

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 140 OF 2017
WITH
CRIMINAL APPLICATION NO. 621 OF 2019

Rajendra s/o. Babaji Bhor,
Age 39 years, Occu. Service,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar
At present – BEG Quarter, Khadki,
Pune, District Pune.

....Appellant.

Versus

The State of Maharashtra

....Respondent.

Mr. V.R. Gundecha, Advocate for appellant.
Mr. Rajendra D. Sanap, APP for respondent/State.
Mr. R.P. Phatke, Advocate assist to APP.

WITH
CRIMINAL APPEAL NO. 141 OF 2017

Govindsingh Shridhat Kesaram Yadav,
Age 50 years, Occu. Retired,
R/o. Rasalpur, Salempur, Tal. Khaga,
Dist. Fatepur, Uttar Pradesh.

....Appellant.

Versus

The State of Maharashtra

....Respondent.

Mr. Abhay Dilip Ostwal, Advocate for appellant.
Mr. Rajendra D. Sanap, APP for respondent/State.
Mr. R.P. Phatke, Advocate assist to APP.

WITH
CRIMINAL APPEAL NO. 183 OF 2017
WITH
CRIMINAL APPLICATION NO. 301 OF 2019

Rahul s/o. Rajaram Shelke,
Age 32 years, Occu. Agril.,
R/o. Narayan Gavhan, Tal. Parner,

District Ahmednagar

....Appellant.

Versus

The State of Maharashtra
Through : The Police Station Officer,
Police Station Supa, Ta. Parner,
District Ahmednagar.

....Respondent.

Mr. R.B. Raghuwanshi h/f. Mr. P.D. Bachate, Advocate for appellant.
Mr. Rajendra D. Sanap, APP for respondent/State.
Mr. R.P. Phatke, Advocate assist to APP.

WITH
CRIMINAL APPEAL NO. 189 OF 2017

1. Ajit s/o. Jagdish Nayar,
Age 23 years, Occu. Labour work,
R/o. Lohgaon, Pune,
District Pune.
2. Richard Thomas Danial,
Age 19 years, Occu. Labour work,
R/o. Lohgaon, Pune,
District Pune

....Appellants.

Versus

The State of Maharashtra

....Respondent.

Mr. N.S. Ghanekar, Advocate for appellants.
Mr. Rajendra D. Sanap, APP for respondent/State.
Mr. R.P. Phatke, Advocate assist to APP.

WITH
CRIMINAL APPEAL NO. 197 OF 2017
WITH
CRIMINAL APPLICATION NO. 302 OF 2019

Rajaram @ Raju Jaiwant Shelke,
Age 61 years, Occu. Agri.,
R/o. Narayan Gavhan, Tq. Parner,
Dist. Ahmednagar.

....Appellant.

Versus

The State of Maharashtra

....Respondent.

Mr. S.J. Salunke, Advocate for appellant.

Mr. Rajendra D. Sanap, APP for respondent/State.

Mr. R.P. Phatke, Advocate assist to APP.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

RESERVED ON : 17/02/2020

PRONOUNCED ON : 17/03/2020

JUDGMENT : [PER T.V. NALAWADE, J.]

1) All the appeals have arisen out of the judgment and order of Sessions Case No. 44/2011 which was pending in the Court of learned Additional Sessions Judge, Ahmednagar. The appellants are convicted for different offences by the Trial Court. Both the sides are heard.

2) In short, the facts leading to the institution of the appeals can be stated as follows :-

Criminal Appeal Nos. 140/2017, 183/2017, 189/2017 and 197/2017 are filed by accused Nos. 8, 2, 5 and 6 and 1, respectively from the aforesaid Sessions Case. They are convicted for offences punishable under sections 302 r/w. 120-B of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short) and some other offences. All of them are sentenced to suffer imprisonment for life and to pay fine. Criminal Appeal No. 141/2017 is filed by original accused No. 11 from the same case, but he is convicted and sentenced only for the

offence punishable under section 5 r/w. 25 of Arms Act.

3) Accused No. 1 is the father of accused No. 2 and both of them hail from village Narayangavhan, Tahsil Parner, District Ahmednagar. Accused No. 8 was resident of Pune at the relevant time, but he used to visit village Narayangavhan as he had married with a lady from this village. Due to his frequent visits to this village, he had become acquainted with accused Nos. 1 and 2 who were in politics. Accused No. 8 was working in military at the relevant time and he was living in Pune as he was posted there. Accused Nos. 1 and 2 had political rivalry with the deceased Prakesh Kandekar. In the past, accused No. 1 was Sarpanch of village Narayangavhan and for many years this Village Panchayat was under his control. One cooperative society of Narayangavhan was also under control of accused No. 1 for quite some time. Deceased Prakesh had created his own group and this group had come in power both in Village Panchayat and in cooperative society. In the past, one criminal case was filed against associates of deceased Prakash on the allegation that they had attempted to commit murder of nephew of accused No. 1, but few months prior to the date of incident in question, they were acquitted. The deceased used to give complaints against milk diary which was run by accused No. 1 and due to that also, accused Nos. 1 and 2 were feeling harassed. Due to all these reasons accused Nos. 1 and 2 took the decision to finish the deceased.

4) Accused No. 8 had contacts in Pune and other places and due to his contacts the work was given to him by accused Nos. 1 and 2 to hire killers to finish the deceased. Brother of accused No. 8, accused No. 7 joined hands with accused No. 8 in this work. They were also expected to procure fire arm which was to be used by hired killers. Thus, accused Nos. 1, 2 and 8 first hatched conspiracy to use hired killers and finish the deceased by using fire arms. One fire arm was procured from accused no. 11, who is resident of Utter Pradesh. The fire arm was then handed over to accused Nos. 5 and 6 who were hired to kill Prakash Kandekar and they became part of the conspiracy to make money.

5) Accused Nos. 1 and 2 withdrew huge amount from their accounts like amount of Rs. three lakh each for giving this amount to hired killers and prior to the date of incident, this amount was paid to accused Nos. 5 and 6. Accused Nos. 5 and 6 visited village Narayangavhan and after meeting accused No. 1 and 8, they made the preparation like choosing the spot etc. and accused Nos. 5 and 6 did the reiki. They collected information regarding routine of the deceased and his habits. The incident in question took place on 13.11.2010 at about 4.30 p.m. On that day, the deceased and his friend Kisan Shelke (PW 14) went to Shirur on scooter of Ravindra, a friend of deceased who is resident of Narayangavhan. Both the

deceased and PW 14 had some work in Shirur. Some witnesses saw accused Nos. 5 and 6 in the company of accused No. 1 in Shirur on 13.11.2010. It was weekly Bazar day of Shirur.

6) The deceased and PW 14 left Shirur on the scooter for returning to Narayangavhan. Accused Nos. 5 and 6 followed them on black Pulsar motorcycle. The deceased was riding the scooter and PW 14 was a pillion rider. When the scooter reached near Mahendra Dhaba Hotel, accused No. 6 who was riding the motorcycle, brought the motorcycle close to the scooter of deceased. Accused No. 5 was pillion rider on this motorcycle. Under pretext of making inquiry about the distance of Shirdi from that spot, accused No. 6 started running his motorcycle parallel to the scooter. As accused No. 6 was making enquiry, the deceased slowed down the speed of the scooter and so, both the vehicles were running with slow speed. When the deceased supplied information regarding the distance between that place and Shirdi, accused No. 5 fired bullet by using fire arm at the head of the deceased. The bullet hit the head of the deceased. The deceased lost control over the scooter. When the scooter was falling on the road, PW 14 somehow put his legs on the road and got away from the scooter. The deceased fell with the scooter on the road. Accused Nos. 5 and 6 then went away from that place with speed.

7) Pratap Gosalwad (PW 16) and Rajesh Shelke (PW 17)

were near the aforesaid place by chance. After hearing the sound of shot taken from fire arm, they rushed to the spot. Accused Nos. 5 and 6 were not known to Kisan (PW 14), pillan rider of the scooter and also PW 16 and 17. However, PW 17 had seen these two persons in the company of accused No.1 and other co-accused. Kisan requested PW 16 to go to village Narayangavhan and inform about the incident to villagers and the relatives of the deceased. Somebody passed the information by giving anonymous call to Supa Police. Prakash died on the spot of incident.

8) Police reached the spot of offence within 25-30 minutes. Till then many persons had gathered on the spot. The dead body was shifted to Civil Hospital, Ahmednagar situated at the distance of more than 35 k.m. away from the spot of offence in ambulance. PW 14 went to Supa Police Station and gave report about the incident. On the basis of this report, the crime at C.R. No. 82/2010 at 6.10 hours came to be registered in Supa Police Station. The aforesaid incident is described in F.I.R. and the suspicion was expressed against accused Nos. 1 and 2 as the persons behind the murder of Prakash.

9) As there was the allegation of firing of bullet, police requested the Government Hospital Ahmednagar to first take X-ray of the head and then go for post mortem (P.M.) examination. X-ray

was taken and bullet was noticed in the head of the deceased. P.M. was conducted on the next day. Accused No. 3 Dr. Patharkar was one of the two doctors who conducted the P.M. examination. Accused No. 4 Dr. Pakale was working in this Civil Hospital and he had remained present during conducting of P.M. examination, though the work of P.M. was not assigned to him. Accused No. 13 was working as sweeper in Civil Hospital and he had remained present inside of the room where P.M. was conducted. Dr. Raut (PW 11) was the second doctor who had remained present for P.M. with Dr. Patharkar. No bullet was found in the head portion of dead body in P.M. when in the X-ray taken already such bullet was seen. Another X-ray was taken. This X-ray showed that no bullet was present in the dead body. This incident was reported by the Government Hospital to Police.

10) During investigation of the crime, it transpired that accused Nos. 3, 4 and 13 had joined hands with accused Nos. 1, 2 and 8 and they had helped to make the evidence disappear by virtually committing the theft of bullet. Due to these circumstances they are made accused, but only for incident of making evidence disappear. Accused No. 14 had acted as mediator and had helped to pass the money to accused Nos. 5 and 6 and so, he is made accused. It is the case of prosecution that the used bullet is recovered from accused No. 12 Atish and so, he is made accused. This bullet was handed over by accused No. 10 Vinod to Atish. So, he is made

accused. With accused No. 9 Janardhan, mobile hand set of accused No. 5 Ajit was found and so, he was made accused. As accused No. 7 Ajay is real brother of accused No. 5 Ajit and he was found involved in the offence of assisting Ajit, he is made accused. The Trial Court has acquitted all other accused except accused Nos. 1, 2, 5, 6, 8 and 11. The decision of acquittal given in favour of the remaining accused is not challenged by the State.

11) During investigation all the accused were arrested. Even prior to the registration of crime, in anonymous call suspicion was expressed as against accused No. 1. Police took action against accused Nos. 1 and 2 on 14th. During house search, empty cartridge came to be recovered from his house. The information supplied by accused Nos. 1 and 2 led to tracing of accused Nos. 5 and 6. Another accused supplied information about the whereabouts of accused Nos. 5 and 6. They had gone to Goa. With the help of Goa police, accused Nos. 5 and 6 were collected and arrested in Goa. During the course of investigation, the fire arm came to be recovered. The empty cartridges and the fire arm were sent to ballistic expert as the opinion was given by doctors that death had taken place due to bullet injury.

12) During the course of investigation, mobile hand sets of accused Nos. 1, 2, 5, 6 and 8 were taken over. C.D.R. record in

respect of the SIM cards which were present in the mobile hand sets were collected. It revealed that these accused were in touch with each other prior to the date of incident. Accused Nos. 5 and 6 were strangers to the village. Some witnesses came forward to say that they had seen accused Nos. 1, 2 and 8 together in Shirur and some witnesses came forward to say that on the previous day of the incident accused Nos. 5 and 6 were seen in village Narayangavhan in the company of accused Nos. 1 and 8.

13) On the basis of aforesaid material, police formed opinion regarding involvement of all the accused in the crime and the chargesheet was filed accordingly for offences of murder, conspiracy, making evidence to disappear, Arms Act etc. The charge was framed against all the accused as per the part played by them in conspiracy and in the main offence. Accused took the defence of total denial. Accused Nos. 1 and 2 examined witnesses to explain few things like the amount which was withdrawn by them from the account just prior to the date of incident. Accused No. 8 examined a witness to show that he does not own any property in village Bhorwadi from where the SIM card was recovered.

14) The Trial Court has believed the three eye witnesses examined by the prosecution. The Trial Court has held that to corroborate the direct evidence there are circumstances like

recovery of weapon, recovery of empty cartridges, recovery of motorcycle used by accused Nos. 5 and 6 at the time of offence, recovery of the clothes of accused which were described by the eye witnesses etc. For proving the offence of conspiracy, the Trial Court has relied on the evidence given by the witnesses to the effect that accused Nos. 5 and 6 were seen in the company of accused Nos. 1 and 8 on previous day of the incident and also in village Shirur on the day of the incident. The Trial Court has relied on the circumstances that accused Nos. 1, 8, 5 and 6 were in touch with each other by using mobile hand sets when accused Nos. 5 and 6 were strangers to the village and they were not known to anybody from village. The Trial Court has believed the evidence given on motive which was mainly on political rivalry which was there between the deceased on one side and accused Nos. 1 and 2 on the other. The Trial Court has considered the circumstance like withdrawal of huge amount by accused Nos. 1 and 2 from the bank accounts and recovery of cash amount of Rs.1.10 lakh from one of accused, accused No. 5 and which was made immediately after the incident. The Trial Court has held that these accused have not given satisfactory explanation about this part of evidence. On the basis of these circumstances, the Trial Court has held that accused Nos. 5 and 6 were hired by accused Nos. 1 and 2 to finish the deceased and for that accused No. 8 had helped these accused.

15) At the outset, this Court wants to praise the learned Additional Sessions Judge for the manner in which he has marshalled the evidence. In case of conspiracy, which involves hiring persons for murder, the evidence needs to be marshalled in a way in which it is done by the learned Judge of the Trial Court. In case like present one, first the evidence on the incident of murder itself needs to be considered and only after coming to the conclusion that the evidence tendered is sufficient for conviction of the accused, who actually murdered the victim, then the Court should start considering the other evidence. The conspiracy can be proved on the basis of circumstances which the prosecution needs to establish and also on the basis of few admissions which accused have given. When there are many incidents in the case like present one in which some accused attempted to make the evidence disappear, those incidents need to be considered separately unless the prosecution makes out the case that they had the knowledge of the conspiracy which was hatched in the beginning. In many cases, the circumstance that there was an attempt made to make the evidence disappear or the evidence was destroyed by some accused is itself a separate circumstance which can support the case of conspiracy of murder. Accused Nos. 1 and 2 of the present matter were in politics and they were financially sound. In such cases, there is always the possibility of manipulation of the things and in the present matter, that probability proved to be true as in Government Hospital the bullet

which was present in the head of the dead body was virtually stolen and some persons made that evidence to disappear. This Court is discussing the prosecution evidence in the same sequence in which the Trial Court has discussed it.

Factum of Homicide and other related circumstances :-

16) The defence has not disputed that the incident took place on Pune - Ahmednagar road and in the vicinity of Mahendra Dhaba, Hotel. The dead body was shifted from this spot to Civil Hospital, Ahmednagar. As per the evidence on record, the Civil Hospital is situated at the distance of 35-40 k.m. from the spot.

17) Bhausahab (PW 8) was attached to Supa Police Station as a Police Head Constable at the relevant time. He has given evidence that at about 4.35 p.m. on 13.11.2010 police station received information that two persons who were on Pulsar motorcycle had shot dead Prakash Kandekar, Deputy Sarpanch of village Narayangavhan. He has deposed that he was asked by P.S.O. to rush to the spot. He has deposed that he went to the spot and after seeing the dead body, he found that there was wound on the right side of the head of the dead body. His evidence shows that he took steps to take the dead body to Civil Hospital, Ahmednagar. He has given evidence that steps were taken to see that first X-ray of the head was taken and according to him, that was done at about 9.15

p.m. of 13.11.2010 itself and the X-ray showed that there was a bullet inside of the head at the left side of head. The requisition given for conducting P.M. examination is proved as Exh. 245 in his evidence. His evidence shows that inquest panchanama was prepared in the Government Hospital.

18) Bhondave (PW 38) has deposed that at the relevant time, he was attached to Tophkhana Police Station, Ahmednagar and at about 7.30 p.m. of 13.11.2010 he received instruction from Superior Officer to go to Civil Hospital, Ahmednagar and to do the needful as the dead body from C.R. No. 182/2010 which was registered in Supa Police Station was brought to Civil Hospital. He has deposed that he went there and he gave requisition to take X-ray first and then go for P.M. examination. The requisition is at Exh. 620 and it is consistent with the oral evidence of Bhondve. He had requested to preserve the bullet and collect the skin from the place of entry of bullet. He had also requested to collect the blood for the purpose of investigation. This letter was addressed to Dr. Raut (PW 11), who actually conducted the P.M. examination along with one of the accused.

19) The evidence of Dr. Raut (PW 11) shows that inquest panchanama was referred to him by the defence counsel and as it was used by the defence, the inquest panchanama was given exhibit as Exh. 262. The inquest panchanama shows that there was clear

entry wound on the right side of the head. On the left side of the head near left ear, there was abrasion of the size of 2.5 cm. In inquest panchanama, it was not mentioned that this injury appeared to be exit wound.

20) Ravindra (PW 3) was working as X-ray Technician in Civil Hospital, Ahmednagar. He has deposed that he first took entry in respect of the dead body in M.L.C. register and as per the requisition, he took X-ray of the skull of the dead body of Prakash Kandekar. He has deposed that thumb impression of the dead body was obtained by him in the register. He has identified the X-ray plates bearing No. 3903 and 3904 in the Court. The X-ray photographs are exhibited by the Trial Court as Exhs. 211 and 212. He has deposed that there was the history of bullet firing at the head. The X-rays show that there was the bullet inside of the head, but the defence suggested that Exhs. 211 and 212 are not in respect of the dead body of Prakash. This suggestion is denied by the X-ray Technician. There is not only the oral evidence of Technician, but there is record like entries made in M.L.C. register. The X-ray plates and X-ray photographs are consistent with the oral evidence of the Technician. The Trial Court has believed this Technician and there is no reason to disbelieve this witness.

21) Dr. Raut (PW 11) has deposed that as per the instruction

given to him by Dr. Patharkar, accused No. 3, he gave instruction to Technician to take X-ray photos of the head of the deceased on 13.11.2010 and accordingly, X-ray was taken. His evidence shows that he and Dr. Patharkar conducted the P.M. examination, but on 14.11.2010.

22) The evidence of Dr. Raut (PW 11) shows that he agreed with Dr. Patharkar in respect of opinion that the injury on the right side of the head was entry wound of the bullet. He has deposed that Dr. Patharkar asked him to describe injury No. 2, injury found on the left side of the head of the dead body as exit wound, but he did not agree with this opinion. He has given reason that the skull was not opened at that time and further, X-ray photos were showing that the bullet was inside of the head on left side. He has given evidence that he gave separate and different opinion in respect of injury No. 2 in column No. 17 of P.M. report which is proved as Exh. 260. Injury No. 2 found on the left side is described as incised wound of size 1 x 2 x 2.5 cm. There was one more injury which was incised wound on the nose which was transversely placed and which was of size 2 x 0.5 cm. This injury was not found when inquest panchanama was prepared.

23) Dr. Raut (PW 11) has deposed that after dissection of scalp, they noticed extra cranial haematoma at the site of entry wound and there was laceration of brain and there was popping out

of brain through injury No. 1. He has deposed that even after opening of the skull, the bullet was not found in the skull. He has deposed that there was extra cranial and sub dural haematoma at the side of injury Nos. 1 and 2. He has given evidence that instructions were given for taking one more X-ray, but in second X-ray no bullet was noticed in the head. There is no need to discuss more evidence on this aspect as accused Nos. 3 and 4, the two doctors and accused No. 13 Sweeper, who were found involved in making the evidence of bullet disappear are acquitted by the Trial Court and that part of the decision is not challenged by the State.

24) Dr. Raut (PW 11) has given evidence that the death took place due to fire arm injury, bullet injury found on the skull which had caused fracture of vault of skull which had caused brain laceration and which had caused extra cranial and sub dural haemotoma. The P.M. report at Exh. 260 is consistent with the oral evidence of Dr. Raut (PW 11). The tenor of the cross examination of Dr. Raut (PW 11) made by the defence counsels show that the defence tried to create probability that his opinion with regard to injury No. 2 is not correct. The tenor of the cross examination shows that the defence did not dispute that the death took place due to bullet injury and one bullet was fired at the head of the deceased. There is no evidence of forensic expert in respect of the skin which was sent to forensic expert for confirming as the skin portion was not

fit for taking test. Even in absence of that evidence, there is aforesaid evidence which is sufficient to prove that the death took place due to one bullet injury. Thus, the prosecution has proved that Prakash died due to bullet injury and one bullet was fired at his head from right side.

Evidence on conspiracy and to prove the authors of bullet injury :-

25) To prove that accused Nos. 5 and 6 were responsible for the aforesaid bullet injury, the prosecution has examined three eye witnesses like Kisan (PW 14), who is also informant of the matter, Sudam (PW 15) and Rajesh (PW 17). All the three eye witnesses are resident of village Narayangavhan, the place of deceased. As per the case of prosecution, Kisan was in the company of deceased right from the morning of 13.11.2010 and they together had gone to Shirur and they together were returning to Narayangavhan. Evidence is given that after about 4 p.m., they started from Shirur to Narayangavhan on the scooter and deceased was riding the scooter. Kisan (PW 14) was the pillion rider on the scooter. In view of such case of the prosecution, it can be said that Kisan is the main eye witness of prosecution.

26) The scooter bearing No. MH-16/L-1612 which was found near the dead body of Prakash was owned by Anil (PW 5). Anil is

resident of Narayangavhan and he has given evidence that on 13.11.2010 at about 12.30 to 1.00 p.m. deceased Prakash and Kisan (PW 14) came to him and as they requested him to hand over the scooter to them as they wanted to go to Shirur, he gave the scooter to them. According to him, he learnt about the incident in question from Sudam (PW 15) at about 4.30 p.m. During his cross examination, the defence counsels have only suggested that the scooter was not given by him to deceased and Kisan. He has denied that suggestion. It is a fact that the scooter was found near the dead body and there is the record of panchanama and there is other record like photographs of the scooter taken at the spot which are referred by the defence by putting questions in respect of those photographs to prosecution witnesses. This Court holds that his evidence is not shattered in the cross examination made by the defence counsels. He has given evidence that he took the custody of the vehicle from the Court. The Trial Court has believed this witness and in view of the aforesaid circumstances and other evidence, this Court sees no reason to disbelieve this witness. Thus, there is evidence to prove that on that day the deceased and Kisan (PW 14) had left together on the scooter of Anil (PW 5) for Shirur.

27) Kishan (PW 14) has deposed that on that day he and deceased took the scooter of Anil (PW 5) and they went on that scooter to Shirur. According to him, the deceased had work like

pressing his clothes at Shirur and he had work at other place situated in the vicinity of Shirur where his sister is living. He has deposed that after visiting place of sister, he returned to Shirur. Kisan (PW 14) has deposed that the deceased collected his clothes given for pressing from the shop and on the same scooter, they started for Narayangavan. He has deposed that the deceased was riding the scooter and he was pillion rider on the scooter. He has deposed that at Rakshe Petrol Pump, petrol of Rs.50/- was filled in the scooter and they again started for Narayangavhan. He has deposed that near Gavhanwadi the deceased had a call on his mobile hand set.

28) Kisan (PW 14) has deposed that when their scooter reached near Mahendra Dhaba Hotel situated on Pune - Ahmednagar road, one black Puslor motorcycle came from backside and two persons were present on this motorcycle. He has deposed that the person, who was riding the motorcycle asked the deceased about the distance of Shirdi from that place. He has deposed that speed of the motorcycle and speed of the scooter was reduced to have a talk and then the deceased supplied information about the distance. He has deposed that when these two vehicles were running parallel with each other and they were running in slow speed, the pillion rider of the motorcycle fired bullet from pistol at the head of the deceased by using his right hand.

29) Kisan (PW 14) has deposed that the firing created big sound and then the deceased lost control over the scooter. He has deposed that the scooter was about to fall towards left side of the road, but he somehow removed himself from the scooter by putting his legs on the road. He has deposed that the deceased fell with the scooter on the left side of the road. He has deposed that the aforesaid two persons went ahead on the motorcycle with speed. He has deposed that he noticed that the bullet had hit right side of the head of the deceased. He has deposed that he started shouting loudly and then Sudam Shelke (PW 15) and wife of Sudam Shelke who were following them from backside, reached the spot. He has deposed that he requested Sudam to go to Narayangavan and inform about the incident to the villagers.

30) Kisan (PW 14) has described the complexions of the rider of the motorcycle, pillion rider, the built of the two and clothes which were on their person. He has deposed that after about one month of the incident, he was called for test identification (T.I.) parade and in the T.I. parade, he identified rider of the motorcycle and pillion rider. In examination in chief, he correctly identified accused No. 6 in the Court, but he could not identify accused No. 5.

31) Kisan (PW 14) first pointed finger to accused No. 9 and

then he pointed finger to accused No. 10. As Kisan did not identify accused No. 5 correctly in the Court, the learned APP declared him as hostile witness and cross examined him. Then the leading questions were put by the learned APP, but in leading questions the learned APP pointed out accused No. 7 to Kisan to indicate that he was accused No. 5. Kisan admitted that he was the same person who was present on the motorcycle. This circumstance shows that the learned APP was not well prepared and that is why he showed accused No. 7 to PW 14 when he ought to have shown accused No. 5 to PW 14. Accused Nos. 5 and 7 are real brothers inter-se and it can be said that due to similarity in the surname, the prosecutor probably committed such mistake.

32) It can be said that on 1.10.2013, on the date of evidence, PW 14 could not identify correctly to accused No. 5. However, according to him, in T.I. parade accused No. 5 was correctly identified by him. It was arranged within one month from the date of incident. It needs to be kept in mind that as many as 14 accused were tried in the present matter and ordinarily, the positions of the accused are changed and they are not made to sit in the sequence of their number given to them in the chargesheet.

33) Kisan (PW 14) has given evidence in examination in chief that on that day, he had seen accused Nos. 1 and 2 in Shirur. He has

deposed that after the incident in question when he was present near the dead body, he noticed that accused No. 1 proceeded towards Ahmednagar side, to village Narayangavhan on his motorcycle and within no time accused No. 2 also proceeded to the same side in his Fiasta car. The evidence on this circumstance is also relevant as in ordinary course even a political opponent would stop at such place to see as to what had happened. That did not happen and the prosecution wants to show that this conduct of both accused Nos. 1 and 2 was not consistent with their innocence.

34) F.I.R. at Exh. 280 is duly proved in the evidence of Kisan (PW 14). On most of material points, the F.I.R. is consistent with the oral evidence of Kisan. It is only suggested to Kisan by defence that he was not in the company of deceased on that day. For creating such probability a photo of one Police Inspector of Supa Police Station which was taken with the dead body and scooter was confronted to Kisan. In the photocopy only Police Inspector is appearing. That does not mean that PW 14 was not present on the spot. The circumstance that within no time the information was reached to Supa Police about the incident and it was specifically informed that two persons who were present on a motorcycle were involved in the incident shows that there were eye witnesses to the incident. When there is evidence of owner of the scooter of aforesaid nature and PW 14 faced the cross examination competently,

inference is not possible that he was not present on the spot at the relevant time or he was not in the company of the deceased on that day. Evidence is brought on the record even by the defence that within no time many persons from village Supa had gathered on the spot, but nobody is appearing in the photograph which was confronted to Kisan by the defence counsel.

35) Kisan (PW 14) has given evidence that after sending of the dead body to Government Hospital, he went with police to Supa Police Station and there he gave report. He has deposed that after giving report, he returned to the spot and that was at about 8.00 p.m. of the same day. His evidence and evidence on the record show that after 8.00 p.m. of the day, the spot panchanama was prepared by the police. He denied the suggestion given by defence counsel that he had deliberations with the persons of his group and then he took the decision to implicate accused Nos. 1 and 2 and then such report was given. This suggestion is denied by Kisan.

36) The circumstance that before lodging of F.I.R. and within 20-25 minutes of the incident, Supa police had reached the spot is important in this matter and it shows that somebody, anonymous person had informed to police about the incident. Kisan (PW 14) could not have moved away from the spot and he had requested Sudam (PW 15) to give news to everybody from Supa. That explains

as to how the information was sent by somebody to police. His evidence and other evidence show that within 10 minutes of incident the villagers of the Narayangavhan had reached to the spot.

37) On the basis of the circumstance that police arrived to the spot before registration of F.I.R. and as there is evidence of Bhausahab (PW 8) to show that police had reached the spot at about 4.35 p.m. from police station, the defence has argued that the F.I.R. at Exh. 280 cannot be treated as F.I.R. under section 154 of Cr.P.C. and it cannot be used for the purpose of corroboration under section 157 of the Evidence Act.

38) In the evidence of Rajput (PW 41), Deputy Superintendent of Police, who made most of the investigation, it is brought on the record that Supa police had already received the information from anonymous caller into writing and entry was made at Entry No. 27. Exh. 855 the entry in the station diary was made at about 16.35 hours. This entry which is exhibited shows that it was made on the basis of information supplied by anonymous caller. It was information that two persons, who were on Pulsar motorcycle had fired bullet at Prakash, deceased. The entry at Exh. 852 made at 16.40 hours shows that information was passed by Supa police on wireless to all the police of that area to inform them about the incident. It was also informed that two persons who were present on

the motorcycle were involved in the incident and the number plate of that motorcycle was covered by using cloth. It was informed that it was black coloured motorcycle and rider was comparatively young than the pillion rider. There were instructions to police to intercept this motorcycle. The entry at Exh. 857 made in the station diary at 14.45 hours shows that some police were sent to the house of Rajendra Shelke, accused No. 1 for taking action. These circumstances are brought on record by the defence.

39) F.I.R. at Exh. 280 was registered at 18.10 hours of 13.11.2010 for the offences punishable under section 302, 120-B, 34 etc. of I.P.C. and section 3 r/w. 25 of Arms Act. Thus, the crime was registered within two hours from the time of incident. If the time which was required by the police to reach the spot from police station which was 20-25 minutes, it needs to be kept in mind that similar time must have been taken for reaching police station and informant must have taken some more time to reach police station. Further, the evidence on record shows that police made arrangement for sending the dead body to Civil Hospital, Ahmednagar and they must have taken steps to see that the things appearing on the spot of offence were not disturbed. As per the record, the dead body was reached to Civil Hospital at Ahmednagar. Evidence on the record shows that many persons of village Narayangavhan had gathered on the spot and everybody had suspicion that accused No. 1 was behind

this murder. Further, there was specific information that two unknown persons who were on the Pulsar motorcycle that they had shot bullet at the deceased. It is already observed that Kisan (PW 14) had asked Sudam (PW 15) to give news to villagers and so, in one way the information which was reached to police was due to the news given by PW 14 and PW 15. The evidence on the record shows that on enquiry, PW 14 only came forward to give report and so, his report was recorded by police as F.I.R. In F.I.R., the reason for involvement of accused Nos. 1 and 2 in the incident and every other aspect including the movements of accused Nos. 1 and 2 seen on that day by PW 14 are mentioned and so, it cannot be said that the information received from anonymous person by Supa police needs to be treated as F.I.R. In the case of **Bhagwan Jagannath Markad and Ors. Vs. State of Maharashtra reported as (2016) 10 SCC 537**, the Apex Court has referred the case of **Lalita Kumari Vs. State of U.P. reported as 2014(1) SCC (Cri) 524** and the Apex Court has laid down that every cryptic information which is not signed by the person giving information cannot be treated as F.I.R. Law is well settled on this point. So, this Court holds that Exh. 280 needs to be treated as F.I.R. in the present matter.

40) The circumstance that even before lodging of the F.I.R. by PW 14 people knew about the incident and they knew that two persons had fired a bullet at the deceased is also relevant in the

present matter as this was immediate disclosure of the eye witnesses and that needs to be treated relevant under section 6 of the Evidence Act and it also gives corroboration to the version of PW 14 and case of prosecution.

41) Sudam (PW 15) has given evidence that at the relevant time, he and his wife were returning with their cattle, with bullocks from the field. He has deposed that he first saw that the deceased and PW 14 were proceeding towards Narayangavhan on scooter and then they noticed that Pulsar motorcycle started running parallel to the scooter. He has deposed that he noticed that rider of the motorcycle was having talk with the rider of the scooter and for that the speed was reduced by the rider of the motorcycle. He has deposed that he noticed that pillion rider of the motorcycle then fired bullet from the revolver from close distance and the bullet hit the head of the deceased. He has deposed that sound was created due to firing and deceased fell with the scooter on the left side of the road. He has deposed that Kisan (PW 14) started crying for help and so, he rushed to the spot with his wife. He has deposed that he then went to Narayangavhan, he first informed the incident to Anil (PW 5) and then to others. His evidence shows that he had kept the bullocks in the vicinity of the spot and after giving news to villagers he had returned to the spot for collecting the bullocks.

42) Sudam (PW 15) has given evidence to describe the two persons who were on the motorcycle. It was about 4.15 to 4.30 p.m. and it is nobody's case that it was cloudy or it was dark. Evidence is already brought on the record that both the vehicles were running with slow speed as talking was going on. So, PW 15 had sufficient time to see accused Nos. 5 and 6. In the T.I. parade, Sudam (PW 15) says that he had identified accused No. 5 and 6. The evidence of eye witnesses shows that the defence did not dispute seriously that he can identify accused Nos. 5 and 6 and that is why the evidence is recorded to the effect that he can identify the accused in the Court. Due to the incident which had taken place in respect of PW 14, everybody must have realised that there is possibility of committing mistake and so, in such cases, the defence does not seriously dispute that subsequent witnesses can identify the accused. It is not disputed that accused Nos. 5 and 6 were present in the Court hall when the evidence of Sudam (PW 15) was recorded and so, in the Court PW 15 identified accused Nos. 5 and 6.

43) The police statement of Sudam (PW 15) was recorded on 17.11.2010. The name of Sudam (PW 15) is mentioned in the F.I.R., Exh. 280 and so, the delay of about four days caused in giving police statement has not created doubt about the version of Sudam. The evidence of Sudam (PW 15) and Anil (PW 5) shows that it is Sudam who had rushed to the village to give the news about the incident.

This circumstance also shows that it is not possible to doubt the evidence of Sudam. No material omission is brought on the record in the evidence of PW 14 and PW 15 by the defence. It is only suggested to Sudam (PW 15) that in the past he was cultivating the land of brother of accused No. 1 and at the relevant time, he was not cultivating the land. He has fairly admitted this circumstance, but on the basis of this circumstance, inference is not possible that the relationship between Sudam and accused Nos. 1 and 2 had become strained.

44) The third eye witness Rajesh (PW 17) has given evidence that he had opportunity to see accused Nos. 5 and 6 on 12.11.2010 in the village. He has deposed that on 12.11.2010 he had seen accused Nos. 1, 8 and two unknown persons going together towards hill side of the village. The evidence of Rajesh (PW 17) shows that these two unknown persons are accused Nos. 5 and 6.

45) Rajesh (PW 17) has deposed that on 13.11.2010 he had again opportunity to see accused Nos. 5 and 6 who were not known to him near the residential place of deceased at 7.30 a.m. and at that time, they were present on a motorcycle.

46) Rajesh (PW 17) has deposed that on 13.11.2010 he left Shirur at 11.30 a.m. as it was weekly Bazar day of Shirur. He has

deposed that in Shirur he again saw accused Nos. 1 and 8 together and accused Nos. 5 and 6 were in the company of accused Nos. 1 and 8. He has deposed that one more person was in their company, but he did not know that person and all these persons were chit-chatting. He has deposed that he left Shirur at about 3.30 p.m. on that day and at some distance from Mahendra Dhaba towards Pune side his tyre of motorcycle got punctured and so, he started walking with the motorcycle. According to him, near Mahendra Dhaba Hotel, there was shop of repairing of puncture and so, he was proceeding towards that shop.

47) Rajesh (PW 17) has deposed that when he was walking with the motorcycle, he first noticed that Sudam (PW 15) was ahead of him with his wife and bullocks and they were proceeding towards Narayangavhan, towards Ahmednagar side. He has deposed that then the scooter of deceased and Kisan passed him and it was proceeding towards Narayangavhan. He has deposed that then the motorcycle on which the same two unknown persons present passed by him and it was Pulsar motorcycle.

48) Rajesh (PW 17) has described two unknown persons who were seen by him on the day of incident at the time of incident by describing their complexion, face, their physic and their clothes. He has identified accused Nos. 5 and 6 in the Court. His evidence on T.I.

parade shows that he had identified accused Nos. 5 and 6 in T.I. parade which was held on 23.12.2010.

49) Rajesh (PW 17) has deposed that he noticed that motorcycle of accused Nos. 5 and 6 was running parallel to the scooter of the deceased. He has deposed that pillion rider of motorcycle then fired bullet at Prakash and it hit the head of Prakash. He has deposed that after firing of the bullet, the motorcycle proceeded ahead with high speed and the deceased fell with the scooter towards left side of the road. He has deposed that he could see that Kisan (PW 14) stood up when the scooter was falling on the road. He has deposed that he left his motorcycle and he rushed forward. He has deposed that Sudam (PW 15) was also there and Kisan (PW 14) then started shouting for help.

50) Rajesh (PW 17) has deposed that when he was present on the spot of incident, he noticed that accused Nos. 1 and 2 proceeded towards the side of village Narayangavhan on motorcycle and Fiesta car respectively and they were looking at the spot, but they did not stop their vehicles. His police statement was recorded on 16.11.2010, though his name was not mentioned in the F.I.R. His name is not taken in the evidence by PW 14 and PW 15. The Trial Court has believed him. The tenor of the cross examination of this witness shows that the defence knew that he knows everything

about the dispute which was between deceased and accused Nos. 1 and 2. Deceased Prakash was maternal uncle of PW 17. Some photographs of the dead body of Prakash were shown to him and some photographs which were taken in the premises of Civil Hospital were also shown to him. The defence suggested that PW 17 was present in the photographs which were taken in civil hospital. These persons were looking at X-ray photo of the head in which bullet was appearing. It is suggested specifically to him that he had gone to Civil Hospital when the dead body was taken to Civil Hospital. In the cross examination, it is brought on the record that earlier he had informed about the incident to police on 14.11.2010 itself. He has stated that his statement was recorded by police on that day. He has deposed that he was called to police station on 16.11.2010 and then police made enquiry and recorded his statement. Rajesh (PW 17) is cross examined mainly to create a probability that on 12th and on morning of 13th, he had not seen accused Nos. 5 and 6 in village Narayangavhan, much less in the company of accused Nos. 1 and 8.

51) Rajesh (PW 17) faced extensive cross examination competently. His evidence shows that he knew everything about the dispute between the deceased and accused Nos. 1 and 2. He has denied that the deceased had any relations with a lady by name Latabai. However, he admitted that when son of Latabai by name Sagar was injured in an accident, the deceased had helped the

family of Latabai and he was in touch with Latabai for some time after the accident. Then the strange suggestion is given to PW 17 by defence counsel in cross examination that the said lady had given threat of life to the deceased. This suggestion is denied. The suggestions were given to create a probability that deceased had enmity with many persons. Those suggestions are denied.

52) The Trial Court has believed Rajesh (PW 17). When the Trial Court believes eye witnesses, it is very difficult for the Appellate Court to lightly interfere in the finding. Further, there are aforesaid circumstances in respect of the evidence of PW 17 including the tenor of the cross examination of PW 17 made by the defence counsels.

53) When there is the evidence of many eye witnesses (three in number), some inconsistencies are bound to be there in the evidence of three eye witnesses. Everybody's thinking and look out in respect of the incident is different. Further, when the evidence is recorded after many years of the incident, the witnesses may commit some mistakes like PW 14 committed mistake in not identifying accused No. 5 properly in the Court. Thus, the lacunae in the evidence of PW 14 are filled by the evidence of PW 15 and PW 17 and their evidence is sufficient to prove the case of prosecution that it is accused Nos. 5 and 6 who were involved in the incident of firing

bullet at the deceased. When unknown persons are involved in the actual murder, this circumstance itself gives rise to the possibility of conspiracy and possibility of hiring such persons by the person who had motive for such crime. In such cases, not only the evidence of eye witnesses is relevant, but the evidence of other witnesses like PW 17 and other witnesses whose evidence will be discussed at proper place is relevant and in such cases, the evidence as a whole is required to be considered by the Court. On the basis of such evidence, inference can be drawn about the conspiracy. If there are some lacunae in the evidence given as against the shooters, such lacunae can also be filled by the circumstantial evidence which is available against them. Thus, all the material which is available as evidence under section 3 of the Evidence Act needs to be considered together in the case like present one.

54) The defence has made an attempt to show that the three eye witnesses are either of the political group of deceased or the relatives of the deceased and so, they are interested witnesses. In these days, almost in every village there are atleast two politically rival groups. Many persons have open affiliation to such groups, but some support one group without openly expressing support. Due to such political reality, the evidence of a witness cannot be discarded only on the ground that he was supporter of one group. In such cases, the only thing that the Court can do is to see whether there is

check of circumstantial evidence to the direct evidence of such witness. In the present matter, all the three witnesses have given evidence on almost every point raised in question put to them including the questions which were regarding political rivalry between the group of deceased on one side and group of accused on the other side. This test is faced by the witnesses successfully and in view of the circumstantial evidence, it only needs to be ascertained as to whether these three witnesses had any reason to be present on the spot of offence at the relevant time. That exercise is done by the Court already. Though the evidence of PW 17 is not that full proof, not that convincing, the evidence of PW 14 and PW 15 is convincing and it has support of circumstances. First part of evidence of PW 17, about incidents of 12th and 13th when he had seen accused Nos. 5 and 6 in village Narayangavhan, needs to be considered separately. At least to that extent, this witness can be believed.

55) The evidence already discussed shows that within no time of commission of offence, even before registration of the crime, there was suspicion against the accused No. 1 to everybody that he was behind the murder of Prakash. Both accused Nos. 1 and deceased were known to the persons of village Narayangavhan and also the persons of vicinity of Narayangavhan due to their activities. Gajare (PW 20) is other witness who has given evidence against accused No. 1 that he had seen accused Nos. 5 and 6 in the

company of accused No. 1 in Shirur on 13.11.2010. He has deposed that on that day as it was weekly Bazar day, he was present in Shirur at 9.30 a.m. He has deposed that when he was proceeding towards the place of weekly Bazar on foot, he saw accused Nos. 5 and 6 in the company of accused No. 1 and there was one black coloured Pulsar motorcycle by their side. His evidence shows that he learnt about the incident in his village Ranegalsiddhi at 5.00 p.m. and as he knew Prakash he rushed to the spot. The tenor of the cross examination of this witness shows that the defence is not disputing that PW 20 knew both accused No. 1 and the deceased. His police statement was recorded on 17.11.2010.

56) Gajare (PW 20) has identified accused Nos. 5 and 6 in the Court and he has deposed that he had identified them in T.I. parade on 23.12.2010. Most of the cross examination of this witness is on the procedure of the T.I. parade. The cross examination is made to show that he is interested witness as deceased was his friend. Exh. 348 photograph dated 14.11.2010 taken in the campus of Civil Hospital, Ahmednagar was shown to this witness to point out that he had gone up to the Civil Hospital where the dead body was shifted. These circumstances can be used both ways and it can show that he had rushed to the spot and also to the Civil Hospital immediately after the incident. Thus, the evidence given by this witness can be used as circumstantial evidence for proving of conspiracy, for

proving that accused No. 1 was in touch with accused Nos. 5 and 6 on the day of incident.

57) Evidence of Sitaram (PW 21) who is resident of village Narayangavhan shows that on that day, he had left Narayangavhan at 4.30 p.m. and he was proceeding towards Shirur for weekly Bazar. He has deposed that when his motorcycle came near the bridge which is constructed over canal, he noticed that one motorcycle was coming from opposite side, from Pune side with high speed. He has deposed that as on the bridge, there was no sufficient space, he slowed down his motorcycle to give side to the motorcycle which was coming from opposite direction and he noticed that two persons were present on this motorcycle. He has deposed that after crossing that bridge and after crossing some distance, he learnt about the incident. He has deposed that he identified accused Nos. 5 and 6 in T.I. parade dated 23.11.2010. His police statement was recorded on 17.11.2010. His cross examination shows that in one breath he admitted that the weekly Bazar of Shirur closes at 4.30 p.m. and on the next breath he tried to say that weekly Bazar closes at 6.00 p.m. The probability that weekly Bazar closed at 4.00 to 4.30 p.m. cannot be ruled out as many persons were returning and had returned from weekly Bazar prior to that time. In any case, the version of this witness does not look probable that only due to the speed of the motorcycle of accused Nos. 5 and 6 he paid attention to

them. Even if the evidence of this witness is discarded, that cannot make any difference to the case of prosecution.

58) Prosecution has given some direct evidence on recovery and some record like C.D.R. in respect of mobile hand sets of the accused persons to prove that accused Nos. 1, 5, 6 and 8 were in touch with each other and particularly from 12th of that month. This Court has already discussed the evidence of witnesses from village Narayangavhan which is to the effect that they had seen accused No. 1 in company of accused No. 8 and also accused Nos. 5 and 6 at places like Narayangavhan and Shirur. It is already mentioned that the name of accused No. 1 was known as suspect immediately after the incident. Accused No. 1 came to be arrested on 14.11.2010 and then evidence on conspiracy was collected.

59) The evidence of Ali Khan (PW 32), the P.S.I. who was working in L.C.B. shows that on 20.11.2010 his superior officer Rajput, P.I. directed him to take accused No. 5 and 6 in custody by informing that they were held by Goa police. The evidence shows that after the arrest of accused No. 1 police got the clue in respect of accused Nos. 5 and 6 and then steps were taken to trace them and take them in custody. The evidence of Ali Khan and Exh. 446 shows that accused Nos. 5 and 6 were taken in custody by police on 20.11.2010 in Goa. The evidence of Rajput (PW 14) shows that

investigation was handed over to L.C.B. on 14.11.2010 itself at 19.00 hours by District Superintendent of Police, Ahmednagar. Till that time, accused Nos. 1 and 2 were arrested by Supa Police and their mobile hand sets were taken over. Rajput took steps for collecting C.D.R. in respect of the mobile numbers of accused Nos. 1 and 2. The evidence of Rajput (PW 41) shows that after arrest of accused Nos. 1 and 2 information was received that accused Nos. 5 and 6 were residents of Pune. The evidence of Rajput shows that Exh. 325 dated 19.11.2010 was sent to Goa by him to request the Goa police to search accused Nos. 5 and 6. The description of these two accused was already available and further, the mobile hand sets of accused Nos. 1 and 2 were taken over and so, more information about the contact numbers was also available.

60) The document at Exh. 726 shows that on 20.11.2010 accused Nos. 5 and 6 were produced before Rajput (PW 41) by Ali Khan (PW 32). The arrest panchanamas of these two accused were prepared on the same day and they are at Exhs. 727 and 728. The record like obtaining police custody remand is at Exh. 732.

61) Accused No. 8 came to be arrested on 21.11.2010 as per the evidence of Rajput. Thus, even before the arrest of accused No. 8, there was clue against accused Nos. 5 and 6 and clue became available after arrest of accused Nos. 1 and 2. The evidence on

record shows that accused Nos. 5, 6 and 7 were picked up from Goa and arrest panchanamas in respect of these three accused are at Exhs. 738 to 740.

62) The evidence of Rajput (PW 41) shows that T.I. parades in respect of accused No. 5 and 6 were held on 6.12.2010 and 20.12.2010, after about 16 days and about one month of the incident, respectively. Prior to that identification, the statements under section 27 of these accused were recorded by Rajput and on that basis, some incriminating articles like fire arms, empty cartridges, motorcycle and huge cash amount were recovered. The defence has taken objection to the identification of accused Nos. 5 and 6 which was made in the Court by the aforesaid prosecution witnesses on the ground that the record of T.I. parade was not duly proved. The aforesaid circumstances like recovery of articles under section 27 of the Evidence Act and further, the delay caused in holding T.I. parade are also there. Though the witnesses like PW 13, PW 14, PW 15 and PW 20 have given evidence in the Court that they had identified accused Nos. 5 and 6 in T.I. parade, that record is not proved. The defence counsels have, however, cross examined these witnesses on the procedure which was followed for T.I. parades.

63) Even if there is circumstance that record of T.I. parade is not proved by the prosecution, the circumstance like absence of

proof of such documents is not sufficient to discard the evidence of aforesaid witnesses. It is already observed that eye witnesses had disclosed that two persons were involved in shooting the deceased by using fire arm and there is also circumstantial evidence against accused Nos. 5 and 6 to infer that they had connection with the shooting. Except PW 14, other witnesses correctly identified accused Nos. 5 and 6 in the Court. Their evidence was recorded in the months of October 2013, December 2013, and January 2014 and the Trial Court has believed them. There is no discrepancy in description of accused given by these witnesses and no material contradiction in that regard is proved. The learned APP placed reliance on the observations made by the Apex Court in the case of **Sheo Shankar Singh Vs. State of Jharkhand reported as AIR 2011 SC 1403** in support of the contentions that even if the record of T.I. parade is not there, the evidence of witnesses on identification given in the Court can be accepted and relied upon. In this case, the Apex Court has referred some portion of the case of **Malkhansingh and Ors. Vs. State of M.P. reported as reported as (2003) 5 SCC 746** and following observations are referred :-

"It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of

the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad v. Delhi Admn.* AIR 1958 SC 350, *Vaikuntam Chandrappa v. State of A.P.* AIR 1960 SC 1340, *Budhsen v. State of U.P.* (1970) 2

SCC 128 and Rameshwar Singh v. State of J&K. (1971)
2 SCC 715)."

There cannot be dispute over the proposition made by the Apex Court in the case of **Malkhansingh** cited supra. In the present matter, there is not only the evidence of eye witnesses against accused Nos. 5, 6, but there is more than sufficient circumstantial evidence to lead to inference that they were involved in the murder of Prakash. So, this Court holds that due to absence of record of identification, the evidence of eye witnesses cannot be discarded in the present matter. The Trial Court has placed reliance on the cases reported as **Ranjeet Kumar Ram @ Ranjeet Kumar Das Vs. State of Bihar reported as 2015 ALL MR (Cri) 2455 (SC)** and **Sheo Shankar Singh Vs. Jharkhand and Anr. Reported as (2011) 3 SCC 654** and in these cases also the Apex Court has laid down that identification made in the Court by the witnesses can be relied upon.

64) Rajput (PW 41) and Manoj (PW 7) panch witness have given evidence on seizure of two mobile hand sets on 20.10.2010 from Accused No. 5 Ajit Nayar and they are marked as Articles 12 and 13. He has given evidence that two mobile hand sets which are Articles 14 and 15 were recovered and seized from accused No. 6 Richard. Seizure panchanama of these mobile hand sets is proved as

Exh. 231. The SIM card No. 9890007121 was found in mobile hand set of accused No. 5 Ajit Nayar and it was found that it was operational. No SIM card was found in the mobile of accused No. 6 Richard. Rajput (PW 41) and Sarjerao (PW 9) panch witness have given evidence on recovery of one SIM card with memory card from accused No. 8 Rajendra Bhor. The memorandum of statement of Rajendra is proved as Exh. 255/1 and panchanama of seizure is proved as Exh. 255/2. The seizure was made on 21.11.2010 and these two articles are given Article Nos. 29 and 30. Evidence is also given that accused No. 8 Rajendra was on leave from 9.11.2010 to 13.11.2010 and this is again one incriminating circumstance against accused No. 8 Rajendra. He was traced in Pune on 21.11.2010. In his mobile, SIM card bearing No. 9369511747 was found. This SIM card was in the name of other person and on that point also, prosecution has given evidence. It is the case of prosecution that by using this SIM card accused No. 8 was in contact with accused No. 5 Ajit, but that contact number of Ajit is given as 9762028931. The record in respect of that SIM card is produced and it is the case of prosecution that this SIM card of Ajit was destroyed by him prior to his arrest.

65) Rajput (PW 41) has given evidence against accused No. 1 that on 23.11.2010 accused No. 1 gave statement in the presence of panch witnesses like Subhash (PW 23) that he was ready to produce empty cartridge of bullet. Memorandum of this statement was

prepared and it is proved as Exh. 361/1. There is evidence of PW 41 and panch witness Subhash (PW 23) on the recovery and seizure of empty cartridge. It was recovered and seized from the premises of accused No. 1 under panchanama at Exh. 361/2 and empty cartridge is marked as Article 28.

66) Rajput (PW 41) has deposed that on 24.11.2010 accused No. 8 Rajendra Bhor gave statement in the presence of panch witness Sarjerao (PW 9) that he had concealed mobile hand set of Reliance Company which was with SIM card in one house. Memorandum of this statement was prepared and it is at Exh. 255/1. The evidence of PW 41 and PW 9 show that accused No. 8 then took the police and panchas to house and from there he produced mobile hand set which was having SIM card No. 9369511747. The seizure panchanama is proved as Exh. 255/2. Thus, the recovery of this SIM card was made under section 27 of the Evidence Act. This circumstance also can be considered for proving of conspiracy as by using this number accused No. 8 was in touch with accused No. 1 and with hired killers.

67) Rajput (PW 41) and panch witness Pratap (PW 16) have given evidence that on 25.11.2010 accused No. 5 Ajit gave statement that he had kept the country made revolver, the weapon, empty bullet, cash amount and blue T-shirt in concealed condition at

a place. Evidence is given by this witness that memorandum of this statement was prepared which is at Exh. 317. Evidence is given by these two witnesses that accused No. 5 then took police and panch witnesses to village Wadgaon-Shinde situated at the distance of 2 k.m. from Lohgaon and from the vicinity of a farm house, after removing grass and earth portion, accused took out a plastic bag from ditch. They have deposed that accused No. 5 then produced articles like revolver, one empty cartridge, cash amount consisting of 227 currency notes of Rs.500/- denomination each. All these articles were seized under panchanama at Exh.317/A. The revolver is given Article 31, empty cartridge is given Article 21, T-shirt is given Article 34 and the bag in which all these articles were found is given Article 35.

68) Rajput (PW 41) has given evidence that he had collected results of election held for village Narayangavhan by making correspondence with Tahsildar and he collected the record of election to Vivid Karyakari Society Narayangavhan also by making correspondence with it's authority. The correspondence is produced at Exhs. 755 and 766. The results of Village Panchayat were supplied and they are at Exhs. 818 and 819. The result of election to Cooperative Society was also collected and it is produced on record. This record shows that the deceased was contesting these elections and his group had come in power both in Village Panchayat and

Cooperative Society. The evidence also shows that the group of accused No. 1 was defeated.

69) Rajput (PW 41) has deposed that on 1.12.2010 accused No. 6 Richard gave statement to him in the presence of witness Shamrao (PW 24) that he had kept his clothes which were on his person on that day at a place and he had also kept his motorcycle which was used by him at that place. The memorandum of this statement is proved as Exh. 363/1. Evidence is given by these two witnesses that accused No. 6 took police and panchas to Lohgaon and then to Kopralli lane and there, he showed the motorcycle bearing No. MH-12/EX-3534 which was parked in front of house and he handed over the key of the motorcycle to police. It was Bajaj Pulsar motorcycle black in colour. He also produced Mehendi green colour T-shirt and pant. These articles were seized under panchanama Exh. 363/2 and this record is proved in the evidence of these two witnesses. The clothes of these two accused were described by the eye witnesses.

70) Rajput (PW 41) has given evidence that accused No. 12 Atish gave statement to him in the presence of panch witness Digambar (PW 22) that one bullet was concealed by him near the house of accused No. 1. Memorandum of this statement is proved as Exh. 357/A. They have deposed that accused Atish then took them

towards the property of accused No. 1 and after making some digging, took out a plastic pouch containing the bullet. They have deposed that there were red stains on bullet and these articles were seized under panchanama, Exh. 357/2. The bullet is given number as Article 47 and the pouch is given number as Article 48. The evidence of Rajput (PW 41) shows that all the aforesaid panch witnesses were collected by him either from the office of Government Department or Local Body and they are independent witnesses. The Trial Court has believed these witnesses. This Court sees no reason to disbelieve these witnesses. Evidence is given by Rajput (PW 41) that the fire arm, empty cartridge recovered from accused Nos.5 and 1 and the bullet produced by accused No. 12 were sent by him to ballistic expert. The said correspondence is produced on the record.

71) Rajput (PW 41) has given evidence that he made correspondence with Manager of the Bank of Maharashtra Branch Narayangavhan, Bank of Maharashtra Branch Nigdi, State Bank of India Branch Shirur, I.D.B.I. Bank Branch Chinchwad for collecting details of bank accounts of accused Nos. 1 and 2. These letters are proved as Exhs. 786 to 793. He has given evidence that he received details of bank account from Bank of Maharashtra, Narayangavhan Branch in respect of accused Nos. 1 and 2. He has deposed that the correspondence showed that accused No. 2 Rahul had withdrawn the amount of Rs.3 lakh from his account on 12.11.2010 and accused

No. 1 had withdrawn amount of Rs.3 lakh from his account on 13.11.2010. This record is at Exhs. 795 and 796, respectively.

72) Rajput (PW 41) has deposed that he collected record in respect of two mobile numbers like 9762028931 and 9595129499 as there was information that they were used by accused Nos. 5 and 6, respectively. He has deposed that these two SIM cards were destroyed by these two accused and so, he collected C.D.R. record and the record in respect of identity proof given for getting the SIM card from respective company. He has given evidence that it revealed that the aforesaid SIM card of Richard was used in mobile hand set bearing IMEI No. 3550360011922165.

73) Devashri (PW 40) has given evidence that SIM card No. 9369511747 was given to her by her friend Divyam Goyal. She has given evidence that when she was at Pune and she was shifting her articles from one premises to other, in October 2009 she lost the SIM card. She has given evidence that she wanted to contact the mobile company to see that the connection is disconnected, but the Pune office informed that as the SIM card was issued from Lakhnow she needs to go to Lakhnow for taking such steps. She has deposed that she was busy in other work and she could not go to Lakhnow and that work remained to be done. This evidence is given by Devashri (PW 40) in respect of the SIM card which was found with accused No.

8 that it was of in her use in the past. The tenor of the cross examination of this witness shows that it is not the case of defence that this SIM card was in the use of Devashir. This lady has no reason to give false evidence against accused in this matter and she hails from other State.

74) To prove that accused Nos. 5 and 6 were in touch with accused No. 8 and accused No. 1 was in touch with accused No. 8, the C.D.R. of the SIM cards recovered from them are produced and to prove that record nodal officer of Mobile companies are examined. The nodal officers have given evidence that they were in control of the systems and the print outs taken from the system are correct. The certificates issued under section 65-B of the Evidence Act are produced and proved by each nodal officer. The nodal officer like Chandrakant (PW 33) of Reliance Communication Limited Pune is examined. He has given evidence that in respect of the aforesaid SIM card on which Devashir (PW 40) has given evidence and his evidence shows that SIM card was issued to Divyam Goyal and not to accused No. 8. He has given evidence on specific instances in respect of this mobile number on the basis of record and C.D.R. record and oral evidence shows that by using this SIM card, the person had contacted the mobile number 9175577431 and the contacts were specifically on 11.11.2010, two days prior to the date of incident. The C.D.R. record is proved as Exhs. 505 and 506 and the record of

identification in respect of Divyam Goyal is produced at Exhs. 503 and 504.

75) Prosecution has examined Lookas Magar (PW 34) nodal officer of Aircel Celluer Company, Sachin (PW 15) nodal officer of Idea Celluer Company, Ravi (PW 36) nodal officer of Vodaphone Celluer Company and Milind (PW 39) nodal officer of Airtel company. They have given evidence on different mobile numbers which were having connections of their company. They include the phone numbers of deceased also. To avoid the confusion, this Court is not mentioning the entire evidence of these witnesses. There is material to show that accused No. 8 was in touch with the hired killers and also accused No. 1. No explanation is given by accused No. 8 about the recovery of SIM card number 9369511747 from him and the aforesaid record. The record has specifically established his contact with accused No. 1 from mobile No. 9822076043 which is recovered from him.

76) Accused No. 8 ought to have given explanation about the evidence which is given to establish that he was in touch with two unknown persons like accused Nos. 5 and 6. Further, there is the evidence of witnesses who had seen accused No. 8 in the company of accused Nos. 5 and 6. These circumstances helped the prosecution to prove that accused Nos. 1 and 8 were together and

they were in touch with accused Nos. 5 and 6, who murdered Prakash.

77) There is circumstantial evidence in the form of recovery of weapon used for murder from one of the two accused who were hired for finishing Prakash and also the evidence of recovery of empty cartridges from accused No. 1 and accused No. 5 showing that these cartridges were of the bullets which were fired from the weapon recovered from accused No. 5. There is also the evidence on the recovery of bullet which was fired at the deceased and which is recovered from the premises of accused No. 1, though it is recovered at the instance of other accused Atish who is acquitted.

78) The evidence of recovery of the fire arm is in the form of statement given under section 27 of the Evidence Act by accused No. 5 to police officer in the presence of panch witnesses. Pratap (PW 16) a panch witness and Rajput (PW 41) have given evidence on the memorandum of the statement and it shows that statement was given by accused No. 5 that he was ready to produce weapon, empty cartridge, cash and T-shirt. The weapon is marked as Article 31 and empty cartridge is marked as Article 32. The labels which were present on these articles bear the signatures of panch witnesses. There is evidence of Digamber (PW 22) and Rajput (PW 41) on the recovery of used bullet on the basis of statement given by accused

No. 12 Atish. Memorandum of the statement of this accused is proved as Exh. 357(1) and the seizure panchanama is proved as Exh. 357(2). The evidence shows that from the side of shed of accused No. 1 this bullet was recovered and it was kept in concealed condition. This bullet is marked as Article 47 and the seizure panchanama shows that on this bullet there were red stains like blood. Atish is nephew of accused No. 1. Though Atish is acquitted of all the offences, in the case involving conspiracy, the circumstance of recovery of such bullet can be considered for proof of conspiracy. The circumstance is to the effect that it was recovered from the premises of accused No. 1 and so, it is definitely incriminating circumstance.

79) Panch witness Subhash (PW 23) and Rajput (PW 41) have given evidence on the statement given by accused No. 1 on 23.11.2010 which lead to recovery of one empty cartridge from his premises. The cartridge was found to be concealed by burring it. The memorandum of statement given under section 27 of the Evidence Act is proved as Exh. 361/1 and seizure panchanama is proved as Exh. 361/2. The empty cartridge is marked as Article 28. It can be said that only after arrest of accused Nos. 5 and 6 police must have got other clue regarding the preparation and then more interrogation must have been made which lead to the discovery of this cartridge. When it is the case of conspiracy, circumstances like the present one

which came to the knowledge of investigating agency after another accused is arrested give explanation about delay caused in recovery of such incriminating article. Due to these circumstances, the delay of 9 to 10 days caused in recovery of the empty cartridge, Article 28, cannot make much difference and that evidence also needs to be believed.

80) Rajput (PW 41) has given evidence that after seizure of all the incriminating articles, the articles were produced in Narayangavhan Police Station immediately after the seizure and then all of them were sent to first either C.A. Office or to the office of ballistic expert. Rajendra (PW 29) was working as Police Head Constable in L.C.B. and he has given evidence that he produced 10 sealed packets on 7.12.2010 with covering letter given by Rajput (PW 41) in Forensic Lab, Nashik and this property was from C.R. No. 182/2010, present matter. He has deposed that 10 more bags were handed over to him by Civil Hospital, Ahmednagar and they were also produced by him in Lab on 7.12.2010. He has given evidence on the acknowledgment given by the said office on the office copy of covering letter in token of receiving the property and such endorsements are there. The covering letter at Exh. 398 contains three letters. Though one letter bearing outward No. 671/1 out of these three letters is dated 5.1.2011 this circumstance does not make any difference in view of the C.A. report and the report of

ballistic expert. With the letter dated 5.1.2011 the bullet used for murder was sent first to C.A. Office to ascertain as to whether the blood was there and after receipt of this bullet from C.A. Office, the bullet was sent to ballistic expert. Prosecution witness Sherkar (PW 31) has given evidence that he produced articles like fire arm, one empty cartridge recovered from accused No. 5 and one empty cartridge recovered from accused No. 1 in the office of ballistic expert and office copy of the letter with which the property was produced is at Exh. 375. The record shows that the ballistic expert received this record on 7.12.2010. Exh. 376 dated 10.1.2011 shows that the ballistic expert received the bullet from police on that day and this was the bullet which was recovered from Atish and which was sent to C.A. Office in the past. The requisition letter given by police shows that police had requested to ballistic expert to compare the fire arm with aforesaid two empty cartridges and one bullet which was used.

81) The ballistic expert Shri. Munj (PW 25) is examined by prosecution to give evidence on the aforesaid comparison which was requested by police. The queries were made in Exhs. 375 and 376. The evidence of Munj shows that two empty cartridges were 8 m.m. Rifle empties, they were having indentation on the cap and they were having head stamp marking as KF-8 MM00. These two empty cartridges which were recovered from accused Nos. 1 and 5 were

similar. Munj (PW 25) has described the fire arm as country made hand gun. He has deposed that after chemical test and barrel washing of this fire arm, it became clear that the hand gun was used for firing before sending it to the lab.

82) Munj (PW 25) has given evidence that he carried out test by firing 8 m.m. riffle cartridge available with the lab by using aforesaid hand gun. He has deposed that after the test, it became clear that hand gun was perfectly in working condition.

83) Munj (PW 25) has given evidence that he then compared aforesaid two empty cartridges sent to him by police for opinion with empty cartridge of the bullet used by him for test firing. He has deposed that he then compared the test fired bullet with the used bullet sent by police for opinion. He has deposed that after microscopic examination, he formed opinion that the two empty cartridges sent by police for opinion were used in aforesaid hand gun. He has deposed that the photographs of the two empty cartridges sent by police were taken and he had taken opinion of his superior officer also for confirmation of his opinion. He has deposed that his superior officer also agreed with his opinion.

84) Munj (PW 25) has deposed that when he compared the used bullet sent by police with the bullet used by him for test firing,

he found that the bullet sent by police was of soft nose cuprojacketed bullet and it was having brushing mark. He has deposed that after chemical and physical examination of this bullet sent by police and on the examination of aforesaid fire arm gun, he formed opinion that the bullet sent by police was fired from this gun. He has deposed that the gun was also having brushing mark and that mark matched with brushing mark appearing on the bullet. The bullet tested by him was also having similar mark. He has deposed that accordingly, he gave reports about his opinion and they are at Exhs. 377 and 378. The photographs of the aforesaid three empty cartridges are proved as Exhs. 379 to 381. He has specifically stated in evidence that no two fire arms can produce exactly the same marks. He has described the marks appearing in the photographs also by pointing out the pin impression and breech face marks appearing on two empty cartridges sent by police. He had shown to the Court as to how these marks appearing on the empty cartridges sent by police tally with each other and with the mark appearing on the case of the test fired bullet.

85) In the cross examination of Munj (PW 25), it is brought on the record that the two empty cartridges sent by police for opinion and one empty cartridge of test fired bullet were manufactured in the same factory viz. Khadki Pune. This circumstance again shows as to how accused No. 8 who was working in military must have helped

accused Nos. 1 and 2 in the conspiracy of murder of Prakash.

86) In the cross examination of Munj (PW 25), he was tested in respect of his experience and the knowledge. In the first para in the examination in chief itself he has deposed about the past experience which he was having at the time of giving of the opinion. His evidence remained unshattered during extensive cross examination. The aforesaid circumstances are sufficient to believe this witness. The Trial Court has believed this witness and this Court also holds that this witness needs to be believed in view of the nature of aforesaid evidence.

87) The aforesaid circumstances show that the investigating agency could recover the bullet which was fired for the murder and it was recovered from the premises of accused No. 1. Two empty cartridges were also there in respect of the bullet which was fired for murder and one bullet which must have been fired for testing the fire arm before the day of the incident. This evidence connects accused No. 1 to accused Nos. 5 and 6. Further, there is the evidence of eye witnesses. This is again a clinching circumstance for proof of conspiracy.

88) The other circumstance which is proved by prosecution is collection of money by accused Nos. 1 and 2 on the day of incident

and one day before the day of incident for giving money to hired killers. The circumstance of recovery of huge money from young boy of the age of 19 years, accused No. 6 who had no other occupation is relevant and incriminating.

89) Rasika Kharat (PW 2), Branch Manager of Bank of Maharashtra, Narayangavhan branch has given evidence that accused No. 1 had withdrawn amount of Rs.3 lakh from the account on 13.11.2010 which he was operating. Evidence is given that on 13.11.2010 accused No. 2 withdrew the amount of Rs.3 lakh from this branch from the account of accused N. 2 to which only he was operating. Accused No. 1 withdrew the amount by using a cheque and accused No. 2 withdrew the amount by using withdrawal slip and that record is duly proved in the evidence of PW 2.

90) Rasika (PW 2) has deposed that Rajaram/accused No. 1 was having current account, though it was in the name of his milk business Hirkani Milk and Food Products. She has given evidence that it is a cash credit account of accused No. 1. The cheque at Exh. 205 bearing signature of accused No. 1 is there and it is not disputed by defence that the amount was withdrawn on that day. The defence witness examined by accused does not show that the other witness who had also signed on the cheque had gone to the Bank for withdrawal. Rasika (PW 2) has produced the account extract at Exh.

205 in respect of the account of accused No. 1.

91) During cross examination of Rasika (PW 2), it is suggested to her that accused No. 2 was having stone crushing business and he had taken loan for that business. She has shown ignorance about it. The account was saving account of accused No. 2 and the name of his business or the concern was not mentioned on this account. No evidence is given to show that any other person had withdrawn the aforesaid amounts from the two accounts.

92) Accused Nos. 1 and 2 have examined as many as seven witnesses in the defence. Sheshrao (DW 1) is examined to show that there was no dispute between the deceased and accused No. 1 in respect of milk business. In the evidence, in the cross examination of this witness, it is brought on the record by the prosecution witness that the deceased used to complain against aforesaid Hirkani Milk and Food Products of accused No. 1 and only to rebut that allegation the witness is examined.

93) Vrishali (DW 2) is examined to prove that the aforesaid milk business was done by accused No. 1 in partnership with persons like Dinesh Auti, Ashok Shelke and Prakash Wable. The record is produced to show that partnership document was sent to the office of Assistant Registrar of firms, Pune for registration. Copy of

certificate is produced at Exh. 1083 showing that the partnership was registered in the year 2006. There is mention that two partners were operating the account.

94) Subhash Mahanto (DW 4), Deputy Manager of Bank of Maharashtra, Branch Koregaon Bhima, Tahsil Shirur is examined by defence. He has given evidence that aforesaid Hirkani Milk diary has account in his bank, but subsequently in January the account was closed. He has deposed that the said firm had applied for cash credit loan of Rs.17.5 lakh and term loan of Rs.40 lakh. He has deposed that term loan was sanctioned and disbursed. He has deposed that there were four persons as partners in this business and they had applied for term loan and cash credit loan. He has deposed that account was to be operated by all the four partners. Some documents like Exhs. 1104, 1105, 1108 and 1109 are produced in support of this oral evidence. Though this evidence shows that these four persons were partners in milk business, atleast in the year 2006 and when they had applied for loan, this evidence does not give reply to the evidence of Rasika (PW 2) which is to the effect that in Narayangavhan branch there was separate account and from that account accused No. 1 had withdrawn the amount of Rs.3 lakh on the day of incident.

95) The defence has examined Anna (DW 8) to prove that the

amount of Rs.3 lakh was disbursed by manager amongst milk suppliers. Evidence is given that the manager had made entry in the register, but the manager is not examined. Cross examination of this witness shows that he does not know anything about the dairy business. Considering the extent of milk collected by this dairy at the relevant time, the explanation given by accused No. 1 of the amount collected from bank for disbursement amongst milk suppliers is not plausible. Huge quantity of milk was collected every day and evidence is given that the amount was disbursed once in a fortnight.

96) Gore (DW 5), Police Officer of Supa Police Station is examined by the defence to show that in the past son of accused No. 1 by name Atul had given report against the persons of group of deceased. This witness has admitted in cross examination that deceased had also given report against accused No. 1 and others and in the past C.R. No. 185/2006 for offence punishable under section 324 etc. of I.P.C. was registered against the persons of group of accused No. 1 on the basis of report given by deceased. This kind of evidence cannot help the accused as this evidence only strengthens the case of prosecution that there was motive for accused Nos. 1 and 2 to finish the deceased and the relations between two sides were strained.

97) Rajendra (PW 6) is employee of Pollution Control Board.

He has given evidence that accused No. 2 Rahul had applied for consent of his department for starting project of stone crusher. The application was made on 12.7.2010. He has deposed that the consent was given on 1.9.2010. These documents are at Exhs. 1141 and 1142. This evidence which is independent cannot be disputed. This evidence only shows that consent was given by the Pollution Control Department for starting that business.

98) Accused No. 2 has examined Nitin (DW 7). He has deposed that in Disha Stone Crusher, he, Atul and Rahul (two sons of accused No. 1) are partners. Nitin has deposed that they had given work of erection of crushing plant to Crusteck Marine Engineering Works Limited. He has produced so called order given to the said company as Exh. 1148. He has deposed that the payment was to be made in different stages. No record of such stages of making such payment is produced. He has deposed that on 12.10.2010 Sanjay Jadhav, owner of aforesaid Crustech company had come to the site as he wanted some money as per the stages of work and as he wanted to make payment of labour. He has deposed that accused No. 2 withdrew the amount of Rs. 3 lakh on that day and he gave the said amount to Sanjay Jadhav. He has deposed that Exh. 1149 is the receipt which is issued by Jadhav. It is already observed that the amount was withdrawn from own saving account by accused No. 2 and it was not the account of partners. The evidence of this

witnesses shows that he does not know as to whether said Sanjay Jadhav is alive or dead. In ordinary course, the defence ought to have examine said Sanjay Jadhav to prove that receipt, but such an attempt was not made by accused No. 2. Nitin (DW 7) has given evidence that subsequently he repaid the entire term loan of Rs.30 to 40 lakh taken from the bank and he has given evidence that he had 50% share, but according to him, he made the things clear by making the payment of entire loan amount. It is already mentioned that evidence of Rasika (PW 2) shows that from separate saving account of accused No. 2 amount was withdrawn and so, the defence evidence is not sufficient to create a probability that the amount was withdrawn for making payment of labour or contractor.

99) The aforesaid evidence has proved the circumstances that at the relevant time, accused Nos. 1 and 2 had withdrawn the amount of Rs.3 lakh each from their bank accounts. This circumstance needs to be considered along with other circumstance like amount of more than Rs. 1 lakh was recovered from accused No. 6 after his arrest. Accused Nos. 5 and 6 had gone to Goa for enjoying life. Thus, these circumstances are relevant and they can be used for proof of conspiracy. They are pieces of circumstances which can be used to complete the chain of circumstances which can lead to inference that there was such conspiracy.

100) Accused No. 8 has examined Sunita (DW 1 for accused No.1] in his defence. She has deposed that she is gramsevak of Village Panchayat Bhorwadi and in that village, accused No. 8 has no house property. This evidence is given by accused No. 8 to rebut the evidence of recovery of mobile hand set which was having the SIM card belonging to aforesaid Divyam Goyal. The evidence shows that only accused No. 8 had knowledge about the presence of that mobile there and SIM card which was used for contacting accused No. 1 and other accused. No probability is created that aforesaid Goyal had any reason to contact either accused No. 1 or other accused. Thus, the evidence of Sunita to the effect that no house property is standing in the name of accused No. 8 in the village Bhorwadi from where these articles were recovered is of no use to defend the matter.

101) Accused No. 8 has examined Sham Ghuge (DW 2 for accused No. 8) to prove that he had given complaint to superior officer of police in respect of his arrest which was shown to be made on 21.11.2010. This witness has given evidence that accused No. 8 made complaint, though subsequently, on 20.11.2010 that when he was on duty in Engineer group of his office from Pune, he was called outside of the campus by informing that his relative had come there. He has deposed that allegations were made by accused No. 8 that by giving such false information, he was called out and then he was taken in custody by police. An attempt was made to show that no

permission of his superior officer was obtained for his arrest when he was on duty in military on that day. This contention of accused No. 8 cannot be considered atleast at the time of deciding of the criminal case. If he has such grievance, he can have different recourse for redressal of that grievance. The evidence of Sham Ghuge, police officer who made enquiry shows that he did not find any substance in the allegations made by accused No. 8.

102) Prosecution has given evidence on motive. Some evidence is given by accused on motive. This Court has discussed evidence of PW 14, 15, 17 and 20. Some record like the result of election to Village Panchayat and result of election to Vivid Karyakari Society is also produced by the prosecution. That record and oral evidence is sufficient to prove that there was motive for crime for accused Nos. 1 and 2. The aforesaid circumstances show that accused No. 2 was active and he was with his father. Atul, other son of accused No. 1 is not involved in the present matter and that circumstance shows that there is no exaggeration of things and only on the basis of material available, accused No. 2 is made accused in the present matter. There is specific evidence against them that they were present in village Shirur together on the day of incident and only after the incident, they returned towards the village. These circumstances show that there is ring of truth in the case of prosecution and it shows that case is made out as against accused

Nos. 1 and 2. This evidence, motive was sufficient for taking the decision to eliminate the political rival. It can be said that there was no other alternative before accused Nos. 1 and 2 than to take such decision as they had lost power in aforesaid both the institutions.

103) The direct evidence and circumstantial evidence discussed above shows that many circumstances which can make out the case of conspiracy are convincingly established by prosecution and they are as under :-

(i) Accused Nos. 1 and 2 had joined hands with accused No. 8 and they had first hatched the conspiracy to finish deceased Prakash. Prakash was to be finished as he was the political rival of accused Nos. 1 and 2.

(ii) Accused No. 8 was working in military and as he was working in Pune, he was able to find hired killers and he was also able to collect arms and ammunition for murder. He acted as middle man for hiring hired killers and for collecting fire arm and bullets. He remained in touch with accused Nos. 1, 5 and 6.

(iii) Accused Nos. 5 and 6 agreed to finish the deceased for money. They were not known either to deceased or to villagers of deceased and they did the act only for money.

(iv) Accused Nos 5 and 6 had visited village Narayangavhan prior to 13.11.2010 to assess the situation

and to test fire the fire arm. They had visited the village for making preparation.

(v) Accused Nos. 1 and 2 gave money to accused Nos. 5 and 6 and part of this money was found with accused No. 5.

(vi) As per the conspiracy they fixed the date and time of commission of offence and the job was executed on the road by using peculiar *modus operandi*.

(vii) On the day of incident, accused Nos. 1, 2, 5 and 6 had gathered at Shirur to make sure that the deceased had come to Shirur as per his routine on the market day.

(viii) Accused No. 6 used the motorcycle which was available with him and as per the plan, he opened talk with deceased who was riding the scooter and due to which the speed of the scooter and motorcycle was slowed down and then accused No. 5 fired the bullet at the head of the deceased and did the job.

(ix) Prakash died due to bullet injury. This bullet came to be recovered during investigation and an attempt was made prior to that to destroy the evidence by committing theft of bullet from the dead body.

(x) The bullet of 8 m.m. was used in the fire arm and such bullet can be used in this fire arm empty cartridge of such bullet is recovered on the basis of statement given by accused No. 5.

(xi) The empty cartridges recovered from accused Nos. 1 and 5 were fired from the fire arm recovered from accused No. 5 and similarly the bullet recovered from one of the accused from the premises of accused No. 1 was fired from the fire arm recovered on the basis of statement of accused No. 5.

(xii) The motorcycle which was seen by the eye witnesses and which was used by accused Nos. 5 and 6 for doing the aforesaid job was recovered from accused No. 6.

(xiii) Accused Nos. 1 and 2 tried to give false explanation in respect of withdrawal of amount of Rs. 3 lakh by each of them from 12th and 13th from the account over which they had the control.

104) The aforesaid circumstances are more than sufficient to prove that accused Nos. 1, 2, 5, 6 and 8 had hatched the conspiracy of murder of deceased prior to 13th and as per the conspiracy the murder was committed by accused Nos. 5 and 6 for consideration of money.

105) Accused No. 11 is also convicted in the present matter though under Arms Act. He hails from Uttar Pradesh and there is allegation against him that he had sold the fire arm to accused No. 8. The evidence on the record shows that accused No. 8 made

disclosure to police that he had purchased the fire arm, from accused No. 11 and then he took the police to residential place of this accused. It can be said that this is the circumstance on the basis of which prosecution can only prove that accused No. 11 was known to accused No. 8. On the contrary, there is evidence that the two bullets were manufactured in Khadki factory from Pune. It can be said that past history of object (weapon) was given by accused No. 8. The weapon and bullets were already recovered and they were recovered from other accused. In view of wording of section 27 of the Evidence Act, this Court holds that the so called statement given by the accused No. 8 is not related to the discovery of fire arm or the two bullets and so, it is not admissible under section 27 of the Evidence Act. Thus, there is virtually no evidence against accused No. 11 for conviction given under the Arms Act and he needs to be acquitted and to that extent interference is required in the decision of the Trial Court.

106) For proving the criminal conspiracy as defined in section 120-A of I.P.C., prosecution is required to prove 'agreement' for the purpose mentioned in section 120-A of I.P.C. Since the conspiracy is hatched up in utmost secrecy, it is very difficult to prove conspiracy by direct evidence. Due to this difficulty, provision is made in section 10 of the Evidence Act which enables the Court to infer conspiracy on the basis of circumstances mentioned in section 10 of the

Evidence Act. Section 10 of the Evidence Act runs as under :-

“10. Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such person in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

107) The Hon'ble Apex Court has laid down in the case of **Mohamad Usman Mohammad Hussain Maniyar & Ors. Vs. The State of Maharashtra reported as 1981 Cri.L.J. 588 (SC)** that very often conspiracy needs to be inferred from the acts, statements and conduct of the parties to the conspiracy. The activities of conspirators start prior to the commission of the offence for which the conspiracy has hatched and the activity may continue even after giving the effect to the unlawful object of conspiracy. Even after accomplishing the object, the conspirators may take steps like steps to conceal or destroy the evidence of offence. When there is such evidence available, that evidence also can be considered as the conduct of conspirators and as the act is done in connection with the object of the conspiracy, such conduct also becomes relevant. From that conduct also, inference of existence of conspiracy becomes

possible.

108) The learned counsel representing for accused No. 1 placed reliance on the observations made by the Apex Court and Bombay High Court in some reported cases and they are as under :-

(i) In the case of **Param Hans Yadav and Sadanand Tripathi Vs. State of Bihar and Ors. reported as AIR 1987 SC 955**, while discussing the requirements for proof of offence punishable under section 120-B of I.P.C., the Apex Court has laid down that if the prosecution fails to prove by circumstantial evidence the complicity of accused in conspiracy to kill, conviction cannot be given under that section. In that case also hired killers were engaged and Apex Court held on facts that the link was not established and in such cases, the circumstances should be established to complete the chain for inferring conspiracy. There cannot be dispute over this proposition and the relevant circumstances of the present matter are discussed accordingly.

(ii) In the case of **Hanumant Govind Nargundkar and Anr. Vs. State of M.P. reported as 1953 CRI.L.J. 129**, the Apex Court has held that while appreciating the circumstantial evidence it needs to be ascertained by the

Court (1) whether the circumstances are fully established, (2) all facts established need to be consistent only with hypothesis of killing, (3) the circumstances should be conclusive in nature and it should exclude every other hypothesis than the hypothesis which is to be proved and (4) the chain of circumstances should be so complete that it does not leave reasonable ground for conclusion consistent with innocence of the accused. The facts and circumstances of each and every case are always different. In one case 3-4 circumstances may be sufficient for proof of conspiracy and in other case, Court may ask for establishing more circumstances in view of the nature of evidence available.

(iii) In the case of **Dudh Nath Pandey Vs. State of U.P. reported as AIR 1981 SC 911**, the Apex Court has laid down that the defence witnesses are entitled to equal treatment with those of prosecution. There is no dispute over this proposition and accordingly the defence evidence is discussed by this Court.

(iv) In the case of **Jaffer Husain Dastagir Vs. The State of Maharashtra reported as AIR 1970 SC 1934**, it is laid down that when police knew that the person is in possession of goods, the statement under section 27 of the

Evidence Act is not admissible. In that case, it was known to the police that diamonds were with particular person and one accused took police to that person and from that person diamonds were recovered. There cannot be dispute over this proposition and accordingly, this Court has considered the evidence of the present matter.

(v) The last case of **Saurabh alias Dabba Vilas Adlag Vs. State of Maharashtra reported as 2019 (3) ABR (CRI) 598** of Bombay High Court is on different point like effect of belated statement of witnesses. There was charge for offence punishable under section 302 r/w. 149 of I.P.C. This Court holds that the Courts are required to keep in mind that offences of conspiracy are of different nature and only when some clue is there, the witnesses start thinking and then they realise that one circumstance which was noticed by them in the past has connection with the crime. Such possibility always needs to be kept in mind by the Court in the case like present one. The present case involves the evidence of eye witnesses and circumstantial evidence of different nature and that is discussed by this Court. Atleast two witnesses were known to police immediately after the incident who had seen the actual murder and the evidence of these two witnesses (PW 14

and PW 15) needs to be believed for reasons already given.

109) The learned counsel for accused No. 2 placed reliance on the observations made by the Apex Court in following cases :-

(i) **Subhash alias Dhillu Vs. State of Haryana reported as (2015) 12 SCC 444** :- The facts of this case were totally different. The Apex Court has observed that existence of some agreement can be proved by establishing some circumstances like prior meeting when there was no reason for such meeting. In the present matter, there is evidence to show that there was meeting of accused Nos. 1 and 8 with hired killers just prior to the day of incident. Thus, this case is of no help to the defence.

(ii) **Vishal @ Shivaji Mahadeo Kamble Vs. State of Maharashtra and Anr. Reported as 2017 (3) Mh.L.J. (Cri.) 724** :- The attention of this Court was drawn to para Nos. 39 and 50. The facts of that case were different and they discuss the provision of section 114 of the Evidence Act and section 114 was used in different circumstances.

(iii) **State of Maharashtra Vs. Bhanudas Sommanna Sangolkar reported as 1997 CRI.L.J. 3205** :- The learned counsel drew the attention of this

Court to para No. 14 which is in respect of 'last seen'. It was held that the evidence was not sufficient for proof of offence. In criminal case, the facts and circumstances of each and every case are always different. The circumstance of 'last seen' is not required to be considered in the present matter as was required to be considered in the reported case.

(iv) **Marling Barnappa Saibanna and Ors. Vs. State of Maharashtra reported as 2015 (1) Mh.L.J. (Cri.) 634** :- The attention of this Court was drawn to para No. 9. This case is on appreciation of evidence of witnesses and it is observed that Court needs to ascertain as to whether the witnesses had opportunity to witness the incident. It is on factual aspect. This Court has considered the relevant facts of the present matter.

110) The learned APP placed reliance on the case of **State of Karnataka Lokayukta Police Station, Bangaluru Vs. M.R. Hiremath reported as AIR 2019 SC 2377**. This case is in respect of compliance of provision of section 65-B of the Evidence At. The relevant observations are at para 16 and hey are as under :-

“16. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under section 65B(4) of

the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.”

There is no dispute over the aforesaid observation. This Court has also considered the circumstance that one nodal officer produced the requisite certificate during the evidence and his evidence is to the effect that the copies of C.D.R. already tendered on record are in accordance with the information stored in the system. He has given evidence that he has control over the system. His evidence is considered and believed by the Trial Court and this Court also sees no reason to disbelieve this witness and consider the certificate which was produced subsequently under section 65B of the Evidence Act.

111) The discussion made above shows that the prosecution has proved the offences for which the conviction is given by the Trial Court as against accused Nos. 1, 2, 5, 6 and 8. It is not possible to interfere in that part of the decision. However, accused No. 11 who is convicted for the offence punishable under Arms Act is entitled to acquittal. In the result, following order.

ORDER

(I) Appeals of accused Nos. 1, 2, 5 & 6 and 8

bearing Criminal Appeal Nos. 197, 183, 189, 140 of 2017, respectively, stand dismissed.

(II) Criminal Appeal No. 141/2017 of accused No. 11 - Govindsingh Shridhat Kesram Yadav is allowed. The judgment and order of the Trial Court delivered in Sessions Case No. 44/2011, sentencing this accused for the offence under section 5 punishable under section 25 of Arms Act is hereby quashed and set aside. He stands acquitted of that offence. His bail bonds are cancelled. Fine amount, if any, deposited by him is to be returned to him. The bond of Rs.15,000/- as provided under section 437-A of Cr.P.C. be obtained from him.

(III) Other criminal applications, if any, stand disposed of.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/