

(1)

Sessions Case No.644/2014 ( Judg)

Presented on : 16/09/2014  
Registered on: 23/09/2014  
Decided on : 27/01/2023  
Duration : 08Ys.04Ms.11Ds.

**IN THE COURT OF THE ADDITIONAL SESSIONS**  
**JUDGE, PUNE AT PUNE.**  
**[Presided over by S.B. Salunkhe.]**

MHPU010109572014



**SESSIONS CASE No.644/2014**

**EXH. No.:**

**CNR NO.: MHPU01-010957-2014**

**The State of Maharashtra**  
Through  
Hadapsar Police Station, Pune

**..... Complainant.**

**Versus**

- 1] Vishal Govind Sutrave,**  
Age: 21 Years. Occu.: Service,  
R/o-Mauli Colony, Tukai Darshan,  
Hadapsar, Pune.
- 2] Atul Rajendra Aagam,**  
Age: 21 Years. Occu.: Labourer,  
R/o- Survey No.18, Om Building,  
Behind Gurukrupa Medical,  
Gondhalenagar, Hadapsar, Pune.
- 3] Ranjit Shankar Yadav,**  
Age: 24 Years. Occu.: Labourer,  
R/o- Ganesh Colony, Kalepadal,  
Hadapsar, Pune.

- 4] **Sagar Chandrakant Sutar,**  
Age: 19 Years. Occu.:  
R/o- Bhekrai Nagar,  
Behind Sane Guruji School,  
Fursungi, Pune.
- 5] **Shubham Dattatray Barde,**  
Age: 19 Years. Occu.: Education,  
R/o- Survey no.37, Ganesh Colony,  
Kalepadal, Galli no.4,  
Hadapsar, Pune.
- 6] **Dada Modak @ Shekhar Anil Modak,**  
Age: 19 Years. Occu.: Education,  
R/o- Wadki, Tal.- Haveli, Dist.-Pune.
- 7] **Aakash Ramesh Lashkare,**  
Age: 19 Years. Occu.: Helper,  
R/o- Wadki, Tal.- Haveli, Dist.-Pune.
- 8] **Prashant @ Bala Kalyan Thorat,**  
Age: 21 Years. Occu.: Service,  
R/o- Ganganagar, Near Water Tank,  
Bhekrainagar, Fursungi,  
Tal.- Haveli, Dist.Pune.
- 9] **Ajay Dilip Lalge,**  
Age: 20 Years. Occu.:  
R/o- Lalge chawl, Satavwadi,  
Hadapsar, Pune.
- 10] **Vijay Rajendra Gambhire,**  
Age: 24 Years. Occu.: Education,  
R/o- Om Building, Sairam Colony,  
Mahadev Nagar, Manjari,  
Tal.- Haveli, Dist.-Pune.
- 11] **Vicky Suresh Khandale,**  
Age: 19 Years. Occu.: Fruit Stall,  
R/o- Awhalwadi Phata, Wagholi,  
Tal.- Haveli, Dist.-Pune.

- 12] **Akshay Dattatray Sonawane,**  
Age: 19 Years. Occu.: Education,  
R/o- Manjari Farm, Solapur Road,  
Tal.- Haveli, Dist.-Pune.
- 13] **Ravi Sukhdev Sathe,**  
Age: 21 Years. Occu.:  
R/o- Hakke Vasti, Manjari,  
Tal.- Haveli, Dist.-Pune.
- 14] **Aakash Prakash Kakade,**  
Age: 21 Years. Occu.: Education,  
R/o- Durvakur Society, 8/109 Kalepadal,  
Hadapsar, Pune.
- 15] **Rohan Chandrashekhar Bobde,**  
Age: 22 Years. Occu.: Business,  
R/o- Hind Colony, Behind Jakat Naka,  
Bhekrai Nagar, Tal.-Haveli, Dist.-Pune.
- 16] **Pratik Pandit Sangle,**  
Age: 20 Years. Occu.: Education,  
R/o- Bhekrai Nagar, Gurudatta Colony,  
Fursungi, Tal.-Haveli, Dist.-Pune.  
  
Originally resident of Dhaneshree Bargaon,  
Tal.- Kalam, Dist.- Osmanabad.
- 17] **Prasad Balasaheb Pansare,**  
Age: 22 Years. Occu.: Education,  
R/o- Opp. Bhekrai Nagar Jakat Naka,  
Fursungi, Tal.- Haveli, Dist.-Pune.  
  
Originally resident of Lakhewadi,  
Tal. Indapur, Dist.-Pune.
- 18] **Rahul Sukhdev Kurule,**  
Age: 21 Years. Occu.: Service,  
R/o- Ganesh Colony, Kalepadal,  
Hadapsar, Pune.
- 19] **Dhananjay @ Manoj Jayram Desai,**  
Age: 34 Years. Occu.: Social Worker,

R/o- Hindu Gad Parmar Bungalow,  
Mistik Village, At Post- Paud,  
Tal.- Mulshi, Dist.-Pune.

20] **Abhishekh @ Banti Sayaji Chavan (Deceased,Abted)**

21] **Mahesh Maruti Khot,**  
Age: 24 Years. Occu.: Service,  
R/o- Janseva Colony, Kalepadal,  
Hadapsar, Pune.

..... **Accused.**

**Appearance:**

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APP Shri. N. D. Patil for State  
Advocate Shri. Sudhir Shah for accused nos.1, 2, 4, 8, 9, 10, 11,  
13 & 14.  
Advocate Shri. Bhoite for accused nos.3, 5, 7, 12, 15, 18 & 21.  
Advocate Shri. Padekar for accused nos.6 & 7.  
Advocate Shri. J. N. Patil for accused nos.16 & 17.  
Advocate Shri. Milind Pawar for accused no.19.  
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**J U D G M E N T**

**[ Dictated and delivered in open Court on 27/01/2023]**

1] The accused are charged for the offence Punishable under sections 109, 302, 307, 143, 147, 149, 109 r/w. 153-A, 120-B, 302 r/w.120-B, 302 r/w.149, 307 r/w.149, 147 r/w.149, 148 r/w.149 and 153-A of the Indian Penal Code (Hereinafter referred as 'IPC').

2] The prosecution case is as under:-

That PW-2 Mobin Mohammad Sadik Shaikh lodged information Exh.615 alleging that on 02/06/2014 his brother Mohsin and friend Riyaz Ahmed Mubarak Shendure left the house at about 8.30 p.m. to perform Namaj at Masjid situated

at Unnatinagar. Subsequently, he by motorcycle visited the Masjid. At about 9.00 p.m. Namaj is over and he returned by motorcycle at room. At about 9.15 p.m. he has received phone call of friend Riyaz Ahmed disclosing that after Namaj he and brother Mohsin visited the mess of Wasim's mother, taken tiffin and started proceeding by Honda Duo motorcycle towards room. At that time Mohsin was driving the motorcycle. They were at 200 meter away from the Masjid in front of grocery shop situated at Satav plot, at that time from the opposite side seven to eight motorcyclist came on which one or two pillion riders were riding. They were having hockey sticks, bat, stone. The Mohsin was worn green pathani shirt and having beard. Hence, those persons purposely targeted him and assaulted by hockey stick, bat and stone. Though also they tried to chase him but he managed to run away and hidden himself in the dark. He immediately visited the spot situated in front of grocery shop, Satav plot. He found his brother is lying in blood clot sustaining injuries on head, face and body. The brother was unconscious and trying to talk but unable to talk. He started shouting for aid. Eight to ten persons were there. Out of them, one person has given phone call on 100 number of police and called help. The persons who assaulted to his brother were assaulting to one beard slim blackish colour person. He then tried to given call on 100 number, visited house and came on motorcycle. Meantime, police came. They took his brother in the vehicle hence he left the motorcycle on the spot and proceeded with them. In the police vehicle another person sustaining injuries was present. They admitted brother at Noble

hospital, Hadapsar. The primary treatment was given and admitted at ICU. Subsequently, the doctor declared him dead. Hence, the complaint.

3] The FIR was registered vide CR no.305/2014 for the offence punishable under section 302, 307, 143, 147, 148, 149 of the IPC and investigation of the same was handed over to the PW-17 Gopinath Narayanrao Patil. He has visited the spot and drawn the spot panchanama Exh.603 and attached Articles-A, B, C & D. He directed PSI Shaikh and Jadhav to arrest the accused. They recorded memorandums of those accused and they have attached the muddemal mobiles, clothes of accused, weapons, hockey sticks, wooden log. He recorded the statements of witnesses as per their say. He recorded the statement of witness Amin Harun Shaikh and Ejaj Yakub Bagwan as per their say. He sent the muddemal for C.A. He has got conducted the T.I. parade of which reports are at Exh.799 to 800. In his investigation, he transpired that the accused have committed an offence punishable under section 302, 307, 143, 147, 148, 149, 120-B, 153-A of the IPC hence filed charge-sheet against the accused before the JMFC, Pune.

4] The offence punishable under section 302, 307 of IPC are exclusively triable by the Court of Sessions hence JMFC Pune has committed the case to this court.

5] My predecessor framed charge against the accused at Exh.479 for offence punishable under section 109, 302, 307, 143, 147, 149, 109 r/w. 153-A, 120-B, 302 r/w.120-B, 302

r/w.149, 307 r/w.149, 147 r/w.149, 148 r/w.149 and 153-A of the IPC. The charge was read over and explained to the accused in vernacular language. The accused pleaded not guilty and claimed to be tried.

6] I have recorded the statement of accused under section 313 of the Cr.PC. Their defence is that of total denial.

7] Following points arise for my determination and my findings with reasons thereon are as under:

Sr. No.	POINTS	FINDINGS
1.	Whether prosecution proved that death of deceased Shaikh Mohsin Mohammad Sadik is homicidal?	..In the affirmative.
2.	Whether prosecution proved that on or about 19th January 2014 at Manjari Bk., Tal. Haveli, Dist.-Pune, accused No.19 provoked the section of the Hindu Community against Muslim Community in general by delivering communal speeches and on or about 17th March 2014 accused no.19 distributed the pamphlets for taking revenge on Muslim Community and thereby enraged the Section of the Hindu Community against Muslim Community and thus accused no.19 abetted accused no.1 to 18 and deceased accused no.20 and 21 along with juvenile accused in the commission of the offence of murder of Shaikh Mohsin Mohammad Sadik on 2nd June 2014 at about 9.15 p.m. at opp. Jagtap Classes, Satav plots and	..In the negative.

	<p>Unnatinagar situated at Hadapsar, Dist.-Pune and causing injuries to Amin Hasan Shaikh and Ejaj Yakub Bagwan by forming unlawful assembly with deadly weapons on the same date, time and place and the said offences are punishable under section 302, 307, 147, 148, 149 &amp; Sec. 153-A of Indian Penal Code, which were committed by accused No.1 to 18 and deceased accused No.20 and 21 along with juvenile accused Amit Mhasku Awchare and Shubham @ Sonya Madhukar Gawli in consequence of their abetment?</p>	
3.	<p>Whether prosecution proved that accused no.19 on or about 19th January 2014 at Manjari, Tal.-Haveli, Dist.-Pune and on or about 17th March 2014 abetted accused no.1 to 18 and deceased accused no.20 and accused no.21 along with juvenile accused in the commission of the offence of murder and also cause fatal injuries to the persons punishable under section 302 of Indian Penal Code which offences were committed by accused no.1 to 18 and deceased accused no.20 and accused no.21 along with juvenile accused on 2nd June 2014 at about 19.15 p.m. at Satav Plots, Unnatinagar situated at Hadapsar, Pune, in consequences of their abetment?</p>	..In the negative.
4.	<p>Whether prosecution proved that accused no.1 to 18, deceased accused no.20 and accused no.21 alongwith juvenile in conflict with law on or before 2nd June 2014 at about 8.30</p>	..In the negative.



	<p>p.m. at Gondhale Mala, Pune agreed to do or caused to be done an illegal act namely to commit the murder of Muslim persons and to cause the damages of vehicles, shops of Muslim community so as to create the terror of Hindu Rashtra Sena at Hadapsar locality, Pune and accused commit the murder intentionally or knowingly causing death of SK. Mohsin Mohammad Sadik on 02.06.2014 at about 9.15 p.m. opp. Jagtap Classes, Satav Plots, Unnatinagar, situated at Hadapsar, Pune, in consequences of the said agreement ?</p>	
5.	<p>Whether prosecution proved that accused no.1 to 18, deceased accused no.20 and accused no.21 alongwith juvenile in conflict with law in pursuance of the criminal conspiracy hatched here in above did commit murder intentionally or knowingly causing the death of Sk. Mohsin Mohammad Sadik on 2nd June, 2014 at about 9.15 p.m. at Satav Plots, Unnatinagar situated at Hadapsar, Pune, in consequences of their abetment?</p>	..In the negative.
6.	<p>Whether prosecution proved that on the aforesaid date, time and place accused no.1 to 18, deceased accused no.20 and accused no.21 along with juvenile in conflict with law committed murder by intentionally or knowingly causing the death of Sk. Mohsin Mohammad Sadik while they were members of unlawful assembly, in prosecution of their common object to commit the murder of Sk. Mohsin</p>	..In the negative.

	<p>Mohammad Sadik and to injure the prosecution witnesses Amin Harun Shaikh and Ejaj Yakub Bagwan on account of insulting images of Shivaji Maharaj which were uploaded on facebook under the pretext that the said images were uploaded by Muslim community and promote the feelings of Hindu community by delivering speech and subsequently on 17.03.2014 by circulation of pamphlets amongst the public at large ?</p>	
7.	<p>Whether prosecution proved that on aforesaid date, time and place accused no.1 to 18, deceased accused no.20 and accused no.21 along with juvenile accused in conflict with law, did an act to attempt to commit the murder by assaulting the prosecution witnesses Amin Harun Shaikh and Ejaj Yakub Bagwan by means of wooden logs, hockey sticks, bat at stump with such intention or knowledge under such circumstances that if, by that act, accused had caused the death of Mohsin Mohammad Sadik and injured Amin Harun Shaikh and Ejaj Yakub Bagwan, accused would have been guilty of murder at that time accused were members of an assembly in prosecution of their common object to promote the feelings of Hindu Community by delivering the speech and circulating the pamphlets amongst the public on account of insulting images of Shivaji Maharaj which were uploaded on facebook under the pretext that the said uploading was done by Muslim community ?</p>	<p>..In the negative.</p>

8.	<p>Whether prosecution proved that on aforesaid date, time and place accused no.1 to 18, deceased accused no.20 and accused no.21 along with juvenile accused in conflict with law, were members of unlawful assembly, in prosecution of their common object to commit the murder of Sk. Mohsin Mohammad Sadik and to injure the prosecution witnesses Amin Harun Shaikh and Ejaj Yakub Bagwan and to promote the feelings of Hindu community against Muslim community on account of insulting images of Shivaji Maharaj uploaded on facebook under the pretext that such uploading was done by Muslim community and subsequently on 17.03.2014 to circulate the pamphlets amongst the public and committed an offence of rioting?</p>	..In the negative.
9.	<p>Whether prosecution proved that on aforesaid date, time and place accused no.1 to 18, deceased accused no.20 and accused no.21 along with juvenile accused in conflict with law, were of unlawful assembly, in prosecution of their common object to commit the murder of Sk. Mohsin Mohammad Sadik and to injure the prosecution witnesses Amin Harun Shaikh and Ejaj Yakub Bagwan and to promote the feelings of Hindu community and circulate the pamphlets amongst the public on account of that insulting images of Shivaji Maharaj were uploaded on facebook under the pretext that said images were uploaded by Muslim community and</p>	..In the negative.

	committed an offence of rioting with deadly weapons by means of wooden logs, hockey sticks, stump, bat and stones ?	
10.	Whether prosecution proved that on 19.01.2014 at Manjari Bk. Tal.-Haveli, Dist.-Pune accused no.19 being a founder president of Hindu Rashtra Sena promoted feelings of Hindu community by delivering the speech and circulating the pamphlets on account of uploading insulting images of Shivaji Maharaj under the pretext that the said images were uploaded by Muslim Community, which is prejudicial the maintenance of harmony between different groups, caste or communities and which disturbs or likely to disturb public tranquility?	..In the negative.
11.	What offence is proved against the accused?	... No offence.
12.	What order?	... Accused are acquitted.

### **REASONS**

8] To bring guilt of the accused at home prosecution have examined,

- i) PW No.1 Sajidkhan Majidkhan Pathan at Exh.602 who has acted as panch witness to the spot panchanama Exh.603 and attachment of articles A, B,C & D from the spot. He is also claimed to be eye witness.

- ii) PW No.2 Mobin Mohammad Sadik Shaikh at Exh.614 who is brother of the deceased Mohsin and lodged FIR Exh.615. He has identified the clothes of deceased Articles 'E' & 'F'.
- iii) PW No.3 Amin Harun Shaikh at Exh.623 claiming to be eye witness.
- iv) PW No.4 Shafik Akbar Dalwai at Exh.624 who has given phone call to the police.
- v) PW No.5 Shakeel Hamid Shaikh at Exh.632 claiming to be eye witness.
- vi) PW No.6 Ejaj Yakub Bagwan at Exh.635 who is injured witness.
- vii) PW No.7 Vilas Ambadas Vedpathak who has saw the deceased sustaining injuries and tried to give phone call to the police.
- viii) PW No.8 Namdeo Narayan Kunjir at Exh.705 who has acted as panch witness to the memorandum of accused and attachment panchnama as per it.
- ix) PW No.9 Atmaram Sayaji Sonawane who has acted as panch witness to the memorandum of accused Ravi Sathe and attachment of mobiles Exh.711 and 712 respectively, memorandum of accused Vijay Gambhire and attachment as per it Exh.713 and 714 respectively, memorandum of Rahul Kurule and attachment as per it Exh.715 and 716 respectively, memorandum of accused Prashant Thorat and attachment as per it Exh.717 and 718 respectively.

- x) PW No.10 Sanjay Atmaram Thite at Exh.727 who has acted as panch witness to the memorandum and attachment of it of accused Ravi Sathe Exh.728 and 729 respectively.
- xi) PW No.11 Balasaheb Tukaram Kenkar at Exh.739 who has acted as panch witness to the memorandum and attachment as per it of accused Ajay Lalge Exh.740, 741 respectively, memorandum of accused Akshay Sonawane and attachment as per it Exh.742, 743 respectively, memorandum of accused Vicky Khandale and attachment as per it Exh.744, 745 respectively.
- xii) PW No.12 Khandu Sambhaji Dhumal at Exh.746 acted as a panch witness alongwith PW-11 Balasaheb Kenkar.
- xiii) PW No.13 Samir Khudbuddin Mulla at Exh.754 to whom witness Riyaz met and disclosed about the incident and he has given phone call to the police constable Sanjay Patil and constable Sanjay Patil informed him that Mohsin has sustained injuries.
- xiv) PW No.14 Santosh Shivaji Gore, API at Exh.766 who has recorded the FIR lodged by PW-2 Shaikh Mobin Mohammad Sadik and registered vide CR no.305/2014.
- xv) PW No.15 Yuvraj Ashok Nandre, police inspector at Exh.767 who has searched the accused as per the directions of investigating officer ACP PW-17 Gopinath Patil. He has arrested the accused Atul

Aagam, Vishal Sutrave, Sagar Sutar, Ranjit Yadav, Shubham Barde, Dada Modak, Aakash Lashkare under panchanama Exh.721 and attached the mobiles. Before him the accused Ajay Lalge has given memorandum Exh.740 and produced clothes, wooden log which is attached under Exh.741. The accused Aakash Sonawane has given memorandum Exh.742 and produced articles which are attached under Exh.743. The accused Vicky Khandale has given memorandum Exh.744 and produced articles attached under Exh.745.

- xvi) PW No.16 Dattatray Rajaram Madne PSI at Exh.774 who conducted the investigation as per the directions of the IO PW-17 ACP Gopinath Patil. The accused Ravi Sathe has given memorandum Exh.728 and produced articles as per Exh.729. The accused Vijay Gambhire has given memorandum Exh.713 and produced articles attached under Exh.714. He has also conducted the house search of accused Vijay Gambhire and attached the clothes under panchanama Exh.723.
- xvii) PW No.17 IO ACP Gopinath Narayanrao Patil at Exh.780 who has investigated the crime no. 305/2014 registered at Hadapsar Police Station, visited the spot and drawn spot panchanama Exh.603. He has recorded the statements of witnesses as per their say, collected the memorandums and attachment panchanamas which

are conducted by PSI Shaikh, PSI Shinde and PW-15 API Yuvraj Nandre and PW-16 PSI Dattatray Madne, sent the muddemal for C.A., got conducted identification parade, collected report of T.I. parade Exh.799 to 800. In his investigation, he transpired that accused have committed an offence, hence filed charge-sheet before the JMFC, Pune.

9] The accused admitted the attachment clothes of injured witnesses PW-3 Amin Harun Shaikh Exh.643,

ii) The search of office of accused Dhananjay Desai and attachment of hard disc, DVR, visiting cards etc., under panchanama Exh.644,

iii) The search of the house of accused Dhananjay Desai and attached calenders, pamphlets etc under panchanama Exh.645,

iv) The printed pamphlets of Shivaji Maharaj Utsav Exh.646,

v) The inquest panchanama Exh.647,

vi) Advance death certificate Exh.651,

vii) Arrest panchanama of accused Exh.650,

viii) Attachment of pamphlets Exh.652,

ix) Arrest panchanamas Exh.678 to 698,

x) Attachment of motorcycle of accused Prasad Pansare Exh.719, attachment of motorcycle of Sameer Mulla Exh.720,

xi) Attachment of mobile from accused Atul Aagam Exh.721, attachment of mobiles from accused Aakash Kakade, Rohan Bobde Exh.722,

xii) Attachment of clothes of accused Vijay Gambhire Exh.723,



- xiii) The memorandum of accused Abhishek Chavan Exh.801 and attachment as per it Exh.801-A,
- xiv) The memorandum of accused Vishal Sutrave Exh.802 and attachment as per it Exh.802-A,
- xv) The memorandum of accused Pratik Pandit Sangle Exh.803 and attachment as per it Exh.803-A,
- xvi) The memorandum of accused Vishal Govind Sutrave Exh.804 and attachment as per it Exh.804-A,
- xvii) The memorandum of accused Pratik Pandit Sangle Exh.805 and attachment as per it Exh.805-A,
- xviii) The memorandum of accused Shubham Dattatray Barde Exh.806 and attachment as per it Exh.806-A.

10] The APP argued that the prosecution has proved guilt of the accused beyond reasonable doubt. The prosecution have examined PW-2 Complainant Mobin Mohammad Sadik Shaikh at Exh.614. The deceased was his brother. He has received phone call of Riyaz disclosing that the persons are assaulting to the brother Mohsin in front of grocery shop, Satav plot, immediately he rushed on the spot and found brother Mohsin sustaining injuries and lying on the spot. Though also, he saw eight to ten persons were assaulting to the person who was having beard. He tried for help but failed. Someone has given phone call to the police. He visited the house and returned with motorcycle to give medical aid to the injured. Meantime, the police came. The injured Mohsin was shifted to the Noble Hospital, where he was declared dead. The FIR Exh.615 is proved beyond reasonable doubt.

ii) The prosecution examined PW-1 Sajidkhan Majidkhan Pathan who has acted as panch witness to the spot panchanama Exh.603. The said panchanama is proved beyond doubt, though also it is admitted by the accused. He is also an eye witness to the incident. He saw the persons were assaulting to the deceased giving slogans “Lande ko khatam karo Dhananjay Desai Zindabad”. The said witness has supported to the prosecution case.

iii) The PW-3 Amin Harun Shaikh is examined at Exh.623. As per his version, he was proceeding towards house by walk. At that time 15 to 20 boys came. He afraid and entered in Soda shop. Those persons chased him, assaulted. He run away and entered in the shop named as Sony. Those persons entered in the shop and assaulted him. He sustained injuries. He is lying as unconscious hence those persons left the spot. The portion marked-A Exh.781 in his statement is proved by examining PW-17 IO Gopinath Narayanrao Patil. The said contents of Exh.781 be taken into consideration.

iv) The prosecution examined PW-4 Shafik Akbar Dalwai who has given phone call to the police constable Patil and informed about the alleged incident. The prosecution examined PW-5 Shakeel Hamid Shaikh at Exh.632 who has received phone call of witness Amin Shaikh as persons have assaulted him. He visited Bhavani temple and found Amin sustaining injuries. He told that he saw the persons who torn ‘Shere-E-Hind’ hoarding hence those persons assaulted him.

v) PW-6 Ejaj Yakub Bagwan who is injured witness deposed that the boys have assaulted him. Those were aged about 20 to 22 years. The portion marked-A in his statement before IO, Exh.782 is proved by examining IO PW-17 Gopinath Narayanrao Patil. The contents of the same be taken into consideration. PW-7 Vilas Ambadas Vedpathak is examined at Exh.636 who has given information to the police. The accused have admitted inquest panchnama Exh.647, advance death certificate Exh.651, the PM notes Exh.836. The prosecution proved that due to injuries sustained to the deceased Mohsin, he has died. The case is of homicidal.

vi) The accused have admitted the memorandum and attachment panchanamas as per those and muddemal mobiles, sticks, clothes were attached from them. Those were sent for C.A. by the PW-17 IO Gopinath Narayanrao Patil. The C.A. reports are at Exh.654 to 677. Those be taken into consideration. The prosecution examined PW-8 Namdeo Narayan Kunjir at Exh.705, PW-9 Atmaram Sayaji Sonawane at Exh.710, PW-10 Sanjay Atmaram Thite at Exh.727, PW-11 Balasaheb Tukaram Kenkar at Exh.739, PW-12 Khandu Sambhaji Dhumal at Exh.746 who are acted as panch witnesses to various memorandums of accused and attachment as per the memorandums. Those witnesses are not supported to the prosecution. The prosecution has proved the memorandums and attachment by examining PW-15 Yuvraj Ashok Nandre, PI Exh.767, PW-16 PSI Dattatray Rajaram Madne at Exh.774 and the IO PW-17 Gopinath Narayanrao Patil at Exh.780. Those memorandums and attachments as per muddemal are proved

by the prosecution beyond reasonable doubt. The prosecution has proved the guilt of accused beyond reasonable doubt and accused may be convicted.

11] The advocate for the accused argued that the prosecution has failed to prove the guilt of accused beyond reasonable doubt. The cross-examination of PW-1 Sajidkhan Majidkhan Pathan be taken into consideration. He is claiming to be eye witness to the alleged incident. He has not given details about the persons who have assaulted to the deceased. He has admitted in his cross-examination that some persons were covered their faces by clothes. There was dark. He is unable to identify persons who have assaulted to the deceased. There was communal riots at the time of incident, as someone has post defamatory statement in respect of Chatrapati Shivaji Maharaj. The police have asked not to come out of the house at the time of alleged incident. This fact shows that this witness has not identified to the accused.

ii) PW-2 complainant Mobin Mohammad Sadik Shaikh is not an eye witness to the alleged incident. He came on the spot subsequently. He admitted in his cross-examination that when persons assaulted to his brother, there was dark. There was communal riots at that time. He has not identified to the accused. The cross-examination of PW-3 Amin Harun Shaikh be taken into consideration. He has not disclosed the details about the persons who are assaulted to him. He has denied the contents of portion marked-A Exh.781 in his statement. The cross-examination of witnesses PW-5 Shakeel Hamid Shaikh,

PW-6 Ejaj Yakub Bagwan be taken into consideration. They in chief-examination not deposed details of the accused who are assaulted to the deceased and him and injured. PW-7 Vilas Ambadas Vedpathak has not given details about the accused. He stated that he has given phone call to the police. PW-8 Namdeo Narayan Kunjir, PW-9 Atmaram Sayaji Sonawane, PW-10 Sanjay Atmaram Thite, PW-11 Balasaheb Tukaram Kenkar, PW-12 Khandu Sambhaji Dhumal who have acted as panch witnesses to the memorandums of accused and attachment as per the memorandums are not supported to the prosecution. They are habitual panch witnesses. The investigation of crime is with PW-17 Gopinath Narayanrao Patil. He has not given written authority to PW-15 API Yuvraj Ashok Nandre, PW-16 PSI Dattatray Rajaram Madne to investigate the crime. Though so, they have arrested accused, recorded memorandums and attached the muddemal. The said memorandums and attachment panchanamas are not supported by the panch witnesses. The cross-examination of PW-17 ACP Gopinath Narayanrao Patil be taken into consideration. He in cross examination admitted that the accused no.19 Dhananjay Desai was the President of Hindu Rashtra Sena and resolution was passed to contest the election of Legislative Assembly. When alleged incident took place, he was in custody. He has not delivered the speech up to the one month before incident which will instigate to others. The crimes are registered as he has given the speech in a meeting. He was get transferred in the present crime from another crime. The details about the speech are not on record nor proved which suggested that the accused

no.19 have not instigated to the co-accused to commit an offence. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The accused may be acquitted.

12] **AS TO POINT NO-1 :-**

The accused admitted the inquest panchanama Exh.647 of the deceased Mohsin Sadik Shaikh, advance certificate of death Exh.651, PM notes Exh.836. The advocate for the accused relied on ruling **2009 (13) SCC 722 Akhtar and others Vs. State of Uttarachal** and submitted that the accused may admit the PM note and court may rely on it. The accused have no objection to rely on PM note. I have gone through the above ruling wherein it is observed that where genuineness of injury report and postmortem report had been admitted by defence the same could be read as substantive evidence to prove correctness of it's contents without doctor being examined. I come to the conclusion that the PM note be taken into consideration as proved and substantive evidence as the accused have admitted it. I have gone through the PM notes which discloses that the deceased Mohsin Sadik Shaikh was sustained 14 injuries which are mentioned in column no.17. The cause of death is due to multiple injuries. I come to the conclusion that the Mohsin Sadik Shaikh has died due to sustain multiple injuries more particularly mentioned in PM notes para-17 and incised injuries mentioned at Para-19, 20 and 21. The death is homicidal. Thus, point under consideration is answered accordingly.

13] **AS TO POINT NO.2 TO 12 :-**

The prosecution examined PW-2 Mobin Mohammad Sadik Shaikh who has lodged the FIR Exh.615. I have gone through the FIR and deposition of the complainant Mobin Shaikh. In chief-examination, he deposed that he has received phone of Riyaz disclosing that some persons are assaulting to the brother Mohsin in front of grocery shop at satav plot. He visited the said spot and found brother Mohsin lying sustaining injuries. At that time Mohsin was worn faint green coloured salvar-khamiz Article-E, F. He further deposed that there were eight to ten persons but no one has tried to give medical aid to brother. Someone told him that phone call is given on 100 number for help. He saw that some persons were assaulting to the person who was having beard. He denied in chief-examination that he saw the accused who are in the dock on the spot assaulting to that person. He further deposed that he has lodged the FIR Exh.615. In cross-examination he has admitted that where the persons assaulted to brother, there was dark. There was communal riots at the time of incident. He was two to three minutes on the spot when first time visited the spot. His evidence and FIR itself discloses that he is not an eye witness to the assault at the hands of accused to deceased Mohsin. He saw some persons assaulting to other person having beard but has not given details about those persons nor identified the accused before the court as they were assaulting to that person which creates doubt whether really he has saw the accused while assaulting to the deceased and other person who is having beard.

14] I have gone through the deposition of PW-1 Sajidkhan Majidkhan Pathan Exh.602. He has acted as panch witness to the spot panchanama Exh.603 and identified the muddemal chappal, pieces of wooden log, pieces of indicator, fiber Article-A, B, C, D. The prosecution is also claiming that he is an eye witness to the incident. He deposed that the brother of Mohsin named as Mobin came at about 9.00 p.m. near Masjid and told that 20 to 25 persons are assaulting to Mohsin with slogans "Lande ko khatam karo Dhananjay Desai Zindabad" then they visited the spot and wait about 50 meter away from the spot. They saw 100 to 125 persons gathered there and giving slogans "Lande ko khatam karo Dhananjay Desai Zindabad" and then police came. They took the deceased in the vehicle and proceeded for treatment. Some persons from the mob were assaulted to the deceased by hockey stick, wooden log, stone, cement block. He is unable to identify those persons as there was crowd. In cross-examination, he has admitted that someone post defamatory statement in respect of Chatrapati Shivaji Maharaj on 31/05/2014 on facebook due to which communal riots started. The persons were feeling that the Islamic person have done the said act and communal riots started. The police have directed not to come out from the house. As Mobin told him about the incident, he came to know about the same. When they were proceeded towards the spot, so many persons were passing the road. The people were running here and there from the spot. If these admissions are taken into consideration coupled with the chief-examination, it is highly improbable to come to the conclusion that those were



accused who are assaulted to the deceased.

15] The prosecution examined PW-3 Amin Harun Shaikh who is injured witness. As per his deposition, at about 9.30 p.m. he alighted from the ST bus and proceeded towards house by walk. He saw 15 to 20 boys are damaging the hoarding. He entered in Soda shop. Those boys saw him and tried to chase, hence, he run away and entered in the shop which is partly open. Those boys entered in the said shop and assaulted him by wooden log. He was lying as he become unconscious. Then those boys run away. He is unable to state the details of those boys who assaulted to him and unable to identify those boys. Then the owner of the shop came. He asked to call adjacent resident Subhan Shaikh then uncle Shakil Shaikh came and admitted in the hospital. He has denied the portion marked-A Exh.781 in his statement before police. In cross-examination, he has admitted that from 31/05/2014 there was curfew in Pune. He has not given details about the persons who are assaulted him nor identified the accused before the court as they have assaulted to him. The APP submitted that portion marked-A Exh.781 is proved by examining PW-17 IO Gopinath Patil. It is pertinent to note that the evidence has not came on record which will show that due to ulterior motive this witness is not supported to the prosecution in respect of statement portion marked-A Exh.781. I am not agree with the arguments of APP. The evidence of this witness creates doubt really present accused have assaulted to this witness.

16] The prosecution examined PW-4 Shafik Akbar Dalwai who has given phone call to the police constable Patil and given information about the incident. Though also the prosecution has examined PW-7 Vilas Ambadas Vedpathak who has given phone call to number 100 and asked for help. They are not an eye witness to the incident. They have not disclosed about assault at the hands of accused to deceased or other injured.

17] The prosecution examined PW-5 Shakeel Hamid Shaikh at Exh.632. He deposed that, he was at Netaji Hall, Mahadeo Nagar, Hadapsar for reception. He has received phone call of Ali Inamdar disclosing that someone has assaulted to the nephew Amin Shaikh. He visited the Bhavani Mata Temple and found Amin Shaikh sustaining injuries. The Amin told that when he was returning, he saw some persons are damaging the board of 'Shere-E-Hind' hence those persons assaulted him by stick and other weapons. Then he admitted Amin at Noble hospital. The said witness is not an eye witness nor the injured Amin has disclosed the details about the persons who assaulted him which creates doubt whether really the accused before court have assaulted to the Amin Shaikh.

18] I have gone through the evidence of PW-6 Ejaj Yakub Bagwan Exh.635. As per his deposition, he was waiting at Hadapsar to proceed to Solapur at bus stand. Five to Seven motorcyclists came and assaulted him by wooden log due to which he sustained injuries. Meantime, the police vehicle came

and then he was admitted at Noble hospital. He has denied to give details of the person who have assaulted him and weapons by which they assaulted. He has given reason that due to dark he is unable to identify those persons or accused before the court. The prosecution declared him adverse and cross-examined at length but nothing was elicited from him. The portion marked-A Exh.782 is tried to prove through IO PW-17 ACP Gopinath Narayanrao Patil. The evidence has not come on record which will show that this witness is deposing false due to ulterior motive. I am not agree with the arguments of APP that the contents of his statement before IO be taken into consideration as proved. As this witness has not given details about the persons who assaulted him, it is highly improbable to come to the conclusion that those were the accused before the court who assaulted to him.

19] The prosecution has examined PW-8 Namdeo Narayan Kunjir at Exh.705, PW-9 Atmaram Sayaji Sonawane at Exh.710, PW-10 Sanjay Atmaram Thite at Exh.727, PW-11 Balasaheb Tukaram Kenkar at Exh.739, PW-12 Khandu Sambhaji Dhumal at Exh.746. All those witnesses are denied to support to the prosecution and deposed that the accused have given memorandum before them and as per memorandum the accused have produced the clothes, mobiles and other articles. The prosecution declared them adverse and cross-examined at length but nothing was elicited from it. The evidence has not come on record which will show that those witnesses are deposing false due to ulterior motive. The APP argued that

those memorandums are proved by examining IO PW-15 Yuvraj Ashok Nandre, PI Exh.767, PW-16 Dattatray Rajaram Madne at Exh.774 and IO PW-17 Gopinath Patil at Exh.780. The PW-15 PI Yuvraj Ashook Nandre and PW-16 PSI Dattatray Rajaram Madne admitted in their cross-examination that the IO has not given written order to investigate the crime. The IO told him names of seven accused and asked those be arrested and then memorandum and attachment was conducted before the panch witnesses but the panch witnesses have denied to support the prosecution which creates doubt whether really accused have given memorandum before those witnesses and accordingly attachment of muddemal panchanama is conducted.

20] The prosecution has examined PW-13 Samir Khudbuddin Mulla at Exh.754. As per his deposition, he has received phone call of Riyaz Mubarak Shendure (Momin) disclosing that some persons are assaulting to Mohsin. Then Riyaz came at his house and disclosed that some persons were assaulting to the Mohsin. He given phone call to adjacent resident Police constable Sanjay Patil who told that he is on Bandobast duty. He given the details of spot where persons assaulting to the Mohsin. After some time he has received phone call of police constable Sanjay Patil disclosing that Mohsin is sustaining injuries and they are shifting him to Noble hospital. The police constable Patil parked two wheeler of Mohsin in front of his house. Then again he given phone call to the constable Patil who told that Mohsin is admitted at Noble hospital and ICU and subsequently Mohsin is declared dead. If

his deposition is taken into consideration, it is clear that he is not an eye witness to the incident. He has not seen accused while assaulting to the deceased.

21] The prosecution has examined PW-14 Santosh Shivaji Gore at Exh.766. He has recorded the FIR Exh.615 as per the say of PW-2 Complainant Shaikh Mobin Mohammad Sadik. The complainant has supported to the prosecution. The complainant is not an eye witness to the incident. I come to the conclusion that the evidence of this witness is not helpful to prove the guilt of accused beyond reasonable doubt.

22] I have gone through the evidence of PW-17 IO API Gopinath Narayanrao Patil Exh.780. He has deposed about the investigation conducted by him and PSI Shinde, Shaikh, memorandum and attachment conducted by them. In cross-examination he has admitted that the accused no.19 Dhananjay Desai is the President of Hindu Rashtra Sena. The resolution was passed to contest the elections of State Assembly and Loksabha. When the incident took place, he was in custody in other crime. He has not given provoking speech within one month upto to the alleged incident. The crimes are registered about speech given by the said accused. If these admissions are taken into consideration, it is clear that the accused no.19 who is President of Hindu Rashtra Sena has not given provoking speech within one month upto to the alleged incident. He was in custody when alleged incident took place. The details about the speech which given by the accused is not came on record. I

come to conclusion that, the prosecution has failed to brought cogent and reliable evidence on record which will show that, on account of insulting images of Shivaji Maharaj which were uploaded on facebook under the pretext that the said images were uploaded by Muslim community and promote the feelings of Hindu community by delivering speech and subsequently on 17.03.2014 by circulation of pamphlets amongst the public at large provoked and instigate to the public to commit offence.

23] From the evidence on record and above discussions, I come to the conclusion that the prosecution has failed to prove the guilt of accused beyond reasonable doubt. The accused are entitled for benefit of doubt and they must be acquitted. Thus, point no.2 to 12 under consideration are answered accordingly and I pass following order.

### **ORDER**

1] The accused 1] Vishal Govind Sutrave, 2] Atul Rajendra Aagam, 3] Ranjit Shankar Yadav, 4] Sagar Chandrakant Sutar, 5] Shubham Dattatray Barde, 6] Dada Modak @ Shekhar Anil Modak, 7] Aakash Ramesh Lashkare, 8] Prashant @ Bala Kalyan Thorat, 9] Ajay Dilip Lalge, 10] Vijay Rajendra Gambhire, 11] Vicky Suresh Khandale, 12] Akshay Dattatray Sonawane, 13] Ravi Sukhdev Sathe, 14] Aakash Prakash Kakade, 15] Rohan Chandrashekhar Bobde, 16] Pratik Pandit Sangle, 17] Prasad Balasaheb Pansare, 18] Rahul Sukhdev Kurule, 19] Dhananjay @ Manoj Jayram Desai and 21] Mahesh Maruti Khot are acquitted under section 235 (1) of

Cr.PC. for the offence punishable under section 109, 302, 307, 143, 147, 149, 109 r/w. 153-A, 120-B, 302 r/w.120-B, 302 r/w.149, 307 r/w.149, 147 r/w.149, 148 r/w.149 and 153-A of the Indian Penal Code.

2] The bail bonds of accused stand cancelled.

3] The muddemal Duo Honda Scooter bearing no.MH-12-EZ-4511 is released on bond. The owner is entitled to retain it. The bond is cancelled in the name of owner, after appeal period is over.

4] The muddemal vehicles no.MH-12-KL-8334, MH-12-GW-59, MH-12-KG-820, MH-12-KZ-1956, MH-12-HM-98, MH-12-GE-4517 be handed over to the owners, after appeal period is over..

5] The muddemal is not claimed by the accused. Accordingly, accused have filed pursis at Exh.835. Those muddemal i.e. mobile phones, weapons and clothes being worthless due to efflux of time be destroyed after appeal period is over.

6] The accused are directed to execute PR bond of Rs.50,000/- and furnish surety of like amount each under section 437-A of Cr.PC.

Pune  
Date : 27/01/2023

( S. B. Salunkhe )  
Addl. Sessions Judge,  
Pune.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : S. Y. Shaikh,  
(Steno Grade -I)  
Court name : Shri. S.B. Salunkhe,  
Additional Sessions Judge, Pune.  
Date : 27/01/2023  
Judgment signed by presiding  
officer on : 03/02/2023  
Judgment uploaded on : 03/02/2023