

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

CRIMINAL APPEAL NO. 769 OF 2018

Mukesh Kushalpal Sharma @
Kabir Hussain Noor Islam Suleman Sardar ..Appellant

Versus

The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO. 2574 OF 2024
IN
CRIMINAL APPEAL NO. 769 OF 2018**

Mr. Kalam Shaikh a/w. Vaishali Sawant for Appellant.
Mr. S. R. Agarkar, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 24 JANUARY 2025

ORAL JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. The Appellant has challenged the Judgment and order dated 04.08.2017 passed by the Additional Sessions Judge, Dindoshi, Greater Mumbai. By the impugned Judgment, the Appellant was convicted for commission of the offence punishable U/s.302 of the I.P.C. He was sentenced to suffer imprisonment for

life and to pay a fine of Rs.5000/- and i.d. to suffer S.I. for six months. The Appellant was acquitted from the charges of the offences punishable under sections 385, 386 and 387 r/w. 120B of the I.P.C., under section 37(1)135 of the Maharashtra Police Act and under sections 3, 25 and 27 of the Arms Act.

2. The prosecution case, in brief, is that the deceased Angara Pujari was having a cake shop at Devraj building, Topiwala road, Goregaon (W). He was receiving extortion calls from the gangsters. He had not succumbed to their demands. On 19.03.2011, the Appellant entered his shop. Initially, he entered the shop and left. He again entered the shop within a short time, had pastries and left. Again he entered the shop and fired a bullet from close range at deceased Angara. He went out of the shop and started to run away. The employees of the son of the deceased who were present in the shop tried to chase him. One of the vendors nearby threw a wooden plank towards him. It hit him. He fell down. In the meantime, wireless van of the police was passing in that area. The police came at the spot. They apprehended him. He was taken to the police station. He was found carrying a country

made pistol and four live cartridges inside the pistol. The deceased was taken to a hospital. He was declared dead. The son of the deceased lodged his F.I.R. The investigation started. The police officers conducted spot panchanama in the shop. An empty was found in the shop. The Appellant was put under arrest at the police station. The statements of the witnesses were recorded. The dead body was sent for postmortem examination. The bullet which was left in the body was recovered. The pistol, the cartridges, an empty and the bullet recovered from the dead body were sent for forensic examination. The investigation was completed and the charge-sheet was filed.

3. During trial, the prosecution examined 23 witnesses including the first informant, other eye witnesses from the shop, the person who threw a wooden plank towards the Appellant, the police officers who apprehended him near the cake shop, the Medical officer who had conducted postmortem examination, the ballistic expert, the panchas and the investigating officer. The learned Judge believed the evidence of the eye witnesses and other corroborative pieces of evidence in the form of ballistic expert's

opinion, and convicted the Appellant.

4. The Appellant took up a specific defence by giving his statement U/s.313 of the Cr.p.c. in writing. According to him, two months prior to the incident, he had come to Mumbai from Delhi in search of his livelihood. It was his first visit to Mumbai. He was residing with his relatives at Malad. During his search for job, he met one Rajubhai, who called him to City Center Mall at Goregaon (W) and told him that there was a vacancy. He reached there on the date of the incident. He was on fast on that day. He was waiting outside the Mall up to 11:00a.m. It was a hot day and because of hot sun he lost his consciousness and fell down. After some time, some police officers helped him to regain his consciousness and took him to the police van. They took him to Goregaon police station and straightaway put him in the lock-up. They asked him to sign some documents. They brutally assaulted him on his legs. On the next day, he was produced before the Magistrate. While he was in jail, he came to know that he was implicated in a murder case.

5. As mentioned earlier, according to the prosecution case, there are eye witnesses to the incident. PW-1 Arun Pujari had witnessed the incident. He was son of the deceased. He has deposed that, he was running a cake shop. It was in the name of his father and was styled as 'Harish Enterprises'. It was on the first floor of Devraj building. His father used to stay in a rented room in that building. PW-1 used to open that shop at 8:30a.m. and used to close it at 10:00p.m. There were six employees working in that shop. Three of them were working in the morning shift and other three were working in the evening shift. PW-6 Pradeep Parkar and PW-7 Uday Wanjole used to work in the morning shift. They used to take keys of the shop from his father and used to open the shop. His father used to go to the shop at 9:30a.m. and PW-1 Arun used to reach the shop at around 10:00a.m.

6. In 2009 and 2010 his father received extortion calls from one gangster for extortion money of Rs.50 lakhs. PW-1 Arun's father had lodged his report at Goregaon police station on 26.02.2010. After that, again he had received the extortion call telephonically. It was repeated on other occasions. The calls were

received from a foreign location. One of the calls was answered by PW-1 Arun and he had filed a report to the police. Three persons were arrested in that matter and it was pending. PW-1 Arun and his father had deposed in that case.

7. On 19.03.2011, at about 10:00a.m. he had gone to his shop. His father was on the cash counter. His employees PW-2 Dinanath Monden, PW-6 Pradeep and PW-7 Uday were present in the shop. At about 11:20a.m. to 11:30a.m. one person between the age of 27 to 28 years entered their shop. He was chewing *gutkha*. He stayed there for some time and then went outside the shop. He again returned. He bought a chocolate and pastry. He paid the bill and again went outside the shop. He again returned to the shop and went towards PW-1's father. He had some conversation. He then took out a pistol from one plastic bag and fired at PW-1's father. There was a big noise of bursting crackers. PW-1's father raised shouts and fell down. The Appellant ran out of the shop. PW-1 Arun and his employees chased him. He was running towards the station. He was threatening the people with his pistol. PW-1 Arun and his employees were raising shouts. One vegetable

seller threw a stick towards the Appellant, due to which he fell down. PW-1 Arun and others caught him. A police vehicle arrived there and took custody of the Appellant, who was carrying a pistol. On enquiry, the Appellant gave his name as Mukesh Sharma. The pistol was an automatic pistol, made in USA and was having a magazine. PW-1 Arun identified the appellant in the Court who had fired at his father with the pistol. PW-1 Arun has deposed that thereafter they took his father to Singhi Hospital, Goregaon, but he was declared dead. His father had suffered bullet injury in the front side of his neck. PW-1 Arun then lodged his report with Goregaon police station. It is brought on record at Exhibit-21. C.R.No.90 of 2011 was registered at Goregaon police station, under sections 385, 386, 387 and 302 of the I.P.C. and U/s.3, 25 and 27 of the Arms Act. His F.I.R. is produced on record at Exhibit-22. PW-1 Arun identified the articles produced in the Court viz. the pistol and deposed that it was the same pistol which was with the Appellant.

In the cross-examination, he deposed that he did not know the gangster who was making those extortion calls. He had

never seen that gangster or his photograph. He deposed that he was not acquainted with the vegetable vendor who had thrown a stick towards the assailant. He could not describe the bamboo stick or its size. After the police had taken the appellant with them, he had returned to his shop and after that, he had gone to Singhi Hospital. He was there till about 3:00 to 4:00p.m. According to him, he lodged his report at 3:00p.m. He explained that he gave the description of the pistol in his F.I.R. because it was shown to him.

The F.I.R. is produced on record at Exhibit-21 and 22. It substantially corroborates the evidence of PW-1 Arun. The F.I.R. was registered at 1:00p.m. on 19.03.2011. The proforma mentions that the police station was informed about the incident at 11:55a.m. on 19.03.2011.

8. PW-2 Dinanath Monden was working in the said cake shop. He described the incident of firing on the deceased in the same fashion as is described by PW-1 Arun. PW-2 added that the assailant was holding a plastic bag in his hand. He removed a

pistol from that plastic bag and fired at the deceased Angara. He then ran away from the shop. Angara raised shouts. PW-2 himself, PW-1 Arun and PW-7 Uday chased that person. One cobbler threw a bamboo stick towards the assailant which hit on his hand and he fell down, and his pistol also fell from his hand. The people in that area caught him. The police arrived at that spot and took him in their custody. They went to the police station. The police recorded his statement. The bullet had hit Angara's shoulder. He was taken to Singhi Hospital. PW-2 Dinanath also identified the appellant before the Court.

In the cross-examination, he deposed that, when the Appellant fired at the deceased, he was facing towards the deceased and at that particular moment, PW-2 had not seen his face. There is hardly any cross-examination of this witness.

9. PW-6 Pradeep Parkar was another employee working in the shop. He has also deposed about the incident. He has supported the description of PW-1 Arun and PW-2 Dinanath. He further deposed that, PW-7 Uday, PW-2 Dinanath and PW-1 Arun

chased the Appellant after the firing incident. They caught him and brought him to the shop. Angara was taken to Singhi Hospital at Goregaon, but he was declared dead. PW-6 also identified the appellant in the Court. He identified the pistol as Article-A produced in the Court.

In the cross-examination, he deposed that, there were 2 to 3 customers present in the shop at the time of the incident. The shop was of the size 25ft x 25ft. At the time of incident, he was using a laptop for receiving orders. He denied the suggestion that he had not seen the face of the assailant. He further added that he identified the appellant when first time he had attended the Court. He had seen the appellant when he had attended the Court. The Appellant was brought to the shop after he was caught by PW-7 Uday and PW-2 Dinanath. He further deposed that, they took the deceased to Hospital within two minutes after he had fallen down. PW-6 further deposed that, he could not explain as to why his police statement does not mention that PW-2 Dinanath and PW-7 Uday had caught the appellant and had brought him to the shop.

10. PW-7 Uday Wanjole was another employee working in the cake shop. He again described the incident in the same manner as is deposed by PW-1 Arun, PW-2 Dinanath and PW-6 Pradeep. He saw the Appellant firing at the deceased and running away. He has described that, a vegetable vendor sitting outside the shop threw a wooden stick towards the appellant, therefore, the Appellant fell down. The appellant was threatening the people with the pistol. At that time, a police van came there and police apprehended the appellant. He gave his name as Mukesh Sharma. PW-7 and others took Angara to Singhi Hospital, but he was declared dead. PW-7 also identified the Appellant before the Court. He identified the pistol shown to him as Article-A.

In the cross-examination, he deposed that, it was the Holi festival day on the day of the incident. They chased the Appellant for around 50 meters. The vegetable vendor threw a wooden stick which was around 2-3ft. long. Besides that, there is nothing much further in the cross-examination.

11. PW-10 Suresh Savardekar is the person who had thrown

a wooden stick towards the appellant. He deposed that, he was a cobbler and used to sit on the footpath in front of Lalit Hotel, Topiwala wadi. On 19.03.2011, at around 12:00p.m. he saw some people were chasing one person who was holding a pistol. He looked frightened. PW-10 threw a wooden plank on him. He fell down. He rose again and tried to run away. At that time, the police came there and caught him. PW-10 identified the Appellant in the Court. He also identified the pistol.

In the cross-examination, he deposed that the shop of the deceased was at a distance of 10 minutes walk from the place where he used to sit. His place of working was about 15 minutes walk from the station. He hit a wooden plank from the distance of about 5 to 7ft. It hit the appellant on the leg. He fell down. His pistol was dropped from his hand. The police recovered the pistol from the spot. He denied the suggestion that the police had shown him the appellant.

In this context, PW-11 ASI Pradeep Sawant and PW-14 Police Naik Suresh Sawant are important, because they had

apprehended the appellant.

12. PW-11 ASI Pradeep Sawant was attached to Goregaon police station. He was on a mobile van duty from 9:00a.m. to 9:00p.m. There were three other police personnel with him. At about 11:55a.m. he received an information from the main control room that one person was lying in injured condition near the City Center Mall. He went towards the spot at around 12:00p.m. At that time, one person holding a pistol was seen running towards the station through *bhajigalli*, topiwala lane. He was threatening the people. The people were running helter-skelter. PW-11 and others chased him. One person hit the person with the pistol, with a wooden plank. He fell down. PW-11 and others then caught him. PW-11 snatched the pistol from his hand. It had four live cartridges. PW-11 enquired about his name. He gave his name as Mukesh Sharma. On further enquiry, PW-11 came to know that the Appellant had fired a bullet on one shop owner. Therefore, PW-11 took him in custody and took him to the police station. PW-11's duty officer was informed. The Appellant and the pistol were handed over to the duty officer. He identified the pistol and four

live cartridges in the court.

In the cross-examination, he deposed that, on receipt of the information from the control room, he used to take entry in the diary which he carried. They were at a distance of 20ft to 25ft. from the Appellant when he fell down. They apprehended him when he got up. He deposed that the pistol did not drop from the hands of the appellant. He then informed the police station and the control room that he had apprehended the Appellant. He took entry in his diary. There were no special marks on the pistol or bullets for their identification. He denied the suggestion that they planted the said pistol in this offence. He could not assign any reason as to why his police statement did not mention that he came to know from the people that the appellant had fired a bullet at the shop owner.

13. PW-14 Police Naik Suresh Sawant has deposed on the same lines as PW-11 ASI Pradeep Sawant. In the cross-examination, he deposed that, at the first instance, the public had caught the appellant. The place of the incident was at some

distance from the railway station.

14. In this same sequence, the evidence of PW-18 API Uttam Dundale would be important. He was attached to Goregaon police station. He was on duty as Police Station Officer on 19.03.2011 between 8:00a.m. to 8:00p.m. At about 11:00a.m. he received an information from the control room that there was an incident of firing at the cake shop. He himself and other police officers reached there. They came to know that the owner of the cake shop was fired at. He was taken to Singhi Hospital. PW-18 went to that hospital, but PW-18 came to know that the shop owner had succumbed to his injuries. PW-18 then recorded the statement of PW-1 Arun. It was treated as the F.I.R. It was produced on record, as mentioned earlier, at Exhibit-21 and 22. PW-18 then conducted the inquest panchanama. He seized the clothes of the deceased. He sent the dead body for postmortem examination. He then again went to the spot of incident in the shop and prepared the spot panchanama. It is produced on record at Exhibit-30. He called the photographer to take the photographs. He found an empty of the cartridge from the spot. It was seized. It is marked as Article-D. In

the meantime, the person who was caught by the public and the police was brought to the police station. He then arrested the Appellant and prepared the arrest panchanama. It is produced on record at Exhibit-32. The Appellant was in possession of pistol and four live cartridges. He then seized the clothes of the Appellant. The seizure of clothes panchanama is produced on record at Exhibit-92. He identified the Appellant produced on the video conferencing in the Court.

In the cross-examination, he deposed that, except slight abrasion on the right leg below the knee, he did not see any other injury on the appellant. PW-18 had reached the police station at about 4:15p.m. At that time, the Appellant was in the detection room of the police station. His belongings were removed and kept in the detection room. The police who had brought the Appellant were from the police mobile van. He did not make any attempt to trace out the bamboo stick. It is not recovered in this case. The arrest panchanama shows that there was swelling on the feet of the Appellant. But, the cause was not mentioned.

15. PW-4 Ajit Kanthak was a pancha for spot panchanama. While conducting the spot panchanama, an empty was recovered. PW-5 Kamlesh Shetty was a pancha for arrest panchanama and seizure of pistol and cartridges panchanama. It is produced on record at Exhibit-32. It was conducted between 4:30p.m. to 5:30p.m. on 19.03.2011.

16. PW-8 Santosh Ghadigaonkar was a pancha for inquest panchanama. PW-3 Ashok Bhagat was a pancha for an insignificant panchanama wherein the Appellant had allegedly shown the place where the plan was hatched. But since nothing was recovered from that place, that panchanama was not of any importance.

17. PW-9 ASI Arvind Kadam was handed over the clothes of the Appellant and the deceased for carrying them to the Chemical Analyzer's office. He carried those packets.

In the cross-examination, he deposed that, he was a store keeper in the police station.

18. PW-13 Keshav Kotiyan was a neighboring shop owner. He had received an extortion call after this incident. His evidence

does not throw any light on the present incident in question.

19. PW-12 Suresh Gaikwad was the photographer. He deposed that, he was called by the police to take the photographs at the cake shop. He took the photographs in that area and in the shop. He identified the photos which were produced at Article-E. He deposed that, he took 6 to 7 photographs of the dead body in the shop. He added that the dead body was lying on the chair of the cashier. Thereafter he went to the Hospital to take the photographs of the dead body. He took 7 to 8 photographs of the dead body. They were produced at Article-I.

In the cross-examination, he admitted that he did not remember the time when the police officers had called him.

20. PW-17 Rajendrapratap Verma was a pancha for seizure of the Appellant's clothes. That panchanama is produced on record at Exhibit-92.

21. PW-20 Head Constable Ravindra Bhosale was examined on the point of publishing prohibitory order from carrying the prohibited arms. PW-21 Nikhil Pawar was examined as a person

who knew the appellant. PW-22 PI. Raju Kasbe had conducted some part of the investigation. He had filed the charge-sheet. PW-23 Satpal Lahot was examined to establish background of the appellant. These are some additional witnesses.

22. Two other important witnesses are PW-16 Dr. Sunny Khandare who had conducted postmortem examination. There were four injuries, out of which, first injury was a circular entry wound situated 16cm from tip of right shoulder, 2cm. from middle of neck and 6cm. from sternal notch. Circular fire arm entry wound was 1cm. in diameter located on anterolateral side of right side of neck. Blackening was present around the entry wound. On dissection it was seen that the bullet had passed through the skin. There was internal injury corresponding to this entry wound. The fire arm injury had extended on the upper lobe of the left lung. The opinion regarding cause of death was "Hemorrhage and shock due to firearm injury". The blackening of the injury around the entry wound indicated that the injury was caused from the close range. A bullet was retrieved from 5th intercostal space of back side of the trunk.

In the cross-examination, he deposed that, he conducted autopsy with his senior Dr. Bhise. In his presence, Dr. Bhise had extracted the bullet from the body. Four articles were sent to chemical analysis along with four forwarding letters.

23. PW-15 Shyamsundar Munj was examined as an expert. He was working as Assistant Chemical Analyzer in Government Forensic Lab, at Mumbai. He received a pistol with magazine having crude markings mentioning AUTOMATIC PISTOL, MADE IN USA 7.65. He also received four intact KF 7.65 mm pistol cartridges. He received one KF 7.65 mm pistol empty. He received clothes of the Appellant and the deceased. This witness was allotted this case by the Head of the Ballistic Department. On examination, he came to the conclusion that it was a country made pistol, it was in working order, it was capable of chambering and firing 7.65 mm pistol cartridges. Residue of fired ammunition – nitrite was detected in the barrel washing of the pistol showing that the country made pistol was used for firing prior to its receipt in the laboratory. They carried out necessary examination by firing through the country made pistol and came to the conclusion that

the pin impression examined under the comparison microscope, on the empty tallied with that of the test fired bullet from the same country made pistol. It means that the 7.65mm pistol empty received by their office was fired from the same country made pistol received by them. The marks on the fired 7.65 mm bullet received from the J. J. Hospital under letter tallied with the test fired bullet from the said pistol and, therefore, he reached the conclusion that the said bullet sent by the hospital was also fired from the said country made pistol. Accordingly, the report was sent.

In the cross-examination, he deposed that, after one bullet was fired then the next cartridge automatically comes in the firing chamber of the gun. The C.A. reports are produced from Exhibit-106 to 108 which show that there was human blood of 'B' group on the clothes of the accused, but the blood group on the clothes of the deceased was inconclusive. The ballistic report was produced at Exhibit-15.

This, in short, is the evidence led by the prosecution.

24. Learned counsel for the Appellant made the following submissions:

The entire case will have to be looked at from the point of view of the defence taken by the Appellant in this case. PW-11 ASI Pradeep and PW-14 Suresh Sawant have deposed that, they had received a message from the control room and thereafter they had started. Therefore, it was not possible that they could reach the spot where the appellant was caught, within a short time; because, according to the prosecution witnesses, after the incident, the appellant was caught at a very short distance, and even if, in the meantime, the police were informed, it would have taken some further time for PW-11 and PW-14 to reach the spot. PW-18 Uttam Dundale has deposed that, he received the information at about 11:00a.m. about the firing which is contrary to the prosecution case. There is contradiction between the eye witness viz. PW-1 Arun and his employees. PW-10 Suresh appears to be a got up witness. PW-6 Pradeep Parkar has deposed that the Appellant was brought back to the cake shop and at that time, he did not have any weapon. This is contrary to the prosecution case that the

appellant was caught at some distance from the shop by PW-11 and PW-14 and then he was taken to the police station. Learned counsel further submitted that, there was a possibility that PW-1 Arun himself could have planned murder of his own father for some unknown reason or for the property. All the alleged eye witnesses are the interested witnesses and the employees had to support PW-1 Arun. There is no corroboration to their evidence. There is a contradiction as to from which spot pistol was recovered. Therefore, it appears that the pistol was planted. The evidence of photographer is very significant, because he has deposed that the deceased was on the chair at the cashier counter when he took the photographs. When PW-18 Uttam had gone inside the shop on the first occasion, he had not recovered any empty, but when the spot panchanama was conducted, that empty was seized. There is no reference as to from where that plastic bag was carried by the appellant from which the pistol was taken out. The witnesses have described the weapon as a foreign made weapon, but the ballistic expert says that it was a country made pistol. It is not explained as to how PW-11 and PW-14 came to

know that there were four live cartridges. There is a contradiction in the evidence of the eye witnesses, and PW-11 and PW-14 as to from where the pistol was seized. After firing, the next bullet naturally springs in the firing chamber of the pistol, but in this case, it was not so. The articles were sent belatedly for chemical analyzer's examination. Tutoring of the witnesses for the test identification parade cannot be ruled out. There is no evidence of any conspiracy, though, the prosecution case was specific that the deceased was murdered for extortion purpose which was a result of a conspiracy initiated by a gangster.

25. Learned APP, on the other hand, relied heavily on the evidence of the four eye witnesses and in particular, evidence of the ballistic expert.

26. We have considered these submissions. We do not find any material discrepancy or contradiction between the evidence of eye witnesses. They have consistently deposed about the actual incident of firing in the shop. They have described as to how the Appellant had entered the shop, had gone out, had come back

again and had fired at the deceased. They are also consistent about the eye witnesses chasing the assailant who was running towards the station. The evidence of PW-11 Pradeep Sawant and PW-14 Suresh Sawant does not run contrary to the prosecution case. They had received an information about some person lying near the City Center Mall and, therefore, they were proceeding towards that mall. But, in between, they came to the spot where this chase was going on and they immediately apprehended the assailant. Therefore, there is no substance in the arguments that the time since when they received the information and the time when they reached the spot do not match. PW-11 and PW-14 were going towards the City Center Mall on receipt of some other information. That information was not in respect of firing at the cake shop. They just happened to pass from that area, they saw the chase and they apprehended the appellant. Therefore, there is no discrepancy in the time. As far as, PW-18 Uttam saying that he had gone to the shop on receiving the information at around 11:00a.m., obviously, this is just an error on his part; because, according to the first informant himself the incident had taken place after 11:30a.m.

This minor discrepancy does not go to the root of the matter. The other discrepancy about the appellant being brought to the shop has also not much relevance. The fact remains that the appellant was chased and then caught. PW-11 and PW-14 had come at the spot and they had overpowered the appellant. The other people from the area were scared because the appellant was wielding the pistol.

27. In this context, evidence of PW-10 Suresh is important. We do not find any discrepancy or infirmity in his evidence. He was an independent witness. He was not under any obligation of PW-1 Arun. In fact, because of his efforts the appellant could be caught. Though, the photographer says that the photographs were taken in the shop and the deceased was on the chair, the photographs produced in the Court did not support any such deposition. The photographs, in fact, show that the photographs of the dead body were taken in the hospital. The other photographs are about the general situation in the shop. There is no further cross-examination of the photographer on that aspect. The evidence of the eye witnesses carries much more weightage than

the stray statement made by the photographer.

28. In this case, one of the most important pieces of evidence is the evidence of the Doctor and the ballistic expert. As mentioned earlier, an empty was recovered from the spot. Though, PW-11 ASI Pradeep Sawant at the first instance did not seize any empty, his purpose of visit to the shop was to see the deceased and to take information about the incident. On the next occasion, he specifically visited the shop for carrying out the spot panchanama and at that time, the shop was minutely observed. At that time the empty was found. Therefore, we do not find any substance in the arguments that the empty could not be recovered at the first instance itself. This empty of the cartridge was sent to ballistic expert for examination. Along with that empty, the bullet left in the dead body which was retrieved by the Doctor was also sent. Importantly, the evidence shows that the said bullet and the empty was fired from the same pistol. This is a very important piece of evidence which connects that particular empty and the cartridge with the pistol recovered from the appellant. Though, the witness says that pistol shows mark 'MADE IN USA', the expert had opined

that it was a country made pistol and it was only marked mentioning 'MADE IN USA'; that does not make it a foreign made weapon. It is not possible to hold that the pistol was not recovered from the appellant. The theory that PW-1 Arun had engineered murder of his father, is totally unbelievable. No such base is made out and it is not even probable. Though, it is the duty of the prosecution to prove its case beyond reasonable doubt, if such arguments are advanced, there has to be some basis to make the defence probable. But in this case there is no such basis.

29. The sum and substance of this discussion is that the prosecution has proved that the appellant had fired on the cake shop owner, he ran away from the shop, he was chased by PW-1 Arun and others. PW-10 Suresh threw a wooden plank at him because of which he fell down. At that point PW-11 and PW-14 had arrived at the spot, they caught the appellant with the pistol. The articles were sent for examination. An empty was recovered from the spot and the bullet was retrieved from the dead body. The bullet and the empty matched with the pistol. The Appellant was caught from near the spot immediately after the incident. All the

eye witnesses have identified the appellant in the Court. They have had sufficient opportunity to observe his features. Apart from that, since the appellant was caught at the spot, it was a very strong circumstance against him.

30. Considering all these factors, we are satisfied that the prosecution has proved its case beyond reasonable doubt. Therefore, we do not find merit in the Appeal.

31. The Appeal is accordingly dismissed.

32. With disposal of the Appeal, the interim application is also disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)