



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 14 OF 2006

The State of Maharashtra
Through Dy. S.P. Shevgaon Division,
Shevgaon for the complainant
Nanasaheb Balaji Bhalerao,
r/o Mahalaxmi Hivare, Tq.Newasa,
Dist.Ahmednagar.

....Appellant

Versus

1. Maruti Ashraji Kedar
2. Narayan Ashraji Kedar
3. Annasaheb Ashraji Kedar
4. Rama Yadav Bhalerao
5. Sudhakar Yadav Bhalerao
6. Ashok Laxman Bhalerao
7. Sanjay Sudhakar Bhalerao
8. Laxman Yadav Bhalerao
9. Karbhari Yadav Bhalerao
10. Gowardhan Rama Bhalerao
11. Kiran Rama Bhalerao

All r/o. Mahalaxmi Hivare
Tq.Newasa, Dist.Ahmednagar.

....Respondents
(Ori. Accused)

.....

APP for Appellant : Mr.S.S.Dande
Advocate for Respondent nos.1 to 3 : Mr.S.V.Natu
Advocate for Respondent nos.4 to 11 : Mr.C.K.Shinde

.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 08 AUGUST, 2025

JUDGMENT :-

1. Instant appeal takes exception to the judgment and order of acquittal passed by learned IInd Additional Sessions Judge, Shrirampur in Sessions Case No.36 of 2003, thereby acquitting present respondents from offence under Sections 325, 504, 506 r/w 149 of the Indian Penal Code, under Sections 143 and 148 of Indian Penal Code (IPC) and under Section 3 (1) (X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred as “the SC and ST Act”).

2. During pendency of the appeal, respondent no.1 Maruti Ashraji Kedar has expired. His death certificate is already placed on record. Therefore, appeal is abated as against respondent no.1.

BRIEF FACTS OF THE CASE

3. In nutshell, eleven accused (present respondents) were chargesheeted by Sonai Police Station on allegations that complainant and accused, who have agricultural lands adjoining to each other, were on cross terms with each others. The incident in question was triggered because accused were grazing their live stock in the field of complainant. The same was objected, as a result of which, there was caste abuse and during the day of 17-08-2001, 2-3

instances took place, where there was encounter between accused and complainant party on one or other count, during which there was said to be assault by accused persons by means of axe, iron rod, stick, kick and fists blows etc. PW1 Nanasaheb Balaji Bhalerao lodged report in consequence to which, FIR was registered and investigated by PW8 Vasant Godhaji Sanap, who after gathering sufficient evidence, chargesheeted accused persons for above offences and they were made to face trial before IInd Additional Sessions Judge in which prosecution relied on oral evidence of ten witnesses, apart from documentary evidence comprising of FIR, spot panchanama, injury certificates etc. Defence denied to lead any evidence.

On appreciation of oral and documentary evidence, learned trial Judge reached to a finding that prosecution failed to prove the charges and acquitted the accused from all offences by judgment and order dated 09-08-2005.

Aggrieved by the same, State has come up in appeal by raising various grounds as stated in appeal memo.

SUBMISSIONS

On behalf of appellant State :

4. Learned APP took this Court through the evidence of

prosecution witnesses, more particularly, PW1 Nanasaheb, PW3 Balu, PW7 Shobha and would submit that they are injured victims. They have narrated the incident that took place on 17-8-2001. Learned APP pointed out that, the first instance took place at 08:00 a.m. on account of grazing cattle by accused no.1 in the field of complainant. When complainant objected, accused nos.1 Maruti, 2 Narayan and 3 Annasaheb hurled caste abuses. Then at 04:00 p.m. she-buffalo of accused no.8 Laxman Bhalerao was grazing in the field of complainant party. When mother and sister of complainant objected for the same, out of annoyance, there was caste abuse and beating. Learned APP pointed out that PW4 Laxman Borde is an independent eye witness. The next incident took place at 06:30 p.m. when complainant and his father were going towards their house on Bicycles. At that time, in the backdrop of incident that took place at 04:00 p.m., accused nos.1, 2, 5, 6, 7 and 11 intercepted them and beat them by axe, iron rod and sticks.

Learned APP submits that, all witnesses are consistent. According to him, accused persons were armed with deadly weapons like axe, iron rods, sticks. They had formed unlawful assembly with common object to assault complainant party. Thus, according to learned APP, necessary ingredients for attracting offence under

Sections 141, 143, 148, 149 of the IPC was very much available in the evidence adduced by prosecution. He would further emphasize that accused persons had put to use the articles held by them causing bleeding injury to the injured, more particularly to PW3 Balu.

According to him, Medical Expert, who examined and treated witnesses is examined as PW9. Thus, according to him even charge of 325 of the IPC was brought home. He pointed out that as there was caste abuse, Dy. Superintendent of Police ranking officer PW8 Vasant carried out investigation. That, caste certificates were procured and made part of the investigation. Resultantly, it is his submission that even charge for commission of offence under the SC and ST Act was made out. Hence, he would submit that there was clinching and overwhelming evidence. However, learned trial Court failed to consider and appreciate the same and also did not consider the settled legal position. He pointed out that delay was sufficiently explained because injured were taking treatment and moreover, attempts of complainant to lodge report went futile as concerned Police did not take cognizance of the report and therefore, postal FIR was required to be filed. However, according to him, when a full proof case was made out, learned trial Court ought not to have acquitted the accused. According to learned APP, the impugned

judgment is patently perverse and so he seeks indulgence by allowing the appeal.

On behalf of Respondents :

5. Per contra, learned counsel for respondent nos.1 to 3 and learned counsel for respondent nos.4 to 11 supported the judgment of acquittal by submitting that prosecution has miserably failed to bring home the charges. They would submit that there are cross complaints. That, crime has been registered against present complainant party, which is first in point of time. That, there is admission to that extent. That, present FIR, apart from being filed after inordinate delay, is mere counter blast and apparently false one. Learned counsel pointed out that witnesses are inconsistent. That, their evidence is full of material omissions suggesting improvement and exaggeration. That, each aspect and evidence has been meticulously analyzed and appreciated by the learned trial Court and hence, end result was obviously failure to prove the charges. According to learned counsel, none of the ingredients for any of the charge being available, there is no illegality in the impugned judgment.

EVIDENCE ON RECORD

6. In support of its case, prosecution has adduced in all ten witnesses. Sum and substance of their evidence is as under :

PW1 Nanasaheb Balaji Bhalerao is complainant. At exh.47, regarding occurrence, he deposed as under:

“We are having our landed property gat no.35 at Mahalaxmi Hivre. The accd.no.1 is having his landed property at the eastern side of property and adjacent to our bandh. The accd.no.1 and his 3 brothers along with their family members are residing in their landed properties. Since the accd, no.1 is having his landed property adjacent to our landed property, the accused/and his family members are destroying the bandh of the property and releasing cattles in our lands for grazing. Whenever we have asked about the destroying of bandh and releasing of cattles in the landed property for grazing to the accused, the accd.no.1 and his brothers are abusing me saying as "MAHARDE, DHEDJE, LAI MAJLE, YANA KHUP JADA ZALE, YACHEADE PAVawe LAGE... Since the accused are uttering these words by pointing our caste, I myself and my caste was Insulted. Prior to incident in the case, a litigation was going on in between myself and accd.nos.4,5,8 and 9 in respect of the consolidation scheme, in the Court. The litigation as pending was decided in my favour in the year 1990.

3. The incident in the case took place on 17.8.2001. In the relevant period there was a crop of Bajri & Hulga in my landed property. At the relevant time I was present at my we vasti.

At the relevant time of incident at 8 a.m. I noticed cattles of accd.no.1 and his brothers while grazing in the crop of Bajri in my field. Therefore, I reached in the field and drove the cattles from the crop of Baira.

Since I drove the cattles of aced. no.1 and his brothers from my crop, aced.no.1 and his brothers Narayan and Annasaheb became annoyed. At the relevant time accd. No.1, his brothers Narayan and Annasaheb were present at their vasti and aced.no.1 Narayan and Annasaheb abused me by saying & his brothers as "MAHARDE DHEDGE LAI MAJLE" and thus abused me by pointing my caste.

4. *On the same day at about 4 p.m. my mother and sister noticed the she-buffalo of accd. Laxman while grazing in the crop of Hulga in our landed property and at that time accd. Laxman was with his she-buffalo. Therefore, my mother and sister asked accd.Laxmam to take out his she-buffalo from crop of Hulga and on that count he became annoyed. The crop of Hulga in our landed property was just adjacent to our house and to the house of accused Laxman. At the relevant time accd. Laxman and female members from his family including his wife Samindarabai abused my mother and sister and assaulted them. At the time of the above incident, the accd. Maruti was passing from the road. At that time accd. Maruti stated to accd.Laxman as "yanche Ghar-dar Aapan Khalas Karun Taku Sandhyakal paryant."*

5. *On the relevant day of incident at about 6.30 p.m. I myself and my father were proceeding towards our vasti by riding on the bicycle. While proceeding, we reached near the vasti of accd. Karbhari. At the relevant time the accd. Rama, Laxman, Sudhakar, Kiran Gowardhan, Ashok and Sanjay were present having sticks, iron bars and axes in their hands.*

At the relevant time, accused Karbhari restrained us from proceedings further. When we tried to proceed further, the accused Karbhari, Sudhakar, Rama, Laxman, Ashok, Sanjay, Kiran and Gowardhan started to assault me and my father. Since the accused started to assault me and my father, there was shouting and on hearing noise of shouting, my mother and sister-in-law (bhaujay) were coming towards the spot. When my mother and my sister in law were coxing towards us, the accd. Maruti ,Anna and Narayan restrained

them, assaulted them. At the relevant time, accd. Maruti stated to my mother as 'Maharde, Dhedge Lai Majle, Yana Aaj Jivant Theu Naka'. The accd,nos, 1 to 3 after assaulting my mother and sister-in-law came towards us to assault us. The accd, nos,1 to 3 instigated the other accused to assault on us. At the relevant time the persons residing on the near vastis separated the incident. During the incident, the accd. assaulted me, my father, mother and sister-in-law and, therefore, we sustained the injuries. We sustained bleeding injuries and, therefore, blood stains came on the cloths on our persons. Then my brother Bhausahab brought the private jeep and took us at Civil hospital, Ahmednagar. I sustained injuries on my waist and other parts other of body. My father sustained injuries on his head. At Civil hospital, Ahmednagar I myself, my father and my sister in law were admitted in the hospital."

PW2 Haribhau Suryabhan Gade is spot pancha. Spot panchanama is at exh.50.

PW3 Balu Madhav Bhalerao is father of complainant. At exh.52, regarding occurrence, he deposed as under:

"The incident in the case took place before about 2 ½ yrs. On the relevant day of incident in the morning time the she-buffalo of accd. Rama was grazing in the crop of Hulaga in my landed property. Therefore, my daughter went to accd. Rama for asking him to take out she-buffalo. At that time the accd. Rama and Laxman assaulted/my daughter. Thereafter, on the relevant day at 6 p.m. I was coming towards my vasti after return from my work. I was coming by riding on the bicycle. While coming my son met with me near the canal and I myself and my son were proceeding towards house. My son was also having bicycle with him. While proceeding when we reached near the vasti of Karbhari, the aced. Rama Laxman, Sudhakar, Karbhari and their sons restrained us. Then the incident of assault took place in between myself, my son and the accused. The accused assaulted

me. At that time my daughter witnessed incident of assault on us, therefore, she went to my son to inform about it.

When accd. Rama, Laxman, Sudhakar and Karbhari and their sons were assaulting us, accd. Annasaheb came there and at that time he was having axe in his hand. At that time accd. Annasaheb stated as " Ya Dhedgyala Mara" The accd. Rama assaulted on my head by axe. The accd. Anna assaulted on my hand by axe. The accd. also assaulted my son. The accd. also assaulted on the female members of my family. But I cannot tell as to exactly who has assaulted on the female members of my family. Due to the assault I sustained bleeding injury and blood stains came on the cloths on my person. At the time of incident the cloths Dhoti, Shirt, Kopari and cap were on my person.

4. Then my son Bhausahab came alongwith Jeep and he took us at Civil hospital, Ahmednagar."

PW4 Laxman Pandurang Borde is an independent witness. At exh.53, regarding occurrence, he deposed as under:

"The incident in the case took place on 17.8.2001. On hearing the noise of shoutings, Sakharbai and Shobha rushed towards the vasti of Karbhari. When Sakharbai and Shobha were proceeding towards the vasti of Karbhari, the accd. Maruti came there. The accd. Maruti caught hold shobha and fall her down on the soil. The accd. Narayan also came there and he was having iron bar in his hand and he assaulted on Shobha by iron bar. At that time I noticed accd. Annasaneb while running towards the vasti of Karbhari, having a axe in his hand. At that time accd. Maruti stated to Shobha as, " Mare, Dhedpadi Lai Majlet. The accd. Maruti and Narayan also proceeded to the vasti of Karbhari. The accd.nos.1 to 3 present before the Court are the said Maruti, Annasaheb and Narayan. I can identify the axe and iron bar which were in the hands of accused, if shown to me. The axe produced before the Court and now shown to me is the said axe. Police

have enquired with me about the incident and recorded my statement.”

PW5 Arvind Vitthal Kulkarni is Police Head Constable at Sonai Police Station, who lodged report.

PW6 Sharad Ramrao Borude is panch witness, who turned hostile.

PW7 Shobha Bhausaheb Bhalerao is sister-in-law of complainant. At exh.58, regarding occurrence, she deposed as under :

“The incident in the case took place before about 3 years back prior to one day of Pola festival. On the relevant day at noon time I had gone in our landed property. At the relevant time of incident I was carrying the work of Khurapane in our property at the noon time. At the relevant time the she-buffalo of accused Laxman was grazing in the crop of our property. Therefore, my mother in law went towards the she-buffalo in order to drive her from the field. At the relevant time accused Laxman quarreled with us. Then accused Laxman took out his she buffalo from the field. And thereafter we were present in our field. We carried the work in the field till evening time. When we were present in our field property we heard the noise of shouting from the vasti of Sudhakar & Karbhari. It was the noise of shouting of complainant Nanasaheb & my brother in law. The accused Karbhari and Sudhakar were assaulting on complainant Nanasaheb & my father in law by restraining them. On hearing the noise of shouting I myself & my mother in law were proceeding towards the site from which we heard the noise. When we were proceeding the accused Maruti, Aana & Narayan came. The accused Anna was having axe in his hand, the accused Maruti was having iron bar in his hand, The accused Narayan was also having iron bar in his hand. At the relevant timem the accused Maruti stated as "Mhaharde, Dherdye, Tumhi Lai Majale", the accused Maruti pulled away

my saree, the accused Narayan assaulted on my head by iron bar. Due to the assault I fall down on the soil. Then my mother in law brought me at house. Then my sister in law went in the village to inform about the incident. Then my husband came alongwith the jeep. And took me & took my brother in law & father in law at Civil Hospital, Ahmednagar. Due to the assault I sustained the bleeding injury & blood stains clothes on my person. The accused before the Court are the same persons who have assaulted on me and assaulted on my brother in law & father in law.”

PW8 Vasant Godhaji Sanap is the Investigating Officer, who carried out investigation. His evidence is at exh.59.

PW9 Dr.Prabhas Manikrao Patil is medical officer, who examined injured. At exh.74, he deposed as under :

“On 17.8.2001 I was present at the hospital and was on duty. On 17.8.2001 the persons by name Balaji Bhalerao, Shobha Bhalerao and Nanasaheb Bhalerao came at Civil hospital, Ahmednagar for medical examination and treatment. At that time Balaji, Shobha and Nanasaheb gave the history of alleged assault on them. Accordingly I have examined Balaji, Shobha and Nanasaheb. The injury certificates are at exhibits 75, 76 and 77 are issued by me.”

PW10 Narayan Raosaheb Korde is Clerk from Sub-Divisional Office, Shrirampur. The said office has issued caste certificate to complainant Nanasaheb.

LAW ON APPLICABILITY OF SECTION 149 OF IPC

7. Before advertng to and undertaking the exercise of re-appreciation and reanalysis of the evidence, and there being charge under Section 149 of the IPC, it would be desirable and fruitful to discuss the judicial precedent on applicability of said penal provision.

Though, there are catena of judgments on applicability of Section 149 of IPC, following judgment, out of few known and landmark judgments, can be referred for proper comprehension.

The Hon'ble Supreme Court in the case of ***State of Karnataka v. Chikkahottappa @ Varade Gowda and others***, AIR 2008 SC 2692, has very lucidly, succinctly and in instructive manner clarified legal position of above provision. The relevant paragraphs from above ruling are borrowed and quoted here for ready reference :

“6. The pivotal question is applicability of Section 149 IPC. Said provision has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial

question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of such an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

7. *'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or*

more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful, It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot co instante.

8. *Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the*

common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at the time of or before or after the occurrence. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object would also be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See Chikkarange Gowda and others v. State of Mysore AIR 1956 SC 731). These aspects were also recently highlighted in Chandra and Ors. v. State of U.P. and Anr. [2004 (5) SCC 141]."

What can be culled out from above ruling is that it is imperative for prosecution to first and foremost establish that the unlawful gathering comprising of five or more persons, was actuated

by common object spelt-out in Section 141 of the IPC. In above ruling, the word 'object' has been clarified by stating to mean as purpose or design, the word 'common' denotes sharing by all others with above strength of persons. Keeping these requirements and the particular phrases, its legislative intent in mind, the exercise of analysis and re-appreciation of evidence available in case in hand is taken up for reaching to conclusion as to whether essential ingredients for attracting Section 149 of the IPC are available or not.

ANALYSIS

8. Here, evidence of **PW1** Nanasaheb Balaji Bhalerao, **PW3** Balu Madhav Bhalerao, **PW4** Laxman Pandurang Borde and **PW7** Shobha Bhalerao is crucial.

On meticulous re-appreciation of evidence, it is clearly emerging that, as submitted in trial Court and also as held by learned trial Judge, witnesses are not consistent and their evidence is full of material omissions for the reasons that, according to **PW1** Nanasaheb, first incident took place at 08:00 a.m. wherein he has named accused nos.1, 2 and 3 for hurling caste abuses and he has attributed role of assault to accused no.8 i.e. for assaulting complainant's mother and sister at around 04:00 pm. Third

incidence he quoted is of about 06:30 p.m. wherein he named accused no.9 for restraining PW1 complainant from proceeding further and has also named accused no.4 to 8, 10 and 11 for being armed with iron rods and axes and it is alleged that they beat complainant and his father. However, he has named only accused nos.1, 2 and 3 inflicting injuries on his mother and sister-in-law i.e. without specifying or clarifying role or naming the site of assault.

It has come in his **cross-examination** that there was a dispute between this witness and accused in respect of Gat No.35. He admitted that he did not lodge complaint prior to 17-08-2001 in respect of destroying of bandh. He admitted that a case is pending against him in Newasa Court.

In paragraph 17, there is omission in respect of incident took place at 04:00 p.m. in which Samindrabai abused mother and sister of this witness. In same paragraph, there is also omission in respect of accused Karbhari restraining them from proceeding further.

9. Another witness PW3 Balu, in his evidence at exh.52, has narrated about occurrence of 06:00 pm, during which he has alleged that accused nos.4, 5 and 8 and 9 restrained him and he has attributed role of assault by axe to accused no.3 and for instigating

others. He attributed role to accused no.4 for assaulting on his head by means of axe.

While under **cross-examination**, in paragraph no.8, there is omission about she buffalo of Rama grazing in the crop of Hulga in the morning and when female members of this witness asked Rama to take out the buffalo, daughter of this witness was assaulted. In same paragraph, there is also omission about the fact that daughter of this witness witnessed the incident of assault and went to inform her brother. There is further omission about accused Rama assaulting on head of this witness by axe.

10. **PW4** Laxman gave timing of occurrence as 06:30 p.m. during which he alleged about accused no.1 catching hold of Shobha and making her fall down and then hurling caste abuse. According to him, accused no.2, who was armed with iron rod also assaulted Shobha with it, but named accused no.3 for being only armed with axe and he has not attributed any role to him.

11. **PW7** Shobha is also a material witness for prosecution and she claims that after hearing shouts, she and her mother-in-law saw accused nos.5 and 9 assaulting PW1 Nanasaheb and his father. By

what means has not been stated by her, however, she named accused no.3 to be armed with axe and accused nos.1 and 2 to be equipped with iron rods. She attributed role to accused no.1 for pulling her saree and further attributed role to accused no.2 assaulting on head by iron bar.

In her **cross-examination**, in paragraph no.4, there are material omissions about she going in their property at noon time for carrying out the work and she worked in the field till evening; accused Anna was armed with axe and accused Narayan was armed with iron bar; there was abuses on the caste, and her sister-in-law went in the village to inform about the incident.

12. Prosecution, in support of injuries, has examined PW9 Dr.Prabhas Patil, who has testified at exh.74 regarding examining injured and issuing injury certificates.

13. On re-analysis of above evidence i.e. substantive evidence of above witnesses, it is emerging that there is previous animosity between complainant party and accused party. As submitted, there is cross FIR by accused persons against present witnesses of which there is clear admission. It is not getting clear, who is the aggressor

here. Apparently, three instances are quoted i.e. in the morning at around 08:00 a.m., in the afternoon 04:00 p.m. and then in the evening at 06:00 p.m. It is evident from above testimony of witnesses that different accused are named for indulging in above three instances. In some instances, only two accused are named, in other three to four accused are named.

What formation of unlawful assembly contemplates is not available in the evidence. To accept the case of sharing common object, evidence is patently lacking. This aspect clearly inflicts severe dent to the prosecution. Three spots are narrated with three distinct timings and as such, it is difficult to accept that there was either common intention or common object.

Most crucial aspect is that evidence of above witnesses is found to be contradictory and full of material omissions giving cause for raising suspicion over the very occurrence. As stated, PW1 complainant had merely stated that report was lodged but the same was not entertained. However, apparently there is delay in lodging FIR and as stated above, it is subsequent to the FIR at the instance of accused party, wherein complainant party is arrested and booked for offence under Section 326 of the IPC. Hence, there is material suggesting counter blast.

14. As regards to offence under the provisions of SC and ST Act is concerned, allegations are directed to all accused and allegations in chorus cannot be made basis. Moreover, some of the accused are themselves belonging to Scheduled Caste and Scheduled Tribe and as such caste abuse cannot be attributed to them.

15. For above reasons, on complete reanalysis of available evidence, even this Court is convinced that evidence of prosecution witnesses does not inspire confidence and is rather full of material omissions, contradictions and improvements. Witnesses are not lending support to each other on material counts. It is thus a fit case of benefit of doubt.

16. Perused the judgment under challenge, in the considered opinion of this Court, all necessary legal requirements are tested by the learned trial Judge and thereupon, by keeping settled law in mind, conclusion has been drawn by assigning sound reasons. No patent perversity or illegality is brought to the notice of this Court so as to interfere or overturn the judgment. No case on merits being made out, appeal deserves to be dismissed. Accordingly, I pass following order :

ORDER

Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE)
JUDGE

SPT