

respect of the Judgment and Order of Conviction and Sentence, dated 01/01/0001 passed by the learned Second Ad-hoc Additional Sessions Judge, XXX in Sessions Case No. 00 of 0000 and after perusal of the same be pleased to quash and set aside the said impugned Judgment and Order of Conviction and Sentence and set the Appellant at liberty. By the said Judgment and Order of Conviction and Sentence dated 01/01/0001 the learned Judge was pleased to convict the present Appellant along with 14 other accused for having committed offences U/s. 147,148,149,506 and 302 of Indian Penal Code and for each offence punishable u/s. 147, 149 and 506 the accused appellant was sentenced to suffer imprisonment for a period of 6 months and to pay fine of Rs. 500/- i.d. to undergo further RI for one month and offence punishable u/s. 149 the accused appellant was sentenced to suffer imprisonment for a period of one year and to pay fine of Rs. 500/- i.d. to undergo further RI for one month and for offence punishable u/s. 302, 149 the accused appellant was sentenced to undergo imprisonment for life and to pay fine of Rs. 1000/- i.d. to undergo further RI for one year.

- II. Facts of the case MAY BE incorporated here.
- III. Being aggrieved and dissatisfied by the said impugned Judgment and Order of Conviction and Sentence passed by the learned Second Ad-hoc Additional Sessions Judge at Thane, dated 01/01/0001, passed in Sessions Case No. 00 of 0000, the Appellant approach this Hon'ble Court with the prayer that this Hon'ble Court may be pleased to quash and set aside the impugned Judgment and Order of Conviction and Sentence on following amongst other grounds which are taken without prejudice to one another. Hereto annexed and marked as "EXHIBIT - A" is copy of the said Judgment and Order of Conviction and Sentence dated 01/01/0001 passed by the learned Second Ad-hoc Additional Sessions Judge at Thane, in Sessions Case No.00 of 0000.

GROUNDS

1. At the outset the Appellant most respectfully submit that the learned Judge has recorded the findings and observations in the impugned Judgment and Order, which are totally contrary, and against the principles laid down not only by the statutory provisions but also against the principles laid down by the Apex Court. Hence, the impugned Judgment and Order is bad in law and improper on facts and therefore the same is liable to be quashed and set aside;
2. It is most respectfully submitted that in all there were 30 accused implicated in this offence and out of them the name of two accused is "A.P.", one is A.B.P. and other is A.J.P. i.e. the present Appellant. It is most respectfully submitted that all the so-called eye witnesses PW1, PW2, PW3 and PW 4 examined by the prosecution has not stated the name of A.J.P. as assailant in their evidence. Even though PW1 and PW2 have stated that name of A.P. in their evidence, they have not identified the appellant as the assailant in the court.
3. The appellant most respectfully states that PW 1 and PW 2 have only states the name "A.P."; however it has not come anywhere in the evidence whether PW 1 has referred A.B.P. or A.J.P. The appellant further states that there is no any evidence to show that the present Appellant i.e. A.J.P. has assaulted the deceased and therefore the Ld. Judge should not have convicted the present appellant.
4. The appellant further states that the PW 1 complainant has stated in his evidence that the accused D.P., M.P., A.P., S.P. are real brother and they are all sons of B.P. The appellant states that in view of this admission it could be said that the PW 1 has stated the name of A.P., the real brother of D.P., M.P.

and S.P. i.e. the son of B.P. and not the present Appellant. Therefore the Ld. Judge should not have convicted the present appellant.

5. The Appellant most respectfully states that the Ld. Judge in his Judgment in para 6 and para 8 has wrongly held that the complainant PW 1 Mr. E.B. and PW 2 L.A.P. has spoken about accused No. 13 A.J.P., when in fact the name of the present Appellant is not stated by these two witnesses. The Appellant further states that in para 30 of the Judgment discloses that PW 2 has stated that Accused A.P. had inflicted a blow of sword on deceased and PW 8 has spoken about the recovery of sword from the accused No. 24 A.B.P. In view of these facts the Ld. Judge wrongly held that PW 2 and PW 1 has stated the name of the present Appellant i.e. A.J.P. and hence the impugned Judgment is liable to be quashed and set aside.
6. The appellant most respectfully states that none of the prosecution witness has stated that A.J.P. i.e. the present Appellant was holding sword in his hand and he assaulted the deceased.
7. It is submitted that the complaint is a fabricated and afterthought document and the same is prepared by the Police in order to falsely implicate the accused in this offence and even the PW1 the complainant E.J.B. himself has admitted in his cross examination that Police prepared the F.I.R. as per their whims and the complainant made his signature thereon at the instance of Police. The appellant therefore state that this admission create serious doubts as to authenticity and genuineness of the First Information Report.
8. The Appellant states that the so-called FIR is typed document, which is quite unusual, and the prosecution has not examined the person who typed the said FIR to prove that it was really typed in the police station. Apart from this the PW 1 complainant has stated in his evidence that he do not remember as

to whether he put his signature on the FIR on 27th of 28th of May 0000. It also creates serious doubts as to authenticity and genuineness of the First Information Report.

9. The appellant further states that PW 1 the complainant has stated in his evidence (Para 10) that L.A.B. went to the police to report about the incident and in para 3 he has stated that since he (the complainant) was brother of A.J.B, police requested him to lodge the FIR. The appellant states that this fact further creates serious doubts as to genuineness of the FIR and the conduct of complainant and prosecution witnesses frustrate the very purpose of First Information Report.
10. The Appellant further states that Exh. 50 is the inquest Panchanama of deceased wherein the time of commencement of inquest panchanama is mentioned as 17:45 Hrs and the offence against the accused was registered vide C.R. No. I 000 / 0000 at 18:10 Hrs. The appellant states that the inquest panchanama was carried out much prior to the registration of the offence and inspite of this fact C.R. No. I – 000 / 0000 is mentioned in the First Information Report, which further creates doubts as to veracity of the First Information Report.
11. The Appellant further states that PW 13 PSI Shri. BBB has stated in his evidence that at about 5:30 P.M., the complainant E.J.B. came to police station (XXX) and lodged FIR against accused. PW 13 has further admitted in his evidence that after recording FIR he sent the injured to XXX Civil Hospital for their medical examination and treatment. This witness has also once stated in his evidence that he first wrote down the FIR and thereafter got typed from writer constable, which is rather surprising and unusual. The appellant further state that from the evidence of PW 1, it appears that the complainant filed complaint after returning from XXX hospital. The appellant

states that this fact goes to the root of the case to show that the so called FIR was came in existence in doubtful circumstances and further creates doubts as to veracity and genuineness of the First Information Report.

12. The appellant further states that after the incident the deceased had gone to XXX Out Post first; however the prosecution has not produced the Occurrence Report of WXY outpost.
13. It is most respectfully submitted that the prosecution has suppressed the truth and has concocted the story in order to implicate the accused falsely in this case. It is submitted that according to PW 4 S.A.P., the brother of the deceased A.J.B. arrived at the spot after one hour, which through the doubt on the entire evidence of PW 1 E.J.B. and so called FIR.
14. It is most respectfully submitted that the case of prosecution lacks its credence for non-examination of independent witnesses. Though the independent witnesses were available to the prosecution for the reasons best known to them they have not examined any Independent witnesses though the statement of these witnesses were recorded by the Investigating Officer.
15. It is most respectfully submitted that the accused and the witnesses who were examined on oath by the prosecution were from two rival fractions. All these witnesses were having animus against the accused. Hence in order to prove the charges levied against the accused beyond reasonable doubts, it was necessary for prosecution to examine natural and independent witnesses when they were available to them.
16. It is most respectfully submitted that the prosecution has alleged that on the date of the incident the deceased and brother of R.M. i.e. V.M. went to the New Bombay Corporation Hospital and thereafter the deceased and R.M. were coming back to XXX village through a Rickshaw when the alleged

incident occurred. It is submitted that the prosecution has neither examined said V.M., nor did they examined the said Rickshaw driver B.K.P. This is a serious lacuna in the prosecution case.

17. It is most respectfully submitted that considering the evidence on record it is difficult to believe that the deceased has died at the time alleged by the prosecution witnesses. The undigested foods in the stomach of the deceased suggest that the death of the deceased must have take place between 1 to 2 P.M. The appellant further states that the evidence of the medical officer PW 6 also suggest that the death must have occurred between 12 to 2 at noon. This fact coupled with other facts on record suggest that the prosecution has concocted and fabricated the story and have falsely implicated accused and therefore the Ld. Judge should not have believed the story of the prosecution.
18. It is submitted that there was no immediate cause for the alleged incident and there was no reason for the Appellant above named to assault the deceased. It is further submitted that the motive alleged by the prosecution is the quarrel that had taken place prior to one year of the alleged incident at the time of *Haldi* ceremony of one Miss. S. It is further submitted that the present appellant was not at all concerned with the alleged quarrel and hence has got no reason to assault the deceased and the appellant is falsely implicated in this offence by the prosecution with some ulterior motive. The prosecution has not proved any motive for the alleged offence.
19. The appellant most respectfully states that allegedly discovery of Iron Bar is shown at the instance of the present appellant. The appellant most respectfully states that the deceased allegedly received total 21 injuries. 20 incised wounds and one contused abrasion and the PW 6 the medical officer has stated in her evidence that these injuries could be caused by sharp edged weapon. The appellant further states that there is no injury sustained by the

accused, which could have been caused by a hard and blunt object like stick, or iron bar and therefore the appellant cannot be held responsible for the alleged incident and hence the Ld. Judge should not have convicted the present Appellant.

20. The appellant most respectfully states that the prosecution has not proved that all accused form an unlawful assembly for committing murder of the deceased A.J.B. and the present Appellant was member of the said assembly and hence the Ld. Judge should not have convicted the present Appellant.
21. The appellant most respectfully submits that considering given set of facts it is difficult to believe that all the four prosecution witnesses examined by the prosecution really witnessed the alleged incident. The Appellant most respectfully states that PW 1 Complainant and PW 3 R. M. have not stated in there evidence that PW 2 L.A.P. and PW 4 S.A.P. where present at the spot of incident and they also witnessed the alleged incident. The PW 2 L.A.P. has not stated about presence of other three witnesses examined by the prosecution at the time of actual assault and so also The PW 4 S.A.P. has not stated about presence of other three witnesses examined by the prosecution at the time of assault. It is therefore submitted that the story as alleged by the prosecution if highly doubtful and hence the Ld. Judge should not have accepted the version of prosecution witnesses.
22. The Appellant most respectfully submits that the entire evidence of PW 2 L.A.P. is suffering from number of omissions and contradictions and all statements made by this witness in his evidence are omissions in his statement. Though he has stated in Para 1 of his evidence that the he witnessed so called A.B. and other accused, the same he has not stated in his statement before police and the said omission has been duly proved by the defense counsel for the appellant and apart from this, this witness has stated

the names of Accused No. 1, 2, 5, 11 and 24 as the assailants and hence the Ld. Judge should not have relied upon that part of his evidence for convicting the present Appellant.

23. It is most respectfully submitted that Panchanama in respect of discovery of iron rod at the instance of the present Appellant is not at all reliable as the same is not as per the provision of Section 27 of Indian Evidence Act. It is further submitted that the places from where the accused appellant allegedly removed the iron rod is open spaces and easily accessible to anybody and it is really difficult to believe the discovery of iron rod at the instance of Appellant for the reason that the said memorandum and Discovery Panchanama is not signed by the accused Appellant.
24. It is most respectfully submitted that discovery of iron rod, at the instance of Accused No. 12 R.H.P., Accused No. 13 i.e. the present Appellant and Accused No. 18 S.B.P., is shown to have been made at one and same time as per the evidence of PW 12 L.P. i.e. the Panch witness. (Exh. 84 to 88). This witness has stated that all the three accused went to the spot together. It is therefore submitted that this evidence is not at all helpful to prosecution as the same is not as per the provision of Section 27 of Indian Evidence Act.
25. It is further submitted that the alleged incident took place on 26/5/0000 and the present Appellant was arrested on 29/5/0000; however the Panchanama in respect of discovery of Iron Rod at the instance of Appellant was drawn on 10/6/0000. Thus there is delay in discovery Panchanama. It is further submitted that PW 12 Panch witness is a close relative i.e. cousin of the wife of the deceased A.J.B. He being an interested witness the Ld. Sessions Judge ought to have discarded his evidence.

26. It is most respectfully submitted that it can be demonstrated from the given set of facts that the discovery of knives is at the instance of Appellant is not trustworthy. It is submitted that prior to drawing the discovery panchanama at the instance of accused, on 2/6/0000 and on 8/6/0000 discovery of chopper has been shown at the instance of two other accused from the same place. Thus the investigating officer had already visited the said place before drawing panchanama at the instance of the present Appellant. The appellant further submits that how at the time of recovery of weapons at the instance of other accused prior in time, the remaining weapon laid unrecovered from the same bushes. It is submitted that this point was argued before the Ld. Sessions Judge but the Ld. Judge has refused to consider this point in the Judgment.
27. It is most respectfully submitted that the conduct of Investigating Officer as to why he opted to choose a close relative of deceased/complainant as the panch, when other persons were certainly available to him and the manner in which the memorandum and discovery panchanama was drawn, which even is not signed by the accused appellant, creates grave suspicion about the genuineness of the said documents.
28. The Appellant further submits that there is not iota of evidence to connect the present Appellant with the alleged offence and even the report of chemical analyzer is not supporting the prosecution so far as the present appellant is concerned and hence the Ld. Judge erred in convicting the present Appellant.
29. It is most respectfully submitted that the learned Judge has not carefully and cautiously examined and scrutinized the evidence led during course of the trial. The learned Judge ought to have held that the evidence of prosecution witnesses is not trustworthy to be relied upon. The appellant further states that because of remissness on the part of investigating officer coupled with

number of improvements and omissions on the part of prosecution witnesses, the Ld. Judge ought to have discarded the prosecution story and should have acquitted the present Appellant.

30. It is most respectfully submitted that the perusal of the impugned Judgment and Order would also show that the learned Judge has not appreciated, considered and construed the submissions and various authorities of higher courts advanced on behalf of the Appellant and at various stages in the Judgment and Order the learned Judge has left the point without coming to the conclusion and therefore has not arrived at a specific finding and conclusion;
 31. Under the circumstances mentioned above and the submissions advanced in the present Appeal Memo it can easily be concluded by this Hon'ble Court that the inferences drawn, the reasons assigned and the conclusions arrived at by the learned Judge are not only bad in law and improper on facts but also are not sustainable on the principles of equity and good conscience and therefore the impugned Judgment of Conviction and Sentence is liable to be quashed and set aside.
- III. The Judgment and Order of Conviction and Sentence passed on 21st February 0000 and therefore the Appeal filed is in time.
 - IV. No other appeal is filed save and except the present Appeal challenging the said impugned Judgment and Order of Conviction and Sentence either in this Hon'ble Court or in the Hon'ble Supreme Court of India.

The Appellant, therefore, pray that:-

- (a) This Hon'ble Court may be pleased to call for the entire record and proceedings in respect of the impugned Judgment and Order of Conviction and Sentence passed by the learned Second Ad-hoc Additional Sessions

Judge at XXX, dated 21st February 0000, in Sessions Case No. 00 of 0000;

- (b) After perusal of the same this Hon'ble Court may be pleased to quash and set aside the impugned Judgment and Order of conviction and sentence and set the present Appellant at liberty;
- (c) Affidavit of the Appellant may kindly be dispensed with as the Appellant are in jail.
- (d) Any other order in the interest of justice may kindly be passed.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPELLANT SHALL, AS IN DUTY BOUND, EVER PRAY.

Mumbai,

Dated this 3rd day of March, 0000

ADVOCATE FOR THE APPELLANT

SHREEKANT V. GAVAND.