

MHAU160012872025



Presented on : 03-05-2016

Registered on : 03-05-2016

Decided on : 13-04-2026

Duration: 09 Years, 11 Months, 10 Days

Sessions Case No.205 of 2025
(Old Sessions Case No.27/2016)

Exh. 1113/A

Form No. XXXII

Part 'A'

(Title Page of Judgment)

(Para 44(i) of Chapter VI of Criminal Manual)

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
GANGAPUR, TAL. GANGAPUR, DISTRICT – CHHATRAPATI-
SAMBHAJINAGAR**

Present : **S. B. Bahalkar, Additional Sessions Judge.**

(Judgment Date:- 13th April, 2026)

**(Sessions Case No.205 of 2025)
(Old Sessions Case No.27/2016)**

FIR No.I-27/20216, Under Sections 302, 364, 120-B, 201 read with
Sec.34 of the Indian Penal Code and under Sec.4/25 of the Indian Arms
Act. Gangapur Police Station, Tal. Gangapur,
Dist. Chhatrapati – Sambhajinagar

Complainant	STATE OF MAHARASHTRA, Through The Police Inspector, Gangapur Police Station, Tal. Gangapur, Dist. Chhatrapati – Sambhajinagar
REPRESENTED BY	Mr. A. U. Ankush Learned A.PP. for the State.
ACCUSED	(1) Santosh Madhav More, Age: - 36 Years, Occu:- Hotel Owner, R/o:- Kausadi, Tq. Jintur, Dist. Parbhani,

	<p>(2) Santosh Kantilal Jagtap, Age:- 38 years, Occu:- Business, R/o:- Gangawalan, Tq. Indapur, Dist. Pune,</p> <p>(3) Vishnu Dagduba Ikhe, Age:- 38 Years, Occu:- Hotel Manager, R/o:- Kausadi, Tq. Jintur, Dist. Parbhani, at present R/o:- Hotel Kailas- Nakshtra, Sayyadpur shivar, Tq. Gangapur, Dist. Aurangabad</p> <p>(4) Raju Ashok Raut, Age:- 33 Years, Occu:- Hotel Waiter, R/o:- Borgaon, Tq. Sillod, Dist. Aurangabad,</p> <p>(5) Deepak Madhavrao More, Age:- 43 Years, Occu:- Agri, R/o:- Kausadi, Tq. Jintur, Dist. Parbhani,</p> <p>(6) Sudam Eknath Khandagle, Age:- 55 Years, Occu:- Driver, R/o:- Yesgaon No.1, Tq. Khultabad, Dist. Aurangabad,</p> <p>(7) Mahesh Maroti Kadne (Abated)</p> <p>(8) Mahesh @ Pappu Vishnu Naikwade Age:- 33 Years, Occu:- Hotel Waiter, R/o:- Sonari, Tq. Mehkar, Dist. Buldhana,</p> <p>(9) Nikhil Chagan Pawar, Age:- 28 Years, Occu:- Hotel Waiter, R/o:- Pimpalgaon Chilamkha, Tq. Deulgaon-Raja, Dist. Buldhana,</p> <p>(10) Santosh Bhanudas Chavan, Age:- 28 Years, Occu:- Hotel Waiter, R/o:- Dhonkheda, Tq. Jafrabad, Dist. Jalna, at present R/o:- Hotel Kailas- Nakshtra, Sayyadpur shivar, Tq. Gangapur, Dist. Aurangabad</p>
REPRESENTED BY	<p>Mr. A. S. Bangar, Learned Adv. for the Accused No.1 Mr. S. R. Pasbola, Learned Adv. for the accused No.2 Mr. Jejurkar, Learned Adv. for the accused Nos.3 to 5, 8 and 9 Mr.S. S. Nikam, Learned Adv. for the accused Nos.6 and 10</p>

Sessions Case No.205/2025 (Judgment)
State Vs. Santosh More and others

Part -'B'
(Para 44(ii) of Chapter VI of Criminal Manual)

Date of offence	On 18.01.2016 at about 03:00 hours to 03:30 hours
Date of FIR	20.01.2016
Date of Charge-sheet	16.04.2016
Date of Framing of Charges	20.07.2017
Date of commencement of evidence	17.07.2021
Date on which judgment is reserved	23.03.2026
Date of the Judgment	13.04.2026
Date of the Sentencing Order, if any	13.04.2026

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offences charges with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for the purpose of Section 428, Cr.PC.
(1)	Santosh Madhav More,	20.01.2016	29.04.2025	Under Sec.302, 364, 120-B, 201 read with Sec.34 of the Indian Penal Code and under Sec.4/25 of the Indian Arms Act.	Convicted	Life imprisonment and fine an amount of Rs.1 Lakh (Rupees Only Lakh) in default to suffer further rigorous Imprisonment for 1 year more	20.01.2016 to 29.04.2025 23.02.2026 to 10.03.2026
(2)	Santosh Kantilal Jagtap,	20.01.2016	30.06.2016		Acquitted	--	--
(3)	Vishnu Dagduba Ikhe,	22.01.2016	17.10.2016		Convicted	Rigorous Imprisonment for 03 years and fine of Rs.5,000/- (Rupees Five Thousand Only) in default to suffer further simple imprisonment for 1	22.01.2016 to 17.10.2016 23.02.2026 to 10.03.2026

Sessions Case No.205/2025 (Judgment)
State Vs. Santosh More and others

				Under Sec.302, 364, 120-B, 201 read with Sec.34 of the Indian Penal Code and under Sec.4/25 of the Indian Arms Act.		month more.	
(4)	Raju Ashok Raut,	22.01.2016	23.09.2016		<u>Convicted</u>	Rigorous Imprisonment for 03 years and fine of Rs.5,000/- (Rupees Five Thousand Only) in default to suffer further simple imprisonment for 1 month more.	22.01.2016 to 23.09.2016, 04.12.2025 to 12.12.2025 23.02.2026 to 12.03.2026
(5)	Deepak Madhavrao More,	24.01.2016	17.10.2016		Acquitted	--	--
(6)	Sudam Eknath Khandagle,	24.01.2016	29.09.2016		<u>Convicted</u>	Rigorous Imprisonment for 03 years and fine of Rs.5,000/- (Rupees Five Thousand Only) in default to suffer further simple imprisonment for 1 month more.	24.01.2016 to 29.09.2016 23.02.2026 to 12.03.2026
(7)	Mahesh Maroti Kadne	24.01.2016	30.09.2016		Abated	--	--
(8)	Mahesh @ Pappu Vishnu Naikwade	24.01.2016	30.10.2016		Acquitted	--	--
(9)	Nikhil Chagan Pawar,	24.01.2016	03.10.2016		Acquitted	--	--
(10)	Santosh Bhanudas Chavan,	24.01.2016	29.09.2016		Acquitted	--	--

J U D G M E N T
(Delivered on 13th April, 2026)

Accused hatched a criminal conspiracy to kill deceased Anil Hawasing Sharma and in furtherance of their common intention, particularly accused No.1- Santosh More committed murder of deceased - Anil Hawasing Sharma by firing from pistole and after committing murder, they caused to disappear evidence of

the said crime with an intention to screen themselves from legal punishment. Hence, the accused are facing trial under Sections 302, 364 and 201 read with Sec.34 and Under Sec.120-B of the Indian Penal Code (for short IPC) and under Sec.4 read with Sec.25 of the Arms Act.

Brief facts of the prosecution case are as under :-

[2] Informant – Sunil Hawasing Sharma is the brother of the deceased - Anil Hawasing Sharma. They have business of transport in the name and style “Yash Logistic”. They have branch offices of their business at Badoda, Panchkula, Kolkatta, Pune and Aurangabad (Maharashtra) said Sunil used to look after business at Badoda Office, whereas, deceased – Anil used to look after their office at Aurangabad (Maharashtra). Their said office was situated at MIDC Waluj, Aurangabad (Maharashtra).

[3] On 18.01.2016 at about 03:00 p.m. Rajeshkumari, the wife of the deceased – Anil Sharma made phone call to the informant and informed him that, since 17.01.2016 her husband – Anil Sharma did not come back home and his phone was switched off. Therefore, Sunil Sharma also attempted to call his brother – Anil Sharma but his phone found switched off.

[4] Therefore, on 19.01.2016 Sunil Sharma came to Aurangabad from Badoda. After coming to Aurangabad he inquired with their Manager – Kishor Patil and driver – Govind

Nadurkar. On inquiry he came to know that on 17.01.2016 at about 10:00 p.m. driver – Govind Nadurkar dropped deceased – Anil Sharma at Delux Dhaba, Dhoregaon by his Fortuner Car bearing No.MH-20-DV-9711. Before they reached there accused – Santosh @ Babu Jagtap resident of Pune was present there with his Range Rover Car. Driver – Nandurkar dropped Anil Sharma there. Thereafter, deceased – Anil Sharma and accused – Babu Jagtap went towards Nakshtra Hotel of accused No.1 – Santosh Patil by Fortuner Car bearing No.MH-20-DV-9711 for celebration of birthday of accused No.1 – Santosh Patil. After dropping the deceased – Anil Sharma, driver – Nandurkar brought the said Range Rover Car of accused – Babu Jagtap back to Aurangabad.

[5] Informant – Sunil Sharma also came to know from driver - Nandurkar that, after celebration of birth day of accused No.1- Santosh Patil, on 18.01.2016 at about 04:00 a.m. accused Babu Patil took the said Fortuner Car and went to Pune. Thereafter, at about 04:00 a.m. deceased – Anil Sharma told accused No.1- Santosh Patil that his driver came there to fetch him. Then, Anil Sharma left the said hotel Nakshtra. Thereafter, Anil Sharma was supposed to come back home. However, he did not come back. His phone was switched off. He could not be found, even, after taking search at nearby places and houses of their relatives.

[6] Thus, since 04:00 a.m. of 18.01.2016 Anil Sharma was

missing. Therefore, on 19.01.2016 in the evening his brother – Sunil Sharma lodged missing report. Accordingly, missing Case No.2/2016 came to be registered and handed over to API – Jamdar for inquiry.

[7] API – Jamdar made correspondence to the mobile phone companies for obtaining CDR and SDR of the phone numbers of the deceased and others.

[8] On the next day i.e. on 20.01.2016 Sunil Sharma lodged FIR alleging that since 5-6 years prior to the incident, deceased – Anil Sharma came into the contact of accused No.1- Santosh More - Patil and out of acquaintance Anil had given Rs.20 Lakh to accused No.1- Santosh More – Patil as hand-loan for purchasing a house. However, accused No.1 – Santosh More Patil did not repay the said money, hence, there had been dispute between deceased – Anil Sharma and accused No.1- Santosh More. Therefore, out of the said dispute of money accused No.1- Santosh More and accused No.2- Santosh Babu Jagtap kidnapped his brother – Anil Sharma with intention to kill him.

[9] On the basis of above FIR crime vide C.R.No. 27/2016 under Sections 364 read with Sec.34 and 120-B of the IPC came to be registered and handed over to Police Inspector – Vijaykumar Sonwane for investigation.

[10] During the investigation PI - Vijaykumar Sonwane recorded statements of some witnesses and arrested accused Nos.1 and 2. On 21.01.2016 he visited to the spot of the incident i.e. Hotel Nakshtra and prepared panchanama of the said spot.

[11] On 21.01.2016 accused No.1 – Santosh More was in police custody. At that time, he made voluntary statement in presence of panch witnesses that after killing deceased - Anil Sharma he cut his head from the body and threw the body in Gandanala at Patoda, whereas, he threw the head in another Nalla near Maa-Bap Dargah. PI-Vijaykumar reduced into writing the said voluntary statement of accused No.1- Santosh More and thereafter he seized the body (without head) from Gandanala at the instance of accused – Santosh More. Similarly, he seized head of the deceased from another Nala near Maa-Bap Dargah. He prepared two separate inquest panchanama for the head and body and forwarded the same to Government hospital, Aurangabad for postmortem. Since, the dead-body was found, Sec.302 and 201 of the IPC came to be added in the matter.

[12] PI – Vijaykumar Sonwane forwarded the head and body for postmortem to Government Medical College and Hospital, Aurangabad. Accordingly, the concern Doctors conducted postmortem and on completion the postmortem they have prepared postmortem report. As per the said postmortem report probable cause of death of the deceased is mentioned as "**Firearm**

injury to head."

[13] Again on 22.01.2016 accused No.1 – Santosh was in police custody, he made voluntary statement and thereby confessed that, he killed the deceased by firing from revolver and he concealed the said Revolver at his house and also showed his willingness to show the spot where he concealed the revolver. Accordingly, PI – Vijaykumar Sonwane seized the said Revolver from the house of the accused No.1- Santosh More at his instance. At that time, 5 cartridges, 1 holster and license of the said Revolver also.

[14] At the same time, P.I. - Vijaykumar inquired with accused No.1- Santosh More. On inquiry accused – Santosh More took out the clothes, waist belt and shoes which were worn by him at the time of incident. PI- Vijaykumar Sonwane seized said articles under the panchanama.

[15] During the interrogation PI – Vijaykumar Sonwane came to know names of other accused persons who helped accused No.1- Santosh More for destroying evidence of this crime. Therefore, PI- Vijaykumar Sonwane arrested those accused also.

[16] On 22.01.2016 accused No.4 - Raju Raut was in police custody. He showed his willingness to show the spots where they threw the head and body of the deceased. PI – Vijaykumar

Sonwane reduced into writing the said voluntary statement of the accused No.4 – Raju Raut. Thereafter, accused No.4- Raju Raut took PI – Vijaykumar Sonwane and panch witness to the said Gandanala where body was thrown and near Maa-Bap Dargah where head of the deceased was thrown. PI – Vijaykumar Sonwane prepared panchanama to that effect.

[17] On 22.01.2016 accused No.1 – Santosh More was in police custody. At that time he made voluntary statement before the PI – Vijaykumar Sonwane in presence of panch witnesses and thereby showed his willingness to show the spot of Hotel Nakshtra where he killed the deceased and thereafter cut him into pieces. Then, accused No.1- Santosh More took PI – Vijaykumar Sonwane and panch witnesses to Hotel Nakshtra showed them the spot where he shoot the deceased with revolver and killed him and also showed the platform of the kitchen in the hotel where the dead-body was cut into pieces. PI – Vijaykumar Sonwane seized blood stains on cotton gauze, pieces of clothes, buckle of leather belt, empty bottle of liquor and some other articles from the said spot and prepared panchanama to that effect.

[18] On 23.01.2016 accused No.4 – Raju Raut was in police custody, at that time, he made voluntary statement and thereby showed his willingness to show the knife and *sattur* (knife) by which he cut head of the deceased from the body and wearing clothes of the deceased from the dead body. Thereafter,

PI – Vijaykumar Sonwane seized said knife and *sattur* (knife) at the instance of accused No.4- Raju Raut from one spot near Hotel Kailash.

[19] On 24.01.2016 accused No.6- Sudam was in police custody. He made voluntary statement and thereby disclosed that, after disposal of the dead-body accused No.1- Santosh More handed over accused No.7 – Mahesh Kadne, one polythene bag containing pistole and cartridges of the deceased and accused No.1 Santosh More asked them to throw the said polythene bag into water. Accordingly, they came to Salim Ali Sarovar (Lake) and threw the said polythene bag containing pistole and cartridges into the water. PI – Vijaykumar Sonwane prepared panchanama of the voluntary statement of the accused No. 6 – Sudam and thereafter he seized said polythene bag containing pistol and cartridges with the help of swimmers at the instance of accused No.6 – Sudam.

[20] Similarly, PI – Vijaykumar Sonwane seized the said TATA Sumo Jeep No.MH-20-U-4890, at the instance of accused No.7- Mahesh Kadne, which was used to go to Salim Ali Sarovar. PI – Vijaykumar Sonwane prepared panchanama to that effect.

[21] Thereafter, PI – Vijaykumar Sonwane forwarded viscera of the deceased to FSL, Aurangabad for chemical analysis.

[22] PI – Vijaykumar Sonwane also seized vehicle No.MH-

20-HG-9594 which was used to transport the witnesses, i.e. Bar Dancers, who were present on the spot at the time of the incident. PI – Vijaykumar Sonwane prepared panchanama to that effect.

[23] Thereafter, on 09.02.2016 PI – Vijaykumar Sonwane got collected DNA samples of the father and mother of the deceased. He also made correspondence to RTO Nanded and Baramati to get details of the vehicles seized in the investigation. He also made correspondence to get prepare rough sketch map of the spot of the incident, the spots where head and body were found. He then made correspondence to the concern authorities to obtain details regarding licence to run Beer-Bar where the incident was taken place. He forwarded seized muddemal to FSL, Aurangabad for chemical analysis. He recorded statements of the witnesses. Further, investigation was handed over to Dy. S.P – Barde.

[24] During the investigation Dy. S.P – Barde seized the Landrover Car bearing No.MH-42-AA-7, wherein driving license and Indian Passport in the name of accused No.2- Santosh Jagtap were found. He recorded statements of some witnesses.

[25] It was transpired in the investigation that there was dispute between accused No.1- Santosh More and deceased – Anil Sharma on account of money transaction. So also, accused No.1- Santosh More had doubt that Anil Sharma had illicit relation with

his wife. Therefore, accused No.2 – Santosh Jagtap under the garb of settlement between the deceased – Anil Sharma and accused No.1- Santosh More called deceased – Anil Sharma on 17.01.2016 at Hotel Nakshtra and at that time, accused No.2- Santosh Jagtap handed over his own Landrover Car in the hands of driver-Nandurkar of the deceased. Thereafter, they all drank liquor in the hotel and at that time accused No.1- Santosh More fire three bullets in the head of deceased – Anil Sharma and killed him there. Thereafter, with an intention to disappear evidence of the said crime all accused cut head of the deceased – Anil Sharma from the body and put them in two difference bags and threw them near Ganda Nala and Maa-Bap Dargah. Therefore, on completion of the investigation he filed charge-sheet under Sec.364, 302 and 201 read with Sec.34 of the IPC and under Sec.120-B of the IPC and under Sec.3 read with 25 of the Arms Act in the Court of Ld. JMFC, Gangapur.

[26] Since the offence under Section 302 and 364 of the IPC is tribal exclusively by the Court of Sessions, the learned J.M.F.C., Gangapur committed the case to this Court.

[27] My Learned predecessor framed Charge (Exh175.) against the accused under Sections 302, 364 and 201 read with Sec.34 of IPC, Under Sec.120-B of the IPC and under Sec.4 read with Sec.25 of the Arms Act. Particulars of offences were read over and explained to the accused, to which they pleaded not guilty and

claimed to be tried.

[28] During the trial accused No.7- Mahesh Maroti Kadne reported to be dead. Hence, the case against him is abated.

[29] Statements of the accused persons under Section 313 of the Code of Criminal Procedure are recorded. They have denied the allegation made by the prosecution. Their defence is of false implication.

[30] Following points arise for my determination. I have recorded my findings thereon for the reasons stated below:-

Sr. Nos.	Points	Findings.
1	Does the prosecution prove that the deceased- Anil Hawasing Sharma died due to homicidal death ? (Homicidal death)	Proved.
2	Does the prosecution prove that the accused persons hatched conspiracy for committing murder of deceased- Anil Hawasing Sharma ? (Sec.120-B of the IPC)	Not proved.
3	Does the prosecution prove that accused persons in furtherance of their common intention abducted deceased – Anil Hawasing Sharma in order that he may be murdered or so dispose of as to be put in	

- | | | |
|----|--|---|
| | danger of being murdered?
(Sec.364 r/w 34 IPC) | Not proved. |
| 4 | Does the prosecution prove that the accused persons in furtherance of their common intention, particularly accused No.1- Santosh More committed murder of deceased- Anil Hawasing Sharma?
(Sec.302 r/w 34 of the IPC) | Proved against accused No.1- Santosh More only. |
| 5 | Does the prosecution prove that the accused persons having knowledge that the above crime has been committed, they in furtherance of their common intention, caused to disappear the evidence of the said crime, with an intention to screen themselves from legal punishment ?
(Sec.201 r/w 34 of the IPC) | Proved against accused Nos.1, 3, 4 and 6 only. |
| 6 | Whether prosecution proves that the accused found in possession of deadly weapons like revolver, Sattur etc., which were used for commission of an offence in contravention the provision of the Arms Act ?
(Sec.4 r/w 25 of the Arms Act) | Not proved |
| 7. | What Order ? | (i) Accused No.1 is convicted of the offence punishable under Sec.302 of the IPC, |

.....

(ii) Accused
 Nos.1, 3, 4
 and 6 are
 convicted of
 the offence
 p/u/Sec.201
 r/w 34 IPC,

.....

(iii) All
 accused are
 acquitted for
 the offence
 p/u Sec.364,
 120-B r/w 34
 of IPC and
 under Sec.4
 r/w 25 of the
 Arms Act.

REASONS

Point No.1 :-

[31] There are two inquest panchanama in this case. First Inquest panchanama (Exh.299) is of the head of the deceased, whereas inquest panchanama (Exh.300) is of the dead body of the deceased without head. The dead-body including head was forwarded for postmortem report. The concern Doctors conducted postmortem and prepared postmortem report (Exh.381). On perusal of both the inquest panchanama, it appears that there were gunshot injuries on the forehead of the deceased and the head was cut by sharp weapon like *knife*. The dead-body

was identified by the informant Sunil Sharma to be of his brother – Anil Hawasing Sharma.

[32] During the course of postmortem the concern Doctors noticed that many surface, wounds and injuries on the person of the deceased. In column No.17 of the postmortem report (Exh.381) following surface wounds and injuries were found:-

Surface wounds and injuries-

1) Cruciate shaped, penetrating firearm entrance wound in the form of obliquely placed lacerated wound of size 2.2 cm x 0.4 cm x cavity deep, along with marginal and corresponding underscalp powdery blackening located over forehead 3.0 cm above nasion, 4.3 cm from medial canthus of left eye and 5 cm from medial canthus of right eye with irregular, ragged, abraded, contused, severely disrupted and inverted blood infiltrated edges.

2) Circular shaped, penetrating firearm entrance wound in the form of puncture wound of size 0.5cm x 0.5 cm x cavity deep, along with marginal and corresponding underscalp powdery blackening, present over midline of forehead, located 0.2 cm below injury number 1), with irregular, abraded, contused and blood infiltrated reddish inverted, edges.

3) Circular shaped, penetrating firearm entrance injury in the form of puncture wound of size 0.5cm x 0.5 cm x cavity deep along with peripheral punctuate tattooing marks present over left frontal region, located 2.5 cm above and left lateral to injury number 1, with irregular, abraded, contused inverted, blood infiltrated reddish edges.

4) Contusion of size 3cm x 1.5 cm over right upper

eyelid, reddish black.

5) Complete amputation of head (decapitation) from the trunk present. Multiple incisions with pale margins present all around neck. The incised margins are placed at the plane situated 07 cm below right mastoid process, 6 cm below left mastoid process, 10 cm below chin and 12 cm below occipital protuberance. The skin is severed along with subcutaneous tissue, muscle, cartilage, blood vessels, nerves with underlying tissues. At decapitation surface, transverse diameter is 15 cm, sagittal diameter is 12.4 cm and the circumference is 42 cm. The amputated surface shows projecting part of tracheal cartilages upto just below thyroid cartilage, with open lumen at a level 3 cm below surrounding surface anteriorly. Posteriorly the level of decapitation is below 2nd cervical vertebra.

6) A transversely placed incised wound of size 3.5cm x 0.3 cm x muscle deep, present over left submandibular region, present 5.2 cm below chin, yellowish and mud stained.

7) A linear abrasion of size 3cm x 0.1 cm present over right submandibular region, adjacent to right end of injury number 5, yellowish and mud stained.

8) An antero-posteriorly placed chop wound of size 9 cm x 2.8 cm x muscle deep. present over right side of neck, 6 cm below right mastoid prominence, yellowish and mud stained.

9) An obliquely placed incision wound of size 5 cm x 1.9 cm x muscle deep, present over anterior aspect of left shoulder, yellowish and mud stained. The upper part of

trunk shows decapitation injury with the skin tags approximating to those at lower margins number 4. The level of injury anteriorly is cervical vertebra with peripheral tissue showing extensive nibbled marks and partly decomposed. The margin of nibbling is 104 cm, obliquely placed starting from over left shoulder extending obliquely downwards and towards right side of anterior chest upto scapular region. All structures in between upper and lower level of decapitation injury are partly missing. The soft tissue of chest wall is blackened and partly decomposed.

10) Right upper limb severed from the trunk and missing along with right scapula. The scapular end of right clavicle is exposed, fractured mud stained margins.

11) Nibbling over an area of size 8.4 cm x 6 cm present over base of left thumb and thenar eminence, with left thumb missing leaving mud stained.

12) Nibbling over an area of size 2 cm x 2 cm present over proximal phalangeal area of left index finger with middle and terminal phalanges and soft tissue missing, mud stained.

13) Nibbling over an area of size 2 cm x 1.5 cm present over middle phalangeal area of left middle finger with terminal phalanx and soft tissue missing, mud stained.

14) Nibbling over an area of size 1.5 cm x 1.5 cm present over middle pharyngeal area of left ring finger with terminal phalanx and soft tissue missing, mud stained.

15) Nibbling over an area of size 0.5 cm x 0.5 cm

present over terminal phalynx of left little finger, mud stained.

[33] In postmortem report (Exh.381), the probable cause of death and time of death is mentioned as under. :-

"Firearm injury to head."

Fragmented bullet pieces retrieved from head preserved for ballistic examination Tooth and sternum preserved for DNA analysis Swabs from entry wound preserved for detection of gun powder residue Routine viscera preserved for chemical analysis

Time since death:- Considering environmental conditions (winter season, body recovered from water) and postmortem features- 72 to 96 hours before postmortem examination.

[34] On the basis of the injuries mentioned in the inquest panchanama (Exh.299) and (Exh.300) and postmortem report (Exh.381), it appears that it is not the case, either of the prosecution or defence that said injuries sustained by the deceased were accidental or suicidal. Moreover, the defence has not challenged the identity of the dead-body to be of deceased – Anil Hawasing Sharma. Therefore, on the basis of the material placed on the record, I have no hesitation to hold that deceased Anil Hawasing Sharma died due to homicidal death. I, therefore, answer Point No.1 in the affirmative.

Point No.4:-

[35] There is no eye witness to the incident.

The prosecution case is totally based upon the circumstantial evidence. On the point of circumstantial evidence, the learned Advocate for the accused relied upon the case law - **Sharad Birdhichand Sarda Vs. State of Maharashtra – AIR 1984 SC 1622**, wherein the Hon'ble Supreme Court observed thus :-

151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh. This case has been Uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of Uttar Pradesh and Ramgopal v State of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345-46 of AIR) (supra):

It is well to remember that in cases where tile evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

[36] The circumstances on which the prosecution is relied

upon are as follows:-

(a) At the evening of 17.01.2016 the deceased went to Hotel Nakshtra.

[37] Rajeshkumari (PW26) is the wife of the deceased. She states that, on 17.01.2016 the deceased told her that, he has to celebrate birthday of Santosh More (Accused No.1) at Hotel Nakshtra and for that birthday party their friend – Jagtap (accused No.2) would be coming from Dubai. Therefore, on that evening at about 08:30 p.m. the deceased went with his driver and at that time, he again told her that, since their friend will be coming from Dubai and they will celebrate birthday party, so she should not make him phone call.

[38] Rajeshkumari (PW26) further states that, on the next morning she made phone call to the deceased, but the phone was switched off. Therefore, she made phone call to their driver – Nandurkar. In response, driver – Nandurkar told her that, he dropped the deceased at Hotel Nakshtra and there had been exchanges of their Cars and he brought Car of the accused and the same was with him.

[39] Govind Nandurkar (PW10) was the driver of the deceased. He states that, on 17.01.2016 he was accompanied to the deceased since 09:00 a.m. till the evening as his Car driver. In the evening deceased disclosed him that, his friend – Santosh Jagtap (accused No.2) was coming from Dubai and he wanted to

go to visit him. Then, both of them, started from Aurangabad at about 08:00 p.m. by their Fortuner Car and reached at Delux Dhaba at about 09:30 p.m. There Santosh Jagtap (accused No.2) was present. Then, he (driver – Nandurkar) kept the Fortuner Car there and took Range Rover Car and came back home. On the next morning he went to the house of the deceased, where he came to know that by that time the deceased did not come back. Thereafter, they took search of the deceased, but he could not found.

[40] Sunil Hawasing Sharma (PW9), is the brother of the deceased. He states that, on 18.01.2016 Rajeshkumari, the wife of the deceased – Anil Sharma informed him that, since 17.01.2016 her husband – Anil Sharma did not come back home. Therefore, he also attempted to inquire about his brother at 2-3 places.

[41] Sunil Hawasing Sharma (PW9) further states that, on 19.01.2016 he came to Aurangabad from Badoda. After coming to Aurangabad he inquired with their Manager – Kishor Patil and driver – Govind Nadurkar. On inquiry they disclosed him that, the deceased asked to come with him for birthday party. Then, both of them, went there by their Fortuner Car and reached at Delux Dhaba. All the while phone calls of accused – Santosh Babu Jagtap were coming on the phone of the deceased. From, the conversation between accused – Santosh Jagtap and the deceased, driver – Govind Nandurkar came to know that, there had been

birthday celebration of the accused Santosh More. After, reaching to Delux Dhaba accused- Santosh Jagtap came there by his Range Rover Car. Then, the deceased asked driver – Nandurkar to take the said Range Rover Car. Thereafter, the deceased and accused – Santosh Jagtap went away by Fortuner Car.

[42] Evidence of Sunil Sharma (PW9), Govind Nandurkar (PW10) and Rajeshkumari (PW26) is consistent to each other and sufficient to establish that, on the evening of 17.01.2016 at about 09:30 p.m. driver – Govind Nandurkar (PW10) dropped the deceased near Delux Dhaba by Fortuner Car at that time accused No.2- Santosh Jagtap was present there along with his Range Rover Car and thereafter, the deceased along with accused No.2- Santosh Jagtap proceeded by Fortuner Car and driver – Govind Nandurkar brought the said Range Rover Car back.

(b) Money transaction between the accused No.1-Santosh More and the deceased. (Motive for commission of the offence).

[43] It has come in the evidence of Rajeshkumari (PW26), the wife of the deceased that long back on 11.02.2011 there was birthday celebration of her daughter – Neha at there house at Aurangabad. On that day, Santosh Patil and others were present there. At that time, her husband i.e. deceased – Anil introduced Santosh Patil with her to be his friend.

[44] It has come in the evidence of Sunil Hawasing Sharma

(PW9) that, he never saw accused – Santosh More. However, he heard his name many times from his deceased brother- Anil. Santosh More was the friend of deceased - Anil. It was stated by deceased – Anil to Sunil that he gave Rs.20 Lakh to Santosh More to purchase a house and deceased – Anil many times asked accused – Santosh More to refund the said money. However, accused No.1- Santosh More threatened the deceased and for one or two times he also chased the deceased.

[45] Sunil Sharma (PW9) further state that, since the day of birthday party of accused – Santosh More, his brother i.e. the deceased was missing and since relations between accused – Santosh More and deceased were strained. He lodged FIR against accused No.1- Santosh More and accused No.2 – Santosh Jagtap vide Exh.458, alleging that both of them kidnapped his brother – Anil Sharma with an intention to kill him.

[46] In the cross-examination of Sunil Sharma (PW9), defence lawyer attempted to challenge the alleged transaction of Rs.20 Lakh. Sunil Sharma (PW9) in his cross-examination has admitted that, the deceased did not mention about said amount of Rs.20 Lakh in any diary or Income Tax Returns. Therefore, according to the defence evidence of Sunil Sharma (PW9) is not sufficient to establish that there had been any transaction of Rs.20 Lakh between the deceased and accused No.1- Santosh More.

[47] However, I am not an agreement with the above

submission made on behalf of the accused. Because, this is not the suit of recovery of money, where the lender of money has to be established his case with documentary evidence. It is the case of the prosecution that, an amount of Rs.20 Lakh was given by the deceased to Accused No.1- Santosh More to purchase a house and the said amount of money was given out of the friendship. In the circumstances, it is always not possible to keep written entries of such hand loan transaction happens between friends.

[48] Moreover, it is interesting to note that, informant – Sunil Sharma (PW9) who happens to be the brother of the deceased – Anil had no occasion to see accused No.1- Santosh More. He only came to know about the transaction of Rs.20 Lakh only from deceased – Anil Sharma and before revealing that the accused No.1- Santosh More is real culprit of this crime, he made allegation against him as regards to the transaction of Rs.20 Lakh. Thus, evidence of Sunil Sharma (PW9) as regards to money transaction between the deceased and accused No.1- Santosh More, appears to be natural and it inspires the confidence. Therefore, on the basis of his evidence I hold that, accused No.1- Santosh More had motive to kill the deceased – Anil Sharma.

(c) Discovery of the spot of the incident and wearing clothes of the deceased at the instance of accused No.1 – Santosh More.

[49] Sunil Sharma (PW9), in his FIR mentioned names of accused No.1- Santosh More and Accused No.2- Santosh Jagtap to

be the culprits of this crime. Therefore, on 20.01.2016, PI – Vijaykumar Sonwane (PW23) arrested them.

[50] Evidence of PI – Vijaykumar Sonwane (PW23) shows that on 21.06.2016 accused No.1- Santosh More was in Police Custody. At that time, he made voluntary statements before him and thereby disclosed that, after committing of murder of Anil Sharma he cut clothes of the deceased, with the help of his servants and also cut head of the deceased from the body and threw the dead-body at Ganda Nala and threw the head in the Nala near Maa-Bap Dargah.

[51] Evidence of PI – Vijaykumar Sonwane (PW23) further shows that, thereafter, he along with accused – Santosh More, panch witnesses and police staff went to Ganda Nala as led by accused – Santosh More, where they found body (without head) of the deceased. However, at that time, there was crowd of the relatives of the deceased and some by passers, he could not prepared panchanama, however, he forwarded the dead-body of the deceased GHATI Hospital, Aurangabad.

[52] PI – Vijaykumar Sonwane (PW23) further state that, thereafter, they went near Maa-Baap Dargah as led by accused – Santosh More, where they found head of the deceased in a Nalla and forwarded the head for postmortem to GHATI Hospital, Aurangabad. He prepared inquest panchanama of head (Exh.299)

and inquest panchanama of the dead-body (Exh.300) of the deceased.

[53] Kailas Nana Thorat (PW1) is the the panch witness of the said inquest panchanama (Exh.299) and (Exh.300). His evidence shows that, on 21.02.2016 he along with police went to Ganda Nala, where they found head of a human. It was identified by Sunil Sharma. Similarly, police took dead-body of the deceased. It was identified by Sunil Sharma.

[54] It appears that, evidence of PI – Vijaykumar Sonwane (PW23) is corroborated by the evidence of Kailas Thorat (PW1). Their evidence remained unshaken during the cross-examination. Moreover, in his evidence PI – Vijaykumar Sonwane (PW23) has mentioned that, since the relatives of the deceased and many other person gathered there. There was a big crowd. Hence, he has mentioned that in what circumstances he could not prepare panchanama of seizure of head and dead-body of the deceased on the said spots. So also, I am of the opinion that, Sec.27 of the Evidence Act nowhere compels the Investigating Officer to draw/prepare panchanama in writing for the discovery of information or things at the instance of the accused. Therefore, on the basis of their evidence I have no hesitation to hold that, at the instance of accused No.1 - Santosh More dead-body and head of the deceased could be discovered by the Investigating Officer. This is an important link of chain of

circumstantial evidence proved by the prosecution.

(d) Discovery and recovery of the revolver, holster, cartridges and license of the revolver etc., at the instance of accused No.1 - Santosh More.

[55] It is the case of the prosecution that, accused No.1- Santosh More fired three rounds of revolver in the head of the deceased and killed him. In this regard, evidence of PI – Vijaykumar Sonwane (PW23) shows that, on 22.01.2016 accused No.1 – Santosh More was in police custody. At that time, he made voluntary statement before him that and thereby showed his willingness to show the spot where he concealed the revolver used to kill the deceased and remaining cartridges. Accordingly, PI – Vijaykumar Sonwane (PW23) reduced into writing said statement of accused No.1 – Santosh More in presence of panch witnesses vide Exh.303.

[56] PI – Vijaykumar Sonwane (PW23) further states that, thereafter, he along with accused No.1- Santosh More, panch witnesses and police staff went to the house of accused No.1- Santosh More at Aurangabad as led by him. Then, they followed accused No.1- Santosh More in his house, where accused No.1- Santosh More open the cupboard and took out one revolver, five cartridges, holster and license to possess revolver. Accordingly, PI – Vijaykumar Sonwane (PW23) seized those articles in presence of the panch witnesses and prepared panchanama to that effect vide

Exh.304.

[57] As regards to seizure of the said revolver and license, accused No.1- Santosh More was asked questions in his statement under Sec.313 of the Cr.P.C. While explaining this incriminating circumstance accused No.1- Santosh More only stated that “this is false”. Thus, he denied recovery of revolver, cartridges, holster and license to possess the revolver. However, on going through the material placed on record it appears that, the said license to possess revolver is standing in the name of accused No.1 - Santosh More and it appears to be issued by District Magistrate, Parbhani. Moreover, product number/serial number carved on the said revolver and mentioned in the license of the revolver are tallied.

[58] Evidence of PI – Vijaykumar Sonwane (PW23) is corroborated by Kailash Thorat (PW1) who is the panch witness of panchanama of (Exh.303) and (Exh.304). Their evidence remained unshattered during their cross-examination conducted by the defence.

[59] On the point of discovery and recovery of the revolver and license to possess revolver, Learned Advocate for accused No.1- Santosh More has submitted that, the said recovery was not made at the instance of accused No.1- Santosh More. He has not made any voluntary statement before the Investigating Officer, therefore, said discovery has no meaning in the eyes of law.

[60] For a moment, even if, it is accepted that, the accused

No.1 did not make voluntary statement before the Investigating Officer, still fact remained is that one license to possess fire arm i.e. revolver is standing in the name of accused No.1 – Santosh More was recovered by the PI – Vijaykumar Sonwane (PW23) and it is not the case of accused No.1- Santosh More the said license to possess the revolver is not standing in his name or it is fake document. Moreover, product number/serial number carved on the said revolver and mentioned in the license of the revolver are tallied. All these facts and circumstances go to establish that, one revolver along with license to possess revolver standing in the name of accused No.1 – Santosh More was discovered and seized by the Investigating Officer at the instance of accused No.1 – Santosh More.

(e) Firearm injuries on head sustained by the deceased – Anil Sharma.

[61] It is already pointed out that, postmortem of head and dead-body of the deceased was conducted at GHATI Hospital, Aurangabad and after completion of postmortem, the concern Doctors prepared postmortem report (Exh.381). At the time of the postmortem the Doctors found three circular punctured wounds in the skull of the deceased. The said injuries are mentioned in column No.19(ii) and (iii) of the postmortem report (Exh.381) as follows:-

Head -

<p>ii) Skull – Valut and base – Describe fractures, their sites, dimensions, directions, etc.</p>	<p>1) A circular puncture wound of size 0.6 cm x 0.6 cm x brain deep, present over mid frontal region x full thickness of cranial vault with clean regular borders and bevelling of inner table of skull vault, directed downwards, backwards and to left with reddish, blood infiltrated, corresponding to injury number 1) mentioned in column number 17.</p> <p>2) A circular puncture wound of size 0.5 cm x 0.5 cm x brain deep, present over mid frontal region x full thickness of cranial vault, 0.3 cm below injury number 1), with regular borders and bevelling of inner table of skull vault, reddish, blood infiltrated, corresponding to injury number 2) mentioned in column number 17.</p> <p>3) A circular puncture wound of size 1.1 cm x 0.9 cm x thickness of cranial vault, 2.4 cm above and left lateral to injury number 1), With regular borders and bevelling of inner table of skull vault, reddish, blood infiltrated, corresponding to injury number 3) mentioned in column number 17.</p> <p>4) Displaced comminuted fracture present involving roof of both orbits and part of wall of frontal sinus present with blood infiltrated margins.</p>
<p>iii) Brain- The appearance of its coverings, size, weight and general condition of the organ itself and any found in its examination to be carefully noted (weight M1300</p>	<p>Meninges:</p> <p>1) A circular puncture wound of size 1.0 cm x 1 cm present over left frontal region x full thickness of duramater with irregular borders, with reddish, blood infiltrated, corresponding to injury number 1) mentioned in column number 19.- ii)</p> <p>2) A circular puncture wound of size 0.6 cm</p>

<p>grams F-1275 grams).</p>	<p>x 0.6 cm present over left frontal region x full thickness of duramater, 0.4 cm antero-inferior to injury number 1), with irregular borders, reddish, blood infiltrated, corresponding to injury number 2) mentioned in column number 19- ii).</p> <p>3) A circular puncture wound of size 1.5 cm x 1 cm present over left frontal region x full thickness of duramater, 1 cm postero-lateral to injury number 1), with irregular borders, reddish, blood infiltrated, corresponding to injury number 3) mentioned in column number 19- ii).</p> <p>4) Brain matter: Grayish, soft, pultaceous, blood mixed. 04 metal pieces (fragments of bullets) found intermingled in brain matter.</p>
<p>Track of the firearm wound</p>	<p>1) Forehead skin subcutaneous tissue frontal bone frontal sinus duramater left frontal brain roof of left orbit through left temporal lobe of brain stopped at anterior surface of lateral half of petrous temporal bone.</p> <p>As the brain matter was converted into grayish, blood mixed paste like material the exact track of the wound could not be determined. The distorted bullet pieces (four) were collected by palpating the paste of brain.</p>

[62] So also, during the postmortem the Doctors while considering Track of the firearm wounds found four distorted bullate pieces by palpating the paste of brain, which is mentioned in last row of column No.19 of the postmortem report (Exh.381).

[63] While giving opinion as to the probable cause of death

the concern Doctors mentioned in the postmortem report (Exh.381) as “Firearm injury to head”. Moreover, fragmented bullate pieces retrieved from head preserved for ballistic examination. Swab from entry wound preserved for detection of gun powder residue. In the said postmortem report the Doctors also mentioned :

“Time since death: Considering environmental conditions (winter season, body recovered from water) and postmortem features – 72 to 96 hours before postmortem examination”.

[64] As per the postmortem report (Exh.381) postmortem was started on 22.01.2016 at 07:00 a.m. and it was completed on 22.01.2016 at 10:30 a.m. Thus, if the said period of 72 to 96 hours is calculated from 07:00 a.m. of 22.01.2016, it would come between 07:00 a.m. of 17.01.2016 to 07:00 a.m. of 18.01.2016. It means, on the basis of the time of death calculated by the concern Doctors there is legitimate scope to ascertain that the deceased might have died between 07:00 a.m. of 17.01.2016 to 07:00 a.m. of 18.01.2016. This calculation and approximate time of death of the deceased matches the prosecution case.

(f) **Evidence of witness Laxmi Jha (PW13).**

[65] As per the prosecution case at the time of the incident the deceased along with accused No.1- Santosh More and accused No.2- Santosh Jagtap were drinking liquor in a Ladies Bar at Hotel Nakshtra. At that time, some Ladies Bar Dancers were dancing

around them in the said Bar and at that time, accused No.1- Santosh More fired bullets in the head of the deceased. Laxmi Santosh Jha (PW13) is one of those Ladies Bar Dancers.

[66] Laxmi Santosh Jha (PW13) states that, she was working in Hotel Nakshtra of accused – Santosh More. Other Bar Girls by name – Jaya, Sweety, Kavita and Yogita were also working there. On 21.12.2015 accused – Santosh More asked them to get ready since the customers were coming. Accordingly, they got ready and came on the dance floor of the Hotel. At that time, three persons were there. Out of them one was by name – Jagtap. She and other girls were dancing in front of them. The said Jagtap was drinking liquor and he was touching those girls. On that day, there was birthday of their owner – Santosh More. Those, three persons had come there to celebrate birthday of Santosh More. After cake-cutting all were dancing there. Suddenly, accused - Santosh More threw currency notes on the face of one Kavita. Therefore, Kavita was crying in a room.

[67] Laxmi Jha (PW13) further states that, since she was tired, she went to the room for taking some rest and to pursued Kavita. In the said room Kavita was crying. On inquiry Kavita disclosed her that, accused – Santosh More told her that, she would be no more like his sister from that day. Then, she (Laxmi Jha) asked said Kavita to come on the dance floor. Kavita told her that, she will wash her face and she will come. Thereafter, she (Laxmi Jha) was proceeding towards dance

floor, suddenly she saw that Sweety, Yogita, Jiya and two other girls running towards her.

[68] It has further come in the evidence of Laxmi Santosh Jha (PW13) that, suddenly those girls told her that, they have to quickly go out by a vehicle. After sitting in the vehicle she asked Sweety about the matter. Sweety disclosed her that, accused – Santosh More fired bullet and Sudam Kaka warned them not to disclose about the incident to anybody. Then, they went to their room. Since, they had no key of the room, they were sitting on the terrace waiting for the key. Early in the morning one waiter brought the key. Then, they all went in the bedroom. Sometime, thereafter, accused Santosh More came on the room. She asked accused – Santosh More if he wanted breakfast. However, he replied nothing. In the afternoon they were asked to be ready to go back to their houses. Then, bus-tickets up to Borivali were arranged for them. Sudam Kaka (Accused No.6) gave them Rs.5000/- each. Then, on the next day they came back to Borivali by bus.

[69] Laxmi Santosh Jha (PW13) further states that, her statement was recorded in the Court at Gangapur (i.e. statement under Sec.164 of the Cr. P.C.). She identified her signature on the said statement (Exh.536).

[70] No doubt, Laxmi Santosh Jha (PW13) did not see the

incident when accused No.1- Santosh More allegedly fired bullet in the head of the deceased. However, her evidence is sufficient to establish that on that evening accused – Santosh More and Santosh Jagtap were present in the Hotel for birthday celebration and accused – Santosh More fired bullet by his revolver. This incriminating circumstance is very much helpful to prove the link of the prosecution case.

(g) Ballistic Expert's Report:-

[71] From the material placed on the record it appears that, at the time of postmortem of the deceased the concern Doctors preserved for ballistic examination, five fragmented bullet pieces and swabs from entry wound for detection of gun powder. The said preserved articles, the revolver and cartridges seized from accused No.1- Santosh More were sent for forensic analysis. After the analysis the concern Chemical Analyzer prepared **Ballistic Report (Exh.1030)**. The concluding paragraph of report (Exh.1030) speak thus:-

The characteristic features of available rifling marks on lead bullets in Exhibit 1A, Exhibit 1B and Exhibit 2A of BL-102/16 (Received from Medical Officer, Autopsy Surgeon Dept. of Forensic Medicine and toxicology, GMCH Aurangabad, PM No. 134/16, Date: 22/01/16) tally among themselves and tallies with the bullet test fired from the 22" caliber rim fire revolver in Exhibit 1 of present case in respect of the available number and width of lands and grooves, direction and extent of twist of available rifling and the characteristic striations on lands and grooves impression on them (examined under comparison microscope) showing that the

deformed lead bullets in Exhibit 1A, 1B and 2A having fired from .22" caliber rim fire revolver in Exhibit 1 of present case.

[72] Thus, the residues of gun powder and fragmented bullet pieces retrieved from the head of the deceased were fired from the revolver which was discovered and recovered at the instance of the accused No.1- Santosh More from his house.

[73] On the point of Ballistic Report Ld. Advocate for accused No.1 has submitted that, the prosecution has only produced on record the said Ballistic Report and only because it is prepared by the Government Authority, it has been marked as Exh.1030 under Sec.294(3) of the Code of Criminal Procedure. However, only production of such reports is not sufficient to prove its contents. For that purpose prosecution was required to examine the Ballistic Expert and the defence was required to give an opportunity to cross-examine the said Expert. However, in the present case, without examination of the author/expert of the said Ballistic Report it is marked as Exh.1030. Hence, it cannot be read in evidence. In support of his argument he relied upon the case laws (1) **Sri. Paramesha Vs. State of Karnataka Criminal Appeal No.1959 of 2019, decided by the Hon'ble High Court of Karnataka dated 11.12.2020** and (2) **Parappa and Others Vs. Bhimappa,ILR 2008 KAR 1840**, wherein the Hon'ble High Court observed thus;

This Provision should not be confused with the general law governing the admissibility of an expert's evidence. In a criminal case when the prosecution relies on the

expert's evidence to prove the charges against the accused mere production of the said expert's report into Court is not sufficient. It does not become a part of the Court record on mere production. If the prosecution relies on a report of the expert, not only the report is to be produced, the author of the report is also to be examined in the Court on oath and an opportunity should be given to the accused to cross-examine the said expert on the correctness of the report. It is only then the said evidence becomes admissible and not otherwise. In such a criminal prosecution, the Court has not appointed the expert. It is the prosecution, to prove its case, needs report and they have to examine such an expert to prove their case. In a criminal trial, expert is a witness for the prosecution. He is not a Commissioner appointed by the Court in the proceedings.

[74] From the material placed on the record it appears that the above ballistic report (Exh.1030) along with other reports were produced on record by the prosecution. Before starting final arguments the accused were aware that such reports were produced on record by the prosecution. Since, the said reports, particularly Ballistic Report (Exh.1030) being the report of Government Scientific Expert, no formal proof was necessary to prove its contents. Throughout the trial the accused have not raised any dispute about the genuineness of the contents of that report. However, only at the stage of final argument the accused have raised dispute about the genuineness of the said report. Thus, the accused had opportunity to challenge the said Ballistic Reports. In the circumstances, I have no hesitation to hold, the said Ballistic

Reports (Exh.1030) to be genuine and trustworthy.

[75] From the discussion of the above incriminating circumstances it appears that the prosecution has proved that the accused No.1- Santosh More had money transaction with the deceased and on account of the said transaction there was dispute between them. The prosecution has also proved that in the evening of 17.01.2016 driver – Nandurkar dropped the deceased at Delux Dhaba at Dhoregaon where accused No.2- Santosh Jagtap was already present and then Range Rover Car of accused No.2- Santosh Jagtap was given to driver – Nandurkar and thereafter the deceased along with accused No.2- Santosh Jagtap proceeded by Fortuner Car of the deceased to Hotel Nakshtra where they celebrated birthday party of accused No.1- Santosh More.

[76] From the above circumstances, prosecution has also proved that accused No.1 – Santosh More had licensed revolver and he killed the deceased by firing three bullets in the head of the deceased and thereafter threw dead-body of the deceased – Anil Sharma near Ganda Nala and threw head of the deceased in the Nala at Maa-Baap Dargah.

Applicability of section 34 of the Indian Penal Code

[77] So far as, applicability of Section 34 of the Indian Penal Code is concerned, principles behind this section are necessary to

be considered. This section embodies common-sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually. This section is restricted to common intention and does not embrace any knowledge. It does not require proof that any particular accused was responsible for the commission of the actual offence. It is not restricted to meet a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them. It can well be applied to cases in which offence is committed by only one or two or three persons who all had a common intention.

[78] If the facts of this case to the extent of commission of crime under Sec.302 of the IPC, are examined minutely, it would reveal that accused No.1 – Santosh More fired bullet in the head of the deceased. No doubt, it also appears that, at the time of the said incident accused No.2- Santosh Jagtap was present there. However, evidence and other material placed on record, nowhere shows that, he committed any overt act in the said incident. Besides, the allegations that accused committed this offence in furtherance of their common intention, there is nothing on record to establish that the accused No.1- Santosh More and accused No.2- Santosh Jagtap were sharing common intention and they had meeting of minds before commission of the offence or at the time of the incident. Therefore, mere presence of accused No.2- Santosh Jagtap, without intention or meeting of mind with

other accused persons, it cannot be said that, accused No.1 – Santosh More and accused No.2- Santosh Jagtap in furtherance of their common intention committed this crime. So also, besides allegations in respect of Sec.34 of the IPC there is absolutely nothing on record to establish that, accused Nos.3 to 10 had any meeting of mind with other accused persons about killing of the deceased – Anil Sharma. Hence, ingredients of Section 34 of the IPC, are not attracted in this matter so far commission of offence under Sec.302 of the IPC is concerned. Therefore, accused Nos.2 to 10 cannot be held responsible for the murder of the deceased – Anil Sharma under Sec.34 of the IPC.

[79] For the reasons stated above, I have no hesitation to hold that, the prosecution has proved beyond reasonable doubts guilt of accused No.1 – Santosh More for the offence punishable under Sec.302 of the IPC. However, I hold that accused Nos.2 to 10 are not guilty of the offence punishable under Sec.302 read with Sec.34 of the IPC.

Point No.5:-

(Section 201 read with Sec.34 of the IPC)

[80] To prove the guilt of accused under section 201 of the IPC, the prosecution must prove that -

- (1) an offence has been committed.
- (2) the accused knew, or had reason to believe, that such offence had been committed.

(3) the accused caused evidence thereof to disappear or gave false information respecting such offence, knowing or having reason to believe the same to be false.

(4) the accused did as in (3) with intent to screen the offender from legal punishment.

[81] It is pertinent to note that to bring home the guilt of the accused, the prosecution first and foremost should prove that an offence has been committed. As discussed in foregoing paragraphs of this judgment, the prosecution has proved that accused No.1 – Santosh More has committed an offence punishable under Sec.302 of the IPC. To prove other ingredients of Sec.201 of the IPC prosecution has adduced evidence of the Investigating Officer and some panch witnesses.

(i) Causing disappearance of evidence of the crime by accused No.1- Santosh More :-

[82] It is proved by the prosecution that accused No.1- Santosh More murdered deceased – Anil Sharma by firing bullet from the revolver. Thus, the said revolver was the weapon of the crime. It has come in the evidence of PI – Vijaykumar Sonwane (PW23) that on 22.01.2016 accused No.1- Santosh More was in police custody. At that time, he made voluntary statement before him that the revolver used to kill the deceased was concealed by him in his house and he also showed his willingness to produce the said revolver. Accordingly, PI – Vijaykumar Sonwane (PW23)

prepared panchanama of the voluntary statement of accused No.1- Santosh More vide Exh.303.

[83] PI – Vijaykumar Sonwane (PW23) further states that, thereafter, he along with accused – Santosh More, panch witnesses and police staff went to the house of the accused as led by him. Then, they stepped down from the vehicle and followed the accused. Accused No.1- Santosh More open the cupboard in his house and took out one revolver, five cartridges, holster and license for the revolver. PI – Vijaykumar Sonwane (PW23) seized those articles in presence of panch witnesses and prepared panchanama vide Exh.304.

[84] Evidence of PI – Vijaykumar Sonwane (PW23) is corroborated by Kailash Thorad (PW1) who is the panch witness of panchanama of (Exh.303) and (Exh.304). Their evidence remained unshattered during their cross-examination conducted by the defence. Thus, the prosecution has adduced evidence to show that after committing murder of the deceased by the revolver accused No.1–Santosh More concealed it at his house. This is nothing but causing disappearance of evidence of the said crime.

(ii) Causing disappearance of evidence of the crime by accused No.3- Vishnu @ Vinu Dagduba Ikhe :-

[85] It appears from the record some part of the

investigation of this case was conducted by PI – Jamdar (PW22). His evidence shows that, on 29.01.2016 accused No.3 – Vishnu @ Vinu Dagduba Ikhe was in police custody. At that time, he made voluntary statement before him in presence of panch witnesses and thereby disclosed that he helped accused No1- Santosh More for disposing of the dead-body and while doing so his wearing clothes and wearing clothes of the accused No.4 – Raju Raut were stained with blood. He concealed the said clothes in one room of Hotel Nakshtra and he further showed his willingness to show the said room. Accordingly, PI – Jamdar (PW22) reduced into writing the said voluntary statement of accused No.3- Vishnu Ikhe vide Exh.393.

[86] Evidence of PI – Jamdar (PW22) further shows that, thereafter he along with accused No.3 – Vishnu Ikhe, panch witnesses and police staff went to the said hotel Nakshtra as led by accused No.3- Vishnu Ikhe. Then, they followed the accused No.3- Vishnu Ikhe uptill the said room. There the said accused took out one bag kept behind the sofa and from the said bag he produced his shirt and pant as well as shirt and pant of accused – Raju Raut and one pair of shoes. PI- Jamdar (PW22) seized those articles in presence of panch witnesses and prepared panchanama vide Exh.394.

[87] Evidence of PI- Jamdar (PW22) is corroborated by Champalal Rajput (PW5) who is the panch witness of panchanama

of (Exh.393) and (Exh.394). Their evidence remained unshattered during their cross-examination conducted by the defence. Thus, the prosecution has adduced evidence to show that after accused No.1- Santosh More committed murder of the deceased, accused No.3- Vishnu Ikhe helped to dispose of dead-body of the deceased, with an intention of causing disappearance evidence of the said crime to screen accused No.1- Santosh More from legal punishment of the crime.

[88] However, the above evidence collected from accused No.3- Vishnu Ikhe cannot be used against accused No.4 – Raju Raut, since it is the evidence of accomplice.

(iii) Causing disappearance of evidence of the crime by accused No.4 – Raju Ashok Raut:-

[89] So far as, accused No.4- Raju Ashok Raut is concerned, evidence of PI – Vijaykumar Sonwane (PW23) shows that, on 22.01.2016 accused – Raju Raut was in police custody. At that time, he made voluntary statement before him in presence of panch witnesses and thereby disclosed that he cut wearing clothes of the deceased by knife and cut head of the deceased by “*Sattur*” (chopper like weapon) and thereby he showed his willingness to show the spot where is concealed the said knife and “*Sattur*”. Accordingly, PI – Vijaykumar Sonwane (PW23) reduced into writing the said voluntary statement of accused – Raju Raut vide Exh.388.

[90] Evidence of PI – Vijaykumar Sonwane (PW23) further shows that, thereafter, he along with accused – Raju Raut, panch witnesses and police staff went near hotel Kailash as led by accused - Raju Raut. Then, accused – Raju Raut took out 1 knife and 1 Sattur which were kept in a tin-container. PI – Vijaykumar Sonwane (PW23) seized those articles in presence of panch witnesses and prepared panchanama vide Exh.389.

[91] Evidence of PI – Vijaykumar Sonwane (PW23) is corroborated by Harishchandra Jagtap (PW4) who is the panch witness of panchanama of (Exh.388 and Exh.389). Their evidence remained unshattered during their cross-examination conducted by the defence. Thus, the prosecution has adduced sufficient evidence to show that after cutting clothes from the dead-body and after cutting head of the deceased, accused – Raju Raut concealed the knife and *sattur* with an intention of causing disappearance of evidence the said crime to screen accused No.1- Santosh More from legal punishment of the crime.

(iv) Causing disappearance of evidence of the crime by accused No.5 – Deepak Madhavrao More:-

[92] So far as, accused No.5- Deepak Madhavrao More is concerned, evidence of PI – Pandit Sonwane (PW25) shows that, on 29.01.2016 he was ordered to take search of the house of accused – Deepak More. Therefore, he along with accused No.5- Deepak More went to the house of accused No.5- Deepak More at village Kausadi, Tq. Jintur, Dist. Parbhani. There accused No.5-

Deepak More produced 1 shirt, 1 pant and a pair of sandal in presence of the panch witnesses. PI – Pandit Sonwane (PW25) prepared panchanama to that effect vide Exh.933.

[93] Rahul Deshmukh (PW7) and Rahul Ghuge (PW8) are the panch witnesses of panchanama of (Exh.933). Both of them turned hostile to the prosecution and denied that police seized clothes of accused – Deepak More in their presence. Moreover, these wearing clothes of accused No.5- Deepak More has nothing to do with the evidence of this crime. Therefore, only on the basis of recovery of the said clothes of accused No.5- Deepak More it cannot be concluded that he caused to disappear evidence of this crime.

(v) Causing disappearance of evidence of the crime by accused No.6 – Sudam Khandagle and accused No.7- Mahesh Kadne (deceased):-

[94] Evidence of PI – Vijaykumar Sonwane (PW23) shows that, on 25.01.2016 accused No.6 - Sudam Khandagle was in police custody. At that time, he made voluntary statement before him in presence of panch witnesses and thereby disclosed that after disposing of the dead-body of the deceased – Anil Sharma accused No.1- Madhav More handed over him and accused No.7- Mahesh Kadne, one polythene bag containing Pistole and cartridges of the deceased and asked them to throw the said carry bag in the water of Salim Ali Sarovar (Lake). Then, he along with accused No.7- Mahesh Kadne went to Salim Ali Sarovar by TATA Sumo Car and threw the said carrybag containing Pistole and

Cartridges. Accordingly, PI – Vijaykumar Sonwane (PW23) reduced into writing the said voluntary statement of accused – Sudam Khandagle vide Exh.403.

[95] Evidence of PI – Vijaykumar Sonwane (PW23) further shows that, thereafter, he along with accused – Sudam Khandagle, panch witnesses and police staff went to the said Salim Ali Sarovar as led by accused – Sudam Khandagle. There accused – Sudam Khandagle showed the said spot where he threw carry-bag into the water of said Salim Ali Sarovar. Already, 2-3 swimmers were called there. PI – Vijaykumar Sonwane (PW23) asked those swimmers to go into the water and search the carry bag containing Pistole and Cartridges. Sometime, thereafter, Rameshwar Lakare, the swimmer took out one carry-bag containing one Pistole, 31 Live Cartridges and 2 empty Cartridges. PI – Vijaykumar Sonwane (PW23) seized those articles in presence of panch witnesses and prepared panchanama to that effect vide Exh.404.

[96] Evidence of PI – Vijaykumar Sonwane (PW23) is corroborated by Narayan Lambate (PW6), who is the panch witness of panchanama of (Exh.403 and 404). Their evidence remained unshattered during their cross-examination conducted by the defence. Thus, the prosecution has adduced sufficient evidence to show that as per the say of accused No.1 – Santosh More, accused No.6 – Sudam Khandagle threw carry-bag containing Pistole and Cartridges into the water of Salim Ali Sarovar with an intention of causing disappearance of evidence the said crime to

screen accused No.1- Santosh More from legal punishment of the crime.

[97] However, the above evidence collected from accused No.6 - Sudam Khandagle cannot be used against accused No.7- Mahesh Kadne, since it is the evidence of accomplice.

(vi) Seizure of TATA Sumo Jeep from the house of accused No.7- Mahesh Kadne (deceased):-

[98] It has come in the evidence of PI – Vijaykumar Sonwane (PW23) that, during the interrogation accused No.7- Mahesh Kadne disclosed that, the TATA Sumo Jeep which was used to go to Salim Ali Sarovar, was kept by him at his house at Shivshankar Colony. Therefore, PI – Vijaykumar Sonwane (PW23) along with two panch witnesses went to the house of accused – Mahesh Kadne at Shivshankar Colony and seized one TATA Sumo Jeep bearing No.MH-20-U-4890 and prepared panchanama to that effect vide Exh.405.

[99] Narayan Lambhate (PW6) is the panch witness of panchanama of (Exh.). His evidence shows that, police seized TATA Sumo Jeep bearing No.MH-20-4890 from accused - Sudam Khandagle and Mahesh Kadne. Police prepared panchanama to that effect vide Exh.405. However, evidence of Narayan Lambhate (PW6) nowhere disclose that, from which particular place the said TATA Sumo Jeep was seized. Therefore, his evidence appears to be

vague and incomplete. Thus, evidence of PI – Vijaykumar Sonwane (PW23) is not corroborated by narayan Lambhate (PW6) on the point of material aspect of seizure panchanama (Exh.405). Therefore, on the basis of uncorroborated evidence of PI – Vijaykumar Sonwane (PW23), it would not just and proper to hold that, accused No.7- Mahesh Kadne caused to disappear evidence of this crime to screen accused No.1 – Santosh More from legal punishment. (It is important to note that, during the trial this accused No.7- Mahesh Kadne reported to be dead. Hence, case against him is already abated.)

(vii) Causing disappearance of evidence of the crime by accused No.2- Santosh Jagtap, accused No.8 – Mahesh @ Pappu Vishnu Naikwade, accused No.9 – Nikhil Chagan Pawar and accused No.10 - Santosh Bhanudas Chavan:-

[100] These accused have also been charged with Sec.201 read with Sec.34 of the IPC for allegedly to have been caused to disappear evidence of this crime. However, on going through the evidence and other material placed on record, it appears that, neither the Investigating Officers nor any other witness have stated that, these three accused have helped other accused persons to caused disappearance of evidence of this crime or anything incriminating has been seized at their instance. I, therefore, can safely conclude that, there is absolutely no evidence to prove guilt of accused Nos.2, 8, 9 and 10 for the offence punishable under Sec.201 read with Sec.34 of the IPC.

[101] On the point of discovery and recovery of the revolver and license to possess revolver, Learned Advocate for accused No.1- Santosh More has submitted that, the said recovery was not made at the instance of accused No.1- Santosh More. He has not made any voluntary statement before the Investigating Officer, therefore, said discovery has no meaning in the eyes of law. Moreover, there is no evidence to show that, the above seized articles were properly sealed by the Investigating Officer at the time of panchanama. Therefore, there is scope to draw inference that the Investigating Officer might have tampered the said seized articles. In support of his argument the Ld. Advocate for accused No.1 has relied upon the case law **Deoraj Deju Suvarna And Etc. vs State Of Maharashtra : 1994CRILJ3602**, wherein the Hon'ble High Court observed thus;

The case for the prosecution is that on 25th March 1991, at about 2 p.m. within 12 hours of the incident, at police station Pant Nagar, P.W. 7 Keru Shivram Gaikwad was called and in his presence a shirt and a pant each from Maria John, Raju alias Rajendra and Guru Nadar was recovered and a shirt and a lungi was recovered from Rajendra Kalmadi. The aforesaid witness states that these four persons were putting on blood-stained clothes and at the behest of the police, they gave them. Whereas the recovery memo with respect to the blood-stained clothes of Guru Nadar and Kalmadi is Exhibit 23, the recovery memo with respect to blood-stained clothes of Maria John and Raju is Exhibit 26. The recovery memo with respect to recovery of clothes from Deoraj is Exhibit 31 and 31A. Mrs. Ponda has contended before us and with considerable justification that the evidence that these

four persons were putting on blood-stained clothes which they gave to the police should not be believed. We find merit in her contentions. In the first instance, it appears to be extremely improbable that as close as 12 hours of the incident taking places, these four persons

would have been parading themselves putting on blood-stained clothes. This is an insult to our intelligence. We further find that there is no evidence to show that from the date of recovery i.e. 25th March, 1991, to the date of the clothes being sent to the Chemical Analyst i.e. on 9th April, 1991, where the clothes were kept and whether they were kept throughout in a sealed condition. Mrs. Ponda argues that in the absence of this evidence, the probability of human blood being put on clothes subsequent to recovery and prior to their being sent to the Chemical Analyst, cannot be ruled out. In support of her contention, she cited a Division Bench decision reported in AIR 1955 Raj 82 : (1955 Cri LJ 835) State v. Motia.

In the aforesaid decision, Chief justice Wanchoo has held, that in the absence of evidence that articles were kept sealed between the time of recovery and being sent to can say that these witnesses are credible and truthful witnesses with respect to recovery of clothes. Consequently, we have no option but, to reject the argument of the learned Additional Public Prosecutor. We hold that the prosecution has failed to prove that blood stained clothes were recovered from the five appellants on the date of the incident and were kept in a scaled condition between the date of recovery and their being sent to the Chemical Analyst.

[102] In the light of observations made in the above case law **Deoraj Deju Suvarna** (supra) if the evidence and other material placed on the record is examined it will reveal that so far as

sealing of the seized articles is concerned, evidence of the Investigating Officer and panch witness remained unshaken.

Point No.3:-

(Sec.364 read with Sec.34 of the IPC):-

[103] To prove guilt of the accused for the offence of abduction punishable under Sec.364 of the IPC prosecution must prove that:-

- (i) the accused compelled the person to go from the place in question,
- (ii) he so compelled that person by means of force; or that he induced that person to do so by deceitful means.
- (iii) he so abducted the person in question in order that;
 - (a) that such person might be murdered; or
 - (b) that such person might be so disposed off as to be put in danger of being murdered;

[104] It is already discussed that from the evidence of Sunil Sharma (PW9), Govind Nandurkar (PW10) and Rajeshkumari (PW26) it appears that, on 17.01.2016 since morning the deceased was saying that his friend Santosh Jagap is coming from Dubai and in the evening they have to go for celebration of birthday of accused No.1- Santosh More.

[105] Moreover, evidence of driver – Govind Nandurkar (PW10) shows that, on that evening the deceased – Anil Sharma asked to take him to Delux Dhaba at Dhoregaon and both of them

went by their Fortuner Car to the said Delux Dhaba.

[106] Evidence of driver – Govind Nandurkar (PW10) also shows that, thereafter, the deceased himself asked him to take back Range Rover Car of accused No.2- Santosh Jagtap and thereafter the deceased along with accused No.2- Santosh Jagtap proceeded for birthday party by Fortuner Car. All these facts and circumstances are sufficient to show that none of the accused persons compelled the deceased to go from one place to another. So also, there is no evidence to show that any of the accused used force upon the deceased or used any kind of deceitful means and thereby induced him to go from the place in question. I, therefore, hold that, prosecution has failed to prove guilt of accused persons for the offence punishable under Sec.364 of the IPC.

Point No.2:-

(Sec.120-B of the IPC):-

[107] It is alleged by the prosecution that, the accused in furtherance of their common intention hatched conspiracy and thereby abducted deceased – Anil Hawasing Sharma in order that he may be murdered or so dispose of as to be put in danger of being murdered.

[108] Sec.120-A of the IPC defines criminal conspiracy as

under:-

Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,— (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

[109] The offence of criminal conspiracy consists in the very agreement between two or more persons to commit a criminal offence irrespective of further consideration whether or not, those offences have actually been committed. The very fact of the conspiracy constitute the offence and it is immaterial whether anything has been done in pursuance of unlawful agreement. Even if there is concurrence in the intention of the accused persons to do an illegal act, it is not enough for the purpose of establishing a charge of conspiracy. A conspiracy is not merely concurrence of wills but a concurrence resulting from agreement between the two. Thus, agreement is the rock bottom of the offence under Section 120-B of the IPC. The essence of criminal conspiracy is an agreement to do an illegal act. Such an agreement can be proved either by direct evidence or by circumstantial evidence or by both.

[110] It is part of the record that on completion of the investigation, the Investigating Officer submitted charge-sheet, wherein he alleged that the accused persons hatched criminal conspiracy and therefore he applied Section 120-B of the IPC against the accused persons. During recording of his evidence it was expected on the part of the Investigating Officer that how the accused persons hatched criminal conspiracy. He was required to state before the Court how there is direct or indirect evidence as regards to the criminal conspiracy. In the present matter, admittedly, there is no direct evidence as regards to the alleged criminal conspiracy. So far as circumstantial evidence is concerned, it appears that besides mentioning of Section 120-B of the IPC, in the charge-sheet, there is nothing on record to show that the accused persons or two or more accused persons had an agreement to do illegal act i.e. murder of the deceased. Even during the final argument, the learned APP has not pointed out or elaborated any circumstance which would be sufficient to say that there was agreement between two or more accused person to kill Anil Hawasing Sharma. Therefore, having considered the material available on the record, I can safely conclude that the prosecution has not brought sufficient and cogent evidence to prove the guilt of the accused persons for the offence punishable under section 120-B of the IPC.

[111] For the reasons stated above, I hold that the prosecution has brought sufficient and cogent evidence on record

to prove the guilt of the accused Nos.1 – Santosh More for the offence punishable under section 302 of the IPC. I, therefore, answer Point No.4 accordingly.

[112] I also hold that, prosecution has brought sufficient and cogent evidence on record to prove the guilt of accused No.1- Santosh More, accused Nos.3- Vishnu Ikhe, accused No.4- Raju Raut and accused No.6- Sudam Khandagle for the offence punishable under Section 201 read with Sec.34 of the IPC. I, therefore, answer Point No.5 accordingly.

[113] I also conclude that, prosecution has not brought sufficient and cogent evidence on record to prove the guilt of the accused persons for the offences punishable under Sections 364 read with Sec.34 and under Sec.120-B of the IPC. I, therefore, answer Point Nos.2 and 3 in the negative.

Point No.6:-

[114] Section 4 of the Arms Act, speaks thus :-

Section 4. License for acquisition and possession of arms of specified description in certain cases. — If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification, and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that

notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

[115] Section 25 of the Arms Act, provides punishment for commission of the offence under Section 4. To attract above Section 4, there must be notification of the Central Government in force to regulate acquisition or possession of the arms other than the fire arms. In the present matter, neither the Investigating Officer nor any prosecution witness has stated that any such notification regulating acquisition or possession of the arms other than the fire arms, was in force at the time of the incident. Moreover, the prosecution has not produced on record any authenticated documentary evidence to show that at the time of the incident, any order or notification prohibiting possession of any arms other than the fire arms, was in force. Therefore, for want of the notification under Section 4 of the Arms Act, prohibiting possession of any arms other than the fire arms, offence under Section 4 read with section 25 of the Arms Act, cannot be attributed against the accused persons. I, therefore, answer Point No.6 in the negative.

Point No.7:-

[116] As mentioned above, the prosecution has proved guilt of accused No.1 – Santosh More for the offences punishable under Sections 302 and 201 read with Sec.34 of the IPC. Hence, he is liable to be convicted.

[117] So also, as mentioned above, the prosecution has proved guilt of accused No.3, 4, 6 for the offences punishable under Section 201 read with Sec.34 of the IPC. Hence, they are liable to be convicted to that extent.

[118] However, I hold that, prosecution has failed to prove guilt of accused No.2, 5 and 8 to 10 for the offences punishable under Sec.201 read with Sec.34 of the IPC. Hence, they are liable to be acquitted to that extent.

[119] Prosecution has failed to prove guilt of all the accused persons for the offences punishable under Sec.364 and 120-B of the IPC and under Sec.4 read with Sec.25 of the Arms Act. Hence, they are liable to be acquitted to that extent.

Disposal of seized muddemal property:-

[120] So far as, Articles of general muddemal property (GPR No.34/2025 (Old GPR No.51/2018) at Sr. Nos.1 to 9, 14 to 17, 23 to 32, 34, 35 and 36 (i.e. samples of blood collected from the spot of the incident, clothes, belt, pieces of cloths, shoes, etc.,) are concerned, they appear to be worthless. Hence, they are liable to be disposed of, after the appeal period is over.

[121] So far as, Articles of valuable muddemal property (VPR No.17/2025 (Old VPR No.15/2018) at Sr. Nos.10, 11, 12, 13, 18, 19, 20 and 21 (i.e. Revolvers, Cartridges, Holsters, license, knife, Sattur, etc.,) are concerned, they are the weapons of the crime.

They are liable to be forwarded to the District Magistrate for their disposal as per the provisions of law, after the appeal period is over.

[122] So far as, muddemal property (VPR No.17/2025 (Old VPR No.15/2018) at Sr. No.38(i.e. DVR, four cameras, power adopter, etc.,) are concerned, till this date this Court has not decided issue of entitlement of custody of the above mentioned DVR, four cameras etc., Therefore, it would be just and proper to give the above articles to the person/s entitled thereto, after due inquiry, after the appeal period is over.

[123] So far as, muddemal property i.e. (i) TATA Sumo Jeep bearing No.MH-20-U-4849, (ii) Accent Car bearing No.MH-20-AG-9594 and (iii) Jeep of Ford Company bearing No.MH-26-N-1 are concerned, till this date this Court has not decided issue of entitlement of custody of the above mentioned vehicles. Therefore, it would be just and proper to give the above motor vehicles to the person/s entitled thereto, after due inquiry, after the appeal period is over.

[124] Before parting with the judgment, I would like to hear accused Nos.1, 3, 4 and 6 on the point of sentence.

Date:- 13th April, 2026

[S. B. Bahalkar]
Additional Sessions Judge
Gangapur, Dist. Chh. Sambhajinagar

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[125] Accused No.1- **Santosh Madhav More** is absent when repeatedly call till 01:10 p.m. Ld. Advocate Shri. Malpani appearing on behalf of accused No.1- **Santosh Madhav More**, in the morning at about 11:30 a.m. submitted that accused No.1- **Santosh Madhav More** is coming before the Court and he is on the way. However, even-after, more than one and half hours he has not appeared. No doubt it is necessary to hear the accused on the point of sentence. Further, accused No.1- Santosh Madhav More is absent for no reason. Thus, though accused No.1- Santosh Madhav More has been given opportunity to make submission on the point of sentence, he has not availed the said opportunity and has chosen to remained absent. This absence of accused No.1- **Santosh Madhav More** at crucial time of pronouncement of judgment is sufficient to draw an inference that to avoid punishment. He is avoiding to come before the Court.

[126] I have heard Ld. Adv. Shri. Malpani for accused No.1- **Santosh More**. He has submitted that, considering the age of accused No.1- **Santosh More** and fact that, he was already in jail as under trial prisoner for more than nine years, lenient view may be taken while awarding sentence. He has also submitted that, this is not the case which can be considered under the category of “rarest of rare case”.

[127] I have heard accused No.3- **Vishnu Dagduba Ikhe**, accused No.4 - **Raju Ashok Raut** and accused No.6 - **Sudam Eknath**

Khandagle in person. I have also heard Ld. Adv. Shri. Malpani and Shri. Jejurkar for these accused persons. They submitted to take lenient view while awarding sentence.

[128] On the other hand, Ld.A.P.P. submitted that the accused have committed heinous offence. Hence, maximum punishment be awarded.

[129] Purpose of imposing sentence is to establish rule of law and respond to society's cry for justice against criminals. For offence U/Sec.302 of the IPC, law prescribes sentence of death or imprisonment for life and fine.

[130] While making selection of appropriate sentence the Court has to weigh the balance of mitigating and aggravating circumstances. In this case, no evidence is brought by prosecution to suggest that prospects of reformation in accused are totally lost and sentence of imprisonment for life would be inadequate to accused No.1- **Santosh More**. Considering the facts of the crime, I am of the view that the prosecution has not brought the case within the category of “rarest of rare case”.

[131] Under Sec.302 of the IPC minimum punishment is rigorous imprisonment for life and maximum punishment is death. Thus, even if, accused No.1- Santosh Madhav More is not present before the Court and not heard on the point of sentence, this Court cannot impose punishment less than rigorous imprisonment

for life. Therefore, the sentence of imprisonment for life for the offence punishable U/Sec.302 of the IPC with fine shall meet the ends of justice.

[132] So far as, accused No.3- **Vishnu Dagduba Ikhe**, accused No.4 - **Raju Ashok Raut** and accused No.6 - **Sudam Eknath Khandagle** are concerned, from the facts and circumstances of the case, it appears that at the time of incident they were serving as servant in the Hotel run/owned by accused No.1- Santosh More, who is the main culprits of this crime. Thus, these three accused can be said to be dominated by their master i.e. accused No.1 – Santosh More. Considering these facts and circumstances, I am of the opinion that, sentence of three years imprisonment and fine would meet the ends of justice.

[133] I, therefore, in answer to Point No.7 pass the following order.:-

ORDER

[1] Accused No.1- **Santosh Madhav More**, is hereby convicted of the offence punishable under Sections **302** of the Indian Penal Code, vide Section **235(2)** of the Code of Criminal Procedure.

[2] Accused No.1- **Santosh Madhav More**, Accused No.3- **Vishnu Dagduba Ikhe**, Accused No.4 - **Raju Ashok Raut** and Accused No.6- **Sudam Eknath Khandagle** are hereby convicted of the offence punishable under Section **201** read with Sec.34 of the Indian Penal Code, vide Section **235(2)** of the Code of Criminal Procedure.

[3] For the offence punishable under Sections **302** of the Indian Penal Code, accused No.1 – **Santosh Madhav More**, is hereby sentenced to **suffer rigorous imprisonment for life and pay fine of Rs.1,00,000/- (Rupees One Lakh only)**, in default, to suffer further **rigorous imprisonment for 1 year more**.

[4] For the offence punishable under Sections **201 read with Sec.34 of the Indian Penal Code** Accused No.1- **Santosh Madhav More**, Accused No.3- **Vishnu Dagduba Ikhe**, Accused No.4- **Raju Ashok Raut** and Accused No.6- **Sudam Eknath Khandagle** are hereby sentenced to suffer **rigorous imprisonment for 03 years** and pay fine of **Rs.5000/- (Rupees Five Thousand only)** each in default, to suffer further **simple imprisonment for 01 month more**.

[5] All accused are hereby acquitted for the offences punishable under Section **364** read with Sec.34 read with Sec.**120-B** of the Indian Penal Code and under Sec.4 read with Sec.**25** of the Arms Act, vide Section 235(1) of the Code of Criminal Procedure.

[6] Accused No.1- **Santosh Madhav More**, Accused No.3- **Vishnu Dagduba Ikhe**, Accused No.4 - **Raju Ashok Raut** and Accused No.6 - **Sudam Eknath Khandagle** shall surrender their bail bonds.

[7] Bail bonds of Accused No.2 - **Santosh Madhav Jagtap**, accused No.5 - **Deepak Madhavrao More**, accused No.8- **Mahesh @ Pappu Vishnu Naikwade**, accused No.9- **Nikhil Chagan Pawar** and accused No.10 – **Santosh Bhanudas Chavan**, shall stands cancelled.

[8] All accused shall furnish P.R.Bond of **Rs.25,000/- (Rs. Twenty Five Thousand only)** each and surety of like amount, in compliance with Section 437-A of the Code of Criminal Procedure.

[9] Accused No.1- **Santosh Madhav More**, Accused No.3- **Vishnu Dagduba Ikhe**, Accused No.4- **Raju Ashok Raut** and Accused No.6- **Sudam Eknath Khandagle** shall be given set-off as per Sec.428 read with Sec.433-A of the Code of Criminal Procedure.

[10] Substantive sentence shall run concurrently.

[11] Amount of fine, if recovered, be given to **Rajeshkumari Anil Sharma (PW26)**, the wife of the deceased – Anil Sharma as compensation under Sec.357(3) of the Code of Criminal Procedure.

[12] Muddemal property [bearing GPR No.34/2025 (Old GPR No.51/2018)] at Sr. Nos.1 to 9, 14 to 17, 23 to 32, 34, 35 and 36 (i.e. samples of blood collected from the spot of the incident, clothes, belt, pieces of cloths, shoes, etc.,) be disposed of, after the appeal period is over.

[13] Muddemal property [bearing VPR No.17/2025 (Old VPR No.15/2018)] at Sr. Nos.10, 11, 12, 13, 18, 19, 20 and 21 (i.e. Revolvers, Cartridges, Holsters, license, knife, Sattur, etc.,) be forwarded to the District Magistrate for their disposal as per the provisions of law, after the appeal period is over.

[14] Muddemal property [bearing VPR No.17/2025 (Old VPR No.15/2018)] at Sr. No.38 (i.e. DVR, four cameras, power adopter, etc.,) be returned to the custody of the person/s entitled thereto, after due inquiry, after the appeal period is over.

[15] Muddemal property i.e. (i) TATA Sumo Jeep bearing No.MH-20-U-4849, (ii) Accent Car bearing No.MH-20-AG-9594, (iii) Jeep of Ford Company bearing No.MH-26-N-1 and be returned to the custody of the person/s entitled thereto, after due inquiry, after the appeal period is over.

[16] Copy of the Judgment be supplied to Accused No.1- **Santosh Madhav More**, Accused No.3- **Vishnu Dagduba Ikhe**, Accused No.4- **Raju Ashok Raut** and Accused No.6 - **Sudam Eknath Khandagle**, at free of costs.

[17] Copy of the Judgment be sent to the District Magistrate, Chhatrapati-Sambhajinagar, for further action and compliance under Section 365 of the Code of Criminal Procedure.

[18] Issue conviction warrant against accused No.1- Santosh Madhav More.

[19] Issue letter accordingly to the concern police station.

Date:- 13th April, 2026

[S. B. Bahalkar]
Additional Sessions Judge
Gangapur, Dist. Chh. Sambhajinagar

...Continued on page No.69

Part 'C'

(Para 44(iii) of Chapter VI of Criminal Manual)
LIST OF PROSECUTION /DEFENCE/COURT WITNESSES

A. Prosecution :-

RAN K	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
(1)	Kailash Nana Thorat – PW1- Exh.298	Panch witness over seizure panchanama of head of the deceased
(2)	Sanjeev Baliram Suryawanshi – PW2- Exh.358	Panch witness over Seizure panchanama of four wheeler bearing registration No.MH-26-N-0001
(3)	Kailas Okhardaji Jine – PW3- Exh.380	Medical Officer who conducted the postmortem of the dead-body of the deceased
(4)	Harischandra Nana Jagatap – PW4- Exh.387	Panch witness over memorandum panchanama of accused- Raju Ashok Raut
(5)	Champalal Sawairam Rajput – PW5- Exh.392	Panch witness over memorandum

		panchanama of accused- Vishnu @ Minu Dagduba Ikhe
(6)	Narayan Ramrao Lambhate (PW6)- Exh.402	Panch witness over memorandum panchanama of accused- Sudam Khandagale
(7)	Rahul Ganeshrao Deshmukh (PW7)- Exh.434	Panch witness over seizure panchanama of one pant, one shirt and one sandal
(8)	Rahul Manikrao ghuge (PW8)- Exh.435	Panch witness over seizure panchanama of one pant, one shirt and one sandal
(9)	Sunil Hawasingh Sharma (PW9) – Exh.456	Informant who lodged FIR
(10)	Govind Ganpat Nandurkar (PW10)- Exh.477	Witness
(11)	Mukeshkumar Mahindrasingh Chohel (PW11) – Exh.487	Panch witness over seizure panchanama in respect of vehicle bearing registration No.MH-42-AA7
(12)	Vijay Ramji Ade (PW12) – Exh.503	Witness
(13)	Laxmi Santosh Jha (PW13)– Exh.535	Witness
(14)	Amol Bhausaheb Pawar (PW14)- Exh.745	Sample carrier
(15)	Kalyan Khanderao Istake (PW15) – Exh.752	Panch witness over spot panchanama (Exh.753)

(16)	Shaikh Taufiq Shaikh Rafiq (PW16)- Exh.805	Panch witness over seizure panchanama in respect of VDR
(17)	Mahesh Patilba Andhale (PW17) – Exh.811	Police witness who prepared the seizure panchanama in respect of seizure of DVR
(18)	Yogesh Damodhar Warade (PW18)- Exh.812	Witness over seizure panchanama dated 01.02.2016 of VDR
(19)	Dattaram Shantaram Angare (PW19) – Exh.823	Nodal Officer, Vodaphone – Ida Ltd., Pune
(20)	Tushar Lalasaheb Nalawade (PW20) – Exh.830	Nodal Officer, Bharti Airtel Ltd., Pune
(21)	Vinay Dadasaheb Londhe (PW21) – Exh.842	Nodal Officer, Bharat Sanchar Nigam Ltd., Pune
(22)	Ganesh Jagannath Jamdar (PW22) – Exh.848	Investigating Officer of missing complaint No.02/2016 dated 19.01.2016
(23)	Vijaykumar Pitamber Sonwane (PW-23) Exh. 871	Investigating Officer of missing
(24)	Shaikh Javed Shaikh Harun (PW-24) Exh. 909	Witness
(25)	Pandit Babasaheb Sonwane (PW-25) Exh. 932	Seizure panchanama cloth of accused Dipak Madhavrao More
(26)	Rajeshkumari Anil Sharma (PW-26) Exh.951	Witness (Wife of deceased)

(27)	Sharad Sarangdhar Barde (PW-27) Exh.955	Investigating Officer

B. Defence Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
-	-	-

C. Court Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
-	-	--

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution :-

Sr. Nos.	Exhibit Number	Description
1.	299	Seizure panchanama of head of the deceased
2.	300	Inquest panchanama of dead-body without head of the deceased
3.	301	Memorandum panchanama

4.	302	Seizure panchanama of sand mix ash, one clip of belt, burnt liquor boxes and cement poll
5.	303	Memorandum panchanama
6.	304	Seizure panchanama of revolver and bullet
7.	305	Seizure panchanama of shoes, shirt, pant, waist best having revolver cover
8.	381	Postmortem report
9.	388	Memorandum panchanama of accused- Raju Ashok Raut
10.	389	Seizure panchanama of Sattur and knife which were used by the accused at the time of commission
11.	393	Memorandum panchanama
12.	394	Seizure panchanama of two shirt, two pant and one pair of shoes
13.	403	Memorandum panchanama
14.	404	Seizure panchanama of carry bag which were containing revolver, 31 live bullets and 9 empty cartage
15.	405	Seizure panchanama in respect of vehicle TATA Sumo No.MH-20-4890 used by accused Sudam Khandagale and Mahesh Kadne
16.	406	White colour label
17.	407	Label
18.	457	Missing complaint
19.	458	Report
20.	536	Statement under Sec.164 of the Cr.P.C. recorded of the PW13
21.	746	Original copy of letter dated 10.02.2016 regarding sending of DNA sample to Directorate of Forensic Science Laboratories

22.	753	Spot panchanama dated 21.01.2016
23.	806	Seizure panchanama dated 01.02.2016 of VDR
24.	813	Signature of the (PW18)
25.	814	Statement under Sec.164 of the Cr.P.C. recorded of the (PW18)
26.	824	Forwarding letter dated 18.10.2016 in respect of furnishing details of cellular numbers
27.	825	CDR of Mobile phone No.9325279711
28.	826	CDR of Mobile phone No.8983777777
29.	827	CDR of Mobile phone No.9923482222
30.	828	CDR of Mobile phone No.8007517715
31.	829	Certificate U/Sec.65-B of the Indian Evidence Act in relation to the CDR
32.	831	Forwarding letter dated 10.11.2016 in respect of information regarding mobile No.9975735971
33.	832	CDR of Mobile phone No.9975735971
34.	833	Certificate U/Sec.65-B of the Indian Evidence Act in relation to the CDR
35.	843	Copy of forwarding letter dated 09.12.2016 regarding of CDR of Mobile Phone No.9423482222, 9423154483
36.	844 and 845	CDR report of mobile phone Nos.9423482222 and 9423154483
37.	846	Certificate U/Sec.65-B of the Indian Evidence Act in relation to the CDR
38.	849	Missing complaint dated 19.01.2016
39.	850	Seizure panchanama
40.	874	Spot panchanama dated 20.01.2016
41.	875	Spot panchanama dated 20.01.2016

42.	876	Letter to CA office dated 25.01.2016
43.	877	Seizure Spot panchanama of Hyundai Car MH20 AG9594 dated 20.01.2016
44.	878	Letter dated 09.02.2016 if favor of M.O. Ghati.
45.	879	Letter issued RTO Nanded Dated 11.02.2016
46.	880	Letter issued RTO Baramati Dated 11.02.2016
47.	881	Letter issued to Tahsil office Gangapur dated 11.02.2016
48.	882	Letter issued to Tahsil office Gangapur dated 11.02.2016
49.	883	Letter issued to Tahsil office Aurangabad dated 11.02.2016
50.	884	Letter issued to Tahsil office Aurangabad dated 11.02.2016
51.	885	Letter issued to Excise office Aurangabad dated 11.02.2016
52.	886	Letter issued to CA office dated 04.03.2016
53.	933	Seizure panchanama dated 20.01.2016
54.	956	Seizure panchanama of Land Rover car dated 20.01.2016

B. Defence:-

Sr. Nos.	Exhibit Number	Description
1	797	Arms license of accused No.1- Santosh Mahadu More

C. Court Exhibits :-

Sr. No.	Exhibit Number	Description
1.	174	Charge
2.	175 to 184	Particulars of accused persons
3.	982 to 989 and 1013	Statement of the accused persons recorded under Sec.313 of the Cr.P.C.
4.	1024 to 1035	C.A. report and DNA reports

D. Material Objects :-

Sr. Nos.	Exhibit Number	Description
1.	Article-A	Half burnt wine box
2.	Article-B	Ash, burnt pieces of box and belt clip
3.	Article-C	White colour shirt
4.	Article-D	Black colour pant
5.	Article-E	Brown colour shoes
6.	Article-F	Revolver cover belt
7.	Article-G	Revolver
8.	Article-H	One transparent box it contents 26 live bullets and 17 empty cartage
9.	Article-I	Revolver license
10.	Article-J	Revolver cover
11.	Article-B-4	Photographs of accused – Raju Ashok Raut
12.	Article-K	Knife
13.	Article-L	Sattur
14.	Article-M	Violent colour shirt
15.	Article-N	White colour shirt

16.	Article-O and P	Black pants
17.	Article-Q	Pair of shoes
18.	Article-R	Revolver
19.	Article-S	31 live cartridges
20.	Article-T	9 empty cartage

Date:- 13th April, 2026

[S. B. Bahalkar]
Additional Sessions Judge
Gangapur, Dist. Chh. Sambhajinagar