

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.544 OF 2012

Anant Dyaneshwar Jadhav
Aged 35 years, Indian Inhabitant,
permanently residing at
Maratha Vasti, Bhavani Peth,
Solapur, Maharashtra and
currently admitted in Civil
Hospital at Solapur.

... Appellant

versus

The State of Maharashtra
(At the instance of
Jail Road Police Station,
Solapur-C.R.No.100/09)

... Respondent

**WITH
CRIMINAL APPEAL NO.772 OF 2013**

The State of Maharashtra
(At the instance of
Jail Road Police Station,
Solapur-C.R.No.100/09)

... Appellant
(Orig. Complainant)

versus

1. Siddheshwar @ Tatya Jaiprakash Vadtile
2. Shivanand Nagnath Wadkar
3. Anand Nagnath Kadam
4. Jyotiba @ Sarja Sidram Mohite
5. Bandu Murlidhar Jadhav

... Respondents
(Orig. Accused Nos.2, 4 to 7)

.....

- Mr.Ashok Mundargi a/w Ayaz Khan and Priyal G. Sarda, for the Appellant in Appeal No.544/12.
- Mr.Priyal G. Sarda for Respondent Nos.1, 3, 4 and 5 in Appeal No.772/13.
- Mr.Viresh V. Purwant for Respondent No.2 in Appeal No.772/13.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : A.A. SAYED &
SARANG V. KOTWAL, JJ.**
RESERVED ON : 13th SEPTEMBER, 2017
PRONOUNCED ON : 27th SEPTEMBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. Both these Appeals arise out of the same Judgment and Order dated 30/04/2012 passed by the Additional Sessions Judge, Solapur, in Special Case No.30/09 and therefore both these Appeals are disposed off by this common judgment. For the sake of convenience the Appellant in Criminal Appeal No.544/12 and the Respondents in Appeal No.772/13 are referred to as the Accused as per their serial numbers in the said Sessions Case. The Criminal Appeal No.544/12 is filed by the original Accused No.1 challenging his conviction and sentence at the conclusion of the trial. The State of Maharashtra has

preferred Criminal Appeal No.772/13 against the Respondents therein, who were the original accused Nos.2, 4 to 7 in the said Special Case, who were acquitted. The accused No.3 who was also convicted alongwith accused No.1, has not preferred any Appeal.

2. The Appellant in Criminal Appeal No.544/12, the original accused No.1 and the original accused No.3 were convicted for the commission of offence punishable u/s 302 of the Indian Penal Code and they were sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine to suffer rigorous imprisonment for six months. Both these accused Nos.1 and 3 were further convicted for the offence punishable u/s 4 (25) of the Arms Act and they were sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment to suffer rigorous imprisonment for three months. The substantive sentences were directed to run concurrently and both these accused were given benefit of set off u/s 428 of

Cr.P.C. The original accused Nos.2 and 4 to 7 were acquitted from all the charges. These accused and accused Nos.1 and 3 were acquitted from the offences punishable u/s 143, 147, 148, 323, 324, 302, 504, 506 r/w 149 of the IPC and u/s 3(i)(x) r/w 6 as well as u/s 3(ii)(v) of The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and u/s 7(1)(d) and 10 of the Protection of Civil Rights Act, 1955 and u/s 4(25) of the Arms Act and u/s 135 of the Bombay Police Act. The original accused Nos.2 and 4 to 7 were further acquitted for the offence punishable u/s 302 r/w 149 of IPC and u/s 4(25) of the Arms Act.

3. The prosecution case pertains to the murder of one Deepak Sable, which took place at around 09.00 p.m. on 07/06/2009 outside Sambhaji Talim in Maratha Vasti, Solapur. According to the prosecution case, all these accused along with the other accused, who were absconding, formed an unlawful assembly. They were having weapons like sword, rod and sticks. According to the prosecution case when Deepak, his brothers

and friends were passing on the road in front of Sambhaji Talim, accused assaulted them. Except Deepak, his companions managed to escape. Deepak Sable was assaulted by the accused with their weapons. After some time Deepak's brother and friends came in search of him. He was found lying unconscious in another lane. Deepak was removed to hospital. Deepak's brother Rohit Sable (P.W.5) went to the Police Station and lodged his FIR, which was registered vide C.R.No.100/09 at Jail Road Police Station. Deepak succumbed to his injuries in the hospital on 09/06/2009 and therefore section 302 of the Indian Penal Code was added. In the mean time, the investigation had commenced. The spot panchanama and the inquest panchanama were conducted. Within a few days accused were arrested. Statements of various witnesses were recorded and at the conclusion of the investigation, the charge-sheet was filed in the Court of J.M.F.C. (3), Solpaur. Thereafter the case was committed to the Court of Sessions. The charges were framed against the aforementioned 7 accused, to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined 20 witnesses including the pancha witness and the police witnesses. Apart from them, the two main witnesses i.e. P.W.5 Rohit Sopan Sable, who was the brother of the deceased and P.W.6 Babloo Madhukar Aigole, who was the friend of the deceased, were examined as eyewitnesses to the incident.

5. P.W.13 Dr. Suryakant Baburao Kambale had conducted post-mortem examination and he had found following injuries on the dead body.

- “1) C.L.W. (5 x 5 cm) bone deep about 'Y' shaped present over right parieto occipital region of the skull with crepitus positive;
- 2) Sutured wound about 4 cm over left occipital region of skull with crepitus positive;
- 3) Linear abrasion about 5 cm over right shoulder with scab formation;
- 4) Contusion over forehead and above right eye with black eye about 6 cm x 4 cm;
- 5) Linear abrasion 3 x 1 cm reddish superficial over left cheek with scab formation;

6) C.L.W. 3 x 1 cm over left middle finger bone deep; fracture left metacarpal bone of left middle finger.”

6. According to him the injury Nos.1 and 4 were fatal injuries as they were corresponding to the fracture of skull which was an injury to brain. He has opined that injury No.1, 2, 4 and 6 were grievous. He has given cause of death as, 'death due to head injury'. He has further deposed that the injury No.1 was possible by sword, the injury Nos.2, 4, 6 and 7 were possible by iron rod and the rest of the injuries were possible by sticks. Curiously in the cross-examination, after he was recalled, he has opined that injury No.1 was not possible by sword and the injury No.2 was also not possible by sword.

7. We have heard learned Senior Counsel Mr.Ashok Mundargi, for the Appellant in Appeal No.544/12, Mr.Priyal G. Sarda for Respondent Nos.1, 3, 4 and 5 in Appeal No.772/13, Mr.Viresh V. Purwant for the Respondent No.2 in Criminal Appeal No.772/13 and Mr.H.J. Dedhia, APP for the State of Maharashtra.

8. As mentioned earlier, the prosecution case mainly rests on the evidence of the two eyewitnesses i.e. P.W.5 Rohit Sable and P.W.6 Babloo Aigole. P.W.5 Rohit Sable was Deepak's younger brother. According to him they used to work as Labourers in the Siddheshwar Yard and their timing was from 09.00 p.m. to 10.00 p.m. P.W.5 Rohit Sable has deposed that he and his brother Deepak belonged to Hindu Mahar community and accused belonged to Maratha caste. When they reached Sambhaji Talim, they were suddenly attacked by 10-15 persons including the present accused, carrying sword, sticks and iron rod. He has further deposed that the accused No.1 abused them by referring to their caste by passing derogative remarks about their caste. He has further deposed that the accused No.1 assaulted Deepak on his head with sword. The accused No.3 was having iron rod, one Bandu Jadhav was having Pharshi (one kind of axe) and the remaining accused were having sticks. According to him, all of them assaulted Deepak. Due to fear this witness and others ran away in a lane and after some time they

returned to the spot where Deepak was assaulted, but could not find him. Thereafter he went to his Uncle Pandurang Sable and came on the spot with him. They saw that a police jeep was already there in a lane and Deepak was lying unconscious with injuries on head, chest and below the eye. The police jeep took Deepak to Civil Hospital. P.W.5 then went to his parents and informed about the incident. Then they went to the Civil Hospital, where Deepak was being treated and thereafter this witness went to the police station to lodge his FIR. He has stated that Deepak succumbed to his injuries on 09/06/2009 at about 12.30 p.m. He further deposed that his supplementary statement was recorded on 11/06/2009 and in his supplementary statement he added five names and he has stated that since his mental condition was not proper on 07/06/2009, he had not mentioned their names in the FIR. According to him, the incident of assault had taken place on 07/09/2009 at about 06.00 p.m. between two groups i.e. boys from their Vasti and the accused persons. Though he had not seen the incident, he had come to know about it on the next day. The incident of

assault on Deepak at 09.00 p.m. was a result of the earlier incident at 06.00 p.m.

9. P.W.6 Babloo Aigole has described the main incident on the similar lines as described by P.W.5. He has further stated that he ran away from the place of incident. He came back after some time and searched for Deepak, but he was not found there. Therefore he went to the house of Pandurang Sable and returned. He has further deposed that he returned to the spot and found that Deepak was being lifted in a police jeep, behind the house of one Lata. In his cross-examination he has admitted that his statement was recorded by the police on 11/06/2009.

10. Mr.Mundargi, the learned Senior Counsel criticized the evidence of these two witnesses and has submitted that from their evidence it is clear that they have not seen the incident and they have implicated the accused because they were guided by their local leaders to implicate them falsely. In this connection he has invited our attention to the deposition of P.W.1

Siddheshwar Saybu Kadam, who is examined as the Pancha for the spot panchanama, but in the cross-examination this witness, P.W.1, has admitted that in the year 2007 this witness had contested Municipal Election against the accused No.1. He has admitted that the accused No.1 was respected in the Maratha Vasti and this witness was respected in his Mukund Nagar and Rajiv Gandhi Nagar area. He has further admitted that the deceased, P.W.5 Rohit Sable, P.W.6 Babloo Aigole and Pandurang were voters in his locality. He has further stated that on 07/06/2009, he had gone to the Civil Hospital and had met P.W.5 Rohit Sable and his parents at 10.00 p.m. and had enquired with them about the incident.

11. Mr.Mundargi, the learned Senior Counsel also invited out attention to the evidence of P.W.7 Ajit Shivaji Gaikwad, who was examined to prove inquest panchanama. This witness has deposed about the phone calls made to him by the accused No.1 about the crime and the accused No.1 showing willingness to pay for the expenses if Deepak, who was then injured, was removed to a private hospital. Apart from this, his cross-

examination shows that the accused No.1 had contested election against this witness's wife. This witness states that he had gone to Civil Hospital and had met P.W.5 Rohit Sable.

12. Mr.Mundargi, the learned Senior Counsel invited out attention to evidence of P.W.2 Sudhakar Ramchandra Gaikwad. This witness was examined to prove seizure of stick at the instance of accused Nos.6 and 7. In the cross-examination he has admitted that on 07/06/2009 he had gone to the Civil Hospital to meet P.W.5 Rohit Sable. At that time there were many people with Rohit Sable including the leaders of their caste. This witness has admitted that P.W.5 Rohit Sable told him that he could not see what happened due to rush of people. He further admitted that this witness and others took P.W.5 Rohit Sable to Police Station and told him how to file the complaint. This witness has further clearly admitted that as per their say, P.W.5 Rohit Sable had filed complaint in the police station. After this clear admission there was no re-examination on behalf of the prosecution. Therefore Mr.Mundargi has submitted that the FIR was a result of deliberation of the leaders with P.W.5 Rohit

Sable and consultation amongst the political opponents of the accused No.1 and the FIR was lodged as per their say and it is quite obvious that, due to political rivalry, the accused Nos.2 to 7 and the accused No.1 who was their leader, were implicated in this crime. Mr.Mundargi submitted that the prosecution has not led any evidence in respect of the incident, which had taken place at about 6 O'clock in the evening on 07/06/2009. Therefore, in any case, there was no motive for the accused to assault Deepak, who was not even said to be involved in the incident at 06.00 p.m.

13. It was further contended that there are material contradictions between the evidence of P.W.5 and P.W.6 Babloo Aigole. P.W.5 Rohit Sable has stated that after the incident, he returned to the spot. He did not find Deepak there. Therefore he went to Pandurang Sable and came back to the spot. Whereas P.W.6 Babloo Aigole has deposed that after the assault, they returned to the spot. Deepak was not found at the spot. Then they went to the house of Pandurang Sable and then this witness

P.W.6 and Pandurang Sable came to the spot and found Deepak being lifted by police and kept in police jeep. This evidence shows that there are two versions. On one hand P.W.5 says that he and Pandurang Sable came to the spot after the incident. On the other hand P.W.6 Babloo Aigole says that he and Pandurang Sable came to the spot. They did not speak about each other's presence when they had returned to the spot to search for Deepak. Pandurang Sable is not examined by the prosecution for the reasons best known to it. He was an important witness. He could have established presence of these two witnesses or the presence of either of these two witnesses at the spot soon after the incident. In the light of the fact that these two witnesses are giving contrary versions, in that behalf, it was necessary for the prosecution to have examined Pandurang Sable.

14. It is also quite surprising that, when after the incident either P.W.5 or P.W.6 Babloo Aigole returned to the spot, Deepak was not found lying there. The prosecution evidence shows that he was lying in front of the house of Awtade and the

evidence is also on record to show that the said spot was merely 200 ft away from Sambhaji Talim. Therefore it is rather difficult to believe that when Pandurang Sable and either of these witnesses P.W.5 and P.W.6 Babloo Aigole searched for Deepak at the spot, they could not find him. This gives rise to a reasonable possibility that both these witnesses were not at the spot and had not seen the incident, but came to know about the incident only in the hospital.

15. According to the P.W.5 Rohit Sable the incident took place at about 09.00 p.m. Thereafter he came to the spot in search of Deepak. Then the police took Deepak to hospital. Then this witness had gone to his house to inform his parents and he was in his house for about 10-15 minutes and thereafter they went to the Civil Hospital, which took 15-20 minutes. He has further stated that Deepak was treated for about 1-2 hours, he met others and then he had gone to the police station. P.W.6 Babloo Aigole has also admitted that, in the Civil Hospital he was with Rohit Sable for 1 or 2 hours and after two hours Rohit

Sable went to the police station to lodge his FIR. In such circumstances, it was not possible that the FIR could have been lodged at 10.35 p.m. as is the prosecution case. Thus, the possibility of manipulation of the FIR and the timing thereon, is not ruled out.

16. As far as P.W.6 Babloo Aigole is concerned, his statement was not recorded by the police either at the spot or in the hospital, where he was available for 2-3 hours or even for the next four days though he was available. His statement was recorded for the first time on 11/06/2009. There is no explanation as to why his statement could not be recorded earlier. Thus, there was sufficient time for him to discuss the matter with his friends and leaders of his locality and therefore false implication of the accused cannot be ruled out.

17. Even P.W.5 Rohit Sable had given his supplementary statement on 11/06/2009 and has added a few names, which clearly means that he has implicated even some more accused

on 11/06/2009. There are major important omissions from his FIR which are brought on record by the defence. Though in his deposition P.W.5 has explicitly mentioned abusive words uttered by the accused No.1, those words are missing in the FIR. In the FIR no specific role or weapon was attributed to any of the accused except the statement that they were carrying weapons and had assaulted. However, in his supplementary statement and in his deposition he has attributed specific roles and weapons, in particular to the accused Nos.1 and 3, which also points to deliberate false implication. Therefore, we are of the opinion that the P.W.5 has deliberately tried to implicate the accused. We do not feel it safe to rely on his evidence.

18. Both these witnesses P.W.5 and P.W.6 Babloo Aigole have deposed that the incident has taken place on the road in front of Sambhaji Talim. Both these witnesses have stated that when the assault started they ran away from the spot and came back there after some time. But they did not find the injured Deepak lying there. Their initial search was unsuccessful and

when they came back with Pandurang Sable, though it is unclear as to which one of them returned to the spot with Pandurang Sable, the injured Deepak was not lying in front of Sambhaji Talim. According to the prosecution case, Deepak was found lying in front of the house of Awatade in a different lane from where the police removed him to the hospital. Thus the prosecution case involves two spots. The first spot was more important because according to eyewitnesses P.W.5 and P.W.6 when they had seen the incident, Deepak was assaulted at that spot. The second spot was in front of house of Awatade, where Deepak was lying injured. The second spot is not that important because it is not much disputed that Deepak was lying in injured condition at the spot. However, the spot in front of Sambhaji Talim was more important because according to eyewitnesses Deepak was assaulted at that spot. The investigating agency has not made any efforts to collect any evidence to corroborate this version of the eyewitnesses that the incident of assault had taken place in front of Sambhaji Talim. They did not collect the sample of earth from that spot for chemical analysis. Such

sample could have established the fact that the assault had indeed taken place in front of Sambhaji Talim. This could have lent corroboration to the version of eyewitnesses. In this behalf, Mr.Mundargi has relied on the Judgment of the Hon'ble Supreme Court in the case of ***Lakshmi Singh and Others Vs. State of Bihar, reported in AIR 1976 SCC 394*** wherein the Supreme Court has held that;

“To add to this another important circumstances is the omission on the part of the prosecution to send the bloodstained earth found at the place of occurrence for chemical examination which could have fixed the situs of the assailants. In almost all criminal cases, the bloodstained earth found from the place of occurrence is invariably sent to the Chemical Examiner and his report along with the earth is produced in the Court, and yet this is one exceptional case where this procedure was departed from for reason best known to the prosecution. This also, therefore, shows that the defence version may be true. It is well settled that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable

doubt on the prosecution case which is sufficient to enable the Court to reject the prosecution version.

19. Thus, in the present case also it was important for the prosecution to have led some corroborative evidence to show that the assault had taken place in front of Sambhaji Talim as deposed by P.W.5 and P.W.6 Babloo Aigole.

20. There is another circumstance in this case in the nature of alleged extra judicial confession made by the accused No.1 to P.W.7 Ajit Gaikwad. According to this witness, P.W.7 Ajit Gaikwad, when he was in the Civil Hospital in the night, he received a phone call from the accused No.1 and according to this witness, accused No.1 told him that they had beaten Deepak and he further requested that Deepak should be shifted to a private hospital and that he was ready to incur the expenditure. Similar phone calls were received on 08/06/2009 at about 01.00 p.m. and again on 09/06/2009 at 01.30 p.m. There was one more phone call from a different phone number and P.W.7 Ajit Gaikwad claims that last phone call was made from the mobile

phone of Ganesh Jadhav who was the brother of the accused No.1. In this connection, the prosecution has not brought on record any material in the form of the call data records. There is nothing to show that in fact call received by this witness was from the phone belonging to any of the accused. There is no record to show that the accused No.1 himself spoke to this witness on the phone call. In any case, recognition of voice on the phone call is not as clear as it is in the case of direct conversation. Moreover, this witness P.W.7 Ajit Gaikwad has admitted that he himself was a political opponent of accused No.1. Wife of this witness had contested election against the accused No.1. The statement of this witness was recorded by the police on 12/06/2009. There is no reason why this witness had not informed the police about receiving such calls from the accused No.1 on earlier occasions. As per his version, he was receiving calls of the accused from 06/06/2009 to 09/06/2009. Thus, the totality of evidence creates doubt about truthfulness of his version. It is not supported by any phone call details which were not very difficult to procure.

21. Apart from this evidence, there is evidence of recovery of alleged weapons. According to the prosecution case, in this case, four bamboo sticks, one iron road and one sword was recovered at the instance of the accused and except the sword, none of the weapons showed presence of blood on it. Therefore in any case, this is not an incriminating circumstance against the accused from whom such recovery was effected. Bamboo sticks are in any case common articles and the recovery of such sticks cannot be of much assistance to the prosecution.

22. As far as recovery of sword at the instance of the accused No.1 is concerned; for the said purpose, P.W.11 Audumbar Sanjay Shinde and P.W.16 Mainoddin Mazum Naikwadi are examined as the Panchas before whom, the accused No.1 had allegedly made disclosure statement leading to the recovery. Both these Panchas have not supported the prosecution case and were declared as hostile witnesses. Therefore for the said purpose, the only available evidence is

that of the A.C.P. Shivprasad Gurubasayya Ghalimath, P.W.19. He has stated that, on 18/06/2009, the accused No.1 showed willingness to produce the sword used in the offence and pursuant to his disclosure statement, the Panchas were taken near Rupbhavani Mandir from Sambhaji Talim road and at his instance, the sword was recovered from the bushes. In the cross-examination, he has admitted that the spot from where the sword was recovered was an open space and it was easily accessible. Though, this witness has stated that the sword was seized, sealed and labelled with signature of the Panchas, the Panchanama Ex.165 itself does not mention that it was sealed. It is merely mentioned that the label bearing signature of the Panchas was pasted on the said sword. The C.A. report shows that sword was seen in the sealed parcel and the seal was intact. However, in the absence of any indication to that effect regarding the seal in the Panchanama, it is difficult to believe that the sword was properly sealed. In any case, though there was human blood detected on the sword, the blood grouping was inconclusive. Because of these infirmities even this

circumstance of recovery of sword cannot be held to be proved by the prosecution.

23. As far as recovery of iron rod is concerned, according to prosecution case, it was recovered at the instance of the accused No.3 Bhagwat. It was recovered from Sambhaji Talim, where it was buried inside the practicing arena. Here again, the panchanama does not show that it was properly sealed and as mentioned earlier, the rod does not show presence of human blood. In this behalf the prosecution has examined P.W.8 Shankar Mallapa Awale and P.W.12 Youraj Ram Lomte. Both these witnesses have not supported the prosecution case. This circumstance is not helpful to the prosecution.

24. The clothes of the accused did not show presence of human blood and therefore seizure of such clothes is of no consequence.

25. The prosecution has not established the fact by

independent evidence to prove that the P.W.5 Rohit Sable and P.W.6 Babloo Aigole alongwith deceased used to regularly go to the marketyard for their work in the night shift. Both these witnesses have tried to project that they used to go from that road every night and therefore they were not the chance witnesses. However, the prosecution has not established that they used to regularly use that road at the same time every night. According to them, apart from these two witnesses and Deepak, there were other friends namely Suresh Babale, Kishore Gaikwad, Balu Sarvade who were with them. However, none of these witness is examined and as mentioned earlier, even Pandurang Sable who was a material witness, was not examined. Therefore we are of the view that P.W.5 and P.W.6 Babloo Aigole are not reliable witnesses. The prosecution has not proved its case through these witnesses beyond reasonable doubt.

26. From the sequence of events it appears that the prosecution has relied on the incident which had taken place

earlier in that evening at about 06.00 p.m. According to the prosecution case, the main incident of assault was the fallout of the earlier incident which had taken place at 06.00 p.m. The prosecution has not led any evidence whatsoever to show that such an incident had in fact taken place. None of the participants or victims of that incident was examined by the prosecution. Even as per the prosecution case, neither P.W.5 Rohit, nor P.W.6 Babloo Aigole nor Deepak and other friends were part of the earlier incident. Therefore there was no reason for the accused to target them. Mr.Mundargi has rightly submitted that the only inference which can be drawn is that these eyewitnesses have not witnessed the incident and the incident had not taken place in front of Sambhaji Talim.

27. In any case, the learned trial Judge has already given benefit of doubt to other accused except the accused Nos.1 and 3. Accused No.2 and 4 to 7 are already acquitted. Accused No.3 for some reason has not preferred any Appeal. During the course of arguments Mr.Mundargi pointed out that against other

accused apart from these accused, another trial was held vide Special Case No.36/14 before the Special Judge at Solapur. In the said case Ganesh Dyaneshwar Jadhav, Gopal Mohan Mane, Dnyaneshwar Bhagwat Shirsat and Raju Ramehs Surwase were the four accused. At the conclusion of the trial, all of them were acquitted of all the offences and the State has not preferred any Appeal against that Judgment and Order dated 16/05/2015 passed by the learned Special Judge, Solapur, in Special Case No.36/14. Though we have strictly gone by the evidence on record in the Appeals before us, the fact remains that except accused Nos.1 and 3, all other accused were given benefit of doubt in the trials.

28. As far as the Criminal Appeal No.772/13 which is filed by State of Maharashtra is concerned, we find that the view taken by the learned Special Judge in the Special Case No.30/09 in acquitting the accused Nos.2 and 4 to 7 is a reasonable and possible view. We do not find such finding or reasoning to be perverse. Therefore we are not inclined to interfere with the said

judgment and order of acquittal. On the basis of the above discussion, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt. The accused No.3 has not preferred any Appeal; but since we are holding that the prosecution has failed to establish its case, the benefit should also be given to the accused No.3 of these findings. In that behalf, we are relying on the judgment of Hon'ble Supreme Court in the case of *Ashok @ Dangra Jaiswal Vs. State of M.P. reported in 2011 AIR SC 1335*, wherein the benefit of acquittal of one accused was given to the other accused who were not before the Court. Similar view is taken by the Hon'ble Supreme Court in the case of *Vajrapu Sambayya Naidu and others Vs. State of A.P., reported in 2003 Cr.L.J. 4433*. Even a Division Bench of this Court in the case of *Ankush s/o. Munjaji Pawar Vs. State of Maharashtra, reported in 2005 ALL MR (Cri) 2624*, had given benefit of their findings to the accused who had not preferred any Appeal. The Division Bench has held thus;

“.....For the reasons discussed hereinabove, we must say

that, the prosecution has failed to establish the guilt. The judgment and conviction, therefore cannot be sustained against either of the accused, in view of the fact that, the evidence relied upon for conviction of the two accused, by the learned Trial Judge, is one and the same, which we have found to be unworthy of credence and belief. Hence, although there is no appeal filed by accused No.2, Sow. Sunanda Pandurang Pawar, resident of Mumbai, Taluka-Loha, District-Nanded, she should be entitled to the benefit of our observations and findings, as recorded pursuant to the arguments advanced on behalf of appellant-accused No.1, Ankush Munjaji Pawar. Such a course of action is necessary in the interest of justice, failing which, accused No.2 Sunanda would be undergoing life imprisonment, by reason of impugned judgment, which we found to be unsustainable.

We are, therefore, inclined to exercise our inherent powers, as conferred by section 482 of the Code of Criminal Procedure, 1973, in favour of accused No.2 Sunanda. Section 482 reads :-

*“482. Saving of inherent powers of High Court –
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order*

under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

We will be justified in directing acquittal of original accused No.2 Sow. Sunanda Pandurang Pawar and her enlargement immediately, simultaneously with accused No.1, in the light of clauses underlined hereinabove for the purpose of emphasis. It would be absurd that accused No.2 should continue to undergo life imprisonment, merely because she has not filed any appeal, after we found the judgment convicting her, to be unsustainable.....”

29. Following the same ratio, we are inclined to extend the benefit to the accused No.3 who has not preferred any Appeal against the impugned judgment and order convicting him. Hence the following order:

ORDER

1. The Criminal Appeal No.544/12 preferred by the original Accused No.1 Anant Dyaneshwar Jadhav is allowed.

2. The Judgment and Order dated 30/04/2012 passed by the Additional Sessions Judge, in Special Case No.30/09, convicting and sentencing the Appellant/Accused No.1 u/s 302 of the Indian Penal Code and u/s 4(25) of the Arms Act are set aside. The Accused No.1 Anant Dyaneshwar Jadhav is acquitted of all the charges.
3. The Judgment and Order dated 30/04/2012 passed by the Additional Sessions Judge, in Special Case No.30/09 convicting and sentencing the original Accused No.3 Bhagwat @ Bhagya Devidas Bhosale u/s 302 of the Indian Penal Code and u/s 4 (25) of the Arms Act are set aside and the said Accused No.3 (who has not preferred any Appeal before us) is acquitted of all the charges.
4. The Criminal Appeal No.772/13 preferred by the State of Maharashtra is dismissed.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)