



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

**CRIMINAL APPEAL NO.1194 OF 2023
WITH
INTERIM APPLICATION NO.4582 OF 2023
IN
CRIMINAL APPEAL NO.1194 OF 2023**

Guddu @ Dhiraj Sobinkumar & Ors. Appellants/
Applicants
versus

The State of Maharashtra & Anr. Respondents
.....

- Mr. Umar Kazi @ Ms. Sonia Santis a/w Umar Nizami i/b. M.M. Deshmukh, Advocate for Appellants/Applicants.
- Ms. Mahalakshmi Ganapathy, Addl. P.P. a/w Mr. Ashish Satpute, APP for State/Respondent No.1.
- Mr. Sagar Rane, appointed Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.
DATE : 23rd APRIL, 2026**

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

1. The Appellants have challenged the Judgment and Order dated 22/08/2023 passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.123 of 2018. For convenience, the Appellants herein are referred to by their status as accused before the Trial Court.

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- Appellant No.1 Guddu @ Dhiraj Sobinkumar was the original accused No.1.
- Appellant No.2 Harindar @ Sujitkumar Murtaprasad Bhar was the original accused No.2.
- Appellant No.3 Sujitkumar Nandlalram Kumar was the original accused No.3.
- Appellant No.4 Balya @ Balikumar Basawanram was the original accused No.4.

2. All the Appellants/accused were convicted as follows ;

- (i) The Appellants were convicted for the commission of offence punishable u/s 302 r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer rigorous imprisonment for six months.
- (ii) The Appellants/Accused were convicted for the commission of offence punishable u/s 504 r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer rigorous imprisonment for three months.



- (iii) All the substantive sentences were directed to run concurrently, except the sentences in default of payment of fine amount.
- (iv) The Appellants were granted set off u/s 428 of Cr.PC.
- (v) Out of the fine amount, if recovered, an amount of Rs.40,000/- was directed to be paid to the father of the deceased.

3. Heard Mr. Umar Kazi, learned counsel for the Appellants, Mr. Sagar Rane, learned counsel for the Respondent No.2 and Ms. Mahalakshmi Ganapathy, learned APP for the State.

4. The prosecution case in brief is as follows :

The deceased Akash was working at a stone quarry with one Subhash Bhere. The accused Nos.1 to 3 were also working at the same place. The accused No.4 had visited the accused Nos.1 to 3. The deceased Akash and the accused were residing in the same house. The deceased Akash was residing on the ground floor and the accused Nos.1 to 3 were residing on



the upper floor. It is the prosecution case that the accused were jealous of the deceased because he was earning more than them. Therefore, they had a grudge against him. On 24/11/2017, at about 10.00 p.m. the accused poured kerosene on the deceased. One of them threw a match stick at him and set him on fire. They went away from the place. Akash lay in the open space outside his room. His father came after some time. He saw the burn injuries on Akash. He immediately informed the police who came to the spot. Akash was initially taken to Primary Health Centre and then was shifted to Civil Hospital Thane. It is the prosecution case that while he was being shifted to the Primary Health Centre, Akash informed his father as to how the incident had occurred and who were responsible for his injuries. The police on the other hand recorded the statement of Akash in the hospital after obtaining endorsement from the Doctor. Based on Akash's statement, the offence was registered at Kinhawali Police Station, vide C.R.No.I-98/2017. Akash succumbed to his injuries after two days i.e. on 26/11/2017. The accused were arrested. Post-mortem examination of the dead body of Akash was conducted. The statement of various witnesses were



recorded. Different Panchanamas were conducted. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During the trial the prosecution examined 10 witnesses including the father and employer of the deceased, the Medical Officer who had given the endorsement on the Dying Declaration, the Medical Officer who had conducted the post-mortem examination, the Panchas, the Police Officers who had carried the articles to FSL and the Investigating Officer.
6. The defence of the accused was of total denial. In addition, the accused No.2 Harindar @ Sujitkumar Murtaprasad Bhar and accused No.3 Sujitkumar Nandlalram Kumar examined themselves as defence witnesses. At the conclusion of the evidence, the learned Judge heard the parties. He reached his conclusion based on the oral and written Dying Declarations and on the circumstance of the accused buying kerosene. The learned Judge convicted and sentenced the Appellants/accused as mentioned earlier.



7. PW.1 Sahebrao Waghmare was the father of the deceased. He deposed that in the year 2017, P.W.1 himself was working at Deepak Bhere's quarry, situated in the mountain between Sathgaon and Shenwa. The deceased Akash was also working in the same quarry. He used to operate Poclain/forklift and other heavy machines. They were residing in a room constructed near the quarry. P.W.1's brother-in-law used to visit them and used to stay with them. The accused were also working in the same quarry. P.W.1 and the deceased used to stay on the ground floor whereas the accused used to stay on the first floor above their room. The incident occurred on a Friday. On that day, they had received their pay. He himself, the deceased and his brother-in-law had gone to the market. The deceased Akash returned home early. P.W.1 and his brother came a little later. They reached home at about 09.45 to 10.00 p.m. P.W.1 saw that the deceased was lying on the ground outside the room. He saw that kerosene was poured on his son and he had suffered burn injuries. P.W.1 then called police telephonically. They came at the spot. The police kept his son in the police vehicle and took him to Shahapur PHC. Akash was still alive and was talking. He



told P.W.1 that the accused Nos.1, 3 and 4 had caught him. The accused No.4 had poured kerosene on him. The accused No.1 using a matchstick had set him on fire. P.W.1 deposed that police had written the facts narrated by Akash. After that, Akash was shifted to a hospital in Thane. Akash was still in a position to talk. He died after two days. According to P.W.1 since Akash used to get higher salary, the accused were jealous. P.W.1's statement was recorded during investigation. He identified the accused present in the Court. He deposed that he had gone to identify the accused in jail.

In the cross-examination he accepted that, when he had called the police, he had not made any accusation against anybody. Akash was in Shahapur PHC for only 15 minutes and then he was immediately moved to Thane. He accepted that he himself and Akash never had any dispute or quarrels with the accused prior to the incident. The accused had come to work in the quarry prior to one and a half month. P.W.1 was working in the quarry for about two years and Akash had joined only three months before the incident. The accused were working on the



crusher machine whereas Akash was doing miscellaneous work assigned to him. He accepted that till this incident P.W.1 had not made any complaint against anybody. He denied the suggestion that Akash was not in a position to speak after the incident. He denied that he himself was addicted to alcohol and Akash was addicted to gambling and therefore there used to be quarrels between P.W.1 and Akash and because of that Akash had committed suicide by setting himself ablaze. He deposed that he had told the police that the three accused had caught his son and the fourth accused had set him on fire. But he could not assign any reason why the said fact was not mentioned in his police statement.

8. P.W.2 Subhash Bhare was the employer of the accused and the deceased. He deposed that he had constructed chawls with rooms which were given to the labourers. The working hours were between 7.30 a.m. and 06.00 p.m. with a lunch break for an hour in between. The weekly off was on Friday. P.W.1 and the deceased were working with him. The deceased used to work as a driver, cleaner and used to do any other job



given to him. He was an extra labourer. He used to work in the night also if asked. Akash's maternal uncle Mahadu had started working with P.W.2 a week prior to the incident as a labourer. Accused Nos.1, 2 and 3, were working with P.W.2. Accused No.4 Balya had visited them. They were working at his stone crusher site. On 24/11/2017, he had paid the weekly wages to his labourers and had left at around 1.00 p.m.. In the night, i.e. on 25/11/2017 at about 2:00 am, his father received a call on his mobile phone from the Rural Hospital at Shahapur. They were informed that one of the labourers had suffered burn injuries. P.W.2 and his father went to the RHC Shahapur. Then the injured labourer was taken to Civil Hospital, Thane. P.W.2 then went to the spot of the incident and met Mahadu Pawar, who informed P.W.2 about the dispute between the deceased and the Appellant and as to how the incident had occurred. Of course, this information will be hearsay as far as P.W.2 is concerned, and Mahadu Pawar is not examined by the prosecution. He then went to the Civil Hospital, Thane at around 4:00 p.m. Again, he was told by P.W.1 that the four accused had a fight with the deceased. They had assaulted Akash and had set him on fire.



This again would be hearsay as far as P.W.2 is concerned. Later on, P.W. 2 came to know that Akash had died. According to him, Akash was getting more wages than the accused Nos.1, 2, and 3. He was called for an identification parade at Adharwadi jail. He identified all the accused during the identification parade.

In the cross-examination, he accepted that in his presence, no incident had taken place between Akash and the accused. He also confirmed that Akash was residing on the ground floor, and the accused were residing on the first floor.

9. P.W. 11 API Arun Phegde, had recorded the written dying declaration and had carried out the investigation. He deposed that, at the relevant time, he was attached to Kinhavli Police Station as API. On 25/11/2017, while on duty, he received information about the incident. He went to the spot and admitted the victim, Akash, to RHC Shahapur. The doctor gave first aid to Akash. P.W. 11 then sought the opinion of the



Medical Officer in respect of the mental and physical fitness of Akash, and whether he was in a position to give a statement. He sought the opinion through a letter which is produced on record at Ex.53. The Medical Officer examined Akash and informed P.W.11 that Akash was in a position to give a statement. Accordingly, he recorded Akash's statement in his handwriting as per his say. That statement is produced on record at Ex.22. It is mentioned in the statement that on 24/11/2017 at about 10.00 p.m., when he was sitting near his room, the accused No.1, Guddu, accused No.4 Balya, accused No.2 Harinder and one tall boy whose name was not known started abusing him without any reason. He came out of his room and asked them as to what had happened. Those persons then poured kerosene on him and one of them threw a burning matchstick on him. He suffered burn injuries on his head, shoulder, and face. Those persons ran away. His father and maternal uncle, Mahadu Pawar, admitted him to the hospital at Shahapur. This was the statement given by the deceased to this witness, which was written down. The statement was read over to Akash. P.W.11 obtained Akash's thumb impression. The Medical Officer had put his endorsement



regarding fitness of Akash to give a statement. He had also put his signature and stamp on the same paper. PW.11 then returned to the police station and registered the FIR. It is produced on record at Ex.54. He came to know that Akash was transferred to Thane Civil Hospital.

10. PW. 11 conducted the investigation, which included conducting the spot panchnama. During the spot panchnama, he seized a kerosene can containing some kerosene and one broken matchbox with matchsticks. The spot panchnama is produced on record. He arranged a photographer to take photographs. The accused were arrested. The accused Nos.1 to 3 were arrested on 27/11/2017. Initially, PW.11 was made to understand that accused No.4 Balya was a minor, but the investigation revealed that he was an adult, and therefore, he was also arrested on 09/01/2018. In the meantime, on 26/11/2017, he came to know that Akash had succumbed to the injuries. He conducted the inquest panchanama and sent the dead body for post-mortem examination. At the instance of the accused Sujit Kumar, they went to the place from where Sujit Kumar had purchased



kerosene. The clothes of the deceased were sent for chemical analysis. The Test Identification Parade was conducted at his instance. Statements of witnesses were recorded, and finally, the charge-sheet was filed.

In the cross-examination, he accepted that P.W.1's statement was recorded after two days of the incident. He had not seized the clothes of any of the accused. He accepted that P.W.1 had not lodged any complaint before the incident in question regarding any other incident. He proved the omission and accepted that P.W.1 had not stated that three of the accused had caught hold of Akash and the fourth one had set him on fire.

11. As mentioned earlier, the dying declaration is produced on record at Ex.22. It bears the endorsement of P.W.3 Dr. Pramod Nirwane. He deposed that on 25/11/2017, when he was on duty at Shahapur Sub-District Hospital, Akash was brought to the hospital. They administered primary medical aid. The medical and physical condition of Akash was getting worse, and



therefore, he referred the patient to District Hospital, Thane. He deposed that the statement of the injured was recorded by the police. PW.3 was asked by the police whether the injured was in a state to give a statement. He had examined the injured and had found that the injured was conscious and oriented. Therefore, he permitted the police to record his statement. He had given his endorsement that the patient was oriented and conscious. He had given his remarks in writing. He identified his endorsement in the left margin. It also bears his signature. After the statement was recorded, again, he gave his endorsement that the patient was conscious and fully oriented. He identified the statement at Ex.22.

In the cross-examination, he accepted that he had not brought any report from the hospital in respect of 25/11/2017 and that he could recollect the name of the patient only by referring to the statement at Ex.22. The perusal of the dying declaration at Ex.22 shows that PW.3 had given his endorsement in the left margin and also at the bottom of the said dying declaration.



12. PW.4, Bhagwan Bhoir, was a Pancha for the spot panchanama. He deposed that there was ground floor and a first floor in the said house. The first floor had a tin roof. There was an iron ladder outside the house. A pair of slippers, shoes, a plastic bucket, and a plastic drum were seen in the open space. They went to the first floor. They saw a Bisleri water bottle containing kerosene. There were utensils for cooking. There was a matchbox. The spot panchanama is produced on record at Ex.26. It describes that the first floor was about six feet in height above the ground floor room. There was an iron ladder to go to the first floor, which was about six feet in height. There was a five litre Bisleri can containing trace of kerosene. There were some matchsticks. The can and the matchsticks were seized. There was also a stove found in the room.

13. PW.5, Nitin Shirke, had sold two litres of kerosene to the accused. He identified the accused who had come to his shop to buy kerosene. However, he has not deposed as to when they had purchased kerosene from him. Though they did not



have any document, he gave two litres of kerosene to the accused. He could identify one of the persons out of the four persons who had come to his shop.

14. PW.6, Nilesh Bhere, was a Pancha in whose presence the accused No.3 had shown willingness to show the place from where they had purchased the kerosene. The police recorded that panchnama u/s 27 of the Evidence Act. To that extent, this evidence is connected with the deposition of PW.5.

15. PW.7, Ranjit Singh Dhari, had conducted the post-mortem examination between 1.15 p.m. and 1.45 p.m. on 26/11/2017. The deceased had suffered 16% burns, and the cause of death was respiratory failure due to asphyxia. The post-mortem notes are produced on record at Ex.39. It shows that the burn injuries were on the head, neck, and left shoulder. There were superficial to deep burns over the scalp.

16. PW.8, Ashok Kirpan, was a Pancha for the inquest panchanama of the deceased.



17. PW.9, PC Sharad Kanthe, had carried the clothes of the deceased to FSL, Kalina on 20/01/2018.
18. PW.10, Ganesh Bhise, was a photographer who had taken photographs of the spot of the incident and of the house.
19. As mentioned earlier the defence of the accused was of total denial. In addition, DW1-accused No.2 Harindar @ Sujitkumar Bhar, gave evidence on their behalf. He deposed that he had joined the work in that quarry only four days prior to the incident. He was working under the contractor named Rajnikant. He did not know the owner of the quarry. The other three accused had come to work there before him, and that he was not knowing them. However, on the date of the incident, it was a Friday and a weekly off. He had gone to the market with the other accused. He had no acquaintance with the deceased. There was no dispute between them. He himself and the other three accused used to stay together. The deceased never used to be with them. The deceased was staying separately with his



father and maternal uncle. Accused No.2 and the other accused went to the market at about 2 p.m. and returned at about 11 p.m.. It took about one and a half hour to go to the market from the quarry. When they returned to their place, at that time, Akash or his relatives were not seen. On the next day, they had attended work at the quarry as usual. They came to know about the incident on the next evening. The police took them to the police station. A false case was lodged against him. He stated that he and the other accused were innocent and that they have no connection with the incident.

The public prosecutor cross-examined this witness. He denied the suggestion that they used to cook their meals themselves. He denied that they had bought kerosene from the shop of P.W.5, Nitin Shirke. He denied the suggestion that they were staying on the first floor shown in the photographs produced in the court. He had agreed to work for a monthly salary of Rs.14,000/-, but there was no occasion to get his first salary because he had worked only for four days prior to the incident.



20. DW2 was accused No.3, Sujitkumar Nandlalram Kumar. He deposed that he had joined the work fifteen days prior to the incident. He was working with the contractor Rajnikant. He was not knowing the quarry owner. The other three accused had come to work before him, and therefore, he was not acquainted with them. The contractor Rajnikant used to pay them. The deceased was working in the same quarry but under a different contractor. He deposed that the contractor used to provide meals in the afternoon and in the evening. Friday was a weekly off. On the date of the incident, it was a Friday. He and the other accused had gone to the market. They had no acquaintance with the deceased. There was no dispute. The deceased used to reside separately with his father and uncle. They had left the place at about 2.30 p.m. to go to the market, and they returned at 11.00 p.m.

In short, his evidence is similar to DW1.

21. The cross-examination conducted by the learned APP was mainly in the form of suggestions, which he denied.



22. This, in short, is the evidence led in this case.
23. Learned counsel for the Appellants made the following submissions :
- (i) There was no motive for the accused to commit the murder of the deceased. Being jealous for getting less salary than the deceased can hardly be a reason to commit murder.
 - (ii) The prosecution has suppressed the genesis of the incident. There is no reason to disbelieve the evidence of the defence witnesses that they had gone to the market at the time of the incident. The defence witnesses have to be treated on par with the prosecution witnesses.
 - (iii) The wages earned by the accused as well as by the deceased were not proved through any cogent evidence, and therefore, there was no reason to believe that Akash was earning more than the accused.
 - (iv) There is inconsistency between the oral and written dying declarations.



- (v) The deceased was at Shahapur Hospital only for a short while and therefore, it was not possible for the police to have recorded his statement in the hospital at Shahapur. Within a short time, he was taken to the Civil Hospital at Thane. He submitted that since there is inconsistency between both these dying declarations, both of them are required to be discarded.

24. The learned APP as well as the learned counsel for PW.1, i.e. the father of the victim, made the following submissions,

- (i) Akash was in a position to give a statement. It is endorsed by the Medical Officer. He has given his endorsement prior to the recording of the dying declaration and at the end of the dying declaration. There is no reason to disbelieve the independent witness, P.W.3. Both the dying declarations have described the incident in detail with specific roles attributed to all the accused.
- (ii) They submitted that the evidence of the quarry owner shows that all of them were staying in the same house. The accused were staying on the



upper floor, and the deceased was staying on the ground floor. There is no explanation as to how the deceased suffered injuries. Though there is some suggestion that the deceased could have committed suicide, there is no basis to give that suggestion.

(iii) The evidence shows that the accused had purchased kerosene. There is evidence of the shop owner who had sold the kerosene. This is an additional incriminating circumstance against all the accused, as all of them had gone to buy kerosene.

(iv) They further submitted that the kerosene bottle was found at the spot. There were scattered matchsticks, and a matchbox was found at the spot, i.e., on the first floor, which is consistent with the prosecution case.

25. We have considered these submissions. The prosecution case mainly revolves around the two dying declarations. The first one was the oral dying declaration made to P.W.1, and the second was a written dying declaration. Though it is argued by the learned counsel for the Appellant that



both these dying declarations were contradictory, we are unable to accept that submission. Though there is some discrepancy about the role played by each of the accused, and though in both these dying declarations, the names of at least one accused were missing, to that extent, there is some discrepancy. But the incident is described in detail in both these dying declarations. The question whether the deceased was in a position to make the oral dying declaration and the written dying declaration is answered by the medical opinion. Of course, the written dying declaration contains his endorsement, but by that time, the deceased, Akash, was taken in a police vehicle. Therefore, before reaching the hospital also, he was in the same position as far as his medical condition is concerned. It is significant to note that he survived for more than a day and ultimately died on 26/11/2017. He had suffered 16% burn injuries, and there is nothing to show based on the medical evidence that he was unable to speak.

26. PW.1 was a natural witness. It is an accepted position even by the accused that P.W.1, the deceased, and P.W.1's



brother-in-law were staying together. P.W.1's deposition that the three of them had gone to the market and that Akash had returned earlier, is believable. When P.W.1 and his brother-in-law reached shortly at around 9.40 to 10.00 p.m., they had seen that Akash was lying on the ground with burn injuries. P.W.1 immediately called the police. The police put Akash in a police vehicle and took him to Shahapur Hospital. P.W.1 had specifically stated that Akash was alive and talking. Then he described what Akash had told him. At this stage, it must be noted that the deposition of P.W.1 mentions that Akash had told him that only the accused Nos.1, 3 and 4 had caught him, and the accused No.4 had poured kerosene. The accused No.1 had set him on fire. Very significantly, there is no mention of accused No.2 in this narration. We have cross-checked this particular paragraph with the original Marathi deposition. There is no reference to the presence of accused No.2 or any role played by him. Therefore, though we do not find that Akash was not in a position to give a statement, at the same time, what he told P.W.1 is important, and significantly, he had not attributed either presence or any role to the accused No.2 in this oral dying



declaration. To that extent, the prosecution case is not proved beyond reasonable doubt as far as accused No.2 is concerned.

27. The next significant circumstance is about the written dying declaration produced at Ex.22. We have already discussed that P.W.3 has given very clear evidence that he had examined Akash prior to the recording of the statement and even after the statement was completed. P.W.3 had specifically stated that the patient was oriented and conscious. The Investigating Officer had taken care to seek the opinion of P.W.3, who at that time was treating Akash. There is no reason to disbelieve either P.W.3 or P.W.11 as far as the written dying declaration is concerned. Therefore, we accept this evidence of the written dying declaration. In this context, it again needs to be mentioned that in this case, the deceased Akash had named Guddu, Balya, Harinder. But he has not named the fourth accused. Instead, he had described that the fourth person was a tall boy, but his name was not known. Thus, the written dying declaration specifically names the accused No.1, accused No.4 and accused No.2. But the accused No.3 is not specifically named. The learned APP as



well as learned counsel for the Respondent No.2 tried to submit that the fourth person, who was described as a tall boy, was to none other than the accused No.3. They relied on the arrest panchanama which shows that he was slightly taller than the other accused, and therefore, the reference to a tall boy was to none other than the accused No.3. We are unable to accept this submission. It would be stretching the narration given by the deceased in his written dying declaration to implicate the accused No.3. A serious doubt is created about his identity and description. We cannot convict him only on a vague description that the fourth person was a tall boy. There is no further evidence led by the prosecution that the description regarding the tall boy was in reference to accused No.3 and to no other person. To that extent, therefore, even the accused No.3 gets the benefit of doubt.

28. Though the written dying declaration names the accused No.2, but since the prosecution is also relying on the oral dying declaration, which was first in point of time and does not name the accused No.2, he gets the benefit of doubt as well.



29. As far as other circumstances are concerned, they relate to the spot panchanama. As mentioned earlier, the upper floor was hardly six feet above the lower room and therefore the incident was quite possible to have taken place in the manner in which it had occurred and was described. However, finding a kerosene can, cannot be termed as an incriminating circumstance. Even as per the prosecution case, the accused were staying in the upper room. There were cooking utensils, vegetables and a cooking stove. All this naturally requires kerosene and therefore, accused buying kerosene can hardly be termed as an incriminating circumstance. There is no evidence to show that they had purchased kerosene with a specific purpose of committing this offence and to pour it on the deceased and then setting him on fire. Therefore, that particular circumstance cannot be taken as an incriminating circumstance or even an additional corroborative circumstance in favour of the prosecution. The Investigating Officer has not seized the clothes of the accused. Finding of kerosene on the clothes of the deceased is hardly surprising.



30. As a result, to summarize, we are of the opinion that the prosecution has proved the evidence of oral dying declaration and written dying declaration. Though there is some discrepancy between both these dying declarations, as far as accused No.2 and 3 are concerned, the incident is consistently mentioned in both these dying declarations and the presence of the accused Nos.1 and 4 is consistent. As a result, the accused Nos.2 and 3 get the benefit of doubt. But there is consistent evidence against accused Nos.1 and 4. Therefore, we are inclined to allow the appeal as far as accused Nos.2 and 3 are concerned, but the appeal of the accused Nos.1 and 4 deserves to be dismissed.

31. Hence, the following order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction and sentence recorded against the accused No.2 Harindar @ Sujitkumar



Murtaprasad Bhar and accused No.3 Sujitkumar Nandlalram Kumar, by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.123 of 2018, are set aside.

- (iii) These two accused are acquitted from all the charges.
- (iv) The accused Nos.2 and 3 shall execute a bond under section 481, of the BNSS in the sum of Rs.15,000/- each before they are released from jail to ensure their presence if an Appeal is preferred.
- (v) The Appeal in respect of accused No.1 Guddu @ Dhiraj Sobinkumar and accused No.4 Balya @ Balikumar Basawanram, is dismissed. The conviction and sentence recorded against them by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.123 of 2018 are confirmed.
- (vi) Both the accused Nos.1 and 4 shall get the benefit of set off under section 428 of Cr.PC.
- (vii) Their substantive sentences shall run concurrently as directed by the learned Judge.



(viii) The Appeal is disposed of.

(ix) With the disposal of the Appeal, the connected application is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)