

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1091 OF 2002

The State of Maharashtra ... **Appellant**

V/s.

1. Sarejao Shankar Khamkar,
Age about : 45 years,
Occu. : Agri.,

2. Dhondiram Shankar Khamkar,
Age about : 50 Years,

3. Bajirao Rajaram Khamkar,
Age about : 32 Years,

4. Poapt Dhondiram Khamkar,
Age about 24 Years,

All r/o. Borpadale, Tal.: Panhala,
Dist.:Kolahpur.

... **Respondents**

.....

Mr.Prashant Jadhav, APP for the Appellant/State.

Mr.Drupad S. Patil, Advocate for the Respondents.

....

CORAM : A.M.BADAR J.

DATED : 20th JANUARY 2018.

ORAL JUDGMENT :

1 Feeling aggrieved by the impugned Judgment and
Order dated 13th June 2002 passed by the learned Additional

Sessions Judge, Kolhapur in Sessions Case No.11 of 2002 thereby acquitting respondents/accused of offences punishable under Sections 3(i)(vi) and 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake or brevity Act) Section 7(i)(d) of the Protection of Civil Rights Act, 1955 as well as under Sections 324, 323 and 504 read with Section 34 of the Indian Penal Code, the State has filed this appeal.

2 Facts in nutshell leading to the prosecution of respondents/accused are thus :

- (a) The incident in question took place because of dispute in respect of boundary in the fields located in Gat No.2 of village Borpadale, Taluka Panhala admeasuring 10 acres. This land was originally belonging to Chhatrapati Shahu Maharaj of Kolhapur. Total five families purchased this land. All five families then started cultivating their shares of the land separately by constructing a bund by dividing that land in five parts. Boundary dispute in respect of their respective shares in the said land bearing Gat No.2 of village Borpadale was going on between the prosecuting party i.e. members of Samudre family and accused party i.e. members of Khamkar family since prior to three years of the incident. However, none of the owner had applied for getting the land measured.

- (b) It is the case of the prosecution that on 27/06/2001 again there was dispute in respect of boundary of fields belonging to Samudre family and Khamkar family. Therefore, members of Samudre family called respected people from village Borpadale on the spot to check encroachment. Accordingly, more than 15 members from village Borpadale visited the field at about 9.00 a.m. of 27/06/2001. Members of Samudre family were present in the field. Accused persons, who are members of Khamkar family were also present in the field. On arrival of panchas for settling the dispute in respect of the boundary, according to the prosecution case, respondents/accused No.1 Sarjerao Khamkar intentionally insulted and intimidated members of Samudre family for humiliating them within a public view by uttering that “म्हारडयानों तुम्हाला माज आलाय, जातीनं म्हाराची पण लय उच बोलण” meaning thereby that you people from Mahar caste became insolent, though you belongs to Mahar caste, you are raising your voice. The respondents/accused persons started abusing members of Samudre family. Members of Grampanchayat, who were called on the spot to act as mediators asked members of the prosecuting party to go to their house. The respondents/accused followed them. At the house of First Informant P.W.No.1 Sangita Samudre, they started

assaulting members of Samudre family including P.W.No.1 Sangita Samudre, her brothers-in-law Subhash as well as Sambhaji their wives, sister-in-law Sonabai etc. Being frightened, Shivaji – husband of First Informant P.W.No.1 Sangita Samudre took shelter of his house and closed the door. Accused persons then started kicking the door for opening it. When First Informant P.W.No.1 Sangita Samudre obstructed accused persons, respondent/accused No1 Sarjerao gave a blow of wooden block on her head causing bleeding injury to her. Accused persons attempted to open the door by hitting it with iron bar.

- (c) According to the prosecution, injured members of Samudre family including informant P.W.No.1 Sangita Samudre then went to the town named Kodoli and visited the Police Station. She was then sent to the Rural Hospital, Kodoli along with other injured persons. On the next day i.e. on 28/06/2001, the FIR lodged by P.W.No.1 Sangita Samudre came to be recorded and accordingly, Crime No.56 of 2001 came to be registered at Police Station, Kodoli, District Kolhapur. Routine investigation is followed and ultimately resulted in filing of charge-sheet against the respondents/accused persons for offences punishable under Sections 3(i)(vi) and 3(i)

(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 under Section 7(i)(d) of Protection of Civil Rights Act, 1955 and under Sections 324, 323 and 504 read with Section 34 of the Indian Penal Code.

3 The charge was accordingly framed and explained to the accused persons. They abjured guilt and claimed trial. In order to bring home the guilt to respondents/accused persons, prosecution has examined in all six witnesses. Injured informant – Sangita Samudre is examined as P.W.No.1. The report lodged by her is at Exhibit 15. Dr.Lalasaheb Patil – Medical Officer of Rural Hospital, Kodoli is examined as P.W.No.2. Injured Vandana Samudre – sister-in-law of P.W.No.1 Sangita is examined as P.W.No.3. Eye-witness Namdeo Jadhav is examined as P.W.No.4. Hambirrao Samudre – relative of the prosecution party is examined as P.W.No.5. Investigating Officer – Manoj Patil, S.D.P.O., Kolhapur is examined as P.W.No.6. The defence of the respondents/accused persons was that of total denial. However, they did not enter in defence.

4 After hearing the parties, the learned trial Court by the impugned Judgment and Order dated 13/06/2002 was pleased to acquit the respondents/accused persons of all offences alleged against them. The learned trial Court came to the conclusion that

evidence adduced by the prosecution witnesses is not sufficient to prove guilt of the respondents/accused persons. All interested witnesses are examined by the prosecution and for the reason best known to it, the prosecution did not examine any independent witness though several independent witnesses were available. The learned trial Court also concluded that the investigation was not carried out by the competent officer as per requirements of Section 9 of the Atrocities Act as well as Rule 7 of the Rules framed thereunder.

5 I heard the learned Additional Public Prosecutor appearing for the appellant/State. He drew my attention to the evidence of injured witnesses P.W.No.1 Sangita Samudre as well as P.W.No.3 Vandana and argued that there is no reason to disbelieve versions of both theses witnesses. The learned APP further argued that evidence of injured witnesses is corroborated by eye-witnesses viz. P.W.No.4 Namdeo Jadhav and P.W.No.5 Hambirrao Samudre. It is further argued by the learned APP that evidence of P.W.No.2 Dr.Lalasaheb Patil corroborates the versions of the injured witnesses. In submission of the learned APP, investigation of the crime in question was carried out by the competent officer.

6 As against this, Shri.Drupad S. Patil, the learned Advocate appearing for respondents/accused persons supported

the impugned Judgment and Order of acquittal by contending that even if two views are equally probable, then the view adopted by the trial Court leading the acquittal of the respondents/accused persons needs to be upheld. The learned Advocate further argued that bare look at the evidence of the injured witnesses as well as other eye-witnesses makes it clear that case of the prosecution is concocted and false. The accused persons were falsely implicated in the crime in question.

7 I have carefully considered the rival submissions and also perused the Record and Proceedings including depositions of witnesses and documentary evidence adduced by the prosecution.

8 This is an appeal challenging acquittal of respondents/accused and the learned trial Court has taken a view that evidence on record is scanty for establishing guilt of the respondents/accused. In the wake of this factual backdrop, let us put on record the legal position on this aspect enunciated by the Honourable Apex Court in the matter of *State of U.P. v. Babu & Ors.*, reported in **2013 ALL MR (Cri.) 2356 (S.C.)**, wherein in paragraph 10, it is held thus :

“10. recently in *State of Punjab Vs. Karnail Singh (2003 AIR SCW 4065)* it was observed that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal

shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See ***Bhagwan Singh Others Vs. State of Madhya Pradesh (2002(3) JT (SC) 387) : [2003 ALL MR (Cri) 564 (S.C.)]***]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspect were highlighted by this Court in ***Shivaji Sahabrao Bobade and another Vs. State of Maharashtra (1973(2) SCC 793)***, ***Ramesh Babulal Doshi Vs. State of Gujarat (1996)(9) SCC 225*** and ***Jaswant Singh Vs. State of haryana (2000(4) JT (SC) 114)***.”

Keeping in mind the fact that on the basis of evidence on record, the learned trial Court has taken a view favourable to the respondents/accused, let us examine whether this view is probable view or not. For this purpose, let us re-appreciate the evidence for ascertaining as to whether the respondents or any of them had committed offence alleged against them or not.

9 Most crucial witness in the case in hand is First Informant P.W.No.1 Sangita Samudre, who is allegedly suffered injury in the incident in question. Her evidence makes it clear that field Gat No.2 of village Borpadale in Kolhapur District is admeasuring 10 acres in which prosecuting party i.e. Samudre family, accused party i.e. Khamkar family, Labde family, Jakate family and Chougule family are having equal shares. It is further clear from evidence of P.W.No.1 Sangita Samudre that the dispute regarding boundary of respective shares in the field Gat No.2 of village Borpadale was going on in between members of prosecuting party as well as accused party since last three years. It is also seen from evidence of P.W.No.1 Sangita Samudre that village Borpadale is divided in two groups. One lead by Jadhav family of which P.W.No.4 Namdeo Jadhav belongs. P.W.No.1 Sangita Samudre has categorically accepted the fact that the members of the prosecuting party belongs to Jadhav group in village Borpadale. Other faction in the village is lead by Koli family to which members of accused party belongs. P.W.No.1

Sangita Samudre has clarified that all accused are against Jadhav group of the village. This makes it clear that First Informant P.W.No.1 Sangita Samudre her sister-in-law P.W.No.3 Vandana, P.W.No.4 Namdeo Jadhav leader of one group and P.W.No.5 Hambirrao Samudre, who is relative of the First Informant are highly interested witnesses having an axe to grind against the respondents/accused. It is, therefore, clear that evidence of this witness will have to be scrutinized closely in order to ascertain whether they are witnesses of the truth or whether they are attempting to wreck vengeance against the respondents/accused persons.

10 As per version of P.W.No.1 Sangita Samudre, even on the day of the incident i.e. on 27/06/2001, there was dispute between her family and family of accused persons. This has resulted in calling members of Grampanchayat and villagers to the field at about 9.00 a.m. of that day. P.W.No.1 Sangita Samudre stated that four accused persons, who are members of Khamkar family were also present in the field on bandh. When P.W.No.1 Sangita Samudre and her family members were showing the position of the bund in the field to panchas, there were altercations between her and accused persons. Accused No.1 Sarjerao, as per version of P.W.No.1 Sangita Samudre, uttered that “म्हारडयानों तुम्हाला माज आलाय, जातीनं म्हाराची पण लय उच बोलण”. P.W.No.1 Sangita Samudre further stated that then panchas present on the

spot pacified both parties. She returned back to her house. The accused persons followed her. Then, as per version of P.W.No.1 Sangita Samudre, accused persons started beating them by fist and kick blows. Her husband was sent inside the house because of fear and he was confined inside the house. As stated by P.W.No.1 Sangita Samudre, the accused persons then started hammering the closed door with an iron bar, but she tried to obstruct them. At that time, accused No.1 Sarjerao gave a blow of heavy wooden block on her head causing bleeding injury to her. The panchas, who were also followed her to her house, then intervened and members of the prosecuting party were rescued by those panchas. She then accompanied by her relatives went to Kodoli Police Station and narrated the incident. Because of injury she was sent to the Hospital where she was admitted. P.W.No.1 Sangita Samudre stated that in the incident, she herself, her brothers-in-law Subhas and Sambhaji and sister-in-law Vandana had suffered injuries.

11 Normally, testimony of the injured witness is liable to be accepted as the very presence of injuries on the person of said witness is sufficient to conclude that such witness was present on the scene of the occurrence. However, this is a case of utter enmity between members of both parties because of boundary dispute in respect of the field. As per version of P.W.No.1 Sangita Samudre, her FIR Exhibit 15 came to be registered on the next day of the incident i.e. on 28/06/2001.

12 If we peruse cross-examination of P.W.No.1 Sangita Samudre, then it becomes clear that though in chief-examination she has stated that the incident of insult and intimidation in order to humiliate her, as she and her family members were belonging to Scheduled Caste 'Mahar', took place in the field, in cross-examination this witness has categorically accepted the fact that no incident of giving abuses took place in the field. It is worthwhile to note that P.W.No.1 Sangita Samudre, who is star witness for the prosecution, has not spoken that the incident of intentionally insulting or intimidating her or her family members for humiliating them in a public view took place near her house. Her evidence in chief-examination clearly mentions all happenings of such incident at the field, whereas her cross-examination makes it crystal clear that no such incident took place in the field.

13 P.W.No.1 Sangita Samudre in her cross-examination has stated that initially, after the incident in question, she along with other injured witnesses went to Police Station, Kodoli. There police recorded whatever was stated by her about the incident. Thereafter, she along with her sister-in-law were sent to the Hospital by the police. This makes it clear that on 27/06/2001, when P.W.No.1 Sangita Samudre allegedly suffered injuries in the incident, she visited the Police Station, Kodoli with her relatives and lodged the report. However, it is seen from FIR at Exhibit 15

that the same is recorded on 28/06/2001 and that too at Rural Hospital, Kodoli. This evidence makes it clear that first version of P.W.No.1 Sangita Samudre recorded by police on 27/06/2001 i.e. on the day of the incident is suppressed by the prosecution. This makes the entire prosecution case suspect.

14 P.W.No.1 Sangita Samudre is very categorical in stating that when her husband took shelter of the house because of fear of accused persons, the closed door of that house was attempted to be broke open by accused persons by giving repeated blows of iron bar. Upon being asked in the cross-examination, P.W.No.1 Sangita Samudre has categorically stated that door of her house was not damaged by blows of the iron bar. On the very next day of the incident, by calling an alleged eye-witness P.W.No.4 Namdeo Jadhav, who is one of the leader of the rival faction in the village, to act as the panch witness, the spot panchanama Exhibit 33 was prepared by the prosecution. Perusal of the spot panchanama Exhibit 44 does not show that door of the house of the P.W.No.1 Sangita Samudre near which the incident of assault on her took place was damaged in any manner. The spot panchanama does not show that there were any blows of iron bar on the door of the house of P.W.No.1 Sangita Samudre. As such, P.W.No.1 Sangita Samudre does not appears to be a witness of truth.

15 Cross-examination of P.W.No.1 Sangita Samudre shows that at the time of incident, 10 to 20 people assembled at the spot. Her chief-examination reveals that panch witness, who had gathered in the field for mediation, also followed her to her house and separated the accused persons. It is brought on record from her cross-examination that apart from P.W.No.4 Namdeo Jadhav panchas such as Balaso Jadhav, Yeshwant Chougule, Kakaso Mohite, Shivaji Biranje, Appa Patil, Krishnat Patil etc. were also present on the scene of occurrence. It is worthwhile to note that except highly interested witnesses, the prosecution has not examined any of the independent witness in this case, though they were available.

16 P.W.No.3 Vandana Samudre is sister-in-law of P.W.No.1 Sangita Samudre. She claimed herself to be an injured witness. She has also stated that panchas were called at the field on 27/06/2001 as accused persons were digging a bund by making encroaching in the field. Accused persons, who were present there, started abusing and accused No.1 Sarjerao uttered that “म्हारडयानों तुम्हाला माज आलाय, जातीनं म्हाराची पण लय उच बोलण”. As per her version, then panchas sent them back to their home. The accused persons followed them. This witness also repeated that accused persons tried to break open the door of the house and they had assaulted her as well as her family members by fist and kick blows. P.W.No.3 Vandana Samudre deposed that accused

No.1 Sarjerao gave blow of wooden block on the head of P.W.No.1 Sangita Samudre. They had also beaten Subhash and Sambhaji. Thereafter, as per version of P.W.No.3 Vandana, panch witnesses separated accused persons. Evidence of P.W.No.3 Vandana makes it clear that thereafter members of prosecuting party went to the Police Station and thereafter to the Hospital. P.W.No.3 Vandana made it clear that Sangita was talking till they reach Kodoli where the Police Station is situated. This version of P.W.No.3 Vandana makes it clear that P.W.No.1 Sangita Samudre must have narrated the incident to the Police on 27/06/2001 itself, which, according to P.W.No.1 Sangita Samudre, was recorded by police. Version of P.W.No.3 Vandana, as such, makes it clear that the prosecution has suppressed genesis of the incident by not bringing on record the first version of P.W.No.1 Sangita Samudre. Evidence of P.W.No.3 Vandana also makes it clear that at the time of the incident about 20 to 22 persons from the nearby area were gathered.

17 P.W.No.4 Namdeo Jadhav claimed to be an eye-witness to the incident in question. He is also shown as panch witness to the spot-cum-seizure panchanama Exhibit 33. He belongs to Jadhav group of the village of which members of the prosecuting party were sympathizer. Evidence of this witness makes it clear that his brother Devappa was Sarpanch of the village and at the time of the incident, his another brother

Balasaheb was holding the post of the Deputy Sarpanch of the village. As stated by P.W.No.1 Sangita Samudre, all accused persons were against Jadhav group. It is also seen from evidence of P.W.No.4 Namdeo Jadhav that as the Grampanchayat had erected a stage in front of the house of the accused persons, the accused persons had filed suit against the Grampanchayat and the Sarpanch is fighting that litigation. On this backdrop, it was not expected of the prosecution to chose this witness i.e. P.W.No.4 Namdeo Jadhav for acting as a panch witness in this crime. The prosecution could have availed services of some independent panch for effecting the spot-cum-seizure panchanama. This witness attempted to support the prosecution so far as the incident of giving abuses and assault took place allegedly at the filed and at the residential house of P.W.No.1 Sangita Samudre. However, evidence of this witness goes to show that he was not in position to tell the location of the spot where the quarrel took place. This witness has candidly stated that except panchas no other villagers had gathered on the spot. He denied the fact that sowing operation was going on in the adjoining fields. In fact, P.W.No.1 Sangita Samudre and P.W.No.3 Vandana have categorically deposed that lot of people gathered on the spot at the time of the incident. Their evidence shows that apart from panch witnesses, about 20 to 22 people from the vicinity had gathered on the spot. P.W.No.4 Namdeo Jadhav is highly interested in the instant prosecution as the alleged victims are members of the group

headed by his family. His evidence regarding witnessing the incident is not free from doubts as this witness was not even in a position to depose as to where the quarrel took place leading to the happening of the incident in question. His evidence is not consistent with other alleged injured witnesses, who are stating that many other people in the vicinity gathered on the spot at the time of the incident.

18 P.W.No.5 Hambirrao Samudre accepted the fact that he is relative of members of the prosecuting party. He also claimed to be the eye-witness to the incident in question. He has stated that accused persons had beaten Subhash and his wife as well as brother of wife of Subhash. As per version of this witness, all accused persons were trying to break open the door of house of P.W.No.1 Sangita Samudre, but Sangita tried to stop them. Therefore, accused No.1 Sarjerao gave blow of wooden block on head of Sangita. Evidence of this witness does not show that accused persons had assaulted P.W.No.3 Vandana and except a blow by wooden block on head of P.W.No.1 Sangita Samudre, he had not stated that P.W.No.1 Sangita Samudre was assaulted by fist and kick blows by accused persons. Though it case of the prosecution coming from the mouth of P.W.No.1 Sangita Samudre that accused No.1 Sarjerao was trying to break open the door of her house by hitting it with iron bar, P.W.No.5 Hambirrao Samudre has deposed that all accused were trying to break open

the door of the house. P.W.No.5 Hambirrao Samudre in his cross-examination has stated that except the panchas no outsiders had assembled on the scene of occurrence. However, in the next breath, he has deposed that about 150 people gathered on the spot of the incident.

19 This is all what is coming on record in respect of the actual incident which allegedly took place in two parts on 27/06/2001, but at quick succession. Evidence of these four witnesses, who are deposing about the incident is not congruous and consistent. They are highly interested witnesses in securing conviction of accused persons. P.W.No.1 Sangita Samudre in her cross-examination disowned the prosecution case that accused Sarjerao had intentionally insulted and intimidated her as well as her relatives in order to humiliate them being member of scheduled caste at the field Gat No.2 of village Borpadale. She stated that the incident of giving abuses did not take place in the field. Though, according to the prosecution case, accused No.1 Sarjerao had attempted to break open the door of the house of P.W.No.1 Sangita Samudre for assaulting Shivaji, P.W.No.5 Hambirrao Samudre is stating that all accused persons attempted to break open that door. Evidence of P.W.No.4 Namdeo Jadhav – an alleged eye-witness is silent on this crucial aspect. It is seen that soon after the incident, it was communicated to the police by P.W.No.1 Sangita Samudre by visiting the Police Station and her

statement was recorded, but the same is not forthcoming on record. Though it is claimed by the prosecution that in the incident in question, two brothers-in-law of P.W.No.1 Sangita Samudre namely Subhash and Sambhaji apart from her sister-in-law Sonabai had suffered injuries, these injured are not examined by the prosecution. It is seen that though evidence of prosecution is not congruous and is suffering from infirmities, despite availability of independent witness to vouch in respect of the incident, the prosecution has failed to examine any disinterested witness for establishing its case. Even during investigation, interested person namely P.W.No.4 Namdeo Jadhav was chosen to act as panch witness. In such situation, as available evidence is suffering from discrepancy, non-examination of independent witness to prove its case casts a shadow of doubts on the prosecution case. Therefore, evidence of P.W.No.2 Dr.Lalasaheb Patil, Medical Officer, Rural Hospital, Kodoli is of no assistance to the prosecution. Evidence on record indicates that there were altercations between two rival groups and cause for sustaining head injury by P.W.No.1 Sangita Samudre may be something other than what is deposed by her. This inference is warranted as her first version given by her to the police on the date of the incident is not coming on record.

20 For all these reasons, it cannot be said that the view taken by the learned trial Court is not a probable view in the

matter. On the contrary, the learned trial Court has taken a possible view on examination of evidence adduced by the prosecution in the matter. Therefore, no other view can be taken by this Court in the matter. In the result, the appeal fails. Therefore, the Order :

21 The appeal is dismissed.

(A.M.BADAR J.)