
(2012) 11 BOM CK 0058

In the Bombay High Court

Case No : Criminal Appeal No. 16 of 2009 and Criminal Appeal No. 13 of 2009

State

APPELLANT

Vs

Naresh Shigaonkar and Others
 State Vs Sushant Naik

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 391
Penal Code, 1860 (IPC) — Section 120B, 143, 147, 149, 323

Citation : (2013) 1 ABR 262 : (2013) ALLMR(Cri) 1291

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Milena Pinto, app, for the Appellant; Thalman Pereira, for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—This common judgment shall dispose of all the above Criminal Appeals. The Collem police had filed charge-sheet against 18 accused persons (respondents) for the offences punishable under sections 143, 147, 120-B, 451, 427, 435, 436, 506(II) r/w section 149 of Indian Penal Code (I.P.C., for short), which had culminated into Sessions Case no. 9/2006, disposed of by the learned Adhoc Assistant Sessions Judge, Fast Track Court-II, Margao.

2. Case of the prosecution, in short, was as follows:

On 19/4/2004, between 14.30 hours to 17.00 hours at Jungle Cafe, Bazarwada, Collem, the accused persons and other villagers of Collem hatched a criminal conspiracy and with their common intention formed an unlawful assembly and in furtherance of their common object pelted stones at the complainant, Shri Joseph Barreto and his labourers, damaged the fencing, criminally trespassed into his property and set fire to his store room, huts, Scorpio jeep bearing registration no. GA-01-S-3913 and other articles, thereby causing loss to the tune of Rs. 14 to 15 lakhs and also threatened said Barreto with dire consequences.

3. Accordingly, charge was framed against all the accused persons, to which they pleaded not guilty.

4. In order to prove the charges, the prosecution examined all together 13 witnesses. PW.1-Shri Joseph Antonio Barreto, owner of the property, lodged report dated 20/4/2004 with the Sanguem police. The report is at Exhibit 53. PW.2-Vimal Magai, PW.3-Virendra Mugai, and PW.9-Sushil Thapa were all employees of PW.1 whereas PW.6-Nagi Vithal Varak is the wife of Vithal who was the employee of PW.1. They were all staying in the said property of PW.1. PW.5-Shrikant Thorat, PW.7-Santosh Mahadev Gawas and PW.11-Deepak Madhukar Pednekar are policemen, who were then attached to Collem police station. All the above witnesses were examined as eye witnesses. PW.8-Dattaram Khandeparkar acted as one of the panch witnesses to the panchanama of scene of offence which is at Exhibit 90. PW.4-Minguel Pereira, the draughtsman of PWD drew the sketch of the scene which is at Exh.79. PW.12-Ashley Barreto is the brother of PW.1, who showed the scene of offence to the police. PW.10-Alex Santan Silveira was the Sub-Officer of Fire Station, Ponda who went to the scene with his team and extinguished the fire and submitted the fire report, which is at Exhibit 94. Lastly, PW.13-Raju Raut Dessai and PW.14-Uday Naik are the Investigating Officers.

5. Case of the accused persons was of denial. Besides the above, accused nos. 9, 11 and 17 claimed that they were not present at the site on 19/4/2004. Accused no. 17 examined himself as DW.1; accused no 9 examined Manjunath Hegde as DW.2 and accused no. 11 examined Satbir Mulla as DW.3, in order to prove their presence elsewhere.

6. The learned Assistant Sessions Judge, upon analysis of the evidence on record, held that the well was a public well and PW.1 was trying to enclose a portion of that well within his own property by putting up compound wall which had provoked the villagers. He held that as Sarpanch of Village Panchayat, accused no. 1 had right to repair the said well and on the relevant date, accused no. 1 had gone with labourers to repair the well and PW.1 had obstructed them from doing the work in his part of property though there was no order of injunction prohibiting accused no. 1 from entering the property to repair the well. First of all, he held that the prosecution failed to prove the offence of criminal conspiracy punishable u/s 120-B of I.P.C. and the offence of criminal intimidation punishable u/s 506(II) of I.P.C., as against any of the accused persons. He further held that the prosecution could not prove that the accused persons damaged fencing of the property of PW.1. The learned Judge further found that the prosecution failed to prove that accused nos. 2 to 7, 9 to 12 and 14 to 18 were members of the said unlawful assembly or that they committed any offence. He, therefore, held that they are entitled to benefit of doubt and acquitted them. The learned Assistant Sessions Judge held that accused no. 1 was guilty of the offences punishable under sections 143 and 147 of I.P.C. and accused nos. 8 and 13 were guilty of the offences punishable under sections 143,

147, 427, 451, 435 and 436 r/w section 149 of I.P.C.

7. The accused nos. 1, 8 and 13 were sentenced for offence punishable under sections 143 of I.P.C. to undergo imprisonment till rising of the Court and to pay fine of Rs. 50/- each, in default to undergo simple imprisonment for two days and for the offence punishable u/s 147 of I.P.C. to undergo simple imprisonment of one month and to pay fine of Rs. 100/- each in default to undergo simple imprisonment for a further period of two days. The accused nos. 8 and 13 were further sentenced for the offence punishable u/s 427 r/w 149 I.P.C. to undergo imprisonment till rising of the Court and to pay fine of Rs. 50/- each, in default to undergo two days simple imprisonment; for the offence punishable u/s 451 r/w 149 I.P.C. to undergo simple imprisonment for 5 days and to pay fine of Rs. 100/-, in default to undergo two days simple imprisonment; for offence punishable u/s 435 r/w 149 I.P.C. to undergo simple imprisonment of two months and to pay fine of Rs. 200/-, in default to undergo 8 days simple imprisonment and lastly; for offence punishable u/s 436 r/w 149 of I.P.C. to undergo simple imprisonment for 4 months and to pay fine of Rs. 500/- each, in default to undergo simple imprisonment for 10 days.

8. Aggrieved by the said judgment and order dated 8/10-8-2007 of the learned Assistant Sessions Judge, the State has preferred the above Criminal Appeal no. 16/2009 praying to quash and set aside acquittal of accused nos. 2 to 7, 9 to 12 and 14 to 18, in respect of offences punishable under Sections 120-B, 143, 147, 451, 435, 436, 506 (II) r/w Section 149 of I.P.C. and to convict them and impose appropriate sentence. It is further prayed to set aside the acquittal of accused no. 1 for offences punishable under Sections 120-B, 427, 451, 435, 436 and 506 (II) r/w Section 149 of I.P.C. and the acquittal of accused nos. 8 and 13 for offences punishable under Sections 120-B and 506 (II) r/w Section 149 I.P.C. and to convict them and impose appropriate sentence. Lastly, it has been prayed to enhance the sentence imposed on accused no. 1 for offence punishable u/Ss 143 and 147 of I.P.C. and that on accused nos. 8 and 13 for offence punishable u/ Ss 143, 147, 427, 451, 435 and 436 r/w section 149 of I.P.C.

9. In the meantime, against the judgment and order dated 8/10-8-2007 of conviction passed by the learned Assistant Sessions Judge, the accused no. 1 preferred Criminal Appeal no. 43/2007; the accused no. 8 preferred Criminal Appeal no. 44/2007 and accused no. 13 preferred Criminal Appeal no. 45/2007 before the learned Sessions Judge, South Goa, Margao. By judgment and order dated 22/2/2008, passed in Criminal Appeal no. 43/2007 and by common judgment and order dated 22/2/2008 passed in Criminal Appeals no. 44/2007 and 45/2007, the Sessions Judge quashed and set aside the judgment and order of conviction dated 8/10-8-2007 passed by the Assistant Sessions Judge against the accused no. 1, 8 and 13 and acquitted them of the offences for which they were convicted and sentenced.

10. The above Criminal Appeals no. 14/2009, 13/2009 and 15/2009 have been filed by the State against the judgment and order of the learned Sessions

Judge(II), Margao respectively in Criminal Appeals no. 43/2007, 44/2007 and 45/2007.

11. In sum and substance, the present position is that acquittal of all the 18 accused persons in Sessions Case No. 9/2006 is under challenge.

12. Learned Additional Public Prosecutor (APP, for short) on behalf of the State and Mr. Thalman Pereira, learned counsel for all the accused persons were heard at length.

13. Learned APP canvassed that the learned Assistant Sessions Judge has passed the judgment as if that was a civil case. She pointed out that after discussing the testimony of PW.1, the learned Assistant Sessions Judge at paragraph 19 of the judgment has observed that the testimony of PW.1 is corroborated by PW.s. 2, 3, 6, 9 and 11, in spite of which, the accused persons have been acquitted. She further submitted that the evidence of the panch witness i.e. PW.8 read with panchanama of the scene of offence and the photographs duly proves the damages to the well, fencing, jeep and the property belonging to PW.1. The learned APP submitted that PW.2 has identified accused nos. 1, 5, 6, 7, 8, 12, 13, 15 and 17; PW.3 has identified accused nos. 1, 2, 8, 12, 13 and 17; PW.6 has identified accused nos. 1, 6, 7, 8, 12, 13, 14 and 16; PW.7 has identified accused nos. 8, 12, 13, 16 and 18; PW.9 has identified accused nos. 2, 5, 6, 7, 9, 10, 14, 15 and 16 and lastly PW.11 has identified accused nos. 1, 3, 5, 6 and 7 as present during the incident which took place between 2.30 p.m. to about 4.30 p.m. on 19/4/2004. She further submitted that PW.s 2, 3, and 9 have identified accused nos. 8, 12, 13 and 17 and PW.s 6 and 7 have identified accused nos. 8, 12 and 13 to be the persons who set the jeep on fire. It is her contention that some of the witnesses are themselves victims and their belongings were destroyed and none of them were enemies of any of the accused persons and therefore, they ought to be believed. Insofar as the defence evidence is concerned, the learned APP contended that no documentary evidence in support of their versions was produced and even otherwise, in view of the cogent evidence adduced by the prosecution witnesses, the said counter evidence cannot be believed. She therefore, urged that the impugned judgments be quashed and all the accused persons be held guilty, convicted and sentenced for the offences with which they have been charged.

14. Per contra, the learned counsel, appearing on behalf of the accused persons, countered the submissions of learned APP and opposed the appeals vehemently and submitted that the evidence on record does not show any prior meeting of minds of the accused persons and, therefore, the criminal conspiracy was not at all proved. He further submitted that the genesis of the entire incident was the public well and accused no. 1 was Sarpanch of the village at the relevant time and it was decided to repair the said well in pursuance of a Gram Sabha resolution and therefore, it was the duty of accused no. 1 to get the said job done. He pointed out that a charge-sheet and consequently a Criminal Case was filed against PW.1 by the same Investigating Officer namely PW.13-Raju Raut

Dessai, alleging that PW.1 abused, assaulted, interfered with and threatened Naresh Shigaonkar, (accused no. 1) while performing lawful duties as Sarpanch of the Village Panchayat. The learned counsel further submitted that since there is evidence to hold that the well is a public well, PW.1 cannot have any grievance about the alleged damages to the said well or entry alleged to be criminal trespass into the property only for repairing the public well. According to the learned counsel, appearing for the accused persons, the evidence on record clearly establishes that PW.1 had committed offence against accused no. 1 on 19/4/2004 at 15.00 hours and PW.11 had taken accused no. 1 to the police station and F.I.R. of accused no. 1 was recorded at 15.30 hours and thereafter, accused no. 1 was referred to the Medical Officer who examined him at about 5.00 p.m. on the same day and all these events prove that the accused no. 1 was not present at the site from 3.00 p.m. up to about 6.30 p.m. and hence, cannot be involved in any of the alleged incidents of burning the jeep, burning the huts/houses and damage to the property. He pointed out from the photographs on record that none of the accused persons is seen in the said photographs and that the persons in the photographs are totally different. He invited my attention to the report lodged by PW.1, which is at Exhibit 53, wherein it is recorded that on 19/4/2004, at about 2.30 to 3.00 p.m., the Sarpanch accompanied by some women folk came to the site. He pointed out that there is no mention of any male persons accompanying accused no. 1, in this report. From the photographs on record, he further showed that mostly women folk is seen in those photographs. He also pointed out from the charge-sheet filed against PW.1 that the witnesses are mainly women. He questioned as to how these witnesses in the counter case were not made accused in the case filed by PW.1. He, therefore, submitted that the other accused persons were also entitled for acquittal. The learned counsel read the evidence of DW.1 i.e. accused no. 17, DW.2 i.e. Officer of Salgaonkar Mining Industries and DW.3, the Officer of M/s Goa Resistor's Private Ltd. and contended that their evidence duly proves that accused nos. 9, 11 and 17 were not at all present at the scene of offence on 19/4/2004. He pointed out from the evidence that some of the witnesses have taken the names of Michael, Manuel Fernandes, Tony D'Costa, Anton Fernandes, Francis, etc., as the persons involved in the offence but they have not been shown as accused persons. He further contended that there is reasonable doubt whether statements of the labourers, who have been examined, were recorded by PW.13 or not since they say that they never gave statements. He further contended that there are many material improvements made in their depositions by the said witnesses. He argued that the witnesses have merely given the names of some of the accused persons, but none of them actually pointed out to any of the accused persons present in the Court. He submitted that the evidence on record reveals that about 300-400 persons had gathered at the spot and PW.9 had told the labourers in the said property to leave the place to save their lives and that he also saw some persons running after the labourers to assault them. According to him, therefore, the presence of labourers at the site is doubtful. The learned counsel further argued that PW.11, a police officer, was at the site on

19/4/2004 and some incident had allegedly occurred in his presence but surprisingly, he had not lodged any report. He, therefore, contended that the report belatedly lodged by PW.1 on 20/4/2004 is a manipulated report. He submitted that there is no scope for interference with the judgments of acquittal rendered by the lower Courts and urged that all the appeals be dismissed.

15. I have carefully perused the original record and proceedings and I have also considered the submissions made by the learned counsel for both the parties and the citations relied upon.

16. PW.1 deposed that on 19/4/2004 at about 10.00 a.m., accused no. 1 along with 10-15 villagers came at the site and started chipping the plaster of the well. However, this work was to the portion of the well which was admittedly not falling in the property of PW.1. According to PW.1, after lunch and between 2.30 p.m. to 3.00 p.m., the said persons again came and started removing stacked stones from his fencing and they entered his property and started breaking plaster of the well from inside his property. PW.1 then telephoned the police and called them at the site. He further deposed that thereafter he came back and saw that the persons had damaged the well and had gone outside his property and were working at the well from outside his property. The deposition of PW.1 reveals that soon thereafter the police arrived and in presence of police the accused no. 1 trespassed into his property and he requested the police to send accused no. 1 outside the property at which time accused no. 1 came charging towards him, pushed him, abused and threatened him and also assaulted him. He stated that the police then intervened and three policemen surrounded PW.1., after which accused no. 1 lifted a stone to hit him. According to PW.1, he questioned the police as why they are catching him when it is the accused no. 1 who entered the property, damaged the same and had assaulted him. According to PW.1, police then left him and took accused no. 1 out. PW.1 further deposed that the accused no. 1 started throwing stones at the police and PW.1 and provoked the persons who were about 50 in number and who had gathered there. PW.1 then stated that the accused who were present in the Court on the day of his deposition formed the said gathering and besides them, there were about 50 more persons. He further stated that he again made a phone call to his advocate and police and about 30 minutes thereafter police came in a police jeep caught hold of him (PW.1), put him in the jeep and took him to the police station and arrested him.

17. From the above, it is seen that insofar as the incident which took place from 2.30 p.m. to about 4.00 p.m. is concerned, except accused no. 1, PW.1 has not identified the other 10-12 persons who had accompanied accused no. 1. Though PW.1 stated that accused no. 1 provoked about 50 persons who had gathered at the spot and that all the accused present in the Court were also there in addition to the said 50 other persons, however PW.1 did not state as to what all the accused persons or any of them did after they were allegedly provoked by PW.1.

18. According to PW.1, the accused no. 1 was accompanied by about 10 to 15

villagers. He did not state that the accused no. 1 was accompanied by women folk. PW. 1 further alleged that the accused no. 1 pushed him and assaulted him. However, in his report (Exh. 53), it is recorded that the sarpanch and women folk came charging towards him. It is not stated in this report that the accused no. 1 pushed and assaulted PW.1. In fact, there is no charge against accused no. 1 or other accused persons for offence punishable u/s 323 of I.P.C. There is therefore improvement made by PW.1 regarding the incident of assault and contradiction of his own report regarding the presence of women folk.

19. Insofar as the alleged incident deposed to by PW.1 which occurred between 2.30 p.m. to about 4.00 p.m. after which PW.1 was taken away by the police, is concerned, the evidence of PW.5 and PW.7 is of no use as they had gone to the spot after 4.30 p.m. The other witnesses namely PW.2, PW.3, PW.6, PW.9 and PW.11 have not corroborated PW.1. They have also not corroborated each other. No doubt, PW.s 2, 3, 6 and 9 have stated that 10 to 12 or about 10 to 15 persons were accompanying accused no. 1. But they have not identified these persons. In his cross-examination, PW.3 could not even remember whether 10 to 12 persons who had come along with accused no. 1 at 2.30 p.m. were the same persons who were present earlier. PW.11 has stated that after tearing his own shirt pocket, the accused no. 1 called Milagrin, Abdul, Lalit, Kunda and others and instigated them by saying in Konkani "Fator mara tika, ad vodui taka, vo chance taka davodapak, marat taka". According to PW.11, thereafter all the said persons started pelting stones on Joseph Barreto and his labourers. However, PW.11, in spite of being a police sub Inspector, having knowledge of criminal procedure, has not identified the said named persons as particular accused persons. He has not even stated that those named persons were present amongst the 18 accused persons. According to PW.2, accused no. 1 came charging towards PW.1 and pushed him and in the process the hand of PW.1 hit accused no. 1 after which police separated PW.1 and accused no. 1. PW.3 says that accused no. 1 rushed towards PW.1 saying that PW.1 wants to drive away him from the village which is his own village, and he pushed PW.1 and while protecting himself, the hand of PW.1 hit accused no. 1 and police separated both of them. PW.6 stated that after coming inside, the Sarpanch started pushing PW.1 and while avoiding the Sarpanch pushing him, the hand of PW.1 hit the Sarpanch. PW.9 brought in a version that the accused no. 1 pushed PW.1 and when PW.1 was handing over his camera to him (PW.9), at that time, the hand of PW.1 hit accused no. 1. PW.2, PW.3, PW.6 and PW.9 were all confronted with their police statements wherein it is recorded that Joseph Barreto (PW.1) slapped accused no. 1. All the above witnesses flatly denied having stated so to the police. The above contradiction has been duly proved through the Investigating officer. No damaged Camera was attached. If the testimony of PW.11 is perused, it is found that according to him the accused no. 1 went charging towards PW.1 and pushed him upon which PW.1 slapped the accused no. 1. No doubt PW.s 2, 3, 6, 9 and 11 have all corroborated each other on the fact that the accused no. 1 himself tore his pant pocket. But this fact has not been stated by the concerned

witness namely PW.1 either in his deposition or in his report.

20. Besides the fact that the testimonies of PW2, PW3, PW6, and PW9 suffer from main defect of non-identification of accused persons other than accused no. 1, the same also suffer from various improvements made by them to the case of the prosecution and from material omissions and contradictions vis-a-vis their police statements. The said material omissions and contradictions have been duly proved through the Investigating Officer namely PW.13 (Raju Raut Dessai). PW.2, PW.3 and PW.6 are employees of PW.1 and PW.9 is the wife of employee of PW.1. The possibility of obliging the master cannot be ruled out.

21. With regard to the accused no. 1, admittedly, he was the Sarpanch of the Village Panchayat of Collem and a resolution was taken in the Gram Sabha meeting to repair the said well which is the genesis of the incident. The evidence on record reveals that some portion of the well falls in the property of PW.1, whereas, major portion of the same falls outside his property. Admittedly, there is a Civil Suit filed by PW.1 against the Village Panchayat, through Sarpanch and many villagers praying for permanent injunction to restrain the said persons from interfering with, trespassing into, obstructing possession of, the suit property, damaging the plantation, fencing and other structures standing in the suit property, carving out road in the suit property, obstructing the plaintiff from using the well water and from interfering in the suit property in any manner. By order dated 19/4/2004, the application for temporary injunction filed by PW.1 was granted and the said defendants inter alia were restrained from obstructing the plaintiffs from using the well water and from interfering in the suit property. Therefore, there was a civil dispute about the said well and about the fencing erected by PW.1. Accused no. 1, as the Sarpanch of the village, was interested in seeing that the said repair work to the public well was done. It should be kept in mind that though PW.1 says that he was abused, pushed and assaulted by accused no. 1, it is not understood as to why the police instead of catching and arresting accused no. 1, had arrested PW.1 himself. It is pertinent to note that according to PW.11, only one stone of the fencing was removed by accused no. 1. The fencing was only of laterite stones placed one above the other. Such stones can be removed and placed again. Keeping in mind the civil dispute, it cannot thus be said that the fencing was damaged.

22. Accused no. 1 had lodged complaint against PW.1 and this complaint was filed on the very day of the incident i.e. 19/4/2004. Upon this complaint, FIR u/s 504, 323, 353, 427 and 506(II) was registered against PW.1 which culminated into Criminal Case No. 35/S/2004. The allegation was that on 19/4/2004 at 15.00 hours near public well, Bazarwada, Collem, the accused namely Joseph Barreto due to public well abused the complainant Shri Naresh Shigaonkar, Sarpanch of Village Panchayat Collem in filthy language, assaulted him with fist blows and kicks on his head and shoulders and caused him injuries, tore his shirt and threatened him with dire consequences while he was performing lawful duties as Sarpanch of the village. PW.1 lodged the report on 20/4/2004. In fact,

PW.11, a P.S.I. of Collem P.S. was allegedly present at the spot and therefore a question arises as to why he had not lodged the report against accused no. 1 and other villagers on 19/4/2004 itself. Besides the above, there was a civil dispute about the well and the fencing also.

23. Admittedly after the incident which allegedly took place between 2.30 p.m. and about 4 to 4.30 p.m., PW.1 was not present as he was taken away by the police and therefore, he was not an eye witness to the incident of setting fire to the jeep/houses/store room in the property and causing damage to the property. Similarly, PW.12 Ashley Barreto, the brother of PW.1 was not an eye witness to the said incident. PW.1 and PW.12 had subsequently seen the said damages. Hence, their evidence would be relevant only to prove the extent of damages. Besides the above, the panchanama of scene of offence was drawn by PW.13 for which PW.8 Dattaram Khandeparkar acted as one of the panch witnesses. The panchanama is at Exhibit 90. The sketch of the scene was drawn by PW.4, which sketch is at Exh. 79. The evidence of PW.10 who had gone to the spot along with other fire personnel, in order to extinguish the fire, also proves the damages to the property. There can be no doubt that the damages to the huts/houses/store room situated in the property of PW.1, to the restaurant and to his jeep by means of fire have been duly proved. But that does not automatically proves the guilt of accused persons. The question is as to who caused the said damages?

24. PW.2 named Amar Chari, Krishna Naik, Daya Kamat and Sushant Naik as the persons who set the jeep on fire. According to her, all the accused persons present in the Court were involved in the incident of damaging the houses and property. She has named some of the accused persons as Naresh Shirgaonkar, Milagrin Mascarenhas, Lalita Naik, Kunda, Sushant Naik, Krishna Naik, Daya Kamat, Amar Chari and Orissa. PW.3 named Sushant Naik, Daya Kamat, Amar Chari and Krishna Naik as the persons who deflated the tyres of the jeep and put it on fire. PW.6 stated that the accused no. 1 had come back along with about 25 persons and that Sushant, Amar Chari and Daya were near the jeep and damaged it. PW.7 named Manuel Fernandes, Sushant Naik, Daya Kamat and Amar Chari as the persons who were responsible for putting the jeep on fire. According to PW.7, there were lot of people who damaged the property. He named Pushpa, Mascarenhas, Francis, Shakeel, Amar Chari, and Tony D'costa as some of those persons. PW.9 stated that after PW. 1 was taken away by police, about more than 300 to 400 persons gathered at the spot. He named Sushant Naik, Daya Kamat, Amar Chari and Krishna as the persons who damaged the jeep. PW.9 further stated that the persons who had lit palm leaves in their hands were Paul Mascarenhas, Gaurish Mapari, Pushpa, Altaf, Krishna who is known as Odisa and these persons put the tourist cottages, restaurant etc., on fire. However, none of the said witnesses namely PW.2, PW.3, PW.6, PW.7, and PW.9 has identified the said named persons vis-a-vis the accused persons, except the accused no. 1. According to PW.5, he saw large crowd gathered on the road near the well and people were putting a jeep on fire. He stated that upon inquiries they were informed that the owner of Jungle Cafe had slapped the Sarpanch and

out of anger, the people had burnt his car and had damaged the Jungle Cafe and the property. PW.11 stated that they saw a crowd of about 500 people gathered at the spot. However, neither PW.5 nor PW.11 has named any accused person being responsible for said damages to the restaurant, jeep, houses/cottages, etc.

25. The names of Jyotiba Ghewade, Moulali Nadar, Namdeo Dessai, and Krishna Dessai have not at all been taken by any of the witnesses. Tony D"Costa, Francis, Krishna Naik and Manuel Fernandes, named by some of the witnesses are not accused persons. In his cross-examination, PW.3 wrongly identified accused no. 17-Krishna Dessai as krishna Naik. In his cross-examination, PW.7 was tested for his identification of at least one of the persons named by him. He, however, wrongly identified accused no. 12 Radhev @ Daya kamat as Francis.

26. The evidence on record reasonably shows that accused no. 1 was taken away from the spot and to Collem Police Station by PW11 at about 3.00 p.m. Initially, N.C. Complaint of accused no. 1 was recorded by PW11. A report was lodged by accused no. 1 at Collem Police Station. The First Information Report, at the instance of accused no. 1 against PW.1, was registered at 3.30 p.m. Distance from Collem to Ponda, as is revealed from the Fire Report at Exh. 94 is 43 Kms. According to PW.11, after recording N.C. Complaint, he prepared Memo to the Medical officer, I.D. Hospital, Ponda and told accused no. 1 to go with police constable to I.D. Hospital. The fire personnel, according to PW.10 took about 35 minutes to reach from Ponda to Collem. But they had gone at full speed and by blowing siren. By normal speed, it would certainly take about an hour to reach I.D. Hospital, Ponda from Collem P.S. The memo to the medical Officer is at Exh. 100. The medical certificate of the medical officer is on the back of the Memo. The accused no. 1 was examined at 5.00 p.m. After medical examination, accused no. 1 reached back to Collem P.S. by about 6.30 p.m. Therefore, the presence of accused no. 1 at the scene of offence between 3.00 p.m. and 6.30 p.m. is highly improbable. PW.5 who had reached the spot at about 4.30 p.m. has stated in his cross-examination that he did not see Naresh Shirgaonkar, at that time in the property. PW.7 does not say that accused no. 1 was present at the spot. After recording N.C. Complaint of accused no. 1, Pw11 had returned back to the spot. PW11 does not say that he saw accused no. 1 there at that time. In the circumstances above, PW.2, PW.3, PW.6, PW.9, who are labourers of PW.1 cannot be relied upon since they state that accused no. 1 was seen by them provoking and instigating the crowd between 4.00 p.m. to 4.30 p.m. i.e. during the time when fire was set to Jeep, restaurant, houses, and property.

27. In the above background, where the presence of the accused persons is not satisfactorily established by prosecution, the defence evidence cannot be simply brushed away. DW.1, the accused no. 17, who is driver by profession, stated that he had left Goa on 18/4/2004 at 6.15 a.m. in a vehicle driven by him and hired by pilgrims and from Kolhapur, had returned back to Goa on 20/4/2004 in the evening. DW.2 stated that he was working as property-in-charge at a farm called Madhuban Farm at Pimplamoll Collem, belonging to Salgaonkar"s Mining

Industries, and accused no. 9-Altaf, a mason was working for them at Tatodi Mines property where the work of construction of compound wall was going on, which place is about 10 to 12 Kms. from Collem Village. DW.2 issued the certificate Exh. 133 that accused no. 9 was working as such from March 2004 to May 2004 including 19/4/2004. According to DW.2, he had checked the attendance register and had confirmed the attendance of accused no. 9 through their contractor. DW.3 was working as in-charge of the factory, with M/s Goa Resistor's Private Ltd. He stated that accused no. 11 was working in their factory till December 2004 as operator and on 19/4/2004, accused no. 11 was working on second shift from 1.35 p.m. to 9.15 p.m. DW.3 issued the certificate (Exh.140), in this regards, after checking the records. In his cross-examination, DW.3 even produced the copy of the attendance card and the muster roll as Exh. 141-colly. The evidence adduced by above accused persons is such that the said accused would certainly be entitled to the benefit of reasonable doubt.

28. In the facts and circumstances of this case, the Judgments of the Apex Court in: (i) State of Gujarat Vs. Chavda Manaji Chelaji, ; (ii) State of U.P. Vs. Anil Singh, , (iii) Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , all relied upon by the learned APP, would not be of any assistance to the prosecution.

29. Therefore, though it is proved that Scorpio Jeep, restaurant, houses and property were set on fire and damaged, however it is not proved beyond doubt that the accused persons or any of them did the same.

30. Relying upon the well known "Best Bakery Case" and Section 391 of Cr. P.C., it was urged by the learned APP that the case be remanded to the trial Court with opportunity to the prosecution to recall all the said witnesses and take additional evidence for identification of the persons named by them vis-a-vis the accused persons. In this regard, as has been rightly submitted by Mr. Pereira, the learned counsel for the accused persons, the Best Bakery case was an extraordinary case in which the Hon"ble Apex court was convinced that the entire prosecution machinery was trying to shield the accused i.e. the rioters. It was also found that the entire trial was a farce. The witnesses were terrified and intimidated to keep them away from the Court. Such is not at all the position in the present case. Allowing the prosecution now to recall the witnesses for identification of accused persons would be like giving a second chance of proving the case. There was negligence or carelessness of the prosecution who had all the opportunity to produce the said evidence on identification. The provision of Section 391 of Cr. P.C. is not meant to fill up the lacuna but to subserve the ends of justice. The request of the learned APP cannot therefore be acceded to.

31. In the case of Murugesan and Others Vs. State through Inspector of Police, , the Apex Court has held thus:

The reversal of the acquittal could have been made by High Court only if the conclusions recorded by the learned trial Court did not reflect a possible view. The use of the expression "possible view" is conscious and not without good

reasons. The said expression "possible view" is in contradistinction to expressions such as "erroneous view" or "wrong view". A "possible view" denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by Court lower in the hierarchical structure may be termed as erroneous or wrong by a superior Court upon a mere disagreement. But such a conclusion of the higher Court would not take the view rendered by the subordinate Court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a Court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. Possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher Court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial Court can be reasonably formed regardless of whether the High Court agrees with the same or not, the view taken by the trial cannot be interdicted and that of the High Court supplanted over and above the view of the trial Court.

32. In the case of State of Uttar Pradesh Vs. Samman Dass, , the legal principles as to when an order of acquittal can be interfered with are stated as follows:

There are, whoever, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken thirdly, in case of acquittal by the trial Judge, the appellate court should take into account the fact that the trial Judge had the advantage of looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given.

33. In the case of Chandrappa and Others Vs. State of Karnataka, , the Hon"ble Supreme Court has laid down the following legal principles:

30. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and appellate Court on the evidence before it may reach its own conclusion, both on question of fact and of law;

(3) Various expressions, such as, "substantial and compelling reasons", "good

and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

34. Tested by the touch stone of aforesaid settled principles of law insofar as the appeal against acquittal is concerned, I am of the view that the impugned judgments and orders of the lower Courts pertaining to acquittal of accused persons, clearly reflect the possible view based upon the evidence and materials on record. Hence, no interference is called for. In the result, all the above criminal appeals are dismissed. Bail Bonds of the accused persons and their sureties are cancelled.