

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1669 OF 2019

Parshuram Prabhakar Uparkar] ... Appellant

V/s.

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| 1. | The State of Maharashtra |] |
| 2. | Sameer Anant Nalavade (Deleted) |] |
| 3. | Sandesh @ Gotya Shridhar Sawant (Deleted) |] |
| 4. | Sanjay Babi Malandkar |] |
| 5. | Surendra @ Anna Sudhakar Kode |] |
| 6. | Sanjay Madhukar Kamtekar |] |
| 7. | Tushar Gangadhar Rasam |] |
| 8. | Nagesh Ramchandra Morya |] |
| 9. | Milind Chandrakant Mestri |] |
| 10. | Javed Rashid Shaikh |] |
| 11. | Sandesh Pandurang Sawant-Patel |] |
| 12. | Sushant Ramesh Pangam |] |
| 13. | Husen Akbarshaha Makandar |] |
| 14. | Gurunath Raghunath Sawant |] |
| 15. | Dnyaneshwar Pandurang Sawant |] |
| 16. | Narrayan @ Gajanan Shivram Gaytonde |] |
| 17. | Akram Usman Khan |] |
| 18. | Vilas Hari Bandekar |] |
| 19. | Hemant @ Kaka Raghoba Kudalkar |] |
| 20. | Sanjay Dhonddev Padate |] |
| 21. | Manoj Chandrakant Naik |] |
| 22. | Dattaram @ Datta Gajanan Kavthankar |] |
| 23. | Taukir Tajuddin Shaikh |] |
| 24. | Atul Jaysing Pendharkar |] |
| 25. | Sachhidanand @ Sanju Jagannath Parab |] |
| 26. | Vikaram @ Viki Vijay Gawade |] |
| 27. | Manish Prakash Dalavi |] |
| 28. | Anant @ Dada Vasudev Keluskar |] |
| 29. | Atmaram @ Dada Yashwant Sokate |] |
| 30. | Girgol Santan Fernandes |] |
| 31. | Prasanna Laxman Desai |] |

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| 32. | Amit Gopal Sawant |] | |
| 33. | Tushar @ Tukaram Narayan Salgaonkar |] | |
| 34. | Upendra @ Raja Vilas Patkar |] | |
| 35. | Vishnudas @ Dada Sajba Kubal |] | |
| 36. | Sandesh Prabhakar Nikam |] | |
| 37. | Rakesh Pralhad Parab |] | |
| 38. | Sainath @ Sai Shashikant Mhaddalkar |] | |
| 39. | Anand Satish Gavande |] | |
| 40. | Sarfaraj Abdul Gafur Naik |] | |
| 41. | Keshav @ Dipak Ramesh Narkar |] | |
| 42. | Rupesh Ashok Pawaskar |] | |
| 43. | Ganu @ Daji Bala Golam |] | |
| 44. | Sandip Chandrakant Mestri |] | |
| 45. | Yashwant @ Daji Laxman Parab |] | |
| 46. | Kanhayya Shankar Gawade |] | |
| 47. | Dattaram @ Datta Sambhaji Sawant |] | ... Respondents |

Mr.Tejesh Dande a/w.Mr.Bharat Gadhavi i/b.Tejesh Dande & Associates for Appellant.

Mr.H.J. Dedhia, A.P.P. for Respondent No.1-State.

Mr.Vivek N. Arote for Respondent Nos.4 to 47.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.**

DATE : 30th August 2022.

JUDGMENT (Per : A.S. GADKARI, J.) :-

1. Appellant (PW-7), Victim, has filed present Appeal under Section 372 of The Criminal Procedure Code (*for short, "Cr.P.C."*) impugning Judgment and Order dated 5th September 2019 passed by the learned Additional Sessions Judge, Sindhudurg-Oras in Sessions Case No. 7 of 2013 thereby acquitting Respondent Nos.4 to 47 from the offences punishable

under Sections 143, 147, 148, 307, 427, 332, 336, 337, 504, 506(2) read with 149 of The Indian Penal Code (*for short, "I.P.C."*) and Sections 37(1)(a), 37(3) read with 135 of Maharashtra Police Act (Bombay Police Act).

2. Heard Mr.Dande, learned Advocate for Appellant, Mr.Dedhia, learned A.P.P. for Respondent No.1-State and Mr.Arote, learned Advocate for Respondent Nos.4 to 47. Perused record before us.

3. Appellant (PW-7) was Member of Legislative Assembly. Elections of Nagar Parishad were declared on 1st November 2011. Police Constable Maruti Sakhare (PW-3) was appointed as bodyguard of Appellant. On 5th December 2005 Appellant visited Vengurla for election campaign. At about 11.00 pm when the Appellant was sitting along with his colleagues and party members in his party office situated at Sundarbhatale, Vengurla, it is alleged that Respondent Nos.4 to 47 along with Original Accused Nos.1 & 2 by forming unlawful assembly and with an object to commit murder of Appellant and his party workers stormed the said office with stones, iron bars, wooden logs and soda water bottles. Sensing danger to their life, Appellant and his party workers pulled down the shutter of the office. However the Original Accused Nos.1 & 2 along with Respondent Nos.4 to 47 broke open the tin shutter of the Office and assaulted Appellant, informant Maruti Sakhare (PW-3), Santosh Sirsath (PW-5) and Rajan Naik (PW-6) and the said persons sustained injuries therein. It is further alleged that, all the accused persons

also damaged articles, furnitures, fixtures in the office and also damaged vehicles parked outside the office of the Shivsena Party. It is further prosecution case that, as there was threat to the life of Appellant and other witnesses who belong to Shivsena Party, the informant Maruti Sakhare (PW-3) under the directions of Appellant fired two bullets from his service revolver and thereafter the mob was dispersed. Maruti Sakhare (PW-3) filed First Information Report bearing CR No.64 of 2011 for the offence punishable under Sections 143, 147, 148, 307, 427, 332, 336, 337, 504, 506 read with 149 of I.P.C. and Sections 37(1)(a), 37(3) read with Section 135 of Bombay Police Act.

4. The investigation of the crime was conducted by Shri Vivekanand T. Wakhare (PW-13). After completion of investigation, he submitted chargesheet in the Court of Judicial Magistrate First Class. The said case was committed to Court of Sessions as the offence punishable under Section 307 of I.P.C. was exclusively triable by the Court of Sessions. The Trial Court framed charge below Exh.33. The said charge was read over and explained to all accused persons in vernacular. Respondent Nos.4 to 47 pleaded not guilty and claimed to be tried. The defence of Respondent Nos.4 to 47 was of total denial and false implication due to the political enmity. The learned Trial Court by its impugned Judgment and Order was pleased to convict Original Accused Nos.1 & 2, namely, Sameer A. Nalavade and Sandesh @ Gotya S.

Sawant respectively under Section 307 read with 149 of I.P.C. and other related Sections for which they were charged. However, the Trial Court by its impugned Judgment and Order was pleased to acquit Respondent Nos.4 to 47 from the charges framed against them.

5. The learned Advocate for Appellants contended that, the Trial Court has not taken into consideration the evidence of Appellant (PW-7), Maruti Sakhare (PW-3), Santosh Shirsat (PW-5), Rajan Naik (PW-6) and Dr.Atul Muley (PW-9) in its proper perspective and has erroneously acquitted Respondent Nos.4 to 47. He submitted that, if the evidence of said witnesses is considered properly, then a case for conviction of Respondent Nos.4 to 47 is certainly made out. He therefore prayed that, the impugned Judgment and Order acquitting Respondent Nos.4 to 47 may therefore be quashed by allowing present appeal.

6. A minute perusal of evidence on record clearly indicates that, all the material witnesses have identified Sameer Nalavade (A-1) and Sandesh @ Gotya Sawant (A-2) as the persons who assaulted injured witnesses in the said riot. In the firing by constable Maruti Sakhare (PW-3), accused Sameer Nalavade (A-1) had sustained injury at antero-medial part of left lower foot. The said accused i.e. Sameer Nalavade (A-1) had given history to Dr.Atul Muley (PW-9) as 'caused due to bullet fire'. The Trial Court has therefore recorded a finding that, the presence of said accused at the scene of said

offence was established. The other witness have also identified accused Sandesh @ Gotya Sawant (A-2) and therefore the Trial Court has convicted the said two accused persons.

7. Perusal of evidence on record clearly indicates that, there is absolutely no specific evidence to even remotely infer that Respondent Nos.4 to 47 were present at the scene of offence at the relevant time and indulged into commission of the present crime. Though the evidence on record indicates that, the mob which stormed at the office of Appellant (PW-7) was consisting of more than five persons, the Respondents have not been identified during trial beyond reasonable doubt by the eye witnesses. The Trial Court has therefore acquitted Respondent Nos.4 to 47 from all the charges levelled against them.

8. After perusing the entire record, it can safely be discerned that the view adopted by the Trial Court was a probable view in the facts and circumstances of the present case. There is no error committed by the Trial Court while passing the impugned Judgment and Order.

9. The Appeal being *dehors* of merits is accordingly dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]