

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1019 OF 2002**

The State of Maharashtra

... Appellant

Versus

1. Balasaheb Savleram Dangat
2. Baba @ Santosh Ratansingh Pardeshi
3. Shaikh Munwar Ahmed
4. Sunil Ramchandra Meher
5. Zarar Ahmed Hazigulam Dastagir
6. Vilas Shankar Auti
7. Tanaji Vishnu Thosar
8. Sambhaji Vithal Tambe
9. Avinash Tukaram Rahane

... Respondents

.....

Mr. Artan Sait, APP for the Appellant-State.
None present for the respondents.

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**CORAM : A. S. OKA, J.
DATE : 18th MAY, 2017.**

ORAL JUDGMENT

1. Heard learned APP for the appellant-State.
2. By the impugned order dated 14th May, 2002, the learned IIIrd Ad-hoc Additional Sessions Judge, Pune acquitted the respondents-accused for the offences punishable under Sections 147, 148, 149 as well as Sections 332, 333, 353, 452, 427 read with Section 34 of the Indian Penal Code and Section 3 of the Prevention of Damage to Public Property Act, 1984.

3. The incidents such as the alleged incident are not uncommon in the State. In the city of Junnar, on 4th May, 2000 there was failure of electricity supply. Electricity was being supplied to the town of Junnar by the Maharashtra State Electricity Board (MSEB). The allegation is that political leaders/workers such as, a member of the Legislative Assembly and municipal councilor and others, entered MSEB Sub-Station control room and indulged in the acts of rioting thereby damaging the public property in the control room. They assaulted the three officers of MSEB.

4. The question is whether the respondents-accused (total nine) are the culprits.

5. The first informant in this case is one Dattatray Appasaheb Shelar who has been examined by the prosecution as PW-4. Briefly stated, the case made out in the F.I.R is that, PW4 along with Shankar Doke – lineman, Khandu Sakharam Mandlik – lineman and Eknath Arjun Pawar - line helper (PW5) were on duty in the Sub-Station control room of MSEB on 4th May, 2000. On that day, at about 10.00 p.m., the first respondent (first

accused) who was a local member of the Legislative Assembly, second to eight respondents and other workers of Shivsena political party entered into the sub-station. They assumed that the staff of MSEB has deliberately discontinued the electricity knowing fully that there was a function of Shiv-Jayanti. They destroyed the public property in the control room, such as chairs, tables, telephone, T.V. etc. They assaulted PW4 and PW5 by kicking and by using broken pieces of chairs thereby causing serious injuries to them. Another allegation is that PW2 - Sitaram Ramacharya Acharya who was residing near the sub-station was called by the mob to the control room and was given blows by kicks and hands.

6. The prosecution examined total nine witnesses including PW2 Sitaram Ramacharya Acharya, PW4 Dattatray Appasaheb Shelar and PW5 Eknath Arjun Pawar and PW3 Dr. Smita Madhusudan Lahoti. Witnesses are victims of the offence as they were injured. PW5 - Eknath Pawar did not support the prosecution and was declared as a hostile witness. Other witnesses were examined, such as, engineers and police officers. The learned APP has taken me through the notes of evidence and the

findings recorded in the impugned judgment. His submission is that the impugned judgment is perverse, inasmuch as the findings recorded therein are completely contrary to the evidence on record. His submission is that the accused viz; a member of the Legislative Assembly and a Municipal Councilor were known to the witnesses and therefore, there was no issue of identification of the accused by eye witnesses. He submitted that the medical evidence fully supports the case of the prosecution and injuries found on the persons of the three witnesses completely support the case of the prosecution. He submitted that there was a high handed act on the part of members of the mob including the present accused. One of them was a member of the Legislative Assembly and one of them was a Municipal Councilor. He submitted that there cannot be a better case of obstructing the functioning of public officers. He submitted that this is a case where in the light of evidence of PW2 and PW4, an order of conviction ought to have been passed by the learned Sessions Judge.

7. I have carefully considered the submissions. I have gone through the notes of evidence. It can be said that there was

an incident as alleged by the prosecution. As stated earlier, the real question is whether the respondents are the persons who committed the alleged offences.

8. PW2 Sitaram Ramcharya Acharya stated that he was Assistant Engineer in the Sub-Station of MSEB at Junnar. He was staying in a quarter provided by MSEB along with his family. He stated that in the night at about 10.00 p.m on 4th May, 2000 while he was in the house, he heard the sound of the mob from outside of his house. He stated that in the mob one Tambe, Auti and Munna Shaikh and others were there. Though he stated that those persons were present in the Court, he did not specifically identify those persons who were present in the Court. In paragraph 2 of his deposition, there is an allegation against the first respondent. In paragraph 2 he stated that;

“2) There accused Sambhaji Tambe told me that Amdarsaheb had called me. Therefore, I went upto the gate of MSEB there Amdar-accused Balasaheb Dangat was present. There said Balasaheb Dhangat stated me Haramkhor, supply band padlela ahe, tubhi kalaji ghetali nahi and muddam supply band padale ahe” and he further stated to the persons who were with him that to see me. Therefore, the accused No.3 Munwar Shaikh, accused No.1 Sambhaji Tambe, accused No.7 Tanaji Thosar, accused No.6 Vilas Shankar, Auti, accused No.2 Baban Pardeshi and accused No.4 Sunwar Mehere and

others pushed and pulled me and they beat felt me on the ground. I received injuries on my left thigh. Thereafter, they all stated that took me to the police station. Thereafter they took me to the Junnar police stn.”

9. What is material is the cross examination. In paragraph 4, he admitted that he was unable to identify the persons of the mob who were standing in front of his house. He accepted that due to the darkness and as there was hue and cry in the mob, he was unable to understand that what was going on in the mob. He was confronted with the question as to whether he had seen who pushed and pulled him. When the suggestion was given that the witness was unable to see who had pushed and pulled him, the witness volunteered that he has seen the persons who assaulted him in the headlight of a jeep. This is not the case made out by the prosecution. Apart from the fact that PW2 did not specifically identify the individual accused who were sitting in the Court, he accepted that there was a darkness and therefore, claimed that he had seen the persons who assaulted him in the headlight of a jeep. Thus, in substance, he accepted that there was darkness inside the MSEB sub-station and even outside the MSEB sub-station control room. The case which is made out is an

afterthought that he had seen the persons who were assaulting him in the headlight of a jeep. He has not stated so in the examination-in-chief. He has not disclosed that there was a total darkness and he had seen the persons who assaulted him in the headlight of a jeep. It is true that on the insistence of the accused that this witness was subjected for medical test for ascertaining whether he had consumed liquor. Taking the evidence of PW2 as it is, in my view, it is difficult to accept his version that he could identify the persons in the mob.

10. As far as PW4 Dattatrya Appasaheb Shelar is concerned, the incident was narrated by him. It may noted that this witness did not specifically identify the alleged accused sitting in the Court. In paragraph 3 of the cross examination, the witness stated thus;

“3) Police had recorded my statements two times. I did not stated to the police in my complaint that I took the charge of my work and made the enquiry regarding the supply. I have not stated in my complaint that the accused while entering the premises immediately started destroying the table and chairs of the office. I also not stated before the police that the accused had assaulted me and Eknath with the pieces of table and chairs. It is also not stated in complaint that my spects were also damaged in that incident. I

also not stated in the complaint that I received injury on my thing by the nail and my trouser were blood stains. I also not stated in my complaint that our engineer Acharya came in the spot and he took me other to the police station.....”

11. In paragraph 2, the witness accepted that he was not knowing and therefore unable to identify the other 20 to 25 persons who were at the place of occurrence with the accused persons. Therefore, there is no identification of the accused by this witness as well.

12. PW5 Eknath Arjun Pawar was declared as hostile.

13. After considering the evidence of the three witnesses, a serious doubt is created as to whether the respondents-accused were involved in the crime.

14. There is one more aspect of the matter. PW8 Rajendra Balajirao Dahale – Additional Deputy Commissioner, State Intelligence Department recorded statements of Jayaram Raut, Sham Khatri, Anil Pardeshi, Arjun Shinde and others who were residents of surrounding area of the place of the occurrence. He admitted that the said persons are residents of surrounding area.

He admitted that he has not produced their statements along with the charge-sheet. Though the statements of independent witness were recorded, the prosecution has chosen not to examine those witnesses.

15. I agree with the submission made by the learned APP that an erroneous approach of the learned trial Judge is reflected from the impugned judgment. However, I have independently examined the prosecution case and the prosecution evidence. After doing so, I have come to the conclusion that the ultimate view taken by the Trial Court that the guilt of the respondents is not established is a possible view which could have been taken on the basis of the evidence on record.

16. Therefore, it is not possible to interfere in this appeal against acquittal of the year 2002. Accordingly, there is no merit in the appeal and the same is dismissed.

(A. S. OKA, J.)