

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.175 OF 2003

The State of Maharashtra
through the Police Inspector,
Jalgaon City Police Station,
Tq. & Dist. Jalgaon

.. Appellant

Versus

1. Suresh S/o. Murlidhar Jagtap
Age-25 years, Occu-Labour,
R/o. Samta Nagar, Jalgaon
2. Popat S/o. Rama Sonawane,
Age-52 years, Occu-Pensioner,
R/o. Behind Collector Bungalow,
Jalgaon.
(Appeal is abated against Resp. No.2)
3. Vilas S/o. Popat Sonawane,
Age-22 years, Occu-Education,
R/o. Behind Collector Bungalow,
Jalgaon
(Appeal is abated against Resp. No.3)
4. Vinod S/o. Govinda Raddhe,
Age-21 years, Occu-Rickshaw Driver,
R/o. Behind Hatnur Colony,
Jalgaon
5. Kailas S/o. Popat Sonawane,
Age-25 years, Occu-Rickshaw Driver,
R/o. Behind Collector Bungalow,
Jalgaon

**.. Respondents
(Ori. Accused)**

Mr.S.G.Salgare, APP for the appellant/State
Mr.Joydeep Chatterji, Advocate for the respondent Nos.
1,4 & 5.

**CORAM : T.V.NALAWADE &
S.M. GAVHANE, JJ.**

DATED : 14.12.2017

J U D G M E N T [PER: S.M. GAVHANE, J.]

. This appeal is directed against the judgment and order dated 23.10.2002 in Sessions Case No.137 of 1999 passed by the 1-Ad-hoc Additional Sessions Judge, Jalgaon thereby acquitting the respondents/accused of the offences under Section 307 r/w Section 149 and Sections 147 and 148 of the Indian Penal Code (for short the IPC) and Section 25 of the Arms Act.

2. Respondent No.2/accused No.2 Popat Rama Sonawane died on 12.12.2015 as per death certificate dated 27.10.2017 issued by Jalgaon Municipal Corporation and respondent No.3/accused No.3 Vilas Popat Sonawane died on 24.11.2013 as per death certificate dated 18.01.2014 issued by Bruhan Mumbai Municipal Corporation which are respectively marked as Articles 'A' & 'B' for identification and kept with the file. Therefore, the appeal is abated against accused No.2 Popat Rama Sonawane and accused No.3 Vilas Popat Sonawane.

3. The facts of the prosecution case are as under:-

A] Rajesh Sonwane (PW-2), Arjun More, Pitambar Sonawane, Gautam Sonawane, Sunil Sonawane were involved in the offence of murder of Sanjay Sonawane son of accused No.2 Popat, as per Sessions Case No.212/1998 (Hereinafter referred to as the said Sessions Case). The trial in the said Sessions Case was conducted before [Shri. J.D.Kulkarni, the then Additional Sessions Judge, Jalgaon]. On 28.04.1999 judgment was to be delivered in the said Sessions case. Therefore, Police Constable Yuvraj Nagrut, Head Constable Shaikh Musa Shaikh Esa, Police Constable Alim Shaikh Ebrahim, Police Constable Balu Dagadu, Police Constable Nanasaheb Pandurang, and Police Constable Dilip Mukhtyarsingh had escorted the above named accused in said Sessions Case to the Court of Sessions on 28.04.1999 in the Government vehicle bearing No.Mh-12 E-8978. Before one hour of the judgment the accused in the said Sessions Case had given idea to the escorting party that relatives of the deceased Sanjay i.e. accused in this case would make attack on them. Therefore, Police Constable Nimba Patil who was on case watch duty had phoned to City Police Station, Jalgaon and Control Room. After 10 to 15 minutes therefrom 6 to 7

persons armed with swords were saying as to where are Rajesh Pitambar and others. Then said 6 to 7 persons had raised their hands with swords. The Police in escorting party had asked them to stop. But, they did not listen and they were coming towards Rajesh and others accused in the said Sessions Case. Since Police in escorting party felt that they would make attack on them and accused in the said Sessions Case and there would be danger to their life the Police Constable Nagrut fired a round from Carbine towards sky due to which two of them threw swords on the ground and some armed with swords ran towards ground floor. The PSI Ufad, Police Constable More and other Police staff apprehended those persons with weapons. Rajesh and others accused in the said Sessions Case were taken by Government vehicle to the Sub-Jail. The Police Constable Nagrut lodged FIR with City Police Station, Jalgaon on the same day at about 2.50 pm. The Crime No.50/1999 for the offences under Sections 147,148 and 307 of the IPC, under Section 4 r/w Section 25 of the Arms Act and under Section 37(1) r/w Section 135 of the Bombay Police Act came to be registered in the said Police Station and investigation was started.

B. During investigation PSI Patil visited the spot and drew the panchanama (Exh.24) in presence of panchas.

He seized cement of the room which was fallen due to hitting of the bullet and empty cartridge from the spot of incident. He arrested all the accused in the Court premises. The weapons were also taken in custody in the Court premises and panchanamas were prepared in the Police Station. The Police Constable Nagrut deposited carbine and empty cartridge which were seized under panchanama (Exh.26). The Investigating Officer recorded statements of Head Constable Shaikh Musa, staff members of the Court and Advocates on 28.04.1999. On 03.04.1999 he recorded statements of Rajesh and others. Carbine was kept in Armory at Head Quarter.

C. After completion of the investigation PSI Patil submitted the charge-sheet in the Court of Chief Judicial Magistrate, Jalgaon for the aforesaid offences against the accused. The learned Chief Judicial Magistrate, Jalgaon committed the case to the Sessions Court, Jalgaon as the offence under Section 307 of the IPC was exclusively triable by the Court of Sessions which was allotted to the 1-Ad-hoc Additional Sessions Judge, Jalgaon.

D. The charge was framed against the accused for the offences punishable under Sections 307 r/w 149,

Sections 147 and 148 of the IPC and Section 4/25 of the Arms Act to which accused pleaded not guilty and claimed to be tried. Their defence was denial. According to accused they were in cross terms with Rajesh who committed murder of Sanjay. After he was acquitted of the offence in the said Sessions due to political pressure this false case is filed against them.

4. To prove the charge against accused the prosecution has examined in all four witnesses and it has relied upon the complaint/FIR and panchanamas referred to above. Considering the evidence adduced by the prosecution the trial Court has held that the prosecution has failed to prove the offences against the accused with which they were charged and accordingly acquitted the accused of the offences punishable under Sections 307 r/w 149, 147 and 148 of the IPC and under Section 4 r/w Section 25 of the Arms Act by the impugned judgment and order. Therefore, this appeal is filed by the State against the acquittal of the respondents/accused on several grounds mentioned in the memorandum of appeal. As said earlier the appeal has been abated against the accused Nos. 2 and 3.

5. We have heard the learned APP appearing for the

appellant/State and learned Advocate appearing for the respondent Nos. 1,4 and 5 and with their assistance we have perused the evidence adduced by the prosecution. We have also perused the impugned judgment and order.

6. Since this is an appeal against the acquittal before examining the evidence adduced by the prosecution it is necessary to bear in mind the principle regarding approach of the appellate Court in the appeal against acquittal laid down by the Apex Court in the case of **Murlidhar alias Gidda and another Vs State of Karnataka, 2014(4)Mh.L.J.(Cri)353** wherein in para No.12 the Apex Court has held thus:

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in **Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai**

Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228,
K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC
355, Tota Singh Vs State of Punjab, (1987) 2 SCC
529, Ram Kumar Vs State of Haryana, 1995 Supp
(1) SCC 248, Madan Lal Vs. State of J & K,
(1997) 7 SCC 677, Sambasivan Vs State of Kerala,
(1998) 5 SCC 412, Bhagwan Singh Vs State of
M.P., (2002) 4 SCC 85, Harijana Thirupala Vs
Public Prosecutor, High Court of A.P., (2002) 6
SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003)
1 SCC 1, State of Karnataka Vs K. Gopalkrishna,
(2005) 9 SCC 291, State of Goa Vs Sanjay
Thakran, (2007) 3 SCC 755 and Chandrappa,
Chandrappa Vs State of Karnataka, (2007) 4 SCC
415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous

view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

7. The prosecution has alleged that after judgment was delivered in the said Sessions Case wherein PW-2 and others were accused for the offence of murder of son of present accused No.2 at about 01.00 pm. the incident took place in varanda of the Court and in the said incident at that time all the accused were members of unlawful assembly, they were armed with deadly weapons and in prosecution of common object of said assembly to commit murder of PW-2 they attempted to commit murder of PW-2 Rajesh and others accused in said Sessions Case. To prove the said facts prosecution has mainly relied upon the evidence of PWs.2 and 3 and circumstantial evidence i.e. panchanama of spot of incident (Exh.24), panchanama of seizure of weapons (Exh.25) and panchanama (Exh.26) of seizure of one carbine and empty cartridge.

8. The evidence of Rajesh Pitambar Sonawane (PW-2) who was accused in the said Sessions Case has deposed that he and four others were acquitted on 28.04.1999 in the said Sessions case by Additional District Judge Shri. J.D.Kulkarni for the offence under Section 302 r/w Section 34 of the IPC for committing murder of Sanjay Popat Sonawane. One Gulab Raghunath Patil who was District Head of the Shivsena was the complainant in the said Sessions Case. The deceased Sanjay was son of accused No.2 in the present case and rest of the accused in the present case are related to said accused. He further deposed that on 16.04.1999 arguments were heard in the said Sessions Case. They all were under trial prisoners in the said Sessions Case. After the arguments were heard while they were being taken by the police on 16.04.1999, the accused persons in the get of the Court had threatened them that on 28.04.1999 i.e. on the date of judgment they would kill them all and they would fire through country made revolver. The police took them to Sub-Jail, Jalgaon. They had submitted an application to the Jailor in respect of the said threat of accused and had requested for providing guards. All the accused reside at Jalgaon and they all are his relatives.

9. As regards the incident Rajesh (PW-2) has stated that on 28.04.1999 they were brought to the Court from the Jail with security. At 11.30 am they were sitting in front of the Court hall. At 12 noon Advocate Shri. Chitre appointed to assist the prosecution had entered the Court hall. Their Advocate Shri Sushil Atre after meeting them came down. Thereafter they were taken in the Court hall and there were police guards, Advocate Chitre, accused Nos.2,3 and 5 were with them. The judgment was delivered at 01.00 pm and they were acquitted. Thereafter, accused Nos. 2,3 and 5 came down. They were also taken out of the Court hall. Police Constable Lingayat came to them and informed to the guards that relatives of the deceased are armed with deadly weapons, and to load their guns and accordingly guards loaded the guns. One Police Constable went to phone in the police station since the situation in the Court premises was tense. Surname of the said police was Patil. As soon as he reached near them from the stair case they heard noise as "Mara Ani Sarvanna Kapa" from the side of gallery. All the five accused were coming while they (witness and others) were in front of the Court hall. Accused No.2 was armed with Koyata, accused No.3 was armed with sword. Accused No.5 Kailas was holding a sword and accused Nos. 1 and 4 were holding Koyatas. All the accused were aggressive and accused No.2

was instigating rest of the accused for making attack on them. He was uttering words 'Cut the Advocate Shri. Sushil Atre and accused' i.e. accused in the Sessions Case. When the accused were at a distance of 5 to 6 feet Police Constable Yuvraj Nagrut (PW-3) who was having carbine restrained them and said to these accused persons not to make attack on the accused in the said Sessions Case. All the accused have raised hands with weapons to make attack on them. Meanwhile, Police Constable Yuvraj Nagrut (PW-3) fired through carbine. It was hit to the roof of the building. The accused persons throwing weapons at our side, fled away on hearing the noise of fire. While the accused persons running away in the Court premises the Police caught them and PSI Ufad came to them and told that accused were arrested. Then in the security they (PW-2 and others) were taken in the Sub-Jail, Jalgaon.

10. In the cross-examination PW-2 has stated that when the accused persons threatened them Police were alongwith them. On 28.04.1999 they had informed to their Advocate Sushil Atre that accused persons had threatened them on 16.04.1999. Admittedly, the prosecution has not examined Advocate Sushil Atre or three policemen who had escorted accused in the said Sessions case on 16.04.1999.

In fact, the prosecution should have examined them. Therefore, the evidence of Rajesh (PW-2) regarding threat given to him and others on 16.04.1999 by the accused is not believable.

11. In the cross-examination Rajesh (PW-2) has further stated that police recorded his statement on 30.04.1999. He had stated before Police that on 28.04.1999 accused Nos. 3 and 5 Vilas and Kailas were present in the Court hall with accused No.2. He had also stated before police that their Advocate Sushil Atre met them and came down. He also stated before police that Police Constable Lingayat came to them and told to Police guards to load their guns. He stated before Police that PSI Ufad had came to them and told that they arrested the accused. He could not assign the reason as to why above facts did not find place in his statement before police. He again stated that he had not stated before police that PSI Ufad had came to them and informed that they have arrested the accused. Thus, the above evidence of PW-2 amounts to material omission in his statement before police and improvement while deposing before the Court and therefore, his evidence in respect of above fact is not believable.

12. Moreover, in the cross-examination PW-2 has stated that Police Constable Yuvraj (PW-3) did not say to the accused persons not to make attack on the accused in the said Sessions Case. He stated before Police that all the accused raised hands with weapons to make attack on them. He stated that he also stated before Police that on hearing the noise of fire the accused persons throwing weapons at their side fled away. He could not assign reason of absence of above facts in his statement before police. Thus, the evidence of Rajesh (PW-2) that Police Constable Yuvraj said accused not to make attack on them, that all the accused raised the hands with weapons to make attack on them (PW-2 and others) and that on hearing the noise of fire the accused persons throwing weapons at their side fled away is amounting to omission in his statement before police and improvement while deposing before the Court and therefore said evidence is not believable.

13. Rajesh (PW-2) has admitted that after delivery of the judgment when they were taken out of the Court hall there were near about 50 persons including Advocates and Court staff in varanda. So also, he admitted that at the time of firing there were Advocates, litigants and Court staff members in the varanda. Admittedly, the

prosecution has not examined any independent witness from the Court Staff, Advocates and litigants. Rajesh (PW-2) accused in the said Sessions case against whom there was charge of murder has admitted that he filed two bail applications. His all bail applications including the bail application before the High Court were rejected. Therefore, when he and others were acquitted in the said Sessions Case he had reason to depose against the accused /relatives of the deceased Sanjay Sonawane in the said Sessions Case. For the above reasons and due to omissions referred to above in his evidence and particularly in respect of the omission that all the accused raised hands with weapons to make attack on them i.e. witness and others the evidence of PW-2 Rajesh is not believable and sufficient to infer that the accused attempted to commit his murder. Another reason to hold this is that admittedly there is no evidence to show that any of the accused assaulted Rajesh (PW-2) by the alleged weapons. Moreover, the evidence of Rajesh (PW-2) is not sufficient to infer that all the accused were members of unlawful assembly, that they were armed with deadly weapons like swords and koyata and that the accused attempted to commit his murder.

14. The evidence of next eye witness Police

Constable Yuvraj Nagrut (PW-3) is that on 27.04.1999 he was allotted duty of guards for accused and the said duty was performed on 28.04.1999. Alongwith him there were one Head Constable and four more Constables as a guards. He was given 9 mm carbine and one of the constables was given 303 rifle. He deposed that on 28.04.1999 at about 10.00 am they had taken Rajesh Sonawane (PW-2) and other four accused to produce them before the Court in the Sessions Case No.212/1998 and on that day judgment was to be delivered. He stated that before one hour of delivery of judgment accused persons in the said Sessions case had told them that relatives of the deceased would make attack on them. As regards the incident he stated that the judgment was delivered in the said Sessions Case. After 10 to 15 minutes of the judgment near about 6 to 7 relatives of the deceased armed with weapons and choppers were found running towards the accused in the said Sessions Case. They asked them to stop in spite of that they rushed upon the person of the accused in the said Sessions case and guards. He stated that they feel that those persons would kill them and the accused in the said Sessions case. So, he took the position with carbine. He fired one round towards the roof. After fire two persons out of them threw weapons on the ground and all ran towards the ground floor. Thereafter, he learnt that PSI

Ufad and some police officials caught them with weapons. He stated that said incident occurred after 01.00 pm. After half an hour of the incident the accused in the said Sessions Case were reached to the Sub-Jail, Jalgaon. He stated that accused persons in the Court are same who had rushed upon them holding weapons. He lodged the FIR (Exh.32) on behalf of the State.

15. In the cross-examination he stated that he had stated at the time of filing FIR that after 10 to 15 minutes of his going to phone 6 to 7 persons armed with swords were found rushing towards them. He admitted that in the Court hall at the time of delivery of judgment relatives of the accused and some Advocates were present. He had admitted that he had seen assailants first time on the day of incident. And after the incident for the first time he had seen the accused before the Court. He stated that at the time of lodging FIR he stated that 6 to 7 relatives of the deceased with chopper and swords rushed towards accused in the said Sessions Case. He could not assign reason why said fact is not specifically mentioned in the FIR (Exh.32) that there were 6 to 7 relatives of the deceased and some of them were holding choppers. Therefore, his evidence that there were 6 to 7 relatives of the deceased and some of them were holding choppers is

amounting to omission in the FIR and improvement while deposing before the Court. Moreover, he had seen the assailants for the first time on the day of incident and no identification parade was conducted to identify the accused by this witness. As referred earlier the evidence of Rajesh (PW-2) shows that accused Nos. 1,2 and 4 were armed with Koyatas and accused Nos. 3 and 5 were armed with swords. However, PW-3 has not specifically deposed that particular accused was holding particular weapon as deposed by Rajesh (PW-2) and his evidence that 6 to 7 relatives of the deceased were armed with swords and choppers were found running towards the accused in the said Sessions Case is vague and not consistent with the evidence of Rajesh (PW-2) one of the accused in the said Sessions Case. Rajesh (PW-2) has not stated that any of the accused was holding chopper.

16. Yuvraj (PW-3) also admitted that at the time of delivery of judgment in the Court hall relatives of the accused and some Advocates were present. As observed earlier the prosecution has not examined independent witnesses present on the spot of incident i.e. the veranda of the Court at the time of incident. Yuvraj (PW-3) was guard on the day of incident and alongwith other constables he had brought accused in the Court. He being

the police witness and as entire incident was over within one minute as per his evidence and as he had seen the accused assailants for the first time in the Court on the day of incident and as there is no consistency in his evidence and in the evidence of Rajesh (PW-2) regarding weapons with the accused his evidence is not sufficient to infer that the accused formed unlawful assembly, that being member of unlawful assembly they were armed with deadly weapons and that they attempted to kill PW-2. His evidence of course shows that he fired one round towards roof but the same is not sufficient to infer that he fired round as accused came upon guards and the accused in the said Sessions case to attack on them as alleged by the prosecution.

17. The next piece of evidence relied upon by the prosecution is panchanama of spot of incident (Exh.24), panchanama of seizure weapons (Exh.25) and panchanma of one carbine and one empty cartridge (Exh.26) in presence of Panchas Dalsherkha Pathan (PW-1) and Jeevan Omkar Mahajan by Police Inspector Patil (PW-4). Panch Dalsherkha Pathan has not supported the prosecution as he has denied that all the above said three panchanamas were prepared in his presence. He has simply admitted his signatures on the said panchanamas. The prosecution has

not examined another Panch Jeevan Mahajan. Police Inspector Patil (PW-4) has stated that he visited the spot and prepared spot panchanama (Exh.24). He stated that accused and the weapons were taken in the custody in the Court premises and that seizure panchanama (Exh.25) showed to him is the same. He also stated that the complainant has deposited cartridge and carbine as per panchanama (Exh.26). On the basis of his evidence at the most it can be said that he prepared panchanama of spot of incident (Exh.24) and seized carbine and empty cartridge as per panchanama (Exh.26) on producing them by the complainant (PW-3) Police Constable Yuvraj. But, his evidence is not sufficient to infer that he seized one sword from the accused No.5 Kailas, One sword from the accused No.4 Vinod, one Koyata from accused No.3 Vilas and one Jambiya from accused No.2 Popat as alleged in the panchanama (Exh.25) as panch Dalsherkha Pathan (PW-1) has not supported the prosecution case and he (PW-1) has not specifically stated regarding seizure of said swords from the above said accused. So also, evidence of PW-4 is not sufficient to infer that he seized sword and one koyata which were thrown by the accused at the spot of incident as he has not specifically stated that said articles which were allegedly thrown by the accused at the spot of incident were deposited by PSI Ufad and then he had

seized the same. For the above reasons the evidence adduced by the prosecution is not sufficient to state that the accused were armed with swords, Koyata and Jambiya at the material time of incident in contravention of the provisions of Arms Act. Thus, circumstantial evidence in the form of panchanamas (Exh.24,25 and 26) is of no help to the prosecution to state that accused were members of unlawful assembly, they were armed with deadly weapons and that they had attempted to commit the murder of Rajesh (PW-2).

18. For all the reasons discussed above, we hold that the evidence adduced by the prosecution is not sufficient to infer that accused were members of unlawful assembly and the common object of said assembly was to attempt to commit murder of Rajesh (PW-2) and others, that the accused members of said unlawful assembly were armed with deadly weapons and that the accused being members of unlawful assembly in prosecution of common object of said assembly attempted to commit murder of the accused in the said Sessions Case and that accused possessed the weapons like swords without pass or permits in contravention of Section 4 of the Arms Act. Thus, the prosecution has failed to prove the offence under Section 307 r/w Section 149, Sections 147 and 148 of the IPC and

Section 4 r/w Section 25 of the Arms Act. The trial Court has rightly held that the prosecution has failed to prove these offences against the accused beyond reasonable doubt and rightly acquitted them of the said offences by the impugned judgment and order. The said view taken by the trial Court is reasonable and possible view. There is no error in appreciating the evidence by the trial Court. Therefore, there is no ground to interfere with the impugned judgment and order. Therefore, the appeal being devoid of merits, the same is liable to be dismissed. Accordingly, we dismiss the same. The bail bonds of the accused Nos.1,4 and 5 are cancelled.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]