



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.477 OF 2018**

Akash Vidyadhar Davare & Anr. ...Appellants
Versus
The State of Maharashtra ...Respondent

Mr. Rohan A. Desai, appointed for the Appellants.

Ms. S. M. Yadav, APP, for the Respondent-State.

**Coram: Madhav J. Jamdar, J.
Date: June 08, 2026**

JUDGMENT:

1. By the present Criminal Appeal, the challenge is to the legality and validity of the Judgment and Order dated 27th March 2018 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.299 of 2012 and Sessions Case No.359 of 2012.

2. Although Mr. Vijaykumar Garad, Advocate, has filed *Vakalatnama*, he is not appearing. Today, none appears for the Appellants. On 6th November 2025, a learned Single Judge [Coram: Shyam C. Chandak, J.] has passed the following Order:

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- 1) *None for the Appellants.*
 - 2) *Mr. Ajay Garad, learned Advocate on record for the Appellants is put to notice to attend the Court on the next date.*
 - 3) *Stand over to 12/12/2025."*

3. It is significant to note that, pursuant to the Order dated 6th November 2025, notice was issued to Mr. Ajay Garad, Advocate, and the



same has been duly served upon him. Despite such service, he has not appeared.

4. Thus, the learned Advocate has consistently remained absent in the matter.

5. As none has appeared for the Appellants, today, when the Criminal Appeal is called out for hearing, Mr. Rohan A. Desai, learned Counsel of this Court, who is present in Court, is appointed to represent the interests of the Appellants and the matter is kept back for some time. Thereafter, the matter is taken up for hearing.

6. Mr. Desai, learned Counsel for the Appellants, submitted that, apart from the merits of the case, the Judgment of the learned Trial Court runs into 10 pages, whereas the reasoning is contained in only one paragraph. He submits that, although the prosecution has examined a total of eight witnesses and they have been extensively cross-examined, their evidence has not been at all considered by the learned Trial Court. He submits that deposition of witnesses and particularly the cross-examination of the witnesses clearly show that the prosecution has failed to establish the case beyond reasonable doubt. He submits that the evidence on record is contradictory and not reliable. He submits that therefore, the impugned Judgment and Order of conviction be quashed and set aside.

7. On the other hand, Ms. Yadav, learned APP, supported the



impugned Judgment and Order. She submitted that this is a case of offence under Section 307 of the *Indian Penal Code, 1860* and PW-1 is the injured witness. She submitted that the injuries are grievous and the medical evidence is supporting the prosecution case. Therefore, she submitted that the Criminal Appeal be dismissed.

8. A perusal of the record shows that the prosecution has examined a total of eight witnesses. PW-1, who is the injured witness, has been cross-examined extensively. All the witnesses have been extensively cross-examined. In fact, the evidence of doctors namely PW-5-Dr. Umesh Gaikwad and PW-8-Dr. Amogh Rajiv Vaishampayan is contradictory. Even evidence of the PW-1-Santosh Janardhan Sawant i.e. injured and his mother PW-2-Meena Janardhan Chavan is contradictory. The explanation given in statement recorded under Section 313 of the *Code of Criminal Procedure, 1973 ("CrPC")* of the Accused has not been taken into consideration by the learned Trial Court.

9. In these circumstances, it is necessary to set out the only paragraph containing the reasons assigned by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.299/2012 along with Sessions Case No.359 of 2012. Said Paragraph No.10 reads as under:

"10. Since all the points are interconnected, therefore they are discussed in common. The informant (PW-1) vide Ex.65



*deposed that on 22.11.2011, he had gone to Kurla Court alongwith the father of his friend Santosh Talekar. Thereafter, at about 6.45 pm he went to public toilet at Gaikwad Nagar for natures call. When he was returning home, accused assaulted him from his back side. He states that accused no.3 Shahaji and accused no.2 Aakash were holding iron rods (Art.3 and 4). Accused no.4 was holding knife (Art.2). He assaulted the informant by knife on his head. He sustained injuries and failed down. Accused nos.2 and 3 had assaulted on his leg and also assaulted on the thumb of his left hand. Thereafter, his mother and police came on the spot. He was taken to Rajawadi hospital by police. After the treatment he came to police station and filed FIR (Ex.66). The informant was crossed examined in detail. Learned Adv. for the accused brought the circumstances of earlier enmity and groups. He has brought the topographical situation of the spot of incident as it is a crowded area. **However, since, the accused in this case have filed cross case against the present prosecution witnesses about the same incident, presence of the accused cannot be disputed. It is further, necessary to mentioned that it is required to be inferred that some incident had happened between the accused and the informant.** Further, the prosecution led the evidence of Meena (PW-2), who is mother of the informant (PW-1). She stated that on the day of incident she had sent her daughter to purchase grocery. Her daughter Sushmita rushed to home and informed the incident to Meena (PW-2). Hence, I answer point nos.1 to 4 accordingly."*

(Emphasis added)

10. The above are the only reasons given by the learned Trial Court. The deposition of the witnesses is not considered, their cross-examination is not considered and even the explanation given in the statement recorded under Section 313 of CrPC is also not considered.
11. Thus, there is substance in the contention raised by Mr. Desai, learned Counsel for the Appellants that the impugned Judgment and Order of conviction is totally perverse.



12. Thus, as the impugned Judgment and Order is totally perverse, the Criminal Appeal is disposed of by passing following Order:

The impugned Judgment and Order dated 27th March 2018 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.299 of 2012 and Sessions Case No.359 of 2012 is quashed and set aside and the case is remanded back to the learned Sessions Court, Greater Mumbai.

13. This Court places on record its appreciation for the assistance rendered by Mr. Rohan A. Desai, learned Advocate. The High Court Legal Services Committee, Mumbai is requested to pay his professional fees as per rules.

[Madhav J. Jamdar, J.]