

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

CRIMINAL APPEAL NO.119 OF 2022

Samadhan s/o Dhanaji Rathod,
Age 28 years, Occu. Agri.,
R/o Jahagirwadi Laman Tanda,
Osmanabad, Tq. & Dist. Osmanabad ... **APPELLANT**

VERSUS

The State of Maharashtra,
Through Police Inspector,
Rural Police Station, Osmanabad
Tq. & Dist. Osmanabad
(Copy to be served on Public
Prosecutor, High Court,
Bench at Aurangabad) ... **RESPONDENT**

.....
Shri P.P. More, Advocate for appellant
Shri S.P. Sonpawale, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 13th April, 2022

Date of pronouncing judgment : 2nd May, 2022

J U D G M E N T :

The challenge in this appeal is to the judgment of conviction and order of sentence passed by Additional Sessions Judge, Osmanabad on 12/8/2016 in Sessions Case No.110/2014. By the impugned judgment and order, the

appellant has been convicted for the offence punishable under Section 332 of the Indian Penal Code and, therefore, sentenced to pay a fine of Rs.10,000/-. In default of payment of fine, he is directed to undergo simple imprisonment for three months.

2. Facts giving rise to the present appeal are as under :

The First Information Report (F.I.R.) was lodged by Assistant Police Inspector (A.P.I.) - Vithal Kale, attached with Rural Police Station, Osmanabad. It was the case of prosecution that, the informant was on election bandhobast duty on 7/2/2012. it was the day of polling for elections for Zilla Parishad and Panchayat Samiti. Some other members of the constabulary were on duty with the informant. It was in fact a team of police officials. One photographer was also in the said team. Shri Pujary was head of the said team. He received an information that there was some law and order problem at Jahagirwadi. His higher-ups had directed him to rush to Jahagirwadi along with his team members. The team, therefore, went to Jahagirwadi by 11.50 a.m. On having seen a police vehicle, a group of about 150 persons assembled

there, started dispersing. A Home Guard on duty at election booth informed the police team that one Sheshrao Chavan, a teacher (accused No.13 in the case) was frequently visiting the election booth. Rival group members took objection thereto. The team members, therefore, wanted to overpower Sheshrao Chavan. He, therefore, started running away. He was chased and successfully overpowered. He was made to sit in police vehicle. On having seen Sheshrao Chavan to have been apprehended, a mob of 15 – 20 persons armed with sticks and stones proceeded towards the police vehicle. The mob members abused the team members. They asked the police officials not to take Sheshrao Chavan to police station. The mob members started pelting stones. Some females were also in the said mob. They manhandled and even beat up police official Sadiq Shaikh, informant and others as well. A lady Home Guard, therefore, passed on a message to the concerned police station. More police force arrived. The accused persons took to their heels. The police party returned to the police station. Since the informant had suffered serious injuries, he was rushed to Civil Hospital, Osmanabad. His statement-cum-F.I.R. was recorded in Civil Hospital. On the basis of the same, a crime vide C.R. No.15/2022 came to be registered for the offences punishable

under Sections 143, 147, 148, 307, 332, 333, 353, 427 of the Indian Penal Code, Section 135 of the Bombay Police Act and Section 7 of the Criminal Law (Amendment) Act, 2013.

3. The crime was investigated, scene of offence panchanama was drawn. Sticks came to be seized. Statements of persons acquainted with the facts and circumstances of the case were recorded. About 16 persons were arrested including the appellant herein. On investigation, the charge sheet was laid before the Court of Chief Judicial Magistrate, Osmanabad. The learned Chief Judicial Magistrate, in turn, committed the case to the Court of Sessions for trial in accordance with law.

4. The learned Additional Sessions Judge framed the charge for offences punishable under Sections 147, 148, 307, 332, 333, 427 of the Indian Penal Code and Section 135 of the Bombay Police Act. The appellant and others pleaded not guilty.

5. The prosecution examined 22 witnesses to establish the charge. It also produced in evidence various documents. On appreciation of the evidence in the case, the

learned Additional Sessions Judge convicted the appellant and 5 others for the offence punishable under Section 332 of the Indian Penal Code and, therefore, sentenced them to pay a fine of Rs.10,000/- each. The convicts and other accused came to be acquitted of rest of the offences they were charged with. The State did not prefer appeal against acquittal. It appears that, except the present appellant, no other convict has preferred appeal against conviction. Be that as it may.

6. Shri P.P. More, learned counsel for the appellant would submit that, the appellant was barely 19 years of age at the material time. None of the prosecution witnesses has named him as one of the assailants. The learned Additional Sessions Judge convicted him simply on the basis of a video-shooting of the incident which was not part and parcel of the evidence in the case. No question in that regard was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure. The trial Court on its own viewed the video clip to find the appellant to have been seen therein and, therefore, convicted him. According to learned counsel, the appellant has now no criminal antecedents. His claim for compassionate appointment has been allowed. He has,

however, not been given a posting on account of his conviction. He, therefore, urged for allowing the appeal.

The learned A.P.P. supported the impugned judgment and order.

7. Considered the submissions advanced. Perused the evidence in the case.

22 witnesses were examined by the prosecution, to bring home the charge. Various documents were produced in evidence. Almost all the independent witnesses did not support the prosecution. The police officials, victims, who were examined as witnesses, did not know the appellant by name. He was named in the F.I.R. on the basis of information given by someone else. On arrest of the appellant, no test identification parade was held. The trial Court, in paragraph No.30 of the judgment has observed as under :

“30. I have given my thoughtful consideration to the judgment cited at Bar. It is true that the delay in lodging FIR may give chance to police to make out a story. In this case there is delay in lodging FIR for which PW-13 Vitthal Kale has given explanation that he had been to the hospital at Yedshi and then

Osmanabad, where his statement was recorded at about 11.45 p.m, though the endorsement of doctor at the foot of statement shows that it was recorded on 8.2.2012 at 12.20, but the endorsement of doctor at the top goes to show that it was started at 11.45 p.m, of 7.2.2012. As stated above I saw the video clips recorded in memory card which go to show that since 7.00 to 7.30 a.m, informant, Sadiq Shaikh, cameraman and home-guard were on duty at the voting booths and the incident had taken place at about 11.30 to 12.00 noon. The timing of video recording is also appearing in video clip. Had it been the case that there was only oral evidence of witnesses, then the inference of their evidence would have been favourable to the accused persons, considering the delay in lodging FIR, but in the present case, the evidence is supported by circumstance of capturing the incident by PW 8 Ravikiran Tigade in his video camera. It is true that in video clip there is no overt act committed by most of the accused. The oral evidence coupled with evidence in the shape of video clip goes to show that accused No.1-Shahaji Chavan, 4-Samadhan Rathod, 12-Pradip Chavan, 14-Rajubai Chavan, 15-Sangita Chavan and 1- Malanbai Rathod have actively participated in the incident. Accused No.1 Shahaji kicked to PW-13 Vitthal Kale when he was going towards jeep. Accused Sangita used small stick in assaulting PW 13 Vittahl Kale, so also accused Malanbai. Accused Rajubai scuffled with PW 13 Vitthal Kale and tried to snatch stick which was in his hand and used force against him. Some accused persons, out of remaining accused were present there and were pacifying the quarrel and tried to made understand the ladies accused.”

8. Close reading of the aforesaid observations of the trial Court would indicate that none of the witnesses attributed any incriminating material against the appellant

herein. True, P.W.8 Ravikiran was one of the members of the police team of bandhobast. He was a photographer. His duty was to have video-shooting. Accordingly, he did his job. The SIM Card in the video camera was taken charge under the panchanama. None of the panchas to the said panchanama stood by the prosecution. It is true that the recording in the camera would be in the nature of a documentary evidence. It was, however, not played in the open Court. No opportunity was given to the appellant to explain the scene appearing therein, indicating him to have allegedly involved in the alleged crime. No question in that regard was put to the appellant in his examination under Section 313 of the Cr.P.C. admittedly, the trial Court, before passing the judgment, viewed the video clip and found the person appearing in the picture to be one similar to the appellant and, therefore, convicted him. In view of this Court, such recourse ought not to have been adopted by the trial Court unless and until the video clip was played in the open Court, giving opportunity to the appellant to explain the picture, wherein he or person like him was appearing. It is reiterated that, the appellant was not known to any of the witnesses examined by the prosecution. He was named in the F.I.R. on the basis of information given by one of the villagers. No witness

examined before the trial Court attributed any overt act to the appellant. For all these reasons, this Court is not at one with the impugned judgment and order. The appeal therefore succeeds. Hence the order :

ORDER

- (i) The criminal appeal is allowed.
- (ii) The impugned judgment and order dated 12/8/2016, passed by learned Additional Sessions Judge, Osmanabad in Sessions Case No.110/2014 is set aside to the extent of present appellant only.
- (iii) The appellant is acquitted of the offence punishable under Section 332 of the Indian Penal Code. Fine amount, if paid, be refunded to the appellant.

**(R. G. AVACHAT)
JUDGE**

fmp/-