

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 75 OF 2015
WITH
APPLN/6380/2015 IN APPEAL/75/2015

Raju S/o. Chintaman Sonawane (Mali),
Age : 28 Years,
R/o. Burhanpur,
(Madhya Pradesh)

... Appellant
(Orig. Accused)

Versus

1. State of Maharashtra
 2. Central Bureau of Investigation,
Through Additional S.P., CBI, SCB, Mumbai
- ... Respondents.

...

Advocate for Appellant : Shri S. S. Kazi (Appointed through Legal Aid)
APP for Respondent-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. Madhur A. Golegaonkar
Advocate for Assist to APP : Mr. S. J. Salunke

...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATED : 17 FEBRUARY 2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. The above captioned appeal arises out of judgment and order of conviction dated 15.11.2014 passed by the learned Additional Sessions Judge-1, Jalgaon in Sessions Case Case No. 8 of 2006, arising out of Crime No.242 of 2005 registered for the offence punishable under Sections 302 and 120-B of the Indian Penal Code (IPC) and Section 3/25 of the Arms Act.

PROSECUTION CASE IN TRIAL COURT

2. Deceased V. G. Patil, apart from being a lecturer in a college, was also active in politics. On 21.09.2005, in the early morning, he was proceeding in his Maruti Car bearing No. MH-19-R-05 to deliver lecture. Around 7.30 a.m. while he was proceeding towards Jalgaon-Dhule National Highway, according to prosecution, his vehicle was intercepted by a motorcycle. Both, rider and pillion rider who were wearing helmet, pulled deceased out of the car and he was stabbed by means of knife i.e. after one of them holding him and the other one stabbing him. **PW-1** Mahendra Mahajan (informant) who was a passerby, rushed to the spot. However both accused persons fled after threatening him. People gathered at the spot. After hearing name of deceased from someone amongst the crowd, **PW-1** Mahendra rushed to the house of deceased and informed his wife, who too rushed to the spot and shifted deceased husband to hospital, where on examination he was declared as dead. **PW-1** Mahendra set law into motion by lodging FIR (Exhibit 256).

3. On the strength of the same, crime was registered and initially investigation was entrusted to Local Crime Branch (LCB) and thereafter to Crime Investigation Department (CID), and by order of this Court, it was transferred to Central Bureau of Investigation (CBI). Charge sheets came to be thus filed against in all four persons i.e. accused no.1 Raju Pundlik Mali, accused no.2 Raju Chintaman Sonawane, accused no.3 Liladhar Purushottam

Narkhede and accused no.4 Damodhar Jagannath Lokhande i.e. under Sections 302 and 120-B of IPC and Section 3/25 of the Arms Act, on the premise that accused nos. 3 and 4, who had political rivalry with deceased, hatched a conspiracy with accused nos. 1 and 2 and hired them to commit murder of deceased.

4. This matter has a checkered history. Three investigating agencies seem to be involved at three different stages i.e. LCB, CID and thereafter CBI.

To briefly put, initially only accused nos. 1 and 2 were arrested. Subsequently, according to prosecution, involvement of accused nos. 3 and 4 was revealed and therefore, all four accused were chargesheeted under Sections 302 and 120-B of IPC and 3/25 of the Arms Act. Accused no. 3 Liladhar and accused no. 4 Damodhar questioned their impleadment by seeking quashment of FIR. By order dated 03.02.2006, this court quashed the proceeding against both of them. State took exception to the same and preferred special leave petition before the Apex Court but it came to be dismissed by order dated 18.04.2006. Meanwhile, wife of deceased filed writ petition and she succeeded in getting directions for further investigation under Section 173(8) of the Code of Criminal Procedure (Cr.PC.). Even Government took decision to handover investigation to CBI. Even this court directed transfer of investigation to CBI and said agency took over investigation. In

supplementary charge sheet again, role of accused no. 3 Liladhar Narkhede and accused no.4 Damodhar Lokhande was shown and they were chargesheeted by way of supplementary charge sheet. In the meanwhile, accused no.1 Raju Mali expired due to some ailment and therefore, proceedings were abated as against him. CBI filed first supplementary charge sheet and second supplementary charge sheet on 10.06.2008 and 06.10.2008 respectively. Two more persons namely, Gajendra Patil and Ulhas Patil also came to be arrayed by virtue of order dated 07.07.2014 and they both challenged legality of the said order under Section 319 of Cr.PC. vide a criminal revision application. This court passed interim orders on 15.07.2014 and 18.07.2014 and thereby stayed the proceedings as against Ulhas Patil and Gajendra Patil.

5. Consequently, learned trial Judge, vide order on Exhibit 1 dated 02.03.2009 separated the trial of surviving accused Raju Sonawane from the trial of accused nos. 3 and 4 i.e. Liladhar Narkhede and Damodhar Lokhande. Said order was never challenged by prosecution even when the trial was pending since 2009 and finally decided in 2014. Apparently no steps were taken by prosecution to have trial of present appellant together with accused nos. 3 and 4 who had allegedly given contract to accused no.1 Raju Mali and accused no.2 Raju Sonawane to kill deceased.

On 15.10.2009, charge was explained to accused Raju Chintaman Sonawane and his trial was undertaken during which above impugned order of conviction came to be passed which is now assailed before us by way of instant appeal.

6. We have heard each side for a considerable long time.

7. This court being first appellate court, is expected, while exercising powers under section 482 of Cr.P.C., to re-appreciate, re-examine and reassess the evidence on record. The above exercise is undertaken in view of directions of the Hon'ble Apex Court in the case of *Ishvarbhai Fujibhai Patni vs. State of Gujarat; (1995) 1 SCC 178*. Accordingly we proceed to do so.

8. In the light of charge under Section 302 of IPC, it is to be first seen as to whether death of deceased V. G. Patil is homicidal. It appears that in trial court, reliance was placed by prosecution on inquest, PM report and autopsy doctor's opinion.

9. In witness box **PW-28** Dr. Pankaj Saindani autopsy doctor has narrated the external as well as internal injuries, which he has noted down in the autopsy report (Exhibit 384).

10. Following **seven external injuries** were found on the dead body of V. G.

Patil :-

- (1) Stab wound on neck anteriorly size about 7 inches x 1½ inches 3 cm deep. Edges clean.
 - (2) Stab wound on neck anteriorly below no.1 injury size about 2¾ inches long & superficial.
 - (3) Stab wound on abdomen just below the Xipisternum, size about 1 inch x ½ cm Peritoneum deep.
 - (4) Stab wound on abdomen on left side size 1½ inches x ½ cm.
 - (5) Stab wound on abdomen just above umbilicus size 1½ inches x ½ cm. Part of intestine protruding out of the wound. Peritoneum deep.
 - (6) C.L.W. on right knee below patella size 1½ inches x 1 cm.
 - (7) Stab wound on abdomen on right side, size 1¼ inch x ½ cm. Peritoneum deep.
- Edges of all stab wounds were clean.
All above injuries were ante-mortem.

Following **internal injuries** were found on the dead body :

- (1) Pleura - Pale, haemothorax on left side.
- (2) Larynx, trachea and bronchi - Pale, Trachea transected at thyroid cartilage level due to wound No.1.
- (3) Left lung - Pale, left lung lacerated due to stab wound No.3. Left lung collapsed.
- (4) Large vessels - Right corotid ortery transected due to injury No.1.
- (5) Walls - Stab wound present on abdomen mentioned in column No.17.
- (6) Peritoneum - Pale, iliac mesentry tear.
- (7) Cavity – haemo peritoneum.
- (8) Desophagus - Transected due to injury No. 1.
- (9) Small intestine and its contents - Through and through - perforation due to stab wound on abdomen.
- (10) Large intestine and its contents – Through and through – perforation due to stab wound at coecum level.

11. He has opined that deceased met death due to shock due to haemorrhage due to multiple injuries mentioned above. He has categorically

stated that all injuries were sufficient in the ordinary course of nature to cause death. He has identified P.M. report authored by him at Exhibit 384 as well as Cause of Death Certificate Exhibit 385. He has further stated that on 07.10.2005, by confronting a knife to him, the Investigating Officer has sought his opinion as to whether injuries on the person are possible by the said article and he has opined in the affirmative.

12. In cross-examination, he has answered that injuries mentioned in column no.17 are possible by sword and gupti also. He has answered that injury Nos.1,3, 4, 5 and 7 are sufficient to cause death of the deceased.

13. Consequently, there is no hesitation to hold that there is no dispute at all regarding mode of death to be homicidal. Resultantly, prosecution has established that death is nothing but homicidal one.

14. Now it is to be seen whether prosecution further proved beyond reasonable doubt that accused nos. 1 and 2 together intercepted deceased, accused no.1 facilitated assault and accused no.2 inflicted knife blows on abdomen and neck of deceased and are thus authors of the fatal injuries.

15. Prosecution claims that there is overwhelming evidence both, in the form of direct evidence as well as documentary evidence. Let scrutinize evidence on record whether it is so.

EVIDENCE LED BEFORE THE TRIAL COURT BY PROSECUTION

16. **PW1** Mahendra Mahajan is the informant and the eye witness; **PW2** Vijay Sonar is panch to spot panchanama (Exhibit 299) during which there was seizure of articles, **PW3** Manoj Wani is pancha to inquest panchanama (Exhibit 300), **PW4** Dnyaneshwar Sapke and **PW5** Pradip Choudhari are panchas to arrest panchanama of accused (Exhibits 304 and 305), **PW6** Kailas Koli is pancha to seizure of burnt clothes at the instance of accused Raju Mali (Exhibit 314), **PW7** Abhay Shisode is pancha to memorandum of disclosure and recovery of bracelet and knife at the instance of accused Raju Mali (Exhibit 316), **PW8** Vilas Kandare is pancha to seizure of motorcycle at the instance of Raju Mali (Exhibit 318), **PW9** Ranjit Khadake is pancha to seizure of car and a plastic bag containing files, slipper (Exhibit 320), **PW 10** Rajendra Koli, **PW11** Narayan Badgular and **PW12** Kailas Patil are witnesses on the point of monetary transactions entered with Raju Mali, **PW13** Shabirsha Ajitsha is pancha to seizure of donation receipt book, **PW14** Devprakash Pawar is the original owner of motorcycle, **PW15** Kailas Patil is an acquaintance of accused Raju Mali, **PW16** Rambhau Gobru Pawar is the second eye witness,

PW17 Damodhar Kapde and **PW18** Dhandrahas Bodkhe are Chemical Analyzers, **PW19** Jaywant Kailas Patil is the third eye witness, **PW20** Jayant Chaudhari is photographer, **PW21** Rajesh Mandan is the owner of shop from where knife was allegedly purchased by accused Raju Mali, **PW22** Ramesh Ranani is the jeweller from whom the bracelet seized at the spot was got identified, **PW23** Ramesh Chaudhari pancha to seizure of register at railway station parking, **PW24** Manohar Mahajan is the tailor from whom accused Raju Mali and Raju Sonawane allegedly purchased clothes which were subsequently burnt to mislead police, **PW25** Mohan Sonawane, **PW29** Rajesh Gurav and **PW30** Dharmraj Sonwane are panchas to Test Identification parade, **PW26** Sachin Mahajan is brother-in-law of accused Raju Sonawane, **PW27** Balasaheb Waghchaure is Tahsildar who conducted Test Identification parade, **PW28** Dr. Pankaj Saindani is the autopsy doctor who issued postmortem report and cause of death certificate, **PW31** Sanjay Sapkale is the carrier, **PW32** Satish Sapkale is pancha to memorandum of disclosure at the instance of Raju Mali, **PW33** Pranav Patil is son of deceased, **PW34** Arjun Rathod sold motorcycle to brother-in-law of accused, **PW35** Shantaram Vana Patil is also a carrier, **PW36** Gopal Chaudhari is a police personnel who passed on information to Zilla Peth Police Station, **PW37** Ashok Shrivastav, **PW38** Madhukar Chaudhari, **PW39** Yadavrao Patil, **PW41** Shivnath Shinde, **PW42** Bashir Tadvi, **PW44** Shantaram Gaikwad, **PW45** Rajendrasingh Panwar and **PW46** Nanarao Ghuge are police officers, CBI officials and police personnel

respectively, **PW40** Ravindra Tupe handed over CDR printout and **PW43** Jitendra Solunkhe is pancha to disclosure memorandum.

17. CW1 Smt. Rajani Patil and CW2 Shridhar Chaudhari are court witnesses.

18. Apart from above oral testimonies, reliance was also placed on various documentary evidence like FIR, inquest panchanama, postmortem report, various panchanamas, CA reports etc.

19. As stated above, here, prosecution has come with a very specific case that there is **direct evidence** in the form of testimonies of **PW1** Mahendra, **PW16** Rambhau, **PW19** Jaywant and **PW36** Gopal. Therefore, we propose to visit such evidence.

20. The sum and substance of evidence of **PW1** Mahendra in witness box is that on 21.09.2005, while he was returning after performing his duty, around 7.30 when he had reached highway, he claims to have seen a Maruti car parked on the other side of the highway. He had also seen two persons on Hero Honda motorcycle. He gave their description. According to him, the pillion rider was holding a knife which was blood stained. Whereas, the person wearing *kurta* and *payjama* was lying on the ground. This witness stated that

when he reached near the spot, he saw intestine of injured had come out of the abdominal part and there was cut injury to the throat. He further claims that he inserted back the intestine in the stomach. According to him, he chased the motorcyclists, but they fled. People gathered. On hearing from the mob the name of injured as 'V. G. Patil', he went and informed wife of injured who accompanied to the spot, and thereafter she shifted injured to the hospital, where he was examined and declared dead. He claims to have lodged FIR (Exhibit 256).

21. Above witness was subjected to grueling cross examination, wherein he has answered that he saw the incidence from a distance of about 200 to 250 feet. He admitted of a scuffle between three persons and he also admitted that **he was not able to see who was beating whom.** He admitted that he could not see as to whether, out of the three persons amongst whom there was scuffle, who were wearing helmet. Lastly, he has candidly admitted that he could not identify accused persons in the Test Identification parade.

22. Now, let us visit the testimony of second so called eye witness i.e. **PW16** Rambhau. It has come in his evidence in examination-in-chief, that on 21.09.2005, while he was walking towards Pimparala, he saw white Maruti car and saw two helmet wearing persons quarreling with one person who was

wearing *kurta* and *paymaja*. He also gave description of the two persons on motorcycle i.e. one to be short and one to be tall. He stated that helmet wearing short person stabbed the person wearing *kurta* and *payjama* with knife in the abdomen. He claims to have vividly seen their faces when their helmets came off while they both leaned forward. He claims that he tried to intervene but was threatened by the short person. According to him, the tall person held the injured and directed short one to again carry out assault, who accordingly inflicted blow on the neck. He claims that he was abused and threatened if he intervenes and so he kept quite. According to him, in civil hospital he has disclosed the occurrence to police and he was taken to police station and his statement was recorded. He further stated that, during Test Identification parade, he identified both accused i.e. Raju Mali and Raju Sonawane.

23. In his cross-examination, he answered that he saw the incident from a distance of about 9 to 10 feet. He admitted that his statement was recorded by police **but in the evening of 21.09.2005**. He claims that during Test Identification parade he was threatened by accused Raju Mali, but he did not inform it to the Tahsildar or to the Police. He has admitted about criminal cases pending against him. He was unable to state when he was summoned by C.B.I. for recording statement. He answered that he gave statement to the CBI officer in Marathi and Hindi. According to him, the tall person who was riding

the motorcycle was Raju Mali. He admitted that, he had not narrated any statement to police about utterance of names of G. N. Patil and Ulhas Patil by tall person. He admitted that **he gave their names for the first time after 20 months** before C.B.I. He has stated that he has noted the events in the diary which he handed over to C.B.I. He stated that gupti and knife are same weapons.

24. There is also third eye witness i.e. **PW19** Jaywant, but on carefully going through his evidence, in our opinion, his testimony cannot be said to be direct evidence for the reasons that he claims that he had only seen two helmet wearing persons standing near the veranda of the shop. He does not speak about seeing the actual assault. Similarly even evidence of **PW36** Gopal on careful scrutiny shows that he had reached the spot at later point of time and had merely seen deceased lying on the ground. He does not whisper about seeing assailants or they speeding away on motorcycle.

25. On taking audit of so called ocular account of these four witnesses, it is clearly emerging that **PW1** Mahendra also does not seem to be an eye witness in the light of answers given by him in his substantive evidence itself that, he saw three persons fighting with each other and as trucks were passing on the highway, he could not see what happened there. He directly claims of seeing one of the accused i.e. pillion rider holding blood stained knife. He seems to

be on the other side of the highway i.e. at a distance of 200 to 250 feet. He has also failed to identify accused in the Test Identification parade. Consequently, as he does not define exact role and overt act of accused, it is doubtful whether his evidence at all could be called as direct eye witness account.

26. **PW16** Rambhau though claims to have seen the actual occurrence, but in his cross-examination he has admitted that his statement was recorded in the evening of 21.09.2005. Infact, according to him, he gave information to the police in the morning in the civil hospital on the day of incident itself. As to why his statement was not immediately recorded in the morning is not explained. Further, **PW 39** P.I. Yadavrao Patil, in his evidence at Exhibit 414 speaks about visiting the spot and on reaching there, he claims that he was appraised by one witness that the incidence was seen by him and who has after assault left the spot on Hero Honda motorcycle. This police officer claims that he even asked the name of the witness and which was allegedly disclosed as Mahendra Pandit Mahajan (**PW1**) and therefore, said person was also taken to the hospital. Thus, even this police officer does not speak about **PW16** Rambhau to be another eye witness.

27. Further, even during trial i.e. on the day of his evidence, **PW16** Rambhau in spite of being present, he complained of ill health and has sought adjournment. His demeanor has been noted by trial Judge. He was called upon

to adduce evidence on 17.07.2010 but as he failed to appear on given date, bailable warrant was required to be issued to secure his presence. **PW1** Mahendra does not mark presence of this witness **PW16** even when he claims to have attempted to intervene. **PW16** Rambhau has admitted that he had not stated the names of G. N. Patil and Ulhas Patil while his statement was recorded by police and he named them for the first time after 20 months to the CBI officer. He is also not speaking about what is claimed by **PW1** Mahendra regarding **PW1** Mahendra re-inserting intestine in the abdomen of deceased.

28. For all above reasons, when evidence of **PW16** Rambhau is not completely free from doubt and his statement being recorded late, in our opinion, it should not be readily acted upon as a direct evidence. Though he claims to have identified accused persons in Test Identification parade, it has come on record that news item with photograph of accused was already flashed in the newspaper dated 22.10.2005 i.e. immediately after the occurrence. Even he participated in Test Identification parade held on 08.11.2005 i.e. after almost over two months of the incident. Therefore, possibility of confrontation of arrested accused to this witness cannot be completely ruled out. Thus, in our opinion, much weightage cannot be given to his evidence. Even otherwise, **PW1** Mahendra and **PW16** Rambhau are not lending support to each other on crucial aspects.

29. Learned APP laid much emphasis about recovery and discovery at the instance of accused. However, it is pertinent to note that here prosecution has come with a very specific case that out of the two assailants, one was tall and the other one was short. According to prosecution, tall one was Raju Mali whereas short one was Raju Sonawane. Arrest panchanama carries details of their height. Prosecution claims that accused Raju Sonawane, i.e. shorter one, inflicted knife blows. But unfortunately and surprisingly, seizure of knife is attributed to Raju Mali and not to Raju Sonawane i.e. the actual assailant. This feature of the prosecution case inflicts a very serious blow to its case. If at all it was case of prosecution that knife was used by Raju Sonawane, then its recovery ought to have been at his instance and not at the instance of Raju Mali. But here it is otherwise.

30. It is trite law that statements contained in the memorandum of one accused are not admissible against another co-accused because his inculpatory statement is not admissible against his own interest. The statements contained in memorandum are admissible only to the extent, that the maker of the statement made certain statements and in furtherance of the same incriminating articles were discovered. Therefore, in our considered opinion, statement made by Raju Mali (who died during trial), would not bind present appellant Raju Sonawane.

31. Surprisingly, even Investigating Officer has noted memorandum of Raju Mali and taken him to the shop from where it was allegedly purchased. According to **PW44** DY.S.P. Gaikwad, knife was purchased by Raju Mali. **PW21** Rajesh Mandan, the shop owner has not identified Raju Mali. There is nothing on record to show that weapon changed hands prior to or subsequent to the assault. Even **PW43** Jitendra Solunkhe, pancha to the recovery and discovery has not supported prosecution. Almost all seizures are shown to be at the instance of deceased accused Raju Mali and there is not a single memorandum of disclosure and recovery at the instance of accused Raju Sonawane i.e. the present appellant. Therefore, here even the aspect of recovery and discovery is of no avail to the prosecution, being weak in nature.

32. Rest of the panchas are either pancha to spot, inquest, pancha to parade, pancha to seizure of various articles, persons with whom there were some monetary transactions by accused Raju Mali, chemical analyzers and police personnel. Their evidence is of not much avail to the prosecution. Crucial pancha witnesses i.e. panchas to memorandum and disclosure have unfortunately not supported to the prosecution. ie. **PW24** Manohar Mahajan, **PW32** Satish Sapkale and **PW43** Jitendra Solunkhe.

33. Prosecution also seems to have pressed into service the aspect of conspiracy being hatched amongst all four accused persons to carry out the murderous assault.

34. The offence of conspiracy is defined in Section 120-A of IPC and Section 120-B of IPC provides for its punishment. Section 120-A reads as under :

“120-A. Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done,-
 (1) an illegal act, or
 (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

35. By plethora of judgments, time and again the Hon'ble Apex Court has dealt with the essentials and ingredients for attracting the said charge. To establish criminal conspiracy, prosecution must adduce evidence to prove that:

- i. Accused agreed to do or cause to be done an act ;
- ii. Such an act was illegal or was done by illegal means within the meaning of penal code.

- iii Irrespective of whether some overt act was done by one of the accused in pursuance of the agreement.

36. Thus, in criminal conspiracy meeting of minds of two or more persons for doing illegal act is a *sine qua non*. To convict a person for conspiracy it is incumbent upon prosecution to show that accused persons together agreed to accomplish the unlawful object of conspiracy.

37. The above position is a residue of plethora of landmark judgments like ***Yash Pal Mittal v. State of Punjab*** ; (1977) 4 Supreme Court Cases 540, ***Kehar Singh and others v. State (Delhi Administration)*** ; (1988) 3 Supreme Court Cases 609, ***Firozuddin Basheeruddin and others v. State of Kerala*** ; (2001) 7 SCC 596, ***Yakub Abdul Razak Memon v. State of Maharashtra*** ; (2013) 13 Supreme Court Cases 1 and ***Mukesh and another v. State (NCT of Delhi) and others*** ; (2017) 6 Supreme Court Cases 1.

38. Bearing above legal requirements in mind, if the evidence in the case in hand is carefully gone into, it is seen that except gathering CDR, there is no credible and reliable evidence or even any circumstance to draw inference about accused persons hatching a conspiracy to commit the murder. There is no evidence to suggest that there was any meeting between them by any mode

or say, meeting of their minds. When it was a specific case of prosecution regarding contract killing, it was expected of prosecution to demonstrate who had hired whom. There ought to have been evidence suggesting payment of blood money. But there is no evidence in that regard. Mere telephonic conversations are not sufficient to draw conclusion regarding plotting conspiracy. Resultantly, if evidence regarding contract killing is not on record, even the very motive for present appellant to commit murder vanishes in thin air. Consequently, in our opinion, when the essential requirements for attracting said charge being patently missing, it cannot be said that said charge is brought home.

39. We have carefully gone through the judgment and order impugned herein. It seems that learned trial judge has straightaway accepted the testimonies of **PW1** Mahendra, **PW16** Rambhau and **PW19** Jaywant and that of the police officers. The answers given by these witnesses in cross-examination do not seem to have been properly appreciated. Merely because defence chose not to cross-examine some of the witnesses, itself was no ground to accept the testimonies as un-controverted.

40. It is a serious case of murder and therefore evidence was expected to be sifted carefully to see that the case is proved beyond reasonable doubt. It is surprising to find that learned trial court has failed to appreciate that actual

assailant was said to be Raju Sonawane but there is not a single recovery or discovery at his instance including that of knife. Rather purchase of weapon and its discovery is shown to be at the hands of other accused Raju Mali. Conspiracy was not cogently proved. Essential ingredients to attract Section 120-B of IPC are patently missing in the evidence of prosecution. So called direct evidence ought to have been accepted and acted upon only if it had inspired confidence. Conduct and demeanor of **PW 16** Rambhau has not been properly appreciated.

41. Graver the offence, stricter the proof is the principle of law. But here evidence does not inspire confidence and is not full-proof. In our opinion, prosecution has not been successful in proving its case beyond reasonable doubt. On re-appreciation and re-assessment of the entire evidence, there is only quantity but no quality. Consequently, interference at the hands of this court has become imperative. Hence we proceed to pass following order :-

ORDER

(1) Criminal Appeal stands allowed.

(2) The conviction awarded by learned Additional Sessions Judge-1, Jalgaon on 15-11-2014 in Sessions Case No. 8 of 2006 to the appellant Raju Chintaman Sonawane (Mali) for the offence punishable under Sections 302 and 120-B of the Indian Penal Code stands set aside. Appellant stands

acquitted of the offence punishable under Sections 302 and 120-B of the Indian Penal Code.

- (3) Appellant be set at liberty, if not required in any other case.
- (4) Fine amount deposited, if any, be refunded to the appellant after statutory period.
- (5) Pending application stands disposed of.
- (6) It is clarified that there is no change in the order passed by the learned Additional Sessions Judge-1, Jalgaon, regarding disposal of Muddemal.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

VRE/-