



**Deccan Education Society's**

**Shri Navalmal Firodia Law College, Pune.**

Gate No. 3, Fergusson College Campus,  
Pune – 411004.

Ph: (020) – 30866400 / 01 / 06 / 08.

Website: [www.deslaw.edu.in](http://www.deslaw.edu.in)

Email: [deslaw.mootcourt@gmail.com](mailto:deslaw.mootcourt@gmail.com)

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**Lokmanya Tilak  
National Appellate  
Moot Court Competition  
(10<sup>th</sup> Edition)**

**9<sup>th</sup> and 10th March, 2018.**

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**Paper Book for Criminal Appeal**

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Received on: 07/01/2010  
Registered on: 07/01/2010  
Decided on: 28/10/2016

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUNE.**

(Presided over by: H. R. Yenpure)

**Criminal Appeal No. 17/2010**

- 1) Shri. Namdeo Maruti Waghmare  
Age about 53 years, Occ: Agriculturalist,  
R/at Wadaki, Pimpalacha Mala,  
Taluka – Haveli, District – Pune.
- 2) Shri. Santosh Namdeo Waghmare  
Age about 25 years, Occ: Agriculturalist,  
R/at as above.
- 3) Shri. Dheeraj Dnyaneshwar Waghmare  
Age about 30 years, Occ: Agriculturalist,  
R/at as above.
- 4) Shri. Sunil Dnyaneshwar Waghmare  
Age about 25 years, Occ: Agriculturalist,  
R/at as above.

... Appellants

V/s

- 1) Shri. Nivrutti Tukaram Waghmare  
Age – Adult, Occ: Agriculturalist,  
R/at Wadaki, Pimpalacha Mala,  
Taluka – Haveli, District – Pune.
- 2) State of Maharashtra.

... Respondents

**Appearance:**

- 1) Shri. S. K. Sharma, Advocate for Appellants.
- 2) Smt. Archana Shinde, Advocate for Respondent.

## **JUDGMENT**

(Delivered on: 28/10/2016)

1. This is an appeal filed by the appellants/original accused against the judgment/order passed in Criminal Case No. 21685/2007 on 19/12/2009 by the Learned JMFC Court No. 7, Pune.
2. In Criminal Case No. 21685/2007 the accused had been charged for having committed offences punishable under Sections 452, 504, 506 and 434 read with Section 34 of the Indian Penal Code.
3. The case of the prosecution in short is as below:  
The complainant Nivrutti Tukaram Waghmare is having a land Gat No. 1547 situated at Pimplacha Mala. Land Gat No. 1514 belongs to the accused who are the cousins of the complainant. The lands had been partitioned and some portion of share of accused was sold. The accused had filed civil suit against the complainant for partition. The suit was decided in favour of the complainant.
4. It is alleged by the complainant that accused no. 1 damaged the bandh. He got his land Gat No. 1547 measured and the measurement was carried out by Surveyor after issuing notices. On 22/09/2005 the Surveyor had come and he fixed the boundaries and he went away. It is further alleged by the complainant that the accused no. 1 abused him. He called accused no. 2 to 4. The accused no. 1 asked accused no. 2 to 4 to remove the stones of boundaries. The accused no. 1 picked up a stone to beat him. Accused no. 3 and 4 caught hold of the son of the complainant namely Ganesh.
5. After happening of the incident, the complainant went to police station to lodge complaint, but police has not taken any action. Therefore, he filed a complaint in the court. The accused appeared before the court and charged was framed against them under Sections 452, 504, 506 and 434 read with Section 34 of the Indian Penal Code. The complainant has adduced evidence. He has examined himself and three more witnesses.
6. Learned JMFC Pune considering the evidence on record, has decided the said matter. Accused no. 1 to 4 came to be acquitted for the offences punishable under Section 452, 504 and 506 read with Section 34 of the Indian Penal Code. However, they were convicted for the offence punishable under Section 434 read with Section 34 of the Indian Penal Code.
7. Being aggrieved by the said judgment/order, more particularly the order about conviction, the accused, i.e. the present appellants have preferred the present appeal on the grounds mentioned in the appeal memo.
8. It is the contention of the appellant/accused that the trial court has come to a wrong conclusion that the appellants have committed mischief by destroying the boundaries/landmarks and has wrongly convicted them and hence the judgment/order passed by the trial court dated 19/12/2009 is liable to be set aside.
9. In view of these facts, following points arise for determination. I have recorded my findings against them for reasons stated thereafter.

### **POINTS**

### **FINDINGS**

- 1) Whether the judgment/order dated 19/12/2009 passed in Criminal Case No. 21685/2007 is

liable to be set aside?

... In affirmative.

1) What order?

...As per final order.

### **REASONS**

10. As stated above, the appeal being an appeal against the order of conviction, it has only to be seen whether the complainant has proved that the accused persons have committed mischief by removing the boundaries and has proved an offence punishable under Section 434 of the Indian Penal Code.
11. The complainant by examining himself as PW1, his son Ganesh Nivrutti Waghmare as PW2, Surveyor Vaibhav Sonawane as PW3 and by examining one Swapneel Shivajirao Sawant as PW4, has tried to prove the case put forth by him.
12. So far as the allegation of the complainant about committing mischief by destroying the landmarks fixed by the Surveyor is concerned, the evidence of the complainant and the Surveyor PW3 needs to be scrutinized by great caution.
13. The complainant Nivrutti Tukaram Waghmare has narrated his story in his evidence and has stated that the stones of boundaries were removed by the appellants/accused and panchanama was prepared by police.
14. In context with the allegation made by the complainant, looking to the evidence of PW3, who is the Surveyor, it appears that as per his evidence, he measured the land Gat No. 1547 on 08/08/2005 under police protection. After measurement he went away. He has specifically stated that on that day the record was not available and he was not able to show the boundaries. He had then issued notices to the appellants/accused to show the boundaries and the date was fixed as 22/09/2005 to show the boundaries. On 22/09/2005 as per record, the boundaries of Gat No. 1547 were shown.
15. Considering the entire examination-in-chief of the above said witness, it nowhere appears that the said witness has fixed the boundaries of Gat No. 1547. Moreover, in cross-examination he has stated that he does not remember as to which crop was standing in the land Gat No. 1547 and he does not remember whether any crop was standing there or not. He has also expressed his ignorance in regard to the fact as to whether in Gat No. 1548, 1549 and 1551 the crop of Bajara was standing.
16. Besides, it has to be noted that as per the evidence of this witness, he had only shown the boundaries of Gat No. 1547 and he had drawn panchanama. However, he has stated that no one was ready to sign on panchanama and has had not taken the signatures of the persons present there and he obtained the signature of only one person. Thus the evidence of the Surveyor, who is the material witness in this case, appears to be shaky and does not appear to be worthy of credence. As stated above, he has expressed his ignorance in regard to the material facts, such as existence of standing crop in the land Gat No. 1547 and whether Bajara crop was standing in Gat No. 1548, 1549 and 1551 and this create doubt in mind about truthfulness of his evidence.
17. In this context, it is argued by advocate Shri S. K. Sharma for the appellants that the evidence of the Surveyor does not disclose that the boundaries are fixed and therefore, there is no

question of removing the same and the offence punishable under Section 434 of the Indian Penal Code is therefore not attracted.

18. As against this, Smt. Archana Shinde for the respondent has submitted in the course of his argument that as per evidence of the Surveyor, stones are fixed and boundary marks are put and his evidence cannot be disbelieved.
19. However, the sum and substance of the evidence of the Surveyor is that the notices were issued to show the boundaries and the boundaries of Gat No. 1547 were shown as per record on 22/09/2005. He has not specifically stated in his examination-in-chief that he has fixed the boundaries of the land and he has put the boundary marks accordingly. This being so, the evidence of the Surveyor cannot be said to be sufficient to hold that the accused have destroyed or moved the landmarks fixed by him and thereby committed mischief.
20. Advocate Shri. S. K. Sharma for the appellants relied upon the following authorities.
  - (a) **Bhagirath v. State of M.P., AIR 1976 Supreme Court 975.**
  - (b) **Ram Lakhan Singh and others v. The State of U.P., AIR 1977 Supreme Court 1936.**
  - (c) **Mangulu Kanhar and another v. State of Orissa, 1995 Cri. L.J. 2036.**
21. Advocate Smt. Archana Shinde for the respondent relied upon the case of **Khem Karan and others v. The State of U.P. and another, AIR 1974 Supreme Court 1567.**
22. The authorities relied upon by the appellants definitely help them for the reason that the evidence of material witness, i.e. the Surveyor PW3 does not stand the test of credibility. His evidence does not appear to be free from shadow of doubt and the benefit of doubt therefore, definitely has to be given to the appellants/accused.
23. The trial court while deciding RCC No. 21685/2007 has observed that the measurement was done by the Surveyor after issuing notices and there is no reason to disbelieve his version. The trial court mainly relying upon the evidence of Surveyor, has come to a conclusion that the complainant has proved an offence punishable under Section 434 read with Section 34 of the Indian Penal Code. However, it appears that the trial court has not appreciated the evidence on record in its proper perspective and has come to a wrong conclusion.
24. The judgment/order dated 19/12/2009 passed by learned trial court in Criminal Case No. 21685/2007 is therefore liable to be set aside. Consequently, I answer Point No. 1 in affirmative.

**Point No. 2**

25. In view of my finding to Point No. 1, this criminal appeal liable to be allowed. In the result, I pass the following order.

**ORDER**

- i. Appeal is allowed.
- ii. The judgment/order passed in Criminal Case No. 21685/2007 on 19/12/2009 is hereby set aside.

The accused/appellants are acquitted for the offence punishable under Section 434 read with Section 34 of the Indian Penal Code.

Pune:

(H. R. Yenpure)

Date: 28/10/2016

Additional Sessions Judge, Pune.

**In the Court of Judicial Magistrate F. C. Court No.7, Pune.**

**Summary Case No. 818/07**

**Exh. No. 25**

1. Date of commission of offence: 22.09.2005
2. The Date of the report of Complaint: 20.12.2005
3. The name of the Complainant: Nivrutti Tukaram Waghmare,  
Age: Major, Occ: Agriculture  
r/o. Wadaki (Pimpalacha Mala),  
Tal: Haveli, Dist: Pune.
4. The name, parentage and : i. Namdeo Maruti Waghmare, age: 53 years  
residence of the accused ii. Santosh Namdeo Waghmare, age: 25 years  
iii. Dheeraj Dnyaneshwar Waghmare, age: 30 years  
iv. Sunil Dnyaneshwar Waghmare, age: 27 years  
Occ: Agriculture, r/o. Wadaki, Pimpalacha Mala,  
Tal: Haveli, Dist: Pune.
5. The offence complained of: U/s. 352, 434, 504, 506, r.w. 34 of IPC
6. Value of the Property:
7. Plea of the Accused: That on 22.09.2005 at about 12.30 noon, Gat. No. 1547 Wadaki, Pimpalacha Mala, in the land of complainant when the Govt. surveyor had gone after taking measurements of land and he fixed the limitation mark, you accused went there and destroyed the marks fixed by him and that time you were armed with sticks and you accused no.2 picked the collar of shirt of complainant by neck, also you accused no.3 picked and pulled shirt of complaint, you accused no.4 caught hold the right hand of the accused and made a scuffle and that you accused no.1 to 4 assaulted or used criminal force against the complainant and his son and thereby committed offence punishable u/s. 352 r.w. 34 of IPC. Secondly, on the above date, time and place you accused no. 1 to 4 committed mischief by destroying land mark which was fixed by the authority of a public servant and thereby committed offence punishable u/s. 434 r.w. 34 of IPC. Thirdly, on the above date, time and place you accused no. 1 to 4 abused the complainant and his son in furtherance of the common intention, in filthy language and thereby gave provocation intentionally knowing that such provocation would cause the complainant to break public peace and you thereby committed criminal intimidation in furtherance of their common object by threatening the complainant and his son with injury to his person and thereby gave threat to kill or to damage his hands or legs and thereby gave alarm to him and thereby committed the offence punishable u/s. 506 r.w. 34 of IPC.

The above said offences are within my cognisance and I hereby direct you to be tried by me on the said charges.

Q1. Have you received the copies of the papers?

Ans: Yes.

Q2. Whether the contents of the plea / offence are read out and explained to you?

Ans: Yes.

Q3. Do you plead guilty?

And: No.

s/d-----

- i. Namdeo Maruti Waghmare
- ii. Santosh Namdeo Waghmare
- iii. Dheeraj Dnyaneshwar Waghmare,
- iv. Sunil Dnyaneshwar Waghmare

Pune

Date:- 19.09.2007

(G. V. Gaikwad)

J.M.F.C. Court No. 7, Pune.



D/W No. 1

I state on solemn affirmation that,

Name: Sopan Nivrutti Modak

Age: 45 years          Occupation: Agriculture          R/o: Wadki, Tal: Haveli

Examination in Chief

1. I know complainant and accused. They are from my community. My land is bearing Gat. No. 1551. Towards north of my land the land of Nivrutti Tukaram Waghmare is situated. Towards his north land of Namdeo Maruti Waghmare is situated.
2. The measurement of land of complainant not done in 4 years to 5 years. I also not received any notice during period of 4 to 5 years of measurement. During this period no dispute taken place in between complainant and accused on land. No scuffle took place in between them. Nearby land are 10 to 15 houses at the distance of 15 – 20 feet.
3. For entire day I work in field. The police never came in land of Nivrutti Tukaram Waghmare nor any dispute taken place.

Cross for Complainant:

1. It is true we are 3 brothers. The daughter of my sister of my sister-in-law is wife of accused Sunil Dnyaneshwar Waghmare. It is true in morning I went to give milk and returned at 10.15 am. I do not know wife of complainant Alka filed suit against me brothers.
2. I cannot read and write. I do not know suit filed against us bears no.1187/98. I do know it was decided on 05/01/2009 and we were restrained from interfering possession of complainant. It is not true that I have sold some land. It is not true that partition taken place in between us. It is not true that my brothers cultivate Gat. No.1551.
3. It is not true to say that I am deposing false that I had not received notice and measurement not taken place. It is not true to say that I am deposing false that these are houses. It is not true to say that I am deposing false that dispute not taken place and police not come. It is not true that as complainant taken injunction against us therefore we are angry.

It is not true that to save accused I am deposing false.

No re-examinaton.

Date: 12/10/2009

Pune.

ROAC

12/10/2009.

- 1) Shri. Nivrutti Tukaram Waghmare  
Age – Adult, Occ: Agriculturalist,  
R/at Wadaki, Pimpalacha Mala,  
Taluka – Haveli, District – Pune.

... Complainant

Versus

- 1) Shri. Namdeo Maruti Waghmare  
Age about 53 years, Occ: Agriculturalist,  
R/at Wadaki, Pimpalacha Mala,  
Taluka – Haveli, District – Pune.
- 2) Shri. Santosh Namdeo Waghmare  
Age about 25 years, Occ: Agriculturalist,  
R/at as above.
- 3) Shri. Dheeraj Dnyaneshwar Waghmare  
Age about 30 years, Occ: Agriculturalist,  
R/at as above.
- 4) Shri. Sunil Dnyaneshwar Waghmare  
Age about 25 years, Occ: Agriculturalist,  
R/at as above.

**JUDGMENT**

(Delivered on 14/12/2009)

Heard arguments of learned advocate for complainant, learned advocate for accused. Perused oral as well as documentary evidence on record. Following points arose for my determination and I record my findings thereon for the reasons to follow –

**POINTS**

**FINDINGS**

1. Does complainant prove that, on 22/09/2005 at about 12.30 noon at the land of the complainant when the Govt. surveyor had gone after taking measurements of the land and he fixed the limitation marks, accused went there and destroyed the marks fixed by him and that time accused were armed with stick and accused no.2 caught the collar of the complainant and accused no.4 caught hold the right hand and scuffled and accused no.1 to 4 assaulted and used criminal force to the complainant and

- his son? ... In the Negative.
2. Does complainant further prove that on the above said date, time and place accused committed mischief by destroying land marks which was fixed by the authority of a public servant? ...In the Affirmative.
3. Does the complainant further prove that on the above said date, time and place accused in furtherance of their common intention, intentionally insulted complainant and his son by abusing them in filthy language and thereby gave them a provocation intending that such provocation will cause them to break public peace? ...In the Negative.
4. Does the complainant prove that on the above said date, time and place accused in furtherance of their common intention, committed criminal intimidation by threatening complainant and his son with injury to their person with intent to cause alarm to them? ...In the Negative.
5. What order? ...As per final order.

### **REASONS**

#### **2. AS TO POINTS NO. 3 & 4:**

Witness no.1 Nivrutti Tukaram Waghmare as witness no.2 is his son Ganesh Nivrutti Waghmare Suryaknt Modak.

If we go through the testimony of complainant and the witness, none of them specifically stated as to the exact words in which threat given by accused and by which particular accused. The testimony of witness is also silent as to the abusive words uttered by the accused which according to them are insulting and sufficient to give provocation to break public peace.

In the testimony of PW2 he deposed that accused threatened that they will see how complainant and his son came in the land, that will see them and bury in land. However, his testimony is silent as to which accused given threat. As such complainant failed to lead cogent and satisfactory evidence which will attract ingredients of section 504 & 506 of the Indian Penal Code. Therefore, I answer point no. 3 & 4 in the negative.

#### **3. AS TO POINT NO.1:**

To bring home the guilt of the accused under section 352 of Indian Penal Code, the complainant must establish –

- i. That the accused made a gesture or preparation to use criminal force.

- ii. That the same was made in the presence of the complainant.
- iii. That he intended, or knew, that it was likely that such gesture, etc., would cause the complainant to apprehend that such criminal force would be used.
- iv. That such gesture, etc., did cause the complainant to apprehend the same.

4. According to the testimony of complainant, accused no.2 hold him by the neck, accused no.1 pick up stone and accused no.3 and 4 hold his son Ganesh Nivrutti Waghmare.

According to PW2 Somanth, Sunil Dnyaneshwar Waghmare (accused no.4) abused him in filthy language and hold him by the collar, accused Namdeo Maruti Waghmare (accused no.1) was holding stone in his hand and all accused rushed towards him to beat him.

From the testimony it appears that, they had not opposed the accused. As such from their testimony itself found that, even for sake of argument we presume that, accused made gesture or preparation to use criminal force, it did not cause complainant or witness to apprehend that such criminal force would be used. As such ingredients of section 352 does not attract. Hence I answer point no.1 in the negative.

#### **5. AS TO POINT NO.2:**

To bring home the guilt of accused under section 434 of the Indian Penal Code complainant must establish –

- i. That the accused caused the destruction of some property, or some change in such property or in the situation thereof.
  - ii. That the above act destroyed or diminished the value or utility of such property, or affected it injuriously.
  - iii. That the accused did as in (i) intending or knowing that he was likely to cause loss or damage to the public or to any person.
  - iv. That the causing of such damage or injury was wrongful
  - v. That the mischief consisted of an act causing the destruction, or removing of, or rendering less useful, a land-mark.
  - vi. That such land-mark was fixed by the authority of a public servant.
6. According to witness no.2 Ganesh Nivrutti Waghmare, the accused no.2 to 4 on say of accused no.1 removed the stones of boundary mark fixed by the surveyor after measurement.

To support their testimony the complainant examined surveyor Nanasaheb Shripati Vaibhav Sonawane as witness no.3.

7. According to witness no. 3 on application of complainant he issued notices to adjoining land-owners on 28/07/2005 and fixed the date 08/08/2005 for measurement. On 08/08/2005 he measured the land Gat No. 1547 and shown boundaries on 22/09/2005. He issued notice on 15/09/2005 informing concern. Map drawn by his witness is at Exh. 37, copy of notice issued to adjoining land-owners at Exh. 40. The receipt for UPC are at exh. 61, 62, 63, shows that the notices were issued to adjoining land owners.

8. By cross examination of the witnesses learned advocate for accused tried to bring on record that the notices were not issued to adjoining land-owners and that the surveyor not followed proper procedure while measuring the land.

It is argued by the learned advocate for the complainant that it is immaterial whether marks fixed correctly or incorrectly. To support his argument he placed his reliance upon –

**The public prosecutor Vs. Madhava Bhonjo Santo & Ors.**

**1916 Cri.L.J. (Vol. 17) 481**

In this case it was held:

“Where a surveyor, empowered to survey an estate under Section 17(a) of Act IV of 1897, put up boundary marks bona fide on land that he was not authorised by the notification to survey and was engaged in taking measurement on what he thought was the estate land, and the accused, after asking who he was, told him not to measure and removed the marks already set up:

*Held*, (1) that the accused was liable to conviction under section 434, Indian Penal Code, as that section deals with all marks fixed by the authority of a public servant without distinction between those fixed correctly and those fixed incorrectly and without reference to the propriety of his exercise of his authority in the particular case, and the fact that the land surveyed was not included in the notification of the Government under the Boundary Marks Act would not justify any obstruction being offered to the surveyor.”

9. It is also tried to show by the accused that no measurement was carried out by the surveyor. For that purpose accused examined Sopan Nivrutti Mmodak as Defence Witness.

However, the defence not brought anything on record to show that why PW3 Vaibhav Sonawane who is surveyor will depose false against the accused. No explanation offered by the accused as to why independent witness will depose against them.

On the other hand complainant produced certified copy of Judgment and order of RCC no. 1187/98 at Exh. 59 which is filed by the wife of complainant and the defence witness is shown as defendant no.3. By the said judgment and order the defence witness and other defendants restrained from interfering possession of the wife of complainant. By this the complainant shown that the defence witness is having cause / reason to depose false against him.

10. If at all the surveyor had not followed proper procedure and not measured the land correctly, then the accused have the remedy to challenge the measurement before the appropriate authority. The mistake by one person cannot be justification of the mistake committed by others.
11. The complainant to support his case also examined PW 4 API Nirwade. This witness, when matter was referred for investigation drawn the panchanama of spot Exh. 46. The panchanama shows that at the South-West corner stone of marking is present. On North South dyke at south-west corner 2-3 stones coloured white were lying at some distance. On dyke he found stones coloured in white at 4-5 places.

The defence not given any satisfactory logical answer why the witness will draw false panchanama.

12. If we read all above evidence together it discloses that the surveyor measured the land and fixed the boundary marks which were removed by the accused.

13. Learned advocate for accused argued that there is not complaint immediately lodged with police after incident and as the dispute is of civil nature, complaint is not maintainable.

From Exh. 52 i.e. judgment delivered in Civil Appeal No. 604/95 it can be seen that there is civil dispute pending between the parties. Exh. 36 is the 7x12 extract Gat No. 1547 standing in the name of complainant Nivrutti Tukaram Waghmare.

14. To support his argument learned advocate for accused placed his reliance upon:

a. **Hesh Shah Vs. Ganesh Satyarajan & Ors.**

**(1996 (2) BCRC 98)**

b. **Rukhmaji Champakrao Bhise Vs. State of Maharashtra**

**(2006(1)Mh.L.J.(Cri.)1136)**

Both these cases cited by the learned advocate for the accused are in respect of quashing of process.

The precedents have given us a binding value with a view that alike cases should be tried alike. While applying any preposition of law laid down in particular case, we cannot ignore the facts and circumstances of each case. Above both citations are in respect of quashing the order of issuance of process. We are at the stage of conclusion of trial, after completion of trial when both parties lead their evidence. As such the facts and circumstances under which abovementioned preposition of law is laid down, are different than the facts of case in hand.

15. It is also argued by the learned advocate for accused that there is delay in filing the complaint.

The incident allegedly had taken place on 22/09/2005 and present complaint is came to be filed on 20/12/2005 and this delay fatal unexplained. However if we go through Exh.47 it is a copy of complaint lodged by Nivrutti Tukaram Waghmare that is present complainant, with police in respect of incident dated 22/09/2005 and bears the endorsement of police that police received it on 23/09/2005. As such it cannot be said that there is unexplained delay in filing present complaint. The complainant had lodged complaint with police. However, whether police taken cognisance and taken any further action, is a different question. Only because had not taken any action in furtherance of complain, it cannot be said that, complaint is not at all lodged immediately. As such, I do not find force in the argument of learned advocate of accused.

16. As such, complainant succeeded in establishing that accused person in furtherance of their common intention removed the boundary marks which were fixed by surveyor. Map Exh.37 shows that the portion shown in blue is from Gat No. 1547 but in cultivation by person of Gat No.1514. Gat No. 1514 is of accused. It shows the loss to complainant of that much land and gain to accused.

As such complainant led the evidence which will satisfies the ingredients of section 434 of Indian Penal Code. Therefore I answer point no.2 in the affirmative.

17. Heard learned advocate for complainant on the point of sentence. he submitted that maximum punishment be awarded to the accused.

It is submitted by accused that minimum punishment be awarded. It is submitted on behalf of accused by learned advocate that civil dispute is pending between the parties and they are relatives of each other. This is first offence, hence lenient view be taken.

In this premise, in my opinion, following sentence is sufficient to meet the ends of justice. Hence, the order.

### **ORDER**

1. The accused no. 1 to 4 are hereby acquitted under section 255(1) of Cr.P.C. for the offences punishable under section 352, 504, 506 r.w. 34 of the Indian Penal Code.

2. Accused no. 1 to 4 are convicted under section 255(2) of the Cr.P.C. for the offence punishable under section 434 r.w. 34 of Indian Penal Code.

3. For offence punishable under section 434 r.w. 34 of Indian Penal Code, accused no. 1 to 4 are sentenced to suffer simple imprisonment for 2 (two) months and fine of Rs.500 (Rupees Five Hundred only) each, in default to suffer simple imprisonment for 15 days.

4. Their bail bond stands surrendered.

Judgment dictated and declared in open court.

Date: 19/12/2009

(S.B. Mahale)

J.M.F.C. Court No. 7, Pune.

STATEMENT OF ACCUSED U/SEC 313OF Cr. P.C

- 1) NAME OF ACCUSED- Namdeo Maruti Waghmare
  - 2) AGE- 55 yrs
  - 3) OCC-Farmer
  - 4) R/o- Wadki, Chaphyacha Mala Tal. Haveli Dist Pune
- 

Q.No.1-Have u heard the evidence led by the prosecution against you?

Ans. YES

Q.No.2-It has come in the evidence that Nivrutti Tukaram Waghmare is having gat no. 1547 at Pampalacha mala. What you have to say about it?

Ans. YES

Q.No.3- It has further come in the evidence that you accused resides in the neighbourhood of Nivrutti Tukaram Waghmare in gat no. 1514. What you have to say about it?

Ans. YES

Q.No.4- It has further come in the evidence that you accused no. 1 is cousin of Nivrutti Tukaram Waghmare, you accused no.2 is son of accused no.1 and you accused no.3 and 4 are sons of brother of accused no.1. What you have to say about it?

Ans. YES

Q.No.5- It has further come in the evidence that partition already effected and some of the portion of your share you sold. What you have to say about it?

Ans. We both sold.

Q.No.6- It has further come in the evidence that you accused filed civil suit against complainant for partition and said suit was decided in favour of him. What you have to say about it?

Ans. It is pending.

Q.No.7- It has further come in the evidence that you accused no. 1 damaged the dyke and therefore Nivrutti Tukaram Waghmare lodged complaint against you with police chowky Devachi Urali. What you have to say about it?

Ans. It is false.

Q.No.8- It has further come in the evidence that however, police not taken any cognizance and asked Nivrutti Tukaram Waghmare to carry out measurement and ascertain his portion. What you have to say about it?

Ans. It is false.



Q.No.9- It is further come in the evidence that Nivrutti Tukaram Waghmare get measured the land gat no. 1547 and asked for the police aid as you were threatened to the persons who came for measurement. What you have to say about it?

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Ans. Stones not affixed.

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Ans. It is false.

Q.No.16-It has further come in the evidence that the neighbourers came, interfered and rescued Nivrutti Tukaram Waghmare and his son. Nivrutti Tukaram Waghmare and his son not said anything to you. What you have to say about it?

Ans. No incident taken place.

Q.No.17-It has further come in evidence that at about 4:00 p.m. Nivrutti Tukaram Waghmare and his son went to police chowky and police asked to give application in writing, therefore, he had given an application in writing. What you have to say about it?

Ans. I do not know.

Q.No.18- It has further come in evidence that incident had taken place at about 12:00 to 12:30 p.m. What you have to say about it?

Ans. No

Q.No.19-It has further come in evidence that police had not taken any action and asked Nivrutti Tukaram Waghmare to go to court, therefore, he filed the present complaint. What you have to say about it?

Ans. I have no idea.

Q.No.20-It has further come in the evidence that police drawn panchama and to them Nivrutti Tukaram Waghmare shown boundaries and points of boundaries. What you have to say about it?

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Ans. I do not know about it.

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Ans. I have no knowledge about it.

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Ans. It is false.

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Ans. I have no idea.

Q.No.32- It has further come in the evidence that after receipt of an application, Vaibhav Sonawane issued notices to the applicant and adjoining land owners. What you have to say about it?

Ans. I have no idea.

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Ans. I have no idea.

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Ans. I have no idea.

Q.No.35 – It has further come in the evidence that on 28/07/2005 Vaibhav Sonawane issued notices to Nivrutti Tukaram Waghmare, Dinesh Rambhau Waghmare, Tukaram Kondiba Waghmare, Genba Modak, Namdeo Maruti Waghmare, Subhash Genba Modak and you accused Namdeo Maruti Waghmare and date fixed for measurement was 08/08/2005. What do you have to say about it?

Ans. – We received one notice, do not know about others.

Q.No.36 – It has further come in the evidence that on 08/08/2005 Vaibhav Sonawane measured Gat No. 1547 under police protection and after measurement he went away. What you have to say about it?

Ans – I have no idea.

Q.No.37 – It has further come in the evidence that as record was not available with Vaibhav Sonawane on that day, he was not able to show points of boundaries and issued notice on 15/09/2005 to the applicant to show the boundaries and fixed the date 22/09/2005. What you have to say about it?

Ans – I had not received any notice.

Q.No.38 – It has further come in the evidence that on 22/09/2005 as per record Vaibhav Sonawane shown boundaries of Gat No. 1547. What you have to say about it?

Ans – No.

Q.No.39 – It has further come in the evidence that as per record Vaibhav Sonawane found that persons from Gat No. 1514 cultivating to the extent of 7 R in Gat No. 1547. What you have to say about it?

Ans – It is false.

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Ans – It is false.

Q.No.43 – It has further come in the evidence that on the spot police found that towards the North there were no white clothes but towards south there were stones and accordingly they drawn panchanama. What you have to say about it?

Ans – It is false.

Q.No.44 – It has further come in the evidence that API Nirawade recorded the statement of Ganesh Nivrutti Waghmare and Nivrutti Tukaram Waghmare on 22/01/2006. What you have to say about it?

Ans – I do not know.

Q.No.45 – Why the witnesses are deposing against you?

Ans – I cannot assign any reason.

Q.No.46 – Do you wish to examine yourself on oath and/or any witness in your defence?

Ans – Yes.

Q.No.47 – Do you wish to say anything more?

Ans – No. There is dispute pending in respect of land. Still, false complaint filed.

Pune:

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

Above statement is recorded in my presence and in my hearing and the contains there of are true account of the evidence recorded before me.

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

STATEMENT OF ACCUSED U/SEC 313OF Cr. P.C

- 1) NAME OF ACCUSED- Santosh Namdeo Waghmare
  - 2) AGE- 28 yrs
  - 3) OCC- Agri.
  - 4) R/o- Wadki, Pampalacha Mala Tal. Haveli Dist Pune
- 

Q.No.1-Have u heard the evidence led by the complainant against you?

Ans. YES

Q.No.2-It has come in the evidence that Nivrutti Tukaram Waghmare is having gat no. 1547 at Pampalacha mala. What you have to say about it?

Ans. YES

Q.No.3- It has further come in the evidence that you accused resides in the neighbourhood of Nivrutti Tukaram Waghmare in gat no. 1514. What you have to say about it?

Ans. YES

Q.No.4- It has further come in the evidence that you accused no. 1 is cousin of Suryakant, you accused no.2 is son of accused no.1 and you accused no.3 and 4 are sons of brother of accused no.1. What you have to say about it?

Ans. YES

Q.No.5- It has further come in the evidence that partition already effected and some of the portion of your share you sold. What you have to say about it?

Ans. We both sold.

Q.No.6- It has further come in the evidence that you accused filed civil suit against complainant for partition and said suit was decided in favour of him. What you have to say about it?

Ans. It is pending.

Q.No.7- It has further come in the evidence that you accused no. 1 damaged the dyke and therefore Nivrutti Tukaram Waghmare lodged complaint against you with police chowky Devachi Urali. What you have to say about it?

Ans. It is false.

Q.No.8- It has further come in the evidence that however, police not taken any cognizance and asked Nivrutti Tukaram Waghmare to carry out measurement and ascertain his portion. What you have to say about it?

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Ans. It is false.

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Ans. No

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Ans. It is false.



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Ans. It is not correct.

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Ans – No.

Q.No.37 – It has further come in the evidence that as record was not available with Vaibhav Sonawane on that day, he was not able to show points of boundaries and issued notice on 15/09/2005 to the applicant to show the boundaries and fixed the date 22/09/2005. What you have to say about it?

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Ans – I cannot assign any reason.

Q.No.46 – Do you wish to examine yourself on oath and/or any witness in your defence?

Ans – Yes.

Q.No.47 – Do you wish to say anything more?

Ans – No. There is dispute pending in respect of land. Still, false complaint filed.

Pune:

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

Above statement is recorded in my presence and in my hearing and the contains there of are true account of the evidence recorded before me.

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

**STC No. 818/07**

**STATEMENT OF ACCUSED U/SEC.313 OF CR. P.C.**

1. NAME OF THE ACCUSED: Dheeraj Dnyaneshwar Waghmare
2. AGE: 35 Yrs                      3. OCC: Agriculture
4. R/O Wadaki, Tal. Haveli, Pune.

Q.No.1 – Have you heard the evidence led by the complainant against you?

Ans – Yes.

Q.No.2 – It has come in the evidence that Nivrutti Tukaram Waghmare is having Gat No. 1547 at Pimplacha Mala. What you have to say about it?

Ans – Yes.

Q.No.3 – It has further come in the evidence that you accused resides in the neighbourhood of Nivrutti in Gat No. 1547. What do you have to say about it?

Ans – Yes.

Q.No.4 – It has further come in the evidence that you accused no. 1 is cousin of Nivrutti, you accused no. 2 is son of accused no. 1 you accused no. 3 & 4 are sons of brother of accused no. 1. What do you have to say about it?

Ans – Yes.

Q.No.5 – It has further come in the evidence that partition already effected and some of the portion of your share you sold. What do you have to say about it?

Ans – We both sold.

Q.No.6 – It has further come in the evidence that you accused filed civil suit against complainant for partition and said suit was decided in favour of him. What do you have to say about it?

Ans – It is pending.

Q.No.7 – It has further come in the evidence that you accused no. 1 damaged the dyke and therefore Nivrutti lodged complaint against you with police chowky Devachi Urali. What do you have to say about it?

Ans – It is false.

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Ans – Notices were not issued to all. We received notice but others not.

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Ans – It is false.

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Ans – I do not know.

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Ans – No.

Q.No.19 – It has further come in the evidence that police had not taken any action and asked Nivrutti to go to court, therefore, he filed present complaint. What do you have to say about it?

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Ans – No.

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Ans – I can not tell.

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Ans – No.

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Ans – I do not know.

Q.No.32 – It has further come in the evidence that after receipt of an application, Sonawane issued notices to the applicant and adjoining land owners. What you have to say about it?

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Q.No.37 – It has further come in the evidence that as record was not available with Sonawane on that day, he was not able to show points of boundaries and issued notice on 15/09/2003 to the applicant to show the boundaries and fixed the date 22/09/2005. What you have to say about it?

Ans – I do not know.

Q.No.38 – It has further come in the evidence that on 22/09/2005 as per record Sonawane shown boundaries of Gat No. 1547. What you have to say about it?

Ans – No.

Q.No.39 – It has further come in the evidence that as per record Sonawane found that persons from Gat No. 1514 cultivating to the extent of 7 R in Gat No. 1547. What you have to say about it?

Ans – It is false.

Q.No.40 – It has further come in the evidence that accordingly Sonawane drawn the map. What you have to say about it?

Ans – I do not know.

Q.No.41 – It has further come in the evidence that in the year 2005-06 API Swapneel Shivajirao Sawant was attached to outpost Urali Devachi, police station Lonikalbhor as API. What you have to say about it?

Ans – I can not tell.

Q.No.42 – It has further come in the evidence that on 22/01/2006 API drawn panchanama of field of Nivrutti Waghmare and spot in shown by Nivrutti Waghmare. What you have to say about it?

Ans – It is not correct.

Q.No.43 – It has further come in the evidence that on the spot police found that towards the north there were no white clothes but towards south there were stones and accordingly they drawn panchanama. What you have to say about it?

Ans – It is false.

Q.No.44 – It has further come in the evidence that API Sawant recorded the statement of Ganesh and Nivrutti Waghmare on 22/01/2006. What you have to say about it?

Ans – It is false.

Q.No.45 – Why the witnesses are deposing against you?



Ans – I can not assign any reason.

Q.No.46 – Do you wish to examine yourself on oath and/or any witness in your defence?

Ans – Yes.

Q.No.47 – Do you wish to say anything more?

Ans – No. There is dispute pending in respect of land. Still, false complaint filed.

Pune:

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

Above statement is recorded in my presence and in my hearing and the contains there of are true account of the evidence recorded before me.

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

**STC No. 818/07**

**STATEMENT OF ACCUSED U/SEC.313 OF CR. P.C.**

3. NAME OF THE ACCUSED: Sunil Dnyaneshwar Waghmare
4. AGE: 30 Yrs                      3. OCC: Agriculture
5. R/O Wadaki, Tal. Haveli, Pune.

Q.No.1 – Have you heard the evidence led by the complainant against you?

Ans – Yes.

Q.No.2 – It has come in the evidence that Nivrutti Tukaram Waghmare is having Gat No. 1547 at Pimplacha Mala. What you have to say about it?

Ans – Yes.

Q.No.3 – It has further come in the evidence that you accused resides in the neighbourhood of Nivrutti in Gat No. 1547. What do you have to say about it?

Ans – Yes.

Q.No.4 – It has further come in the evidence that you accused no. 1 is cousin of Nivrutti, you accused no. 2 is son of accused no. 1 you accused no. 3 & 4 are sons of brother of accused no. 1. What do you have to say about it?

Ans – Yes.

Q.No.5 – It has further come in the evidence that partition already effected and some of the portion of your share you sold. What do you have to say about it?

Ans – We both sold.

Q.No.6 – It has further come in the evidence that you accused filed civil suit against complainant for partition and said suit was decided in favour of him. What do you have to say about it?

Ans – It is pending.

Q.No.7 – It has further come in the evidence that you accused no. 1 damaged the dyke and therefore Nivrutti lodged complaint against you with police chowky Devachi Urali. What do you have to say about it?

Ans – It is false.

Q.No.8 – It has further come in the evidence that however, police not taken any cognizance and asked Nivrutti to carry out measurement and ascertain his portion. What do you have to say about it?

Ans – It is false.

Q.No.9 – It has further come in the evidence that Nivrutti get measured the land Gat No. 1547 and asked for the police aid as you were threatened to the persons who came for measurement. What do you have to say about it?

Ans – It is false.

Q.No.10 – It has further come in the evidence that measurement was carried out on 08/08/2005. Before it officer issued notices to the adjoining neighbours to fix the points of boundaries. What do you have to say about it?

Ans – Notices were not issued to all. We received notice but others not.

Q.No.11 – It has further come in the evidence that notices were issued to the persons whose names were bearing on 7/12 extract. What do you have to say about it?

Ans – It is false.

Q.No.12 – It has further come in the evidence that letter was given on 22/09/2005 to fix the boundaries. What do you have to say about it?

Ans – It is false.

Q.No.13 – It has further come in the evidence that surveyor came and fixed the boundaries, shown the points of boundaries and went away. What do you have to say about it?

Ans – I do not know.

Q.No.14 – It has further come in the evidence that you accused no. 1 started abusing and called you accused no. 2 to 4 and asked them to remove the stones of boundaries. What do you have to say about it?

Ans – Stones not affixed.

Q.No.15 – It has further come in the evidence that you accused no. 2 Santosh caught hold Nivrutti by his neck, you accused no. 1 Namdeo pick up the stone to beat him and you accused Dheeraj and Sunil hold the son of Nivrutti namely Ganesh. What do you have to say about it?

Ans – It is false.

Q.No.16 – It has further come in the evidence that the neighbourers came, interfered and rescued Nivrutti and his son. Nivrutti and his son not said anything to you. What do you have say about it?

Ans – It is false. No incident taken place.

Q.No.17 – It has further come in the evidence that about 4:00 PM Nivrutti and his son went to police chowky and police asked to give application in writing, therefore, he had given an application in writing. What do you have to say about it?

Ans – I do not know.

Q.No.18 – It has further come in the evidence that incident had taken place at about 12:00 to 12:30 PM. What do you have to say about it?

Ans – No.

Q.No.19 – It has further come in the evidence that police had not taken any action and asked Nivrutti to go to court, therefore, he filed present complaint. What do you have to say about it?

Ans – I have no idea.

Q.No.20 – It has further come in the evidence that police drawn panchanama and to them Nivrutti shown boundaries and points of boundaries. What do you have to say about it?

Ans – It is false.

Q.No.21 – What you have to say about 7x12 extract of land of Nivrutti and the map of land?

Ans – I do not know.

Q.No.22 – It has further come in the evidence that Nivrutti also produced receipt of payment made to the police for police aid and office copy of letter dtd. 22/09/2005 and office copy of letter given to Superintendent of Police. What you have to say about it?

Ans – I do not know.

Q.No.23 – It has further come in the evidence that on 08/08/2005 measurement of Gat No. 1547 was carried out and after 8 to 15 days notices were issued to concern. What you have to say about it?

Ans – I received only one notice.

Q.No.24 – It has further come in the evidence that TILR shown the points of boundaries on 22/09/2005 and with the help of labours called by complainant stones were fixed on the boundaries shown by officer. What you have to say about it?

Ans – It is false.

Q.No.25 – It has further come in the evidence that you accused Sunil abused Ganesh in filthy language and caught hold him by collar and pushed him. What you have to say about it?

Ans – It is false.

Q.No.26 – It has further come in the evidence that you threatened complainant and his son that you will see how they came in the land and that you will bury them in the land. What you have to say about it?

Ans – It is false.

Q.No.27 – It has further come in the evidence that you all accused rushed towards Ganesh to beat him and he had not opposed you. What you have to say about it?

Ans – It is not correct.

Q.No.28 – It has further come in the evidence that at the time of the incident on the spot, Ganesh, Nivrutti and labours were present. What you have to say about it?

Ans – No.

Q.No.29 – It has further come in the evidence that in the year 2004-2005 Vaibhav Sonawane was Surveyor at Haveli and Wadaki was under his jurisdiction. What you have to say about it?

Ans – I can not tell.

Q.No.30 – It has further come in the evidence that Sonawane measured the Gat No. 1547 on the application of Nivrutti Tukaram Waghmare dtd. 15/05/2001. What you have to say about it?

Ans – No.

Q.No.31 – It has further come in the evidence that Sonawane received an application on 04/01/2001 from his office for measurement. What you have to say about it?

Ans – I do not know.

Q.No.32 – It has further come in the evidence that after receipt of an application, Sonawane issued notices to the applicant and adjoining land owners. What you have to say about it?

Ans – I have no idea.

Q.No.33 – It has further come in the evidence that Nivrutti made an application to stay the measurement. What you have to say about it?

Ans – I have no idea.

Q.No.34 – It has further come in the evidence that on 17/03/2005, Sonawane received an application from his office for remeasurement. What do you have to say about it?

Ans – I do not know.

Q.No.35 – It has further come in the evidence that on 28/07/2005 Sonawane issued notices to Nivrutti Waghmare, Dinesh Rambhau Waghmare, Tukaram Kondiba Waghmare, Maruti Waghmare, Eknath Dattatray Waghmare, Dnyaneshwar Maruti Waghmare and you accused Namdeo Maruti Waghmare and date fixed for measurement was 08/08/2005. What do you have to say about it?

Ans – We received one notice, do not know about others.

Q.No.36 – It has further come in the evidence that on 08/08/2005 Sonawane measured Gat No. 1547 under police protection and after measurement he went away. What you have to say about it?

Ans – No.

Q.No.37 – It has further come in the evidence that as record was not available with Sonawane on that day, he was not able to show points of boundaries and issued notice on 15/09/2005 to the applicant to show the boundaries and fixed the date 22/09/2005. What you have to say about it?

Ans – I do not know.

Q.No.38 – It has further come in the evidence that on 22/09/2005 as per record Sonawane shown boundaries of Gat No. 1547. What you have to say about it?

Ans – No.

Q.No.39 – It has further come in the evidence that as per record Sonawane found that persons from Gat No. 1514 cultivating to the extent of 7 R in Gat No. 1547. What you have to say about it?

Ans – It is false.

Q.No.40 – It has further come in the evidence that accordingly Sonawane drawn the map. What you have to say about it?

Ans – I do not know.

Q.No.41 – It has further come in the evidence that in the year 2005-06 API Swapneel Shivajirao Sawant was attached to outpost Urali Devachi, police station Lonikalbhor as API. What you have to say about it?

Ans – I can not tell.

Q.No.42 – It has further come in the evidence that on 22/01/2006 API drawn panchanama of field of Nivrutti Waghmare and spot in shown by Nivrutti Waghmare. What you have to say about it?

Ans – It is not correct.

Q.No.43 – It has further come in the evidence that on the spot police found that towards the north there were no white stones but towards south there were stones and accordingly they drawn panchanama. What you have to say about it?

Ans – It is false.

Q.No.44 – It has further come in the evidence that API Sawant recorded the statement of Ganesh and Nivrutti Waghmare on 22/01/2006. What you have to say about it?

Ans – It is false.

Q.No.45 – Why the witnesses are deposing against you?

Ans – I can not assign any reason.

Q.No.46 – Do you wish to examine yourself on oath and/or any witness in your defence?

Ans – Yes.

Q.No.47 – Do you wish to say anything more?

Ans – No. There is dispute pending in respect of land. Still, false complaint filed.

Pune:

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

Above statement is recorded in my presence and in my hearing and the contains there of are true account of the evidence recorded before me.

(G. V. GAIKWAD)

Date: 14/06/2009

J.M. F.C. COURT NO. 7, PUNE.

STC No.818/07

Witness no.1 for the Prosecution

I do state on solemn affirmation that-

Name – Nivrutti Tukaram Waghmare,

Age- 52 yrs. Occ. Agriculture

R/at – Wadaki Pimpalacha mala, Tal.Haveli.

Examination-in-chief

1. My Gat no. is 1547 situated at Pimpalacha mala. I know the accused. Accused resides to my neighbourhood in Gat no.1514. Accused are my cousins. Accused no. 1 is cousine, accused no. 2 is his son, accused no 3 & 4 are the sons of brother of accused no.1. We already had partition. The some portion of share of accused was sold. Accused filed civil suit against us for partition. Said suit was decided in my favour. Accused no.1 damaged the bandh. I went to lodge the complaint. I had given complaint at police chowky at Devachiurali. Police had not taken cognizance. Police asked me to carry out measurement and ascertain my portion. I get measured the land Gat no.1547. I paid the amount. I asked for the police aid as accused were threatened to the persons who came for measurement. Measurement was carried on 08/08/2005. The officers issued notices to the adjoining neighbourers to fix the points of the boundary. Notices were issued to the persons whose names were appeared on 7/12 extract. As per notices letter was given on 22/09/2005 to fix the boundaries. Surveyor came and fixed the boundaries, shown the points of boundaries. The surveyor went away. Accused no.1 started abusing. He called accused no. 2 to 4. Accused no.1 asked to accused no. 2 to 4 to remove the stones of boundaries. Accused no.2 hold me by neck. Accused no.1 pick up the stone to beat me. Accused no. 3 & 4 hold my son Ganesh. The neighbours came, interfered and rescued us. We had not said anything to them. At about 4.00 pm we went to police chowky. Police asked us to give application in writing. I had given application in writing. I had narrated all this fact to police. Incident had taken place at about 12.00 to 12.30 pm. Police had not taken any action and asked me to go to court. I filed present complaint in court. Complaint filed as per my say. Police came to me. Police drawn the panchnama. I shown the boundaries and points of boundaries to police. Police enquired with me. I had produced office copy of letter dtd. 22/9/2005. I had also filed o/c of letter given to superintendent to police. I had filed 7/12 extract of my land. It is at exh.36. I had also filed the map. It is at exh.37. I had produced the receipt of the payment made for police aid. Accused be punished.

Cross-examination by Adv. Tambe for accused

2. It is true to say that, my father and father of accused no.1 are real brothers. It is true to say that, both of them no more. It is true to say that, Gat no. 1509, 1547, 1514, 1257 & 1100 are ancestral properties. Gat no. 1257 is purchased by sale deed. My parents purchased it. It is not true to say that, the court proceeding was pending between my father and his brother in respect of partition of properties. It is true to say that, both the parties had filed suit against



each other. It is not true to say that, matter is pending in the High Court. I cannot tell the appeal number of High Court. I had not produced copies of judgment of High Court to show that, decision is in my favour. It is true to say that, in the year 1989 I have filed suit of encroachment against the father of the accused. It is true to say that, on 24/11/92 suit was decided. It is true to say that, on 24/11/94 the suit was decided. It is true appeal preferred against said decision was dismissed. It is true in the year 2000 again I filed suit that father of accused encroached to the extent of 7 R in Gat no.1547. It is not true to say that, said suit was dismissed. Suit is pending. It is true to say that, suits were pending since 1981-82. I had not filed any criminal case against accused prior to this. It is not true to say that, as I had no complaint against accused and his family members therefore I had not filed any complaint. It is true to say that, I had not get possession of encroached portion. It is not true to say that, as I had not get possession of the encroached portion, I filed false complaint. It is not true to say that, on 23/9/05 I first time lodged false complaint to Urali police. I had given that application on 23/9/05. It is not true to say that, before 23/9/05 I had not made any complaint to police. I had not filed copies of complaint made prior to 23/9/05.

3. I cannot tell the exact date on which I have made application for measurement of Gat no. 1547. I had not filed the copy of application made for the measurement. It is true to say that, notice to be issued to adjoining land owners. I had produced xerox copy to show that, notices are issued.

Further cross-examination adjourned till next date.

No re.

R.O. & A.C.

(G. V. GAIKWAD)

Date: 27/07/2008

J.M. F.C. COURT NO. 7, PUNE.

Cross-examination continued on S.A.

4. The land was measured on 08/08/2005. Notices were issued to the adjoining land owner of Gat no.1545. The total area of Gat no.1547 is 54 R. It is true to say that, the land of accused situated towards North of 1547. Towards East of Gat no. 1547 land of Dinesh Rambhau Waghmare and Eknath Dattatray Waghmare is situated. Towards West land of Dinesh Waghmare and Eknath Waghmare is situated. Towards South land of Eknath Waghmare is situated. It is not true to say that, notice for the measurement dtd. 08/08/2005 was not issued to the adjoining land owners. Surveyor came on the spot at about 10.45 am. Surveyor was Sonawane. He came along with one more person. Measurement was carried out in presence of police. For measurement Eknath Dattatray Waghmare and all the accused were present. Dinesh Rambhau Waghmare was also present for some time and went after 1-2 hours. Measurement continued for 4 hours. Surveyor drawn the map on the spot. The accused not

given signatures on the map drawn by the surveyor. For measurement myself, my son and two labours were present. It is not true to say that, on 08/08/2005 notices were not issued to adjoining land owners and measurement was not done. Surveyor also measured the land of my adjoining land owners.

5. On 22/09/2005 surveyor and one more person came to show the boundaries. Except me four more persons were present in my land. I cannot tell their names. My elder son was also present. The ladies were present near the house. Except these persons no one else was present in my land. It is not true to say that, surveyor shown the boundaries as per our cultivation. Surveyor not drawn the panchanama. When accused started abuse us, surveyor went away. It is not true to say that on 22/9/05 surveyor not came on the spot and not shown the boundaries. It is not true to say that on 08/08/2005 and 22/9/05 none of the accused came in the Gat. No.1547. Police took my complaint. It is true to say that, police told me that my dispute is of civil nature and asked me to file civil suit. It is true to say that, I filed civil suit on 12/11/2005. I cannot read. I do not remember contents read over to me whether are in my plaint or not. It is true to say that, civil suit is filed against Dnyaneshwar Waghmare, Mukesh Waghmare and Namdeo Waghmare & Dadaji Khatate. I do not remember whether incident dtd. 22/9/05 in relation to accused no. 2 to 4 is mentioned in plaint or not. It is not true to say that, incident dtd. 22/9/05 not taken place and therefore I have not impleaded accused as defendants. As I did not get the documents earlier I have lodged complaint about incident dtd. 22/9/2005 on 20/12/05. It is not true to say that incident dtd. 22/9/03 not taken place and only to harass accused I filed complaint after 3 months. It is not true to say that, I am deposing false that accused no.1 rushed on my person to throw the stone and accused no.2 hold me back. It is true to say that, civil suit 1637/03 is filed for injunction. It is true to say that, court grant permission to fence land excluding disputed area of 7 guntha. It is true to say that, order was passed from year back. As accused preferred the appeal, I have not fence the land though order was passed. Appellate court passed injunction order against me. It is not true to say that, incident had not taken place. It is not true to say that, I have filed false complaint against accused.

No re.

R.O. & A.C.

(G. V. GAIKWAD)

Date: 10/01/2009

J.M. F.C. COURT NO. 7, PUNE.

STC No. 818/2007

Witness no.2 for state-

I do state on solemn affirmation that-

Name- Ganesh Nivrutti Waghmare

Age-30 yrs.Occ- Agriculture

R/at- Wadakigaon, Tal. Haveli, Dist. Pune.

Examination-in-chief

1. On 8/8/2005 we get measured the land bearing no. 1547. After measurement after 8-15 days the notices were issues to concern. The TILR shown the points of boundaries on 22/9/05. My father called the 4 labours. With the help of labours we fixed the stones on boundaries shown by the officer. Thereafter. The officers went away. Namdeo Waghmare called to his son and nephew. They came holding sticks and abusing. They pulled out the stones of boundary marks and thrown away. Sunil abused me in filthy language and hold me by collar. They pushed me. They threatened that how we come in our land they will see and bury us in the land. Namdeo Waghmare was holding stone in his hand. All the accused rushed towards me to beat me. We had not opposed them. My father went to the police station to lodge the complaint. Two accused are present before the court and two are not present. Initially police not taken the complaint and asked us to give in writing. Next day my father went and given written application. Police asked us to approach to the court. On the spot myself, my father and labours were present.

Cross-examination by Adv. Tambe for accused

2. It is true to say that, accused are my relatives, some are my uncles and some are brothers. It is true to say that, since long dispute is going on in between our family and family of accused in respect of our ancestral property. I cannot tell that we file the suit against us and accused also filed suit against us. It is true to say that suit is pending in between us in respect of Gat no. 1547. I cannot tell its case no. 1637/05. I do not know my father has filed suit against the accused for encroachment in respect of Gat no. 1547. I do not know that, that case was decided. It is true to say that, since last 20 -25 years dispute is pending in respect of Gat no. 1547. It is true to say that, till today the dispute is not settled. When land was measured all the adjoining owners were present. Eknath Dattatray Waghmare, accused, Tukaram Kondiba Waghmare were present for measuring the land. I cannot tell the name of persons who measured the land. I cannot tell the names of labours. Before the measurement, the officer sent notices to adjoining owners. They were asked to remain present on 08/08/2005. Before 2 to 4 days of that day notices were sent. It is not true to say that, at the relevant time accused and the adjoining land owners were not present. It is not true to say that, the officer not came on 08/08/2005 or thereafter on the land and not measured the land, not fixed the boundaries. It is not true to say that, I am deposing false that, accused beat me and my father. It is not true to say that, it not happened that, Sunil came and hold me by my neck and beat me. I myself not went to police station. It is true to say that, police asked us to file civil suit. It is not true to say that, police not taken our complaint. It is true to say that, police not taken any action against

the accused. I do not know that my father filed suit against the accused. I cannot tell that, in that suit permission was asked to fence the land in possession. I cannot tell that court granted permission to fence the land. It is true to say that, till date our land is not fenced. It is not true to say that, we lodged complaint to harass the accused. It is not true to say that, incident dtd. 22/9/05 not taken complaint and we lodged false complaint. It is not true to say that, none of the accused beat me and my father and not abused us.

No re.

R.O. & A.C.

(G. V. GAIKWAD)

Date: 27/11/2008

J.M. F.C. COURT NO. 7, PUNE.

STC No.818/2007

PW No .3 for the Complainant

I do state on solemn affirmation that

Name- Vaibhav Sonawane

Age- 42 yrs., Occ. Service. R/at – Pimpale Saudagar, Tal. Haveli, Dist. Pune.

Examination-in-chief

1. In the year 2004-05 I was at Haveli as surveyor. Wadaki was under my jurisdiction. I had measured Gat no.1547 on the application of Nivrutti Tukaram Waghmare. He applied on 15/9/01. Application was given to me on 4/1/2003 by my office for measurement. I had issued notices to the applicant and adjoining land owners. The applicant Nivrutti made an application to stay the measurement. On 17/7/05 my office handed over to me the said application for remeasurement. On 28/7/2005 I issued notices to Nirvutti Waghmare, Dinesh Rambhau Waghmare, Tukaram Kondiba Waghmare, Maruti Waghmare, Eknath Dattatray Waghmare, Dnyaneshwar Maruti Waghmare, Namdeo Maruti Waghmare and date fixed for measurement again on 8/8/2005. On 8/8/2005 I measured Gat no. 1547. I measured land under police protection. After measurement I went away. As record was not available on that day I was not able to show the boundaries, on 15/9/05 and date was fixed 22/9/05 to show the boundaries. On 22/9/05 as per record shown the boundaries of Gat no. 1547. As per record after measurement I found that, the persons from Gat no. 1514 cultivating to the extent of 7 R in Gat no. 1547. Map now shown to me is drawn by me. It bears my signature. It is at exh. 37. I have office copy of notices. Xerox which is on record shown to me is the same. (It is verified with the office copy which is with the witness and found correct.) It bears my signature. Contents are correct. It is at exh.40. I can produce the office copy of the notice which is issued to applicant and adjoining land owners before measurement.

Cross examination by Adv. Tambe for the accused

2. I cannot tell the name of the owner whose land is situated towards East of Gat no. 1547. I cannot give the name of the adjoining land owners whose land is situated towards north, south, west of Gat no. 1547. It is correct to say that, before measurement it is necessary to issue the notices to the adjoining land owners. I cannot tell the lands of the persons to whom I issued notices are to which direction of Gat no. 1547. It is true to say that, previously the lands were having survey number. It is correct to say that, one Gat no. is became of 4 to 5 survey numbers. The Gat no. 1547 is of survey no.189/15. Gat no. 1547 is made of survey no. 189 only. I had not taken information as to who are adjoining to survey no.189. At the time of measurement of Gat no. 1547, I measured Gat no. 1548, 1549, 1551, 1546, 1547, 1514. I cannot tell who is the owner of each Gat number. I had not verified about bout the owners of adjoin Gat numbers. I issued notices to the persons who are shown as adjoining land owners in application. I had not verified the names which are given in the applicant are whether of adjoin land owners or possessors. I myself issued notices as surveyor. I send the notice for

measurement under certificate of posting. I handed it over to the peon. I have no idea the person whom I send notices not received it.

3. On 08/08/2005 at about 11:00 am I went for measurement of Gat no. 1547. My assistant Aba Kothawade was with me. I had taken plain table, drawing sheet, pencil, eraser, pins, two flags for measurement and the documents which sent by the applicant. Adjoining land owners were present. I had not enquired about their names. Police were present there. I had not verified about the names of persons present. 7-8 persons were there except me, my staff, police and applicant. I do not remember which crop was standing in Gat no. 1547. I do not remember whether crop was standing. I cannot tell which crop is standing in any Gat number. I do not remember in Gat no. 1547 the crop of sugar cane 8 to 9 months was standing. I do not remember in Gat o. 1548, 1549, 1551 crop of bajari was standing. It is not correct to say that, as the crop was standing the land could not measure. If the crops are below the level of cable we can measure the land. It is not true to say that, it is a rule of our office that land is to be measured when there is no crop. It is not true to say that on 08/08/2005 I had not measured any land. I had only used 7x12 extract of the applicant. It is correct to say, without 7x12 extract of adjoining land owners I measured Gat no. 1547. I am depositing on the basis of phalni who encroached in whose land. I cannot tell the area of Gat number which is adjoining Gat no. 1547. It is not correct to say that, as I do not know the area of adjoining Gat number I could not say from which side there is encroachment. Rarely it happens that the area which is shown in 7x12 extract spot it found less of that. It took 4 hours to measure the land. After measurement I put marking. I had drawn the map after measurement of Gat no. 1547 only. I have rough map of all the Gats not drawn the fair map. Today the rough map is with me. I measured all Gat numbers. In map they are showing by pencil and only fair the Gat number accused. I had not shown the area of adjoining Gat numbers in map. It is not true to say that, on 08/08/2005 I had not measured the adjoining Gat numbers of 1547 and therefore I had not written it's area.
4. On 22/9/05 adjoining land owners were present I do not know their names. I had only shown the boundaries of Gat no. 1547. I put marked on it. I had not called police patil or Talathi or Kotwal at the time of measurement or showing boundaries. I had drawn the panchamana. Only one person signed on it. I can produce the panchanama. I had not taken the signature of persons who were present. As they are not given signature, therefore, I had not taken. No one was ready to sign therefore, I had not taken any signature. I cannot tell the name of persons who were present at the time of measurement and refused to sign. It is not true to say that, on 08/08/2005 I had measured land Gat no. 1547. It is not true to say that, when I had shown the boundaries no one was present there and at one place I had prepared all documents. It is not true to say that, I had drawn the map as per the say of complainant for his gain.

No re.

R.O. & A.C.

(G. V. GAIKWAD)

Date: 10/01/2009

[46]

J.M. F.C. COURT NO. 7, PUNE.

STC No.818/2007

PW No.4 for the Complainant

I do state on solemn affirmation that

Name- Swapneel Shivajirao Sawant

Age- 40 yrs., Occ. API, Pune, Rural.

Examination-in-chief

1. In the year 2005-06 I was attached to outpost Urali Devachi, police station Lonikalbhor as API. On 22/1/04 I drawn the panchanama on field of Nivrutti Waghmare. Nivrutti Waghmare shown the spot. He informed that the stone which were put by panchas after measurement, were thrown by the accused. Towards north there no white stones but towards south there were stones. Panchanama shown to me is same bears my signature. Contents are correct. It is at Exh.46. I recorded statement of Ganesh and Nivrutti Waghmare on 22/1/06.

Cross examination by Adv. Tambe for accused

2. On 22/1/2006 I enquired with complainant and his son about the incident. On enquiry I came to know that, the signs which were put by surveyor after the measurement of land towards North were removed by the accused and thrown away. I enquired with Ganesh and Nivrutti. I had went to spot and also call them at police station. I went in Gat no. 1547. I had not enquired about the owners who are adjacent to the land of Nivrutti from four side. Towards north of the land of complainant the land of Sunil Waghmare is situated. I enquired with complainant and his son as to who removed the stones. I also enquired with complainant and his son as to who removed the stones. I also enquired with them why those stones were installed. I had not enquired with the surveyor whether measurement was carried out by him or not. Except complainant I had not enquired with the adjacent land owners about the stones. I had not enquired with panchas whether their lands are adjacent to the land of the complainant. I called the panchas. I called the persons with whom I came across near hotel Sahyadri near the spot. It is not true to say that I never went to Gat no. 1547 and not withdrawn the panchanama on the spot. It is not true to say that, I had drawn false panchanama. In land of Sunil Waghmare the crop of 'val' and 'pavta' were standing. I do not remember which crop was standing at Gat no. 1547. On the say of Nivrutti I am saying that 1514 Gat belongs to Sunil. It is true to say that, I have enquired only with the complainant. It is not true to say that, there is residential area nearby the house of complainant. It is at the distance of 500 ft. I do not know whose houses are there. I had not enquired with anyone whose houses are at the distance of 500 ft. I do not remember on 22/09/2005 complainant lodged complaint with us. Complaint dtd. 22/09/2005 shown to me bears signature of ASI Ugale. Complaint is at Exh.47. ( as complaint is referred in cross examination, exhibited) I have no personal knowledge as to that complaint. It is not true to say that, to harras the accused and on the say of complainant I had drawn false panchanama.

No re.

R.O. & A.C.

(G. V. GAIKWAD)

Date: 10/01/2009

J.M. F.C. COURT NO. 7, PUNE.