

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

CRIMINAL APPEAL NO.1022 OF 2007

Mubarak Rahematulla Maniyar
Age adult,
R/o Millar Nagar, Navi Vasti,
Malegaon, Dist. Nashik,
Presently at Nashik Central Jail

...Appellant.
(Orig. accused No.3)

versus

State of Maharashtra
Through Police Inspector
Malegaon City Police Station,
Malegaon, Dist. Nashik.

..Respondent.
(Orig. complainant)

.....
Mr. N.R. Bubna for the Appellant.
Mrs. A.S. Pai, Addl.P.P. for the State

....
**WITH
CRIMINAL APPEAL NO.1180 OF 2007**

The State of Maharashtra
Through Police Inspector
Malegaon City Police Station,
Malegaon, Dist. Nashik.

..Appellant.
(Orig. Complainant)

versus

1. Mohammad Ismile Mohammad Shafi
Age 32 years,
R/o Kamalpura Galli No.1,
Malegaon, District Nashik.
2. Shaikh Mukhtar Shaikh Tahir,
Age Adult,
R/o Chinchwar, Dist. Dhule.
3. Anwar Husain Khurshid Ahmed,
Age 30 years,
R/o Naya Islampura, Malegaon.

4. Farzan Ahmed Mohd. Haroon,
Age Adult,
R/o Naya Islampura, Malegaon.
5. Sayeed Ahmed Mohammad
Salim @ Raju Bangdu,
Age 22 years,
R/o Kamalpura, Malegaon,
District Nashik.
6. Sageer Ahmed Faizulla Ansari
@ Sagir Kalwa,
Age 34 years,
R/o Madani Nagar, Malegaon,
District Nashik.

..Respondents.

(Orig. accused Nos.1, 5 to 8 & 10)

....

Mrs. A.S. Pai, Addl.P.P. for the State – Appellant.

Mr. N.R. Bubna for the Respondents.

....

**CORAM : SMT V.K. TAHILRAMANI, Acting C.J.&
A.S. GADKARI, J.**

Judgment reserved on : 9th September, 2015.

Judgment pronounced on : 8th October, 2015.

JUDGMENT (PER A.S. GADKARI, J.) :

The Appellant, original accused No.3 has impugned the judgment and order dated 6th January, 2007 passed by Ad-hoc Additional Sessions Judge-1, Malegaon, District Nashik in Sessions Case No.99 of 2003 thereby convicting the Appellant under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life and to pay fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month. The Trial Court has also convicted the Appellant under Section 3 read with Section 25 of the Indian

Arms Act and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default of payment of fine, the Appellant has been directed to further undergo rigorous imprisonment for one month. The Trial Court has directed that the substantive sentences to run concurrently.

2. The Trial Court by the said judgment and order dated 6th January, 2007 was also pleased to convict the original accused No.5- Shaikh Mukhtar Shaikh Tahir for the offence punishable under Section 3 read with Section 25 of the Indian Arms Act and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. The original accused No.5 - Mukhtar Shaikh has been acquitted from the offence punishable under Section 120-B and Section 302 read with Section 120-B of the Indian Penal Code. It appears from the record that the original accused No.5 - Shaikh Mukhtar Shaikh Tahir has not preferred any appeal against the impugned judgment and order.

3. The record discloses that the original accused No.2 - Mohammad Qufran Mohd. Shafi @ Chiku, accused No.4 - Mohammad Vakilkhan Mohd. Samiulla and accused No.9 - Mohammad Kasim Mohammad Husain were absconding at the

time of trial and therefore, the Trial Court separated their trial. As far as original accused No.1 – Mohammad Ismile Mohammad Shafi, accused No.6 – Anwar Husain Khurshid Ahmed, accused No.7 – Farzan Ahmed Mohd. Haroon, accused No.8 – Sayeed Ahmed Mohammed Salim @ Raju Bangdu and accused No.10 – Sageer Ahmed Faizulla Ansari are concerned, the learned Trial Court by the same judgment and order was pleased to acquit the said accused persons for the offence punishable under Section 120-B, Section 302 read with Section 120-B of the Indian Penal Code and under Section 3 read with Section 25 of the Indian Arms Act.

4. The State of Maharashtra has preferred an appeal bearing Criminal Appeal No.1180 of 2007 against the acquittal of the said original accused persons. The State has also preferred an appeal against the acquittal of original accused No.5- Shaikh Mukhtar Shaikh Tahir under Section 120-B and Section 302 read with Section 120-B of the Indian Penal Code.

5. The facts which give rise and are necessary to decide the present Appeal can briefly be stated thus :

(i) The deceased Shaikh Javed Shaikh Haji Jumman was a businessman and was residing at Naya Islampura area in the city

of Malegaon. The deceased was having four brothers. The deceased and his brothers were running the business of hotel in the name and style of Milan Hotel at Malegaon. The date of incident is 6th August, 2002. Prior to about one year before the date of incident, a criminal from the city of Malegaon viz. Chota Alu was murdered. In respect of the said murder of Chota Alu, charge-sheet was filed against the deceased Shaikh Javed Shaikh Haji Jumman, Javed Jakir and other accused persons. In connection with the murder of Chota Alu, the deceased and number of other accused persons were arrested by police. The deceased paid a compromise money to the brothers of Chota Alu and had tried to compromise the matter. Accused No.1 - Mohammad Ismile Mohammad Shafi and accused No.2 - Mohammad Qufran Mohd. Shafi @ Chiku in the present case are the brothers of deceased Chota Alu. Prior to 15 days before the date of incident in the present case, original accused Nos.1 and 2 had demanded more money from deceased Shaikh Javed Shaikh Haji Jumman on account of murder of Chota Alu. On account of murder of Chota Alu, original accused No.1 - Mohammad Ismile Mohammad Shafi and accused No.2 - Mohammad Qufran Mohd. Shafi @ Chiku were having enmity with deceased Shaikh Javed Shaikh Haji Jumman.

(ii) It is the further prosecution case that in connection with the murder of Chota Alu, original accused No.8 - Sayeed Ahmed

Mohammad Salim @ Raju Bangdu and accused No.9 - Mohammad Kasim Mohammad Husain @ Kasim Gharphodi were also arrested. The original accused No.8 - Sayeed Ahmed Mohammad Salim @ Raju Bangdu and the original accused No.9 - Mohammad Kasim Mohammad Husain @ Kasim Gharphodi were not released on bail at an early stage and therefore, they were demanding money from deceased Shaikh Javed Shaikh Haji Jumman. However, Shaikh Javed Shaikh Haji Jumman refused to make payment to original accused Nos.8 and 9 and therefore, they were also angry with the deceased.

(iii) A few days prior to the date of occurrence in the present case i.e. 6th August, 2002, original accused No.10 - Sageer Ahmed Faizulla Ansari @ Sagir Kalwa of Malegaon and absconding accused Hamid Ahmed @ Hamid Gharphodi were arrested in some different case. The said persons expected that deceased Shaikh Javed Shaikh Haji Jumman should advance them some financial help for their release from the jail. On that count accused No.10 - Sageer Ahmed Faizulla Ansari @ Sagir Kalwa and Hamid Ahmed @ Hamid Gharphodi were also angry with deceased Shaikh Javed Shaikh Haji Jumman. The original accused No.5 - Shaikh Mukhtar Shaikh Tahir was the resident of village Chinchwar, Taluka Dhule and used to accept illegal contract to get vacated the plots and houses at Malegaon. One and half year prior to the date of incident of murder of Shaikh

Javed Shaikh Haji Jumman, a dispute took place between accused No.5 - Shaikh Mukhtar Shaikh Tahir and deceased Shaikh Javed Shaikh Haji Jumman. In that incident deceased Shaikh Javed had beaten Shaikh Mukhtar and had caused fracture to the bone of leg of Shaikh Mukhtar. However, after the said incident, deceased Shaikh Javed had paid compromise money to accused No.5 - Shaikh Mukhtar Shaikh Tahir and compounded the said matter.

(iv) In this background on 6th August, 2002 at about 3.30 p.m. deceased Shaikh Javed and his 4 to 5 other friends were sitting outside Hotel Milan on chairs and were chitchatting. At that time, accused No.2 - Mohammad Qufran Mohd. Shafi came from the side of Machhi Bazaar and returned back. Accused No.5 - Shaikh Mukhtar Shaikh Tahir arrived from the direction of new bus stand and went towards Pivala pump area of Malegaon. That accused No.2 - Mohammad Qufran Mohd. Shafi @ Chiku came on the spot of occurrence and took a survey of the situation, to see that Shaikh Javed Shaikh Haji Jumman was present on the spot. Thereafter at about 3.00 p.m. in the afternoon, two persons arrived from the backside of Shaikh Javed Shaikh Haji Jumman, took out country made pistol (katta) and fired on the back and below the neck of Shaikh Javed Shaikh Haji Jumman and ran away towards Machhi Bazaar.

(v) Shaikh Javed Shaikh Haji Jumman received serious injuries and he collapsed on the spot. The persons who were accompanying him took Shaikh Javed by an auto-rickshaw to the hospital of Dr. Farhan. Shaikh Javed Shaikh Haji Jumman was admitted in the said hospital. P.W.10- Khan Gulam Vahid Gulam Nayyar was on duty as Police Inspector in Malegaon Police Station. On 6th August 2002 he received information that a person by the name Javed Jumman was attacked and admitted in Dr. Farhan's Hospital. He immediately went to the said hospital and after adopting due procedure, he recorded the statement of Javed Jumman. The said statement of Javed Jumman was treated as the First Information Report. On the basis of the said statement of Javed Jumman dated 6th August, 2002 C.R. bearing No.I-0055 of 2002 under Section 307 read with Section 120-B of the Indian Penal Code and under Sections 3 and 25 of the Arms Act along with the provisions of the Bombay Police Act came to be registered at Malegaon City Police Station. Shaikh Javed Shaikh Haji Jumman succumbed to the injuries in the hospital on 8th August, 2002 and thereafter Section 302 of the Indian Penal Code came to be added to the said crime. P.W.10 recorded the statements of various witnesses and arrested the accused persons. After receipt of the Chemical Analyser's report, he submitted charge-sheet in the Court of Judicial Magistrate, First Class, Malegaon.

(vi) The learned Judicial Magistrate First Class committed the said case as per the provisions of Section 209 of the Criminal Procedure Code to the Court of Sessions as the offence under Section 302 is exclusively triable by the Court of Sessions. The learned Trial Court after recording the evidence of the witnesses and after hearing the parties to the said case was pleased to convict the Appellant and acquitted the other accused persons as stated herein above. The Appellant has impugned the said judgment and order dated 6th January, 2007 by the present Appeal.

6. Heard Mr. N.R. Bubna, learned counsel for the Appellant and Mrs. A.S. Pai, learned APP for the State and with their assistance, we have also perused the entire record pertaining to the present case.

7. Mr. Bubna learned counsel for the Appellant submitted that P.W.2 i.e. Shaikh Shaid Shaikh Sadik is a chance witness and his presence at the spot is doubtful. He submitted that P.W.2 - Shaikh Shaid Shaikh Sadik did not give the particulars inter alia details pertaining to the actual assault on the deceased. That P.W.2 was a relative of deceased Shaikh Javed and therefore, his testimony cannot be believed as he is an interested witness. He contended that P.W.2 - Shaikh Shaid Shaikh Sadik is not

believable. He then contended that the panch witness to the discovery of the fire arm and clothes at the instance of the Appellant has not been examined by the prosecution and therefore, the recovery of the said weapon is not proved. Mr. Bubna then submitted that the Trial Court in the impugned judgment at paragraph Nos.120 and 121 has observed that the hand gun which was recovered at the instance of the absconding accused No.4 - Mohammad Vakilkhan is instrumental in causing the fatal injury and therefore, benefit of doubt may be given to the present Appellant. Mr. Bubna then contended that the prosecution has failed to prove the case beyond reasonable doubt and therefore, if this Court is not inclined to acquit the Appellant, as submitted earlier, the Appellant may be given the benefit of doubt and may be acquitted from the charges levelled against him. Mr. Bubna therefore prayed before us that the present Appeal may be allowed by giving the benefit of doubt to the Appellant.

8. Per contra, Mrs. A.S. Pai, learned APP supported the impugned judgment and order and submitted that there is sufficient evidence in the form of eye-witness and recovery against the Appellant which undoubtedly connects the Appellant with the murder of Shaikh Javed Shaikh Haji Jumman. She further submitted that two accused persons simultaneously fired at the

deceased from his backside and both the bullets have ultimately resulted in death of Shaikh Javed. She therefore submitted that the Appellant is responsible for the murder of Shaikh Javed. She, therefore, urged before us that the conviction and sentence imposed by the Trial Court may be maintained and the present Appeal preferred by the Appellant be dismissed.

9. As far as Criminal Appeal No.1180 of 2007 is concerned, the same is preferred by the State of Maharashtra against original accused Nos.1, 5 to 8 and 10 against their acquittal from Section 120-B, Section 302 read with Section 120-B of the Indian Penal Code and under Section 3 read with Section 25 of the Indian Arms Act. As far as original accused No.5- Shaikh Mukhtar Shaikh Tahir is concerned, his acquittal under Section 120-B and under Section 302 read with Section 120-B of the Indian Penal Code has been challenged by the State of Maharashtra. As stated herein above, as far as accused No.5 - Shaikh Mukhtar Shaikh Tahir is concerned, the Trial Court has convicted him for the offence punishable under Section 3 read with Section 25 of the Indian Arms Act and he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.3,000/-, in default of payment of fine to further undergo rigorous imprisonment for one month. With respect to Criminal Appeal No.1180 of 2007, Mrs. A.S. Pai learned APP submitted that there

is sufficient evidence in the form of statements of witnesses which implicate the Respondents / original accused Nos.1, 5 to 8 and 10 in the present crime i.e. in the commission of murder of Shaikh Javed Shaikh Haji Jumman. She further submitted that taking into consideration the evidence available on record against the said accused persons, the said Appeal may be allowed thereby reverting the acquittal of the said accused persons from the said crime.

10. The prosecution in support of its present case has examined in all 10 witnesses. As far as Criminal Appeal No.1022 of 2007 is concerned, the evidence of P.W.1 - Shaikh Sayeed Shaikh Gafoor, panch witness to the arrest of the Appellant, P.W.2 - Shaikh Shaid Shaikh Sadik, eye-witness to the incident of firing, P.W.6 - Javedkhan Firozkhan alias Javed Kalya, a witness to the motive behind the crime, P.W.7 - Usmankhan, panch witness to the test identification parade wherein P.W.2 - Shaikh Shaid Shaikh Sadik identified the Appellant, P.W.8 - Sanjay Madhukar Joshi, the Special Judicial Magistrate who conducted the test identification parade of the Appellant, P.W.9 - Dr. Mohammad Turabali, the Medical Officer who conducted the postmortem on the dead body of Shaikh Javed Shaikh Haji Jumman and P.W.10 - Khan Gulam Vahid Gulam Nayyar is necessary for our consideration.

11. P.W.1 – Shaikh Sayeed Shaikh Gafoor is the panch witness to the arrest of the Appellant. The arrest panchanama of the Appellant along with accused No.4 – Mohammad Vakilkhan Mohd. Samiulla is at Exhibit 47. P.W.1 – Shaikh Sayeed Shaikh Gafoor has proved the said panchanama of arrest of the Appellant. In the cross-examination of this witness, no material which is beneficial to the Appellant has been elicited.

12. P.W.2 – Shaikh Shaid Shaikh Sadik is the eye-witness to the incident of firing by the Appellant and absconding accused No.4 – Mohammad Vakilkhan Mohd. Samiulla. P.W.2 in his testimony has deposed that he was residing in Hazarkholi area with his father and uncles. At the time of incident he was taking education in A.T.T. High School. His father was in the business of hotel and also used to sell fish. The name of the hotel was Milan which was situated in front of new S.T. Stand, Malegaon. He has deposed that before 1 to 1 ½ years prior to the incident, a dispute had arisen between Javedbhai (deceased) and Chota Alu. That his uncle Shaikh Jakir murdered Chota Alu. Mohammad Harun once beat his younger uncle, but that dispute was compromised. That deceased Javed Jumman was his elder uncle. Before 1 to 1 ½ years prior to the date of incident in question, a dispute had taken place between Javed Jumman and Shaikh Mukhtar Shaikh Tahir. Javed had beaten Shaikh Mukhtar and Shaikh Mukhtar was

admitted in the hospital. However, Javed Jumman incurred expenses for giving treatment to Shaikh Mukhtar and therefore, Shaikh Mukhtar entered into compromise with Javed Jumman.

That the incident in question took place on 6th August, 2002. At about 3 to 3.30 p.m. P.W.2 was going to fish market to bring fish. He stood near his uncle Khalil near Hotel Milan. The deceased was sitting near the hotel with his friends. At that time, two unknown persons came there and stood behind Javed Jumman. The said persons took out pistols which were kept near their waist. Both the persons placed the pistols on the back of Javed Jumman and fired the bullets. Javed Jumman fell down from the chair. Those two persons ran away in front of P.W.2. They went towards the side of fish market. P.W.2 and servants from the hotel named Altaf, Rafiq and Akil chased the said two persons. Thereafter one person who was short in stature kept the pistol near his waist and took out the sword and tried to frighten P.W.2 and others with the said sword. Those persons ran towards Kamalpura. These two persons appeared near Nurani Masjid when one person tried to catch them. However, the person with short stature tried to assault with the sword in his hand and therefore, a person who tried to catch short person returned back. Thereafter both the persons caught an auto-rickshaw and ran away. That Javed Jumman was admitted in the hospital of Dr. Farhan. P.W.2 was called to Naya

Rest House to identify the Appellant and other co-accused. P.W.2 identified the Appellant in the said test identification parade. P.W.2 has also identified the Appellant and other accused persons in the Court as Mubarak (the Appellant) and Vakil (accused No.4). In the cross-examination at the behest of the Appellant and co-accused No.4, no omission and/or admission has been elicited which is beneficial to the Appellant.

13. P.W.7 - Usmankhan is a panch witness to the test identification parade conducted by P.W.8 - Sanjay Madhukar Joshi, the Special Judicial Magistrate. As stated herein above, P.W.2 - Shaikh Shaid Shaikh Sadik identified the Appellant and co-accused No.4 Vakilkhan in the said test identification parade which was conducted on 26th August, 2002 in the Government Rest House at Malegaon. These two witnesses have narrated about the various steps taken during the course of test identification parade wherein P.W.2 - Shaikh Shaid Shaikh Sadik identified the Appellant and original accused No.4 - Mohammad Vakilkhan Mohd. Samiulla. The testimony of these witnesses according to us is formal in nature and in the cross-examination of these witnesses, no material which is useful to the Appellant has been elicited.

14. P.W.9 - Dr. Mohammad Turabali is the Medical Officer who

was then attached to Wadia Hospital at Malegaon. P.W.9 has deposed that on 8th August, 2002 Police Constable Aher brought dead body of a person viz. Shaikh Javed Shaikh Haji Jumman with history of fire arm injury. On 8th August, 2002 at about 9.15 a.m. he started postmortem examination and completed it at about 10.40 a.m. In the external examination he found that the body was cold and moderately nourished. Rigor mortise was present lower extremities. Postmortem lividity was present over dependent parts of the body. He found the following injuries on the body :

- “1. Right shoulder sutured wound of 5 inches diameter with hyper pigmented i.e. of oval shape. It is suggestive of wound of entry no.1.
2. There was incised wound over 5th cervical spine obliquely directed towards posterior triangle of the neck with hyper pigmented oval shaped injury in cervical region. Suggestive of wound of entry no.2.
3. Right side lower thoracic region incised wound for inter costal drain. Besides of both the wounds of entry small of size 1 inch for drain. There were bluish discoloration over supra umbilical region of size 8 cm and 5 cam in bluish in discoloration.”

On internal examination he noticed the following injuries :-

- “1. On internal examination of neck, echymosis was

present to the course of bullet of wound of entry No.1.

2. The direction of wound of entry was right shoulder to right scapula with multiple bony fragments of scapula present. It also pierces or penetrates rib nos.3 and 4 on right side with bony fragments were present. Along with this, it lacerates right pleura and lung. That causes right pneumohemothorax. Along with this it also lacerates superior border of liver. Later on it goes to lesser omentum along with hepatic flexure to greater omentum and embedded in supra umbilical region. i.e. floating type. That causes bluish discoloration over supra umbilical region as well as ecchymoses of transverse of abdominal muscles.

3. On examination of abdominal cavity, there was foul smell with aspirated blood in the stomach.

4. On the cervical region at level of 5th vertebra the wound of entry was as follows :

Skin of deep fascia to cervical muscle. There was ecchymosis of muscles as well as clotted blood was present. There was history of removal of bullet during surgery at Dr. Ferhan Hospital.

5. The bullet from entry no.1 was recovered during postmortem examination through anterior abdominal wall and sealed and sent for Ballistic expert for opinion.

15. After conducting the external and internal examination, P.W.9 opined the final cause of death as synocop due to laceration of lung, liver and omentum and large intestine which causes foecal peritonitis. Secondary to fire arm injury through wound of entry no.1. In the cross-examination he has stated that in his opinion two bullets were fired. As it was not possible to extract the bullet easily, he dissected the entry wound and extracted the bullet. P.W.9 has proved Exhibit 78 i.e. the postmortem notes.

16. P.W.10 is Khan Gulam Wahid Gulam Nayyar, the investigating officer of the present crime. P.W.10 has deposed that after receipt of information about the attack on Javed Jumman on 6th August, 2002, he immediately went to the hospital and recorded his statement which was treated as the First Information Report. The said First Information Report is at Exhibit 82. He then directed the PSO to register crime on the basis of the said complaint. Accordingly Crime No.55 of 2002 came to be registered with Malegaon City Police Station. He therefore recorded the statements of witnesses and seized the clothes of injured Javed Jumman by effecting a panchanama Exhibit 84. A bullet was extracted by Dr. Altaf Farhan during the course of the earlier treatment of Javed Jumman and was produced by him which was seized by effecting a panchanama which is at Exhibit

85. That on 8th August, 2002 Javed Jumman expired and therefore an inquest panchanama was drawn which is at Exhibit

86. P.W.10 has deposed about various steps adopted by him during the course of the investigation of C.R. No.55 of 2002 i.e. the present crime. P.W.10 has further stated that on 11th August, 2002 he arrested the Appellant along with accused No.4 - Mohammad Vakilkhan and accused No.5 - Shaikh Mukhtar by effecting the arrest panchanama which is at Exhibit 47. That the Appellant when was in police custody expressed his willingness to discover one country made pistol (katta) and accordingly his memorandum statement was recorded in presence of the panch witness which is at Exhibit 89. That in pursuance of the memorandum statement recovery of country made pistol (katta) at the instance of the Appellant was made by effecting a detail panchanama which is at Exhibit 90. The said panchanama Exhibit 90 is dated 11th August, 2002. That at the instance of the Appellant the recovery of a sword was also made by effecting a panchanama which is at Exhibit 91. P.W.10 has further deposed that he sent the said fire arm to the forensic science laboratory for getting the ballistic report from the expert.

17. P.W.10 was cross examined at length at the instance of the Appellant. In the cross-examination he has admitted that the deceased was a habitual offender. That the bullet seized by

making panchanama Exhibit 85 was kept in a glass bottle. That he has not made any special identification mark on the bullet seized on 6th August, 2002.

18. Thus, after taking into consideration the entire evidence on record, it is clear that there were no distinctive features of the bullet and the fire arms to distinguish that the fire arm (katta) used by the Appellant did not cause the fatal injury. Otherwise also, it is the cumulative effect of both the fire arms that the death of the deceased occurred. The learned counsel for the Appellant contended that as the panch witness to Exhibits 90 and 91 were not examined by the prosecution, the discovery at the instance of the Appellant of the said fire arm (katta) and sword cannot be relied upon as the said panchanamas are not proved by the prosecution. It is to be noted here that the said two panchanamas which are at Exhibits 90 and 91 wherein the discovery of the fire arm (katta) and sword was made at the instance of the Applicant has been proved by P.W.10 - Khan Gulam Vahid Gulam Nayyar, the investigating officer and therefore, non-examination of the panch witness to the said panchanamas does not affect the authenticity of the said two documents. It is to be noted here that one bullet from the body of injured Javed Jumman was extracted by Dr. Farhan on 6th August, 2002 and another bullet was extracted by P.W.9 - Dr.

Mohammad Turabali while conducting the postmortem examination. The prosecution sent two single barrel country made handguns along with the bullets to the Chemical Analyser for its opinion. The Chemical Analyser's report discloses that the bullet which was at Exhibit 4 was fired from the handgun which was at Exhibit 1. The other bullet was fired from the handgun which is at Exhibit 2. It was further opined that both the weapons were in working order and were capable of chambering and firing 8 mm rifle cartridges which were sent for examination. The contention of the learned counsel for the Appellant is that the fire arm which was seized at the instance accused No.4 – Mohammad Vakilkhan was responsible for causing the fatal injury as has been held by the learned Trial Court in paragraph Nos.120 and 121 of the impugned judgment and therefore, the present Appellant is not responsible for causing the fatal wound to the deceased. We may note here that we did not find any such finding and/or observation made by the Trial Court in the impugned judgment. What has been observed by the Trial Court is that a bullet which is Exhibit 4 was fired on the back of the victim from handgun Exhibit 1 and the said handgun was recovered from accused Mohammad Vakilkhan. As stated herein above, a minute perusal of the entire record nowhere discloses that there was any distinctive feature either on the bullet or on the fire arm to distinguish that a particular bullet was not fired by

the Appellant and it did not lead to the death of the deceased. It is the cumulative effect of both the injuries which led to the death of Javed Jumman. The facts on record clearly show that the Appellant with absconding accused participated in the crime in pursuance of the criminal conspiracy and by sharing common intention along with accused No.4 – Mohammad Vakilkhan fired at the deceased and therefore, in our considered opinion, the Appellant is also equally responsible for causing the death of Javed Jumman. We are, therefore, of the view that there are no merits in the Appeal preferred by the Appellant and the same is dismissed accordingly.

19. As far as Criminal Appeal No.1180 of 2007 preferred by the State of Maharashtra against the acquittal of the Respondents i.e. the accused persons mentioned therein is concerned, we have minutely perused the entire evidence on record and we are of the considered opinion that the view taken by the Trial Court while acquitting the said Respondents is a probable view and the acquittal of the said Respondents from the offences charged therein is just, right and proper. We find no merit in the said Appeal and therefore, the same is accordingly dismissed.

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment.