
(2015) 09 SC CK 0159

In the Supreme Court Of India

Case No : Criminal Appeal No. 1957 of 2008

State of Maharashtra

APPELLANT

Vs

Ramlal Devappa Rathod and others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Evidence Act, 1872 — Section 134

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 3 ACR 3340 : (2015) 11 AD (SC) 206 : (2015) 91 ALLCC 601 : (2016) CriLJ 340 : (2016) 1 JCC 294 : (2015) 4 JLJR 312 : (2016) 1 KCCR 161 : (2016) 1 RCR(Criminal) 133 : (2015) 10 SCALE 347

Hon'ble Judges : Pinaki Chandra Ghose and U.U. Lalit, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

U.U. Lalit, J—This appeal by special leave challenges the judgment and order dated 22.06.2006 passed by the High Court of Bombay in Criminal Appeal No. 885 of 2001 acquitting the Respondents namely original Accused Nos. 1, 2, 3, 7, 10, 12, 29 and 30 of the charges Under Sections 302, 307, 326, 324, 427, 436, 435, 452, 147 and 148 read with Section 149 of the Indian Penal Code.

2. According to the prosecution, deceased Tanaji Pandurang Rathod, his brothers and father were trustees of Durgamata Temple in Village Sevalal Nagar, Taluka North Solapur, Solapur. They were also members of Sahakari Krushi Society, which society had received about 44 acres of agricultural land from the Government. There was a dispute in the village over this agricultural land. On 30th April, 2000 Tanaji, his brothers and father had opened Durgamata Temple at 4.30 a.m. and performed pooja. After completion of pooja while Drums, Shankh and Bells were being played and blown, at about 5.50 am, a group of persons came there holding sticks, axes, swords and stones. The mob started assaulting Tanaji, who received injury by a sword. His brothers and family members who tried to intervene were also assaulted. Tanaji managed to run

towards the cluster of houses of the family of his uncle Hemla Tukaram Rathod. He was running for his life and went from place to place followed by the mob. His brothers, other relations, sister and wife Sarojini were all the while pleading that he be spared but the mob was relentlessly after Tanaji. The brothers who intervened were also assaulted. Finally Tanaji had taken refuge in the house of his uncle Hemla Tukaram Rathod. The members of the mob removed the tiles of the roof and managed to catch Tanaji who was then taken to the field in front of the house of Hemla Tukaram Rathod and assaulted with sword, axes and sattur. The members of the mob then entered the house of Tanaji, carried away all the documents from his house and set them on fire. Valuables like gold ornaments and cash were also taken away.

3. The family members managed to put Tanaji and other injured in a tempo which carried them to Civil Hospital, Solapur for treatment. However, Tanaji was found to be dead. The injured were given treatment and PW1 Parmeshwar, brother of Tanaji informed the police about the incident, pursuant to which FIR was registered. In his statement PW1 Parmeshwar named thirty four persons from the mob and also attributed overt acts to some of those named persons. Crime No. 37 of 2000 was therefore registered on 30.04.2000 and investigation was undertaken. The body of Tanaji was sent for post-mortem.

4. PW16 Dr. Pradeep Chinchure and Dr. P.V. Antrolkar performed post mortem on 30.04.2000 and found following external and internal injuries:

1. Incised wounds two in numbers right fronto parietal region,
 - a) 2"x2 bone deep, skull palpable fracture.
 - b) 2"x1/2 bone deep with palpable fracture.
2. Incised wound occipital region 3 1/2"x1" bone deep with fracture skull,
3. Chop wound near left elbow joint 6 cm x 4 cm bone deep with fracture numerous obliquely placed with loss of anatomical continuity,
4. Incised wound 2" above left ankle joint 3"x1" muscle deep,
5. Chop wound above left ankle with amputation exposing muscle bones of left lower leg, foot attached by skin anteriorly 7"x4" bone deep,
6. Multiple incised wounds
 - a) right foot 3"x1" bone deep on lateral maleolus of right ankle,
 - b) 2" below right ankle 4"x1" muscle deep,
 - c) 2" below inj. No. (b) about 3"x1" muscle deep,
 - d) 2" below inj. (c) 2" x 1"x muscle deep,
7. Incised wound above right knee joint 3" x 1"x muscle deep,

8. Incised wound on thigh lateral aspect upper part 4"x1" bone deep,
9. Chop wound right palm 3"x1" bone deep with partial amputation of middle, ring, little finger and complete amputation of inner finger which is missing.
10. Chop wound right fore-arm 3"x2" bone deep with fracture underlying bone.
11. Chop (incised) wound 7"x2" bone deep on back near right buttock,
12. Incised wound right shoulder joint posteriorly 4"x1/2" muscle deep,
13. Multiple linear incised wounds all over body more on right shoulder area than foot and both legs.

And

- 1) Haematoma under-scalp right fronto parietal region, incised wound on same region and on occipital region,
- 2) Fracture of occipital bone corresponds to column No. 18 about 7 cm. in length and injury to brain,
- 3) Fracture of fronto parietal bone about 10 cm. in length and injury to brain. Brain was congested oedematous. Injury to brain at the side corresponding to Inj. Nos. 1 and 2. Subdural haematoma all over brain more on right side and occipital region.

The cause of death was: "Hemorrhage and shock due to multiple chop wounds with head injury with fractured skull with Sub-dural haematoma with injury to vital organs.

5. In the meantime PW-18 Pratap Kisan Pawar, C.P.I. proceeded to the scene of occurrence and recorded spot Panchnama Ext. 75, stating inter alia that blood stains were present in and around the temple i.e. on the tiles around the goddess on the southern side. The grill of middle pillars from western side was stained with dried blood. The pillar thereafter from right side was also stained with blood due to placing of bleeding hand on it. Thereafter trail of blood stains led to tar road between Mardi and Sevalal Nagar 100 ft away from the temple on the western side, whereon multiple blood stains were found at different spots. From the southern side of the temple towards water tank and at a distance of 500 ft near the well of one P.T. Rathod four blood stained rocks and broken handle of axe were found. Faint footprints were found on the recently ploughed land near the deceased's paternal uncle Hemla Rathod's land. At the house of deceased's cousin Maruti, the doors had been damaged, the room had six tins of 12 ft. x 10 ft. size used as roof, out of which tin No. 3 from the southern side was removed. There were two bags of jowar and other food grain bags along with clothes and items of daily needs present in the said room. At the house of Jaysingh Rathod, the doors on the west facing room were removed and placed along the eastern wall in vertical position, construction in the northeast corner of the said room was severely damaged and there were bricks and earth lying

around. The length of the said room was 12 ft. x 8.6 ft. and there was a cot, food grain bags and clothes kept there. At the house of Laxman Rathod, all the tins forming roof of the said house were detached. The room was about 15 ft. x 7.6 ft. in dimension and a cot, food grain bags, items of daily needs and clothes were found there. The roof of Shivaji Rathod's house was set on fire. Three tins from the northern side of the house of Hemla Rathod were also removed. At the ploughed area, pieces of blood stained saree, tube filled with blood, three blood stained bags, a baniyaan and two small sticks were found.

6. PW-18 Pratap Kisan Pawar, CPI attached four stones with blood stains. He recorded statements of eight witnesses. He arrested twelve accused persons on the same day. On the next day, he recorded statements of eight more witnesses including Sarojini, wife of Tanaji. On that day pursuant to disclosure statements made by:

A1- Ram Lal - sword, axe and sticks with blood stains

A2-Ramchandra - satturs, axe and sticks with blood stains

A3-Limbaji - sword, axe and sticks with blood stains

A29-Shivaji Wadaje - spear with blood stains

A30-Pandit - axe with blood stains,

were recovered and attached.

The attached articles were forwarded to the Chemical Analyzer and the reports in that behalf were later marked as Exts. 125 to 160 in the trial. On completion of investigation charge-sheet was filed and thirty four persons were charged for having committed the offences Under Sections 147, 148, 302, 307, 324, 326, 395, 427, 435, 436, 452 read with 149 Indian Penal Code.

7. In the trial, PW1 Parmeshwar stated about the incident that he had gone to the temple to offer pooja along with his brothers Bhanudas, Prithviraj, Tanaji and their father and that while pooja was going on, about 100 to 200 people from their village came and started beating them. He however, stated that he did not know if the accused were present in that mob which assaulted them and also could not say who had beaten his brother Tanaji. The witness was therefore declared hostile. PW2 Arjun, another brother of Tanaji also did not support the case of the prosecution and was declared hostile. The third brother Bhanudas examined as PW3 accepted that he had sustained injuries but could not name the persons who had assaulted him and was also declared hostile. Fourth brother Bharat examined as PW4 was similarly declared hostile. The cousin of Tanaji named Shivaji Hemla Rathod examined as PW5 stated that his cousins had sustained injuries and on that day the roof of his house was burnt but he could not name the persons who had beaten them and had set the house on fire. He was also declared hostile. The other brother of Tanaji named Prithviraj was examined as PW6. He accepted that he had sustained injury on the day in

question and that while they were performing pooja, 100 to 200 persons had come and assaulted them. He however did not support the case of the prosecution on the identity of the assailants and was declared hostile. Maruti Hemla Rathod was examined as PW7. He accepted that Tanaji had come to take shelter in his house and that the roof of his house was removed. However he also did not support the case of the prosecution and was declared hostile. The sister of Tanaji named Vimal, examined as PW8 was declared hostile, having refused to support the case of the prosecution. Mother of Tanaji named Theplabai was examined as PW9. She accepted that her sons and husband had gone to the temple on the occasion of Mahapooja and that after hearing the shouts she had come out of the house. However, as regards the identity of the assailants she did not support the case of the prosecution and was declared hostile. The medical reports produced on record at Ext. 81 to 91 established that some of these witnesses had suffered injuries. However, the witnesses could not state who had caused injuries to them.

8. It appears that Sarojini, wife of Tanaji had left the village after the incident and was staying with her brother at Bijapur in Karnataka. Despite summons being issued, Sarojini did not turn up to tender evidence as witness. Finally she was brought under a non-bailable warrant and was examined as PW12. In her testimony PW12 Sarojini described the entire incident in following terms:

I know incident which took place on 30.04.2000, on Sunday. On Sunday in the morning my husband, his brothers Bhanudas, Parmeshwar, Prithviraj and my father-in-law Pandurang and my two children had gone. He must have gone around 4 a.m. to the temple. Around 5 a.m. I could hear beating of drum, blowing of Shankh (Counch). I thereafter heard shouts. I came out of the house. There were many people who had assembled near the temple. My mother-in-law also came there and wives of my brothers-in-law also came out of the house. I saw that some quarrel was going on. I had seen that Ramchandra Lalu Nadaje had given a blow to Bhanudas with iron bar. My husband started running towards the water tank. Behind him, Bharat, Parmeshwar and Prithviraj were also running. Many people were also running after them namely Ramlal Devappa Rathod, Jaysing Devappa Rathod, Ramchandra Lalu Nadaje, Shivaji Ramaji Wadaje and other people. Thereafter, my husband had fallen down near the well. Thereafter, my husband was beaten by Ramlal Rathod, Jaysing Rathod namely all the accused before the Court were assaulting my husband with sword, axe and stick, etc. I went there and tried to separate my husband. When I tried to separate, at that time my brother-in-law was also beaten. At this juncture my husband got a chance to run away and once again he started running. All these accused before the Court once again chased my husband. My husband thereafter went to the house of Hemla. I also went after these accused. All the accused also went to the house of Hemla. Then my brothers-in-law were running. All the accused were chasing and were assaulting my brothers-in-law. My husband had thereafter entered the house of Maruti son of Hemla. All these accused started breaking the door of the same house where my husband had entered. These

accused also tried to remove the roof, galvanized sheets of the said house. I was trying to protect my husband. Myself, my mother-in-law stood in front of the door and requested people not to beat my husband. My husband once again got opportunity of coming out of that house. He immediately came out and went inside house of Jaysingh namely son of Hemla. My husband locked inside. Thereafter these accused broke open the wall of the house and also removed the tin sheet of roof. Myself, my mother-in-law once again started to stop these accused. My husband once again came out of house and ran in the house of Laxman son of Hemla. The accused once again removed the tin sheet roof of house of Laxman and started to throw stones inside the house. Thereafter, my husband once again escaped and ran in the house of Hemla. In the mean time, accused Ramchandra Shima Rathod, Kisan Ganu Rathod, Sitaram Gopa Rathod had set the house of Shivaji on fire. I know all these accused. The witness identified all the three accused namely Ramchandra, Kisan and Sitaram. When my husband entered the house of Hemla, Ramlal Devappa Rathod Accused No. 1, Shivaji Ramaji Wadaje Accused No. 29, Pandit Gopa Rathod Accused No. 30, Limbaji Manohar Rathod Accused No. 3, Ramchandra Lalu Nadaje Accused No. 2, Jaysingh Devappa Rathod Accused No. 12, went inside the house of Hemla. They caught my husband by his hands and feet and took him in the field of Hemla Rathod which is in front of his house. They assaulted him with axe, sword, Sattur. At that time, other accused had assaulted my brother-in-law, Hemla and others. We tried to beg the accused not to beat us but they never listened to us. My husband because of severe beating had fallen unconscious. His both legs were cut off, his both hands were chopped. So also, he was beaten over all parts of the body. My brother-in-law Arjun, Prithviraj, Bhanudas, Bharat, Parmeshwar. Theplabai my mother-in-law, similarly Hari, Hemla Rathod were also beaten. All these injured were lying on the ground. I can identify all these accused. The witness now pointed out towards Accused No. 1 Ramlal Devappa, Accused No. 29 Shivaji, Accused No. 30 Pandit, Accused No. 3 Limbaji, Accused No. 2 Ramchandra Lalu and Accused No. 12 Jaysingh.

9. After considering the material on record, the Trial Court by its judgment dated 06.10.2001 held the Respondents i.e. Accused Nos. 1, 2, 3, 7, 10, 12, 29 and 30 guilty of the offences punishable Under Sections 147, 148, 302, 307, 326, 324, 427, 435, 436, 452 read with Section 149 Indian Penal Code. The Trial Court acquitted rest of the accused of all the charges levelled against them. By subsequent order dated 06.10.2001, the Trial Court sentenced the Respondents to various terms including life imprisonment Under Section 302 read with Section 149 Indian Penal Code.

It was observed by the Trial Court that the death of Tanaji was proved by the prosecution to be homicidal and that out of the witnesses examined by the prosecution, PW12 Sarojini alone had supported the case of the prosecution while nine other eye witnesses had turned hostile. It stated that as laid down by this Court, it was possible and permissible to rely on the testimony of a single witness if the evidence was trustworthy and free from doubt. The Trial Court

found the version of PW12 Sarojini to be natural, free from doubt and well supported by other material on record, including the spot panchnama and the fact that the houses where Tanaji had taken refuge one after the other were found to have been damaged and burnt. While dealing with the question whether such version could be relied upon in view of the decision of this Court in *Masalti Vs. State of U.P.*, the Trial Court observed that it would be unsafe to rely on the evidence of witnesses who speak in general and omnibus way without any specific reference to the overt acts committed by them but PW12 Sarojini had given specific names of accused and attributed specific overt acts to those accused. According to the Trial Court these allegations were not omnibus or general in nature and as such the matter would not be covered by the decision of this Court in *Masalti (supra)*. It thus found that the prosecution had completely proved that Accused Nos. 1, 2, 3, 7, 12, 29 and 30 were guilty of the offences with which they were charged.

10. The convicted accused i.e. the Respondents herein carried the matter by filing Criminal Appeal No. 885 of 2001 in the High Court of Bombay. The State did not file any appeal against the acquittal of rest of the accused and their acquittal attained finality. The High Court by its judgment under appeal, acquitted the Respondents of all the charges against them. It was observed by the High Court that the entire case rested on the sole testimony of PW12 Sarojini and if according to her she had followed the assailants and had tried to save her husband, the possibility of her suffering any injury could not be ruled out but no such injuries were reported. Additionally, all the injured persons as well as those whose houses were burnt had refused to identify any of the assailants. The High Court relied upon the decision of this Court in *Masalti (supra)* and observed thus:

...We find that the trial court was not justified in arriving at a conclusion that it is the Appellants-accused who are guilty of having committed murder of Tanaji and assaulted the witnesses by taking into consideration evidence of PW12 Sarojini and other evidence i.e. medical and forensic which is merely of corroborative in nature and, therefore the caution sounded by the Supreme Court in the case of *Masalti and Ors. v. State of Uttar Pradesh* cited *supra* squarely applies to the factual matrix of the case.

11. In this appeal by special leave we have heard Mr. Shankar Chillarge, learned Advocate for the State and Ms. Meenakshi Arora, learned Senior Advocate and Mr. Vinay Navare, learned Advocate for the Respondents-accused. It was submitted by Mr. Chillarge, learned Advocate that the impact of the incident was such that though most of the eye-witnesses had suffered injuries, yet those witnesses including four brothers, sister and mother of Tanaji had not supported the prosecution case. However, it was PW12 Sarojini who described everything in detail how Tanaji was assaulted. All the stages of the incident were clearly stated by her and were fully supported by the other material on record. In his submission, testimony of even a single witness can be relied upon if it is found to be trustworthy and supported by material on record, that reliance on the decision

of Masalti (supra) was not called for and that the assessment made by the High Court was completely erroneous.

12. Ms. Meenakshi Arora, learned Sr. Advocate and Mr. Vinay Navare, learned Advocate submitted that the testimony of PW12 Sarojini was not worthy of reliance. In their submission, her statement Under Section 161 Code of Criminal Procedure was not recorded the same day. Though it was asserted by the witness that she tried to intervene and save her husband, she had not suffered any injury making her very presence doubtful. It was submitted that the witness was in the police station on the previous day before her examination in Court and was tutored. It was further submitted that in case of an attack by a mob having large number of persons, the principle laid down in Masalti (supra) must be applied, that the principle though first adopted as a rule of prudence, has now assumed the status as principle of law and, therefore, unless her evidence is corroborated by at least one eyewitness, it would be hazardous to rely on her testimony. Reliance was also placed on State of U.P. Vs. Dan Singh and others, , Baddi Venkata Narasayya and Others Vs. State of A.P., , Binay Kumar Singh and others Vs. State of Bihar, , Mrinal Das v. State of Tripura (2011) 9 SCC 479 and Inder Singh Vs. State of Rajasthan .

13. Criminal Misc. Petition No. 6303 of 2015 was filed on behalf of Respondent No. 8 submitting that one of the suspects named Laxman Ramchandra Rathod was not tried along with thirty-four accused tried in the present matter and he was subsequently tried in Sessions Case No. 359 of 2003. During his trial, four witnesses were examined on behalf of the prosecution. Parmeshwar was examined as PW1 who again turned hostile. Prithviraj, brother of Tanaji was examined as PW2 who could not identify said accused Laxman. Sarojini, wife of Tanaji was examined as PW3. Her evidence in this trial shows that she had deposed that her husband was assaulted and had taken refuge in the houses of his cousins. She however did not identify nor could she ascribe any role to said accused Laxman. The Investigating Officer was examined as PW4. In the face of inability of any of the prosecution witnesses to identify said accused Laxman, he was acquitted by judgment dated 29.02.2008. This judgment having become final, it is contended that the case of the prosecution stood finally rejected and that in any case there could be no inconsistent findings, as regards the very same offence.

14. The case of the prosecution depends upon the testimony of PW12 Sarojini. The substantive evidence on record is only through this witness. The law on the point is well settled that a conviction can well be founded upon the testimony of a sole witness. However, as laid down in State of Haryana Vs. Inder Singh and Others, the testimony of a sole witness must be confidence inspiring and beyond suspicion, leaving no doubt in the mind of the Court. In Joseph v. State of Kerala 2003 (2) SCC 465 it was stated that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. It was further stated in Ram Naresh v.

State of Chhattisgarh (2012) 11 SCC 257 that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution.

15. In the backdrop of the aforesaid principles, if the deposition of PW12 Sarojini is analyzed, it discloses that the incident happened in nine consecutive stages:

(i) In the early hours of the day in question many people had assembled near the temple and shouts were heard. A-2 Ramchandra gave a blow to PW3 Bhanudas with an iron bar.

(ii) Tanaji started running from the temple towards the water tank. With him PW4 Bharat, PW1 Parmeshwar and PW6 Prithviraj were also running. A-1 Ramlal, A-2 Ramchandra, A-12 Jaysingh, A-29 Shivaji and Ors. were following.

(iii) Tanaji fell down near the well. He was beaten by A-1 Ramlal, A-12 Jaysingh and other accused with sword, axe and sticks. At this stage PW12 Sarojini tried to intervene.

(iv) Tanaji somehow managed to run away and went towards the house of Hemla. All the accused were following him. Tanaji managed to enter the house of Maruti S/o Hemla. All the accused were trying to break the door and remove the galvanized sheets on the roof. At this stage PW12 Sarojini stood in front of the door and requested the accused not to beat her husband.

(v) Tanaji got an opportunity, came out of the house and went inside the house of Jaysingh S/o Hemla. He locked himself in. The accused started breaking open the wall of the house and remove tin sheets of the roof and started throwing stones inside the house.

(vi) Tanaji once again came out of the house and entered the house of Laxman S/o Hemla. He was followed by the accused who again started removing the tin sheets of the roof and started throwing stones inside the house.

(vii) Tanaji once again escaped and entered the house of Hemla. In the meantime A-27 Ramchandra, A-10 Kishan and A-7 Sita Ram set the house of Shivaji on fire.

(viii) A-1 Ramlal, A-29 Shivaji, A-30 Pandit, A-3 Limbaji, A-2 Ramchandra and A-12 Jaysingh entered the house of Hemla, caught Tanaji by hands and feet and took him to the field in front of the house of Hemla.

(ix) It was here that the aforementioned six accused assaulted Tanaji with axe, sword and sattur. His legs were cut off, his hands were chopped. PW12 Sarojini identified these six accused persons.

16. The deposition of PW12 Sarojini shows that while Tanaji was being pursued and assaulted, her attention was focussed in so far as her husband was concerned, which is quite natural. Except referring to the initial blow which was given to Bhanudas, her testimony concentrates only upon those who were

primarily responsible for having pursued and assaulted her husband. All the stages as stated above and the acts at each stage are corroborated by other material on record. The fact that the incident started at the temple, then shifted next to the well and then to the cluster of houses of Hemla is well-supported by the blood stains found at these places as disclosed in the spot panchnama as also by the damage caused to the houses of Hemla. Though declared hostile on the issue of identity of assailants, the other prosecution witnesses also lend support to the substratum of the case. The material on record including medical evidence thus lends complete support to the version as unfolded through the deposition of PW12 Sarojini. It is noteworthy that the progression of events as narrated in her testimony, in natural course, must have taken some length of time. The progression as stated above must have afforded sufficient opportunity for PW12 Sarojini to observe and absorb the roles played by certain accused. In her testimony she has concentrated only upon the roles of those accused who were directly responsible for having committed certain overt acts. Out of large body of thirty-four accused, she named only nine of them and attributed clear specific roles to them. If the incident went on for some length of time, it lends complete credibility to the version of the witness in terms of opportunity to observe salient features and the stages of the incident. Though a feeble suggestion was made in the cross-examination that she was not present in the village on the date in question, we have no doubt about her presence and the fact that she had opportunity to witness the incident. The incident also happened after 5.50 am on a day in summer and as such there is nothing to entertain any doubt about her capacity and available opportunity to observe the features of the incident.

17. The criticism leveled by the learned Advocate for the Respondents that PW12 Sarojini was in the police station on the day prior to her examination in Court and that she was tutored, is not correct. The intensity of the incident where the entire village stood against the deceased, had impact on the witnesses who turned hostile one after the other. PW12 Sarojini was also no exception to a certain extent and apparently did not want to come and depose as a witness. Despite summons having been issued by the Trial Court she failed to appear. Her presence had to be secured by way of warrant issued by the Court and as such her presence in the police station cannot be termed as excuse for tutoring as suggested. In fact the way her presence had to be secured by a warrant of arrest, lends ring of credibility to her version. It is true that there are no physical injuries on her person but this by itself is no ground to reject her testimony. It needs to be stated here that the High Court has also not rejected her testimony doubting her presence but has proceeded to put the matter in the light of the decision of this Court in Masalti (supra).

18. It also requires to be noted that pursuant to the disclosure statements made by A-1 Ramlal, A-2 Ramchandra, A-3 Limbaji, A-29 Shivaji and A-30 Pandit, certain weapons with blood stains were recovered immediately on the day after the incident. The aforesaid recoveries have been doubted by the Trial Court

inasmuch as the independent panchas had not supported the prosecution case. However, PW18 Pratap Kisan Pawar in his testimony deposed that such recoveries were made pursuant to the disclosure statements of the accused. It has been laid down by this Court in Mohd. Aslam Vs. State of Maharashtra, and Anter Singh Vs. State of Rajasthan, that the recoveries need not always be proved through the deposition of the panchas and can be supported through the testimony of the investigating officer. The fact that the recoveries were made soon after the incident is again a relevant circumstance and we accept that the recoveries can be considered against the Respondents as one more circumstance.

19. In the aforesaid premises, we find that the deposition of PW12 Sarojini is devoid of any exaggeration, completely trustworthy and reliable. Her deposition is well-supported by the medical evidence and other material on record including the destruction and damage to the houses of Maruti Hemla, Jaysingh Hemla, Laxman Hemla and Shivaji. We therefore hold that though she is the sole witness, her evidence is completely reliable and trustworthy.

20. That brings us to the question whether in an attack such as the present one, how far the principle laid down by this Court in Masalti (supra) is applicable? In Masalti one Laxmi Prasad and his armed companions had proceeded to the house of one Gayadin. On the instigation of Laxmi Prasad, the assailants broke open the doors of the house of Gayadin, killed four persons including Gayadin and dragged their bodies out of the house whereafter one more person was killed. These five dead bodies were then taken to the field and set on fire. Out of thirty-five accused who were convicted, ten accused were given death sentence. The High Court confirmed their sentence of death and out of the remaining accused, seven were given benefit of doubt. In so far as the accused who were convicted with the aid of Section 149, the High Court adopted a test and held that unless at least four witnesses had shown to have given a consistent account against any of the Appellants, the case against them could not be said to have been proved. The decision discloses that except Laxmi Prasad, none of the assailants was assigned any particular part. The evidence as regards other accused was that they were part of unlawful assembly which is evident from the following observations of this Court:

It also considered another feature which characterized the evidence of all the witnesses and that was that they gave their account of the incident substantially in similar terms and did not assign particular parts in respect of overt acts to any of the assailants except Laxmi Prasad accused No. 1.1

The observations of this Court further show that though testimony of a single witness would be enough to convict an accused person, in a case involving large number of accused, where the witnesses depose to the fact that certain persons were members of unlawful assembly which had committed the offences in question, a test so adopted by the High Court was found to be safe. It was observed that though every member of the unlawful assembly would be liable for the offence committed by anyone actuated by and entertaining common object of

the unlawful assembly, in the absence of any overt act or specific allegation, it was possible to adopt such test.

21. We may at this stage consider the law of vicarious liability as stipulated in Section 149 Indian Penal Code. The key expressions in Section 149 Indian Penal Code are:

- (a) If an offence is committed by any member of an unlawful assembly;
- (b) in prosecution of common object of that assembly;
- (c) which the members of that assembly knew to be likely to be committed in prosecution of that object;
- (d) every person who is a member of the same assembly is guilty of the offence.

This Section makes both the categories of persons, those who committed the offence as also those who were members of the same assembly liable for the offences Under Section 149 Indian Penal Code, if other requirements of the Section are satisfied. That is to say, if an offence is committed by any person of an unlawful assembly, which the members of that assembly knew to be likely to be committed, every member of that assembly is guilty of the offence. The law is clear that membership of unlawful assembly is sufficient to hold such members vicariously liable.

It would be useful to refer to certain decisions of this Court. In *State of U.P. Vs. Kishanpal and Others*, it was observed:

It is well settled that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed.

Further, in *Amerika Rai v. State of Bihar* (2011) 4 SCC 676 it was observed as under:

The law of vicarious liability Under Section 149 Indian Penal Code is crystal clear that even the presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly.

22. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence

was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus, when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in *Masalti* (supra) this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider "whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly", this Court at pages 148-149 in *Masalti* (supra) observed that his participation as a member of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in *Masalti* (supra) was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well known maxim that "evidence has to be weighed and not counted" as statutorily recognized in Section 134 of the Evidence Act.

23. We now deal with other cases relied upon by the learned Advocates for the Respondents. In *State of U.P. v. Dan Singh* (supra) fourteen persons were killed. Six were burnt alive in a house that was set on fire, while other eight were killed in the mob assault. According to witness Nari Ram, accused Dan Singh and Ram Singh were spraying kerosene on the house while Jasod Singh and Gosain Singh were putting the house on fire. This Court found the aforesaid named accused, who were ascribed specific roles, to have set the house on fire and responsible for killing of six persons who died as a result of burns. While considering the question of the killing of eight other persons by the members of the unlawful

assembly at different places in the adjoining fields, this Court then relied upon the test in *Masalti* (supra). It is evident that the test was relied upon when it came to the question of finding the liability of the members of the unlawful assembly other than those against which there were specific allegations. It was observed, ".....If we accept the testimony of PW1 and PW7 in its entirety then all the Respondents must be regarded as being members of the unlawful assembly and provisions of Section 149 Indian Penal Code would be applicable to them. Even though we see no reason to disregard their evidence, nevertheless, keeping in mind the observations of this Court in *Masalti* (supra) case, we feel that even though a very large number of members of the unlawful assembly had taken part in the attack on the Doms, it would be safe if only those of the Respondents should be held to be the members of the unlawful assembly who have been specifically identified by at least four eyewitnesses". The decision in *Baddi Venkata Narasayya and Ors.* (supra) does not show that any witness had specifically attributed any overt act to any of the accused. In *Binay Kumar Singh* (supra), the decision again turned on identification of the accused as members of unlawful assembly without there being specific attribution against any of the accused of having committed any overt act. The decision in *Mrinal Das* (supra) was principally on the reliability of the evidence of a pardoned accomplice and the principle in *Masalti* (supra) was not even projected for consideration by this Court. In *Inder Singh* (supra) the submission advanced on behalf of the prosecution was recorded thus, "..... It was highlighted on behalf of prosecution that when a large number of accused persons had run after the deceased and indulged in indiscriminate assault resulting into death of four persons in an open field and serious injuries to the informant, the witnesses cannot be expected to notice, remember and depose the individual acts committed by different accused persons vis-?-vis the five victims." This again discloses that there were no specific overt acts attributed to any of the accused and the allegations were general in nature principally focusing on the identification of the accused being members of the unlawful assembly.

24. We do not find anything in *Masalti* (supra) which in any way qualifies the well settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable. The test adopted in *Masalti* (supra) is required to be applied while dealing with cases of those accused who are sought to be made vicariously responsible for the acts committed by others, only by virtue of their alleged presence as members of the unlawful assembly without any specific allegations of overt acts committed by them, or where, given the nature of assault by the mob, the Court comes to the conclusion that it would have been impossible for any particular witness to have witnessed the relevant facets constituting the offence. The test adopted in *Masalti* (supra) as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness. The Trial Court was therefore perfectly right and justified in

relying upon the testimony of sole witness PW12 Sarojini and the High Court completely erred in applying the test laid down in Masalti (supra). The view taken by the High Court being completely erroneous and unsustainable, in this appeal against acquittal, we have no hesitation in setting it aside and restoring that of the Trial Court. Out of eight accused found guilty by the Trial Court, going by the testimony of PW12 Sarojini, only six of them that is to say Accused Nos. A-1, A-2, A-3, A-12, A-29 and A-30 had caused final assault on Tanaji which resulted in his death. The other two accused, according to the witness had set the house of Shivaji on fire and had not participated in the final assault. We therefore grant them benefit of doubt and confirm their acquittal. However as regards other six accused, they having pursued, taken out Tanaji by lifting him from the house of Hemla and thereafter assaulted him in the field adjacent to the house, the case of the prosecution as against them stands completely proved.

25. Lastly, we deal with Criminal Misc. Petition No. 6303 of 2015 and submissions on the basis of the judgment in Sessions Case No. 359 of 2003. The deposition of Sarojini examined therein as PW3 is not in any way inconsistent with her deposition in the present matter as PW12. She had not named accused Laxman Ramchandra Rathod in any manner in the present trial and her failure to identify said accused Laxman or ascribe any role to him does not lead to any inconsistency. Without going into the question whether such subsequent judgment could in any way be relevant, since there is no inconsistency on any count raising any doubt about the case of the prosecution, we reject the submissions advanced on the basis of the judgment in Sessions Case No. 359 of 2003.

26. In the result this appeal is partly allowed as against Accused Nos. A-1, A-2, A-3, A-12, A-29 and A-30. Their acquittal as recorded by the High Court is set aside and the judgment of conviction and order of sentence as recorded by the Trial Court as against them stands restored. The appeal as against Accused Nos. 7 and 10 stands dismissed. Accused Nos. A-1, A-2, A-3, A-12, A-29 and A-30 be taken in custody forthwith to undergo the sentences awarded to them. The appeal stands disposed of in the above terms.

1 (1964) 8 SCR 133 at 140.