

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.37 OF 2012

1. Haneef Gulam Rasool Makrani
Age 22 Years
2. Irfaan Suleman Makrani
Age 25 Years
3. Saeed Suleman Makrani,
Age 21 Years
4. Imranali Nisarali Makrani,
Age 26 Years
5. Nisarali Noor Mohammad Makrani
Age 54 Years

All R/o. Mothi Rajmohi,
Taluka Akkalkuwa,
District Nandurbar

APPELLANTS

VERSUS

The State of Maharashtra
Through Police Station Officer,
Akkalkuwa Police Station

RESPONDENT

...
Mr.S.M.Godsay, Advocate for Appellants.
Mr. S.B.Pulkundwar, APP for the Respondent – State.
...

WITH

CRIMINAL APPEAL NO. 501 OF 2012

1. Gulamali Muradali Makrani,
Age 51 Years, Occ : Business
r/o. Moti Rajmohi, Taluka
Akkalkuwa, District Nandurbar
2. Latifali Gulamali Makrani,
Age 27 years, Occ. and
r/o. as above
3. Sameerali Gulamali Makrani,
Age 25 Years, Occ. and
R/o. as above
4. Shafi-Mohammad Adbul-Hamid Makrani,
Age 37 Years, Occu. and
R/o. as above
5. Mehommadali @ Kalu Miyadad Makrani,
Age 54 Years, Occ. and
R/o. as above

APPELLANTS**VERSUS**

The State of Maharashtra.

RESPONDENT

...
Mr. N.S.Ghanekar, Advocate for Appellants.
Mr. S.B.Pulkundwar, APP for the Respondent – State.
...

WITH**CRIMINAL APPEAL NO. 242 OF 2012**

Sallauddin Sher Mohammad Makrani,
Age: 19 Years, Occu. Agril & Business,
R/o. Mothi Rajmohi, Tal. Akkalkuwa,
District Nandurbar

APPELLANT
[Orig. Victim]

VERSUS

1. The State of Maharashtra
Through Police Station
Officer, Akkalkuwa Police Station,
Tq. Akkalkuwa, Dist. Nandurbar
2. Gulamali Muradali Makrani
Age 50 Years, Occu. Agril.
3. Latifali Gulamali Makrani
Age 25 Years, Occu. Nil
4. Sameerali Gulamali Makrani
Age 23 Years, Occu: Nil,
5. Shafi Mohammad Abdul Hanif Makrani
Age 20 Years, Occu: Nil,
6. Haneef Gulam Rasool Makrani
Age 20 Years, Occu. Nil,
7. Irfaan Suleman Makrani
Age 20 Years, Occu. Nil,
8. Saeed Suleman Makrani,
Age 19 Years, Occu. Nil,
9. Imranali Nisarali Makrani,
Age 24 Years, Occu. Nil
10. Nisarali Nor Mohammad Makrani
Age 51 Years, Occu: Nil,
11. Mehmoodali @ Kalu Miyadad Makrani
Age 52 Years, Occu: Nil,

All R/o. Mothi Rajmohi,
Taluka Akkalkuwa,
District Nandurbar

RESPONDENTS

[Nos.2 to 10 are Orig.
Accused]

...

Mr.S.P.Brahme, Advocate for the Appellant / Ori.Victim.

Mr.N.S.Ghanekar, Advocate for the R.Nos.2 to 5 & 11.
Mr.S.M. Godsay, Advocate for R.Nos.6 to 10.
Mr. S.B.Pulkundwar, APP for the Respondent No.1 – State

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**CORAM : S.S. SHINDE &
A.I.S.CHEEMA, JJ.**

**Reserved on : 01.07.2015.
Pronounced on : 16.07.2015.**

JUDGMENT [Per S.S.Shinde, J.]:

1. Criminal Appeal No.37/2012 and Criminal Appeal No.501/2012 have been filed by the appellants [original accused], challenging the Judgment and Order dated 13th January, 2012 passed by the Additional Sessions Judge, Shahada, District Nandurbar in Sessions Case No.06/2009, thereby convicting the appellants /original accused for the offence punishable under Section 302 r/w. Section 149 of IPC and sentencing each of them to suffer rigorous Life Imprisonment and also to pay fine of Rs.1,000/- each, in default of payment of fine, to suffer rigorous imprisonment for six months each. The appellants / accused are further convicted under Section 324 r/w. Section 149 of IPC and each of them is sentenced to suffer rigorous imprisonment for two years and also to pay fine of RS.500/- each, in default of payment of fine, to suffer rigorous imprisonment for three

months each. The appellants are further convicted under section 147 r/w. Section 149 of IPC and each of them is sentenced to suffer rigorous imprisonment for one year and also to pay fine of Rs.300/- each, in default of payment of fine, to suffer rigorous imprisonment for three months each. The appellants are further convicted under Section 148 r/w. Section 149 of IPC and each of them is sentenced to suffer rigorous imprisonment for two years and also to pay fine of Rs.500/- each, in default of payment of fine, to suffer rigorous imprisonment for three months each, and appellant No.10 namely Mehmoodali @ Kalu Miyadad Makrani / original accused No.10 is further convicted for the offence punishable under Section 341 of the IPC and sentenced to suffer rigorous imprisonment for one month and also to pay fine of Rs.200/-, in default of payment of fine, to suffer rigorous imprisonment for one month. All the sentences are to run concurrently.

Criminal Appeal No. 242 of 2012 has been filed by the appellant [victim] for enhancement of sentence and to convict the accused / respondents for the offence punishable under Section 120-B, Section 4 r/w. Section 125 of Arms Act and Section 37 [1] [3] r/w. Section 135 of Bombay Police Act.

Facts of prosecution case, in brief, are as under:

2. On 14.10.2008 at about 11.15 a.m. a telephonic call was received on telephone No. 252390 in the house of Abdul-Raheman Mauladad Makrani and at that time it was informed that, labourers have come in his agricultural land, and therefore, requested to come there immediately. Abdul Raheman Makrani directed his son Abdullah Abdul-Raheman Makrani [deceased] to go immediately towards the agricultural land. Accordingly, Abdullah Abdul-Raheman Makrani on motorcycle went towards Abdul-Hakeem Abdul-Sattar [PW-1] and Salauddin Sher-Mohammad [PW-3]. Accordingly, all three of them, on motorcycle started proceeding towards agricultural land at Pimpripada.

3. It is further alleged by the prosecution that, when the motorcycle of Abdullah Abdul-Raheman Makrani came near Hanuman temple of village Pimpripada, at that time from backside a motorcycle driven by Mehmoodali @ Kalu Miyadad Makrani [accused no.10] overtook the motorcycle of Abdullah Abdul-Raheman Makrani. After overtaking the motorcycle,

Mahmoodali directed to Abdullah Abdul-Raheman Makrani to stop his motorcycle, and accordingly, he stopped the motorcycle and Abdullah Abdul-Raheman Makrani, Abdul-Hakeem Abdul-Sattar and Salauddin got down from the motorcycle. In the meantime from backside a jeep and one big L.P. truck came there and at that time Gulamali Muradali Makrani [accused no.1], Latifali Gulamali Makrani [accused no.2], Sameerali Gulamai Makrani [accused no.3], Saeed Suleman Makrani [accused no.7], Nisarali Noor-Mohammad Makrani [accused no.9], Imranali Nisarali Makrani [accused no. 8], Shafi-Mohammad Abdul-Hamid Makrani [accused no.4], Haneef Gulam-Rasool Makrani [accused no. 5] and Irfaan Suleman Makrani [accused no.6] armed with Koyeta, sword, razor, wooden Dengara and sticks got down from the jeep and truck and started abusing and threatening to Abdullah Abdul-Raheman Makrani, Abdul-Hakeem Abdul-Sattar and Salauddin.

4. It is further alleged by the prosecution that, thereafter, Gulamali Muradali Makrani [accused no.1] with the help of Koyeta, Sameerali Gulamali Makrani [accused no.3] with the help of sword and Latifali Gulamali Makrani

[accused no.2] with the help of razor started beating to Salauddin [PW-3]. After seeing the said beating, Abdul Hakeem Abdul Sattar [PW-1] ran away into the banana crop and concealed himself there. At that time due to the beating, Salauddin Sher-Mohammad Makrani [PW-3] fell down.

5. It is further alleged by the prosecution that, after seeing beatings to Salauddin Sher-Mohammad Makrani, at that time Abdullah Abdul-Raheman started running away towards village Pimpripada. At that time, accused Shafi-Mohammad [accused no.4] armed with axe, Mehmoodali [accused no.10] armed with sword, Irfaan Suleman [accused no.6] armed with razor, Saeed Suleman [accused no.7] armed with wooden Dengara, Nisarali Noor-Mohammad [accused no.9] Imranali Nisarali [accused No8] and Haneef Gulam-Rasool [accused no.5] armed with sticks started running behind Abdullah. At that time the accused persons by chasing to the said Abdullah, intercepted him near the house of Ramsing Rodkya Wasave, and thereafter, the said accused persons with the help of said weapons, gave blows on chest, head, hands and ribs and due to the said beatings, said Abdullah died on the spot. It is alleged by the prosecution

that, Abdul-Hakeem through the banana crop, witnessed the whole incident. At that time all the accused went away, and thereafter, Abdul Hakeem Abdul Sattar went to Police Station, Akkalkuwa, in order to lodge the First Information Report.

6. Abdul-Hakeem Abdul-Sattar [PW-1] lodged report. The same was reduced into writing and the same was treated as First Information Report [Exh.74] and on that basis, crime bearing No. 89/2008 came to be registered for the offences punishable under Section 302, 307, 147, 148, 323, 504 and 506 read with Section 149 of the Indian Penal Code and Section 37 (1) (3) read with Section 149 of the Indian Penal Code and Section 37 (1) (3) read with Section 135 of the Bombay Police Act. At that time, it was also informed by the informant that in the year 2007, accused no.1 Gulamali Muradali Makrani did not pay Rs.500/- to Gulam Khwaja Makrani regarding puncture charges of jeep and over that there were clashes in between two groups and both the groups had filed cases against each other. It was also informed by the informant that, the accused persons were saying that the case filed against them should be withdrawn by the deceased and other persons, and therefore, they

committed murder of Abdullah and attempted to commit murder of Salauddin. It was also informed by the informant that, at that time abuses were also given to him and threatened him that they will kill him.

7. Gopal Natthu Gadhari [Investigating Officer PW-13] was the Police Inspector of Police Station, Akkalkuwa. After registration of the crime, he commenced the investigation. He immediately rushed to the place of incident that was near the house of Ramsing Rodkya Wasave at Pimpripada. At that time the dead body of Abddullah was lying there. Accordingly, in presence of panchas, he prepared inquest panchanama [Exh.110]. Thereafter, he sent the dead body to Rural Hospital, Akkalkuwa, for the purposes of autopsy. Thereafter, the Investigating Officer prepared spot panchanama in respect of the place that was shown by the informant. At that time motorcycle was lying there. There were also blood spots and he seized soil containing blood as well as simple soil from the said spot and prepared spot panchanama [Exh.81].

8. Dr.V.B.Balapure [PW-7] on 14.10.2008 received

dead body of Abddullah in Rural Hospital, Akkalkuwa, for the purpose of autopsy. Accordingly, between 3.00 p.m. and 4.30 p.m. on 14.10.2008, he carried out autopsy upon the dead body. At that time Doctor noticed in all 13 injuries on the person of the deceased as mentioned in detail in the autopsy notes [Exh.99]. After internal examination of thorax, he also noticed fracture of second, third and fourth ribs. On the basis of the autopsy, he concluded that probable cause of death was due to *hyporolmic* shock due to excessive hemorrhage due to multiple injuries.

9. Dr. Priti Sandeep Suryewanshi [PW-8] was attached to Civil Hospital, Nandurbar. On 14.10.2008, she medically examined to injured Salauddin and found injuries on his person as mentioned in injury certificate [Exh.101].

10. The Investigating Officer, during investigation, recorded statements of the witnesses. He arrested to seven accused person on 14.10.2008 and prepared arrest panchanama [Exh.113/1 to 113/7]. He arrested three accused on 15.10.2008 i.e. Imranali, Nisarali and Mehmoodali and prepared arrest panchanamas [Exhs. 113/8 to 113/10].

After arrest, the Investigating Officer seized clothes those were on the person of the accused persons and prepared arrest panchanamas [Exhs. 114/1 to 114/10]. During investigation, the Investigating Officer seized truck that was in front of house of Gulamali Muradali [accused no.1]. At that time one Koyeta and two sticks were found there and he prepared seizure panchanama [Exh.115]. At that time, the Investigating Officer also seized the jeep that was in front of house of Latifali [accused no.2] and from the said jeep, he seized wooden Dengara, razor and accordingly seizure panchanama [Exh. 116] came to be prepared. Motorcycle was seized from the possession of Sameerali [accused No.3] and prepared seizure panchanama [Exh.117].

11. According to Investigating Officer, when accused Shafi Mohammad Abdul-Hameed [accused no.4] was in police custody, at that time he made a statement regarding concealment of Axe and accordingly memorandum panchanama [Exh.118] came to be prepared and in pursuance of that, there was recovery of axe at the hands of accused Shafi Mohammad and he prepared recovery panchanama [Exh.119]. According to the Investigating

Officer, on 21.10.2008, Mehmoodali [accused no.10] while in police custody made a statement that he is ready to produce sword that was concealed by him and accordingly memorandum panchanama [Exh.87] was prepared and in pursuance of that, there was recovery of sword at the hands of Mehmoodali by preparing recovery panchanama [Exh.88]. According to Investigating Officer, on the very day, Sameerali while was in police custody, made a statement that he is ready to produce sword that is concealed by him in sugarcane crop and accordingly memorandum panchanama [Exh.90] was prepared and in pursuance of that, there was recovery of sword and thereby prepared recovery panchanama [Exh.91]. According to Investigating Officer, it was requested to the Doctor for collection of blood samples of the accused. According to the Investigating Officer, he sent seized Muddemal for analysis. As there was sufficient evidence, therefore, charge-sheet came to be filed in the Court of Judicial Magistrate, First Class, Taloda.

12. The offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions. Therefore, the Judicial Magistrate First Class, Taloda, committed the case to

the Court of Additional Sessions Judge, Shahada, as per Section 209 of the Criminal Procedure Code.

13. Mr. Ghanekar, learned Counsel for the appellants in Criminal Appeal No.501 of 2012 invited our attention to the evidence of P.W.1 Abdul Hakim Abdul Sattar Makrani and P.W.3 Salauddin Shermohammad Makrani and submitted that even if their evidence is read in its entirety, they have attributed overt-acts only to three accused. The prosecution did not prove that the accused formed an unlawful assembly in furtherance of any common object. It is submitted that the prosecution did not examine Abdullah. It is further submitted that there is no proper recovery, role of other six accused is not stated and no overt-acts are attributed to them, they are only named and their presence has not been convincingly proved by the prosecution. There are two separate incidents alleged i.e. assault on P.W.3 Salauddin Shermohammad Makrani and then murder of deceased Abdullah. Therefore, the prosecution ought to have proved that the assembly had common object. It is further submitted that if the evidence of the prosecution is taken in its entirety, it failed to establish formation of unlawful assembly in

furtherance of their common object. Therefore, the appellants are entitled for benefit of doubt.

14. Learned Advocate Mr.Godsay appearing for the appellants in Criminal Appeal No.37 of 2012 submitted that P.W.3 Salauddin Shermohammad Makrani is the injured witness. He stated that there was enmity only between Shaikh Mohammad and Salauddin and other accused had no enmity and, therefore, their implication appears to be afterthought. The learned Counsel invited our attention to the cross-examination of P.W.3 Salauddin and submitted that the prosecution has not brought on record enmity between the family of Abdullah and accused. The prosecution has tried to suppress the genesis of occurrence. There was no recovery of weapons, no overt-acts are attributed to six accused. The seizure panchanama and memorandum panchanama were prepared belatedly, which are not in accordance with the established procedure. The learned Counsel placed reliance in the case of **Shaji and Ors. vs. State of Kerala**¹, and submitted that, the Supreme Court in the facts of that case, held that, merely because some of the

¹ AIR 2011 SC 1825;

members were armed is not sufficient to prove common object. Therefore, he submitted that the appellants are entitled for benefit of doubt and therefore, appeal may be allowed.

15. On the other hand, learned APP appearing for the State submitted that the object of the unlawful assembly was to kill Abdullah – the deceased. It is submitted that all the accused, in furtherance of their common intention of killing said Abdullah, went on the spot and not only they killed Abdullah but, also injured P.W.3 Salauddin Shermohammad Makrani. In support of his contention that irrespective of overt-acts attributed to member of unlawful assembly, if the assembly is formed with a knowledge and intention to commit an offence, it is not necessary to attribute overt-acts to each member of the said assembly and each member of the said unlawful assembly would be responsible for commission of the offence in view of the provisions of sections 141, 143, 147, 148 and 149 of IPC. He placed reliance on the judgment of Supreme Court in case of **Prathap & Anr vs. State of Kerala**² and **Lalji vs. State of Uttar Pradesh**³.

² 2010(12) SCC 79;

³ 1989(1) SCC 437;

16. The learned Counsel for the original complainant submitted that the accused brutally murdered deceased Abdullah and also assaulted P.W.3 Salauddin Shermohammad Makrani. They went at the spot, fully prepared themselves to achieve their object and therefore, the trial Court should have awarded death sentence to the accused.

17. We have given careful consideration to the submissions of the learned Counsel for the respective appellants, learned APP appearing for the State and the learned Counsel for the original complainant in Criminal Appeal No.242/2012. We have also perused the entire notes of evidence.

Abdul Hakim Abdul Sattar Makrani was examined as P.W.1. He lodged the complaint. He was eye witness to the incident. In his evidence, he stated that the incident took place on 14.10.2008 at about 11 to 11.15 a.m. Before the said incident, a telephonic call was received on Phone number 252390 in the house of Abdul Rehman Makrani. It was informed by telephonic message that labourers have come in

his field and he should come in the field. Said Abdul Rehman asked his son Abdullah to go to the field. Then, Abdullah went to Salauddin and requested him to accompany to the field at Pimpripada. When Abdullah and P.W.3 Salauddin reached near Hanuman Temple, Mohammadali @ Kalu Miyadad came on a motorcycle and overtook the motorcycle of P.W.1 Abdul Hakim. Therefore, P.W.1 Abdul Hakim also stopped his motorcycle and got down. That time, they saw that one vehicle jeep and goods career truck came at that place and stopped. That time, Gulamali Muradali, Sameer Gulamali, Latif Gulamali, Shafimohammad Hanif, Nisar Nurmohammad, Irfan Suleman, Said Suleman, Imran etc. 9 persons got down from that vehicles. They were armed with sword, Koyata, Axe, Knife (Vastara), Wooden thick stick (dengara). That time they started to beat Salauddin. Before that, they abused them. The witness P.W.1 stated further that by seeing beating to Salauddin, he concealed himself by going in Banana tree. That time Gulamali Muradali beat Salauddin by means of Koyata, Latif Gulamali by means of knife (vastara) and Sameerali by means of sword, hence Salauddin fell down.

Thereafter, all these accused persons went towards Abdullah and beat him near the house of Ramsing Rodkya. That time those persons beat Abdullah on his head, chest and stomach. That time those persons beat Abdullah by means of Axe, Koyata. Abdullah died on spot. Then the accused went away from that place.

P.W.1 further stated that then he came out from Banana field and went to Police Station Akkalkuwa and lodged report of the incident to the Police. That time, Police reduced the complaint into writing as per his say and read over contents of the same to him and he signed on it, after satisfying that it is correct. P.W.1 admitted the contents of the complaint and his signature thereon.

He further stated that there was quarrel on the ground of puncture amount of Rs.500/-. On that ground, matter went in Court. The accused were asking to withdraw those cases. He identified the accused persons before the Court. He stated that, they are his relatives. Salauddin and Abdullah are his relatives. After lodging the complaint, police took him to the place where motorcycle was stopped. Then at

the place where Abdullah was killed. He took the police and showed the spot. He identified two swords, axe, Koyata and two sticks shown to him. He also identified two knives (Vastaras).

It is true that, in the cross-examination, P.W.1 Abdul Hakim admitted that he is accused in the case filed by wife of Safimohammad under Section 307 of IPC. In his cross-examination, he stated that Pimpripada is at the distance of 1 to 2 kms from Mothi Rajmohi. Village Pimpripada is about 1 Km. away from the road passing through East-West direction. He denied the suggestion that in all 40 – 50 persons came in vehicle. He denied the suggestion that he did not see personally the assault on Salauddin and Abdullah. He stated that he had no cordial relations with the accused. Relations between Gulamali and Sher-Mohammad are also not cordial. He could not state number of motorcycle, jeep and truck. If the evidence of P.W.1 Abdul-Hakeem is considered in its entirety, it shows that he had named all the accused persons. He further stated that they were armed with deadly weapons. They absued P.W.1 Abdul-Hakeem and Salauddin. It is true that he has attributed specific overt-acts to Gulamali,

Muradali, Latif Gulamali and Sameer Gulamali. However, he specifically stated that after assaulting Salauddin, all the accused persons went towards Abdullah and beat him on his head, chest and stomach by means of axe, Koyata and other weapons.

18. The prosecution did examine Salauddin as P.W.3. In his deposition, he stated that he know the accused persons present before Court. He also know the complainant Abdul-Hakeem Abdul Sattar and deceased Abdullah Abdul Raheman who was his brother. He stated that, on 14.10.2008 at 11.15 a.m. he was present near house of Abdul-Hakeem, that time Abdul Hakeem was also present with him at that place. That time Abdulla Abdul Raheman came on a black coloured, unnumbered Pulser motorcycle. That time, he stated that they have to go in field and he took both of them towards field on a motorcycle. While their motorcycle was near Hanuman temple Pimpripada Shivar that time, Miyadad overtook them by his motorcycle and stopped their motorcycle. Then vehicle jeep came at that place. Latif Gulamali, Sameerali Gulamali, Safimohammad, Hanif were in that jeep. Then one vehicle truck came. Gulamali Muradali was driving that truck. Irfan

Suleman, Saeed Suleman, Imranali Nisar, Nisarali Nurmohammad were in that truck. That time Gulamali stopped the truck, got down and started to abuse them by uttering the words that “*Madarchod ho, hamare khilaf court me kes dakhla kiya hai. Vah kes vapas nikalo, ab tak tum kaise jinda ho*”. That time, Gulamali Muradali assaulted him (Salauddin) by blow of handle of Koyata on his nose. Handle of Koyata was wooden. That time Latifali Gulamali assaulted him by means of knife (Vastara) on his right ear. That time Sameerali inflicted blow by handle of sword on backside of his right shoulder. Due to assault, he became unconscious. That time Abdul Hanif ran away in field since afraid of the accused. That time at that place accused killed Abdulla. On the next day while he was taking treatment in the Government hospital father told him about the incident of Abdulla.

It appears that he was carried to hospital for treatment after he became unconscious. He identified the weapon by which he was assaulted by the accused. He further stated that when he was in the hospital, police seized blood stained baniyan and brownish coloured pant. During his cross-

examination, he stated that Mothi Rajmohi is the village of accused and deceased is at a distance of 2 kms from Pimpripada. Pimpripada is about 1 km from road. There is one another temple near Hanuman temple. It appears that defence wanted to suggest that alleged spot of incident is situated in a crowded area. He further stated that Sher-Mohammad Makrani is his father. Abdul-Hakeem, Abdul Mohammad, Abdulla are his relatives. He stated that accused had filed cases against his father and those cases are pending in the court. He denied the suggestion that he is also accused in those cases. He denied other suggestions given by the defence Counsel.

19. If the evidence of P.W.1 Abdul-Hakeem and P.W.3 Salauddin Sher-Mohammad is considered in its entirety, there is no slightest doubt that all the accused gathered at the spot with deadly weapons with an object to kill Abdullah. It has come on record that the spot of the incident is more than 1 km away from village Mothi Rajmohi. From the evidence of P.W.1 Abdul-Hakeem, it appears that phone call was received on telephone number 252390 in the house of Abdul-Raheman Mauladad Makrani, so that deceased or father of the deceased

should go to their field situated near Pimpripada. It appears that after the incident, P.W.1 Abdul-Hakeem lodged FIR within about 2 hours. After registration of the FIR, spot was visited by the concerned police persons on the same day. From the said spot, motorcycle was recovered and also on both the places where P.W.3 Salauddin was assaulted and the deceased Abdullah was killed, the witnesses saw blood lying on the spot. The said blood mixed with mud was taken from the said spots for further examination. Therefore, the sequence of events clearly shows that the accused persons made a phone call in the house of Abdul-Raheman Mauladad Makrani to secure their presence away from the village so as to kill Abdullah. False information was given that labourers had come in the field of P.W.1 Abdul-Hakeem. Miyadad who was traveling on motorcycle, overtook the motorcycle of P.W.1 Abdul-Hakeem and then when P.W.1 Abdul-Hakeem with Salauddin got down from the motorcycle, they saw one jeep and truck from which accused persons got down with deadly weapons. If the spot of the incident is taken into consideration, same is more than one km away from village Mothi Rajmohi. The appellants and deceased and the P.W.3 Salauddin all are residents of Rajmohi.

20. Upon careful perusal of the evidence of P.W.1 Abdul-Hakeem and P.W.3 Salauddin, it is abundantly clear that the accused came on the spot fully prepared, carrying deadly weapons so as to achieve their object causing grievous hurt to Abdullah. The prosecution has brought on record evidence to suggest that there was previous enmity and group of the accused persons headed by Gulamali Muradali Makrani was insisting to withdraw the pending cases from court. It has also come in the evidence of wife of the deceased Abdullah that there was previous enmity between two groups on account of some dispute in Gram Panchayat elections taken place in the year, 2006. The evidence of P.W.1 Abdul-Hakeem and P.W.3 Salauddin corroborates with each other and lends support from the medical evidence.

21. The prosecution examined Dr. Vivekanand Baburao Balapure as P.W.7, who examined the dead body of Abdullah Abdul Raheman Makrani. In his examination-in-chief, he stated that on 14.10.2008 he was serving as Medical Officer and was attached to the Rural Hospital, Akkalkuwa. On that day, police station Akkalkuwa referred the dead body of

Abdulla Abdul Raheman Makrani to Rural Hospital, Akkalkuwa, for the purpose of autopsy. Between 3 p.m. and 4.30 p.m. on 14.10.2008, he carried out the autopsy upon the dead body. At the time of external examination of the dead body, he noticed that the clothes that were on the person of the deceased were having blood stains. He was 28 years old and was belonging to Muslim community. At that time it was noticed that *rigor mortis* were not developed. He stated that at the time of autopsy, he noticed the following injuries on the person of the deceased:

- 1) Incised wound at upper 1/3 of right arm 5x3x2 c.m.
- 2) Incised wound (bone deep) at right elbow joint 7 x 5 x 4 c.m.;
- 3) Incised wound at right palm 5 x 2 x2 c.m. At base of fingers, lateral four meta carpels cut;
- 4) Laceration of left shoulder 6x4x2 c.m.;
- 5) Bone deep incised wound at middle of left arm 7x5x3 cm;
- 6) Bone deep incised wound at left angle of mandible 5x3x2 c.m.;
- 7) CLW at lateral side of left eye brow 3x2x1 c.m.;
- 8) CLW at middle of forehead 3x1x1 c.m.;
- 9) Incised wound at right maxilla 4x3x2 c.m.;

- 10) Incised wound at left chest below clavicle 7x4 deep thoracic. Wound is spindle shaped tapers off at the end. No injury to thoracic organs;
- 11) Penetrating incised wound at left upper hypocondrium. Intestine prolapsed from wound 7 c.m.x3xperitoneal deep. No injury to viscera.
- 12) Laceration at upper 1/3 of left tibia 2x2x1 c.m.;
- 13) CLW at occipital region 5x3x1 c.m.

P.W.7 Dr. Vivekanand Balapure opined that probable cause of death according to him was due to cardio respiratory arrest due to hypovolumic shock due to excessive hemorrhagic due to multiple injuries.

During his cross-examination, he stated that injuries mentioned in Column No.17, particularly, 1 to 8 were not fatal. However, he stated that injuries 9, 10, 11, and 13 were fatal in nature.

22. Prosecution also examined Dr. Priti Sandeep Suryewanshi as P.W.8. In her examination-in-chief, she stated that, On 14.10.2008 while she was serving as Medical Officer at Civil Hospital, Nandurbar, she examined injured Salauddin Shaikh Mohammad Makrani, who was referred by Medical Officer, Rural Hospital, Akkalkuwa. She found

following injuries on person of Salauddin:

- 1) C.L.W. Over right supraorbital region 0.5x0.5 c.m.;
- 2) CLW over right post aural region in groove 0.5x0.5 c.m.;
- 3) Swelling and tenderness from nose with fresh bleeding with underlines fracture of nasal crest (dorsum).

X-ray DNS suggestive of fluid level in right maxillary sinus and x-ray Nasal bone suggestive of nasal bone fracture.

Accordingly, she prepared injury certificate which she admitted to be correct.

23. The prosecution examined Anjumbee Abdul Makrani as P.W.11. In her deposition, she stated that deceased Abdullah Abdul Makrani was her husband. She knows Salauddin Hakimbhai and also the accused. In the year, 2006 there was Gram Panchayat election. In that election quarrel had taken place between her husband and Gulamali. On 15.10.2007 at 9 a.m., she was present in house. That time her husband was present in front of house. That time, Gulamali and other

15 to 20 persons having armed with pipe and sticks, came and stated to her husband to ask to Nurmohammad to withdraw the cases lodged prior to two months by Nurmohammad against them. That time her husband replied them that he had no knowledge at all about case and he was not at all concerned with that case. That time those persons became angry and severely beat her husband by stick and iron pipe and tried to kill her husband. Thereafter her husband lodged complaint against them in Akkalkuwa Police Station.

On 14.10.2008 at 11 a.m. while she was in house that time, she received telephonic call informing that, labourers had come in field so her husband was to come in field. Thereafter, immediately her husband, Salauddin and Hakim went towards field on motorcycle. Thereafter this incident took place. Then, she came to know about the incident. She stated that the incident took place on the ground of old quarrel.

She denied the suggestion given during cross-examination that on the ground of old enmity, she is deposing falsely. If the evidence of this witness is considered, she has stated old enmity between her husband and Gulamali. She

received phone call on the relevant date. Therefore, if the evidence of P.W.1 Abdul-Hakeem and P.W.11 Anjumbee is considered, information was given on telephone that labourers had come in their field and husband of P.W.11 Anjumbee was asked to visit the said field which is nearby Pimpripada, which is more than one k.m. away from village Rajmohi. The presence of deceased was secured by the accused persons on false pretext that labourers had come in the field. He was called at such a place where accused with an object to kill him with knowledge and intention came prepared with deadly weapons in 2 – 3 vehicles. Therefore, presence of each member of unlawful assembly was not passive. All the ten accused had knowledge about the common object. The fact that members of unlawful assembly were carrying deadly weapons and as a matter of fact, by using those weapons, P.W.3 Salauddin was injured and Abdullah was killed, which clearly indicates that the unlawful assembly achieved its object. All the ten accused going more than one k.m. away from their village, fully prepared with deadly weapons and some of the accused using said deadly weapons, assaulted P.W.3 Salauddin and Abdullah, leaves no slightest doubt in mind that each member of the unlawful

assembly had knowledge about forming such unlawful assembly for killing Abdullah and in the process, P.W.3 Salauddin was also severely assaulted. The argument of the learned Counsel for the appellants that assault on P.W. 3 Salauddin was by blunt side of the weapon and therefore, members of the assembly had no intention either to kill P.W.3 Salauddin or deceased Abdullah, deserves no consideration. The manner in which Abdullah was assaulted by giving blows on vital parts of his body with deadly weapons like sword, axe, knife etc. shows that the assembly had intention to kill Abdullah.

24. Prosecution did examine Ajimohammad Pirmohammad Makrani as P.W.12. In his evidence before the Court, he stated that he is resident of Mothi Rajmohi. He knows families of Shafimohammad and Gulamali. On 2.10.2008 he had been at Mothi Rajmohi on the occasion of Ramjan festival. That time he addressed to the persons not to quarrel with each other, participate in the pleasure and sad incident of each other, amicably withdraw the cases lodged against each other. When asked to raise hands showing who agrees to his suggestion, the persons in the group of Shermohammad raised their hands by saying that they agree. However,

persons in the group of Gulamali did not agree with him and they went away. This also shows that the group of Gulamali was not agreeable to resolve the old dispute. The said group was aggressive.

25. The prosecution has also proved recovery of weapons from some of the accused and also seized the truck and jeep and also the motorcycle from the spot. The other witnesses were examined to prove the seizure of truck, jeep and motorcycle. Some weapons were also seized and were shown to P.W.1 Abdul-Hakeem and P.W.3 Salauddin during recording of their evidence before the Court and they identified the same.

26. The investigating Officer Gopal Natthu Gadhari was examined as P.W.13. In his evidence, he deposed that on 14.10.2008 he was attached to the Akkalkuwa Police Station as Police Inspector. On that day, complainant Abdul Hakim Abdul Sattar came in the police station to lodge complaint. The said complaint was reduced in writing and contents of the same were read over to the complainant. The said compliant was exhibited at Exh.74. He investigated the crime. He

visited the spot of incident which is in-front of house of Ramsing Vasave at Pimpripada. On the spot, dead body of Abdullah was lying. That time, Haknavaj Lukman Makrani identified dead body. Then he prepared inquest panchanama in presence of two panchas, which bears his signature. Then he further deposed that dead body was sent to Civil Hospital, at Akkalkuwa for post-mortem examination. Then he prepared spot panchanama in presence of panchas. The complainant shown the spot of incident. He took motorcycle in custody. He seized ordinary earth and blood mixed earth from the spot. Spot Panchanama is at Exh.81. Then he recorded statements of the witnesses. On 14.10.2008, he arrested seven accused. He has further stated details about each accused and their arrest panchanama. Then he arrested some accused on 15.10.2008. When the accused were arrested on 14.10.2008, that time there were blood stains on clothes on their person. Those clothes were seized under seizure panchanamas Exh.114/1 to 10. One vehicle truck was seized in front of the house of accused Gulamali. In the cabin of said truck two sticks and one iron koyata were found and those were seized under seizure panchanama Exh.115. One vehicle jeep was seized in front of the house of

Latifali under the seat of said jeep, one dengara and knife (vastara) were found, which came to be seized under seizure panchanama Exh.116. One motorcycle had been seized from the possession of accused Sameerali Gulamali under seizure panchanama Exh.117. He took police custody of the accused. On 20.10.2008, accused Shafimohammad Abdul Hamid made statement in presence of panchas that, he has concealed axe used in crime and he is ready to produce it. Memorandum panchanama was prepared, which bears signatures of the witness and panchas. In pursuance to statement of accused, concealed axe was recovered and seizure panchanama was prepared. On 21.10.2008, accused Mehmudali gave statement that, he has concealed in field, sword used in crime and he will produce it. Accordingly, memorandum panchamaa was prepared and sword was recovered under seizure panchanama at Exh.87. He requested doctor for taking blood samples of the accused. Samples of blood were taken and sent to Chemical Analyzer. Injury certificates of the injured witnesses were collected.

A suggestion was given during his cross-examination that he is deposing falsely that there was blood stains on clothes of the accused at the time of arrest. However, he

denied the said suggestion.

27. After taking into consideration the entire evidence brought on record by the prosecution, the version of P.W.1 Abdul-Hakeem about presence of the accused, their arrival on the scene of the offence, the fact that they came by jeep and truck and also by motorcycle, carrying deadly weapons, has been corroborated by evidence of P.W.3 Salauddin, who was also an injured eye witness. The version of P.W.1 Abdul-Hakeem gets corroboration from the version of P.W.3 Salauddin and, P.W.3 Salauddin gets corroboration from evidence of P.W.1 Abdul-Hakeem. They have in detail stated all the events occurred on the date of incident. P.W.1 Abdul-Hakeem lodged FIR promptly within about two hours after the incident and, therefore, possibility of false implication of any of the accused is ruled out. Since the accused and prosecution witnesses are from same village, some of them are even relatives of each others and the incident had taken place in broad day light, there was no question of mistaken identity of any of the accused present on the spot and their participation in the incident. While showing the spot and when spot panchanama was prepared by the P.W.13 Gopal

Natthu Gadhari, P.W.1 Abdul-Hakeem had again named all the accused persons. As already observed, the place of the incident was more than one km. away from the village of accused and deceased as also village of P.W.1 Abdul-Hakeem and P.W.3 Salauddin. Therefore, arrival of accused at the said place by jeep, truck and motorcycle carrying deadly weapons with them and assaulting P.W.3 Salauddin by the members of the unlawful assembly and then killing Abdullah, clearly show formation of an unlawful assembly with knowledge and intention to kill Abdullah. It is not the case that any of the accused, by chance, was present at the spot. There was no any other occasion or reason to have presence of the accused persons at the spot except to achieve common object of killing Abdullah.

28. The C.A. reports have been produced on record at Exh.135 to 139. The contents of C.A. report at Exh.137 goes to show that the blood sample of Abdullah Abdul Raheman was examined and the same was blood group 'O'. As per Exh.138, blood sample of injured witness Salauddin (P.W.3) was examined and the blood group of P.W.3 Salauddin is 'A'. In the light of this, if we peruse C.A. report Exh.135 which is

in respect of clothes of deceased, clothes of accused as well as the weapons, it is clear that Exh.1 to 10 were having blood groups 'O' and 'A'. Exh.14 to 16 and 20 to 22 were having blood group 'A'. Therefore, considering the same, the conclusion is that weapons and clothes which were sent to Chemical Analyzer for analysis, were having blood group of deceased Abdullah as well as injured Salauddin. Accordingly, C.A. reports also support the case of the prosecution strongly.

Exh.139 page 361 shows examination of blood group of all ten accused. Out of that, blood group of five accused could not be determined, blood group of two accused is shown as 'O' and that of three accused is shown as 'A'. However, none of the accused was injured in the incident.

29. Reliance placed by the learned Counsel for the appellant in case of ***Shaji and Ors. vs. State of Kerala*** (supra), is misplaced in the facts of the present case inasmuch as, in the facts of that case, it appears that the prosecution did not prove common object or overt-acts on the part of the accused persons. There was no finding recorded about common object or overt-acts and, therefore, in the facts of that case, the Supreme Court granted benefit of doubt to

the accused therein.

30. In order to prove that assembly was unlawful, it is necessary to meet the ingredients of Sections 141 and 142 of IPC. In the present case, the prosecution has established beyond doubt that there was assembly of more than five persons and the case in hand would be covered by the provisions of section 141 of IPC. Section 141 of IPC reads, thus:

“ 141. Unlawful assembly.--An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, or the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally

bound to do, or to omit to do what he is legally entitled to do. Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

31] In the light of provisions of section 141 of IPC, the members of unlawful assembly have committed offence and therefore, ingredients of section 141 are met in the present case. The accused persons more than five in number, in furtherance of common object to assault / cause grievous hurt to Abdullah, proceeded to the spot of incident with deadly weapons, their behaviour prior to commission of offence and at the time of commission of offence was certainly in furtherance of common object. Their involvement was not passive. They knew the result of forming such an unlawful assembly. As a matter of fact, the members of the unlawful assembly who are named and overt act attributed to them, actually participated in assaulting P.W.3 Salauddin and murder of Abdullah. The case in hand is covered under clause 'Third' of Section 141 of IPC.

32] Section 142 of IPC reads, thus:

“ 142. Being member of unlawful assembly.--Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful

assembly.”

As already observed, members of the unlawful assembly were aware as to for what purpose they have assembled and were proceeding to the spot of incident, they were aggressors, they formed an unlawful assembly knowing the object, joined the assembly and they continued their association till the actual offence was committed. Therefore, in the present case, the prosecution has proved that in furtherance of the common object, the accused persons formed an unlawful assembly and they proceeded to the spot of incident so as to kill Abdullah and assault P.W.3 Salauddin.

33] At this juncture, it would be relevant to refer the provisions of section 149 of IPC which read. Thus:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

34] In our opinion, punishment should be related to the gravity of the offence. The Supreme Court in the case of **Jai Kumar vs. State of M.P.**⁴ while considering various theories of punishment, observed that Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day.

In the light of observations of the Supreme Court in case of **Jai Kumar** (supra), it is our duty to ensure that appropriate sentence is awarded to the accused persons who were members of unlawful assembly.

The Supreme Court in the case of **K.C. Mathew and**

4 (1999) 5 SCC 1;

others vs State of Travancore-Cochin⁵, while explaining section 149 and 300 IPC, held that section 149 applies not only to offences actually committed in pursuance of the common object but also to offences that members of the assembly know are likely to be committed.

Yet, in another judgment in the case of **Lalji and others v. State of U.P.**,⁶ the Supreme Court held that the members of unlawful assembly cannot be acquitted for lack of corroboration as to their participation in the offence. While explaining scope of section 149 of IPC, it is held that said section makes every member of an unlawful assembly at the time of committing offence guilty of that offence. Section created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly.

Yet, in another judgment in the case of **State of A.P. V Thakkidiram Reddy**⁷, the Supreme Court held in para 17, thus:

“17. From the above judgments of this Court it is evident that to ascertain whether a particular person

5 AIR 1956 SC 241;

6 AIR 1989 SC 754;

7 (1998) 6 SCC 554;

shared the common object of the unlawful assembly it is not essential to prove that he committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object. Once it is demonstrated from all the facts and circumstances of a given case that he shared the common object of the unlawful assembly in furtherance of which some offence was committed - or he knew was likely to be committed - by any other person, he would be guilty of that offence. Undoubtedly, commission of an overt act by such a person would be one of the tests to prove that he shared the common object, but it is not the sole test. Coming now to the present case, the fact that at the dead of night a mob of persons armed with various weapons forcibly trespassed into the house of the deceased after breaking open the door, clearly indicates that they had formed an unlawful assembly with a common object to commit some offence and each of them would be liable for the offence committed or knew likely to be committed by any of the members of the mob. To ascertain what was the common object of the above unlawful assembly, we will advert later. Suffice it to say, at this stage, that in the facts and circumstances of this case the six accused (with whom only we are concerned in these appeals) would be guilty for the offence committed by any other member of the mob, in furtherance of the common object, without proof of any overt act committed by them. We do not, however, wish to dilate on this aspect of the matter any further as we find the second ground canvassed by the High Court that the ocular evidence regarding overt acts committed by A2 to A5 and A9 is not supported by medical evidence, is factually incorrect."

35] In case of ***Dani Singh and others vs. State of Bihar***⁸, the Supreme Court, relying upon the judgment in the case of ***Masalti vs. State of Uttar Pradesh***⁹ and also other judgments, in para 19 held that, where parties go with a

8 (2004) 13 SCC 203;

9 AIR 1965 SC 202;

common purpose to execute a common object, each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility.

36 Recently, the Supreme Court in case of **State of U.P. vs. Chandrika**¹⁰, in the facts of that case held that, there was prompt lodging of F.I.R. common object of unlawful assembly armed with Gun was to commit murder. Testimonies of injured witnesses present at spot could not be doubted being corroborated with eye witnesses as well as medical evidence. Finding of acquittal recorded by trial Court ignoring materials on record oral as well as documentary evidence fully supported by medical evidence. Acquittal of accused found to be based basically on dying declaration whose maker was alive. Said statement was not admissible in evidence. On appraisal of evidence on record it was amply clear that prosecution had fully proved its case beyond doubts. Judgment and order of acquittal reversed and all the accused were convicted by allowing government appeal.

In case of **Phodol vs. State of C.G.**¹¹, Chhattisgarh

¹⁰ 2014(2) ACR 1756;

¹¹ 2014 CRI.L.J.4704;

High Court, in the facts of that case, held that injuries found over bodies of deceased were incised wounds, lacerated wounds and depressed fracture of head. Appellants were holding battleaxe and other weapons and they had caused homicidal death of three persons and also caused fatal injuries to prosecution witness by battleaxe and other weapons. Evidence adduced on behalf of prosecution and defence taken by appellants were sufficient to establish fact that appellants had formed unlawful assembly having its common object to commit murder of deceased and in furtherance of common object of assembly, they were armed with deadly weapons. Therefore, Chhattisgarh High Court maintained order of conviction of the accused therein.

In case of ***Manilal vs. State of Kerala***,¹² the Kerala High Court while explaining scope of section 149 of IPC, held that even if the identity of some of the accused forming part of the unlawful assembly is not established or even if one or more of the accused are acquitted granting benefit of doubt, that does not absolve the other accused from being proceeded against under Section 149 of the Indian Penal Code.

The facts in the case in hand and those in case of ***Om***

¹² ILR2014(2)Kerala871; 2014(2)KLT800;

Prakash vs. State of Haryana,¹³ are almost similar. In the said case, the Supreme Court, while considering the provisions of Section 141, 142, 148 and 149 and also sections 302 and 319 of IPC, held that there was no delay in lodging FIR. Ocular testimony gets corroborated from medical evidence. All accused persons came together armed with lathis and gun. Eye witnesses who are natural witnesses, being brothers, have deposed in unequivocal manner about assault by all accused persons. Common object is clearly evident. In such situation, attribution of specific individual overt act has no role to play. All requisite tests to attract section 149 established by prosecution and the contentions raised by appellants therein were rejected and the Supreme Court upheld the order of conviction passed by the High Court.

37. We have appreciated the entire evidence on record and we are of the considered view that, the findings recorded by the trial Court are in consonance with the evidence brought on record. Upon considering the evidence in its entirety, the prosecution has brought on record sufficient material to show that there were two factions in the village Mothi Rajmohi. The

¹³ (2014) 5 SCC 753;

prosecution witnesses P.W.1 Abdul-Hakeem and P.W.3 Salauddin belong to one group and accused to the other. The prosecution has also brought on record that since long there is enmity and cases are filed against each other. The abusive words uttered by the accused No.1 have come on record through evidence of Salauddin P.W.3. Copy of the Complaint No.19/2009 filed in the Court of J.M.F.C. has already been placed on record. It has come in the evidence of P.W.12 Ajimohammad Pirmohammad Makrani that just prior to the incident, he requested to withdraw the cases initiated by both the groups against each other. But, the group of accused persons was not willing to withdraw the cases. Thereafter, the incident in question took place. Evidence of P.W.1 Abdul-Hakeem and P.W.3 Salauddin coupled with medical evidence and evidence of other prosecution witnesses has established the case beyond reasonable doubt against the accused. The C.A. reports supports the prosecution case. All the accused had knowledge for what purpose and object they formed unlawful assembly and that object was to cause grievous hurt/kill Abdullah. With the said object, they proceeded to the spot with deadly weapons and in furtherance of their common object, some of the members of the unlawful

assembly, assaulted P.W.3 Salauddin and killed Abdullah. Incident of assaulting P.W.3 Salauddin and killing Abdullah are in same transaction and those cannot be segregated as tried to be submitted by the Counsel for the accused. Therefore, inevitable conclusion is that, each of the accused was responsible for the offence committed by the assembly in furtherance of their common object and therefore, the findings recorded by the trial Court and sentence awarded deserve no interference.

38. Though the original complainant has filed appeal for enhancement of sentence, after considering the evidence placed on record and taking into consideration the aggravating and mitigating circumstances and the fact that there was enmity and cases were filed against the group consisting of P.W.1 Abdul-Hakeem and P.W.3 Salauddin, it is not the rarest of rare case where death penalty is warranted. The trial Court while considering the sentencing part, has taken into consideration all factors and we don not see any reason to modify the sentence and enhance it to death penalty. Therefore, prayer for enhancement of sentence and to convict the accused / respondents for the offence

punishable under Section 120-B, Section 4 r/w. Section 125 of Arms Act and Section 37 [1] [3] r/w Section 135 of Bombay Police Act, stands rejected.

39. In the result, Criminal Appeal No.37 of 2012 and Criminal Appeal No.501 of 2012 filed by the appellants / accused challenging the judgment and order of conviction and sentence stand dismissed.

So also, Criminal Appeal No.242 of 2012 filed by the victim / injured for enhancement of sentence and to convict the accused / respondents for the offence punishable under Section 120-B, Section 4 r/w. Section 125 of Arms Act and Section 37 [1] [3] r/w Section 135 of Bombay Police Act, stands dismissed.

[A.I.S.CHEEMA, J.]

[S.S. SHINDE, J.]