

MHJG010008332022**Exh.146.**

Presented on : 09.11.2022
Registered on : 09.11.2022
Decided on : 02.09.2023
Duration : 00Y-09M-24D

IN THE COURT OF SESSION.....AT AMALNER

(Presided over by P.R. Chaudhari, Additional Sessions Judge)

Date of Judgment : 02.09.2023.**SESSIONS CASE NO.94 OF 2022**

**(Crime No.48/2012 of Chopda City Police Station,
Taluka Chopda, District- Jalgaon)**

Complainant : The State of Maharashtra
through Chopda City Police Station
Tal. Chopda, District- Jalgaon.

Represented by : Mr. K.R. Bagul.

Accused : 1. Dinesh Prakash Mahajan,
(Deceased).
2. Vinod Magan Mali,
Age.20 Years.
3. Raju Himmat Mahajan,
Age.20 Years.
4. Vijay Prakash Mahajan,
Age.25 Years.
5. Amol Govinda Chaudhari,
Age.18 Years.
6. Pramod Sudhakar Mistry,
Age.17 Years.
7. Jagdish Supadu Marathe,
Age.19 Years.
8. Dinkar @ Bapu Ramesh Mali,
Age.27 Years.
9. Eknath @ Bhaiya Ramesh
Mali, Age.22 Years.

10. Atul Supadu Marathe (Jadhav),
(**Juvenile with conflict in law**)
11. Vasudev @ Sonu Ramdas @
Rama Mali, Age.21 Years.
12. Samadhan Suresh Mali,
Age.24 Years.
13. Yogesh @ Bhaiya Ramesh Mali,
Age.29 Years.
14. Dhanraj @ Banti Krishna @ Kisan
Gosavi (Buva), Age.25 Years.
15. Salim Kasam Pinjari,
Age.53 Years.
16. Firojkhani Motilal Pinjari,
Age.35 Years.
17. Sarafraj Motilal Pinjari,
Age.35 Years.
18. Nizamoddin Rasul Momin,
Age.30 Years.
19. Shakil Babu Khatik,
Age.38 Years.
20. Nasir Kalu Pathan, Age.30 Years.
21. Humedali Sayyad Saukatali,
Age.30 Years.
22. Somnath Bhagwan Mahajan,
(**Deceased**)
23. Pravin Vasant Mali, Age.24 Years.
24. Kalya @ Karim Rasul Arab,
Age.22 Years.
25. Samir Salim Pinjari, Age.24 Years.
26. Aasif Rashid Pathan, Age.21 Years.
27. Irfan Saiyyad Ali, Age.22 Yrs.
28. Sonu Prakash Mali, Age.25 Years.
All R/o. Chopda, Tal. Chopda,
District – Jalgaon.

Represented by : Advocate Mr. K.R. Bagul.

Date of offence : 29.04.2012.

Date of F.I.R. : 29.04.2012.

Date of charge sheet : 18.06.2012.

Date of framing charge : 04.03.2014.

Date of commencement of evidence : 26.02.2018.

Date on which Judgment is reserved : 02.09.2023.

Date of the Judgment : 02.09.2023.

Accused Details :

Rank of the accused	Name of accused	Date of Arrest	Date of released on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of section 428 of Cr.P.C.
1.	Dinesh Prakash Mahajan.	Deceased Abated by order dated 20.06.2014.		143,147,324 332,353,427 r/w Sec.149 of the I.P.C and Sections 37(1)(c)/ 135 of Bom. Police Act.			
2.	Vinod Magan Mali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
3.	Raju Himmat Mahajan.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
4.	Vijay Prakash Mahajan.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
5.	Amol Govinda Chaudhari.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil

6.	Pramod Sudhakar Mistry.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
7.	Jagdish Supadu Marathe	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
8.	Dinkar @ Bapu Ramesh Mali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
9.	Eknath @ Bhaiya Ramesh Mali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
10.	Juvenile in conflict with law.						
11.	Vasudev @ Sonu Ramdas @ Rama Mali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
12.	Samadhan Suresh Mali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
13.	Yogesh @ Bhaiya Ramesh Mali	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
14.	Dhanraj @ Banti Krishna @ Kisan Gosavi (Buva).	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
15.	Salim Kasam Pinjari.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
16.	Firojkhan Motilal Pinjari.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
17.	Sarafraj Motilal Pinjari.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
18.	Nijamoddin Rasul Momin.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
19.	Shakil Babu Khatik.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil

20.	Nasir Kalu Pathan.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
21.	Humedali Sayyad Saukatali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
22.	Somnath Bhagwan Mahajan.	Reported to be dead on 15.05.2015.					
23.	Pravin Vasant Mali.	29.04.12	02.05.12	-- ditto--	Acquitted	Nil	Nil
24.	Kalya @ Karim Rasul Arab.	22.05.12	23.05.12	-- ditto--	Acquitted	Nil	Nil
25.	Samir Salim Pinjari.	22.05.12	23.05.12	-- ditto--	Acquitted	Nil	Nil
26.	Aasif Rashid Pathan.	22.05.12	23.05.12	-- ditto--	Acquitted	Nil	Nil
27.	Irfan Saiyyad Ali.	22.05.12	23.05.12	-- ditto--	Acquitted	Nil	Nil
28.	Sonu Prakash Mali.	09.05.12	10.05.12	-- ditto--	Acquitted	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT WITNESS
A- PROSECUTION

Rank	Name	Nature of Evidence
PW-1	Rashid Usman Arab.	Spot panch.
PW-2	Jakirabi Mehboobkha Pathan.	Eye witness.
PW-3	Gopan Jagannath Patil	Informant.
PW-4	Rajiyabi Bhikan Shah.	Eye witness.
PW-5	Anil Arjun Katkade.	Investigating officer.
PW-6	Kiran Vasudev Patil.	Police witness.
PW-7	Vasant Waman Chavan.	Police witness.

B- Defence witness, if any - Nil
C- Court witness, if any - Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A- PROSECUTION**

Sr. No.	Exhibit Number	Description
1.	9	Report.
2.	10	Journey report of S.T. Depot.
3.	15	Spot panchanama.
4.	16 & 17	Letter issued to Depot Manager and its reply.
5.	18	Letter issued to Medical Officer, Chopda.
6.	19	Arrest panchanama.

B- DEFENCE

Sr. No.	Exhibit Number	Description
		Nil.

C- COURT EXHIBITS

Sr. No.	Exhibit Number	Description
1.		Nil.

D- MATERIAL OBJECTS

Sr. No.	Exhibit Number	Description
1.	PR 82/14	Stones and empty beer bottles.

-: ORAL JUDGMENT :-

(Delivered on this 02th day of September, 2023)

Accused are hereby charge-sheeted by Chopda City Police Station for committing offence punishable under Sections 143,147,324,332,353,427 read with Section 149 of the Indian Penal Code and Sections 37(1)(c)/135 of Bombay Police Act.

2. In brief, it is the case of the prosecution that, on 29.04.2012, informant Police Head Constable, Mr. Gopal Jagannath Patil lodged on behalf of State at Chopda City Police Station alleging that, on that day at about 09.30 am he was present at police station. Police H.D. Mr. Devidas Ishi informed him that, one news has spread that at Nagalwadi square, in Chopda City, one boy of Hindu community has teased a girl of Muslim community and therefore peoples of both community have gathered there. Therefore, he along with other police staff went to the spot at Nagalwadi square. They saw that people of both community were making commotion, abusing each other and pelting stone. They tried to pacify those people however they did not listen and started pelting stone, bricks and glass bottle on them and damaged the police vehicle. In the incident, Police Inspector Mr. Katkade sustained injury on his stomach and right wrist of the hand. Other police personnel also sustained injuries. He identified those people who were pelting stone, bricks and glass bottle and on them while they were performing their duties as public servant and thereby used criminal force to deter them. Thereafter, informant went to the police station and lodged report about the incident.

3. On his report, offence bearing Cr. No.48/2012 was

registered and investigation was handed over to Police Inspector Mr. Anil Katkade. In the investigation, he arrested accused by drawing arrest panchanamas, recorded statements of witnesses as per their say, he made correspondence and collected certain documents. He obtained CDR. He collected injury certificates of the injured. After completion of investigation he submitted charge-sheet against accused.

4. Initially, as the offences levelled against the accused were triable by the Ld. Judicial Magistrate, F.C., Chopda, he framed charge against the accused as per Exh.107 under Sections 143,147,148,324,332,353,427 read with Section 149 of the Indian Penal Code and Section 135 of Bombay Police Act. The plea of the accused were recorded as per Exhs.108 to 132. Accused pleaded not guilty claimed to be tried. The defence of the accused is total denial.

5. Thereafter, the Ld. Judicial Magistrate F.C., Chopda recorded evidence of five witnesses. They are, PW-1 Rashid Usman Arab as per Exh.175, PW-2 Jakirabi Mehboobkha Pathan as per Exh.178, PW-3 Gopal Jagannath Patil as per Exh.179, PW-4 Rajiyabi Bhikanshah as per Exh.181 and PW-5 Investigating Officer Mr. Anil Arjun Katkade as per Exh.187.

6. Thereafter, as the offence punishable under Section 353 of the Indian Penal Code became exclusively triable by this Court, the Ld. J.M.F.C., Chopda made compliance of Section 207 of Cr. P.C. and committed the case before this court under Section 209 of Cr. P.C. on 05.11.2023.

7. After framing of charge against accused, accused no.1 Dinesh Prakash Mahajan reported to be dead vide Exh.106 hence case came to be abated against him by order dated 20.06.2014. Record shows that, vide pursis Exh.151 and death certificate Exh.151A, accused no.22 Samadhan Bhagwan Mahajan reported to be dead. Hence, by order dated 02.09.2023 case stands abated against him.

8. Before committing the case to this court, the Ld. Judicial Magistrate, F.C., Chopda has recorded material evidence of five witnesses. Hence, considering the observation of Hon'ble Bombay High Court in case of **Santosh Lakhichand Patil (Criminal Writ Petition No.945/2019)** dated 14.02.2020, the matter proceeded further for examining further witnesses.

9. The prosecution has examined further witnesses before this Court. They are PW-6 Police Naik Mr. Kiran Vasudeo Patil as per Exh.81 and PW-7 retired police PSI Mr. Vasant Waman Chavan as per Exh.82.

10. The prosecution relied and proved certain documents such as, Report Exh.180, printed F.I.R Exh.181, Arrest panchanamas Exhs.188 to 209, 211 to 215, Spot panchanama Exh.210, Letter issued by I.O. to the S.P Jalgaon Exh.216, Muddemal receipt Exh.217 and Portion marked 'A' in the statement of witnesses Exh.218 and 219.

11. I have gone through the evidence, defence taken by the accused and his statement recorded under Section 313 of Cr.

P.C. Heard Ld. A.P.P. Shri. K.R. Bagul for the State and Ld. Advocate Shri. D.S. Chavan for the accused. Thereafter, following points arise for my determination and I recorded my findings on each of it in the light of reasons given below.

POINTS	FINDINGS
1) Whether the prosecution proves that on 29.04.2012 at about 21.30 hours, at Chopda, in Nagalwadi square, in public place, accused were members of an unlawful assembly and thereby committed an offence punishable under Section 143 of the Indian Penal Code ?	.. In Negative.
2) Whether the prosecution proves that on the aforesaid date, time and place, accused, in prosecution of common object of the assembly, committed offence of riot thereby committed an offence punishable under Section 147 of the Indian Penal Code ?	.. In Negative.
3) Whether the prosecution proves that on the aforesaid date, time and place, accused, in prosecution of common object of the assembly, committed offence of riot with deadly weapons and thereby committed an offence punishable under Section 148 of the Indian Penal Code ?	.. In Negative.
4) Whether the prosecution proves that on the aforesaid date, time and place, accused, in prosecution of common object of the assembly, voluntarily caused grievous hurt to each other by pelting stones upon each other and thereby committed an offence punishable under Section 324 read	

with Section 149 of the Indian Penal Code ? ..In negative.

5) Whether the prosecution proves that on the aforesaid date, time and place, accused, in prosecution of common object of the assembly, pelted stones and empty beer bottles on police vehicle to deter them from their duty and thereby committed an offence punishable under Section **332** read with Section 149 of the Indian Penal Code ? ..In negative.

6) Whether the prosecution proves that on the aforesaid date, time and place, accused, in prosecution of common object of the assembly, assaulted on police to deter them from discharging their duties and thereby committed an offence punishable under Section **353** read with Section 149 of the Indian Penal Code ? ..In negative.

7) Whether the prosecution proves that on the aforesaid date, time and place, accused, in prosecution of common object of the assembly, committed mischief of pelting stones upon police vehicle and thereby broke the glass of it and thus caused damage or loss to the amount of Rs.50/- and more and thereby committed an offence punishable under Section **427** read with Section 149 of the Indian Penal Code ? ..In negative.

8) Whether the prosecution proves that on the aforesaid date, time and place, accused, carried collected and prepared stones and other instruments such as empty beer bottles prohibited at the said place by

Superintendent of Police, Jalgaon for prevention of disorder in public and thereby contravened Section 37(1)(c) punishable under Section 135 of the Bombay Police Act ? ..In negative.

9) What Order ? .. As per final order.

:- REASONS :-

As to Point Nos.1 to 9 :-

12. Point Nos.1 to 9 are inter-connected with each other, for the sake of convenience, they are discussed together.

13. To prove the case prosecution examined informant PW-3 Police H.C. Gopal Jagannath Patil. In his evidence he stated that on 29.04.2012 he was present in the police station. At that time, PSO Mr. Ishi had made call on telephone to Police Inspector Mr. Katkade stating that, in Nagalwadi square, there is possibility of riot between Hindu and Muslim people because of teasing a girl.

14. Thereafter, he along with police PI Mr. Katkade asked him and Police Inspector Mr. Kazi, ASI Mr. Vasant Chavan, P.C. Mr. Patil and other staff to go to the spot of incident. Thereafter, he along with other police staff went in Nagalwadi square of Chopda. At that time, the mob of Hindu and Muslim people were pelting glass bottle, stones and bricks against each other. There was dark at the said spot. 25/30 people were abusing and shouting against each other. A stone was hit on his right leg and

police staff Mr. Mahajan and Umesh Dhangar also sustained injuries. They all collected stone, bricks and glass bottle and brought to police station. Thereafter, he became complainant on behalf of state and lodged report. He and other injured were sent for medical treatment at Sub-District Hospital Chopda.

15. In his cross-examination he deposed that, he is unable to tell the names of persons gathered there. He cannot able to tell the names of the persons who pelted glass of bottle and stones, bricks against each other. There was very dim light at the spot of incident. He knows those persons by face but while lodging report, he did not explain the features of each of the persons who pelted stone against each other. Suggestion of denial were given to this witness.

16. The prosecution examined PW-6 Kiran Vasudeo Patil. In his evidence, he deposed that on 29.04.2012 as per the order of Station In charge, Mr. Devidas Ishi he along with H.C. Gopal Patil, ASI Chandrakant Patil, PSI Kazi and police staff Nitesh Chudhari, Sandip Dhangar went at Nagalwadi square Chopda. When he went the persons of Hindu and Muslim community were pelting glass bottles, stones and bricks against each other. He, Mr. Katkade, Ravi Mahajan and police staff and informant Gopal sustained injuries. He deposed that at that time, Dinesh Mahajan, Sonu Mali, Raju Mahajan, Vinod Mali, Bhaiya Mali, Bapu Mali, Asif Pathan, Nasir Pathan, Salim Pinjari, Kalya Rasul, Jagdish Marathe, Nijamoddin and other 8/10 persons were present there. He can identify those persons if shown.

17. In his cross-examination, he deposed that he told name of above persons as they use to come at police station routinely. He does not know the name of the persons or identified the persons who pelted bricks, stones and glass bottle against each other. The suggestion of denial was given to this witness.

18. The prosecution examined retired police officer Vasant Waman Chavan. In his evidence he deposed that on 29.04.2022 as per the order of Devidas Ishi police in charge in between 09.00 to 09.30 pm he went on the spot of incident along with police staff. The received information that, one Muslim girl was teased by Hindu boy so there was riot between Hindu and Muslim persons. When he went on the spot, the persons of Hindu and Muslim groups were pelting glass bottle, stones and bricks on each other. He and other police officers sustained injuries. He deposed that, Dinesh Prakash had teased Muslim woman, this is omission in his statement. He deposed that he cannot identify the persons who pelted stone and bricks against each other.

19. The prosecution examined Muslim woman Rajiyabi Bhikan Shah as PW-4. According to prosecution, a Hindu boy teased her by snatching her *Dupatta* from her person. She turned hostile. She denied that she was teased by Hindu person. She denied that because of this incident, there was quarrel at Chopda.

20. The prosecution examined PW-2 Jakirabi Mehboob Pathan. According to prosecution, she was along with the victim girl Rajiyabi and she had witnessed the incident of snatching *Dupatta* of Rajiyabi by Sonu Mahajan. But this witness turned hostile. She denied that, in her presence Sonu Mahajan snatched *Dupatta* of Rajiyabi and insulted her. She denied that, because of this incident, there was riot at Chopda.

21. The prosecution examined PW-1 spot panch Rashid Usman. He deposed that, spot panchanama was not prepared in his presence. He was declared hostile and was cross-examined but nothing fruitful came from his mouth. Spot panchanama is not proved in his evidence.

22. The prosecution examined PW-5 P.I. Mr. Anil Katkade. In his evidence he deposed that on 29.04.2012 when he was in-charge of police station, he received telephone message from H.C. Mr. Devidas Ishi that, there was riot and Chopda city in Nagalwadi square as a Hindu boy teased Muslim woman. So he along with police officers went on the spot. The H.C. Gopal Patil lodged report. On his report, offence is registered was handed over to him. In his investigation, he arrested 21 accused, prepared spot panchanama, recorded statements of witnesses and collected CDR report and in his investigation it was revealed that all accused committed riot hence, he submitted charge-sheet.

23. In his cross-examination, he deposed that near the

spot of incident, there are many residential houses. He did not record the statements of the persons who reside there. He did not seize anything from the spot of incident. He did not able to tell the identification features of any of the accused.

24. Heard Ld. A.P.P Shri. K.R. Bagul for the State and Ld. Advocate Shri. D.S. Chavan for accused at length. So to avoid repetition I think, arguments advance by the parties are not necessary to reproduce on record.

25. In the statement of any of the witness, identification feature of any of the accused is not explained. H.C. Mr. Gopal lodged complaint in the name of the accused persons but in his evidence he deposed that, he knows those persons as they usually came to the police station. All the police witnesses stated that they are unable to tell the names of accuses who pelted stones, bricks and bottle on whom or the police witnesses stated that there was dark so, they could not identify the person who were present at the spot of incident.

26. Rajiyabi turned hostile. The other independent witness Jakirabi also turned hostile. Both the eye witnesses denied the incident. No identification parade of any of the accused is conducted. There is no explanation given by investigation officer or informant why the names of the accused are mentioned either in the report or in the charge-sheet.

27. From the above evidence, it is quite clear that, thee is no evidence that an assembly was formed by more than five

persons. The assembly became unlawful assembly, the prosecution failed to prove that the members of assembly were having common object of committing riot or causing hurt or injury to any person. There is no evidence on record that, this assembly has breached the public peace and destroyed the public property. So, I record my finding negative on nos.1 to 9 in negative and proceed to pass following order.

ORDER

- 1] Accused no.2. Vinod Magan Mali, 3.Raju Himmat Mahajan, 4. Vijay Prakash Mahajan, 5.Amol Govinda Chaudhari, 6. Pramod Sudhakar Mistry, 7. Jagdish Supadu Marathe, 8. Dinkar @ Bapu Ramesh Mali, 9. Eknath @ Bhaiya Ramesh Mali, 11. Vasudev @ Sonu Ramdas @ Rama Mali, 12. Samadhan Suresh Mali, 13.Yogesh @ Bhaiya Ramesh Mali, 14. Dhanraj @ Banti Krishna @ Kisan Gosavi (Buva), 15. Salim Kasam Pinjari, 16. Firojkhan Motilal Pinjari, 17. Sarafraj Motilal Pinjari, 18. Nijamoddin Rasul Momin, 19. Shakil Babu Khatik, 20. Nasir Kalu Pathan, 21. Humedali Sayyad Saukatali, 23. Pravin Vasant Mali, 24. Kalya @ Karim Rasul Arab, 25. Samir Salim Pinjari, 26. Aasif Rashid Pathan, 27. Irfan Saiyyad Ali and 28. Sonu Prakash Mali, All R/o. Chopda, Taluka Chopda, District-Jalgaon, are hereby acquitted vide Section 231(1) of Cr. P.C. for the offences punishable under Secs.143,147,324,332,353,427 r/w Sec.149 of Indian Penal Code and Sec.135 of Bombay Police Act.
2. Their bail bonds stand cancelled.
3. The accused shall comply the direction as per section 437 (A) of Cr. P.C.
4. Mudemal property, being worthless, be destroyed according to law, after appeal period is over.

(P. R. Choudhary)

Date:- 02/09/2023.

Addl. Sessions Judge, Amalner.

