



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 127 OF 2022

Vilas Chokhoba Mhaske
Age : 38, Occ. : Agriculture,
R/o : Bhavthana, Taluka Ambajogai,
District Beed.

... Appellant
[Orig. Complainant]

Versus

1. The State of Maharashtra
2. Bhikaji Narayan Maske Died (Abated)
3. Pramod Bhikaji Maske,
Age : 30 years, Occ. : Agri,
R/o. Bhavthana Village,
Taluka Ambajogai,
District Beed.
4. Amol w/o Bhikaji Maske,
Age : 30 years, Occ. : Agri,
R/o. As above.
5. Shantabai w/o Bhikaji Maske
Age : 53 years, Occ: Household,
R/o. As above.
6. Ashwini Pramod Maske,
Age : 33 years, Occ. and
R/o. As above.
7. Seema @ Nital Amol Maske,
Age : 27 years, Occ. : &
R/o. As above.
8. Sukhdeo Narayan Maske, Died (Abated)
Age : 48 Years, Occ. Agri.,
R/o. As above.

9. Wrandawani w/o Sukhdeo Maske Died (Abated)
Age : 43 years, Occ. Household,
R/o. As above. ... Respondents

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Mr. Ashok A. Munde, Advocate for the Appellant
Mr. S. G. Sangle, APP for Respondent No.1-State.
Ms. Ashwini A. Lomte, Advocate for Respondent Nos. 3, 5 and 6.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.03.2026

Pronounced on : 13.03.2026

JUDGMENT :

1. Original complainant Vilas, who set law into motion resulting into registration of crime bearing no. 04/2007 for offence under Sections 147, 148, 323, 324, 504, 506 r/w 149 of IPC, is hereby taking exception to the judgment and order dated 21.12.2021 passed in Criminal Appeal No. 66 of 2015 thereby allowing the appeal and setting aside the judgment and order dated 11.08.2015 passed by learned J.M.F.C., Ambajogai in R.C.C. No. 291 of 2007.

2. Learned trial court had convicted present respondents for offence under Sections 324 r/w 149, 323 r/w 149, 147, 148 of IPC. But, learned first appellate court acquitted them. Hence, original complainant has preferred instant appeal.

3. In short, on the strength of private complaint as well as FIR by Vilas Chokhoba Mhaske, crime was registered wherein he reported that, on 10.07.2007 while he was standing in front of his house, in the backdrop of previous complaint, accused nos. 1 to 8 came armed with sticks and axes. Initially accused Sukhdeo questioned complainant for lodging complaint and thereafter mounted assault during which he gave blow of axe on the head of complainant. Accused Nos. 1 to 3 i.e. Bhikaji, Promod and Amol used sticks for assaulting him on shoulder and thigh. When his mother came to his rescue, accused Sukhdeo hit his mother with handle of the axe on right leg below the knee. Remaining accused nos. 4, 5, 6 and 9 i.e. Shantabai, Ashwini, Seema and Vardhavan assaulted him as well as his wife and sister by means of kicks and fist blows. Neighbours, namely, Ratan, Maruti and Shrikishan intervened. They approached police who referred him to hospital and thereafter on his statement, FIR was registered.

4. On above statement, as well as on the strength of previously filed private complaint which was merged in this proceeding, crime was registered for above offences and all eight accused faced charge Exhibit 38/C and on denial of the charge, trial was conducted by learned J.M.F.C. vide R.C.C. No. 291 of 2007. At trial, prosecution

adduced evidence of eight witnesses and relied on documentary evidence. All such evidence was appreciated by the learned J.M.F.C., who by judgment and order dated 11.08.2015, held charges proved against accused nos. 2 to 8 and convicted them for offence under Sections 324 r/w 149, 323 r/w 149, 147, 148 of IPC.

5. The above order of conviction was challenged by the accused in the court of Additional Sessions Judge, Ambajogai vide Criminal Appeal No. 66 of 2015. On complete re-appreciation of the evidence, learned first appellate court interfered and overturned the judgment of conviction and recorded acquittal. Feeling aggrieved by the same original complainant has come up in instant appeal by invoking Section 372 of Cr.P.C.

SUBMISSIONS

On behalf of the Appellant/complainant :

6. Learned counsel for the complainant would point out that, prosecution had proved the case beyond reasonable doubt. That, prosecution evidence comprised of both, independent witnesses, as well as injured eye witnesses. That, said evidence was rightly considered by the learned trial court in recording guilt of the accused. He pointed out that, ocular account found support from medical

account. Therefore, after complete appreciation of oral and documentary evidence and by relying on settled legal position, learned J.M.F.C. had correctly recorded guilt and conviction and there was no illegality or perversity in the same so as to interfere.

7. Learned counsel pointed to the judgment of first appellate court and would submit that, findings and conclusion reached by the first appellate court are contrary to the record. Taht, consistency between the testimonies of witnesses has not been correctly appreciated. That, learned first appellate court also unnecessarily doubted prosecution case on minor count like variances in the testimony of prosecution witnesses. According to him, the variances were not at all fatal to the prosecution and core of the prosecution case had remained unshaken. According to him, first appellate court also erred in discarding the evidence of eye witnesses by doubting the same. Further according to him, it is the trial court which has correctly appreciated the evidence and reached to the just conclusion rather than the first appellate court, which had failed to correctly appreciate the evidence and consider the same in correct perspective. For such reasons, he seeks indulgence in the appeal buy setting the order of first appellate court and restoring the conviction.

On behalf of the Respondents-Accused :

8. Learned counsel for accused would justify the order of first appellate court by criticizing the order of trial court on the ground that the findings recorded were contrary to the evidence. According to her, entire substantive evidence comprising of cross of witnesses was not appreciated by learned trial court. She laid stress and emphasis on Exhibit 66 which is a private complaint by informant and according to her, the same was contrary to the evidence adduced by complainant in the witness-box and therefore, his story was rightly doubted by the first appellate court. She pointed out that, learned trial court has not considered the testimonies which were full of variances, and had selectively considered the examination-in-chief of the witnesses but there was no comparative analysis of the testimonies of prosecution witnesses. She pointed out that, very circumstance of recovery has come under shadow of doubt and moreover, regarding the assault, ocular account did not match with that of medical evidence and this was correctly appreciated by the first appellate court. For all above reasons, she justifies the order of acquittal and prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

9. This being appeal against acquittal, even this court is called upon to re-analyze and re-appreciate the evidence on record adduced before the trial court. The sum and substance of prosecution evidence in brief is as under :

10. PW1 Vilas is examined at Exhibit 64 and he narrated the occurrence of 7.00 a. m. of 10.07.2007 which allegedly took place while he was standing in front of his house. He testified that accused, eight in number, came holding sticks and axes in their hands and after abusing him, accused Sukhdeo questioned him for lodging false complaint and thereafter hit axe on his head causing him grievous head injury. At that time, he alleges that, accused nos. 1 to 3 hit him by means of sticks on shoulder, thigh and back. His mother who had come to his rescue was also hit by Sukhdeo by means of handle of the axe. remaining accused nos. 4 to 6 and 8 had assaulted his sister and wife by kicks and fist blows. He named neighbors Ratan, Maruti and Shrikishan for intervening in the quarrel. He identified FIR Exhibit 65 and articles shown in the court.

While under cross, initially he admitted filing private complaint regarding the same incidence in the court of law through Advocate

and when he affirmed its contents to be true and correct learned TC marked the private complaint at Exhibit 66. While in remaining cross on the point of occurrence, he admitted that Sukhdeo had filed application to Tahsildar for seeking approach road. He denied suffering injury on account of fall on hard surface. Rest all suggestions are denied.

11. PW2 Maruti at Exhibit 72 deposed that, while he was in front of his house, hearing shouts, he went to the spot and claims to have seen Bhika, Sukhdeo, Amol, Pravin, Shantabai, Ashwini, Wrandawani and Neeta abusing Vilas for filing complaint against them. According to him, Sukhdeo hit axe on the head of Vilas as a result of which he fell down. Thereafter Bhika, Amol and all other ladies beat wife, mother and sister of PW1 when they came to rescue him. According to him, **that time one Ratan and Shrikrishna rescued the quarrel** (he has not stated about he himself going to rescue).

While under cross, on the point of occurrence he answered that his house is on the southern side beyond 50 to 60 houses of people belonging to Buddhist community. He is unaware of issue between complainant and accused on the point of approach road. According to him, along with him, around 10 to 20 persons gathered at the spot.

He answered that, he accompanied complainant to police station but he did not give statement to police and rather, on the next day police recorded his statement by visiting his house.

12. PW3 Suman, wife of PW1, deposed at Exhibit 80 that, on 10.07.2007 while her husband was sat in the house, at that time accused persons came there and started beating her husband (she does not speak about initial questioning and abuse by any of the accused as stated by PW1). According to her, Sukhdeo hit axe on the head of her husband due to which blood started oozing (she does not report, like PW2, about her husband collapsing after suffering head blow) According to her, when her mother-in-law went to rescue, she was hit by handle of the axe on the leg below knee (but she does not attribute blow to Sukhdeo). According to her, Maruti and Ratan rescued the quarrel. (This witness does not name Shrikishan for coming to their rescue as is stated by PW1 and PW2).

While under cross, she answered that almost over 100 people gathered on hearing the hue and cry. According to her, house of PW2 Maruti is at the distance of 1500 feet away from the Maruti temple. She admitted enmity between them since long. She also admitted Sukhdeo and Bhikaji filing application to Tahsil office. Omission is

brought on the point of Wrandawani, Ashwini and Geeta beating her as well as Ratnamala by means of stick and on the point of agricultural field to be the cause of quarrel.

13. PW4 Laxmibai is mother of PW1 and in her evidence is at Exhibit 83. Regarding occurrence she narrated that, around 7.00 a.m. when they were in the house, accused Bhika, Sukha, Pramod and Amol rushed in their house with sticks and axe and axe blow was given by accused Sukhdeo to Vilas in the courtyard According to her, because of said assault, Vilas sustained bleeding head injury. When she rushed, Sukhdeo hit her on the leg, whereas Shantabai, Ashwini, Smeeta and Wrandawani beat her daughter and daughter-in-law by catching hold of their hair. Ratan and Maruti rescued the quarrel.

While under cross, she stated that at the time of incident, her son, daughter-in-law and daughter were in the courtyard. She had raised shouts seeing the accused, but no one gathered. Omission is brought about Shantabai, Ashwini, Smita and Wrandawna beating her daughter-in-law and daughter by catching hold of their hair. Rest is all denial.

14. PW5 Bhawan is pancha to spot panchanama, but he did not support prosecution.

15. PW6 Balasaheb is the pancha to recovery of axe and stick.

16. PW7 is the Medical Officer who narrated the injuries noticed by him on Vilas on referral, and issuing certificate Exhibit 100. According to him, he noticed CLW at parietal area behind the central part of forehead caused by hard and blunt object and at no.2 contusion over left knee. According to him, injury no.1 was possible by stick, whereas second injury was possible by blunt side of the axe, if it is of wood.

While under cross, he admitted that history is not noted on Exhibit 100. He also admitted that he was not told about weapon used for beating, nor it was shown to him. He admitted that injury nos.1 and 2 are possible is someone falls on hard surface.

17. PW8 is the Investigating Officer.

ANALYSIS AND CONCLUSION

18. It is cardinal principle of Criminal Jurisprudence that prosecution has to prove the case beyond reasonable doubt. Evidence of complainant, who sets law into motion, has to be credible one.

Here, PW1 complainant, prior to deposing in the court, seems to have lodged private complaint and on his identification while in cross, said private complaint is got exhibited as he himself admitted its contents to be true and correct.

19. Learned counsel for respondents has strenuously submitted that, story put forth by complainant in the witness-box is false and afterthought and is very much contrary to the actual occurrence which is reflected in the private complaint.

20. In the light of above, both, private complaint as well as testimony of complainant are placed in juxtaposition and then analyzed and thereupon it is noticed that, in private complaint occurrence is reported to be of 02.07.2007 during which, accused persons were allegedly questioned for their live stock causing damage to his cotton crop and in that backdrop, initially there was abuse to him and his wife followed by life threats, and therefore he had been to police station, Ambajogai on 03.07.2007 and he lodged complaint but it was not entertained by police. For lodging such complaint, it is alleged that, on 10.07.2007 accused persons came in front of his house, accused no.2 i.e. Sukhdeo initially questioned him for filing complaint and then hit axe on his head, whereas accused nos. 3 and 4

hit him by means of sticks. When his mother came to rescue hearing his shouts, accused no.2 Sukhdeo hit her on the right and left leg followed by rest of the accused assaulting his wife Suman and sister Ratnamala and snatching away Rs.2000/- from his pocket. Then, in the private complaint he has stated that, after the incident, they came to Ambajogai police station and gave oral information. That, complainant was discharged on 12.07.2007 but police had not taken any action and had not drawn spot panchanama and had also not seized blood stained clothes as well as articles put to use by accused.

21. If these contents of private complaint are compared with above discussed testimony at Exhibit 64, apparently as pointed out, they are inconsistent. In the testimony, direct occurrence of 10.07.2007 is narrated and not the previous occurrences dated 02.07.2007 and 03.07.2007. Similarly, allegations of snatching Rs.2000/- from his pocket, which are leveled in the private complaint, do not find place in his testimony before the Court. Again, in the private complaint allegations of assault by stick are attributed only to accused Amol and Pramod whereas in evidence, allegations of assault by stick are attributed to accused nos. 1, 2 and 3. Therefore, for above reasons, contents of private complaint are distinct from the testimony narrated in the witness-box.

22. Another crucial witness here is the mother of complainant i.e. PW4 Laxmibai. According to her, incident took place while they were inside the house, whereas according to her son, incident had taken place while he was standing outside the house. PW4 mother attributes assault to four persons i.e. Bhika, Sukha, Pramod and Amol for coming with sticks and axe, but even she has not distinctly stated who was holding what. Later on she attributes blow given to her by Sukha, and her son being hit on the head by Sukha and Sukha also raising stones to hit. Such is not the version of her son.

23. PW3 is the wife of complainant PW1 and again, according to her, on 10.07.2007 around 7.00 a.m. when they were inside the house, accused persons came there and started beating. According to her, accused Sukhdeo gave blow of axe on the head of her husband. She merely named Maruti and Ratan for coming to the rescue and not Shrikishan, which is named by her husband.

24. Sister of PW1 Vilas is not examined. Therefore, PW1, PW3 and PW4 are complainant, his wife and mother respectively. They being interested witnesses, their evidence is to be carefully sifted and on going through the same, it is notice that complainant's wife and mother are at variance with him on the point of the actual spot of

occurrence. According to complainant, while he was standing in front of the house, that time incident took place. Whereas his own wife and mother state that while they were all sitting in the house, accused persons rushed there.

25. Another crucial witness is PW2 Maruti and he is said to be an independent eye witness. However firstly, though PW2 Maruti claims to be present at the time of incident, PW3 wife of Vilas has admitted that PW2 resided approximately 1500 feet away from the spot. PW2 Maruti claims to have heard shouts and rushed their. Therefore it is not sure whether he actually saw the incident happening or he came at later point of time. This witness Maruti, in spite of claiming to be accompanying injured initially to Ambajogai Police Station, he has not given his statement that day itself. Had he been eye witness, he was expected to give his statement in the capacity of independent witness.

26. Learned counsel for the complainant has also doubted findings of the first appellate court on the point of medical evidence. According to him, ocular account was matching with medical evidence, but the same has not been considered. Here, it is noticed that according to complainant, Sukhdeo hit him by axe on the head and caused him grievous injury, but he does not speak about any

bleeding injury or falling down, as is narrated by his wife and mother. Medical expert PW7 noted two injuries i.e. CLW over forehead and contusion over left knee. However, according to him, injury no.1 is only possible by stick whereas, second injury is possible by blunt side of axe. But here, allegations are of axe being hit on head and not on leg, which allegedly is contusion injury. Moreover, injury certificate Exhibit 100 does not carry history and is apparently issued on 18.10.2007 regarding examination dated 10.07.2007. Even, medical expert has admitted that said injuries noticed by him are possible on account of falling on rough surface.

Therefore, aspect of use of axe for causing bleeding injury itself has come under shadow of doubt. Resultantly, ocular account and medical account does not tally. Though in such cases it is the ocular account that would prevail, here, witnesses are not consistent about causing grievous bleeding injury.

27. To sum up, here, occurrence is in backdrop of previous enmity. contents of private complaint prior to FIR and the testimony narrate a different story. Genesis is not coming ahead. There is only evidence of family members, except independent witness PW2 Maruti, but for reasons stated above, his evidence is also not worthy of complete

reliance. For above reasons there are several doubts in the prosecution story. Resultantly, no fault can be found in the impugned judgment of acquittal. Hence, the following order :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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