

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 916 OF 2021

Sanjay Prakash Mane	]	
Aged about 28 Yrs.,	]	
R/o. Sangli, Indian Inhabitant	]	
Currently at Kolhapur Central Prison	]	... Appellant
Formerly R/o. Chintamaninagar, Miraj, Sangli.	]	
Presently on covid parole	]	(Org. A. No.1)

V/s.

The State of Maharashtra	]	
(Vishrambag Police Station)	]	... Respondent

WITH

CRIMINAL APPEAL NO. 675 OF 2013

WITH

INTERIM APPLICATION NO. 2057 OF 2023

1. Kiran @ Sonya Dhondiram Satpute	]	
Age 19 Yrs.,	]	
2. Amrut @ Amrya Mangilal Kamble	]	
Age 19 Yrs.,	]	
3. Sagar Mahadeo Bhise	]	
Age 25 Yrs.,	]	
All R/o. Chintamaninagar, Sangli,	]	
Tal. Miraj, District Sangli.	]	... Appellants
(At present in Kalamba Central Jail, Kolhapur)	]	(Org. A. Nos.2 to 4)

V/s.

The State of Maharashtra	]	
At the instance of Vishrambag Police Station	]	
C.R. No. 55/2011.	]	... Respondent

WITH

INTERIM APPLICATION NO. 2491 OF 2023

IN

CRIMINAL APPEAL NO. 675 OF 2013

Amrut @ Amrya Mangilal Kamble

] ... Applicant

V/s.

The State of Maharashtra

] ... Respondent

Dr. Yug Mohit Chaudhry a/w. Mr. Anush Shetty for Appellant in Appeal/916/2021.

Mr. Kedar J. Patil for Appellants in Appeal/675/2013 and for Applicant in IA/2491/2023 and IA/2057/2023.

Ms. A.A. Takalkar, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 4th January 2024.

PRONOUNCED ON : 11th June 2024.

JUDGMENT (Per : A. S. Gadkari, J.) :-

1) Appellants have impugned Judgment and Order dated 2nd April 2013 passed by the learned Additional Sessions Judge, Sangli in Sessions Case No. 97 of 2011, convicting the Appellants under Section 302 read with 34 of the Indian Penal Code (for short, "I.P.C.") for committing murder of Suraj @ Balu Shabbir Magdum and are sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each, in default of payment of fine to further undergo rigorous imprisonment for six months and under Section 307 read with 34 of I.P.C. for attempting to commit murder of Rohan S. Sakate (PW-3) and are sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.500/- each. The Trial Court has directed that, both the substantive sentences to run concurrently.

2) Appellant in Criminal Appeal No. 916 of 2021 is original Accused No.1 and Appellants in Criminal Appeal No. 675 of 2013 are original Accused Nos.2 to 4. The Appellants hereinafter will be referred to as per their original nomenclature before the trial Court i.e. Accused Nos.1, 2, 3 & 4 respectively.

3) Heard Dr. Chaudhry, learned counsel for Accused No.1, Mr. Patil, learned counsel for Accused Nos.2 to 4 and Ms. Takalkar, learned A.P.P. for State. Perused entire record.

4) The prosecution case as unfurled from the record can be summarized as under :-

4.1) Prior to the incident in question a year earlier Ravi Shevale had committed murder of one Ajay Mane. Because of it, there were strained relations between the said two groups headed by Ajay Mane and Ravi Shevale. Suraj @ Balu Shabbir Magdum (deceased) and Rohan S. Sakate (PW-3) were associates of Ravi Shevale. PW-3 was a very close friend of Ravi Shevale.

4.2) On 22nd March 2011 around 8:00 p.m., Rohan Sakate (PW-3), Ravi Shevale and Balu Magadum (deceased) were proceeding in Balu's autorikshaw towards a dhaba for dinner. They stopped rickshaw at a country liquor shop near Hotel Priya. Ravi Shevale and Balu Magadum went to drink liquor. However, PW-3 was sitting in the rickshaw. After about half an hour Ravi Shevale, Balu Magdum (deceased) and Sandeep Savant (PW-2) came out of the shop. PW-3 was about to give place to the said persons to sit in the rickshaw. However, suddenly Sanjay Mane (A-1) appeared there and gave a

stab with sword (Article-22) in the stomach of PW-3. At that time, other three accused persons were present. Kiran @ Sonya Satpute (A-2) was holding an axe and Amrya @ Amrut Kamble (A-3) was holding a knife. PW-3 was stabbed by Sanjay Mane (A-1) by uttering the words 'Bhoksa re Bhoksa' and thereafter the accused persons went after Balu Magdum. Balu Magdum ran towards Hotel Priya. Ravi and Sandeep (PW-2) fled away from the place. PW-3 in injured condition ran towards Panchshilnagar. Sandeep (PW-2) and Akshay met him there and they both took PW-3 in Civil Hospital in rickshaw. On their way near the railway gate, Ravi Shevale met them and he also accompanied them.

4.3) That, when Balu Magadum ran towards Hotel Priya, the Appellants followed him with the weapons in their hand and assaulted him. Balu Magdum entered Hotel Priya in injured condition. The accused persons assaulted him there also. When the Manager/Conductor of the said Hotel namely Ashok D. Shetty (PW-1) tried to intervene, the Appellants prevented and restrained him from doing so. Balu Magadum died at the spot itself.

4.4) Dr. Mahananda M. Hubale (PW-8) treated Rohan Sakate (PW-3), then aged about 16 years. PW-3 gave her the history of assault by means of a knife at about 8.40 p.m. near Hotel Priya. After examination, she found CLW over left lumber region and the intestine was protruding out. The size of injury was 15 cm x 5 cm and its age was within one hour. She opined that, the possible weapon was sharp pointed weapon and the nature of injury was grievous. She issued Injury Certificate (Exh.45) dated 23 March 2011. She

opined that, the said injury could be possible by means of a sword like weapon (Article 22), which was shown to her during trial.

4.5) On 23rd March 2011 at about 1:00 a.m. a dead body was brought to Civil Hospital, Sangli by the police. It was identified by the relative of the concerned person as that of Suraj @ Balu S. Magadum. PW-8 conducted autopsy on the dead body. The clothes on the person of the deceased were soaked with blood. She found multiple injuries over face, trunk, upper lips, abdomen, lower limbs and back. She noted in all 14 external injuries on the person of deceased and mentioned it in column No.17 of postmortem notes.

On the internal examination she found, *“linear CLW over scalp over tempero parietal region 6 x ½ x 2 cm. There was fracture to the skull over tempero parital region 4 x ½ x 1 cm. In the brain the intra cranial haemorrhage was seen at tempero parietal region. The coverings were not intact. The walls, ribs of thorax saw stab injury on right side (lower) 2 x 1 x 3 cm. There was stab injury to right lung measuring 1 ½ x 1 x 1 ½ cm. The left lung pericardium and heart were intact but congested”*. Taking into consideration all the said injuries, she arrived at the conclusion that, the probable cause of death was shock due to multiple injuries with injuries to vital organ, with intra cranial haemorrhage.

She prepared Postmortem Report (Exh.46). PW-8 took blood sample at the time of conducting postmortem for Chemical Analysis and the said samples were sent to Chemical Analyzer at Pune. She has noted that, the

injuries mentioned in column No.17 correlate to the injuries mentioned in column No.19 of the postmortem notes.

4.6) Police Inspector Nivas Salokhe (PW-13) conducted Spot Panchanama (Exh.49). The Investigating Officer Sharad Jambale (PW-14) recorded statements of other witnesses. Sword (Article 22) and knife (Article 24) were recovered from accused Nos.1 & 3 respectively in presence of panch witness Vijay Chavan (PW-4) by effecting recovery panchanama(s) at Exh.36 and Exh.34 respectively. An axe was recovered at the instance of accused No.2 by effecting a Panchanama (Exh.52) in presence of panch witness Sanjay Londhe (PW-10). The Test Identification Parade of accused persons was conducted by Swati Shende (PW-11), Special Executive Magistrate on 5th July 2011.

4.7) After receipt of medical documents, Chemical Analyzer's report and completion of investigation, the Investigating Officer (PW-14) submitted chargesheet in the Court of Judicial Magistrate First Class, Sangli.

As the offence punishable under Section 302 of the I.P.C. is exclusively triable by the Court of Sessions, the learned Magistrate committed the said case to the trial Court as contemplated under Section 209 of Cr.P.C.. After committal, the trial Court framed charge below Exh.2 against all the accused persons for the offence punishable under Section 302, 307 read with 34 of I.P.C.. The contents of the charge were read over and explained in vernacular language to the accused persons, to which they denied and claimed

to be tried. The accused persons claimed total innocence.

4.8) The prosecution in support of its case and to bring home the guilt of the accused persons examined in all 14 witnesses. It appears from the line of cross examination and the defence adopted by the accused in their statement recorded under Section 313 of Cr.P.C. that, their defence was of total denial. It was also their defence that, the deceased was a known criminal and many cases were pending against him. That, the act of assault might have committed by somebody else who had enmity with the deceased and his gang members. The injured (PW-3) used to be in the company of deceased Balu Magadum and therefore he also might have been assaulted by some unknown person/s.

4.9) The trial Court after recording evidence of prosecution witnesses and hearing the Advocates for the accused persons, has convicted and sentenced the Appellants by its impugned Judgment and Order, as noted earlier.

5) At the outset, it is to be noted here that, both the learned counsel appearing for the respective Appellants did not dispute the factum of homicidal death of Suraj @ Balu Shabbir Magdum. Mr. Chaudhry, learned counsel did not seriously contested the conviction of Accused No.1 under Section 307 read with 34 of I.P.C.. Advocate Mr. Patil also did not seriously contested the conviction of Accused Nos.2 & 3 under Section 307 of I.P.C.. However he contested the conviction of Accused No.4 under Section 307 of I.P.C.. Both the learned counsel strenuously argued about the admissibility of evidence of eye

witnesses pertaining to the offence alleged against them under Section 302 of I.P.C. by contending that, there is every reason to disbelieve the testimonies of said witnesses, as it is not legally admissible.

6) Dr. Chaudhry, learned counsel appearing for Accused No.1 submitted that, the PW-3 has admitted that, he was close friend of Ravi Shevale and recognized him as 'Dada'. The said witness was of susceptible age of 16 years and was deeply influenced under the control and domination of gangster Ravi Shevale, who had deep-seated enmity against the accused and therefore he had motive for false implication of the accused. That, the prosecution has not explained, how PW-3 with grievous injury i.e. with his intestines coming out had managed to run from the spot in the direction of hospital. Though, PW-3 claims that, he sustained injuries on his hand while resisting the assailants, his Injury Certificate (Exh.45) does not mention any such injury. He submitted that, PW-3 is an interested witness and therefore his testimony should not be accepted. That, the important witness i.e. Mr. Ravi Shevale, who is the gang leader of opposite side has not been conveniently examined by the prosecution, though he was very much present at the scene of offence and had witnessed the incident. He further submitted that, PW-1 is an unreliable witness. He has not identified the assailants and weapons in the court and therefore his evidence cannot be relied up on. That, PW-1 and PW-12 were shown the accused persons before Test Identification Parade (T.I.P) and therefore their identification is legally not acceptable. That, the T.I.P. was

conducted belatedly after about three and half months and therefore it is unsafe to rely upon such an identification. He submitted that, the PW-12 is a chance witness. The PW-1 does not mention about the presence of PW-12 in his hotel, when the incident occurred. He submitted that, the evidence on record of material eye witnesses is not wholly reliable and therefore it cannot be accepted in law. He therefore prayed that, the accused No.1 be acquitted from the offence under Section 302 of the I.P.C..

7) Mr. Patil, learned Advocate appearing for accused Nos.2 to 4 submitted that, the injured eye witness, PW-3 has mentioned the presence of accused No.4 Sagar at the spot of incident as and by way of a passing reference, however has not attributed any role at all to him. That, there is every possibility of false implication of accused No.4 by the PW-3, as the said witness is a very close friend of rival group's leader Ravi Shevale. He submitted that, PW-3 has not seen the actual attack on Balu Magdum. He also submitted that, the Injury Certificate (Exh.45) of PW-3 belies his statement that, he tried to resist the assault by holding the weapon by his hand. That, the Injury Certificate issued by PW-8 does not mention about any such injury received by PW-3. He submitted that, PW-12 is a total chance witness. That, his evidence is not credible and therefore cannot be accepted for convicting the accused under Section 302 of I.P.C.. He therefore prayed that, the accused Nos.2 & 3 may be acquitted from the charge under Section 302 of I.P.C. and accused No.4 be acquitted from all the charges framed against him.

8) In the present case, the prosecution has relied upon four eye witnesses namely, (i) Ashok D. Shetti (PW-1), Manager of Hotel Priya, (ii) Sandeep S. Sawant (PW-2), friend of deceased, who has been declared hostile by the prosecution, (iii) Rohan S. Sakate (PW-3), injured witness and (iv) Shridhar S. Pailwan (PW-12), an independent witness, who was present in Hotel Priya at the time of alleged assault by accused on deceased Balu Magadum.

9) Ashok D. Shetty (PW-1) has deposed that, he was conducting hotel business under name and style as 'Hotel Priya' at Sampat Chowk, Sangli, since last two years. On 22nd March 2011 at about 6.00 to 6.30 p.m. he was on counter. There were no rush of customers in the hotel. There were two parts in the hotel and one of it was used as Bar and the other part was kept vacant for lack of waiters. At about 8.45 p.m. a person in injured condition entered the hotel shouting for help. The said person had kept his hand on mouth. He went running towards right side part of the hotel. Four persons followed him and entered the hotel. The said persons were holding weapons in their hands. The waiter came out from the hotel and PW-1 along with waiters started to leave the place, but two persons amongst those four restrained them from going out. He pushed the said persons and went inside, however at that time the other two persons came out and all of them ran away. Two of the persons were holding knife and axe. Their clothes were stained with blood. PW-1 then went inside the hotel and saw the injured person lying on the ground and was

soaked in the blood. Later on PW-1 came to know that the name of injured was Balu Magdum. He thereafter went to Police Station and his information was recorded. He put his signature on his statement (Exh.22). He has deposed that, he would not be able to recognize the accused now. He was subsequently called by police for identification of accused in the office of Special Executive Magistrate, where he identified the accused persons. He has also identified Articles namely, Sword (Art. No.22), Axe (Art. No.23) and knife (Art. No.24). He has deposed that, he was not able to identify whether those weapons were held by accused persons.

9.1) In his cross-examination the PW-1 has admitted that, adjacent to his hotel there were 4-5 rooms, which were closed and then there was one country liquor shop. He has admitted that, he would not be able to say who were the persons involved in the incident. That, the photographs of accused were published in newspapers after they were arrested in connection with the incident. That, deem lights are generally used in beer bars and on the date of incident, there were deem lights.

10) Sandeep S. Sawant (PW-2) was a friend of Ravi Shevale, Balu Magdum (deceased) and Rohan Sakate (PW-3). He has deposed that, Ravi Shevale had committed murder of one Ajay Mane. Because of the murder of Ajay Mane, there were strained relations between the two groups i.e. of Ravi Shevale and Ajay Mane. On 22nd March 2011 around 8.00 to 8.45 p.m., he had been to Sampat Chowk for work. He saw Ravi Shevale, Balu Magdum

(deceased), Rohan Sakate (PW-3) were drinking liquor. He had also gone there to drink liquor. That, PW-3 was sitting in a rickshaw. After they consumed liquor, they started to go. Deceased and Ravi Shevale also left the place. He heard the shouts 'bhoksa'. After the chaos started, he ran towards Panchsheelnagar. He saw PW-3 sustained injuries to his abdomen and therefore he along with Akshay Bhosale took PW-3 to Civil Hospital. He had seen sword, axe and knife in the hands of accused Nos.1, 2 & 3 respectively. PW-3 was sitting the rickshaw. He came towards rickshaw after Balu Magdum (deceased) and Ravi Shevale fled away. At this stage, the learned A.P.P. declared the said witness as hostile as he resiled from his statement made under Section 161 of Cr.P.C.. The trial Court granted permission to learned A.P.P. to cross examine the said witness. In his elaborate cross examination by the learned A.P.P., nothing beneficial to the prosecution has been elicited.

10.1) In the cross examination of PW-2 by the Advocate for the accused, he has admitted that, at around 7.00 p.m. the electricity in the said area had gone off. That, thereafter he had heavy drinks and came out of the liquor shop. That, due to the heavy dose of liquor, he had fallen down by the side of the road and lost consciousness. He did not know what happened thereafter. That, on the next day when police made inquiry with him, he told that he knew nothing. That, the accused did not assault anybody in his presence.

11) Rohan Sakate (PW-3) is the injured eye witness. He has deposed that, he knew Balu Magdum (deceased), Ravi Shevale, Sandeep Sawant (PW-

2) and Akshay Bhosale as they all used to reside in Panchsheelnagar and were friends. He knew accused Nos.1, 2 & 3. On 22nd March 2011 at about 8.00 p.m., PW-3, Ravi Shevale and Balu Magdum (deceased) were proceeding in Balu's rickshaw towards a Dhaba for dinner. They stopped at country liquor shop near Priya Hotel. Ravi and Balu went to drink liquor. At that time accused No.2 was proceeding from that place. Balu Magdum slapped him and took out Rs.100/- from his pocket. He then threatened accused No.2 that, he should not come in his area. Thereafter Ravi and Balu went inside the shop for drinking liquor. Subsequently, PW-2 arrived and also went inside the shop. PW-3 was sitting in the rickshaw. After about half an hour Ravi, deceased and PW-3 came out of the shop. He was in a position to give place to Ravi and PW-3 and moved slightly towards left side of the rickshaw. All of a sudden accused No.1 appeared there and stabbed him with a sword (Art. No. 22) in his stomach. At that time, accused Nos.2, 3 and 4 were present. Accused No.2 was holding an axe and accused No.3 was holding a knife. He was stabbed by accused No.1 Sanjay by uttering the words 'bhoksa re bhoksa'. Thereafter all of them went after Balu (deceased). Balu went towards Priya Hotel. Ravi and PW-2 fled away from the spot. PW-3 was injured and in that condition he ran towards Panchsheelnagar. PW-2 and Akshay met him there and they took him to Civil Hospital in a rickshaw. On their way near railway gate, Ravi Shevale met them. He also went along with them when was admitted to Civil Hospital. PW-3 has identified the accused before the Court.

11.1) In his cross examination he has admitted that, he was not doing any work in 2011. That, Ravi Shevale, Balu Magdum (deceased) and Sandeep Sawant (PW-2) had committed many offences. His father used to often advise him that, he should not be in the company of those persons, as the said persons were addicted to vices. That, the country liquor shop and Priya Hotel are adjacent to each other. Two days prior to the incident, he had left his house and did not return, as he felt that his family members would scold him. He slept in the house of Ravi Shevale during the said two days. He has admitted that, Ravi Shevale was his special friend. PW-3 used to listen to him. That, his friends had consumed country liquor on the said day. That, he tried to resist the assailant by holding the weapon by hand. He has admitted that, Ravi Shevale had influence in the area. That, Ravi Shevale had created rein of terror in Chintamannagar, Panchsheelnagar and Ahilyanagar. That, Ravi had many enemies. There was no enmity between PW-3 and accused. He had intention to go along with Ravi Shevale as he had created terror. That, he had intention that, he should also be recognized as 'Dada' and therefore he joined company of Ravi. That, he used to do work, whatever was told to him by Ravi. PW-3 has denied the suggestion that, he do not know who had stabbed him, as there was darkness and he was sitting in a rickshaw.

12) Shridhar S. Pailwan (PW-12) has deposed that, on 22nd March 2011 at around 8.30 p.m. he boarded a City Bus from Sangli stand for going to Industrial Area, as he intended to go to Lokmat Office. He got down at Sampat

Park. He met a friend Tanaji Salgar in Sampat Chowk, who offered him a tea. Therefore they went to Priya Hotel in Sampat Chowk and sat in the southern side room of the hotel. As tea was not available, he placed the order for Thums-Up. Before the order was placed, a person in injured condition having injuries on his right chick and blood stains on him came shouting that, he should not be beaten/assaulted and be saved (mala maru naka, wachava). The said person thereafter concealed underneath a bench. Before he could completely go underneath the bench, two persons one of whom was having an axe and other was having a sword entered the room. They pulled out that persons and gave multiple blows to him with their weapons. After a while, two more persons came there. They both were shouting that, the injured should not be let out and should be killed. The person holding a knife was literally soaked in blood. He and Tanaji got frightened, came out and went to Tasgaon immediately. He has identified accused in the Court.

12.1) In his cross examination, he has admitted that, for going to Lokmat Office, the bus stop is M.I.D.C.. He has denied that, tea or breakfast was not served at Priya Hotel. He has denied all the suggestions given to him.

13) It be noted here that, PW-1 in his cross examination has admitted that, the photographs of accused were published in newspapers after they were arrested in connection with the incident. The T.I.P in the present case has been conducted after about three and half months after the arrest of accused persons. The T.I.P by PW-1 therefore loses its sanctity. Even otherwise PW-1

has failed to identify the accused persons, as the assailants of deceased in Court. Therefore the identity of the Appellants/accused has not been established beyond reasonable doubt through this witness.

13.1) As far as PW-2 is concerned, though he has been declared as hostile by the prosecution, in his examination in chief he has admitted that, because of the murder of Ajay Mane there were strained relations between the two groups i.e. of Ravi Shevale and Ajay Mane. He has admitted that, he had seen sword, axe and knife in the hands of accused Nos.1 to 3 respectively. He had seen PW-3 sustained injuries to his abdomen and therefore he along with Akshay Bhosale took PW-3 to Civil Hospital.

13.2) PW-3 has admitted that, Ravi Shevale was his special friend and he used to listen to Ravi. That, Ravi Shevale had created rein of terror in the locality of Chintamaninagar and its adjoining area and therefore he was fascinated with the personality of Ravi Shevale. PW-3 had intention that, he should also be recognized as 'Dada' and therefore he had joined company of Ravi Shevale. PW-3 has categorically admitted that, he used to do work whatever was told to him by Ravi Shevale. He has also admitted that, Ravi had many enemies. In his examination in chief, PW-3 has admitted that, after accused No.1 stabbed him with a sword in his stomach he ran towards Panchsheelnagar in injured condition and on his way met PW-2 and Akshay. The said two persons thereafter took him to Civil Hospital along with Ravi Shevale. His assertion that, he tried to ward off or resist the assailants by

holding the weapon in his hand is not corroborated by the Medical Certificate (Exh.45) issued by PW-8. In the Medical Certificate (PW-45) no injury to the hand or palm of PW-3 is mentioned. It appears to us that, this witness is not telling the entire truth to the Court. The PW-3 was aged about 16 years at the relevant time and we find substance in the contention of learned counsel for the accused that, he was of susceptible age, deeply influenced by and under the control and domination of Ravi Shevale, who had a long festering enmity with the accused. Record clearly indicates that, the accused are from the group of Ajay Mane. PW-3 therefore is an interested witness and there is every possibility that, as far as actual assault on deceased Balu is concerned, though he has not witnessed the same, has narrated about it. As far as accused No.4 Sagar Bhise is concerned, except making a passing reference of his first name 'Sagar was present' no other overt act is attributed to him. PW-3 has admitted that, he knew Accused Nos.1, 2 & 3 only. As noted earlier, the PW-3 had every reason to implicate members of Ajay Mane group in the present crime, under the dictation of Ravi Shevale.

13.3) As far as PW-12 is concerned, this witness has not told the reason to get down from the bus abruptly at Sampat Chowk, though he wanted to go to industrial area and his meeting with a friend Tanaji Salgar. The meeting with his friend Tanaji was not pre-scheduled. Though Priya Hotel was a beer bar, why he went to the said hotel to have a tea late in the evening has not been explained by him. PW-1 has honestly admitted the fact that, after the arrest of

accused their photographs were published in newspapers. i.e. before the T.I.P. was conducted, he had occasion to see the photographs of accused. Despite the said fact, upon a question put by the Court, this witness has stated that as he had gone to Pune during the said period, he had not read the newspaper. PW-1 is silent about the presence of this witness and therefore presence of PW-12 at the spot of incident on the said day and date creates doubt in the mind of this Court. This witness has also admitted the fact that, he was having mobile phone at the relevant time, however he was not aware whether his friend Tanaji had mobile phone with him or not. It therefore clearly appears to us that, this witness is not telling the truth to the Court and is totally a chance witness. Therefore his testimony needs to be kept aside from consideration. PW-12 has not specifically mentioned about any overt act of Accused No.4 Sagar Bhise. Thus except a passing reference, no other role i.e. of assault or otherwise is attributed to Accused No.4.

14) At this stage, a useful reference can be made to a decision of the Supreme Court in the case of *Vadivelu Thevar vs. The State of Madras reported in AIR 1957 S.C. 614*, wherein the Supreme Court has enumerated three categories of witnesses namely, (i) wholly reliable (ii) wholly unreliable (iii) neither wholly reliable nor wholly unreliable.

14.1) The Hon'ble Supreme Court in the case of *Rai Sandeep @ Deepu Vs. State (NCT of Delhi), reported in (2012) 8 SCC 21*, in para No.22, has held as under -

“In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can

even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

15) After applying the aforestated principles to the case in hand, according to us the PW-3, an injured eye witness, falls in the category of neither wholly reliable nor wholly unreliable witness, as enumerated by the Hon'ble Supreme Court in the case of *Vadivelu Thevar (supra)*. PW-3 had every reason to implead the Appellants in an offence under Section 302 of I.P.C. under the dictation of Ravi Shevale, his mentor, as Ravi Shevale was having long festering enmity with the Appellants, who belonged to the group of Ajay

Mane. As far as PW-12 is concerned, he is an unreliable and a chance witness. His testimony does not inspire confidence in the mind of this Court. As noted earlier, nobody had seen actual assault on deceased by the Appellants. There is no evidence that, Accused No.4 Sagar actually participated in the commission of either of the crimes i.e. under Section 307 or 302 of I.P.C.. PW-2 has not even stated about the presence of Accused No.4 Sagar at the spot of incident. He is therefore entitled for acquittal by granting benefit of doubt in both the offences. The other Appellants i.e. Accused Nos.1, 2 & 3 are entitled to have benefit of doubt for the alleged commission of offence under Section 302 of I.P.C. of committing murder of Balu Magdum.

16) Hence, the following Order :-

- (i) The Appellant Nos.1, 2 & 3 are acquitted from the charge under Section 302 of I.P.C. by giving benefit of doubt to them.
- (ii) The conviction of Appellant Nos.1, 2 & 3 under Section 307 read with 34 of I.P.C. is confirmed and are directed to undergo the sentence as prescribed by the trial Court.
- (iii) Record indicates that, the Appellant Nos.1, 2 & 3, have already undergone their sentence under Section 307 of I.P.C. including the in default sentence and therefore they be released from jail immediately on production of an authenticated copy of this Judgment and Order, if not required in any other case/cases.
- (iv) Accused No.4 is acquitted from all the charges framed against him

by giving benefit of doubt.

(v) Both the Appeals are partly allowed in the aforesaid terms.

17) In view of disposal of Criminal Appeal No.675 of 2023, Interim Application Nos.2057 of 2023 and 2491 of 2023 pending therein, do not survive and are accordingly disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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