, J.]