

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

CRIMINAL APPEAL NO. 220 OF 2019

1. Maya w/o Anantrao Gangekar
Aged about 46 years, Occ.: Labour,
R/o. Umari (Smarak), Tq. Babhulgaon,
Dist. Yavatmal.



... Appellant

Versus

1. State of Maharashtra,
Through Police Station Babhulgaon,
Tq. Babhulgaon, District - Yavatmal.
2. Shailesh s/o Ramdas Khating
Aged about 24 years
3. Ramdas s/o Mahadeo Khating
Aged about 54 years
4. Sau. Seeta Ramdas Khating
Aged about 49 years
5. Ambadas s/o Chadrabhan Madavi
Aged about 54 years.
6. Sandip s/o Haribhau Patil
Aged about 36 years
7. Gajanan s/o Vishwanath Shinde
Aged about 44 years
8. Vijay s/o Ganeshrao Chavan
Aged about 37 years
9. Ravi s/o Ramkrushna Shinde
Aged about 31 years.
10. Suhanand s/o Ramchandra Chahare
Aged about 49 years,
Nos. 2 to 10 are R/o. Umari (Smarak)
Tq. Babhulgaon, Dist. Yavatmal.



... Respondents

Ms. Gayatri Dive, Advocate for appellant.

Mr. V.A. Thakare, APP for respondent No.1.

Mr. Atharwa S. Manohar, Advocate for respondent Nos.2 to 10.

CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.

RESERVED ON : 21.03.2023.

PRONOUNCED ON : 29.03.2023.

JUDGMENT : (PER: Bharat P. Deshpande, J.)

. **Admit.** Heard finally by the consent of the learned counsel for the respective parties.

(2) This appeal is filed by the original complainant whereby challenging acquittal of respondent Nos.2 to 10 (original accused Nos.1 to 9) in Sessions Case No.09/2015, vide judgment dated 05.05.2018, passed by Ad-hoc Additional Sessions Judge, Yavatmal.

(3) The appellant/complainant set the law in motion by filing complaint on 13.10.2013 at Police Station Babhulgaon, District – Yavatmal, on the allegations that all the accused persons formed unlawful assembly and in furtherance of common object, assaulted her father-in-law (Natthuji), brother-in-law (Gunwant) and other relatives with the help of sticks, iron rods and spear and attempted to commit murder in that assault, the family members sustained bleeding injuries. The JCB machine brought for the purpose of clearing water canal was also damaged.

(4) Babhulgaon Police Station registered the offence vide Crime No.146/2013, for the offences punishable under Sections 307, 143, 147, 148, 149, 324, 294, 323, 427 and 506 of the Indian Penal Code. After investigation, charge-sheet was filed before the learned Magistrate and vide order dated 20.12.2014, the matter was committed the Court of Sessions at Yavatmal. On appearance of the accused persons, charges were framed against them for the offences mentioned in the charge-sheet. Prosecution in all examined 9 witnesses during the trial. The statement of all accused persons under Section 313 of the Code of Criminal Procedure, were recorded in which, it is their specific case of false accusations/implications. No witness in defence was examined.

(5) The learned Sessions Court after considering the submissions and assessing the evidence brought on record observed that prosecution has miserably failed to first of all prove that accused Nos.1 to 9 formed unlawful assembly and assaulted the family members of the complainant with sticks, iron rods and spear etc., thereby causing injuries to them. Accordingly, all the accused persons were acquitted for the said offences mentioned in the charge-sheet, which has been challenged by the original complainant on various

grounds as mentioned in the memo of appeal.

(6) We have heard at length, Ms. Gayatri Dive, learned counsel appearing for the appellant, Shri Atharva Manohar, learned counsel appearing for respondent Nos.2 to 10 (original accused persons) and Mr. V.A. Thakare, learned APP appearing for respondent No.1.

(7) Ms. Dive, learned counsel appearing for appellant vehemently argued that injuries caused to family members of the complainant clearly goes to show that they were brutally attacked by the accused persons with the help of sticks, iron rods, spear and since the complainant is an eye witness to the incident, she lodged the report with the police. The medical evidence clearly supports the ocular evidence of the witnesses, except minor variations. The learned counsel would submit that in a mob attack, it is quite difficult for the complainant or even the injured witnesses to tell exact weapons used by each of the accused persons *qua* the victim and others. She would submit that the learned trial Court committed error by observing that there is a discrepancy in the ocular evidence with that of medical evidence. In this respect, she invited our attention to the depositions

of the injured witnesses, namely, PW 2, PW 4, PW 6 and PW 7 with that of a medical evidence and would submit that minor discrepancies ought to have been ignored by the learned trial Court.

(8) Learned counsel would further submits that accused persons were against the complainant and her family members and without any provocation they gathered at the spot, armed with deadly weapons and started assaulting the victims. She would further submit that the depositions of the victims has to be appreciated on higher pedestal, as there is no possibility of falsely implicating others than the real culprit. In this regard, she invited our attention to the injuries as deposed by PW-8 – the Doctor. According to her, such injuries ought to have been considered as caused due to assault by the weapons like sticks, iron rods and spear etc., which the learned trial Court has ignored. Finally, she claimed that when deposition of victims are found to be trustworthy, conviction could be based on it, even if other evidence is ignored.

(9) Ms. Dive, learned counsel for the appellant placed reliance in the cases of *State of Rajasthan Vs. Bablu alias Om Prakash*, *AIR 2022 SC 1288*, *Masalti Vs. State of U.P.*, *AIR 1965 SC 202* and

Sakharam Gunaji Chavan and Ors. Vs. State of Maharashtra, 2016 (1) Bom.C.R. (Cri.) 117.

(10) Per contra, Mr. Manohar, learned counsel appearing for respondent Nos.2 to 10, vehemently argued that first of all, this is an appeal against acquittal and therefore, the parameters which this Court would have to consider while dealing with an appeal against acquittal are totally different. He would submit that the view taken by the trial Court is a plausible and possible view and that there is no illegality or perversity in the findings of the learned trial Court, so as to interfere in the appellate jurisdiction under Section 378 of the Code of Criminal Procedure.

(11) Mr. Manohar, learned counsel for respondent Nos.2 to 10, on merits of the matter would submit that ocular evidence is at variance with medical evidence and therefore, observations of the learned Sessions Court are perfectly justified. There is no need to disturb such findings which formed a possible view. He then would submit that there is a delay in sending a copy of FIR to the Magistrate and since, there is manipulation/alteration/addition of some of words, a possibility of tampering with such FIR cannot be ruled out. In this

regard, he submitted that the words inserted subsequently are with specific intention to implicate the respondents in a cognizable non-bailable offence and that too when there is a civil dispute pending between the family of the complainant and that of accused persons. He submitted that on perusal of the allegations in the FIR and the depositions of the witnesses, there is no case made out to prove that there was any intention on the part of the appellants or the assailants to kill the victims.

(12) Mr. Manohar, learned counsel would then submit that all the witnesses examined before the trial Court are only the injured and not a single independent witness was examined. Even the driver of a JCB machine was not examined. The statement of driver was not recorded during investigation. He therefore, would submit that all injured persons are interested witnesses and belongs to one family, who are in inimical terms with the respondents and other villagers. Panch witnesses for the panchnamas are also related to the victims. According to him, infact all the injured witnesses admitted that villagers of around 100 to 150 in numbers gathered at the spot and obstructed Gunwant and others, who came with a JCB machine with an intention to obstruct the way of the villagers through the

pandhan. Even the FIR shows that villagers attacked a JCB machine and the victims.

(13) Mr. Manohar, learned counsel then would submit that injuries caused to the victims were not due to the assault as alleged, but since they were obstructed by the mob of around 100 to 150 in numbers, they tried to escape and in that process sustained injuries. According to him, this possibility is the probable defence which cannot be ruled out.

(14) Mr. Manohar, learned counsel then would submit that other contradictions, omissions and improvement in the evidence of the prosecution witnesses would clearly make the entire case as highly suspicious. Even the deposition of the Investigating Officer and the witnesses shows that statements of the injured witnesses were recorded on multiple occasions, however, such statements were suppressed by the prosecution, without giving any explanation. Finally, he claimed that so called weapons attached during the investigation were never recovered from the accused persons. Such weapons were not sent to expert for the purpose of report. Even the clothes or the glass pieces of JCB machine though attached were not produced before the Court.

(15) Mr. Manohar, learned counsel then submitted that so called injuries found on the victims are not possible by the used of spear and therefore, the entire story appears to be a concocted and false story developed by the complainant in order to falsely implicate the accused persons. He placed reliance on the following decisions:-

(i) *Ranjit Singh Vs. State of Punjab and Ors.*, (with other connected matters) (2013) 16 SCC 752, *Taijuddin Vs. State of Assam and Ors.*, (2022) 1 SCC 395 and *Deo Narian Vs. State of Uttar Pradesh*, (2010) 12 SCC 298,

(ii) *Ishwar Singh Vs. State of U.P* (1976) 4 SCC 355,

(iii) *Ganga Prasad Vs. State of U.P reported in* (1987) 2 SCC 232 and *Balaka Singh and Ors. Vs. The State of Punjab*, (1975) 4 SCC 511,

(iv) *Hallu and Ors. Vs. State of Madhya Pradesh*, (1974) 4 SCC 300,

(v) *Lakshmi Singh and Ors. Vs. State of Bihar*, (1976) 4 SCC 394,

(vi) *Mahendra Singh and Ors. Vs. State of Madhya Pradesh*, (2022) 7 SCC 157, *Subhash Yetal Wagh Vs. State of Maharashtra*, 2013 SCC

OnLine Bom 2154 and Sujit Gulab Sohatre and Ors. Vs. State of Maharashtra, (1997) (2) Mh.L.J. 142,

(vii) *Keshav Gangaram Navge and anr. Vs. State of Maharashtra, 1971 (1) SCC 513 and Ram Lakhan Singh and Ors. Vs. State of Uttar Pradesh, (1977) 3 SCC 268,*

(viii) *Babubhai Vs. State of Gujarat and Ors. (with connected matters) reported in (2010) 12 SCC 254,*

(ix) *Ravi Sharma Vs. State (Government of NCT of Delhi) and anr., (2022) 8 SCC 536, State of Goa Vs. Mr. Rosario Ferrao, (2023) ALL MR (Cri.) 493 and Kanju Muhammed Alias Khumani and anr. Vs. State of Kerala, (2004) 7 SCC 193,*

(x) *Ashok Nagorao Chaudhari Vs. State of Maharashtra, reported in 2001 (2) Mh.LJ. 31 and Jai Narain Mishra and Ors. Vs. State of Bihar, 1971 (3) SCC 762,*

(xi) *Nasru Vs. State of U.P., 1994 Supp (2) SCC 493 and Narayan Ramu Noukudkar Vs. State of Maharashtra, 2014 SCC OnLine Bom 937,*

(xii) *Arshad Hussain Vs. State of Rajasthan, (2013) 14 SCC 104 and*

(xiii) *Kanju Muhammed Alias Khumani and anr. Vs. State of Kerala, (2004) 9 SCC 193 and Firozkhan alias Firdoskhan s/o Jabajkhan and and Vs. State of Maharashtra in Criminal Appeal No.150/2012 decided on 27.07.2022.*

(16) Mr. Thakare, learned APP appearing for the State would fairly submit that decision of the learned trial Court appears to be a probable and possible view under the circumstances.

(17) Rival contentions fall for the consideration as under:

(i) Whether the prosecution succeeded in proving that all the accused persons formed unlawful assembly and had a common object to commit or attempt to murder ?

(ii) Whether the prosecution succeeded in proving that all the accused persons were armed with deadly weapons like iron rods, sticks, spear while members of unlawful assembly with a common object ?

(iii) Whether the prosecution succeeded in proving that accused persons attempted to commit murder of Gunwant, Anusaya, Kavita, Vijesh, Akshay and Natthuji ?

(iv) Whether prosecution succeeded in proving that all the accused persons while members of unlawful assembly insulted and threatened the victim, thereby provoking them to breach public peace ?

(v) Whether prosecution succeeded in proving that all the accused persons being a members of unlawful assembly and with common object committed mischief by causing damage to the JCB machine.

(18) In all 9 witnesses were examined during trial out of which appellant/complainant was examined as PW-1. Shivdas was examined as PW-2 (spot panch witness). Gunwant (victim) was examined as PW-3. Anusaya (victim) was examined as PW-4. Vinod (panch for attachment of clothes) was examined as PW-5. Kavita (victim) was examined as PW-6. Vijesh (victim) was examined as PW-7. Arshiya Raheman Shaikh, the Doctor, attached to the hospital was

examined as PW-8 and PSI, Sachin Kashinath Selukar as PW-9.

(19) Some of documentary evidence were produced, such as FIR at Exh.46, scene of offence Panchanama at Exhibit 48, seizure Panchnamas at Exhibit Nos.50, 55, 56, 98 to 103 and 113, map of the spot of incident at Exhibit 51, injury certificates at Exhibit Nos.74, 78, 81, 84, 87 and 89, the letter correspondence, opinions, arrest panchnamas, invoice challans and extract of station dairies are the other documents.

(20) Some of the admitted facts are that Natthuji owned four acres agricultural land in village Umri (Smarak). Complainant and other victims are all his family members. Said Natthuji expired during pendency of the trial proceedings. The field of late Natthuji was earlier owned by Sudhir Kapse. Since the time Natthuji purchased the said property, dispute between Natthuji and his family members on one part and other villagers on other side started in connection with pandhan way situated in between the field of Natthuji and one Shinde. It was the contention of Natthuji that said pandhan way is passing from the field of Shinde. Admittedly, there were number of cases filed between Natthuji and Shinde, before the Revenue Authorities. Prior to

the alleged incident of assault i.e. on 16.05.2013, Tahsildar of Babhulgaon, by his order directed Natthuji and Vishwanath Shinde to open the said pandhan by removing obstructions. Natthuji challenged the said order before the Additional Collector, Yavatmal, which was partly allowed by directing to conduct re-enquiry by the Tahsildar. Be that as it may, subsequently the Tahsildar on conducting fresh enquiry held that Natthuji close the said pandhan way and therefore, directed him to remove obstruction. An appeal preferred against this order of Tahsildar was dismissed on 06.04.2016. Even the Revenue Minister vide its order dated 06.06.2017, held that said pandhan is a public way and required to be kept open for public used. This history is necessary to understand the allegations made against Natthuji and his family members by the villagers, at the time of alleged incident, which are clearly reflecting in the FIR itself. On 13.03.2013, the appellant/complainant lodged a report at Babhulgaon Police Station, wherein she alleged as under:

(21) That on 13.10.2013, her brother-in-law by name Gunwant brought one JCB in order to remove the water blocked in the Nala and in order to close the pandhan way. Said Gunwant along with

Natthuji, Kavita, Anusaya, with the JCB machine proceeded towards the field and when they reached near a cow shed belonging to Shinde, villagers obstructed the JCB machine and questioned Gunwant and Natthuji, as to why he wants to close the pandhan way. When they were obstructed, quarrels started in which the villagers abused Gunwant and Natthuji and other members with filthy words. At that time, the villagers were armed with sticks, iron rods and spear and they assaulted Natthuji, Gunwant and other family members, thereby causing bleeding injuries. In that process, accused No.2 – Ramdas assaulted Gunwant on his head with a spear. Accused No.2 – Ramdas also assaulted Anusaya, with the spear on her head. Accused No.1 – Shailesh assaulted Kavita and Gunwant with the help of sticks. Accused No.4 – Ambadas and accused No.3 were armed with sticks and they assaulted Natthuji. Accused No.5 – Sandip and accused No.6 – Gajanan, were armed with iron rods, whereas accused No.7 – Vijay, accused No.8 – Ravi and accused No.9 – Suhanand, were armed with sticks and iron rods and assaulted Natthuji, Gunwant, Anusaya, Kavita and Akshay. All these accused persons also damaged the JCB machine and broke the glass.

(22) Mr. Manohar, specifically pointed out the last line in the complaint which is found to be written in pen, whereas entire contents of the complaint are found to be recorded with the help of computer. The last line which is added reads “all above persons armed with sticks, spear and iron rods assaulted and attempted to commit murder”. In this respect, Mr. Manohar, would submit that this line was subsequently added only to bring the matter under Section 307 of the Indian Penal Code, which is evident from the record. He would submit that the Police Station Officer of Babhulgaon Police Station was duty bound to forward a copy of FIR with immediate dispatch to the concerned Magistrate. He submitted that FIR was registered on 13.10.2013 at 13:50 hours, however, a copy of this FIR was not forwarded to the concerned Magistrate on the same day, but it was forwarded on the next day, without any plausible reason.

(23) It is admitted fact that only injured persons were examined before the trial Court. The other witnesses are panch witnesses, the Medical Officer and the Investigating Officer. Not a single independent witness was examined by the prosecution to corroborate contentions raised by the injured witnesses. Surprisingly,

the JCB driver was not identified by the Investigating Officer and no statement of such witness was recorded during the investigation. The JCB driver was a crucial witness.

(24) All injured witnesses including the complainant admitted only in cross-examination that a mob of around 100 to 150 villagers gathered on the road and obstructed JCB machine from proceeding ahead in the field. Immediately, thereafter quarrel started between the villagers, Natthuji and his relatives and others. In this backdrop, evidence of injured witnesses needs to be assessed, so as to find out whether view taken by the trial Court is a possible view.

(25) At this stage, while dealing with an appeal against acquittal we are conscious about settled proposition of law as laid down by catena of decisions and cited by Mr. Manohar, as discussed above. It is not necessary to deal with all these cases individually. Suffice it to say that the Apex Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following:-

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by

the order of acquittal passed in his favour by the trial Court.

(ii) Accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal.

(iii) Though, the powers of appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but appellate Court is generally loath in disturbing the finding of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanour of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of appellate Court in interfering with such conclusions is fully justified and

(iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of trial Court.

(26) Keeping in mind the above settled proposition of law culled out from the catena of decisions, it is clear that unless the conclusion reached by the trial Court is found to be palpably wrong or based on erroneous view of law or if such conclusions are allowed to stand, they are likely to result in grave injustice, reluctance on the part of the appellate Court in interfering with such findings is fully justified.

(27) The appellate Court in appeals against acquittal had to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon evidence on record that the order of acquittal is liable to be interfered with or disturb, then only the appellate Court should act in accordance with law. In the recent case of **Ravi Sharma** (*supra*) the Hon'ble Apex Court considered all earlier

decisions and observed that the findings of fact recorded by a Court can be held to be perverse, if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A findings may also be said to be perverse if it is “against the weight of evidence”, or if the findings so outrageously defies logic as to suffer from the vice of irrationality. Similarly, if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

(28) Having observed above settled propositions, we would like to discuss oral as well as medical evidence of the witnesses in order to consider submissions raised on behalf of appellant.

(29) PW-1/complainant deposed that on 13.10.2013, Gunwant was going to the field with JCB machine. He was accompanied by Anusaya, Vaijesh, Kavita and Akshay. Thus, according to the complainant, five of her family members were proceeding along

with JCB machine to the field. She then claimed that on seeing the JCB machine with Gunwant, the villager thought that Gunwant and others came with JCB machine to close the pandhan way. She then deposed that the villagers started assaulting Gunwant, Anusaya, Natthuji, Akshay and Vijesh, the villagers also abused them in filthy language. She then deposed that Ramdas/A-2, Sita/A-3 and Shailesh/A-1 assaulted them. Ravi/A-8, Ambadas/A-4, Viju/A-7, Suhanand/A-9, Sandip/A-5, Gajanan/A-6, also assaulted with weapons and sticks. She clarified that weapons means Bhala/spear. The JCB machine was damaged.

(30) PW-1 claimed that Gunwant sustained injury on his head, Anusaya sustained bleeding injury on her both hands, Kavita sustained mute injuries, Vijesh and Akshay sustained injuries on their left leg. She then claimed that Ramdas/A-2 assaulted Gunwant. Sita/A-3 and Shailesh/A-1 assaulted Gunwant and Anusaya. Vijesh, Kavita and Akshay were also assaulted by all the accused persons. Accordingly, she lodged the report at Babhulgaon Police Station. During cross-examination, she admitted that the field of Natthuji is situated on Umri to Chondi pandhan way. She then admitted that on

both sides of the said pandhan, there are fields of various villagers including accused persons. She then claimed that the said pandhan is situated since the time which she has seen from the time of her marriage. She then admitted that the agriculturists are having only that pandhan way to cultivate their fields. She then admitted that on 13.10.2013, it was Desshera festival and it was a period of harvesting. She further admitted that the dispute was between Natthuji and villagers about the said pandhan way and it was going on even prior to the date of incident. She then admitted that it was the contention of the Natthuji that said pandhan has to pass from the field of Shinde. Natthuji purchased the said field from Sudhir Kapse. Till the time said field was owned by Sudhir Kapse, there was no dispute between him and the villagers. She then admitted that after the incident, Tahsildar, Pathwari and Talathi visited the site and demarcated the way, which proceeds by the side of cattle shed of Shinde. Finally, she admitted that when Gunwant brought JCB machine, a mob of 100 to 150 villagers gathered the spot. She admitted that Shailesh/A-1 was a school going boy at that time. She then admitted that there was some function in her house, on that day being a Desshera festival. She claimed that at around 100 to 150 villagers obstructed the JCB

machine near the field of Shinde. The villagers told the JCB driver not to close the way of villagers. The glasses of JCB machine were broken by means of stones and sticks. She then admitted that her family members were requesting villagers, not to damage a glass of JCB, however, people were not listening. She then admitted that incident happened in presence of JCB driver.

(31) PW-2 Shivdas claims to be spot panch witness, however, his deposition is cryptic, wherein he claimed that police called him on the way adjacent to the field of Shinde for Panchanama. The said spot is near the field of Sudhir Kapse and Shinde. On the spot, glass pieces were lying and there were blood stains. Police collected pieces of glass from the spot. He identified the Panchanama at Exhibit 48. During cross-examination, Shivdas admitted that since his childhood, he knew that there is pandhan way in village Umri from Chondi and from one side of the said pandhan, there is a field of Shinde and on the other side, there is field of Sudhir Kapse. Near about 25 to 30 agriculturists used that pandhan way for cultivation. Finally, admitted that he is related to Natthuji. It is thus clear that this witness specifically claimed that blood stains were lying on the spot,

which is contrary to the evidence of the Investigating Officer. Similarly, being a relative of Natthuji, one of the victim, he is an interested witness. There is a dispute with regard to the spot of the occurrence, as the victims and the complainant are deposing contrary to the panchanama, which creates serious doubt.

(32) The spot panchanama at Exhibit 48 shows that the scene of offence is on the kaccha road proceeding from Umri (Smarak) to Chondi. The said kaccha road is of 14 feet of width. On the east of the said road, there is a field of Sudhir Kapse which was purchased by Natthuji and on the south of the field of Shinde, there is field of Natthuji. A panchnama further shows that on the said road, some glass pieces were found and nothing else. It is specifically mentioned that after the incident, it had rained and therefore, road was found wet and hence, no blood stains were noticed. However, PW-2 in his deposition specifically stated that apart from glass pieces, blood stains were lying on the spot. This shows that PW-2 being a relative of the victim Natthuji and an interested witness, improvised by claiming presence of blood stains, which did not find any reference in the Panchanama.

(33) PW-3 Gunwant deposed that on 13.10.2013, he along with his father, wife, sons and daughter, as well as wife of his brother, namely, Maya, were proceeding with a JCB machine to clear the water accumulated in their field. At that time, the accused persons abused them and assaulted him and his wife, by means of spear, iron rods and sticks. Ramdas/A-2, assaulted him and his wife with spear, due to which, he sustained head injury on the back left side and the blood started coming out. He sustained a mute injury on his leg, and wrist also. His wife Anusaya sustained injuries on her both hands, due to assault by spear. There was cutting injury to her right palm and blood started coming out. His daughter sustained bleeding injury on her leg and mute injuries on other part of body. His son Vaijesh sustained bleeding injury on his left leg near knee. His father Natthuji sustained cutting injury of his left hand and blood started coming out. The accused damaged JCB machine. Thereafter, all of them went to the hospital. During cross-examination, PW- 3 Gunwant, admitted that he brought JCB machine for removing saturated rain water from his field and also for closing the way of his own field. He claimed that there is no way from his field used by any other villagers. He denied the contention that on 16.03.2013, Tahsildar passed an order against

his father Natthuji for clearing the way to the public. However, he claimed that his father preferred an appeal against the villagers. He admitted that the Additional Collector, has decided the case against his father. He further admitted that the Minister of Revenue, passed an order on 06.06.2017, directing the State Government Officers to clear the said way.

(34) During further cross-examination, PW-3 Gunwant was confronted with the statements, wherein material contradictions and omissions have been recorded and proved through the Investigating Officer. He then admitted that about 100 and odd villagers gathered at the spot, at the time of said incident. Though, he denied about making any statement to the police that the villagers were telling Natthuji, not to close the pandhan way, he was confronted with such portion and it was proved through the Investigating Officer. He claimed that on 13.10.2013, he personally did not visit the police station, however, at around 1:00 p.m. the police came to the hospital and he disclosed to the police, about the incident, which was reduced in writing as per his narration. Similarly, at around 2:00 p.m. police visited his village Umri and again enquired with him about the

incident. At that time, police told him that his statement required to be recorded again and accordingly, he gave statement. He then showed ignorance about the name of the owner and the driver of the JCB, but admitted that he hired the said machine on hourly basis. He then admitted that he did not show the spot of incident to the police and claimed that that map attached that Exhibit 51, showing the spot is not correct. According to him, the place of incident is towards southern side and a map at Exhibit 51 is not correctly showing the place of incident.

(35) PW-4 Anusaya wife of Gunwant, deposed that she along with her husband, father-in-law, children, were going to the field on 13.10.2013. It is necessary to note that PW-4, did not utter a word about presence of PW-1 Maya, along with them at the spot. She then deposed that on the way accused persons assaulted them by means of spear, sticks, iron rods etc. She they specifically claimed that accused assaulted her with the spear on her right hand palm and left hand. The accused also assaulted her husband, father-in-law and her children. Thereafter, they were taken to the hospital and after medical examination, their clothes were seized under the panchanama.

(36) During cross-examination, PW-4 Anusaya was confronted with her statement and such confrontations have been proved through the Investigating Officer. She then stated that her statement was recorded by the police at 2:00 p.m. in her house and along with her statement, the statements of her husband, father-in-law and children were also recorded. She categorically admitted that the statement of others were recorded as per the statement of her husband.

(37) At this stage, it is necessary to note that major contradictions were marked in the deposition of Anusaya. She did not disclosed specifically which accused assaulted her, however, generally she has disclosed that all the accused persons assaulted them with the weapons. She denied specifically of stating to the police that the mob of villagers gathered and prevented them from closing the way on the pandhan with the JCB machine, which has been admitted by the other witnesses.

(38) PW-5 Vinod is the panch witness, in whose presence clothes of the victims were attached in the hospital. These panchanamas are at Exhibits 55 and 56. During cross-examination, he

admitted that he is resident of District – Hingoli. He voluntarily stated that for the purpose of Desshera festival, he came to the house of victim. Thus, it shows that he is also related an interested witness. He admitted his relationship with Natthuji and claimed that he reached the hospital at around 12:30 p.m. and at that time, police requested him to act as a Panch witness.

(39) PW-6 Kavita deposed that she along with her father, mother, brother and grandfather were going to the field. Her father Gunwant was taking JCB machine for removing saturated rain water from the field. The villagers obstructed JCB machine and abused her grandfather Gunnaji, with filthy words. She claimed that accused No.1-Shailesh, assaulted her on both thighs and wrists. Ramdas/accused No.2 assaulted her father by means of spear on his head. Her mother was assaulted on her left palm and right hand. She then claimed that other accused persons assaulted her father with sticks. Said accused persons also assaulted all of them with sticks. Thereafter, the accused persons damaged JCB machine. All of them went to the hospital for treatment. During cross-examination, she admitted that incident took place at the distance of 50 feet from the

locality. She admitted to the police stating that the JCB machine was brought to the close way. She then claimed that Akshay is her cousin, however, she was not aware, whether Akshay had any knowledge about the incident. She specifically admitted that Akshay was not there along with them, at the time of alleged incident.

(40) She then admitted that at the time of incident, there were about 100 persons present, who are the villagers. She then claimed that the incident took place near the cow shed of Shinde and specifically denied the spot of the incident on Umri to Chondi pandhan way. She admitted that the dispute between her grandfather and villagers was about the pandhan and it was a long standing dispute. She then admitted that villagers told her grandfather not to close the way and only on that point dispute arose. She then admitted specifically that her grandfather Natthuji told the villagers that he going to close the way and on saying, quarrel took place. She then claimed that the accused persons pelted stones, but in the same breath, she further claimed that the accused did not pelt the stone, but assaulted them. She then admitted that it was a say of the villagers that her grandfather was illegally closing the way.

(41) PW-7-Vaijesh claimed that he along with his father, mother, grandfather and sister were proceeding towards the field with a JCB machine. The accused persons abused his grandfather and told him that he is obstructing their way. The accused assaulted them. He was assaulted on his left leg and blood was coming out. During cross-examination, Vaijesh claimed that Akshay was along with them for the whole time and he knew about the incident. He then admitted that there was assault on his cousin Akshay also. The contradictions were marked and proved through the Investigating Officer.

(42) Admittedly, said Akshay is not examined, who claims to be one of the injured witness. No independent person from the village was examined by the prosecution. Perusal of the charge-sheet shows that the Investigating Officer even did not attempted to record statement of any villager or an independent person. Similarly, the driver of JCB machine, who was a witness to the entire incident is not examined or even identified. There is no explanation coming from the prosecution on these material aspects.

(43) PW-8-Dr. Shaikh, deposed that on 13.10.2013, she was attached to the rural hospital at Babhulgaon and on that day, she examined Natthuji at 10:30 p.m. and found the following injuries :

(i) Lacerated wound of size 2 x 2 x 3 cm. over left hand caused by sharp weapon probable age of injury within 2 to 3 hours. Healing period 10 to 15 days,

(ii) Abrasion of size 1 x 1 x 1 cm. over left elbow caused by sharp edged weapon probable age of injury within 2 to 3 hours. Healing period 6 to 7 days.

(44) PW-8 then examined Gunwant at 1:30 p.m. and found two injuries :

(i) Lacerated wound of size 2 x 2 x 2 cm. over left parietal region caused by sharp blunt weapon probable age of injury within 2 to 3 hours. Healing period 15 to 20 days,

(ii) Contusion of size 1 x 1 cm. over back caused by blunt weapon probable age of injury within 2 to 3 hours. Healing period 10 to 11 days.

(45) She then examined Anusaya, again at 1:30 p.m. and found following two injuries :

(i) Incised wound of size 2 x 3 x 3 cm. over right hand caused by

sharp edged weapon probable age of injury within 2 to 3 hours.

Healing period 15 to 20 days,

(ii) Laceration of size 2 x 2 x 2 cm. over left forearm caused by blunt weapon probable age of injury within 2 to 3 hours.

Healing period 6 to 7 days.

(46) PW-8 then examined Kavita, again at 1:30 p.m. and found three injuries as under :

(i) Contusion of size 2 x 2 x 2 cm. over back caused by blunt weapon probable age of injury within 3 to 4 hours. Healing period 6 to 7 days,

(ii) Contusion of size 2 x 2 cm. over left knee caused by blunt weapon probable age of injury within 3 to 4 hours. Healing period 6 to 7 days.

(iii) Contusion of size 1 x 1 cm. over left hand caused by blunt weapon probable age of injury within 3 to 4 hours. Healing period 6 to 7 days.

(47) She then examined Vaijesh, again 1:30 p.m. and found the following injury:

(i) Abrasion of size 2 x 2 cm. over right knee caused by blunt weapon probable age of injury within 2 to 3 hours. Healing period 7 to 8 days.

(48) Finally, she examined Akshay, again at 01:30 p.m. and found one injury as under:

(i) Laceration of size 1 x 1 cm. n left hand thumb caused by blunt weapon probable age of injury within 2 to 3 hours. Healing period 6 to 7 days.

(49) Finally, the prosecution examined the Investigating Officer, who depose about the investigation and their seizure of one stick from the possession of accused No.1, one spear from accused No.2-Ramdas, one stick from accused Ambadas, one stick from accused Sandip, one stick from accused Ravi and one iron rod from accused Sahunand, under the Panchanamas vide Exhibit Nos.98 to 103. Admittedly, these seizures of the alleged weapons are not under Section 27 of the Indian Evidence Act. Such seizures are recorded casually under the panchnama. Weapons were not sealed and forwarded for the examination of expert.

(50) During cross-examination, PW-9 admitted that along with the informant/PW-1, all the injured came to the police station. This fact has been denied by most of the injured witnesses. PW-9 then deposed that he reached the spot of the alleged incident, JCB machine was not found at the said place and on enquiry, he was told that the JCB machine was taken away from the spot. However, perusal of the spot panchnama shows the presence of JCB machine in the diagram. There is no explanation from the Investigating Officer, as to how the sketch attached to the panchnama shows the JCB machine at the time of conducting such panchnama.

(51) PW-9 then admitted that he did not record the statement of driver of JCB, as he was unable to trace the owner. We are unable to accept such statements as JCB machine was hired by Gunwant.

(52) PW-9 then admitted that seized glass pieces were not produced before the Court. He again admitted that he did not seal the seized weapons as well as the clothes attached from the victims.

(53) All contradictions which were noted in the

depositions of the prosecution witnesses were put to the Investigating Officer, and were duly proved. Perusal of cross-examination of PW-9 would go to show that all these contradictions are material contradictions, which goes to the root of the depositions and would clearly create serious doubt about credibility of the witnesses.

(54) PW-9 then admitted that as per his investigation, the incident took place on Umri sadak to Chondi road, which is having a width of 14 feet. He then admitted that the villagers were using the way from Umri sadak to Chondi. He also admitted that all the witnesses stated before him that for closing the way, JCB machine was called. He also admitted that there are orders passed by Competent Authority directing Natthuji not to close the way. It is quite surprising, when the Investigating Officer states in his cross-examination that besides the family of Natthuji, no any other person witnessed the incident. This statement of PW-9 is quite contrary to the statements of the injured, who admitted that around 100 to 150 villagers gathered at the said spot and witnessed the alleged incident.

(55) With these material on record, the learned trial Court observed that there are major contradictions and discrepancies

in the depositions of the material witnesses. Similarly, ocular evidence is not supported by medical evidence. We found that injuries deposed by the witnesses are not supported by the medical evidence. If the case of injured witnesses is accepted of assault by all the accused persons with the deadly weapons like sticks, iron rods, spear, then more serious injuries would have been found on injured persons, Natthuji, Gunwant and others. The injuries recorded by PW-8- the Doctor, are all minor injuries and they are not supporting the ocular version of the injured witnesses. There is a clear conflict between ocular evidence and that of the medical evidence, which creates serious doubts about the contentions raised by the injured witnesses, about the so called assault.

(56) The view taken by the learned trial Court is considered to be possible view and therefore, even if another view is arrived at, the same cannot be disturbed as such view is not considered to be perverse or without any evidence. Admittedly, all the witnesses claimed that there were around 100 to 150 villagers, who obstructed Natthuji and Gunwant from carrying the JCB machine and closing the way. The friction between Natthuji and his family members on one

side and villagers on the other side took place only because Natthuji had intention to close the way. Admittedly, there is a civil dispute pending between the parties.

(57) It is true that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict accused persons, whereas evidence given by half a dozen witnesses, which is not trustworthy would not be enough to sustain the conviction. Where the Criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses, who give a consistent account of incident. In a sense, the test may be described as mechanical, but it cannot be treated as irrational or unreasonable. It is, no doubt, the quality of evidence that matters and not the number of witnesses who give such evidence. But, sometimes it is useful to adopt a mechanical test. The above observations are found in para 16 in the case of *Masalti (supra)*. The matter in hand is also similar in nature as prosecution has only examined family members of Natthuji even though there were around

150 villagers present at the spot. It is difficult to accept that not a single person from the said village was ready to depose before the Court. Surprisingly, the Investigating Officer made a statement in the cross-examination that apart from family members of Natthuji, no one witnessed the incident, which is totally against the deposition of injured witnesses.

(58) In a friction, ridden village community, there is always tendency to implicate innocent also along with the guilty, especially when a large number of assailants are involved in the commission of offence. The evidence in such cases is bound to be partisan, but while the Courts cannot take an easy route to rejecting out of hand such evidence only on that ground. What ought to be done is to approach the depositions carefully and scrutinized the evidence more closely to avoid any miscarriage of justice.

(59) In the present matter, depositions of prosecution witnesses are not inspiring confidence which has been observed by the trial Court and which we also endorsed. The version of eye witnesses on careful assessment and evaluation found that they lack the credibility.

(60) Since, the observations of the learned trial Court which found to be reasonable and plausible under the circumstances, we do not find any reason to disturb such findings for want of material which could be considered as absolute assurance of the guilt of the accused.

(61) Having said so, the appeal fails, and thus stands dismissed.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

Prity