

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

CRIMINAL APPEAL NO. 34 OF 2007

1. Balu @ Balaji s/o Bhagwan Waghmare,
Age : 37 years, Occ. Agriculture,
R/o : Dharmapuri, Tal. Parli (Vaijanath),
Dist. Beed.
2. Sambhu s/o Bhagwan Waghmare,
Age : 35 years, Occ. Agriculture,
R/o : Dharmapuri, Tal. Parli (Vaijanath),
Dist. Beed.
3. Nandkumar s/o Bhagwan Waghmare
Age : 32 years, Occ. Agriculture,
R/o : Dharmapuri, Tal. Parli (Vaijanath),
Dist. Beed.
4. Babu s/o Bhagwan Waghmare,
Age : 39 years, Occu. Agriculture,
R/o Dharmapuri, Tal. Parli (Vaijanath),
Dist. Beed. ..APPELLANTS

VERSUS

The State of Maharashtra,
Through Police station, Parli (V)
(Gramin). ..RESPONDENT

...
Mr. M.P. Kale, Advocate for Appellants
Mrs.D.S. Jape, APP for Respondent-State

...
CORAM : K.K. SONAWANE, J.

RESERVED ON : 09-01-2019

PRONOUNCED ON : 04-04-2019

JUDGMENT :-

The appeal is directed against the impugned Judgment and order of conviction and resultant sentence of imprisonment and

fine amount passed by the learned *Ad-hoc* Additional Sessions Judge, Ambajogai, in Sessions Case No. 17 of 2005 dated 22-01-2007. The appellants are convicted for the offence punishable under Sections 143, 147, 324 and 332 read with section 149 of the Indian Penal Code (for short "IPC") and they are sentenced to suffer punishment till rising of the Court and pay a fine of Rs.100/- each for the offence punishable under section 143 read with section 149 of the IPC. They are also ordered to suffer RI for two years and pay a fine of Rs. 250/- each I/d to suffer R.I for five days each for offence punishable under Sections 324, 332 read with section 149 of the IPC respectively.

2. Being dissatisfied with the conviction and resultant sentence as indicated above, the appellants invoking remedy under section 374 of the Cr.P.C. preferred the present appeal to redress their grievances.

3. The scenario of the prosecution case in brief is that the appellant - Balu @ Baba Bhagwan Waghmare resident of Dharmapuri committed encroachment by erecting house structure on the public land of crematory of 'Dhor community' in the village. There were complaints about the encroachment of appellant-Babu received to the concerned revenue authority. At last the Tahsildar Parli- Vaijnath on 02-12-2003 issued the order

to remove the alleged encroachment. Therefore, the first informant -Devidas Wade, Revenue Inspector, Naib Tahsildar Shri Latpate, and other Officials were deputed for execution of order of Tahsildar. The Police personnels were also deployed for Bandobast duty to maintain law and order problem. According to prosecution, all the concerned persons from revenue and Police visited to the spot at about 12.30 p.m. They gave instructions to the appellant Babu to remove the encroachment till 4.00 p.m. But, they did not receive any response from the encroacher. Therefore, the Revenue Personnel with the help of other labourer and JCB machine started razing the structure of encroachment. But, the appellants and their family members formed the unlawful assembly and attacked the Revenue and Police Personnel present on the spot. The appellants pelted the stones as well as flung the chilly powder in the eyes of members of the squad. In the incident of riot, the P.C Mr. Jagtap P.C. Mr. Band, P.C. Mr. Ghule and other received injuries following stone pelting. They all were escorted to the hospital for medical treatment. Thereafter, the Revenue Personnel Mr. Devidas Wade approached to the Police and filed the report.

4. Pursuant to FIR of Mr. Wade, Police of Parli (Rural) Police Station, Parli-Vaijnath, District Beed registered the crime No. 217 of 2003 under Sections 147, 149, 323, 332, 337, 307 and 504 of

IPC and set the penal law in motion. Investigating Officer (IO) recorded the statements of witnesses acquainted with the facts of the case. IO collected the relevant documents, apprehended the accused for the sake of investigation. After completion of investigation, IO filed the charge sheet against all the accused including the appellants.

5. The learned Trial Court framed the charge against the accused-appellants. They denied the charges pitted against them and claimed for trial. In order to bring home guilt of the accused, prosecution adduced evidence of in all nine witnesses in this case. The learned Trial Court also recorded statement of accused/appellants under section 313 of Cr.P.C. The appellants /accused denied the incriminating circumstances and claimed their innocence and false implication in this case. The learned Trial Court appreciated the entire evidence adduced on record on behalf of prosecution in the light of defence of total denial raised on behalf of appellants/accused and held the appellants/accused guilty for the offence punishable under Sections 143,147, 324, 332 read with Section 149 of IPC. Accordingly, the learned Trial Court passed the impugned Judgment and order of conviction and resultant sentence as indicated above. The appellants agitated the legality and propriety of impugned order of conviction and resultant sentence, in this appeal.

6. As referred supra, the prosecution examined in all nine witnesses in this case. P.W. 1 – Maruti Sonwane and P.W. 2- Dnyanoba Nagargoje are the panch witnesses for the panchnama of scene of occurrence (Exhibit-20) and seizure of the cloths of the injured Police Personnels (Exhibits-22 and 23).

7. The star witness of the prosecution, P.W. 3 - Devidas Wade, stepped into the witness box and deposed that during relevant period he was employed as Circle Inspector in the Dharmapuri Circle. He received order of his Superior Officer i.e. Tahsildar, Parli(V) for removal of encroachment on the land Gut No. 24 located at village Dharmapuri, belonging to "*Dhor Community*" for crematory. It has been alleged that appellant - Babu Waghamre had constructed house by making encroachment on the land of crematory of "*Dhor Community*". P.W.3- Mr. Devidas Wade further testified that he forwarded letter to the concerned Police of Parli (Rural) Police Station, for deploying Police Personnels to maintain law and order problem, while removing encroachment as per order of his Superior Officer i.e. Tahsildar, Parli(V). Accordingly, on 04-12-2003 he accompanied with Police Personnels as well as his associates Naib-Tahsildar Smt. Manjusha Latpate, Senior Clerk Shri Nilawade, Talathi Shri Dahiphale and others visited to the spot of incident. The appellant-Babu Waghmare was instructed by the Naib Tahsildar to remove his encroachment upto 4.00 p.m.. But, P.W. 3-Devidas

Wade and members of the Squad did not receive any response from appellant-Babu. Therefore, complainant and other started razing structure of house of the appellants erected on the encroached portion of land of "*Dhor Community*". P.W.3 - Devidas Wade further added that while demolition work, accused Nos. 1 to 7 and other people started pelting stones and chilly powder on the person of Police Officers. They caused injuries to five Police Personnels by pelting of stones. According to P.W.3 Devidas Wade, two Police Personnels became unconscious. After completion of work of removal of encroachment, they proceeded for measurement of the land and it was handed over to members of "*Dhor Community*". Thereafter, P.W. 3 - Devidas Wade approached to Police of Parli (V) Police Station and lodged the report (Exhibit-26).

8. The prosecution also examined P.W. 4- Smt. Manjusha Latpate, Naib Tahsildar, Tahsil Office, Parli(V). She stepped into the shoe of P.W.3 - Devidas Wade in regard to order of concerned Tahsildar for removal of encroachment made by appellant - Babu Waghmare on the land of crematory of members of "*Dhor Community*". P.W. 4-Smt. Manjusha Latpate further testified that till 4.00 p.m. they did not receive any response from appellant -Babu for removal of encroachment on their own accord. Therefore, they started work of removal of encroachment with the help of other labourers and JCB Machine

etc. But, the occupants of encroached house started throwing chilly powder on the Police Personnel. They had also pelted the stone on their direction and caused injuries to Police Personnel on duty. The injured Police Personnels were escorted to PHC Ghatnandur as well as Government Hospital, at Ambajogai.

9. In order to fortify the evidence of Revenue Personnels, the prosecution examined P.W. 6-PHC Shri Jagtap and P.W.6-PHC Shri Band as well as P.W. 7- Smt. Parwatibai Vyavahare, Ladies Police Constable. These Police Personnels deposed that while removing the encroachment the appellants-accused thrown Chilly powder on their face and also pelted stones. In the incident, they all received injuries. Thereafter, they were escorted to Civil Hospital for medical treatment. The prosecution adduced evidence of P.W. 8-Dr. Rais Rashid Hashmi, who had an occasion to clinically examined P.W.6-PHC Shri Band, P.W.5-PHC Shri Jagtap and others for their injuries. He produced injury certificates on record (Exhibits-35 and 37). He opined that all the injuries were simple in nature and caused by hard and blunt object.

10. At this juncture, Mr. Kale, learned counsel for the appellants vehemently submitted that learned trial Court did not appreciate the evidence on record in its proper perspective and committed error in convicting the appellants for the offence

punishable under Sections 143, 147, 324 and 332 of the IPC. He further contended that the appellant - Babu Waghmare did not make any encroachment on the land of crematory of "*Dhor Community*". But, it was the land purchased by his father from one Hussain Saheb. There are entries in regard to the same in revenue record.

Moreover, the matter was subjudice before the Court of law. The Revenue Personnels illegally caused damage to the house of appellants without ascertaining the factual aspect of his ownership and title over the land. The appellants were present on the scene of occurrence, but it cannot be said that they formed unlawful assembly in prosecution of their common object to assault and prevent the Revenue as well as Police Personnels from removal of the alleged structure of house. The learned counsel for the appellants also discussed the evidence of each of the witnesses in detail and urged that the evidence of prosecution witnesses are vague and ambiguous in nature. They did not attribute any overtact to each of the accused for their participation in the melee. Therefore, on the basis of such cryptic evidence, the appellants cannot be held guilty for the charges pitted against them. He explained that the Police Personnels received the injuries while razing the construction of the house at the relevant of incident. Therefore, it would unjust and improper to draw adverse inference against appellants/accused.

11. The intense scrutiny of the evidence adduced on record on behalf of prosecution reflects that the argument advanced on behalf of learned counsel for the appellants found more considerable and sustainable one. Admittedly, the appellants are held guilty for the offence punishable under Sections 143, 147, 324, 332 read with Section 149 of the IPC. The learned trial Court, except the present appellants, was pleased to extend benefit of Probation of Offenders Act to rest of the accused in this crime. It is true that the circumstances on record demonstrate that the appellants were present at the scene of occurrence, but it does not mean that they formed unlawful assembly. Their presence at the scene of occurrence was natural as the appellants were residing in the house erected at the spot of incident. It also appears from the evidence of P.W.3-Devidas Wade that at the relevant time the appellants as well as other persons from the village were congregated at the scene of occurrence. It was not brought on record in the evidence of prosecution witnesses that which one of the accused indulged in the activities of pelting stone as well as throwing chilly powder on the Police and Revenue Personnels to deter them from discharging their official function as public servant. The specific overtact of each of the accused were not attributed by the prosecution witnesses in their evidence.

In such circumstances, when other persons from village

also thronged at the spot including appellants, it was highly unsafe to draw adverse inference only against the appellants. It was not made clear that what role each of the appellant played in the incident. It is true that accused were present on the spot, but it is hard to believe that they proceeded to participate in the assault by sharing common object of unlawful assembly. In case of riot, if number of people gathered on the spot, it is hazardous to convict any of the accused by application of Section 149 of the IPC, unless it is positively proved that each one of them shared common object and participated in the occurrence of incident.

12. In the matter in hand, as referred above, the evidence of star witnesses P.W.3- Mr. Devidas Wade, P.W.4- Smt. Manjusha Latpate, P.W.5-PHC Mr. Jagtap, P.W.6-Police Constable Mr. Band and P.W.7 -Smt. Parwatibai Vyawhare appears vague and slender in nature. They did not describe the specific overtact of each of the appellants during the course of incident of rioting and assault. Therefore, it is fallacious to draw adverse inference against the appellants that they were the members of unlawful assembly and common object of such assembly was to attack Police and Revenue Personnels to prevent them from discharging their duties as public servant while removing alleged encroachment.

13. It is also worth to mention here that in the evidence of P.W.3-Devidas Wade, it has brought on record that after

demolition of alleged encroachment, the land was handed over to members of the "*Dhor Community*" after its due measurement. The circumstances are sufficient to point out that at the relevant time of demolition of the alleged encroached structure, members of "*Dhor Community*" from the village must have received an opportunity to watch this spectacle. Moreover, other villages were also shown present at the scene of occurrence. But, no one else from the members of the "*Dhor Community*" or any person from the village came forward to depose against appellants for the alleged incidence of assault on the Police and Revenue Personnels. Admittedly, PW-3 Devidas Wade and his associates from Revenue Office as well as Police Personnels all were interested witnesses. They were deputed for removal of encroachment on the land of "*Dhor Community*" as per the order passed by the concern Tahsildar. In such circumstances, in absence of any independent witness, it would be hazardous to appreciate the cryptic and slender versions of Police and Revenue Personnels against appellants in this case.

14. The evidence on record is also not sufficient to arrive at the conclusion that the appellants are persons responsible for the injuries sustained to the Police Personnels. In contrast, it has brought on record on behalf of the appellants-accused that Police Personnels received injuries during the course of demolition of the house. In such circumstances, findings of the learned trial

Court about guilt of the appellants are perverse, imperfect and deserves to be quashed and set aside.

15. Accordingly, the criminal appeal stands allowed. The impugned Judgment and order of conviction and resultant sentence of imprisonment and fine amount passed by the learned *Ad-hoc* Additional Sessions Judge, Ambajogai, in Sessions Case No. 17 of 2005, dated 22-01-2007, is hereby quashed and set aside. The appellants are acquitted for the offence punishable under Sections Sections 143, 147, 324, 332 read with Section 149 of IPC. Their bail bonds stand cancelled. The muddemal property being worth less be destroyed after appeal period is over. The fine amount, if any, deposited by the appellants-accused be refunded to them, after expiry of appeal period.

16. The Criminal Appeal stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.