

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 299 OF 2014

Sachin s/o Rameshwar Tayade
Age 29 years, Occu. Education,
R/o Nandanwan Colony,
Aurangabad

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr A.K. Bhosale, Advocate for appellant
Mr S.P. Deshmukh, A.P.P. for respondent

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**RESERVED ON : 30th September, 2021
PRONOUNCED ON : 20th December 2021**

JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. This appeal is directed against the impugned judgment and order of conviction dated 17.5.2014 passed in Sessions Case No.397/2009 by the Additional Sessions Judge at Aurangabad.

2. The facts of the prosecution case in narrow compass are as under:

(i) Mr Ashok Vishwanath Giri (first informant) was serving as a Regional Transport Officer at Aurangabad since June 2007. He was in-charge of R.T.O. offices at Ambajogai, Osmanabad, Jalna, Beed and Aurangabad. R.T.O. office at Latur was established in the year 2008 and as such, Ambajogai R.T.O. office was attached to R.T.O. Latur.

(ii) Father of appellant (Rameshwar Babanrao Tayade) was serving as a Junior Clerk in the R.T.O. office at Ambajogai in the year 2008. The office of Accountant General, Mumbai conducted audit of R.T.O. office, Ambajogai and during audit, it was revealed that Mr Rameshwar Babanrao Tayade, Junior Clerk (father of appellant) has misappropriated government money of Rs.12,35,512/-. Mr Vinod Chavan working in the R.T.O. Office, Ambajogai lodged complaint against father of the appellant for misappropriation of government money. The Transport Commissioner, Mumbai was apprised about misappropriation of government money by the Junior Clerk Rameshwar Tayade. Mr Ashok Giri along with his Assistant Transport Officers went to Ambajogai and after verifying such fact, instructed to Mr Machale to lodge F.I.R. against Rameshwar Tayade (father of appellant) with Police Station, Ambajogai. Accordingly, Mr Machale lodged F.I.R. on 6.5.2008 against father of appellant and on that basis Crime No.189/2008 came to be registered against father of the appellant/accused no.1 for the offences punishable under Sections 420, 409, 468 and 471 of the Indian Penal Code. As such, Rameshwar Tayade, Junior Clerk came to be suspended on 4.9.2008 with direction that he shall report his attendance at R.T.O. office, Latur.

(iii) Rameshwar Tayade and sometimes his son Sachin Tayade/appellant/accused no.1 used to visit R.T.O. office, Aurangabad for making enquiry as to when his suspension order would be revoked. The appellant came to R.T.O. office at Aurangabad on 19.5.2009 and asked to the first informant/Ashok Giri as to when his father's suspension would be

revoked. His father is under suspension for more than eight months. The first informant informed to the appellant that the Transport Commissioner has suspended his father and nothing is in his hands to revoke the suspension. The first informant also asked to the appellant to file an application with R.T.O. office, Latur for revocation of suspension of his father. The appellant may even meet Transport Commissioner. After having such interaction, the appellant left the office by saying that he will have to do something.

(iv) The first informant had called meeting of his Officers in his chamber on 30.5.2009 at 12.00 noon. The Assistant Transport Officers namely Sudhir Dinkarrao Jaybhay, Vinod Vaijinath Chavan and Sudam Deoram Suryawanshi were present. As well as R.T.O. Anil Yashwantrao Baste was also present. The appellant rushed to the chamber of first informant about 12.15 noon and asked him as to how long his father would remain under suspension. The first informant replied him that it is beyond his authority and thereafter appellant went outside. Meantime, Shri Kondawar, Accounts Officer participated in the meeting and sat in the chamber beside the first informant.

(v) The appellant again entered in the cabin of first informant on the same day at about 12.30 noon and asked him to do something to revoke suspension of his father. There was interaction between the first informant and the appellant as to how suspension of his father can be revoked even by depositing the amount of misappropriation. Mr Pathak, R.T.O. intervened and told that appellant may go to Latur on Tuesday in respect of revocation of suspension of his father. The first informant

joined the tone of his Officer Mr Pathak. The appellant annoyed and started shouting. Shri Baste tried to pacify, but the appellant was not in a mood to listen. The appellant made call on phone to another person and had conversation in Hindi. After having such hot exchange of words, the appellant went outside. Shri Baste also followed him. However, the appellant again entered in the cabin of the first informant and he stood beside the first informant and took out weapon from his pant's right pocket and he fired shot and the bullet was hit on the chest of Mr Dharmaji Kondawar. This incident happened at about 12.45 p.m. on 30.5.2009. There was big noise. Mr Kondawar fell down. The appellant tried to load the weapon for fire towards Ashok Giri (first informant) but, it was locked. He could not fire towards the first informant. All the officers who were present in the meeting in the cabin stood up. The appellant ran outside the cabin.

(vi) Mr Bhalerao and other Officers, with the help of Peon Mr Abedkhan picked up Mr Kondawar and put in the vehicle and taken to the Government Medical College and hospital at Aurangabad. Assistant R.T.O. Mr Jaybhay and Mr Chavan were accompanied with Mr Kondawar. On reaching the Government Medical College and Hospital at Aurangabad, doctor declared Mr Dharmaji Kondawar as dead. The information about death of Mr Kondawar was given to the first informant who was in the office. He communicated such information to the police. The first informant made enquiry with Peon Abedkhan and came to know that two more persons were accompanied with Sachin Tayade/appellant. Many persons were present in the corridor when the appellant left the

office by saying that whoever responsible for the suspension of his father, he had killed.

(vii) On the basis of F.I.R. lodged by Mr Ashok Giri/R.T.O., Aurangabad with Kranti Chowk Police Station, Crime No.310/2009 came to be registered. The investigation was entrusted to the Police Inspector More who visited the scene of offence soon after the registration of F.I.R. and prepared the panchnama of scene of offence and seized one pen of Reynold company with spectacle, blood stains, clip and empty cartridge. The map of the scene of offence also came to be prepared. The inquest panchnama of the dead body came to be drawn. The clothes of the deceased Mr Kondawar were seized under panchnama. Post mortem was conducted.

(viii) The appellant came to be arrested on 31.5.2009. His clothes came to be seized and sent to Chemical Analyzer. The motorcycle which was used in the commission of offence also came to be seized. The Pistol, one magazine and five bullets used in the commission of crime also came to be seized on 4.6.2009 in view of disclosure statement given by the appellant. The appellant also produced one T-shirt and same came to be seized under panchnama.

(ix) On 31.05.2009, accused no.2 came to be arrested. It was revealed during investigation that after the incident, appellant had rushed to the house of Mr Sachin Pawar (original accused no.2) and had a bath. Those clothes came to be seized under memorandum panchnama of accused no.2. It was revealed during course of investigation that

appellant/accused no.1 had purchased the Pistol from bus stand of Indore. However, the Investigating Officer could not get any further clue in spite of visit to Indore. The Investigating Officer recorded statements of witnesses and also conducted test identification parade of accused. It was revealed after completion of investigation that accused no.1 has committed murder of Mr Kondawar by using fire arm when meeting was going on in the chamber of PW-3 Ashok Giri on account of suspension of his father. Accused no.2 had extended help to accused no.1 in causing disappearance of evidence of offence of murder knowingly that an offence of murder has been committed with an intention of screening from the legal punishment. After completion of investigation, charge-sheet came to be filed in the Court of Chief Judicial Magistrate, Aurangabad against the appellant/accused no.1 and his colleague/accused no.2.

(x) The learned Chief Judicial Magistrate, Aurangabad committed the case to the Court of Sessions for trial by way of compliance of Section 209 of Cr.P.C. after noticing that offences alleged against both the accused are exclusively triable by Court of Sessions.

(xi) The case was assigned to Additional Sessions Judge at Aurangabad for trial. The learned Additional Sessions Judge, Aurangabad framed the charge against both the accused vide Exh.16 for the offences punishable under Sections 302, 307, 353, 332, 333, 201, 120-B read with Section 34 of Indian Penal Code and under Sections 3 and 25 of the Arms Act. Both the accused pleaded not guilty to the charge and claimed to be tried.

(xii) Accordingly, trial was commenced before the Additional Sessions Judge, Aurangabad. During the trial, the prosecution machinery has examined in all 13 witnesses to prove the charges against both the accused. The accused did not prefer to examine any witness by way of defence. The defence of both the accused is of common nature. They defended that they have been falsely implicated in this case at the instance of first informant. The first informant has played prime role in their false implication in a case of murder.

(xiii) The learned Additional Sessions Judge, Aurangabad after appreciating the evidence on record and considering oral and documentary evidence on record and considering the argument advanced by the learned A.P.P. and the defence Counsel arrived at conclusion that the prosecution has been successful in proving the charges punishable under Sections 302, 307, 353, 332, 333, 201 of the Indian Penal Code and under Sections 3 read with 25 of Arms Act against the appellant/accused no.1. Original accused no.2 Sachin Pawar came to be acquitted of the offences punishable under Sections 302, 307, 353, 332, 333, 120-B read with Section 34 of the Indian Penal Code.

(xiv) Both the accused however, held guilty for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code.

(xv) The learned Additional Sessions Judge, Aurangabad was pleased to pass the following order of sentence against the accused.

"(1) The accused No.1 Sachin Rameshwar Tayade, is convicted as per Section 235 (2) of Cr.P.C. for offences punishable under Sections 302, 307, 353, 332, 333, 201 of Indian Penal Code and 3 read with 25 of Arms Act.

(2) Accused No.1 is sentenced to suffer rigorous life imprisonment and shall also liable to pay fine of Rs.5,000/- (Five thousand), in default to suffer rigorous imprisonment for 3 (three) months for the offence punishable under Section 302 of IPC.

(3) Accused No.1 is sentenced to suffer rigorous imprisonment for 10 (Ten) years and shall pay fine of Rs.2,000/- in default to suffer RI for one month, for the offence punishable under Section 307 of IPC.

(4) Accused No.1 is sentenced to suffer rigorous imprisonment for 2 (Two) years and shall also liable to pay fine of Rs.1,000/- (One thousand), in default to suffer rigorous imprisonment for 15 days for the offence punishable under Section 353 of IPC.

(5) Accused No.1 sentenced to suffer rigorous imprisonment for 2 (Two) years for the offence punishable under Section 332 of IPC.

(6) Accused No.1 is sentenced to suffer rigorous imprisonment for 5 (Five) years and shall also liable to pay fine of Rs.2,000/- (Two thousand), in default to suffer rigorous imprisonment for 1 (one) month for the offence punishable under Section 333 of IPC.

(7) Accused No.1 and 2 are sentenced to suffer rigorous imprisonment for 5 (Five) years each and shall

also liable to pay fine of Rs.2,000/- (Two thousand) each, in default to suffer rigorous imprisonment for 1 (one) month each for the offence punishable under Section 201 r/w 34 of IPC.

(8) All the sentences shall run concurrently.

(9) Accused No.2 Sachin Pawar is acquitted for the offence punishable under Sections 302, 307, 353, 332, 333, 120-B r/w 34 of IPC.

(10) Accused No.1 Sachin Tayade is acquitted for the offences punishable under Section 120-B of IPC and Sec.135 of Bombay Police Act.

(11) Accused No.1 and 2 are in jail, hence set off for their custody period be given as per the provision of Section 428 of Cr.P.C.

(12) Muddemal property VPR No.18/2010 pistol (Art. No.24), cartridges (Art.No.26) and magazine (Art.25) be sent to District Magistrate for disposal according to law."

3. Feeling aggrieved by the impugned judgment and order of conviction rendered by the Additional Sessions Judge at Aurangabad, original accused no.1 Sachin Rameshwar Tayade has preferred this appeal and assailed the order of conviction on various grounds.

4. There is no record to show whether original accused no.2 has preferred an appeal against his sentence awarded under Section 201 of Indian Penal Code.

5. Heard Mr A.K. Bhosale, learned Counsel for the appellant and Mr S.P. Deshmukh, learned A.P.P. for the respondent/State at length. Perused the impugned judgment and order of conviction rendered by the Additional Sessions Judge at Aurangabad. We have also gone through the record and proceedings of the trial Court which consist oral and documentary evidence, statements of witnesses recorded before the trial Court and other material.

Submissions of Mr A.K. Bhosale, learned Counsel for the appellant/original accused no.1 :

6. Mr A.K. Bhosale, learned Counsel for the appellant vehemently submitted that the prosecution has examined only selected witnesses. All the witnesses examined by the prosecution are attached to R.T.O. department. They were working under the control of PW-3 Ashok Giri/first informant. The witnesses have stated under the influence of the first informant to implicate the appellant. He submitted that though there was crowd in the R.T.O. office at the time of alleged incident, not a single independent witness is examined by the prosecution. All the witnesses are brought up witnesses. The witnesses examined by the prosecution cannot be said to be impartial witnesses.

7. Mr Bhosale, learned Counsel for the appellant submitted that Chemical Analyzer's report and Ballistic report placed on record by the prosecution cannot be relied upon. The Muddemal property was not preserved with due care and caution as required. He further submitted that essential Ballistic tests are also not performed by the Ballistic expert.

As such, Ballistic reports are not sufficient to rely upon. The prosecution has failed to prove the charges levelled against the appellant beyond reasonable doubt. It is difficult to digest that the appellant being a son of the suspended employee of R.T.O. office killed the Accounts Officer from R.T.O. office at Aurangabad who had no concern with the suspension of his father. The entire prosecution story is highly doubtful.

8. Mr Bhosale, learned Counsel for the appellant took us through the relevant part of evidence of respective prosecution witnesses in order to show as to how their evidence is not trustworthy. He submitted that PW-3 Ashok Giri/first informant is a corrupt man and he has falsely implicated father of the appellant in a case of misappropriation to hide his corruption.

9. Mr Bhosale submitted that the appellant/original accused no.1 is behind the Bars for more than twelve years. Even for the sake of argument accepted that appellant fired shot and as a result, Mr Kondawar Accounts Officer succumbed to bullet injuries, it was not the intention of the appellant to kill Mr Kondawar who had no concern about the suspension of father of the appellant. It is not a case of murder. It is a case of culpable homicide not amounting to murder and falls under Section 304 Part II of Indian Penal Code. He submitted that by looking to the period which is already undergone by the appellant, at the most he can be held guilty under Section 304 Part II of the Indian Penal Code which would meet the ends of justice.

10. He submitted that so called test identification parade relied upon by the prosecution is also doubtful and no more reliance can be placed.

11. To buttress the argument, Mr Bhosale, learned Counsel for the appellant has placed reliance on following stock of citations:

- (i) **Sandhya Jadhav (Smt.) Vs. State of Maharashtra,**
reported in **(2006) 4 SCC 653;**
- (ii) **Rampal Singh Vs. State of Uttar Pradesh,**
reported in **(2012) 8 SCC 289;**
- (iii) **Surendra Singh Alias Bittu Vs. State of Uttaranchal,**
reported in **(2006) 9 SCC 531;**
- (iv) **Surinder Kumar Vs. Union Territory, Chandigarh,**
reported in **(1989) 2 SCC 217;**
- (v) **Mahavir Singh Vs. State of Madhya Pradesh,**
reported in **(2016) 10 SCC 220;**
- (vi) **Tulshiram Bhanudas Kamble and Ors. Vs. The State of Maharashtra,** reported in **2000 Cri. L.J. 1566;**
- (vii) **State of M.P. Vs. Ghudan,**
reported in **(2003) 12 SCC 485;**
- (viii) **Murlidhar Shivram Patekar Vs. State of Maharashtra,**
reported in **2014 (3) AIR Bom.R (Cri.) 804;**
- (ix) **Sukhdev Singh Vs. Delhi State (Govt. of NCT of Delhi),**
reported in **(2003) 7 SCC 441**

12. By taking help of abovesaid citations, Mr Bhosale, learned Counsel for the appellant urged to allow the appeal and set the appellant at liberty by way of acquittal from all the charges. By alternate submissions, Mr Bhosale argued that the appellant may be held guilty at the most under Section 304 Part II of the Indian Penal Code and appropriate sentence may be awarded having regard to the period already undergone by the appellant which is more than twelve years.

Argument of Mr S.P. Deshmukh, learned A.P.P. for respondent/State

13. Per contra, Mr S.P. Deshmukh, learned A.P.P. for the respondent/State submitted that the incident of murder has taken place in a broad day light in a public office/R.T.O. office at Aurangabad. There are three eye witnesses to the incident of murder who have stated about prime role played by this appellant in causing murder of Mr Kondawar, Accountant serving at R.T.O. office at Aurangabad at the relevant point of time. PW-3 Ashok Giri/first informant has disclosed in detail as to how and in what manner the incident had occurred in his office/chamber. PW-3 Ashok Giri has also identified the Pistol used by the accused in committing murder of Mr Kondawar. He further invited our attention to PW-4 Sudam Suryawanshi who is another eye witness and pointed out that his evidence is consistent. He has corroborated the testimony of PW-3 Ahok Giri. Again the role played by this appellant is described in detail by PW-4 Sudam Suryawanshi which has strengthened the prosecution case.

14. Mr Deshmukh, learned A.P.P. invited our attention to PW-7 Abedkhan who had witnessed this appellant while holding the Pistol in his

hand and pointing it towards PW-3 Ashok Giri. There is recovery of Pistol at the instance of co-accused Sachin Pawar which was used by this appellant and handed over to co-accused after the incident to conceal it. The circumstantial evidence on record is also supporting to the prosecution case.

15. The cause of death in this case due to fire arm injury is also proved by examining PW-2 Dr. Kailas Zine. Chemical Analyzer's reports and reports of Ballistic expert are also supporting to the prosecution case. The participation and involvement of this appellant in causing murder of Mr Kondawar is duly proved by the prosecution by producing direct evidence, circumstantial evidence and expert's evidence. The witnesses who were present at the time of incident and who had seen the actual incident are examined by the prosecution agency and no question of selection of witnesses for examination. He submitted that it is a clear case of culpable homicide amounting to murder punishable under Section 302 of Indian Penal Code. He submitted that it is not a case falling under the exception under Section 304 Part II of Indian Penal Code.

16. Mr Deshmukh, learned A.P.P. submitted that the learned Additional Sessions Judge has appreciated the evidence of prosecution witnesses and also considered the circumstantial evidence and expert's evidence and arrived at correct conclusion. The findings recorded by the learned Additional Sessions Judge are required to be upheld and conviction against the appellant needs to be confirmed in the appeal. No case is made out by the appellant to make any sort of interference in the

decision rendered by the learned Additional Sessions Judge. There is no merit in the appeal. The appeal needs to be dismissed.

17. Mr Deshmukh, learned A.P.P. has placed his reliance on following citation in support of his argument :

Decision of Honourable Supreme Court in Criminal Appeal No.556 of 2021 (Rakesh and another Vs. State of U.P. and another) dated 6th July 2021.

18. We have considered the arguments advanced by Mr A.K. Bhosale, learned Counsel for the appellant /accused no.1 and Mr S.P. Deshmukh, learned A.P.P. for the respondent/State.

19. In order to prove the charges against the appellant/accused no.1, the prosecution machinery has examined in all thirteen witnesses, which can be classified as under :

- (i) PW-1 Chandrakant Mariba Taktode (Exh.25)
(Panch witness on spot panchnama);
- (ii) PW-2 Dr. Kailas Ukhardaji Zine (Exh.29)
(Medical Officer who conducted the post mortem examination);
- (iii) PW-3 Ashok Giri (Exh.37)
(First informant/eye witness);
- (iv) PW-4 Sudam Suryawanshi (Exh.71);
(Eye witness)
- (v) PW-5 Nandkumar Kisanrao Deshpande (Exh.74)
(Panch witness on inquest);
- (vi) PW-6 Bhausahab Bhivsan Bhosle (Exh.78)
(Panch witness on disclosure statement of accused and recovery under Section 27 of the Evidence Act;

- (vii) PW-7 Abed Omar Khan (Exh.85)
(another eye witness);
- (viii) PW-8 Satish Pandharinath Pandit (Exh.91)
(Carrier of muddemal property);
- (ix) PW-9 Rohidas Shekuji Khambat (Exh.93)
(Panch witness of arrest and recovery);
- (x) PW-10 Mohd. Azhar Mohd. Siddik (Exh.106)
(another carrier of muddemal property);
- (xi) PW-11 Daulat Mahadu More (Exh.133)
(Investigating Officer/Police Inspector);
- (xii) PW-12 Madhav Palodkar (Exh.162)
(Assistant Chemical Analyzer);
- (xiii) PW-13 Gautam Natha Ghadge (Exh.69)
(Another Assistant Chemical Analyzer)

20. The prosecution case rests upon direct evidence in the nature of three eye witnesses coupled with circumstantial evidence and expert's evidence.

MEDICAL EVIDENCE

21. It would be appropriate to consider evidence of PW-2 Dr. Kailas Zine vide Exh.29 who has conducted the post mortem in order to determine the nature of death. PW-2 Dr. Zine, Dr. Gadage, Dr. V.S. Kalokhe and Dr. M.R. Sane have conducted the post mortem examination on the dead body of Mr Kondawar on 30.5.2009 between 5.30 p.m. to 6.30 p.m.

22. PW-2 Dr. Kailas Zine, on external examination noticed following injuries on the body of Mr Kondawar:

"Injury No.1 : Gun shot entrance would in left anterior of chest 3.5 cm medial to left nipple and situated 15 cm below left medial

end of clavicle. 7 cm to left of mid line and 118 cm above left medial malleolus. The wound is oval in shape of size 2 cm x 1.5 cm with inverted edges and abrasion collar of 0.4 cm over left lateral aspect and 0.2 cm all over surrounding wound of 1.3 cm x 1.4 cm. There is no soot (blackening) deposit or powder tattooing. A small amounting of blood comes out from the defect after manipulation of the body.

Injury No.2 : Gun shot wound of exit over right side of back of chest, situated 13 cm to right of midline, 29 cm below tip of acromion (shoulder up bone) process right side, 116 cm above right medial malleolus. The wound is circular in shape of size 1 cm x 1 cm (There is no abrasion collar, no soot deposit or no powder tattooing). Small amount of blood come out from the defect upon manipulation (i.e. after turning the body) of the body.

4/- On dissection tract of Gun shot wound from left anterior thoracic wall (chest wall) to right side of back of chest is - Skin - subcutaneous tissue - inter costal-muscles between ribs 4th and 5th 7 - pleura of left side of lung - Lingular (part of lung covering heart) of left lung - pleura of left lung - Peri cardium - Right ventricle - Peri Cardium - Right pleura - Right lung lower lobe - Right pleura Inter costal muscle between 8th & 9th rib - subcutaneous - skin of back of chest right side".

All the aforesaid injuries noticed by the doctors were ante mortem injuries.

23. The doctors noticed following internal injuries :

- (i) Evidence of Gun shot injury, entry and exit wound as mentioned in column No.17 (page No.4 of P.M.).
- (ii) Puncture wound as mentioned in column No.17 (page No.4) Evidence of partly clotted blood in left, 1500 ml and to right side 1100 ml. in pleural cavity.
- (iii) Puncture wound as mentioned in column No.17 (page 4) Evidence of cardiac tamponade of 250 ml. partly clotted blood.
- (iv) Puncture wound over heart as mentioned in column No.17 (page 4).

24. Dr. Zine also stated about preservation of viscera for chemical analysis in four bottles and collection of sample for grouping purpose. They had also preserved gauze piece soaked in blood for grouping and skin from entry wound and skin from exit wound for ballistic examination. X-ray photographs were taken before post mortem examination for ballistic examination.

25. According to Dr. Kailas Zine, all the doctors arrived at conclusion that death of Mr Kondawar is caused because of 'hemorrhagic shock due to fire arm injury to lung and heart'. The post mortem report is duly proved at his hands and the same is vide Exh.30. While facing the cross-examination, Dr. Zine admitted that no bullet was found in the dead body of Mr Kondawar at the time of post mortem examination but, Dr. Zine has clarified that bullet passes across the body if there is exit wound. Dr. Zine has earlier stated that he had noticed the entry wound and exit wound and accordingly, preserved the skin for ballistic examination. It clearly speaks that the bullet had passed through the body and that is

why, it was not found in the dead body at the time of post mortem examination. Dr. Zine has also admitted that he has not mentioned the age of injury in hours and time in the post mortem report. It is not anyway sufficient to raise question mark about the post mortem report. On careful examination of the cross-examination of Dr. Zine, it is noticed by us that Dr. Zine has explained in detail about external and internal injuries found on the dead body at the time of post mortem examination and his opinion about cause of death in this case. Dr. Zine also admitted that no revolver was shown to him on the day of post mortem examination and he had seen the seized revolver in Court for the first time. Dr. Zine has clarified that he has required knowledge of forensic/ballistic and on that basis he has given his opinion. The testimony of PW-2 Dr. Kailas Zine and the post mortem report vide Exh.30 make out a case that Mr Kondawar met with homicidal death due to fire arm injury. The injury was on vital parts of body. Mr Kondawar succumbed to injuries caused due to fire arm before any medical treatment is provided though immediately taken to the Government Medical College and Hospital at Aurangabad.

26. Having regard to the careful scrutiny of evidence of PW-2 Dr. Kailas Zine and post mortem report vide Exh.30, we have no manner of doubt that Mr Kondawar met with homicidal death due to fire arm injuries.

EVIDENCE OF EYE WITNESSES

27. Now coming to evidence of eye witnesses. PW-3 Ashok Giri vide Exh.37 is a first informant and eye witness to the incident. His evidence discloses that at the relevant point of time, father of accused no.1 was suspended from the R.T.O. office, Ambajogai due to

misappropriation of government money. Accused no.1 was insisting PW-3 Ashok Giri to revoke suspension of his father which was beyond his authority.

28. PW-3 Ashok Giri has stated in detail as to how the incident occurred on 30.5.2009 in the afternoon about 12.45 p.m. His evidence discloses that he had called meeting of his sub-ordinate Officers in his chamber on 30.5.2009. Accused no.1 came there and started speaking loudly. Mr Baste, Motor Vehicle Inspector tried to pacify accused no.1, but accused no.1 was not in a mood to listen. Accused no.1 called somebody on his mobile. Accused no.1 used certain words in Hindi language "मैंने गिरी साहबको आठ दिन का टाईम दिया था। उन्होंने काम नहीं किया। मुंबईके बॉस को बोलना पड़ेगा क्या ?" Accused no.1 left the chamber of Ashok Giri by uttering the abovesaid words. Mr Baste also went outside by following accused no.1 to pacify him.

29. The evidence of PW-3 Ashok Giri further discloses that within a short time, accused no.1 again entered into his chamber. He was on right side of his table. Accused no.1 took out one Pistol out of his right side pant pocket and fired from that at Pistol and the bullet was hit on the chest of Mr Kondawar who was sitting opposite to Mr Ashok Giri. It was about 12.45 p.m. Mr Kondawar sustained bleeding injuries. The blood was oozing from his chest and he was collapsed. Due to such incident, other Officers were frightened. There was noise after firing of bullet from the Pistol. Accused no.1 also pointed Pistol towards PW-3 Ashok Giri and tried to fire the bullet. However, the Pistol was locked and his attempt was unsuccessful.

30. After hearing the noise of fire, Mr Bhalerao, Peon and Abedkhan rushed there. Mr Abedkhan was standing outside his chamber just close to door of his chamber. Mr Kondawar was taken to the Government Medical College and Hospital, Aurangabad with the help of his Officers. Mr Jaybhay and Mr Vinod Chavan, Assistant R.T.O. and Peon. After sometime, he was informed that Mr Kondawar was declared dead by the Medical Officer. Accordingly, he gave information to Kranti Chowk Police Station, Aurangabad on telephone. After ten minutes, Police officials rushed to the spot. On making enquiry with Abedkhan, Abedkhan disclosed that accused no.1 was accompanied by other two persons. He shown the place of offence to the police. He lodged the F.I.R. about 2.00 p.m. with Kranti Chowk Police Station, Aurangabad about the incident which is vide Exh.44. The narration given by PW-3 Ashok Giri makes out a clear picture as to in what manner the incident had occurred in his chamber in the afternoon and the participation of accused no.1 and causing death of Mr Kondawar by firing bullet.

31. The evidence of PW-3 Ashok Giri/first informant was attempted to be shaken by way of lengthy cross-examination mainly on the ground that he is a corrupt Officer. One criminal case was registered against him. He was demanding money to the father of appellant/accused no.1. We have carefully gone through the cross-examination of PW-3 Ashok Giri in the light of argument advanced by Mr Bhosale, learned Counsel for the appellant. It is true that one news was published in the newspaper about corruption of PW-3 Ashok Giri. There were complaints against him. One criminal case was registered against him. Whether this material can be

said to be sufficient to discard his evidence. The answer is 'no'. PW-3 Ashok Giri is not only an eye witness but, a star witness.

32. The incident had taken place in his chamber in the afternoon when meeting was going on. The presence and participation of accused no.1 is rightly brought on record through the evidence of PW-3 Ashok Giri. It is not any way shaken. The suspension of father of appellant/accused no.1 is found to be the motive of accused no.1 in causing the offence of murder. PW-3 Ashok Giri was his main target, however, he missed the target and bullet was hit on the chest of Mr Kondawar, Accounts Officer who succumbed to bullet injuries. The father of appellant/accused no.1 was suspended in view of report submitted by PW-3 Ashok Giri but, it was beyond his authority to revoke the suspension of the father of appellant. The appellant was insisting to PW-3 Ashok Giri to revoke the suspension of his father by visiting R.T.O. office at Aurangabad on number of times but, there was no outcome. As a result, the appellant seems to have annoyed and ultimately committed the offence of murder of Mr Kondawar, Accounts Officer though PW-3 Ashok Giri was his target.

33. The testimony of PW-3 Ashok Giri makes out a clear picture about crime scene. It is proved by the prosecution through the testimony of PW-3 Ashok Giri that appellant/accused no.1, by taking out fire arm from his right side pant pocket, fired bullet and it was hit on the chest of Mr Kondawar. He sustained injuries due to fire arm and blood was oozing and subsequently, he collapsed. The appellant did not stop there. The appellant pointed the Pistol towards the first informant PW-3 Ashok Giri

who was his target but, the Pistol was locked and he could not succeed. It shows the intention of appellant to kill PW-3 Ashok Giri at whose instance, his father was suspended and suspension order was not revoked since long time. It is evident from the testimony of PW-3 Ashok Giri that it was revealed during the A.G.Office audit that father of the appellant has misappropriated government money of Rs.12,35,512/- and accordingly, he verified the same and submitted report to his higher authority - Transport Commissioner, Mumbai. Accordingly, the Transport Commissioner seems to have suspended father of the appellant due to misappropriation of government money. F.I.R. also seems to have been filed against the father of appellant for misappropriation of government money with Ambajogai Police Station. In this background, it is difficult to accept the argument advanced by Mr Bhosale learned Counsel for the appellant that appellant has been falsely implicated in this case at the instance of PW-3 Ashok Giri.

34. The testimony of PW-3 Ashok Giri is further questioned on account of certain contradictions, omissions and improvements brought on record by way of cross-examination. It has been held by the Honourable Supreme Court in catena of cases that minor contradictions, omissions and discrepancies should not be given undue importance. In a recent case of **Yogesh Singh vs Mahabeer Singh & Ors.** reported in **(2017) 11 SCC 195** and **Prabhu Dayal Vs. State of Rajasthan** reported in **(2018) 8 SCC 127**, it is held by the Honourable Supreme Court that there might be some minor contradictions and discrepancies in the testimony of a witness. Those minor discrepancies should not be given undue

importance that don't go to the root of the matter. As such, no more importance needs to be given to the minor contradictions, omissions and improvements which are brought on record by the defence side through the testimony of PW-3 Ashok Giri. He was a natural witness to the incident. When he was conducting the meeting with his sub-ordinate Officers at the time of incident, the appellant rushed in his chamber and used fire arm, resulting in death of Mr Kondawar, Accounts Officer. Why evidence of PW-3 Ashok Giri should be disbelieved when he was found to be a natural witness to the incident. The incident had taken place in his chamber and by that point of view, his evidence is assessed by us. His evidence is found trustworthy and reliable.

35. Now coming to the another eye witness to the incident PW-4 Sudam Suryawanshi vide Exh.71. On going through the testimony of PW-4 Sudam Suryawanshi, it is noticed that at the relevant point of time, he was working as a Assistant R.T.O. in R.T.O. office, Aurangabad. His evidence discloses that on the day of incident i.e. on 30.5.2009, PW-3 Ashok Giri had called meeting in his chamber. At that time, Mr Vinod Chavan, Sudhir Jaybhay and Anilkumar Baste were present. The meeting was in progress. When accused no.1/appellant entered into the chamber of PW-3 Ashok Giri, it was about 12.15 p.m. The appellant asked PW-3 Ashok Giri for how long his father would be kept under suspension to which PW-3 Ashok Giri replied him that it was not within his power. The appellant went outside the chamber. The meeting was continued. Mr Kondawar, Accounts Officer entered into the chamber and sat in the chair to right side of PW-3 Ashok Giri. It was 12.30 p.m., the appellant/accused

no.1 again entered into the chamber of PW-3 Ashok Giri. The appellant was insisting that suspension of his father should be revoked and he was annoyed. Mr Baste tried to pacify the appellant and he took out the appellant out of the chamber but, the appellant again entered into the chamber of PW-3 Ashok Giri and rushed to the side of Mr Giri. He took out Pistol out of his right side pant pocket and fired bullet. It was 12.45 p.m. The bullet hit on the chest of Mr Kondawar, Accounts Officer and Mr Kondawar sustained bleeding injuries. Mr Kondawar fell down from the chair. He further disclosed that the appellant/accused no.1 pointed out that Pistol towards PW-3 Ashok Giri and tried to fire from that Pistol but, he could not fire due to some problem in the Pistol. After the incident, the appellant ran out of the chamber. He has further disclosed in what way Mr Kondawar was taken to the Government College and Hospital at Aurangabad where Mr Kondawar, Accounts Officer was declared dead.

36. PW-4 Sudam Suryawanshi has corroborated the evidence of PW-3 Ashok Giri. The evidence of PW-4 Sudam Suryawanshi is found consistent with the evidence of PW-3 Ashok Giri, in what way the incident had occurred in the chamber.

37. While facing cross-examination, PW-4 Sudam Suryawanshi, Assistant R.T.O. explained about the area of the cabin/chamber of Mr Ashok Giri and the arrangements of chairs, two cupboards. It shows that he was present on 30.5.2009 in the cabin of Mr Ashok Giri and that is why he knew everything about the arrangement in the cabin. He has stated that one case was filed against Mr Ashok Giri under the Prevention of Corruption Act. He has stated that he had no idea whether Mr Ashok Giri

had accepted Rs.6 lakhs from the father of the appellant/accused no.1 to take back him in service and he was demanding Rs.6 lakhs more. This material is not anyway helpful to raise any question mark about the credibility of this witness.

38. He has identified the Pistol (Article-24) before the Court, however, while facing the cross-examination, he has admitted that he did not know anything about the Pistol. He had not handled the Pistol (Article-24) prior to that. The evidence of PW-4 Sudam Suryawanshi as an eye witness is not anyway shaken by way of cross-examination. He being Assistant R.T.O. attended the meeting on 30.5.2009 and he was present in the cabin/chamber of Mr Giri when the incident had occurred. He has disclosed in detail as to how and in what manner the incident had occurred. He has disclosed the prime role played by appellant/accused no.1 in killing Mr Kondawar, Accountant by using fire arm. His evidence is found trustworthy and reliable and corroborating to the testimony of PW-3 Ashok Giri. We do not see any reason to discard the evidence of PW-4 Sudam Suryawanshi, Assistant R.T.O., who had witnessed the incident. He is also found to be a natural witness. He has described the incident in detail.

39. Now coming to the evidence of PW-7 Abedkhan vide Exh.85. The prosecution has projected this witness as an eye witness. At the relevant time, he was serving as a Peon in the R.T.O. office, Aurangabad. He has disclosed that the incident had occurred on 30.5.2009 in the afternoon. He has stated that the appellant/accused No.1 entered into the cabin of Mr Ashok Giri and accused no.2 was waiting outside. The

appellant and his father Rameshwar Tayade are known to him. He has identified both the accused before the Sessions Court. He has further disclosed that after some time, accused no.1 again entered into the cabin. He was sitting outside the cabin. He heard the noise and, therefore, entered into the cabin and noticed that the blood was oozing from the chest of Mr Kondawar, Accountant. The appellant was inside. He was armed with Pistol. The appellant pointed Pistol towards Mr Ashok Giri, however, the bullet did not come out.

40. Even though PW-7 Abedkhan has been projected as an eye witness to the incident, in reality he was not an eye witness. While facing the cross-examination, he has admitted that whatever he has stated about the appellant armed with Pistol and pointing that Pistol towards Mr Giri and it was locked, does not find place in his Police statement. He has stated said facts for the first time before the Court. In view of such material improvement brought on record through the cross-examination of PW-7 Abedkhan, he cannot be said to be an eye witness. He rushed to the cabin of Mr Ashok Giri after hearing the noise. It was his spontaneous reaction to the noise. At the most, he can be said to be first person rushed to the cabin after noise of fire. His evidence about entry of the appellant/accused no.1 in the cabin of Mr Giri is found trustworthy and reliable. Whatever happened in the cabin seems to have not been witnessed by this witness PW-7 Abedkhan.

41. PW-3 Ashok Giri and PW-4 Sudam Suryawanshi have stated in detail about the incident who are the real eye witnesses to the incident. The evidence of PW-7 Abedkhan can be believed to the extent of entry of

this appellant into the cabin of Mr Ashok Giri which is consistent with the evidence of above referred two eye witnesses. While facing the cross-examination, he has denied the suggestion that on the day of incident, the appellant/accused no.1 never visited the R.T.O. office, Aurangabad. He has denied the suggestion that somebody fired bullet on the person of Mr Kondawar from outside and because of that, Mr Kondawar died. The entry of appellant in the R.T.O. office, Aurangabad on the day of incident and rushing into the chamber/cabin of Mr Ashok Giri is proved, which has strengthened the prosecution case.

42. Having regard to the careful scrutiny of evidence of above referred two witnesses, PW-3 Ashok Giri/first informant and PW-4 Sudam Suryawanshi/A.R.T.O., it is revealed that their testimony is wholly reliable. The evidence of an eye witness stands on higher footing. They are the witnesses who had actually seen the incident thereby focusing light on the complexity of the accused in committing the murder.

43. Mr Bhosale, learned Counsel for the appellant led much emphasis that the prosecution has examined only selected and interested witnesses and no independent witness is examined. We do not find any merit in his submission. It is well settled position of law that quality of evidence is important and not quantity of evidence. Section 134 of the Evidence Act, 1872 provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a Court to record and sustain the conviction on the evidence of a solitary eye witness if the evidence tendered by said eye witness is cogent, reliable and in tune with probabilities and inspired

implicit confidence. We may refer the decision to support our view in case of **Joseph Vs. State of Kerala** reported in **2003 SCC (Cri.) 356**.

44. It is material to note that the incident had taken place in the chamber of Mr Ashok Giri (PW-3). It is not the case that the incident has taken place in a corridor or passage of the R.T.O. office. The persons who were present in the meeting and who had actually witnessed the incident are important witnesses. The prosecution has examined two witnesses out of them and their evidence is found trustworthy, reliable and consistent and supported by medical evidence. As such, we are not impressed by the argument advanced by Mr Bhosale, learned Counsel for the appellant/accused no.1.

45. PW-5 Nandkishor Deshpande vide Exh.74 is panch witness on inquest panchnama vide Exh.28. He has also noticed hole on the left side chest of the dead body. He has also disclosed about seizure of clothes of deceased under panchnama vide Exh.75. Though he was cross-examined at length, no material is brought on record to discard his evidence.

CIRCUMSTANTIAL EVIDENCE

46. Now, coming to circumstantial evidence. PW-1 Chandrakant Taktode (Panch witness) was working in the R.T.O. office at Aurangabad as a Junior Clerk at the time of incident. PW-3 Ashok Giri shown the spot of incident to the Police in his presence. He was a panch witness to the panchnama of scene of offence. He has supported to the prosecution case. He has disclosed that Police prepared the panchnama of scene of

offence in his presence on 30.5.2009. He has stated that Police Inspector Mr More seized articles from the scene of offence (total six articles) under the panchnama of the scene of offence vide Exh.26. He has also stated that another panch Mr Tushar Bavaskar was also present at that time. He has disclosed that Police have seized seat of blood stained chair and its handle apart from other articles.

47. He has admitted that Police party had already reached at crime scene before they reached the chamber. He went on admitting that Police gave information to them about the circumstances noticed, they have prepared the panchnama. This admission is not anyway damaging to his earlier part of evidence. He has disclosed in detail about his presence at the time of panchnama of scene of offence and panchnama of seizure of articles. The Police have taken measurement in his presence, which shows that he was present throughout preparation of panchnama. The Police have prepared the panchnama of scene of offence on the very day when incident took place. His evidence cannot be discarded only because he is working in the same office as a Junior Clerk under the control of PW-3 Ashok Giri.

48. PW-6 Bhausahab Bhosle is a panch witness on the disclosure statement and discovery of weapon at the instance of accused no.2/Sachin Pawar under section 27 of the Evidence Act. He has admitted his signatures but, denied about disclosure statement given by accused no.2 and discovery of weapon at his instance. As a result, he was declared hostile and his cross-examination has been initiated. He has admitted that he is serving with Vivekanand Collage as a Laboratory

Assistant and he understand the seriousness of panchnama and after considering the seriousness, he signed the panchnama. He has also admitted that Police read over the contents of panchnama to him but, he denied about disclosure statement given by accused no.2 and discovery of weapon at his instance. In view of such state of affairs, no more reliance can be placed on the testimony of PW-6 Bhausahab Bhosle.

49. PW-8 Satish Pandit vide Exh.91 is a Police Constable attached to Kranti Chowk Police Station, who carried four sealed packets and one sealed bottle and deposited the same with Forensic Science Laboratory, Mumbai. His role is restricted as a sample carrier.

50. PW-10 Mohd. Azhar vide Exh.106 is another Police Constable who has carried the muddemal (six sealed packets) and deposited the same with Forensic Science Laboratory, Mumbai. He has denied that P.I. More shown him said muddemal property and then he kept it in the packets and sealed those packets. His role is also restricted to the extent of carrier of sample.

51. PW-9 Rohidas Khambat is a P.S.I. vide Exh.93 who has taken search of accused no.2/Sachin Pawar in the CIDCO area and taken into custody and produced before P.I. Mr More who effected his arrest in the crime on 31.5.2009 at 5.00 p.m. He has further disclosed about laying trap at Sant Dnyaneshwar Garden, Paithan to nab accused no.2. He has stated that on 2.6.2009, he along with P.I. More and other two Police officials were at Sant Dnyaneshwar Garden, Paithan on the basis of tip received by the Police. Appellant/accused no.1/Sachin Tayade came

there on motorcycle. During personal search of accused no.1, ticket of the garden, parking ticket and two mobile handsets were found and same came to be seized.

52. PW-9 Rohidas has disclosed about discovery of weapon/fire arm from Om Sai Pathology Lab where accused no.2/Sachin Pawar had concealed the weapon. He has also disclosed that four bullets were found in the magazine. P.I. More examined Pistol and found one bullet in the chamber of that Pistol and accordingly, Mr More seized the Pistol, magazine and five bullets in presence of two panch witnesses.

53. PW-9 Rohidas has further disclosed about disclosure statement given by accused no.1 and visit to the house of Avinash Digambar Deshmukh where from his one black T-shirt came to be seized.

54. PW-12 Madhav Palodkar vide Exh.162 is working as a Assistant Chemical Analyser with the Forensic Science Laboratory at Aurangabad. He has disclosed about analysis of blood grouping. According to him, the bottle containing blood was found to be of 'O' group and chemical analysis report to that effect is at Exh.163. The blood was of Mr Dharmaji Shivabba Kondawar. His evidence was tried to be questioned on the ground that the blood was analysed by Mr Khandare and he has no concern with it.

55. PW-13 Gautam Ghadge vide Exh.169 is also a Assistant Chemical Analyser working in Forensic Science Laboratory at Mumbai. He has given ballistic report on examination of clothes of deceased and other articles, fire arm and bullet vide Exh.114 to 116. His evidence discloses

that he received the muddemal articles with seal intact and as such, ruled out any tampering. While facing the cross-examination, PW-13 Gautam Ghadge stated that the country Pistol was in working condition. The analysis of gun was made after lapse of five months of its receipt. He also admitted that walker and paraffin tests are essential but the same are not done. By taking advantage of this, Mr Bhosale, learned Counsel for the appellant vehemently submitted that the reports of ballistic expert are not anyway reliable when necessary tests are not carried out. The case in hand is mainly rest upon direct evidence in the nature of eye witnesses. The evidence of both eye witnesses is found trustworthy, reliable and creditworthy. Even, for the sake of moment if it is accepted that reports of ballistic expert are not reliable, not anyway damaging to the prosecution case. In **Rakesh and another Vs. State of U.P. and another** (supra), the Honourable Supreme Court has held that as per the ballistic report, the bullet found does not match with the fire arm/gun recovered and, therefore, the use of gun as alleged is doubtful and, therefore, benefit of doubt be given to the accused is concerned, the aforesaid cannot be accepted. At the most it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non.

56. As observed hereinbefore, PW-3 Ashok Giri and PW-4 Sudam Suryawanshi are found reliable and trustworthy eye witnesses to the incident and they have stated categorically that appellant/accused no.1

has used the fire arm and fired bullet which hit on the chest of Mr Kondawar who succumbed to fire arm injuries. The injuries caused by the fire arm have been established and proved on the basis of medical evidence and deposition of PW-2 Dr. Kailas Zine. Therefore, the evidence of both eye witnesses who witnessed the firing and using of fire arm at the hands of accused no.1 is on higher pedestal and cannot be discarded, when their evidence is found trustworthy and reliable.

57. PW-11 Mr More, Police Inspector is an Investigating Officer. He has disclosed about his procedural part of investigation during his testimony vide Exh.133.

58. Having regard to the exercise of appreciation of stock of prosecution witnesses, it would be clear that Mr Kondawar, Accounts Officer met with homicidal death. He sustained injuries by fire arm. The appellant/accused no.1 is the person who has used the fire arm and fired bullet at the time of incident on 30.5.2009 in the afternoon but, missed the target. His target was PW-3 Ashok Giri. The bullet was hit on the chest of Mr Kondawar, Accounts Officer who succumbed to fire arm injuries.

59. Mr Bhosale, learned Counsel for the appellant/accused no.1 vehemently argued that it is a case falling within the exception 4 to Section 300 of the Indian Penal Code. There was no intention on the part of appellant/accused no.1 to kill Mr Kondawar, Accounts Officer. Mr Kondawar was accidentally killed. It is not a case of culpable homicide amounting to murder punishable under Section 302 of Indian Penal Code but, it is a case of culpable homicide not amounting to murder punishable

under Section 304 Part II of the Indian Penal Code. Mr Bhosale has also referred number of citations in support his argument.

60. In **Sandhya Jadhav (Smt.) Vs. State of Maharashtra** (supra), it is held by the Honourable Supreme Court that 'for bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner'. In case of **Rampal Singh Vs. State of Uttar Pradesh** (supra), the Honourable Supreme Court has distinguished culpable homicide when amounts to murder and when not. Number of citations were referred by Mr Bhosale in order to alter the conviction from Section 302 of Indian Penal Code to Section 304 Part II of the Indian Penal Code.

61. We have gone through the stock of citations referred by Mr Bhosale, learned Counsel for the appellant/accused no.1 in order to see whether the case of the appellant falls under Section 304 Part II of Indian Penal Code. For bringing a case under the exception 4 of Section 300 of Indian Penal Code, it has to be established that the death is caused :

- (a) without premeditation;
- (b) in a sudden fight;
- (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and
- (d) the fight must have been with the person killed

To bring the case under exception 4 of Section 300 Indian Penal Code, all these ingredients must be found. The fight must be out of heat of passion. If the facts of the case in hand are taken into

consideration, above four requirements are absent. It is a clear case of culpable homicidal amounting to murder.

DOCTRINE OF TRANSFER OF MALICE

62. Appellant/accused no.1 had been to the chamber of PW-3 Ashok Giri with fire arm. It was not a case of sudden fight. It was not a case of sudden fight and out of heat of anger appellant/accused no.1 fired bullet in the air. In the present case, PW-3 Ashok Giri has called the meeting of his sub-ordinate Officers in his chamber. When the meeting was going on, appellant/accused no.1 entered into his chamber and obstructed the meeting. The officials present in the meeting tried to convince the appellant/accused no.1 about the cause of suspension of his father and how it can be revoked. The appellant/accused no.1 went out of the chamber/cabin and again entered into the chamber and used fire arm. He fired bullet and bullet was hit on the chest of Mr Kondawar, Accounts Officer. The target was Mr Ashok Giri but, it was missed. Appellant/accused no.1 attempted to fire again but, the fire arm was locked and he could not succeed due to which PW-3 Ashok Giri remained save. The intention of appellant/accused no.1 is very much clear. He was armed with fire arm with an intention to kill and he has used the fire arm in the cabin/chamber of PW-3 Ashok Giri and killed Mr Kondawar, Accounts Officer by missing the target (PW-3 Ashok Giri). It is a case of murder under doctrine of 'Transfer of Malice' as contemplated under Section 301 of Indian Penal Code. In case of **Jagpal Singh and ors., Vs. The State of Punjab**, reported in **1991 SC 982**, the Honourable Supreme Court in paragraph 3 has observed as under :

"3. On going through the entire evidence and other connected records placed before us, we are fortified in holding that the first appellant, Jagpal Singh shot at Surjit Kaur even though he aimed at only Kapur Singh. Therefore, under the doctrine of transfer of malice as contemplated under Section 301 of the IPC, Jagpal Singh has made himself punishable under Section 302 IPC (simpliciter). So far as the rest of the appellants are concerned, the allegations are omnibus. On a careful analysis of the entire evidence particularly of Udham Singh, we are of the opinion that it is not safe to convict the other two appellants, namely, Baldev Singh and Gurmel Singh s/o Chanan Singh".

63. Having regard to the legal position made clear by the Honourable Supreme Court, it is a case of doctrine of Transfer of Malice. The appellant/accused no.1 cannot take shelter by defending that he had no intention to kill Mr Kondawar, Accounts Officer.

64. Applying the aforesaid principle of transfer of malice, the appellant/accused no.1 is liable to be held guilty for the offence punishable under Section 302 of Indian Penal Code. The learned Additional Sessions Judge has rightly held him guilty for the offence of murder punishable under Section 302 of Indian Penal Code. We do not find any error on the part of learned Additional Sessions Judge-2, Aurangabad while convicting the appellant/accused for the offence of murder. The learned trial Judge has rightly appreciated the evidence and also held the appellant/accused no.1 guilty under Sections 302, 307, 353, 332, 333 and 201 of the Indian Penal Code. The conviction needs to be upheld in the appeal without any interference, at our hands.

65. Having regard to the above reasons, the appeal needs to be dismissed.

ORDER

- (i) The Criminal Appeal stands dismissed.
- (ii) The conviction and sentence dated 17.5.2014 awarded by the Additional Sessions Judge-2, Aurangabad in Sessions Case No.397/2009 against the appellant/accused no.1 - Sachin s/o Rameshwar Tayade for respective offences punishable under Sections 302, 307, 353, 332, 333 and 201 of the Indian Penal Code is hereby confirmed.
- (iii) The Criminal Appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

vvr