

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 195 OF 1996

The State of Maharashtra

... Appellant
(Orig. Complainant)

V E R S U S

1. Hamid Dawood Nachare,
Aged 40 years,
2. Ebrahim Hamid Nachare,
age 25,
3. Ismail Kasam Vakali Satavilkar,
24 years,
4. Shahuddin Kasim Satvilkar,
25 years,
5. Kutubuddin Harun Satvilkar,
30 years,
6. Kasam Kasim Satvilkar,
35 years,
7. Mahamad Yusuf Satvilkar,
55 years,
8. Isak Abdul Rahman Satvilkar,
40 years,
9. Husen Ismail Navalekar,
37 years,
10. Usman Hasan Satvilkar,
11. Izman Hasan Satvilkar,
32 yrs.

12. Babalal Husen Navalekar,
33 years,

13. Ebrahim Yakub Patankar,

14. Dawood Kasam Satvilkar,
32 years,

15. Imam Yakub Nachare,
32 years,

All R/o Khalachi Musalmanwadi,
Nandgaon, Tal. Kankavli,
Dist. Sindhudurg.

... Respondents
(Orig. Accused)

Mr. S. H. Yadav, APP for the Appellant.
Mr. S. R. Fanse, Advocate (Appointed) for Respondent
Nos. 1 & 3 to 15.

CORAM : **SMT. SADHANA S. JADHAV &
NITIN W. SAMBRE, JJ.**

DATE : **6TH JANUARY, 2018**

ORAL JUDGMENT [Per Nitin W. Sambre, J.]

1. This appeal is by the State questioning the judgment of acquittal delivered in Sessions Case No.27 of 1992 decided by the Additional Sessions Judge, Sindhudurg, acquitting the respondents/accused for the offences punishable under Sections 147, 148, 302, 307, 326, 324 read with Section 149 of the Indian Penal Code.

2. This Court appointed Advocate Mr. S. R. Fanse for representing the interest of respondent Nos. 1, 3 to 15.

3. The relevant facts necessary for deciding the present appeal are as under:-

In the village where the complainant and the accused were residing, Jumma and Pir Masjid are visited by the complainant and the respondents/accused. There was a division in the village. As such the respondents used to celebrate Moharram festival at Pir Masjid whereas the complainant at Jumma Masjid. The differences between the parties started on a issue of privilege right to celebrate the Moharram as it is the respondents/accused who started claiming preferential right.

4. On 24.07.1991 after the completion of distribution of meals at around 9 p.m. when the complainant along with his friends were proceeding to their respective houses on Bombay-Goa road, it is claimed that the respondents armed with weapons came out of the bushes and started assaulting the complainant and his friends with iron rod, sickle, sticks and spear etc. Against respondents/accused, following specific attributions are noticed:-

Accused No.1 had given a chisel blow on the head of Babalal Adam Satvilkar. Accused No.2 assaulted Kasam Usman Nachare with the weapon like that of Gupti. Accused No.3 Ismail Satvilkar

assaulted Abdul Karim Satvilkar with the spear on the head, like accused Nos. 4 and 5 belaboured Abdul Karim with the stick. When he was lying on the ground, at that time accused No.6 assaulted the complainant and Nurmahamad with the stick. Amongst the assailants, the accused were the persons and they were holding deadly weapons and belaboured the complainant and others.

5. In the backdrop of the aforesaid criminal events, the complainant Hamid lodged an first information report with Kankavali Police Station, resulting into registration of Crime No. 116 of 1991 for the offences punishable under Sections 147, 148, 302, 307, 326, 324 read with Section 149 of the Indian Penal Code.

6. The respondents/accused were charge-sheeted for the aforesaid offenses and on 15.04.1994 charge came to be framed against them at Exh.23. The prosecution has examined following witnesses so as to prove its case:-

P.W. No.	Name of Witness	Exh.	Examined on the point/issue
PW1	Hasan Abdul Batwale	52	Panch witness on scene of offence , inquest etc.
PW2	Hamid Usuf Satwilkar	59	Complainant
PW3	Babalal Adam Satwilkar	62	Eyewitness/injured
PW4	Kasam Usman Nawlekar	63	Injured
PW5	Nurmahamad Abbas Nawlekar	64	Injured
PW6	Ajijabi Iqbal Dhopawlkar	65	Eyewitness
PW7	Jainabee Umar Nawlekar	66	Eyewitness/injured

PW8	Karim Hasan Batwale	67	Injured
PW9	Akbar Usuf Satwilkar	68	Eyewitness/injured
PW10	Aishabi Ahamadabi Nawlekar	70	Eyewitness/injured
PW11	Usuf Husein Nawlekar	71	Eyewitness
PW12	Chandrakant Gangaram Khanolkar	72	Prepared map of scene of offence
PW13	Dr. Ajit Limye	74	Examined injured also performed Post Mortem
PW14	Subhash Baban Raul	88	Carried Muddemal to C.A.

7. The Additional Sessions Judge acquitted the respondents/accused of the charges framed. As such this appeal by the State questioning the acquittal.

8. The learned A.P.P. would urge that the acquittal ordered of the respondents/accused is contrary to the evidence brought on record. According to him, the learned Additional Sessions Judge committed an error in recording a finding of acquittal in spite of the fact that there are eyewitnesses to the incident.

9. *Per contra*, the learned appointed counsel Mr. S. R. Fanse would support the judgment of acquittal.

10. Considered rival submissions. The factual matrix and the evidence as is brought on record depicts that in the village in the same religion two factions were formed one that of the complainant and another that of the respondents/accused persons. It is claimed that the

respondents/accused persons have attacked the group of the complainant and in the said incident on 25.07.1991 Abdul Karim who was killed in the crime, has suffered five external injuries and three internal injuries. The cause of death was cardio respiratory failure due to extensive extra dural hematoma and brain laceration. Exh.87 is the provisional death certificate issued by PW13 Dr. Limye, who conducted the autopsy and who was examined at Exh.74. PW13 Dr. Limye also examined the injured witnesses whose details could be appreciated from the record as under:-

PWNo.	Name of Witness	Injure certificate Exh.
PW2	Hamid Usuf Satwilkar	Exh.81
PW3	Babalal Adam Satwilkar	Exh.80
PW4	Kasam Usman Nawlekar	Exh.75
PW5	Nurmahammad Abbas Nawlekar	Exh.79
PW6	Ajijabi Iqbal Dhopawlkar	Exh. 83
PW7	Jainabee Umar Nawlekar	Exh.82.
PW8	Karim Hasan Batwale	Exh.78
PW9	Akbar Usuf Satwilkar	Exh.76
PW11	Usuf Husein Nawlekar	Exh.85

11. As against the aforesaid injuries suffered by the accused persons, PW13 Dr. Limiye in his evidence has deposed that he has also examined accused Nos. 1,4,5,10 and 11 on the same day and noticed the injuries on the person of the respondents/accused. Accused Usman, Shahuddin, Hamid, Imam, Kutabuddin have suffered grievous as well

as simple injuries. Even they also sustained fracture and incised wounds.

12. In the aforesaid background, what was expected of the Investigating Officer was to investigate the cause of the aforesaid injuries particularly in the backdrop of the clash between two groups of the persons from the same religion. Apart from above, the investigating agency was duty bound to book the main culprit in the offence in question. Merely because the complaint prior in point of time was lodged by the complainant, the respondent – accused should not have been proceeded against mechanically. The entire evidence brought on record has nowhere explained cause of the grievous injuries suffered by the accused persons. Apart from above there is no conclusive proof as to which of the accused has caused the injuries to the persons from the group of the complainant.

13. The Apex Court had an occasion in the matter of ***Lakshmi Singh .Vs. State of Bihar***¹, to consider the aforesaid issue viz – non-investigation and non-explanation of the injuries suffered by the accused persons. The Apex Court has gone to the extent of observing that if the injuries suffered by the accused persons are not investigated and explained by the prosecution, particularly about the time of the

1 AIR 1976 S.C. 2263

occurrence, course in which such injuries are caused, the same can be considered as an important circumstance from which the adverse inference can be drawn against the prosecution. It can also be inferred from such conduct of prosecution that it has tried to suppress the genesis and the origin of the occurrence. Same gives an understanding to the Court that the prosecution has not presented true and correct version of the offence in question. Apart from above, eyewitnesses to the incident have denied the injuries on the person of the accused, which can be termed as giving a false version and as such the evidence of such witnesses can be rejected as unreliable. The defence has come out with a version explaining the probable cause of such injuries, so as to doubt the very prosecution case. The said version will definitely have bearing over the merits of the matter.

14. As observed herein above, particularly as regards the grievous injuries in the nature of incised wounds, fracture etc. suffered by the five accused and the investigating agency having not investigated into the cause of such injuries, there is serious doubt raised *qua* the happening of the incident as narrated in the version given by the prosecution. On this ground alone, the acquittal of the accused persons appears to be justified.

15. The investigating officer in the present case is not

examined by the prosecution though repeatedly summons were tried to be served on the investigating officer. In the evidence of the complainant Hamid, it is claimed that phone call was initially made to the Police Station informing about the incident from shop of one Shashikant Shete, pursuant to which the prosecution case appears to be that they reached the spot with Ambulance. The said aspect was not treated as a first information report. The prosecution has not adduced any evidence in support of the aforesaid issue. The said aspect has seriously affected the prosecution case. Under Section 162 of the Cr.P.C., the contents of the complaint in the backdrop of above, if appreciated, needs to be weighed in favour of the accused persons. The reason being the first information report came to be recorded subsequent to the investigation set into motion. In our opinion, the investigation in the matter should have been based on the telephonic complaint received resulting into station diary entry and same should have been treated as first information report. It needs to be appreciated that the copy of the F.I.R. was not sent to the Magistrate immediately. The incident is dated 25.07.91 and the copy of the first information report was received by the Magistrate on 29.07.1991. The prosecution as such got sufficient time to introduce and improve its case. There is no satisfactory explanation coming from the prosecution side for such delay and as such a strong doubt is created on the truth of the

prosecution case. Apart from above, the spot map Exh.73 was drawn by the Circle Inspector PW12 as per his own convenience. The same also loses its sanctity in view of the provisions of Section 162 of the Cr.P.C.

16. Apart from above, if the testimony of the witnesses whose list is cited supra appreciated, it can be inferred that those witnesses belong to a particular community that too from the group of the complainant. The place of incident is located near the localities of the persons from different community. It has also come on record that there were about 50 to 60 persons gathered on the spot. However, there is absence of any witness from the said gathering or the persons residing in the adjoining localities.

17. The deposition of the complainant about the accused persons were hiding near the tree or in the bushes, assault on him by the accused, the omissions about the incident of assault noticed in his evidence, the opinion of the doctor PW13 about the said assault caused by hard and blunt object and not by the sharp edged weapon, prompts this Court to discard his testimony.

18. Apart from above, the overall appreciation of the evidence of the witnesses, lacks corroboration and suffers from substantial omissions. For non-examination of the investigating officer, the

substantial omissions and the contradictions in the evidence of the witnesses could be noticed and inferred easily.

19. As a consequence, the prosecution in our opinion, has failed to prove its case. That being so, we hardly notice any illegality in the view expressed by the learned Sessions Judge.

20. Appeal lacks merits. As such same is dismissed.

(Nitin W. Sambre, J.)

(Smt. Sadhana S. Jadhav, J.)