

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

**CRIMINAL APPEAL NO. 291 OF 2022
WITH
INTERIM APPLICATION NO. 3915 OF 2022**

Mohd. Shoab Shaukatali Mansuri	..Appellant
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Amin Solkar a/w. Gaurav Shenoy i/b. Misbaah Solkar for Appellant.

Mr. S. R. Agarkar, APP for State/Respondent No.1.

Mr. Aashish Satpute, (Appointed Advocate) for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 6 FEBRUARY 2023**

ORAL JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 27/12/2021, passed by learned Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.90 of 2016. There were four accused in the trial. The Appellant was the accused No.2. The other accused were Accused No.1 Mohd. Naved Salim Parmar, Accused No.3 Rahul

Ramya Pawar and accused No.4 Sanjaykumar Gagankumar Mahanti. At the conclusion of the trial, the Accused Nos.1 and 4 were acquitted. The Appellant/Accused No.2 and the Accused No.3 were convicted and sentenced as follows:

- i) They were convicted for commission of offence punishable U/s. 341 r/w. 120(B) of the Indian Penal Code (for short 'I.P.C.') and were sentenced to suffer S.I. for one month.
- ii) They were convicted for commission of offence punishable U/s.394 r/w. 397 and 120(B) of the I.P.C. and were sentenced to suffer R.I. for 10 years each and to pay a fine of Rs.5000/- each and in default of payment of fine to suffer S.I. for three months each.
- iii) They were convicted for commission of offence punishable U/s.307 r/w. 120(B) of the I.P.C. and were sentenced to suffer R.I. for 10 years each and to pay a fine of Rs.5000/- each and in

default of payment of fine to suffer S.I. for three months each.

iv) They were convicted for commission of offence punishable U/s.3 r/w. 25 of the Indian Arms Act and were sentenced to suffer R.I. for three years each and to pay a fine of Rs.1000/- each and in default of payment of fine to suffer S.I. for one month each.

v) They were convicted for commission of offence punishable U/s.5 r/w. 27 of the Indian Arms Act and were sentenced to suffer R.I. for three years each and to pay a fine of Rs.1000/- each and in default of payment of fine to suffer S.I. for one month each.

Both of them were granted set off U/s.428 of the Cr.p.c. All the substantive sentences were directed to run concurrently.

2. Heard Mr. Amin Solkar, learned counsel for the

Appellant, Mr. Agarkar, learned APP for the State/Respondent No.1 and Mr. Aashish Satpute, learned appointed advocate for the Respondent No.2.

3. The prosecution case is that, Dakshesh Shah who is the first informant in this case wanted to send Rs.25000/- to his mother in Gujarat. He called his friend Dipak Vora. Both of them went on a motorcycle to Malad to find a courier to send that amount. The offices were closed. They were returning back. They reached Kandivali. The motorcycle was driven by Dakshesh Shah and Dipak Vora was the pillion rider who was carrying the bag with money. They were intercepted by a motorcycle. Two persons got down from that motorcycle. The prosecution case is that, they were the Appellant and the Accused No.3. They snatched the bag from Dipak Vora. The informant and Dipak Vora resisted. It is alleged that, both these accused then fired at the informant with their respective firearms. One bullet got embedded in the wrist of the informant. The other hit his thigh. The two empties and one deformed bullet lay on the ground. The accused went away from there. The informant was taken to the hospital. His statement was

recorded and the offence was registered at Kandivali police station. The investigation was carried out. The spot panchanama was conducted. Two empties and one bullet were seized from the spot. The bullet removed from the informant's hand was collected. In the meantime, the police got information that both the accused were in Nagpur. The police team went to Nagpur and took help of the local police. The Appellant and the accused No.3 were arrested from a lodge in Nagpur on 11/12/2015. At the time of their arrest, two firearms were recovered from them. They were seized. The firearms and the bullets were sent for testing to Ballistic Experts. The investigation was carried out. The test identification parades were held separately and both of them were identified. The statements of the witnesses were recorded and at the conclusion of the investigation the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined twenty witnesses including the informant, his friend Dipak Vora, the Doctor who treated the first informant, the Special Executive Magistrate who conducted the Test Identification Parades on 08/01/2016 and on

19/01/2016, the panchas, the Nodal Officers of the telephone service providers, the Ballistic Experts and the Investigating Officers. The defence of the Appellant was of total denial.

5. Learned Trial Judge relied on the evidence of the prosecution and in particular on the evidence regarding identification of the Appellant and the recovery of the weapons. This is crystallized in paragraph 131 of the impugned Judgment.

6. PW-1 Dakshesh Shah was the first informant. He has deposed that, he was in the business of selling and purchasing clothes in the name of Mahavir Enterprise. On 05/11/2015, it was a holiday for him. He wanted to send some money to his mother residing at Bhavnagar. He called PW-2 Dipak Vora and told him to accompany him for going to a courier office at Malad (E). He asked Dipak Vora to meet him at Borivali. PW-1 had taken Rs.25000/- with him. Both of them reached Malad at about 1.30p.m. on PW-1's scooter. But the offices of the courier company were closed. They started to come back from Malad to Borivali. They decided to go from Kandivali. PW-1 had kept Rs.25000/- in a

bag. Since he was driving his scooter, he had given the bag to PW-2 Dipak. When they were going from Shankar Lane towards Iraniwadi, they were obstructed by two persons on a motorcycle. They removed the keys of his scooter and started abusing them. They tried to snatch the bag from PW-2. At that time, PW-1 tried to obstruct them. They pulled the gold chain from his neck. The chain fell down but PW-1 picked it up. He pushed one of the offenders. The offender removed a revolver and shot at PW-1. He suffered an injury on his left hand's small finger. PW-1 tried to hit him with the helmet. The other accused also removed the revolver from his pant and shot at PW-1. That caused injury to PW-1's right leg. The bullet went through his leg causing entry and exit wounds. Both of them threatened the people who had gathered there and then went away. PW-1 could see the last four digits of the motorcycle as 7779. PW-1 and PW-2 then went to Shatabdi Hospital at Kandivali. They informed about the incident to the constable on duty at that Hospital. PW-1 further deposed that, the motorcycle used by the accused was red coloured Honda Passion. He was discharged from the hospital after 5 to 6 days. The police showed him that

motorcycle after 5 to 6 days from the date of incident.

7. While deposing before the Court on 17/01/2019, PW-1 identified the accused No.3 Rahul Pawar in the Court. PW-1 categorically stated that, out of the two offenders, only one was present in the Court. The other one was not seen in the Court. The roznama shows that, on 17/01/2019 all the four accused were present in the Court. That means, though the Appellant was very much present in the Court, PW-1 did not identify him in the court on that occasion. He was very specific that the accused other than accused No.3 Rahul Pawar was not present in the Court. This is important in the context of this case. PW-1 identified his own clothes in the Court.

In the cross-examination, PW-1 deposed that he did not call the police from the spot of incident. Approximately 20 to 25 people had gathered at the spot at the time of incident, but he did not speak with anybody. After the incident, he was stunned. There were buildings and shops near the spot of incident. When he reached the hospital he was conscious. At about 8.00p.m. on the

same day, he left Shatabdi hospital and went to Sanjivani hospital which was a private hospital. Operation was performed on him. He specifically deposed that, Dipak had not come with a bag containing money. He has further deposed that, no amount belonging to Dipak was robbed.

PW-1 has not deposed in the examination in chief that he had lodged the F.I.R., but the prosecution case is that the F.I.R. was given by him. It was registered as C.R.No.400 of 2015 at Kandivali police station on 05/11/2015. The police station was informed at about 2.55p.m. and the F.I.R. was lodged at 4.50p.m.

In the cross-examination, PW-1 was confronted with his statement in the F.I.R. that Dipak had brought Rs.25000/- in a black rexine bag and that PW-1 himself had brought Rs.20000/-. These contradictions were brought to his notice. He could not explain why it was so mentioned in his F.I.R. In further cross-examination, he admitted that he had not given the broken chain to the police and that he had also not given his helmet to the police.

On 08/03/2019, a question in his re-examination was asked by learned APP to PW-1. In answer to that specific question he stated as follows:

“One accused is present today who was absent on the day when examination in chief was recorded. He is present in Court today. He is the same person.”

This statement does not throw further light on the identity of the offender. In fact, it emphasizes that the person who was not present on 17/01/2019 was present in the Court on 08/03/2019 and he was identified by PW-1. This statement does help the appellant because he was present in the Court on 17/01/2019. PW-1's evidence was resumed on 07/10/2019 and again he was asked to identify the accused, and this time he identified the Appellant and the accused No.3. On this statement he was cross-examined on behalf of the Appellant. He tried to explain that, on the earlier occasions he had seen the accused from a long distance from the witness box and not by going near the accused. But he still could not give clear answers. He admitted that, he was not sure whether the Appellant was present in the Court on 17/01/2019. Thus, he has not properly identified the

Appellant in the Court during his deposition.

8. Dipak Vora who had accompanied PW-1, was examined as PW-2. He has deposed that, on 05/11/2015, at about 12.30p.m. he received a telephone call from PW-1 who asked him to meet him. They met at Kandivali. PW-2 wanted to deposit some amount at Malad Diamond market. PW-1 and PW-2 went to Malad Diamond Market on PW-1's scooter; but the offices were closed. Therefore, they started coming back towards Iraniwadi at Kandivali (W). They were intercepted by two persons on a motorcycle. They started quarreling with PW-1. One of them snatched the bag from PW-2. Both of them fired at the first informant causing injuries. Both the accused then went away on their two wheeler with PW-2's bag containing Rs.25000/-. PW-2 then took PW-1 to Shatabdi hospital and admitted him there. He has deposed that, he was called to identify the accused at Thane Jail. According to him, he identified both the accused. At the time of his deposition, he was shown all the accused, but he identified only accused No.3. Though, the Appellant was present in the Court, he did not identify the Appellant.

In the cross-examination, he stated that, PW-1 had not given him any amount for keeping it in his bag. When he had taken PW-1 to the hospital, he was there for about one and half hour. During that period, police officers inquired with him, but they did not record his statement in the hospital.

9. PW-3 Mukesh Mehta was a pancha for recovery of Rs.2500/- from the Accused No.1. PW-4 Saurabh Shah was a shop owner from where the CCTV footage had captured the incident. He had produced that CCTV footage, however, there was no further connection of that CCTV footage with the prosecution evidence. PW-5 Gaffar Mistry was a pancha, but he was declared hostile. He did not support the prosecution case. The prosecution wanted to show that the accused No.3 had showed his willingness to point out the spot in presence of this witness and accordingly accused No.3 had shown the spot. PW-6 Dhaval Shah was a technician who had provided the CCTV footage in the pen-drive. PW-8 Aslam Khan was a pancha in whose presence PW-1's clothes were seized.

In the context of this case, the evidence of PW-3, PW-4,

PW-5, PW-6 and PW-8 is not very material and this evidence does not have much relevance.

10. PW-7 Dr. Prashant Weling was attached to Sanjivani Hospital. PW-1 was admitted to that hospital on 05/11/2015. On examination, he found CLW on volar aspect of left little finger and entry and exit wound of the size 2 x 2 cm and 1 x 1cm. respectively on the right thigh. He found haematoma over the radial styloid and metallic foreign body felt. The metallic body was removed during the treatment and PW-1 was discharged on 08/11/2015.

In the cross-examination, he stated that the bullet which was removed by him from the wrist of PW-1 was not handed over to the police. According to him, he had handed over that bullet to the Nurse in charge. He had no knowledge whether the Nurse had handed over that bullet to the police or not.

11. PW-11 Dr. Amit Joshi was attached to Dr. Babasaheb Ambedkar Municipal Hospital, Mumbai. That hospital was also known as Shatabdi hospital. He has deposed about the injuries

seen by him. They are as follows:

i) Puncture wound size 2 x 1 x 3cm on the inner surface of right thigh. The injury was fresh and simple in nature.

ii) Puncture wound size 1 x 1 x 1cm on the back of right knee. The injury was fresh and simple in nature.

iii) Lacerated wound size 5 x 2 x 1cm on left hand little finger. The injury was fresh and simple in nature.

There was no reference to any swelling or presence of any foreign body or bullet having been seen in the wrist.

In the cross-examination, he stated that the police officer from Kandivali police station had visited their hospital. He had not informed the police station. According to him, it was a job of the casualty department. He was unable to tell whether the constable in the casualty department made any inquiry with the patient. Interestingly, he has deposed that he did not find any foreign material or substance on the person of the patient and if

there was any swelling or abrasion on PW-1 he would have recorded the same.

12. PW-10 Sachin Jadhav was working with Sanjivani hospital as a Technician. On 23/01/2016, the police called him. The incharge of the operation theater Smt. Shraddha Shirodkar produced a bullet removed from the patient. That was seized by the police under panchanama. It is produced on record at Exhibit 104. A sealed packet bearing label with his signature was identified by him in the Court. He also identified the bullet.

In the cross-examination, he stated that, on 05/11/2015, no article was shown by the Doctor to the police officer before this witness. On 05/11/2015, at about 6.00p.m. the doctor handed over one article to him. He handed over the same to the Nurse. The panchanama shows that the deformed bullet which is described as 'lead' was kept in a small plastic box and a label was affixed on that box bearing the signature of this witness. But in the cross-examination, he deposed that, at the time of the panchanama no label was affixed on the plastic container.

13. PW-9 Dattatray Bandekar was Naib Tahsildar and Special Executive Magistrate at the relevant time. He conducted two test identification parades on 08/01/2016 and 19/01/2016. He has deposed about conducting those parades. He produced the test identification parade panchanamas at Exhibit 99 and 100. In his substantive evidence he has not elaborated all the details of those test identification parades, but he relied on the test identification parade panchanamas.

In the cross-examination, he admitted that, he did not pay attention as to whether any CCTV camera or monitor was available in the jail. He had not given description of the accused to the Jailor. Four dummies were common in both the parades. In both the parades, two different accused were identified. When he visited the place of the test identification parade, the accused and the dummies were already present. He had not given description of the accused to the Jail Authorities. He had not made enquiry with the Jailor whether prior to him any witness had visited the Jail or not. The memo of test identification parade dated 08/01/2016 is produced on record at Exhibit 99. The

memorandum shows that PW-2 had identified the Appellant and the accused No.3. There were in all 12 dummy persons kept in two groups. The memorandum of test identification parade dated 19/01/2016 is produced on record at Exhibit 100. In this parade, PW-1 had identified the Appellant, as well as, the accused No.3. The same memorandum panchanama mentions that the Special Executive Magistrate had asked PW-1 Dakshesh Shah as to why he was not present on 08/01/2016 for the first test identification parade. At that time, PW-1 had answered that, on that date i.e. on 08/01/2016 he was present in Thane Central Jail in connection with some other case. This answer raises serious doubt about the investigation. There was no reason for PW-1 to remain present in Thane Central Jail on 08/01/2016 and not attending the first parade dated 08/01/2016. No satisfactory explanation is offered. He has not even referred to this in his deposition. Therefore, the entire procedure is under serious doubt.

14. PW-12 Baby John and PW-13 Sangdev Godse were two Nodal Officers working with two different service providers of mobile phone network. However, the prosecution has not

connected their evidence with any other material. There is nothing to show that, either the Appellant or the accused No.3 was using a particular phone number regarding which these Nodal Officers could give the evidence. In this view, the evidence of PW-12 and PW-13 is absolutely irrelevant.

15. PW-14 Namdev Rathod was attached to Kandivali police station on 05/11/2015. He received the information telephonically about the firing. He visited the OPD of the Dr. Babasaheb Ambedkar Hospital and made inquiries with PW-1. He was informed about the incident. He recorded PW-1's statement on his laptop. PW-14 then obtained the crime registration number by making a phone call to the police station. He obtained the signature of PW-1 on that statement. He returned to the police station and registered the offence vide C.R.No.400 of 2015. He has deposed that, PHC Sundkar had brought the blood stained clothes of PW-1 to the police station.

In the cross-examination, he admitted that in every Municipal or Government hospital, one EPR register is kept and

the information of firing should have been registered in the EPR register. He stated that, he has not produced any record of EPR register of that hospital.

16. PW-15 API Dnyaneshwar Kadam had conducted the spot panchanama. The articles, as mentioned earlier, were collected from the spot. He recorded the statement of PW-2. On 16/01/2016, one staff member of the Sanjeevani Hospital produced the lead piece. It was seized under the panchanama. He has further deposed that, he prepared the panchanama on 23/01/2016 which is produced on record at Exhibit 104. The spot panchanama is produced on record at Exhibit 160 which mentions seizure of two empties and one deformed bullet.

17. PW-16 Kutbuddin Mulani was attached to Forensic Laboratory at Kalina. On 22/01/2016, seven sealed packets were received from the Kandivali police station under a covering letter Exhibit 171. Those samples were sent to the Ballistic department where PW-16 was working. Those articles included two empties and a deformed bullet found at the spot. On 01/02/2016, under a

covering letter Exhibit 174 another deformed copper jacketed bullet was received. One ballistic examination report was produced on record at Exhibit 172. It mentions that, two deformed bullets were sent in this case. The first bullet sent on 22/01/2016 and the other one sent on 30/01/2016 were fired from the same weapon. The second bullet was sent as Exhibit 1 under ML Case No. BL-99/16. The first bullet was sent under ML Case No. BL-71/16. The prosecution case is that the second bullet was collected on 23/01/2016 from the hospital. It was removed from the hand of the first informant.

18. In this context, the evidence of PW-17 Yogita Patait is also important. She was also working with the Forensic Science Laboratory at Kalina. She has produced the Ballistic report showing that, two weapons were sent to examine whether the bullets recovered in this case were fired from those weapons. The Ballistic examination report is produced on record at Exhibit 194. It mentions that the test was conducted for two country-made pistol (Exhibit 1 and 2). It showed that deformed bullet seized in the hospital (which was sent under BL-99/16/Exh.1) and the

empty found at the spot (which was sent under BL-71/16/Exh.1) and the bullet found at the spot (which was sent under BL-71/16/Exh.3) were fired from the same weapon.

19. PW-18 API Sachin Lule was attached to Tahsil police station, Nagpur at the relevant time. On 10/12/2015, at about 3.00a.m. API Dahiphode attached to Kandivali police station approached him and told him about the offence. Both of them together searched for the Appellant by using his mobile phone's location. They arranged to lay a trap in a lodge. They caught the appellant at 5.30a.m. from a lodge. Apart from the Appellant, Accused No.3 was also arrested. Two firearms were seized from the person of the Appellant and accused No.3. The panchanama is produced on record at Exhibit 199.

In the cross-examination, it is admitted and it is also seen from that panchanama that there was no mention of any sealing or labeling of the articles. This witness has further admitted in his cross-examination that the articles were sent to Ballistic Expert, Nagpur and the report was received from the

Ballistic Expert at Nagpur. He has not given any linking evidence as to how the weapons were handed over to the police officers of Kandivali police station and as to how they were sent to Forensic Science Laboratory, at Kalina.

20. PW-19 P.I. Sudhir Dalvi was attached to Kandivali police station on 05/11/2015. He had conducted some part of the investigation. He has deposed about collecting CCTV footage. An abandoned motorcycle bearing No.MH43-T-7779 was recovered on 09/11/2015. By collecting the information about the telephone numbers the Appellant was traced to Nagpur. This witness then deposed about the recovery made at the instance of accused No.1. He had arranged for conducting the test identification parade.

21. PW-20 Dadasaheb Gade was a pancha for spot panchanama which is produced on record at Exhibit 160.

22. Learned counsel for the appellant submitted that the prosecution has failed to prove its case beyond reasonable doubt. There are various contradictions in the main story. PW-1 has deposed that there was only one bag containing Rs.25000/- which

he had brought from his house; to be handed over to a courier agency. However, PW-2 has deposed that, Rs.25000/- were not brought by PW-1 but were brought by PW-2 himself as he wanted to pay to some person in Diamond business. Learned counsel, therefore, submitted that the genesis of the incident itself is suppressed. The contradictions from the F.I.R. are brought on record. Therefore, there is a doubt about the prosecution story. The identification of the accused in the Court is not proper. There is no proper identification of the Appellant. The test identification parade can only be used for corroboration. Even regarding the incident, there are too many doubtful circumstances. The firearms were not shown to the witnesses. The firearm is not directly connected with the Appellant. The panchas for recovery of the weapons at Nagpur are not examined. There is no connecting piece of evidence to connect the firearms with the Appellant.

23. Shri. Agarkar, learned APP for the State, as well as, Shri. Satpute, learned Appointed Advocate for the Respondent No.2 submitted that, though there is some discrepancy in the identification before the Court, ultimately, PW-1 did identify the

Appellant in the Court. They submitted that the test identification parades were held immediately in the month of January 2016 and in two separate parades, PW-2 and PW-1 have consistently identified the Appellant, as well as, accused No.3. Therefore, their identity is sufficiently established. The Ballistic Expert's report shows that the empties and bullets which were recovered from the spot and from the hospital matched with the firearm recovered in in this case and, therefore, there is a strong connecting evidence between the Appellant and the firearm. The first informant had suffered serious injuries on his hand and on his thigh and, therefore, the offences under sections 397 and 307 of the I.P.C. are made out. They submitted that the discrepancy about the amount and as to who had brought that amount hardly matters because it cannot be overlooked that the first informant had in fact suffered firearm injuries to his hand and to his thigh. Therefore, his evidence cannot be brushed aside.

24. I have considered these submissions. As far as, occurrence of the incident is concerned, there is no doubt that some serious incident had taken place on 05/11/2015 at the spot

mentioned by PW-1 and PW-2. It cannot be denied that PW-1 had suffered firearm injuries. The medical evidence sufficiently corroborates this fact. The informant had first gone to Shatabdi hospital and then to Sanjeevani Hospital. Both the doctors have described the injuries. There is some discrepancy about the bullet embedded in the wrist of the informant, but the fact still remains that the informant had received firearm injuries; at least on his thigh. Therefore, it cannot be said that no incident had taken place. The prosecution needed to connect the present appellant with the incident.

25. There is important discrepancy about the amount which was allegedly taken away by the offenders. PW-1 has deposed that, he had brought Rs.25000/- and that amount was kept in a bag. That bag was kept by PW-2 with him as, PW-1 was driving the motorcycle. Whereas, PW-2's version is different. According to him, he had brought Rs.25000/- from his house and it was kept in a bag. PW-1 in his F.I.R. has stated that the amount of Rs.20000/- was brought by him and there was also another amount of Rs.25000/- brought by PW-2. There was really no reason as to why

this discrepancy should have occurred in the depositions of PW-1 and PW-2. But leaving aside this discrepancy, there is no reason to disbelieve that at least Rs.25000/- in a bag were taken away by the offenders. Having said this, the discrepancy in the evidence of PW-1 and PW-2 has still remained unexplained.

26. Therefore, crucial question would be about the identity of the culprits and to see whether there is any connecting piece of evidence. So far as, identity of the offenders is concerned, the identification in the Court is the substantive piece of evidence. In this regard, PW-2 has not identified the Appellant in the Court. Even in the re-examination he had identified only accused No.3. It is specifically recorded that all the accused were present in the Court on that date except the absconding accused. That means, though the Appellant was very much present in the Court at the time of deposition of PW-2, he was not identified by PW-2.

27. Similar is the case with PW-1. His examination in chief at the first instance was recorded on 17/01/2019. At that time he had identified only accused No.3. The record shows that, on that

date the Appellant was very much present in the Court, but PW-1 was very categorical in stating that there were two persons who had committed the offence; out of which only one person i.e. Accused No.3 was present in the Court on that date. He was asked a question in re-examination on 08/03/2019. Even at that time, his answer did not show that he identified the Appellant in the Court. On the third occasion i.e. on 07/10/2019, for the first time, he deposed that he identified the Appellant in the Court. Thus, in the Court during deposition he has not properly identified the Appellant. While it is true that his deposition is recorded after about 4 years from the occurrence of the incident, but that was not because of any fault on the part of the Appellant. Therefore, no benefit can be given to the prosecution in this behalf.

28. The test identification parade evidence can at the highest be a corroborative piece of evidence, but as discussed earlier, even that evidence is not satisfactory. As mentioned earlier, on the first occasion i.e. on 08/01/2016 though, PW-1 was very much present in the Thane Central Prison, he was not made to identify the suspects. He identified the suspects only on the second occasion

i.e. on 19/01/2016. There is no explanation forthcoming as to why PW-1 was present in the Thane Central Prison on 08/01/2016. Therefore, both these test identification parades are not free from doubt. Thus, I find that the evidence regarding the identification of the Appellant is totally unsatisfactory.

29. There is no recovery of either the stolen amount or the motorcycle from the Appellant. The motorcycle was found abandoned and it was not connected with the Appellant at all. There was no recovery of stolen amount. The next incriminating piece of evidence which the prosecution wants to rely on is about the recovery of the firearms from a lodge in Nagpur when the Appellant and the Accused No.3 were arrested. They were found with the weapons. In that context, the prosecution has relied on the report of the Ballistic examination. Two weapons were sent for Ballistic examination. Two bullets, i.e. one recovered from the spot and the other seized from the hospital and two empties found at the spot were sent for examination. It was found that both bullets were fired from the same firearm and one empty also matched with the bullets. Thus, the prosecution has tried to establish that,

at least one weapon was involved in the incident. In fact, it is contrary to the prosecution case that two different people had used two different firearms in firing shots on the first informant.

30. The crucial piece of evidence in this connection is about seizure of those firearms and sending them for Ballistic examination. As mentioned earlier, the seizure panchanama and the evidence of the police officer at Nagpur do not show that those firearms were kept in a sealed condition with any labels. The Police officer – PW-18 has deposed that, those firearms were sent to the Laboratory at Nagpur. There is no evidence about what was the report of Nagpur Laboratory. There was no connecting piece of evidence to show as to how those firearms travelled to F.S.L. at Kalina, Mumbai. There is nothing to show that, in the meantime, the weapons were securely kept and that there was no possibility of tampering. No connecting evidence is brought on record by the prosecution.

31. There is another infirmity in the prosecution case about seizure of the bullet. The Doctor at Shatabdi Hospital had not

noticed any bullet embedded in the wrist of the informant. The Doctor at Sanjeevani Hospital has deposed that the bullet was removed from his wrist. That was done on 05/11/2015. There is again no evidence as to what happened to that bullet till it was actually seized by the police. The prosecution evidence is that, on 23/01/2016 the bullet was produced by a Nurse in-charge Smt. Shraddha Shirodkar; but she is not examined. There is nothing to show that, from 05/11/2015 to 23/01/2016 the bullet was kept securely and that there was no scope for tampering. At one place the police officer has deposed that the bullet was seized on 16/01/2016. These two dates also do not match and, therefore, even seizure of the bullet from the hospital is not proved satisfactorily.

32. The evidence regarding seizure of the firearms and seizure of the bullet from the hospital is not satisfactory. The prosecution has not ruled out the possibility of tampering with those articles.

33. There is no other evidence against the Appellant. Thus, I

find that there is serious doubt about the prosecution evidence and the benefit of this doubt must necessarily go to the Appellant. Therefore, the appellant deserves to be acquitted from this case.

34. Hence, the following order:

O R D E R

- i) The Appeal is allowed.
- ii) The Judgment and order dated 27/12/2021, passed by learned Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.90 of 2016 is set aside.
- iii) The Appellant is acquitted from all the charges in Sessions Case No.90 of 2016 before learned Additional Sessions Judge, Dindoshi, Mumbai.
- iv) The Appellant shall be released forthwith if not required in any other offence.
- v) The Appellant shall execute P. R. bond under the

provisions of Section 437A of the Cr.p.c. for an amount of Rs.30000/- with one or two sureties in the like amount before being released. The formalities of furnishing the P. R. bond and the sureties shall be completed to the satisfaction of the trial Court.

vi) The Appeal is disposed of accordingly.

vii) With disposal of the Appeal, the Interim Application No.3915 of 2022 does not survive and it is also disposed of.

(SARANG V. KOTWAL, J.)