

MHTH270014012023 	Presented on : 28/04/2016 Registered on: 28/04/2016 Decided on : 10/02/2025 Duration : 08Y.09M 13D
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Exh.202

FORM NO. XXXII Part 'A' (Title Page of Judgment) [Para 44(i) of Chapter VI of Criminal Manual]		
<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BELAPUR.</u> Present :- Parag A. Sane, Addl. Sessions Judge, Belapur.		
	<u>SESSIONS CASE NO.</u>	<u>235/2023</u> <u>Old Thane</u> <u>Sessions Case</u> <u>No. 155/2016</u>
	FIR/Crime No.	I 334/2015
	Police Station :	Nerul Police Station
Complainant/ Prosecution	State of Maharashtra, through Nerul Police Station, Navi Mumbai.	
Represented by -	Ld. A.P.P. Shri. Yogendra Patil.	
Accused	1] Ilahi Marimshaha Shaikh Age-21 years, Occ- Business, R/at- Sainagar Bail Bajar, Malkapur Road, Karad, Dist- Satara. 2] Shahid Najir Sutar Age-25 years, R/at- Prakash Nagar, Krishna Naka, Mangalvar Peth, Karad, Dist- Satara.	

	3] Malhari Hanmant Gujale Age-21 years, Occ- Daily wages. R/at- Revangaon, Tal- Khanapur, Dist- Sangali. 4] Sangita Swapnil Patil Age-22 years, Occ- Housewife, R/at- Nhava, Tal. Panvel, Dist- Raigad. 5] Shevanta Maruti Gaikwad Age-50 years, R/at- house no.431/2, Near Bharat Garage, Gaondevi Chawl, Nerul, Sector-20, Navi Mumbai.
Represented by	Ld. Advocate Shri. Baba Shaikh for the accused Nos.1 and 2. Ld. Advocate Shri. Shankar Katkar for the accused No.3. Ld. Advocate Smt. Anjali Gopale for the accused nos.4 and 5.

Part 'B'

[Para 44(ii) of Chapter VI of Criminal Manual]

Date of Offence	01/12/15
Date of FIR	01/12/15
Date of Charge-sheet	25/04/16
Date of framing of Charges	03/12/18
Date of commencement of Evidence	24/02/21
Date of which judgment is reserved	-
Date of the Judgment	10/02/25

Date of Sentencing the order, if any	As per final order
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Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428
1.	Ilahi Marimshaha Shaikh	05/12/15		302, 120(B) of IPC.	Acquitted	As per final order	
2	Shahid Najir Sutar	“__”		“__”	Acquitted	As per final order	
3	Malhari Hanmant Gujale	06/12/15		“__”	Acquitted	As per final order	
4	Sangita Swapnil Patil	05/12/15		“__”	Acquitted	As per final order	
5	Shevanta Maruti Gaikwad	06/12/15		“__”	Acquitted	As per final order	

Part "C"

[Para 44(ii) of Chapter VI of Criminal Manual]

List of prosecution/Defence/Court witnesses.

A Prosecution :

Rank	Name	Nature of Evidence.
P.W.1	Jitendra Damodar Mhatre, Exh.32	Informant
P.W.2	Kishor Kashinath Khasrivale, Exh.39	Panch Witness
P.W.3	Ramchandra Mainu Bhagat, Exh.44	Panch Witness
P.W.4	Krupalsingh Mahendrasingh Negi, Exh.47	Panch Witness
P.W.5	Mehndi Hasan Abdul Alim Shaikh, Exh.57	Witness
P.W.6	Mehboob Abbas Shaikh, Exh.64	Witness
P.W.7	Tausif Mohammad Shaikh, Exh.65	Witness
P.W.8	Namdeo Kashinath Patil, Exh.67	Witness
P.W.9	Sameer Amanulla Patel, Exh.68	Witness
P.W.10	Sunil Anil Sathe, Exh.71	Witness
P.W.11	Ramchandra Budhya Ghatal, Exh.73	Witness
P.W.12	Aasif @ Sher Alam Khalilur Rehman, Exh.76	Witness
P.W.13	Dr. Bhushan Vilasrao Jain, Exh. 80	Medical Officer
P.W.14	Mahesh Damodar Thakru Exh.93	Witness
P.W.15	Sangita Rajesh Patil, Exh.94	Witness
P.W.16	Bibija Abdul Salim Shaikh, Exh.98	Witness
P.W.17	Sandeep Maruti Gaikwad, Exh.100	Witness
P.W.18	Ravindra Jagunnath Mhatre, Exh.101	Witness
P.W.19	Changdev Haribhau Godse, Exh.106	Witness.
P.W.20	Jagvendrasingh Navalsing Rajput, Exh.136	I.O.

P.W.21	Arjun Vitthal Gaikwad, Exh.173	Witness
P.W.22	Nitin Jagnnath Shinde, Exh.189	Witness
P.W.23	Vijay Eknath Shinde, Exh.198	Nodal Officer.

B. Defence witnesses, if any :

Rank	Name	Nature of Evidence.
	NIL	--

C. Court Witnesses, if any :

Rank	Name	Nature of Evidence.
	NIL	--

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS.**A. Prosecution :**

Sr. No.	Exhibit	Description
1.	Exh. 24	Charge
2.	Exh.33, PW1	Complaint
3.	Exh.34, PW1	FIR
4.	Exh.40, PW2	Panchanama
5.	Exh.45, PW3	Seizure Panchanama
6.	Exh.48, PW4	Memorandum Statement
7.	Exh.69, PW9	Entries regarding I.Cards
8.	Exh.81, PW13	Acknowledgment
9.	Exh.82, PW13	Postmortem Report
10.	Exh.102, 103, PW18	Letters regarding Identification parade.
11.	Exh.104, PW18	Panchanama

12.	Exh.107, PW19	Letter regarding mobile
13.	Exh.108, PW19	Certificate u/s.65-B
14.	Exh.109, PW19	Documents regarding CDR, SDR, Customer information form.
15.	Exh.174, PW21	Letter
16.	Exh.175, PW21	Panchanama
17.	Exh.177, PW21	Muddemal receipt
18.	Exh.178, PW21	Portion Mark A
19.	Exh.137, 138, 141, PW20	Arrest Panchanama
20.	Exh.139, 140, 145,152,153, PW.20	Letters
21.	Exh. 142, 143, PW20	Panchanama
22.	Exh.144, 148, 154, 155, PW20	Muddemal receipt
23.	Exh.146, PW20	Memorandum Statement
24.	Exh.147, 151, PW20	Seizure Panchanama
25.	Exh.149,150, 157, PW20	Letter
26.	Exh.158, PW20	Information regarding Registration.
27.	Exh.159, PW20	Page no.197 to 213 regarding Station Diary.
28.	Exh.160, 161 PW20	C. A. Report
29.	Exh.162 to 169 PW20	Portion Mark A to B
30.	Exh.170 PW20	Portion Mark B
31.	Exh.179 to 185 PW20	Labels
32.	Exh.174, PW21	Letter
33.	Exh.175, PW21	Inquest Panchanama
34.	Exh.177, PW.21	Muddemal receipt
35.	Exh.178, PW21	Portion Mark A
36.	Exh.190, PW.22	Report
37.	Exh.191, PW.22	Meddemal Receipt
38.	Exh.192, 193 PW22	Arrest Panchnama
39.	Exh.194 to 196 PW22	Labels.

B. Defence :

Sr. No.	Exhibit	Description
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C. Court Exhibits :

Sr. No.	Exhibit	Description
1.	Exh.24	Charge.
2	Exh.198 to 201	Statement u/s.313 of Cr.P.C.

D. Material Objects:

Sr. No.	Material Object number	Description
1	Article-G	Pink bag
2	Article-H	Blue Shirt
3	Article-I	Blue Pant
4	Article-J	Pink Shirt
5	Article-K	Brown Pant
6	Article-L	White Shirt
7	Article-N	Blue Jeans Pant.

J U D G M E N T**(Delivered on :- 10th of February, 2025)**

1] The accused persons are chargesheeted for the offence punishable under Sections Sec. 120-B, 302 r/w.34 of IPC.

2] **Case of the Prosecution in brief is as under:**

One first informant Jitendra filed report to the police on 01/12/2015 whereby it is contended that on that day, he received call from his nephew Satyavan that his other nephew Swapnil Namdev Patil had sustained grievous injury and was admitted in D.Y. Patil Hospital at Nerul.

Accordingly, he immediately rushed there where the doctor informed him that he was dead. There were injuries on his forehead, chest. Deceased Swapnil was married to Sangita Maruti Gaikwad 7 years back and had two children; one daughter Akshara – 5 years old and a son Jeevan – 2 years old and both of them used to go to Nerul. It is also contended that Sangita was having illicit relations with Mahesh Damodar Thakur and on that count, deceased Swapnil enquired with Mahesh Thakur. At that time, Mahesh Thakur quarreled with him and threatened to see him. On 01/12/2015 at 12.30, his nephew Swapnil went from Nhava village on motorcycle and thereafter, the informant received the information from Satyavan that Swapnil was brought to D.Y. Patil Hospital in injured condition and on getting the visiting card in pocket of the deceased, Satyavan was called. Thus, it is contended that some unknown person killed Swapnil. On the basis of this, crime came to be registered.

3] During the course of investigation, the investigating officer carried out the spot panchnama. Initially, there was suspicion against Mahesh Thakur. But during the course of investigation, it is transpired that Sangita was having love with Ilahi alias Salman Marim Shah Shaikh and it was further transpired during the course of investigation that the accused no. 1 Ilahi, accused no. 2 Shahid and accused no. 3 Malhari with furtherance of common intention with accused no. 4 and 5 committed murder of the deceased and also they had criminal conspiracy to kill the deceased. During the course of investigation, statement of witnesses were recorded. The accused persons were found residing at lodge before the commission of offence and after commission of offence at Karad. The samples were obtained, sent for chemical analysis, muddemal stone was

seized and it was transpired that the accused persons killed the deceased on 01/12/2015 prior to 7.35 hours at Ramleela Maidan, Sector 12, Nerul. The accused were arrested. Identification parade was done and after completing the investigation, chargesheet is filed against the accused persons.

4] The offence is exclusively triable by the court of sessions. Accordingly, the case is committed u/sec 209 of CrPC.

5] On hearing both the sides, charge is framed at Exh.24. Particulars of the charge were read over and explained to the accused in vernacular to which they pleaded not guilty and claimed to be tried.

6] The prosecution has examined the witnesses.

7] Statement of the accused u/sec 313 of CrPC is recorded. It is their defence that they have not committed any offence and are falsely involved in this case.

8] In defence, the accused has not led any evidence.

9] I have heard the arguments canvassed by the learned APP Mr. Yogendra Patil and the learned counsels Adv. Mr. Baba Shaikh, Adv. Smt. Gopale and Adv. Mr. Katkar for the accused at length.

10] Considering the case of the prosecution, theme of cross-examination, answers given by the accused while recording their statement u/sec 313 of CrPC, arguments canvassed by both the sides following points arise for my determination to which I have recorded my findings before

them for the reasons discussed therebelow:

Sr.No.	Points	Findings
1	Whether the prosecution proves that on 01/12/2015 prior to 07.35 hrs. at Ramlila Maidan, Sector-12, Nerul, Navi Mumbai all accused agreed with accused no.1 Ilahi @ Salman Mariha Shaikh, No.4 Sangita Patil and No.5 Shevanta Gaikwad to commit murder of Swapnil Namdeo Patil, by illegal means and in presence of the said agreement all accused committed murder of Swapnil Namdev Patil punishable with death or improvement for life and thereby committed an offence punishable u/s.120-B of I.P.C.?	... Not proved.
2	Whether the prosecution proves that on the aforesaid date, time and place all accused in furtherance of their common intention committed murder intentionally or knowingly causing death of Swapnil Namdev Patil by assaulting with stone on his forehead, behind the head and other parts of his body and thereby committed an offence punishable u/s.302 of I.P.C.?	... Not proved.
3	What order?	... As per final order.

REASONS

ARGUMENTS:

11] Learned APP – Mr. Yogendra Patil, while canvassing the

argument submitted that the prosecution has successfully proved the guilt of the accused. He submitted that there are two eye witnesses which cannot be disbelieved. He further submitted that there is consistency in the evidence. He also submitted that if there is a faulty investigation, it would not benefit the accused persons. He submitted that there is well corroboration and charge levelled against the accused is proved beyond reasonable doubt. Hence, he submitted that the accused be convicted. During the course of argument, he cited certain case laws which are discussed at the relevant places.

12] The learned counsel Mr. Baba Shaikh, for the accused submitted that as per the prosecution with a particular motive, offence has been committed. However, motive has not been proved. He submitted that the so-called motorcycle recovery is itself doubtful. It is seen from the two eye-witnesses i.e PW 5 and PW 12 who are star witnesses of the prosecution that these two witnesses were detained by the investigation officer in police station for 5 days and during that period, they had the occasion to see the accused persons. He submitted that considering the evidence of these two eye-witnesses, it is not believable and in such contingencies, the identification parade which is subsequently taken is of no means. He submitted that the statements of these two witnesses were obtained by the investigating officer under threat, promise etc. He further submitted that the investigation is not faulty but it is a manipulated one. He also submitted that there is no evidence supporting the case of prosecution that before commission of crime and after the commission of crime, the accused persons stayed together at a lodge at Karad. Thus, it is submitted that there is no cogent and consistent evidence in order to prove that the

accused has committed murder of the deceased and ultimately, he submitted that for these reasons, the charge is not proved beyond reasonable doubt. Hence, he submitted that the accused be acquitted. He has also cited case law which is discussed at relevant place. I have heard Adv. Smt. Gopale and Adv. Mr. Katkar.

As to point no. 1 and 2:

13] It is the case of the prosecution that the accused persons have committed murder of Swapnil in furtherance of their common intention and they had hatch conspiracy. It is the case of the prosecution that the accused no. 4 is having love affair with accused no. 1 Ilahi and with a particular motive, all the accused persons killed Swapnil. It is the case of the prosecution that on 01/12/2015, the incident occurred before 07.35 p.m at Ramleela Maidan, Sector 12, Nerul Navi Mumbai whereby at that time, Swapnil was assaulted. He sustained injuries on his head and other parts of his body. He was taken to D.Y. Patil Hospital and at that time, the doctor told that Swapnil was dead. So, in such contingencies, it is imperative to see whether the death of Swapnil is a homicidal death or not. In this regard, the prosecution has examined PW 13 Dr. Bhushan Vilasrao Jain, a medical officer of NMMC at exh. 80. As per this witness, he is having qualification in MBBS and diploma in forensic medicine. He is having vast experience of more than 19000 autopsies. On 02/12/2015, dead body of Swapnil Namdev Patil was given to him for post-mortem and on the same day, he carried out the post-mortem between 11.45 a.m. to 01.15 p.m. and he found in all 13 external injuries on his person which are more particularly stated on column 17 of the post-mortem report and he found 3 internal injuries which are mentioned in column 19 of the post-mortem

report. As per his contentions, all the injuries are ante-mortem. He kept blood for alcoholic estimation, obtained blood sample for grouping, obtained nail samples, plucked hair. Final cause of death is head injury due to multiple hard and blunt impact and that post-mortem report is at exh. 82. He has further opined that the death of the deceased was within 12 to 24 hours before conducting autopsy. So it can be seen that the autopsy was done on 02/12/2015 at about 11.45 a.m. So it can be said that the death has been caused on 01/12/2015 before 11.45 p.m. He has further opined that by the weapon "stone" which is at Exh. D, such injuries are possible. He has particularly opined that it is a homicidal death. The witness is duly cross-examined whereby he admitted that he cannot opine whether there exists blood mark on the stone or not. He further admitted that in first impact, the person may shout or cry. He also admitted that the injury may occur by similar type of weapon and it may also occur by iron rod or wooden bat. Thus, considering the evidence of this witness, there is nothing to disbelieve that the death of Swapnil is a homicidal death.

14] Now, it is to be seen from the evidence led by the prosecution that whether the accused persons committed murder of the deceased. In such contingencies, before discussing the entire evidence of the prosecution witnesses, as according to the case of the prosecution, there are two eye-witnesses, it would be proper to see evidence of these two witnesses for proper appreciation of evidence. Those are PW5 Mehendi Hasan Abdul Alim Shaikh at exh. 57 and PW 12 Asif alias Sher Alam K Rahman at exh. 76.

15] Now turning to the star witness, PW5 Mehendi at exh. 57; it is

coming from his evidence that he got acquainted with Swapnil just 8 days before the incident. Swapnil was residing at Uran. Asif was residing near his house. Swapnil's in-laws house was at Nerul. He used to go there. One day, before the incident, at night, Swapnil came and slept in the house of Asif and at about 3.00 to 4.00 a.m, Swapnil took the motorcycle and left the house. He told that he was going to Satara to get his friend. At 10.30 a.m., Swapnil, Salman, Shahid and Malhari came near Zopadpatti near Balaji temple. They were drinking liquor. They also called Asif and he also started drinking. However, he did not consume it. Then all of them went near Namdev lake. Then, he went for his labour work of lifting sand. Swapnil told him and Asif to come to Ramleela Maidan in the evening. At that time, he himself and Asif went to Ramleela Maidan on bike. They parked their vehicle. It was around 6.30 p.m. Swapnil's motorcycle was at busstop. He heard shouting of Swapnil and hence, went near the busstop. He saw that Salman was assaulting Swapnil by stone. Shahid and Malhari were holding hands of Swapnil. Seeing him, they fled away by taking Swapnil's bike. Swapnil sustained injuries on his head. His head was pressed and blood was oozing. Seeing that, he and Asif fled away on motorcycle. The stone by which the assault was committed was lying there and it was having blood stains. It was a big stone of about 1 and half feet diameter.

16] It has further come in his evidence that at about 3.00 a.m., the police came, took his brother and Asif. Thereafter, at 9.00, he himself and his mother went to Nerul police station. The incident occurred on 01/12/2015. After going to the police station, the police recorded his statement. He stated that he can identify stone by which assault was committed. On 09/12/2015, his statement was recorded before the

magistrate.

17] On 10/02/2016, he was called to Taloja jail for identification parade in which he identified Salman, Shahid and Malhari. He identified those persons in the court. He has further stated that due to the number of years passed, he cannot identify the stone which is at article “B”.

18] Thus, it can be seen that there are several highlights in his evidence as such he was knowing Swapnil just 8 days before the incident. He, his friend Asif joined Swapnil where Swapnil, Salman, Shahid and Malhari and Asif were drinking liquor. Thereafter, according to his contentions, at about 6.30 p.m., as per the say of Swapnil, he visited Ramleela Maidan where he found Swapnil’s motorcycle. He witnessed the incident that Salman assaulted Swapnil by stone and Shahid and Malhari had held hands of Swapnil and thereafter, they fled away on Swapnil’s bike. Swapnil had sustained injuries on his head. On seeing that, he and Asif fled away. Another important aspect coming is that on the night of the incident, he visited the police station whereby Asif was taken and his statement was recorded. Third aspect is that his statement before the magistrate was recorded on 09/12/2015. Fourth aspect is that he identified the accused persons in identification parade which was conducted on 10/02/2016 and the fifth aspect is that he identified the accused persons in the court. The above points are reiterated from his examination-in-chief because on each and every aspect, the witness is cross-examined and arguments are canvassed on this aspect.

19] Now turning to the cross-examination of this witness. But before discussing the cross-examination, it is submitted by the learned

counsel that as per this witness, who has specifically stated that at about 3.00 to 4.00 a.m., Swapnil went on motorcycle to Satara to bring his friends and returned at about 10.30 a.m. This is highly impossible. It is submitted that this aspect cannot be believed. Now in the cross-examination, the witness has particularly shown the muddemal stone whereby he admitted that the muddemal stone which is seized is 6 to 7 inches and it is different from the stone of 1 to 1 and half feet in diameter. In this regard, the learned counsel for the accused submitted that the so-called muddemal property “stone” is different from that of the alleged “stone” in the incident. Here it is to be noted that before drawing any inference regarding this aspect, it is necessary to see the entire evidence before drawing any inference.

20] Further from his cross-examination, he has stated that at Ramleela Maidan, children used to play cricket. There is a bus-stand adjacent to the ground. People going to the bus-stand go through the ground. He admitted that he did not call the adjoining people for help. He further admitted that it was possible on his part to chase the assailants on motorcycle. It was also possible for him to take the injured to the hospital and to give the information of the incident to police. He further admitted that he did nothing out of it. He has denied that he and his friend were not present at the incident at the time of alleged incident and therefore, they did nothing out of this. In view of the above cross-examination, it is submitted on the side of the defence that the above admissions are fatal to the prosecution. He submitted that the present witness who was knowing Swapnil, Salman, Shahid and Malhari, in the natural course of conduct, it would be his reaction to help Swapnil. He and Asif should have shouted to gather people which they did not do, neither did they intervene to save

Swapnil from assault. Furthermore, they did not even bother to inform the police immediately at the relevant time. So he submitted that the conduct of this witness is itself doubtful. While canvassing the argument, he also submitted that there are certain important aspects which are coming from his cross-examination, which will destroy his creditability. He further submitted that the evidence of this witness is a manipulated one. Turning further to his cross-examination, he has admitted that police took him to the police station at about 3.00 a.m. He further stated that he narrated the whole incident to the police. Police kept him and Asif for 5 days. The accused were in lockup and he was outside. At that time, the police asked him to identify the accused. He further denied that at that time, the police told that the accused persons were arrested for murder of Swapnil. He denied that the police told him at that time that if he did not give the statement then they would be arrayed as accused. He denied that he identified the accused persons in the court at the instance of police. He further stated that the next day after the incident, police recorded his statement and thereafter, they did not record his any statement. There are certain omissions which are brought on record on the side of the defence that he and Asif went to Ramleela maidan on motorcycle. There is omission regarding the motorcycle. There is also omission that Swapnil was shouting. Moreover, there is also omission that the accused assaulted Swapnil by stone and Shahid and Malhari had held hand of Swapnil. There is also omission that head of Swapnil was pressed.

21] In view of the above cross-examination, the learned counsel for the defence submitted that this witness is a brought up witness by the prosecution. He submitted that in natural course of conduct regarding the

reaction of a prudent normal man is absent. We have already seen regarding his conduct at the relevant time. Further, it is important to note that this witness has stated that he and Asif were kept with the police for 5 days. Naturally, in such contingencies, it is to be noted that for what reasons, they were kept with the police. The prosecution has not given any explanation. Neither this witness was recalled by the prosecution on this aspect. So the question comes into mind that why this witness and Asif were kept with the police for 5 days and another important aspect coming on record is that as per this witness on the next day of the incident, his statement was recorded and thereafter, his statement was never recorded by the police. In this regard, the learned counsel has pointed out that the statement of this witness was recorded on 07/12/2015 and there is no statement as on 02/12/2015. He submitted that the admission of this witness is not a stray admission because the witness has particularly admitted that when the police took him at 3.00 a.m, he narrated the whole incident to the police and the police recorded his statement. Thus, it is submitted that when he was at police station, this witness admitted that the accused persons were in lock-up and they were outside. He also submitted that at that time, the police asked him to identify the accused. It is submitted on the side of the accused that this aspect of evidence is a crucial one because the identification parade is taken on 10/02/2016 i.e after two months of so-called incident. Thus, it is submitted that in such contingencies, the evidence of this witness cannot be trusted and that too, the identification parade cannot be believed. Considering the entire evidence of this witness, this witness has made certain improvements and there are certain omissions which are discussed above. Furthermore, the above admissions given by this witness are also significant in this case.

Now before coming to any conclusion regarding the evidence of this witness, it is necessary to see the evidence of another eye witness Asif.

22] The prosecution has examined Asif alias Sher Alam K Rahman at exh. 76. It has come from his evidence that he was knowing Swapnil and on 29/11/2015, Swapnil brought liquor. Mehendi Hasan and Ram were also present. Swapnil left after some time and again came in the evening at about 8.00 p.m. Again he brought liquor. At that time, he himself, Ram and Swapnil consumed liquor but Mehendi did not. Next day, he alongwith Swapnil, Ram and two friends of Swapnil went at Golden Gate bar to have liquor. Thereafter, Swapnil demanded money to his father which he refused. Then he himself, Ram went to their house. Again in the evening, Swapnil asked him to come at Sunil bar at Belapur. He further stated that on 01/12/2015, at about 3.00 a.m., Swapnil told that he was going to receive his three friends who were coming from Satara. So he went on bike. Then they met near Balaji mandir at about 10.00 a.m. to 11.00 a.m. Swapnil was accompanied with other three persons and Swapnil introduced one of them as Salman. At that time, Swapnil was having three liquor bottles. Then all of them went to Ramdev Bhagat lake. Some other boys who were knowing Swapnil were also present. Then he returned at about 2.30 p.m. and Mehendi also returned to his work place. At that time, Swapnil and his three friends and Ram were drinking liquor. Later Ram also went away to his work place. Thereafter, Swapnil came to them and told that he was going to Ramleela maidan and also asked to accompany him. After completion of work, at about 6.00 p.m., he and Mehendi went to Ramleela maidan on bike. They found that bike of Swapnil was parked near Sarsole bus depot. They parked their vehicle. At that time, Swapnil

and his three friends from Satara were shouting. He rushed to the spot and saw Swapnil lying on the ground from some distance and those three persons fled away on the vehicle of Swapnil. Blood was oozing from the head of Swapnil. Those persons assaulted Swapnil with stones. They were frightened. They left the spot. Stone was lying there. Some big stones were also lying there. He identified article "B" i.e the stone. His statement was recorded by the police as well as before magistrate. He identified the accused persons.

23] From the cross-examination, he admitted that he was knowing Swapnil since last two months. They used to consume liquor. He admitted that after consuming liquor, they used to sleep where they were working. Two days before the incident, around 15 to 20 persons had drunk liquor. As per his contention, the incident occurred on the 1st. He does not remember whether he consumed liquor before 3.00 a.m. Swapnil went away at 3.00 a.m.

24] The incident occurred at Ramleela maidan. There is a bus depot. Several persons used to play cricket on the said maidan. Many people used to come for walk. It was around 6.00 to 7.00 p.m. It was dusk and was slight dark. He stated that he parked his vehicle out of the ground and from there he saw the incident. Nobody was between them. The bus stop is adjacent to the spot of the incident. He does not remember whether there was crowd at bus depot. He has stated that he has not told the police that they did not go on motorcycle but they walked. No doubt, there is an omission to that extent but I am of the view that this omission is not material one. The witness admitted that he has not chased the assailant.

He further admitted that they did not go near Swapnil in order to ascertain whether he was alive or not and whether he required any help. He also admitted that they did not take any efforts to take Swapnil to hospital. He did not rush to the police and neither did he call the police or inform the police. He further admitted that the police took him and Ram to the police station. The police took him at about 3.00 to 4.00 a.m and made enquiry with him. He told the information which he was having. On that day, the police did not permit him to go away. At night, the police also brought Mehendi and made enquiry with him. He stated that however, the police did not record their statement. He further admitted that both of them were with police for 4 days and the police recorded his statement on 7th i.e one week after the incident and also recorded the statement of Mehendi. He admitted that after recording his statement, he was permitted to go away. He has denied that the police compelled him to give statement as per their whim and that he is deposing at the instance of police.

25] Considering the above cross-examination, the learned counsel for the accused submitted that this witness and Mehendi were at police station for 4 days and after recording their statement, they were asked to go. So he submitted that this aspect is a crucial aspect as no explanation is given by the prosecution that for what reasons, for 4 days this witness and Mehendi were detained by the police. Further, it is important to note that no re-examination of this witness, in this regard, is on record.

26] Turning further to his cross-examination, he admitted that he saw from the distance that Swapnil was lying and three persons assaulted Swapnil and that he saw big stones at the spot. This omission is considered

and it is seen that this witness has not stated while recording his statement. Further from his cross-examination, he admitted that police did not call him for identification parade. He has denied rest of the suggestions given on the side of the accused.

27] Thus, considering the evidence of this witness, it is pointed out that this witness was detained by the police for 4 days and once his statement was recorded, he was permitted to go. Further, this witness has done certain omissions. Here it is pointed out that this witness was not called for identification parade and thus, it is submitted that this witness and PW5 who were detained by the police and their omission and the natural course of conduct of both these witnesses that according to them when they witnessed the incident, they did not rush there to help Swapnil. Neither did they chase the assailants nor did they call or inform the police immediately. The natural course of conduct of these witnesses is very suspicious because these two witnesses are not the accidental witnesses/chance witness but as per their contentions, they were called by Swapnil. Then, the question comes into mind why did they abstain themselves from doing above acts to which there is no reasoning. Thus, the silence of these two witnesses is weighed in one hand and on another hand, the aspect that they were detained by the police for 4 days and they were permitted to go after their statement was recorded. So this aspect of their evidence in one hand is considered, it creates the doubt about the investigation in this regard. Further, it is important to note that as per PW5, he had the occasion to see the accused persons when he was detained by the police i.e much before the identification parade. So all these factors play a significant role in the present case. Now in such contingencies, in

the light of above evidence, I am of view that the case of the prosecution requires proper corroboration and cogent evidence and one cannot solely rely on the evidence of above two witnesses.

28] The informant PW1 Jitendra Mhatre (Exh.32) as per this witness Swapnil was his nephew and marriage of Swapnil was performed with Sangita Maruta Gaikwad whereby they had begotten two children. It is further contended that Sangita fled away with Mahesh Thakur when her son was 6 months old. They had illicit relations and after four days she returned. She was given understanding but still she stayed with Mahesh at Nerul for 4 months. Two days before incident father of Swapnil brought Sagnita to matrimonial house on understanding. On 1st of December 2015 at about 12noon, Salman came to Swapnil and the informant came to know the said fact from his niece Jagruti Koli. Thereafter, he narrated the fact that he visited hospital, found deceased in hospital. He lodged report. He further stated that next day, he informed police that motorcycle of Swapnil was not found and motorcycle was bearing no.MH46AQ547. Thereafter, police told him that the said motorcycle is seized from the accused. So, so far as the first part of the evidence is considered it is hearsay evidence. Second part in evidence is considered from cross-examination of this witness he has particularly stated that on 06th of December 2015 he went to police station and 5 accused persons were present. On that day, motorcycle of Swapnil was in police station and he identified the same. So, as per this witness it is coming on record that he has seen the motorcycle on 06th of December 2015. The Ld. Counsel for the accused submitted that the evidence of this witness is a crucial one because he submitted that as per the prosecution the motorcycle is seized on 07th of December 2015 vide panchanama at

Exh.48. However, as per the evidence of this witness it is seen that the motorcycle of Swapnil was shown to him on 06th December, 2015 i.e., a day before seizure panchanama of motorcycle.

29] Kishor Kahsinath who is a panch witness at Exh.39 is a PW2. As per this witness, on 01/12/2015 he visited Nerul police station at about 10.30p.m., thereafter P.I. Gaikwad took them to Ramlina Maidan at about 10.30 p.m., where they found blood was lying, Sample of blood, soil, soil with blood, hair stain was seized. Moreover, stone was seized and panchanama was drawn. From his evidence there is nothing to disbelieve that panchanama was prepared at the relevant time and certain muddemal and blood samples etc., was seized.

30] PW3 Ramchandra Bhagat at Exh.44 as per this witness on 05/12/2015 police called him for panchanama. He went to Nerul police station. Accused Ilahi and Sutar were present. Thereafter, they seized clothes of Ilahi and sundry items from him. He further stated that he does not remember whether any article was found with accused Sutar. According to him, panchanama was prepared and it is at Exh.45.

31] This witness has further stated that thereafter, again he was called at Nerul police station after some days were accused Ilahi was present and police Rajput was present. Accused was ready to show place of incident and motorcycle and accordingly, at the instance of accused motorcycle was seized on 07/12/2015 he in some aspects has not supported the prosecution for third time. He visited police station. From his cross-examination, he admitted that when he went to police station for second

time writing was going on and police gave it to him and he signed on It. Accordingly, it is submitted that it creates the doubt whether in fact memorandum statement and the seizure is done in the presence of this witness. In order to substantiate the contention of the prosecution regarding seizure of vehicle they examined another panch witness Krupal Singh Negi PW4 at Exh.47. As per this witness, he works as a panch witness. Certain articles were seized from Salim Shaikh and that panchanama is at Exh.45. On 06th of December, police called him. Police prepared panchanama but he does not remember what was exactly done. Then on 07/12/2015, he and Ramchandra i.e. PW3 were called to police station and at that time, accused Salim and he were ready to show motorcycle. Thereafter, at the instance of the accused they visited the spot and at Nerul Railway station motorcycle was seized. Moreover, clothes have been seized and that seizure panchanama is at Exh.48. He has identified the accused persons. From his cross-examination on 07/12/2015 police enquiry was completed. The accused took them in the open space. Here in this regards the Ld. Counsel for the accused submitted and pointed out that as per PW-1, motorcycle of Swapnil was shown to him on 06th of December while as per these two witnesses the motorcycle is seized by the memorandum panchanama vide Exh.48 on 07/12/2015. So, it is submitted that in such contingencies the evidence of this witness could not be believed as it goes to the root of the matter. In view of the above situation, now it is necessary to see evidence of the I.O. Mr. Rajput at Exh.20. The witness has particularly stated regarding the investigation and the work which he has done during the investigation. According to this witness, memorandum statement was recorded, muddemal was seized and motorcycle came to be seized. The witness is duly cross examined and during the cross-examination, it is

particularly coming on record that he has seized motorcycle of deceased on 07/12/2015 and in order to identify the vehicle of the deceased he called and examined uncle of deceased i.e. PW1. He further stated that supplementary statement of PW1 is recorded on 06/12/2015 and in his supplementary statement it is particularly stated that the said witness has identified the said motorcycle of the deceased. In order to give this explanation, the witness stated that date is mistakenly stated. However, it is important to note that even though it is considered that date is mistakenly stated but PW1 uncle of deceased has particularly stated in his evidence that the motorcycle was shown to him on 06th of December 2015. So in such contingencies one cannot say that the date on the supplementary statement is mistakenly stated. So, this fact goes to the root of the matter. So, in such contingencies it creates the doubt regarding the memorandum statement and the seizure panchanama dated 07/12/2015 at the instance of the accused.

32] PW6 Mehboob Abbas Shaikh at Exh.64. He has not supported the prosecution case. As per the prosecution, he is a panch witness and he visited lodge at Karad where the accused person stayed. The witness is duly cross examined. However, nothing is transpired from his cross-examination in order to support the prosecution case.

33] Tasif Shaik is a panch witness PW7 at Exh.65. As per this witness on 09/12/2015 he was called at Kolhapur naka, Karad at Sagar lodge where panchanama was prepared. Another panch was Mehboob but he denied that the panchanama was prepared in his presence and register was seized. The witness resile and did not support prosecution. However,

from his cross-examination, prosecution is not able to bring fruitful material in order to support the prosecution case.

34] PW9 Samir Patel at Exh.68. As per this witness, in the year 2015 he was working as a Manager at Sargam lodge, Kolhapur Naka Karad. It is seen from his evidence that on 02/12/2015 he had not checked to whom rooms were allotted. He has verified the register and there was entry in name of Ilahi Shaikh at Room no.107 and that was allotted to three persons. He just identified article E i.e., a register. But he stated that there is no identification of other two persons. Thus, considering evidence of this witness, it is nowhere coming on record that who were the persons accompanied with accused Ilahi. So, the evidence of this witness is not helpful to the prosecution except the contentions that there was entry in name of Ilahi.

35] PW10 Sunil Sathe at Exh.71. As per this witness in the year 2015 he was working as a Manager at Sargam Lodge, Karad. He stated that he cannot state as to whether on 02/12/2015 accused no.1 to 3 came to the lodge and resided there. From his further evidence, he has not supported the prosecution and from his cross-examination, prosecution is not able to bring on record any material in support of prosecution except the register.

36] From the evidence of the aforesaid witnesses here it is the case of the prosecution that after the incident the accused persons fled away and stayed at lodge at Karad. Thus, as per the prosecution these facts related to motive of the illicit relations of accused Sangita i.e., the wife of deceased and the accused no.1. However, it is important to note that from the above

witnesses who are related to visit to the said lodge, there is nothing coming on record that who were present in the said lodge except one person named Ilahi.

37] PW11 Ramchandra Ghatal at Exh.73. This witness has particularly stated in his evidence that he is working as a police constable. In the year 2015 he was attached to Nerul police station. On 01/12/2015, he was on patrolling duty along with police Kakad. They were informed that one person was injured and was lying on Ramlila Maidan. They reached there, found that person there was bleeding, head injury. They inform immediately to police. Thereafter, ambulance was brought and that person was taken to DY Patil hospital whereby that person was declared dead. They found one visiting card in pocket of deceased and they contacted that person. From the evidence of this witness there is nothing to disbelieve that he visited the spot and found Swapnil who was found there in injured position and he was taken to hospital.

38] Prosecution witness no.8 Namdev Kashinath Patil at Exh.67, who is the father of deceased. From his evidence it is seen that he has stated that the deceased was married with Sangita and they were having three children. He was called for at D.Y. Patil Hospital and he was informed that Swapnil had sustained head injuries and was taken to hospital. The evidence of this witness is considered. He was knowing whether Sangita was having any relationship with Mahesh Thakur. Considering the evidence of this witness there is nothing coming on record as such incriminating against the accused persons.

39] PW14 Mahesh Thakur at Exh.93. As per the evidence of this witness he knows Sangita. Sangita had borrowed sum of Rs.2,000/- from him and when she came to return the said amount, he asked her to keep the said amount with her. At that time, Sangita told him that he likes her and thereafter they started to reside together for two months and thereafter Swapnil took Sangita away and later on, he came to know regarding murder of Swapnil. Here it is noted that initially the investigation agency was suspecting this person in crime. Thus, considering the evidence of this witness it is seen that nothing is coming on record to show the motive regarding the accused person.

40] PW15 Sangita Rajesh Patil at Exh.94. This witness is the sister of deceased Swapnil. She stated that on 01/12/23015 she met Swapnil and at that time somebody was accompanied with him on motorcycle but she did not enquire with him. This witness has not supported the prosecution. The witness is duly cross examined by the prosecution. But nothing came on record in order to support prosecution.

41] PW 16 Bibija Shaikh at Exh.98. As per this witness, she was not knowing the relations between Swapnil and Sangita. She stated that one day Swapnil visited her house and he was accompanied with one boy and he asked for lunch and thereafter he went away. This witness has not supported the prosecution. This witness is duly cross examined by the prosecution but nothing is coming from her cross-examination in order to support prosecution case.

42] Sandeep Maruti Gaikwad PW17 at Exh.100. From the

evidence of this witness, he has supported the prosecution case. He is cross examined by the prosecution but nothing has been brought from his cross-examination to support the prosecution case.

43] PW18 Ravindra Jagannath Mhatre at Exh.101. From the evidence of this witness, he has carried out Identification Parade. He has stated that identification parade was duly complied as such issuance of notice and it was done on 9th of February 2016 and at that time witness Mehendi i.e. PW5 who is the eye witness identified accused Ilahi, accused Shahid and accused Malhari who were standing in different rows. He has particularly stated regarding the identification parade. The witness is duly cross-examined by the defense side where he was given suggestion that he was knowing the accused persons earlier to the identification parade and at the instance of the police he is deposing falsely. In this regards the Ld. Counsel for the accused who has pointed out that PW5 Mehendi has particularly stated in his evidence and as such from the cross-examination of Mehendi immediately at night on 1st December 2015 he was taken by police to police station and he was kept with police along with Asif for 5 days and at that time accused were in lockup and he was outside lockup. In this contingency, it is to be noted that the witness has particularly stated that he has seen the accused persons when he was detained by police for 5 days. Furthermore, PW12 Asif has also stated that he along with PW5 was kept with police for 4-5 days. So, considering these aspects when the accused persons were in the lockup and the witness had the opportunity to see the accused persons. So, this factor goes to the root of the matter. Further, it is imperative to note that as per PW5 & PW12 who are the eye witnesses, as per the prosecution, they were immediately taken to the police

station and according them, police had made enquiry with them immediately. However, it is important to note that their statements are recorded by police on 07/12/2015. Furthermore, PW12 Asif in his cross-examination, has particularly admitted that once their statement was recorded, they were permitted to go by police. So, this aspect of the evidence place a crucial aspect in this case because it is important to note that it is seen from PW5 and PW12 that PW5 had seen the accused persons when they were in custody. So, in such circumstances, the identification parade, in this case, in no means, is helpful to the prosecution. Ld. APP cited case law of Hon'ble Supreme Court. In *Mekala Sivaiah Vs State of Andhra Pradesh, Cri. Appeal No. 2016 of 2013, decided on 15/07/2022, on point of ocular evidence*. In *Kailas s/o Sopan Jade Vs. State of Maharashtra through Police station Parola, Tal. Parola, Dist- Jalgaon, [2023] Supreme (Bom)2, on point of identification parade and its purpose*. In *Ganesh Lal Vs. State of Rajasthan, Cri. Appeal Nos..1034-1035 of 2022, decided on 31/10/2001, on point of recovery*. In *Ganga Singh Vs. State of Madhya Pradesh, Cri.Appeal No. 1118 of 2004, decided on July, 2013, on point of faulty investigation*. In *Sadhu Saram Singh Vs. State of U.P. & Ors., Cri. Appeal Nos.1467-1468 of 2005, decided on 26/02/2016, on point of non examination of independent witness*. Ld. Advocate for accused cited case law in *Vinod Bhai Vs. State of Kerala, of Hon'ble Supreme Court in Cri. Appeal No.1730 of 2017 decided on 29/01/2025*.

I have gone through the said case law but in view of the evidence of PW5 and the fact in the present case in my view the above cited case is not helpful to the prosecution.

44] PW19 Changdev Haribhau Godse who is a Nodal Officer. He

has stated that the police called certain information regarding four mobile numbers and he provided data. One mobile was of accused Ilahi another was of D. Thakur and third one was of Swapnil Patil and he has produced the data along with customer details. He has received certificate u/s.65B of The Evidence Act. He has produced the documents at Exh.108 & 109. The witness is cross examined but it is important to note that as per the prosecution the nexus between all mobile numbers has to be established which is missing.

45] PW23 Nitin Shinde at Exh.198 as per this witness he was working in Idea Cellular as a Nodal officer in the year 2015. At the request of police, he has provided details of mobile of Sim-card of Sangita Patil. But according to him, one Rahul Bhasme has called data and he is not able to know the address of that person. It is submitted on the side of the accused that the prosecution could not secure the presence of Rahul. In his cross-examination, this witness has admitted that he has not done any investigation in this matter and what was done was done by Rahul Bhasme. So, in such contingencies, the evidence of this witness is not helpful to the prosecution.

46] Thus, from the evidence of the Nodal officers discussed above, there is nothing coming on record as such the consistency to locate the mobile phone and the communications between them in order to establish chain.

47] PW21 Arjun Vitthal Gaikwad retired police inspector at Exh.123. As per this witness, one Jitendra Mhatre has made report to police

and he has taken FIR. He has further stated that he has prepared the inquest panchanama which is at Exh.175. He visited the spot of the incident, prepared spot panchanama, obtained samples from spot. That panchanama is at Exh.177. The witness is duly cross examined whereby he admitted that he has done investigation for one day and he has not brought any person on suspicion to police station. So, considering the evidence of this witness it is very limited as to the inquest panchanama and that to the FIR and collecting samples from the spot. So, his evidence cannot be disbelieved

48] PW22 Nitin Jagannath Shinde at Exh. 189 who is a API. As per this witness in this matter PW20 Mr. Rajput was the investigation officer. He has given role to arrest the accused at Karad. Accordingly, he visited Karad and arrested accused Ilahi, Shahid on 04/12/2015 and accordingly certain sundry items were seized. He has further that he has identified the articles. From the evidence of this witness there is nothing coming on record as such to disbelieve his evidence.

49] Now turning to the evidence of the I.O. Mr. Rajput at Exh.20. This witness at Exh.136 has particularly stated the manner in which he has carried the investigation. He has further stated that he has carried out the identification parade. That aspect is discussed earlier regarding the identification parade. This witness has stated that the accused Ilahi gave memorandum statement and at his instance motorcycle of deceased was seized. This aspect is also discussed above and the evidence regarding this particularly shows that the memorandum statement and the disclosure of vehicle was on 07/12/2015 but as per PW1 and his supplementary statement, the said vehicle was shown to him on 06/12/2015. Furthermore,

the evidence of panch witness also suggests that the panchanama was prepared at police station. So, the memorandum statement and the seizure of motorcycle is under the clouds of suspicion.

50] This witness has particularly stated that he has recorded statements of witnesses as they narrated. He has particularly stated that the statements are recorded as per the contentions of the witnesses.

51] The witness has particularly stated regarding seizure of stone, obtaining samples and submitting chargesheet against the accused persons.

52] The witness is duly cross examined whereby he admitted that he has recorded statement of Asif and Mehendi on 07/12/2015. He stated that he has not recorded statement earlier because investigation was going on. He has denied that he has wrongfully detained PW5 & PW12 for 5 to 6 days in police station and they were compelled to give statement in favour of police even though they have stated that they have not seen anything which this witness has denied. He particularly stated that only these two witnesses are the eye witnesses. The witness has further stated and denied that people used to play cricket and the people residing used to assemble on the same playground. He stated that nobody used to come there and further, he has stated that the police used to be there on patrolling but no police was patrolling at that time as there were less police personnels. In this regard, it is pointed out on the side of the defense that the rest of the witnesses are directly contradicting to the facts stated by the investigation officer as they have admitted that people used to gather and people used to play cricket on the same playground. Considering this aspect, it is admitted fact that at the

spot of the incident there is a bus stop but it is surprising to note that the investigation officer is stating that nobody used to that playground.

53] Turning further to his cross-examination he admitted that he has taken the tower locations of the witnesses but he is unable to state the same. The witness is cross examined regarding the seizure of motorcycle of deceased which is discussed above. The witness is cross examined regarding the omissions of PW5 Mehendi and PW 12 Asif. The witness has denied that nothing was seized from the accused and false data has been provided on record.

54] Taking the stock of the entire evidence it is important to note that C.A. report which are produced on record of Shahid Sutar. It is stated that no blood or tissues were found in Exh.1 & 2 and his blood group is B. C.A. reports as regards the Sohil and other aspect. It is stated that there were some blood stains but so far as grouping it is inconclusive. On examination of blood samples of accused Ilahi, no blood or tissues have been found on Exh.2 while his blood group is A. So far as blood samples of Swapnil Patil is at Exh.160, no blood or tissues were found on Exh.2 and blood group can't be determined. Blood samples of Shahid Sutar is considered no blood or any tissues were detected in Exh.1 & 2 and his blood group is B. Thus, considering these aspects there is nothing coming incriminating against the accused persons.

55] Taking the stock of the entire evidence the evidence of PW5 and PW 12 who are as per the prosecution witness but from the evidence of these witnesses which is discussed above in detailed it is highly difficult to

believe the evidence of these witnesses. There is also inconsistency and the doubtfulness regarding the memorandum statement and seizure of vehicle. Motive is not established. There is no other eye witness. Investigation in this matter is very doubtful and it has been rightly pointed out that there are certain aspects in the investigation which are discussed above which totally creates doubt regarding the prosecution case. I do not find substance in the submission of the Ld. APP that investigation is faulty but in other words it can be said that the investigation itself creates doubt regarding the case of the prosecution. The entire evidence does not inspire confidence in order to say that the accused persons had hatched conspiracy, nothing coming against accused No.4 and 5. No cogent evidence is coming against all accused persons in furtherance of their common intention has committed the murder of the deceased. Thus, considering the entire above discussion the prosecution has miserably failed to prove beyond the reasonable doubt that the accused persons committed murder of the deceased. In view of the above reasoning and discussion the charge levelled against the accused is not proved beyond reasonable doubt. Hence, I answer point nos.1 and 2 as not proved.

Point no.3.

56] In view to the findings of point nos.1 and 2 as not proved accused requires to be acquitted. Hence, point no.3 is answered as per final order: Hence, the order:

ORDER

1. Accused No.1 **Ilahi Marimshaha Shaikh**, No.2 **Shahid Najir Sutar**, No.3 **Malhari Hanmant Gujale**, No.4 **Sangita Swapnil Patil** and No.5 **Shevanta Maruti Gaikwad** are hereby acquitted u/s.235(1) of Cr.P.C. of the offence punishable u/s.120-B, 302 r/w.34 of IPC.

2. Accused nos.1 **Ilahi Marimshaha Shaikh** and 2 **No.2 Shahid Najir Sutar** are in jail they be released forthwith if not wanted in any other crime.
3. Accused to furnish P.R.Bond and S.B. of Rs.15,000/- each in view of Section 437-A of Cr.P.C.
4. Muddemal property stone and clothes be destroyed after appeal period is over. Moreover, motorcycle be returned to the original owner if not handed over after appeal period is over.
5. Copy of the Judgment be sent to District Magistrate in view of Sec.365 of Cr.P.C.
6. Declared and dictated in open Court.

Belapur.
Date :- 10/02/2025

(P. A. Sane)
Additional Sessions Judge,
Belapur, Navi Mumbai.