



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.718 OF 2006

The State of Maharashtra
Through P.S.O. Dharur
Police Station, Tq. Dharur,
District Beed.

.. Appellant

Versus

1. Nilkanth @ Bhagwan
s/o Madhavrao Shinde
Age: 32 years,
2. Santosh s/o Madhavrao Shinde
Age: 20 years,
3. Madhavrao s/o Baburao Shinde
Age: 65 years,
4. Omprakash @ Ashok s/o Madhavrao
Shinde, Age: 27 years,
5. Ashok Shridhar Nirmal
Age: 28 years,
6. Navnath Dhondiram Nirmal
Age: 35 years,
7. Shivaji s/o Asaram Kharat,
Age: 26 years,
8. Sidheshwar s/o Shrirang Wani
Age: 22 years,
9. Balu s/o Suryabhan Wani
Age: 24 years,
10. Prakash s/o Dhondiram Nirmal
Age: 20 years,

11. Ambadas s/o Damodhar Wani,
Age: 22 years,

12. Sonaji s/o Ginyandeo Wani,
Age: 23 years,

All R/o. Nirmalwai (Karalwadi)
Tq. And Dist. Beed.

.. Respondents

...

Mr. S. M. Ganachari, APP for the appellant/State.

Mr. S. J. Salunke, Advocate for respondent Nos.1 to 12.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 29.09.2026

Pronounced on : 08.10.2026

JUDGMENT :-

1. In the State appeal, there is challenge to the judgment and order of acquittal dated 17.05.2006 passed by learned Additional Sessions Judge, Majalgaon in Sessions Case No.30 of 2005, thereby acquitting all the respondents herein from charges under Sections 143, 147, 148, 353, 333, 325 read with Section 149 of the Indian Penal Code.

BRIEF FACTS OF THE PROSECUTION CASE

2. The prosecution case, in brief, is that PW5 injured Baliram Mhatre, working as a Gramsevak at Gram Panchayat Khadkideola, was directed by the Tahsildar to convene a Gram Sabha on 17.02.2004. When he reached the venue near Hanuman temple, the

accused, namely, Nilkanth, Madhavrao, Santosh, Ashok @ Omprakash and others alighted from the jeep. They started reprimanding PW5 on account of Gramsabha convened by him near Hanuman temple in village Nirmalwadi. Thereafter, accused persons abused him, threatened him and assaulted him in connection with the said meeting. Meanwhile, Revenue Inspector Gangadhar Panchal PW1 and Talathi Sk. Wajir PW4, who were proceeding to attend the meeting, were intercepted by the accused. Accused Nilkanth allegedly dragged PW4 Talathi from his motorcycle, while accused Madhavrao, Santosh and Ashok assaulted him with stones. When PW1 intervened, accused Madhavrao allegedly threw a stone at him, causing a fracture injury to his forearm. The injured public servants were thereafter rescued by the villagers and taken to the hospital. PW1 Gangadhar Panchal lodged report, on the basis of which crime was registered, investigated and the accused persons were duly charge-sheeted and tried for above referred offences vide Sessions Case No.30 of 2005. The trial ended up in acquittal. Hence, the appeal by the State questioning the judgment and order of acquittal.

SUBMISSIONS

On behalf of the appellant/State :-

3. Learned APP would apprise this Court about the prosecution case in trial Court and would also took this Court through the

evidence adduced by prosecution in trial Court and would submit that there was cogent, convincing and clinching evidence in support of the charges. That, there is injured witness account as well as eye witness account. Evidence of such witnesses has remained intact during cross. There was no variance or inconsistencies. Therefore, according to him, learned Trial Court ought to have accepted the story of prosecution. He would submit that essential ingredients for attracting the charges were available in the testimonies of above witnesses. There is incorrect appreciation of available evidence in its correct perspective resulting into acquittal and hence, he prays for allowing the appeal.

On behalf of respondents/original accused Nos.1 to 12 :-

4. Per contra, learned Counsel for the respondents would justify the judgment and order of acquittal by submitting that prosecution witnesses are inconsistent on material counts. Their evidence is full of material omissions and contradictions and therefore, finding that testimonies are unworthy of credence, learned trial Court rightly refused to rely on the same and acquitted the accused.

EVIDENCE BEFORE THE TRIAL COURT

5. **PW1** – Gangadhar Panchal, Revenue/Circle Inspector, deposed at Exhibit-45 that on 17.02.2004, he and PW4 Talathi proceeded on a

motorcycle to village Nirmalwadi to attend the Gram Panchayat meeting. Near the village boundary, the accused intercepted their vehicle, accused Nilkanth dragged PW4 from the motorcycle, while the accused assaulted him with stones. When PW1 intervened, accused Madhavrao threw stones at him, causing a fracture injury to his hand as well as other injuries. He also stated that accused Nilkanth kicked him and that, during scuffle, his gold chain and Rs.600/- were allegedly taken away, while PW4's wristwatch and pen were also allegedly stolen. Villagers, including Udhav Maske, intervened and rescued them. He stated that all the injured persons as well as himself were taken to the hospital at Beed, where his statement was recorded, on the basis of which FIR (Exh.46) was lodged. His blood-stained clothes were subsequently seized under a panchnama and identified by him. In his supplementary statement, he specifically stated that accused Nilkanth, Madhavrao and Santosh had participated in the incident, but he could not state about the participation of the remaining accused. He further stated that the accused were protesting against the Government representatives attending the meeting, as they intended to prevent allotment of the fair price shop.

. While under **cross-examination**, PW1 admitted that the office of the Group Gram Panchayat was situated at Karalwadi. That, he was

acquainted with the accused. That, the incident occurred about 15–20 feet from the village boundary and that, 5–6 female members were also present in the mob. He admitted that he had no conversation with accused Nilkanth, Santosh and Madhavrao at the spot and had no prior animosity with them. He further admitted that the assault lasted about 5–10 minutes. That, except Udhav Maske he could not recall the other persons who had gathered at the spot, and that, he was travelling as a pillion rider. Further, he admitted that the allegations regarding snatching of his golden chain and amount of Rs.600/-, theft of wristwatch and pen of PW4 and the reason for their being questioned by the accused were not stated in the FIR and were brought on record subsequently in his supplementary statement. He also admitted that the seizure panch witness Dattatraya was his son. The suggestions put to him on behalf of defence that the alleged incident had not occurred, that the complaint was false, and that he was deposing falsely in collusion with Sarpanch Dilip Wani were specifically denied by him.

6. **PW2** is the acquaintance of PW1 complainant, who at Exhibit-49 deposed that, he witnessed the accused Madhavrao, Nilkanth and others assaulting Gramsevak Baliram Mhatre and intervened to rescue him. Thereafter, when the PW1 and PW4 arrived

on a motorcycle for official work relating to the fair-price shop, the accused intercepted their motorcycle and assaulted them by pelting stones. He stated that Nilkanth, Santosh, Madhavrao and Ashok @ Omprakash assaulted PW1, while PW4 also sustained injuries. PW2 intervened and rescued both officials, who were thereafter taken to the hospital. He identified accused Nos.1 to 4 as the assailants, but stated that he could not speak about the involvement of remaining accused.

. While under **cross-examination**, he admitted his relationship with Sarpanch Dilip Wani. Further, he admitted that there were school and houses situated near the place of incident and that 7 to 8 persons had gathered during the assault on Gramsevak. He further admitted that 8 to 10 persons, including women, were present during the assault on PW1 and PW4, some of whom attempted to intervene, but he could not recognize them. He also admitted having met the police before recording his statement on 19.02.2004, though he stated that he had no occasion to disclose the incident to them. He admitted having stated to the police that accused Santosh assaulted PW1 and PW4. He denied the defence case that the prosecution witnesses, including Sarpanch Dilip Wani and his relatives, had assaulted accused Omprakash @ Ashok with an axe and that the present case was falsely lodged on account of such incident or

because of his relationship with the Sarpanch.

7. **PW3**, who is the acquaintance of PW1 and PW4, deposed at Exhibit-50 that on 17.02.2004, he saw accused Madhavrao, Nilkanth, Omprakash @ Ashok and Santosh assaulting Gramsevak Mhatre near the temple to prevent the Gram Sabha. He rescued Mhatre. He thereafter saw Madhavrao, Santosh and Nilkanth assaulting PW1 and PW4 at the village boundary by stones. He stated that Nilkanth assaulted PW4 with stone as well as Madhavrao also assaulted PW1 with stone and inflicted injuries at his hand, head etc. and identified the accused Madhavrao, Nilkanth, Omprakash and Santosh before the Court. Further, he stated that rest of the accused were seen standing on the spot of incident.

. While under **cross-examination**, he admitted that he belonged to NCP and the accused belonged to BJP. He also admitted that Madhavrao was the previous Sarpanch and his wife had contested against PW-3 in the year 2000. He also admitted that no Gram Sabha was held from 2000 till the incident and that a chargesheet had been filed against him and Bandu concerning the assault on Omprakash on 17.02.2004. Further, there are material omissions regarding his presence at the spot, his intervention in the incident, the role attributed to Udhav Mhaske, the allegation that Ashok had torn the

shirt of the Gramsevak, and the circumstances surrounding the entire incident, including as to who had pelted stones, were brought on record through PW7. He denied the suggestion that his deposition was motivated by any political motive or that he was deposing falsely. He also denied the defence suggestion regarding the existence of a counter-case and the alleged assault on Omprakash with an axe.

8. **PW4** is the Talathi, who at Exhibit-57 deposed that, pursuant to the letter of Tahsildar, he was required to attend the Gram Sabha at Nirmalwadi in connection with allotment of the Fair Price Shop. He travelled with PW1 on a motorcycle and, near the village boundary, saw accused Nilkanth, Madhavrao, Santosh and others approaching with stones. He stated that Nilkanth intercepted them, abused him and assaulted him with a stone, causing injury to his right hand. He further stated that Nilkanth pushed PW1 aside and kicked him, while Madhavrao assaulted PW1 with a stone on his back and right elbow. Udhav Maske rescued them. He was admitted to hospital for about two days and identified Nilkanth and Madhavrao before the Court.

. While under **cross-examination**, he admitted that he received the letter on 13.02.2004 and he left village Deola at about 11.00 a.m. He stated that he was not familiar with Udhav Maske and could not speak about the persons who were present as onlookers. Omissions

were brought on record regarding the presence of Santosh in the mob, the kick allegedly given by Nilkanth to PW1, and the stone blow allegedly given by Madhavrao on the back of PW1. He could not explain the omissions. He denied knowledge of or participation in the alleged assault on Omprakash with an axe and denied that the complaint was lodged falsely to compel withdrawal of the case.

9. **PW5**, is the Gramsevak, who at Exhibit-59 deposed that, Tahsildar had directed him to hold the Gram Sabha and that he had issued the requisite publication and letters. He reached Nirmalwadi on 17.02.2004, went to the house of Sarpanch and thereafter proceeded towards the venue near Maruti temple. A jeep arrived carrying 8-9 persons including Nilkanth, Madhavrao, Ashok and Santosh. According to him, accused Nilkanth abused him and told him not to hold the Gram Sabha and assaulted him on the head with a *chappal*. Accused Ashok and Santosh caught hold of him, while Madhavrao assaulted him with shoes and they attempted to tear his shirt. One Udhav Maske rescued him. He was taken to hospital and the Gram Sabha could not be held. He identified accused Nos.1 to 4.

. While under **cross-examination**, he admitted that he had been suspended by the BDO on an earlier occasion and that he had received a letter directing that the Gram Sabha be held at Karalwadi

instead of Nirmalwadi. He admitted that Udhav Maske and Tukaram Wani accompanied him to the venue and that several villagers, including female members, were present. A material omission was proved regarding the chappal blow allegedly given by Nilkanth. Another material omission was proved regarding the allegation that Ashok and Santosh had caught hold of him at the time of incident. He could not explain the omissions. He denied the suggestions of false deposition, forged documents, *mala fides* and the defence version concerning the venue and counter-case.

10. **PW6**, who is the acquaintance of accused, deposed at Exhibit- 66 that, the incident occurred in front of the Maruti temple. He deposed that Gramsevak and others, including Sarpanch, came to the temple after taking tea. A jeep arrived carrying Nilkanth, Madhavrao, Santosh and Ashok. Nilkanth abused Gramsevak for arranging the Gram Sabha, and Nilkanth and Santosh assaulted him. Accused Madhavrao attacked gramsevak Mhatre with shoes on his head. He stated that he and Udhav intervened in the scuffle. Accused, Nilkanth, Madhavrao, Santosh and Ashok also torned the clothes of Gramsevak Mhatre. He further stated that he identified all the four accused present before the Court.

. While under **cross-examination**, he admitted that he was the

real brother of Sarpanch Dilip Wani and that there was political rivalry between Dilip Wani and Nilkanth. He also admitted that Ashok had sustained bleeding head injury and had lodged a complaint against him, his brother and Gramsevak. He admitted that several villagers were present but did not intervene. Omissions were proved regarding his personal intervention and the presence of Sarpanch accompanying Gramsevak to the temple. He stated nothing regarding the assault on the PW1 and PW4. He denied the defence suggestions that the case was false or that the Gramsevak's clothes were intact and stated that he was unaware of the alleged assault on Ashok with an axe.

11. **PW-7** is the Investigating Officer, who at Exhibit-67 deposed regarding receipt of information about the incident, registration of the FIR under Sections 147, 148, 353, 332 and 325 read with Section 149 of IPC, preparation of the spot panchnama, seizure of clothes, recording of statements, collection of medical certificates and investigation of the case. He stated that Section 395 of IPC was initially added on the basis of supplementary statement of PW1. During investigation, in absence of evidence against the accused about the dacoity, he stated that he deleted the Section 395 of IPC against accused. He collected the documents relating to the Gram

Sabha and filed the chargesheet for rest of offences.

. While under **cross-examination**, he stated that he had not recorded the statement of the Deola Police Patil, made no station diary entry regarding the initial telephone information, did not record statements of several witnesses on 17.02.2004 and 18.02.2004, and did not record statements of nearby villagers, school teachers or students. He also investigated the counter-case lodged by Ashok and stated that Dilip Wani and Bandu Wani were charge-sheeted in that case. Material omissions in the evidence of PW2 to PW6 were proved through him. He denied suggestions that the FIR, addition of Section 395 of IPC and chargesheet were false or that he had acted at the behest of Dilip Wani.

12. **PW8** is the medical expert. He deposed at Exhibit-70 regarding the injuries sustained by PW1, PW4 and PW5. PW1 had a contusion on the right forearm, fracture of the lower end of the right radius and an abrasion on the face. The nature of fracture injuries was grievous. PW4 had a CLW on the right elbow and PW5 had a contusion on the left scalp, both the are stated to be simple in nature. He identified the medical certificates issued by him.

. While under **cross-examination**, he admitted that the injuries were caused by hard and blunt objects and that the injuries of PW1

and PW4 could also be possible from a fall on a rough surface from a motorcycle. He denied having issued false or spurious certificates or deposing falsely. Rest is all denial.

ANALYSIS AND CONCLUSION

13. Perused the record. As many as 12 accused persons were tried vide above Sessions Case on the charge for offence under Sections 143, 147, 148, 353, 333, 325 read with Section 149 of IPC. The occurrence has allegedly taken place on 17.02.2004. In short, it is the case of prosecution that Tahsildar had directed Gramsevak Mhatre to conduct meeting of villagers with regard to the allotment of Fair Price Shop in the village and said meeting was scheduled on above date at village Nirmalwadi. It is the case of prosecution that when Revenue Inspector, Gangadhar Panchal PW1 and Talathi Sk. Wajir PW4 were proceeding to attend the meeting on their motorcycle, on the boundary of village Nirmalwadi itself, they were intercepted by a mob and they were manhandled and assaulted by means of stones. The case of the prosecution, to that extent, is sought to be established by examining, in all, eight witnesses. The gist of the depositions of those witnesses could be summarized as under:

PW1 Gangadhar Panchal at Exhibit-45 deposed that accused Nilkanth dragged PW4 Talathi Sk. Wajir of the motorcycle and

hit him with stones, whereas Madhavrao threw a stone which hit on his back as well as right hand and again Nilkanth kicked him at his waist. However, so much of his testimony is not reported by him in the FIR at his instance at Exhibit-46.

PW2 Udhav Mhaske at Exhibit-49 deposed that accused intercepted the motorcycle, pelted stones and he named Santosh, Ashok, Madhavrao and Nilkanth for beating PW1 Revenue Inspector and he to be extricated.

PW3 Sarpanch Dilip, examined at Exhibit-50, testified that after the assault on PW-5 Baliram Mhatre, he went home. Thereafter, upon learning about the assault, he again rushed to the boundary of the village and claims to have witnessed Madhavrao, Santosh and Nilkanth assaulting PW1 and PW4.

PW4 Talathi Sk. Wajir is also a crucial witness who, at Exhibit-57, testified that accused Nilkanth and Madhavrao, along with others, came armed with stones. According to him, they pushed the motorcycle, causing both the occupants to fall. Thereafter, accused Nilkanth hit him with a stone and kicked him on the waist, whereas accused Madhavrao assaulted him with a stone.

PW5 Gramsevak Baliram Mhatre at Exhibit-59 deposed about convening meeting and according to him, accused Madhavrrao tried to remove his footwear to assault him.

PW6 Tukaram Wani, who is brother of Dilip Wani, at Exhibit-66 deposed that while he was sitting on the platform near Maruti Temple, PW5 Baliram Mhatre and he himself were having tea in the house of Dilip Wani and according to him, PW1 Gangadhar and PW4 Wajir were assaulted near Maruti Temple, but he does not named any of the accused.

PW7 Investigating Officer, who at Exhibit-67, narrated all the steps taken by him during investigation.

PW8 Medical Expert, at Exhibit-70, deposed regarding injuries sustained by PW1, PW4 and PW5 and identified the medical certificates issued by him.

14. From above material, it is primarily emerging that witnesses are not consistent on the role played by accused persons. Apparently, only names of Madhavrao, Nilkanth, Santosh and Ashok are surfacing from the testimonies of above witnesses. Therefore, only four persons are identified and remaining are not identified. When there is charge of

Sections 147 and 148 of IPC, it is an essential and legal requirement that five persons must be shown to be involved, but here it is not so. As stated above, each of the above witness is attributing distinct role even to accused Madhavrao, Nilkanth, Santosh and Ashok. Even when PW1 Gangadhar and PW4 Wajir are together, they are not lending support to each other. Consequently, here, evidence is falling short of formation of unlawful assembly, which requires five persons. Only above named four persons are identified by witnesses. Therefore, apparently, there is no formation of unlawful assembly. In view of variance in the roles attributed to the named accused, testimonies of above referred prosecution witnesses cannot be straightaway accepted and relied.

15. It is fairly settled position that mere presence at the scene of riot or arrest from the spot does not by itself establish membership of an unlawful assembly and law to this extent is fairly settled by catena of judgments including recent judgment in the case of *Dhirubhai Bhailalbai Chauhan and another vs. State of Gujarat and others*, [2025 SCC OnLine SC 601].

16. Here, as stated above, required strength of five persons is not met to attract unlawful assembly. Prosecution seems to have invoked charge of Section 149 of IPC, but such liability cannot be presumed

merely by presence of a person in a mob, when common object and participation is not proved beyond reasonable doubt. In support of such legal proposition, reliance can be placed on the judgment of Hon'ble Apex Court in the case of ***Musa Khan and others vs. State of Maharashtra, (1977) 1 SCC 733.***

17. The cumulative effect of above discussion is that case of prosecution is not proved beyond reasonable doubt.

18. Perused the judgment under challenge. No infirmity or perversity is brought to the notice of this Court so as to interfere. Hence, the following order is passed :-

ORDER

. Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]