



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 103 OF 2020

Bablu @ Rameshwar s/o Kuwarsingh Sanodiya,
Aged about 30 years,
R/o. Purani Basti, Kurhiya,
Tahsil and District-Sivani (M.P.)
At present R/o. Dhone Colony, Shivar,
Tahsil and District-Akola
(Presently at Central Prison, Amravati). ..

Appellant
(In Jail)

.. Versus ..

The State of Maharashtra,
Through Police Station Officer,
Police Station, M.I.D.C.,
District – Akola. ..

Respondent

.....
Mr. Rajendra M. Daga, Advocate for Appellant.
Mr. Ganesh Umale, APP for Respondent/State.
.....

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

DATED : 13th MARCH, 2025.

JUDGMENT [PER : NITIN B. SURYAWANSHI, J.]

1. Appellant is aggrieved by the judgment and order
passed by the learned Sessions Judge, Akola in Sessions Case

No.200/2016, thereby convicting the appellant under Sections 302, 120-B, 118 r/w Section 34 of the Indian Penal Code, 1860 (for short, IPC) and under Section 3, 25 and 27 of the Arms Act and sentencing him to suffer life imprisonment and imposing a total fine of Rs.13,000/-.

2. Prosecution case is that, on 21.06.2016, PW-15 PSI Harshal Chapale, attached with MIDC Police Station, Akola received a telephonic information that one person is lying in injured condition in front of Rungta Tyre Company, MIDC, Akola. He took the entry in the station diary and visited the spot of incident with police staff. He found one person lying there in injured condition. He sent the injured to Government Medical College and Hospital, Akola (for short, "GMC Akola"). Medical Officer declared the injured dead.

At about 23.40 hours, PW-1 Yashwant Ghanshyam Sharma visited the MIDC Police Station, Akola and lodged a oral report alleging that on that day at about 8.30 pm, when he was at Khandelwal Paper Factory, he received a phone call from his mother asking him to immediately come home as his brother Santosh was found lying in injured condition near Rungta Tyre

Company, and he is taken to ICON Hospital. He therefore visited ICON Hospital and came to know there that his brother is shifted at GMC Akola. He therefore visited GMC Akola and noticed one gun-shot injury between eye and nose and similar injury over temporal region of his brother. Due to the said injuries, Santosh expired. He further alleged that prior to 1½ year of the incident, his brother Santosh had eloped with Smt. Manju, wife of absconding accused Rajkumar Yadav. On the next day, Santosh and Smt. Manju returned, at that time, there was quarrel between his brother Santosh and absconding accused Rajkumar Yadav, who issued life threat to his brother. Rajkumar Yadav had announced that he would give reward, if any one commits murder of Santosh. Informant therefore suspected that Rajkumar Yadav has committed murder of his brother, as there were illicit relations between his brother and Rajkumar's wife. On the basis of the said report, Crime No.51/2016 was registered against Rajkumar Yadav for offence punishable under Sections 302 of IPC and Section 3 punishable under Sections 25 & 27 of the Arms Act. On completion of investigation, chargesheet was filed wherein three accused were named; A-1 Bablu @ Rameshwar s/o Kuwarsingh Sanodiya, A-2 Golu @ Ishwar s/o Jiyanlal

Sanodiya and A-3 Rajkumar Yadav, who is absconding.

3. Trial Court framed charge against accused for the offences punishable under Sections 302, 120-B, 118 r/w Section 34 of the IPC and under Section 3, 25 and 27 of the Arms Act. In order to prove the charge, prosecution has examined 15 witnesses. The defence of accused was that of total denial and that they are falsely implicated in the crime. Trial Court acquitted accused no.2 and convicted accused no.1-appellant as aforesaid. Hence, the present appeal.

4. Heard learned advocate for the appellant and the learned Additional Public Prosecutor for the respondent/State.

5. Learned advocate for the appellant assailed the conviction stating that evidence of eyewitness **PW-6 Raju Pathan** reveals that he was not in a position to see the incident from the place from where he claims to have seen it. His Transport Company Office is not shown in the spot panchanama and it has come in his evidence that the spot of incident is not visible from his office. He has not given description of the accused who fired the shots. According to him, incident has taken place in one

minute and, therefore, he was not in a position to see exactly who has fired the gunshot. No independent witness is examined by the prosecution, though many people were gathered at the spot of the incident. Though he went to the Police Station and narrated the incident to police, police ought to have registered FIR on the basis of information given by him, but it is not done. His conduct also appears to be doubtful, as he did not help the deceased and did not take him to the hospital. He has admitted that when he reached the spot of incident, deceased had already fallen down. It has come in his evidence that there was dark at the spot of incident and, therefore, it was not possible for him to see the incident. The fact that there was dark at the spot of the incident is admitted by panch to the spot panchanama as well as investigating officer, they have seen the spot in the torch light. The trial court has erred in considering Investigating Officer's examination-in-chief only and has ignored vital admissions given by him in cross-examination. Considering these aspects, the evidence of PW-6 is not reliable and his version should be disbelieved. He submits that the test identification parade was held after two months of the arrest of the appellant. Appellant was in police custody for 14 days and was produced many times

in the Court. It is not the prosecution case that appellant was produced in the Court by covering his face. Therefore, by relying on the judgment of the Hon'ble Apex Court in the case of *Gireesan Nair and others .vs. State of Kerala*, reported in (2023) 1 SCC 180, *Md. Sajjad Alias Raju alias Salim .vs. State of West Bengal*, reported in (2017) 11 SCC 150 and the judgment of this Court in the case of *Suresh Vyankati Chavan .vs. The State of Maharashtra*, reported in 2019 ALL MR (Cri) 887, he submits that the test identification parade is held belatedly and in defiance of the provisions of the Criminal Manual, therefore, it should be disbelieved, also for the reason that, while the test identification parade was being held, police officers were present outside the room, where the parade was held.

6. Pistol was seized from appellant on 29.06.2016 and the same was forwarded to Forensic Science Laboratory on 11.07.2016. Thus, there is delay of more than 14 days in sending the weapon, which is not explained by the prosecution. The weapon was received by FSL on 14.07.2016 and for this inordinate and unexplained delay, no reliance can be placed on the said ballistic expert's report. So also there is no evidence on

record that the murder weapon was kept in the safe custody in police station for 14 days. Ballistic expert is not examined. The ballistic expert's report which is against the appellant was not put to him in the statement under Section 313 of the Code of Criminal Procedure (for short 'Code') and, therefore, the said evidence cannot be relied upon. He then assailed the recovery of murder weapon panchanama and memorandum statement of the appellant stating that neither the panchas nor the investigating officer have disclosed the exact statement made by the appellant. Memorandum statement of the appellant is recorded three days after his arrest, which creates doubt about the same. As per the settled position of law, accused has to disclose the source of concealment of the weapon, which is not disclosed in the present case. The weapon, after seizure, was deposited in the Police Station, however, no receipt of the same is produced on record. Further submission is, the initial information of the incident is suppressed by the prosecution. The Investigating Officer has admitted that it was not taken down. Hence the adverse inference needs to be drawn against the prosecution. Though, investigating officer has admitted that PW-6 was present in the Police Station, there is no explanation

as to why, his statement was not recorded at that time and on that basis, why FIR was not registered. He submits that certificate under Section 65-B of the Indian Evidence Act, 1972 is given by the Investigating Officer to the CCTV footage of a Bar where the three accused were found consuming beer, the same is inadmissible in law. He further submits that blood detected on the clothes of the appellant is human, however, the blood group could not be determined. The fact of detection of human blood on the clothes of the appellant was not put to him during his examination under Section 313 of the Code. Therefore, by relying on the judgment of the Hon'ble Apex Court in the case of *Amar Singh and others .vs. State of Punjab*, reported in (1987) 1 SCC 679, *Bollavaram Pedda Narsi Reddy and others .vs. State of A.P.* reported in 1991 Cri.L.J. 1833, *Ramanand @ Nandlal Bharti .vs. State of Uttar Pradesh*, reported in 2022 LiveLaw (SC) 843, *Shankarilal .vs. State of Rajasthan*, reported in (2004) 10 SCC 632 and the decision of this Court in *Criminal Appeal No.179/2022 decided on 04.03.2025* in the case of *Rahul Babanrao Bhad .vs. State of Maharashtra*, he submits that prosecution has failed to prove the case against appellant beyond reasonable doubt and therefore, appellant be acquitted.

7. Learned Additional Public Prosecutor, on the other hand, supported the impugned judgment of conviction, stating that evidence of PW-6 eyewitness is sufficient to convict the appellant. PW-6 has seen the appellant firing the gun-shot and his evidence is supported by the medical evidence. Weapon is seized from the appellant and, therefore, by relying on the judgment of the Hon'ble Apex Court in the case of *Dharam Deo Singh .vs. State of U.P.* reported in *1994 SCC (Cri) 50*, he submits that trial court is justified in convicting the appellant. By relying on the judgment of the Hon'ble Apex Court in the case of *Mustak alias Kanio Ahmed Shaikh .vs. State of Gujarat*, reported in *(2020) 7 SCC 237* and the judgment of this court in the case of *Syed Sarfaraz .vs. State of Maharashtra* and other connected matters, reported in *2023 SCC Online Bom. 2981*, he submits that the discrepancies in holding test identification parade are not so glaring, so as to discard the evidence of test identification altogether. He therefore submits that there is no merit in the appeal and the same may be dismissed.

8. Heard the learned advocate for the appellant and the learned Additional Public Prosecutor for the respondent/State at

length. With their assistance, we have perused the record. We have carefully scrutinized the prosecution evidence and we are of the considered view that the prosecution has utterly failed to prove the charge against the appellant beyond reasonable doubt.

9. The Trial Court has heavily relied on the evidence of eyewitness PW-6 Raju Pathan, who has deposed that he is doing transport business in the name and style as Friends Transport Services. His office is situated at MIDC-2, Akola. On 21.06.2016, he was standing in front of his office at 7.00 pm. One person was proceeding on motorcycle. Two persons then obstructed him and assaulted him. One person having height was assaulting by sword like weapon. He then went towards the place of incident. He saw one person took out revolver and then fired at the person on the motorcycle. Then both the persons sat on the motorcycle and ran away. Person, who received bullet injury, fell down on the road. He identified the appellant as the person who fired from revolver. On 23.8.2016 he was called to the Jail at Akola where test identification parade was held and he identified the appellant in the said parade.

In cross-examination, he admitted that incident had

taken place in front of office of Rungta Tyres. While standing in front of his office, the gate of Rungta Tyre is not visible and the spot in front of Rungta Tyre is not visible from his office. He denied having made this statement “तभी मुझे रूंगटा टायर के सामने के रोडपर झगड़े की आवाज सूनाई दि”. Following omissions were brought on record in his cross-examination. “I had not stated to police that on 21.06.2016, I was standing at 7.00 p.m., I was standing at 8.00 p.m. when I heard the sound of quarrel, one person went on motorcycle and two persons have obstructed him, one person was having tall and at the time of incident there was light of electric pole at the spot and when I went near them they both ran away.” He admitted that he had not given the description of two persons to the police including the dresses worn by them. He admitted that he had seen the two accused persons from behind while they were running away. He did not try to catch the two accused persons, but he shouted. Persons from the area had assembled and he disclosed the incident to them. He had also gone to the Police Station and narrated the incident to the police, but it was not reduced into writing. Police came with him to the spot. He did not try to talk to the injured

who had fallen down. At the time of incident, persons were working in front of Rungta Tyres. His statement was recorded by police on the next day in the afternoon but he had already narrated the incident to police. He further admitted that he reached the spot after the injured fell down on the ground and when the injured fell down, two persons ran away. The entire incident ended in one minute. He has also admitted that he was having connections with the police.

10. From the evidence of this witness, it is clear that incident had taken place at the night time. He does not say about any light available at the spot of incident. In view of his admission that from his office, the spot in front of Rungta Tyre where the incident has taken place, is not visible, it is not possible to believe that he has witnessed the incident. Considering the admissions given by him that incident had taken place within one minute and he has seen the accused persons from behind while they were running away, it is not possible to believe that he has witnessed the incident. Considering the admissions given by this witness in the cross-examination and the omissions and contradictions brought on record, it is unsafe

to rely upon his testimony.

11. **PW-9 Dr. Trishul Padole** is the Medical Officer, who has proved the postmortem report (Exh.74). He found following injuries on the body of deceased Santosh :

- (1) *Gunshot entry wound in the form of lacerated puncture wound over left lateral wall of nose 2 cm below inner canthus of left eye. The wound is cruciate in shape of size 2 cm x 2 cm x bone deep, margins irregular, contused, inverted and blood infiltrated. Central defect of size 1.9 cm x 1.7 cm x cavity deep is seen over the skull. Singeing of hairs not seen around the wound. The area around the perforated wound is abraded, Tattooing was absent. Muzzle imprint absent tract of wound is established from skin over left lateral wall of nose to nasal bone to greater wing of sphenoid bone to meninges over medial side of right temporal lobe. Medial aspect of right temporal lobe of brain near pituitary gland through right temporal lobe through meninges over lateral side of right temporal lobe to right temporal bone. Direction of gunshot would is anterior to posterior, downwards to upwards and towards left to right side.*
- (2) *Gunshot exit wound in the form of puncture lacerated wound seen over right temporal region of head. The wound is stellate in shape of size 4 cm x 1 cm x brain deep, margins irregular, contused, everted and blood infiltrated, Central defect of size 1.2 cm x .8 cm x cavity deep is seen over*

the skull. Brain matter oozing out through the defect. Singeing, tattooing, abrasion collar and dirt collar absent with pieces of skull bone seen in the track.

- (3) Lacerated wound over left frontal region of size 4 cm x 0.7 cm x bone deep margins irregular blood infiltrated with two parallel linear abrasion of length 4 cm each 0.7 cm apart extending from each other extending from lacerated wound towards scalp hair line of left frontal region. Both reddish in colour.*
- (4) Laceration over left ear pinna travels obliquely dividing the pinna in two segments at level of tragus of size 8 cm x .05 cm x muscle deep, margins irregular and blood infiltrated.*
- (5) Laceration over left ear lobule travels obliquely dividing the lobule in two segments at lower end of size 2 cm x 0.2 cm x muscle deep, margins irregular and blood infiltrated.*
- (6) Two parallel linear abrasion over left cheek of length 3 cm x 2 cm, respectively, 0.5 cm apart, reddish in colour.*
- (7) Abrasion over left side of neck of size 3 cm x 1 cm reddish, obliquely placed.*
- (8) Laceration over distal phalanx of right ring finger travels obliquely dividing into segments at level of distal phalanx of size 2 cm x 0.2 cm x bone deep, margins irregular and blood infiltrated.*
- (9) Abrasion over dorsal aspect of right forearm*

3 cm x 2 cm with blackish brownish scab, obliquely placed.

(10) Linear abrasion over left side of back of length 9 cm. reddish in colour, horizontally placed.

He also noticed corresponding internal injuries on head, skull and to the brain.

In cross-examination, he admitted that generally speaking lacerated wounds are possible by hard and blunt object. Individually speaking, injury nos.3, 4 and 5 in Column No.17 are not on any vital organ and not likely to cause death. Injury Nos.3 to 10 are least likely to be caused due to fall on a hard substance. He did not notice skin was burnt with singeing of hair. He admitted that in case of close range shot there will be burning of skin and singeing of hair near the entry wound. He did not notice tattooing and blacking of skin. He did not notice abandon gun powder and metalkic particle of melted bullet in the track of bullet. He did not notice any signs of close range shot. In view of the evidence of PW-9, the prosecution has proved homicidal death of Santosh.

12. **PW-3 Mohd. Rizwan** has proved the spot panchanama (Exh.47). He has admitted that from the road

proceeding towards the left side of the tar road, the premises of Rungta Tyres is not visible. The entire area is deserted in the night and the spot panchanama was prepared in the battery light. He volunteered that light of mobile handset was also used. From his evidence, one thing is clear that no light is mentioned in the spot panchanama and due to absence of light on the spot of incident, the panchanama was conducted in the torch light and the mobile light.

13. **PW-5 Dhanraj Lahode** is the panch to the memorandum statement of the appellant (Exh.55). He deposed that he was working in Zilla Parishad, Akola. On 28.6.2016, he was sent by his office to MIDC Police Station, where one Ramesh Sonone was also present. Two accused were in the police lockup. Police then took out one accused who disclosed his name as Bablu Sanodia (A-1). He deposed that Bablu made a voluntary statement to produce one weapon viz. Pistol. After recording the memorandum statement (Exh.55), Accused Bablu and accused Golu took them in a private vehicle along with police to village Karayya in District Shivni (M.P.). Accused Bablu then asked to stop the vehicle in front of one house and told that

it was his house. Bablu then went inside the house and took out one *Desi Katta* from inside one iron box over the cot. The said katta (Article-1) and three cartridges (Article-2) were seized by seizure panchanama (Exh.57).

In cross, he admitted that he was unable to tell how many rooms were there in the house of Bablu and Golu. How many persons were residing in the house of Bablu and Golu. Both the houses were open. He admitted that there were ladies and gents present in both the houses. Police did not prepare any list of the persons residing in the said house.

14. **PW-15 PSI Harshal Chapale** is the Investigating Officer. He deposed that on 21.6.2016 he received one phone call and the informant informed that one person was lying in injured condition in front of Rungta Tyre Company, MIDC, Akola. Thereafter, he along with the police staff visited the said spot and found one person lying in injured condition there. He then narrated the steps taken by him during investigation. He deposed that appellant-accused no.1 Bablu alias Rameshwar Kuvarsingh Sanodiya and accused no.2 Golu alias Ishwar Jiyanlal Sanodiya were arrested on 26.6.2016. On 27.6.2016

both accused were produced before the learned Judicial Magistrate, First Class, Akola and were remanded to police custody and for almost 14 days they were in police custody. On 28.6.2016 he seized the clothes of accused no.1 Bablu worn by him at the time of commission of offence, vide panchanama (Exh.99). He submitted that in the meanwhile investigation was conducted by PSI Sanap, who has seized the murder weapon and live cartridges from accused no.1 and handed it over to him. While recording his evidence, the Trial Court has noticed that he is not deposing properly and not giving link for collection of evidence properly. He proved the Chemical Analyser's report (Exh.116) and the other correspondence made during the course of investigation.

In cross-examination, he stated that he had not taken entry in the Station Diary after receipt of information from the informant that one injured person is lying in front of Rungta Tyre Company, MIDC, Akola. He has not noted the name of informant in the Station Diary. He did not enquire about the name of person who gave the said information. He stated that PW-6 Raju Pathan did not inform him about the incident when he visited the spot of incident. In the investigation, it was not

revealed to him that PW-6 Raju Pathan gave any information about the incident to Police Station. Though brother of deceased met him at Civil Hospital, but he did not enquire with him about the incident. He admitted that initially he registered Crime No.51/2016 against Rajkumar Yadav. Though he made search of Rajkumar Yadav, but till date, he could not be traced. He did not carry any procedure to declare him as absconding accused. He admitted that PW-6 Raju Pathan had found the spot of incident. He did not enquire with him while drawing spot panchanama (Exh.47). Since PW-6 was having his office in the name of Friends Transport near the spot of incident and he enquired with people nearby the incident, then he came to know that PW-6 is the eyewitness to the incident. Spot of incident is in front of Rungta Tyre Company. He did not record statement of any employee of Rungta Tyre Company. Except PW-6 he did not make enquiry with any person about the incident. He admitted about the location of Friends Transport Company of PW-6 which is situated on the North-South road, which meets to the East-West road, on which Rungta Tyre Company is situated. He further admitted that while drawing spot panchanama (Exh.47), he used battery light, as there was insufficient light. He further

admitted that he did not put seal on Exh.37 to 40, Exh.97, 99, 100. He did not produce the extract of Malkhana register. Property receipt (Exh.135) does not bear the date. He also admitted that after seizure of the articles and prior to deposit with the property department under Exh.135, all seized properties were in his custody and it was stored by him in his room. He admitted that in Exh.135, it is not mentioned that Item Nos.4, 6, 7, 8 and 5 to 10, were in sealed condition. Both the accused were in the police custody remand with effect from 27.6.2016 to 9.7.2016. He arrested both the accused persons on 26.6.2016, however, since accused no.1 did not hand over his clothes at the time of his arrest, his clothes were seized on 28.6.2016. He further admitted that the CCTV Footage does not show who were sitting at the Table in the Bar and he did not collect the evidence that accused nos.1, 2 and the absconding accused had conspired to commit the murder of deceased in a specific manner or mode. He admitted that when two panch witnesses from Fire Brigade office visited the Police Station, at that time, eye-witness was present in Police Station, but he did not record the statement of eye-witness at that time. He further admitted that he did not reduce the discloser statement of the

accused about the firearm. He admitted that Execute Magistrate conducted test identification parade ("TIP") in respect of only one accused on his request. He orally informed PW-6 Raju Pathan to visit at Jail for TIP. He did not remember the date, on which he informed PW-6.

15. On careful analysis of the prosecution evidence, it is clear that evidence of eye-witness PW-6 is not reliable, as he could not see the spot of incident from his office. Spot Panchanama is conducted in the torch light, so also, Investigating Officer has admitted that there was insufficient light on the spot of incident and therefore, he carried out the investigation in the torch light, it is obvious that, at the time of incident, there was no sufficient light on the spot of incident.

16. Fact remains that the eye-witness PW-6 has seen both the accused persons running away from behind. Therefore, no importance can be attached to the identification of the accused in the TIP.

17. It is clear from the evidence of the Investigating Officer that he has conducted TIP after a period of almost two

months. Admittedly, after arrest, both the accused were presented in the Court for Police Custody and Magisterial Custody on number of occasions. Witnesses had opportunity to see them. It is not the case of the prosecution that both accused were produced by covering their faces, therefore the evidence of identification of accused in TIP is not reliable.

18. In *Budhsen Vs. State of U.P. (1970) 2 SCC 128*, it is observed that sufficient precautions have to be taken to ensure that that the witnesses who are to participate in the TIP do not have an opportunity to see the accused before the TIP is conducted. In paragraph of the 50 of the said ruling, it is also observed that undue delay in conducting a TIP has a serious bearing on the credibility of the identification process. In paragraph 59 it is observed that the presence of Investigating Officer at the time of TIP cannot be ruled out, and therefore, no importance can be attached to such TIP.

19. In paragraph 62 it is observed that the conduct of TIP coupled with the hovering of the presence of the police during the conduct of TIP, vitiated the entire process.

20. In ***Subash and Shiv Shankar Vs. State of U.P., AIR 1987 SC 1222***, TIP is held after four months was discarded from consideration.

21. In ***Md Sajjad Alias Raju*** (supra), it is observed:-

“19. In the instant case none of the witnesses had disclosed any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simpliciter cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by PW 8 Saraswati Singh was also not enough to record the finding of guilt against the appellant. We therefore grant benefit of doubt to the appellant and hold that the prosecution has failed to establish its case against the appellant.”

22. In ***Suresh Vyankati Chavhan*** (supra) TIP conducted after 14 days, without following the procedure prescribed by the Criminal Manual for conducting the parade, TIP was held to be vitiated.

23. In the light of aforesaid ratio, it is clear from the prosecution evidence that TIP was held after a delay of two months and at the time of holding said parade, police personnel were present outside the room, in which the TIP was held. The procedure prescribed in criminal manual was not followed while holding the TIP, therefore no importance can be attached to the TIP.

24. Though PW-6 was present in the Police Station for the reasons best known, his information was not reduced into writing and FIR is not registered on that basis. The Investigating Officer has failed to record his statement and there is no explanation in that behalf from the Investigating Officer. He shows the manner in which the investigation is conducted by the Investigating Officer. This further creates doubt about the prosecution case. Admittedly, transport office of PW-6 alleged the eye-witness is not shown in the spot panchanama as well as in the sketch map of the incident.

25. Exh.108, Ballistic Expert Report is proved by the Investigating Officer PW-15. Investigating Officer has deposed that pistol allegedly used in the crime was seized on 29.06.2016

from the appellant. As per the requisition Exh. 112, dated 11.07.2016, the seized articles were forwarded by the Investigating Officer to the FSL. There is no explanation of delay of 14 days in forwarding the seized articles to the FSL. Though the articles were forwarded on 11.07.2016, FSL has received them on 14.07.2016 i.e. after three days of the sending. The carrier who carried articles to the FSL Police Constable Akash Chavhan, is not examined by the prosecution. There is no evidence on record that articles were kept in safe custody in the Police station for 14 days. In this view of the matter, it is unsafe to rely upon the report of FSL and Ballistic Expert Report. Therefore scientific evidence is also no help to the prosecution case.

26. In the light of observations of this Court in Criminal Appeal No.179/2022, for belatedly sending the seized articles to the FSL, the said evidence loses its evidentiary value and no explanation is offered by Investigating Officer for belatedly sending the seized articles to the FSL. Similar is the ratio of the Apex Court in Criminal Appeal No. 1636-1637 of 2023. These decisions support the case of appellant.

27. Learned counsel for appellant was justified in submitting that for not confronting the Ballistic expert's report to the appellant in the statement recorded under Section 313 of the Code, the same cannot be relied upon against the appellant. So also, no question about detection of human blood was put to the appellant while recording his statement under Section 313 of the Code. Therefore, this evidence also cannot be cannot be considered against the appellant.

28. So far as the evidence of recovery of murder weapon from the appellant, it appears that the Investigating Officer has recorded the memorandum statement of the appellant Exh.55, to which PW-5 is the panch witness. Neither PW-5 nor Investigating Officer PW-15 have stated the exact statement made by the appellant. The seizure panchanam of pistol (Exh.57) shows that a common panchanama is conducted for raiding the houses accused Nos.1 and 2 which is not permissible in law. Admittedly, there were many persons present in the house at the time of recovery. In that view of the matter, memorandum statement and recovery panchanam cannot be relied upon to convict the accused.

29. In *Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh, 2022 LiveLaw (SC) 843*, it is held that “.....he confessed and told that he would get recovered the murder weapon used in the murder and his blood stained pant-shirt which he had kept hidden at a secret place. On this, expecting the recovery of murder weapon and blood stained clothes, the SHO along with followers and force, carrying accused Ramanand with him, departed on an official jeep.....”

67. What emerges from the evidence in the form of panchnama is that the appellant stated before the panch witnesses to the effect that "I will show you the weapon used in the commission of offence". This is the exact statement which we could read from the discovery panchnama and the Investigating Officer also could not have deposed as regards the exact statement other than what has been recorded in the panchnama. This statement does not suggest that the appellant indicated anything about his involvement in concealment of the weapon. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source. He may have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered weapon, he was the person who concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the panchnama of the discovery of weapon and the evidence in this regard is that he

disclosed that he would show the weapon used in the commission of offence. In the same manner we have also perused the panchnama Exh.32 wherein the statement said to have been made by the accused before the panchas in exact words is "the accused resident of Roghada village on his own free will informs to take out cash and other valuables".

68. *What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, "I may get discovered the murder weapon used in the incident". This statement does not indicate or suggest that the accused appellant indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.*

69. *In Dudh Nath Pandey v. State of U. P., AIR (1981) SC 911, this Court observed that the evidence of discovery of pistol at the instance of the appellant cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was held that pointing out of the*

weapon may, at the best, prove the appellant's knowledge as to where the weapon was kept.

70. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.”

In the case in hand also since the exact words of the appellant are not forthcoming in the evidence of PW-5 and PW-15, no reliance can be placed on the discovery of murder weapon at the instance of appellant.

30. Learned APP has relied upon **Syed Sarfaraz** (*supra*), wherein it is held that TIP is held so as to enable the investigation agency to put the arrested person for identification in order to make itself sure about arrest of right person. There cannot be any dispute about the said position, however for the observations made *supra*, we are unable to rely on TIP of the appellant.

31. In **Dharam Deo Singh** (*supra*), the defence plea was found to be wholly inconsistent with the medical evidence and evidence of independent eye-witness was corroborated by the medical evidence. As noted *supra*, the evidence of eye-witness is

wholly unreliable in the present case, therefore, this ruling is of no help to the prosecution case.

32. In ***Mustak alias Kanio Ahmed Shaikh*** (*supra*), it is held that evidence of witnesses have to be read as a whole. Words and sentences cannot be truncated and read in isolation. We have carefully evaluated evidence of PW-6 and found him unworthy of credit. Hence, this ruling is of no help to the prosecution case.

33. In ***Leela Ram (dead) through Duli Chand Vs. State of Haryana and another, (1999) 9 SCC 525***, it is held that, “*it is now a well-settled principle that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case and High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contractions are of material dimension, the same should not be used to jettison the evidence in its entirety. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.*” For the reasons

recorded in forgoing paras, this ruling is also no help to the prosecution case.

34. For the aforesaid reasons, we find that prosecution has utterly failed to prove the charge against the appellant beyond reasonable doubt.

35. The appeal, therefore, deserves to be allowed, hence the following order :-

- (I) The appeal is allowed.
- (II) Impugned judgment and order of conviction dated 30.12.2019 passed by learned Sessions Judge, Akola in Sessions Case No.200/2016 is quashed and set aside.
- (III) Appellant Bablu @ Rameshwar S/o Kuwarsingh Sanodiya is acquitted of all the charges.
- (IV) Appellant be released forthwith, if not required in any other case.
- (V) Appellant to execute Bail Bond in terms of Section 437A of the Code of Criminal Procedure.

(Pravin S. Patil, J.)

(Nitin B. Suryawanshi, J.)