

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 302 OF 2004

The State of Maharashtra

..... Appellant

Vs.

- 1) Shivaji Laxman Naik, 65 yrs (abated)
- 2) Uday Shivaji Naik, 26 yrs
- 3) Vijay Shivaji Naik, 29 yrs
- 4) Sunil Pandurang Patil, 29 yrs
- 5) Rangrao Balu Injulkar (abated)
- 6) Tanaji Rangrao Injulkar, 22 yrs (abated)
- 7) Uvraj Rangrao Injulkar, 24 yrs
- 8) Suresh Rangrao Injulkar, 26 yrs
- 9) Shahaji Rangrao Injulkar, 20 yrs
- 10) Ramchandra Gopal Injulkar, 35 yrs
- 11) Bajirao @ Nana Gopal Injulkar, 30 yrs
- 12) Kerba Mahadev Injulkar, 19 yrs
- 13) Sandeep Kerba Injulkar, 19 yrs
- 14) Shivaji Balwant Injulkar, 40 yrs
- 15) Uday Vilas Patil, 21 yrs
- 16) Amit Shripati Chaugule, 20 yrs
- 17) Gopal Khandu Injulkar, 74 yrs
- 18) Vasant Gopal Injulkar, 35 yrs
- 19) Sanjay Pandurang Patil
- 20) Rajaram Kerba Injulkar

21) Shivaji Sadashiv Injulkar

22) Rajaram Shivaji Injulkar, 19 yrs

All R/o. village Kale, Tal. Panhala,
Dist. Kolhapur

..... Respondents

Ms. Dr. D.S. Krishnaiyer, the learned APP for the State.

Mr. Shekhar A. Ingawale, the Advocate for Respondent Nos.1 to 4.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 05th MAY, 2025

PRONOUNCED ON : 02nd JULY, 2025

JUDGMENT :-

. Present Appeal filed under Section 378 (1) of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been directed against the Judgment and Order dated 22/07/2003, in Sessions Case No.215/2001, passed by the Court of learned 3rd Ad-hoc Additional Sessions Judge, Kolhapur whereby the Respondents have been acquitted of the charge of offences punishable under Sections 143, 147, 148, 323 r/w. 149, 324 r/w. 149, 337 r/w. 149, 427 r/w. 149, 452 r/w. 149, 504 r/w. 149, 506 r/w. 149 of the Indian Penal Code and under Section 7 (1) (d) of Protection of Civil Rights Act, 1955 and Section 3 (i) (x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2) Heard Ms. Krishnaiyer, the learned APP for the Appellant-State and Mr. Ingavale, the learned Advocate for the Respondents.

Perused the record. (*Hereinafter the Respondents are being referred to as per their status in the trial Court, i.e., Accused Nos.1 to 22*).

2.1) Record indicates that the said Sessions Case abated against Accused No.5 as he expired during the pendency of the said case. The Appeal was admitted on 20/06/2007, but only against Accused Nos.1, 2, 6, 7 and 10. Thereafter, the Appeal abated against Accused Nos.1 and 6 as they expired during pendency of the Appeal.

3) The prosecution story giving rise to this Appeal is that, the first informant–Vishnu Bapu Belekar (PW3) has been residing at village *Kale*, Tal. *Panhala* alongwith his children, daughters-in-law and grand children. On 15/08/2000, PW3 filed an oral Report (Exh.52) from the CPR/Government Hospital in Kolhapur therein it was narrated that, PW3's grandson namely Rajendra Ananda Belekar was elected in the last Gram Panchayat elections of the village *Kale*. On 15/08/2000, a meeting was convened in the office of the Gram Panchayat after the flag hoisting was over. However, his grandson Rajendra Belekar did not return home after the meeting. Therefore, PW3 went towards the Gram Panchayat to find Rajendra. At that time PW3 saw that members of the party of Accused No.1 were present in front of the Gram Panchayat. At about 01:30 PM, PW3 went to the house of Anant Shankar Mithari. At that time, member of the party of Accused No.1 came from the lane on the rock (*Khadkavaril Galli*) and

proceeded towards the Gram Panchayat office, by pelting stones. Accused No.2 Uday hit PW3 over his back by pelting a stone and Accused No.1 assaulted PW3 on the head with an Axe and injured him. As a result, PW3 fell on the ground. Then, Accused No.3–Vijay, Accused No.4–Sunil and Accused No.19–Sanjay, assaulted PW3 on his back and legs. PW3's nephew–Ananda Belekar rescued him and removed him to the CPR Hospital, in a private jeep. Like PW3, the accused persons also assaulted PW7–Sambhaji Jadhav, PW8–Narayan Londhe, PW9–Tanaji Jadhav, and PW12–Hindurao Ganpati Devang by forming an unlawful assembly and they were also brought to the same hospital.

3.1) PW13–Gunga Lad, PHC recorded the Report (Exh.52). Hence, Police registered the Report (Exh.52) at C.R.No.72/2000, under Sections 143, 147, 148, 149, 337, 324, of the Indian Penal Code. During investigation PW–15 Vitthal Ananda Patil recorded the Spot Panchanama (Exh.47) and seized the *muddemal* Article Nos.1 and 2 from the spot. Then, he recorded the statement of four witnesses. On 16/08/2000, Accused Nos.1 to 18 surrendered at the Police Station. On 17/08/2000, PW14–Baburao Chavan went to the said hospital as instructed by PW15, and recorded the statement of PW7, PW8 and PW9. PW15 recorded the statement of the other witnesses. The pw7statement of certain witnesses revealed that the accused persons

abused them on their caste. Therefore, PW15 collected the Caste Certificates of PW7, PW8 and PW9 and added the offence of Section 7 (1) (d) of the PCR Act and under Section 3 (1) (10) of the S.C. & S.T. Act. On 18/08/2000, Accused No.12 appeared before PW15 and panchas and produced the weapons of the offence (Article Nos.3 to 9), which PW15 seized under the Panchnama (Exh.49). On 21/08/2000, PW15 handed over the investigation to the SDPO. On completion of investigation, the police submitted charge-sheet before the Court of learned JMFC, *Panhala*.

4) Since the offence under the S.C. & S.T. Act was triable by the Special Court, the learned Magistrate committed the case to the said Court.

5) On appearance of the accused persons, the learned Judge of the Special Court framed the Charge (Exh.15) against the accused, to which they pleaded not guilty and claimed to be tried.

6) Thereafter, the prosecution examined the following witnesses :

Sr. No.	Name of the Witness	Exh. No.	Nature of Evidence
PW1	Babaso Jadhav	46	Spot Panch.
PW2	Gangaram Malvi	48	Seizure Panch.
PW3	Vishnu Belekar	51	First Informant & Injured witness.
PW4	Yashwant Jadhav	53	Village Development Officer at <i>Kale</i> .
PW5	Laxmi Patil	55	Injured Witness.

PW6	Saraswati Devang	56	Injured Witness
PW7	Sambhaji Jadhav	61	Injured Witness.
PW8	Narayan Londhe	62	Injured Witness.
PW9	Tanaji Jadhav	63	Injured Witness.
PW10	Anjana Jadhav	64	Eye-Witness.
PW11	Dr. Sharmila Gaikwad	66	M.O., C.P.R. Hospital. She examined PW-3, PW-7, PW-8, PW-12 and issued injury certificates (Exhs.67-70).
PW12	Hindurao Devang	71	Injured Witness.
PW13	Gunga Lad	74	P.H.C., Panhala Police Station. Recording of <i>Vardi Bayan</i> /Report Exh.52 filed by PW-3 from C.P.R. Hospital.
PW14	Baburao Chavan	75	P.H.C. He recorded statement of witnesses.
PW15	Vithal Patil	77	P.S.I. Investigation Officer. He Prepared spot panchnama, seized <i>muddemal</i> and weapons.
PW16	Dr.Shivaji Bhui	82	MO, P.H.C. Kale. He examined PW5 and PW6 and gave injury certificate (Exh.83).

7) After closure of the prosecution evidence, the trial Court recorded the statement of the accused under Section 313 of Cr.P.C. The defence of the accused was of denial and false implication. The accused did not examine them on oath nor examined any witness in their defence.

7.1) In view of the evidence on record and rival arguments, the trial Court disbelieved the evidence of PW1– Babaso Jadhav holding that he was not an independent witness because he admitted that his hotel was situated on the encroached portion of Gram Panchayat. The Gram Panchayat did not give him notice to remove the hotel. The Gram Panchayat was towards Belekar/informant's group. Therefore,

PW1 supported the complainant. In the cross-examination PW2–Gangaram Malvi admitted that the seizure Panchnama (Exh.49) was already prepared and the police only called him to sign the same. The trial Court disbelieved the evidence of PW3–Vishnu Belekar because his evidence indicated that being aged, he was unable to see properly. He could not identify the accused No.22. There is inconsistency in the deposition of PW3, his Report (Exh.52) and the medical evidence. Despite shirt of PW3 was stained with blood, the police did not seize the same. The trial Court observed that there is inconsistency in the evidence of PW5– Laxmi Patil, PW6– Saraswati Devang and PW12– Hindurao Devang. PW5 was related to the Sarpanch and they were belonging to the group of the informant. Therefore, it was natural that she would support the prosecution case. The trial Court noted that, police recorded the statement of PW7–Sambhaji Jadhav and PW8–Narayan Londhe after two days of the incident. Therefore, there is possibility of exaggerating the story. The trial Court observed that, PW8 is an interested witness. The trial Court held that the evidence of PW7 and PW9 is consistent. There is inconsistency in the testimony of the injured witnesses and the medical evidence. There is no sufficient and reliable evidence to hold the offence of damage to the property. There is no sufficient and reliable evidence to hold the offence under P.C.R. Act and S.C. & S.T. Act, because the allegations

to that effect were leveled belatedly. Therefore, the trial Court disbelieved the prosecution story and acquitted the accused.

8) Ms. Dr. Krishnaiyer, the learned APP for the Appellant-State submitted that, there is consistent evidence by the prosecution witnesses who were injured due to the assault by the accused persons. Said evidence has been corroborated with evidence of independent witnesses, medical evidence, Spot Panchnama and seizure of the weapons of the offence. Except minor inconsistencies in the evidence of the prosecution witnesses, there is nothing on record to discard and disbelieve their evidence. However, the trial Court disbelieved the said evidence mainly for the reason that the witnesses were interested. Yet, the trial Court did not give any specific finding as to how the witnesses can be labeled as interested witnesses despite the prosecution proved the assault on the witnesses, their injuries and the weapons by which said injuries caused. The evidence also proved the identity of the accused persons. Therefore, Ms. Dr. Krishnaiyer strongly submitted that the impugned Judgment and Order is erroneous and it may be set aside.

9) Mr. Ingawale, the learned Advocate for the Respondents, in the rebuttal, submitted that according to one set of the witnesses the incident occurred at about 1:30 PM to 1:45 PM but the another set of the witnesses claimed that the incident occurred at about 2:15 PM

to 2:45 PM. As such, there is material inconsistency as to the time of the incident. There is also inconsistency as to who assaulted to whom and with what weapon. He submitted that the testimonies of the injured and eye-witnesses was not corroborated with the medical evidence. There is delay in recording the statement of the witnesses by the police. Said delay resulted in giving an opportunity to the witnesses to exaggerate the story of the prosecution. The witnesses are interested witnesses. Therefore, the trial Court declined to rely and depend upon the prosecution evidence and acquitted the accused persons. As such, the impugned Judgment and Order cannot be rated as erroneous. Lastly, Mr. Ingawale, the learned Advocate submitted that it is settled legal position that the interference with the finding of acquittal recorded by the trial Court would be warranted by this Court only if the Judgment of acquittal suffers from patent perversity. To support his submission, Mr. Ingawale cited the following reported cases :-

*i) Murlidhar alias Gidda and Anr. vs State of Karnataka*¹

*ii) Ganesh Bhavan Patel and Anr. Vs State of Maharashtra*²

10) At the relevant time, PW4–Yashwant Jadhav was serving as a Village Development Officer in the Gram Panchayat office of village *Kale*. Mr. B. B. Kumbhar was a clerk in the office. PW4

¹ (2014) 5 SCC 730

² AIR 1979 SC 135

testified that, on 15/08/2000, at about 12 noon, there was a meeting of the members of the village Panchayat in the Gram Panchayat office. He was present for the meeting. The meeting started at 12.15 PM and was over at 1.00 PM. In all, 9 members of the Gram Panchayat were present in the meeting. He and clerk Mr. Kumbhar were writing the proceeding of the meeting. At about 1:00 PM, Accused No.1 and his party members came there and questioned as why the meeting was concluded as they wanted to attend the meeting. Meanwhile, Sarpanch Sarjerao came there. Then, there was a scuffle in between Sarjerao and Accused No.1. Thereafter, Dnyandeo Patil, father of Sarjerao, came in the Gram Panchayat office and five to six persons followed him, there. This evidence did not meet any challenge in the cross-examination for accused.

10.1) However, PW4 did not support the prosecution on some material aspects. Therefore, PW4 was cross-examined by the learned APP. In the cross-examination by the APP, PW4 admitted that police recorded his statement on 16/08/2000. He had stated before the police that, Accused No.1 quarreled with Dnyandeo Patil and there was a scuffle in between them. He admitted that the other persons present with Accused No.1 were demanding for the proceeding book from him (PW4).

10.2) In the cross-examination for the Accused, PW4 stated that

since the quorum was completed, the meeting was started and entries were taken in the proceedings book. Accused No.1 and the other three members asked him as to why he completed the meeting before their arrival. He admitted that, they told him to show the proceeding book. He admitted that when Accused No.1 and others with him came in the Gram Panchayat Office, the Sarpanch and other members were not there. He admitted that when the Sarpanch came back in the office, a scuffle started between the Sarpanch and Accused No.1. He admitted that there was a scuffle between father of the Sarpanch and Accused No.1 and others.

11) Considering the aforesaid evidence of PW4, it is apparent that, the defence did not challenge the fact of the meeting and that, just before the incident, there was a quarrel in-between the two parties on account of concluding the meeting, early.

12) PW3–Vishnu Belekar deposed that, on 15/08/2000, there was a meeting of the members of the Gram Panchayat. He was at home and his is grandson Rajendra was in the office of the Gram Panchayat. He deposed that Rajendra had not come home since the morning. Therefore, at about 1:30 PM, he went to the office of the Gram Panchayat to see Rajendra. PW3 deposed that, when he went to the office of the Gram Panchayat, Accused Nos.1 to 4 and 19 were present in front of the office of the Gram Panchayat. This evidence did

not meet any challenge in the cross-examination for the accused.

13) PW3 stated that the Accused Nos.1, 2 and other 2 persons rushed towards him. Therefore, he went in front of the house of Anantha Mithari. He stated that, there, Accused No.2 gave him an Axe-blow over his head. Consequently, he fell down. His son Ananda came at the spot and removed him to the CPR hospital in Kolhapur, in a jeep. He stated that PW7-Sambhaji Jadhav, PW8-Narayan Londhe, PW12- Hindurao Devang and one more injured were also admitted in the same hospital for medical treatment. He deposed that, in the evening the police had been to the hospital and recorded his *Vardi bayan*/Report (Exh.52). PW13-Gunga Lad, P.H.C deposed that, on 15/08/2000 he went to the CPR Hospital as per direction of P.S.I. Patil and recorded the Report (Exh.52) of PW3. Then, he handed over the said Report ASI *Koli*, who was on P.S.O. duty. The medical evidence of PW11–Dr.Gaikwad, Medical Officer alongwith the injury certificate (Exh.67) established that, PW3 had sustained CLW over scalp, over front parietal region, size of injury was 6 X 1 cm X ½ cm, margin was irregular and bleeding was present.

13.1) However, there is inconsistency in the evidence of PW3 and his Report (Exh.52). Because, as stated in the Report (Exh.52), Accused No.2 Uday hit PW3 over his back by pelting a stone, Accused No.1 assaulted PW3 on the head with an Axe and injured him.

Therefore, it is difficult to hold that, Accused No.2 assaulted PW3 with an Axe. The evidence of PW3 that Accused No.3–Vijay, Accused No.4–Sunil and Accused No.19–Sanjay assaulted him on his back and legs is consistent with his Report (Exh.52). But, PW3 has not deposed that he had sustained any injury due to the said assault. That apart, the injury certificate (Exh.67) does not mention about any other injury. As such, it is doubtful that Accused Nos.3, 4 and 19 assaulted to PW3, as above.

14) PW10–Anjana Jadhav deposed that on 15/08/2000, there was a meeting of Gram Panchayat. Said meeting started at 12.15 PM and was over at 1.00 PM. PW10 deposed that, after the meeting, she went home. At about 1.45 PM she heard a noise. Therefore, she came out of the house. She deposed that, all the accused came at her house and abused her on caste in a filthy language, as stated in her deposition. The accused pelted stones at her house and broke glasses of the windows and doors. She deposed that, through the window of her house she saw that, the accused were beating PW8–Narayan by stripping him naked. The accused were armed with sticks, Axe and iron bars. On the same day, the accused beat her husband PW7–Sambhaji. She identified the accused persons.

14.1) In the cross-examination, PW10 stated that when the accused were pelting stones, she was in the middle room of the house.

There was no damage to any article inside the house. She cannot assign any reason as to why it is not recorded in her statement that the accused abused her on caste as stated in her examination-in-chief and that, the accused were having an Axe.

15) PW8–Narayan Londhe deposed that on 15/08/2000, at about 1:45 PM, Accused Nos.1, 2, 3, 4, 10, 11, 12, 13, 16, 17, 18, 19 and 20 came at his house. Accused were having iron bars and sticks. The accused persons abused him on caste as specifically stated in his examination-in-chief. Then the accused persons pulled him out of the house and assaulted him with iron bars and sticks. One of the accused gave him an Axe blow over his head. The accused also stripped him naked. He became unconscious due to the said beating. He was admitted in the CPR Hospital. He identified the accused persons.

15.1) In the cross-examination, PW8 admitted that house of Sambhaji is visible from his house. He admitted that, he does not know whether a quarrel had occurred on that day, near the gram Panchayat. He admitted that Accused No.10 was having an Axe. He sustained bleeding injuries on his head due to an Axe blow. His shirt was stained with blood. He had shown his shirt to the police. Police recorded his statement on the next day. PW8 admitted that he cannot assign any reason as to why the facts that accused numbers 1 to 3 had been to his house and beat him; that, the accused abused him on caste

as specifically stated by him; that, one of them had an Axe and the said accused gave him the Axe blow on his head; that, the accused persons removed his shirt; that A17–Gopal Injulkar had been to his house to assault him; are not recorded in his statement before the police. He denied that the accused party had already filed a Report, therefore, he gave a false statement to the police and deposed false against the accused.

16) Considering the aforesaid evidence of PW10, it appears that, when the accused allegedly pelted stones at her house, she was in the middle room of the house. She could not identify all the accused persons. As such, it is difficult to hold that PW10 had seen all the accused while pelting stones on her house. The evidence of PW10 and PW8 indicate that Accused Nos.1, 2, 3, 4, 10, 11, 12, 13, 16, 17, 18, 19 and 20 assaulted to PW8 by means of Axe, iron bars and sticks. But, the evidence of PW11 and the M.L.C. (Exh.68) issued by her indicate that, on examination, PW8–Narayan had sustained only following two injuries, which were simple in nature and might have been caused by hard and blunt object.

1. Contused lacerated wound (CLW) over right occipito parietal region. Size of injury was 4 x 1 x 0.5 cm. Bleeding was present.
2. Linear contusion over right shoulder extending from posterior to anterior aspect, reddish colour present. Tenderness was present. No evidence of fracture clinically.

16.1) If indeed more than 10 accused persons had assaulted PW8 by means of sticks, Axe and iron bars, he would have sustained more injuries. But he had sustained only two simple injuries as noted above. The evidence of PW8 is suffering from material omissions. PW10 and PW8, both have not explained as to how the accused persons, at a time, abused them on their social status. That apart, said allegations are omission. As such, it would be risky to accept the evidence of PW10 and PW8 and hold that, the accused persons assaulted to PW10.

17) PW5–Laxmi Patil deposed that, on 15/08/2000, at about 02:45 PM to 03:00 PM, she, her relatives PW12–Hindurao, PW6 and Anandi @ Kanchan Patil were present in her house. Accused Nos.6 to 11 and 18 to 20 entered in her house from the back side door, abusing them in a filthy language. Said Accused were armed with sticks and iron bars. Accused No.7 assaulted her by means of a stick over her right knee and Accused No.10 assaulted PW12–Hindurao on his head by means of an iron bar. The Accused persons also pelted stones and broken the roof tiles, bulbs and tubes in the house. Thereafter, she was taken to PHC Kale for medical treatment. PW6–Saraswati was also with her for the medical treatment. PW5 identified the aforesaid accused persons.

17.1) In the cross-examination, PW5 admitted that Accused No.10 was from the party, opposite to her husband. Therefore, persons from the two panels were not on talking terms. She admitted that they were not having good relations with the Injulkar family.

18) PW6–Saraswati testified that on 15/08/2000, at about 02:45 PM, she, PW5 and one Kanchan were present in the house of PW5. Her husband PW12–Hindurao was sleeping in the said house. At that time, Accused Nos.6 to 10, 17, 18, 20 to 22 entered in the house from the backside. Accused were armed with sticks and iron bars. She deposed that Accused No.10 gave a blow of an iron bar on the head of PW12. Accused No.6 assaulted PW12 on the back. She rescued him. Accused No.7 gave a stick blow on the right knee of PW5. Accused No.7 assaulted her by a stick, therefore, she sustained an injury to her right hand thumb and on the shoulder. Police referred her and PW5 to PHC *Kale*, for the medical treatment.

18.1) In the cross-examination, PW6 admitted that she was from the group, opposite to the accused. She was not on talking terms with the accused.

19) PW12–Hindurao deposed that, on 15/08/2000 at about 2.00 PM he was sleeping in the house of Banda Patil. His wife PW6–Saraswati came there and informed him that there was a quarrel near the wine shop. At that time he heard sound of pelting stones from

back side of the house and saw that Accused Nos.5 to 14, 17 and 20 to 22 entered in the house with sticks and iron bars. He deposed that Accused No.10 caught hold of his collar and pulled him outside the house and abused him in a filthy language as deposed by him. They also abused the women in the house in a filthy language. He deposed that, Accused No.10 assaulted him above the right ear by means of an iron bar. Accused No.6 assaulted him over his back with an iron bar. When PW6–Saraswati and PW5–Laxmi came to rescue him, the accused beat them and caused injuries. Mr.Shahji Desai brought them to CPR Hospital. He identified the accused persons.

19.1) In the-cross-examination, PW12 admitted that he is brother-in-law of Bajirao and he was from his Panel. He denied that, relations between Bajirao and Injulkar family were not good. He had stated before the police that, the accused who entered in his house abused the women in the house in a filthy language, and that, they also abused him in the manner stated by him. But, he cannot assign any reason as to why these facts are not recorded in his statement before the police.

20) PW11 deposed that, at the relevant time, she examined PW12–Hindurav Devang and noticed following injuries on his person. All the injuries were simple in nature and caused by a hard and blunt object. All the injuries are possible by iron bars and sticks

produced before the Court. Accordingly, she issued M.L.C. (Exh.70).

1. Abrasion over Rt Temporal region, 2 x 2 cm, reddish in colour
2. Contusion over Rt.shoulder, linear 6 cm long.
3. Abrasion over back, Rt. Infra scapular region, 1 x 1 cm.
4. Contusion over back, below injury No.3 and 4 cm in length.

20.1) PW16-Dr.Shivaji Bhui, then Medical Officer at P.H.C. *Kale* deposed that on 15/08/2000, PW5–Laxmi Patil and PW6–Saraswati Devang were referred with the police *yadi*. He examined Laxmi at 5.30 PM. PW5 had C.L.W. on the lower part of right knee laterally, 1” x 1/4th” x 1/4th”. He examined to PW6 at 5.40 PM, who had C.L.W. on the posterior part of right thumb distal phalinx size of injury was 1/2” x 1/4th” x 1/5th”. He deposed that, the age of both injuries was within 6 hours. Both the injuries were simple in nature and might have been caused by a hard and blunt object. Accordingly, he issued the M.L.C. (Exh.83).

21) PW7–Sambhaji deposed that, on 15/08/2000, in the morning, he had been to a village Bazaar at *Kotholi*, riding his motorcycle bearing number MH–12/ZA–7775. At about 2:15 PM, he and PW9–Tanaji Jadhav were returning to village *Kale*. When they reached near a wine shop in the village, Accused No.6 came towards them and assaulted him on both his hands, by means of a stick. He deposed that Accused Nos.2, 10, 21 and 22 were having sticks and iron bars. Said accused assaulted him on his thigh, back, neck and

knee. Therefore, he fell down from the motorcycle and became unconscious. At the time of the incident, he had Rs.20,000/- cash and a gold chain of one and half *Tola* on his person. When he regained consciousness, he found that said cash and the gold chain were missing. He deposed that the accused persons also damaged his motorcycle. He deposed that Police Patil of the village removed him to the CPR Hospital for medical.

21.1) In the cross-examination, PW7 admitted that their relations with the accused party were not good due to the election. He admitted that PW9 is his cousin brother. PW9 was working with him. He admitted that he had gone to the Bazaar at 9 AM and returned at about 1:45 PM to 2 PM. He admitted that, he had stated before the police that Accused No.6 assaulted him by means of a stick. He admitted that, he was arrayed as an accused in the counter case, filed by the accused party.

22) PW9–Tanaji Jadhav deposed that, on 15/08/2000, at about 8:30 AM to 9 AM, he along with PW7 had been to the village Bazar at *Kotholi*. They returned to village *Kale* at about 1:45 PM to 2 PM on the motorcycle of PW7. When they reached near a wine shop in the village, a mob was already gathered there. The accused persons were present in the mob. The accused were having sticks and iron bars. He deposed that, Accused No.6. assaulted PW7 with stick. Other

accused persons also assaulted him and PW7 with stick and iron bar. The accused threatened to kill him by abusing him on caste and saying as “*we just have come by beating their ladies*”. He also stated the specific abuse. He deposed that, Accused No.10 inserted his hand in the pocket of PW7 and Accused No.15 snatched the gold chain from the neck of PW7. Due to the assault, PW7 became unconscious. He deposed that he had sustained mute injuries on his waist. He deposed that police Patil removed him and PW7 in the CPR hospital by jeep. He deposed that his social status is “*Maang*”. He has identified the accused persons.

22.1) In the cross-examination, PW9 admitted that Malubai is wife of PW8. He admitted that he was working with PW7 in the business of selling and purchasing cattle. He stated that they reached *Kotholi* Bazar at about 9:30 AM to 10:00 AM and were in the Bazaar for one hour. Thereafter they started to return. They reached back to the village after one and half hour. He admitted that there was police *bandobast* in the village *Kale*. He admitted that the said wine shop was outside the village and people used to pass by that road. There was no one on the spot except the accused persons. He admitted that when the accused assaulted them, the M/cycle was in a running condition. He admitted that they fell down from the M/cycle, but he did not sustain any injury. He admitted that PW7 had sustained

bleeding injuries and his shirt was stained with blood. He denied that he deposed false against the accused as they are from an opposite political group. He admitted that police recorded his statement on the same day of the incident. He admitted that he had not stated before the police that he had gone with PW7 on his motorcycle to the Bazaar, at about 8:30 AM. He has not stated to the police that PW7 met him in the Bazaar. He cannot assign any reason why said fact is written in his statement before the police. He can not assign any reason as to why the fact that the accused threatened to kill him by abusing on caste is not recorded in his statement. He admitted that he did not state before the police that the accused said as "*we just have come by beating their ladies*". He cannot assign any reason as to why the above facts are not recorded in his statement before the police that Accused No.10 inserted his hand in the pocket of PW7 and Accused No.15 snatched the gold chain from the neck of PW7. He admitted that they reached in CPR hospital at about 3.00 PM to 3.30 PM and that, the police recorded his statement at about 5.00 PM to 5.30 PM.

23) PW11 deposed that, at about 3.15 PM, she examined PW7–Sambhaji and found 9 injuries on his person. She deposed that, the said injuries were simple in nature. Injury No.1 might be caused by any pointed object. The rest injuries might have been caused by a hard and blunt object and possibly by an object like iron bar and

sticks which were present before the Court. She issued the M.L.C. (Exh.69). She deposed that the injuries were as under :-

1. Punctured wound just above left elbow, 1/2 x 1/2 cm, active bleeding present.
2. Wheal mark over left deltoid, 12 x 3 cm, bluish to reddish colouration.
3. Contusion below (2), 7 x 2 cm, bluish to reddish colour.
4. Contusion over Lt. Shoulder posterior, 5 x 3 cm, bluish to reddish colouration.
5. Multiple contusion all over Lt. Buttock, bluish to reddish discolouration.
6. Contusion over Lt. Side of chest on post aspect, 10 x 2 cm, bluish to reddish colouration.
7. 2 scratch marks behind Rt. Ear, 2 x 2 cm, no active bleeding.
8. Contusion over Lt. Forearm, 4 x 3 cm, bluish to reddish colouration.
9. Contusion below Lt. Elbow joint, 3 x 4, cm bluish red in colour.

24) PW14—Baburao Chavan, P.H.C. deposed that on 17/08/2000 he recorded the statements of PW7, PW8 and PW9 as per their narration and handed over said statements to PSI Mr.Patil.

24.1) In the cross-examination, PW14 stated that when he went to the CPR Hospital to record the statement of PW7-Sambhaji, this offence was already registered. He did not attach the clothes of PW7. He admitted that PW9-Tanaji had stated that PW7 met him in the bazar. PW9 did not state that Accused No.6 assaulted PW7 by stick. PW9 has not stated that accused threatened him by abusing on caste. PW9 has not stated that Accused No.10 inserted his hand into the

pocket of PW7 and Accused No.15 snatched the gold chain of PW7. PW9 has not stated that PW7 became unconscious on the spot. PW9 has not stated that police Patil came with a jeep and took them to the CPR hospital. PW8 has not stated that Shivaji Naik and his sons beat him. PW8 has not stated that the accused abused him with casteist slurs. PW8 has not stated that one of the accused was having an Axe and he gave an Axe blow on his head. PW8 did not state that accused removed his shirt. He has not stated that Gopal Injulkar had been to his house for beating him and also he was unconscious on the spot.

25) Evidence of PW1–Babaso Jadhav coupled with the Spot Panchnama (Exh.47) show that, on 15/08/2000, the police recorded the Spot Panchnama in his presence and co-panch Mr.Uavraj Bandu Patil. The police inspected the spot and recorded the scene of the incident there. There was pelting of stones at the houses of Bajirao Jadhav, Shamrao Pandu Jadhav, Sanjay Londhe, Yuvraj Patil and Sambhaji Jadhav (PW9) and the houses, lighting etc. were damaged. That, the M/cycle was lying at the spot in damaged condition.

26) PW15–Vitthal Patil deposed that, he recorded the Spot Panchnama (Exh.47) on 15/08/2000 in presence of panchas and seized the *muddemal* Art.Nos.1 and 2 from the spot. He recorded the statements of witness Krishna Patil and two others. He sent them for medical examination. On 16/08/2000 he arrested Accused Nos.1 to

18. On the same day, he recorded the statement of witness Saraswati Devang and other two witnesses. On his instructions, P.H.C. Chavan went to CPR hospital on 17/08/2000, and recorded the statement of PW7, PW8 and PW9, who were admitted there. Their statement revealed that, said witnesses were of “Hindu *Maang*” social status. Therefore, he added the offence under Section 7 (1) (d) of P.C.R. Act and 3 (i) (x) of S.C.S.T. Prevention of Atrocities Act. He sent the Report to the Superior and the Court concerned. On 17/08/2000, he recorded the statements of witnesses PW12–Hindurao Devang and other three witnesses. On 18/08/2000, he recorded the statement of witness Shantabai Jadhav and four others. On 18/08/2000, itself the Accused No.12 Kerba Injulkar produced the weapons (Art. Nos.3 to 11) in police *chowki*, at *Kale* which he attached under the Panchnama (Exh.49) in presence of the panchas. On 19/08/2000, he recorded supplementary statements of the witnesses. On 21/08/2000, he handed over the investigation to the Dy.S.P. Mr.Bharambe. He collected the caste certificate (Exh.78 to 80) of PW7–Sambhaji Jadhav, PW8–Narayan Londhe and PW9–Tanaji Jadhav.

26.1) In the cross-examination, PW15 stated that the Gram Panchayat office is near the place where the Spot Panchnama as to the assault on PW1–Vishnu Belekar was prepared. He cannot state at what time he received the information of the incident at *Kale*. He

admitted that, P.H.C. Kumbhar informed him that there was rioting at *Kale* at about 2 PM. Thereafter, he went there for *bandobast*. He reached at *Kale*, at about 2.30 PM to 3.00 PM. He does not remember as to whether he received any information that some persons were sent to P.H.C. for treatment. He recorded the statement of Laxmi and Saraswati on the same day and inquired about the incident. He had received the information of rioting in two groups of village *Kale*. He stated that except the statement of informant (PW3), no statement of the witnesses were recorded who were admitted in the hospital till 18/08/2000. He stated that till 18/08/2000 there was no complaint under the Atrocities Act. He stated that proceedings under Section 110 (e) (g) of Cr.P.C. was filed before the Executive Magistrate, *Panhala* against all the accused. He denied that in collusion with complainant party he added the offence under Atrocities Act.

27) I have carefully considered the above stated evidence of PWs 5, 6, 12, 7, 9, 11, 14, 15 and 16. In the cross-examination, PW5 admitted that Accused Nos.10 and 11 were having an Axe in their hand. However, the injuries sustained by PW5, PW6 and PW12 were simple in nature and caused by hard and blunt object. There is inconsistency in the evidence of PW5, PW6 and PW12 about the accused persons who allegedly trespassed in the house of PW5.

27.1) Although PW9 deposed that accused persons assaulted

with stick and iron bars, he has not informed the injuries sustained by him. No medical evidence is produced to show that PW9 was injured in the incident. There is improvements in the evidence of PW9 that Accused No.10 inserted his hand in the pocket of PW7 to snatch the cash and that, Accused No.15 snatched the gold chain of PW7. That apart, PW7 has not informed the said fact.

27.2) The evidence of PW11 went unchallenged in the cross-examination in so far as the injuries sustained by PW7 are concerned. The evidence of PW7 indicates that only Accused Nos.2, 6, 10, 21 and 22 had assaulted him. But, according to PW9 all the accused had assaulted to PW7. The evidence of PW9 and PW12 about abusing on the caste, is an omission.

28) The evidence of PW1 clearly indicates that he is an interested witness because he was running his hotel in the encroached area of the Gram Panchayat but he was not given any notice to remove his hotel. PW2–Gangaram Malvi deposed that, on 18/08/2000 police called him at *Kale* Out post to act as a panch. Ramchandra Jarag was another panch. PW2 deposed that, at that time, Accused No.12 Kerba Injulker was present in the Police Station and he produced 3 iron bars, one Axe and 5 sticks. The police seized the same and recorded the Panchnama (Exh.49). He deposed that, the *muddemal* Article Nos.3 to 11 are the same. But, in the cross-

examination, PW2 admitted that one police had come to his house to call him as the panch for the panchnama. He admitted that said police told him that the panchnama was prepared and he should come to sign the same. He admitted that the police told him that the article before the court were seized and to sign the label. These admissions suggest that, the Seizure Panchnama (Exh.49) was not prepared in presence of the panchas.

29) PW15 deposed that, on 15/08/2000, he received another complaint from Ramchandra Naik under sections 147, 148, 149, 324 of I.P.C. and it was registered as C.R.No.73 of 2000. There were five injured in the said case, out of them four were accused in this C.R.No.72 of 2000. However, the prosecution has not explained as to why the said four accused persons sustained the injuries. Therefore, and considering the evidence as a whole, it is probable that, there was a free fight between certain members of the two group, in which there was pelting of stones and the rival members assaulted each other in their defence.

30) In view of the above discussion, I hold that there is a reasonable doubt about the truthfulness of the prosecution story. As such, the impugned Judgment and Order of the acquittal of the Respondents/accused dose not call for an interference. As observed in the case of **Murlidhar** (supra), “*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 the 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 the trial court.”

30.1) In the result, the Appeal is liable to be dismissed and is dismissed, accordingly.

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2025.07.07
14:15:03 +0530

(SHYAM C. CHANDAK, J.)