

(2002) 07 BOM CK 0143

In the Bombay High Court

Case No : Criminal Appeal No's. 96 and 148 of 1996

Bhagwan alias Shivaji Haribhau Patil, Raman, Dharmraj,
Chandrabhan, Jankiram and Prakash alias Batkya

APPELLANT

Vs

The State of Maharashtra
 The State of Maharashtra Vs
Popat Haribhau Patil, Pandharinath Namdeo Patil, Vasudeo
Mohan Patil, Ashok Hiramn Patil, Tukaram Mohan Patil,
Govind Mohan Patil and Namdeo Baburao Patil

RESPONDENT

Date of Decision : 22-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 138, 147, 148, 149, 302
Protection of Civil Rights Act, 1955 — Section 7(1)

Citation : (2002) 07 BOM CK 0143

Hon'ble Judges : D.S. Zoting, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : M.S. Phatak, No. 1, S.R. Barlinge, Nos. 2, 4 to 6, A.H. Kapadia, No. 3 and K.B. Chaudhari, APP for State in Criminal Appeal No. 148 of 1996, for the Appellant; K.B. Chaudhari, Assistant Public Prosecutor for State in Criminal Appeal No. 96 of 1996 and M.B. Sabnis, for the Respondent

Final Decision : Dismissed

Judgement

Marlapalle, J.—An innocent Dalit, who had temporarily become disabled, became a victim of a mob fury and was mercilessly beaten up and subsequently roasted alive. In addition, about 25 to 30 houses of the Dalit families were set on fire and their belongings were damaged. It was for these reasons that in all 64 accused were put on trial in Sessions Case No. 32 of 1989 before the Sessions Court at Jalgaon, for offences punishable under sections 147, 148, 302, 323, 436, 504, 506 read with section 149 of the Indian Penal Code and section 7(1)(d) of the Protection of Civil Rights Act. The learned 4th Additional Sessions Judge at Jalgaon tried them and by judgment and order dated 19th of February, 1996 he convicted Shri Bhagwandas alias Shivaji Patil (Accused No.1), Raman Jagan Patil (Accused No. 2), Dharmaraj Narayan Shinde (Accused No.5), Chandrakant

Ramkrishna Patil (Accused No. 8), Jankiram Pandharinath Patil (Accused No. 28) and Prakash alias Batuk Kashinath Patil (Accused No.40) for offence punishable under sections 147, 148, 302, 323, 436, 504 and 506 read with section 149 of the Indian Penal Code whereas the other 56 accused came to be acquitted of all the offences they were tried for. All the 62 accused, have been acquitted for the offence u/s 7(1)(d) of the Protection of Civil Rights Act. While the trial was pending Sukhadev Sadashiv Patil (accused No. 7) and Tukaram Patil (accused No. 56) had expired and the trial was, thus, proceeded against only the remaining 62 accused.

2. Appeal No. 96 of 1996 has been filed by the 6 Accused who have been convicted and sentenced, whereas Criminal Appeal No. 148 of 1996 has been filed by the State of Maharashtra against only 7 of the 56 acquitted Accused. Out of the said 7 Respondents/ accused, Respondent No. 1 (Accused No. 39 Shri Popat Haribhau Patil) died on 13th June, 1996 and, therefore, as per order dated 12th December, 1996 Criminal Appeal No. 148 of 1996 was abetted against the said Accused and it, thus, survived only against the remaining 6 Accused i.e. Pandharinath Namdeo Patil (Accused No. 37), Vasudeo Mohan Patil (Accused No. 13), Ashok Hiranman Patil (Accused No. 19), Tukaram Mohan Patil (Accused No. 36), Govind Mohan Patil (Accused No. 46) and Namdeo Baburao Patil (Accused No. 32).

3. The six accused, who were convicted, have been sentenced to suffer imprisonment for life for offence punishable u/s 302 read with section 149 of the Indian Penal Code and a fine of Rs.500/- each, rigorous imprisonment for 5 years and to pay a fine of Rs.500/- each for offence punishable u/s 436 read with section 149 of the Indian Penal Code, to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.200/- each for the offence punishable u/s 323 read with section 149 of the Indian Penal Code, rigorous imprisonment for three months and to pay a fine of Rs.200/- each for offence punishable u/s 504 read with section 149 of the Indian Penal Code and rigorous imprisonment for 6 months and to pay a fine of Rs.300/- each for the offence u/s 506 Part-II read with section 149 of the Indian Penal Code, rigorous imprisonment for 3 months and to pay a fine of Rs.100/- each for offence u/s 147 of the Indian Penal Code and rigorous imprisonment for 3 months and to pay a fine of Rs.200/- each for offence punishable u/s 148 of the Indian Penal Code. It needs to be noted, at this stage, that in the impugned order under appeal the accused No. 2 has been listed in the operative order in the list of accused as well as the acquitted persons and this is certainly due to inadvertence. We have read the entire judgment under appeal and we have noticed that Accused No. 2 has been convicted along with 5 other Accused/ Appellants in Criminal Appeal No. 96 of 1996 and he is, in fact, one of the Appellants in the said Appeal. This fact also goes to show that he has not been acquitted from any of the offences under the Indian Penal Code for which he was tried alongwith other 61 accused. All the 6 Accused/ Appellants were refused bail while admitting their appeal and they have remitted the fine amounts.

4. The prosecution case briefly begins with an incidence that happened in the morning of 2nd August, 1987 in village Avhane, Taluka and District Jalgaon and which was located, at the relevant time about 4 to 5 Kms. away from Jalgaon municipal area. In the said village the Dalit Vasti is located towards the south and north of the road leading from Jalgaon to the village Avhane. The Harijanwada on the north is called as "Rajwada" or "Budhhawada" and the Harijan locality on the south side is called as "Plot area". Udhav Raghav Sapkale, who has his house in the south side Harijan locality, was allegedly scolded and beaten in the morning by Popat Hari Patil (Accused No. 39) who was the Chairman of the Crop Protection Society formed in the said village and on the ground that he had committed theft of fodder. Ratan S/o Paulad Sapkale Complainant (PW5) was a member of the Village Panchayat and belonged to the Scheduled Caste (Budhha). Udhav Raghav Sapkale approached him and narrated the incidence of beating by Popat. Ratan, therefore, suggested to Popat to recover fine from Udhav rather than beating him and the incident was accordingly closed.

Ratan (PW5) had six brothers by name Ramdas, Shamrao, Pandit, Yeshwant and Bhimrao and one sister by name Janabai. Ramdas (PW6) and Shamrao (deceased-victim) were having their separate houses in the southern locality whereas the other four brothers were staying in the northern Rajwada locality, including sister Janabai. Ramdas was, at the relevant time, employed as mechanic in the S.T. Depot at Jalgaon and on 2nd August, 1987 he had returned to village Avhana at about 6.45 p.m. after completing his duty hours, by bus and while he was sitting in the stationery bullock cart in the courtyard of his house with his daughter, Popat (Accused No. 39) went to him and invited him for drinking liquor. Ramdas turned down the offer and on that count Popat purportedly abused him in filthy language in the name of his caste. There was some exchange of words between the two and Popat allegedly took an axe from behind and gave its blow on the forehead of Ramdas resulting into injuries. At that time other accused namely Chandrabhan Ramkrishna (Accused No.8), Dharmaraj Narayan (accused No.5), Ashok Hiranman (accused No.19) Prakash Kashinath (accused No.40), Raman Jagan (Accused No.2), Sopan Jagan (accused No.44) and Pandharinath Namdeo (accused No.37) also allegedly assaulted Ramdas with sticks and iron-rods and abused by saying "Mahar Majale, Yana Marun Takayeche Aahye, Sodayeche Nahi" []

Ramdas allegedly sustained bleeding injuries and he ran to his brother Ratan to the Rajwada area. He narrated the whole incident to Ratan and also informed him that the Accused persons alongwith a mob of about 40 others had threatened him to beat and they were coming towards the Rajwada area. Ratan advised Ramdas to report the incident to the police and, therefore, Ramdas left for Jalgaon. On his complaint Criminal Case No. 136 of 1987 came to be registered. The police also advised him to get treatment in the hospital and he was accordingly admitted.

The third and main limb of the prosecution case commences around 7.30 p.m. It is alleged that Ramdas was chased and followed by a mob of about 40 persons which went to the Rajwada Budhhawada locality, armed with sticks, iron-bars, axe and a fire torch (Mashal). Ratan, the complainant, went out of his house and asked the members of the mob not to enter the Budhhawada area or to cause any damage to the houses or property of the residents. He tried to persuade and pacify the mob but his pleas went unheeded. The mob started pelting stones at the houses of the Dalits and Ratan also received injuries in the same. He, therefore, ran towards his house and he had hidden himself in the house of one Trimbak Sandu Sapkale. His brother Shamrao (deceased) was at that time in the adjoining house of one Shamrao S/o Waman. It is alleged that the mob started pelting stones and setting the houses on fire in the Budhhawada. A group of persons noticed Shamrao in the house of Shamrao Waman and assaulted him, dragged him in the injured conditions to the fire wood stack.

After beating him mercilessly Shamrao (deceased) was thrown on the fire wood stack which was lit by some of the accused and as a result Shamrao was burnt alive. The mob fury did not stop there alone and it went on rampage and continued to set the houses on fire and cause damages to the household articles in the Budhhawada area. This was between 8.00 and 9.00 p.m. and it appears that the Police Patil of the village informed the police station. The police arrived at the scene around 9.15 p.m. and also some fire extinguishers were also pressed in service. The fire was extinguished. Twenty six houses were completely burnt, number of houses suffered partial damage and some of the injured persons were taken to hospital in the police vehicle. They were examined by Dr. Gujarati (PW10) and these injured persons were Janabai, Kalabai (PW13), Sarubai, Sakhubai, Ashabai, Ratan (PW5), Pratibha, Sumanbai, Vijayabai and Bhaiya etc. Dr. Gujarati conducted postmortem on the dead body of Shamrao S/o Paulad and noticed that the body was extensively and deeply burnt (100%). He issued postmortem report (Exhibit-131). On the next day, Dr. Arun Patil (PW11) had examined Accused Sopan Jagannath, Ramdas (PW6), Raghunath Nannaware, Yeshwant Sapkale, Ashok Sarawade, Popat Hari (Accused No. 39) and issued injury reports at Exhibit-133.

5. Ratan (PW5) filed complaint (Exhibit 121) which was treated to be an F.I.R. purportedly at about 4.30 a.m. on 3rd August, 1987. There is a controversy regarding the timing of this F.I.R. and it is contended that it was filed in the afternoon on 3rd August, 1987 after cremating the dead body of Shamrao. On this complaint, Crime No. 92 of 1987 came to be registered by the Taluka Police Station at Jalgaon and investigation was undertaken by P.S.I. Wadage (PW14). He visited the place of occurrence on 3rd August, 1987 and drew spot Panchanama (Exhibit-145) and so also the inquest Panchanama of the body of the deceased (Exhibit-106). He recorded statements of witnesses during the period from 3rd August, 1987 to 10th August, 1987. On 9th September, 1987 he had seized wrist watch produced by the complainant and found in his house damaged by fire. The said watch had the name of Namdeo Bhaurao engraved on

it. During the course of investigation bloodstained clothes were seized and sent for chemical analysis and the C.A. reports were received at Exhibits-146 to 151. Dy.S.P. Shri Pawar (PW15) had visited Civil Hospital, Jalgaon on 4th August, 1987 and had seized the clothes of the injured persons under Panchanama Exhibit-155. The investigation was subsequently handed over to Shri Chautha, Police Inspector (PW18) from 11th September, 1987 to 14th November, 1987. He recorded supplementary statement of Ratan (PW5) on 16th September, 1987. The investigation was then transferred to C.I.D. and Shri Jadhav, Dy.S.P. (PW16) was incharge of the investigation. He recorded supplementary statements of Ramdas (PW6) as well as Ratan, Sumanbai, Kalabai, Ashabai and others on 18th November, 1987. The map of the place of the occurrence was drawn (Exhibit-136) on 13th November, 1987 and on completion of the investigation Shri Jadhav (PW16) submitted the charge sheet in the Court of Judicial Magistrate, First Class at Jalgaon on 17th November, 1988. The learned Judicial Magistrate, First Class, 2nd Court, Jalgaon committed the case to the Court of Sessions vide his order dated 14th February, 1989.

6. Charge was framed and was read over to all the 62 Accused who pleaded not guilty and their plea was recorded over a period of time. In all 20 witnesses were examined by the prosecution and the defence of the accused was of total denial even in their statement recorded u/s 313 of the Criminal Procedure Code. Most of them claimed that they were falsely implicated. The defence of Accused Nos. 19 and 39 was that of alibi and others had claimed false involvement on account of enmity. PW1 to PW4 were Pancha witnesses i.e. Exhibit-111 to 113 and 117. The prosecution claims that there were eye-witnesses to the incidence involved in this appeal namely unlawful assembly, murder of Shamrao, setting on fire 26 houses and damaging the household articles and other property in the Budhhawada area between about 7.00 to 9.30 p.m. on the fateful day and they were Ratan (PW5), Ramdas (PW6), Rukminbai (PW7), Ashok (PW8), Gaba Sapkale (PW9), and Kalabai Tayade (PW13). Dr. Gujarati (PW10) was examined, who had conducted the postmortem on the dead body of Shamrao Paulad as well as the injured residents of the Budhhawada, some of whom were witnesses before the trial Court. Dr. Arun Patil (PW11) was examined as he had examined Sopan Jagannath Patil (accused No.44), Ramdas Paulad (PW6), Raghunath Yadav Nannaware, Yeshwant Paulad, Ratan Paulad (PW5), Ashok Atmaram Sarwade (PW8), Popat Haribhau Patil (Accused No. 39) in the night of 2nd August, 1987 and in the early hours of 3rd August, 1987. Circle Officer Bhausar (PW12) had drawn the map of the spot. Shri Wadage (PW14) was examined as one of the investigation officers alongwith Shri Pawar, Dy.S.P. (PW15), Shri Jadhav, Dy.S.P. (PW16) from C.I.D., Soma Sapkale (PW17) a Pancha to the Spot Panchanama (Exhibit-160), Chautha (PW18), Patil, A.P.I. (PW19) and Rabdia (PW12) all Investigating Officers. Besides the evidence of these 20 witnesses the prosecution also relied upon the documentary evidence viz. inquest Panchanama (Exhibit-107) caste certificate (Exhibit-108), Panchanama of seizure of Board (Exhibit-114) and seizure Panchanama of Wrist Watch - Ricoh (Exhibit-118), the

map of place of offence (Exhibit-136), Postmortem notes (Exhibit-131), injury report (Exhibits-129, 130 and 133), Panchanama with respect to the houses damaged by the fire (Exhibit-145), C.A. report (Exhibit-146 to 151), Panchanama about seizure of clothes of injured persons (Exhibit-155). Some of the accused submitted documents in support of their statement recorded u/s 313 of the Criminal Procedure Code. Statement u/s 313 of Criminal Procedure Code was recorded only of Accused Nos. 1 to 3, 5 to 6, 8 to 10, 12 to 13, 17 to 20, 24, 28 to 32, 34, 36 to 40 and 44 to 45. Initially, Criminal Case No. 136 of 1987 was merged for its trial alongwith Sessions Case No. 32 of 1989. However, on a specific application moved after closing the evidence by the prosecution the trial of Criminal Case No. 136 of 1987 was demerged.

7. The following points were framed by the trial Court in para 16 of its judgment for consideration.

1) Whether it is proved that, on 2.8.87 around 6-30 p.m. at Avhane all accused formed an unlawful assembly alongwith deceased accused Nos. 7 and 56 armed with deadly weapons like stick, iron rods, burning torch in prosecution of its common object to commit offence u/s 302, 436, 323, 504, 506 of the Indian Penal Code?

2) Whether it is proved that, deceased Shamrao Paulad died homicidal death on 2.8.1987?

3) Whether it is proved that, homicidal death of Shamrao Paulad was caused by members of said unlawful assembly in prosecution of its common object by setting him on fire on heap of firewood stack?

4) Whether it is proved that, all accused as member of said unlawful assembly in prosecution of its common object caused mischief by fire to about 26 houses in Harijanwada locality of Awhane?

5) Whether it is proved that, all accused voluntarily caused hurt to the witnesses in prosecution of common object of said unlawful assembly?

6) Whether it is proved that, all accused as members of said unlawful assembly in prosecution of its common object abused complainant and witnesses insulting and causing them to commit breach of peace?

7) Whether it is proved that, all accused as members of said unlawful assembly in prosecution of its common object threatened complainant and witnesses causing apprehension of injury or danger to their life?

8) Whether it is proved that, all accused as members of said unlawful assembly in prosecution of its common object abused complainant and other witnesses in insulting language in the name of their caste?

9) Whether prosecution proved offences u/s 147, 138, 149, 302, 436, 323, 504, and 506 read with section 147, 148, 149 of the Indian Penal Code and offence u/s 7(1)(d) of the Protection of Civil Rights Act, read with Section 147, 148 and

149 of the Indian Penal Code?

The findings against each point were recorded as under:

Point No.1:- Proved against Accused.

Point No.2:- In affirmative.

Point No.3:- Proved against accused Nos. 1, 2, 5, 8, 28, and 40.

Point No.4:- Proved against accused Nos. 1, 2, 5, 8, 28, and 40.

Point No.5:- Proved against accused Nos. 1, 2, 5, 8, 28 and 40.

Point No.6:- Proved against accused Nos. 1, 2, 5, 8, 28 and 40.

Point No.7:- Proved against accused Nos. 1, 2, 5, 8, 28, and 40.

Point No.8:- Proved against accused Nos. 1, 2, 5, 8, 28, and 40.

Point No.9:- Offence u/s 147, 148, 149, 302, 436, 323, 504, and 506 read with Section 149 of the Indian Penal Code has been proved against accused Nos. 1, 2, 5, 8, 28, and 40.

8. It was fairly conceded by the learned counsel for the Appellants before us as well as by the prosecutor that the prosecution case is based on the evidence of Ratan (PW5), Ramdas (PW6), Rukminbai (PW7), Ashok (PW8), Gaba Sapkale (PW9), Kalabai Tayede (PW13), who were alleged to be the eye witnesses and the medical evidence of Dr. Gujarati (PW10) and Dr. Arun Patil (PW11). It is also conceded by the learned counsel for the Appellants that Shamrao S/o Paulad Sapkale died a homicidal death in the night of 2nd August, 1987 on account of burn injuries, which were antemortem.

9. While considering Criminal Appeal No. 96 of 1996 we are only required to decide whether the testimony of the above named witnesses has proved, beyond reasonable doubt, the complicity of these six Appellants in the offences they have been convicted and hence sentenced by the trial Court.

10. Regarding the timings of filing FIR (Exhibit-121) by Ratan (PW5) there is a serious contradiction in his deposition as well as the Investigating Officer Shripat Wadaje (PW14) who stated that on 3rd August, 1987 he received the complaint filed by Ratan Sapkale at about 3.30 a.m. and he confirmed that complaint to be the FIR (Exhibit-121) before the Court and the same was written by him as per the say of the complainant. It was read over to the complainant and he signed the same. Offence bearing CR No. 92 of 1987 was accordingly registered under the signature of PSO and he had only signed on the report as it was recorded in his presence. However, Ratan had stated that as soon as the police came at the spot in the night of 2nd August, 1987 the complaint was recorded whereas in his testimony before the Court Ratan stated that his complaint was recorded by the police in the evening on 3rd August, 1987 and it was not recorded at the spot of incidence. In a case of this nature, which had a colour of communal riot, it would

not be safe for us to consider these contradictions in the evidence. There is no denial that Ratan had lodged a complaint on 3rd August, 1987 with the Taluka Police Station at Jalgaon and Shri Wadaje (PW14) was the first investigating officer responsible for the investigation. A number of houses of Dalits were completely burnt and the house of Udhav and Shamrao (the deceased), which were located in the plot area, were also set on fire. In some other houses, household articles were either damaged or set on fire and houses were partly burnt. Shamrao S/o Paulad Sapkale, the brother of Complainant, was done to death by some members of the mob which had entered the Budhhawada area at about 7.30 p.m. on 2nd August, 1987. We will have to, therefore, consider the testimony of the so called eye witnesses and also the medical evidence keeping in mind these admitted circumstances and the incidents while deciding the complicity of the Appellants/ Accused in the said acts of crime.

11. At the threshold the learned counsel for the Appellants submitted that the FIR lodged by Ratan (PW5) suffered from inordinate delay and the statement of the investigating officer that it was lodged in the early hours of 3rd August, 1987 cannot be corroborated or accepted in view of the testimony of Ratan (PW5). Reliance was placed on the decision of the Supreme Court in the case of "Mehtaraj Singh (L/Nk.) V/s State of U.P." 1994 SCC (Crim) 1390 to point out that FIR in a murder case is a vital and valuable piece of evidence for its appreciation at the trial and the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, any, used, as also the names of the eye-witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of such delays the FIR not only gets the bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. It was further submitted that the complaint or the report lodged by Ratan could not be treated as an FIR and it could be treated only as a statement recorded in accordance with section 161(3) of the Criminal Procedure Code. The statements made therein are required to be supported by corroborative evidence and if the same is not done it is required to be excluded from the consideration of the Court. In support of these submissions, the decision in the case of "Ranbir Yadav V/s State of Bihar" [1995 Criminal Law Journal 2665] has been cited. Referring to the statements made during investigations, by the witnesses, whose evidence has been relied upon by the trial Court, it is submitted that they are the earliest statements made by them with reference to the facts of occurrence and, therefore, are available material for testing the veracity of the witnesses examined before the Court with particular reference to those statements which happened to be at variance with their earlier statements. It is alleged that an improved story has been brought out through the evidence recorded before the Court and the names of the Accused/ Appellants, which did not find place in the statements made before the investigating officer, have been added while deposing before the Court. Referring

to the decision of the Supreme Court in the case of Baladin and Others Vs. State of Uttar Pradesh, it was submitted by the learned counsel that the Accused are entitled to challenge the testimony of these witnesses and the improvisation so made before the Court could not be relied upon. So far as the issue of unlawful assembly is concerned, the Appellants urged before us that mere presence of a person does not make him a member of such an assembly unless it is shown that he had done something or omitted to do something which would make him a member of unlawful assembly. In the case of some of the Appellants/ Accused only mere presence in the mob on the fateful day in Budhhawada area has come out through the testimony of the witnesses concerned and no acts of doing something or omitting to do something have been proved before the trial Court. In support of these submissions also the decision in the case of Baladin (supra) has been referred to.

Though, a number of persons were interrogated and their statements were recorded during the course of investigation u/s 161 of the Criminal Procedure Code, a selected few were picked and put up in the witness box. This omission on the part of the prosecution is also required to be considered by the Appellate Court in weighing the testimony of the witnesses examined in support of the prosecution case. When there is an incidence of free fight between two groups or in the case of group rivalries there is a general tendency to rope-in as many persons as possible accusing them to have participated in an assault and, therefore, the Court is required to scrutinise the evidence carefully and should there be any doubt in such testimony benefit should be given to the Accused Baldeo Singh and others V/s State of Bihar" AIR 1972 SC 464 . Where a sudden quarrel arises as a result of remonstrance and counter remonstrance and an unpremeditated free fight takes place it cannot be said that the Accused, who were present there, formed an unlawful assembly. The counsel further urged that each of the Accused persons should be held liable for his own act and not vicariously liable for the acts of others Lalji and Others Vs. The State of U.P., . While challenging the reliability of the oral evidence recorded before the trial Court it is submitted by the Accused/ Appellants that majority of the so called witnesses are interested persons as they are closely related and they have made the substantial improvements over these statements which they made during the course of investigation and as recorded u/s 161 of the Criminal Procedure Code. Such a testimony is required to be discarded as unreliable. In support of these submissions reliance has been placed on the decision of the Apex Court in the case of Badruddin Rukonddin Karpude and Others Vs. State of Maharashtra, .

On the issue of the homicidal death of Shamrao the evidence on record showed that some of the Accused/ Appellants were involved in merely dragging him and being a part to such an incident alone is not sufficient for conviction for an offence punishable u/s 302 of the Indian Penal Code. In support of these contentions the learned counsel referred to the decision of the Supreme Court in the case of Naresh Kumar Vs. State of Maharashtra, and submitted that the accused concerned cannot be held to have committed the murder of Shamrao.

12. In the case of Masalti Vs. State of U.P., a four Judge Bench of the Apex Court, inter alia, held:

(a) It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material and even if it is known that he has been won over or terrorized.

(b) There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. But it would be unreasonable to contend that evidence given by such witnesses should be discarded only on the ground that they are interested or partisan witnesses.

(c) Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for the witness to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with the weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault.

(d) Though it is true that the trustworthy evidence of a single witness would be enough to convict an accused and evidence given by half a dozen witnesses, which is untrustworthy, would not be enough to sustain the conviction, where a 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 the incident. Such a test may be described as mechanical but it cannot be treated as irrational or unreasonable.

(e) What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by section 141 of the Indian Penal Code. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence and that emphatically brings out the principle that the punishment prescribed by section 149 of the Indian Penal Code is in a sense vicarious and does not proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.

13. In the case of Kutumbaka Krishna Mohan Rao and others Vs. Public Prosecutor, High Court of A.P. and another, there was a large scale rioting that had taken place in a village and two persons died and several witnesses

belonging to the deceased party had received injuries. 43 persons were put on trial before the Sessions Court and some of them were convicted. One of the issues involved was regarding the reliance to be placed on the evidence of the injured witnesses in respect of their own assailants and in para 5 it was stated, thus:

"... We have examined the reasons given by the High Court accepting the evidence of these witnesses to the extent of their own assailants and we see no reason to disagree with the same. In a case of this nature, the Court generally has to fix the presence of an unlawful assemble, would first scrutinise the evidence of injured witness and if the same is corroborated by the medical evidence that can be accepted as against those accuse who caused injuries and they can be held to be members of the unlawful assembly. This is on the ground that the witnesses at least, would be in a position to identify their own assailants."

In the case of Angad Vs. State of Maharashtra, it has been, inter alia, held that the testimony of eye-witnesses cannot be rejected only on the ground that they did not intervene to rescue the deceased. This principle could be made applicable more soundly to a case where the deceased became a victim of a mob attack which smacked of a communal attack by a higher caste on the Harijans. We are not dealing with a case of a free fight between two groups and the case at hand has a colour of the communal riot resulting into an attack on the Dalits and their property. We are, therefore, required to assess the evidence, as brought out by the prosecution on the touchstone of the enunciations, as referred to hereinabove, and keeping in mind the admitted incidence of the attack on the Dalit Vasti by a mob of 100-150 persons which has resulted into the murder of an innocent disabled Dalit and full damage to about 26 houses, part damage to some other houses and loss of household articles as well as other belongings, in addition to physical injuries to some of the residents of that Vasti. The mental trauma and physical insecurity suffered by these socially and economically disadvantaged persons can not be measured in any units.

14. Yuvraj Ramchandra Nannaware (PW1) and Baban Yadav Sapkale (PW2) turned hostile and they stated nothing in favour of the prosecution case. Magan Suka Awachite (PW3) was examined in support of the Panchanama for recovery of a tin-board from the toilet near the S.T.Stand at village Avhane (Exhibit 114) and the said board was stated to have been displayed in the Rjwada area. The inscription on the said board was "Dalit Mukti Sena Gram Shakha, Avhane". Devidas Yadav Nannaware (PW4) was a Pancha witness to prove the seizure Panchanama of a Ricoh brand wrist watch from the house of Ratan Sapkale and the name of Shri Namdeo Baburao Patil (Accused No.32) was inscribed on that watch. In his testimony he proved the same Panchanama drawn on 9th September, 1987 (Exhibit - 118).

Bhausar (PW12) has drawn a map of the place of occurrence (Exhibit-136) immediately after the incident. The said map was not disputed by the defence. In

addition, the maps at Exhibits-122, 136 and 137 have been admitted. The depositions of PW14 to PW20 did not relate to the incident about atrocities on the Harijans in the Budhhawada area alleged to have been committed by the unlawful assembly of the accused and hence the same need not be considered by us. Exhibits-129, 130 and 133 are the medical certificates issued by PW10 and PW11.

On the complaint filed by Ramdas (PW6) Criminal case No. 136 of 1987 came to be filed and it was demerged from Sessions Case No. 32 of 1989. The testimony of the complainant (PW5) and Ramdas (PW6) read together clearly goes to show that after the scuffle between him and Popat Hari had taken place near his house, Ramdas rushed to the Budhhawada area and told the incident to Ratan at about 7.00 p.m. and, thereafter, on the advise of Ratan he left for Jalgaon to file a complaint. The testimony of this witness (PW6), therefore, has no relevance for the occurrence in the Budhhawada/ Rajwada area after 7.00 p.m. and before 9.00 p.m.

Exhibit-129, Exhibit-130 and Exhibit-133 are the medical certificates issued by PW10 and PW11. The first certificate (Exhibit-129) shows that Kalabai Bhimrao Tayade (PW13) was examined and she had received three injuries and they were attributed to hard, blunt and rough substance. All the three injuries were of simple nature. Alongwith her Smt. Janabai, Smt. Sarubai and Smt. Sakhubai W/o Ratan were also examined and they were found to have suffered injuries by hard and blunt substance. The medical certificate at Exhibit-130 shows that Asha Ratan Sapkale, the daughter of complainant (PW5), alongwith other six persons was examined and all of them had received simple injuries which were attributed to hard and blunt substance. All the injuries were noticed to be fresh. Medical certificate at Exhibit-133 shows that out of the accused persons Sopan Jagannath Patil (accused No.44), Popat Haribhau Patil (accused No.39) had also received injuries by hard and blunt substance. Popat Haribhau Patil (accused No.39) was admitted in the hospital and similar was the case regarding injuries sustained by Ramdas Paulad (PW6). Ashok Atmaram Sarwade (PW8) had received two injuries of simple nature and he was shown as outpatient. The age of the injuries was within 24 hours. In the depositions of PW11 it has been stated that accused Sopan Jagannath Patil (accused No. 44) had sustained contused lacerated wound on scalp at the junction of both parietal region (2cm X 1/4 cm scalp deep). Complainant Ratan (PW5) was examined at 4.50 a.m. on 3rd August, 1987 and the injuries noticed on his person were contused lacerated wound on right mastoid region (1/2cm X 1/2 cm skin deep) and abrasion on right shoulder (2cm X 2 cm). The injuries were simple in nature, within 24 hours and cause of injury was by hard and blunt object. Ratan (PW5), Ashok (PW8) and Kalabai (PW13) are the injured witnesses. Nandlal Ganpat Bhausar, Circle Officer (PW12) had drawn the map (Exhibit-136) on 3rd August, 1987 at the request of the police. He had also drawn another map (Exhibit-122) of the place of incident on 7th December, 1995. He also confirmed the map at Exhibit-137. The map at Exhibit-136 has given the description of the village as well as the two different

Harijan localities i.e. plot area and Budhhawada. It has identified the houses which are completely burnt and the houses which were partly burnt. It also showed the location of the fire stack on which the deceased was thrown and burnt. There are some houses which were fully burnt and were located around the fire stack but there were other houses away from the place of the said occurrence and obviously they were set on fire. The house of deceased as well as Ramdas Paulad, Udhav Raghav Sapkale and Ratan were also set on fire and were completely burnt. The houses of the upper caste Hindus are located at a distance from the Harijan locality and they are separated by roads. The distance between the house of Shamrao Waman from where the deceased was dragged and the place where his dead body was lying is about 100. The discovery of Ricoh wrist watch from the house of the complainant has been proved and the said watch belonged to Namdeo Baburao (accused No.32). By the time the fire extinguishers arrived at the scene and followed by the police van the mob (unlawful assembly) had dispersed.

16. Ratan Paulad Sapkale (PW5) - the complainant, stated in his depositions that he had six other brothers and two brothers by name Ramdas and Shamrao (deceased) were residing in the plot area locality whereas the remaining four brothers and himself were staying in the Rajwada Budhhawada locality. On the day of incidence he was in his house and his brother Ramdas (PW6) came to him between 7.00 to 7.30 p.m. and disclosed that Popat Hari had inflicted axe blow on Ramdas forehead who was beaten up by Namdeo Hari and Shivaji Hari (accused No.1) with a stick. Ramdas also told him that Sopan Jagannath (accused No.44) and Raman Jagannath (Accused No.2) had also beaten him and threatened that the houses of Budhha citizens would be burnt. He also told Ratan that he also may be beaten. Ratan, therefore, advised Ramdas to report the incident to Jalgaon police and, therefore, he left for Jalgaon and at that time Ramdas had bleeding injury. Thereafter, Popat Hari Patil (Accused No.39), Dharmaraj Narayan Shinde (accused No.5), Namdeo Pundalik Patil (accused No.10), Pandharinath Kautik Patil, Raman Jagannath Patil (accused No.2), Chandrabhan Ramkrishna Chaudhari (accused No.8), Vasudeo Mohan (Accused No.13) and some other persons, armed with sticks, came to the Budhhawada locality and Vasudeo Mohan was holding a fire torch in his hands. He requested these persons not to enter the Budhhawada area or set on fire the houses but they did not pay any heed to his appeals. They started pelting stones and were giving slogans "Jai Shivaji, Jai Bhavani". They were also saying Mahars have become unruly and their houses should be burnt. One stone hit Ratan near his right ear and, therefore, he got frightened and returned towards his house. When he was running towards his house he looked behind and found Kamlakar Chandrabhan Chaudhri, Vasudeo Mohan, Jankiram Pandharinath set fire to the houses of Sukhadeo Sadashiv Sapkale, Godawaribai Jotiram Sapkale. At that time instead of entering his house Ratan entered in the house of Trimbak Sandu Sapkale to hide himself and he heard the noise from the mob saying, "Mahars be burnt", "first house of Ratan should be burnt". His brother Shamrao Paulad

Sapkale (deceased) was in the house of Shamrao Waman Sapkale in the Budhhawada area and adjacent to the house of Trimbak Sapkale where Ratan was hiding. Namdeo Pandurang, Prakash Kashinath (accused No.40), Sukhadeo Sadashiv (accused No.7), dragged Shamrao Paulad from the house of Ramrao Sapkale. Pandharinath Kautik (accused No.10), Namdeo Pundalik (accused No.20), Sukhadeo Sadashiv (accused No.7), Prakash Kashinath (accused No.10), Shivaji Hari (accused No.1), Vasudeo Mohan (accused No.13), Chandrabhan Ramkrishna Chaudhari (accused No.8) started beating Shamrao Paulad and at that time Chandrabhan Ramkrishna Chaudhari (accused No.8) and Popat Hari Patil (accused No.39) were saying "Shamrao Paulad Sapkale should be burnt". There was fire wood lying by the side of house of Sadhashiv Baburao Sapkale. Vasudeo Mohan (accused No.13), Prakash Kashinath Patil (accused No.40, Jankiram Pandharinath (accused No.28) set the firewood stack on fire. Thereafter, Shivaji Hari, Namdeo Pundalik, Pandharinath Kautik, Raman Jagannath, Dharmaraj Narayan Shinde, Chandrabhan Ramkrishna Chaudhari lifted Shamrao Paulad and threw him on the burning stack. Ratan could hear Shamrao's cries when he was thrown in the fire. All those persons, who had assaulted Shamrao, dragged him towards the fire wood and threw him on the fire. Raman (accused No. 2) was at that place for about half an hour. Shamrao was burnt and dead there only. He noticed the said incident through the door of Trimbak Sapkale. Police came to the spot. He narrated the incident to them and it was recorded as per his say. He confirmed the F.I.R. (Exhibit-21). He also identified Popat Hari Patil, Vasudeo Mohan Patil, Namdeo Patil, Dharmaraj Narayan Shinde, Shivaji Haribhau Patil, Prakash Kashinath Patil, Jankiram Pandharinath Patil (accused No. 28) before the Court as the persons engaged in the incident of murder of Shamrao and setting some houses on fire by entering into the Budhhawada area as members of the mob. He was member of the Village Panchayat and had studied upto 8th standard. He was knowing all the residents of Budhhawada as well as the plot area with their full names. He stated that Shiv Sena Branch was established in his village around the year 1984-85 and stated there were no communal riots prior to the date of incident though there were strained relations between Harijans and caste Hindus. He new Prakash alias Batkya (accused No.40) and in 1987 he was dealing in illicit liquor. His liquor shop was known as "Prakashchi Tapari". He was not knowing as to who had given information to the police regarding the riots at Avhane in the fateful night. He admitted that the police van and fire-brigade vehicle came from Jalgaon to Avhane village after Ramdas had left for Jalgaon and the police had taken him to Jalgaon hospital in metador alongwith injured Ashok Atmaram Sarwade (PW8) [reached at about 10.00 p.m.]. Before the arrival of police, he, Ashok Surwade, sister Janabai and daughter Kalabai and wife of his brother-in-law Rahul Sonawane as well as Hirabai Yuvraj Nannaware were injured by the attack unleashed on the residents of Budhhawada area by the mob. He did not know whether Popat Hari, Sopan Jagannath Patil, Ramdas Paulad, Raghunath Yadav Nannaware and Yeshwant Paulad were admitted in the hospital by police before he was admitted. He denied the suggestion that he was admitted in

Jalgaon hospital at 4.30 a.m. on 3rd August, 1987. He also admitted that his supplementary statement was recorded by the police on 16th September, 1987 as well as 17th November, 1987. He was in the hospital for fifteen to twenty minutes till the dressing was completed. Map submitted by the investigating officer (Exhibit-122) was shown to him regarding the locations of various houses in the Budhhawada as well as plot area. He denied the suggestion that he and other Harijan citizens from Rajwada area were angry against caste Hindus on account of the resolution passed on 29th July, 1987 for employing a Gorkha from Rajasthan for protection of the crops and he had no quarrel with Popat Hari Patil on account of abuses or beating to Udhav Raghav Sapkale.

Before arrival of the police on 2nd August, 1987 House Nos. 26, 27, 28, 37, 40 and 51 were set on fire and he did not see persons who set fire to other houses. He did not see Godabai or Sukhadeo injured by fire or beating though they were in their respective houses. While he was hiding in the house of Trimbak he had switched off the lights in that room only and Trimbak Sandu was not in his house. He denied the suggestion that he had told Harijans from the Budhhawada area to leave their houses as caste Hindus would not show mercy on them and that he had ran away from the Rajwada area locality. He could not report about the occurrence since he was taken to Jalgaon hospital and on the next day his deceased brother Shamrao was to be cremated. He reported the incident to the police on 3rd August, 1987 only after Shamrao was cremated and Panchanamas of burnt houses were drawn. In the morning of 3rd August, 1987 he had told the police that on account of the death of his brother he was upset and he would lodge the report in the evening and the police did not ask his other two brothers Ramdas and Vasant to lodge the report in his presence. He confirmed the FIR (Exhibit-121) recorded as per his statements. In his cross examination he stated that he had told the police that accused Vasudeo Mohan Patil was holding the burning torch, accused Kamlakar Chandrabhan, Vasudev Mohan and Jankiram Pandharinath set fire to the house of Sukhadeo Sadashiv and Godabai, accused Namdeo Pundalik, Prakash Kashinath and Sukhadeo Sadashiv dragged his brother Shamrao (deceased) and accused Chandrabhan, Popat Hari were telling other persons in the mob that Shamrao Paulad be set on fire, accused Vasudeo Mohan, Prakash Kashinath and Jankiram threw Shamrao Paulad on fire and he did not know the reasons why all these statements were not recorded by the police in his report (Exhibit-121). He stated that Namdeo Pundalik and Pundalik Namdev were two different persons in village Avhane and Accused Namdeo Pundalik was not the same person as Pundalik Namdeo. He similarly identified Chandrabhan Ramkrishna Chaudhari before the Court and denied that the said accused could not walk properly as he had sustained fracture injury in an accident in 1983-84. He also admitted that Shamrao (deceased) had become crippled in an accident in 1985-86 and he did not sustain fracture injuries on account of the assault on him on 2nd August, 1987. He also admitted that an organization by name Dalit Panther was formed to attend to the problems of Harijans in Avhane village. He specifically stated that Pundalik Namdev was not

present in the mob that entered the Rajwada area. Initially a mob of 20 to 25 was coming towards Rajwada locality of Harijans and though the mob was shouting there was no atmosphere of terror. However, within a hour or so more persons joined and the mob turned violent and indulged in beating and setting the houses on fire. He denied the suggestion that Jankiram Pandharinath Patil (accused No.28) was not present in the mob on 2nd August, 1987 that entered the Rajwada area as the said Jankiram was working on a truck of Dagadu Kumbhar and was in the MIDC area, Jalgaon till 10.00 p.m.

17. Shripad Pandurang Wadage (PW14) was the Investigating Officer who had registered Crime No. 92 of 1987 on the basis of the report (Exhibit-121). He had drawn inquest Panchanama of the dead body of Shamrao Paulad Sapkale (Exhibit-106) by visiting the place of incident. He had also drawn spot Panchanama as well as Panchanama of burnt houses (Exhibit-145). Between 4th August, 1987 to 10th August, 1987 he had recorded the statements of witnesses and had seized one wrist watch on 9th September, 1987 in the house of Ratan (PW5) on 24th December, 1987 he had received C.A. report of seized clothes and on 14th November, 1987 investigation was handed over to CID. He admitted that the complaint was received by him at 3.30 a.m. and he had come to know that Ramdas Paulad was injured and was admitted in the hospital. When complainant gave the report (Exhibit-121) he was conscious and able to understand and the report was recorded as per the complainants say. Police reached Avhane around 9.50 p.m. whereas the fire brigade vehicle had reached the said place at 9.00 p.m. The information about the incident at Avhane was received by the Taluka Police Station around 9.00 p.m. through Village Police Patil Uttam Namdeo Patil on telephone and Police Patil had informed on telephone that Popat Hari Patil was lying unconscious near the Budhhawada area as he was beaten by Harijans and further that he appeared likely to be dead. In the night of 2nd August, 1987 and during the day time on 3rd August, 1987 workers of Dalit Panther had come to Avhane village. The heap of fire wood on which Shamrao was set on fire consisted of thorny branches of Babul trees and stems of cotton crop and the place of fire wood was surrounded by residential house. He admitted that the name of accused Kashinath Patil (accused No.40) was not reported to him as one of assailants of the deceased, by Ratan (PW5).

18. Before we proceed to sift the evidence of these material witnesses viz. PW5, PW7, PW8, PW9 and PW13 alongwith the evidence of (PW5) we deem it appropriate to refer to a similar case which had come up for consideration before a Division bench of this Court i.e. "Sukhadeo and others V/s State of Maharashtra" 1988 Mh.L.R. 1249 . Violence was unleashed by a mob of about 40 persons belonging to majority the Wanjari community at Antarwali village situated in Gangakhed taluka of Parbhani district. The unfortunate victims of the assault were three deceased brothers viz. Hari, Govinda and Limba and their nephew Narayan all belonging to minority Budhha community. The majority community thought that some of the Budhha community persons had brought notoriety to them and to the village by leading a life of dacoits and, therefore,

the deceased and their family members, as well as their associates, had left Antarwali village and shifted to Malkhed in Ahmedpur taluka of Latur district but on the fateful day i.e. on 4th June, 1982 they had returned to the Antarwali village to meet some relations. A mob of about 25 persons came to the house of PW15 Manik raising slogans and hurling abuses. They were armed with axes and sticks, to teach a lesson to the four deceased and the other six injured witnesses and to take revenge that they had returned to village Antarwali even though they were instructed to leave the said village in view of their deeds of dacoity. 40 persons were put on trial for offences punishable under sections 147, 148, 452, 302, 307, 324, 506 (Part-II), 323, 452/149, 302/149, 324/149, 506 Part-II/149 and 307/149 of the Indian Penal Code. The trial Court convicted eight accused and sentenced them to suffer rigorous imprisonment for life, in addition to various terms of sentences on other counts and others were acquitted. This order was challenged by the convicts in Criminal Appeal No.133 of 1983 whereas the State of Maharashtra preferred Criminal Appeal No. 177 of 1983 against the order of acquittal. While Criminal Appeal No. 133 of 1983 was dismissed, Criminal Appeal No. 177 of 1983 was partly allowed and this Court convicted other 10 accused and sentenced each one of them to suffer imprisonment for life and other terms of sentences on other counts. Aggrieved by the decision of this Court, in both the Appeals, Criminal Appeal Nos. 31 and 231 of 1989 and 53 of 1990 came to be filed before the Apex Court i.e. Sukhdeo and Others Vs. State of Maharashtra, . The Supreme Court noted that all the appellants were personally known to the witnesses since they were the residents of the same village and, therefore, mistaken identity of any of the appellants was out of question. The injuries sustained by the three deceased persons as reflected in the postmortem examination reports clearly born out how the three victims were mercilessly beaten by the police and other members of the riotous mob and the Supreme Court opined that the Courts below had rightly accepted the evidence of the complainant Manik (PW15) as trustworthy. The prosecution had examined in all 22 witnesses and it was contended by the defence that most of the witnesses had made improvement in their evidence in the Court by implicating as many accused persons as possible and, therefore, the evidence of such witnesses ought to be discarded. It was further contended that in view of the known animosity between the two communities it would be unsafe to sustain the conviction on the basis of such evidence. As regards the first contention, the Court observed that the incident had taken place in the Harijan locality which was situated few furlongs away from the village Abadi and the Wanjari community as a united front had caused the attack and, therefore, it would be futile to accept that any person from the village would support the cause of Harijans. In addition, the evidence of the witnesses could not be discarded on the score that they were closely related to the deceased persons and all that was required in such cases was that the Court must scrutinise the evidence of such witnesses with greater caution. On the score of untrustworthy evidence on account of improvisation the Apex Court accepted the evidence of such of the eye-witnesses whose evidence was free from omissions and contradictions and

also considered the accused being the members of the unlawful assembly sharing a common object and in pursuance thereof causing assault on four victims by axes and sticks etc. and thereby committing their murder and it did not suffer from any infirmity. In addition to this evidence, there was also other material on record in the form of recovery of certain incriminating articles. This Court, while confirming the order of conviction and partly allowing the appeal on acquittal, had relied upon the decision in Maslatis case (supra) and observed in para 36, thus:

"The law does not insist on plurality of evidence. The evidence given by even a single which is credible enough becomes the foundation of a conviction. However, when a large number of accused are involved in such a riot case, and four persons kicked their buckets as a result of murderous allault made by the members of that unlawful assembly, it is difficult to come to a conclusion, particularly when the ocular testimony which otherwise cannot be doubted, has to be appreciated. On such occasions, it sometimes become useful to adopt a mechanical test. The Supreme Court has said that although a test may be described as mechanical, it cannot be treated as irrational or unreasonable. It is no doubt true that it is the quality of evidence that matters, but where consistent evidence has been given and the evidence cannot be rejected so lightly, it is useful to adopt the test and that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incidence. It has been our endeavour to adopt this mechanical test whenever it is useful and whenever we find that two or more witnesses have given a story which is broadly in conformity with the general pattern of assault."

The conviction as confirmed and recorded by this Court, based on the above principles, has been upheld by the Apex Court in the above said case. Bearing this legal position in mind, we will have to proceed to examine the evidence of the above stated eye-witnesses and if two or more witnesses have described an incidence which is broadly in conformity with the general pattern of assault or a particular act, we will have to accept the said testimony to bring home the charge levelled against such accused as per the law laid down by the Apex Court in the case of Maslati and others (supra).

19. Dealing with the first ground that the FIR was belated, we have noted that the FIR was registered on the basis of the complaint of Paulad (PW5) only at about 3.30 p.m. on 3rd August, 1987 and it was not recorded at the spot of incidence in the wee hours of the same day. The delay caused in lodging the complaint has been explained by Ratan in his evidence before the trial Court. He has clearly stated that looking at the scene of offence and the fact that his brother Shamrao was roasted alive and he himself was worried of his security and the security of his family members, he was not in a mentally fit condition to lodge the report to the police and, therefore, he lodged the report only after his deceased brothers body was cremated. This explanation, given by the complainant Ratan, deserves to be accepted and it is a most natural explanation

furnished by him. The witnesses are admittedly from the same locality and some of them are closely related to each other. The minor contradictions in the depositions of the complainant, as compared to the statements made in the FIR, do not vitiate the case of the prosecution and all that is required to be done by the Appellate Court is to scrutinise the evidence of the witnesses with care and caution. While appreciating the evidence of these witnesses, we have to also keep in mind that the rule of "falsus in uno falsus in omnibus" is not applicable in India *Deep Chand and Others Vs. State of Haryana*, and, therefore, the improvisations made in certain respects by the witnesses in their testimony before the Court cannot lead to discarding the entire evidence. If the remaining evidence is trustworthy and substratum of the prosecution case remains in-tact then the Court should uphold the prosecution case to that extent. We have to examine the evidence only in respect of the appellants before us in Criminal Appeal No. 96 of 1996 and the six respondents in Criminal Appeal No. 148 of 1996 so as to find out whether two or more witnesses have described the incidents or complicities of each of the appellants in respect of the offences held to have been established by the trial Court i.e. offences punishable u/s 147, 148, 302, 323, 436, 504, 506 read with section 149 of the Indian Penal Code. 20. Section 141 of the Indian Penal Code states that an assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is, inter alia, to commit any mischief or criminal trespass or other offence; or by means of criminal force, or show of criminal force, to any person, to take or obtain possession of a property, or to deprive any person of the enjoyment of a right of way. The explanation to the said section states that an assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly. As per section 142 whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. Section 143 provides with punishment to a member of an unlawful assembly. Section 146 states that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting and punishment for the said offence has been provided u/s 147. Section 148 defines rioting, being armed with deadly weapon. Section 149 states that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing that offence, is a member of the same assembly, is guilty of that offence. This means that where a criminal act is done by several persons in furtherance of common intention of all, each of such person is liable for that act in the same manner as if it was done by him alone. The term "common object" is different from the term "common intention". In that it does not require prior concert and a common meeting of minds before the attack and an unlawful object can develop after the people get there (at the spot of incidence).

21. In his evidence, the Complainant (PW5) has specifically attributed to each of the Appellants/ accused the culpability in the murder of his brother Shamrao. He stated that Chandrabhan Ramkishan (accused No.8), Pandharinath Kautik (accused No.10), Prakash Kashinath Patil (accused No.40), Ashok Hiranman, Raman Jagannath Patil (accused No.2), Gaulu Kashiram Patil and Jankiram Pandharinath Patil (accused No.28) had beaten Shamrao (deceased) by sticks. The same seven accused had also taken Shamrao to the fire wood stack and all of them kept him on the said stack. Thereafter, Shivaji Hari Patil (accused No.1) poured kerosene on the fire wood stack and Prakash Kashinath Patil (accused No.40) lit the fire wood stack as a result of which Shamrao was burnt alive and all those persons were on the spot till Shamrao died. He had identified all these persons before the Court.

Rukminbai (PW7) stated in her depositions that while she was cooking meals in the Varandah of her house she heard shouts of only five persons viz. Pandharinath (accused No.10), Chandrabhan (accused No.8), Batuk (accused No.40), Shivaji (accused No.1) and Dharmaraj (accused No.5) and she did not see any other person from the mob. As per her, they were saying "Sale Dhedge Mahar Majale" and "Harijans should not be allowed to live in the village". They were armed with stick and burning torch. They started beating Shamrao (deceased) near the house of Sadashiv Baburao and Shamrao was crying for help to save him. Despite his cries these five persons continued beating Shamrao and they kept Shamrao on the fire wood stack near the house of Sadashiv. As per her, Shivaji Haribhau (accused No.1) poured kerosene and Batuk (accused No.40) set fire to the stack. Shamrao Paulad Sapkale was burnt alive. The witness identified all these five persons before the Court.

We have, thus, seen that the names of four Appellants/ accused viz. Bhagwan alias Shivaji Haribhau (accused No.1), Chandrabhan S/o Dharmaraj Shinde (accused No.8), Ramkrishna Patil and Prakash alias Batkya (accused No.40) have been confirmed in the testimony of Ratan (PW5) and Rukminibai (PW7).

22. We then come to the evidence of Ashok (PW8) who stated that he had returned to his house between 7.00 to 7.30 p.m. on the fateful day and while he was at his house he heard the shouts of villagers "Mahar Dhed Matle" and, therefore, he came out of the house. He was standing in the door of his house and he saw Chandrabhan Ramkrishna (accused No.8), Pandharinath Kautik (accused No.10), Prakash Kashinath Patil (accused No.40), Ashok Hiranman, Raman Jagannath Patil (accused No.2), Gaulu Kashiram Patil, Jankiram Pandharinath Patil (accused No.28) had beaten Shamrao (deceased) by sticks near the house of Shamrao Waman. There was fire wood stack at about 10-15 ft. distance from the house of Shamrao Waman and Shamrao Paulad was taken by seven persons and they kept Shamrao Paulad on the fire wood stack. Thereafter, Shivaji (accused No.1) poured kerosene on fire wood stack and Prakash Kashinath Patil (accused No.40) lit fire to it. If this testimony is read with the testimony of Ratan (PW5) regarding the incidence of the death of Shamrao it is

clear that the witness has corroborated the participation in the crime of Chandrabhan (accused No.8), Prakash Kashinath (accused No.40), Raman Jagannath Patil (accused No.2), Jankiram Pandharinath (accused No.28) and Shivaji alias Bhagwan Bhaurao Patil (accused No.1). The witness identified these eight persons before the Court as the persons he had seen at the time of incident.

From the testimony of this witness (PW8) read with the testimony of Ratan (PW5) the culpability of Shivaji Hari Patil (accused No.1), Raman Jagannath (accused No.2), Chandrabhan (accused No.8), Jankiram (accused No.28) and Prakash (accused No.40) is duly proved. Out of the six appellants before us the name of Dharmaraj (accused No.5) did not figure in the testimony of Ashok (PW8). Similarly, in the evidence of Rukminibai (PW7) the names of two of the appellants i.e. Raman Jagannath (accused No.2) and Jankiram (accused No.28) did not figure. However, by relying upon the law laid down by the Apex Court in Maslatis case (supra) we have to read the evidence of Ratan (PW5) together with the evidence of Rukminibai (PW7) and Ashok (PW8) and if any of the appellants culpability is established in the evidence of any of the two witnesses out of the three i.e. PW5, PW7 and PW8, the order of conviction will have to be upheld. We, therefore, deem it safe to reproduce the tabular statement regarding the involvement of the six accused/ appellants before us as per the evidence of the three eye-witnesses i.e. Ratan (PW5), Rukminibai (PW7) and Ashok (PW8), whom the trial Court has accepted as such and we are in agreement with the same, of course in addition to the testimony of Gaba (PW9) and Kalabai (PW13).

Sr. Name and No. Particulars of statements given No. of witness. in the depositions.

1. PW5 - Ratan 1. Accused No. 1 Shivaji Hari, Accused No.8 Chandrabhan and Accused No. 40 Prakash beat Shamrao near electric pole in front of Shamrao Waman Sapkale.

2. Accused No. 28 Jankiram set fire to houses of Sukhadeo Sadashiv Sapkale, Godavaribai.

3. Accused No. 40 Prakash dragged Shamrao from the house of Shamrao Waman Sapkale.

4. Accused No.28 Jankiram and Accused No. 40 Prakash lit fire to firewood stack.

5. Accused No.1 Shivaji Hari, Accused No.2 Raman Jagannath, Accused No. 5 Dharmaraj, Accused No. 8 Chandrabhan lifted Shamrao & kept him on the burning fire wood.

2. PW7-Rukminibai 1. Accused No. 1 Shivaji Hari poured kerosene.

2. Accused No. 5 Dharmaraj and Accused No. 8 Chandrabhan gave slogans.

3. Accused No. 40 Prakash set fire to the firewood stack.

3. PW8-Ashok 1. Accused No.1 Shivaji Hari poured kerosene.

2. Accused No. 5 Dharmaraj, Accused No. 8 Chandrabhan, Accused No. 28 Jankiram and Accused No. 40 Prakash beat Shamrao by stick and taken him to the firewood stack.

3. Accused No. 28 Jankiram set fire to his house and Accused No. 40 set fire.

23. Now coming to the other offences, we shall refer to the testimony of Rukminibai (PW7), Ashok (PW8), Gaba (PW9), and Kalabai (PW13), so as to examine whether the acts attributed to the appellants, in addition to the murder of Shamrao, by Ratan (PW5) are supported by one or more of the witnesses. Rukminibai (PW7) stated that the incident took place around 8.00 p.m. and her house was in the Budhhawada locality. She heard shouts of hundreds of villagers to burn the Harijan people and to set their houses on fire. The depositions as made by her before the trial Court are substantial only on the issue of assault on Shamrao which subsequently resulted into his murder by setting him on fire at the hands of the five accused and four of them being the present appellants. We, therefore, need not consider her evidence for other acts as it is silent in that respect except to hold that the five persons, so named, were the members of an unlawful assembly which had entered the Budhhawada area. Ashok (PW8) stated that he saw Chandrabhan Ramkrishna Patil (accused No.8), Prakash Kashinath Patil (accused No.40), Pandharinath Kautik Patil, Ashok Hiranman (accused No.19), Raman Jagannath Patil (accused No.2), Gaulu Kashinath Patil (accused No.18), Jankiram Pandharinath Patil (accused No.28) and several others. Jankiram Patil set fire to his house by the burning torch. He had received injuries on his head and he was beaten by a pipe. This incident had taken place before Shamrao Paulad was set on fire. The injuries were minor in nature. In the crowd of 100-125 persons he could not see who had beaten him. He did not talk to any persons in the mob nor any one of them talked to him. The mob had come from the southern side and after the members of this mob started pelting of stones on the house, the persons in the locality were frightened, ladies, gents and children were running for their lives. He had also sent his father, wife, children and brother away from the house as he had apprehended danger to their lives from the mob.

Gaba (PW9) was declared hostile by the A.P.P. and in his cross examination by the Prosecutor he stated that on 2nd August, 1987 between 8.00 to 8.30 p.m. a mob came towards his house and the persons in the Budhhawada area started running hither-thither on seeing the mob. Popat Hari (accused No.39), Shivaji Hari (accused No.1), Pandhari Namdeo, Narayan Namdeo were in the mob coming towards his house and these persons set fire to the house of his neighbour and his house as well. Some articles from his house were burnt. He identified Popat Hari (accused No.39, Shivaji Hari (accused No.1), Pandhari Namdeo before the Court as the same persons who were members of the mob and who had set fire to his house as well as the house of his neighbour. After hearing the shouts given by the mob he had hidden alongwith the family members in his house and then all of them noticed fire to rear portion of his

house. His children, therefore, left the house from the front door and all of them went to the banana field to hide themselves. The Banana field lies beyond the boundary of the Budhhawada area. While he was hiding himself in the Banana field he noticed that houses in the Budhhawada area were in flames one after another. He, therefore, went to village Khedi rather than coming to his house and stayed there overnight. He was candid to say that he did not notice as to who set fire to the houses in the Budhhawada area.

Kalabai (PW13), confirmed the earlier incidence of a scuffle between Ramdas (PW7) and Popat Hari (accused No.39) and others around 7.00 p.m. She thereafter got frightened and started running towards the house of her father and while she and her mother were running towards the Budhhawada area the attackers of Ramdas also followed them saying that they would beat them. These persons were giving slogans "Jai Bhavani, Jai Shivaji" and that they should be killed. She, alongwith her mother and maternal uncle, had hidden in the ancestral house and closed the door. They heard noises of pelting stones, noise of rod pushing door of the house which was broken. She stated that Pandharinath Kautik, Tukaram Mohan, Govinda, Naval Dattu Patil, Uttam Ramkrishna Patil, Shivaji Hari Patil entered the house of her family. She was assaulted by Pandharinath Kautik, Uttam Ramkrishna Patil, Naval Dattu Patil and she lost her senses. After sometime she was woken up by her brother and she regained conscious. She ran towards the field and went to Khedi. She identified before the Court the accused persons viz. Tukaram Mohan Patil, Dharmaraj Narayan Shinde, Pandharinath Namdeo Patil, Shivaji Hari Patil, Chandrabhan Ramkrishna, Govind Mohan Patil, Popat Hari Patil to be the same persons who were the members of the mob which entered the Budhhawada area. Out of these persons identified by her, the Appellants before us are Shivaji Hari Patil, Dharmaraj Shinde, Chandrabhan Ramkrishna Patil.

The evidence of all these three witnesses read with the evidence of the complainant (PW5) clearly brings out the complicity of the Appellants in the offence of being the members of unlawful assembly, rioting, rioting with sticks, iron-bars in the Budhhawada locality in prosecution of their common object to commit offences punishable u/s 147, 148 read with section 149 of the Indian Penal Code. The evidence in its entirety has also proved beyond doubt, at the first instance, that a mob had entered the Budhhawada area with sticks and rods, burning torch on 2nd August, 1987 between 7.00 to 8.00 p.m. and the appellants were the members of this mob. It is also proved that the mob had caused mischief of setting on fire some of the houses in the Budhhawada locality and the Panchanama shows that about 26 houses in the said locality were burnt. The evidence also proved that the appellants/ accused had voluntarily caused hurt to some of the witnesses in prosecution of common object of the said unlawful assembly. The findings recorded by the trial Court on the points framed by it are duly supported by the evidence of the above said witnesses regarding the culpability of the present appellants and thus the prosecution proved its case beyond reasonable doubt that the appellants were guilty of committing offences

punishable u/s 147/149, 148/149, 302/149, 323/149, 436/149, 504/149, 506/149 of the Indian penal Code.

24. The learned counsel for the appellants has invited our attention to the charge framed by the Sessions court and submitted that it suffers from patent errors. It is true that while framing the charge the trial Court ought to have separate each of the offences punishable under sections 147/149, 148/149, 302/149, 323/149, 436/149, 504/149 and 506/149 of the Indian Penal Code. However, this failure itself will not vitiate the prosecution case so long as the trial Court has examined the evidence in respect of every offence and recorded its findings. We have considered the evidence on each score and we are satisfied that the objection so raised has no bearing on the prosecution case. In addition, though the evidence about accused No. 1 Shivaji, in respect of his complicity in the offence of beating or setting the deceased Shamrao on fire, is not consistent or suffers from omissions, the evidence of these eye-witnesses is consistent on the point that he was a member of the unlawful assembly and Rukminibai (PW7) stated that the said accused poured kerosene on the fire wood stack. This evidence has been corroborated by Ashok (PW8) as well.

25. The evidence of PW5, PW7, PW8, PW9 and PW10 fully corroborates the prosecution case that a mob of unlawful assembly, armed with sticks, axes, fire torch etc. had come to Harijanwada and indulged in atrocities. They had pelted stones on the houses, set some of the houses on fire and in the said incident Shamrao was killed. The occurrence in the Rajwada area, which commenced around 7.00 p.m. on the fateful day cannot be treated to be an incidence in isolation and it has its definite origin in the first incidence that had taken place in the morning namely Udhav Ragho was taken to the Gram Panchayat office and he was allegedly beaten by Popat Hari. In addition, consequent to the scuffle between Ramdas (PW6) on the one hand and Popat Hari and his associates on the other, resulted in spreading a rumour in the village that the accused Popat Hari was lying on the road and perhaps he was dead. These developments lead to the hypothesis that the members of the higher caste got annoyed and decided to take a revenge or retaliate. The origin of the common object to enter the Budhhawada area and commit atrocities is, thus, originated from these two incidents which had taken place earlier. The members of the unlawful assembly were not the residents of the Harijanwada locality and they were residing in the village at some distance. When they entered the Budhhawada area with sticks, axes etc. their objective was visible. u/s 141 of the Indian Penal Code an assembly of five or more persons is defined as an unlawful assembly if the common object of the persons composite that assembly is to commit any mischief or criminal trespass or any other offence. In the instant case, the object of the unlawful assembly to commit offences/ atrocities in the Budhhawada area was duly establish.

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26. As noted earlier, this Appeal survives against the original six accused viz.

Pandharinath Namdeo Patil (accused No.37), Vasudeo Mohan Patil (accused No.13), Ashok Hiranman Patil (accused No.19), Tukaram Mohan Patil (accused No.36), Govind Mohan Patil (accused No.46) and Namdeo Baburao Patil (accused No.32). It was urged before us, at the threshold, that Pandharinath Namdeo Patil and Pandharinath Kautik Patil are one and the same person and the eye-witnesses have specifically deposed regarding the participation of Pandharinath Kautik Patil and, therefore, there was a case made out to convict accused No. 37 as well. Such a plea ought to have been taken by the prosecution before the trial Court which has not been done. There is nothing on record to show that Pandharinath Namdeo Patil and Pandharinath Kautik Patil was one and the same person or the name of Pandharinath Patil's father was Namdeo alias Kautik Patil.

27. It has come in the evidence that a Ricoh watch, on which the name of Namdeo Baburao Patil (accused No.32) was engraved, was recovered from the house of Ratan (PW5). Ratan (PW5) in his depositions stated that name engraved on the said watch is Namdeo Bhaurao. In addition, the other witnesses have implicated one Namdeo Bhaurao as well as Namdeo Hari and Namdeo Pandurang. None of these persons were arrayed as accused before the trial Court. Namdeo Baburao Patil (accused No.32) has, therefore, been rightly acquitted by the trial Court.

28. Though the complainant, in his depositions before the trial Court, has implicated Vasudeo Mohan (accused No.13) he does not refer to the presence of Tukaram Mohan Patil (accused No.36) and Govind Mohan Patil (accused No.46) as well as Ashok Hiranman Patil (accused No. 19). The other eye-witnesses have not spoken regarding the presence of Vasudeo Mohan Patil (accused No.13) as member of the unlawful assembly. No two witnesses have implicated any one of these four accused viz. Ashok Hiranman Patil (accused No.19), Tukaram Mohan Patil (accused No.36), Govind Mohan Patil (accused No. 46) and Vasudeo Mohan Patil (accused No.13). The trial Court has meticulously analysed the evidence brought before it by the prosecution and the finding of acquittal recorded against all these six respondents/ accused does not suffer from any infirmities. This appeal, therefore, does not succeed.

29. In the result, both the appeals are hereby dismissed and the order of conviction and sentence, as passed by the learned Sessions Judge in Sessions Case No. 32 of 1989 on 19th February, 1996 is hereby confirmed. The District Superintendent of Police, Jalgaon is directed to take immediate steps for the re-arrest of the absconding accused.

D.S. Zoting, J.

B.H. Marlapalle, J.