

**SUPREME COURT OF INDIA**

Jitendra Bappa Barawkar

Vs.

State of Maharashtra

Crl.A.No.683 of 2007

(B.N. Agrawal and G.S. Singhvi JJ.)

06.05.2008

**ORDER**

1. Heard learned counsel for the parties.

2. The sole appellant, along with Umesh Babanrao Khutwad [Accused No.1], Subhash Maruti Avasare [Accused No.3], Sunil Maruti Avasare [Accused No.4] and Rakesh Tukaram Pawar [Accused No.5], was convicted by the Trial Court under Section 302 read with Section 34 of the *Indian Penal Code* [for short, "I.P.C."] and sentenced to undergo rigorous imprisonment for life. On appeal being preferred, the High Court acquitted Accused Nos.4 and 5, set aside their conviction under Section 302/34 I.P.C. and convicted them under Section 323 and they were sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/-; in default, to undergo further rigorous imprisonment for two months. So far as Accused No.1 is concerned, he did not move this Court but so far as Accused No.3 is concerned, he filed appeal before this Court giving rise to Criminal Appeal No.1086 of 2006, which was dismissed on 19th October, 2006. This appeal by special leave has been filed by the appellant.

3. Learned counsel appearing on behalf of the appellant in support of this appeal submitted that case of the appellant is quite distinguishable from that of Subhash Maruti Awasare [Accused No.3] and Umesh Baburao Kutwad [Accused No.1] as in the first version of the occurrence disclosed by the deceased in the oral dying declaration said to have been made before Baburao [P.W.9], who was police constable, the name of this appellant was not disclosed, but the names of Accused Nos.1 and 3 were disclosed. The first information report was lodged after the said oral dying declaration. This being the position, we are of the view that it is not safe to place reliance upon evidence of P.W.1 so far the appellant is concerned. In view of these facts, we are of the view that the High Court was not justified in upholding the conviction of the appellant.

4. Accordingly, the criminal appeal is allowed, conviction and sentence of the appellant are set aside and he is acquitted of the charge. The appellant, who is in custody, is directed to be released forthwith, if not required in connection with any other case.