

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 28 OF 2003

1. Mr. Pandurang Krishna Naik,
2. Mr. Babaji Dhargalkar,
3. Mr. Damu Naik,
4. Mr. Mahesh Shankar Naik,
5. Mr. Ganesh Revodkar,

All major in age,
residents of Chikali,
Colvale, Goa.

... Appellants.

versus

S T A T E

... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S.Dessai,
Advocate for the Appellants.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 29TH AUGUST, 2003.

ORAL JUDGMENT

The Appellants/Original Accused No.1, Pandurang Naik, Accused No.3, Babaji Dhargalkar, Accused No. 4, Damu Naik, Accused No. 5, Mahesh Naik and Accused No. 7, Ganesh Revodkar have filed the

present Appeal challenging their conviction and sentence passed by the Additional Sessions Judge, Mapusa, by Judgment dated 26th February, 2003, in Sessions Case No.39 of 2000, for offences punishable under Sections 323, 504 and 452 of the Indian Penal Code. All the Appellants stand sentenced to pay fine of Rs.500/- each for an offence punishable under Sections 323 and 504 of the Indian Penal Code, in default to undergo Simple Imprisonment for 15 days. Original Accused No.1, Pandurang Naik and Original Accused No. 4, Damu Naik are sentenced to undergo Rigorous Imprisonment for 6 months and to pay fine of Rs.1000/- each, in default to undergo Simple Imprisonment for 1 month for an offence punishable under Section 452 of the Indian Penal Code. Accused No.3, Babaji Dhargalkar, Accused No. 5, Mahesh Naik and Accused No. 7, Ganesh Revodkar are sentenced to undergo Rigorous Imprisonment for 1 year and to pay fine of Rs.1000/- each, in default to undergo Simple Imprisonment for 1 month for an offence punishable under Section 452 of the Indian Penal Code.

2. The facts, in brief as are germane for the decision of this Appeal are stated hereunder:-

P.W.6, A.S.I. Ramesh Kare, was attached to the Mapusa Police Station. On 8th March, 1987, P.W.1,

Sagun Satardekar, filed a written complaint at Exh.46. On the basis of the said complaint, an offence against the Accused who were 39 in number came to be registered. P.W.6, A.S.I. Ramesh Kare, then conducted the scene of the offence panchanama at Exh.57 in the presence of P.W.4, Filip Dias and one Pandurang. The scene of the offence panchanama at Exh.57 evidences the damage caused to the house and valued at Rs.500/- to Rs.600/-. The injured were referred to the Asilo Hospital and their Medical Certificates are at Exh.55 colly. The injured were examined by P.W.3, Dr. Anant Amonkar. He examined P.W.2, Ranjit Satardekar, and found a superficial and a simple injury on the left thigh about 3 cms. in length and bruises caused by hard object. He had also examined P.W.1, Sagun Satardekar, and he found one contused lacerated wound about 2 cms. on forehead left side, superficial and simple injury caused by hard object. He had also examined P.W.5, Tulshi Satardekar, and found that she had one bruise about 1 cm. on scalp left side, superficial and simple caused by hard object. He also noticed swelling on the fifth finger of right hand caused by hard object, superficial and simple injury. After completion of the investigation, a charge-sheet, against 39 Accused came to be filed.

3. After committal of the case to the Court of

Sessions, charge vide Exh.8 was framed against all the 39 Accused by the learned Additional Sessions Judge, Mapusa, for an offence punishable under Sections 143, 147, 148 r/w 149, 323, 504 and 506, 395 r/w 149 of the Indian Penal Code. The Accused denied their guilt and claimed to be tried. The prosecution in support of its case examined six witnesses, The injured are P.W.1, Sagun Satardekar, P.W.2, Ranjit Satardekar and P.W.5, Tulshi Satardekar.

4. The learned Trial Court came to the conclusion that none of the Accused was the member of the unlawful assembly and as such, had not indulged in rioting in furtherance of their common intention. The learned Trial Court further held that the prosecution had established that Original Accused No.1, Pandurang Naik, Accused No.3, Babaji Dhargalkar, Accused No. 4, Damu Naik, Accused No. 5, Mahesh Naik and Accused No. 7, Ganesh Revodkar had criminally trespassed in the house of the Complainant after making preparation for the assault in prosecution of their common object. The learned Trial Court also held that Accused No.1, Pandurang Naik, Accused No. 3, Babaji Dhargalkar, Accused No. 4, Damu Naik, Accused No.5, Mahesh Naik and Accused No. 7, Ganesh Revodkar had caused injuries to the Complainant and his family members acting in prosecution of their common object. The learned Trial

Court also held that Accused No.1, Pandurang Naik, Accused No. 3, Babaji Dhargalkar Accused No. 4, Damu Naik, Accused No. 5, Mahesh Naik and Accused No.7, Ganesh Revodkar had given abuses and threats in prosecution of their common object. The learned Trial Court has held as not proved against any of the Accused that the Accused had committed robbery in the house of the Complainant and had caused damage to their property in prosecution of their common object. Though, in the First Information Report at Exh.46, 39 Accused had been alleged to have committed the offences, the injured in their substantive evidence only attributed overt acts to the Appellants/Accused who have been convicted, exonerating completely all the other Accused. This probably impelled the learned Trial Court to draw an inference that the other persons had been roped in on account of enemical relations and not on account of their involvement.

5. A reference may usefully be made to the evidence of P.W.1, Sagun Satardekar, P.W.2, Ranjit Satardekar and P.W.5, Tulshi Satardekar. P.W.1, Sagun Satardekar, states that on 8th March, 1987, he had returned home at about 5.30 p.m. At that time, his brother P.W.2, Ranjit Satardekar, and one person named Santamaria were in the house. He heard the shouts of his mother P.W.5, Tulshi Satardekar, who came running

from Manshi side followed by all the Accused. All the Accused, entered the varandah of his house. Accused No.1, Pandurang Naik, hit a stone on the left side of his head. Accused No.3, Babaji Dhargalkar, hit a danda(stick) on his head, due to which, he fell unconscious. When he regained consciousness, he saw P.W.2, Ranjit Satardekar, being assaulted by Accused No.4, Damu Naik, Accused No.5, Mahesh Naik and Accused No.7, Ganesh Revodkar with fist blows. The said Accused namely Accused No.4, Damu Naik, Accused No.5, Mahesh Naik and Accused No.7, Ganesh Revodkar also assaulted his mother, P.W.5, Tulshi Satardekar with fist blows. He further states that he had seen the other Accused who had entered his house over turned the table, breaking furniture, tiles and taking away his gold chain and his helmet. According to him, these Accused had also taken a gold ring of his sister-in-law named Vijaya. The Accused also abused him filthily calling his sister-in-law a prostitute and they also gave threats that they would kill him. According to P.W.1, Sagun Satardekar, they were successful in closing the doors and after some time, the Police came and took them to the Police Station where they lodged a complaint at Exh.46. He has identified muddemals M.Os. 2, 3, 4 and 5 as his shirt, pieces of broken roof tiles, broken pieces of glass and a stone which were attached by the Police. In the cross-examination, on

behalf of the Accused, it was endeavoured to point out that criminal cases were pending against P.W.1, Sagun Satardekar. He has also admitted that Surekha, wife of Accused Babaji, had filed a case against him and his family members. He has further admitted that the Accused had come to his house armed with dandas, sticks, koitas, chains, belts and other weapons. He has also admitted that the chains, belts and koitas were not used to assault him. He does not remember if these weapons were used against any of the injured. He has admitted that in his statement before the Judicial Magistrate First Class, he has not referred to any assault with these weapons. He has admitted that he has not made a reference to the assault on his sister-in-law. He has also admitted not to have stated in his complaint at Exh.46 that five persons had entered the hall and damaged the furniture and other articles. According to him, he had stated in his complaint that all the Accused had entered the house and had damaged the articles inside. He has also admitted that he was not in a position to say as to who had taken away his gold chain and helmet. He has also admitted, on going through his complaint at Exh.46, not to have given the names of the Accused who had assaulted his mother, P.W.5, Tulshi Satardekar.

6. P.W.2, Ranjit Satardekar, states that he like

P.W.1, Sagun Satardekar, is a practicing Advocate. On 8th March, 1987, at about 5 p.m., his mother P.W.5, Tulshi Satardekar, his wife Vijaya and two small children were in the house. His mother, P.W.5, Tulshi Satardekar, left the house to go to the liquor shop which she was managing. At that time, one Santamaria was with him in the house. His brother P.W.1, Sagun Satardekar, came to the house and after a few minutes thereafter, his mother P.W.5, Tulshi Satardekar, came shouting in the house and stating that some people were wanting to assault her. On hearing her shouts, P.W.1, Sagun Satardekar, went outside while he followed P.W.1, Sagun Satardekar. He saw that all the Accused were coming towards his house. P.W.1, Sagun Satardekar, who was standing in the varandah of the house told them not to enter the house. All the Accused were armed with chains, sticks, stones and koitas. As soon as P.W.1, Sagun Satardekar, told the Accused not to enter his house, Accused No.1, Pandurang Naik, hit P.W.1, Sagun Satardekar, with a stone on his head. Accused No.3, Babaji Dhargalkar, dealt a blow of stick on his head. When he went to intervene, Accused No.2, Vinayak Naik, hit him with a stick. He was also assaulted by Accused No.10, Lavu Naik, Accused No.20, Eknath Naik, Accused No.9, Vassu Naik, Accused No.11, Krishna Naik, Accused No.5 Mahesh Naik, Accused No.21, Parvati Naik, Accused No.14, Ravi Poke, Accused No.19, Gurudas Poke, Accused

No.16, Vasant Dhargalkar, Accused No.6, Pandhari Dhargalkar, Accused No.7, Ganesh Revodkar and Accused No.12, Gangaram Revodkar. According to him, some of these Accused assaulted him with sticks and iron rods. When his mother, P.W.5, Tulshi Satardekar and his wife Vijaya intervened, they were also assaulted by the same Accused. Accused No.3, Babaji Dhargalkar and Accused No.4, Damu Naik had also assaulted his wife and his mother, P.W.5, Tulshi Satardekar. They managed to go inside the house and while they were trying to close the door, Accused No.4, Damu Naik and Accused No.5, Mahesh Naik, entered the house and started damaging the furniture. According to P.W.2, Ranjit Satardekar, these three Accused then snatched a gold chain worn by P.W.1, Sagun Satardekar, the nose ring of his mother, P.W.5, Tulshi Satardekar and gold earrings of his wife. With difficulty, they managed to close the door. Several of the Accused removed stones from the compound wall and put them against the doors and windows of their house in order to effect entry in their house. According to him, Accused No.1, Pandurang Naik, Accused No.2, Vinayak Naik, Accused No.3, Babaji Dhargalkar, Accused No.4, Damu Naik, Accused No.5, Mahesh Naik and Accused No.9, Vasu Naik gave threats while some of the other Accused abused them filthily. Some of the Accused then collected hay from their compound and spread it in order to burn the house. He also speaks

about Accused No.5, Mahesh Naik, puncturing the scooter of P.W.1, Sagun Satardekar and Accused No.5, Mahesh Naik stealing the helmet. One Vithal Mandrekar, informed one Haldankar who in turn informed the Mapusa Police Station. The Police, therefore, came to the scene of the offence and by seeing the Police, the Accused went away. The injured were first taken to the Police Station and thereafter to the Asilo Hospital. He has admitted that there was enmity between the Accused and his family. In the cross-examination, P.W.2, Ranjit Satardekar, has admitted that one criminal case was filed against him by the wife of the Accused No.3, Babaji Dhargalkar, in which his mother, P.W.5, Tulshi Satardekar, his wife Vijaya and his brother, P.W.1, Sagun Satardekar were co-Accused. Certain admissions have been elicited in the cross-examination showing the pendency of civil suits and criminal cases against him. He has admitted not to have stated in his statement that he was assaulted by sticks and iron rods. Omission is also brought out in respect of the assault by all the Accused on his wife. He has also admitted not to have stated specifically that only three Accused had entered the balcony of his house. Similarly, contradiction is brought on record in respect of only three Accused causing damage to the property. He has also admitted not to have specifically stated in his statement that Accused No.3,

Babaji Dhargalkar, Accused No.4, Damu Naik and Accused No.5, Mahesh Naik had entered inside the hall and had snatched the gold chain, nose ring and gold earrings. He has also admitted not to have stated that several Accused removed stones from the compound wall and put them at the door and the windows in order to effect entry in the house. He has also admitted not to have stated that some of the Accused collected hay from the compound and spread it around the house in order to burn the house. Similarly, omission is brought out in respect of Accused No.5, Mahesh Naik, puncturing the scooter belonging to P.W.1, Sagun Satardekar and also of Accused No.5, Mahesh Naik, removing the helmet of his brother. He has also admitted that apart from this case, he has filed another case against the Accused.

7. P.W.5, Tulshi Satardekar, states that on the day of the incident, at about 5 p.m., she started going towards the liquor bar which was situated at some distance from her house. She was accompanied by one Sonu. At that time, Accused No.1, Pandurang Naik, Accused No.3, Babaji Dhargalkar, Accused No.4, Damu Naik, Accused No.5, Mahesh Naik, Accused No.7, Ganesh Revodkar, Accused No.9, Vasu Naik and Accused No.11 Krishna Naik along with other persons were sitting in the house of Accused No.7, Ganesh Revodkar. On seeing her, Accused No.7, Ganesh Revodkar, came running on the

road and started abusing her filthily. Fearing injury to herself, she ran away being chased by Accused No.7, Ganesh Revodkar. On reaching her house, she raised an alarm. In the meanwhile, the other Accused gathered outside their house and were armed with stones and sticks. Her son P.W.1, Sagun Satardekar, told the Accused not to enter the house. Accused No.1, Pandurang Naik, threw stones on P.W.1, Sagun Satardekar, which struck him on his forehead. Accused No.3, Babaji Dhargalkar, hit a stick blow on the head of P.W.1, Sagun Satardekar. P.W.2, Ranjit Satardekar, rushed to intervene and was also assaulted by the Accused who had entered the house. He was assaulted by a stone. Seeing the assault on P.W.2, Ranjit Satardekar, his wife rushed to his rescue and she too was assaulted with stones. P.W.5, Tulshi Satardekar, also rushed and some one from the group of the Accused hit her with a stone which fell on the last little finger of the right hand. She is unable to state which of the Accused had hit her with stones. She further states that Accused No.3, Babaji Dhargalkar, Accused No.4, Damu Naik and Accused No.5, Mahesh Naik entered the house and started damaging the furniture and cupboards in the house. According to her, Accused No.5, Mahesh Naik, removed the nose pin from her nose and one of the Accused removed the earrings of Vijaya and gold chain from the neck of P.W.1, Sagun

Satardekar. She further states that there was a hay stack outside the house and the Accused removed the hay and spread it around the house saying that they would damage the house. The Accused also removed the roof tiles of the house. After some time, the Police arrived at the scene of the offence and after seeing the Police, the Accused fled away. In the cross-examination, she has admitted not to have stated that the Accused had all gathered in the house of Accused No.7, Ganesh Revodkar and on seeing her, Accused No.7, Ganesh Revodkar, chased her armed with a stick. According to her, only Accused No.4, Damu Naik, Accused No.3, Babaji Dhargalkar and Accused No.5, Mahesh Naik entered their house. Omission was brought out in respect of assault on Vijaya by a stone. She has admitted not to have stated in her statement that Accused No.3, Babaji Dhargalkar, Accused No.4, Damu Naik and Accused No.5, Mahesh Naik entered the house and started damaging the furniture etc. and Accused No.5, Mahesh Naik removed the nose pin from her nose.

8. In respect of P.W.5, Tulshi Satardekar, the learned Trial Court in paragraph 9 of the Judgment has observed thus;-

"Material omissions were brought forth about all the Accused being in the house of A-7, Ganesh and coming on the road and abusing her and then

rushing towards her house. Through her examination too, the prosecution has failed to establish that all the accused became members of an unlawful assembly and indulged in rioting, acting in prosecution of any common object. For that matter the prosecution has failed to carve out what was the common object in prosecution of which the accused were stated to have acted on the said date, place and time".

9. In respect of P.W.1, Sagun Satardekar, the learned Trial Court in para 10 of the Judgment has observed:-

"Be that as it may, his statement however that accused had come armed with dandas, koitas, belt and other weapons has been materially shaken and which he admitted as not having revealed in his statement to the police or even before the J.M.F.C. The assault on his sister-in-law was admittedly not stated by him in his complaint to the police and which he tried to justify as being on account of the complaint being lodged over more than a decade back".

10. In respect of P.W.2, Ranjit Satardekar, the learned Judge after referring to his evidence has observed:-

"At the most it may be taken as an endeavour by the witness to make his case more colourful and which would

indicate the anxiety to make improvements but on material aspects namely the assault on Sagun P.W.1 by A-1 Pandurang, A-3 Babaji and on him by A-4 Damu, A-5 Mahesh and A-7 Ganesh he has materially corroborated".

11. Then commenting on the overall evidence of the prosecution, the learned Trial Judge has observed thus:-

"These prosecution witnesses have however failed to substantiate their case that the assault on them was with weapons like iron rods, dandas, sticks, etc. Moreover the case of the prosecution that these witnesses were assaulted by all the accused would appear rather farfetched and unbelievable with the number of accused involved and the only irresistible conclusion which can be drawn is that the other persons have been roped in on account of strained and enemical relations and not on account of their involvement". (Emphasis supplied)

12. The learned Judge in paragraph 19 has further held that though the evidence of P.W.1, Sagun Satardekar, P.W.2, Ranjit Satardekar and P.W.5, Tulshi Satardekar is shown to be a coloured version and with improvements, in view of the corroboration, the Accused are held guilty.

13. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Appellants has urged before me that the learned Trial Judge has recorded a finding that none of the Accused were members of the unlawful assembly and that none of the Accused had indulged in rioting in furtherance of their common object. In the face of these findings, it is urged by the learned Counsel appearing on behalf of the Appellants that unimpeachable evidence is necessary in order to sustain the evidence of the individual overt acts of the Accused. According to the learned Counsel appearing on behalf of the Appellants, the learned Trial Judge has recorded a finding that all the witnesses have falsely implicated the other Accused and in such cases in the absence of strong reasons, the evidence of the prosecution witnesses cannot be accepted to sustain the conviction.

14. The learned Public Prosecutor appearing on behalf of the State has supported the Judgment of conviction.

15. Perusal of the evidence of P.W.1, Sagun Satardekar, P.W.2, Ranjit Satardekar and P.W.5, Tulshi Satardekar would show that the evidence of these witnesses suffers some material omissions on vital aspects of the prosecution case. Not only that, a very

deliberate attempt appears to have been made by these witnesses to falsely implicate some other Accused. The F.I.R. recites the name of 36 Accused. Charge-sheet has been filed against 39 Accused. During the evidence, it appears that an attempt has been made to exonerate the other Accused except the Accused who have been convicted. The relations between the Accused and the prosecution witnesses is admittedly strained. Cases and counter cases have been filed against each other. P.W.2, Ranjit Satardekar, claims to have been assaulted by the Accused with sticks and iron rods. His Hurt Certificate shows that he had only received a bruise on his thigh which was superficial. P.W.1, Sagun Satardekar, had only one contused lacerated wound on his forehead. If these witnesses claim to have been assaulted by the Accused with sticks and iron rods, according to me, the medical evidence does not only corroborate their version but falsifies it. If, the witnesses could go to the incident of falsely involving more than 34 Accused and then giving them a clean chit in the trial, the evidence of such witnesses does not inspire confidence.

16. When the prosecution examines its witnesses, it unfolds the prosecution case through the evidence of these witnesses. In a sense, the prosecution weaves the fabric of its case through the evidence of these

witnesses. If, the prosecution in its attempt to weave the fabric itself is gaping holes the fabric of the prosecution case is completely weakened. It is true that minor contradictions and omissions do not necessitate the rejection of the testimony of the witnesses in its entirety. Material contradictions and omissions should put the Court on its guard and should make the Court scrutinise the evidence of such witnesses carefully. The Court in its scrutiny should separate the grain from the chaff. However, if the truth and the falsehood, as in this case, are so intermingled and intertwined so as to render the exercise of separating the grain from the chaff difficult, the rejection of the prosecution case in its entirety is justified. In this case, apart from the fact that the truth is intermingled and it is difficult to separate the grain from the chaff, the attempt of the prosecution witnesses to falsely implicate other witnesses is a factor which affects their credibility. Plurality of the evidence cannot strengthen the infirm testimony of the witnesses. Examination of three injured witnesses, whose evidence the learned Trial Court found to be infirm cannot strengthen the prosecution case in the absence of corroboration for the individual overt acts of Accused. In the present case, on the basis of the cross-examination, the learned Trial Court had rightly come to the conclusion

that these witnesses had given a coloured version and in the face of these findings, according to me, the learned Trial Court was in error in convicting the Accused. The evidence of the injured witnesses should be of sterling quality so as to inspire the confidence of the Court. According to me, therefore, the conviction and sentence passed by the learned Trial Court is wholly unsustainable.

17. In the result, therefore, Criminal Appeal No. 28 of 2003 is allowed. The Judgment of the learned Trial Court convicting and sentencing the Accused is hereby quashed and set aside and the Appellants/Accused are acquitted of the offences for which they were charged and convicted. Their Bail Bonds stand cancelled. Fine, if paid, be refunded to the Accused.

P. V. HARDAS, J.

RD.