

rkmore

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.747 OF 2008**

Digitally
signed by
DINESH
SADANAND
SHERLA
Date:
2021.10.27
13:47:53
+0530

- | | | | |
|----|--|---|--|
| 1. | Kishore Balkrishna Mhatre |] | |
| | Age : 32 years, | | |
| 3. | Balkrishna Laxman Mhatre |] | |
| | Age : 57 years, |] | |
| | Both residing at, Chinchpadagaon, |] | |
| | Ambernath, Taluka-Kalyan, Dist. Thane. |] | Appellants/
Org. Accused Nos.1 and 2. |

vs.

- | | | | |
|----|---|---|-------------|
| 1 | The State of Maharashtra |] | |
| | (At the instance of Vitthalwadi Police Station, | | |
| | Dist. Thane) |] | |
| 2. | Gaurabai Balaram Mhatre |] | |
| | Age : Adult, |] | |
| | R/o, Chinchpadagaon, Kate Manevali |] | |
| | Tal-Ambernath, Kalyan(E), Dist. Thane. |] | Respondents |

**ALONGWITH
CRIMINAL APPEAL NO.211 OF 2009**

- | | | |
|--------------------------------------|---|--------------------------------|
| The State of Maharashtra |] | |
| (Through Vitthalwadi Police Station) | | Appellant/ Org.
Complainant |

vs.

- | | | |
|----|--|---|
| 1. | Pradeep Rajaram Tare |] |
| | Age : 27 years, |] |
| | R/o Chinchpadagaon, |] |
| | Ambernath, Taluka-Kalyan, Dist. Thane. |] |
| 2. | Sandip Balkrushna Mhatre |] |
| | Age : 24 years, |] |
| | R/o Chinchpadagaon, |] |
| | Ambernath, Taluka-Kalyan, Dist. Thane. |] |
| 3. | Rupesh Sadanand Jadhav |] |
| | Age : 28 years, |] |
| | R/o Navapada, Subhash Road, |] |
| | Jadhav Bldg. Room No.6, Near Marathi |] |
| | School, Vishnu Nagar, Dombivli. |] |
| 4. | Ramesh Dinkar Gaikwad |] |

- | | | | |
|----|---|---|--|
| | Age : 10 years,
R/o Ashok Nagar, Gaikwad Chawl,
Valdhuni, Taluka-Kalyan, Dist. Thane. |] | |
| 5. | Machindra Damu Mhatre
Age : 30 years,
R/o Anandwadi, Behind Shiv Mandir,
Vitthal Mandir, Kate Manevali, Kalyan(E). |] | |
| 6. | Rupesh Eknath Pawase
Age : 25 years,
R/o Anandwadi, Behind Shiv Mandir,
Vitthal Mandir, Kate Manevali, Kalyan(E). |] | |
| 7. | Dilip Rajaram Tare
Age : 30 years,
R/o Chinchpadagaon,
Ambarnath, Taluka-Kalyan, Dist. Thane. |] | |
| 8. | Vijay Ramdas Bhoir
Age : 27 years,
R/o Devichapada, Satyawan Chowk,
Dombivli, Dist. Thane. |] | |
| | | | Respondents/
Org. Accused Nos. 5 to 12. |

**ALONGWITH
CRIMINAL APPEAL NO.569 OF 2008**

- | | | | |
|----|---|---|--|
| 1. | Pandhari Babu Mhatre
Age : 43 years, |] | |
| 3. | Ganesh Pandhari Mhatre
Age : 25 years,
R/a Kalyan, Dist. Thane. |] | |
| | | | Appellants/
Org. Accused Nos.3 and 4. |

vs.

The State of Maharashtra (At the instance of Vitthalwadi Police Station)	]	Respondent
---	---	------------

**ALONGWITH
CRIMINAL REVISION APPLICATION NO.435 OF 2008**

Ravi Balaram Mhatre	]	Applicant
---------------------	---	-----------

vs.

Pradeep R. Tare and ors.	]	Respondent
--------------------------	---	------------

Mr.Niteen Pradhan, Sr. Counsel a/w Ms.S.D. Khot i/b Mr.Rupesh Nalawade for Appellant in Cr. Appeal No.569/2008.

Mr.Aniket Vagal for appellant in Cr. Appeal No.747/2008.

Mr.Niranjan Mundargi i/b Mr.Rupesh Nalawade for Respondent Nos.5

to 12 in Criminal appeal No.211/2019

Mr.Suraj Naik i/b Mr.R.D. Suryawanshi for Applicant in Criminal Revision No.435/2008.

Ms.P.P. Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

**RESERVED ON : 01.03.2021.
PRONOUNCED ON : 26.10.2021.**

COMMON JUDGMENT : (PER : N.R.BORKAR, J.)

1] The above three appeals and criminal revision application are filed against one and the same judgment and order dated 06.06.2006 passed by the District Judge -2 and Additional Sessions Judge, Kalyan in Sessions Case No.49 of 2006. They were, therefore, heard together and are being disposed of by this common Judgment.

2] In the aforesaid sessions case, in all 12 accused were tried for the offences punishable under Sections 147, 148, 302, 307, 326 read with 149 of the Indian Penal code and in the alternative 302, 307, 326 read with 34 of the Indian Penal Code. They were also tried for the offences punishable under Section 25 of the Arms Act and 135 of the Bombay Police Act.

3] By the impugned Judgment and order, the trial Court convicted accused Nos.1 to 4 for the offences punishable under Sections 147, 148 of the Indian Penal Code and sentenced them to suffer Rigorous Imprisonment for two years and to pay fine of Rs.1000/- each. Accused Nos.1 to 4 have been further convicted for the offence punishable under Section 302 read with 149 of the Indian Penal Code

and sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.5000/- each. They have been further convicted for the offence punishable under Section 326 read with 149 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for four years and to pay fine of Rs.1000/- each. The trial Court acquitted rest of the accused i.e. accused Nos. 5 to 12 of all the charges.

4] Criminal Appeal No. 747 of 2008 is filed by accused Nos.1 and 2 and Criminal appeal No.569/2008 is filed by accused Nos.3 and 4 challenging their conviction. Criminal Appeal No.211 of 2009 is filed by the State and Criminal Revision Application No.435 of 2008 is filed by the original complainant against acquittal of accused Nos.5 to 12.

5] It is the case of the prosecution that there was dispute between the deceased Balaram and accused No.2 in relation to the ancestral land bearing Survey No.28/17, admeasuring 92.8 R situated at Village Chinchpade, Taluka – Ambernath, District – Thane. In relation to said dispute even civil suits were filed in the court of Civil Judge, Kalyan.

6] Prior to the date of incident which took place on 18.11.2005, the Office of Taluka Inspector of Land Records, was directed to carry out measurement of land in dispute. Accordingly, on the day of incident at about 10.00 a.m. surveyor PW 8 Shri Nanabhau Kedar came to measure the said land and at that time the deceased and his few relatives including PW 1 Ravi Mhatre, PW 2 Ramesh Mhatre, PW 3 Gurunath Mhatre and PW 5 Tukaram Mhatre were

accompanying him.

7] According to the prosecution, while the measurement of land in dispute was going on, at that juncture, accused Nos.1 to 12 came there and at that time they were armed with swords, spear, sticks and iron pipes. It is alleged that accused assaulted the deceased and his relatives who were present there with the weapons which they were carrying. It is alleged that PW 2 Ramesh Mhatre, on seeing assault on the deceased ran towards his house. It is alleged that some of the accused followed him and assaulted him in front of his house and when he ran inside the house to save himself, he was assaulted there also. According to the prosecution in the incident accused caused the death of the deceased and attempted to kill the witnesses.

8] A report in relation to the incident was lodged. On the basis of said report Crime No.122/2005 was registered against the accused Nos.1 to 12. On completion of investigation, charge sheet was filed against all the accused for the offences punishable under Section, 147, 148, 149, 302, 307 of the Indian Penal Code and for the offences punishable under Section 25 of the Arms Act and Section 135 of the Bombay Police Act.

9] The accused were charged and tried for the above stated offences and even alternate charge was framed for the offence punishable under Section 302, 307, 326 read with 34 of the Indian

Penal Code. As stated earlier, the learned trial Court convicted accused Nos.1 to 4 for the offences punishable under Sections 147, 148, 302 read with 149 and 326 read with 149 of the Indian Penal Code and acquitted rest of the accused.

10] We have heard the learned counsel for the parties.

11] It is not disputed before us and even otherwise it is apparent from the evidence on record that there was dispute between the parties in relation to land bearing Survey No.28/17. According to the witnesses, pursuant to the order passed by the revenue authorities in their favour the office of Taluka Inspector of Land Records (T.I.L.R.) was directed to carry out measurement of the said land. Whereas, from the suggestions given to the witnesses, there was no such order and application was made by the deceased to T.I.L.R. office for measurement of the land. However, the fact remains that surveyor PW 8 Shri Kedar was deputed by T.I.L.R. office to carry out the measurement and on the day of incident he came there on land bearing Survey No.28/17 to measure the said land.

12] PW 8 Shri Kedar has stated in his evidence that in the year 2003 he was working as Surveyor and was attached to T.I.L.R. Office, Ulhasnagar. On 21.10.2005 he was directed by his superior to carry out the measurement of Survey No.28/17. Accordingly, on 18.11.2005 he went there alongwith his peon. The deceased and others were present there. While he was measuring the land, suddenly about 15 persons

got down from the vehicle and came there. Then they started assaulting the persons who were at the spot. On seeing this, he and his peon ran away from there.

13] In the cross-examination conducted on behalf of the accused, the evidence of PW 8 to the extent that about 15 persons got down from the vehicle and came there at the place of incident, has not been challenged. His presence at the place of incident is also not challenged. On the contrary, it came to be suggested to PW 8 that the incident occurred when work of measurement was going on. Apart from this, it was also suggested to him that except the prosecution witnesses and assailants nobody else was there.

14] It is, thus, apparent from the evidence of PW 8 that about 15 persons got down from the vehicle and made assault on the deceased and the prosecution witnesses, who were present there at the place of incident. The question is whether the accused Nos.1 to 12 were among those 15 persons, who assaulted the deceased and the prosecution witnesses.

15] According to PW 1 Ravi Mhatre, who is also son of the deceased, on the day of the incident, accused Nos.1 to 6 and 8 with others armed with swords, spear, iron pipe and sticks came to the place of incident and assaulted his father. According to him, he and his relatives were also assaulted and then the accused ran away. In the incident, he sustained injuries on his hand, shoulder, palm and waist. In

addition to him, his relatives viz. Dinesh, Gurunath (PW 3), Hanumant, Sanjay and Ramesh (PW 2) were also injured.

16] In the cross-examination, PW 1 has admitted that, accused Nos.2 and 3 constructed 7 chawls on some portion of disputed land and about 70 families are residing there. He has further admitted that they have filed the suit for demolition of the said chawls. It was suggested to PW 1 that when they went to place of incident for the purpose of survey, they tried to create an impression that they came to demolish the chawls and take possession of the land on which the chawls are constructed. It was suggested that 600 to 700 persons from the said chawls had gathered there and they assaulted them. PW 1 has denied these suggestions. There is nothing in the cross-examination to doubt the presence of PW 1 at the time of incident.

17] At this stage, it would be appropriate to refer to the injuries which were found on the person of the deceased during the postmortem examination. PW-14 Dr. Vilas Salve, who conducted the postmortem examination has found the following injuries on the person of the deceased :

- 1] Incised wound elliptical in shape right ASI Spine area 3 x 2 x 1 cm;
- 2] Incised wound right popliteal 1 x ½ x ½ cm;
- 3] Incised wound right clavicle area transvers 6 x 3 x 2 cm;
- 4] Linear 3 abrasions at back about 10 cm long Oblique in position upper part of back;
- 5] Perforating injury left paraspinal area elliptical in shape oblique in position 6 x 3 cm x peritoneal deep;
- 6] C.L.W. left forearm ulner aspect middle 6 x 3 cm x bone deep;
- 7] Incised wound 6 x 3 x 2 cm left elbow anterior aspect

cubitalfossa artery vein and muscles are cut;

8] Incised wound left parieto occipital area of scalp Oblique in position 8 x 2 cm x bone deep elliptical in shape;

9] Incised wound 4 x 2 cm x bone deep left parieto Occipital area of scalp elliptical in shape;

10] Incised wound 10 x 6 cm x bone deep with Penetrating fracture at Occipital bone at occipital area oblique in position at lower part;

11] Incised wound right side of occipital area as scalp Oblique in position 6 x 2 cm x bone deep;

12] Incised wound 6 x 2 cm x bone deep at occipital area at middle part with penetrating fracture of the occipital area with sharp cutting edges at the fracture side about 6 cm long;

13] Incised wound left thumb 2 x 2 x 1 cm terminal Phalanx; &

14] Abrasion left shoulder area 10 x ½ cm oblique in position upper part.

Stab wound elliptical in shape 3 x 2 CM. x peritoneal deep right subcostal area.

ii] Stab wound elliptical in shape 3 x 2 cm. X peritoneal deep right lumbar area.

iii] Incised wound 3 x 2 x 2 cm. Left forearm middle 3.

iv] Incised wound 3 x 2 x 2 cm. Left forearm dorsal aspect upper 3.

18] It is apparent from the above mentioned injuries that the deceased was brutally assaulted. It is thus unlikely that PW 1 would allow the actual assailants of his father who killed him brutally to go scot-free and would implicate the accused, just because there is civil dispute between the parties in relation to some landed property. Even otherwise the defence of the accused that persons from the chawls assaulted the deceased and his relatives cannot be accepted, in view of the finding which we have recorded on the basis evidence of PW 8 Surveyor Shri. Kedar.

19] PW 2 Ramesh Mhatre, is second injured witness in the matter. According to PW 2, while survey was going on, the accused

Nos. 1 to 6 and 8 to 11 with other five persons came there at the place of incident. They started assaulting the deceased by sword, chopper, iron rod and sticks. PW 3 Gurunath tried to intervene to save the deceased from the assault of the accused, however, PW 3 was also assaulted. PW 2 has stated that in order to save himself, he ran towards his house. The accused Nos.2 to 4, 10 and 11 followed him and assaulted him in front of his house. According to PW 2, to save himself from assault, he ran inside, however, accused followed him inside his house and there also he was assaulted. According to him, he was assaulted on abdomen with sword and chopper and on his head by iron pipe. According to him, after assault, he became unconscious and he regained consciousness, while he was at Sion Hospital.

20] The evidence of PW 2 is corroborated by the medical evidence. After the incident, PW 2 was examined by PW 14 Dr. Vilas Salve. He has stated that on examination, he found the following injuries on the person of PW 2.

- i] Stab wound elliptical in shape 3 x 2 CM. x peritoneal deep right subcostal area.
- ii] Stab wound elliptical in shape 3 x 2 cm. X peritoneal deep right lumbar area.
- iii] Incised wound 3 x 2 x 2 cm. Left forearm middle 3.
- iv] Incised wound 3 x 2 x 2 cm. Left forearm dorsal aspect upper 3.

According to PW 14, the injury Nos.i to iv were grievous and were caused by hard and sharp object. Thus, the evidence of PW 2 is consistent with the medical evidence.

21] We have perused the cross-examination of PW 2. There is

no challenge to his testimony with regard to the assault on the deceased as well as assault on him. Considering the nature of injuries, which PW 2 had sustained in the incident, we do not see any reason to disbelieve him.

22] PW 3 Gurnath Mhatre is third injured witness in the matter. According to PW 3 when the accused were assaulting the deceased, he tried to rescue the deceased. According to him, at that time, accused Nos.2 to 4 and 10 assaulted him by sword, chopper and iron pipe.

23] After the incident, PW 3 was examined by PW 14 Dr. Vilas Salve and he found the following injuries on the person of PW 3:

- i] Incised wound occipital area 6 x 3 cm bone deep with fracture on skull;
- ii] Incised wound right side of parieto frontal area of scalp 6 x 3 cm bone deep with fracture;
- iii] C.L.W. 3 x 2 x 2 cm right thumb; &
- iv] Incise wound right axial 3 x 2 x 2 cm.

24] It is well settled that the evidence of injured witnesses must be given due weightage as their presence cannot be doubted. Convincing evidence is required to discredit the injured witnesses. In the present case nothing is brought on record to doubt the testimony of the injured eye witnesses.

25] The learned counsel for convicted accused has submitted that the trial court has disbelieved the evidence PW 2 and PW 3 and convicted the accused Nos.1 to 4 only on the basis of evidence of

PW1.

26] We have gone through the Judgment of the trial Court. The finding of the trial Court is otherwise and therefore we are constrained to reproduce the finding of the trial Court to that effect.

Para No.105 of the Judgment of the trial Court reads thus :

“105} Considering all the aforesaid circumstances, presence of Ramesh to the spot is found natural. He being relative and was injured and also interested in land dispute also support his presence to the spot. As such so far as incident seen by him at place at survey is said to be acceptable evidence. So also, his evidence on the point that, he was also assaulted at the place of his house is found believable. His evidence to the extent of making assault in his abdomen causing abdominal injury though is found corroborated to medical evidence. However, authorship at those injuries for the reason discussed above is not attributable to accused Pandharinath, Ganesh and Rupesh.”

(emphasis supplied)

27] The learned trial Court in no uncertain terms has accepted the evidence of PW 2 with regard to both the incidents.

28] The trial court has also accepted the evidence of PW 3 in relation to the incident in question and findings to that effect are in para Nos.125 and 126 and the said findings read thus:

“125} Evidence of Gurunath does not carry details of manner of assault except that accused had beaten Balaram. Name of specific assailants of Balaram is not given. Considering the presence of mob of about 15 persons non mentioning overt act of each person does not belie his version.

126} One of the contention raised by defence is that evidence of Gurunath is in total variance and is a vague story, is not acceptable. His version of sitting beneath the tree and Tukaram bringing rickshaw is not corroborated by Tukaram. In such cases some discrepancies found to occur. His evidence examined on the total facts, is found believable. His presence to the spot is found natural”.

(emphasis supplied)

29] Thus, the submission of the learned counsel for the accused that the trial Court has disbelieved the testimony of PW 2 and PW 3 is not correct.

30] The learned counsel for the convicted accused has cited various Judgments of the Hon'ble Supreme Court and this Court on the point of sole eye witness. However, we do not wish to refer to those judgments, as they are not applicable to the present case.

31] The evidence of PW 1 to PW 3 with regard to accused Nos.1 to 4 is consistent. Therefore, we do not see any reason to interfere with their conviction recorded by the trial court.

32] The learned counsel for the convicted accused has submitted that the trial court on the basis of evidence on record has not accepted the case of the prosecution that accused Nos.5 to 12 were with the alleged assailants and convicted accused Nos.1 to 4 only. It is submitted that the conviction under sections 147,148 and 149 of the IPC cannot be recorded against four accused. It is submitted that the trial court was therefore, not justified in convicting the accused Nos.1 to 4 for the offences punishable under sections 147, 148 and for the offences punishable under sections 302 and 326 with the aid of section 149 of the IPC. In support of his submissions, the learned counsel for the convicted accused has relied upon the following judgments:

- 1] ***Mohan Singh and anr. v. State of Punjab***
– AIR 1963 SC 174;
- 2] ***Accheyal v. State of Uttar Pradesh – 1978 (3) SCC 526;***

- 3] **Amar Singh v. State of Punjab – 1987 (1) SCC 679; and**
 4] **Ramanlal & anr vs. State of Haryana – (2015) 11 SCC.**

33] The Hon'ble Supreme Court in the case of Mohan Singh (supra), on which reliance is placed, has observed :

“(8) The true legal position in regard to the essential ingredients of an offence specified by S.149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and S.141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The argument, therefore, is that as soon as the two Piara Singhs were acquitted, the membership of the assembly was reduced from five to three and that made S.141 inapplicable which inevitably leads to the result that S. 149 cannot be invoked against the appellants. In our opinion, on the facts of this case, this argument has to be upheld. We have already observed that the point raised by the appellants has to be dealt with on the assumption that only five persons were named in the charge as persons composing the unlawful assembly and evidence led in the course of the trial is confined only to the said five persons. If that be so, as soon as two of the five named persons are acquitted, the assembly must be deemed to have been composed of only three persons and that clearly cannot be regarded as an unlawful assembly.”

34] However, the Hon'ble Supreme Court has further

observed:

“(9) In dealing with the, question as to the applicability of S. 149 in such cases, it is necessary to bear in mind the several categories of cases which come before the Criminal Courts for their decision. If five or more persons are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them, that is a very clear case where S. 149 can be invoked. It is, however, not necessary that five or more persons must be convicted before a charge under S. 149 can be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under S. 302/149 if the charge is that the persons before the Court along with others named constituted an unlawful assembly; the other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that less than five persons are before the Court does not make section 149 inapplicable for the simple reason that both the charge and the evidence seek to prove that the persons before the court and others number more than five in all and as such, they together constitute an unlawful assembly. Therefore, in order to bring home a charge under S.149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. Similarly, less than five persons may be charged under S.149 if the prosecution case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons before the Court along with unidentified and un-named assailants or members composed an unlawful assembly, those before the Court, can be convicted under section 149 though the unnamed & unidentified persons are not traced and charged. Cases may also arise wherein the charge, the prosecution names five or more persons and alleges that they constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the

charge and out of the persons so named two or more are acquitted leaving, before the court less than five persons to be tried, then S.149 cannot be invoked. Even in such cases, it is possible that though the charge names five or more persons as composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under [section 149](#) because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases the acquittal of one or more persons named in the charge does not affect the validity of the charge under [section 149](#) because on the evidence the court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five. It is true that in the last category of cases, the court will have to be very careful in reaching the said conclusion. But there is no legal bar which prevents the court from reaching such a conclusion. The failure to refer in the charge to other members of the unlawful assembly un-named and unidentified may conceivably raise the point as to whether prejudice would be caused to the persons before the court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully considered, there is no legal bar preventing the court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified. That appears to be the true legal position in respect of the several categories of cases which may fall to be tried when a charge under [section 149](#) is framed.

(emphasis supplied)

35] We have, on the basis of evidence of PW 8, already held that 15 persons came to the spot of incident and assaulted the deceased. The trial court on the basis of evidence on record has merely not accepted the case of prosecution that accused Nos.5 to 12 were part of that unlawful assembly. The present case, thus would fall in last category mentioned by the Hon'ble Supreme Court in the case of *Mohan Singh (supra)*. The trial court was therefore, justified in convicting the accused Nos. 1 to 4 with the aid of section 149 of the IPC.

36] As regards the State appeal, admittedly, the names of accused No.7 and accused Nos.9 to 12 were not mentioned in the FIR and the said accused were thus not known to PW 1. Admittedly, no test identification parade is conducted in relation to the said accused. The trial court was therefore, justified in acquitting accused No.7 and accused Nos.9 to 12.

37] As regards accused Nos.5, 6 and 8, the trial court has held that accused Nos.5 and 8 are not from the family of accused No.2, with whom there was dispute of the deceased on account of ancestral land. It is further held that the evidence on record about the presence of accused Nos.5,6 and 8 at the place of incident is not convincing. The trial court has therefore, acquitted them. The view taken by the trial court does not appear to be perverse and therefore we are not inclined to interfere with the acquittal of accused Nos.5, 6 and 8. In the result, the following order is passed:

ORDER

1] Criminal Appeal No. 747 of 2008, Criminal Appeal No. 211 of 2009, Criminal Appeal No.569 of 2008 and Criminal Revision Application No. 435 of 2008 are dismissed.

2] Pending Applications, if any, do not survive and the same are also disposed of.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]