

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.439 OF 2016

APPELLANT : Raju @ Mukesh S/o. Punamchand Dangre
(Patel), Age : Now running 39 years,
R/o. Bagmar, Near Lord Ram Temple,
Tah. Pandhana, Dist. Khandwa (M.P.)
(At Present District Prison Amravati
Since 2011).

VERSUS

RESPONDENT : State of Maharashtra,
Through Police Station Officer,
Police Station Malkapur City,
Dist. Buldana.

**WITH
CRIMINAL APPEAL NO.440 OF 2016**

APPELLANT : Dipak @ Golu Ananda Tayde,
Aged about 30 years, Occ. : Nil,
R/o. Sindhi Basti, Burhanpur,
Madhya Pradesh.
Presently at Amravati Central Jail.

VERSUS

RESPONDENT : The State of Maharashtra,
Through P.S.O., Malkapur City,
District Buldhana.

Shri A.K.Bhangde, Advocate for appellant in Cri. Appeal No.439/2016.
Shri R.R.Prajapati, Advocate for appellant in Cri. Appeal No.440/2016.
Shri A.S.Fulzele, Additional Public Prosecutor for respondent-State.

**CORAM : SUNIL B. SHUKRE &
G. A. SANAP, JJ.**

DATE OF RESERVING JUDGMENT : 09/06/2022

DATE OF PRONOUNCING JUDGMENT : 01/07/2022

JUDGMENT : (PER G. A. SANAP, J.)

1. These two appeals arise out of the Judgment in Sessions Trial No.86/2012 and therefore, the same are being disposed of by common Judgment. The appellants have challenged the Judgment and order dated 13/04/2016 passed by the learned Additional Sessions Judge, Malkapur, whereby the learned Additional Sessions Judge convicted and sentenced the appellants for the offences punishable under Sections 302, 307, 353, 201 of the Indian Penal Code and under Section 25 of the Arms Act, 1959. The sentences awarded to them are as follows :-

i] Under Section 302 of the Indian Penal Code, the appellants were sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.1,000/- each, and in default, to suffer Rigorous Imprisonment for six months.

ii] Under Section 307 of the Indian Penal Code, the appellants were sentenced to suffer Rigorous Imprisonment for seven years and to pay fine of Rs.1,000/- each, and in default, to suffer Rigorous Imprisonment for six months.

iii] Under Section 353 of the Indian Penal Code, the appellants were sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs.1,000/- each, and in default, to suffer Rigorous Imprisonment for six months.

iv] Under Section 201 of the Indian Penal Code, the appellant Raju was sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs.500/-, and in default, to suffer Rigorous Imprisonment for six months.

v] Under Section 25 of the Arms Act, 1959, the appellant Raju was sentenced to suffer Rigorous Imprisonment for one year and pay fine of Rs.500/-, in default, to suffer Rigorous Imprisonment for six months.

2. Dipak @ Golu Ananda Tayade was arrayed as accused No.1 (hereinafter referred to as 'Golu'). Raju @ Mukesh Punamchand Dangre (Patel) was arrayed as accused No.4 (hereinafter referred to as 'Raju'). The remaining accused namely accused Nos.2 and 3 have been acquitted by giving the

benefit of doubt. The State has not preferred appeal against the order of their acquittal.

3. A crime bearing No.5/2011 for the commission of offence under Section 307 read with Section 34 of the Indian Penal Code and under Section 3/25 of the Arms Act, 1959 was registered at Kholapuri Gate Police Station, Amravati against Golu and others. PW-2 Sanjay Ramrao Deshmukh (P.I.) was conducting the investigation of the said crime. The wanted accused in the said crime Rahul Rajput and Lokesh Thakur were arrested on 14/01/2011 from Burhanpur and brought to Amravati. PW-2 Sanjay Deshmukh received the information that the wanted accused Golu was residing at Malkapur City. PW-2 Sanjay Deshmukh on the basis of this information decided to proceed to Malkapur. On 15/01/2011 at about 4.45 a.m., PI Sanjay Deshmukh, deceased PSI Sanjay Chaugule, NPC Sanjay Patinge, PC Amar Baghel, PC Vijay Gaharwal, HC Bhaurao Kalane along with the arrested accused Rahul Rajput left Amravati for Malkapur in search of

absconding accused Golu. The arrested accused Rahul Rajput was with them because he was knowing Golu. Rahul Rajput informed PW-2 Sanjay Deshmukh that Golu might be found at Malkapur or Bhusawal. The investigation team reached Malkapur at 12.00 noon. The location of the appellant Golu was traced out with the help of his sim card. The sim card used by Golu was in the name of Sandip Jaware. The investigation team reached place of Sandip Jaware. The enquiry made with Sandip Jaware led the investigation team to "Comprint Computers", Shop of one Sancheti. They got the information that Golu was residing at Pant Nagar. They took search at Pant Nagar. Their search revealed that the person possessing the said sim card had recharged his sim card at the Grocery Shop of Rajesh Nimbolkar. Rajesh Nimbolkar on being questioned took them to Pant Wada in Pant Nagar, where the accused Raju was earlier residing. The accused Raju was not found there. Rajesh Nimbolkar gave a call to one Fulsing and called him to that place. Fulsing told the police party that accused Raju who was earlier residing at Pant Nagar, has shifted his

residence in a rented premises belonging to one Rashid Coolie. The police got information that the accused Golu had taken shelter with Raju.

4. It is the case of the prosecution that Fulsing took PW-2 Sanjay Deshmukh and other members of the investigation team to the house of Rashid Coolie. At the house of Rashid Coolie, they found that the door of the house was closed from inside. PW-2 Sanjay Deshmukh and other members of the investigation team at about 11.30 p.m. knocked at the door. They told the occupants to open the door and come out. The occupants did not open the door. PW-2 Sanjay Deshmukh and other members of the team could make out that the men and women were inside the house. They heard the sound of loading of bullets in the revolver. They also heard that the women were instigating the men to kill the police. The deceased PSI Sanjay Chaugule therefore, latched the door from outside and went behind the compound to ensure their safety. They took position there. PW-2 Sanjay

Deshmukh (P.I.) informed Amravati Police Headquarter to provide the additional force. It is the case of the prosecution that when the team was keeping watch, they saw that the persons inside the house bent the latched door and came out. They started firing on the police. One bullet hit PSI Chaugule in his stomach. PSI Chaugule informed this fact to Sanjay Deshmukh (P.I.). The accused started running. Sanjay Deshmukh, P.I. took the revolver of PSI Sanjay Chaugule and fired two shots in the direction of the accused. However, the same missed the target. They took PSI Chaugule to the side and within 5 minutes, ambulance came there. They took him to the hospital of Dr. Kolte. Dr. Kolte on examination declared PSI Chaugule dead. The accused fled from the spot.

5. PW-2 Sanjay Deshmukh lodged the report. On the basis of his report Crime No.8/2011 came to be registered against the accused persons. Mr. Khan, Police Inspector attached to Malkapur Police Station conducted initial investigation. He drew the spot panchnama and seizure

panchnama of the articles found on the spot. Further, investigation was conducted by PW-17 Shriniwas Patil (P.I.). Shriniwas Patil (P.I.) arrested Golu and two women accused. He recorded the statements of the witnesses. He forwarded the articles to the Chemical Analyzer for examination. After completion of the investigation, he filed charge sheet on 11/04/2011 in the Court of Judicial Magistrate, First Class, Malkapur.

6. The accused Raju was formally arrested on 04/03/2011 by handing over letter to Chief Judicial Magistrate, Khandawa, Madhya Pradesh as he was lodged in Central Prison, Khandawa, Madhya Pradesh. The Investigating Officer made efforts to obtain the custody of Raju. The efforts made by Investigating Officer yielded result on 01/02/2012 and he obtained custody of Raju. After his arrest, he conducted the investigation. The accused Raju led the Investigating Officer to the place and person to whom he had sold the revolver. After completion of the investigation, he

filed supplementary charge sheet.

7. The learned Additional Sessions Judge framed the charge against the appellants and remaining two accused. They pleaded not guilty. Their defence is of total denial. The prosecution examined 19 witnesses to prove the guilt against the accused. The prosecution relied upon the number of documents. The learned Additional Sessions Judge convicted and sentenced Golu and Raju as above and acquitted two women accused. Being aggrieved by the impugned Judgment and order, the appellants are before this Court by filing their separate appeals.

8. We have heard learned Advocates appearing for the accused Golu and Rajesh. We have heard learned Additional Public Prosecutor for the State. We have perused the record and proceedings.

9. Shri R. R. Prajapati, learned Advocate appearing for the appellant Golu submitted that there is no evidence to prove the charge against the appellant. Learned Advocate further submitted that there is no cogent and reliable evidence to prove that the accused Golu with remaining three accused were inside the house and after the incident of firing, they were seen on the spot by the witnesses. Taking his argument further on this point, learned Advocate submitted that in the First Information Report lodged by PW-2 Sanjay Deshmukh and the statements of the witnesses PW No.5 - Sanjay Patinge and PW-14 Sanjay Gaharwar, there was no mention about the existence of electric light around the spot of incident. Learned Advocate submitted that PW Nos.2, 5 and 14 at the time of evidence, for the first time stated that there was electric light around the spot and in the said light, they saw the appellant Golu and his companion on the spot. It is the further submission of the learned Advocate that the case of the prosecution that these very persons were present inside the house becomes doubtful and unbelievable. Learned Advocate

further submitted that the identification parade conducted to establish the identity of the accused Golu and Raju is not reliable. Learned Advocate pointed out that the prosecution has only examined PW-13 Amol Kumbhare (Tahsildar) to prove the test identification parade. It is submitted that the panch witnesses who were independent witnesses, have not been examined. It is, therefore, submitted that the reliance cannot be placed on the evidence of PW-13 - Amol Kumbhare and the documentary evidence pertaining to the test identification parade. Learned Advocate pointed out that the accused Golu was not produced before the Court on the date of recording the evidence of PW-2. It is submitted that the identification of the accused No.1 through PW-2 in the Court has not been established.

10. Shri A. K. Bhangde, learned Advocate for the appellant Raju, in addition to the above submissions, submitted that the evidence of PW Nos.2, 5 and 14 is not credible and acceptable inasmuch as there are material

omissions and inconsistencies in their evidence on the material aspects. Learned Advocate submitted that the eye-witnesses have not specifically stated as to which accused was having the pistol and fired the bullets. In the submission of the learned Advocate, if the incident as narrated by the eye-witnesses had occurred, then in that event, they ought to have noticed this material fact. Learned Advocate pointed out that in the First Information Report, the description of the accused persons has not been provided. Learned Advocate submitted that the evidence of PW-2 – Sanjay Deshmukh on the point of identification of the accused on the spot cannot be accepted inasmuch as he did not at the first instance identify the accused Raju in the test identification parade. It is submitted that PW-2 - Sanjay Deshmukh in a second attempt identified the accused Raju. It is, therefore, submitted that this evidence of identification on the spot as well as at the time of test identification parade cannot be accepted. Learned Advocate further submitted that the pistol from which the alleged bullet was fired had not been seized. The learned Advocate

submitted that in the absence of examination of the revolver, the report of the Chemical Analyzer cannot be accepted as a gospel truth. Learned Advocate further submitted that there was no reason for accused Raju to open fire on the police inasmuch as he was not wanted by the police in Crime No.5/2011 registered at Kholapuri Gate, Police Station, Amravati. Learned Advocate submitted that the learned trial Judge has glossed over all these aspects and held them guilty for the crime which they have not committed.

11. Shri A. S. Fulzele, learned Additional Public Prosecutor submitted that the evidence of the eye-witnesses PW Nos.2, 5 and 14 is consistent and credible. Learned APP submitted that the omissions sought to be relied upon by the learned Advocates for the appellants have not been proved through the Investigating Officer. Learned APP submitted that the only aspect disputed in this case by the appellants is the role attributed to them on the spot of incident. Learned APP submitted that the direct and circumstantial evidence has been

properly appreciated by the learned trial Judge. Learned APP submitted that therefore, no interference is warranted in the reasoned Judgment of the learned trial Judge.

12. The defence of the appellants as can be seen from the suggestions put to the material witnesses is that PSI Chaugule fired himself and committed suicide or due to the enmity, the other police officers taking the advantage of the situation, killed PSI Chaugule by using his service revolver. In order to appreciate this defence coupled with the evidence of PW Nos.2, 5 and 14, it would be necessary to take into consideration the facts recorded in the spot panchnama. It is not disputed that the deceased PSI Chaugule succumbed to the bullet injury on his stomach. In order to prove that the PSI Chaugule's death is homicidal, the prosecution has placed reliance on the evidence of the Medical Officer PW-8 Dr. Prafulla Patil. PW-8 Dr. Prafulla Patil has conducted the post-mortem of the dead body of deceased PSI Chaugule on 16/01/2011. The post-mortem report is at Exh.67. PW-8 has

deposed that he found the following injuries on the dead body.

- i] Punctured Wound
location 4 cm above umbilicus in umbilical
region slightly on right side of mid sternal line
Dimension 0.5 cm in diameter circular wound
with demarcated edges.

13. PW-8 Dr. Prafulla Patil further stated that there is injury to spinal cord at T 4 to T 5 vertebra and bullet was lodged in between (intervertebral disc) upto spinal cord level. He noticed Aortic tear of size 1.5 cm x 0.5 cm approximately. He has categorically stated that the injury found by him was ante-mortem. PW-8 has opined that the cause of death was due to gun-shot bullet injury to vital organs leading to internal haemorrhage and hypovolemic shock. PW-8 identified the bullet Article F-1 in the Court being the same bullet recovered from body of the deceased. He has stated that at the time of post-mortem, he had preserved the viscera in 5 bottles. It is to be noted at this stage that the CA report of the viscera at Exh.83 proves that the viscera sample did not reveal any poison or poisonous substance. Perusal of his cross-

examination would show that on these material aspects, this evidence has not been shaken.

14. In order to corroborate this aspect, reliance has been placed on the evidence of PW-9 Dr. Arvind Kolte. It is the case of the prosecution that immediately after sustaining bullet injury, the deceased was carried to a private hospital of PW-9 Dr. Kolte. PW-9 Dr. Kolte has stated that he attended the deceased on his admission. He has stated that he found injury on his stomach. He has further stated that the deceased was brought to the hospital in unconscious state and his blood pressure and pulse was not recordable. He, therefore, applied Cardio Respiratory Resuccitation to the patient due to which the abdomen started distending and pulse was recorded. He has stated that the deceased did not respond to the treatment and on 16/01/2011 at 2.10 a.m., he died. Perusal of his cross-examination would show that there was no challenge to the material part of his evidence. The prosecution on the basis of these two witnesses has proved that immediately after the

incident, the deceased was taken to the hospital of PW-9 Dr.Kolte. He treated him. He noted down the condition of the deceased and particularly, the injury on his stomach. PW-8 - Dr. Prafulla Patil in his evidence has proved the cause of death and the nature of injury being ante-mortem.

15. In order to appreciate the defence of the appellants, we have minutely perused the evidence of the eye-witnesses PW Nos.2, 5 and 14 and the facts recorded in the panchnama. Minute perusal of the evidence of these witnesses and the facts recorded in the panchnama clearly indicates that there is no substance in the defence of the appellants. The evidence and the facts recorded in the panchnama completely rule out the possibility of suicide by deceased and also the elimination of the deceased by PW Nos.2, 5 and 14. It has come on record that the house in which the appellant Raju was residing was taken on rent by the wife of Raju. This fact has been proved on the basis of the evidence of PW-10 - Sk. Rashid Sk. Wajir. It has come on record that Rajesh hails from Jalgaon. The

evidence of PW-15 - Fulsing Bhoi is relevant on this aspect. In fact, Fulsing Bhoi had pointed out the rented house of Raju to the police. In his evidence, PW-10 - Sk. Rashid Sk. Wajir, who is known as Rashid Coolie has deposed that he had let out the room to Sangitabai, wife of Raju and mother of Raju and children of Raju were residing in the same room. Perusal of the cross-examination would show that there is no suggestion to this witness consistent with the defence of the appellants, on the point of occurrence of the incident. PW-10 Rashid Coolie has also deposed about the occurrence. He did not witness the actual occurrence. However, his evidence would show that after hearing the sound of firing, he came out of his house. He found that the police were on the spot. He came to know that in the firing, PSI Chaugule had sustained bullet injury. It is, therefore, seen that presence of Rajesh in the house was but natural. It is the case of the prosecution that Golu who was wanted accused in Crime No.5/2011 had taken shelter with Raju at his house. It is the case of the prosecution that the deceased PSI Chaugule had latched the door from the outside

so that the occupants do not run away. It is the further case of the prosecution that the appellants Golu and Raju bent the door of the house and came out and fired with the revolver on the police party.

16. The facts recorded in the panchnama fully corroborate the evidence of PW Nos.2, 5 and 14 on the point of actual occurrence of the incident. It has come on record in the evidence of the witnesses as well as in the spot panchnama that in front of the room occupied by Rajesh, there was a tin compound of 4 feet height. The length of the compound was 22 feet. PW-2 Sanjay Deshmukh, deceased Chaugule and PW-5 Sanjay Patinge had taken position to monitor the movements of occupants outside the compound directly opposite to the door of this house. Chaugule was facing towards the door of the house. The panchnama records that there was a hole to the tin sheet. The opening of the hole was on the side of the deceased Chaugule. This fact would clearly indicate that the bullet was fired from the verandah of the house of Raju and the

said bullet pierced through the tin and further pierced into the stomach of PSI Chaugule. The panchnama further records that two fired cartridge cases of KF 7.65 mm revolver were found in the verandah. It has been proved by the prosecution that the bullet found in the stomach of PSI Chaugule was fired from 7.65 caliber revolver. This is consistent with the evidence of PW Nos.2, 5 and 14.

17. It is the further case of the prosecution that in retaliation, PW-2 Sanjay Deshmukh fired two shots from the service revolver of the deceased PSI Chaugule. The facts recorded in the panchnama with regard to the actual location of cartridge cases of the bullets fired by PW-2 indicate that same were fired from the side where the police team had taken position to nab the appellants. One KF 9 MM cartridge case was found in front of the house of Nivrutti Chim. The location of the same house can be seen from the sketch which is a part of the panchnama at Exh.38. It is the case of the prosecution that before firing the second shot, PW-2 and PW-5 carried PSI

Chaugule in injured condition towards the house of one Parvatibai. One red colour car was parked there. They took shelter behind the said car. PW-2 Sanjay Deshmukh as per the case of the prosecution fired one more bullet towards the appellants. One KF 9 mm cartridge case was found on the side of the house of Parvatibai near the red colour car. It has further come on record in the panchnama that the bullet fired by PW-2 - Sanjay Deshmukh from his 9 mm caliber pistol was found in broken condition in the bathroom of the house of Santosh Laxman Kachkure. The house of Santosh Kachkure is on the southern side of the room occupied by Raju. It is the case of the prosecution that after opening of fire on the police, the appellants and the other accused started running in the opposite direction. The factual position existing on the spot recorded in the panchnama, therefore clearly rules out the possibility of either suicide by the deceased PSI Chaugule or the elimination of the deceased Chaugule by PW-2 Sanjay Deshmukh and other members of the police team. The situation prevailing on the spot and recorded in the spot

panchnama clearly indicates that the version of PW Nos.2, 5 and 14 as to the occurrence is consistent and credible.

18. At this stage, it would be necessary to note the existing factual position of the spot to appreciate the evidence of the eye-witnesses in proper perspective. It can be seen on perusal of the facts recorded in the panchnama and particularly topography of the spot recorded in the sketch that PSI Chaugule, PW-2 Sanjay Deshmukh and PW-5 Sanjay Patinge were not far away from the door of the house of Raju. The height of the tin compound from the ground was 4 feet. It has also come on record in the evidence that in front of the room, there was a platform. This would further indicate that the person taking position at the place where the deceased Chaugule, PW-2 Sanjay Deshmukh and PW-5 Sanjay Patinge had taken position could be easily seen by the persons standing in front of the house of appellant Raju. It is further seen that for the purpose of leaving the said house through the compound, the occupants had to come on the main road. It is

the case of the prosecution that PW-14 Vijay Gaharwar, who had taken position from the opposite direction came to the spot on receipt of the phone call and saw the appellants fleeing from this spot. Keeping the aspect of existence of the electric light on the spot aside for a moment, it can be seen that it would not have been difficult for the witnesses to see the appellants. This evidence would clearly indicate that the appellants could easily locate and see the Police Officers on the road and open fire in their direction. This fact in our view would lead further credence to the evidence of the prosecution witnesses on the point of identification of the appellants on the spot. It is pertinent to note that if there was darkness on the spot as suggested, then the accused Raju could not have hit the target with this precision. An inference has to be drawn from this fact that the place where the police team had taken shelter and position was clearly visible to the appellants and therefore, shot was fired from the revolver in the direction of the police team. In our opinion, this would be the most important aspect while appreciating the improved version of PW Nos.2, 5 and

14 on the point of existence of the electric pole around this spot and electric light on the spot. The evidence of the eye-witnesses PW Nos.2, 5 and 14 proves their presence on the spot. These witnesses have narrated in detail the purpose of their visit to Malkapur and the enquiry made by them with the concerned persons at Malkapur with regard to the whereabouts and location of the appellant Golu. The witnesses who have provided them the whereabouts and the location of the appellant Golu, are PW-11 Rajesh Nimbolkar and PW-15 Fulsing Bhoi. PW Nos.2, 5 and 14 have narrated the actual occurrence in great detail. It has been proved that the appellant Golu was wanted in Crime No.5/2011 registered at Kholapuri Gate Police Station, Amravati. The co-accused arrested in the said crime provided the necessary information that the appellant Golu might be residing at Malkapur. PW-2 Sanjay Deshmukh and deceased PSI Chaugule on the basis of the mobile sim card of the appellant Golu traced out his location. The mobile phone and the sim cards have been seized in this case. The said evidence corroborates the version of PW-2

Sanjay Deshmukh on this point. PW-2 has deposed that on getting the actual location of the appellant Golu and the appellant Raju, they went to the said place. PW-2 has deposed that the deceased PSI Chaugule had gone near the door of the house and on the basis of his assessment of the occupants informed PW-2 that men and women were present inside the house. He further informed that the suspected accused could also be inside the house. He has stated that PSI Chaugule had gone near the door of the said house and informed the occupants that he was policeman and told them to open the door. He has stated that when they went near the door, they heard the sound of loading of bullet in the pistol. He has further stated that the women were instigating the men to kill the policemen. He has deposed that therefore, PSI Chaugule latched the door from outside. They took position and shelter by the side of tin sheet compound in front of the said house. He has deposed that he gave message to Amravati Police Headquarter and requested for police aid. He has stated that the occupants were switching off and on the light in the house.

They were knocking on the door. It is to be noted that this conduct of the occupants would have further fortified the suspicion of the police team with regard to the presence of the wanted accused inside the house and they would have become more alert and watchful. The next part of his evidence would show that they monitored the movement of the occupants and saw that in order to flee from the spot, the accused bent the door of the house and came out of the house. He has deposed that they fired the bullets from the pistol on them. He has deposed that PSI Chaugule told him that the bullet has hit him on the stomach. It is necessary to mention at this stage that while minutely observing the movements of the occupants of the house, PW-2 Sanjay Deshmukh and other members of the police team saw that they were coming out of the house. It is to be noted that if there had been darkness, PW-2 and other members of the police team would not have been in a position to see them bending the door and coming out of house. The evidence would further show that before PW-2 and other member of the police team could react, the bullets were fired

by the appellants. PW-2 has deposed that thereafter, they took PSI Chaugule near the red colour vehicle. He took the service revolver of PSI Chaugule and fired in the direction of the appellants. He has stated that the appellants along with women fled from the spot in their opposite direction. He has further deposed that other members of the police team saw them in the electric light.

19. The PW-5 Sanjay Patinge has also narrated the incident in great detail. His version is consistent with the version of PW-2 Sanjay Deshmukh. These witnesses were subjected to searching cross-examination on this point. However, no material has been elicited in their cross-examination to doubt their version on the occurrence of the incident. Their evidence is unshaken on the point of seeing the appellants in the street electric light. It is further pertinent to note that since the appellants were not known to the witnesses prior to this incident and to give credence to their version, test identification parade of the appellant Golu and the appellant

Raju was conducted on two different dates. PW-2 Sanjay Deshmukh and PW-5 Sanjay Patinge identified the appellant Golu and the appellant Raju in the said test identification parade. Their evidence on the point of the identification of the appellant Golu and the appellant Raju in the test identification parade has also not been shaken.

20. This would now take us to the evidence of PW-14 Vijay Gaharwar. PW-14 Vijay Gaharwar was the member of the police team. In his evidence, he has narrated the facts in detail up to the time they located the house of the suspect. On the actual occurrence, he has stated that after locating the house, the deceased PSI Chaugule had asked him to stay on one side of the house. He has stated that the remaining members of the police team with Rajesh Nimbolkar went towards the house. He has stated that after sometime, he heard the sound of the firing. He, therefore, went towards the said place. He has stated that he saw two men, two women and three children running on the road. He has categorically stated

that he saw them in the electric light. He identified the appellant Golu and the appellant Raju in the Court. He has stated that he chased them to catch them. However, they ran away. He received phone call and the caller informed him that PSI Chaugule had sustained bullet injury. If his evidence is appreciated in juxtaposition with the topography of the spot, it would show that he was on the southern side of the house and after hearing the sound of the firing, he started running towards the spot. His evidence indicates that he went to the spot from the house of Kachkure which was southern side of the spot.

21. The evidence of PW-2 Sanjay Deshmukh and PW-5 Sanjay Patinge clearly proves that the appellant Raju and the appellant Golu with other accused ran away in opposite direction. The evidence of PW-2 Sanjay Deshmukh and PW-5 Sanjay Patinge on one hand and PW-14 Vijay Gaharwar on the other hand, if appreciated, would show that PW-14 while proceeding towards the spot, crossed the appellants on the

road and there, he saw them. In his evidence, he stated that thereafter, they took the deceased Chaugule to the hospital. The evidence of these witnesses would further show that he is silent on the point of firing made by PW-2 Sanjay Deshmukh in retaliation. His evidence factually appears worthy of credence. This fact would further fortify his version that after hearing the sound of firing, he went in the direction of the spot and at that time, he saw two men, two women and three children running away. He has categorically stated that there was electric light on the road. Perusal of the evidence of PW Nos.2, 5 and 14 together would show that on the point of place of incident, the occurrence of incident and the manner of occurrence of the incident and the event took place after the occurrence of the incident is consistent. All the witnesses were subjected to searching cross-examination. Perusal of their evidence in entirety would show that no dent has been caused to their credibility on the relevant facts deposed by them.

22. Perusal of the cross-examination eye-witnesses would show that the defence has almost admitted the existence of the electric light on the spot. If the evidence of PW Nos.2, 5 and 14 is appreciated in juxtaposition with accurate firing of the bullet at target namely; police team, it would indicate that there was sufficient light on the spot to locate the persons standing around the spot. In view of this position, the improvements albeit not proved through the Investigating Officer could not be said to be material. The evidence adduced by the prosecution does not make the existence of the electric light on the spot unbelievable. PW Nos.2, 5 and 14 identified the appellant Golu and the appellant Raju in the test identification parade. The evidence of PW Nos.2, 5 and 14 with sense of certainty indicate that they were not given an opportunity by Tahsildar before conducting the actual test identification parade to see the appellant Golu and the appellant Raju. We, therefore, have no reason to discard and disbelieve the evidence of PW Nos.2, 5 and 14. The learned trial Judge has accepted their evidence on all the facts stated by

them. We endorse our agreement with the finding of the learned Additional Sessions Judge on this point.

23. It would be necessary to consider the evidence of other witnesses examined to seek corroboration to the evidence of PW Nos.2, 5 and 14. Those witnesses are PW Nos.10, 11, 12 and 15. As stated above, Rashid Coolie in whose house the appellant Raju with his family was staying, has deposed about the said fact as well as the occurrence of the incident of firing. He has also deposed about the presence of the policemen at the spot of incident on the given date and time. His evidence on this aspect corroborates the evidence of PW Nos.2, 5 and 14. PW-11 Rajesh Laxman Nimbolkar is the mobile repairing shop owner. On the basis of the sim card of the mobile phone, he was traced out and police made enquiry with him. PW-11 deposed on the point of recharge of the Mobile No.9561980135. Initially, on the basis of the information provided by him about absconding the appellant Golu, the police team went to the house of one Pant Saheb. There, the

police team and PW-11 came to know that the appellant Raju with his family had shifted elsewhere. PW-15 Fulsing Bhoi was residing as a tenant of Pant Saheb. The police made enquiry with Fulsing and Fulsing informed the police team that the appellant Raju with his family had gone to reside in the premises of Rashid Coolie. He has stated that thereafter, the police team, he and Fulsing went to the said house. He has deposed about the events occurred on the spot till the time, the door of the house was latched from outside by PSI Chaugule. He has deposed that thereafter, the police team told him and others to leave the said place. He has further stated that after passing short distance from the spot, they heard firing of the bullet. When they looked back, they saw the red colour spark of bullet firing. On this point, PW-15 has deposed consistently. While appreciating the evidence of PW Nos.11, 12 and 13, it is to be noted that they did not depose about the actual occurrence of the incident. In our opinion, this would reflect upon their credibility as well as the credibility of the evidence of PW Nos.2, 5 and 14. If they had been planted as

witnesses by the police to the occurrence, then they would have stated about the actual occurrence of the incident and fleeing of the appellant Raju and the appellant Golu with other accused from the spot. In our view, this is very important fact which weighs in favour of the prosecution.

24. PW-12 Santosh Laxman Kachkure is residing in his house, which is adjoining to the house where the appellant Raju with his family was residing. He has deposed that after hearing the sound of bullet firing, he came out of the house and saw the policemen on the spot. He has further deposed that he has seen the bullet pieces in his toilet. He had shown the said bullet to the police. It is to be noted that during investigation, the pieces of the broken bullet were recovered from bathroom attached to his house. His evidence, therefore, corroborates the evidence of the eye-witnesses on the occurrence of the incident on the given date and time. Similarly, the recovery of the broken bullet from his bathroom further fortifies the case of the prosecution that it was the same

bullet, which was fired by PW-2 in the direction of the accused persons.

25. PW-15 Fulsing Bhoi is the important witness inasmuch he has deposed on vital aspects. PW-15 was knowing the appellant - Raju before the incident. PW-15 apart from deposing about the occurrence of the incident has deposed about the country-made revolver possessed by the appellant Raju. He has stated that since 9 years prior to the occurrence, he had been residing in the room let out to him by Pant Saheb. He has deposed that the appellant Raju, his wife, children and his mother-in-law were residing in one room let out to him by Pant Saheb. He has deposed that on one or two occasions the appellant Raju and he had consumed liquor together in his room. On one occasion, the appellant Raju had taken out the pistol, which was kept beneath his bed. At that time, the appellant Raju told him to see the pistol, which he would have seen in the cinema. He took the pistol in his hand. He has stated that the appellant Raju removed the bullet from

his pistol and handed over pistol to him. He had shown the said pistol to Krupal, Vedprakash and Ramesh. After half an hour, he returned the pistol to appellant Raju. He has stated that because of this incident landlord Pant Saheb made the appellant Raju to vacate the tenanted room. Therefore, the appellant Raju went to reside as a tenant in the premises of Rashid Coolie. This part of the evidence of PW-15 was put to strict scrutiny. He was subjected to cross-examination on this point. However, perusal of this cross-examination would show that no dent has been caused to his evidence. On the basis of this evidence, the prosecution has proved that the appellant Raju was possessing the pistol and the bullets.

26. The evidence of this witness after occurrence of the incident is very relevant. He has stated that he along with Rajesh Nimbolkar had accompanied the police to the house of the appellant Raju and had pointed out the same to the police. While narrating the post occurrence events, he has stated that on the way to his house from the spot, he heard the sound of

the bullet firing. After reaching his house, he went to attend the nature's call. He has stated that while returning back after attending the nature's call, he saw the appellant Raju. Raju was carrying baniyan in his one hand and in another hand, he was carrying the pistol. He has stated that the appellant Raju pointed the pistol at his temple and demanded clothes and money. He has stated that he removed the clothes on his person and handed over the same to the appellant Raju. He has also paid Rs.200/- to the appellant Raju. He has categorically stated that while leaving the said place, the appellant Raju told him to go in his room and not to disclose this fact to anybody. He has deposed that about 4.00 p.m., police came to him and made enquiry with him. He thereafter, came to know that the appellant Raju had fired the bullet and one policeman had died in the said incident. Perusal of this cross-examination would show that there are no omissions and inconsistencies in his evidence. The omission sought to be attributed to him from his original statement was in fact not the omission. He had disclosed all the facts to the police at the time of recording of

his statement during the course of investigation. The core of his evidence pre-incident and the post-incident has not been shaken in his cross-examination. On the basis of his evidence, the prosecution has proved that the appellant Raju was possessing the revolver and the bullets. It is true that neither this witness nor his erstwhile landlord Pant Saheb reported this fact to the police. They may have the reasons for not reporting the same to the police. However, this fact would not make the evidence of this witness shaky. The evidence of this witness assumes importance inasmuch as the revolver used by the appellant Raju was not recovered during investigation.

27. There is evidence on record that after the arrest of the appellant Raju, he had led the police to the house of one person in the State of Madhya Pradesh to whom he had sold the revolver. The investigation transpired that the said person was detained in jail in some offence in the State of Madhya Pradesh. The evidence of PW-15 Fulsing Bhoi, in our opinion, lends an assurance to the case of the prosecution that the

appellant Raju was possessing the revolver and the bullets. The evidence further proves that after the incident, the appellant Raju came to his house and by pointing the revolver at his temple, took his clothes and money from him. On minute scrutiny of his evidence, we do not find any infirmity in his evidence. His evidence proves the presence of the police team at the spot of the incident, the occurrence of the bullet firing and death of PSI Chaugule. In our opinion, this witness on the facts deposed by him is the star witness to the prosecution. Despite searching cross-examination of all the relevant aspects deposed by him, no dent has been caused to his evidence. On minute scrutiny and appreciation of his evidence, we find his evidence worth credible. We do not see any reason to discard and disbelieve his evidence. The facts narrated by this witness were from his knowledge. The evidence apart from establishing the facts deposed by him corroborates the evidence of PW Nos.2, 5 and 14 on other relevant aspects qua the occurrence of incident.

28. In this case, the weapon of offence was not recovered during the course of investigation. As stated above, during the course of investigation, the appellant Raju has provided information to the police about the disposal of the revolver. However, despite investigation, this aspect could not be taken to its logical conclusion. In this case, there is hardly any dispute about the occurrence of the incident in the manner deposed by PW Nos.2, 5 and 14. The only disputed aspect is the involvement of the appellant Raju and the appellant Golu in the incident. The evidence of PW Nos.2, 5 and 14 and the evidence of the Medical Officer and the Chemical Analyzer proves beyond doubt that the deceased PSI Chaugule died due to bullet injury. The bullet was seized. The fired bullet cases from 7.65 mm caliber pistol as well as KF 9 mm caliber pistol were recovered from the spot. The evidence on record proves beyond doubt that the pistol was used for firing the bullet and the said pistol was country-made pistol of 7.65 mm caliber. In our opinion, in the teeth of this evidence, non-recovery of the pistol would not be fatal to the case of the prosecution. It is

settled legal position that the non-recovery of weapon of offence may not always be fatal to the case of the prosecution. The conviction of the accused can be based on available evidence, even if the weapon of offence is not recovered. We may seek support to this proposition from the judicial pronouncements. We may usefully refer to the decisions in the following cases:-

i] In the case of State of Rajasthan Vrs. Arjun Singh and others, reported in (2011) 9 SCC 115, the Hon'ble Supreme Court has held that mere non-recovery of cartridge does not detract from the case of prosecution where the evidence adduced is clinching and acceptable. It cannot lead to a conclusion that no crime had taken place.

ii] In the case of Krishna Gope Vrs. State of Bihar, reported in AIR 2003 SC 3114, the country-made rifle used for firing was not recovered. There were eye-witnesses to the incident of firing. The Hon'ble Supreme Court has held that non-recovery of weapon from the house of accused does not inure to the benefit of the accused.

29. In order to prove the identification of the appellant Raju and the appellant Golu, the test identification parade was conducted. PW-13 Amol Kumbhare, the then Tahsildar at Malkapur had conducted the test identification parade. The evidence of PW-13 has been assailed by the appellants on the ground that in the absence of examination of the panch witnesses to the test identification parade, the evidence of PW-13 loses the credibility. PW-13 had conducted the test identification parade of the appellant Golu and the appellant Raju. In his evidence, PW-13 has categorically deposed about the procedure followed by him at the time of test identification parade, the witnesses for the identification and identification of the the appellant Golu and the appellant Raju by the witnesses. It is true that ordinarily, the prosecution should have examined the panch witnesses to the identification parade. However, failure on the part of the prosecution to examine the panch witnesses could not be a ground to reject the evidence of PW-13 about the test identification parade conducted by him. We may state that the test identification

memorandum can be proved on the basis of the evidence of the officer, who has conducted the test identification parade. In this sense, the panch witnesses may not be said to be author of the test identification memorandum. The author of the test identification memorandum would be the officer conducting the test identification parade. The panch witnesses in such circumstances would be the witnesses to depose about the test identification parade conducted in their presence by the officer. Therefore, the failure to examine the panch witnesses would not by itself be a ground to discard the evidence of PW-13, especially when evidence of PW-13 is not shaky. In our opinion, examination of the panch witnesses in this case would have been an icing on the cake for the prosecution. We, therefore, do not see any reason to discard the evidence of PW-13.

30. PW-13 Amol Kumbhare, as can be seen from his evidence, followed the required procedure. He maintained the fairness required at the time of test identification parade. He

gave fullest opportunity to the appellant Raju and the appellant Golu to change their positions in the row of dummies. It has come on record that PW-13 gave an opportunity to each identifying witness to observe the parade twice by changing the position of the appellant Raju and the appellant Golu in the parade. It has come on record that PW-2 Sanjay Deshmukh in his first attempt could not identify the appellant Raju. This fact has been recorded in the test identification memorandum and the evidence of PW-13. This fact, in our opinion, would lend an assurance to the fairness of the test identification parade. This would show that PW-13 acted independently. He recorded true account of the events occurred at the test identification parade. If PW-13 had hand-in-glove with the Investigating Officer, then he could have created a record suitable to the police, stating that even in the first attempt, PW-2 Sanjay Deshmukh had identified the appellant Raju. He was subjected to searching and gruelling cross-examination. Perusal of his cross-examination would show that he could not be deviated an inch from his original

version. No dent has been caused to the core and crux of his evidence. We do not see any reason to discard and disbelieve his evidence. Perusal of his evidence in entirety would show that he followed the procedure strictly and observed the transparency while conducting the test identification parade. The evidence of PW-13 coupled with the evidence of PW Nos.2, 5 and 14 would show that PW Nos.2, 5 and 14 identified the appellant Raju and the appellant Golu being the assailants of PSI Chaugule.

31. It is settled legal position that the evidence of the test identification parade can be used for the purpose of corroboration. The substantive evidence is the identification of the accused in the Court by witness. It is seen that PW-2 was not granted an opportunity to identify the appellant Golu in the Court because on that date, he was not produced from the jail. The remaining accused namely; accused Nos.2, 3 and 4 were produced. Even if this part of evidence of PW-2 is eschewed from consideration, the evidence of PW Nos.5 and

14 would be sufficient to establish their identity. It is seen that on this point, there was blunder on the part of the learned Additional Sessions Judge, Link Court, Malkapur who had recorded the evidence of this witness. It is observed that without taking required steps, the learned Judge proceeded to record the evidence of such important witness in the absence of the accused. It was not permissible in the teeth of the mandate of Section 273 of the Code of Criminal Procedure. We are constrained to observe that ignorance of this fundamental provision of law by the officer of rank of Additional Sessions Judge is totally unfathomable. In this case, fortunately for the cause of justice, there are other witnesses on the point of identification of the appellant Golu and the appellant Raju. In the absence of those witnesses, grave prejudice would have caused to the victim. The appellant Golu and the appellant Raju would have got the benefit of this fact, and would have been enabled to seek their acquittal from the case. We are constrained to mention that not enough care was taken to follow the rules in recording evidence of PW-2 in the

sense that at that time appellant Golu was absent.

32. Be that as it may, in this case, the evidence of the other witnesses has filled up the gap which arose from the mistake committed in recording evidence of PW-2. The next important witness relied upon to seek corroboration to the eye-witnesses is PW-19 Pramod Misal. PW-19 Pramod Misal is an Assistant Chemical Analyzer. At the relevant time, he was In-charge of the Ballistic Division, Regional Forensic Science Laboratory, Nagpur. He examined the bullet and the piece of skin of deceased PSI Chaugule and other articles forwarded to him by Investigating Officer. On examination of articles, he gave his report. Exh.146 is examination report of skin piece of deceased PSI Chaugule. Exh.147 is examination report of bullet. As far as the skin is concerned, he has opined that he detected the metallic copper and lead around the periphery of shot hole on the skin piece. The same were found to be consistent with the passage and wipe of fired copper jacketed bullet. In case of the bullet, the result of analysis is that the

deformed copper jacketed bullet was fired, which was 7.65 mm pistol bullet. He has further opined that the characteristic lengthwise brushing marks observed on the surface of the bullet were showing that it has been fired from the country-made gun having smooth bore barrel. This result of analysis clearly indicates that the bullet examined by him was not fired from 9 mm caliber pistol. We may mention at this stage that this opinion belies the defence of the accused. At this stage, it is necessary to state that the bullet examined by him was deformed copper jacketed bullet. It is submitted on behalf of the appellants that certain admissions given by this witness on the point of dimension of the bullet, a doubt is created about the firing of this bullet from 7.65 mm caliber pistol. In order to satisfy ourselves, we have perused the evidence of PW-19 Pramod Misal, Chemical Analyzer. On going through this evidence, we are convinced that there is no substance in the submission. PW-19 has categorically deposed that the bullet examined by him was fired from 7.65 mm pistol. The bullet is having superficial brushing marks on its surface. He has stated

that the bullet was deformed. He has stated that on the basis of brushing marks on the surface of the bullet, he came to the conclusion that it was fired from country-made gun having smooth bore barrel. It has come on record that the cartridge cases of 9 mm bullet and 7.65 mm bullet were seized. He has stated in his cross-examination that 9 mm revolver cartridge and 7.65 mm caliber cartridge have a different visible dimension. He has further stated that on the basis of dimension, weight and physical observation of the bullet examined by him, he came to the conclusion that it was 7.65 mm bullet. The cartridge case of 9 mm bullet was shown to him. The cartridge case of 7.65 mm bullet was shown to him and he was asked to put the bullet examined by him in the said empty cartridge cases. He could not fit the said bullet in that cartridge case. On the basis of this, it was suggested to him that it was not the bullet fired from 7.65 caliber firearm. PW-19 has explained in his evidence that when the cartridge fired from the firearm hits any target, it may get "D" shaped or deformed depending on the target and the impact on the

target. He has admitted that if the bullet only passes the liquid, then the shape and dimension of the bullet would not change. In our opinion, this line of cross-examination has not caused any dent to the evidence of this witness. In the earlier part of Judgment, we have dealt with the target hit by the bullet. Initially, the bullet hit the tin and after piercing through the tin, the same hit on the stomach of the deceased PSI Chaugule. The tin is a hard target. If the bullet had not hit the tin and pierced through it, then there would have been substance in the line of cross-examination. The evidence of this witness on the point that the deformed bullet examined by him is 7.65 mm caliber bullet fired from 7.65 mm caliber firearm is credible. In our opinion, therefore, the evidence of this witness corroborates other evidence adduced by the prosecution that the bullet which hit the deceased PSI Chaugule was fired from 7.65 mm caliber firearm and not from 9 mm caliber firearm. We may state at this stage that if 9 mm service revolver of PSI Chaugule had been sent for analysis, then same would have dispelled all the doubts sought to be created. In any case,

the same has not made any serious difference. The evidence of PW-19 is consistent. It supports the case of the prosecution and makes us to disbelieve the defence of the accused.

33. In the earlier part of the Judgment, we have observed that the evidence proves that on the spot, there was electric light. On this point, we may consider the evidence of Investigating Officer PW-17 Shriniwas Patil. The spot panchnama was drawn by PSI Mr.A.M. Khan. Panch witness has been examined. Mr. A. M. Khan has not been examined. On 16/01/2011, the investigation was handed over to PW-17 Shriniwas Patil. In the spot panchnama, there is no mention about the existence of electric pole or electric light on the spot. PW-17 Investigating Officer in his examination-in-chief did not utter a word about the existence of light on the spot. In this backdrop, it would be necessary to see his cross-examination. Perusal of his cross-examination would show that it has been conducted on the assumption that this witness in categorical term has deposed about the existence of light on the spot. We

may state that being the Investigating Officer PW-17 Shriniwas Patil could not be said to be a stranger to all these facts. Perusal of his evidence would show that during the course of investigation, he had made request to Revenue Circle Inspector to draw the sketch of spot of incident. The said letter is at Exh.139. The record reveals that the sketch of the spot of the incident was drawn. However, the Revenue Inspector who had drawn the sketch was not examined. The sketch has not been proved. In the sketch, it has been stated that at two places, there were electric lights. Learned Prosecutor In-charge of the case in Trial Court seems to have not applied his mind to this important aspect. The prosecutor In-charge of the case in view of the fact that the statement with regard to the existence of light made by PW Nos.2, 5 and 14 did not find place in the First Information Report and in their statements, ought to have taken precaution to prove such an important document. Be that as it may, the fact remains that the evidence of the witnesses has been found to be credible on this point. A line of cross-examination of the Investigating Officer would

further support this observation. The relevant cross-examination is at Page No.225 in para No.18 of the evidence of PW-17. It was suggested to this witness that there was no street light from the spot of incident up to distance of 102 feet. In further probing cross-examination, PW-17 has stated that the street light was at the distance of about 5 to 10 feet from the house of Santosh Kachkure. The accused after firing round fled from the road in front of the house of Santosh Kachkure. PW-17 to a pointed question has stated that he did not enquire as to whether there were two houses and neem tree on the spot of incident between the street light. The line of cross-examination suggests that the light was blocked due to two houses and neem tree. This line of the cross-examination proceeds on the assumption that there was light on the spot, but the same was blocked. In our opinion, the answers invited in the cross-examination further illuminate the point of existence of the street light on the spot. We have minutely perused the reasons recorded by the learned Additional Sessions Judge. Perusal of the Judgment would show that the

learned Additional Sessions Judge has taken the relevant evidence into consideration. The finding of guilt of the accused is based on proper appreciation of the evidence. The learned Additional Sessions Judge has recorded the reasons to hold the appellants guilty of the offence for which they have been convicted and sentenced. On re-appreciation of the evidence in the appeals, we are fully satisfied that the guilt of the appellants has been proved beyond doubt.

34. The learned Advocate during the course of the argument to substantiate the submissions, placed reliance on the following decisions :-

i] The learned Advocate for the appellant Raju relying upon the decisions in the cases of Ashoksingh Jayendrasingh Vrs. State of Gujarat, reported in (2019) 6 SCC 535 and Bollavaram Pedda Narsi Reddy and others Vrs. State of Andhra Pradesh, reported in (1991) 3 SCC 434 submitted that the failure to mention the existence of electric light in the panchnama and in the First Information Report would create a doubt about the evidence of the eye-witnesses PW Nos.2, 5 and 14 and thereby, the identification of the appellant Raju

and the appellant Golu by these witnesses at the time of test identification parade becomes doubtful. It is observed in the case of Ashoksingh Jayendrasingh Vrs. State of Gujarat (supra) that in the absence of the evidence of availability of sufficient light, the identification of the accused and overt act attributed to the accused would become doubtful. In this case, the incident had occurred in the agricultural field of the informant at 9.00 p.m. There was no evidence as to the existence of electric light. In the case of Bollavaram Pedda Narsi Reddy and others Vrs. State of Andhra Pradesh (supra), the evidence on record was found insufficient in the absence of proof of the light at the place of occurrence and proximity to the assailants. It is observed that in such situation, it was not proper to place reliance on so called eye-witnesses.

ii] Relying upon the decision in the case of Wakil Singh and others Vrs. State of Bihar, reported in AIR 1981 SC 1392, the learned Advocate submitted that the description of the assailants in this case was not provided by the witnesses at the stage of investigation as well as at the stage of evidence and therefore, the identification of the appellant Golu and the appellant Raju at the time of test identification parade becomes doubtful.

iii] Relying upon the decision in the case of Sujit Biswas Vrs. State of Assam, reported in AIR 2013 SC 3817, the learned Advocate submitted that the omission on important fact as to the existence of the electric light on the spot affects the probability of the case of the prosecution.

iv] Relying upon the decision in the case of the State of Gujarat Vrs. Adam Fateh Mohmed Umatiya and others, reported in 1971 (3) SCC 208, learned Advocate submitted that in the absence of the recovery of pistol allegedly used in the crime and examination of the same with the result of the test fired cartridges and empty cartridges found on the spot and the bullet, the reliance cannot be placed on the evidence of the Chemical Analyzer.

35. We have gone through the Judgments relied upon by the learned Advocate. We have recorded a finding that there is sufficient material, including the conduct of the appellant Raju and the appellant Golu to accept the case of the prosecution on the point of existence of the electric light on the spot. The evidence of the eye-witnesses on the fact of existence of electric light on the spot is found credible. The

omission sought to be attributed to the eye-witnesses has not been proved. The weapon i.e. pistol used in this case was not recovered. The custody of the pistol with the appellant Raju has been proved on the basis of the independent evidence of PW-15 Fulsing Bhoi. It is also undisputed on behalf of the appellants that the deceased PSI Chaugule died due to injury sustained by the bullet which was retrieved from his body. The facts recorded in the panchnama crystallized the facts with regard to the actual occurrence of the incident and use of country-made pistol for firing on the police party. In our view, therefore, the law laid down in the judgments relied upon by the learned Advocate for the appellant Golu is of no help and assistance to the case of the appellant. The evidence in this case on re-appreciation in this appeal has been found credible and accepted. We, therefore, do not see any reason to interfere with the findings of the fact recorded by the learned Additional Sessions Judge. We are, therefore, not inclined to accept the submissions advanced by the learned Advocate for the appellant Golu and the appellant Raju. As a result of this, we

conclude that these appeals fail. Hence the following order :-

ORDER

Criminal Appeal Nos.439/2016 and 440/2016
stand dismissed.

[G. A. SANAP, J.]

(SUNIL B. SHUKRE, J.)