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IN THE COURT OF SESSIONS JUDGE AT PUNE.
(PRESIDED OVER BY ASHOKKUMAR B.BHILLARE, ADDL.
SESSIONS JUDGE, PUNE)

SESSIONS CASE NO. 900/2013
EXH.

State of Maharashtra
 Through Khadak Police station,
 (at the instance of Jitendra Sudhakar
 Takle R/o: 386 Navi Peth, Puine.) .. **..Complainant.**

Vs.

1. Ashish Bhalchandra Sable,
 Age: 23 years Occ. Business
 R/at : B.No. 5, Room No. 323,
 Swargate Police Vasahat,
 Swargate, Pune.
 Originally r/at- Bahul, Tal- Khed,
 Dist-Pune.
2. Dynaneshwar Gajanan Thite,
 Age: 22 years Occ. Business
 R/at : 243/10 Shukrawar Peth,
 Thite Building, Pune
 Originally r/at : Hatve,
 Tal. Bhor, Dist. Pune.
3. Sachin Subhash Katkar,
 Age: 25 years Occ. Business
 R/at : Flat No. 21/1, Shankar Complex,
 Balaji Nagar, near Nayantara society,
 Dhankawadi, Pune.
4. Ranjit Sunil Dhage,
 Age: 22 years Occ. Business
 R/at : Flat no.1, Hari Niwas society,.. **..** **..Accused.**

447, Shaniwar Peth, Pune.

5. Ashish @ Anand Milind Waghmare

Age: 27 years Occ. Business

R/at : 717, Swapnasakar society,
Sahakar nagar 1, Padmavati,Pune.

6. Nilesh Sadashiv Dhumal

Age: 23 years Occ. Business

R/at : 671 Budhwar Peth,
In front of Tambadi Jogeshwari Temple,
Pune.

7. Lalit Sakharam Tinde

Age: 24 years Occ. Business

R/at : 429 / 27, Industrial colony,
Gultekadi, Pune.

8. Nagesh Babanrao Dhamale,

Age: 25 years Occ. Business

R/at : 1182, Sadashiv peth,
Canara Bank, Shadge Ali,
Pune.

9. Vasant Haburao Khutwad

Age: 47 years Occ. Business

R/at : 896, Shukrawar peth,
Pune.

10. Rohidas @ Ravi Vasant Sahane,

Age: 41 years Occ. Business

R/at : 358, Guruwar Peth,
Fulwala chowk, near Bank of
Maharashtra, Pune.

11. Rushi Ananta Sutar,

Age: 28 years Occ. Business

R/at : S.No. 32/2/2, Pratibhanagar,
Suyog society, Dhankawadi, Pune.

12. Nitin Sadashiv Borate,

Age: 53 years Occ. Business..

..

..Accused.

15. Ganesh Somnath Bhokare,
Age: 26 years Occ. Service
R/at : 605, Shaniwar Peth,
Shrikrupa Apartment,
Flat no.501, Pune.

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..

..Accused.

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Shri Wadekar, Addl. Public Prosecutor for State.
Shri Patil, Advocate for accused.

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ORAL JUDGMENT
(Delivered 23.7.2015)

1. The accused persons stand prosecuted for the offence punishable under sections 143,147,148,435,436 r.w. 149 of Indian Penal Code and sec. 37(1)/135 of Bombay Police Act.
2. The facts of the prosecution case, in brief are as under :

Informant Jitendra Takle was the General Secretary of Nationalist Congress Party (hereinafter referred as NCP), Pune Unit. The office of NCP, Pune unit is situated at Gire Bungalow Hirabaug chowk, Shukrawar Peth, Pune. On 26.2.2013, informant Jitendra along with his colleague Shailesh and Prashant were walking by Tilak road at about 12 mid-night. They found crowd of persons and commotion in front of NCP Office. They went there to see what is matter. At that time accused Ashish Sable, who was President of Maharashtra Nav Nirman Sena, Students Cell, was found running away along with his 10 to 15 companions. The informant found that the flex installed outside the office was hafly burnt. The glasses of window of the office were broken. Plant pots in the courtyard of the office were broken.

3. It is further case of prosecution that Maharashtra Nav Nirman Sena Chief Shri Raj Thakre had criticized President of NCP Shri Sharad Pawar and the then Dy. Chief Minister Ajit Pawar in public rally, therefore, incident of pelting stone on the convoy of Shri Raj Thakre at Ahmednagar by the workers of NCP had occurred. In order to protest that incident the workers of MNS caused damage to the NCP office. Therefore, the informant lodged report Exh. 32 against the accused Ashish Sable and his other workers.
4. At the relevant time Sambjhaji Shirke(pw5) was attached to Khadak police station as API. On 27.7.2013 ASI Holkar recorded the complaint Exh. 32 of complainant and registered an offence. Thereafter investigation followed. During course of investigation PSI Khot visited spot of incident and drew spot panchanama Exh. 46. So also he got snapped photographs of scene of offence. During

investigation API Shirke obtained CCTV footage of incident. At the time of incident prohibitory order u/s 37(1) of Bombay Police Act passed by Commissioner of police was in force. He recorded statements of witnesses, arrested the accused, seized the vehicles used by accused. He forwarded the seized articles to Chemical analyzer. He conducted almost entire investigation in this crime. On account of his transfer the investigation was entrusted to PSI Babar, who simply filed charge-sheet in JMFC court No.6,Pune.

5. The learned JMFC Court no.6,Pune, committed this case to the Court of Sessions Pune as the offence under section 436 of IPC is exclusively triable by the court of Sessions.
6. The charge was framed against the accused under sections 143,147,148,435,436 r.w.149 of Indian Penal Code and sec. 37(1)/135 of Bombay Police Act vide Exh.12. The contents of the charge were read over and explained to accused in vernacular. The accused pleaded not guilty and claimed to be tried. The defence of the accused as revealed from cross examination of witnesses and their statements recorded under section 313 of CrPC is of total denial.
7. The following points arise for my determination and I record my findings thereon for the reasons stated as under:

POINTS

FINDINGS

- (1) Does the prosecution prove that on 26.2.2013 at about 12 hrs. at Shukrawar Peth, all the accused nos. 1 to 15 were the members of unlawful assembly and the common object of which was to cause loss and to set on fire the office of Nationalist Congress Party ?..

.. No

- (2) Does it further prove that on the same date, time and place in and the course of same transaction the accused persons being the member of unlawful assembly in prosecution of common object of that assembly committed an offence of rioting by using deadly weapon viz. Cement blocks, stones and fire balls?... .. No
- (3) Does it further prove that on the same date, time and place in and the course of same transaction in prosecution of the aforesaid common object the accused committed mischief by setting on fire office of NCP and thereby caused destruction to the said office?.. .. No
- (4) Does it further prove that the accused contravened the prohibitory order passed by Commissioner of police u/s 37(1) of Bombay Police Act. No
- (5) What order?.. .. As per final order.

R E A S O N S

8. In order to establish guilt of the accused, the prosecution has examined in all 5 witnesses. Those are PW 1 Jitendra Takle(Exh.31), informant, PW2 Prashant Gandhi(Exh.41), and PW3 Shailesh (Exh.42) eye witnesses to the incident, PW4 Sachin Ughale(Exh.45) police witness and API Shirke (Exh. 25), investigating officer.

9. Besides the ocular testimony of above witnesses the prosecution is placing reliance upon FIR Exh.32, printed format of FIR Exh.33, spot panchanama Exh.46, arrest panchanamas Exh. 47 to 49, seizure panchanama Exh. 50, photographs Exh.51, report Exh. 53, panchanama of seizure of CD of CCTV footage Exh.54, copy of Prohibitory order passed by commissioner of police under section 37(1) of Bombay Police Act Exh. 55, reports about arrest of accused are Exh.57 to 61, report of forwarding seized articles to chemical analyzer Exh. 62. The evidence of prosecution came to be closed vide pursis at Exh.63.

10. I heard the learned APP Shri Wadekar, who submitted that matter may be decided on merit. I heard learned counsel for accused Shri Patil at length.

11. Precisely it is the case of prosecution that the accused are the active workers of political party viz. Maharashtra Nav Nirman Sena. Chief of Maharashtra Nav Nirman Sena had criticized then Dy. Chief Minister of Government of Maharashtra and President of Nationalist Congress party, due to which worker of NCP had pelted stones on the convoy of Raj Thakre at Ahmednagar and due to which accused formed unlawful assembly and committed mischief by setting on fire and causing damage to office of NCP at Hirabaug Pune on 26.2.2013 a about 12 midnight.

12. In order to prove charge against the accused, first charge against accused is that the accused form unlawful assembly and the common object of that assembly was to cause damage to the office of NCP. The prosecution is required to prove that the accused who are facing trial were the members of that assembly and they are the only persons who ransacked the office of NCP. In this regard the

prosecution is heavy relying upon the ocular testimony of Jitendra, Prashant Gandhi and Shailesh Badade.

13. Informant Jitendra Takle was the General Secretary of Pune unit of NCP. He deposes that on 26.2.2013 at about 12 midnight he himself, his colleagues Shailesh Badade and Prashant Gandhi were going by Tilak road by walking. They found crowd was gathered in front of office hence, they went there and found that the attempt was made to fire NCP office and the office was ransacked. He further deposes that he went to police station and reported the matter with police. This is what is the evidence of informant regarding the incident. By adducing evidence of informant the prosecution has proved FIR Exh. 32. As far as occurrence of incident is concerned evidence of informant has been duly corroborated by FIR Exh. 32. So far as involvement of present accused persons in the crime is concerned the informant Jitendra Takle has not whispered a single word about the presence of accused near the spot of incident.

14. A perusal of FIR would show that the informant had an occasion to see the accused more particularly accused Ashish Sable while passing near the spot of incident. However, he has not whispered a single word in this regard. Needless to mention here that, FIR is not a substantive piece of evidence. It can be used for corroboration and to contradict makers of it. FIR Exh. 32 and the ocular testimony of informant is contradictory with each other as far as the factum of involvement of accused in the crime is concerned.

15. The prosecution has adduced evidence of other eye witnesses i.e. Prashant Gandhi and Shailesh Badade. As per

prosecution case, these two witnesses were accompanied with informant at the time of incident. They had an occasion to see the accused Ashish Sable and his companions while going away from the office of NCP. However, pw2 Prashant and pw3 Shailesh both turned hostile and not supported to the prosecution case. The learned APP cross examined these witnesses at length, but failed to elicit material from their cross examination. Thus for proving the complicity of accused persons, their evidence is not at all helpful for prosecution.

16. Though the prosecution has not examined the panch witness on spot panchanama or the photographer who snapped the photographs of scene of offence, but the defence admitted the spot panchanama Exh. 46 and photographs Exh. 51. The contents of spot panchanama shows the destruction caused to office of NCP. The contents of spot panchanama candidly show that the incident of causing mischief to the office of NCP had occurred. Thus the spot panchanama lends corroboration to the ocular testimony of informant, eye witness Shailesh and Prashant to the extent of occurrence of incident. From the above discussion it is proved that destruction was caused to the office of NCP Pune at Hirabaug Pune, it is also proved that an attempt was made to set on fire the office of NCP by pelting fire balls. Though it is proved that any untoward incident that is ransacking the office of NCP was occurred but from this mere fact it cannot be proved that the accused are the persons who committed mischief. It is for prosecution to adduce cogent evidence to prove complicity of accused beyond reasonable doubt.

17. With regards to complicity of accused the prosecution is relying upon evidence of informant, Shailesh and Prashant and

police constable Sachin Ughale. However, informant, Prashant and Shailesh have not supported to the prosecution case so far as involvement of accused in crime in question is concerned. Therefore, from their evidence, the complicity of accused cannot be established. Thus only evidence remains before me is evidence of Sachin Ughale. Now let us see what is the evidence of Sachin.

18. Sachin (pw4) is the police constable attached to Khadak police station. He deposes that on 26.2.2013, he was on night patrolling duty on Khadak I mobile van along with Police Havaladar Jagtap and Police constable Sawant. He received message from police control room about the incident, hence he went there. His evidence further shows that when he reached there he found that 8 to 10 persons stopped on two wheeler including accused Ashish Sable and on inquiry accused Ashish and other went away. He further deposes that Jitendra Takle had disclosed to him that accused Ashish and his 10 to 15 companions caused damage to the office of NCP. This is what is the evidence of pw4 Sachind Ughale. If we scrutinize the evidence of this witness minutely, it appears that this witness had no occasion to see the accused while causing damage to office of NCP. Jitendra disclosed to him about the incident, this aspect itself is sufficient to infer that this witness has not seen the accused while committing the offence. Moreover, Jitendra had not whispered a single word that he ever disclosed to Sachin that the accused Ashish and his companions caused damage to the office of NCP. Therefore, the evidence of Sachin that Jitendra stated to him that accused caused damage is not acceptable one or worth believable. His evidence is relevant to the aspect that accused were found present near the spot of incident. Even if this particular

evidence is accepted as it is, still from this sole fact, it would be highly risky to jump over to the conclusion that the accused were the persons who caused damage to the office of NCP. Therefore, this evidence falls short to establish guilt of the accused.

19. An attempt was made by the prosecution that in front of office of NCP there is a Bank of India, where CCTV cameras were installed outside and the area of office of NCP was covered in that camera. PW5 API Shirke obtained the CCTV footage of the incident but the prosecution had not produced that electronic evidence on record. Thus again the prosecution failed to establish the guilt of accused. In totality of above discussion, I have no hesitation to hold that the prosecution has miserably failed to prove beyond reasonable doubt that the accused are the persons who were the members of unlawful assembly and in prosecution of that they committed rioting by using deadly weapon and committed mischief by causing destruction/damage to the office of NCP.

20. PW 5 API Shirke claimed that at the relevant time prohibitory order u/s 37(1) of Bombay Police Act was in force, whereby there was prevention for raising slogans, singing instruments and carrying any kind of weapon. For contravention of prohibitory order it is for the prosecution to adduce the evidence that the prohibitory order was duly promulgated in that area so that all residents were having conscious knowledge regarding passing of such order and secondly the prosecution must adduced the evidence that accused were found in possession of any weapon. In the instant case there is absolutely no evidence of due promulgation of order of Commissioner. There is no evidence on record that the accused were raising shouts or singing instruments. There is nothing on

record that the accused were found in possession of any kind of weapon. As such for want of evidence the accused cannot be held responsible for contravention of prohibitory order. Consequently the prosecution failed to prove charge under section 37(1)/ 135 of Bombay Police Act. In totality of above discussion the prosecution failed to prove beyond reasonable doubt that the accused have committed the offence and consequently the accused are entitled to benefit of doubt as far as accused no.1 is concerned. So far as accused nos.2 to 15 are concerned, there is absolutely no evidence against them. Consequently they are entitled for acquittal. In such circumstances I have no option, but to answer all points in negative. In the result I pass following order :

O R D E R

1. Accused nos. 1 to 15 stand acquitted vide section 235(1) of [Cr.P.C.](#), of the offence punishable under sections 143,147,148, 435, 436 r.w. 149 of Indian Penal Code and sec. 37(1)/135 of Bombay Police Act.
2. Their bail bonds stand cancelled.
3. After appeal period is over -
 - (i) Motorcycle Hero Honda No. MH12/FL 303, Access Scooter No. MH12/HR 5320, Bajaj Motorcycle No.MH12/CX 1691, Hero Honda Activa scooter No. MH12/HK 72 are already returned to owners on Supratnamas, hence supratnamas stand cancelled.
 - (ii) The motorcycle No. MH12/ZC 2922 lying at police station be returned to its original owner.
 - (ii) The rest of the muddemal property being worthless be destroyed.
4. The accused shall execute PR bond of Rs.15,000/- each

with one surety of the like amount to ensure their presence in case of appeal against acquittal, if any, as contemplated under section 437-A of CrPC. The accused are granted time of 15 days to furnish surety.

5. Dictated and pronounced in open court.

Date: 23.7.2015

(Ashokkumar B.Bhillare)
Addl. Sessions Judge,Pune.

SC 900/2013

State of Maharashtra.. ..Complainant
Vs.
Ashish Bhalchandra Sable etc. 14Accused.

OPERATIVE ORDER

1. Accused nos. 1 to 15 stand acquitted vide section 235(1) of Cr.P.C., of the offence punishable under sections 143,147,148, 435, 436 r.w. 149 of Indian Penal Code and sec. 37(1)/135 of Bombay Police Act.
2. Their bail bonds stand cancelled.
3. After appeal period is over -
 - (i) Motorcycle Hero Honda No. MH12/FL 303, Access Scooter No. MH12/HR 5320, Bajaj Motorcycle No.MH12/CX 1691, Hero Honda Activa scooter No. MH12/HK 72 are already returned to owners on Supratnamas, hence supratnamas stand cancelled.
 - (ii) The motorcycle No. MH12/ZC 2922 lying at police station be returned to its original owner.
 - (ii) The rest of the muddemal property being worthless be destroyed.
4. The accused shall execute PR bond of Rs.15,000/- each with one surety of the like amount to ensure their presence in case of appeal against acquittal, if any, as contemplated under section 437-A of CrPC. The accused are granted time of 15 days to furnish surety.
5. Dictated and pronounced in open court.

Date: 23.7.2015

(Ashokkumar B.Bhillare)
Addl. Sessions Judge,Pune.

I affirm that the contents of this [P.D.F.](#) file Judgment same word for word as per original Judgment.

Name of Steno : Mrs. A. A. Nikam
Court Name : Shri Ashokkumar B.Bhillare, Addl. Sessions
Judge, Pune
Date : 23/07/2015.
order signed by P.O.on : 05/09/2015.
order uploaded on : 07/09/2015.