

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 878 OF 2002

Abdul Rauf Dawood Merchant.
Indian, Aged 31 years,
R/o. Wafa Complex, "B" Wing,
Amrutnagar, Mumbra, Dist.Thane.
(Presently lodged at Pune central prison.) ... Appellant.

V/s.

State of Maharashtra.
(D.N. Nagar Police Station C.R. NO.
572/1998) ... Respondent.

Mr. Satish Maneshinde a/w. Ms. Deepali Thakkar, advocate for appellant in
Cr. Appeal No. 878 of 2002.

Ms. Madhavi H. Mhatre a/w. Ms. P.P. Shinde, APP for the State.

ALONGWITH

CRIMINAL APPEAL NO. 1006 OF 2002

The State of Maharashtra. ... Appellant.

v/s.

1. Ramesh Sadharam Taurani
Age 41 years, 1st floor,
Mukta Bldg. 10th Road,
Khar (West), Mumbai

2. Abdul Rashid Dawood Merchant.
Age 28 years, Wafna Complex,
"D" Wing, Ground Floor,
R. No. 1, Mumbra,
District Thane. ... Respondents.

Ms. Madhavi H. Mhatre a/w. Ms. P.P. Shinde, APP for the Appellant-
State.

Mr. Apoorv Singh, advocate for Respondent No. 1 in Appeal No. 1006/2002.

Mr. Satish Maneshinde a/w. Ms. Deepali Thakkar, advocate for Respondent No. 2

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : MARCH 3, 2021.

PRONOUNCED ON : JULY 1, 2021.

JUDGMENT :(PER SMT. SADHANA S. JADHAV,J)

CRIMINAL APPEAL NO. 878 OF 2002

1 This appeal impugns the Judgment and Order dated 29th April, 2002 passed by the Additional Sessions Judge, Gr. Mumbai in Sessions Case Nos. 15/1998 a/w. 448/1998 a/w. 1473/1998 a/w. 18/2000 a/w. 365/2001, thereby convicting and sentencing the Accused No.19-appellant Mohd. Rauf Dawood Merchant as under :

- (i) For the offence punishable under section 302 of Indian Penal Code to suffer imprisonment for life and to pay a fine of Rs. 5,000/- I.d. to suffer S.I. for 3 months;
- (ii) For the offence punishable under section 307 of the Indian Penal Code to suffer imprisonment for life;
- (iii) For the offence punishable under section 392 of the Indian Penal Code to suffer R.I. for a period of 7 years and to pay a fine of Rs. 1,000/- I.d. to suffer S.I. for one month.

(iv) For the offence punishable under section 397 of the Indian Penal Code to suffer R.I. for a period of 7 years and to pay fine of Rs. 1,000/- I.d. to suffer S.I. for one month.

(v) For the offence punishable under section 27 of the Arms Act and is sentenced to suffer R.I. for 3 years and to pay fine of Rs. 1,000/- I.d. to suffer S.I. for one month.

2 This appeal pertains to the murder of Gulshan Kumar Dua, the Managing Director of Super Cassette Industries, who was in the business of purchase of rights of audio cassettes of Hindi movies and private albums. He was the founder of T-Series Company and producer of several movies. He was shot dead in broad daylight. On 12th August, 1997 the deity SHIVA received the last offerings from his pious disciple Gulshan Kumar Dua, the deceased. On that day at 10 a.m., he visited Shiv Mandir, situated at Jeet Nagar, Andheri(W) as part of his daily routine. He had sponsored the renovation of the said temple in the year 1976. Ever since then, he was visiting the temple twice a day – in the morning at about 10 a.m. and in the evening at about 6 p.m. On that day, as usual his driver Rooplal(P.W.7) had driven him to the temple in his Red Opel Car. Ramchandra Lavangare (P.W.1) the President of the Shiv Temple Management Association had also attended him as usual. He offered prayers for about 15 minutes, made the offerings and was returning home. He was proceeding towards his car, which was parked facing towards Navkiran Road at a distance of just 6 to 7

feet across the temple. He was followed by his driver P.W. 7 and P.W. 1 as usual. When they reached the car, the driver had crossed the other side of the car to take the driver's seat and therefore, P.W. 1 was walking a few steps behind Gulshan Kumar. When Gulshan Kumar was opening the door of the car, suddenly a person waiting in ambush, touched his back with a pistol and fired a battery of bullets in a fraction of a second. Taken by surprise, Gulshan Kumar turned back only to receive more bullets on his chest. At that juncture, when he was about to collapse, another assailant rushed towards him and rained bullets on him. He still struggled to rescue himself and walked a few paces upto the Gate of Raundal's bungalow and was again showered with bullets by the third assailant. When his driver tried to help him to rise, he was also shot on his right thigh. P.W. 1 had laid him on the rear seat of the car and immediately asked Rajesh Johari (P.W.3) to drive the car to Cooper Hospital. P.W.1 followed the car in an auto rickshaw. By the time, the injured reached Cooper Hospital, some person from Jeet Nagar had given telephonic information to D.N. Nagar Police Station, which information was received by PSI Rashmi Jadhav(P.W. 10) at 10.35 a.m. After making station diary entry at Sr. No. 23/97, she rushed to Cooper hospital with P.I. Rane (P.W.11), PSI Shinde (P.W.13) and a police constable. There she saw one severely injured man on stretcher, a crowd of people and P.W. 1 Laxman Lavangare, the only person who could tell her what exactly happened. P.W. 10 then recorded his statement which is at Exh. 54. As per the directions of PI Rane, she returned to D.N. Nagar Police

Station and registered Crime No. 572 of 1997 for offences punishable under section 302, 307 read with section 34 of the Indian Penal Code and section 25 of the Indian Arms Act. The investigation was set in motion.

3 The prosecution examined 45 witnesses to bring home the guilt of 17 Accused persons. Accused No. 6 and Accused No. 15 were discharged in April, 2001. To evaluate the evidence adduced by the prosecution, the witnesses need to be classified in five categories.

i) P.W.1 Ramchandra Lavangare, P.W. 2 Shankar Fukhe, P.W. 3 Rajesh Johari, P.W. 4 Labh Shankar Sharma and P.W. 7 Rooplal Saroj are eyewitnesses to the incident of shooting as well as the subsequent conduct of the assailants.

ii) The officers who have conducted the Test Identification Parade are P.W. 20 Shrikant Kauthankar, P.W. 21 Vinod Ghedia and P.W. 36 Sitaram Jadhav.

iii) The panchas to the recovery of incriminating articles at the behest of the Accused persons i.e. P.W. 24 Ashok Shah, P.W. 22 Kishor Goyal for recovery of passport, P.W. 38 Sanjay Desai, P.W. 6 Arun More for scene of offence panchanama, P.W. 8 Dhanaji Kadam Panch for recovery of Taxi of P.W. 4 which was abandoned at Kapaswadi Exh. 73.

iv) Witnesses to the conspiracy to kill Gulshan Kumar are Kishan Kumar Dua P.W. 32 who happens to be the younger brother of the deceased and P.W. 37 Arif Lakdawala.

v) The local police who investigated on 12th and 13th of August, 1997 i.e. P.W. 10 Rashmi Jadhav, P.W. 17 Subhash Salvi and P.W. 45 Arjun Bagdi of DCB CID Unit.

4 P.W. 1 Ramchandra Lavangare has deposed all these facts before the Court and has proved the contents of the FIR which was lodged by him in Cooper Hospital. P.W. 1 has then given a narrative description of the event to the Court as to how the incident had occurred and the assailants who had murdered Gulshan Kumar.

5 According to P.W.1 Ramchandra Lavangare, he was well acquainted with the deceased and his driver P.W.7, Rooplal as the deceased used to visit the Shiv temple twice every day since 1976. P.W.1 used to make it a point to remain present at the temple whenever the deceased arrived. On the unfortunate day also, he was present at the temple, when Gulshan Kumar visited the temple. After Gulshan Kumar completed his daily rituals, and offered prayers, the driver of the deceased took the articles from the hands of the deceased and followed him towards the car. P.W.1 followed them up to the car, as usual. As soon as the deceased reached the car, the driver had crossed over to take the driver's seat and therefore, P.W.1 was walking a few paces behind the deceased. Suddenly an unknown person rushed towards Gulshan Kumar, placed pistol on his back and fired a volley of bullets in the body of the victim. P.W.1 has stated that the said assailant had come from the

eastern side. When the deceased looked back aghast, the bullets were fired in his chest. P.W.1 had seen the injured trying to go towards Raundal's house, when the other Accused came from the side of the stall and again fired at the deceased. P.W.1 was scared and rushed towards the coconut tree, on the opposite side and saw a third person firing at the deceased. When the driver intervened to pick up the injured, he was also shot on his leg.

6 P.W.1 Lavangare had requested P.W.3 Rajesh Johari to drive the car of the deceased and take them to the hospital. He followed the car in an auto rickshaw. At Cooper Hospital, he saw the deceased on a stretcher. He saw P.W.10 PI Rashmi Jadhav. Upon inquiry, he informed P.W.10 that the person on the stretcher was Gulshan Kumar. He further informed her that he had witnessed the whole incident. He narrated the entire incident to P.W.10 and informed her that he would be able to identify the assailants if shown to him. His statement was recorded in the proforma under section 154 of Code of Criminal Procedure and is marked at Exhibit 54. P.W.1 has proved the contents of FIR. On the same day in the afternoon the police had reached the scene of offence. The scene of offence panchnama was drawn by P.W.11. It was P.W.1 who had shown the scene of offence to P.W.11 and P.W.6 Arun More, had acted as a panch for the scene of offence. The said panchnama is at Exhibit 62.

7 P.W.1 Lavangare has further testified that he had attended the

test identification parade which was conducted by P.W.20 Shreekant Kauthankar at Central Prison Thane on 21st October 1999. PW1 has identified Accused No.16 at the test identification parade as the assailant i.e the person who came from the side of auto rickshaw and fired at the deceased. On 2nd February 2001 he identified Accused No.19 as the assailant who came from the side of the stall and fired at the deceased in front of Raundal's house in the test identification parade conducted by P.W.20. He has also identified Accused No. 19 on 3rd February 2001 in the test identification parade held by P.W.21 in Arthur Road prison. The test identification parade conducted by P.W.36 is challenged on the ground that he was not officiating as a Special Executive Officer on 2nd February 2001, however the test identification parade conducted by P.W.21 on 3rd February 2001 cannot be ignored. P.W.1 has further clarified that Accused No. 1 Javed Kaliya is not present before the Court.

8 P.W.1 was cross-examined at length. P.W.1 was cross-examined at length about the topography of the place where the incident had occurred, being oblivious of the fact that he was residing in that area for more than 3 decades and was visiting the temple daily, at least twice a day and would not have confounded for a moment. As far as he being an eye witness to actual incident of assault is concerned, his testimony could not be shattered, instead the facts reiterated and clarified in the cross-examination are as follows :

(a) I could see the first assailant at 3 stages- (i) when he arrived on

the scene, (ii) when he started firing on the deceased and (iii) when he was running away from the spot.

(b) The assailants were on left side of the coconut tree when I was hiding myself behind the tree. I cannot say whether I saw the second and third assailants from the left side of the tree or from right side. Not correct to say that I saw them when they were running.

(c) It will be correct to say that the assailant Nos. 2 and 3 fired shots when the deceased was lying in front of Raundal's house.

(d) It is not correct to say that I had rushed to the same direction where the shots were being fired by assailant Nos. 2 and 3.

(e) I had identified the Accused Nos. 16 and 19 by their faces and features.

(f) My hands were stained with blood when I lifted the deceased to put him in the car.

(g) I followed Opel car.

(h) The deceased was lying on stretcher in casualty department when I reached hospital. My statement was recorded at about 11.30 to 11.45 p.m.

9 All these contentions of P.W. 1 in the cross-examination would establish that P.W.1 is an eyewitness to the incident and that his sterling testimony could not be dislodged in the course of cross-examination. It is believed that cross-examination is conducted to shatter or discredit the

testimony of a witness. But, in the present case, the case of the prosecution is reaffirmed in cross-examination.

10 On 12th August 1997 itself, at about 4.30 pm, when P.W.11 visited the scene of offence, P.W.2 Shankar Fukhe had voluntarily approached the police and informed them that he is a resident of Jeet Nagar. On that day, upon hearing the sound of firing, he rushed in the said direction and saw the deceased lying in a pool of blood in front of Raundal's house and witnessed two persons shooting at the deceased, although he was injured. He, therefore raised shouts and saw the two assailants running towards Bharat Nagar, he had even chased them. He saw the assailants looking backwards, probably to verify as to whether they were being chased. At that time, their facial features were clearly noticed, and were imprinted on his mind. On 21st October 1999 he identified Accused No. 16 and on 2nd February 2001, he identified Accused No 19. The suggestions accepted in his cross-examination are as follows :

- (a) It is correct to say that the assailants had run away towards Bharat Nagar.
- (b) It is correct to say that the assailants were looking behind occasionally while running away from the spot.
- (c) I could identify the Accused because I had seen them.
- (d) Accused No. 16 and Accused No. 19 continued to fire shots at the deceased even after his collapse.

It is pertinent to note that it has been elicited in the cross-examination as follows :

(e) **“I had stated before the police that I had seen the said person loitering in the area before 12th August, 1997.**

The suggestion at item No.“(e)” would establish that the Accused had marked the said spot for killing the deceased.

11 P.W.3 Rajesh Johari, was a rickshaw driver, holding the licence for driving light motor vehicle and heavy motor vehicle. He is also a resident of four Bungalows area in Bharat Nagar area. That on 12th August 1997, upon hearing the noise like bursting of crackers, he rushed towards Jeet Nagar and saw people running helter skelter as they were scared. He saw one person brandishing his black pistol and trying to flee. The said person was at a distance of 10 feet away from him. He started chasing the said person, but when the said person realised that he was being chased, he threatened P.W. 3 with his pistol thereby restraining him from chasing. He had even picked up something that he had dropped and then both the miscreants escaped towards Versova link road and then he saw them leaving in a taxi.

12 P.W.4 Labh Shankar Sharma is not an eyewitness to the incident of shooting, but for the subsequent conduct of the assailants. He happens to be a taxi driver, plying Taxi bearing No MHO-891 from 9 a.m to 10 p.m. On 12th August 1997, the passenger who hired him, halted before the Dominic

Garage at Versova Link Road. At that juncture, two persons holding pistol had pulled him out of his taxi by holding his hair. The lady passenger got scared and alighted from the taxi. The said two persons terrorised him by pointing the pistol towards him and fled towards Juhu with his Taxi. According to him, he could identify Accused No. 19 as the person who pulled him out of the taxi. The facial features of Accused No. 19 were imprinted in his mind and therefore, he identified Accused No. 19 in the test identification parade on 2nd February, 2001.

13 When P.W.4 called the police on 100 number from a shop nearby, he was directed to come to D. N. Nagar Police Station. While he was narrating the incident to the police, the police received telephonic information that a taxi was abandoned near Kapaswadi, which is half a kilometer from D. N. Nagar police station. PW4 accompanied the police and identified the Taxi, which was seen at Kapaswadi. **P.W. 4 had given the description of the person who had hijacked the Taxi.**

14 The last eyewitness to the whole episode is P.W.7 Rooplal Saroj, who happens to be the driver of the deceased since 1983. He used to accompany the deceased whenever he visited Shiv Mandir at Jeet Nagar. The temple was about 10 minutes drive from the residence of the deceased. Since he was visiting everyday, he was well-

acquainted with P.W. 1, who used to remain present at the temple whenever the deceased visited the said temple. P.W. 7 is an injured witness. The cell phone of the deceased was with P.W. 7 as the deceased never used to carry the same inside the temple. He had parked the car near Dhoopchav Society. When the deceased came out of the temple after offering prayers, P.W.7 had taken the articles from the deceased. The articles included fruits, 'Bel Leaves' and the canister. He followed the deceased towards the car and P.W. 1 followed him. He has further narrated the incident by stating that when the deceased was about to reach the car, he was suddenly accosted by an unknown person who came from behind, placed the pistol on his back and fired shots and as soon as the deceased turned around, the said assailant again shot him on his chest. Thereafter, the deceased tried to rescue himself by proceeding ahead. Soon thereafter, another person came from the side of the stall, rushed towards the deceased and fired on him, only to be followed by one more assailant, who came by the side of the auto-rickshaw and who also fired at the deceased. When the deceased collapsed in front of Raundal's house, P.W. 7 rushed towards him to pull him away from the spot, but he was also shot at. P.W.7 received a bullet injury on his right thigh and saw two of the assailants

running towards Shiv Temple. He has further stated that P.W. 1 called a person to drive the car, to take them to the hospital. His statement was recorded while he was in the ICU. Before the Court, he had identified the Accused No. 19 as the person who had shot at him, which would establish that Accused No. 19 was the last person, who had shot at the deceased and P.W. 7.

15 It is stated in cross-examination by P.W.7 that he could clearly see the face of the assailants when they were shooting the deceased. According to him, the assailants were firing from a distance of about three to four feet. It is further clarified that when he was pulling away the deceased from the spot, only Accused No. 19 was in front of him and he had shot at him. He had seen the Accused from a very close distance and identified Accused No. 19 at the test identification parade on 3rd March 2001. The said identification parade was conducted by P.W. 21 Vinod Ghedia, who was acting as a Special Executive Officer at Arthur Road Prison. P.W.21 was appointed as Special Executive Officer in 1996. He has proved the panchnama of the Test Identification Parade which is marked at Exh. 26.

16 Accused No. 4 Imtiaz Daud Merchant happens to be

the brother of Accused No. 16 and 19. Accused No. 4 was arrested on 31/8/1997. Accused No. 4, Accused No. 16 and Accused No. 19 are the sons of Accused No. 17 from whom two imported pistols were recovered. Accused No. 16 was arrested on 27th September 1999. PW45 Mr. Bagdi the investigating officer has admitted in the cross-examination that Accused No. 16 was in the custody of Barabanki Police Station, UP when he was arrested in this case. On 6th October 1999, a passport was recovered at the behest of Accused No. 16. The said passport was forged and fabricated in the name of Shabbir. The recovery was caused from the house of Shehenaz, who happens to be the sister of Accused No. 16. She was residing at Wippo complex. The statement of Shehenaz is not recorded although her three brothers and mother were Accused in this case. P.W.20 Mr. Goyal has acted as a panch for the said recovery and has testified to that effect. The panchnama is at Exh. 28. On 21st October 1999 Accused No. 16 was identified by P.W.1 and others. The recovery of the pistol and live cartridges at the instance of Accused No.16 from the house of Lakshmibai situated at Devipada, on 11th October 1999, is proved by P.W. 24 Ashok Shah who has acted as a panch. Lakshmibai happens to be the maternal aunt of Accused Nos. 4, 16 and 19 and the sister of

Accused No. 17.

17 Dr. Y. A. Chaudhary P.W. 14 examined the deceased and found that 18 bullets were shot on various parts of his body. The medico legal certificate is at Exh. 102. The autopsy on the dead body of the deceased was performed by Dr. Umesh Patil P.W.25. The post-mortem notes are at Exh.138. P.W.7 was also examined by P.W. 14 and his medico legal certificate is at Exh. 161. The certificate would show that P.W. 7 had sustained a bullet injury at the beginning of right thigh and a contused lacerated wound on right upper gluteal region.

18 It is pertinent to note that the evidence of P.W.14 would show that he had also examined one Madhukar Govankar at about 11.05 a.m on that day and had found one bullet injury on left mid scrotum with blood clots. The identity of Madhukar Gavankar was not established by the prosecution. His medical certificate is at Exh 162. It is seen from the evidence of PW17 Subhash Salvi, the Assistant Commissioner of Police, CID that, on 12th August 1997 he was informed by API Desai that besides Gulshan Kumar, three to four other persons have also been injured in the said incident. Unfortunately, there appears to be no further investigation in regard to the said

information.

19 The scene of offence panchnama was conducted on 12th August 1997 by PI Rane PW.11. PW.6 Arun More has acted as a panch for the scene of offence panchnama, which is at Exh 62. The recitals of Exh. 62 would show that there are blood spots, a pair of blood stained chappal and 12 empty cartridges in front of the Gate of Dhoopchau Society. A piece of lead was found in the house of D'Souza, which is 11 to 12 feet from the place where the car was parked. There was a hole to the outer wall of the said house and the adjoining house of Mr. Raundal. Raundal's house is situated just opposite the three stalls adjoining the compound wall of Simple Apartment. Blood stains and a lead piece were found in the sewer (Mori) which is outside the house of Raundal. Four empty cartridges were also found outside Raundal's house. Two empty cartridges were seized from the front of Simple Apartment and two magazines were found. A piece of lead was also found at a close distance near Shiv Temple.

20 On 22nd February 2001 the map of the scene of offence was drawn by PW.5 Ramesh Mahimkar, who had retired as a draftsman from the Public Work Department. The scene of offence was shown by

P.W.5 Ramesh Mahimkar and P.W. 45 Mr. Bagdi and the same is exhibited at Exh. 5. The map is in consonance with the scene of offence panchanama and corroborates the narration of eyewitnesses.

21 After attempting to establish the identity of the assailants, the investigating agency carried out further investigation to determine the motive on the part of the Accused to eliminate the deceased. In the said process, it transpired that there was a larger conspiracy to eliminate deceased Gulshan Kumar and that the assailants were hired killers. The investigation revealed that there was a conspiracy and to establish the same, the prosecution examined the following witnesses.

22 P.W.32 Kishan Kumar Dua is the younger brother of the deceased. According to him on 12th August 1997 at about 10.30 a.m. Bhushan Kumar, the son of the deceased rushed to his house and informed him that he had learnt from Rooplal(P.W.7) that his father has been shot by some persons and that they had taken him to Cooper Hospital. P.W. 32 rushed to the Cooper Hospital and saw Rooplal crying and was informed that his brother Gulshan Kumar was dead. He was informed by P.W.3 that he has seen three assailants while shooting the deceased and that he had brought the deceased to the hospital. On

hearing this, P.W. 32 had become unconscious.

23 P.W. 32 was one of the directors of Super Cassettes Industries. He was acquainted with music director Nadeem Saifee as he used to visit their office in his presence. That in the year 1996 Nadeem had produced an Audio Album by name “Hi Ajnabi” and was insisting the deceased to purchase the audio rights, however, the deceased was reluctant to oblige. Towards the end of the year 1996, Nadeem had visited the office of the deceased several time in the presence of P.W.32. However, the deceased was not interested. The deceased had informed P.W.32 that since Nadeem was not a good singer, he had turned down the proposal to purchase the audio rights. However, later, for reasons unknown to P.W. 32, the deceased had purchased the audio rights and picturised a song for the promotion of the said Album. The Album was released in the month of March 1997 but was a big failure. Being annoyed by the failure of the sale of Album in the market, Nadeem had confronted the deceased, blamed him for the failure, as he was of the opinion that the deceased had not given due publicity to his album, and had threatened him with dire consequences. On 5th August 1997 P.W. 32 saw his brother in a

frightened condition and upon inquiry, had disclosed that he had received threatening call from Abu Salem. The deceased refused to inform the police as Abu Salem was a dangerous man and would not take police intervention lightly. On 9th August 1997 in the presence of P.W.32 the deceased had received a call on his cell phone. He addressed the caller as Salim Bhai and explained that he could not be blamed for the failure of “Hi Ajnabi” in the market since he had given due publicity. He had also clarified that the voice of Nadeem was not good. He was speaking to the caller in a frightened voice, but candidly asked him as to why his life should be endangered at the hands of the caller for the sake of Nadeem. Thereafter, he was informed by the deceased that it was a clear threat to kill. The deceased had also told the caller that he would leave his destiny to Lord Shiva. The cell phone number of deceased was 9820048896. P.W. 7 has disclosed that the cell phone of the deceased was with him at the time of incident.

24 Another important witness on the point of conspiracy is P.W. 37 Arif Lakdawala, who was acquainted with Abu Salem since 1991 and had met him in Dubai in 1996. He was also acquainted with Accused Keki Balsara who had expired before trial had commenced, in

the toilet of the office of Commissioner of Police. P.W.37 had accompanied Keki to Juhu to collect Rs. Twenty-Five Lakhs from Nadeem and Accused Ramesh Taurani on the instruction of Abu Salem. Ramesh Taurani was introduced to P.W. 37 as the owner of Tips Industries. P.W.-37 had also received a box from Nadeem and had placed the same in the rear seat of the car. Nadeem had made a phone call to a person and told him that the money was already handed over and Gulshan should be dealt with immediately. In the words of P.W.37, “Paisa to de diya hai Gulshanka kaam jaldi niptaa do”. P.W.37 claims to have conversed with the caller and he identified the voice of the caller, to be that of Abu Salem. Accused No. 11 Ramesh Taurani (Acquitted accused) is identified by P.W. 37 before the Court, as the person, who had accompanied Nadeem, and that he was talking on the cell phone.

25 P.W.37 has also given the telephone number of Abu Salem as 6260786. P.W.37 had actually seen Keki Balsara talking to three persons in K. D. Compound. On the instructions of Keki Balsara, two boxes kept in the rear seat of the car were taken by two persons before they left K.D. Compound. P.W. 37 has identified Accused Nos. 7,8, and 9 as the persons who had met them in K.D. compound.

26 The cross-examination of P.W.37 would show that he had clarified that, he was a witness to transfer of the money from Nadeem and Taurani to the deceased Keki Balsara and further transferred to three persons at Nagpada. His admission that he had spoken to Abu Salem on his Cell phone would show that he was aware of the involvement of Abu Salem, Nadeem, Keki Balsara and Taurani in the alleged Murder of Gulshan Kumar.

27 After recording of the evidence of P.W.37 was completed, an application was filed on behalf of Accused Nos. 8, 9 and 10 under section 319 of Criminal Procedure Code to arraign P.W.37 as an Accused in the present case. The said application was filed on 25th September 2001. The said application is at Exh.186. The said application was rejected on 26th September 2001 on the ground that the evidence given by P.W.37 is protected by proviso to Section 132 of the Indian Evidence Act.

28 P.W.40 Sunil Mehta working as Associate Vice President of Hutchison Max Telcom was examined by the prosecution. He has identified the signature of Rajit Barthakur and Seema Dubey, who were

working in the company in the year 1997, but had subsequently settled abroad. P.W. 40 was called upon to prove the signature of Seema Dubey and Bharthakur on Exhibit 201. The contents of Exh. 201 are as follows 'As desired by you in the pursuit of your inquiry we here by confirm that cell phone No. 9820045423 is in the name of Mr. Ramesh Taurani, Tips Industry Pvt. Ltd. was used on 27th June 1997 at 16.04 hours at cell Id 10031803 which covers the Juhu area. The caller made an international call to 971506260786.' The same contention is further corroborated by P.W.41 Debojeet Datta, the Chief General Manager of Videsh Sanchar Nigam. He had given thirteen printouts in response to the letter which is at Exhibit 203 which corroborates that international calls were received and made from cell phone No. 971506260786. Videsh Sanchar Nigam has also confirmed that the phone call was made from Juhu and the printouts given would further corroborate the same. P.W.43 Mr. P. K. Rahul has also substantiated the same.

29 P.W.45 Arjun Bagadi was attached to Unit VII of DCB CID on 13th August, 1997. The investigation of Crime No. 572 of 1997 was entrusted to him. The papers were handed over to him by D.N. Nagar Police station. He had recorded the statement of P.W. 31 the approver.

The statement is at Exh. 156A. There was recovery of one imported pistol, five live cartridges and a Magazine from P.W. 31. Pursuant to the statement made by the approver, the Accused Nos. 1 and 4 were arrested on 31/8/1997. The Accused Nos. 16 and 19 were arrested by P.W.45. Accused No. 17 was also arrested along with Accused No. 16 on 31/8/1999. Two revolvers were recovered at the behest of Accused No. 17, who stands acquitted.

30 According to P.W.45, a pistol and live cartridges and one Maxine were seized at the behest of Accused No. 16. P.W.45 had also filed an application seeking grant of sanction to prosecute the Accused for the offence punishable under section 25(1B) (a) read with section 3 of the Arms Act. Sanction was granted by the Deputy Commissioner of Police to prosecute the Accused under the Arms Act and the said sanction order is at Exh. 199. After completion of investigation, P.W. 45 had filed the charge-sheet.

31 It is admitted that he had not conducted any investigation in respect of the telephone number on which calls were made to Dubai except recording the statement of Arif Lakadawala, although he was aware that detection of the telephone number of Abu Salem was an

important fact for the purpose of investigation in this case. It is admitted that it had transpired in the course of investigation that international calls were made from a PCO at Bandra. That there was material to show that the PCO belonged to one Faiyaz as per the papers of investigation. He had taken printouts of the cell phone numbers of Keki Balsara, but had made no attempts to collect the evidence about the identity of the subscriber of the telephone No. 6260786. That he had not subjected Accused No. 11 for test identification parade from P.W. 37.

32 The learned counsel for the Appellant has submitted that it was not possible for P.W. 1 to have seen the incident since he had rescued himself when he saw the incident of shooting and had stood behind a coconut tree. According to the learned Counsel, therefore, the process of identification was of no avail and his evidence cannot be relied upon since he could not have seen anything from behind the coconut tree. He has submitted vehemently that P.W. 1 has identified Accused No. 16 almost after 2 years i.e. in the year 1999 whereas he identified Accused No. 19 after 4 years of the incident. And therefore, no implicit reliance can be placed upon the identification of both the

Accused at the time of test identification parade. According to him, after four years the memory must have faded. As far as P.W. 7 is concerned, it is stated that since he was shot, when he was trying to lift the deceased, he could not have seen the Accused while they were shooting. It is further submitted that the Accused No. 19 has been falsely implicated and hence, he deserves to be acquitted.

33 The evidence of P.W. 2 has also been challenged on the ground that since he was chasing the accused, he could not have seen their faces. As far as P.W. 3 is concerned, according to the learned Counsel, he appears to be a got-up witness. Similarly, the evidence of the other eyewitnesses is challenged on the ground that they are all got up witnesses and even according to the prosecution, the Accused No. 16 was transferred from an offence registered at Barabanki Police station, U.P., whereas Accused No. 19 was arrested on suspicion. Hence, it is submitted that the Accused No. 16 has been rightly acquitted and that Accused No. 19 deserves to be acquitted in the present case. Learned APP has submitted that there is an appeal challenging the acquittal of Accused No. 16, and that the prosecution has established the case against the Accused No. 19 beyond reasonable

doubt.

34 Upon evaluation of the evidence of the eyewitnesses such as P.W. 1, 2, 3, 4 and 7, the Special Executive Officers i.e. P.W. 20 and 21, it is well established that the evidence of the eyewitnesses is a sterling testimony which could not be shattered despite lengthy cross-examination. The statement of P.W. 1 was recorded by P.W. 10 within half an hour of the alleged incident and P.W. 1 had disclosed to P.W.10 immediately the entire episode of how the deceased was shot dead right in front of his eyes by 3 persons. P.W. 10 Rashmi Jadhav was the first police personnel to reach Cooper Hospital. P.W.1 has reiterated repeatedly and consistently that he had actually seen Accused Nos. 16 and 19 firing at the deceased as well as Rooplal at the spot and also when they were fleeing from the spot. There is no delay in disclosing the incident. In fact, the FIR is registered on the basis of the statement of P.W. 1. The first assailant had fled soon after shooting the deceased in his back and chest. Thereafter, when the deceased proceeded towards Raundal's house, at that time, he was shot by 2 persons.

35 P.W.2 Sahebrao Fukhe had chased the Accused when they were running towards Bharat Nagar. He saw them looking backwards

and therefore, he could clearly notice their facial features which were imprinted in his mind forever. At this stage, it is pertinent to note that the Bharat Nagar Gate is adjacent to the compound wall of Shiv Temple, which was last visited by the deceased. Moreover, there is a clear assertion by PW.2 that he had stated before the police that he had seen the said person loitering in the area before 12th August 1997. The said contention has not only gone unchallenged by the defence, but is elicited in the cross-examination.

36 PW. 3 Rajesh Johari had also chased the Accused and had identified Accused No. 19 as the person who had brandished pistol towards him, while he was chasing to deter him from escaping any further. Hence, he returned to the temple where he was requested by PW. 1 to drive the car of the deceased and take the injured to Cooper Hospital.

37 PW. 4 Labhshankar Sharma, the taxi driver is not an eyewitness to the incident, but he was forced out of his taxi by the Accused by terrorising him with a pistol. According to him, it was none other than the Accused No. 19 who had pulled him out of the taxi. And therefore, he could identify the Accused No. 19 on 2nd

February, 2001. In any case, he had given the description of the person who had hijacked his taxi.

38 PW. 7 Rooplal is the driver of the deceased. He had accompanied the deceased to the temple. He had identified the Accused No. 19 as the person who had shot at him. He had seen the assailants firing at the deceased from a distance of 4 to 5 feet. He had seen the Accused from a very close distance and therefore, could identify him in the test identification parade on 3rd March, 2001. The presence of all the prosecution witnesses on the spot at the time of incident was natural. They were residents of the said area. The challenge to the test identification parade is mainly on the ground of delay in conducting the same.

39 The Supreme Court in the case of **Brij Mohan and ors. v/s. State of Rajasthan**¹ has held as follows :

“So far, the present case is concerned, as the appellants were put on test identification within 24 hours of their arrest in connection with the present case, the identification made by the witnesses cannot be rejected merely on the ground that it was not possible for them to identify after lapse of a period of three months. This

1 AIR 1994 SC 759

was not ordinary case of dacoity; for commission therefore, four persons were killed, one of them being a lady. The gruesome and callous manner, in which the dacoity was committed by the culprits must have left a deep impression on the mind of the witnesses, who had occasion to see such culprits in the electric light during the course of commission of assault, firing and removal of the articles from the house in question. This deep impression will also include the facial impression of the culprits, which in normal course must not have been erased only within a period of three months.”

40 In the present case, the incident had occurred in broad daylight in the presence of P.W. 1 and P.W. 7 and they could not have forgotten such a horrendous incident which had occurred right in front of them. The entire incident was permanently imprinted in their mind and therefore, this cannot be said to be a case of mistaken identity. Said witnesses had no reason to falsely implicate the Accused in the present case. In any case there is material to indicate that the Accused had absconded and could be arrested only after they were arrested in another State in another crime.

41 The act of the Accused is further corroborated by recovery of pistol and live cartridges at the instance of the Accused No. 16. This

is not a case of a sole eyewitness. There were five eyewitnesses. Each one had emphasised the role of Accused Nos. 16 and 19 at different stages. The attack mounted upon the deceased was so graphically explained that unless they had seen the incident, they could not have been consistent in the cross-examination also. In the factual discussion of the case, this Court has emphasised on the cross-examination. The simple reason being that the credibility of a witness must be examined, and his evidence must be appreciated by referring to his evidence individually and ascertaining as to how he has fared in the cross-examination and what impression is created by his substantive evidence taken in the context of the case and not upon surmises and conjecture. The evidence of P.W. 1 is consistent with the evidence of P.W. 7 as well as P.W. 3 who had driven the Opel car of the deceased to Cooper Hospital, at the request of P.W. 1.

42 That P.W.11 the Investigating Officer has specifically stated that P.W. 2 had voluntarily informed him at about 3 p.m. on the spot that he had seen 3 persons shooting at the deceased. P.W. 2 has also identified both the Accused in the test identification parade. The fact that 18 bullets were retrieved from the body of the deceased, coupled

with the fact that the empty cartridges were found on the scene of offence, would clearly establish that there was more than one person who had shot at the deceased and that they had arrived at the scene of offence from 3 different directions.

43 At this stage, the evidence of the eyewitnesses needs to be appreciated in view of the local inspection notes drawn by the Sessions Judge himself. The Sessions Judge had visited the scene of offence on 5th November 2001 along with the special prosecutor and the defence lawyer. The local inspection notes by Session Judge are at Exh. 210. The recitals of Exh. 210 would show that the distance between compound of the temple and the corridor of the houses in front of the temple is about 16 ft. There is a coconut tree near Avishkar Kreedha Mandal near the compound wall of Simple Apartment and there are four stalls near the compound wall. Dhoopchhav Society is situated opposite Simple Apartment. The width of road goes on increasing and it is about 40 ft. in between Dhoopchhav and Simple Apartment. **Raundal's house is situated at about 50 ft. away from coconut tree and is on the opposite side of the tree.** It further shows that the house of Raundal is visible from the coconut tree. The stalls and coconut tree

are in the same row and they are in front of Raundal house. The complete compound wall of Dhoopchhav Housing Society is visible from Kamgar Nagar Gate. Bharat Nagar Gate is adjoining compound of the Shiv temple. Kamgar Nagar Gate is on north side whereas Bharat Nagar Gate is on south side. Dhoopchhav Society is on east side and Simple Apartment is on the west side.

44 The challenge of the learned counsel for the appellant that the act of shooting could not have been noticed by P.W. 1 from behind the coconut tree is dislodged by the local inspection notes at Exh. 210 and supported by ocular evidence on record.

45 The Accused No. 19 had criminal antecedents. The Court cannot be oblivious of the fact that the evidence of the doctor who had examined the injury on the deceased as well as the injuries of P.W. 7 is in conformity with the evidence of the eyewitnesses and would clearly establish that the bullets were first shot on the back and when the deceased turned towards the assailants, he was shot on his chest. The battery of bullets was then shot on the deceased from two different directions and all the injuries are mentioned in the autopsy notes.

46 There is no delay in recording the statement of the eyewitnesses and the disclosures were voluntarily made by the witnesses. The incident was also of such a nature that the face of the assailants could not have effaced from the memory of the eyewitnesses, particularly, P.W. 1, who was acquainted with the deceased for 20 years.

47 The learned Counsel has further demonstrated lacunas in the investigation to show that there is no evidence to show that Accused No. 19 was a part of any conspiracy to eliminate the deceased. The evidence of PW 37, Arif Lakadawala needs to be appreciated at this stage. It is the specific case of P.W. 37 that Nadeem and Keki Balsara had hired people to eliminate Gulshan Kumar. He was a witness to the dialogue between Nadeem, acquitted Accused Taurani and Abu Salem. It is his specific case that when he spoke to “Caller” of Taurani he had identified it to be that of Abu Salem with whom he was acquainted since 1991, and he had met him in Dubai in 1996. Therefore, it would not be necessary to delve into the issue as to whether the Accused had any personal animosity against the deceased or whether they were on inimical terms with the deceased.

48 The fact that Accused No. 19 could be one of the hired persons for eliminating the deceased also needs to be examined by appreciating his conduct before the incident, at the time of incident, soon after the incident and thereafter. There is evidence to show that Accused No. 19 had travelled to Dubai six months prior to the incident. A forged passport was recovered at the instance of his brother Accused No. 16 from the house of his sister Shehenaz. That PW 4 Labhshankar Sharma had identified him as the person who had brandished a pistol at him, terrorised him, dragged him out of the taxi and hijacked his taxi, which was later found abandoned at Juhu Link Road. The fact that his evidence is consistent with P.W. 2 and 4 would show that he is one of the assailants of the deceased Gulshan Kumar. It also needs to be taken into consideration that soon after the incident he was absconding. There were serious offences registered against him at Calcutta as well as Thane and transferred in Crime No. 157 of 1997 only after four years. He had criminal antecedents. On 15/4/2009 the Accused No. 19 was released on furlough leave. He absconded and overstayed for 2750. He was arrested on 9/11/2016 and brought back to the jail. Therefore, offence vide C.R. No. 254 of 2013 under section

224 of the Indian Penal Code was registered at Mumbra Police Station, Dist. Thane against him.

49 According to the learned Counsel for the Appellant, P.W. 33 the ballistic expert examined the pistol at Article 74, which was recovered at the instance of the absconding Accused No. 1. He has also examined Article 35 and Article 37B, 37A and Article 26A. He has deposed that he had failed to record the number of similarities and dissimilarities in respect of striations found on the land grooved impression, the similarities and dissimilarities in firing pin impressions and breach face marks and therefore, his evidence cannot be relied upon. However, the said material needs no discussion as one pistol was recovered at the instance of Accused No. 16, one was recovered from P.W. 31 and two pistols were recovered from Accused No. 17 i.e. the mother of Accused Nos. 16 and 19.

50 Implicit reliance can be placed on **Dhanaj Singh @ Shera & ors. vs. State of Punjab**², wherein it has been observed that :

“5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect;

² 2004(2) SCR 938

to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

“The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.”

51 The learned Counsel for the Appellant has placed reliance upon several judgments of the Supreme Court to emphasize that the prosecution has not proved the case beyond reasonable doubt which are as under :

1. **Somasundram @ Somu Vs. State represented by the Deputy Commissioner of Police**, (2020) 7 SCC 722.
2. **Suresh Chandra Bahri vs. State of Bihar**, 1995 SCC (Cri.) 60.
3. **Rampal Pithwa Rahidas & ors. vs. State of Maharashtra** 1994 SCC (Cri.) 851.
4. **Sarwan Singh vs. State of Punjab**, AIR 1957 SC 637.
5. **Ghurey Lal vs. State of Uttar Pradesh**, (2008) 10 SCC 450.
6. **Anwar Ali & Anr. vs. State of Himachal Pradesh**, Criminal Appeal No. 1121 of 2016.

However, the facts in the said cases are not relevant in the present case.

In the case of **Rampal Pitwa Rahidas**(Cited supra) refers to the evidence of an approver. As far as test identification parade is

concerned, in the said case it was the specific case of the prosecution that the Accused persons were wearing mask at the time of incident and therefore, there was only identification in the Court.

In the case of **Somsundram @ Soma(cited supra)**, the victim was abducted, kept in illegal confinement and then his murder was reported. The Supreme Court had held that where abduction is followed by illegal confinement and still later by death, the inference becomes overwhelming that the victim died at the hands of those who abducted/confined him. As far as the conspiracy is concerned, the Supreme Court had held that there need not be meeting of minds between all the persons involved in a conspiracy and it is sufficient if a person is engaged in the conspiracy following which the offence is committed. This means that it is not even necessary that the persons who are engaged in the conspiracy, to even know the identity, leave alone physically meet the other players. And in the said case, the evidence of the accomplice was under consideration.

52 In the present case, when the accomplice was declared hostile, an application was filed by the prosecution to discharge P.W. 31. The said application was rejected by the Sessions Court. Said

order was challenged before the High Court by filing Criminal Application No. 4140 of 2001 and was allowed to be withdrawn at the admission stage on 13/1/2003. The trial Court had given a final verdict in this case on 29th April, 2002 and probably, therefore, Criminal Application was withdrawn.

53 The learned Counsel for the Appellant has highlighted the lacunas in the investigation and the delay in conducting test identification parade. As far as the test identification parade is concerned it was conducted within one month. The investigating agency could reach the Accused No. 19 on the basis of the interrogation of Accused Nos. 16 and 17 as well as accused No. 4. In fact, there is material to indicate that the Accused No. 19 was present in Dubai, when the conspiracy was hatched. He had also executed the conspiracy in action with the help of Accused Nos. 1 and 16.

54 At this stage, It would be appropriate to refer to the Judgment of the Supreme Court in the case of **Chandraprakash v/s. State of Rajasthan**³. The Apex Court has observed thus :

“31 The next issue, to which we should advert to, pertains to

³ 2014 Cr. L.J. 2884

the delay in holding the test identification parade. The submission of Mr. Balaji Srinivasan, learned counsel appearing for accused Abdul Hamid and Raies Beg, is that there has been enormous delay in conducting the test identification parade in respect of accused Abdul Hamid and Raies Beg. There is no dispute that both of them were arrested on 8.6.1997 and the test identification parade was held on 25.6.1997. Thus, it is evident that they were arrested long after the occurrence but the test identification parade was held within a period of three weeks from the date of arrest. As the analysis of the trial court shows, they could not have been arrested as the materials could not be collected against them and things got changed at a later stage. In this regard, we may refer with profit to the decision in Ramanand Ramnath v. State of M.P.[4], wherein identification parade was held within a period of one month from the date of arrest. This Court observed that there was no unusual delay in holding the test identification parade.

34. In view of the aforesaid, the submission that there has been delay in holding the test identification parade does not really affect the case of the prosecution. It is also noteworthy that the witnesses had identified the accused persons in court and nothing has been elicited in the cross-examination even to create a doubt. Thus, we discard the submission advanced by the learned counsel for accused Abdul Hamid and Raies Beg.”

55 In fact, the eyewitnesses could not have faulted about the

identity of the persons who had killed the deceased in broad daylight. It was indeed a cold blooded murder. It also needs to be appreciated that the eyewitnesses have categorically stated that the Accused No. 1 who had shot in the first instance was not present in the Court. They had not mistaken any other person to be Accused No. 1. This by itself would show that they were sure that it could be none other than the Accused Nos. 16 and 19 who had committed the ghastly act on 12th August, 1997 and killed Gulshan Kumar. It is a case of direct evidence. In the present case, we need to appreciate the conduct of the eyewitnesses who had not just claimed that they are witnesses but without showing any apathy had promptly helped the deceased and the driver by taking them to the hospital, reporting the matter to the police and did not hesitate to stand true to the test of scrutiny. In fact, P.W. 2 and 3 had actually tried to accost the miscreants immediately. There was no delay in recording their statement and in fact, the statements of all eyewitnesses were recorded by D.N. Nagar Police Station on 12/8/1997 and 13/8/1997 itself.

56 We have no doubt whatsoever that the prosecution has proved that the appellant has caused homicidal death of deceased

Gulshan Kumar by firing and causing bullet injuries to P.W. 7, beyond reasonable doubt. Having regard to the sterling testimony of the eyewitnesses, coupled with the corroborating circumstances that have come on record, we are convinced that the Accused has committed an offence punishable under section 302, 307 read with Section 34 of the Indian Penal Code read with 27 of the Indian Arms Act. Accordingly, the Judgment of the Sessions Court insofar as conviction of Accused No. 19 under section 302, 307 read with section 34 of the Indian Penal Code read with section 27 of the Indian Arms Act is justifiable and warrants no interference.

57 The Appellant-Accused No. 19 had no personal animosity or grudge against the deceased Gulshan Kumar. He had committed the ghastly act as he was hired by Nadeem Saifee and Abu Salem who wanted to satisfy their personal vendetta against the deceased. Therefore, Appellant/the Accused No. 19 also deserves to be convicted for the offence punishable under section 120B of the Indian Penal Code. It is pertinent to note that in the present case, Nadeem Saifee and Abu Salem as well as one Kayyum @ Chacha have been shown as an absconding accused. Hence, the trial could not proceed against

them.

58 The appellant is also convicted for the offence punishable under section 392 and 397 of the Indian Penal Code. Due to lack of material on record to prove the charge under section 392 and 397 of the Indian Penal Code, the appellant deserves to be acquitted of the charge under section 392 and 397 of the Indian Penal Code.

59 It is a matter of record that the appellant had absconded soon after the incident i.e. 12th August, 1997 and could be arrested only in 2001. The appellant was enlarged on furlough on 15/4/2009 and he had not surrendered within the stipulated time. He was arrested on 9/11/2016. The appellant has criminal antecedents, and he continued in the similar criminal activities thereafter also. Hence, in the interest of justice and society at large the appellant does not deserve any leniency. Hence, the appellant shall not be entitled to any remissions whatsoever.

60 In view of evidence discussed hereinabove, the appeal deserves to be partly allowed.

61 Hence following order is passed :

ORDER

(i) The Criminal Appeal No. 878 of 2002 is partly allowed.

(ii) The conviction and sentence passed against the Appellant-Mohd. Rauf Dawood Merchant under section 302, 307 read with section 34 of the Indian Penal Code read with section 27 of the Indian Arms Act vide Judgment and Order dated 29th April, 2002 by the Additional Sessions Judge, Gr. Mumbai in Sessions Case Nos. 15/1998 a/w. 448/1998 a/w. 1473/1998 a/w. 18/2000 a/w. 365/2001 is hereby upheld. The Appellant is also convicted for the offence punishable under 120B of the Indian Penal Code. No separate sentence is required for the same.

(iii) The conviction and sentence passed against the Appellant-Mohd. Rauf Dawood Merchant under section 392 and 397 of the Indian Penal Code vide Judgment and Order dated 29th April, 2002 by the Additional Sessions Judge, Gr. Mumbai in Sessions Case Nos. 15/1998 a/w. 448/1998 a/w. 1473/1998 a/w. 18/2000 a/w. 365/2001 is hereby quashed and set aside. The Appellant is acquitted of the said charge.

(iv) The Appellant shall not be entitled to remissions, if any.

(v) The Criminal Appeal is disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)

CRIMINAL APPEAL NO. 1006 OF 2002

1 The State of Maharashtra being aggrieved by the acquittal of the Respondent Nos. 1 and 2 vide Judgment and Order dated 29th April, 2002 passed by the Additional Sessions Judge, Gr. Mumbai in Sessions Case Nos. 15/1998 a/w. 448/1998 a/w. 1473/1998 a/w. 18/2000 a/w. 365/2001 has preferred this appeal.

2 The facts of the case are the same as considered in Criminal Appeal No. 878 of 2002. The evidence of the witnesses has also been discussed in Criminal Appeal No. 878 of 2002. What falls for determination in the present Appeal is as to whether the acquittal of the original Accused No. 11 Ramesh Sadharam Taurani and Accused No. 16 Abdul Rashid Dawood Merchant is justified.

3 The case of the prosecution as against Respondent No. 1

Ramesh Sadharam Taurani is that the Respondent No. 1 had hatched conspiracy with Nadeem Saifee and Abu Salem for killing Gulshan Kumar. The only witness who has demonstrated the involvement of the Respondent No. 1 is P.W. 37 Arif Lakadawala. According to P.W. 37, he was acquainted with Abu Salem who had fled from India after his name had surfaced in 1993 serial bomb blast case.

4 According to the prosecution, on 27/6/1997 P.W. 37 Arif Lakadawala had accompanied Keki Balsara to meet music director Nadeem Saifee at Juhu. Keki Balsara has died in the toilet of the office of the Commissioner of Police, Mumbai, before commencement of the trial. P.W. 37 has deposed that on 27/6/1997 he had seen Nadeem Saifee handing over two boxes from his car to Keki Balsara when they met at Juhu. Nadeem had then called one person from his cell phone and informed him that an amount of Rs. 25 Lakhs was handed over to Keki Balsara and P.W. 37. He had further asked the caller to deal with Gulshan Kumar (in the words of P.W. 37 “Gulshan ka kam kardo”). Nadeem had handed over the phone to Respondent No. 1 who had thereafter, told the caller that money is paid and Gulshan should be eliminated as soon as possible (in the words of P.W. 37,

“paisa to de diya hai Gulshan ka kam jaldi nipta do”). That Accused No. 11 i.e. Respondent No. 1 has been identified by P.W. 37 before the Court as the same person who had accompanied Nadeem Saifee on 27/6/1997 for delivering the money and had conversation with absconding Accused Abu Salem who was lodged in Dubai at that time.

5 P.W.45 Arjun Bagdi has categorically admitted that he had not conducted any investigation in order to trace the identity of the person to whom the call was made by Keki Balsara to Dubai, except recording of the statement of Arif Lakdawala. In fact, he was aware that the detection of telephone number of Abu Salem was an important factor for establishing conspiracy in the present case. P.W. 45 has also admitted that he had made no attempts to collect evidence about identity of the subscriber of the telephone No. 951506260786. It is further pertinent to note that P.W. 37 had not met Accused No. 11 Ramesh Taurani before 27/6/1997 and that was the only occasion when he had seen the Accused No. 11. However, the Respondent No. 1 Ramesh Taurani has not been subjected to test identification parade. P.W. 37 has identified him for the first time before the Court. The evidence of P.W.37 is discussed in detail in the connected judgment.

6 It is therefore, clear that there is no cogent and convincing evidence to establish that the Respondent No. 1 Ramesh Taurani had conspired with Music Director Nadeem Saifee or Abu Salem and hence, the acquittal of the Respondent No. 1 Ramesh Taurani does not call for any intervention.

7 As far as Accused No. 16 Abdul Rashid Dawood Merchant is concerned, the material on record which corroborates substantive evidence of eye witnesses alongwith corroborative circumstances needs to be discussed.

8 The first eyewitness is P.W. 1 Ramchandra Lavangare. According to P.W. 1, the deceased had sustained bullet injuries on his back and chest at the hands of one unknown person who fled from the spot immediately after shooting. P.W. 1 has given a graphic narration before the Court as to the manner in which the incident had occurred. P.W. 1 has also deposed about the identity of the assailants whom he had identified in the test identification parade by ascribing specific role to each one of them.

9 P.W. 1 has categorically stated that after sustaining injuries on the back and chest, Gulshan Kumar was trying to go towards Raundal's House and at that juncture, one person came from the side of the stall and fired at the deceased, whereas another person came from behind an auto-rickshaw and shot at the deceased. The third person had then shot at P.W. 7 Rooplal, driver of the deceased when he was trying to help his employer i.e. Gulshan Kumar. He has identified Accused No. 19 as the person who shot at Rooplal. P.W. 1 has further stated that when he saw a person coming from the side of the stall and firing at the deceased, he rushed towards the coconut tree, just in front of Raundal's House. Then, the third person came from behind an auto-rickshaw and fired at the deceased.

10 P.W. 1 has stated that the Accused No. 16 is the same person who had come from behind an auto-rickshaw and shot at the deceased. P.W.1 has voluntarily stated that the assailant who first shot Gulshan Kumar on his back and chest is not present in the Court. Abdul Rauf Dawood Merchant, Accused No. 19 is identified as the same person who had come from the side of the stall.

11 The evidence of P.W.1 has been discussed in detail in

preceding paragraphs. The evidence of P.W. 1 Lavangare finds support from the local inspection notes of the learned Sessions Judge which clearly establishes that the house of Raundal is clearly visible from behind the coconut tree, which is just in front of Raundal's house. The spot panchanama drawn on 12/8/1997 corroborates the same.

12 The reasons assigned for the acquittal of the Accused No. 16 i.e. Respondent No. 2 by the Sessions Court is that P.W. 1 has stated in the cross-examination that he had seen the first assailant on 3 occasions i.e. when he arrived on the scene of offence, shot the deceased on his back and chest and when he fled. The trial Court has relied upon this admission to discard the testimony as far as Accused No. 16 is concerned, on the ground that P.W. 1 must not have seen the Accused No. 16. In fact, the appreciation ought to have been otherwise. It is categorically stated by P.W. 1 that after first assailant fled from the spot, he had seen the other two assailants shooting at the deceased. P.W.1 has actually given the location from where they arrived on the scene of offence and shot the deceased. The bullets were not only retrieved from the back and the chest but from other parts of the body as well, which would show involvement of two other persons.

Secondly, it is misconstrued that P.W. 1 had proceeded towards the coconut tree soon after the arrival of the first assailant. In fact, the said suggestion is denied. Emphasis is placed upon the fact that P.W. 1 had seen the first assailant running away and therefore, the evidence regarding involvement of Accused No. 16 has been ruled out. It is further misconstrued that P.W. 1 had seen Accused No. 1 and 19 running away from the scene of offence.

13 The recitals of Exh.62 i.e. the scene of offence panchanama is discussed in the preceding paragraphs. The evidence of an eyewitness cannot be partly relied upon, especially when his testimony is consistent with the cross-examination. A stray admission in the cross-examination of P.W. 1 to the effect that he had seen Accused No.1 while fleeing cannot be given undue importance.

14 P.W. 2 Sahebrao Fukhe has clearly stated that Accused Nos. 16 and 19 continued to fire shots at deceased even after he collapsed in front of Raudal's House. He has stated before the Court that on 21st October, 1999, he had identified the Accused Nos. 16 and 19 in the test identification parade. It is reaffirmed by P.W. 2 in the cross-examination that he has seen the said persons loitering in the said area

prior to 12th August, 1997.

15 The evidence of P.W. 2 has been discarded on the ground that the assailants were running towards Bharat Nagar, whereas, the witness was coming from Kamgar Nagar Gate and therefore, the trial Court has expressed a doubt as to whether P.W. 2 was in a position to see the faces of the assailants properly while firing shots at the deceased. It needs to be appreciated that the Gate of Bharat Nagar is adjoining the Shiva Temple and Kamgar Nagar Gate is in front of the Gate of Bharat Nagar.

16 The trial Court has further observed that in the normal course, P.W. 2 should have seen P.W. 7 trying to pull away the deceased from the spot of the incidence to save his employer from further assault at the hands of assailants. The trial Court has therefore arrived at a conclusion that P.W. 2 has not witnessed the firing at the hands of Accused No. 16. The identification of Accused No. 16 by P.W. 2 has been discarded.

17 The evidence of P.W. 3 Rajesh Johari is believed to the extent that he had identified Accused No. 19 as the person who had

threatened him with a pistol to restrain him from chasing. However, his evidence to the extent that he had seen Accused No. 16 as well has been discarded.

18 While appreciating the evidence of P.W. 7 Rooplal, the driver of the deceased, it is held that P.W. 7 could not identify the Accused No. 16 since he had seen the Accused No. 19 and the first assailant i.e. the absconding Accused while fleeing from the spot. According to the trial Court, this would eliminate any active participation of Accused No. 16 on the spot.

19 According to the trial Court, there is a possibility that 3 assailants were present at the time of incidence, but all three must not have shot at the deceased. It is further held that the third person must have only given cover to the other two assailants. The possibility that he must have used his weapon to shoot Gulshan Kumar has been ruled out. We are in disagreement with the said finding of the trial Court.

20 It is settled principle of criminal jurisprudence that if an act committed is a result of pre-meditation and execution, by several persons, the person who had shared the common intention is to be

held liable for the said offence. Section 34 of the Indian Penal Code reads thus:

34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

Whether the death was the result of an act or series of acts of one out of the several accused, the act is necessarily held to be done by them within the meaning of Section 34. If death followed the different acts of different Accused at the same time and place, then again Section 34 would undoubtedly apply.

21 The trial Court has arrived at a conclusion that only two weapons were used for shooting, one is Article 74 and the other is Article 35. It is also observed that the bullets or the empty cartridges did not tally either with Article 74 or Article 35. At the same time, it is recorded as follows:

“It is abundantly clear that Accused No. 19 had fired shots at the deceased and P.W. 7. There were in all 12 entry wounds and 10 exit wounds on the dead body. Two bullets were retrieved from the dead body. The same have been produced in the Article 65A

and 67A. In addition to this, some guttering wounds were also found on the dead body. Police had recovered 18 empties and 6 bullets from the spot. Out of the said 6 bullets two bullets were tallying with Article No. 35. It is thus clear that both the weapons were used for firing shots at the deceased. The shots were fired by Accused No. 19 and absconding accused.”

This observation has to be read in consonance with the fact that Article 35 is recovered at the instance of Accused No. 16. The investigating officer has recovered nine bullets. Five of them tally with Article 74 and remaining four tally with Article No. 35. The trial Court has agreed that Article 35 was recovered at the instance of Accused No. 16, but has held as follows :

“However, alleged role of Accused No. 16 is found to be doubtful, since there is no evidence as to which of the two weapons was used by Accused No. 19.”

The trial Court has given undue importance to that part of the testimony of P.W. 33 that he had failed to record the number of similarities and dissimilarities in respect of striations found on the land grooved impression, the similarities and dissimilarities in firing pin impressions and breach face marks on the empties and therefore, his evidence cannot be relied upon.

22 The injuries shown in column No.17 of the post mortem notes at Exh. 138 would show that the deceased had not only sustained bullet injuries on his back and chest but also on -

- (i) lower lateral side of left leg above ankle;
- (ii) entry wound on right leg;
- (iii) a shot wound on right thumb;
- (iv) an entry wound on lateral aspect of right gluteal region;
- (v) an exit wound below left angle of mandible and on right side of forehead;
- (vi) iliac crest and iliac spine and also on right lateral aspect of buttocks.

All these injuries coupled with the fact that bullets and empties were found in front of the house of Raundal clearly substantiates the evidence of P.W.1.

23 In paragraph-211, it is observed as follows :

“The cumulative effect of careful reading of evidence of P.W. 1, 2, 3, 4 and 7 leads me to the conclusion that P.W. 1 had not seen Accused No. 16. He had seen Accused No. 19 and the first assailant running towards Bharat Nagar area.”

The trial Court has discarded the testimony of P.W. 1 that he had not seen the Accused No. 1 fleeing from the spot. In fact, the said contention is reaffirmed in the cross-examination. The evidence of P.W. 1 has been compared and tested with the testimony of the other eyewitnesses to discard the testimony of P.W. 1 indicating the involvement of Accused No. 16.

24 The Apex Court in the case of **Inder Singh Vs. State of Rajasthan**⁴, has held as follows :-

“On going through the entire evidence of material witnesses, other materials and judgment of the courts below, we find that since the number of accused persons was quite large and they were bold and strong enough to cause four deaths in the open field in presence of large number of persons, it cannot be difficult to understand and appreciate as to why independent witnesses from the village who might have seen the occurrence, did not prefer to come out to support the prosecution. But that will not take away from the worth of deposition of six eye witnesses when they have given a consistent account of the occurrence which was disclosed in a nutshell soon after the occurrence in the FIR lodged by P.W.15 who was seriously and critically injured in the same occurrence and whose presence cannot be doubted. If, per chance, he would have been the sole witness, even then it

4 (2015) 2 SCC 743.

may have been possible for the courts below to convict the accused persons on his testimony after testing its veracity in the light of his earlier statement contained in the FIR. In such a factual scenario, we find no reason to doubt the prosecution case if the I.O. failed to recover pellets from the open field which was the place of occurrence or if he could not obtain ballistic report. The eye version account of the occurrence and the medical evidence showing large number of injuries including firearm injuries support each other.”

25 Section 153 of the Indian Evidence Act reads thus :

"153. Exclusion of evidence to contradict answers to questions testing veracity. - When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.”

26 It would be unfair to use the evidence of one witness to contradict the evidence of other witnesses. In fact, there are bound to be some variations in the testimony of two witnesses. In the present case, all the three eyewitnesses had seen the assailants from different locations and at different stages in the series of events. It would be appropriate to place implicit reliance upon the Judgment of the

Supreme Court in the case of **Leela Ram (D) through Duli Chand v/s. State of Haryana**⁵. The Supreme Court has observed as follows :

“the High Court is within its jurisdiction being the first appellate court to re-appraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.”

The Supreme Court has further observed as follows :

“The court shall have to bear in mind that different witnesses react differently under different situations : whereas some become speechless, some start wailing some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground

5 AIR 1999 SC 3717.

of his reaction not falling within a set pattern is unproductive and a pedantic exercise.”

27 We would not hesitate to observe that the evidence of P.W. 1 by itself would be sufficient to convict the Accused No. 16 as well. The Supreme Court in the case of **State of Karnataka v/s. Yarappa Reddy**⁶, in which the Judgment of acquittal passed by High Court was set aside and the conviction and sentence passed by the trial Court was upheld. The Supreme Court has observed thus :

“The general rule of evidence is that no witness shall be cited to contradict another witness if the evidence is intended only to shake the credit of another witness.

The Supreme Court has further observed as follows :

“The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence, should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined. In **Vijayan v. State**, [1999] 4 SCC 36, this Court has held that "the rule limiting the right to call evidence to contradict a witness on collateral issues excludes all evidence of facts which are incapable of affording any reasonable

6 (1999) 8 SCC 715.

presumption or inference as to the principal matter in dispute.”

28 The learned Counsel for the Respondent No. 2 has supported the judgment of the Sessions Court in so far as the acquittal of Accused No. 16 is concerned and submits that the Accused No. 16 has been falsely implicated.

29 Per contra, the learned APP has drawn our attention to the fact that the witnesses have reaffirmed in their cross-examination that they could identify the assailants since their facial features were imprinted in the minds of the witnesses. They had seen a ghastly incident and the disclosure is made by the witnesses immediately after the incident. It is submitted that the trial Court has compared the evidence of two witnesses and has arrived at a conclusion that they are consistent with each other and the discrepancies are minor discrepancies, which cannot be taken into consideration, more particularly, in view of the fact that all the witnesses have seen the incident from different angles and in different situation. Undue reliance is placed upon immaterial omissions in the cross-examination.

30 It would be relevant to refer to the Judgment of the

Supreme Court in the case of **Dhuleshwar v/s. State of Madhya Pradesh(Now Chhattisgarh)**⁷, wherein it is observed as follows :

“it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. It is held that even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly.”

“In other words, the comprehension of overall evidence on record is requisite; and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness cannot be decisive of the matter. In such facts and circumstances, even the relevance of the corroborating facts and factors like that of recovery of weapons or any other article co-related with the crime in question cannot be ignored altogether.”

31 In fact in the case of **Dhuleshwar(cited supra)**, the Accused were charged under section 147, 148, 302 read with section 149 of the Indian Penal Code and 13 Accused were tried. The Supreme Court was pleased to re-appreciate the evidence and dismissed the appeal as against five Accused persons, whereas, Accused Nos. 8 and 13 have been acquitted. The other Accused were acquitted by the trial Court

⁷ (2020) 11 SCC 440.

and the High Court.

32 In the present case, there are serious lapses in the investigation and there is no cogent and convincing evidence to hold that Respondent No. 1 had spoken to Abu Salem in Dubai. There is no investigation to verify as to whether that phone No. 951506260786 was used by Abu Salem at that time. Abu Salem was an absconding Accused since 1993 serial bomb blast. The only witness who has deposed about the involvement of Respondent No. 1 is P.W. 37 Arif Lakadawala. The evidence of P.W. 37 would show that he was also present when Respondent No. 1 had contacted Abu Salem when they met at Juhu. The application seeking arraignment of P.W. 37 as an Accused had been rejected with the aid of section 132 of the Indian Evidence Act. The said order of rejection was not challenged and has attained finality. In view of this, the acquittal of the Respondent No. 1 calls for no interference.

33 The learned Counsel for the Respondent No. 2 has vehemently submitted that the acquittal of the Respondent No. 2 cannot be overturned in an appeal against acquittal since the trial Court has taken a justifiable view to acquit the Accused No.

16/Respondent No.2.

34 The High Court is the first appellate Court to reappraise the evidence recorded before the trial Court. It is settled principle of criminal jurisprudence that an acquittal recorded by the trial Court need to be necessarily set aside wherever it is noticed that the acquittal is recorded on the basis of erroneous appreciation of evidence adduced by the prosecution. In the present case, there are compelling reasons to set aside the acquittal of the Accused No. 16 and the same has been discussed above in detail. In the landmark Judgment of **Shivaji Sahebrao Bobade & anr. vs. State of Maharashtra**⁸, the Supreme Court has held that -

“In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty' to scrutinise the probative material de novo informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration.”

⁸ 1973 AIR 2622.

“The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly as a learned author(1) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. For all these reasons it is true to say', with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the ,guilty no less than from the conviction of the innocent. .."-In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free arid chopping the logic of preponderant probability to, punish marginal innocents. We have adopted these cautious in analysing the evidence and appraising the soundness of the contrary

conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago. This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full power to review at large I the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed.”

35 The role of the Accused No. 16/Respondent No. 2 cannot be segregated from the role of the Accused No. 19/the Appellant in Criminal Appeal No. 878 of 2002 in any way, since both of them had shot at the deceased in front of Raundal’s House. To disassociate the role of the Accused No. 16/Respondent No. 2 from the role of Accused No. 19 would be unjustified in view of the testimony of the eyewitnesses and the cogent and convincing evidence adduced by the prosecution.

36 In the present case, at the cost of reiteration, we would emphasis the observations of the Apex Court in the case of **Shivaji Bobade(supra)** as follows :

“If unmerited acquittals become general, they tend to lead to a

cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless."

37 The assailants had no personal animosity or grudge against the deceased Gulshan Kumar. They had committed the ghastly act as they were hired by Nadeem Saiffee and Abu Salem who wanted to satisfy their personal vendetta against the deceased. Unwarranted acquittals would not only give wrong signal to the society but would pose a threat to law and order. Therefore, the Accused No. 16/Respondent No. 2 also deserves to be convicted for the offence punishable under section 120B of the Indian Penal Code.

38 Hence, in view of the above discussion, the appeal against acquittal of the Accused No. 16/Respondent No. 2 deserves to be partly allowed.

39 In view of the above observations and discussions, the following order is passed:

ORDER

- (i) Criminal Appeal No. 1006 is partly allowed;
- (ii) The Appeal challenging the acquittal of the Respondent No.1 - Ramesh Sadharam Taurani vide Judgment and Order dated 29th April, 2002 by the Additional Sessions Judge, Gr. Mumbai in Sessions Case Nos. 15/1998 a/w. 448/1998 a/w. 1473/1998 a/w. 18/2000 a/w. 365/2001 is hereby dismissed.
- (iii) The Appeal challenging the acquittal of the Respondent No.2 - Abdul Rashid Dawood Merchant vide Judgment and Order dated 29th April, 2002 by the Additional Sessions Judge, Gr. Mumbai in Sessions Case Nos. 15/1998 a/w. 448/1998 a/w. 1473/1998 a/w. 18/2000 a/w. 365/2001 is hereby partly allowed.
- (iv) The Respondent No. 2 Abdul Rashid Dawood Merchant is convicted for the offence punishable under section 302 read with Section 34 and 120B of the Indian Penal Code and section 27 of the Indian Arms Act.
- (v) The Respondent No. 2 is sentenced to suffer imprisonment for life and to pay fine of Rs. 5,000/- in default to suffer R.I. for 6 months for the offence punishable under section 302 read with section 34 and 120B of the Indian Penal Code. The Respondent No. 2 is

sentenced to suffer R.I. for 3 years and to pay fine of Rs. 2,000/- in default to suffer R.I. for 2 months for the offence punishable under section 27 of the Indian Arms Act.

(vi) The Respondent No. 2 Abdul Rashid Dawood Merchant is acquitted of the offence punishable under section 307, 392 and 397 of the Indian Penal Code.

(vii) The Respondent No. 2 Abdul Rashid Dawood Merchant is entitled to the set off for the period already undergone during the pendency of the trial.

(viii) His bail bonds stand cancelled.

(ix) The Respondent No. 2 Abdul Rashid Dawood Merchant shall surrender forthwith before the Sessions Court or before D.N. Nagar Police Station. Upon surrendering, the Respondent No. 2 shall surrender his passport to the police authorities. In the eventuality, he does not surrender within a week, the Sessions Court shall issue Non-bailable Warrant against the Respondent No. 2 and take him into custody.

(x) The Criminal Appeal is disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)