

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 587 OF 2001

The State of Maharashtra,	]	
(At the instance of the Rabale	]	...Appellant
Police Station, Dist. Thane)	]	

Versus

Prabhakar @ Balu Narayan Gavade,	]	
Age : 25 years, Occ: Service,	]	
R/at Mata Ramabhai Ambedkar	]	...Respondent
Marg Police Station, Police Colony,	]	(Orig. Accused)
B-Block, 2 nd Floor Room No. 79,	]	
Mumbai.	]	

Mr. Arfan Sait, APP for the Appellant – State.
Mr. S.H. Kantharia for Respondent.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : MARCH 04, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Sessions Judge, Thane, in Sessions Case No. 194 of 1997, dated 17th March, 2001, whereby Respondent herein – Original Accused was acquitted for the offences punishable under Sections 302, 307 and 452 of the Indian Penal Code (for short “IPC”), the present criminal appeal is

preferred by the Appellant – State of Maharashtra.

2. The case of the prosecution, in brief, can be summarized as under:

The elder sister of accused Prabhakar @ Balu, namely, Ujvala was in love with Suhas Karnekar, who was working as a class – IV employee in the office of the Director of the Technical Education at Mumbai initially. Subsequently, Suhas was promoted in his service as a Junior Clerk in January 1996. Accused was working as Police Constable in the police department. Except the Respondent – Accused, the other family members gave a nod to the love relationship between Ujvala and Suhas. As such, marriage between Suhas and Ujvala was solemnized on 20.12.1995. After marriage, Suhas and Ujvala started residing in Sai-leela Society at 2nd floor and they were occupying room no. 204. In the same building at 4th floor parents of Ujvala and accused were residing. The unfortunate incident in question took place on 17.01.1997. On 17.01.1997 at about 7 am Prabhakar went to the house of Ujvala. On hearing the electric bell, Ujvala opened the door. Prabhakar entered in the house. Ujvala as a part of courtesy offered a cup of tea to accused. Ujvala then went inside the kitchen. Prabhakar picked up the quarrel

with her husband Suhas and started raising question to him as to why he has married his sister Ujvala. He further said that he would finish him (Suhas) and by saying so he took out his service revolver and opened fired to Suhas. Two bullets were shot at Suhas from the revolver. On hearing the shouts Ujvala came in the hall and found that her brother Prabhakar is standing with a revolver in his hand aimed at her husband. She rushed to save Suhas but accused Prabhakar was not in a mood to stop there and he fired third bullet hitting the same to his sister Ujvala. After firing three bullets from the revolver accused Prabhakar fled away from the spot.

3. Suhas raised shouts for help. His neighbours immediately rushed to the block of Suhas. A Fiat car was arranged for shifting Ujvala in the Civil Hospital, Thane, as well an ambulance was also arranged for shifting Suhas to Civil Hospital, Thane. Before any medical assistance could be provided to Ujvala in the Civil Hospital, Thane Ujvala succumbed to the bullet injury. Suhas was taken to Civil Hospital, Thane in serious condition. The duty constable attached to Civil Hospital, Thane recorded the statement of Suhas and the same was registered as a complaint. Suhas was then shifted to a private hospital i.e., Singhania

Hospital, Thane for further surgical treatment and then from Singhania Hospital, Thane he was shifted to K.E.M. Hospital, Mumbai on 21.01.1997. Suhas was under treatment at K.E.M. Hospital, Mumbai till his discharge on 31.07.1997.

4. In Rabale Police Station crime was registered against the Respondent – Accused for commission of offence punishable under Section 452, 307 and 302 IPC read with Section 25(1)(A) of Arms Act. Mr. Janardan Garaje (PW 9) who was attached to Rabale Police Station at the relevant time as police inspector took over the investigation and on completion of necessary formalities of investigation he filed charge-sheet in the Court of JMFC. As the offences being exclusively triable by the Court of Sessions, the learned Magistrate committed the case to Court of Sessions.

5. The accused pleaded not guilty. The defence of the accused was of two folds. Firstly, it was a denial and secondly Suhas husband of Ujvala himself hatched a plan to eliminate Ujvala on the ground that Suhas had developed an intimacy with one of the colleague and artist and because of this intimacy their used to quarrels between Suhas and Ujvala.

Certain documentary evidence in the form of reports from chemical analysis were also placed before the Court. On appreciation of evidence learned Trial Judge though recorded an affirmative finding in so far as the death of Ujvala being homicidal death and found that the evidence brought by the prosecution is wholly insufficient to connect the accused for commission of offence and as such recorded the judgment and order of acquittal.

6. Learned APP vehemently submitted that the learned Trial Judge committed a serious error in not appreciating the version of injured eye witness Suhas, in proper perspective. Learned APP further submitted that the attending circumstances in the form of medical evidence and ballistic report also supports the case of prosecution. Learned APP further submitted that learned Trial Judge ought not to have attached undue importance to minor discrepancies or omissions in the version of the eye witness. It is also the submission of learned APP that the prosecution has brought on record the motive i.e. the resistance of the accused to the marriage of his elder sister Ujvala with Suhas. Thus, learned APP prayed for allowing the appeal by setting aside the judgment and order of acquittal passed by the Court below.

7. Per contra, learned Counsel appearing for the Respondent in his detailed submission vehemently submitted that learned Trial Court committed no error in appreciating the evidence. Learned Counsel for Respondent submitted that the so called motive in the form of opposition by the accused that too at initial stage is a weak piece of evidence and learned Trial Judge committed no error in not accepting this material as a circumstance against the accused. Learned Counsel for Respondents vehemently submitted that there are serious lacunae in the prosecution evidence. The discrepancies and omissions are of such nature that a suspicion is created over the prosecution case. Learned Counsel appearing for the Respondent further vehemently submitted that the so called injured eye witness at the first instance though having every opportunity to disclose the name or identity of the accused withhold the name and identity of the accused and this fact itself creates a serious doubt and suspicion over the prosecution case. Thus, learned Counsel for Respondent prayed for dismissal of the Appeal.

8. With the assistance of learned Counsel appearing for the respective parties, we have gone through the evidence and record

brought before the Court below.

9. On going through the evidence, we find considerable merit in the submissions of learned Counsel appearing for the Respondent. We are also of the opinion that the learned Trial Judge was justified in observing that though the prosecution was successful in proving the death of Ujvala being homicidal one but the prosecution miserably failed to connect the accused with commission of offences. The evidence brought by the prosecution failed to establish that the weapon used in the offence namely, revolver and the bullets i.e. two bullets fired at Suhas and one bullet to Ujvala were in exclusive possession of the accused only. Learned Trial Judge was also justified in observing that though the prosecution could have collected the material in the form of other witnesses who could have been eye witness and doctors who could have been witnesses in support of medical evidence were not examined by the prosecution. Learned Trial Judge was also justified in observing that the facts namely, the relationship between the parties i.e. accused being the brother of deceased and the deceased was carrying pregnancy when she lost her life could not have been the only decisive factor to record the conviction. Learned Trial Judge was also justified in observing that the

Trial Court was expected to appreciate the entire evidence i.e. the ocular version of the witnesses and the circumstantial evidence so as to record the judgment and order of conviction and it could not have been swayed away by mere fact of relationship between the parties.

10. Now we may refer the evidence of Dr. Chhaya Kamat (PW 8) attached to General Hospital, Thane as Medical Officer at the relevant and who had conducted autopsy on the person of Ujvala firstly.

In her examination-in-chief she stated that on 17.01.1997 she received dead body at about 2.00 pm of a female by name Smt. Ujwala Suhas Karnekar. She performed autopsy on the said body from 02.05 pm and completed the same by 03.00 pm. She further stated that she found body was averagely nourished and old in its condition. She further stated that out of there was no more composition, there were slight signs of rigor mortis. The eyes and mouth of the female body were found partially opened. There was purging of stool from anus. All limbs were found straight and were found by the said of body.

On external examination she found only one injury with its entry wound and corresponding exit wound. The entry wound was found on posterior axillary line on the right side in 9th rib intercostal

space circular in shape and 1 cm in its diameter. The exit wound was found on left side in 4th intercostal space mid clavicular line above nipple, triangular shape and the side of border 4 cm approximately with irregular margins. This injury was anti mortem. No injuries were noted externally or internally on the area of head i.e. scalp or skull. On internal examination the brain congestion was found.

11. On internal examination of thorax portion she found toraic cavity with haemophorax with approximately 3 liters of blood and the exit and entry wound were found present in portion of walls and ribs as well cartilages and pleasura was found torn at 2 sides with right pleural caviry in two sides with left pleaural cavity. Haemorage was noted the portion of layrnx, trachea & bronchi. In respect of right lung its lower lob was found torn while in respect left lung its upper lob was found torn. The pericardium was found torn posteriorly. The right and left arteries of heat were found torn. On internal examination of abdomen portion she noted walls and peritonium as intact. In respect of bucal cavity and all other portiois congestion was found with some undigested food present in the intestine. She further stated that she had collected sample of skin around the exit and entry wound of the plan blood and of the citated

blood and of the nails of the hands and the food. The spine and spinal cord were found intact. On examination of uterus six months pregnancy was noted.

In her opinion cause of death of Ujvala was on account of hemorrhagic shock due to gunshot injury. Postmortem notes are admitted by this witness.

In the cross-examination she stated that burning of surround skin of entry wound caused with any fire arm irrespective of any distance or range is a common phenomena in all such injuries.

Version of this witness established the factum that death of deceased Ujvala was a homicidal death.

12. Now we may refer to the evidence of Dr. Balkrishna Khadale (PW 7). In his examination-in-chief he stated that in January 1997 he was attached to Civil Hospital, Thane. On 17.01.1997 at about 08.10 am patient Suhas Karnekar was brought in casualty ward by his father-in-law Narayan Gavade patient was conscious. He examined Suhas clinically and he found following injuries on his person:

1. There was wound of entry at right side chest at anterior line of axilla in fifth intercostal space with bleeding

present. No corresponding exit wound was found of this entry wound.

2. He found another wound of entry on left upper 1/3 part medical side on calf muscle with bleeding present. Similarly no exit wound of this entry wound was found of the person of this patient.

The measurements of the first entry wound as second entry wound were 1 cm x 1 cm. The first entry wound was found having depth towards thorax side but he did not measure its depth by probing any glass rod. The second wound of entry was found muscle deep.

In his opinion, both these injury were fresh and may have been caused with bullets, they were grievous in their nature. He, therefore, issued MLC in his own hand under his signature of patient Suhas. Certificate of clinical examination of Suhas was admitted in evidence at Exb. 50.

In the cross-examination, he stated that there may not be any exit wound in every entry wound since there is possibility of projectile remaining side if bullet has been fired from extreme range with the rifle weapon. He further stated that patient as well as his father-in-law had disclosed history of assault which he has recorded in case register. He

further stated that on seeing the same he say that no name of assailant has been mentioned in this history of assault.

13. Perusal of version of Dr. Balkrishna Khadale (PW 7) show that it is admitted by this witness in the cross-examination that no exit wound of the entry of the bullet injury at right side chest was found on the patient. It is also admitted by this witness that the patient was brought in the hospital through his father-in-law Narayan Gavade. When patient was brought to the hospital he was conscious. In the cross-examination the witness admitted that the patient as well as his father-in-law disclosed the history of assault and the same was recorded in the case register. It is important to note here that Dr. Balkrishna Khadale (PW 7) in his cross-examination admitted that there was no name of assailant mentioned in the history of assault. Now this aspect clearly lead to raise a doubt in the prosecution case for the simple reason that as per the prosecution case it was the accused who opened the shot by the fire arm to deceased Ujvala and victim Suhas. It is also the case of prosecution that Suhas being the brother-in-law of accused had an acquaintance with the deceased and in such situation non mentioning the name of assailant in the history providing to the medical officer raises a suspicion over the

prosecution case.

14. Now we may refer to the important injured witness i.e. Suhas Karnekar (PW 1). In his initial version before the Court Suhas provides the preliminary information in respect of the love relationship between himself and Ujvala. The marriage was solemnized with consent of the family members of Ujvala on 20.12.1995 by vedic method and an opposition to their marriage from the accused. Then he also gives information about the status of himself and the accused respectively i.e. he was working in the office of Director of Technical Education and accused was working as a armed constable in police forces. Then he states about the shifting their residence in Sai-leela society in room no. 204 of second floor and on fourth floor his in-laws were residing. In so far as the incident is concerned, he stated that on the day of incident at about 07.00 am he was sleeping in his tenement. The door bell rang and he was about to open the door but his wife Ujvala proceeded and opened the door. Accused entered in the house. His wife then proceeded towards kitchen to bring water and at that time accused started giving abuses to him. Accused gave him threats of life and said that he was compelled to live insulted life because of him. Then he took out revolver and fired

bullets towards him. His wife came out of kitchen and stood in front of him. The accused also opened revolver towards her. Both of them were injured due to fire of bullets. He further stated that at that time his wife was carrying pregnancy and she was unable to bear the bullet injury and she started shaking her body with severe pain. He further stated that after firing the shots from revolver the accused immediately ran away. He kept his wife down for a very brief period and came out of room and started shouting. His parents, in-laws came down, some other residents also rushed to the spot of help. He further stated that the main door of the tenement was latched from inside and his in-laws who were possessing extra key of the flat have brought the key and the door was opened. Then he stated about the shifting of himself and his wife to the hospital. Then he stated about his treatment at Civil Hospital, Thane and then Singhania Hospital and then K.E.M. Hospital at Bombay til 31.01.1997. He stated that as he was having pains he was admitted in J.J. Hospital at 26.09.2000 and he was operated on 09.10.2000. He was discharged from J.J. Hospital on 19.10.2000.

This witness was subjected to a detailed cross-examination. In the cross-examination he stated that the dimension of the hall of his

tenement was 7ft in width by 12ft in length. He further stated that accused came ahead of entering in the hall towards a distance of about 2 to 3 ft and shoot two bullets towards him. Suggestions were made to this witness about his interest in direction and his coming across with female artist as director, then there was a suggestion that due to his thick relations with female artist disputes and quarrels used to took place between himself and his wife Ujvala, these suggestions are denied. Then he admitted in the cross-examination that he has no knowledge so as to distinguish between service revolver and a simple revolver and a reference in the complaint to service revolver is as per his impression in the context that the accused was working as a police constable at the relevant time. Then the suggestions were given to this witness that he himself hatched a plan to kill his wife and involved the accused as he was serving in police department, these suggestions were denied. Then he stated that the bullets were shot from the revolver by holding the same with both hand sin straight directions. He had also stated that the bullets were shot at him and his wife from a distance of 5 to 6 ft.

15. Sudhir Karnekar (PW 2) is younger brother of Suhas (PW 1). He stated before the Court about the objection to the marriage of Suhas

and Ujvala by accused Prabhakar. At the relevant time this witness was serving in Povai and on 17.01.1997 due to tense atmosphere on account of murder of Datta Sawant he preferred to stay at home instead of attending his duty. In the evening his sister Sunita informed him and the family members that she had received a phone call that Suhas has been admitted in the Civil Hospital, Thane due to accident. Then it was informed that Suhas has been shifted to Singhania Hospital from Civil Hospital. Then he rushed to Singhania Hospital along with other family members. Then he came to know from Manohar Gavade the younger brother of accused Prabhakar that Prabhakar opened fire and Ujvala and Suhas were subjected to the bullet shots at the hands of accused.

Thus, the evidence of this witness only hearsay evidence and as such, it fails short either to support the case of prosecution or to take further case of prosecution.

16. Sachin Kamble (PW 3) a panch witness. A panchnama was prepared in his presence and another panch Sunjil Shedge in respect of attachment of two bullets taken out from the body of Suhas Karnekar. The bullets were kept in a small glass bottle.

In the cross-examination the witness admitted that it was his

first time to see an operation theater. He further stated that he had not entered in the operation theater and only the bullets were kept in the bottles and the bottles were sealed in presence of himself and other panch. Thus, this witness is a formal witness.

17. Nandkumar Rokde (PW 4) was working as Assistant Chemical Analyzer in the Forensic Science Laboratory at Mumbai at the relevant time. On 28.01.1997 he received a letter forwarded through Senior P.I. of Rabale Police Station along with four sealed files, 7 sealed parcels and two sealed small bottles pertaining to Crime No. I-26/97. On opening the packets he found one six chambered inch revolver having body number 405596 with bullet no. 572 markings titan tiger cal 38 opfie corp Miami fla with black card wrapped in paper in the first parcel. In second parcel he found six intact KF 380 revolver cartridges having head stamp markings KF 380, 2, 90 wrapped in paper. In third parcel he found one brass rod, 3 small cloth pieces. In fourth parcel he found a full bush shirt wrapped in brown paper. In fifth parcel which was wrapped in brown paper was found containing one full pant. Sixth parcel of brown paper was found containing one gown. Seventh parcel was found confound contain one nicker put inpol these bag wrapped in brown

paper.

He refers to the four files and stated thus:

10. After having opened and found above articles in 7 different parcels wrapped in brown paper, I have taken other four phials in hand description of which is as under:

First phials was found containing one couperage jacketed bullet having rifling marks put in phial marked as Marathi figure.

Second phial when seen was found containing 2 coupra jacketed bullets having rifling marks put in a phial with the label around its as bearing "Suhas Karnekar 470/88" S.D. bullet (2) 17/1/97 which was also marked as marathi figure 6.

Third phial was found containing cotton swab with marathi figure 4 and fourth phial was found cotton with marking of marathi figure 5.

Then he found two sealed small bottles, and both of them was found containing reddish liquid separately marked on each bottle.

Then he undertook the exercise of analyzing these articles and he prepared the CA report. Same was dictated by him and was typed by his typist.

18. In the cross-examination he admitted that from analysis it is not possible to say as to how much time or date or days before the bullet was fired from a particular revolver. He further stated that there are various types of wound which can be described from the velocity or range of firing known as contact range, burning scorching range, smoking range, tattooing range. He further admitted that in his report there is not mention regarding finding of seal of signatures of panchas. Then to a Court question the witness stated that he would not be in a position to say positively whether the shot holes found on gown Exh. 12 could be a result of firing of bullet or not. He also not in a position to say about the exact distance of firing of bullet from revolver alike Exhibit 1 (Article 5). Nandkumar Rokde (PW 4) stated that the shot holes found on that gown were made by shot of coupro jacketed bullet. From perusal of record it seems that it was only impression carried by this witness because coupro bullets sent to him in a separate phial. Another bullet was kept in a separate phial stating that it was fired from the revolver. This witness admitted that there are four ranges available for recording various types of wound as a result of the firing under these four ranges either through smooth bearer weapon or rifled weapon. It was further admitted

that the distance limit for all these ranges is within 3 ft and if the bullet is fired from the revolver then the distance of 2 mtr i.e. 6 ft. Then in the event of such close distance firing phenomena's of scorching, tattooing, blackening are observed. There is also discrepancy as to whether the packets or the phials received by this witness were sealed under the signature of panchas. This witness stated that he did not come across any seal from the office of M.O. Then he further admitted that he was not in a position to say about the exact distance of firing of bullet from revolver.

19. Manohar Chavan (PW 5) was working as head constable in the police head quarters at Naigon. He had an acquaintance with accused Prabhakar being a police constable serving in S.B. 1 C.I.D. 'S' branch. On 02.12.1996 accused visited the head quarter office with a requisition letter from CID office for taking official delivery of revolver. Superior Officer, PI – Pednekar put an endorsement on the requisition letter. Then that letter was carried to this witness and on confirmation and signature of Mr. Pednekar and the letter this witness handed over the revolver bearing no. 572 and bearing body no. N-405596 also bearing name of Titan Tiger. Along with revolver he gave 30 cartridges to the accused. He also gave one brass cord for cleaning the revolver. Then

accused put his signature on the receipt. Necessary entries were taken in the register. The original register was brought by the witness for perusal of the Court. Though, the suggestions were put to this witness to submit that the statement made before the Court are not true but this witness denied all these suggestions. The photographs of the entries in the register is at Exhibit 46.

20. Bharat Gavde (PW 6) is another police personnel who was working as head constable at the relevant time. He stated before the Court that he was working as Armour Mechanic since 1981 and in that capacity only he was attached to unit L3 at Worli police head quarters. He stated that in the month of March / April 1996 he was residing in new police lines at Naigaon and while coming to duty from his residential quarters he came across three live cartridges near firing range of Naigaon. He carried these three live cartridges and made an inquiry as to whom these cartridges belonging. He further stated before the Court that on inquiry accused Prabhakar present near the firing range approached him and told him that these cartridges belong to him. On this statement this witness handed over these three live cartridges to accused Prabhakar on the same day.

In the cross-examination this witness admitted that Sr.PI is incharge of Armory at police head quarters he supposed to be in control of all the Armory including cartridges either rifle or revolver. He also admitted that it was necessary to report about anything occurring in respect of part of the Armory to the Sr.PI. He further admitted that at the relevant time he was attached to Worli head quarters firing range. He further admitted in the cross-examination that he did not submit any report in writing regarding of three live cartridges and handing it over to the accused either to the police inspector incharge of Naigaon police firing range or inspector incharge of Armory at Worli head quarter. An omission was brought on record to the effect that in the statement the witness stated that he had seen accused Prabhakar standing near the firing range when he made inquiry about three live cartridges.

21. Perusal of version of this witness clearly show that the witness even though was a police personnel and admittedly was duty bound to report any case of finding an article in Armory a bullet either from revolver or rifle but this witness very casually just made an inquiry and when accused informed him that these three live cartridges belonging to him the witness without further making any inquiry

casually handed over to the accused.

22. Now the last witness is Janardan Garje (PW 9) is the investigating officer at the relevant time. In examination-in-chief he stated that in January 1997 he was working as Police Inspector in Rabale Police Station in Thane. He further stated that on 17.01.1997 he was present in the police station at 7.30 am. He received an information that in Sai-leela apartment there has been incident of firing in which one female and one male have been injured. He then stated about the steps taken by him in the process of investigation.

Certain omissions are proved through this witness.

23. Suhas Karnekar (PW 1) stated before the Court that accused shot the bullets to him and his wife Ujvala from a distance of 5 to 6 fts. Now considering the version of Nandkumar Rokde (PW 4) if the bullet is shot at a close distance there ought to have been firing phenomena like scorching, tattooing, blackening but the same was not observed either in the medical certificate of Suhas (PW 1) who is an injured witness or the deceased Ujvala. There is also no explanation on the backdrop as to Suhas (PW 1) in his version before the Court stated that accused hold the

revolver in his both hands and shot three bullets from the revolver. As already observed by us that Balkrishna Khadale (PW 7) the medical officer had stated that though there was wound at entry at the right side chest of complainant, there was no corresponding exit wound to his entry wound. In the cross-examination Balkrishnas (PW 7) stated that there may not be any exit wound in every entry wound if the bullet has been fired from extreme range with rifle weapon. Here the prosecution case is that the accused had used revolver for firing the bullet shots.

24. An attempt was made by the prosecution to place reliance at a letter allegedly seized while effecting arrest of the accused i.e. Article no. 26 under arrest panchnama Exh. 17. Though, the panchnama was admitted the letter by itself could not have been a circumstance against the accused merely because there was some anger and displeasure expressed in the letter due to marriage of Ujvala and Suhas. Learned Trial Court was justified in observing that the letter would only show that the accused was carrying a frustration and anger to all those persons responsible for making his life miserable including his parents. Therefore, this letter itself cannot be a circumstance against the accused leave aside an strong circumstance.

25. In so far as the firing of two bullets from the revolver is concerned, learned Trial Judge assigned one more reason for not accepting the prosecution case on the backdrop of the medical certificates. It may be useful for our purposes to refer to these observations reflected in Paragraph 19 of the judgment and same reads thus:

19/-

For this purpose, it would be necessary for me to go back to the contents of the correspondence on record from singhania hospital. The medical certificate received from Singhania hospital is admitted in evidence at Exh. 53 as was so admitted by the defence U/sec. 294 of Cr. Procedure Code. From the content of this medial certificate it is crystal clear that beside Dr. Harish Jamihal Dr. Milind Patil and Dr. Ramchandra Bhide are also present in the operation theater and that Dr. Bhide explored the chest wound, while Dr. Patil explored the calf and removed the bullet from there. That all means the two doctors could not be held as mere onlookers when they have taken actual parts in the surgical

operation to take the bullets from the wounds and therefore the presence of these two doctors in the operation theater would naturally compelled one's mind to accept the prosecution to lead the evidence of any of the two doctors. It was tried to be strenuously urged by Mr. Navale the Ld. A.P.P. for the state has in reply submitted today that since the defence had admitted the document of the medical certificate Exh. 53 and the prosecution had proved it through the evidence of panch witness Mr. Kamble the panchnama Exh. 41, from the contents of the panchnama Exh. 41 one can gather that the two bullets kept in sealed small glass bottle foil were so kept by Dr. Harish himself. It is no doubt that the panch witness has formerly stated to have admitted one sentence that the "contents of this document are true and correct". But this mechanical proof of the contents of the document Exh. 41 practically has been done away by the examination-in-chief portion of this very witness that the two bullets were shown to these two panchas not by any doctor, but by police himself. Here lies the lacuna on the part of the prosecution to directly link of the two bullets as to have been duly; established as duly taken out from the prosecution of Suhas Karnekar and then sent for its chemical analysis, to the chemical analyser for being linked up with the service revolver seized from the

possession of the accused under the panchnama Exh. 17. Unfortunately, the C.A. report do no help the prosecution in this above. None of the three bullets are found to have contained any blood stain, either which was found to be shot to the deceased Ujvala or out of two bullets allegedly shot towards the person of Suhas Karnekar. No doubt that one of three bullets is found to have been blood stained, but as usual a result thereof is reported as inclusive.

26. It was the case of prosecution itself that the accused approached Bharat Gawade (PW 6) with a requisition letter for collecting the revolver and cartridges. Accordingly, one revolver and 30 cartridges were handed over to the accused. There is no explanation coming before the Court as to the source of three cartridges which were found at the firing range and on inquiry by Bharat (PW 6) accused told that these three cartridges belonging to him and Bharat (PW 6) casually handed over three cartridges to the accused. Revolver and 30 live cartridges were already seized from the possession and custody of accused while effecting his arrest.

27. On the backdrop of these facts, the reasoning assigned by the

learned Trial Court for not accepting the case of prosecution reflects in paragraph 20 of the judgment and same reads thus:

20/- For establishing the use of the same bullets which were taken out from the person of the deceased Ujvala as well as from the person of Suhas Karnekar became further as a must because of the recovery of 30 live cartridges when the service revolver such as article no. 4 and 5 alleged seized from the possession and the custody of the accused while arresting him under the panchnama Exh. 17 and it is the story of the prosecution that as per the evidence of the police head constable Manohar Chavan witness no. 5, the said service revolver and those 30 live cartridges were delivered to the accused Prabhakar Narayan Gavade on the given date of 02/12/1996 under delivery entry no. 572 appearing on page no. 213 of the original delivery register, an extract of which is admitted in evidence at Exh. 46. It is also not in dispute before me that the said 30 live cartridges and the same service revolver delivered to this accused on 02/12/1996 which later on recovered on 17/01/1997 in the night at about 10.00 p.m. at the time of arrest of the accused who was arrested on 17/01/1997 as per the Exh. 17 arrest panchnama. If that been so the prosecution was naturally called upon to account for the use of additional

3 cartridges as has been so allegedly done by the present accused allegedly for committing the crime and perhaps finding it out of the evidence of Bharat Gavade, the head-constable then working in Warali Firing Range, about staying in the vicinity of Naygaon Firing Range to be recorded during the investigation on 24/01/1997 and later on in this case as witness no. 6 for the prosecution. Mr. Bharat Gavade alleges in his evidence that it was on 11/5/96 that while he left from his residential quarters to resume his duty at Worli and while he was trying to search of availability of vehicle for going from Thane to Worli he happened to see 3 live cartridges lying down on the ground of the Naygaon Firing Range and that when he allegedly starting making enquiry accused Prabhakar Gavade came ahead and said to him that he had lost those 3 cartridges and that the same should be handed over to him and as a plain gentleman Bharat Ankush Gavande handed over the same to the accused Prabhakar @ Balu Gavade and that too without making any report to the higher authorities under whom he was serving and under the incharge of Naygaon Armary of Naygaon Firing Range. This positively creates a reasonable big question mark in one's mind and his evidence therefore becomes little bit doubtful and right from the stage of beginning itself the probability of finding out such 3 live

cartridges and seeing by the Bharat Ankush Gavade within side the firing range of Naygaon, to my mind, was not so usual, but appears to me by very remote chances. This I am observing particularly when Bharat Gavade himself admitted that Firing Range of Naygaon was circumvented by 4 walls with one opening door there to and it was not explained by the prosecution that it was no other property or entrance to that Naygaon Firing Range which was admittedly enclosed 4 walls instead of following the normal tract of passing by the said road thereto, particularly when he was required to go and attend his duty by getting the lift by chance of some empty second vehicle of the police department. This conduct of Bharat Ankush Gavade to my mind does not appear to me quite natural and normal.

28. It is already referred by us, that while admitting Suhas (PW 1) in the hospital through his father-in-law history of assault was recorded but name of assailant was missing. This aspect is also dealt with by the learned Trial Court in paragraph 24 of the judgment and same reads thus:

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..... on the backdrop of admissions given by Mr. Garje investigation officer, Mr. Garaje admitted in his cross-examination that it had transpired in his investigation or enquiry of this case, while he made enquiry with the witness like Mr. Madan Gurav that the door of the flat of Suhas Karnekar being of the arrangement of such as latching system had been automatically latched and closed from inside, since Suhas Karnekar came in an injured state outside his flat with his hand kept around the abdomen wound where from the blood was oozing out and that the door of the flat was opened by Balu Gurav. Balu Gurav is no other person than the accused Prabhakar Gavade which is not a disputed matter and which accordingly to me also can not be controverted matter. Prabhakar Gavade was also being known as Balu Gavade is the fact brought for the first time in the complaint Exh. 38 and it is not tried to be brought on record either by leading evidence of Narayan Gavade the father of the deceased Ujvala or of the accused or by leading the evidence of the Manohar Gavade the brother of the present accused that Balu was also the nick name of accused Prabhakar Narayan Gavade. Therefore, the door of the flat of Suhas Karnekar is opened with the key by the present accused Prabhakar @ Balu Gavade does not explained by the prosecution as to why Suhas

Karnekar did not avail the foremost opportunity by directly pointing out his finger or other hand towards the accused Prabhakar @ Balu Gavade that he is the brutal culprit who committed the murder of his wife and also tried to kill him. This silence on the part of complainant Suhas Karnekar therefore smells out something else and positively creates a reasonable doubt in one's mind.

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29. Considering the above referred aspects, namely, the material discrepancies in the version of witness and more particularly, in the version of injured Suhas (PW 1), the failure of prosecution firstly to establish circumstances independently, namely, the weapons were used by the accused whether the service revolver or otherwise and the source of live cartridges allegedly used by the prosecution to submit that three bullets were fired and then failure of prosecution to establish the chain of these circumstances pointing out unerringly towards the accused and accused only as the culprit, the learned Trial Judge thus, on consideration of the evidence found that the accused is entitled for benefit of doubt. The view adopted by the learned Trial Judge cannot be said to be an

illegal or perverse view. Appeal, thus, being meritless deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)