

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 31 OF 2002

The State of Maharashtra,  
through Purna Police Station,  
District Parbhani

.. Appellant

Versus

1. Maroti Narayan Patil,  
Age 44 years, Occu. Agri.,  
R/o Kavalgaon, Taluka Purna,  
District Parbhani
2. Deorao Manikrao Kakde,  
Age 20 years, Occu. and  
R/o as above
3. Sk. Sadik Sk. Akub,  
Age 30 years, Occu. and  
R/o as above
4. Sk. Mohiuddin Sk. Muradudin,  
Age 25 years, Occu. and  
R/o as above
5. Babarao Marotrao Kawase,  
Age 50 years, Occu. and  
R/o as above
6. Sk. Jalil Sk. Yakub,  
Age 40 years, Occu. and  
R/o as above
7. Tukaram Chimnaji Bhise,  
Age 22 years, Occu. and  
R/o as above
8. Devidas Manikrao Kakde,  
Age 22 years, Occu. and  
R/o as above
9. Hanmant Trimbak Dake,  
Age 26 years, Occu. and  
R/o as above

10. Nivrutti Baburao Wange,  
Age 25 years, Occu. and  
R/o as above
11. Chandkhan Nanhekhon Pathan,  
Age 45 years, Occu. and  
R/o as above
12. Babu Manik Kakde,  
Age 26 years, Occu. and  
R/o as above
13. Sk. Ismail Sk. Diwan,  
Age 28 years, Occu. and  
R/o as above
14. Gangadhar Maroti Pisal,  
Age 30 years, Occu. and  
R/o as above
15. Narayan Maroti Pisal,  
Age 30 years, Occu. and  
R/o as above
16. Dnyanoba Kondiba Bhakal,  
Age 20 years, Occu. and  
R/o as above
17. Rasulkhan Nanhekhon Pathan,  
Age 35 years, Occu. and  
R/o as above
18. Rama Keshav Patle,  
Age 30 years, Occu. and  
R/o as above
19. Sk. Babu Sk. Yakub,  
Age 45 years, Occu. and  
R/o as above
20. Ashok Manikrao Shelke,  
Age major, Occu. and  
R/o as above

.. Respondents

Mr R.V. Dasalkar, A.P.P. for appellant  
Ms Roopa Daxini, Advocate h/f A.H. Kapadia, Advocate for  
respondents no.1 to 7, 9 to 20  
Respondent no.8 served

**CORAM : T.V. NALAWADE AND  
A.M. DHAVALA, JJ**

**DATE : 24<sup>th</sup> November 2017**

**ORAL JUDGMENT (Per A.M. Dhavale, J.)**

1. The State has preferred this appeal against the judgment of acquittal of the respondents passed by learned III Additional Sessions Judge, Parbhani on 29.8.2001 in Sessions Case No.104 of 1996 whereby the respondents were acquitted of the offences punishable under Sections 143, 147, 148, 307, 323, 325 read with Section 149 of Indian Penal Code.

2. The facts relevant may be stated as follows :

P.W.2 Kishan is the main injured and the informant. On 12.4.1995, as he had sustained injury on his skull, his statement in the form of dying declaration was recorded by P.S.I. Poorna police station and on the basis of the same, crime was registered at C.R. No.32/1995 at 10.05 a.m. under above referred Sections. The F.I.R. discloses that there is a public way in village Kavalgaon. P.W.3 Rustum was Sarpanch of the village and he had fitted one electric motor on the well for providing water to the general public. Accused no.1 Maroti thereafter became Sarpanch and on 11.4.1995, he issued notice to P.W.3 Rustum, Ex-Sarpanch, for removing the motor. Then P.W.3 Rustum and other witnesses requested accused no.1 Maroti that the motor was fitted for supplying water to the villagers and it should not be removed, but accused no.1 Maroti and his party-men insisted for removing the motor. At the crucial time of incident at 8.00 a.m. when P.W.3 Rustum and P.W.9 Sambhaji, P.W.8 Nemaji were requesting the accused persons not to remove the motor, accused no.1 Maroti,

accused no.15 Narayan, accused no.8 Devidas, accused no.4 Shaikh Mohiuddin, accused no.12 Babu and one Dasu Manik Kauthekar started assaulting them. P.W.2 Kisan intervened. Accused no.1 Maroti inflicted blow of axe on his skull and accused no.8 Devidas inflicted blow of axe on his shoulder. Then, Narayan A-15, Manik A-8 assaulted him. Shaikh Mohiuddin A-4 gave blow of wooden block on his left arm. Shaikh Babu A-19, Shaikh Jalil A-6, Shaikh Sadik A-3, Chandkhan A-11, Rama A-18, Ashok Shelke A-20, Nivrutti A-10, Hanumant A-9, Tukaram A-7, Jalba assaulted by sticks bought from accused no.5 Babarao and caused injuries to P.W.3 Rustum, P.W.8 Nemaji, Purbaji, Shankar, Bapurao and Bhagwan. After registration of crime, medical treatment was given to the injured witnesses. Thereafter investigation was carried out. Blood stained clothes and weapons of offences were seized from various accused. After completion of investigation, charge-sheet was filed in the Court Judicial Magistrate. In due course, the case was committed to the Court of Sessions.

3. Learned Additional Sessions Judge framed charge under Sections 143, 147, 148, 323 read with Sec.149 and 307 read with Sec.149 of Indian Penal Code against the accused (when charge under Section 147 of Indian Penal Code was framed, charge under Section 143 of I.P.C. was not necessary). The accused pleaded not guilty. The prosecution examined 14 witnesses. The defence of the accused was of total denial. It is claimed that P.W.3 Rustum was using the well water by motor on the well for his personal use and not for villagers and after following the due process, he was served with notice and

pump was removed. There was free fight in which several persons from both the sides participated. The accused denied that they have injured the prosecution witnesses. The learned trial Judge did not believe the witnesses. Hence, all the accused were acquitted of all the charges. Hence, this appeal.

4. Learned A.P.P. Mr Dasalkar submitted that though main injured witness P.W.2 Kishan has turned hostile, there is consistent evidence of P.W.3 Rustum, P.W.5 Bapunna, P.W.6 Ansabai, P.W.7 Bhagwan and P.W.9 Sambhaji that accused no.1 Maroti inflicted blow of axe on P.W.2 Kishan. Their evidence is supported by medical evidence led by P.W.1 Dr. Gaikwad, who has proved medical certificate Exh.36. There is recovery of axe as well. Therefore, the accused no.1 should have been convicted for attempting to commit murder of P.W.3 Rustum and besides, there are medical certificates and evidence of witnesses showing that various persons assaulted P.W.3 Rustum, P.W.4 Eknath, P.W.5 Bapunna, P.W.6 Ansabai, P.W.7 Bhagwan, P.W.8 Nemaji and P.W.9 Sambhaji. There are recoveries of deadly weapons like axe, sticks, cycle chains etc. There is medical evidence of P.W.1 Dr. Gaikwad, P.W. 13 Dr. Laxman Chavan. They should have been believed and the accused should have been convicted.

5. Learned Advocate Rupa Daxini, holding for Mr A.H. Kapadia for the accused supported the judgment of acquittal. She argued that the accused belong to one political party led by accused no.1 Maroti, while the prosecution witnesses belong to opposite party led by P.W.3 Rustum. There was strong political rivalry. Accused no.1 Maroti has consistently won the elections and was holding the post of Sarpanch

and Deputy Sarpanch from 1984. He had received awards of Rs.40,000/- and Rs.5 lacs under the government schemes for the village. Therefore, they have been falsely implicated. The evidence shows that P.W.3 Rustum was taking well water for his personal use and not for public purpose and main witness P.W.2 Kishan and P.W.8 Nemaji turned hostile. There are inconsistencies, contradictions and falsity by the prosecution witnesses and learned trial Judge has rightly taken note of the same and disbelieved them. The view taken by the learned trial Judge is a reasonable and probable view and it needs no interference.

6. After hearing the learned A.P.P. and learned Advocate for the parties and going through the evidence on record, the points for consideration with our determination are as follows:

- (I) Whether accused nos.1 to 20 formed their unlawful assembly with common intention to assault the prosecution witnesses and used criminal force ? .. Not proved
- (II) Whether accused nos.1 to 20 while being members of unlawful assembly were armed with deadly weapons ? .. Not proved
- (III) Whether accused nos.1 to 20 in prosecution of their common object attempted to commit murder of P.W.3 Rustum ? .. Not proved

- (IV) Whether accused nos.1 to 20  
in prosecution of their common  
object caused injuries to  
Rustum, Bapunna, Ansabai,  
Bhagwan, Sambhaji ? .. Not proved
- (V) What order ? .. The appeal is  
dismissed

7. The evidence on record shows that there are two political parties in the village. The accused persons belong to political party led by accused no.1 Maroti. He is Sarpanch of the village since 1984. For brief period, he was Deputy Sarpanch. P.W.3 Rustum is his rival and the accused belong to political party led by P.W.3 Rustum. There are admissions to show that under the leadership of accused no.1 Maroti, the Gram Panchayat of Kavalgaon had won government awards of Rs.40,000/- and Rs.5 lacs for ideal village. The evidence also shows that the motor installed by P.W.3 Rustum during his tenure as Sarpanch was not for public purpose, but for his personal use. He was served with a notice by the Gram Panchayat for removal of the motor from public well, but the notice was not complied. Therefore, accused no.1 Maroti and other accused were taking legal action by removing the electric motor.

8. Though several witnesses have stated that they were injured and there is reference to it in the F.I.R. and post mortem report, we find that there are medical certificates of only five witnesses and the evidence regarding assault on these witnesses only deserves to be considered. We take up evidence of assault of five witnesses one by one.

9. The main injured is P.W.2 Kishan. He has lodged the F.I.R. As per his F.I.R., accused no.1 Maroti had inflicted axe blow on his skull, whereby he sustained grievous injury. P.W.1 Dr. Gaikwad has deposed that on 12.4.1995 at 10.30 a.m. he had examined P.W.1 Kishan and noticed contused lacerated wound over head, temporal parietal region left side, laceration size 7 c.m. X 1 c.m. and contusion 8 c.m. X 8 c.m. The said injury was possible by sharp weapon like axe and was caused within six hours. It was grievous in nature. Besides, there was injury over left shoulder. As per F.I.R., accused no.8 Devidas inflicted stick blow to him.

10. It is true that P.W.3 Rustum, P.W.4 Eknath, P.W.5 Bapunna, P.W.6 Ansabai, P.W.7 Bhagwan and P.W.9 Sambhaji all have stated that accused no.1 Maroti had given blow of axe on the skull of P.W.2 Kishan, however, two material witnesses P.W.2 Kishan himself and P.W.8 Nemaji have turned hostile. According to P.W.2 Kishan, there was a free fight and he could not tell who caused injury to him.

11. When the main injured has turned hostile, learned trial Judge could have still relied on the other witnesses supported by medical evidence, but if he felt a reasonable doubt about the author of injury to P.W.2 Kishan on account of P.W.2 turning hostile, it is reasonable and probable view and the same cannot be interfered.

12. Similarly P.W.8 Nemaji was examined by P.W.1 Dr. Gaikwad on the same day and time. He noticed following two injuries on h is person :

- (I) Contusion over left elbow 5 cm x 5 cm;
- (II) Contusion over face at mandible left side at angle of mandible 4 cm x 4 cm

As P.W.8 Nemaji has turned hostile, he has stated that he was not knowing who had assaulted whom. Similar is the evidence of P.W.2 Kishan and P.W.3 Rustum who stated that he was not knowing who had assaulted Nemaji. Therefore, there was no reliable evidence to show as to who had assaulted P.W.8 Nemaji. Therefore, the finding of acquittal in respect of injury by the accused to P.W.8 Nemaji is also reasonable and probable view.

13. P.W.13 Dr. Chavan has issued three certificates. First one is in respect of Anusayabai P.W.6. She had sustained one abrasion on right hand forearm, anteriorly 1 cm x  $\frac{1}{4}$  cm to skin deep, vertical in direction, red in colour and second - contusion on the back infra-scapular area 2 cm x 2 cm red in colour. She has stated that accused no.1 Maroti had inflicted stick blow on her hand and back, but admittedly, she is mother-in-law of P.W.3 Rustum. She is resident of Aundha Nagnath and not of Kavalgaon. She admitted the factum of not knowing the assailants and other persons told her the name of accused no.15. No test identification parade was held. Therefore, identification of accused no.15 by her is not reliable. Besides, she had not sustained a stick blow on the hand as stated by her as the injury on the hand is abrasion, which cannot be caused by stick blow. Thus, the author of injury to P.W.6 Ansabai is also not proved.

14. P.W.13 Dr. Chavan has issued certificate Exh.72 after examining P.W.4 Eknath. He found one injury as follows :

“Linear imprint contusion on right side scapular region posteriorly, vertically oblique size 10 cm x 3 cm, it was caused within 12 hours, next before my examination by linear hard and blunt object, simple in nature.”

15. P.W.4 Eknath apart from his evidence regarding injury by accused no.1 Maroti to Kishore, deposed that accused nos.1, 2, 6, 7, 12, 15 had assaulted Rustum, but there is no medical certificate of P.W.3 Rustum. He stated that he, Bapunna, Ansabai, Bhagwat had gone to rescue Rustum and at that time, accused nos.14 Gangadhar and accused no.17 Rasulkhan had caught his hands and accused no.2 Devrao had given a stick blow to him. However, he had sustained linear imprint contusion on right side scapular region, which can be caused by blow of cycle chain about which he has not deposed and there is no contusion on his person due to alleged stick blow given by accused no.2 Devrao with the help of accused nos.14 Gangadhar and accused no.17 Rasulkhan. Therefore, the author of injury to P.W.4 Eknath is also not proved.

16. P.W.13 Dr. Chavan has examined P.W.5 Bapunna and noted one abrasion on right side posterior medially on dorsal, vertical in direction 3 cm x 1/4<sup>th</sup> cm skin deep. P.W.5 Bapunna has not stated who had given stick blow on his wrist. The abrasion on his right hand cannot be caused by stick blow. Thus, the author of injury to P.W.5 Bapunna is also not proved.

17. P.W.13 Dr. Chavan has issued certificate Exh.74 showing following injuries to P.W.7 Bhagwan:

(I) Linear imprint contusion on back (left side) infra axillary area, 6 cm x 2 cm (chain marks were seen). It was vertical in direction, caused within 12 hours, next before my examination.

(II) Imprint contusion (chain marks) on back infra-scapular area, at the level of T-10 on left side, size 7 cm x 2 cm read in colour.

(III) Contusion on left axillary prominence 3 cm x 2 cm red in colour.

P.W.7 Bhagwan has vaguely stated that all the accused assaulted all the injured witnesses. He stated that accused no.12 Babu had given blow of cycle chain on his back and another blow near his right eye. The evidence thus disclosed that P.W. 12 Babu was holding a chain.

18. P.W.9 Sambhaji is son-in law of P.W.3 Rustum. There is no medical certificate for injury caused to P.W.9 Sambhaji. Therefore, his evidence that accused no.12 Babu gave a blow of cycle chain and accused no.8 Devidas gave stick blow to him and accused no.2 Devrao scuffled with him is not supported by medical evidence.

19. After considering the entire evidence on record, we find that there is strong enmity between the prosecution witnesses and the accused. There were two actions of two political groups, one led by P.W.3 Rustum and other led by accused no.1 Maroti. Accused no.1 Maroti had good success in the village elections and was Sarpanch for number of years. There was a quarrel on account of action taken by accused no.1 Maroti as a Sarpanch of removal of electric motor of P.W.3 Rustum. P.W.3 Rustum came with a case that it was fitted for use of providing water to public at large, but it was fitted for his personal use. At the relevant time, there was free fight and melee in which persons of two different groups were freely attacking each other without any common object or intention. The main witnesses P.W.2 Kishan and P.W.8 Nemaji have turned hostile. The evidence of other material witnesses do not tally with the medical evidence on record. The substratum of prosecution story has been falsified. In the circumstances, some corroboration to the medical evidence to the injuries sustained by P.W.7 Bhagwan will not be enough to rely on P.W.7 Bhagwan. The evidence shows that many independent witnesses were present on the spot, but they were not examined. As many as twenty persons from the political party of accused no.1 Maroti were implicated, but there are no corresponding number of injuries on the person of injured witnesses.

20. After considering the entire evidence, we find that the trial Judge was justified in having reasonable doubt about the credibility of the prosecution witnesses. In the light of the facts, we hold that the view taken by learned trial Judge is a reasonable and probable view.

The prosecution has failed to prove the offences charged against the accused and causing injuries to various witnesses and to prove the incident of rioting. Hence, we answer all the points accordingly in the negative and pass the following order :

ORDER

The Criminal Appeal is dismissed.

**( A.M. DHAVALA, J.)**

**( T.V. NALAWADE, J.)**

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