

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1017 OF 2013

- | | | |
|---------------------------------------|---|----------------|
| 1. Balaji @ Bala Gopal Sukunde, |] | |
| Age - 31 years, Occ. - Hawker, |] | |
| R/A - Room No.216, Suresh Chawl, |] | |
| Navshakti Nagar, Ambemata Road, |] | |
| Jogeshwari (W), Mumbai. |] | |
| 2. Ramchandra @ Pintya Gopal Sukunde, |] | |
| Age - 31 years, Occ. - Hawker, |] | |
| R/A - Room No.216, Suresh Chawl, |] | |
| Navshakti Nagar, Ambemata Road, |] | |
| Jogeshwari (W), Mumbai. |] | ... Appellants |

Versus

- | | | |
|--|---|----------------|
| The State of Maharashtra. |] | |
| (At the instance of Oshiwara Police Station, |] | |
| Mumbai, vide C.R.No.220/2011). |] | ... Respondent |

Mr. Satyavrat Joshi for Appellants.
Ms. P. P. Shinde, APP for Respondent - State.

CORAM :- A. S. OKA &
SARANG V. KOTWAL, JJ.
DATE :- 09 MAY, 2018

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

1. The present Appeal is preferred by the Appellants challenging the Judgment and Order dated 24/07/2013 passed by the learned Sessions Judge, Greater Bombay in Sessions Case No.723 of

2011. The Appellants were the original accused nos.1 and 2 in the said case. By the impugned Judgment and Order, the Appellants were convicted for commission of offence punishable under Section 302 read with Section 34 of the IPC and were sentenced to suffer R.I. for life and to pay fine of Rs.5,000/- each and in default of payment of fine, to suffer R.I. for one year. The Appellants were given benefit of set off under Section 428 of the Cr.P.C. for the period already undergone in jail as undertrial prisoners.

2. The prosecution case, in brief, is as follows :

On 20/04/2011 at about 1.15 p.m., one Balbeer Singh Rana came to Oshiwara Police Station and informed that one Rangilal was assaulted by unknown persons and he had suffered stab injuries. The police officers went to the spot of incident at Millat Nager where they found that the injured was lying with injuries on his chest. The injured was removed to Cooper Hospital but he was declared dead before admission. Balbeer Rana was present in the hospital. The police recorded his statement in the hospital itself and on the basis of his statement, registered an offence vide C.R.No.220 of 2011 under Section 302 of the IPC. Significantly, this FIR was registered against

unknown persons. The dead body was sent for post-mortem examination. The investigation was carried out. The spot panchanama was conducted and statements of witnesses were recorded.

3. It appears that, there was no headway in finding the perpetrators of the crime. The investigation was handed over to PI Sunaina Nate on 06/05/2011. On 11/05/2011, the supplementary statement of the aforementioned Balbeer Rana was recorded. At that time, for the first time, Balbeer Rana disclosed that the Appellants had committed the murder. On the same day, statement of one Mohd. Altaf Shaikh was recorded and he also claimed that the Appellants had committed the murder. Both the Appellants were arrested on 11/05/2011 itself. On 12/05/2011, second spot panchanama was carried out with the help of team of Chemical Analyzer. This time, blood scrapings from the floor near Enrich Salon were seized. The witness Altaf produced his bloodstained clothes and a bloodstained shoe to show that he was present at the spot to witness the incident. On 14/05/2011, a knife was recovered at the instance of the Appellant No.2 from shrubs near Lokhandwala backroad. On

15/05/2011, the bloodstained clothes worn by the Appellants were recovered at the instance of the Appellant No.1 from the railings on the bridge on the way to Lokhandwala. On 20/05/2011, statements of Balbeer and Altaf were recorded by the Metropolitan Magistrate under Section 164 of the Cr.P.C. On 01/06/2011, Test Identification Parade ('TIP') was conducted to enable the witnesses to identify the accused. After completion of the investigation, charge-sheet was filed. As the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions for trial.

4. During trial, the prosecution examined 13 witnesses. PW 1 Balbeersingh Ranbeersingh Rana had lodged the FIR and he claimed to be one of the eye witnesses. PW 2 Prema Hanumant Pawar is the sister of the Appellants. This witness did not support the prosecution case and was declared hostile. PW 3 Ramchet Jayram Kanojia was a relative of the deceased Rangilal. This witness also did not support the prosecution case and was declared hostile. PW 4 Dayabhai Meghjibhai Patel was a pancha in whose presence clothes of the deceased were seized and the inquest panchanama was conducted. PW 5 Swati Balaji Sukunde is the wife of the Appellant No.1. She did

not support the prosecution case. Swati was declared hostile. PW 6 Uttam Toruni Debnath was a pancha in whose presence bloodstained clothes and a shoe belonging to Mohd. Altaf (PW 7) were seized. PW 7 Mohd. Altaf Abdul Gani Shaikh is the other eye witness besides Balbeer. PW 8 Buntty Joti Datta was a pancha in whose presence the clothes of the Appellants were recovered at the instance of the Appellant No.1. PW 9 Anand Manohar Nerulkar was a pancha in whose presence the knife was recovered. PW 10 Dr. Vijay Nivrutti Tasgaonkar had conducted the post-mortem examination on the dead body of the deceased. PW 11 PSI Laxman Bapurao Padalkar had conducted the initial part of the investigation and PW 12 PI Sunaina Subodh Nate was the Investigating Officer. PW 13 Jaichand Bhika Singh was a pancha in whose presence the TIP was conducted.

5. After recording the evidence of the prosecution witnesses, the learned Judge recorded the statements of the Appellants under Section 313 of the Code of Criminal Procedure, 1973. The defence of the Appellants was that of total denial. After hearing the arguments advanced on behalf of both parties, the learned Judge passed his impugned Judgment and Order.

6. We have heard Mr. Satyavrat Joshi, learned Counsel for the Appellants and Ms. P. P. Shinde, learned APP for State. With their assistance, we have read the entire evidence and we have gone through the record and proceedings of the case.

7. Insofar as the evidence of PW 2 Prema, PW 3 Ramchet and PW 5 Swati is concerned, they turned hostile and did not support the prosecution case. Though their statements before the police are brought on record by the prosecution by way of contradictions through the evidence of PW 12 PI Nate, their evidence is not reliable. PW 2 Prema and PW 5 Swati are close relatives of the Appellants and Ramchet is a close relative of the deceased. The prosecution case is based mainly on the evidence of eye witnesses and the other circumstantial evidence of recovery of clothes and knife. Therefore, the fate of this Appeal depends on the analysis of such evidence. Therefore, in our opinion, the evidence of PW 2 Prema, PW 3 Ramchet and PW 5 Swati can safely be left out of consideration.

8. The most important evidence in this case is the deposition of PW 1 Balbeer and PW 7 Altaf. According to PW 1 Balbeer, Rangilal

was staying with him. Rangilal was working in a beauty parlour. The Appellants and Rangilal used to come together after closing their shop. On 19/04/2011 at about 11.30 p.m. when this witness was sleeping, he heard loud shouts of abuses. When he woke up, he saw the Appellants and one unknown person were holding Rangilal and were assaulting him. There was bleeding from Rangilal's nose. At that time, the Appellant No.2 took out a knife from his pant pocket and stabbed Rangilal. Rangilal started to run and gave call for help to PW 1. As PW 1 Balbeer came near Rangilal, the Appellants and the unknown person ran away after giving threats to the said witness. PW 1 Balbeer then went near Rangilal who was lying there. At that time, Rangilal's mobile phone which was lying nearby, started ringing. PW 1 Balbeer answered the phone to find the Appellant No.1 was on the other side. The Appellant No.1 made inquiry regarding Rangilal's physical condition. PW 1 Balbeer told him that Rangilal was critical. Within 10 minutes both the Appellants came there. They got panicked as Rangilal had died. The Appellants' mother was telephonically contacted when she advised the PW 1 to let the Appellants go to their house and she further told the PW 1 to inform the police that unknown persons had assaulted Rangilal. PW 1 has further deposed

that he refused to go alone to the police station. Therefore, the Appellants' sister Prema and Appellant No.2's wife went with him to the police station and informed the police accordingly. Thereafter, police came to the spot and removed Rangilal to Cooper Hospital. PW 1 followed them to Cooper Hospital where his statement was recorded and it was treated as the FIR. The FIR is produced on record at Exh.15. In this statement, PW 1 has stated that the deceased was assaulted by unknown persons. PW 1 Balbeer has further deposed that on 11/05/2011, he gave his further statement to the police and this time, according to him, he gave a truthful version and named the Appellants as the assailants. His statement under Section 164 of the Cr.P.C. was recorded on 20/05/2011. PW 1 Balbeer was cross-examined in detail on behalf of the Appellants mainly regarding the suspicious circumstances during the night between 19th and 20th April, 2011 and about his wrong disclosure to the police at the first instance. Some minor omissions from his statement recorded under Section 164 were brought on record.

9. PW 7 Mohd. Altaf is another eye witness to the initial part of the assault. He has deposed that on 19/04/2011 at around 11.15

p.m., he heard some noise. He saw that the Appellants and one unknown person were beating Rangilal with fists and kick blows. They forcibly carried Rangilal near the bridge. According to this witness, he followed them but got frightened and came back and sat on his chair. He noticed that some blood had fallen where he was sitting which got stuck on his shoe. He has further deposed that he did not go to his duty out of fear. On 11/05/2011, the police recorded his statement. He has given description of the clothes worn by the accused at the time of assault. He has further deposed that he had seen the Appellants at Arthur Road jail. In is cross-examination, he has stated that he knew the Appellants as he used to have 'Vada-Pav' at their stall.

10. Interestingly, the prosecution has examined PW 6 Uttam Debnath as a pancha in whose presence PW 7 Altaf had produced his bloodstained shirt and a bloodstained shoe from his house. Though PW 7 Altaf had identified his shirt in the Court, the shoe was not shown to him during trial. PW 6 Uttam has not stated in his substantive evidence that these articles were produced by PW 7 Altaf. PW 6 Uttam has merely stated that the police seized those articles

from one watchman. The panchanama in that regard is produced at Exh.24. Surprisingly, the title of the panchanama shows that it is a memorandum of statement. We find it quite strange that the police had recorded the statement of a witness and not of an accused as if they were effecting recovery in accordance with Section 27 of the Indian Evidence Act.

11. PW 8 Buntty Datta was a pancha in whose presence the clothes were seized from a 'Vada-Pav' stall of the Appellants, at the instance of the Appellant No.1 on 15/05/2011. PW 9 Anand Nerulkar was examined as a pancha in whose presence the knife was recovered at the instance of the Appellant No.2 from some bushes in the area. He has admitted in his cross-examination that he has deposed as a pancha many times in Court. In the context of his evidence, we are constrained to observe that the deposition of this witness was not recorded in clear terms by the learned trial Judge. To emphasize this aspect, we reproduce the relevant para 1 of his evidence as follows :

“1. I was called by Oshiwara Police on 14.05.2011 for panchanama at about 4.00 or 4.15 p.m. The accused was present there. He was asked his name and address. He made a voluntary statement to show the knife. Police prepared panchanama. Now

*I am shown the first part of Recovery Panchanama. It is the same. It bears my signature and the signature of other panch. it also bears signature of accused. Its contents are true and correct. **It is marked as Exh.32** (Only to the extent which is admissible in evidence.)”*

In para 2 of the deposition, the learned Judge has further recorded thus :

“2. The accused is present before the court sitting in the dock.”

As can be seen, this recording of evidence does not indicate as to which accused this witness was referring to. In a case where there are more than one accused and when a witness is referring to a particular accused from amongst them, it is not only desirable but absolutely necessary for the trial Judge to record as to exactly which accused such witness is referring to. The recording of deposition should be in clear and unambiguous language. In the instant case, the deposition of PW 9 Anand Nerulkar does not indicate as to which accused he was referring to. His deposition being substantive piece of evidence, assumes a lot of importance. But due to absence of specific reference to a particular accused, it has created ambiguity. Thus, it cannot be said that PW 9 Anand Nerulkar was referring to the Appellant No.2 as

the accused at whose instance the knife was recovered. The recovery panchanama produced at Exh.32 and Exh.32A will not assist the prosecution because it is only a corroborative piece of evidence. In the absence of clear substantive evidence, we are not inclined to hold that the knife was recovered at the instance of the Appellant No.2.

12. Apart from the fact that the recovery of the clothes and the knife was effected after about 24 days from the places which were accessible to all, in any case, the CA report in respect of the weapon and the clothes of the accused show presence of human blood but the result of the test for blood grouping was inconclusive. Therefore, these clothes and the knife cannot be connected positively with the offence of murder of the deceased.

13. PW 10 Dr. Tasgaonkar has described the injuries suffered by the deceased. Dr. Tasgaonkar had conducted the post-mortem examination and had found 4 injuries out of which 3 were incised wounds and one was an abrasion. The cause of death was given as 'heamorrhage and shock due to incise stab woulds with alcohol consumption'.

14. Thus, from the evidence discussed above, the prosecution has relied on the direct evidence in the form of deposition of two eye witnesses i.e. PW 1 and PW 7 and on the circumstantial evidence i.e. i) motive, ii) recovery of the bloodstained clothes and knife and iii) TIP. The learned trial Judge has considered these aspects and has mainly relied on the evidence of the eye witnesses. The learned trial Judge also believed the recovery and held that it was an incriminating circumstance against the Appellants which was proved by the prosecution. The learned trial Judge observed that though the motive was not particularly proved by the prosecution, the said aspect was not important in the light of the evidence of the eye witnesses.

15. Mr. Joshi, learned Counsel for the Appellants, submitted that the evidence of the eye witnesses is not reliable. Both these eye witnesses have disclosed the names of the Appellants much belatedly i.e. after more than 20 days. Mr. Joshi submitted that there was no acceptable explanation offered by these witnesses for naming the Appellants so belatedly. In this behalf, Mr. Joshi relied on the Judgment of the Hon'ble Supreme Court in the case of **Ganesh**

Bhavan Patel and another Vs. State of Maharashtra¹. The Hon'ble Supreme Court has observed thus :

“Delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. Thus under the facts and circumstances of the case delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.”

He also relied on another Judgment of the Hon'ble Supreme Court in the case of ***State of Orissa Vs. Mr. Brahmananda Nanda***², wherein it is held that :

“Where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eye-witness and this witness did not disclose the name of the assailant for a day and half after the incident and the explanation offered for non-disclosure was unbelievable, held that such non-disclosure was a serious infirmity which destroyed the credibility of the evidence of the witness and that the High Court was correct in rejecting it as untrustworthy and acquitting the accused.”

¹ AIR 1979 SUPREME COURT 135

² AIR 1976 SUPREME COURT 2488

He further submitted that these two witnesses were, in fact, detained by the Crime Branch and they were the suspects. He, therefore, submitted that the evidence of these two witnesses should not be believed. Mr. Joshi further submitted that the evidence of recovery of the bloodstained clothes and knife is of no consequence and it is not incriminating against the Appellants. He lastly submitted that the TIP was not necessary and no cogent evidence is led in respect of conduct of TIP.

16. Mrs. P. P. Shinde, learned APP for State, supported the impugned Judgment and submitted that in view of the direct evidence which was believable, there is no reason to take a different view than the one taken by the learned trial Judge.

17. We have considered the rival submissions. Insofar as the circumstantial evidence is concerned, there are mainly 3 circumstances. As per the prosecution case, the deceased Rangilal was having a love affair with the Appellant No.1's wife. To establish this fact, the prosecution has examined the Appellant No.1's wife Swati as PW 5. Swati had turned hostile and did not support the prosecution

case. Apart from this witness, the prosecution did not examine any other witness from the neighbourhood or from amongst the acquaintances of the Appellants to prove this fact. It is, thus, clear that the prosecution has not proved the motive of murder of the deceased.

18. The next circumstance is that of recovery of bloodstained clothes and knife. As we have mentioned earlier, the substantive evidence in respect of recovery of knife is neither reliable nor unambiguous. The pancha PW 9 Anand Nerulkar has not even deposed as to what was the statement made by the accused which led to recovery of knife. PW 9 Anand Nerulkar was examined as a pancha who was present when the knife was recovered. The knife was recovered from shrubs at Lokhandwala backroad. The said place was accessible to all and the knife was not even concealed. It was just thrown in the shrubs. Therefore, not much reliance can be placed on such recovery. Furthermore, the blood group on the knife was mentioned as inconclusive. Therefore, this knife cannot be connected with the assault on the deceased.

19. Similarly, the clothes of the Appellants were allegedly recovered at the instance of the Appellant No.1 from a bridge on a creek near Celebration Club, Lokhandwala, Andheri. The clothes were kept in a joint between the compound wall of the club and railings of the bridge. This place, too, was accessible to all. The knife was recovered on 14/05/2011 and the clothes were recovered on 15/05/2011 i.e. after about 15 days from the incident. Such recovery can hardly be called as a reliable piece of evidence. Importantly, even the blood group on these clothes has remained inconclusive. Therefore, the prosecution has not ruled out that those bloodstains were not of the accused themselves. Therefore, we are not inclined to place reliance on the evidence of recovery.

20. We fail to understand as to why the TIP was held. Both the eye witnesses have categorically stated that they knew the Appellants and they had named them in their statements, though belatedly. In such circumstances, it was surprising that the Investigating Officer thought it necessary to conduct the TIP. In our opinion, even this circumstance depends on the quality of evidence given by the eye witnesses which is discussed hereinafter.

21. Considering the manner in which the investigation has proceeded, we are satisfied that the investigating agency was clueless in respect of the identity of the assailants. It is only after 06/05/2011 when PW 12 took over the investigation, efforts were made to implicate the present Appellants. The evidence shows that on 11/05/2011, the statements of both the eye witnesses were recorded. PW 1 gave his supplementary statement and PW 7 gave his first statement. There is no indication as to why these two important statements were made available to the investigating agency on the very same day. PW 1 Balbeer has conveniently stated that at the first instance he did not name the Appellants as he was scared. He has deposed that he, on his own, went to the police station on 11/05/2011 to give his statement. He has not explained what made him change his mind on 11/05/2011 and why he waited for so long to disclose the names of the Appellants. He has specifically deposed that he had not met the Appellants after 20/04/2011. In this connection, very important documents are brought on record by the defence. This affects the veracity of the prosecution case. Such documents were obtained by the defence under the Right to Information Act and they were produced with a list vide Exh.61. These were the certified copies

of the station diary entries of DCB CID, Unit IX, dated 25/04/2011, 26/04/2011 and 27/04/2011. The production of these certified copies was allowed by the learned trial Judge. These documents show that on 26/04/2011 the Appellants as well as the PW 1 and the PW 7 were called for inquiry at 4.00 p.m. and they were allowed to go at 7.30 p.m. Thus for about 3.½ hours, the Appellants and these two witnesses were together. On 27/04/2011, the Appellants and the PW 1 were called at 3.30 p.m. and were allowed to go at 6.50 p.m. These entries show that the eye witnesses were called by the DCB CID along with the Appellants which may indicate that these two eye witnesses too were the suspects or at any rate, these eye witnesses were together with the Appellants when they were called for the inquiry. Both these eye witnesses have deliberately avoided to make reference to such inquiry. These eye witnesses, therefore, are not truthful or reliable witnesses. We are, therefore, inclined to accept the submission of Mr.Joshi that the police had pressurized these two eye witnesses and therefore they had named the Appellants.

22. PW 7 Altaf had not given any statement till 11/05/2011. No explanation is offered as to why his statement was not recorded

though he was called by the DCB CID for inquiry. This witness has not given any reasonable explanation as to why he did not give his statement till 11/05/2011. Another interesting aspect in respect of the evidence of this witness is that one bloodstained shoe was recovered from his house. As mentioned earlier, his statement was recorded as if the police were effecting the recovery in consonance with the provisions of Section 27 of the Indian Evidence Act. There was no impediment in simply seizing the shoe from him. According to this witness, he has seen the first part of the incident i.e. before the deceased was stabbed. At that time, the deceased had not suffered major bleeding injury and there was only bleeding from his nose. PW 7 Altaf claimed that when he returned to his place, that time the blood stuck on his shoe. This story appears improbable. The Investigating Officers have not stated about the inquiry conducted by the DCB CID. They have not produced the Call Data Record ('CDR') to substantiate the story of the PW 1 that the Appellant No.1 had given a call on the same phone of the deceased after the assault. This call was answered by the PW 1. The CDR would have established and corroborated the version of the PW 1, but this evidence is not brought before the Court. In our opinion, the evidence of the eye witnesses is totally unreliable.

23. Considering all these aspects, we are of the opinion that there is a serious doubt about the truthfulness of the entire prosecution case. The evidence led by the prosecution is not reliable and therefore, the benefit of doubt must go to the Appellants.

24. Before we part with the Judgment, we must refer to the order of the Division Bench passed on 15th March 2018. In paragraphs 2 to 4 of the said order dated 15th March 2018, the Division Bench has noted certain disturbing features about the manner in which Vakalatnamas are being filed by the Advocates in Criminal Appeals. In paragraph 5, the Division Bench noted that the disturbing trend which has been noted by the Division Bench in the earlier paragraphs was brought to the notice of the senior level Registry officials including the learned Registrar General in the chambers of the Hon'ble Judges. It is recorded that the officials in the Registry did not comply with the oral directions issued. It is observed that the Registry has become a party to such unhealthy and unethical practices adopted by the Advocates. It is further observed that the illegal and unethical practices have been ignored by the learned Registrar General, the learned Registrar (Judicial-I) and the learned

Registrar (Judicial-II) all of whom are senior members of the District Judiciary. The Division Bench directed the Registrar (Judicial-I) to hold an enquiry about the manner in which the Vakalatnama of Advocate Mr. Prabhanjay R. Dave was taken on record. On the basis of the said order, the Registrar (Judicial-I) held an enquiry and submitted two detailed reports dated 28th March 2018 through the Registrar General. In paragraphs 2 to 5 of the order dated 3rd April 2018, the Division Bench observed thus :

“2. The Registry has sought directions on this report and together with this report it has also forwarded a summary of the preventive steps taken to curb filing of multiple Vakalatnamas.

3. Pursuant to our earlier order, now a Practice Note is issued and which Practice Note has been circulated after the Hon'ble the Acting Chief Justice has approved it. It has also been signed by the Hon'ble the Acting Chief Justice. The Practice Note No.53 sets out the procedure as to how Vakalatnamas either singly or jointly have to be filed. Let the present Vakalatnama and tendered by Mr.Dave be scrutinized in the light of this office order and Practice Note No.53.

4. We are hopeful that the Registry will act upon this enquiry report and take the necessary steps in accordance with the disciplinary rules against the erring officials. The superior officials in the Registry must send a strong message so that hereafter no staff member or Advocate will commit a breach of the rules and the law laid down by this Court as mentioned in detail in our earlier order.

5. When we say that the Registry officials must take disciplinary measures, we do not mean that they do not have any discretion in the matter at all. It is entirely left to them as to how they must proceed against these officials but the tendency to accept oral apologies does not ensure that such practices are not repeated again. Such unhealthy and illegal practices should not be repeated is our anxiety. The procedures and rules have a sanctity and they should not be violated by the Advocates and the staff either in a collusion or individually. The Registry can also report the names of the Advocates involved to the Bar Council of Maharashtra and Goa and it is for that Council to initiate the disciplinary measures against these Advocates. We strongly deprecate and discourage the tendency of Advocates filing Vakalatnamas in the midst of the proceedings without the earlier Advocate being discharged or the requisite NOC being obtained from him. Therefore, we had to take these strict measures.”

25. We have perused the second part of the Appeal and now we find that the learned Advocate Mr. Prabhanjan R. Dave has filed separate Vakalatnamas for both the Appellants after obtaining no-objection of the Advocate who had filed Vakalatnama along with this Appeal. Moreover, Mr. Satyavrat Joshi who appeared and argued the Appeal has stated that he has been authorized and instructed by Mr. Dave who appears for both the appellants and, in fact, an authority letter is also placed on record by him.

26. We have perused the enquiry reports submitted by the Registrar (Judicial-I). As noted by the Division Bench in the order dated 3rd April 2018, preventive steps have been taken by the Registry to prevent or curb the practice of filing multiple Vakalatnamas. The Practice Note No.53 has been issued which is noted in paragraph 3 of the said order. Directions have been issued to the Registry to act upon the enquiry report. As the directions have been issued to the Registry to act upon the enquiry report, nothing further is required to be done in that behalf. However, in paragraph 5 of the order dated 15th March 2018, certain observations have been made by the Division Bench which suggest that illegal and unethical practices which are noted in the said order adopted by the Advocates have been ignored by the learned Registrar General, the learned Registrar (Judicial-I) and the learned Registrar (Judicial-II) all of whom are senior members of the District Judiciary. As far as these observations are concerned, we are of the view that only the Hon'ble the Acting Chief Justice can take a decision whether any action is required to be initiated against the said members of the Registry as they are senior members of the District Judiciary. We, therefore, propose to direct

the Registry to place copies of both the orders along with reports submitted by the Registrar (Judicial-I) before the Hon'ble the Acting Chief Justice to enable her to take appropriate decision. The Registry will have to immediately place these two orders before the Hon'ble the Acting Chief Justice. For reporting compliance of this direction, we propose to keep this appeal on 8th June 2018 in chamber.

27. Hence, the following order.

ORDER

- (i) The conviction and sentence of the Appellant under impugned Judgment and Order dated 24th July 2013 in Sessions Case No.723/11 passed by the learned Sessions Judge, at Mumbai, is hereby quashed and set aside and both the Appellants are acquitted of the offence alleged against them. The Appeal is allowed on above terms.

- (ii) In view of the observations made by a Division Bench of this Court in the orders dated 15th March 2018 and 03rd April 2018, we direct the Registry to place copies of both the orders before the Hon'ble the Acting Chief Justice, in

view of the fact that there are certain observations made against the members of the Registry who are Judicial Officers. It is only for the Hon'ble the Acting Chief Justice to decide the course of action as far as the observations against the Registrars are concerned. We direct the Registry to place both the orders along with reports submitted on record by the Registry before the Hon'ble the Acting Chief Justice on the basis of operative part of this order.

- (iii) As both the aforesaid orders will have to be taken to its logical end, we direct the Registry to place this Appeal before the same Bench, subject to approval of the Hon'ble the Acting Chief Justice, on 08/06/2018 at 02.40 p.m. in Chamber, so that after considering the order which may be passed by the Hon'ble the Acting Chief Justice, necessary directions, if any, can be issued by this Bench.

(SARANG V. KOTWAL, J.)

(A. S. OKA, J.)