

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPEAL NO. 135/2003

The State of Maharashtra
Through Police Station Officer
Police Station, Sewagram ..

APPELLANT

versus

- 1) Ashok Dalatrao Kathane
Aged about 26 years
- 2) Sanjay Ramkrishna Mandade
Aged about 20 years
- 3) Prakash Ganpatrao Wagh
Aged about 19 years
- 4) Homeshwar Vitthal Ugemuge
Aged about 20 years
- 5) Kamlakar Mahadeo Mandade
Aged about 34 years
(proceedings abated since deceased)
- 6) Ravindra Ganpatrao Wandile
Aged about 25 years,
- 7) Raju Namdeorao Rahate
Aged about 22 years
- 8) Mahendra Namdeorao Rahate
aged about 25 years
- 9) Shyam Vithalrao Ugemuge
Aged about 24 years,.
- 10) Govind Vithalrao Ugemuge
Aged about 25 years
- 11) Sharad Ramkrishna Mandade
Aged about 25 years

12) Ganpat Shankar Wagh
Aged about 70 years
(ABATED AS AGAINST RES.NOS.11 & 12)

13) Dilip @ Shankar Wagh
Aged about 26 years

(Appeal dismissed against Res.Nos.13 on
25.4.2004 as per Courts order dated 3.2.2004)

14) Gunwant Rangrao Shende
Aged about 35 years

All Residents of Chitoda
Tah.& Dist. Wardha.

.. **RESPONDENTS**

.....
Mr. V.P.Maldhure, Additional Public Prosecutor for appellant -State
Mr. S.K. Bhoyar, Adocate for Respondents 1 to 4, 6 to 10
None appears for respondent no.14
.....

CORAM : MRS. SWAPNA JOSHI, J.
DATED : 21st April, 2018

ORAL JUDGMENT:

This Appeal has been directed against the judgment and order dated 3rd October 2002 passed by the learned 1st Ad-hoc Additional Sessions Judge, Wardha in Sessions Trial No.2/1993 acquitting the accused/respondents of the offence punishable under sections 143, 147, 148 ,452 read with sections 149, 323, 324 and 307 read with Section 149 of the Indian Penal Code.

2. I have heard Shri V.P. Maldhure, learned Additional Public Prosecutor for

the appellant-State and Shri S.K.Bhoyar, learned counsel for the accused/respondents. With their assistance I have carefully gone through the entire record of the case.

3. At the outset, it may be noted that the appellant no.5 Kamlakar Mandade died during the course of the trial. Hence, the case stood abated against him. Appellant no.11- Sharad Mandade and appellant no. 12 - Ganpat Wagh, died during the pendency of the present Appeal. So far as appellant No. 13 - Dilip Wagh is concerned, the Appeal stands dismissed.

4. The prosecution case in brief is that there were two rival political groups in village Chitoda, Tahsil and District Wardha. The respondents at one side and the injured on the other side. On 6.4.1991 at about 8 o' clock., the complainant-Sunil Namdeorao Dhurve (PW1) along with his cousin brother Maroti, Ramesh and Jivan were proceeding on bicycles from village Chitoda towards Wardha. When they reached near the house of Police Patil, Krishnaji Jaipurkar (PW 7), all the accused holding swords, spears, iron rods and wooden sticks arrived at that place and started assaulting the complainant and his brothers with the weapons which they were holding. Accused Raju, Mahendra, Kamlakar, Ashok, Sharad and Ravindra were holding swords and the accused Ganpat and Sanjay were holding spears. The other accused persons were holding wooden sticks. Due to the said assault, the complainant and his brothers sustained injuries. The accused persons then fled away from the spot. They proceeded to the house of one Yashwantrao Waghmare (PW 6). They forcibly entered inside his

house and assaulted him and his friend Sadashiv Ugemuge (PW9). They also sustained injuries. The accused persons then left the house of Yashwant Waghmare and fled away. It is further the case of the prosecution that the Police Patil, Krishna Jaipurkar saw the commotion going on between the members of both the groups and proceeded to the Sevagram Police Station and lodged his oral report (Exh.94). PSI Deorao Wanjari, who was attached to Sevagram Police Station recorded the complaint lodged by Police Patil and on the basis of the said report, he registered the offence. PSI Wanjari, then proceeded to the place of the incident and recorded the spot panchnama. During the course of investigation, he seized the clothes of some of the accused persons and of the injured ones, under different panchnamas. Immediately, he took charge of the weapons i.e. swords and iron rod from the accused Mahendra, Sharad Mandade and Ravindra Wandile at their instance and accordingly recorded the memorandum panchnamas and seizure panchnamas in that regard. The injured persons were referred to Mahatma Gandhi Institute of Medical Sciences, Sevagram. Their medical certificates were secured by the police. The police also took charge of the wooden sticks from the remaining accused persons, in the presence of Panchas and accordingly, the panchnamas were drawn. The seized weapons were referred to the Medical Officer and the opinion in that regard was sought by the police. All the seized articles were sent to the Chemical Analyzer for its analysis. The CA reports were secured by the police. After completing the due investigation, the charge-sheet was filed by the police in the Court of learned JMFC. The case was committed to the court of Sessions. Charge was framed by the learned trial Judge. The accused pleaded not guilty

to the charges levelled against them and claimed to be tried. The defence of the accused was of total denial and as there was political rivalry between the members of both the groups and as there were counter reports lodged against each other, they were falsely implicated in the case. It was further alleged by the accused that the complainant and his associates were holding weapons and they had attacked the accused and, therefore, they had also sustained injuries and they were required to be admitted in the hospital by the police. The report was filed by Sunil Dhurve (PW 1). As the report was lodged by PW1 Sunil, the accused were prosecuted. According to the accused persons the complainant and his associates were the aggressors and they had lodged the false complaint against the accused persons due to the previous enmity.

5. Mr. V.P. Maldhure, the learned Additional Public Prosecutor submitted that the learned trial Judge has not assessed the evidence adduced by the prosecution in its right perspective and has wrongly come to the conclusion that the prosecution has failed to prove its case and has acquitted the accused.

6. Mr. S.K. Bhoyar, the learned counsel for the respondents vehemently argued that since there was political rivalry between the two groups i.e. complainant's group and the group of the accused persons, a scuffle took place and the accused persons were injured due to the attack by the complainant's group. However since the complainant lodged the complaint against the accused persons, they have been falsely implicated in the present case.

7. On considering the rival contentions of both the counsels, I have gone through the entire record of the case and has noticed that no doubt the prosecution witnesses had adduced the evidence about the incident, however, there are material discrepancies in their evidence before the Court. It is further noticed that the prosecution has suppressed the material facts before the court that the accused persons were also injured during the course of the incident. Thus, the genesis of the incident is not properly brought on record by the prosecution. The said fact goes to the root of the case and brings the prosecution case under a shadow of doubt.

8. The prosecution heavily relied upon the testimony of PW1-Sunil Dhurve, PW 5-Maroti Jugnake, PW 6-Yashwant Waghmare, PW7 Krishna Jaipurkar, Police Patil and PW 8 Indutai Waghmare. PW 1-Sunil Dhurve has deposed before the Court that on 6.4.1991 at about 8.00 am, he along with his cousin brothers namely, Maruti, Ramesh and Jivan, were proceeding from Chitod to Wardha. When they arrived at house of the Police Patil at village Chitoda, the Police Patil asked them to compromise with the other party. Thereafter the complainant along with his associates proceeded ahead. When they crossed the distance of 300 to 400 ft, the accused Mahendra Rahate, Sharad mandade , Ravindra Wandile and all other accused persons, namely, Prakash, Ashok , Ganpat, Homeshwar, Sham, Gunvant, Sanjay, Raju, Govindrao reached the place of the incident from their back side. Mahendra was holding a sword, Sharad was also holding a sword, Ravindra was holding iron rod and other accused

persons were holding *lathis* in their hands. All of them started assaulting the complainant as well as his associates. PW1-Sunil further stated that due to the blows given by the accused persons he received injuries on his head, right leg and both shoulders and he fell unconscious. He was then taken to the hospital along with three cousin brothers were hospitalized for three days. His complaint was recorded by the police at Exh. 64.

9. PW1-Sunil admitted that there were two rival groups in village Chitoda - one is headed by Waghmare and the other by accused-Ashok. He and his cousin brothers belong to Waghmare group. It was suggested to PW1 that about one year prior to the incident there was an election of Gram Panchayat and therefore there was quarrel between him and Waghmare group on one side and the accused persons on the other side. PW1 admitted that prior to the alleged incident, he, Vijay, Raju, Anil, Ashok and four others were prosecuted in Crime No.255/1990 of Sevagram Police Station. It was suggested that the said quarrel was between both the groups on account of election of Sarpanch of Gram Panchayat, Chitoda. PW1 further admitted that on the report of Ashok and others regarding the incident dated 6.1.1991 he himself, Jeevan Jugnake, Ramesh Jugnake Maroti Jugnake and Ashok Jugname were prosecuted by Sevagram Police Station. He however, denied that the said report was due to the incident in which Ashok Kathare had sustained injury on his chest by gupti (spear) and Ashok, Kamlakar and Sanjay were admitted in Sevagram hospital due to the injuries sustained in the said incident and the criminal prosecution was pending in the Court of learned JMFC at Wardha. An improvement was pointed out in the testimony

of PW1 to the effect that Ganpat Wagh was holding lathi in his hand at the time of the incident. He however admitted that he had not given the description of the weapons to the police. Thus, the testimony of PW1 clearly shows the rivalry between the group of accused on one side and the complainant and Waghmare group on the other side, on account of election of Saprach of Gram Panchayat. His testimony also depicts that offences were registered against the complainant and other witnesses at the instance of the accused persons. Furthermore, the complainant and other witnesses i.e. his brothers also received injuries at the time of the incident and were hospitalized. It appears that the accused persons were also injured at the time of the incident.

10. The testimony of PW5-Maroti Jugnake shows that on the date of the incident between 8 and 8.30 am, PW 5 along with his brother Jivan, Ramesh and cousin brother Sunil Dhurve(PW1) was proceeding on bicycles from Chitoda to Wardha. When they reached the house of Police Patil, all the accused persons arrived there and they attacked them with swords, iron rod, and lathis. Thereafter PW2 and others were shifted to Sevagram hospital. Improvements were pointed out in the testimony of PW5 that the accused Ravindra had iron rod with him and the remaining accused persons had lathis in their hands. Further improvement was pointed out that accused Mahendra had dealt a sword blow on left arm and right hand index finger, the other accused persons also dealt blows upon him and thereafter they left the spot. These improvements go to the root of the case and creates a doubt as to which weapon was carried by which accused person.

11. The deposition of PW 6 -Yashwant Waghmare shows that on the date of incident when he was present in his house at Chitoda, he heard the commotions. He noticed that accused-Narendra Rahate and accused Sharad were holding swords; accused Ashok was holding a spear in his hands and accused -Ravindra had iron rod with him and the other accused were holding lathis. He immediately closed the doors of his house, however, the accused persons broke open the doors and entered inside his house and all started assaulting him. As a result of which, he received injuries on his body, he then became unconscious. In the cross-examination, an improvement was pointed out that Ravindra was holding an iron rod. Further improvement was also pointed out with regard to the fact that the accused persons broke open the door of the house of PW 6. A case was put up to PW 6 that he himself, his son Manoj, Maouti Jugnake and his three brothers assaulted Ashok and other accused persons near the house of Police Patil and a scuffle took place between the members of both the groups. PW 6 however denied the said suggestion.

12. The testimony of PW 7-Krishna Jaipurkar, who is a Police Patil of the village, shows that on the date of incident at about 9 to 9.30 a.m, he had returned back to his house from the temple after performing pooja. At that time, all the accused persons were present near his house. He apprehended that there would be some quarrel between the two groups. As he saw lathis in the hands of all of the accused he tried to pacify them however as they were not in a position to listen, he proceeded to

Sevagram Police Station and lodged a complaint (Exh.94). The said witness was declared hostile by the prosecution. PW7 flatly denied that some of the accused persons were holding the swords and some were holding lathis and some of them sustained injuries. He further denied that the accused persons were holding the swords, lathis in their hands and that they gave blows to Maroti and his brothers. He also denied that Ashok Kathane, Mahendra Rahate and Sharad Mandade were holding swords in their hands and Ravindra was holding an iron rod and rest of the accused persons had lathis in their hands and they all entered inside the house of Yashvant. Thus, the testimony of PW7 is of no assistance to the prosecution case although he was a Police Patil and had lodged the first information report in that regard.

13. The testimony of PW 8 -Indutai Waghmare reveals that on 6.4.1991 between 8 and 8.30 am, all the accused persons reached to her house; they were holding swords, iron rods and lathis. Mahendra Rahate and Sharad Mandade, had swords in their hands. Accused Ravindra had iron rod with him and some of the accused persons were holding lathis. All the accused persons assaulted her husband and Sadashiv in her house. Thereafter the accused persons left that place. According to PW8 her husband sustained injuries on his left hand, head and fingers as a result, her husband became unconscious. He was then shifted to Sevagram Hospital. In her cross-examination, an omission was pointed out that some of the accused were holding lathis in their hands. Surprisingly, PW8 stated that the entire episode of assault took place within two minutes and no other persons gathered near her house when the act of

assault was going on. The testimony of PW 8 does not inspire confidence due to the material discrepancies in her version and the fact that the entire incident took place within a span of two minutes.

14. On going through the testimony of the above-referred witnesses, it is noticed that there are material discrepancies in their version, about holding of the weapons by accused. It is not clear as to which accused was holding which weapon at the time of incident. Similarly it is also not clear as to which accused persons were holding lathis in their hands. Although it is denied by the witnesses that the complainant and his brothers were holding weapons at the time of the incident and they also assaulted the accused persons, the injuries on the body of the accused persons remained unexplained. It appears that there was a fight between the accused persons and the witnesses and, therefore, all of them received the injuries. It is worthwhile to note that the prosecution has failed to produce the medical certificates of the accused persons on record. The said suppression goes to the root of the case and makes the entire prosecution case doubtful. The learned trial Judge has rightly considered the evidence in right perspective and has rightly come to the conclusion that there was rivalry between two groups and on the date of the incident and there was a free fight amongst the accused persons and the witnesses and all of them were holding weapons and they all received injuries due to the said assault. The discrepancies in the testimony of all witnesses go to the root of the case and creates a serious doubt about the the accused persons holding the particular weapon in their hands at the time of the incident.

The testimony of PW1 clearly shows that on the report of the accused persons, the complainant and his brothers who were alleged eye witnesses to the incident, were prosecuted by the Sevagram Police. During the course of arguments, both sides counsel pointed out that the accused persons in Crime No.255/1990 of Sevagram police station were acquitted. The fact that the offence was registered against the complainant and his brothers on the date of incident (i.e. 6.4.1991) shows that there was a free right amongst the accused persons and the complainant on the date of the incident and the said fact has been suppressed by the prosecution.

15. The recovery of weapons at the instance of the accused persons has not been proved by the prosecution as the witnesses in that regard turned hostile. Thus, the entire case of the prosecution comes under the shadow of doubt. No illegality and perversity is noticed in the judgment impugned in this appeal.

16. In the case of **Mahendra Pratap Singh vs. State of Uttar Pradesh**, reported in **(2009) 11 SCC 334**, it has been held by the Hon'ble Apex Court that if on appraisal of the evidence and on considering the relevant attending circumstances it is found that two views are possible – one for acquitting the accused and the other for convicting the accused, in such a situation, rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial Court. Unless conclusions of trial court on the evidence on record are found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal.

17. In the instant case, nothing is brought on record to interfere with the conclusion of the trial Court. In the facts and circumstances, the Appeal needs to be dismissed and the same is accordingly dismissed.

JUDGE

sahare