

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 602 OF 1997

The State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

1. Vijay Mohan @ Shivaji Kadam (Patil)
Age- 29 years.

2. Sharad Tukaram Thorat
Age- 28 years.
Both residing of Beldare,
Taluka Karad, Dist. Satara.

...Respondents
(Orig. Accused)

...

Mrs. M.M. Deshmukh, APP for Appellant – State.
Mr. Ganesh Gole a/w. Bhavin Jain for Respondent No. 1.
Mr. D.I.S. Mulla for Respondent No. 2.

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**CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.**

**RESERVED ON: 27th NOVEMBER 2019
PRONOUNCED ON: 19th DECEMBER 2019**

JUDGMENT [PER: S S SHINDE, J.]

1. At the outset it is required to be noted that during course of arguments of this Criminal Appeal, much importance was laid on the evidence of PW-12 and since the incident in question is of the year 1989, and PW-12 got married subsequent to the incident and she is now residing at her

matrimonial life, her identity needs to be concealed and she is referred to as “PW-12” in this judgment. The Registry is directed to maintain the record accordingly.

2. This appeal takes an exception to the judgment and order passed by the 2nd Additional Sessions Judge, Satara on 19.05.1997 in Sessions Case No. 126 of 1990, thereby acquitting the accused under Section 109, 120 (B), 302, 307, 201 read with 34 of Indian Penal Code (for short “IPC”) & 25 (i) (6A) of Arms Act, 1959.

3. The prosecution case, in brief, is as under:-

Complainant Vivek Shinde is a resident of village Beldare and at the relevant time he was taking education in Sy. B.Com., at Venutai Chavan, College, Karad. At the relevant time, he was residing with his aunt Sou. Savitri w/o Shivaji Garud in revenue colony Karad. Deceased Pravin Sabale was basically from Sabalewadi (Maldhan) and he was also taking education in 12th standard, at Yashwantrao Chavan, College, Karad, and for the said purpose, he was residing near the house of complainant’s aunt in revenue colony, Karad. Accused No. 1 Vijay Mohan Kadam is a resident of village Beldare, and at the relevant time, he was taking education in S.G.M. College, Karad. Accused No. 2 is a resident of village Beldare. PW-12 was resident of village Beldare, and at

that time she was serving as a teacher in Balwadi at village Beldare. PW-12 is the cousin sister of the complainant.

4. On 08.08.1989, cousin brother of the complainant namely Rajaram Shinde had informed complainant by going to his college that the letter (Chitthi) was written by PW-12 in the name of the complainant and the said letter is in possession of Accused No. 1. Therefore, on 09.08.1989, the complainant Vivek Shinde and Vijay Patil, went to the house of Vijay Kadam at Beldare from Karad and they made inquiry with the Accused Kadam about the said letter. Thereupon, accused Vijay Kadam informed them that though the said letter was given to him by Suresh Kadam, it is not with him now. Thereafter, complainant Vivek and his friend Vijay Patil went to make inquiry with Suresh Kadam, but he was not at his house. Complainant Vivek Shinde could not meet Suresh Kadam on that day and he could not secure that letter, therefore, they returned back to Karad.

On the night of 11.08.1989, at about 11.00 pm, the complainant Vivek Shinde and his deceased friend Pravin Sabale went on bicycle to Beldare from Karad for making further inquiry in respect of that letter. They parked their bicycles at village Beldare, Karad Road near 'Khadichi Shala' and went on foot to the house of Suresh Kadam, and made inquiry with him. Suresh

Kadam was available at his house. The complainant inquired from him about the said letter. However, Suresh Kadam gave reply to the complainant stating that the complainant and deceased Pravin were mis-guided by some one. Finally, Suresh Kadam clearly stated to them that the alleged letter is not with him. There was no alternative left for the complainant except to contact Accused No. 1., therefore, in order to ascertain the fact, the complainant and deceased Pravin Sabale went to grocery shop of Accused No. 1. The complainant knocked the door of the shop of Accused No. 1. Accused No. 1 was present in his shop. Therefore, he opened the door of the shop. There was meeting between Accused No. 1 and the complainant in the grocery shop. In the meeting the complainant told to Accused No. 1 that, as per the information of Accused No. 1, they approached Suresh Kadam, and they made inquiry with Suresh Kadam, but Suresh kadam gave reply in the negative stating that, he does not possess any letter with him. Finally, Accused No. 1 told them that, they should see their own affairs and by saying this much, he closed his shop and went out from the shop premises.

5. The complainant and his deceased friend Pravin Sabale, for some time stood on the road in front of grocery shop for discussion. They discussed in respect of the letter, and thereafter, they went to the house of cousin brother of the complainant namely Prakash Shinde, who was at the relevant time,

found present in the house of Yashwant Suryawanshi. When the complainant and his deceased friend Pravin Sabale went to the house of Yashwant Suryawanshi, at that time, 'Bhajan' was going on in his house. Prakash Shinde was called from the house of Yashwant Suryawanshi by the complainant. After his coming out of the house of Suryawanshi, the complainant made inquiry to him about the said letter. In the inquiry, it was revealed that, he had no knowledge about the said letter in question. In the mid night of 11th and 12th August, 1989, at about 1.00 am., the complainant and his deceased friend Pravin Sabale took their bicycles from Khadichi Shala, and they were returning back on their respective bicycles to Karad. When they came on Beldare Karad Road, more particularly near 'Khadicha Odha', Accused No. 1 and 2 were standing on the Road. Accused Vijay Kadam was holding gun in his hand and Accused No. 2 Sharad Thorat was holding torch in his hand. When the complainant and his deceased friend reached near them, immediately, Accused No. 1 accosted the complainant and his deceased friend Pravin Sabale and told the complainant, "herein after do not come to him for making inquiry about the letter in question. The people of the village would think that, you are coming to Beldare to threat me." The complainant replied by saying that, "you have called me and therefore I came." Thereafter wordy quarrel was started between the complainant and the accused. Accused No. 2 was holding torch in his hand, and he was all the while focusing light of the torch on them.

Accused No. 1 retraced his step and fired gun shot at deceased Pravin Sabale. Because of which, deceased Pravin Sabale immediately collapsed on the ground, and the complainant started running from the spot of incident for saving his life. Accused No. 1 chased him and fired gun shot at him, which was received by the complainant on his left hand. The complainant fell down because of gun shot injury on his hand, however, he got up very quickly and started running towards temple of Naikba to save his life. The complainant at the beginning went to the house of Balwant Mane and he gave a call to him. Balwant Mane was present in his house. The complainant contacted Balwant Mane in his house and narrated the facts of the incident, and thereafter, the complainant came to his house along with Balwant Mane. The complainant narrated the facts of the incident to his mother and grand father and grand mother. Thereafter, with the help of Balwant mane, tempo was brought from the village, which was owned by Shankar Khambe. The complainant and his mother boarded into tempo and came to cottage hospital, Karad for the treatment. Before reaching to the hospital, they went to the house of aunt of the complainant namely Savitrabai and the complainant narrated the incident to her and her husband. Thereafter, from the house of the aunt of the complainant, the complainant came towards cottage hospital, Karad. The complainant was admitted in Cottage Hospital, Karad. After getting the admission in the hospital, after some time, the police officer, Taluka Karad

Police Station arrived in the hospital. The police officer recorded the statement of the complainant as per his narration. The police officer Mr. Jagadale after recording statement of the complainant came in Taluka Police Station, Karad, and he registered an offence at about 5.05 am. The police officer Mr. Jagadale immediately gave directions to another police officer Mr. Khan to proceed towards the spot of incident. After some time, the police officer, Mr. Jagadale visited the place of incident and recorded the inquest panchnama of the dead body of Pravin Sabale in the presence of two panchas. At the same time, Mr. Jagadale recorded the spot panchnama in the presence of panchas. The police officer Mr. Jagadale secured one vehicle in which dead body of deceased Pravin Sabale was asked to carry to cottage hospital, Karad for post mortem examination. The medical officer of cottage hospital, Karad performed post mortem examination on the dead body of deceased Pravin Sabale. The blood stained clothes of deceased Pravin Sabale were sent by medical officer along with one constable to police station, Karad. The blood stained clothes of deceased Pravin Sabale were seized by the police officer under seizure panchnama. The statement of the relevant witnesses were also recorded by the police officer during the course of investigation. The clothes which were on the person of the complainant, were seized by the police officer on 14.08.1989 under the seizure panchnama. The investigating officer also seized double barrel gun and one empty cartridge and one torch from the house of Accused

No. 1 in the presence of panchas under seizure panchnama. Accused No. 2 was arrested. His clothes were also seized under seizure panchnama. Accused No. 1 was also arrested by the police, and his clothes, which were on his person on the day of incident were attached under seizure panchnama. All the incriminating articles were sent to C.A. for examination and his report.

6. At the time of conducting post-mortem examination on the dead body of deceased Pravin Sabale, some pellets were collected by the medical officer in a bottle. The said bottle was sealed by paper seal and referred the same towards police officer. The medical officer also collected the blood of deceased Pravin Sabale for the purpose of sample in a bottle. The said bottle was also sealed properly and handed over to the police officer Mr. Jagadale. The sealed bottle of pellets and sealed bottle of blood sample of the complainant were also sent to C.A. for examination and report. Accused Nos. 1 and 2 were referred to medical officer for collecting their blood for blood sample. The medical officer, cottage hospital, Karad, collected blood of Accused Nos. 1 and 2 in a different bottles and those bottles were properly sealed and handed over to the police officer. All the incriminating articles including double barrel gun and pellets were sent to the office of C.A. Bombay, for examination and report.

7. On 12.10.1989, the police officer Mr. Jagadale wrote a letter to

District Magistrate, Satara, through Superintendent of Police, Satara for cancellation of license of Mohan Pandurang Patil in respect of double barrel gun. On 16.10.1989, the police officer issued a letter to Tahsildar, Karad, in which he requested him to visit the place of incident and prepare a map as per prevailing condition. On 17.12.1989, the police officer Mr. Jagadale received all the certificates from the office of C.A., Bombay. After completing the entire investigation, the police officer Mr. Jagadale filed charge sheet against the Accused in the Court on 07.01.1990.

8. The learned JMFC, Karad, committed the case to the court of Sessions, at Satara, as the offences punishable under Section 302, 307 of IPC are exclusively triable by the Court of Sessions. The said case was committed to the Court of Sessions on 21.03.1990. Accused No. 1 and 2 pleaded not guilty to the charge and denied the commission of any offence. The defence of the Accused is that, they are innocent and they have not committed any offence as alleged by the complainant, the prosecution witnesses and the police. They have been falsely implicated in this case merely on suspicion.

9. Thereafter the learned Additional Sessions Judge, Satara, framed the charge against both the accused for the offences punishable under Sections 120-B, 302 r/w 120-B, 302 r/w 34, 1209, 302, 307 r/w 120-B, 307 r/w 34 ,

307, 201 r/w 120-B and 201 r/w 34 of the Indian Penal Code, Section 25(1) (6A) of Arms Act, 1959. The charge was read over and explained to the accused. Both the accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. According to the accused, they are innocent, and they have not committed any offence as alleged by the prosecution, and they have been wrongly implicated in a false case merely on suspicion.

10. To bring home the guilt of the accused, during the trial the prosecution examined twenty five witnesses in support of its case. The learned Additional Sessions Judge, Satara has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Additional Sessions Judge, after considering the material on record and the evidence adduced by the prosecution, came to a conclusion that the prosecution has miserably failed to establish its case beyond reasonable doubt, and that the accused are entitled to get benefit of the same. As stated herein above, the learned 2nd Additional Sessions Judge, Satara by the impugned judgment and order dated 19/05/1997, acquitted both the accused for the offences punishable under Sections 109, 120(b), 302, 307, 201 r/w 34 of the Indian Penal Code. Hence this Appeal against acquittal by the Appellant-State..

11. We have heard Mrs. M M Deshmukh, the learned APP appearing

for the Appellant – State, Mr. Ganesh Gole, the learned counsel appearing for Respondent No.1 and Mr. D I S Mulla, the learned counsel appearing for Respondent No.2. With their able assistance we have perused the grounds taken in the Appeal Memo, the evidence adduced by the prosecution, the documents produced on record, and the reasons recorded by the learned 2nd Additional Sessions Judge, Satara in the impugned judgment.

12. It is submitted by the learned APP that the learned Additional Sessions Judge, did not consider the evidence led by the prosecution in proper perspective. The learned Additional Sessions has failed to properly appreciate the evidence of the complainant, who is the sole eye witness to the entire incident and who himself had sustained injuries in the said incident. She submits that the Trial Court erred in coming to a conclusion that P.W.No.3 is a got up witness, and that his evidence does not inspire confidence so far as incident in question is concerned. She further submits that the Trial Court ought to have believed the version of PW-12. She also submits that the Trial Court has erred in holding that since there were no street lights on the road side of Beldare-Karad Road, the evidence of the complainant cannot be believed. It is submitted that as the complainant knew the accused persons, it is easy to identify the person on the basis of voice and gait up, and therefore, it was quite possible for the complainant to identify the accused persons as they

had met earlier. She submits that though there are minor omissions in the evidence of the mother of complainant, which are not substantial in nature, the same will not affect the credibility of her evidence. She further submits that the Trial Court has wrongly considered the evidence of PW-4 Dipak Salunkhe on the ground that he is an interested witness. She submits that the prosecution has adduced sufficient evidence and material on record to establish the motive in the instant case and therefore there is strong possibility to hold the accused guilty. She further submits that the evidence of Dr. Pawan and Dr. Shauka Ali is the corroborative and substantial evidence to prove the injuries on the person of deceased and complainant. Therefore considering the evidence and material produced on record, the learned APP vehemently submits that, the prosecution has proved its case beyond reasonable doubt and hence the accused are not entitled for benefit of doubt. The learned APP therefore submits that the impugned judgment and order passed by the learned Additional Sessions Judge dated 19/05/1997 in Sessions Case No.126 of 1990 acquitting the accused for the offences punishable under Section 109, 120(b), 302, 307, 201 r/w 34 of the Indian Penal Code is illegal, improper and erroneous, and the same is liable to be quashed and set aside. She lastly submits that this Criminal Appeal may be allowed.

13. The learned counsel for Respondent No.1 Mr. Ganesh Gole, and

learned counsel for Respondent No.2 Mr. D I S Mulla submit that the prosecution has failed to bring home the guilt of the accused. It is also submitted that, the prosecution has failed to prove the motive of the accused to commit murder of Pravin Sable and injure the complainant Vivek Shinde. It is submitted that the Trial Court has rightly discarded the evidence of PW-4 Dipak Salunke on the ground that he is an interested witness as his statement was recorded after 12 days of the alleged incident. It is further submitted that there are omissions and improvements in the evidence of mother of complainant Kamal (PW-5). The learned counsel for the Respondents submit that there is no corroborative evidence adduced by the prosecution to show the involvement of the accused in the alleged incident. It is also submitted that there is not evidence or material on record to establish the motive of the accused to murder the deceased Pravin Sabale and to cause injury to complainant Vivek Shinde. They therefore submit that the learned Additional Sessions Judge after considering the evidence and material on record has rightly acquitted the accused. The impugned judgment and order passed by the learned Additional Sessions Judge is well reasoned judgment and order of acquittal, and needs no interference at the hands of this Court. They therefore submit that the Appeal against acquittal filed by the State-Appellant may be dismissed.

14. In order to bring home the guilt of the accused, the prosecution

has examined 25 witnesses. It appears that the prosecution case is based upon the evidence of eye witness i.e. Complainant Vivek Shinde (PW-3) who is the injured in the alleged incident. The prosecution has also relied upon the evidence of Shobha Kiran Shinde (PW-6), Prakash Ananda Shinde (PW-10), Balwant Pandurang Mane (PW-18) and Shankar Babasaheb Khambe (PW-19), who are the independent witnesses. In support of its case, the prosecution has also examined panch witnesses i.e. Shivaji Khasabha Kumbhar (PW-2), Tukaram Kondiba Jagtap (PW-7), Shivaji Pandit Kadam (PW-11), Kashinath Vithoba Shinde (PW-14), Shambhaji Tukaram Shinde (PW-17), Vikas Srirang Sankpal (PW-21) and Ashok Mahadev Salunkhe (PW-22). The prosecution has also examined Mohan Patil, who is the father of accused No.1, as PW-24. The prosecution has also adduced medical evidence in the form of Dr. Pandurang Srirang Pawar (PW-13) and Dr. Shoukat Ali Babalal Shaikh (PW-20), and lastly the prosecution has examined Hanmant Pundalik Jagdale – the Investigating Officer (PW-25). The other witnesses examined by the prosecution are, Vasant Hindurao Badekar (PW-1) who prepared the map of spot of incident, Dipak Vasant Rao Salunke (PW-4) who is the friend of deceased Pravin Sabale, Kamal Shivaji Shinde (PW-5) who is the mother of complainant Vivek Shinde, Jagannath Tatoba Bhosale (PW-8) – the police constable who carried the articles to the Chemical Analyzer on the directions of Investigating Officer, Chandrakant Krishna Shinde (PW-9) who removed the

dead body of Pravin Sabale from the stream-let and kept it on the road, (PW-12) who wrote the alleged letter to complainant Vivek Shinde, Atmaram Dinkar Patil (PW-15) – the Police Head Constable, Shivaji Mahadev Garud (PW-16) who is the uncle of the Complainant, and Dinkar Maruti Bhosale (PW-23) – the Police Head Constable

15. There are some admitted facts which are necessary to be mentioned for the adjudication of this Appeal. On 12-08-1989 at about 5 to 6 am the dead body of deceased Pravin Sable was lying at the spot of incident i.e. Khadicha Nala. Deceased Pravin Sabale died due to the injuries sustained by him upon epigastric region. The prosecution has examined Medical Officer Dr. Pandurang Srirang Pawar (PW-13), who has performed post mortem of the dead body of Pravin Pandurang Sabale. According to him the cause of death is “firearm injury, age within 12 hours” and the said injury mentioned in Column No.17 is “1 ½ diametere circular CLW over Lt. Epigastric region lateral to mid-line” below costal margin on entum protruding through it edges irregular bleeding.” Apart from this injury, the Medical Officer has found the following injuries. The injury in between chest and abdomen was anti-mortem injury. The condition of the eyes was that there were rigor mortis present. There was no decomposition. The knees of the body were slightly flexed. On internal examination the medical officer found that

the cavity contains about two liters of blood and in the stomach, there was slight food material and liquid and it had no smell. Left lobe of the liver shattered, leather like pieces found in liver. The left lobe was shattered as a result of the impact of the project tile on the part of the body. The project tile penetrated the body. Upper lobe of right kidney was also shattered, hematoma around to it and two metal balls about 1 c.m. in diameter were found. According to the Medical Officer the cause of death due to hemorrhagic shock due to injuries mentioned in column No.17 and 21 of post mortem report due to firearm. Therefore it is clear from the evidence of Medical Officer (PW 13) that the deceased Pravin pandurang Sabale died homicidal death. Therefore the question which needs to be answered is, whether the prosecution has proved that the accused are the author of the said homicidal death. For that purpose, the evidence of the some of witnesses needs to be to be scrutinized. It is required to be noted that there is only one eye witness i.e. the complainant Mr.Vivek Shinde (PW-3), who is an injured in the alleged incident.

16. The first witness examined by the prosecution is Vasant Hindurao Badekar (PW-1) - the circle inspector who has prepared the map of the spot of incident. He stated in his examination in chief that on 10-1-1990 he personally visited the place of incident along with copy of panchamama and letter, constable and kotwal of the village. He personally inspected the

place of incident and read the contents of the panchanama carefully to ascertain the various spots as contained in panchanama. Finally he prepared the map as per the panchanama while sitting at the place of incident only. He stated that while preparing the map, he took the assistance of the contents of panchanama. After preparing the map in the office of Tahasildar Karad in order to forward to the concern police station.

In the cross examination, PW-1 admitted that there is no endorsement on map in order to indicate on what basis the map in question was prepared by him. He also admitted that, he does not have any other documentary evidence to show, on what basis map is prepared by him except his bare words. He stated in his cross examination that Beldare is situated at the distance of 1 K.M. from the place of incident. He further admitted that at the distance of 2 furlong, there is school of village Beldare and people reside there.

Perusal of the evidence of PW-1 shows that on 10/01/1990 he visited the spot of incident along with copy of panchanama and drew map as per the panchanama, however, he did not make endorsement on the map to indicate on what basis the map in question is prepared by him. Therefore evidence of PW-1 is not helpful to the prosecution case.

17. The next witness examined by the prosecution is Shivaji Khashaba Kumbhar (PW-2). He stated that he was called by the police for panchanama. After seeing the panchanama, he stated that, he was called by the police in cottage hospital at Karad on 14-9-89 at about 1 pm. He stated that PSI Jagdale was also present in the hospital. Immediately in the next sentence, he stated that he cannot tell, as to whether Jagdale was present or not. He stated that he does not know the panchanama of whose clothes was to be made, and he does not know from whom the clothes were collected by the police. After seeing the panchanama, PW-2 stated that the clothes were produced by Vivek Shivaji Shinde, and he admitted that it has been mentioned in the panchanama that Vivek Shinde produced those clothes, and one T Shirt was also produced by him upon which there were blood stains.

In the cross examination, PW-2 admitted that the police produced some clothes in police station and he was asked by the police to sign on paper, and police obtained his signature on some papers. He further stated in his cross examination that the police told him that they have prepared panchanama as per their convenience and simply he would have to sign, and accordingly he signed on it. He further deposed that he signed panchanama in police station.

In the Re-Examination of this panch witness Shivaji Kumbhar (PW-2), he denied the suggestion given to him that, he is deposing false in order to support accused persons.

It is required to be noted that the prosecution has not examined the other panch Sadashiv Tukaram Teli to prove the panchanama of seizure of clothes on the person of the complainant i.e. the injured Vivek Shivaji Shinde, who is an eye witness. If the deposition of this panch witness Shivaji Kumbhar (PW-2) is perused carefully, there is nothing incriminating so as to connect the accused with an alleged incident.

It can be seen from the evidence of PW-2 Shivaji Kumbhar that he is not supporting the case of the prosecution.

18. The next witness is complainant Vivek Shivaji Shinde (PW-3) who is an eye-witness of the alleged incident. He stated that basically he is the resident of village Beldare. He stated that, they had come to reside at Beldare, at that time one Pawar was cultivating their land. His father was having married sister namely Savita Shivajirao Garud. Mr. Garud was scooter mechanic and he used to run scooter garage at Bombay. In the year 1983, he

left Bombay and came to Karad. He deposed that there was no provision for further education at Beldare, therefore, they had come to Karad for education purpose. He further deposed that in the year 1989, deceased Pravin Pandurang Sabale was residing near the house of Shivaji Garud and he was residing for the purpose of education and he was taking his education in Yeshwantrao Chavan Jr. College. PW-3 was studying in Venutai Chavan, Arts and Commerce College, Karad. He deposed that as there was no sufficient accommodation at the house of Shivaji Garud, therefore, he used to go the room of deceased Pravin Sabale for study, and Dipak Vasantrao was his room partner. PW-3 further deposed that he knows accused Nos.1 and 2, and basically they are resident of Beldare. He stated that in the year 1989 accused No.1 was studying Sadguru Gadage Maharaj College at Karad. He further stated that Accused Nos.1 and 2 are friends. She stated that he knows Suresh kadam who was residing in village Beldare at the relevant time. PW-3 further deposed that Rajaram Shinde is his cousin brother and he is brother of one Prakash Shinde. He also stated that at the relevant time there was one girl in their village i.e. PW-12. She was serving as a teacher in Anganwadi at Beldare. He stated that the grocery shop of accused No.1 is situated in front of Anganwadi at a distance of about 50 feet, and there was only road between grocery shop of the accused and Anganwadi. He further deposed that PW-3 was having acquaintance with PW-12. He stated that PW-12 is now married

and she is residing in Bombay along with her husband and her marriage performed before 5 years back. PW-3 also deposed the accused No.1 used to make gestures, and PW-12 disliked the gestures made by accused No.1. He deposed that the incident took place on 12-8-1989 in the midnight at about 1 to 1-30 am. On 8-8-1989 he was told by Rajaram Shinde that, PW-12 wrote a note to him and the note which was written by PW-12 is in custody of accused No.1, and accused No.1 is reading letter of PW-12 in front of villagers of Beldare in order to defame him, so also PW-12, PW-3 himself and Vijay Patil came to village Beldare to meet and inquire from accused No.1 about the reading of the letter. He stated that Vijay Patil is his friend. They met Vijay Kadam at Beldare and made inquiry with accused No.1 in respect of the letter. Accused No.1 told them that the said letter was given to him for reading and he had already returned back to Suresh Kadam. PW-3 further deposed that, thereafter they visited the house of Suresh Kadam at Beldare, but they could not meet him because he had been to village Talbeed, thereafter, PW-3 and his friend Vijay Patil returned to Karad. The complainant further deposed that, again on 11-8-1989 he himself and his friend Pravin Sabale came to Beldare in the evening in order to meet Suresh Kadam on bicycle. PW-3 stated that he had taken his own bicycle and deceased Pravin Sabale had taken bicycle of Dipak Vasantrao Salunkhe. He further stated that at about 11.00 pm he and his friend deceased Pravin Sabale came to village Beldare and parked their

bicycles near Khadichi School which is situated at the distance of half kilometer from village Beldare. Thereafter they went to the house of Suresh Kadam on foot. In that night they met Suresh kadam and inquired in respect of the letter written by PW-12. Suresh kadam told them that he is not possessing that letter, and he told them that they were wrongly informed about the said letter being with him. PW-3 further deposed that thereafter they went to the grocery shop of accused No.1. The shop of accused No.1 was closed therefore they knocked the door of the shop, and after some time the door of the shop was opened, and accused No.1 i.e. Vijay Kadam was in the shop. They told to accused No.1 what Suresh kadam told them. Accused No.1 told them to see your own affairs and do not ask him hereinafter about the letter. PW-3 further deposed that he himself and Pravin Sable came out of his shop and they were discussing on the road. Meanwhile accused No.1 closed his shop and walked away. PW-3 stated that they thought to meet again Prakash Shinde. They met Prakash Shinde at the house of Mr. Suryawanshi and inquired from him in respect of the said letter, however, he was not able to tell about the said letter in whose possession it is. PW-3 further deposed that thereafter he himself and his friend Pravin Sabale started coming towards Karad. They came near Khadichi Shala where they had parked their bicycles, took their bicycles and started coming towards Karad. He deposed that they came on bicycle upto Khadicha Odha, crossed Khadicha Odha, and came little

bit ahead, so he noticed accused Nos.1 and 2 standing on the road. On the right side of the road, there is agricultural land of accused No.1 and his cattle shed. Accused Sharad Thorat was holding torch in his hand. Accused No.2 was flashing the said torch and accused No.1 was holding gun in his hand. He deposed that it was twelve bore gun with two barrels. Accused Nos.1 and 2 were standing at the distance of 50 feet from cattle shed. Accused Vijay kadam asked them to stop. PW-3 stated that no sooner, they heard his voice, they got down from the bicycle and stopped there. They asked accused persons as to what was the matter. Thereafter accused No.1 told them, not to come in the village for asking him about the letter, as the people of the village would think that they have come to threaten him. They told to accused No.1 that he had called them therefore they came, otherwise there was no any purpose for them coming there. Thereafter wordy quarrel started between himself and accused. Friend of PW-3 Pravin was also having dialogs with accused persons and he was trying to pacify them. When the dialog was going, meanwhile accused No.1 redressed his steps 8 to 10 feet, and he fired a gun at deceased Pravin Sabale. The gun shot was aimed on the chest of the deceased Pravin Sabale. PW-3 further deposed that no sooner, he sustained gun shot, he immediately collapsed on the ground by shouting. Cycles were at the spot. PW-3 left his cycle and ran for his life. PW-3 ran because he was frightened and in order to save his life. He ran towards southern side i.e. towards branch road. Accused

No.1 chased him, and fired gun at him. PW-3 sustained gun shot on his left hand near the wrist and he collapsed on the ground. However, he got up and ran towards east i.e. towards the temple of Naikba. Accused Nos.1 and 2, both of them, were chasing him before he received gun shot. PW-3 ran about half kilometer and came in the village and contacted Balwant Mane, who was cultivating their land. Balwant Mane was present at his house. PW-3 deposed that on that day white shirt and trouser (Pajama), these clothes were on his person. Because of injuries his cloths were blood stained. He gave call to Balwant Mane, and after hearing his call, Balwant Mane came out of the house, and he narrated all the facts of incident to him. Blawant Mane and his brother then carried PW-3 towards his house. PW-3 deposed that his mother and grand parents were in the house. They got up from the sleep. PW-3 narrated the facts of the incident to them. Thereafter Balwant Mane went to village for search of tempo to carry him to the hospital. PW-3, his mother, Balwant Mane, and others came up to Aad (well) of the village, and when he reached that Aad (well), Vijay Kadam was coming on his tractor near phata. Meanwhile tempo came near Aad (well), PW-3 himself, his mother, Balawant Mane, boarded in that tempo and came towards Karad side. The injury was bleeding. PW-3 asked to the tempo driver to stop the tempo near the spot of the incident in order to see Pravin Sabale. They did not notice Pravin Sabale any where on the road. He noticed one cycle was lying in the nala. Blawant

Mane told him to go to hospital first and take treatment, and meanwhile they would bring injured Pravin also if traced. PW-3 deposed that at the beginning he came to the house of his aunt Savitribai in the tempo, he narrated the entire facts of the incident to Savitribai and her husband, and thereafter went to cottage hospital, Karad in tempo. PW-3 further stated that the medical officer of cottage hospital immediately admitted him in the hospital and started giving him treatment. PW-3 further stated that Medical officer removed clothes of PW-3 which were on his person and they gave him another clothes to put on. After some time police came in the cottage hospital for recording his statement. PW-3 stated that at the time of recording his report, he was in full possession of his senses. PW-3 stated that about 1 months and 26 days he was in the cottage hospital, Karad as indoor patient. On 14-8-1989 he produced those clothes before the police and police seized those clothes under seizure panchanama in presence of panchas They are Paijama (Article 20) and Neharu Shirt (Article 19). PW-3 stated that at the relevant time, the deceased was wearing full pant gray green, full sleeves "T" Shirt of pink colour. Accused No.1 was wearing shirt of pink colour and full pant of blueish colour. Accused No.2 Thorat was wearing shirt along with trouser.

In the cross examination PW-3 deposed that Police reached in cottage hospital, Karad after one hour of his admission in the hospital, but

doctor did not start giving him treatment, till arrival of the police in the hospital. He deposed that police and doctor arrived in the hospital at one and the same time. After arrival of the police, 15 minutes thereafter police started recording his report, and when his report was being recorded at that time, Articles 19 and 20 were not on his person. At the time of recording of his statement, the clothes which were on his person were given in his custody. PW-3 further deposed in his cross examination that when his statement was being recorded, at that time, he did not handover or produce those apparel before the police. He admitted that he did not state to the police that the blood stained clothes are with him. PW-3 deposed that besides his report i.e. FIR, police did not record his supplementary statement thereafter. He deposed that on 12-8-1989 he showed his blood stained clothes to police which were in his possession, and when he showed clothes to police on 12-8-1989 at that time those clothes were under his pillow. Police saw those clothes and they did not say anything to him about clothes. PW-3 admitted that he did not state to police at the time of recording his report as well as supplementary statement that Article Nos.19 and 20 were on his person as the time of incident, as also he did not state to police what kind of apparels were on the person of accused Nos.1 and 2 at the time of incident. PW-3 admitted that he was not on the talking terms and visiting to the house of accused No.1 and the vice versa. PW-3 deposed that PW-12 is not his cousin sister but she is

from his brother hood. He further deposed that there were no affairs as such between him and PW-12 and she was not writing letters to him previously. He was on talking terms with her. He deposed that he inquired from Rajaram Shinde as to why PW-12 wrote letter to him. He did not even inquire from PW-12 as to why she wrote letter to him. He deposed that the alleged incident had taken place, according to him, on account of letter of PW-12 and there was no any reason for the alleged incident. PW-3 further deposed that on 9-8-1989 when he visited his village at that time he noticed PW-12 was in the village. He did not ask to PW-12 about the letter. He deposed that he did not make any complaint to the family members of accused No.1 that he is possessing the letter of PW-12 which is written to PW-3. PW-3 admitted that he did not state in his report so also in supplementary statement to police that accused No.1 used to make gestures, and PW-12 disliked the gestures made by accused No.1. He deposed that though he had stated at the time of recording his report that accused No.1 was reading the contents of the letter of PW-12 before the villagers in order to defame him so also PW-12, however he could not assign any reason as to why police did not insert the above stated facts in his report and the supplementary statement. He stated that the place where they met to accused No.1 is situated at the distance of 300 feet from the house of Suresh Kadam. He admitted that their conversation with accused No.1 at his shop was of normal nature and friendly atmosphere. PW-3 deposed that

after leaving the shop of the accused No.1, he did not go to his residential house in village. He deposed that he saw accused No.1 for the first time, from the distance of 10 feet. He further deposed that no body met him on the way from the house of Suryawanshi till the scene of incident. There is one turn on the road from Khadichi Shala up to the place of incident. The place of incident is situated at the distance of 150 meters from the turn. He further deposed that the accused were not focusing the light of torch when they were moving on the road. He further deposed that there was wordy quarrel between him and accused No.1 at the place of incident. He admitted that he did not state in his report nor in his supplementary statement that, accused No.1 was holding double barrel gun in his hand, and accused No.1 moved back to 8 to 10 feet. PW-3 deposed that, when he sustained bullet of gun at that time he was on the road itself. The accused persons might have chased him approximately 10 feet. He admitted that he did not state to police at the time of recording his report and alleged supplementary statement that before he received fire arm injury, the accused were chasing him. He deposed that when he received fire arm injury at that time blood was oozing from the injury. He sustained only fire arm injury when he was running on the road. He further deposed that when he fell down after receipt of the injury at that time accused were standing at the previous place. He admitted that he did not state to police at the time of recording his report that accused No.1 fired gun

by targeting the chest of deceased Pravin Sabale. He stated that those days were of rainy season. He admitted that there was no talk between the driver of tempo and himself even from his side nobody had talk with the driver of the tempo. PW-3 admitted that he did not state to police at the time of recording of his report and supplementary statement that he saw accused at the distance of 50 feet on the road from cattle shed and field, and that cattle shed and field of accused No.1 are situated, and that deceased Pravin was making them to understand in so many words, and that he, his mother and Balwant Mane boarded in tempo and proceeded towards Karad.

Perusal of the evidence of eye witness Vivek Shinde (PW-3), who is the star witness of the prosecution, reveals that there are omissions and improvements in his evidence before the Court. In order to sustain an order of conviction on the basis of testimony of a solitary witness, the evidence of eye witness must be clear, cogent convincing and should be of a impeachable character. It is clear from the deposition of PW-3 that he did not tell so many things at the time of recording of his report as well as supplementary statement by the police, therefore, he is not reliable witness. He has not come forward with honest and truthful version about the entire incident. After scrutinizing the evidence of PW-3, it cannot be said that the evidence of the complainant is sufficient to hold the accused guilty beyond reasonable doubt. It can be seen

from the deposition of PW-3 that, though PW-3 stated in his evidence that he was on talking terms with PW-12 and she is from his brother hood, why he did not directly meet PW-12 and asked her, what is the said letter written by PW-12. In the evidence of PW-3 there are substantial omissions, improvements and contradictions, and therefore, to rest the conviction relying on solitary eye witness would be risky.

19. The next witness is Dipak Vasantrao Salunkhe (PW-4). He was the room partner of deceased Pravin Sabale in the rented premises in revenue colony at Karad, and on whose bicycle Pravin Sabale went to Beldare along with complainant Vivek Shinde. He stated that when he reached village Beldare, more particularly on road, he noticed, dead body of Pravin Sabale was laying. According to him, round about 10 minutes he was present near the dead body of deceased Pravin Sable. On showing the clothes to this witness, he stated in his evidence that it is not possible for him, to identify which clothes belonged to the deceased, and which clothes belonged to the complainant. He stated that his statement was recorded by the police on 23-8-1989. He further stated that up to 14th August 1989 he was at Karad. In his cross examination he admitted that from 13-8-1989 upto 23-8-1989 he did not go to the police station in those days, because he was not knowing A, B, C, D of the incident.

If deposition of Dipak (PW-4) is perused carefully, it shows that he is an interested witness being the friend of deceased Pravin Sabale. There is nothing incriminating in his evidence so as to connect the accused with the alleged incident.

20. The prosecution has examined Kamal Shivaji Shinde as PW-5. She is the mother of complainant Vivek Shinde. She stated that Vivek is her son and he is eldest of my children, and she does not have any other son except Vivek. She stated that both the accused are the natives of village Beldare. She further stated that Accused No.1 also possessed twelve bore gun, which is in the name of his father. On 9-8-1989, on Wednesday she was present at her house, and on that day her son had been to her house at Beldare. PW-5 stated that Accused No.1 told to her son that the letter which was written by PW-12 was not possessed by him and the said letter is in possession of Suresh Kadam. The said Suresh Kadam, today is not available in the village, and Suresh would meet him on Friday evening and he should come. She stated that, on Friday he did not come and they waited him till late in the evening. In the night at 12 or 12-30 am the door of her house was knocked by somebody. When she opened the door of her house, Balu Mane was standing in front of her house. Balu Mane told her that her son had

received an injury, and that Vijay Kadam fired gun shot on his person and as a result of it he received bullet injury, and that Vivek Shinde is standing on the road and he rushed to her to tell all these facts. PW-5 further stated that thereafter she accompanied with Balu Mane upto 100 feet where she noticed her son Vivek was standing and there was injury on the left hand and blood was oozing from the said injury and his clothes were blood stained and there were soil stains. She stated that her son told her that his friend Pravin Sabale was with him and they were going to Karad on their bicycles from village Beldare, and deceased Pravin Sabale also received bullet injury. PW-5 also deposed that her son told her that Vijay Kadam obstructed him, and he quarreled with him and his friend, and he fired bullet from the gun, and Pravin Sabale sustained a bullet injury on his chest and he received bullet injury on his hand. She deposed that, thereafter she sent Balu Mane towards Shankar Khambe who own tempo. Thereafter her son and she herself walked up to some distance stood near village well. She stated that, when she was standing near village well, she noticed accused No.1 was coming on his tractor towards his Wasti. She asked to accused No.1 as to why he did all these things. Accused No.1 did not give reply to her question, therefore, she came to his house following his tractor. PW-5 further deposed that thereafter she came towards her son. She stated that again her son told her to go to accused No.1 and ask him about the Pravin Sable and, whether he has been carried away.

Again she came towards the house of accused No.1. She stated that Accused No.1 did not talk with her and simply he closed the door and walked inside. She stated that again she came toward her son where he was standing, and meanwhile the Tempo reached there. In that tempo Shankar Khambe, his driver, Balu Mane and Prakash Shinde, she along with her son were seated. She stated that when they came near wasti, her son asked to driver to stop vehicle at that spot and when the tempo stopped near the spot, her son told her that accused No.2 focused torch light on them and accused No.1 fired his gun shots towards them. The first shot of the gun was fired on the chest of deceased Pravin and as result of it, he fell down. She further stated that thereafter her son asked to Balu Mane and Prakash Shinde to find out deceased Pravin Sabale. They tried to find out deceased Pravin Sabale with the help of torch light, but they could not find Pravin Sable near the spot. Balu Mane and Prakash Shinde told them that if deceased pravin Sabale would be located by them, in that event they would bring him to Karad in another vehicle. She stated that thereafter she came to her husband's sister house Savitribai. She narrated the facts to Savitribai and her husband. Thereafter she came to cottage hospital, Satara She stated that she came to know that deceased Pravin Sabale expired at the spot and dead body of Pravin was brought to the hospital for P M examination. She stated that her statement was recorded by the police only once.

In the cross examination PW-5 deposed that she personally did not hear the conversation between her son and accused No.1 as stated by her in her examination in chief. She admitted that whenever her son was coming to Beldare, he was coming to her house. She further deposed that PW-12 is not a daughter of her husband's brother, but she is her distance niece. She deposed that after receipt of the information from Balu Mane she did not call to anybody from her vicinity for her help. She deposed that Prakash Shinde and Balu Mane were searching deceased Pravin round about 10 minutes and they were searching Pravin Sabale in the adjoining area. She further deposed that she asked to Balu Mane to find out Pravin Sabale in the adjoining area of the road. PW-5 deposed that he could not assign any reason as to why police did not mention in her statement that she was asked by her son to go to the house of accused No.1 and inquire from him about deceased Pravin. She further deposed that when she visited the house of accused No.1 at that time door of his house was open. She did not take an opportunity to go into the house of accused No.1 and disclose the facts of the incident to his family members. She stated that police did not mention cycle in her statement, so also police did not mention the time of the knocking of door in her statement. She admitted that she did not state to police at the time of recording her statement that the clothes of her son Vivek were stained with soil. She further

deposed that she cannot assign any reason as to why police did not mention in her statement that Vijay Kadam raised quarrel. She also deposed that she cannot assign any reason as to why police did not mention in her statement that she was told by her son that accused No.2 focused torch light on their person. She admitted that she did not state to police that Balu Mane told her at that time that he would find out Pravin and he would bring to hospital if found.

Perusal of the evidence of PW-5, who is the mother of injured PW-3, discloses that her evidence is hearsay evidence, and there are improvements and omissions in her evidence. She stated that after the incident when they were standing near the well, she asked the accused No.1 about the incident, and thereafter complainant asked her to again go to the house of the accused No.1. The aforesaid fact do not find place in the evidence of the complainant Vivek Shinde (PW-3). Therefore her evidence does not help the prosecution to establish its case and connect the accused with the alleged crime.

21. The Prosecution has examined Shobha Kiaran Shinde (PW-6), Prakash Ananda Shinde (PW-10), Balwant Pandurang Mane (PW-18) and Shankar Babasaheb Khambe (PW-19) as the independent witnesses. However,

nothing fruitful to the prosecution case has come out from their deposition.

PW-10 Prakash Shinde stated that he knows Vivek Shinde. He knows PW-12 r/o of his village, and PW-12 is her distant cousin sister. He knows both the accused. He stated that in the 12th Morning his statement was recorded by the police. He stated that he does not know anything about the incident, and if any thing happened prior to the date of incident. He stated that prior to the date of recording his statement, PW-12 was seen by him in the village, but she did not meet him and no talk as such was materialized between him and PW-12. He stated that occasionally he was talking with PW-12.. He further deposed that 5 to 6 months prior to the date of recording his statement, he had an occasion to talk with her.

The learned Special Public Prosecutor was permitted to put leading questions to PW-10. PW-10 deposed that on the night intervening 11 and 12th of Aug. 1989 he was at my house. He stated in his deposition that the following things did not happen in that night, that he had been to the house of Suryawanshi, in order to attend the Kirtan. that when he was present in the Kirtan at the house of Surywanshi., at that time, Vivek and Pravin Sabale came to him, that Vivek met him at the house of Suryawanshi and he made inquiry in respect of the said letter, that night Balwant Mane had come to his house,

and asked PW-10 to bring tractor owned by Kashinath Shinde, that he went to the house of Kashinath Shinde and requested for his tractor and brought his tractor in order to carry injured Vivek Shinde to hospital, Karad, that he also accompanied with them in the said tempo up to odha (stream-let), when he came with tractor near Vivek Shinde, he told him that accused No.1 had fired at him and Pravin Sable, and as a result of it he received bullet injury and Praving Sabale also received bullet injury, and Praving Sabale is lying on the spot where he sustained bullet injury, that at the instance of Vivek, that he tried to search out Pravin Sabale near Khadicha odha (stream-let).

In the cross examination PW-10 deposed that on the intervening night of 11 and 12 of Aug. 1989 he was sleeping in the house and in that night he did not come out of the house. In his cross, PW-10 further deposed that he knows accused Nos.1 and 2, since they are hailing from village, but they were not on talking terms with each other. PW-10 further deposed that he is not having brother by name Rajaram.

It can be seen from the testimony of PW-10 that he does not support the prosecution case. He has categorically deposed in his cross examination that he was sleeping in the house and he did not come out of the house on the night of the alleged incident. He has categorically stated that

PW-12 was seen by him in the village, but she did not meet him and no talk as such was materialized between him and PW-12. During the course of recording of evidence of this witness (PW-10) a permission was granted to the learned Special Public Prosecutor to put leading questions, there was nothing incriminating in his evidence so as to connect the accused in the alleged crime.

Balwant Pandurang Mane (PW-18) admitted that, in the night intervening 11-8-89 and 12-8-89 he was at his home. In that night nothing had happened. He knows Vivek Shinde and his mother Kamalabai. He also knows one Khambe who is the resident of his village. In that night none of these persons met him nor anything happened in connection with these persons. He stated that it did not happen in the night intervening on 11-8-89 and 12-8-89 Vivek Shinde came to his house and knocked the door of his house. He stated that portion marked D of his statement was not stated by him to police,¹ and it had not happened that on the next day morning, he had been to the scene of offence and he found that dead body of Pravin was lying in the Nala beside the road and there was a fire arm injury on his chest and the said injury was bleeding and panchanama of this was drawn by police.

22. The Prosecution has also examined pancha witnesses in support of its case.

Tukaram Kondiba Jagtap (PW-7) on the seizure of clothes on the person of deceased at the time of alleged incident. He stated that, the police of Karad Police Station called him in the police station and PHC Patil told him that constable Shinde had brought the clothes of deceased Praving Sabale, and those clothes were to be attached under seizure panchanama. He stated that those clothes were found blood stained. He noticed there was one whole on the T shirt towards chest side. The whole was noticed blood stained. He stated that P C Shinde also produced one motor cycle iron chain and one pair of havai chappel. He stated that police recorded the panchanama in his presence (Exhibit 24). He further stated that P. C. Shinde also produced two sealed bottles one containing blood and in another sealed bottle there were pellets.

In his cross examination PW-7 stated that except Exhibit 24, the police did not record any other panchanama in his presence. The police also did not record his statement. He deposed that for the first time, he is stating that Shinde produced two sealed bottles. He admitted that in his presence, seizure panchanama relating to those bottles was not recorded by the police. He deposed the the motor cycle chain was double chain and it was having hook.

Shivaji Pandit Kadam (PW-11) is the panch witness on the inquest panchanama and spot panchanama. He stated that On that date about 7 am he was reached Khadicha road. He noticed near Khadicha road that people from village so also police persons were gathered, He also stopped near that gathering and Kashinath Vithoba Shinde from his village was standing there. He stated that understanding was given to him by police officer that an inquest panchanama of the dead body of the deceased was to be prepared. He stated that he noticed that the dead body of deceased was lying in the nala. The dead of the deceased was taken out by the police from the said nala, and it was kept on the road. The father of the deceased identified the dead body which was of his son. He further stated that T Shirt was on the person of that dead body and it was blood stained Full pant was on the person of the dead body and there was underwear under the pant. He stated that there was one injury above his abdomen and it was oozing and the pant which was on the person of the dead body was stained with mud. He further stated that there was chain on waist of the deceased, and one sattur (Butcher's knife) was also found near the dead body. He stated that he saw back side of the dead body of the deceased. He did not notice any injury on his back. The dead body of deceased was handed over to police for the purpose of post mortem. Finally the police recorded inquest panchanama. He stated that he noticed one scarf

was lying on the spot of incident, one sattur was also noticed and one sword was also found on the spot of incident. He stated that nobody showed them the place of incident. In addition to the place of incident, no other place was shown to them. The police officer collected blood stained earth from the nala, so also simple earth from that place. Finally, police prepared spot panchanama in his presence. After reading the contents of spot panchanama, PW-11 stated that bicycles were not noticed at the spot of incident and police did not collect blood stained earth scene of offence from the road. He stated that the police did not seize sword and sattur. He stated that he could not give any reason as to why police mentioned in the inquest panchanama stating that there were scratches on the back of the deceased, though scratches were not noticed. He stated that the dead body of the deceased was lying in the Nala of the eastern side of the road, and similarly there is a nala to the western side of the road. He stated that they noticed one used cartridges and one gun and finally the police seized those articles in their presence and sealed them, and finally prepared seized panchanama to that effect in the house.

PW-11 further deposed that he was called by the police officer in the office of grampanchayat at about 2-30 pm. Another panch witness Sambhaji Tukaram Shinde was also called. Police persons were present in the office of grampanchayat when they were called. Accused No.2 was present

there, and there was shirt and pant on his person. PW-11 stated that he saw the condition of the shirt but he did not notice anything special upon the same. The police officer asked to accused No.2 to remove his shirt from his person in his presence and accordingly accused No.2 removed his shirt from his person and handed over in the possession of the police. The police officer made bundle of that shirt and rapped in a paper. The police prepared seizure panchanama.

In his cross examination PW-11 deposed that he did not notice any sign of commission of the offence on the road. He deposed that police were writing panchanamas without taking their opinion, and he signed those panchanama at the instance of the police. He further deposed the police obtained his signature on blank piece of papers round about 15 signatures. PW-11 further deposed in his cross examination that police did not show sattur and sword in the panchanama and police told them that these weapons are not necessary to be shown in panchanama. He admitted that the box which was seen by him, the same box was containing live cartridges and the police did not seize that box. He deposed that since 3 days he is in custody of the police. He further deposed that Shankar Baba Khame and 2 to 3 more witnesses were with him in the custody of police. He further deposed that he did not notice drag marks from scene of offence upto Nala. He admitted that

when he saw double barrel gun in the office of grampanchayat and when it was shown to him, he noticed dust was accumulated on the same.

Next panch witness examined by prosecution is Kashinath Vithoba Shinde (PW-14). He stated that he noticed one dead body of a young boy aged 18 to 20 years. The dead body was of male. Police asked him to act as panch witness. He stated that father of the deceased was present there and he identified the said dead body saying that dead body is of his son. One pant, T Shirt, these apparels were on the person of the dead body. The T Shirt of the deceased was blood stained, and he noticed one injury appearing near his chest. He stated that the pant of the deceased was not blood stained and there were no blood stains appearing on the underwear of the deceased. He further stated that the entire body of the deceased was seen by him and he did not notice any injury or scratches on his back. He noticed at the bottom of his pant, near ankle, there was a knife and he also noticed one Koyata lying at the distance of 2 to 3 feet. Finally police recorded the panchanama. It is inquest panchanama at Exh.33. After going through its contents, he stated that, the contents are not 100% correct. He further stated that the contents of the panchanama were not read over and explained to him.

In the cross examination he stated that he was present at the spot

of incident round about 2 hours.

The prosecution has examined Shambhaji Tukaram Shinde (PW-17) who is the Panch of panchanama in respect of search of house of accused No.1. He stated that on 12-8-89 in the morning at about 10-15 am he was at home and he was called in the office of grampanchayat of his village through Kotwal. He stated that PSI was present there. He was told by him that he has to sign panchanama and therefore he was called there. He stated that as per his directions, he signed panchanama and walked away. He further stated that he did not read the contents of the said panchanama. He further stated that he did not sign any document prior to the date of incident without reading the contents of the documents, and it was his first time to sign panchanama without reading its contents. He stated that he signed the said panchanama at the instance of the police.

In the cross examination, PW-17 deposed that he was called by the police in the grampanchayat office at about 4 to 4-30 pm. He admitted that police obtained his signatures on both the panchanamas in the grampanchayat office and, at the same time, his few more signatures were obtained on the blank piece of papers. PW-17 also admitted that he is coming from Biradari of the complainant.

Vilas Srirang Sankpal (PW-21) panch witness examined by the prosecution on the seizure of weapons of accused No.1. He stated that he was called by the police between 4 to 5 pm, and nothing more than obtaining his signature had taken in the police station. He stated that all the signatures were made at the same time at Karad.

The prosecution has also examined Ashok Mahadev Salunkhe (PW-22) as panch. He stated that on that day at about 4 pm he was called by the police when they were near the police station. He further stated that police officer did not tell him any thing and simply he asked him to sign on written paper.

Perusal of the evidence of the aforesaid pancha witnesses shows that they are not supporting the prosecution case. Though during recording of the evidence of these witnesses, the learned Special Public Prosecutor was permitted to put leading questions to these witnesses, however, nothing fruitful has come on record in favour of the prosecution to establish its case against the accused.

23. The next important witness examined by the prosecution is

PW-12 who alleged to have written the said letter. She stated that before her marriage, she was residing at village Beldare. She further stated that she knows Vivek Shinde, he is her cousin brother. She deposed that Vivek Shinde was residing in those days at Karad and he was studying. She stated that she was on visiting terms at the house of her cousin uncle and vice versa. She was on the talking terms with Vivek Shinde. She stated that she knows both the accused. She stated that accused No.1 was teasing her and some time, he was showing box of biscuits. She was not giving response to him, however, this fact was unfolded to her mother. She further stated that Vivek Shinde was making inquiry from her as to whether accused No.1 was teasing her and, she replied in the affirmative. She stated that she wrote letter to Vivek Shinde when he was at the house of his uncle. She stated that 8 days prior to 11-8-89 letter was written by her to Vivek Shinde. The said letter was handed over to Prakash Shinde who is her cousin brother. It was open letter. The said letter was handed over to him by her since he was going to Karad. She does not know whether the said letter was received by Vivek. She stated that after sending that letter Vivek met her. On 12-8-89 she came to know about the incident.

In her cross examination PW-12 admitted that Vivek Shinde is her real cousin brother, and that was only letter which was written by her to

Vivek Shinde. She admitted that accused Vijay was not talking with her and he did not talk with her in those days, and accused No.1 was not making “Cheshta” (ridicule) of her. In her further cross examination, PW-12 deposed that there was no love affair as such between her and Vivek Shinde. She deposed that she had stated to police at the time of recording her statement that she had love affair with Vivek. She deposed that she had stated to police that letter was sent by her to Vivek Shinde in the form of poetry. She admitted that out of love, the letter I had written to Vivek Shinde.

24. Shivaji Mahadev Garud (PW-16) is the next witness examined by the prosecution in support of its case. He stated that Vivek Shivaji Shinde is a son of his wife’s brother. He stated that deceased Pravin Sabale was residing near his house in the rented premises, and Vivek Shinde was having friendly relation with Pravin Sabale. He stated that in that night when he was sleeping in the house at about 2 am some body knocked the door of his house, therefore he opened the door, when he opened the door he saw Vivek Shinde’s mother. She had come to his house in tempo. She told him that Vivek Shinde received bullet injury and he has to be admitted in the hospital. He immediately accompanied with them in a tempo in a cottage hospital. He stated that Vivek Shinde was admitted in the hospital, and he was in conscious condition. In order to know, how the incident took place, he approached

Vivek and started making inquiry from him. He stated that in the morning at about 6-30 he went to Beldare on a scooter. He further stated that dead body of Pravin Sabale was lying there and he saw the said dead body from a distance.

In his cross examination (PW-16) deposed that on 14-8-89 in the morning, his statement was recorded by the police in the hospital. He admitted that he had stated to police that he went to Vivek in order to ask the facts of the incident. He could not assign any reason as to why police did not mention the above stated facts in his statement. He had stated to police that accused No.2 was holding torch in his hand, however, he cannot give any reason as to why police did not mention this particular fact in his statement. He further deposed in his cross examination that he did not state to police that he informed the incident to Karad Taluka Police Station on phone.

Perusal of the deposition of this witness (PW-16) shows that his evidence is hearsay evidence and he is deposing on the basis of information gathered by him from the informant Vivek. It can be seen from his evidence that, there is nothing incriminating in the evidence to connect the accused with the alleged crime. He is not an eye witness to the incident in question, and nothing has been brought on record which could support the prosecution

case.

25. The prosecution has examined Shankar Babasaheb Khame (PW-19), the owner of the tempo in which the injured Vivek was carried to the cottage hospital, Karad. He stated that on 11-8-89 in the night he was at home. He told that Vivek Shinde is necessary to be carried in the hospital. Accordingly he gave call to his driver. He stated that Vivek and his mother sat on the back seat of the tempo and, he himself sat near the driver in the cabin. They were four persons in the tempo at the relevant time. He stated that straight way from village Beldare, they came to hospital at Karad and they did not stop anywhere in between on the way.

During her cross, the learned Special Public Prosecutor was allowed to put leading questions and also allowed to use police statement.

He stated that the contents of his statement were not read over and explained to him by PSI. He stated that police made inquiry, however, he could not satisfy them because he was not knowing anything, therefore, he left police station and straight way went to his village.

It can be seen from his deposition that straight way from their

village Beldare, they came to hospital at Karad and they did not stop anywhere in between the way. It appears that he is not supporting the prosecution case.

26. The prosecution has also examined Dr. Pandurang Srirang Pawar (PW-13) who at the relevant time was the medical superintendent attached to Cottage Hospital, Karad. He stated that on that day in the afternoon, at about 12-30 pm one constable namely C K Shinde of Karad Taluka Police Station brought dead body of Pravin Pandurang Saabale for post mortem. He stated that on the front side of T shirt, in between chest and abdomen, there was one hole and the condition of the hole was irregular. Just below the hole, there was an injury in the epigastric region. The injury found in between chest and abdomen was ante mortem injury. The condition of the eyes was that they were semi open and mouth happened to be closed. The said body was not oozing from any natural orifices. There was Rigor mortis present. There was no decomposition. The knees of the body were slightly flexed. The injury upon epigastric region 1 ½' diameter circular C.L.W. 1" lateral to midline, 1" below costal margin, the omentum protruding through it, bleeding, edges irregular. The injury was circular and circular C.L.W. The Medical Officer stated that the injury might have been caused by firearm. The age of injury was within 12 hours before death. He stated that while conducting P.M. Examination, the internal injuries were also found. He stated that upper lobe

of right kidney was also shattered, haematoma around to it, two metal balls about 1 cm. In diametere were found. At the time of conducting P M Examination, he took out those metal balls from the kidney and subsequently those metal balls were placed in little bottle and duly labelled and sealed. He stated that he read inquest panchanama. In the the inquest panchanama it has been mentioned that there were scratches on the back of the deceased. The medical officer (PW-13) further stated that very small and insignificant abrasions were found on the back of the deceased, therefore, he did not mention the injry in col. No.17. He stated that the deceased might have taken the last intake of food about 3 hours before the incident. He stated that the victim and the shooter must not be exactly facing to each other. The shoot might have been slightly on the left side of the victim. He stated that when a shot is fired, the bullet travels at a distance about 3 feet as one unit and thereafter pellets start spreading. He further stated that the part on which the injury is received, is vital part of human body, and in the event of the victim being in a standing posture, he will immediately fall down, and after receipt of such injury, the victim will not be in a position to make active voluntary moment. The victim may toss his hands and feet, but he will not be able to stand or move away from that place. In that event, there will be extensive bleeding So far the condition of the apparel on the injured is concerned, it will be drenched in blood. He further stated that he had noticed that there were

injuries on the back of victim, but he did not mention those injuries in his PM notes and there was no difficulty to mention in his PM report.

In the cross examination, the medical officer deposed that he has not mentioned in his PM notes about the condition of hole was irregular. He deposed that the shot guns means country gun and for different kinds of guns, different kinds of cartridges are being used. He deposed that he is not in a position to tell what kind of cartridge is used for what kind of gun. He deposed that when the shot is fired, the bullet travels at the distance of 3' as one unit and thereafter pellets start spreading, this statement of his is applicable to all kinds of cartridges.

27. In so far as injuries received by the injured Vivek Shind are concerned, the prosecution has examined Dr. Shoukat Ali Bababal Shaikh (PW-20), who, at the relevant time, was the medical officer attached to Karad ITI hospital. He stated that at 2 am one patient namely Vivek Shivaji Shinde R/o beldare was brought to hospital for the treatment of gun shot injury. When he examined the said patient, he found the following injuries.

- 1] C I W on left lower forearm 4" vertical margin irregular deep ½".
- 2] Swelling of left lower forearm irregular size.
- 3] Laceration on left knee joint 1 cm superficial.

He stated that the injury on the forearm was the gun shot injury and it required radiological examination. The swelling was a result of first injury, and the injury No.3 is likely to be caused by hard and blunt object. He stated that since they seen pellets inside of the injury, therefore, they decided to summon Dr. Shinde for necessary operation. Dr. Shinde performed operation and removed pellets from the said injury. Finally this medical officer issued medical certification to that effect.

In the cross examination this witness (PW-20) deposed that he does not have any knowledge so far mechanism of the firearm are concerned like 12 bore gun's pistol, revolver, country made gun. He admitted that the distance of the firearm depends upon the nature of weapon used and it varies from weapon to weapon. He deposed that he has not mentioned in the case papers that the injuries which were on the person of patient were serious in nature. He admitted that the injuries Nos.1 and 2 are not vital and fatal, and they are not sufficient to cause death in the ordinary course of nature.

28. The prosecution has also examined Investigating Officer Hemant Jagadale (PW-25), and Police constables in support of its case. The Investigating Officer has stated in his examination in chief the manner in

which the investigation was carried out by him, recording panchanama and statement of witnesses, sending of incriminating articles for examination and reports. In his cross examination, the IO has deposed that the dead body of the deceased was kept towards western side of nala, and when the panch witnesses were called at the spot of incident, at that time, dead body was already taken from the nala and it was kept on the ground. He admitted that he did not collect blood mixed earth from where dead body was kept. He deposed that during the course of investigation he did not record the statements of suresh Kadam, Rajaram Shinde and Vijay Patil. In his cross examination, IO further deposed that he took minute search of the house Laxmibai in order to find out if any incriminating article would be found, and when he took the search of the house of laxmibai, during that search he did not notice torch and empty cartridge, and did not find live cartridges and license of the 12 bore gun. He admitted that he did not find pellets on the spot or nearby spot of incident. He further admitted that during the course of investigation, he did not seize the lover letter of PW-12.

29. The prosecution has also examined the father of accused No.1 Mohanrao Pandurang Patil as PW-24. He stated that he is possessing license gun for the protection of crop. He further stated that the gun which is available before the Court is his gun. He stated that at present valid license of

the said gun is with police. In the year 1980 the gun in question was purchased by him. The valid license was demanded by him from the office of District collector in order to purchase gun. The license of the said gun was valid up to 31-12-1990. He stated that personally he was purchasing cartridges for his gun. He stated that it is not necessary to keep in account for the cartridges which are issued to him. He further stated that he was using his gun as per rules and conditions imposed at the time of issuance of license. He was keeping his gun in the cupboard of his house and at the same time, he was keeping cartridges near the gun in the cupboard. He further stated that on 11-8-89 he was possessing 10 cartridges.

The learned Special Public Prosecutor was allowed to put leading question to this witness.

He stated that on 11-8-89 he was at village Choregaon. He stated that when he went to village Choregaon, at that time, 10 cartridges were carried with him and all those cartridges were bought by him back. He stated that he had never used that gun for firing. According to him his gun and cartridges were never used by him and they were in his house in the same position. He stated that from the date of its purchase, till 1989, August neither he himself nor any member of his family used that gun for any

purpose. During the course of recording of his evidence, the empty cartridges were shown to the witness. After its perusal this witness says, these are not empties of the cartridges which he possessed, and intact live cartridges were produced by him before the police and empties cartridges are available before Court, therefore, he says empties cartridges are not owned by him. He stated that the police seized gun without any reason from him.

In the cross examination PW-24 deposed that, he was all the while keeping his gun with him for self protection therefore gun was carried by him when he went to Choregaon in those days. He deposed that he was not allowing any family members of him to touch his gun and he was all the while keeping his gun in the cupboard with lock and he was keeping key with him. He deposed that the police demanded his license, gun and cartridges from him, and accordingly he handed over the same to police. He further deposed that police demanded live cartridges from him and as per their demand, he handed over live cartridges to them. He further deposed that at that time, understanding was given to him that some live cartridges police wanted to fire them and therefore live cartridges were demanded by the police.

30. Considering the aforesaid evidence led by the prosecution in support of its case, it needs to be mentioned that there is only one eye witness

to the incident, and therefore, the prosecution has placed reliance mainly on the evidence of eye witness Vivek Shinde (PW-3). Therefore, it is necessary to scrutinize the evidence of PW-3 to find out whether his evidence is sufficient to hold the accused guilty beyond reasonable doubt. He is a star witness of the prosecution as he claims to be an eye witness to the alleged incident. As stated herein above, looking to his evidence, he has not come forward with honest and truthful version about the entire incident. He stated in his evidence that he was having acquaintance with PW-12 and accused No.1 used to make gestures, and PW-12 disliked the gestures made by accused No.1. It appears from his evidence that taking advantage of the fact that the accused No.1 wants to develop love affair with PW-12, with whom the complainant Vivek (PW-3) had already developed relation the prosecution has planted Vivek Shinde (PW-3) as an eye witness. It can be seen from the evidence of PW-3 that his evidence does not inspire confidence so as to hold the accused guilty.

31. It is required to be noted that the alleged incident has taken place on account of the letter written by PW-12 to Vivek Shinde (PW-3). Therefore the whole matter revolves around the said letter. PW-12 admitted in her deposition that she knows Vivek Shinde, who is her cousin brother, and he was on the talking terms with her. She stated that accused No.1 was teasing

her. Thereafter she categorically admitted that, Vivek Shinde was making inquiry from her as to whether accused No.1 was teasing her and she replied in the affirmative. She also admitted that she was writing letter to Vivek Shinde. In her cross examination, though she deposed that there were no love affairs as such between her and Vivek Shinde, in the next breathe, she categorically admitted that she had love affair with Vivek. She further admitted that out of love, the said letter had written to Vivek Shinde. A conjoint reading of the evidence of Vivek Shinde (PW-3) and PW-12 would show that, the version of Vivek Shinde (PW-3) who is the star witness of the prosecution, appears to be totally false, because he stated that PW-12 is not his cousin sister but she is from his brother hood. As stated herein above, the alleged incident has taken place on account of the said letter of PW-12, and Vivek Shinde was fully aware of this fact, however, he suppressed the said fact stating that he does not know, as to whether the incident had taken place on account of the said letter written by PW-12 to him. Under these circumstances it cannot be said that Vivek Shinde (PW-3) and PW-12 were having love relations as sister and brother. There is one more point which is required to be considered. PW-3 stated that on 8-8-89 he was told by Rajaram Shinde that PW-12 wrote a letter to him. He further stated that Rajaram Shinde told him that Chithi (letter) which was written by him is in the custody of accused No.1. However, PW-12 deposed that the said letter was handed over by her to Prakash Shinde, who was her

cousin brother, and not to Rajaram Shinde. At this stage it is pertinent to mention that Prakash Shinde does not support the case of the prosecution. The prosecution has not examined Rajaram Shinde and Suresh Kadam in support of the theory of the letter being written by PW-12. PW-10 Prakash Shinde has categorically deposed in his cross examination that he is not having brother by name Rajaram. One more reason to discard the testimony of PW-3 is that, though he deposed that accused No.1 had called him at Beldare and therefore he and his friend deceased Pravin Sabale had gone to meet accused No.1. However, this version of PW-3 Vivek Shinde does not find place either in his report or in the supplementary statement recorded by police. Why PW-3 Vivek Shinde met accused No.1 in relation to the letter written by PW-12, instead of making inquiry from PW-12 herself when PW-3 Vivek was on talking terms with her, and she is the cousin sister of him. According to the complainant, at the relevant time, wordy quarrel took place on the road, and accused No.1 fired gun shot towards the deceased and thereafter towards him, and he ran away to save his life. Considering the evidence of medical officer, which shows that, the part on which the injury is received is very vital part of human body and in that event if the victim is in standing position, he will immediately fall down and cannot stand or move away from the said place. It means, if, according to PW-3 they were on road when wordy quarrel took place and accused No.1 fired gun shot, and if deceased Pravin Sabale received

injury on his vital part of the body, then as stated by medical officer, the dead body of the deceased should have been found on the road, and not in the nala. This also creates doubt about the story of the prosecution. Even none of the prosecution witness says that there were drag marks from the road upto the nala. Panch witness Shivaji Kadam (PW.11) has categorically admitted in his cross examination that he did not notice any sign of commission of the offence on the road, and he did not notice drag marks from scene of offence upto Nala.

32. In so far as the evidence of panch witnesses, independent witnesses and other prosecution witnesses is concerned, they are not supporting the prosecution case as also there are improvements, omissions and contradictions in their evidence. Some of the panch witness stated that they do not know the contents of the panchanama, and the police obtained their signature on blank piece of papers.

33. It has come on record through the evidence of some of the prosecution witness, one scarf, sattur, motor cycle chain and sword have been found at the spot of incident. However, the Investigating Officer, for the reasons best known to him, did not find it necessary to seize those articles.

34. It has also come in the evidence of the prosecution witnesses that

there were no street lights on the road side of Beldare Karad road, more particular on the spot of incident. However, PW-3 has given details of the clothes which were on the person of the accused, particularly accused No.2, when there was no material on record to show that in that night prior to incident the complainant met accused No.2. If this was the circumstance, then how could complainant identify the clothes of accused No.2. No doubt, as per prosecution case, the accused No.2 was holding the torch in his hand. Whether the torch was really in the hand of accused at the relevant time, and in the light of said torch the complainant is alleged to have identified the accused persons, appears to be suspicious. So far as theory of halting the tempo at the spot of incident and searching for Pravin Sabale, is concerned, the tempo owner has categorically stated that they straight way went to Karad and did not halt anywhere. One more important thing is that the letter in question which was written by PW-12 to Vivek Shinde is not available on record and the same has not been secured by the IO during the course of investigation. The absence of letter on record therefore weakens the case of the prosecution. The panch witnesses also do not support the prosecution case.

35. The question which remains to be considered is that of recovery of gun from the house of accused. The father of accused No.1 Mohan Patil

was holding valid and proper license of gun at the relevant time. According to the prosecution that gun was recovered from the house of accused No.1 in his absence. It has come on record that the alleged recovery of gun, torch and empty cartridges is not proved, since the panch witnesses have not supported the recovery of those articles. The father of accused No.1 has specifically stated in his evidence that at the relevant time, the gun was with him and he was out of the village. PW-23 Mohan Patil has categorically stated that on 11-8-89 he was at village Choregaon, and he carried all the cartridges with him. He further stated that he used to keep the gun and cartridges in the cupboard and he used to carry the key with him. The father of accused No.1 has produced intact live cartridges before the police, and therefore, he stated that the empties cartridges before the Court are not owned by him. So far evidence of PW Nos.6, 10, 18 and 19 is concerned, they are independent witnesses. However, they have not been able to speak anything either about the roll of accused Nos. 1 and 2 or about the incident. These independent witnesses do not support the prosecution case in any manner.

36. So far as medical evidence is concerned, the evidence given by the medical officers is of advisory character given on the basis of symptoms found on examination. According to the medical officer, if a bullet is fired at a distance of 3', the victim toss his hands and feet, but cannot stand or move

anywhere. It is required to be noted that as per the PW-3 the incident happened on the road. However, the dead of Pravin Sabale found lying in the nalla which is away from the road. According to the medical evidence, in that event there will be extensive bleeding both external and internal and the condition of the apparels on the injured will be drenched in blood. Considering this evidence coupled with the spot of incident, then it appears that the blood of Pravin was not found on the spot which creates doubts about the spot of incident.

37. For the afore-stated reasons, we are not inclined to believe that the evidence of the complainant Vivek Shinde (PW-3) that he saw accused No.1 fired gun shot on the person of deceased Pravin Sabale and on his person. As it could be gathered from the evidence led by the prosecution that, the deposition of PW-3 Vivek is not sufficient and helpful to the prosecution to bring home the guilt of the accused beyond reasonable doubt. By examining PW-3 the prosecution tried to prove that he has allegedly seen the actual incident at the relevant time. There is no cogent and satisfactory evidence led by the prosecution in support of its case.

38. It is true that the death of Pravin Sable is a homicidal death. However, the important question which needs to be answered is, whether the

Accused are the authors of injuries suffered by deceased and the injured Vivek Shinde. As already observed, the entire prosecution case mainly revolves around the evidence of PW-3, who is planted as an eye witness, however, there are substantial improvements, omissions and contradictions in his evidence. Hence considering the evidence of PW-3 Vivek Shinde, it cannot be said that he is honest and trustworthy. So also there are improvements, omissions and contradictions in the evidence of other prosecution witnesses, particularly, the evidence of mother of Vivek Shinde (PW-5) and PW-12 which is fatal to the case of the prosecution. As stated herein above, the panch witness, the independent witness do not support the prosecution case. The prosecution has not adduced satisfactory evidence to prove that the accused in furtherance of their common intention commit the alleged crime.

39. Perusal of the report of the Chemical Analyzer shows that the blood group of complainant is A and the blood groups of the deceased, and accused cannot be determined as the results are inconclusive. It is required to be noted that the articles seized from the spot of incident during the course of investigation contain blood group of A.

40. It is required to be noted that though the report in respect of the gun of the Forensic Science Laboratory is on record, the ballistic expert has not

been examined by the prosecution in support of its case. The said gun was sent by the Police Officer, Karad Police Station, to the Forensic Science Laboratory, State of Maharashtra, Mumbai calling upon his report. The report of the Forensic Science Laboratory is on record. In the letter written by the Karad Police station the description of the gun mentioned is, the length of gun is 4 ft and body No. is 1802/1618-Y-1978 of Arm Strong and Company. However, in the report the description of the said gun is mentioned as “ One double barrle breech loading 12 bore hammer-less shotgun having body No.1802/1618- Y-73 & markings ARMSTRONG &Co. wrapped in cloth marked as A/1”. Perusal of the letter of Karad Police Station and the report of Forensic Science Laboratory would reveal that description of the said gun in the report is different than the description mentioned in the police letter. In the report the body number is mentioned as “1802/1618, Y-73” whereas in the letter of Karad Police Station it is mentioned as “1802/1618, Y-1978”. Further in the letter of Karad Police Station the length of gun is mentioned as “4 feet”, however, in the report there is no mention of length of gun. Therefore it is difficult to place reliance on the report of ballistic expert in the absence of evidence in this regard from the expert, which perhaps might have thrown light on this aspect. As stated herein above, the ballistic expert has not been examined by the prosecution.

41. So far as motive of the accused is concerned, as rightly contended

by the learned counsel for the accused, there is no evidence placed on record by the prosecution to establish the motive of the accused in the instant case to murder deceased Pravin Sabale and to cause injuries to the complainant Vivek Shinde (PW-3). So far as intention of the accused is concerned, from the evidence it cannot be said that the accused No.1 had intention to kill deceased Pravin Sabale, who has nothing to do with the said letter written by PW-12. If the prosecution case is accepted, then accused No.1 would have an intention to kill Vivek Shinde and not Pravin Sabale. Therefore, the prosecution has failed to prove the intention of the accused to kill Pravin.

42. The Trial Court has properly recorded the finding that the prosecution has miserably failed to establish its case beyond reasonable doubt that on the intervening night of 11th and 12th August 1989 at about 1-30 am accused No.1 fired gun shot on the person of deceased Pravin Sable and thereby committed his murder, so also the prosecution has miserably failed to establish beyond reasonable doubt that at the relevant time, accused No.1 fired a gun shot on the person of the complainant and thereby caused bleeding injury to him. After considering the entire oral evidence as well as documentary evidence led by the prosecution, including the medical evidence and CA reports, the Trial Court has rightly reached a conclusion that the prosecution has miserably failed to establish its case beyond reasonable doubt

and the accused are entitled to get benefit of the same. The Trial Court, as stated herein above, by the impugned judgment dated 19/05/1997, acquitted the accused from the offences punishable under Sections 109, 120(b), 302, 307, 201, r/w 34 of the Indian Penal Code.

43. In our view, the Trial Court has taken a plausible view on the basis of the evidence available on record. There is no perversity in the findings recorded by the Trial Court. In that view of the matter, there is no merit in this Appeal against acquittal, and hence the same deserves no consideration. Accordingly Criminal Appeal stands dismissed. Bail Bonds of the Respondents – Accused, if any, stand cancelled.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)