

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

CRIMINAL APPEAL NO. 487 OF 2018

Dinesh @ Dadu Shishupal Hajare,
Aged 23 years, Occupation – Nil,
R/o Plot No.52, Ranvadi, Nagpur.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through Police Station Officer,
Ajni, Nagpur.

.... **RESPONDENT**

WITH

CRIMINAL APPEAL NO. 525 OF 2018

Amit s/o Pramod Somkuwar,
Aged 21 years, Occupation – Private,
R/o Kaushalya Nagar, Nagpur.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Ajni, Nagpur.

.... **RESPONDENT**

WITH

CRIMINAL APPEAL NO. 528 OF 2018

Pritam s/o Ambadas Kawale,
Aged 19 years, Occupation – Labour,
R/o Kaushalya Nagar, Nagpur.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through Police Station Officer, Police
Station, Ajni, Nagpur.

.... **RESPONDENT**

Mr. S.P. Dharmadhikari, Senior Counsel Assisted by Mr. Uday Dable,
Counsel for the appellant in Cri. Appeal 525/2018,
Mr. D.V. Chauhan, Counsel for the appellants in Cri. Appeal 487/2018
Mr. C.R. Thakur, Counsel for the appellant in Cri. Appeal 528/2018,
Mr. M.K. Pathan, Addl.PP for the respondent/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.

DATE OF PRONOUNCING THE JUDGMENT : 21st JUNE, 2023

JUDGMENT : (PER : R.B. DEO, J.)

These appeals assail the judgment of conviction dated 19-7-2018 rendered by the learned Additional Sessions Judge-2, Nagpur (LSJ) in Sessions Trial 275/2015 whereby Dinesh-appellant in Criminal Appeal 487/2018, Pritam-appellant in Criminal Appeal 528/2018 and Amit-appellant in Criminal Appeal 525/2018 are convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for life, and to payment of fine of Rs.75,000/-(Rupees Seventy Five Thousand), and in default to suffer further rigorous imprisonment for two years, and are further convicted for offence punishable under Section 135 of the Maharashtra Police Act and are sentenced to suffer rigorous imprisonment for one year, and to payment of fine of Rs.2,000/-

(Rupees Two Thousand), and in default to suffer further rigorous imprisonment for two months.

2. **THE PROSECUTION CASE :**

1) On 22-3-2015 there was marriage ceremony of Pravin Yadav at Gotra Lawn, Kamptee Road, Nagpur. At 10.00 – 10.15 p.m. or thereabout Ishant Hajare came to Gotra Lawn under the influence of liquor and created nuisance by abusing the guests. PW 1-Kapil Pal, deceased Shubham and Aman escorted Ishant out of the Gotra Lawn. However, Ishant assaulted Shubham and an altercation ensued during the course of which Ishant threatened Shubham. The reception of Pravin Yadav was scheduled on 23-3-2015. Deceased Shubham, his friend Kapil Pal (PW 1), his brother Pawan Dhepe (PW 2) and sister-in-law Priya Dhepe (PW 3), were standing in front of the house of Shubham. Pawan and Priya were standing in front of their courtyard. Accused along with Amit “juvenile in conflict” arrived at the spot between 8.30 – 9-00 p.m. Shubham was brutally assaulted with knife, spear and boulder which led to instantaneous death.

2) Pawan telephonically informed the police which arrived at the spot within ten to fifteen minutes. Pawan disclosed the entire incident to the police. After the police conducted the preliminary investigation on the spot, Pawan went to the police station and lodged oral report which was reduced to writing (Exhibit 37).

3) On the basis of report lodged by Pawan, offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Indian Arms Act was registered at Ajni Police Station, Nagpur.

4) Investigation proceeded on the usual lines. The body was sent to the Government Medical College and Hospital, Nagpur (GMC) for autopsy. Sample of plain and blood mixed soil was collected. Five pieces of cement stones stained with blood and one blood stained knife along with bunch of hair was seized from the spot. The seized articles were sealed in presence of panchas. The spot-cum-seizure panchanama was prepared in presence of panchas (Exhibit 51). The inquest panchanama was

recorded at the GMC.

5) PW 11-Prataprao Bhosale, API collected the blood samples of the accused and sent the samples in sealed condition to the Chemical Analyzer. PW 11 also sent the seized weapons and the pieces of cement stones to Medical Officer, GMC for opinion which was received vide Exhibit 58.

6) The investigation was handed over to Police Inspector Sandipan Pawar (PW 14) on 24-3-2015. PW 14 recorded the statements of witnesses on 24-3-2015. Accused Dinesh and Pritam were apprehended between 3.00 p.m. and 3.30 p.m. on 24-3-2015. The personal search of the said accused was taken in presence of panchas. From accused Dinesh, T-shirt, full pant, pair of chappal and one mobile phone were seized. The clothes and chappals were blood stained. The seized articles were sealed in presence of panchas. From accused Pritam, blood stained pair of sandal and one mobile phone was seized. The articles were seized in presence of panchas. Accused Dinesh and Pritam were arrested and arrest and seizure panchanama was recorded in the police station in presence of witnesses. Dinesh and Pritam were

sent to GMC for medical examination with their faces masked.

7) Accused Amit was apprehended on 25-3-2015 and from his personal search pair of chappals with blood stains was seized and sealed, and arrest and seizure panchanama was recorded in presence of panchas. Accused Amit was sent to GMC for medical examination with his face masked.

8) While in custody, accused Dinesh expressed willingness to point out the place where he had concealed the knife used in the commission of offence and the *gupti* which he had carried with him. Memorandum statement of accused (Exhibit 67) was prepared and signatures of the accused and the panchas obtained. The disclosure led to recovery of one folding knife and *gupti* which were concealed in the residential house of accused Dinesh. Separate seizure panchanamas of the knife and the *gupti* were prepared and the signatures of panchas and accused Dinesh were obtained. The mother of the accused also signed on the panchanamas.

9) Accused Pritam also expressed willingness to disclose the place where he had concealed the knife used in the

commission of offence and the clothes worn at the time of the incident. The disclosure resulted in recovery of one knife which was concealed on the lintel of the front door of the residential house of the accused. The knife was blood stained. The accused also produced the blood stained clothes which he was wearing at the time of the incident. The motorcycle of the accused had blood stains on the footrest on the right side of the driver and the left side of the pillion rider. The rubber covers of the footrests were seized and sealed. Seizure panchanama of the articles seized was recorded in presence of the panchas (Exhibit 63).

10) While in custody, accused Amit also expressed willingness to disclose the place where the weapon of offence and clothes worn by him were concealed. On the basis of the disclosure statement, the blood stained knife and blood stained clothes were recovered from the dilapidated house of one Madan Shende which was situated near the house of accused Amit. The seized articles were sealed and seizure panchanama drawn.

11) The test identification of the accused was conducted by the Tahsildar, Nagpur on 17-4-2015 and the report of the test

identification parade (T.I.P.)(Exhibits 136 & 137) was received along with memorandum Part-I (Exhibits 46 and 47).

12) The culmination of investigation led to the submission of final report under Section 173 of the Criminal Procedure Code (Code) in the Court of the jurisdictional Magistrate. The Magistrate committed the case to the Sessions Court. The learned Sessions Judge framed Charge Exhibit 8. The accused abjured guilt and claimed to be tried in accordance with law.

13) The prosecution examined fourteen witnesses to bring home the charge. The accused neither examined any witness in defence nor did the accused step into the witness box.

14) Fourteen witnesses examined by the prosecution are -

- 1) PW 1-Kapil Pal at Exhibit 29, eyewitness to the incident, best friend of elder brother of accused Dinesh namely Ishant @ Mama Hajare and neighbour of deceased Shubham.
- 2) PW 2-Pawan Narayan Dhepe at Exhibit 36, brother of deceased Shubham and eyewitness to the incident.
- 3) PW 3-Sau. Priya Pawan Dhepe at Exhibit 44, wife of PW 2 i.e. sister-in-law of deceased Shubham and

eyewitness.

- 4) PW 4-Pramod Rajendra Suryawanshi at Exhibit 50, panch witness to the spot panchanama (Exhibit 51) and also panch witness to the seizure of knife (Article-B) from the spot and pieces of cement stone (Article-Z) seized from the spot under spot panchanama (Exhibit 51).
- 5) PW 5-Dr. Hrishikesh Vinayak Pathak at Exhibit 56, Associate Professor at Government Medical College and Hospital, Nagpur who conducted autopsy on the dead body of deceased Shubham and prepared his memorandum of postmortem examination (Exhibit 57). He also examined five weapons seized in the said crime and issued weapon examination report (Exhibit 58).
- 6) PW 6-Sumit Banduji Sarware at Exhibit 59, panch witness to the physical verification/personal search of accused Dinesh and seizure of T-shirt, pant, sleeper and mobile handset under seizure panchanama (Exhibit 60), panch to the personal search of accused Pritam Kawale and seizure of seizure panchama (Exhibit 61), panch witness to the memorandum statement given by accused Pritam while in police custody to police in his presence vide Exhibit 62. Panch witness to the seizure panchanama (Exhibit 63) prepared in pursuance to the memorandum statement of Exhibit 62 made by accused Pritam whereby the

clothes of accused Pritam and red shirt, blue jeans, one big knife and one Splender motorcycle were seized by the police.

- 7) PW 7-Sachin Purshottam Choudhari at Exhibit 66, panch witness to the memorandum statement made by accused Dinesh Hajare to police in his presence vide Exhibit 67 and seizure panchanama (Exhibit 68) in pursuance to the memorandum statement made by accused Dinesh (Exhibit 67), whereby one folding type knife and one gupti was seized from the house of accused under panchanama (Exhibit 68).
- 8) PW 8- Swapnil Parmeshwarrao Shembharkar at Exhibit 70, panch witness to the personal search of accused Dinesh and seizure of his clothes, footwear, cell phone on disclosure statement made by accused Amit from his house.
- 9) PW 9-Dumdeo Prabhakarrrao Raut at Exhibit 73, panch witness to seizure of clothes of deceased vide panchanama (Exhibit 19), seizure of blood of accused in three piles along with three forms under panchanamas (Exhibit 74, Exhibit 75 and Exhibit 76), panch witness to the seizure of Micromax company cellphone under panchanama Exhibit 77.
- 10) PW 10-Manoj Gajanan Orke at Exhibit 83, PS.I. then attached to Police Station, Ajni who has taken station diary entry at 9-10 p.m. on 23-3-2015 of the telephonic information received from Pawan Dhepe

(PW 2) about murder of deceased Shubham Dhepe. Extract of said station diary entry (Exhibit 83), panch witness to the spot panchanama shown by the informant Pawan where the dead body of Shubham was lying in whose presence deceased was sent to Government Medical College and Hospital, Nagpur for postmortem examination, in whose presence samples of blood lying on the spot was collected with the help of cotton swab, in whose presence normal soil/earth from the spot was also collected by the Investigating Officer, in whose presence five pieces of cement stone, knife on the spot, bunch of hair of deceased were seized from the spot. In whose presence sample of the crush stones (Gitti) fixed on the road were also seized. In whose presence spot panchanama (Exhibit 51) was prepared who is scribe of information/report given by PW 2-Pawan Dhepe, who collected the inquest panchanama (Exhibit 15) of deceased from Government Medical College and Hospital, Nagpur.

- 11) PW 11-Prataprao Vinayakrao Bhonsale at Exhibit 84 then attached to Police Station, Ajni who sent the blood samples of all accused on 09-4-2015 under requisition letter (Exhibit 85) through WNPC Archana for the purpose of chemical analysis under invoice challan (Exhibit 86) and B Forms (Exhibit 87/1, Exhibit 87/2 and Exhibit 87/3) who sent the muddemal i.e. four knives, pieces of cement stones to

Medical Officer, Government Medical college for query vide letter Exhibit 58. He also forwarded the weapons in sealed condition to the office of C.A. Nagpur through P.H.C. Anil vide Exhibit 88.

- 12) PW 12-Nandkishor Baba Salodkar at Exhibit 98, Jr. Engineer, Electric Department, N.M.C. Nagpur who gave information about two electric poles DPG 229N and DPG 201D to be enlightened on 23-3-2015 to 24-3-2015 who proved letter (Exhibit 100) of their office (Exhibit 99) dated 18-4-2015 which says that aforesaid poles were enlightened in the night between 23-3-2015 and 24-3-2015.
- 13) PW 13-A.S.I. Dilip Shyamrao Gadwe at Exhibit 101, then attached to Ajni Police Station, who gave publicity for promulgation the order u/sec. 37 of Bombay Police Act of Addl. Police Commissioner, which was in force from 30-3-2015 to 06-4-2015 for Nagpur City.
- 14) PW 14-PI. Sandipan Vasantryao Pawar, at Exhibit 105 who investigated into the said crime from 24-3-2015.
- 15) In addition to the oral evidence the prosecution relied on the following documentary material -
 - 1) First Information Report (FIR) given by PW 2-Pawan Dhepe to the police vide Exhibit 37.
 - 2) Printed F.I.R. Exhibit 38.

- 3) Report lodged by PW-2 Pawan Dhepe to Ajni police station about threatening from unknown person vide Exhibit 39.
- 4) Inquest panchanama of deceased Shubham Dhepe vide Exhibit 15.
- 5) Police report forwarded to Civil Surgeon with dead body vide Exhibit 16.
- 6) Letter sent to Head Master, St.John High School, Ajni, Nagpur for information about juvenile Amit Chudhari vide Exhibit 22.
- 7) Copy of leaving certificate of Amit Choudahri, child in conflict with law vide Exhibit 23.
- 8) Seizure panchanama of articles vide Exhibit 51.
- 9) Postmortem examination report of deceased Shubham vide Exhibit 57.
- 10) Weapon examination report, vide Exhibit 58.
- 11) Seizure panchanama of clothes and other articles from accused Dinesh vide Exhibit 60.
- 12) Seizure panchanama of clothes and other articles from accused Pritam vide Exhibit 61.
- 13) Seizure panchanama of motorcycle, knife, clothes etc. from accused Pritam vide Exhibit 63.
- 14) Memorandum statement of accused Dinesh in respect of discovery of knife and Gupti vide Exhibit 67.
- 15) Seizure panchanama of knife, Gupti from the house of accused Dinesh vide Exhibit 68.
- 16) Seizure panchanamas of sealed bottles of blood samples vide Exhibit 74 to Exhibit 76.
- 17) Seizure panchanama of cell phone of Micromax company vide Exhibit 77.

- 18) Extract of station diary of arrest of accused vide Exhibit 106.
- 19) Extract of station diary regarding sending accused to G.M.C. Nagpur vide Exhibit 107.
- 20) Seizure panchanama of pair of Chappal vide Exhibit 108.
- 21) Arrest form vide Exhibit 109.
- 22) Station diary entries of arrest of accused and sending accused for medical examination vide Exhibit 110 to Exhibit 112.
- 23) Arrest form of juvenile vide Exhibit 113.
- 24) Copy of information letter of arrest of juvenile vide Exhibit 114.
- 25) Memorandum statement of Amit Choudhari vide Exhibit 115.
- 26) Panchanama of seizure of clothes of accused Amit Chudhari, child in conflict with law vide Exhibit 116.
- 27) Copy of station diary vide Exhibit 117.
- 28) Letter sent to Medical Officer for collecting blood samples of Amit Choudhari, child in conflict with law vide Exhibit 118.
- 29) Seizure form vide Exhibit 119.
- 30) Form 'B' vide Exhibit 120.
- 31) Letter sent to G.M.C for taking blood samples of accused Dinesh, Pritam and Amit vide Exhibit 121.
- 32) Copies of station diary entries vide Exhibit 112, Exhibit 127.
- 33) Marriage invitation card of Pravin Yadav vide Exhibit 128.
- 34) Copy of station diary vide Exhibit 129.
- 35) Memorandum statement of accused Amit vide Exhibit 130.
- 36) Copy of station diary entry vide Exhibit 131.

- 37) Seizure panchanama vide Exhibit 132.
- 38) Copy of station diary entry vide Exhibit 133.
- 39) Letter issued to A.C.J.M for permission for test identification parade vide Exhibit 134.
- 40) Letter issued to Tahsildar for test identification parade vide Exh.135.
- 41) Letter of Tahsildar of holding test identification parade vide Exhibit 136.
- 42) Document pertaining to test identification parade vide Exhibit 137.
- 43) Letter issued to A.C.P. Crime Branch, Nagpur for providing the photographs vide Exhibit 138.
- 44) Application for filing documents vide Exhibit 139.
- 45) Letter issued to G.M.C. Nagpur for opinion of injuries sustained by deceased vide Exhibit 140.
- 46) Copy of station diary vide Exhibit 141.
- 47) Letter issued to A.C.J.M., Nagpur for adding sections vide Exhibit 142.
- 48) Letter issued to R.T.O. Nagpur for supplying information about owner of vehicle vide Exhibit 143.
- 49) C.A. reports vide Exh.144 to Exhibit 151.

16) Perusal of the examination of the accused recorded under Section 313 of the Code reveals that the defence is of total denial and false implication.

17) The learned Sessions Judge (LSJ) was pleased to convict the accused as noted supra.

3. BRIEF ANALYSIS OF THE JUDGMENT OF THE TRIAL

COURT :

1) The LSJ formulated the following points and recorded findings :-

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether prosecution proves homicidal death of deceased Shubham Dhepe ?	In the Affirmative
2	Does the prosecution prove that the accused persons in furtherance of their common intention committed the murder by intentionally and knowingly causing the death of Shubham Narayan Dhepe and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code ?	In the Affirmative
3	Does the prosecution prove that the accused persons in furtherance of their common intention committed an offence punishable under Section 135 of the Maharashtra Police Act ?	In the Affirmative.
4	Does the prosecution prove that the accused persons were found in possession of knife, spear and stones as contemplated under the provisions of the Indian Arms Act and thereby committed the offence under Section 4 punishable under Section 25 of the Arms Act ?	In the Negative
5	What offence is made out by the prosecution against the accused ?	Offence punishable under Section 302 r/ w Section 34 of the I.P. Code and Section 135 of the Maharashtra Police

		Act.
6	What order ?	As per final order.

Answering point 1 in the affirmative, the LSJ noted that the homicidal death of Shubham is not disputed. The LSJ considered the evidence of PW 5-Dr. Pathak who conducted the autopsy, which revealed as many as sixty-eight external injuries and five injuries were revealed in the internal examination.

2) The injuries noticed in the external examination by Dr. Pathak were :-

- 1) Lacerated wound present over right forehead, just above medial 1/3rd part of right eyebrow of size 0.5cm x 0.5cm x bone deep, surrounded by contused abraded area.
- 2) Lacerated wound present over right forehead and involving middle 1/3rd part of right eyebrow of size 2cm x 1 cm x bone deep horizontal, surrounded by contused abraded area.
- 3) Contused abrasion present 2cm above injury no.2 of size 4cm x 2cm horizontal, red.
- 4) Contused abrasion present 1cm above injury no.3 of size 2cm x 0.5 cm, vertical red.
- 5) Lacerated wound present over forehead on either side of midline, 3cm above gabella of size 3.5cm x 1cm x bone deep, vertically oblique underlying bone

fractured.

- 6) Lacerated wound present over left forehead, just above medial end of left eyebrow of size 0.5cm x 0.5cm x bone deep surrounded by a contused abraded area.
- 7) Lacerated wound present just below medial 1/3rd part of left eyebrow of size 1cm x 0.3cm x muscle deep, horizontal.
- 8) Lacerated wound present over left forehead just above middle 1/3rd part of left eyebrow of size 1.4 cm x 0.5cm x bone deep, vertical.
- 9) Lacerated wound present over left forehead 2.5 cm above medial 1/3rd part of left eyebrow of size 2cm x 0.5cm x bone deep vertically oblique.
- 10) Contused abrasion present 2cm above injury no.9 of size 0.5cm x 0.5cm red.
- 11) Contused abrasion present over left intra orbital region of size 1cm x 0.3cm vertical red.
- 12) Abrasion present over left zygomatic region of size 1cm x 1cm red.
- 13) Abrasion present over left of size 1cm x 1cm red.
- 14) Abrasion over right side of nose of size 3cm x 1cm red vertical.
- 15) Abrasion present over right maxillary region and adjacent area of cheek of size 4cm x 1cm horizontal red.
- 16) Abrasion present over area overlying right maxillary region, 2cm from midline of size 2cm x 1cm horizontal

red.

- 17) Lacerated wound present over upper lip on either side of midline of size 0.5cm x 0.3cm x muscle deep.
- 18) Lacerated wound present over lower lip on either side of midline of size 0.5cm x 0.3cm x muscle deep surrounded by a contused abraded area.
- 19) Abrasion present over area overlying angle of left jaw of size 1cm x 1cm red.
- 20) Lacerated wound present over left temporal region, just behind left ear pinna of size 4cm x 1cm muscle deep vertically.
- 20A) Abrasion present over left mastoid region of size 2cm x 4cm red.
- 21) Multiple abrasions, 5 in number present over left lateral aspect of neck of size varying from 2cm x 1cm to 0.3cm x 0.3cm red.
- 22) Lacerated wound present over right parietal temporal region, involving high parietal region and adjacent temporal region of size 9cm x 4cm x cavity deep, committed fracture of underlying vault, with brain matter oozing out from the lacerated wound.
- 23) Multiple abrasions present over antero lateral aspect of upper 1/3rd part of left arm 18 in number of size varying from 1cm x 0.5cm to 0.3cm x 0.3cm red.
- 24) Abrasion present over sternal area at the level of nipple of size 0.5cm red.
- 25) Abrasion present over left anterior aspect of chest, 8

- cm below and 2cm lateral to left nipple of size 1cm x 0.3cm horizontal red.
- 26) Abrasion present 3cm below injury no.25 of size 1cm x 0.3cm horizontally oblique red.
 - 27) Abrasion present over left anterior aspect of trunk, 20cm below supra-ternal notch and 3cm from midline of size 1cm x 0.5cm horizontal red.
 - 28) Abrasion present 1.5cm below injury no.27 of size 1cm x 0.5cm horizontal red.
 - 29) Stab wound present over right anterior aspect of trunk 23cm below super sternal notch and 1cm from midline of size 3cm x 1.5cm x cavity deep, horizontal, margins clean cut.
 - 30) Stab wound present 1.5cm below injury no.29 of size 1.5cm x 1cm x cavity deep, vertically oblique margin clean cut, both ends sharp, directed downward, laterally and slightly backward.
 - 31) Abrasion present over right anterior aspect of trunk in mid clavicular line, 15cm below right nipple of size 0.3cm x 0.3cm red.
 - 32) Stab wound present over left anterior aspect of abdomen at the level of umbilicus, 12cm lateral to umbilicus of size 2cm x 1cm x cavity deep. Vertical margins clean cut, both ends sharp, directed backward and straight.
 - 33) Stab wound present 2cm lateral to injury no.32, of size 2cm x 1cm x cavity deep, vertical margins clean cut

both ends sharp directed backward medially and straight.

- 34) Stab wound present 1.5cm lateral to injury no.33 of size 2cm x 1cm x cavity deep, vertical margins clean cut, both ends sharp directed backward medially and straight.
- 35) Stab wound present 1cm lateral to injury no.34 of size 1.5cm x 0.5cm x cavity deep, vertical margins clean cut both ends sharp, directed medially and straight.
- 36) Stab wound present 1cm below injury no.32 of size 2cm x 1cm x cavity deep vertical, margins clean cut, both ends sharp, directed backward and straight.
- 37) Stab wound present 6cm above injury no.32, size 1.5cm x 1cm x middle deep, vertical margins clean cut, both ends, sharp directed downward and straight.
- 38) Stab wound present 0.5cm above injury no.33, size 1.5cm x 0.5cm above injury no.33 of size 1.5cm x 0.5cm x cavity deep, vertical margins clean cut, both ends, sharp directed downward and straight.
- 39) Stab wound present 0.5cm above injury no.34 of size 2cm x 0.5cm x cavity deep, vertical margins clean cut, both ends, sharp directed downward and straight.
- 40) Stab wound present 0.5cm above injury no.35 of size 1.5cm x 1cm x cavity deep, vertical margins clean cut, both ends, sharp directed downward and straight.
- 41) Stab wound present over left umbilical region 3cm above umbilicus and 1cm from middle of size 2cm x

- 1cm x cavity deep, vertically oblique margins clean cut, both ends, sharp directed downward and medially.
- 42) Abrasion of size 4cm x 0.3cm red present over anterior aspect of right arm lower $\frac{1}{2}$ continuing with an incised wound of size 2cm x 0.3cm x subcutaneous tissue deep with evidence of failing for 3cm downwards. The whole injury placed vertically oblique over lower $\frac{1}{2}$ of anterior aspect of right arm.
- 43) Abrasion present over anterior aspect of right forearm middle 1/3rd of size 2cm x 0.2cm vertical red.
- 44) Incised wound present over right palm along the middle finger of size 3.5cm x 0.4cm x muscle deep vertical.
- 45) Stab wound present over lateral aspect of right thigh upper 1/3rd of size 2.5cm x 1.5cm x muscle deep, vertical margins clean cut both ends sharp directed medially and straight.
- 46) Incised wound present over anterior aspect of right left, upper 1/3rd of size 3cm x 0.5cm x muscle deep, vertically oblique.
- 47) Stab wound present over anterior aspect of left thigh, upper 1/3rd of size 1cm x 0.5cm x muscle deep, vertical, margins clean cut both ends sharp, directed backward and straight.
- 48) Stab wound present 5 cm lateral to injury no.47, of size 1.5cm x 1cm x muscle deep, vertical, margins clean cut both ends sharp directed backward and

straight.

- 49) Stab wound present over anterior aspect left thigh, middle 1/3rd of size 1cm x 0.5cm x muscle deep, horizontal, margins clean cut both ends sharp, directed backward and straight.
- 50) Abrasion present over anterior-lateral aspect of left leg over lower 2/3rd of size 12cm x 0.3cm vertically oblique red.
- 51) Abrasion present over dorsum of left foot in the line of fifth toe of size 2.5cm x 0.2cm x 0.03 cm vertically red.
- 52) Abrasion present over dorsal aspect of left 5th tow of size 1cm x 0.2cm vertical red.
- 53) Multiple abrasion 4 in number present over posterior aspect of right arm, middle 1/3rd of size varying from 0.3cm x 0.3cm to 0.2cm x 0.2cm red.
- 54) Abrasion present over posterior aspect of right elbow of size 2cm x 1.5cm red.
- 55) Abrasion present over posterior aspect of left arm middle 1/3rd of size 2.5 cm x 0.2cm vertical red.
- 56) Abrasion present over posterior aspect of left forearm upper 1/3rd of size 0.4cm x 0.3cm red.
- 57) Abrasion present 3cm below injury no.56 of size 0.3cm x 0.3 cm red.
- 58) Abrasion present over dorsum of left hand of size 1cm x 0.5cm red.
- 59) Stab wound present over posterior aspect of trunk on

right side, at the level of 3rd thoracic vertebra, 2cm from midline of size 2.5cm x 0.5cm x cavity deep horizontal margins clean cut both ends sharp directed forward laterally and downward.

- 60) Incised wound present 5cm below and 2cm lateral to injury no.59 of size 4.5cm x 0.3cm x muscle deep vertical.
- 61) Incised wound present over posterior aspect of trunk on left side at the level of second thoracic vertebra of size 5cm x 0.3cm x muscle deep horizontal.
- 62) Incised wound present 8cm below injury no.61 of size 8cm x 0.3cm x muscle deep, horizontal.
- 63) Stab wound present 2cm medial to injury no.62 of size 2cm x 1cm x cavity deep, horizontal, margins clean cut, both ends sharp. Directed forward laterally and straight.
- 64) Stab wound present 1.5cm above injury no.63 of size 1cm x 0.4cm x cavity deep, margins clean cut both ends sharp directed forward medially and straight with an incised wound of size 3.5 x 0.2cm x muscle deep horizontal starting from the lateral end of stab wound.
- 65) Stab wound present over posterior aspect of trunk on left side 13cm below interior angle of left scapula of size 4cm x 2cm x cavity deep, horizontally oblique, margins clean cut both ends sharp, directed forward downward and straight.

- 66) Stab wound present 8cm below injury no.65 of size 2.5cm x 1cm x cavity deep, horizontal margins clean cut both ends sharp, directed forward and straight.
- 67) Stab wound present over posterior aspect of trunk on right side, 8cm below interior angle of right scapula of size 5cm x 1.5cm x cavity deep, vertically oblique, directed forward downward and medially margins, clean cut, both ends sharp.
- 68) Abrasion present over posterior aspect of left thigh, upper 1/3rd of size 9cm x 1cm, horizontal red.

3) The injuries noticed in the internal examination

were :-

- 1) under scalp hematoma present over frontal and parital region at places red.
vault – Comminuted fracture of vault present involving parieto temporal bones.
base – Comminuted fracture of base present.
Meninges – Pale, lacerated at places corresponding to sizes of comminuted fractures.
Brain – pale lacerated at placed corresponding to sites of Comminuted fractures subarachnoid hemorrhage present over brain surface at places.
- 2) There were stab wounds over the walls and pleura both the lungs were stabbed, they were pale and partially collapsed.

- 3) There were stab wounds over the walls of abdomen and peritoneum corresponding to injuries mentioned in column no.17 of postmortem examination.
- 4) There was about 1 liter of blood and clots in peritoneum cavity.
- 5) There was stab wound over liver corresponding to the injury no.29 and 30 mentioned in column no.17.

4) The LSJ held, on the basis of the evidence of PW 5-Dr. Pathak, that considering the nature and extent of the injuries suffered, accidental or suicidal death is ruled out. Point 1 was accordingly answered in the affirmative.

5) The LSJ then analysed the evidence on record to determine whether the accused were responsible for the homicidal death of Shubham. The evidence of the eyewitnesses PW 1-Kapil, PW 2-Pawan and PW 3-Priya is found credible and confidence inspiring. The report and the proceedings of the T.I.P are held to lend corroborative weight to the ocular evidence of PW 3-Priya. The LSJ held that the ocular account of PW 1, PW 2 and PW 3 is corroborated by forensic evidence. The presence of the blood stains on the articles which were seized from the spot,

during personal search of the accused and on the basis of the disclosure memorandum, is considered as corroborative material. The LSJ noted that while the blood group on the incriminatory articles could not be ascertained, the accused did not explain the presence of human blood on the articles seized.

6) The LSJ, after examining the evidence on record meticulously, found that the prosecution has established the culpability of the accused beyond any reasonable doubt.

4) **SUBMISSIONS** -

1) The learned Senior Counsel Mr. S.P. Dharmadhikari led the defence submissions along with the learned Counsel Mr. D.V. Chauhan and Mr. C.R. Thakur.

2) Mr. S.P. Dharmadhikari would submit, in the context of the heavy reliance placed by the LSJ on the testimonies of the eyewitnesses PW 1-Kapil, PW 2-Pawan and PW 3-Priya, that the identification of the accused, particularly accused 2-Pritam and accused 3-Amit, as assailants is not free from doubt. Attacking the testimony of PW 1-Kapil, Mr. S.P. Dharmadhikari submits that

Kapil has either not witnessed the entire incident or he has wrongly identified accused Amit and Pritam as the assailants. It is further submitted that the conduct of PW 1-Kapil is highly unnatural, and creates doubt on his presence at the spot when Shubham was assaulted. Mr. S.P. Dharmadhikari would submit that while PW 1-Kapil claims to know all the accused and has named them as the assailants, PW 2-Pawan has only identified accused Dinesh. Inviting our attention to the testimony of PW 3-Priya, Mr. S.P. Dharmadhikari submits that irrefutably she was not aware of the identity of the assailants other than accused Dinesh and she claims to have identified accused Amit and Pritam in the T.I.P. which was conducted after twenty-five days of the incident on 17-4-2015.

3) Mr. S.P. Dharmadhikari would submit that the LSJ committed a grave error in admitting in evidence the report of the Magistrate and the proceedings of the identification parade invoking Section 291-A of the Code. The extension of the submission is that since neither the Magistrate nor the panchas to the T.I.P. were examined, the report and the proceedings are inadmissible.

4) Mr. S.P. Dharmadhikari would submit that apart from the fact that the report of the T.I.P. and the proceedings are not admissible in evidence, there is no evidence on record that every precaution was taken by the Investigating Officer to ensure that between the date of arrest and the T.I.P. the witnesses did not have any opportunity of seeing the accused. It is submitted that there is no evidence that the faces of the accused were masked at every stage of the investigation and production in Court. Mr. S.P. Dharmadhikari would submit that in view of the fact that PW 2- Pawan did not identify the accused in the T.I.P., the testimony of his wife Priya on the aspect of identification of the accused must be tested with caution. Mr. S.P. Dharmadhikari would submit that it has come in the evidence of the Investigating Officer that vide communication dated 07-4-2015 addressed to the A.C.P. Crime the photographs of the accused were sought, which is extremely relevant in the text of the fact that the test identification was conducted on 17-4-2015.

5) Mr. S.P. Dharmadhikari would rely on the decision of the Hon'ble Supreme Court in *Shivasharanappa and others v. State of Karnataka, (2013) 5 SCC 705* in support of the

submission that if the behaviour of the witness is absolutely unnatural, the testimony may not deserve credence. Mr. S.P. Dharmadhikari would further rely on the decision of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Raju Bhaskar Potphode, (2007) 11 SCC 261*, which reiterates the proposition supra.

6) The learned Counsel Mr. D.V. Chauhan and Mr. C.R. Thakur who argued on behalf of accused Dinesh and Pritam, adopt the submission canvassed by Mr. S.P. Dharmadhikari.

5. CONSIDERATION -

1) PW 1-Kapil, PW 2-Pawan and PW 3-Priya are examined as eyewitnesses and all have deposed that accused Dinesh was known to them. PW 1-Kapil has told the LSJ that the elder brother of accused Dinesh is his close friend. PW 2-Pawan and PW 3-Priya have told the LSJ that accused Dinesh resides in the locality and is known to them. PW 1-Kapil has also identified accused Pritam and Amit in the dock. PW 1-Kapil has deposed that since the said accused frequently visited accused Dinesh, they are known to him. PW 2-Pawan was not aware of the identify of

the assailants other than accused Dinesh and he has further not identified the accused Pritam and Amit in the T.I.P. PW 3-Priya was also not aware of the identity of accused Pritam and Amit and she claims to have identified them in the T.I.P. In dock identification which is the substantive evidence, PW 3-Priya has told the LSJ that accused Pritam and Amit are the same persons whom she identified in the test identification as the assailants.

2) The cross-examination of PW 1-Kapil by the learned Counsel for accused Dinesh is most ineffective. It is not even suggested to PW 1-Kapil that Dinesh is not the brother of Kapil's best friend muchless that PW 1-Kapil was not knowing Dinesh. PW 2-Pawan is extensively cross-examined by the learned Counsel on behalf of Dinesh. It is suggested that Pawan was on duty at the relevant time, which suggestion is denied. Inviting the attention of PW 2-Pawan to the information which he conveyed the police telephonically, it is brought on record that certain particulars were not disclosed, including that Dinesh assaulted the deceased by knife and that Dinesh told him “ले बादशाह तुने बुलाया और हम आ गये”. It is further suggested to the witness that when the police arrived at the spot, certain details of the incident were not disclosed to

the police. Certain omissions in the First Information Report (FIR) are brought on record. Illustratively, it is brought on record that PW 2-Pawan did not mention in the FIR that there is DP of MSEDCL Company and there are two lights on the electric pole in front of his house. It is finally suggested that PW 2-Pawan has falsely implicated accused Dinesh as he was not on talking terms with accused Dinesh.

3) PW 3-Priya has also identified accused Dinesh as the assailant. She has deposed that it was Dinesh who launched the assault on Shubham with knife and when PW 1-Kapil and his brother intervened, two other assailants threatened them with weapons forcing them to retreat. She has told the LSJ that all the assailants assaulted Shubham with weapons and when she and PW 2-Pawan went to Shubham's rescue, they were threatened with death. She has also told LSJ that after Shubham collapsed on the ground, it was accused Dinesh who fetched a cement stone and threw it on the head of the injured Shubham.

4) In cross-examination conducted on behalf of Dinesh, PW 3-Priya has stood firm in the assertion that it was indeed Dinesh

who along with others assaulted Shubham. She concedes that no attempt was made to give water to Shubham after he collapsed and that she did not visit the hospital. Certain omissions are brought on record which are not material and do not in any manner dilute muchless obliterate the credibility of the witness. PW 3-Priya denies the suggestion that PW 1-Kapil and his brother ran away from the spot. She clarifies that in her statement to the police, she stated that PW 1-Kapil and his brother retreated to safe distance from the spot. The witness says that she cannot assign any reason why it is recorded in the police statement that PW 1-Kapil and his brother ran away from the spot. The witness denies the suggestion that she did not witness the incident.

5) We are more than satisfied that the cumulative effect of the evidence of PW 1-Kapil, PW 2-Pawan and PW 3-Priya is that the role of accused Dinesh as the assailant is conclusively established. Accused Dinesh was known to the eyewitness and there is no attempt made in the cross-examination to suggest otherwise. Nothing is brought on record to suggest that the witnesses had any motive to falsely implicate accused Dinesh.

6) The version of the eyewitnesses is broadly consistent. Some minor inconsistencies in the testimonies is expected and at times lends an assurance that the witnesses are not tutored. The faculties of perception and memory differ. When the witnesses are close relatives who have suffered the trauma of their loved one butchered in their presence it would be unrealistic to expect that every minute detail would be disclosed, and that too in identical or even similar words to the LSJ. The duty of the Court is to ascertain whether the inconsistencies or embellishments touch the core of the testimony. We are satisfied that the testimonies of the three eyewitnesses who identify accused Dinesh as the leader of the group of assailants, is confidence inspiring.

7) We have found that in so far as the incident is concerned, on every important aspect the eyewitnesses have spoken in unison. Broadly, the witnesses have told the LSJ that deceased Shubham was standing on the road in front of his house along with PW 1-Kapil and his brother. PW 2-Pawan and PW 3-Priya were standing in the courtyard. The accused came on one Splender motorcycle. Accused Dinesh alighted and the other assailants followed. All the assailants were armed with weapons.

It was accused Dinesh who launched the assault with knife and the other assailants delivered multiple blows. Even after Shubham collapsed due to the injuries, accused Dinesh smashed his head with cement stone. On the important aspects of the incident, there is no inconsistency and the cross-examination does nothing to create any doubt on the veracity of the witnesses.

8) Mr. S.P. Dharmadhikari, however, launches a frontal attack on the finding rendered by the LSJ that accused Pritam and accused Amit are identified as the assailants, who along with accused Dinesh, murdered Shubham. Mr. S.P. Dharmadhikari would submit that the conduct of PW 1-Kapil is most unnatural. PW 1-Kapil was a friend of the deceased. PW 1-Kapil and his brother claim that since accused Pritam and the juvenile-in-conflict Amit threatened them, they ran away from the spot and returned after some time and saw deceased Shubham lying in pool of blood with multiple injuries on the body. Mr. S.P. Dharmadhikari would submit that being a friend, the conduct of PW 2-Pawan of fleeing from the spot is unnatural. More significantly, PW 1-Kapil admits that he did not approach the police on the date of the incident. Mr. S.P. Dharmadhikari would

submit that had PW 1-Kapil really witnessed the incident, and in any event, were PW 1 to be really knowing the identities of the assailants other than Dinesh, he would have disclosed the same to the family members of his deceased friend, which he evidently did not do. PW 2-Pawan and PW 3-Priya were not aware of the identities of the assailants other than Dinesh when their statements were recorded. Mr. S.P. Dharmadhikari would submit that it is in a sense too incredible to believe that despite knowing the identities of accused Pritam and Amit who allegedly murdered his friend, PW 1-Kapil did not disclose the identities to PW 2-Pawan and PW 3-Priya. Mr. S.P. Dharmadhikari would submit that the only inference which can be drawn is that either PW 2-Pawan did not witness the incident or he was not knowing accused Pritam and Amit.

9) Mr. S.P. Dharmadhikari would submit that there was no reason for PW 1-Kapil to know accused Pritam and Amit and the version of the witness that he knew accused Pritam and Amit since they used to visit the house of accused Dinesh must be taken with a pinch of salt.

10) In response to the submission supra, the learned Additional Public Prosecutor Mr. M.K. Pathan submits that while the submission appears to be attractive at the first blush, the stark reality is that a witness, even a close friend of the victim, is likely to be traumatized having seen his friend brutally murdered. No straight jacket formula can be applied to test the conduct of such witness. Different persons react differently in similar situation. Assuming that PW 1-Kapil did not immediately disclose to the family members of his deceased friend the identities of the assailants or that he did not visit or contact the family members on the next day, the same can perhaps be explained by behavioral psychology. The witness may nurture a guilt feeling that he could not save his friend. The witness may be too shocked or traumatized or hesitant to visit the family members of the deceased. Mr. M.K. Pathan submits that in the police statement of PW 1-Kapil recorded on the next day of the incident, PW 1 has narrated the incident in detail and did disclose the identities of the assailants and the role played. Mr. M.K. Pathan would submit that in the cross-examination conducted on behalf of accused 2-Pritam and accused 3-Amit, there is no attempt made, except

giving a suggestion that PW 1-Kapil has seen one of the accused first time in the Court, to discredit PW 1-Kapil on the aspect of identification.

11) Mr. M.K. Pathan would further submit that there is no material to suggest that the statement of PW 1-Kapil was recorded after the arrest of accused Dinesh on 24-3-2015 and no such suggestion is given to PW 14-Sandipan Pawar.

12) We shall analyze the evidence of PW 1-Kapil on the aspect of identification of accused 2-Pritam and accused 3-Amit at a later stage in the judgment.

13) PW 2-Pawan has not identified accused 2-Pritam and accused 3-Amit. PW 2-Pawan was not aware of the identities of the said accused nor did he identify them in the T.I.P. or in the Court. We may, therefore, proceed to examine the testimony of PW 3-Priya who claims to have identified accused 2-Pritam and accused 3-Amit in the T.I.P. and who also identifies the said accused in the dock as the persons whom she identified in T.I.P. as assailants. But before we venture to analyze the evidence of PW 3-Priya, we may consider the submission of Mr. S.P.

Dharmadhikari that the test identification report of the Magistrate and the proceedings are not admissible and the provisions of Section 291-A of the Code are wrongly invoked.

14) The identification parade is a tool of investigation. The object is to enable the witnesses to satisfy themselves that the suspect is the offender. The identification further lends assurance to the Investigating Officer, that the investigation is proceeded in the right direction. T.I.P. is not substantive evidence. The only substantive evidence of identification is the identification in Court.

15) The prosecution neither examined the panch/panchas nor did the Executive Magistrate step in the witness box to prove the memorandum of identification. The LSJ has invoked the provisions of Section 291-A of the Code of Criminal Procedure, 1973 (Code).

16) Our attention is invited to the decision of this Court in ***Sonya @ Umesh Nandkumar Metkari Vs. The State of Maharashtra in Criminal Appeal 752/2014 dated 5-10-2021***

which considers the provisions of Section 291-A of the Code which was inserted by Amendment Act of 2005. The learned

Judges of the Division Bench have held that the report of T.I.P. and the memorandum of identification can be read in evidence provided the provisions of Sections 21, 32, 33, 155 or 157, as the case may be, of the Indian Evidence Act are followed. It is held that since the provisions of Sections 21, 32, 33, 155 or 157 of the Indian Evidence Act are not applicable, the report of the Executive Magistrate and the memorandum of identification cannot be read in evidence. The Division Bench further observes thus :

“30. In the above mentioned circumstances, there would be no application of section 291A of the Code of Criminal Procedure, 1973. Moreover, the memorandum of test identification parade is not a document as contemplated under section 80 of the Indian Evidence Act. Sub-section 1 of section 291A of the Code of Criminal Procedure, 1973 cannot be read in isolation without giving thoughtful consideration to sub-section 2 of 291A of Code of Criminal Procedure, 1973. By virtue of sub-section 2 of 291A of Code of Criminal Procedure, 1973, it cannot be said that it is a negative legislation and that section 291A of Code of Criminal Procedure, 1973 is designed to prevent recording of evidence of the Magistrate who conducts the test identification parade. It is not a negative change sought by the criminal amendment. The Special Executive Magistrate is also a party to the investigation and hence, the accused would lose his right to cross-examine Executive Magistrate in respect of the rules followed in conducting the test identification parade. The Criminal Manual of State of

Maharashtra lays down the procedure to be followed at the time of conducting test identification parade. It would therefore, be necessary to examine Executive Magistrate on oath to substantiate that he had followed the procedure as contemplated in the Criminal Manual. Moreover on plain reading of the panchanama, it is clear that the accused was brought from the police station which was abutting to the Tahasildar office.”

17) Section 291-A reads thus :

[291-A. Identification report of Magistrate. - (1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Magistrate is not called as a witness.

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 21, section 32, section 33, section 155 or section 157, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject-matter of the said report.]

18) The legislative intent is clearly to ensure that the judicial time is saved. The interests of the accused are sufficiently

protected since sub-section (2) mandates that if the prosecution or the accused moves an application for examination of the Executive Magistrate, the Court has no discretion and such application shall have to be allowed.

19) While sub-section (1) provides that any document purporting to be a report of identification under the hand of Executive Magistrate, may be used as evidence without examination of the Magistrate, it is further provided that where such report contains a statements of suspect or witness to which the provisions of Sections 21, 32, 33, 155 or 157 of the Indian Evidence Act, 1872 apply, such statement would not be used under this sub-section except in accordance with the provisions of those Sections.

20) It appears to us, that the purport of the provision is that even if, the report of identification is admitted in evidence, any statement to which the provisions of Indian Evidence Act which are specified apply, cannot be used except in accordance with the provisions of the concerned Section.

21) With utmost respect to the observations in *Sonya @ Umesh Nandkumar Metkari*, it does not appear to us that Section 291-A cannot be invoked unless the Sections of Indian Evidence Act, which are specified, are attracted. However, we are not expressing any final opinion on the said aspect, since we find it even otherwise unsafe to rely on the corroborative evidence of the T.I.P.

22) The incident occurred on 23-3-2015. On 7-4-2015, the photographs of the accused were sought by the Investigating Officer and the T.I.P. was conducted on 17-4-2015. It cannot be gainsaid that the prosecution was obligated to adduce evidence to demonstrate that the identify of the accused was concealed from the date of arrest till the date of the T.I.P. and in the interregnum, the possibility of the witness having seen the accused is eliminated. It was canvassed before the LSJ that the provisions of the Criminal Manual were breached. It was inter alia submitted that only one lady panch was present as against the requirement of two panchas. The LSJ has brushed aside the said submission reasoning that the guidelines issued by the High Court are

illustrative.

23) It appears to us that it is reasonably well settled that breach of guidelines of the High Court Criminal Manual is not merely an irregularity. In *Sanjay Dagadu Jadhav Vs. The State of Maharashtra [1997 ALL MR (Cri) 197]* which follows the decision in *Vilas Vasantrao Patil Vs. State of Maharashtra (1996 Cri.L.J. 1854)*, it is held that the instructions contained in the Criminal Manual issued by the High Court for conducting identification parades may not be statutory but nonetheless have to be consistently followed to ensure a fair identification parade. A similar view is taken in *Ganesh Bhagwati Pandian Vs. State of Maharashtra (1985 Cri.L.J. 191)*.

24) We may note certain instructions contained in Criminal Manual.

1) Chapter I of the Criminal Manual deals with arrest and investigation. Clause 16(2) articulates the guidelines to be followed by the Magistrates holding the identification parade. We may extract the guidelines.

(a) The object of an identification parade is to make sure that the ability of the witness to recognise the suspect has been fairly and adequately tested.

(b) It should be fair and seem to be fair and every precaution must be taken to exclude any suspicion of unfairness or risk of erroneous identification through the witnesses' attention being directed specially to the suspected persons instead of equally to all the persons to be paraded.

(c) The Officer concerned with the case against the suspect, if present, must not take part in conducting the parade.

(d) The parade should be arranged by an officer who is not a police officer.

(e) After the commencement of the identification parade, every thing in respect of it should take place in the presence and hearing of the suspect, including any instruction to the witnesses attending it as to the procedure that is to be adopted.

(f) All unauthorised persons should be strictly excluded from the place of identification parade.

(g) The witnesses should be prevented from seeing the suspect before he is paraded with other persons, and witnesses who have previously seen a photograph or description of the suspect should not be led in identifying the suspect by reason of their recollection of the photograph or description, as for instance by being shown the photograph or description, before the parade.

(h) The suspect should be placed among persons (if practicable eight or more) who are as far as possible of the same age, height, general appearance (including standard of dress and grooming) and position in life. Two suspects of roughly of similar appearances should be paraded with atleast twelve other persons. Where, however, the two suspects are not similar in appearance or where there are more than two suspects, separate parades should be held using different person on each parade.

(i) All members of a group of suspects more than two should not be paraded together. There should be more parades than one, each including not more than two. Two suspects of obviously dissimilar appearance should not be included in the same parade. Identification numbers should be concealed.

(j) The suspect should be allowed to select his own position in the line and should be expressly asked if he has any objection to the persons present with him or the arrangements made. He should be informed that if he so desires, he should have his Advocate(or a friend) present at the identification parade.

(k) The witnesses should be introduced one by one and, on leaving, should not be allowed to communicate with witnesses waiting to see the persons paraded; and the suspect should be informed that he is free to change his position after each witness has left.

(l) The witness should be asked whether the person he has come to identify is on the parade. He should be told that if he cannot make a positive identification, it is open for him to say so.

(m) Generally, a witness should be asked to touch any person whom he purports to identify, but if the witness is nervous at the prospect of having to do that (in cases where the witness is a woman or a child who has been victim of a sexual or violent assault or other frightening experience) and if prefers not to touch the person, identification by pointing out should be permitted.

(n) If a witness indicates someone, but is unable to identify him positively, this fact should be carefully noted by the officer conducting the parade and every other circumstances, (such as whether the suspect or any other person is identified or not), connected with it should be noted.

(o) If any request is made by a witness, for example to see the suspect with his hat on or his hat off or to see the person walk or to hear the person speak and there being no objection to the person paraded as asked for, the incident should be recorded.

(p) Where a parade has to be held in prison, a prison officer should be present throughout in-charge of the discipline of the prisoners who would take part. Otherwise, the police officer unconnected with the case, ought to be responsible for the parade. It must be ensured that the parade is conducted in the same way as a parade outside prison.

2) Sub-clause (3) then refers to the procedure laid down in the Government of Maharashtra Circular dated 16-8-1963.

3) The procedure envisages that two independent respectable persons, not connected with the police, should be summoned as panchas. If two accused persons are to be identified, 10 to 12 persons shall be included in the parade in addition to the accused and such persons should be or more or less the same physical appearance, and approximately of the same age, as the person to be identified. After the parade is arranged, one of the two respectable persons should be sent up to bring the accused from the lock-up and care should be taken that when the accused is brought from the lock-up, the identifying witnesses do not have the opportunity of seeing him.

4) The memorandum to be recorded by the Magistrate is at two stages. The first stage is after the suspect is brought from the lock-up and Magistrate is required to start to write the memorandum which should include :

(a) the place at which and the date on which, parade is being held and the time at which it was commenced;

(b) the names, ages, occupations and the full addresses of the two respectable persons;

(c) the names and the approximate ages of the persons standing in the parade, mentioning clearly, one below the

other, in numerical order their positions in the parade (which positions they should not be allowed afterwards to alter);

(d) the fact that no persons, other than those, in the parade and the two respectable persons, were allowed to remain in the room and that all police officers and constables were asked to withdraw; and

(e) that respectable person so and so fetched the accused from the lock-up, and that the identifying witnesses were in a different room, so that they could not see him being brought from the lock-up to the identification room.

5) Next stage is the conclusion of T.I.P. The Magistrate is required to state the time at which the parade concluded. Other than the safeguards noted supra, the procedure contemplates several safeguards to ensure fairness in conducting the parade. Illustratively, the accused must be asked to take whatever place he likes in the parade and the place which he selects should be noted in the memorandum. The accused must further be asked if he wants to make any alteration in his dress. The accused may change his cap or coat, or may decide to put on or remove a cap or a coat and if the accused so decides, the said fact should be noted in the memorandum. If the accused does not wish to

change his dress, then that fact, too, should be noted in the memorandum.

6) The report of the Magistrate is Exhibit 136 and the only statement is that the T.I.P. is conducted on 17-4-2015 at the Central Prison, Nagpur. The report then states that the proceedings are enclosed. Exhibit 137 is the proceeding. While Exhibit 137 records in the opening paragraph that the proceeding commenced in the presence of two respectable persons, in the column of the information of the panchas, there is only one name recorded, which is Bhikshuni Mahaprajapati. It appears from the judgment impugned, that the LSJ has also found that only lady panch was present. It is not recorded in proceedings, Exhibit 137 that all the precautions which are required to be taken to ensure fair T.I.P. were, as a fact taken. Illustratively, it is not discernible from Exhibit 137 whether the Magistrate ensured that the suspects were placed among persons, who are as far as possible of the same age, height, general appearance including standard of dress and grooming and position in life. It is also not clear whether accused Pritam and Amit were similar in appearance, in as much as the Criminal Manual provides that if two suspects are

not similar in appearance, separate identification parades should be conducted. We have referred to the said aspects as illustrative and not exhaustive instances.

7) The sole panch is also not examined. Even if, we assume *arguendo* that Section 291 was rightly invoked and the report of the Magistrate and the proceeding including the memorandum are admissible in evidence, the probative value is suspect.

8) While it is true that in the evidence recorded, PW 3 – Priya identified Pritam and Amit in the dock, on holistic consideration of the evidence on record, we find it unsafe to rely on such identification, particularly in view of Priya's admission that her husband did tell that the accused persons were arrested and she further admits that she knew whom the police had arrested. We further find that the evidence on record adduced by the prosecution is not sufficient to assure us, that from the date of incident to the dock identification, Priya did not see the accused. *Au contraire*, Priya claims to have identified the accused in the T.I.P. which T.I.P. we have already observed raises more questions

than provides answers.

9) All that we have on record are Exhibits 136, 137, 46 and 47 which do not throw light on whether T.I.P. was conducted at least substantially in accordance with provisions of the Criminal Manual. What is recorded in memorandum Exhibits 46 and 47 is that PW - 3 Priya identified accused Pritam and Amit in the T.I.P. The memorandum, Exhibits 46 and 47 are signed by the panch, PW 3 – Priya and the Executive Magistrate.

25) We are, however, not persuaded to accept the submission of Mr. S.P. Dharmadhikari that in view of the unnatural conduct of PW 1-Kapil, his evidence on identification of the assailants deserves rejection. We have already noted that there is no material on record to suggest, nor is there any cross-examination to the effect that accused Dinesh was arrested and interrogated and PW 1-Kapil was made to disclose the names of the assailants which emerged in the interrogation of accused Dinesh in the police statement recorded the next day after the incident.

1) PW 1-Kapil has told the LSJ that in front of the house

of the deceased Shubham there is a public road with two street lights, one of which is mercury light and the other tube light. PW 1-Kapil then told the LSJ that on 22-3-2015 there was an altercation between the brother of the accused Dinesh and deceased Shubham, during the course of which Shubham was threatened. PW 1-Kapil further told the LSJ that he and Shubham were to attend the marriage reception of Pravin Yadav. PW 1-Kapil was visiting his maternal aunt at Parvati Nagar, Shubham came there and both spent some time wandering on the motorcycle and reached the house of Shubham at 8.00 to 8.15 p.m. approximately. PW 1-Kapil and Shubham were talking in front of the house near the road and PW 2-Pawan and PW 3-Priya were standing in the courtyard. PW 1-Kapil and Shubham were joined by Shyam Pal. While the trio were chitchatting, the accused arrived on Splendor motorcycle. Accused Pritam was riding. The accused took out their weapons and approached the trio. Accused Dinesh uttered “ले बादशाह तुने बुलाया और हम आ गये” and assaulted Shubham with knife. PW 1-Kapil attempted to prevent Dinesh from further assaulting Shubham. However, accused Pritam and the juvenile in-conflict Amit brandished weapons and

threatened PW 1-Kapil and his brother who retreated in order to save their lives. PW 1-Kapil has told the LSJ that PW 2-Pawan and PW 3-Priya came to the rescue of Shubham. Accused Pritam and the juvenile in-conflict Amit tried to assault PW 2-Pawan. PW 2-Pawan was threatened not to intervene and thereafter all the accused assaulted Shubham by the weapons which they wielded. PW 1-Kapil has told the LSJ that he did pelt stones towards the accused which missed the mark. PW 1-Kapil then told the LSJ that since accused Pritam and the juvenile in-conflict Amit came towards PW 1-Kapil and his brother with the intention of assaulting them, PW 1-Kapil and his brother ran away from the spot and when they returned, the accused had left and Shubham was lying in pool of blood. Shubham died on the spot. PW 1-Kapil has identified the weapons used in the commission of offence by the accused and the clothes wore by the accused. PW 1-Kapil has deposed that the folding knife Article-A was with accused Dinesh, the dagger type *gupti* was with accused Amit and the big cutting knife with curved tip was in the hand of accused Amit and the sword type weapon was wielded by accused Pritam (Articles B to D respectively). PW 1-Kapil has also identified

Article-G, H & I as the clothes worn by the accused.

2) During the cross-examination, it is brought on record that PW 1-Kapil did not disclose to the police that on 22-3-2015 the brother of accused Dinesh assaulted Shubham. The cross-examination conducted on behalf of the accused Dinesh is cryptic and does nothing to create doubt as regards the material and important parts of the testimony.

3) The cross-examination of PW 1-Kapil on behalf of accused 3 is equally cryptic. It is brought on record that PW 1-Kapil did not tell the police while recording the statement that accused Pritam was having sword type weapon. PW 1-Kapil volunteers that he was not knowing the name of the weapon and, therefore, he did not specifically disclose that accused Pritam was having sword type weapon. It is then brought on record that while on the day of the incident PW 1-Kapil was not knowing to which hospital the body was sent, til the next day he did not contact PW 2-Pawan. PW 1-Kapil denies the suggestion that he came to know about the incident on the next day. PW 1-Kapil further denies the suggestion that he saw accused 2-Pritam for the

first time in the Court. We find from the cross-examination that there is no serious attempt to demolish the testimony of PW 1-Kapil that he was knowing accused Pritam.

4) The cross-examination of PW 1-Kapil conducted on behalf of accused 3-Amit is more elaborate. Certain minor omissions are brought on record which do not affect the credibility of the testimony. Illustratively, it is brought on record that PW 1-Kapil did not tell the police that he went to the house of his relative or that Shubham had come to meet him in the house of his maternal aunt. It is brought on record that PW 1-Kapil did not tell the police that on 23-3-2015 there were two street lights in front of the house of Shubham. PW 1-Kapil concedes that he did not approach the police on the day of the incident. Certain omissions as to the details of the weapons are brought on record and it is suggested that since PW 1-Kapil was not present on the spot of the incident, he did not disclose the shape of weapons to the police, which suggestion is denied. The witness has told the LSJ that after the incident, he and his brother went to the house of his maternal aunt Fulwati Pal. PW 1-Kapil has then told the LSJ that he narrated the incident to Fulwati Pal

in the night and also told the police that after the incident, he went to the house of his maternal aunt Fulwati.

26) We have scrutinized the evidence of PW 1-Kapil with extra caution since the learned Counsel appearing on behalf of the accused have passionately urged us not to rely on the evidence of PW 1-Kapil to the extent he identifies the accused as the assailants. While it does appear that PW 1-Kapil and his brother either retreated from the spot or fled and returned after some time, we see no reason to disbelieve the testimony of PW 1-Kapil to the extent and till the stage of the assault by the accused with weapons which caused Shubham to collapse. When PW 1-Kapil returned, the accused had left and Shubham was dead. PW 1-Kapil has not seen, and does not even claim to have seen, accused Dinesh smashing the head of Shubham with cement stone. However, we are more than satisfied that PW 1-Kapil was indeed present on the spot and has witnessed the brutal assault on Shubham with sharp edged weapon.

27) While Mr. S.P. Dharmadhikari did strenuously submit that PW 1-Kapil had no occasion to know the accused other than

Dinesh, and he has probably named accused 2-Pritam and 3-Amit at the behest of the police or was plainly mistaken in identifying accused 2-Pritam and Amit, the cross-examination conducted on behalf of accused 2 and 3 is absolutely silent and ineffective on the said aspect.

28) We are not persuaded to accept the submission of Mr. S.P. Dharmadhikari that the conduct of PW 1-Kapil was unnatural. No straight jacket formula can be invoked to judge the conduct of a person who has witnessed a brutal murder. PW 1-Kapil apparently went to his maternal aunt's house on the night of the incident and his statement is recorded by the police on the next day. The fact that PW 1-Kapil did not immediately disclose to the family members of the deceased the identity of the assailants, is not necessarily unnatural. The shock and trauma of the brutal murder may conceivably force a person to distance himself from the spot and the situation. We have already noted that there is no effective cross-examination directed at diluting the version of PW 1-Kapil that he did know the assailants. A person in whose presence his friend is brutally done to death may also nurture some guilt conscious and may avoid facing the near and

dear of the victims in immediate proximity of the incident.

29) The direct evidence in the form of the ocular account of PW 1-Kapil and PW 2-Pawan and PW 3-Priya apart, there is formidable corroborative evidence to connect the accused with the offence. But before we analyze the forensic evidence, we may consider the submission of the learned Counsel for the accused that the prosecution has not established that there was light sufficient to facilitate the identification. The PW 1 to PW 3 witnessed the incident from extremely close quarters. The spot panchanama Exhibit 51 does refer to the source of light. PW 4-Pramod Suryawanshi who is a witness to the spot panchanama, has told the LSJ that near the spot of incident there was one tube light on cement pole and one mercury light on iron pole and one light in the house of the deceased was switched on. The cross-examination conducted on behalf of accused 1 is ineffective. No suggestion is given to the witness that there was no source of light. Similar is the cross-examination conducted on behalf of accused 2-Pritam. Even in the cross-examination conducted on behalf of accused 3-Amit, it is not suggested to the witness that there was no source of light. That part of the

testimony of PW 4-Pramod Suryawanshi has also gone absolutely unchallenged. PW 10-Manoj Orke who was attached to Police Station Ajni, has also deposed that there was sufficient source of light. In the cross-examination, the only suggestion given to PW 10-Manoj by the learned Counsel for accused Dinesh is that PW 2-Pawan did not state in the report that there is DP of MSEDCL and there are two lights on the electric pole/s. The learned Counsel for accused 2-Pritam did not conduct any effective cross-examination, except for suggesting that the witness did not seize any article from the spot, which suggestion is denied, and bringing on record that PW 2-Pawan did not disclose the name of accused Pritam in the report. On behalf of accused Amit there is a suggestion that the witness has falsely stated that the lights were working. Other than such suggestion, there is nothing whatsoever in the cross-examination to create any doubt on the existence and working condition of the lights. PW 12-Nandkumar Salodkar was working as Junior Engineer, Electric Department of NMC. He has deposed that the official record reveals that in the night intervening between 23-3-2015 and 24-3-2015 the lights were working. The said witness is cross-examined and he admits

that he has no personal knowledge as regards the contents of Exhibits 99 and 100 which are the letter received from the police and the response of the Corporation, respectively. In view of the testimonies of PW 1-Kapil and PW 2-Pawan, we are satisfied that the source of light is established. We have already believed the testimony of PW 2-Pawan that he was knowing the accused and considering the sequence in which the incident unfolded and the interaction between PW 1-Kapil and the assailants before and during the assault, renders it next to the impossible that PW 1-Kapil would not identify the assailants who are known to him.

30. We may now consider the corroborative evidence which lends assurance to the hypothesis of guilt.

1) PW 6 - Sumit Sarware is the panch to seizure panchanama, Exhibit 60. Sumit has told the LSJ that at Ajni Police Station, the personal search of accused Dinesh was taken in his presence. Accused Dinesh was wearing black T-shirt and black jeans which were blood stained. The slipper worn by Dinesh was also blood stained. Sumit has told the LSJ that all the articles were wrapped in paper and sealed and his signature was obtained

on the seal. Sumit has also told the LSJ that another panch was also present who also signed on the seal and that the seizure panchanama, Exhibit 60 was prepared in his presence. Sumit then told the LSJ that personal search of accused Pritam was taken in his presence. One mobile set and sandal which was blood stained were seized. The articles were seized and the signature of Sumit and the other panch obtained. Sumit has also proved the seizure panchanama, Exhibit 61. Sumit is also witness to the memorandum, Exhibit 62 which was recorded since accused Pritam expressed willingness to disclose the place where he had concealed the knife, Splendor motorcycle and the clothes worn at the time of incident. Accused Pritam disclosed that the knife was hidden on the lentil of his house. Sumit then told the LSJ that he accompanied the police and the accused to the house of the accused. Accused Pritam produced one big knife from the lentil of front door of his house and from the other room, he produced red colour shirt and blue colour jeans which were blood stained. Accused Pritam then took the police to the Splendor vehicle which was parked in the courtyard. Blood stains were visible on the footrest of motorcycle. The police removed the

footrest from the motorcycle which was seized along with other articles. Articles except the motorcycle were wrapped in paper, sealed and the signatures of Sumit and other panch and accused Pritam obtained on the seizure panchanama, Exhibit 63. Sumit has identified accused Pritam and the articles seized.

2) Sumit is cross-examined at length on behalf of accused 2 Pritam. General suggestions are given that nothing was seized in presence of the witnesses. Witness Sumit has withstood the cross-examination and nothing is elicited as would create any doubt as regards the testimony of the witness.

3) PW 7 - Sachin Choudhary has told the LSJ that while in custody, accused Dinesh expressed willingness to produce the knife and *gupti* from his house where the weapons are concealed. Sachin has proved the memorandum, Exhibit 67 and has identified his signature and the signatures of the other panch and the accused. Sachin then told the LSJ that he accompanied the police and the accused to the house of the accused. Accused produced one knife and *gupti* from the shoe stand in the house. Knife was folding type and was blood stained. The weapons were

wrapped in the paper and sealed in presence of Sachin. Signatures of Sachin, the other panch and the accused were obtained on the seal. Sachin has proved seizure panchanama, Exhibit 68 and has identified the accused and the weapons. In the cross-examination, Sachin concedes that the accused did not state that he will produce yellow colour folded knife. Sachin told the LSJ that when Dinesh was interrogated, other accused persons were not present. General suggestions are given to Sachin that he did not know the contents of the panchanama and he is deposing at the behest of the police, which suggestions are denied.

4) PW 8 - Swapnil Shembharkar told the LSJ that he identified the clothes of the deceased in the police station. Swapnil admitted his signature on arrest panchanama, Exhibit 60 of accused Dinesh, arrest panchanama, Exhibit 61 of accused Pritam and the memorandum statement of accused Amit. However, he did not support the prosecution on important aspects and the learned prosecutor was permitted to put questions to Swapnil in the nature of cross-examination. The cross-examination did not yield the expected dividend.

5) PW 9 – Dumdeo Raut has proved Exhibits 74 to 76 which are the seizure panchanamas of the three sealed bottles of blood samples.

6) PW 10 – Manoj Orke is the police officer who reached the spot along with panchas on receiving information from PW 2 – Pawan that Shubham is murdered. PW 10 recorded the spot panchanama. PW 10 also collected the samples of simple and blood mixed earth and bunch of hairs. He also collected and seized the crushed stones on the road. PW 10 has told the LSJ that there was cement pole on the East side of the dead body with tube-light which was in working condition and another iron pole with mercury light which was also switched on and working. PW 10 has also stated that there was D.P (distribution point) of electricity near the cement pole. PW 10 has proved the spot-cum-seizure panchanama, Exhibit 51. PW 10 told the LSJ that he took Pawan to the police station and recorded report, Exhibit 37 on which basis Crime 82/2015 was registered. PW 10 has identified the seized articles.

In the cross-examination, the endeavour of accused Dinesh

is to bring on record that the material details of the incident were not disclosed by PW 2 Pawan when he called the police. It is suggested to the witness by the learned counsel for accused 3 Amit that the lights were not working, which suggestion is denied.

6) PW 11 Prataprao Bhonsale was attached to Police Station, Ajni. On 9-4-2015, since the Investigating Officer was on leave, he was in-charge of the investigation. On 9-4-2015, he sent the blood samples of the accused through Police Constable Archana to the office of the Chemical Analyser (C.A.). PW 11 has deposed that the samples were in sealed condition. PW 11 has proved the requisition letter, Exhibit 85 and the invoice challan, Exhibit 86 evidencing deposit of the sealed articles. PW 11 also proved copies of the B-Form, Exhibit 87/1, 87/2 and 87/3. PW - 11 then told the LSJ that on 10-4-2015, he sent the seized muddemal – 4 knives and pieces of cement stones to the Medical Officer (M.O.), Government Medical College (GMC) seeking opinion which was received vide Exhibit 58. On 16-4-2015, PW 11 sent the seized articles to C.A. in sealed condition through Head Constable Anil. PW 11 then proved Exhibit 88 which is the

requisition and Exhibit 89 which is the invoice challan.

In the cross-examination, PW 11 admits that the seized articles and samples are kept in the muddemal room in the custody of the Muddemal Moharil. PW 11 told the LSJ that he did not know whether the Moharil enters every seized article in the muddemal register and that the Moharil would be better placed to comment. PW 11 states that he did not know whether the Moharil takes entry in the muddemal register while sending the articles to C.A. or M.O. PW 11 told the LSJ that Head Constable Anil and Constable Archana have taken the muddemal from the muddemal room acting on his orders. PW 11 denies the suggestion that he did not send the weapons and the blood samples in sealed condition to the C.A. and M.O. PW 11 concedes that the muddemal property in the crime was deposited in the muddemal room on 27-3-2015.

7) PW 14 – Sandipan Pawar took over the investigation on 24-3-2015. PW 14 told the LSJ that he recorded the statements of witnesses on 24-3-2015. The D.B. squad apprehended accused Dinesh and Pritam and produced them

before PW 14 between 3.00 p.m. to 3.30 p.m. PW 14 then deposed in detail as regards the personal search of accused Dinesh and seizure of incriminating articles with blood stains. PW 14 identifies his signature and those of the panchas and the accused on Exhibit 60. PW 14 then deposed that he arrested accused Pritam in presence of panchas and took his personal search. PW 11 has proved the arrest forms, Exhibit 20 and 21 and seizure panchanama, Exhibit 61. PW 14 then told the LSJ that on 25-3-2015, accused Amit was arrested, his personal search was taken and blood stained chappal was seized. PW 14 identifies his signature and the signatures of the panchas and the accused on the arrest- cum-seizure panchanama, Exhibit 108. PW 14 then told the LSJ that on 27-3-2015, the accused were sent to GMC, Nagpur for collection of blood samples. The blood samples were collected and received at the police station in sealed condition which he seized vide panchanamas Exhibits 74, 75 and 76 and B-Forms, Exhibits 87/1 to 87/3. PW 14 then identifies his signature on the station diary, Exhibit 122. He told the LSJ that accused Dinesh expressed willingness to disclose the place where he had concealed the weapon of offence and the *gupti* which he had

carried. PW 14 has identified his signature and the signatures of the panchas on memorandum, Exhibit 67. PW 14 then told the LSJ that accused Dinesh took the police to his house at Ranwadi where his mother was present. Accused Dinesh produced one folding knife and the *gupti* from heap of chappals, shoes and other articles. Folding knife was stained with blood. PW 14 seized the knife and *gupti* separately and obtained the signatures of panchas and accused Dinesh on both seals. PW 14 identifies his signature and the signatures of the panchas, accused Dinesh and his mother on seizure panchanama, Exhibit 68. PW 14 then told the LSJ that while in custody on 28-3-2015, accused Pritam expressed willingness to produce the knife and clothes worn by him at the time of incident. PW 14 then told the LSJ that accused Pritam took the police to his residential house and produced one knife from the lentil of the front door. The knife was blood stained. Accused Pritam then produced one red colour shirt and jeans pant from the *sajja* (loft) of the other room. The clothes were blood stained. Accused Pritam then took the police to the courtyard from where the rubber of the footrest of the motorcycle on the right side of the driver and left side of the pillion rider was

seized, since the footrest was stained with blood. The incriminatory material were wrapped in papers and sealed and seizure panchanama, Exhibit 63 was recorded.

PW 14 then told the LSJ that while in custody, accused Amit expressed willingness to produce the knife and clothes at the time of incident. PW 14 has identified his signature on memorandum, Exhibit 130, and also the signatures of panchas and accused Amit. The witness told the LSJ that accused Amit took the police to one dilapidated house of Madan Shende which is situated near the house of the accused and produced one knife which was blood stained and T-shirt and black full pant which were also blood stained. The incriminatory articles were seized and sealed and signatures of the panchas and accused were obtained. PW 14 has proved the seizure panchanama, Exhibit 132.

PW 14 then told the LSJ that he handed over the investigation to API Bhonsale on 7-4-2015 since he proceeded on leave. API Bhonsale was in-charge of the investigation from 7-4-2015 to 25-4-2015 and after resuming duty, PW 14 took charge of the investigation on 26-4-2015. PW 14 has identified

weapons and clothes seized from the accused.

PW 14 was asked in cross-examination why he did not prepare the sketch map showing the exact spot where the eye witnesses were standing and his response was that since it was clear from the statements of the eye witnesses where they were standing, sketch map was not found necessary. It was further suggested to the witness in the cross-examination that the statements of witnesses were not recorded till the dead body was handed over to the relatives. The suggestion is denied.

It is brought on record that while recording statements of PW 1, PW 2 and PW 3, the colour of clothes worn by accused was not disclosed nor was the registration number and make of the vehicle which the accused used, disclosed. It has come in cross-examination that PW 1 was not in contact with PW 14 till the statement of PW 1 was recorded on 24-3-2015. The suggestion that accused Dinesh was arrested at 3.10 p.m. on 24-3-2015 is denied. Witness volunteers that Dinesh was produced and personal search was conducted. Witness denies the suggestion that the time of arrest of accused Dinesh is wrongly recorded.

PW 14 admits that there is no document on record to show at which time and on which date, the muddemal seized from accused Dinesh was deposited. While the witness concedes that he knew the place where accused Dinesh had concealed the weapon before proceeding to the house of Dinesh, he clarifies that he came to know the place in view of the memorandum statement. It is brought on record that PW 14 did not file the vehicle log book in which the visit to the house of Dinesh may have been reflected on record. PW 14 denies the suggestion that Dinesh did not give any statement nor did he take police to his house. PW 14 agrees that there is no mention of weapon *gupti* in Exhibit 124. However, the suggestion that there is no mention of *gupti* since same was not produced by Dinesh is denied. PW 14 explains the statement in PCR application which is that the clothes of accused are to be recovered by telling the LSJ that clothes of accused other than Dinesh were not recovered till then and the said statement is general and not with respect to accused Dinesh. PW 14 agrees that till accused Amit and Pritam were produced in the Court on 25-3-2015, their clothes were not seized.

It is elicited in the cross-examination that the Malkhana

property register is not produced and that no document is filed to show after the seizure of the articles, till they were handed over to C.A., where were the articles kept. Nothing is elicited in the cross-examination conducted on behalf of the accused Pritam and Amit as would shake the credibility of the witness. While no attempt is made in the cross-examination conducted on behalf of the accused Dinesh to prove any omission much less omission partaking the character of contradiction, in the cross-examination conducted on behalf of accused Amit, it is proved that PW 1 Kapil did not disclose in the statement that he took Ishant out of marriage lawn with Shubham and Aman and/or that Ishant assaulted Shubham. PW 14 agrees that PW 1 did not specifically state that while going Ishant threatened Shubham, PW 14 clarifies that the omission is only as regards the words “while going”. The next omission which is proved is that PW 1 did not disclose that he went to the house of the relatives after the incident and further that on 23-3-2015, there were lights which were functioning. The other omission is as regards the failure to disclose the shape of the weapons. Certain other minor and inconsequential omissions are proved.

31) We have given due consideration to the submission canvassed by learned Senior Counsel Mr. S. P. Dharmadhikari that there is no evidence on record to show that from the time of the seizure of the incriminatory articles and the dispatch to the C.A., the articles were in sealed condition and in proper custody. The evidence on record is that at every stage the seized articles were duly sealed and the signatures of the panch and the accused were obtained on the seals. We have found from the cross-examination that there is not even a suggestion given to PW 14 that the seals were tampered or that the investigation was conducted dishonestly. The defence was contented by bringing on record that PW 14 has not filed any document to show where the seized articles were kept till they were handed over to the C.A. The evidence of PW 14 on disclosure has gone virtually unchallenged in the cross-examination conducted on behalf of accused Pritam and Amit. The learned counsel for accused Pritam gave general suggestion that no memorandum statement was made, nothing was produced and that the seizure panchanamas are prepared at the police station. In the cross-examination conducted on behalf of accused Amit, it is only suggested that accused did not give

memorandum statement and did not produce any weapon. No further question is asked on the aspect of the personal search and seizure and the discovery.

32) The C.A. report is that blood detected on Exhibits (1), (3) to (11), (13), (14), (16), (18) to (26), (28) and (29) is human. Exhibit (5) are the pieces of cement concrete stones which were seized from the spot. Exhibit (6) is also a stone seized from the spot. Exhibits (10) and (11) are the clothes of accused Dinesh and Exhibit (12) and Exhibit (13) are the right leg and left leg slippers seized from accused Dinesh. Blood is not detected on Exhibit (12). Exhibit (13) was found stained with blood at lower portion. Exhibits (16) and (17) are the right leg sandal and left leg sandal of accused Pritam. While blood is detected on Exhibit (16), no blood is detected on Exhibit (17). The clothes of accused Pritam are at Exhibits (19) and (20) on which blood stains are detected. Blood stains are also detected on both the rubbers of the footrest seized on the basis of the memorandum statement of accused Pritam. Exhibits (23) and (24) are the right leg and left leg chappals seized from accused Amit, Exhibit (25) is the knife seized on the basis of

memorandum statement and Exhibits (26) to (29) are the clothes seized on the basis of memorandum statement of accused Amit. Blood is detected on the said article, Exhibit (27).

33) While the blood group could not be ascertained, as is rightly observed by the LSJ, there is absolutely no explanation forthcoming from the accused why human blood is detected on the articles seized.

34) The circumstantial and corroborative evidence is telling, and lends assurance to the hypothesis that the eye witness account of PW 1 can be entirely believed. We do not nurture any doubt as to the complicity of the accused in the crime. The evidence is overwhelming and the only inference is that the accused acting with common intention brutally assaulted Shubham with the intention of causing death. We do not see any reason to disturb the findings recorded by the LSJ on the said aspect.

35) We are further satisfied that the conviction under Section 135 of the Maharashtra Police Act and Section 4, punishable under Section 25 of the Arms Act is also

unexceptionable. While no submissions are canvassed assailing the conviction of the accused under Section 135 of the Maharashtra Police Act and Section 4, punishable under Section 25 of the Arms Act, we are satisfied that no interference is necessary.

36) We find the appeal without merit and the same is accordingly dismissed.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)