

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 651 OF 2014

Syed Sarfaraz s/o. Abdul Kadar,
Age : 40 Years, Occ. Nil
R/o. Dargah dayra, Mukund Nagar,
Ahmednagar, Tq. & Dist. Ahmednagar.

... APPELLANT

VERSUS

State of Maharashtra
Through the Chhawani Police Station,
Aurangabad, Dist. Aurangabad.

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 238 OF 2015

1. Shaikh Ejaj @ Munna Jahagirdar
Age : 37 Years, Occ. At present in Jail,

2. Shaikh Javed @ Painter s/o Sk. Sheru
Age : 34 Years, Occ. At present in Jail,

Both R/o. Ahilyanagar, Ward No. 5,
Newasa (kh), Tal. Newasa, Dist. Ahmednagar

3. Muneer @ Munna Pathan
Age : 38 Years, Occ. At present in Jail,
R/o. Ahilyadevinagar, Ward No. 2,
Bajrang Chowk, Dhangar-Vasti,
Shrirampur, Dist. Ahmednagar.

... APPELLANTS

VERSUS

State of Maharashtra
Through the Chawani Police Station,
Aurangabad, Dist. Aurangabad.

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 717 OF 2014

Shaikh Raju @ Raju Jahagirdar
Age : 46 Years, Occ. At present in Jail,
R/o. Ahilyanagar, Ward No. 5,

Newasa (kh), Tal. Newasa, Dist. Ahmednagar ... APPELLANT

VERSUS

State of Maharashtra
Through the Chawani Police Station,
Aurangabad, Dist. Aurangabad. ... RESPONDENT

WITH
CRIMINAL APPEAL NO. 653 OF 2014

Shaikh Mushtaq Ahmed S/o Gulam Rasool,
Age : 38 Years, Occ. Nil,
R/o. Near Badi Masjid, Mukund Nagar,
Ahmednagar, Tq. & Dist. Ahmednagar. ... APPELLANT

VERSUS

State of Maharashtra
Through the Chhawani Police Station,
Aurangabad, Dist. Aurangabad. ... RESPONDENT

Mr. H. D. Deshmukh, Advocate h/f Mr. N. S. Ghanekar, Advocate for the
appellant in Criminal Appeal Nos. 238 of 2015 and 717 of 2014
Mr. G. R. Syed, Advocate for the appellant in Criminal Appeal Nos. 651
of 2014 and 653 of 2014
Mr. P. G. Borade, APP for the respondent/State

CORAM : **R. G. AVACHAT &
R. M. JOSHI, JJ.**

RESERVED ON : **20/12/2022**

PRONOUNCED ON : **23/03/2023**

JUDGMENT (PER- R. M. JOSHI, J.):

1. Appellants/accused being aggrieved by the judgment and order passed in Sessions Case No. 376 of 2011 convicting them for the offences punishable under Sections 302, 120-B, 143, 147, 148 read with Section 149 of the Indian Penal Code (for short 'IPC) and 3 read with 25

of Indian Arms Act and sentencing them to suffer imprisonment for life with fine have preferred these appeals under Section 374 of the Code of Criminal Procedure (for short 'Cr.P.C.).

2. In nutshell the story of the prosecution can be recorded as under:

(a) On 18/05/2011 Anna Lashkare, resident of Newasa along with his wife (Pooja), three children and neighbouring boy (Manoj) came to Aurangabad in his own car. When they reached near Nagar Naka one car gave dash to the vehicle of Lashkare. Both vehicles halted at about 100-150 meters from the place of the said accident. Both drivers were engaged into altercation over the said issue. At the said place two motorcycles came and 4-5 persons alighted there from. Two of them caught hold of Lashkare and others fired bullets on him from close range. Lashkare fell down in injured condition. His wife Pooja had sought help from the bypassers and after some time one unknown person drove them in car of Lashkare to Ghati Hospital. Lashkare was declared dead by Doctor on being brought to the hospital. Pooja lodged the report in respect of the said incident at about 9.15 pm and pursuant to the said First Information Report bearing No. I-130/2011 came to be registered at Chhavni Police Station,

Aurangagad.

(b) The Investigation into the said crime commenced and panchnama of spot as shown by Pooja was drawn. From the said spot empty cartridges were seized. A mobile phone of the assailants came into the hands of Pooja while she tried to catch hold of him was seized by drawing panchnama. According to the investigating agency the said mobile phone was found to be of Munna Jahagirdar. Thereafter in the said direction investigation was carried out. Investigating Officer got secret information about the assailants having gone to Indore and hence he along with panch witnesses went to Indore and accosted Munna and Javed. During the interrogation it was revealed that the weapons of assaults were concealed in the residential house of Sayyed Sarfaraj at Ahmedangar. The Investigating Officer therefore went to the house of Sarfaraj and in presence of panch witnesses two fire arms were seized under the panchnama (Exhibit 166). Motorcycle used in committing offence was also seized from his residence (Panchnama Exhibit 166). Further investigation was carried out and it was revealed to the Investigating Agency that the murder of Lashkare was an out come of a conspiracy hatched by Raju Jahagirdar accused No.1 with co-accused. In that direction

investigation was done and statements of witnesses were recorded who had claimed to have heard the conversation between the accused persons giving an impression to them about there was a conspiracy to kill Lashkare. Statement of the witnesses were also recorded indicating that in the evening of the faithful day accused Munna and Javed had altercation with Lashkare at petrol pump at Khadka phata and they followed deceased's vehicle on Pulsar motorcycle. During the course of investigation four accused persons were put to identification parade and eye witnesses. Pooja and Manoj identified accused Nos. 2 to 4 to be the assailants involved in the actual assault. Investigating Officer has recovered Nano motorcar which was allegedly used in the said incident by which accident was caused and deceased was kept engaged at the spot. Seized fire arms were sent for ballistic examination and the report of the ballistic examination indicated that the bullets seized from the dead body of Lashkare were fired from the seized fire arms. After conclusion of the investigation, charge-sheet came to be filed.

3. In order to bring home guilt of the accused, prosecution has examined in all 38 witnesses. For the purpose of proving homicidal death of deceased Dr. Zine (PW-31) was examined who categorically

opined about cause of death due to multiple fire arms injuries. Ballistic reports (Exhibit 217 and 218) support the said opinion of the Medical Officer. The actual occurrence of incident is sought to be proved through testimonies of Pooja (PW-9) and Manoj (PW-19). The testimonies of Sudhir Mande (PW-27) panch witness for identification parade and evidence of Datta Bharaskar, Executive Magistrate (PW-30) were also relied upon, to establish conduct of identification parade. Ankush Jadhav (PW-22), panch witness who had accompanied the Investigating Officer to Indore deposed about the manner in which two accused persons were accosted and while they were brought to Aurangabad, at there instance how two fire arms and motorcycle were seized from the house of accused Sarfaraj. On the point of conspiracy reliance was sought to be placed on testimony of Mohan Kusalkar (PW-16), a tea vendor, who claimed to have heard the conversation between the accused on 16/05/2011 wherein accused No.1 Raju had instructed co-accused to kill Lashkare. In this regard witness Pardeshi (PW-15) also claimed to have heard the conversation in Yashraj Hotel. Prosecution examined Advocate Pathan (PW-12) who had accompanied accused No.1 Raju to Ajmer and had found Raju to be disturbed and that he used to go away from them while attending phone calls.

4. Learned counsel for the appellants amongst other

contentions submitted that Trial Court has committed error in not considering the fact that most of the witnesses examined by the prosecution were either relatives of the deceased or the member of the political party to which the deceased represented. It is further argued that the admissions given by the Pooja indicate that there was no dispute between accused No.1 and deceased in respect of the election of Grampanchayat and that there is no evidence in order to show existence of dispute on any other count. As far as testimony of eye witnesses is concerned, it is submitted that the evidence is not free from doubt as the their evidence about the previous incident is nothing but improvement to the statements made during the course of investigation. According to him the identification done by these witnesses is also doubtful as the incident in question has occurred at around 8.00 pm at the place where there was no provision for the light on the road. It is submitted that the identification parade conducted by the Investigating Agency of putting four persons at a time for identification provision is contrary to the law. He relied upon judgment in case of **Rajesh Govind Jagesha Versus State of Maharashtra, (1999) 8 SCC 428, Bollavaram Pedda Narsi Reddy and others Vs. State of A.P., AIR 1991 Supreme Court 1468** and **Ravi @ Ravichandran V. State Rep. By Inspector of Police, AIR 2007 Supreme Court 1729**. On the point of conspiracy it is submitted that the evidence of the witnesses is

far from reliability as it is not probable that the conspiracy could be hatched in such a manner as claimed and that witnesses are got up. With regard to the testimony of Sachin Pardeshi (PW-15) who has allegedly heard the conversation of the accused at Yashraj Hotel is wholly unreliable taking into consideration cross-examination of the said witness. He further drew attention of the Court to the evidence of Advocate Pathan who has in no uncertain terms deposed about the accused No.1 Raju visiting Ajmer regularly and at the relevant time also he being there with the witness. Thus, according to him it is not the case where the prosecution was able to prove the guilt of the accused beyond shadow of reasonable doubt and hence the judgment of conviction deserves interference. He placed reliance on the case of ***Iqbal and Another Versus State of Uttar Pradesh, 2015(2) B Cr.C. 641 (SC)*** and ***Arjun Panditrao Khotkar Versus Kailash Kushanrao Gorantyal and Ors*** in ***Civil Appeal Nos. 20825-20826 of 2017***, to urge keeping electronic evidence out of consideration for want of compliance of Section 65-B of Evidence Act.

5. On the other hand learned APP supported the impugned judgment on the ground that the testimonies of eye witnesses are consistent with regard to the occurrence of the incident and it is sufficiently explained by them as to the situation at the spot which

enabled them to see and identify the accused persons. With regard to the identification parade it is submitted that such parade has importance only during the course of investigation just to ensure that the investigation proceeds in right direction. It is submitted that identification by these witnesses of the assailants in the Court is the substantive piece of evidence and the defence was unable to create any doubt with regard to the said identification. It is further argued that minor discrepancies in the testimonies of the witnesses is natural to occur and the same cannot become a ground for discarding their otherwise reliable version about the incident. About conspiracy it is submitted that practically it is not possible to prove it by direct evidence however in this case the prosecution was able to examine two witnesses who have had occasion to listen to the conversation of the accused which clearly indicates the conspiracy on the part of the accused to kill Lashkare. He placed reliance on the judgment of the Hon'ble Apex Court in case of ***Rakesh and another Versus State of U.P. and another*** in ***Criminal Appeal No. 556 of 2021***.

6. At the out set, we would like to deal with arguments that most of witnesses were related to deceased and hence their testimonies cannot be considered. Law on this point is fairly settled to say that the testimonies of relatives or interested witnesses cannot be discarded on

that sole ground but the Court is required to put itself on guard. Reference can be made to the judgment of Hon'ble Apex Court in case of ***Mohd. Rojali Ali and Others Versus State of Assam, Ministry of Home Affairs Through Secretary, (2019) 19 SCC 567***, it has held that,

"13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki, Amit v. State of Uttar Pradesh, and Gangabhavani v. Rayapati Venkat Reddy. Recently, this difference was reiterated in Ganapathi v. State of T. N. in the following terms, by referring to the three-Judge bench decision in State of Rajasthan v. Kalki Ganapathi case, SCC p. 555 para 14)

"14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

7. In the instant case perusal of the cross-examination of these witnesses do not show that they had any enmic terms with accused

persons or had any motive to falsely implicated them. However, in the facts of the case the testimonies of such witnesses are closely scrutinised. In the instant case Pooja (PW-9) is wife of deceased. She however is a natural witness to the incident of assault as she was present along with deceased in their car. There is no dispute about the fact that deceased Lashkare was local leader of a political party. Kishor Kachvah (PW-2), who acted as memorandum panch is corporator of said political party. He testified about accused Javed Shaikh making statement (Exhibit 84) and pursuant to the same, nano car was seized (Panchnama Exhibit 85) from house of father-in-law of said accused. Though this witness belongs to same political party of which deceased was member but the testimony of the witness was subjected to cross examination and nothing is elicited to disbelieve this version. Similarly, Pratap Hande (PW-1) who is spot panch and has admitted himself to be relative of deceased. He deposed about spot of incident being shown by Pooja and recovery of soil mixed with blood, six empty cartridges etc. under panchnama (Exhibit 80). There is nothing on record to indicate that this witness has not deposed truth. Tukaram Gunjal (PW-3) is also related to deceased. He was panch witness to seizure of clothes of deceased (Panchnama Exhibit 87). According to him shirt with bullet shots and banian soaked with blood were seized in his presence. Dattatraya Lashkare (PW-20) is cousin brother of deceased. His

testimony as well as testimony of Pooja (PW-9) needs minute and careful scrutiny but merely for the reason that they are related to deceased, their testimonies cannot be discarded. Even evidence of Mahesh Pandure (PW-11) cannot be discarded merely on ground that he belongs to same political party, as his evidence on the point of receiving information of accident from deceased and other evidence about business and rivalry is supported by other evidence on record. We therefore, do not find substance in the argument that the accused deserves to be acquitted only for the reason that some of the witnesses examined were related to deceased.

8. For the purpose of proving of offence punishable under Section 302 of the IPC, at the first instance prosecution has to prove that the deceased died homicidal death. In order to establish the same prosecution examined Dr. Zine (PW-31) who has conducted autopsy on the dead body of Lashkare. This witness was serving as Professor and Head of the Department of Forensic Medicine, Government Medical College (Ghati), Aurangabad. As per his testimony on 18/05/2011 dead body was received at around 11.50 pm along with inquest panchnama. He along with Dr. Verma, Dr. Tandale, Dr. Tasgaonkar and Dr. Wakde carried out postmortem examination between 11.55 pm to 3.55 am on 19/05/2011. According to him as per the police inquest the history of

assault with fire arm on 18/05/2011 around 20.30 hours was recorded. It was also recorded that deceased was forwarded to Ghati hospital on 18/05/2011 at about 21.30 hours and was declared dead on admission. On examination of the dead body autopsy surgeons noted following surface injuries.

1. Entry wound of fire-arm of size 1 x 0.6 cms x cavity deep on right side of face, mandibular ramus, 5 cms from right angle of mouth, 8 cms below from the lateral end of right eye-brow, margins inverted, irregular with blood infiltration, oval shape, surrounded by rim of abrasion collar measuring 2 to 3 mm, greater width being on lower side with blackening of size 12 mm x 3 mm surrounding the central defect.
2. Entry wound of fire-arm of size 0.5x 0.5 cm x cavity deep on right side of face on mandibular condylar region, 9 cms from right angle of mouth, margins irregular inverted with blood infiltration, oval in shape, surrounded by rim of abrasion collar measuring 2 to 3 mm greater width being on anterior upward side, with blackening of 4 x 3 mm surrounding central defect.
3. Lacerated wound on right ear, tragus and pinna region, above lobule of 1.5 x 0.5 cm x tissue deep, margins irregular and blood infiltrated.
4. Entry wound of fire-arm of size 2 x 2 cm x tissue deep, on left maxillary region, 2.5 cm below eye, 1 cm lateral to left nostril, margins irregular, inverted with blood infiltration, oval in shape, surrounded by rim of abrasion collar, measuring 1 to 3 mm, greater width being superiorly with blackening of 7 x 3 mm surrounding central defect.
5. Exit wound of fire-arm of left upper chest, 4 cms below left collar bone, in mid-clavicular line, 7 cms from mid-line of 1.5 x 0.5 cm size margins irregular, everted and blood infiltrated.

6. Entry wound of fire arm of 1 x 0.5 cm x tissue deep on left anterior chest, lower part, 18.5 cms from left collar bone, 4 cms from mid-line, margins irregular, inverted with blood infiltration, circular in shape, surrounded by rim of abrasion collar measuring 2 mm width with blackening of 4 x 3 mm surrounding central defect.

7. Entry wound of fire-arm of 2 x 1 cms x tissue deep on right front of lower chest, 24 cms from shoulder and 13 cms from mid-line, margins irregular, inverted with blood infiltration circularly shaped surrounded by rim of abrasion collar of 2 mm width with blackening of 4 x 3 mm surrounding central defect.

8. Entry wound of fire-arm of 1.3 x 1 cm x tissue deep on left fore-arm in lower 1/3rd part, anterior aspect, 7 cms from wrist, 22 cms from elbow joint, margins irregular, inverted with blood infiltration, oval in shape, surrounded by rim of abrasion collar measuring 2 to 3 mm, greater width being on inferior side with blackening of 4 x 3 mm surrounding central defect.

9. Entry wound of fire-arm of 1 x 0.5 cm x cavity deep on back on left side in middle part 6.5 cms from mid-line, 25 cms from acromion process, margins irregular, inverted with blood infiltration surrounded by rim of abrasion collar measuring 2 mm width circularly shaped with blackening of 3 x 2 mm surrounding central defect.

9. He further deposed about recovery of bullets from track Nos. 2, 5, 7 and 8 by blunt dissection by fingers. They also found following corresponding internal injuries to the external injuries recorded in postmortem notes which are as follows;

- 1) Under scalp contusion on left occipital region of size 5 x 4 cms, irregular pinkish in colour.
- 2) Under scalp contusion on right occipital region of size 5.5 x 4 cms, irregular pinkish in colour.
To the scalp :-
 - i) Circular defect of size 0.8 x 0.6 cm on left occipital

- region corresponding to injury No. 11 in column No. 17 with evidence of punched in hole, on outer table and bevelled greater on inner table of skull.
- ii) Circular defect of size 1 x 0.8 cms on right occipital region corresponding to injury No. 10 of column No. 17, with evidence of punched out opening on inner table and bevelled crater in outer table.
 - iii) Circular defect of size 0.8 x 0.6 cms at base of skull near left mastoid, punched out opening on inner table and bevelled crater on outer table.
 - iv) Circular defect of size 0.9 x 0.7 cm at middle cranial fossa, on right side, punched in hole on outer aspect and bevelled crater on inner table.

10. On examination of brain there was subarachnoid haemorrhage on both hemispheres. Meninges were torn corresponding to injury Nos. 10 and 11 in column No. 17. Perforation was present in cerebellar region penetrating complete substance with evidence of blood infiltration. On internal examination of Thorax, there was a perforating injury to intercostal muscle. Left lung had perforating injury passing through both lobes from posterior aspect of lower lobe to anterior aspect of upper lobe with blood infiltration. He further deposed about the recovery of bullets from various parts of body i.e. i) left infra-scapular region of 1 x 0.6 cms size, ii) from left fore-arm of size 1 x 0.6 cm, iii) from right angle of mandible of 1 x 0.6 cms size, iv) from the soft tissue beneath left mastoid process of size 1 x 0.6 cm with anterior end deformed.

11. It is further testified before the Court that before

commencing postmortem examination x-ray of the body was taken and it was submitted to Ballistic Expert through police. The bullets recovered and the skin surrounding the injuries were also recovered and were sent for ballistic examination and preserved for chemical analysis.

12. He opined that the cause of death was shock and haemorrhage due to multiple fire arm injuries. Accordingly, postmortem report (Exhibit 215) was prepared.

13. Dr. Zine after going through viscera report and ballistic examination report issued certificate regarding final cause of death (Exhibit 218) to state that "shock and haemorrhage due to multiple fire arm injuries". From the postmortem findings he was of the opinion that the death might have occurred within four hours of commencement of the postmortem. This supports case of prosecution about assault on deceased at around 8 pm. He further opined that all the injuries mentioned in the postmortem report are collectively sufficient to cause death in ordinary course of nature. Injuries Nos. 1, 2, 4, 5, 6, 7, 9 to 11 and the corresponding internal injuries are sufficient individually to cause death of person. He further stated on perusing the weapons i.e. pistol (Articles 16 and 17) that the injuries mentioned in the postmortem report are possible with these weapons. Though Medical Officer was thoroughly cross-examined by the defence, the opinion of

the Medical Officer about final cause of death is not disturbed in any manner. Apart from the medical evidence there is evidence of eye witnesses Pooja (PW-9) and Manoj (PW-19) who have categorically deposed about occurrence of the incident in which bullets were shot at the deceased from fire arms. Moreover, PW 5- Anant Jagtap (inquest panch) has testified about the injuries noted while conducting inquest panchnama (Exhibit 92) on the dead body of Lashkare. The ocular evidence of eye witnesses coupled with testimony of inquest panch and Medical Officer is sufficient to hold that deceased Lashkare died due to bullets fired at him by fire arms. Prosecution therefore was able to prove that deceased died homicidal death.

14. The prosecution claims that the incident of assault on the deceased has occurred in presence of his wife Pooja (PW-9) and Manoj (PW-19), a boy of 16 years' age, who was accompanying deceased and his wife and children in the car at the relevant time. Pooja (PW-9) deposed about her love marriage with deceased and also narrated the business activities and political background of the deceased. She also stated about rivalry between deceased and accused No.1 Raju who was the active member of different political party. According to her accused No.1 Raju wanted to contest election of Sarpanch about six years back and deceased fielded and supported another candidate and got him

elected which became main cause of the dispute between accused No.1 and deceased. With regard to the incident dated 18/05/2011 she stated about the deceased having been to Shrirampur Court to attend criminal case and while he was returning back to Newasa was suspected to have been followed. At about 5 pm Lashkare decided to go to Aurangabad with his family and asked Manoj to accompany them to take care of the children. She deposed about they having been to Khadka Phata petrol pump where altercations took place between deceased and two persons. She has further narrated that on the way to Aurangabad near Nagar Naka circle one car gave dash from the back side to the car of the deceased and witness and there occurred quarrel between deceased and the driver of the said car. She further stated about deceased being kept engaged in the said quarrel and in the meantime two motorcycles came and the riders had word with the deceased. She further stated that thereafter about 4 to 5 persons came on motorcycles and when the deceased was boarding car 3 to 4 persons caught hold of him and others fired bullets at the deceased from the pistols. She also stated that after causing assault on the deceased the assailants ran away and she caught hold of one of the assailants. The said assailant, however, fled away but his mobile phone came into her hand. She stated about the said persons appeared Muslims from their attire. As regards the subsequent occurrences she claimed that initially no one came to help

her however afterwards with the help of one unknown person deceased was taken to Ghati hospital at around 9 to 9.15 pm where he was declared dead. She lodged report (Exhibit 102) about the incident to the police. On the next day at about 7 am she took police to the spot of the incident wherein empty cartridges were found. The mobile phone of one of the assailant which came into her hand was seized by the police under panchnama. She identified accused No.1- Shaikh Raju @ Raju Jahagirdar, accused No.2 - Shaikh Ejaj @ Munna Jahagirdar, accused No.3 Shaikh Javed @ Painter s/o Sk. Sheru, accused No. 4 – Muneer @ Munna Pathan before the Trial Court.

15. This witness was extensively cross examined by the defence wherein it is sought to be brought on record that deceased was not eligible to contest the election for having three children. Defence has further brought on record the omission and improvements in her testimony as compared to the statement recorded by the police during the course of investigation. Discrepancy about make of car involved in accident is brought on record. Challenge is also made to identification of accused in the identification parade. She was further cross-examined on the point of incident, availability of light, incident of Khadka phata and omissions in her statement.

16. Along with deceased and Pooja, Manoj (PW-19) was in the

car, who was accompanying them to take care of the children. The witness was aged about 14 years at the time of occurrence of the incident. Manoj specifically deposed about he frequently going with deceased to look after his children and on 18/05/2011 too he went along with them. Manoj claimed to have occupied the seat besides deceased/driver of the car. He also narrated the incident occurred at Khadka Phata and claimed that two persons came thereon pulsar motorcycle and stared at the deceased and due to which there was abusing and altercations exchanged between them. He deposed about a Nano car giving dash to the car of the deceased and involvement of driver of the said car in a quarrel with deceased. This witness too was called for the identification parade of the accused and he identified three accused persons.

17. During the cross-examination it is accepted by the witness that assailants were not known to him and he was in the state of a shock due to the occurrence of the incident. He further accepted that the incident occurred so fast giving little time to him to understand the things happening in front of him. With regard to the conducting of identification parade it was suggested to him that a day prior to the incident the police constable had given him letter for remaining present during the parade he denied to have met Pooja on that day. Omission is

also sought to be brought on record with regard to the incident occurred had petrol pump at Khadka Phata, being not reflected in the statement during the investigation.

18. Testimonies of eye witnesses are sought to be challenged predominantly on three counts i.e. improvements in their evidence before the Court doubtful, identification of the accused as assailants and identification parade. According to these witnesses the incident has occurred at around 8 pm on 18/05/2011. They have specifically stated about availability of sufficient light at the spot. The said fact is challenged by the defence contending that the spot panchnama does not disclose any street light at the spot. In this regard it would be material to take into consideration the circumstances appearing from the evidence on record. The evidence clearly indicates that near Nagar Naka there was a dash between the car of the deceased and another car and both the vehicles went ahead to stop at the distance of about 100 ft from the place of accident. There is further evidence to indicate that there was altercation between deceased and the driver of the vehicle and that for substantial time all concerns were present at the spot. This certainly must have given time to witness to become used to the light. There is no dispute that the place where the incident of assault has occurred is busy road. These witnesses have categorically deposed

about availability of light as well as their ability to identify the assailant in the headlight of the vehicles passing by. It is further evident from record that both witnesses had seen the occurrence of the incident from a very close distance as the deceased was standing just beside car which was occupied by them. The witnesses therefore were placed in such a close position that it was easily possible for them to see the assailants who had fired bullet at the deceased from a very close range. There is medical and scientific evidence to that effect which indicates that the bullets hit to the deceased, from close range. The material circumstances on record therefore clearly are indicative of the fact that the witnesses were so close to the deceased and the assailants that it was possible for them to know the features of the assailants and to recollect them not only at the time of identification parade but also at the time of the identification before the Court.

19. As far as omission of these witnesses to state incident of Khadka phata to the police during investigation is concerned, every omission does not become a reason to discard evidence of witness. One cannot ignore the situation faced by Pooja and Manoj who was only age of 14 years. Non making of statement about this incident, does not make its occurrence impossible. Particularly in view of evidence of Amol Shirsath (PW-24). He deposed about having acquaintance with accused

Munna as well as deceased Lashkare. According to him on 18/05/2011 at 6.30 pm accused No.2 and 4 i.e. Munna and Munir came to the petrol pump on black color pulsar motorcycle and there occurred incident of altercations between then and deceased. Like other witnesses is testimony is sought to be challenged on the ground that the statement of this witness was recorded belatedly i.e. on 25/05/2011. This witness was not eye witness to the actual incident of assault and that in each and every case recording of statement belatedly will not be sufficient to discard the testimony of the witness. There is nothing on record to indicate that this witness was anyway related to the deceased or was in enimical terms with accused for deposing falsely against them.

20. Thus, there is positive evidence on record to indicate occurrence of said incident and hence merely because Pooja and Manoj, have failed to narrate the same to police, we find no reason to discard their testimonies. The other evidence, such as testimony of Sachin Kadam (PW-6), shows that car of deceased was damaged, supporting the case of causing of accident before actual incident of assault. Similarly, error committed by witnesses to identify another car involved in accident as 'Indica Car' instead 'Nano Car' would not be enough to hold that no accident occurred at spot prior to incident of assault.

21. At this stage it would be relevant to take note of the testimonies of Datta Baraskar (PW-30) Naib Tahasildar who conducted identification parade and Sudhir Mande (PW-27) who acted as panch witness during the said parade. As per testimony of Sudhir (PW-27) he was present as panch witness during the conducting of identification parade at Harsool jail and the Tahasildar had asked the Jail authority to change four to five person who were brought amongst 20 dummies to conduct the identification parade. Similar is the evidence of Tahasildar. Both these witnesses stated about 20 persons being called as dummy person for the purpose of conducting identification parade and four accused persons were put to the parade out of which three accused i.e. accused Nos. 2, 3 and 4 were identified by both witnesses. Cross-examination of these two witnesses aims at challenging the validity of the identification parade, more particularly on the ground of non compliance of rules of parade and possibility of accused being already shown to witnesses.

22. It is settled position of law that the evidence of the witnesses and identification of the accused in the Court is a substantive piece of evidence and the identification parade is only confirmatory/ corroborative to the identification before the Court. It is held by the Hon'ble Apex Court in case of ***State Of Andhra Pradesh vs K.***

Venkata Reddy & Others, 1976 AIR SC 2207, that the importance of identification parade is during the course of investigation which confirms the Investigating Agency that the investigation is being proceeded in right direction. Section 54A of Code of Criminal Procedure provides for identification of person arrested. According to this provision where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit. A perusal of this provision clearly shows that this is enabling provision to the investigation agency to put the arrested person for identification in order to make itself sure about arrest of right person. The said provision clearly indicates about the identification of such person being necessary for the purpose of investigation of the crime. In the light of the aforesaid provision and in view of the settled position of law by the judgments of the Hon'ble Apex Court, even non conducting of the identification parade per se is not sufficient to discard the identification of the accused in the Court. In the instant case as discussed above the circumstances in which the incident in question has occurred is clearly indicative of the fact that the witnesses had sufficient opportunity to see

the assailants and their identification in the Court is substantive piece of evidence. Merely because certain irregularities were committed by the authority while conducting identification parade, by itself, no benefit can be extended to the accused and this does not become ground for the acquittal of the accused. It would be relevant to take into consideration observations of Hon'ble Apex Court in case of **State of Maharashtra Vs. Suresh, Criminal Appeal No. 1092-1093 of 1998**, wherein it is observed that,

"The last reasoning of the Division Bench is based on a criticism of the modes adopted by the Executive Magistrate who held the test identification parade. The aforesaid criticism was based on the evidence of two witnesses who said that the accused were taken on foot from police station to the place where the parade was conducted and that their faces were not covered during such transit.

Ext 17 is the minutes of the test identification parade conducted by the Magistrate who himself was examined as PW-2. It contains the details of the steps adopted by him. Seven other persons were kept ready in the room and the witnesses were kept in another room from where they could not see the suspect. Thereupon the suspect was brought from the lock up with the help of two respectable persons and all precautions were taken that the witnesses could not see the suspect during such transit. Then the suspect was permitted to stand anywhere among the 7 persons. It was thereafter that the witnesses were brought with the help of the same respectable persons and the witnesses were then asked to identify the person whom they saw on the crucial day. If potholes were to be ferreted out from the proceedings of the magistrates holding such parades possibly no test identification parade can escape from one or two

lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every test identification parade would become unusable. We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes; The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved.

23. Even, perusal of judgments cited supra on behalf of Appellants, indicate that looking in to the totality of evidence in those cases, benefit of doubt is given to accused for want of conduct of identification parade properly. In our considered view having regard to nature of evidence and established facts and circumstances on record, appellants are not entitled to get any benefit of doubt.

24. According to Pooja she had shown the spot of the incident on 19/05/2011 at around 7 am and at that time Pratap Hande (PW-1) acted as panch witness. He also stated about the spot being shown by Pooja, wife of the deceased. At the spot blood was found and six empty cartridges, one charra and soil with blood were seized under panchnama (Exhibit 80).

25. Testimony of Tukaram Gunjal (PW-3) indicates that the

clothes of the deceased seized under panchnama (Exhibit 87) and the shirt of the deceased was showing bullets holes and his banian was soaked in blood. This witness though is relative of the deceased, his evidence deserves acceptance that as in the facts of the case when a person was shot at with bullets, there would be holes in the clothes as well as there would be profuse bleeding. We therefore find no reason to discard his testimony merely on the ground that he was related to the deceased. Similar is the case with inquest panchnama (Exhibit 92), Anant Jagtap (PW-5) testified about inquest on the dead body be conducted in his presence and that the injuries found on the person were recorded in the panchnama. The car of the deceased, bearing registration No. MH-04 PW 3863 was seized under the panchnama (Exhibit 94). The panchnama indicates that there was damaged to the front side and rear side of the said car. Evidence of Sachin Kadam (PW-6) is sufficient to establish the said fact. This corroborates the evidence of Pooja and Manoj who had stated about occurrence of the accident involving the car of the deceased and another car.

26. Apart from the fact that the accused persons were identified by the eye witnesses, there is other evidence led by the prosecution in order to connect them to the crime along with the co-accused. The present case is the one wherein it is alleged by the prosecution that

there was conspiracy hatched for committing murder of deceased Lashkare. Section 120 A of the IPC provides that the elements of criminal conspiracy are that there is an object to be accomplished pursuant to an agreement between two or more persons and achievement thereof with cooperation. Needless to say that in a rare case the direct evidence is available to prove conspiracy. A conspiracy can be proved either by direct or circumstantial evidence or by both. The circumstances may be expressed or even implied. What the prosecution is required to show is the meeting mind and consensus between the accused persons to achieve unlawful purpose. The entire evidence therefore needs to be considered and its cumulative effect would determine as to whether the prosecution was able to prove the conspiracy or not.

27. At this stage it would be fruitful to refer to judgment of Hon'ble Apex Court in case of ***Esher Singh Versus State of A.P., (2004) 11 SCC 585***, wherein it is held that,

"41. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in

Section 120-B read with the proviso to sub-section (2) of Section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in section 120-B (See: Suresh Chandra Bahri v. State of Bihar.)

42. Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence."

28. It is claimed by the prosecution that there was a rivalry business as well as political between accused No.1 Raju and deceased Lashkare. In this regard evidence of Pooja (PW-9), Mahesh Pandure (PW-11), Nitin Mirpagar (PW-13), Ashok Nipunge (PW-14) and Dattatray Lashkare (PW-20) is relied upon. These witnesses deposed about the political rivalry of deceased as well accused No.1 Raju. From their testimony it is brought on record that during the election of Sarpanch and Deputy Sarpanch there was tussle between two political rival parties, represented by accused No.1 and deceased. Accused No.1 does not dispute his involvement in the politics so also there is no challenge

to the fact that deceased Lashkare was also member of a political party and was active in the local politics. Apart from this there is evidence on record to show that both were involved in same business as they were having clubs/gambling dens. Evidence also indicates that there were disputes between them over the issue of tearing of the flex of each other. Thus, there is ample evidence on record to show that deceased and accused No.1 were rivals and there existed disputes between them. On the other hand we do not find any individual disputes between deceased and other accused.

29. Mohan Kusalkar (PW-16), who has tea canteen at Newasa phata, used to supply tea regularly to office and club of Raju (Accused No.1). On 16/05/2011, he received order of 7 to 8 teas from Raju, through his servant. At about 4.00 to 4.30 pm witness saw Raju present in his office with Muuna, Munir and 2-3 unknown persons. He further narrated to have heard conversation between them to kill Anna Lashkare by firing. It is also stated that Raju told them that he will go to Ajmer and on returning he will pay them money. It is stated that Javed came there in 10-15 minutes. It is further deposed that Raju told Javed that two country made pistols are given to his brother. Witness claims that he was frightened and once thought to inform this to Anna Lashkare. He however disclosed this to Raosaheb Lahare, who asked to

keep mum.

30. In cross-examination he admitted knowing Lashkare. He also admitted that his father-in-law is uncle of Lashkare. In further cross-examination witness was able to give some identifications near office of accused No.1. It is suggested to him that after hearing talk he felt that all are joking. He also claimed that talk between accused was not in low voice, which is contrary to his statement under Section 161 CrPC. He denied suggestion that talk inside office of accused is not audible from outside. Perusal of entire cross-examination though show certain omissions but by and large his testimony about hearing of conversation of accused is not shattered. There is nothing brought on record to indicate that this witness has any reason or enmity to falsely depose against them. As far as non intimation of the incident to police or even to Anna Lashkare, cogent explanation has been provided.

31. There is further support to the testimony of this witness from evidence of Raosaheb Lahare (PW-18). He stated about Mohan (PW-16) informing him the witnessing the talk between accused to kill Lashkare. He advised Mohan not to disclose this to anyone as both Raju and Lashkare are politicians and witnesses are poor persons. There cannot be a straight jacket formula, as to how one may react in such situation. Having regard to the status of Mohan and in view of the

fact that accused No.1 and Anna were in politics, there is no reason to discard the explanation provided by these witnesses for non disclosure of incident to anyone.

32. Prosecution has further examined Sachin Pardeshi (PW-15) who had heard conversation at Yashraj hotel. According to him on 17/05/2011 he had been to the said hotel and heard conversation of four persons who were discussing about planning for eliminating the deceased Lashkare. He narrated the words he heard from the said conversation. He also identified Accused Munna and Munir. He also explained that since he was frightened, this incident was not disclosed to anyone immediately. His testimony is sought to be challenged on ground that he had no Jeep of his own at relevant time. The topography of Kalakendra and Hotel was pointed out to say that witness could not have heard any conversation from urinal. There is nothing to show that the witness is having any enmity with accused or any reason to falsely implicate them in this crime.

33. Testimonies of these two witnesses are also challenged by the defence on the ground that their statements were recorded belatedly and that the evidence is not probable. Non recording of statement of the witnesses immediately after the occurrence of the incident per say is not sufficient to discard their evidence. It depends on

facts and circumstances of the case as to call a statement as belated one. In a given case, non recording of the statement of an eye witness even within few hours of the incident may become ground for not accepting their testimony whereas in certain cases recording of statement after substantial time also will not be enough to discard evidence of such witness. It is pertinent to note that these witnesses are not the eye witnesses to the incident in order to enable the police to record their statement in short period of time. Needless to say that in case of conspiracy there would not be any surface material to enable the investigating agency to lay hand on the same. Time is certainly required to unearth the conspiracy. Similarly, the facts and circumstances involved in the case such as status of witness, influence of accused persons also cannot be ignored. These witnesses have stated about the mustering no courage to disclose the conversation heard to anyone. Having regard to the fact that the deceased as well as accused No.1 were active in the local politics at Newasa, their silence appears natural and it would not be sufficient to discard their testimony since otherwise it inspires confidence.

34. Testimony of Mohan (PW-16) is also challenged stating that it is impossible that there could be conversation between the persons who are from Muslim community in Marathi language and that the

the conspiracy would not be hatched in such a manner that it is made known to the public. Appellants are trying to propound a theory that there is inherent incredibility in the evidence. It is matter of common knowledge that in the rural area of Maharashtra irrespective of the communities, Marathi language is used for conversation. Secondly, the conversations are said to have been done in premises and office owned by accused. These are places where the possibility of presence of witnesses cannot be totally ruled out. Moreover, in every evidence some or other discrepancy would definitely occur. Moreover, there is nothing on record to indicate that these witnesses had any interest in securing conviction against accused owing to previous enmity. In our view such reasoning cannot be considered as proposition of human conduct. There cannot be presumption that accused could not have spoken in Marathi or in any particular tone/pitch of voice etc.

35. There is also evidence on record to suggest that the death of Lashkare was not instantaneous or arisen out of incident of accident between cars, when Sushil Dhaije (PW-17) narrates the manner in which Lashkare was followed on the date of incident, while they were coming back to Newasa after attending Court at Shrirampur.

36. It is not only that there are witnesses who have heard the

conversation indicating the conspiracy to kill deceased but other circumstances brought on record are also sufficient to demonstrate that there was prior planning and that the incident in question has not occurred in the spur of movement. Prosecution was able to prove that the pulsar motorcycle was used by the assailants to come to the spot of the incident. The evidence of Ganesh Kumbhar (PW-29) shows that he is the owner of pulsar motorcycle bearing registration No. MH-20 AG-3791 (changed as MH-20 AG 3791) with chassis No. MD2JDTDZZSCL61007. The said motorcycle was stolen and he had lodged report in respect of the theft of the said motorcycle. The very motorcycle was used in crime by putting different registration number plate. Panchanama of seizure of said motorcycle (Exhibit 166) proves that the stolen motorcycle with same chassis number was used by accused. The said fact indicates that there was a preparation prior to the incident of killing of deceased as care was taken to ensure that the vehicle used in the crime is not connected to accused. The said motorcycle is seized at the instance of accused No.2 Munna Jagirdar and accused No.3 Munir Pathan.

37. Ankush Jadhav (PW-22), Panch witness has categorically deposed about having gone to Indore with police and as to manner in which to both accused persons were taken in custody. He also deposed about the accused disclosing to the police about keeping the fire arms

as well as the motorcycle in the house of co-accused Sarfaraj. They took police to the house of Sarfaraj from where the two fire arms and pulsar motorcycle were seized. This testimony of the witness not only brings on record the evidence showing preparation before committing the offence but it also indicates the involvement of co-accused Sarfaraj in the commission of the said crime. In case of criminal conspiracy there need not be physical participation in assault nor there could be any evidence about the actual communication between all the accused persons, if the circumstances brought on record through evidence indicate the involvement of the accused, such conspiracy can be established and all conspirators would be liable for the punishment for crime.

38. Apart from the seizure of two pistols under panchnama (Exhibit 166), prosecution was able to bring further material evidence on record to connect these fire arms with the crime in question. Dr. Zine (PW-31) categorically deposed about death of the deceased being caused due to multiple fire arm injuries and he had also opined about possibility of causing of those injuries with fire arms (Articles 16 and 17). There is further support to this evidence through the testimony of ballistic expert Sudhakar Ramteke (PW-36) and report (Exhibit 217 and 218). His testimony coupled with said ballistic report conclusively proves

that the injuries caused to the deceased and the bullets recovered from the dead body were fired from these two seized fire arms. Thus, there is sufficient evidence led by prosecution to connect these two fire arms with killing of deceased which was seized, at the instance of co-accused from the house of accused Sarfaraj to further establish their nexus with the crime in question.

39. The prosecution has also placed reliance upon evidence of Devidas Khaire (PW-33) and Sadanand Mukte (PW-34), who worked at Toll naka and have sought to prove the extract of record showing car of the deceased is being followed by the Nano car which was involved in the accident. Perusal of the evidence of these witnesses shows that though they have relied upon electronic evidence however it is not supported with certificate under Section 65-B of the Evidence Act. In view of in the judgment in case of **Arjun Kotkar Vs. State of Maharashtra** (supra) wherein Hon'ble Apex Court has held that evidence in absence of certificate under Section 65-B cannot be considered, we are of the view that the said electronic evidence needs to be kept out of consideration. We however, wish to add that even ignorance of this evidence would not become sufficient ground to acquit accused, in view of other material evidence available on record.

40. Accused No.1 Raju has taken a defence that he has no

concern with the incident in question and that he had been to Ajmer along with Riyajkhan Pathan (PW-12) and Mira Sahib Shaikh (PW-23). Both these witnesses deposed about having gone to Ajmer on 16/05/2011. Mira Sahib Shaikh (PW-23) deposed that on 18/05/2011 at 8.45 pm he received call from his son giving information about the incident involving firing of bullets on deceased Anna Lashkare. Advocate Riyajkhan Pathan also stated about they going together to Ajmer. He however has deposed that Raju used to receive phone calls frequently and that he used to go to a distance to talk on the phone. In the statement of this accused recorded under Section 313 he simply denies the evidence of this witness however does not offer any explanation as to the reason for which he used to go away from them to talk on the phone. This becomes additional circumstance against accused No.1.

41. Pooja (PW-9) has categorically deposed about she trying to catch hold of one of the assailants who though ultimately ran away from the spot but his mobile phone came into her hands. The said mobile phone was seized under panchnama (Exhibit 100). It is argued on behalf the defence that even after the time of the incident there is receipt of the phone calls on the said mobile phone and which according to defence indicates that the said phone has no nexus with the incident in question. Similarly it is argued that the mobile phone was not seized

immediately. It is pertinent to note that Pooja had witnessed the incident of assault on her husband who died instantly. She was accompanying by 14 years old boy and small children. She could not get immediate assistant except that one unknown person drove them to Ghati hospital. After the deceased being declared dead she lodged report to the police and therefore in this situation it is not impossible that the mobile phone is not seized immediately. Pertinently the mobile phone came to be seized much before the arrest of any of the accused persons. The evidence on record indicates the mobile phone belonged to accused No.2 Munna. Evidence of Riyzakhan Pathan also indicates that accused No.1 had received a phone call from the police officer intimating him that the mobile phone of accused No.2 i.e. brother of accused No.1 was found at the spot. Thus, there is more than sufficient material on record to hold that at the time of the assault Pooja attempted to stop one of the assailants and his mobile phone got into her hand. The formal seizure of the said mobile phone after few hours is not sufficient to discard the said evidence. Prosecution has also led evidence of Chetan Patil (PW-35) and Ravi Pardeshi (PW-38), Nodal Officers, to corroborate its claim of use of mobile phones and its connection with accused.

42. Accused No. 6-Shaikh Mushtaq Ahmed has been identified

by Pooja (PW-9) before the Trial Court. She claims that this accused had caught hold of deceased Lashkare. Though she could not name him but identified him as one of the person involved in the actual assault caused on Lashkare. Learned Trial Court relying upon this evidence has convicted accused.

43. Manoj (PW-19) another eye witness has identified before the Court accused Shaikh Javed, accused Munna and Muneer Pathan, but he does not identify accused No.6. Thus, according to him except three accused no one else was involved in the actual assault. It is not in dispute that this accused was not put to identification parade and no explanation is forthcoming from prosecution for the same. Thus, except for the identification of this accused by Pooja that too for the first time before the Court since he was not put for identification parade during the course of investigation, there is no other evidence to connect him with this crime. Undoubtedly, this evidence is a weak piece of evidence to convict him.

44. Further, there no identification of this accused by other witnesses in particular Mohan (PW-16) and Pardeshi (PW-15) who had heard a conversation in respect of the conspiracy to kill deceased Lashkare. Thus, as far as this accused is concerned, there is no

corroboration to the evidence of his identification by Pooja for the first time in the Court. His participation in actual assault has not been proved beyond shadow of reasonable doubt. Similarly, there is no material evidence on record to indicate his participation in the conspiracy. It is settled law that the guilt of the accused needs to be established beyond reasonable doubt and we find evidence of Pooja insufficient in absence of further corroboration to be safe to conclude guilt of this accused. He, therefore, deserves to be acquitted by extending benefit of doubt.

45. In our considered view, evidence led by prosecution conclusively, proves that accused Nos. 2, 3 and 4 were involved in actual assault on Lashkare. They are duly identified as assailants and further evidence of seizure of mobile phone of accused No.2 at the spot leaves no room for doubt about their participation in catching hold of Lashkare and firing gun shots at him. Prosecution was further able to establish that the incident in question did not occur at spur of moment but there was planning and it was result of conspiracy hatched to kill deceased. We do not find any reason to discard evidence led by prosecution which shows that there was theft of motorcycle for its use in committing crime, deceased was followed for whole day, incident at Khadka phata, petrol pump, accused Nos. 2 and 3 following deceased's car, accident of cars and deceased being kept engaged at spot, arrival of

assailants on motorcycle and firing gun shots at Lashkare. These events on the date of incident were preceded by meeting between accused and conspiracy hatched to eliminate Lashkare. Mere, absence of accused Nos. 1 and 5 at the spot, does not absolve them from crime as actual overt act of each accused is not contemplated to prove offence punishable under Section 120-B IPC.

43. In view of above discussions, following order is passed:

ORDER

- (i) Criminal Appeal Nos. 651 of 2014, 238 of 2015 and 717 of 2014 stand dismissed.
- (ii) Criminal Appeal No. 653 of 2014 stands allowed.
- (ii) The impugned judgment of conviction and order of sentence against accused No.6-Shaikh Mushtaq Ahmed S/o Gulam Rasool dated 10/10/2014 passed by learned Addl. Sessions Judge, Aurangabad, in Sessions Case No. 376 of 2011 for the offences punishable under Sections 302 read with Section 149, 120-B, 143, 147, 148 of the Indian Penal Code and 3 read with 25 of Indian Arms Act, is set aside.
- (iii) Accused No. 6- Shaikh Mushtaq Ahmed S/o Gulam Rasool is hereby acquitted of the offences punishable under Sections 302 read with Section 149, 120-B, 143, 147, 148 of the Indian Penal Code and 3 read with 25 of Indian Arms Act. He be released forthwith, if not required in any other case.

- (iv) Fine amount deposited by the accused No. 6-Shaikh Mustaq s/o Gulam Rasool, if any, be refunded to him.
- (v) Accused No.1-Shaikh Raju @ Raju Jahagirdar who is enlarged on bail during pendency of appeal, is directed to surrender before Trial Court forthwith to undergo remaining sentence.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

1. Learned counsel for the appellant in Criminal Appeal No. 717 of 2014 seeks four weeks time for surrender of the appellant before the Trial Court.
2. In order to consider the request for surrender, no case is made out as to the compelling circumstances to grant time for surrender. The copy of the judgment is ready. In absence of making out any case for extension of time to surrender, request stands rejected.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

ssp