



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.152 OF 2005

1. Ganesh Narayan Waman
Age : 23 yrs, Occ : Pvt. Service,
R/o Warul Temple, Nalegaon,
Ahmednagar.
 2. Bhausahab Dattatraya Agarkar
Age : 20 yrs, Occ : Education,
R/o Datrange Mala, Ahmednagar.
 3. Shrikant Uttamrao Misal,
Age : 21 years, Occ : Education,
R/o Bagroja, HUDCO Colony,
Ahmednagar.
 4. Vijay s/o Bhimraj Chitale,
Age : 30 years, Occ : Service,
R/o Nalegaon, Ahmednagar.
 5. Ajay s/o Bhimraj Chitale,
Age : 28 yrs, Occ : Service,
R/o Nalegaon, Ahmednagar.
- ...Appellants/ accused
- *Versus* -

The State of Maharashtra.

...Respondent/ State.

AND

CRIMINAL APPEAL NO.161 OF 2005

Satish @ Baba s/o Bhagwan Sanap,
Age : 25 years, Occupation : Education,
R/o C/o Government Quarter No.14,
In the premises of PWD Rest House No.2,
Aurangabad Road, Ahmednagar.

...Appellant/ accused No.6

- Versus -

The State of Maharashtra.

...Respondent/ State.

...
Shri Satej S. Jadhav, Advocate for the appellants/ accused in Criminal Appeal No.152/2005.

Shri S.S. Jadhavar, Advocate for the appellant/ accused No.6 in Criminal Appeal No.161/2005.

Shri C.V. Bhadane, APP for the respondent/ State.

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 24 November 2025

ORAL JUDGMENT :-

1. By these two appeals filed under Section 374(2) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellants/ accused Nos.1 to 6 challenge the judgment and order dated 01.03.2005 passed by the learned 4th Ad-hoc Additional Sessions Judge, Ahmednagar, in Sessions Case No.194/2004 by which, the appellants/ original accused Nos.1 to 6 have been convicted for offences punishable under Sections 143, 147, 148, 332, 333, 337, 353, 325 r/w 149 of the Indian Penal Code, 1860 (for short, 'the IPC') and they are sentenced as under:-

(a) For the offence punishable under Section 143 of the IPC, the appellants are sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- each, in default of payment of fine, they are directed to suffer further simple imprisonment for one month each.

(b) For the offence punishable under Section 147 of the IPC, the appellants are sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- each and in default, to suffer further simple imprisonment for one month each.

(c) For the offence punishable under Section 148 of the IPC, the appellants are sentenced to suffer rigorous imprisonment for 18 months and to pay fine of Rs.600/- each and in default, to suffer further simple imprisonment for one month each.

(d) For the offence punishable under Section 333 r/w 149 of the IPC, the appellants are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/- each and in default, to suffer further simple imprisonment for two months.

(e) The offences punishable under Sections 332, 353,

325 r/w 149 of the IPC and under Section 337 of the IPC, are covered by the offence punishable under Sections 333 r/w 149 of the IPC, hence, no separate punishment is awarded for the said offences.

(f) Substantive sentences are directed to run concurrently.

(g) The appellants are acquitted for the offence punishable under Sections 295 r/w 149 of the IPC and Section 135 r/w 37(1)((3) of the Bombay Police Act.

2. The brief facts leading to filing of the present appeals are as under:-

(a) The prosecution case is that on 15.03.2003 at about 01:30 am, the informant PSI Shinde (PW-1) lodged the FIR bearing crime No.76/2003 with the Kotwali Police Station, Ahmednagar, for the offences punishable under section 143, 147, 148, 353, 295, 332, 333, 326 r.w. 149 of I.P.C. and under section 135 r.w. 37 (1) (3) of Bombay Police Act. It was alleged that in the year 2003, informant PSI Shinde was attached to Kotwali Police Station, Ahmednagar alongwith HC Shaikh Akbar, PC

Dhole, PW 2 Dhavale, Sherkar, Pavashe and HC Sayyad attached to L.C.B. Ahmednagar. On 14/3/2003, there was Moharam and there was procession thereof alongwith two Sawari from Ahmednagar city. Hence, from 12.00 noon, till immersion of Sawari and end of procession, the police bandobast was deployed on both sides of procession in parallel manner, so as to have effective check on rioters and mobbers. Accordingly, the procession had started at 12.00 noon and, at 7.30 pm, it was reached at Delhi-gate. Therefore, above said police party had proceeded towards Nilkranti chowk where immersion of the procession and Sawari was to be performed. At that time, from passersby, said police party came to know that at Delhi-gate, some persons are pelting stones and hence, there was hotchpotch. Therefore, said police party, alongwith PI Pachpute, PSI Shinde and Shelke had rushed towards Delhi-gate and noticed that from Nepti Naka, mob of Mohammedans is coming while pelting stones. At that time, the police party had convinced them to maintain peace and then succeeded in dispersing the mob. However, at that time, the mobbers pelted stones out of which, one stone hit on the person of PI Pachpute, due to which he had sustained bleeding injury. Hence, he was taken to civil hospital,

Ahmednagar.

(b) Then the said police party rushed towards Chaupati Karanja and when they noticed mob of Hindus gathered from Nalegaon side, they gave call to maintain peace and dispersed them. Then they have been at Zarekar lane and on the road situated behind District Court, they noticed that the mob was pelting stones. Simultaneously, there was news about some mobbers have pelted stones on Faraskhana mosque. Hence, the said police party had rushed there by mobile van and gave call to the mobbers to maintain peace and dispersed the mob which was of about 200 persons including present accused. Then, again they have been at Chaupati Karanja and at that time, the mob consisting of accused nos.1 to 6 and other 200 persons have pelted stones on the police party with intent to restrain them from discharging their duty of public servant in lawful manner. In the said stone pelting, one stone hit on the mouth of PW-1 PSI Shinde and he had sustained contusion and dislocation of right canine tooth and right first pre-molar tooth of lower jaw with profuse bleeding. Therefore, the press reporters had carried him in Civil Hospital, Ahmednagar for medical treatment where he

was treated by PW 4 Dr. Swati Naik. Thereafter, PW 1 PSI Shinde had lodged the said report with Kotwali Police Station.

3. Criminal law was set into motion. The investigation of crime was handed over to PW-3 PSI Bondar. The spot panchanama was carried out. The accused were arrested. Necessary evidence was collected. After completion of investigation, the charge-sheet was filed in the Court of J.M.F.C. Ahmednagar on 18.06.2003. Then, the said Court has committed case to the Sessions Court, Ahmednagar by his order dated 06.11.2004. Thereafter, the charge vide exhibit-27 came to be framed, which was read over and explained to the accused persons/ appellant in vernacular, to which they have pleaded not guilty and claimed to be tried. The prosecution has examined the following witnesses:-

PW No.	Name of witness	Significance/ role
PW-1	PSI Shinde	Informant. Injured eyewitness to unlawful assembly and stone pelting.
PW-2	Police Constable Dhavale	Eyewitness accompanying PW-1. Identified accused and described mob conduct.
PW-3	API Shri Bondar	Investigating Officer.
PW-4	Dr. Swati Naik	Medical Officer. Examined PW-1 injured witness.

4. After recording evidence and hearing the appellants and prosecution side, learned 4th Ad-hoc Additional Sessions Judge was pleased to pass the impugned judgment. Hence, the instant appeals filed by accused Nos.1 to 6.

5. Learned advocate Shri Satej Jadhav for the appellants/ original accused Nos.1 to 5 in Criminal Appeal No.152/2005 as well as learned advocate Shri S.S. Jadhavar appearing for the appellant/ accused No.6 in Criminal Appeal No.161/2005, vehemently submitted that the learned Sessions Judge committed grave error by convicting the appellants as it has not properly appreciated evidence brought on record. The prosecution has failed to prove guilt of the appellants beyond reasonable doubt. Learned advocates submitted that accused No.1 was Councillor from Nalegaon Ward and accused Nos.4 and 5 are his brother-in-law and therefore, they have been falsely implicated. Accused No.4 was serving as primary teacher in Sangamner taluka and he was not present on the spot at the time of incident and he has also been falsely implicated. Accused No.6 specifically stated that since 2003, he was the President of Students Union in Ahmednagar city and therefore, he has been

falsely implicated.

6. Learned advocates further submitted that in the incident of large mob where there were about 200 people involved and the stone pelting allegedly took place at night hours and in such situation, it is very difficult to believe that out of mob of 200 people, only the appellants/ accused have been identified by the informant. Therefore, it was not appropriate for the learned Sessions Judge to base the conviction particularly when there was no test identification parade. The FIR itself mentioned that there were many unknown persons involved in the mob. Thus, the naming of the appellants/ accused by the informant is based on wrong assumption. Assuming that the appellants were present in the mob, that does not mean that the appellants were part of unlawful assembly or that they had shared common intention of attack on the police party. The prosecution has not proved that the appellants threw any stone or instigated others to do so. In such situation, Section 149 of the IPC cannot be applied mechanically.

7. Learned advocates strenuously submitted that all witnesses examined by the prosecution are police personnel and

one is medical officer. No independent witness from civilian has been examined, though it is alleged that there was mob of about 200 people. Thus, the witnesses examined by the prosecution are interested witnesses and their testimonies cannot be relied upon.

8. Learned advocates for the appellants further submitted that the prosecution has alleged that in the said incident, stones, bricks and other materials were involved or were allegedly thrown towards the police party, however, nothing has been seized or produced before the Court to prove the guilt of the appellants beyond reasonable doubt. The prosecution also did not produce photos or video recordings before the Court, though it is alleged that photographers and video persons were present at the spot to record huge procession. There is no proof to show that it was only these six appellants who were leading procession and they were pelting stones towards the police party. There are lot of lapses in investigation. Though there were panch witnesses to the spot panchanama, however, they were not examined. Though injured PSI Shinde (PW-1) received grievous injury, but there is no evidence to show which accused/ appellant threw the stone. Learned advocates, therefore, submitted that

unless and until the assaulting accused is identified, the conviction under Section 325 r/w 149 of the IPC cannot be applied. In order to prove offences involved in the present case, the prosecution is required to prove its case beyond all reasonable doubt. Merely because, the appellants were allegedly part of the mob, cannot be sufficient to hold that they have pelted stone or instigated others to do so. The prosecution has not conducted a test identification parade though the accused were not previously known to PW-1 or PW-2. Learned advocates, therefore, submitted that the instant appeals be allowed by acquitting the appellants/ accused.

9. *Per contra*, learned APP strongly opposed the submissions of learned advocates for the appellants. According to learned APP, the statements of witnesses proved the guilt of the appellants beyond all reasonable doubts and, therefore, their evidence cannot be discarded. Since the police personnel and the medical officer are examined, their testimonies are trustworthy and are in corroboration with each other. Therefore, their testimonies cannot be brushed aside unless and until there is contrary statement in the same. Learned Sessions Judge has

rightly considered evidence on record and rightly convicted the appellants. Learned APP, therefore, prayed for dismissal of the appeals.

10. After hearing the submissions of learned advocates for the respective parties and with their assistance, after going through evidence on record carefully, it is clear that the police were on bandobast duty and there was mob of 200 persons allegedly pelting stones in order to prohibit the police from performing their lawful duty. During stone pelting, PSI Shinde (PW-1) was injured and was taken to hospital and was treated by PW-4 Dr. Naik. Dr. Naik opined that the injuries sustained by PSI Shinde (PW-1) were grievous in nature. The prosecution has examined only four witnesses, though there was mob of about 200 persons. No independent corroboration was brought on record despite availability of several civilians, press and media persons.

11. As far as evidence of PW-1 PSI Shinde is concerned, he deposed that he was injured in the said stone pelting as one stone hit on his face and he sustained contusion on outer side of face and dislocation of two teeth of lower jaw. It

was bleeding injury. He deposed that some press and TV reporters were present and they have taken PW-1 to civil hospital in their vehicle. It is noteworthy that the prosecution has not examined any reporter or driver of the vehicle, who carried PW-1 to hospital. PW-1 further deposed that he identified accused Nos.1 and 4 to 6 before the Court and denied the suggestion that due to night hours, he could not personally witness any mobber. It is relevant that PW-1 does not state that he saw any particular accused throwing the stone which hit him.

12. The prosecution has also examined PW-2 Police Constable Dhavale, who is also eyewitness. PW-2 deposed that one stone hit on the face of PW-1 and he sustained bleeding injury and dislocation of two teeth from lower jaw. Therefore, PW-1 was taken to hospital in the vehicle of press reporters. PW-2 deposed that when he was shown the accused persons in lock-up of the Police Station, he identified them and stated that they were present at the time of incident and had pelted stones. The supplementary statement of PW-2 was recorded and PW-2 identified the accused persons present in the Court.

13. PW-3 is the Investigating Officer and PW-4 is the

Medical Officer. However, evidence as regards PW-1 and PW-2, who are eyewitnesses, itself is very silent as to who is the author of the injury sustained by PW-1. PW-1 and PW-2 have stated that it was not the procession from one community, but there were persons from both Hindus and Muslims communities involved in the procession. Both stated that one stone from one mob came and hit on the face of PW-1, but who had thrown the said stone is not clear from their depositions. Such general statements are insufficient to fix criminal liability on specific individuals in a mob of almost 200 persons. In such background, evidence of PW-1 and PW-2 is not sufficient to convict the appellants.

14. Sections 143, 147 and 149 are in respect of unlawful assembly and rioting. It is well settled that to show that a person is a member of an unlawful assembly, it is not necessary that such person must commit overt act towards commission of crime. However, the test is whether, he knows common intention and continues to keep himself in company on his own free will. If some unidentified members of unlawful assembly are behaving in unruly manner, then other members of such assembly cannot be held guilty merely because they are members

of such assembly.

15. Likewise, in order to prove guilt under Section 353 of the IPC of assaulting or using criminal force to deter public servant from discharging his duty, it is necessary for the prosecution to establish that the accused persons have resisted public servant from performing his official duty. Taking part in lawful procession is not at all prohibited, however, whether, such procession was carried out in order to prevent the public officer from discharging public duty, is required to be seen. There is no iota of evidence on record to suggest that the procession was causing any hindrance to the police party while they were performing their duties. Therefore, as there is no specific averment in the deposition of any of witnesses that the appellants alone and none other else in the said mob of 200 people, were deterring the police from discharging their duty, the appellants cannot be held guilty of the said offence. The prosecution has not proved that the appellants formed a common object to obstruct the police from discharge of duty. Therefore, the prosecution has failed to prove the charge under Section 353 of the IPC.

16. As far as offences punishable under Sections 148,

332, 325 and 337 of the IPC are concerned, those offences will attract if the accused, who have caused injuries, are identified. The informant cannot pick and choose only few persons out of the mob of 200 people and state that only the accused persons have caused injuries to him. Therefore, the prosecution has failed to prove the guilt of the appellants for the said offences.

17. In cases involving large unlawful assemblies, the Hon'ble Supreme Court has repeatedly held that unless specific overt acts or clear evidence of participation is proved against an accused, a conviction with the aid of Section 149 IPC cannot be sustained. In *Masalti v. State of U.P.*, AIR 1965 SC 202, the Hon'ble Supreme Court observed that where a crowd consists of many persons, the court must insist on clear, cogent and reliable evidence fixing the role or presence of each accused. Similarly, in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, it was held that omnibus allegations against persons said to be in a mob are insufficient to attract vicarious liability under Section 149 IPC. In the present case, neither PW-1 nor PW-2 has attributed any specific act to the appellants, nor has the prosecution established that they shared a common object to attack the police party. In

absence of such evidence, the benefit of doubt must go to the accused.

18. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the ingredients of the charge levelled against the appellants beyond reasonable doubt. Consequently, **both these Criminal Appeals are allowed and the impugned judgment and order is quashed and set aside.** The appellants/ accused are acquitted for the said offence. As the appellants are on bail, they need not surrender. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The record and proceedings be sent back to the concerned Court.

kps

(SUSHIL M. GHODESWAR, J.)