

MHDH010026202018



Presented on : 17/09/2018
Registered on : 17/09/2018
Decided on : 09/03/2026
Duration : 07Y, 05M, 22D

IN THE COURT OF SESSIONS DHULE, AT DHULE

(Present: Jayshri R. Pulate, Additional Sessions Judge, Dhule)

Sessions Case No. 103/2018

Exhibit No. : 1128

(Crime No.75/2018 of West Deopur Police Station)

Form No. XXXII

PART- 'A'

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

Prosecution

STATE OF MAHARASHTRA

Through: Dhule Taluka Police Station,
At the instance of Prashant Dagajirao
Patil,

Represented by

Shri. D. Y. Tavar, APP for the State,

Accused

- 01) Bajirao @ Subhash Sajan Pawar,
Age : 68 Years, Occu. Business,
R/o. Lane No. 6, Pawanputra Chouk,
Dhule, Tal. Dist. Dhule,
- 02) Bhupesh Valmik Patil,
Age : 23 Years, Occu. Nil
R/o. 43, Gayatri Nagar, Walwadi
Deopur, Dhule,
- 03) Harshad @ Dadu Ravindra Patil,
Age : 18 Years, Occu. Nil,

R/o. Walwadi Deopur, Dhule

- 04) Jayraj Shamkant Patil,
Age : 25 Years, Occu. Business,
R/o. 12-A, Borse Nagar, Deopur, Dhule.
- 05) Vaibhav @ Sonu Arun Pawar,
Age : 22 Years, Occu. Business,
R/o. Abhiyanta Nagar, Wadibhokar
Road, Deopur, Dhule,
- 06) Rushikesh Shamkant Patil,
Age : 19 Years, Occu. Education,
R/o. 12-B Borse Nagar, Deopur, Dhule,
- 07) Darshan Ambadas Pardeshi,
Age : 23 Years, Occu. Education,
R/o. 8 A Rane Nagar, Nijampur,
Tal. Sakri, Dist. Dhule,
- 08) Bhagwan Nanabhau Ahire,
Age : 22 Years, Occu. Agriculturist,
R/o. Near Vitthal Mandir, Jaitane, Tal.
Sakri Dist. Dhule,
- 09) Sandip @ Vikky Dilip Velis,
Age : 27 Years, Occu. Nil,
R/o. 19-B, Janki Nagar, Wadibhokar
Road, Deopur, Dhule.
- 10) Appa @ Arjun Bhagwan Ahire,
Age : 24 Years, Occu. Education,
R/o. At Post Jaitane – Nijampur,
Tal. Sakri, Dist. Dhule,
- 11) Gaurav Bajirao @ Subhash Pawar,
Age : 29 Years, Occu. Private Work,
R/o. Lane No. 6, Pawanputra Chouk,

Dhule

- 12) Bhushan Baburao Kapakar
Age : 30 Years, Occu. Business,
R/o. Fuley Colony, Near Shahu Natya
Mandir, Parola Road, Dhule,
- 13) Bhushan Nimba Pagare,
Age : 27 Years, Occu. Agriculturist,
R/o. Malhar Sena Chouk, Mahajan
Lane, Jaitane – Nijampur, Tal. Sakri,
Dist. Dhule.

- Represented by
- 01) **Mr. Prakash Patil, Advocate for accused
Nos. 1, 3, 7, 8 & 11**
- 02) **Mr. Satyajee V. Patil, Advocate for
accused No. 2**
- 03) **Mr. Akil Ismail Shaikh, Advocate for
accused Nos. 4, 6, 10 & 13**
- 04) **Mr. S. R. Patil, Advocate for accused
No. 5**
- 05) **Mr. B. B. Waghmare, Advocate for
accused Nos. 9 & 12.**
- 06) **Mr. Nikhil S. Chavan, Advocate for
Accused No. 11.**

PART- 'B'

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

Date of Offence : 08/06/2018

Date of F.I.R. : 09/06/2018

Date of Charge-sheet & : 03/09/2018 (Against accused
Supplementary Charge-sheet Nos. 1 to 9)
02/01/2019) (Against accused
Nos. 10 to 13)

Date of framing charge : 03/09/2021
Date of commencement of evidence : 13/06/2022
Date on which judgment is reserved : ---
Date of Judgment : 09/03/2026
Date of the sentencing order if any : 12/03/2026

Accused details :

Rank of the accused	Name of Accused	Date of Arrest	Date of release on bail	Offence charge with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Sec.428 of Cr.PC..
01)	Bajirao @ Subhash Sajan Pawar	09/06/2018 09/03/2026 (Taken in custody)	09/10/2023	143, 147, 148, 302, 307, 341, 201, r/w Sec. 149 & 120-B of the IPC, and Section 37 (1) (3) / 135 of B. P. Act.	Convicted	U/s. 302, 120 B of IPC and sentenced to suffer Imprisonment for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months.	
02)	Bhupesh Valmik Patil	09/06/2018	U.T.P	--"	Convicted	U/s. 302, 120 B r/w 149 of IPC and	

						<p>sentenced to suffer Imprisonment for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months.</p> <p>U/s. 143, 147, 148 r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively.</p>
03)	Harshad @ Dadu Ravindra Patil	09/06/2018	U.T.P	--"	Convicted	<p>U/s. 302, 120 B r/w 149 of IPC and sentenced to suffer Imprisonment for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months</p> <p>U/s. 143, 147, 148 r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of</p>

						Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively.
04)	Jayraj Shamka nt Patil	09/06/2018	U.T.P	--"--	Convicted	U/s. 302, 120 B r/w 149 of IPC and sentenced to suffer Imprisonme nt for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months.
						U/s. 143, 147, 148 r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively
						U/S. 341 r/w SI for one month fine of Rs. 500 I/d to suffer SI for 8 days.
05)	Vaibhav @ Sonu Arun Pawar	10/06/2018	U.T.P	--"--	Acquitted	
06)	Rushikes h Shamka	10/06/2018	U.T.P	--"--	Convicted	U/s. 302, 120 B r/w 149 of IPC

nt Patil

and
sentenced to
suffer
Imprisonme
nt for life
(two counts)
and fine of
Rs. 10,000/-
I/D. To
suffer R. I.
For six
months.

U/s. 143,
147, 148
r/w 149 of
IPC and
sentenced to
suffer RI for
1 month, 6
months & 1
year
respectively
and fine of
Rs. 500/-
each I/D. To
suffer S. I.
For 8 days, 1
month and 1
month
respectively

U/S. 341
r/w SI for
one month
fine of Rs.
500 I/d to
suffer SI for
8 days.

07)	Darshan Ambadas Pardeshi	16/06/2018 09/03/2026 (Taken in custody)	02/08/2025	--"--	Convicted	U/s. 302, 120 B r/w 149 of IPC and sentenced to suffer Imprisonme nt for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months.
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U/s. 143,
147, 148

						r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively
08)	Bhagwan Nanabha u Ahire	18/06/2018	U.T.P	--"--	Convicted	U/s. 302, 120 B r/w 149 of IPC and sentenced to suffer Imprisonme nt for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months. U/s. 143, 147, 148 r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively
09)	Sandip @ Vikky Dilip Velis	29/06/2018	U.T.P	--"--	Convicted	U/s. 212, of IPC and sentenced to R. I. For 5 years and fine of Rs.

						r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively
12)	Bhushan Baburao Kapkar	13/10/2018	U.T.P	--"--	Convicted	U/s. 302, 120 B r/w 149 of IPC and sentenced to suffer Imprisonme nt for life (two counts) and fine of Rs. 10,000/- I/D. To suffer R. I. For six months. U/s. 143, 147, 148 r/w 149 of IPC and sentenced to suffer RI for 1 month, 6 months & 1 year respectively and fine of Rs. 500/- each I/D. To suffer S. I. For 8 days, 1 month and 1 month respectively
13)	Bhushan Nimba Pagare	13/10/2018	U.T.P	--"--	Convicted	U/s. 302, 120 B r/w 149 of IPC and sentenced to suffer

Imprisonment for life
(two counts)
and fine of
Rs. 10,000/-
I/D. To
suffer R. I.
For six
months.

U/s. 143,
147, 148
r/w 149 of
IPC and
sentenced to
suffer RI for
1 month, 6
months & 1
year
respectively
and fine of
Rs. 500/-
each I/D. To
suffer S. I.
For 8 days, 1
month and 1
month
respectively

PART- 'C'

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

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A - Prosecution

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
P.W.1	Mayurchandra Pawar Amrutrao	Inquest Panch of dead body of deceased Raosaheb
P.W.2	Prashant Sakharam Patil	Inquest Panch of dead body of deceased Vaibhav
P.W.3	Sandip Shivram Pardeshi	Seizure Panch (of clothes of deceased Raosaheb)
P.W.4	Kiran Pitamber Patil	Seizure Panch of clothes of

- accused Jayraj, Bhupesh Patil, Harshal Patil & Hrishikesh Patil.
- P.W.5 Sanjay Nanabhau Pimpale Vehicle Inspection Panch of Scorpio bearing Registration No MH-18-W-5778
- P.W.6 Gaurav Vasudeo Kothawade Seizure panch of Vehicles bearing Registration No. MH-11-BC-4144, & Mh-18-BB-5513 Seizure Panch
- P.W.7 Tushar Dipak Wagh Vehicle Honda Shine Seizure Panch
- P.W.8 Vijay Deba Vasave Vehicle Hero Honda Pleasure Seizure Panch
- P.W.9 Vijay Shambhunath Shukla Witness on conspiracy
- P.W.10 Uday Subhash Chaudhari, Revenue Assistant, Tahsil Office Memorandum & Seizure Panch (A-2 Bhupesh Patil and A-3 Harshal Patil, A-6 Rushikesh Patil)
- P.W.11 Chhotu Mahadu Patil, Talathi Memorandum & Seizure Panch (A-8 Bhagwan Ahire)
- P.W.12 Tushar Vasant Baisane, Senior Assistant, Z. P. Dhule Memorandum & Seizure Panch (A-9 Sandip Velis)
- P. W. 13 Dr. Ramesh Gadhari Autopsy Surgeon
- P.W.14 Dr. Jitendra Yuvaraj Thakare The Medical Officer who examined deceased Vaibhav Patil, deceased Raosaheb Patil and Aakash Rajendra Patil.
- P.W.15 PSI Anil Jagannath Patil The witness who handed over the Scorpio Car and blood

- samples with copy of panchnama to West Deopur Police Station along with forwarding letter.
- P.W.16 PHC Nana Magan Pawar Police Station Officer at Parola Police Station on 08/06/2018
- P.W.17 Musaddik Anwar Husain Businessman of CCTV
Ansari equipments
- P.W.18 Rajendra Uttam Garde Editor of Daily Murder
Newspaper
- P.W.19 PSI Kautik Ramdas A witness who prepared
Surwade seizure panchnama of MH-15-
DJ-3700
- P.W.20 PHC Purshottam Amrut Carrier of seized clothes of
Sonawane both the deceased, their blood
samples and nail clippings.
- P.W.21 PC Yogesh Himmat Wagh Carrier of 5 sealed articles
- P.W.22 PHC Bhagwat Abhiman The carrier (and depositor of
Patil blood samples) of letter dated
11/06/2018 issued by IO for
collecting blood samples of
accused Bhupesh Patil,
Harshal Patil, Jayraj Patil,
Hrishikesh Patil and Vaibhav
Pawar, to Dr. Parvez Mujawar
attached to Hire Medical
College.
- P.W.23 PHC Sunil Baburao More Carrier of clothes of deceased,
accused and witnesses to
CFSL, Nashik.
- P.W.24 Tahsildar Milindkumar Conducted I. D. Parade
Ramdas Wagh
- P.W.25 Amit Maroti Pawar The witness for the incident
dated 31/01/2018

P.W.26	Gaurav Deoram Khairnar	Spot Panch
P.W.27	Prashant Dagajirao Patil	Informant
P.W.28	Harish Anil Shinde	Eye witness
P.W.29	Pravin Tanawade	Pandurang Nodal Officer
P.W.30	Dattaram Angre	Shantaram Nodal Officer
P.W.31	PI Satish Mhasu Borade	Second Investigation Officer
P.W.32	PI Sarita M. Bhand	Investigation Officer

B - Defence Witness if any --

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
D. W.1 (For accused No.5)	Raja Suresh Paradhi	Defense of Alibi
D. W.1 (For accused No.11)	Sanjay Dattatraya Pawar	Defense of Alibi

C – Court Witness if any -- NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A – Prosecution

<u>Sr.No.</u>	<u>Exhibit Number</u>	<u>Description</u>
01.	290	Inquest Panchnama (Deceased Raosaheb)

02. 291/1 to 291/9 Photographs of dead body of deceased Raosaheb
03. 293/1 to 293/15 Photographs of dead body of deceased Vaibhav
04. 294 Inquest Panchnama (Deceased Vaibhav)
05. 299 Seizure Panchnama of clothes of deceased Raosaheb & Vaibhav
06. 300 Seizure Panchnama of clothes of deceased Raosaheb, informant P. W 27, Omprakash Pati, Yogesh Patil, Aakash Deore and P. W. 28 Harish.
07. 306 Seizure Panchnama of clothes of accused Jayraj, Bhupesh & Harshal.
08. 307 Seizure Panchnama of clothes of accused Rushikesh Patil
09. 311 Intimation letter to P. W. 5 Sanjay Pimpale
10. 312 Scorpio vehicle inspection panchnama
11. 314 Seizure panchnama of Motorcycle Bajaj Pulser MH-11-BC-4144 and Honda Activa MH-18-BB-5513
12. 315/1 & 315/2 RC Books of vehicles No. MH-11-BC-4144 and Honda Activa MH-18-BB-5513
13. 318 Seizure Panchnama of Black Honda Shine bearing Registration No. MH-18-AK-3513
14. 320 Seizure Panchnama of Hero Honda Pleasure bearing Registration No. MH-18-AD-3920
15. 324 Statement of P. W. 9 recorded u/s. 164

- of Cr. P. C.
16. 327, 328 Intimation letters to P. W. 10 Uday Chaudhary and Panch Nana Gawali.
 17. 329 Memorandum of accused Bhupesh Patil
 18. 330 Memorandum of accused Harshal Patil
 19. 331/1 to 331/5 Photographs snapped at the time of process of seizure panchnama of Kukari and sword
 20. 332 Seizure Panchnama of Kukari and sword
 21. 333 Memorandum of accused Rushikesh Shamkant Patil
 22. 334 Seizure Panchnama of knife.
 23. 335/1 to 335/3 Photographs snapped at the time of process of seizure panchnama of knife.
 24. 338, 339 Intimation letters to P. W. 11 & another panch
 25. 340 Memorandum of accused Bhagwan Nanabhau Ahire
 26. 341 Seizure Panchnama of plain soil, ash mixed soil & iron rod.
 27. 342/1 to 342/4 Photographs taken while preparing Exh. 341.
 28. 344 Order of CEO Z. P. (For P. W. 12)
 29. 345 Memorandum statement of accused Sandip @ Vikky Dilip Velis
 30. 346 Seizure Panchnama of Hero Honda Splendor Motorcycle bearing No. MH-18-AG-0548
 31. 347 Photographs of the process of

		panchnama Exh. 346
32.	353	Requisition letter for dead body of deceased Raosaheb Patil
33.	354	Sixteen column form
34.	355	Provisional P. M. Report of deceased Raosaheb Patil
35.	356	Final P. M. Report of deceased Raosaheb Patil
36.	357	Requisition letter for dead body of deceased Vaibhav Patil
37.	358	Sixteen column form
38.	359	Provisional P. M. Report of deceased Vaibhav Patil
39.	360	Final P. M. Report of deceased Vaibhav Patil
40.	361	Weapon Query letter of Kukari, Sword and knife.
41.	362	Report of Weapon Query Kukari, Sword & knife.
42.	363	Weapon (Steel Rod) Examination request letter
43.	364	Weapon Examination Report
44.	371	Medical Certificate of deceased Vaibhav Patil
45.	372	Medical Certificate of deceased Raosaheb Patil
46.	373	Injury Certificate of Aakash Rajendra Patil
47.	375	Forwarding letter handed over by P. W.
		15

48. 377 to 389 Arrest Panchnamas of accused Nos. 1 to 13 (*Admitted by Defense*)
49. 392 Station Diary Entry about visit of accused Jayraj Shamkant Patil to Parola police station.
50. 393 Entry No. 29 in Police Station Diary regarding custody of accused Jayraj taken by Dhule Police at Parola.
51. 397 Letter issued to P. W. 17 by I. O. for providing CCTV footage of Amrita Chavan's house dated 08/06/2018 between 1:00 pm to 5:00 pm
52. 398 Certificate issued under Section 65-B by P. W. 17
53. 400 Letter dated 08/08/2018 issued by I. O. to P. W. 18 for providing the copy of newspaper daily Murder dated 01/02/2018.
54. 401 Photocopy of Newspaper dated 01/02/2018.
55. 406 Seizure panchnama of MH-15-DJ-3700
56. 407 Station Diary Entry of Nijampur Police Station thereby sending the seized MH-15-DJ-3700 to LCB Dhule.
57. 413 Acknowledgment on reverse page of Provisional postmortem report of deceased Raosaheb Patil
58. 414 Acknowledgment on reverse page of Provisional postmortem report of deceased Vaibhav Patil
59. 416 Letter dated 21/06/2018 along with the acknowledgment of CFSL Nashik
60. 418 Letter dated 11/06/2018 issued by I. O.

to the Medical Officer, Hire Medical College

61. 419 The letter depositing the motorcycle bumper and three sealed packets to CFSL Nashik.
62. 427 Letter dated 14/06/2018 issued by the IO for Chemical Analysis of clothes of deceased, accused and witnesses.
63. 434 Letter dated 24/07/2018 thereby appointing P. W. 24 for conducting I. D. Parade.
64. 435 Letter dated 24/07/2018 issued by Executive Magistrate to the Superintendent District Prison, Dhule.
65. 436 Memorandum Panchnama of ID of accused Bhagwan Ahire and Darshan Pardeshi by P. W. 28 Harish Shinde.
66. 437 Map
67. 438 Memorandum Panchnama of ID of accused Bhagwan Ahire and Darshan Pardeshi by witness Aakash Patil.
68. 439 Map
69. 440 Memorandum Panchnama of ID of accused Bhagwan Ahire and Darshan Pardeshi by P. W. 27 informant Prashant Patil.
70. 441 Map
71. 442 Memorandum Panchnama of ID of accused Bhagwan Ahire and Darshan Pardeshi by witness Yogesh Patil
72. 443 Map
73. 444 Memorandum Panchnama of ID of

- accused Bhagwan Ahire and Darshan Pardeshi by witness Sunil Rohidas Mohite
74. 445 Map
75. 446 Memorandum of ID of accused Bhagwan Ahire and Darshan Pardeshi by witness Prashant Shamkant Patil.
76. 447 Map
77. 448 ID Parade panchnama
78. 449 ID Parade Memorandum
79. 450 Letter dated 26/07/2018 issued by PW 24 to API West Deopur Police Station,
80. 451 Letter issued by Tahsildar, Dhule to PW 24 for conducting ID Parade.
81. 452 Letter issued by PW 24 to Superintendent, District Prison, Dhule for intimation of ID Parade.
82. 453 Memorandum of ID of accused Arjun @ Appa Bhagwan Ahire by Informant Prashant Dagajirao Patil
83. 454 Map
84. 455 Memorandum of ID of accused Bhushan Nimba Pagare, by Informant Prashant Dagajirao Patil
85. 456 Map
86. 457 Memorandum of ID of accused Arjun @ Appa Bhagwan Ahire by witness Omprakash Dagajirao Patil
87. 458 Map
88. 459 Memorandum of ID of accused Bhushan Nimba Pagare, by witness

Omprakash Dagajirao Patil

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|------|-----|---|
| 89. | 460 | Map |
| 90. | 461 | Memorandum of ID of accused Arjun @ Appa Bhagwan Ahire by witness Yogesh Raosaheb Patil |
| 91. | 462 | Map |
| 92. | 463 | Memorandum of ID of accused Bhushan Nimba Pagare, by witness Yogesh Raosaheb Patil |
| 93. | 464 | Map |
| 94. | 465 | Memorandum of ID of accused Arjun @ Appa Bhagwan Ahire by witness Aakash Patil |
| 95. | 466 | Map |
| 96. | 467 | Memorandum of ID of accused Bhushan Nimba Pagare, by witness Aakash Patil |
| 97. | 468 | Map |
| 98. | 469 | Memorandum of ID of accused Arjun @ Appa Bhagwan Ahire by P. W. 28 Harish Anil Shinde |
| 99. | 470 | Map |
| 100. | 471 | Memorandum of ID of accused Bhushan Nimba Pagare, by P. W. 28 Harish Anil Shinde |
| 101. | 472 | Map |
| 102. | 473 | I. D. Parade Panchnama |
| 103. | 474 | I. D. Parade Memorandum |
| 104. | 475 | Letter dated 21/12/2018 issued by P. W. 24 to PI West Deopur Police Station. |

105. 487 Statement of P. W. 25 recorded by the Magistrate U/s. 164 of Cr. P. C.
106. 492 Intimation letter to P. W. 26 issued by the I. O.
107. 493 Spot Panchnama
108. 494/1 to 494/9 Photographs of Spot of incident.
109. 495 Intimation letter to P. W. 26 issued by I. O. for house search panchnama
110. 496 House Search Panchnama of house of accused Hrushikesh Patil and Jayraj Patil
111. 588 First Information Report
112. 603 Statement of P. W. 28 recorded by the Magistrate U/s. 164 of Cr. P. C.
113. 645 Letter dated 15/11/2018 issued by S. P. office, Dhule for examination of CDR and issuing certificate U/s. 65-B of Mobile No. 8459325344
114. 646 Letter dated 22/11/2018 issued by P. W. 29 to S. P. Dhule
115. 647 CDR of Mobile No.8459325344
116. 648 Certificate issued by P. W. 29 under Section 65-B of the Evidence Act in respect of CDR of two mobile numbers.
117. 672 Letter dated 15/11/2018 issued by S. P. Dhule to Nodal Officer for collection of CDR and SDR of eight mobile numbers.
118. 673/1 Letter dated 28/11/2018 issued by P. W. 30 to S. P. Dhule for furnishing details of mobile numbers.
119. 673/2 Certificate issued U/s. 65-B issued by P.

- W. 30 in respect of CDRs of 8 mobile numbers.
120. 674 Application of Govind Subhash Pawar to a mobile company
121. 675 Application of Jayraj Shamkant Patil to a mobile company
122. 676 Application of Rushikesh Shamkant Patil to a mobile company
123. 677 Application of Rahul Balu Patil to a mobile company
124. 678 Application of Sandip Dilip Velis to a mobile company
125. 679 CDR of mobile no. 8087057227 of Govind Subhash Pawar from 06/06/2018 to 08/06/2018
126. 680 CDR of mobile no. 9595292323 of Jayraj Shamkant Patil from 01/06/2018 to 09/06/2018
127. 681 CDR of mobile no. 9130100416 of Rushikesh Shamkant Patil from 07/06/2018 to 08/06/2018
128. 682 CDR of mobile no. 9527747323 of Rahul Balu Patil from 06/06/2018 to 09/06/2018
129. 683 CDR of mobile no. 9226872713 of Sandip Dilip Velis from 01/06/2018 to 09/06/2018
130. 684 Letter dated 15/11/2018 issued by S. P. Dhule to Nodal Officer Pune for calling CDR and SDR of the Nine mobile numbers.
131. 685/1, 685/2 Reply dated 28/02/2024 of P. W. 30 along with SDR, CDR and Certificate

under Section 65-B

132. 686 SDR of Mobile No. 9823011803 of Govind Subhash Pawar
133. 687 CDR of mobile No. 9823011803 of Govind Subhash Pawar
134. 688 SDR of Mobile No. 9158504439 of Shamkant Sahebrao Khairnar,
135. 689 CDR of Mobile No. 9158504439 of Shamkant Sahebrao Khairnar,
136. 690 SDR of Mobile No. 9823980355 of Bhushan Baburao Kapkar.
137. 691 CDR of Mobile No. 9823980355 of Bhushan Baburao Kapkar.
138. 692 SDR of Mobile No. 9823023427 of Subhash Sajan Pawar
139. 765 Letter dated 30/10/2018 issued by P. W. 31 to S. P. Dhule for getting CDR & SDR of 22 mobile numbers and their certificates under Section 65-B
140. 766 Letter dated 03/11/2018 issued by P. W. 31 to the Judicial Magistrate, F. C., for identification parade of accused Arjun Ahire and Bhushan Pagare,
141. 767 Letter dated 03/11/2018 issued to Tahsildar.
142. 768 Letter dated 06/11/2018 issued by P. W. 31 to Tahsildar for submission of report of I. D. Parade.
143. 770 The order dated 28/08/2020 of Hon'ble High Court, Bench at Aurangabad.
144. 789 Muddemal Receipt

145. 790 Letter dated 09/06/2018 issued by P. W. 32 for medical examination of accused Jayraj Patil.
146. 791 Injury Certificate of accused Jayraj Patil.
147. 792, 793, 796, 798, 799, 800, 806, 807, 808, 809, 822, 829 Muddemal Receipts
148. 794 Notice dated 10/06/2018 issued to informant Prashant Patil by P. W. 32 for production of Scorpio vehicle for inspection.
149. 795, 797 Certified & True copy of extract of log book of official vehicle bearing Registration No. MH-18-F-164 & MH-18-F-172.
150. 801 Letter dated 11/06/2018 issued by P. W. 32 to S. P. Dhule for getting CDR & SDR of mobile phone of deceased and witness.
151. 802/1 to 802/6 Six Photographs of Spot of Incident (Subject to objection)
152. 803 Letter dated 13/06/2018 issued by P. W. 32 to medical officer General Hospital, for collection of blood samples of P. W. 28 Harish Shinde and Aakash Patil.
153. 804 & 805 Letters dated 15/06/2018 issued by P. W. 32 to S. P. Dhule for getting CDR, SDR and tower location of 12 mobile numbers.
154. 810 True copy of log book of official vehicle No. MH-18-F-164

155. 811 Letter dated 23/06/2018 issued by P. W. 32 to PI Jalgaon Taluka Police Station for getting certified copy of Station Diary Entry dated 11/06/2018.
156. 812 Certified copy of Station Diary Entry dated 11/06/2018.
157. 813 Letter dated 23/06/2018 issued by P. W. 32 to Siddheshwar Hospital, Dhule for getting information about the treatment given to injured witnesses.
158. 814, 815 Letters dated 26/06/2018 & 21/06/2018 issued by P. W. 32 to FSL Nashik for supplementary questionnaire for Chemical Analysis of seized muddemal.
159. 816 Order dated 19/06/2018 issued by P. W. 32 to ASI More for recording statement of the PSO attached to Parola Police Station.
160. 817 Letter dated 22/06/2018 issued by P. W. 32 to Medical Officer, Cottage Hospital, Parola Dist. Jalgaon, for getting information of medical treatment provided to accused Jayraj Patil.
161. 818 Letter dated 29/06/2018 issued by P. W. 32 to Superintendent Land Records, Dhule for issuance of site map in three copies.
162. 819 Letter dated 30/06/2018 issued by P. W. 32 to Superintendent Zilha Parishad, Dhule for providing two Government Panchas.
163. 820 Letter dated 30/06/2018 issued by P. W. 32 to Police Inspector, Chopada

- Gramin Police Station regarding panchnama prepared in the jurisdiction of Chopada Gramin Police Station.
164. 821 Certified copy of extract of log book of the official vehicle bearing No. MH-18-F-164
165. 823 Letter dated 05/07/2018 issued by P. W. 32 to Judicial Magistrate, F. C. (Court No. 4), Dhule for intimation of addition of Section 201 in the crime.
166. 824 Letter dated 07/07/2018 issued by P. W. 32 to Nodal Officer, & Additional S. P. Dhule for getting CDR & SDR Location of the mobile numbers of witnesses.
167. 825 Letter dated 07/07/2018 issued by P. W. 32 to Nodal Officer, & Additional S. P. Dhule for getting CDR & SDR Location of the mobile numbers of accused Bajirao Pawar, Harshal Patil, Bhupesh Patil, Bhushan Kapkar, Darshan Pardeshi, Sandip Velis and Bhagwan Ahire.
168. 826 Letter dated 05/07/2018 issued by P. W. 32 to Judicial Magistrate, F. C. Dhule for I. D. Parade of accused Darshan Pardeshi and Bhagwan Ahire.
169. 827 Order dated 05/07/2018 issued by J. M. F. C. Dhule to Tahsildar, Dhule for conducting I. D. Parade of accused.
170. 828 Letter dated 19/07/2018 issued by P. W. 32 to Tahsildar, Dhule for conducting I. D. Parade.
171. 830 Letter dated 10/06/2018 issued by P. W. 32 to Chandan Rajendra Sonar for

- getting CCTV camera footage available in Chai Tapari Hotel.
172. 831 Reminder dated 07/08/2018 issued by P. W. 32 to City Survey Officer, Dhule for preparing map of incident site and sending copies of the map.
173. 832 Letter dated 16/08/2018 issued by P. W. City Survey Officer, Dhule to P. W. 32 for providing three copies of incident site map.
174. 833 Map of the incident site provided by City Survey Officer.
175. 834 Letter dated 08/08/2018 issued by P. W. 32 to S. P. Dhule and Nodal Officer for getting certificate U/s. 65-B regarding CDR and SDR of mobile phone of accused.
176. 835 Letter dated 02/07/2018 issued by P. W. 32 to Judicial Magistrate F. C. (Court No. 4), Dhule for recording statement of witnesses Harish Shinde, Aakash Patil and other two witnesses.
177. 836 Letter dated 11/07/2018 issued by P. W. 32 to Chief Judicial Magistrate Dhule for recording statement of 15 witnesses.
178. 837 Letter dated 26/07/2018 issued by P. W. 32 to Chief Judicial Magistrate Dhule for recording statement of Amit Maroti Pawar and 7 other witnesses.
179. 838 Letter dated 05/07/2018 issued by P. W. 32 to Architectural Engineer Nandkishor Sisode regarding site map and distance measurement along with the receipt of payment.

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|------|-----------------|--|
| 180. | 839 | Receipt of payment |
| 181. | 840 | Map issued by Nandkishor Sisode |
| 182. | 841 | Letter dated 08/08/2018 issued by P. W. 32 to S. P. Dhule for getting CDR and SDR of mobile phone of witnesses and accused and the certificate under Section 65-B. |
| 183. | 842/1 to 842/14 | 14 C. A. Reports. |

B – Defence :

<u>Sr.No.</u>	<u>Exhibit Number</u>	<u>Description</u>
1.	404	News paper daily murder dated 09/06/2018
2.	504	Colour Prints of facebook account of P. W. 26
3.	693	Copy of SDR of Mobile No. 9545351364 of Prashant Dagajirao Patil.
4.	In view of order passed below Exh. 731, exhibited at 743	Letter issued to Nodal Officer for providing SDR & CDR of Sim No. 9823023427 from 06/06/2018 to 08/06/2018.
5.	744	SDR of Mobile No. 9823011803 of Govind Subhash Pawar
6.	745	CDR of Govind Pawar (A-11) for Mobile No. 8087057227
7.	746	Letter dated 15/06/2018 issued to Nodal officer for providing SDR and CDR of Mobile No. 9595292323 of A-4 Jayraj from 01/06/2018 to 09/06/2018.

8. 747 SDR of Mobile No. 9823980355 of Bhushan Baburao Kapkar from 04/06/2018 to 09/06/2018.
9. 748 CDR of Mobile No. 8605805485 of Vilas Bhaskar Bodake from 08/06/2018 to 09/06/2018
10. 769 Copy of report dated 21/09/2020 submitted by P. W. 31 before the Hon'ble High Court.
11. 848, 849 Colour print of screenshot of accused Bhupesh, Harshal and Rushikesh appearing in the video recording.
12. 850 Colour print of screenshot of the person appearing in the video recording 100 AN V01
13. 851 Colour print of screenshot of the person appearing in the video recording in clip No. 00021.
14. 861, 862 Colour prints of screenshots in video recording MAH01465 showing policeman Bhagwat Patil
15. 863 Colour print of screenshot of person seen in video recording MAH01435
16. 873 Colour print of screenshot of persons seen along with the sword in video recording MAH01465
- 17.
18. 921/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile dated 08/06/2018 recorded in Pen Drive at 3:26:08 hours
19. 922/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in

the pen drive at 3:27:00 hours.

20. 923/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 5:11:37 hours.
21. 924/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 5:21:55 hours.
22. 925/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 4:18:22 hours.
23. 926/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 5:53:24 hours.
24. 927/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 5:51:16 hours.
25. 928/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 5:57:30 hours.
26. 929/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile recorded in the pen drive at 5:57:31 hours.
27. 930/D.W.1/ A-11 Colour print of Screenshot of CCTV footage of Tanisha Mobile from Camera No. 5 recorded in the pen drive at 5:57:31 hours.
28. 931 Colour print of Screenshot of CCTV footage of Tanisha Mobile from Camera No. 5 recorded in the pen drive at 5:57:35 hours.
29. 932 Colour print of Screenshot of CCTV

footage of Tanisha Mobile from Camera No. 5 recorded in the pen drive at 5:58:07 hours.

30. 933 Colour print of Screenshot of CCTV footage of Tanisha Mobile from Camera No. 5 recorded in the pen drive at 5:59:20 hours.
31. 934 Colour print of Screenshot of CCTV footage of Tanisha Mobile from Camera No. 3 recorded in the pen drive at 5:59:42 hours.
32. 935 Colour print of Screenshot of CCTV footage of Parola Road Traders Association from Camera No. 2 dated 08/06/2018 recorded in the pen drive at 6:12:31 hours.
33. 936 Colour print of Screenshot of CCTV footage outside Surya Peripherals dated 08/06/2018 recorded in the pen drive at 6:33:40 hours.

**IN CROSS OF D.
W.1/A.11**

34. 998 Colour Print of CCTV footage dated 09/06/2018 at 08:16:38 hours taken from Article-B.
35. 999 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at 08:16:38 hours taken from Article-B.
36. 1000 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at 08:27:11 hours taken from Article-B.
37. 1001 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at

- 08:28:12 hours taken from Article-B.
38. 1002 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at 08:29:12 hours taken from Article-B.
39. 1003 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at 09:15:59 hours taken from Article-B.
40. 1004 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at 20:15:49 hours taken from Article-B.
41. 1005 Colour Print of CCTV footage of Camera No. 1 dated 09/06/2018 at 20:15:48 hours taken from Article-B.
42. 1009, 1010 & 1011 Colour Print of CCTV footage of Camera Nos. 1, 3 & 5 dated 07/06/2018 at 23:59:59 hours taken from Article-B.
43. 1012, 1013 & 1014 Colour Print of CCTV footage of Camera Nos. 1, 3 5 dated 08/06/2018 at 00:00:01 hours taken from Article-B.
- 44 1017 Certified copy of complaint application by Deepak Ghundiyaal to S. P Dhule against D. W. 1 Sanjay Pawar and 17 others.

C – Court Exhibits

<u>Sr.No.</u>	<u>Court Exhibits</u>	<u>Description</u>
01)	216	Charge
02)	877 to 889	Statements of accused Nos. 1 to 13 under Section 313 of Cr. P. C.

D – Material Objects :

A) Prosecution :

<u>Sr.No.</u>	<u>Material Object Number / Articles</u>	<u>Description</u>
01)	Article-A	Red Colour T Shirt
02)	Article-B	Brown Colour Underpant
03)	Article-C	Pista Colour Shirt
04)	Article-D	Black Colour Pant
05)	Article-E	White Colour Sando Baniyan
06)	Article-F	Ash Colour underwear
07)	Article-G	Brown colour pant
08)	Article-H	White colour pant
09)	Article-I	Yellow Colour Shirt
10)	Article-J	Pink colour night pant
11)	Article-K	Dark Pink (Aboli) colour shirt
12)	Article-L	White colour pant
13)	Article-M	Green colour shirt
15)	Article-N	Black colour jeans pant
16)	Article-O	White colour shirt
17)	Article-P	Denim Blue Colour Pant
18)	Article-Q	White colour half sleeves shirt
21)	Article-R, S, T, U, V	Blue colour shirt, Blue colour jeans pant, Sando Baniyan, underwear & Two shoes (Accused Jayraj)
22)	Article- W, X, Y, Z	Acid Wash jeans pant, red colour

		T shirt, White colour underwear and white colour baniyan (Accused Bhupesh Patil)
23)	Article-A-1, A-2 & A-3	Shirt, jeans and underwear of accused Harshal.
24)	Article-A-4 & A-5	Light Ash colour half sleeves T shirt and blue colour jeans pant of accused Hrushikesh Patil
25)	MO-A-6, A-7 & A-8	Kukari, sword & Knife
26)	MO-A-9	Iron (steel) rod,
27)	MO-A-10	DVD of the CCTV footage prepared by P. W. 17
28)	MO-11 to MO-19	Pair of paragon chappal, pair of leather chappal, left leg sandle, kukari cover, small knife, two swords, knife with cover and knife.

Material Objects :

B) Defense :-

<u>Sr.No.</u>	<u>Material Object Number / Articles</u>	<u>Description</u>
01)	Article-B	Tanisha Mobiles DVR (Hikvision)
02)	Article-C	DVR of Parola Road Traders Association
03)	Article-C-1	Hard Disk
04)	Article-D	DVR of Surya Peripherals Shop
05)	Article-E, F, G,	Pen Drive Nos. 1, 2 & 3
06)	Article-A-1 & A-2	Two cuts by scissor on Article-A

		(Marked by yellow highlighter)
07)	Article-C-1 & C-2	Two cuts by scissor on Article-C (Marked by yellow highlighter)
08)	MO-10 & 10/1	CDs
09)	MO-A-10/2	Memory Card

JUDGMENT

(Delivered on this 9th day of March-2026)

The prosecution case unfolds the brutal double murder committed on 08/06/2018 of father and son duo Raosaheb Dagajirao Patil and Vaibhav Raosaheb Patil. Accused Nos. 1 to 13 are facing trial for the same having committed offences punishable under Sections 143, 147, 148, 302, 307, 341, 201, r/w Sec. 149 & 120-B of the Indian Penal Code and under Section Section 37 (1) (3) / 135 of B. P. Act. *(Hereinafter accused persons are referred as A-1 to A-13 with their first names at appropriate place).*

Shorn of unnecessary details, prosecution case is that :-

02. On 31/01/2018 on the occasion of Holi Festival, A-1 Bajirao had arranged a program of erecting pole in lane No. 6 in front of Pawanputra Vyayamshala. Deceased Raosaheb along with informant P. W. 27 Prashant attended the said program. At that time A-1, A-11 Gaurav and Raju Pawar asked them, as to why they

arrived there, why they used to join the company of their rivals and threatened them to kill. It is alleged that A-2 Bhupesh, A-3 Harshal @ Dadu, A-4 Jayraj, A-5 Vaibhav @ Sonu, A-6 Rushikesh and A-12 Bhushan were present at that time.

03. It is the case of prosecution that on 06/06/2018 around 4:30 pm the nephew of P. W. 27, deceased Vaibhav was proceeding on his motorcycle from Dutta Mandir square. A-4 was proceeding from opposite side on motorcycle, and he gave a scornful look towards Vaibhav. On 07/06/2018 at 11:30 am P. W. 27 and his younger brother Omprakash Patil (Not Examined) had gone to Zilha Parishad, Dhule to meet Z. P. President Shivaji Dahite. It is alleged that in the premises of Z. P., A-11 met them and without any reason raised dispute with them by threatening them to kill. Both informant and Omprakash tried to convince him and came back to their house. On the same day at 7:30 pm when informant and deceased Vaibhav were sitting on the bench outside their house in Sarawati Colony, A-3 along with two unknown persons arrived ther and threatened deceased Vaibhav तु खुप मातला आहे तुझा तर काटाच काढतो. By threatening, A-3 and two unknown persons left the said place.

04. On 08/06/2018 informant P. W. 27, received information from Hitesh @ Aakash Deore (Not Examined) that A-6 followed him while he was proceeding to provide medicines to deceased Raosaheb. So, P. W. 27 had suspicion and he immediately proceeded to meet his brother Raosaheb. He was accompanied by his brother Omprakash Patil and nephew Yogesh Patil / elder son of deceased Raosaheb (Not Examined).

05. P. W. 27, Omprakash and Yogesh were proceeding towards their house at Wankhedkar nagar. They had seen A-11, A-4, A-6, A-5, A-3 and A-12 intercepted the Scorpio vehicle in which deceased Raosaheb, deceased Vaibhav and P. W. 28 Harish Shinde were proceeding towards Saraswati Colony. They along with some witnesses had seen that aforesaid accused persons along with three to four unknown accused committed brutal murderous assault on deceased Raosaheb and Vaibhav with deadly weapons like sword, sickle, kukari, rod etc. It is alleged that accused persons dealt number of blows on vital body parts of Raosaheb and Vaibhav. They along with injured witness Hitesh @ Aakash were taken in Siddheshwar Hospital by P. W. 27, P. W. 28, Omprakash and Yogesh in Scorpio vehicle. Vaibhav was declared dead on arrival in the

hospital and Raosaheb died after some time. P. W. 27 informant Prashant Patil lodged FIR at about 00:58 hours on 09/06/2018 in West-Deopur Police Station.

06. On the basis of said report, crime No. 75/2018 for the offence punishable under Section 143, 147, 148, 302, 307, 341, 201, r/w Sec. 149, 120-B, 109 and of the IPC, & Section 37 (1) (3) / 135 of B. P. Act, came to be registered. The investigation was handed over to P. W. 32 API Sarita Bhand.

07. Initially, on the basis of information received, station diary entry No. 20/2018 at 19.00 hours was taken by P. W. 32 the investigation officer API Sarita Bhand and she proceeded towards spot of incident. Meanwhile she received information that both the injured were admitted in Siddheshwar Hospital. So, she went there. From there she went to the spot of incident and prepared spot panchnama. She seized kukari cover, small knife, a light brown colour left leg sandal, light brown colour pair of paragon company chappal, samples of plain soil and blood stained soil mixed with crushed stones, a pair of black colour leather chappal from the spot of incident. She also prepared inquest panchnama of

both the dead bodies in presence of panchas, forwarded the dead bodies for postmortem examination, seized some weapons from the house of A-4 vide seizure panchnama.

08. During investigation P. W. 32 arrested accused A-1 to A-9 and seized sword, kukari, knife and rod (MO-A-6 to MO-A-9) on the basis of disclosure statements of A-2, A-3, A-6 & A-8 Bhagwan. She further seized three motorcycles, one activa, blood stained clothes of deceased Raosaheb, Vaibhav, P. W. 27, P. W. 28, Omprakash, Yogesh and Hitesh @ Aakash. On production of Scorpio vehicle by informant, she collected the blood stains from pieces of seat cover, seat belt, mat in Scorpio vehicle through Forensic Officers. She further obtains CDRs and SDRs of some of the accused by making necessary correspondence to Nodal officer through Superintendent of Police, Dhule. P. W. 32 collected CCTV footage near Radhika Hotel and Chai Tapari Hotel of presence of four unknown accused and other accused near Kalyani Hotel on 08/06/2018. She forwarded request letters to the Court for permission to conduct Test identification parade (TIP) of A-7 Darshan and A-8 Bhagwan. Seized articles, clothes, samples of blood stained seat cover, mat, seat belt of Scorpio vehicle were

sent for Chemical Analysis to FSL Nashik. P. W. 32 then recorded statements of witnesses and filed charge-sheet against A-1 to A-9.

09. P. W. 31 PI Satish Gorade conducted investigation under Section 173 (8) of Cr. P. C. as some of the accused were absconding and due to transfer of P. W. 32. He arrested A-10 Arjun, A-11 Gaurav, A-12 Bhushan and A-13 Bhushan Pagare. He made necessary correspondence through S. P. office Dhule to Nodal Officer on 30/10/2018 for getting CDRs and SDRs of 22 mobile numbers and its certificates under Section 65-B of Indian Evidence Act. On 03/11/2018 he made necessary correspondence to Judicial Magistrate, First Class, for holding TIP of A-10 & A-13. Accordingly, TIP was held on 21/12/2018. Then P. W. 29 filed supplementary charge-sheet against A-10, A-11, A-12 & A-13.

10. As the offence punishable under Section 302/120B of the I.P.C. is exclusively triable by the Sessions Court, Learned Judicial Magistrate, F. C. (Court No.4) Dhule, committed the case to Sessions Court for disposal, according to law.

11. My learned predecessor framed charge against the

accused persons vide Exh. 216. The charge was read over and explained to the accused persons in their vernacular language. They abjured the guilt and claimed for trial.

12. Prosecution, in support of its case, has examined in all thirty two witnesses, and relied upon several documents, details of which is given in the appended chart.

13. The accused were asked about the incriminating evidence as per Section 313 of the Code of Criminal Procedure (in short the Cr. P. C.) They denied the incriminating evidence. Their defense is of total denial and false implication.

14. Accused Nos. 1, 3 & 8 filed written statement with their statement recorded under Section 313 of the Cr. P. C. and submitted that they have been falsely implicated in the present case in collusion with informant and the investigating officer. The evidence of recovery is falsely shown against them. In-fact both the deceased were aggressors and had gone to assault. Accused No. 2 filed written statement with his statement under Section 313 of Cr. P. C., and submitted that he has no concern with the alleged

incident and the injuries sustained by both the deceased. He was not present on the spot of incident and was not holding any sickle. He was not having any cordial relation or any enmity with both the deceased. The recovery of clothes and the weapon is prepared by pressurizing him.

15. Accused No. 4 filed written-statement with his statement under Section 313 of the Cr. P. C. and submitted that he is falsely implicated in the present case. On 08/06/2018 between 5:30 to 6:00 pm when he was present with his parents in the house, at Borase Nagar deceased Raosaheb and Vaibhav arrived there in a four wheeler with four to five unknown persons carrying deadly weapons, called him outside the house and before he could understand anything, assaulted him with the dangerous weapons causing him serious injuries on left ear, head and hand. Due to sudden attack he was scared, therefore, fled away from the place. According to A-4 both the deceased were aggressors and he has no concern with the present crime. It is further submitted that seized clothes of A-4 having blood stains are detected with blood group 'O' which is of A-4. Prosecution has not explained the grievous injuries sustained by him on the day of incident and therefore, he is

entitled for acquittal. Accused Nos. 5 & 11 submitted written statements with their statements recorded under Section 313 of Cr. P. C. and had taken the plea of alibi. According to accused No. 5 on the day of incident he was present in Hotel Poonam at Amalner. At the time of alleged incident, he was present in his room at Amalner and in the market of Amalner. The said fact is evident from the CCTV footage collected by P. W. 29 ASI Gorade. His report about the said CCTV footage was tendered before Hon'ble High Court of Bombay, Bench at Aurangabad at the stage of hearing bail application of accused No. 5. He is falsely implicated in the present case. Accused No. 11 submitted that at the time of alleged incident he was present in Tanisha Mobile, Parola road, Dhule and the same is evident from the evidence of the witness Sanjay Dattatraya Pawar and from the CCTV footage relied by him.

16. Accused No. 6 filed written-statement with his statement under Section 313 of the Cr. P. C. and submitted that he is falsely implicated in the present case. P. W. 28 deposed false against him. He along with his brother A-4 have been falsely implicated at the instance of informant P. W. 27. Accused No. 7 filed written-statement with his statement under Section 313 of the

Cr. P. C. and submitted that he is falsely implicated in the present case. No recovery of clothes or any weapon is made at his instance during investigation. On 05/06/2018, 06/06/2018, 07/06/2018, 08/06/2018 and 09/06/2018 he attended the examination at New English School and Junior College, Sakri Tal. Dhule between 10:30 am to 1:30 pm. The distance between Sakri to Dhule is around 60 to 70 Kms. And it took around 2 hours to reach from Sakri to Dhule. The copy of his attendance sheets have been relied by A-7.

17. A-9 & A-12 filed submitted in their statement recorded under Section 313 of Cr. P. C. that they have no concern with the conspiracy. A-9 had not done any act harboring A-6. Both A-9 & A-12 were not present at the time of alleged incident. Accused No. 13 submitted that he is falsely implicated in the present case at the instance of P. W. 27 and P. W. 28. At the time of identification parade, the witnesses had an opportunity of seeing him and thereafter the parade was conducted.

18. A-5 has examined Raja Suresh Paradhi and A-11 examined Sanjay Dattatraya Pawar as defense witnesses.

19. Following points arise for my determination and I have recorded findings thereon as under, for the reasons stated below :-

Sr. No.	POINTS	FINDINGS
1.	Does prosecution prove that death of Raosaheb & Vaibhav is homicidal ?	Yes.
2.	Does prosecution prove that all accused, on 08/06/2018 at about 06:00 pm, within the limits of Dhule city, at Borse Nagar, Deopur Dhule, in front of house of accused Nos. 4 and 6, on a public place, all accused conspiring with each other, except accused Nos. 1 and 9, all were members of an unlawful assembly, in prosecution of the common object of that assembly was to cause injuries, and to commit murder by using dangerous weapons like swords, kukri, sickle, iron rod and knives, and thereby committed an offence punishable under Section 143 r/w 149 of the I. P. C. ?	Proved against accused Nos. 2 to 4, 6 to 8 & 10 to 13
3.	Does prosecution prove that all accused, conspiring with each other, on the above said date, time and place, except accused Nos. 1 and 9, all were members of an unlawful assembly, in prosecution of the common object committed an offence of rioting, and thereby committed an offence of rioting punishable under Section 147 r/w 149 of the I. P. C. ?	Proved against accused Nos. 2 to 4, 6 to 8 & 10 to 13

4.	Does prosecution prove that all accused conspiring with each other, on the above said date, time and place, except accused Nos. 1 and 9, all were members of an unlawful assembly, and were at that time armed with deadly weapons like sword, kukri, sickle iron rod and knife, etc., and thereby committed an offence punishable under Section 148 r/w 149 of the I. P. C. ?	Proved against accused Nos. 2 to 4, 6 to 8 & 10 to 13
5.	Does prosecution prove that all accused conspiring with each other, on the above said date, time and place, committed murder of Raosaheb Patil and his son Vaibhav Raosaheb Patil, intentionally or knowingly causing their death by assaulting on their head and various parts of their bodies with the aid of sword, kukri, iron rod, sickle and knives, and that thereby all have committed an offence punishable under Section 302 r/w 120B of the I. P. C. ?	Proved against accused Nos. 1 to 4, 6 to 8 & 10 to 13 and offence under Section 212 of the IPC is proved against accused No. 9.
6.	Does prosecution prove that all accused conspiring with each other, on the above said date, time and place, except accused Nos. 1 and 9, all were members of an unlawful assembly, and in prosecution of the common object of that assembly, did an act of injuring the maid of informant viz. Harish Anil Shinde and Hitesh @ Aakash @ Shendya Rajendra Deore by assaulting them with dangerous weapon i.e. sword, kukri, sickle, iron rod and knives,	

	with such intention or knowledge and under such circumstances that by that act they had caused the death of witnesses, they would have been guilty of murder of said witnesses, and that thereby committed an offence punishable under Section 307 r/w 149 of the I. P. C. ?	No.
7.	Does prosecution prove that all accused conspiring with each other, on the above said date, time and place, except accused Nos. 1 and 9, all were members of an unlawful assembly, and in prosecution of the common object of that assembly, wrongfully restrained deceased Raosaheb Patil and his son Vaibhav, and that all have thereby committed an offence punishable under Section 341 r/w 149 and Section 120B of the I. P. C. ?	Proved against accused Nos. 4 & 6.
8.	Does prosecution prove that all accused conspiring with each other, on the above said date, time and place, except accused Nos. 1 and 9, all were members of an unlawful assembly, and in prosecution of the common object of that assembly and conspiracy, knowing or having reason to believe that the offence of murder and attempt to commit murder punishable with imprisonment for life have been committed, caused certain evidence connected with the said offence of murder and attempt to commit murder to disappear the weapon and also	

	destroyed the cloths with blood stains which used in said offence with intention to screen the offender from legal punishment, and that all have thereby committed an offence punishable under Section 201 r/w 149 and Section 120B of the I. P. C. ?	No.
9.	Does prosecution prove that all accused except accused Nos 1 and 9, conspiring with each other, on the above date, time and place, all were members of an unlawful assembly, and in prosecution of the common object of that assembly, disobeyed the order lawfully made by District Magistrate, Dhule under Section 37 (1) (3) of the Bombay Police Act, and that all have thereby committed an offence under Section 135 of Bombay Police Act, r/w 149 of the I. P. C. ?	No.
10.	Does prosecution prove that all accused conspiring with each other, on 07/06/2018 at about 11:15 pm to 11:30 pm within the limits of Dhule City, in the one room of Swastik Theatre Premises, all agreed to do an illegal act to commit the murder of deceased Raosaheb Patil and his son Vaibhav Raosaheb Patil, by using dangerous weapons like sword, kukri, knife, iron rod, and sickle, and besides the above said agreement that they did above acts, in pursuance of the said agreement to commit the offence of murder, punishable with death or imprisonment for life, and that all have thereby committed an	

	offence punishable under Section 120B of the I. P. C.	Proved against accused Nos.1 to 4, 6 to 8 & 10 to 13
11.	What order ?	As per final order.

REASONS

ARGUMENT OF PROSECUTION :-

20. Learned P. P. Mr D. Y. Tavar argued that there was enmity between A-1 and deceased Raosaheb since from holding of Grampanchayat election of village Balapur as P. W. 27 and deceased Raosaheb supported the panel of P. W. 25 Amit Pawar and his brother Sumit Pawar. Second incident according to learned PP is date 31/01/2018 of Dandi Pournima. P. W. 18, the editor of daily murder is examined to prove the said incident. The news of the said incident was published in daily murder dated 01/02/2018.

21. It is the submission of learned PP that the grudge of A-3, A-4 & A-11 can be seen from the incident dated 06/06/2018 & 07/06/2018 as narrated in the report Exh. 588. As regards hatching conspiracy by accused persons, it is submitted that P. W. 9 Vijay Shukla is material witness. His statement is recorded on 24/07/2018 as he did not inform anyone about the said incident

dated 07/06/2018 occurred in front room of Swastik Talkies. Therefore, delay in recording his statement is not adverse to the prosecution case. A-9 Sandip was in contact with other accused persons and he provided weapons to them and was taking them to and fro. In all eight accused are named in the FIR. Four accused are unknown persons who were arrested later on. According to learned PP TIP is proved through the evidence of P. W. 24 Nayab Tahsildar and informant and P. W. 28 have identified all the four unknown accused persons in the said TIP as well as before the Court while recording their evidence.

22. As regards the incident of Dandi Pournima dated 31/01/2018, it is submitted that the evidence of P. W. 18 and P. W. 25 is crucial. Though, name of Raju Pawar who was present at the time of said incident is mentioned in the FIR, he is not made an accused for the incident dated 08/06/2018. Thus, the contention of defense of false implication of A-5 & A-11 has no relevance. According to learned P. P. eye witness Hitesh @ Aakash Deore is not examined since he was won over by the defense. The same can be gathered from the FIR bearing Crime No. 414/2023 filed by P. W. 28 Harish against A-1 and others for pressurizing him, he being

one of the eye witness in the present case.

23. The photographs clicked at the time of drawing spot panchnama, inquest panchnama etc., are corresponding to the injuries sustained by both the deceased and spot of incident. The witnesses concerned have deposed that those were clicked in their presence. Therefore, objection raised by defense for exhibiting the said photographs needs to be turned down. Since the photographs were developed afterwards, witnesses had no opportunity to observe them. The next submission of learned P. P. is that blood stained clothes of P. W. 27, Yogesh, Omprakash substantiates the story of prosecution that immediately after receiving knowledge of chasing Hitesh by A-6, they went there and after occurrence of incident they had taken both the deceased along with injured Hitesh in Siddheshwar Hospital. Although one or two panch witnesses acted as a panch in another case, they cannot be termed as habitual panchas. The clothes of only four accused have been seized since the clothes of other accused persons have been destroyed by them. The discrepancy in the registration number of Scorpio vehicle in Exh. 312 would not infer that wrong vehicle was produced or inspected by police.

24. It is further argued that P. W. 6, P. W. 7 & P. W. 8 are vehicle seizure panchas and nothing has been elicited in their cross-examination to disbelieve their evidence. P. W.10, P. W. 11 & P. W. 12 are the panchas of disclosure statements, and seizure panchnama of the various articles of A-2, A-3, A-6 & A-10. MO A-6 to MO A-9 i.e. sword, kukari, knife and rod / bumper rod have been recovered on the basis of their disclosure statements. As per FSL reports human blood was found on MO A-6 kukari and MO A-9 recovered at the instance of A-3 and A-6. Learned P. P. fairly submitted that the signatures of A-2 & A-3 appear on their disclosure statements vice versa, still the memorandum panchnmas are signed by them and those signatures are not disputed by defense.

25. Learned P. P. did admit that the place of keeping the articles is nowhere mentioned in all the disclosure statements, but according to him it is the '*discovery of fact*' which is essential under Section 27 of the Indian Evidence Act. As per disclosure statement of A-8 he destroyed his clothes as well as clothes of A-7 and of other accused persons. So, their clothes were not recovered during investigation. FSL report Exh. 842/2 indicates that the ash is of

clothes. So, Section 201 of IPC is attracted against him. According to learned P. P. minor omissions and contradictions brought in the cross-examination of prosecution witnesses did not falsify their evidence.

26. It is further submitted that admittedly A-1 and A-9 were not present on spot of incident, but A-1 is the main conspirator and A-9 assisted A-6 to flee away from the spot of incident. Vide Exh. 345 & 346 disclosure statements of A-9 & memorandum panchnama of recovery of motorcycle bearing Registration No. MH-18 AG-0548 is drawn. The spot where A-6 was left by A-9 is also disclosed by him. Thus, his involvement in the crime is evident.

27. As regards the injuries sustained by A-4, learned P. P. strenuously submitted that arrest panchnama of A-4 is admitted by defense. Exh. 791 is his injury certificate. It indicates that grievous injury on left cheek and left ear were sustained by him. In his statement under Section 313 of Cr. P. C. he has not given any explanation about the same. According to learned P. P. A-4 might have received injuries by co-accused in the deadly assault. In cross-

examination of P. W. 28 Harish, he voluntarily stated that A-4 received injuries while A-2 was assaulting deceased Raosaheb by means of weapon. So, the injuries of A-4 are sufficiently explained by prosecution. Although Exhs. 392 & 393 the station diary entries in Parola Police station as regards arrival of A-4 there and referring him to Cottage Hospital, Parola are disputed by defense, it is public document and anyone can get its certified copy. Thus, both the station diaries are reliable documents. There is no enmity between A-4 & P. W. 16 so as to manipulate station diary entries by P. W. 16.

28. The next submission of learned P. P. is that P. W. 17 who collected CCTV footage dated 08/06/2018 between 1:00 to 5:00 pm in front of Honda Showroom Wadi Bhokar Road to show the presence of accused persons, has admittedly not taken any technical education, and therefore, he is not aware of niceties of Section 65-B certificate, but the same cannot be a ground to disbelieve his evidence. It is nowhere brought on record by defense that any part of said CCTV footage is tampered with.

29. It is further urged that P. W. 18 is the editor of daily newspaper Murder through whom the dispute arose on

31/01/2018 is proved. Nothing has been elicited in his cross-examination to disbelieve his evidence. P W 25 Amit Pawar is the witness on the point of enmity between A-1 and deceased Raosaheb. The argument of learned PP as regards the evidence of P. W. 24, P. W. 27, P. W. 28, P. W. 30, P. W. 31 and P. W. 32 will be referred at appropriate stage. 45 cited judgments relied upon by learned PP will also be referred at appropriate stage.

ARGUMENT OF ADVOCATE OF ACCUSED Nos. 1, 3, 7, 8 & 11

30. Learned advocate of accused Mr. P. B. Patil tendered written notes of arguments at Exh. 1084. The gist of the said argument is that Omprakash Patil, Yogesh Patil and Hitesh @ Shendya the maid of deceased Raosaheb, the eye witnesses of the alleged incident are not examined by the prosecution for no apparent reason. Witness Hitesh filed application before the Court that he needs protection from informant and he is willing to disclose the truth before the Court. Still he is not examined by the prosecution. No independent eye witness is examined though it has come on record in cross-examination of P. W. 27 that 8 to 10 people witnessed the incident. The photographer who snapped the various photographs filed on record is not examined. Therefore,

the photographs exhibited in the evidence of prosecution witnesses, cannot be relied upon. Since there is no reference of snapping of photographs in any panchnama, those are not proved. It is further submitted that P. W. 2 Prashant Sakharam Patil had earlier visited postmortem room on two to three occasion. Hence, he is habitual witness and his evidence cannot be relied upon. He is also not aware whether photographs were taken before or after preparing memorandum.

31. P. W. 5 is the seizure panch of blood stains and pieces of seat cover and belt taken from Scorpio Car bearing Registration No. MH-18-W-5778 produced by informant. However, the registration number of the said vehicle mentioned in panchnama Exh. 312 is MH-18-AF-5778. Thus, it appears falls. The seizure panchnama of two motorcycles bearing Registration No. MH-18-BC-4144 and MH-18-BB-5513 is doubtful and unreliable as the cause for appearance of its panchas and their presence is doubtful.

32. It is next submitted by learned advocate that the seizure panchnamas of Honda Shine black motorcycle bearing Registration No. MH-18-AK-3513 and Hero Honda Pleasure MH-

18-AD-3920 proved by P. W. 7 & P. W. 8 are also suspicious as those vehicles were allegedly brought by Shamkant Patil and Walmik Patil but their names are not referred in panchnama.

33. According to learned advocate P. W. 15 PSI Anil Patil by whom the blood samples from Skoda car were sent for Chemical Analysis, is unable to state the name of PSO from whom he had received those articles and could not tell whether station diary entry to that effect was recorded or not. Hence, according to learned advocate FSL report will have to be discarded from consideration.

34. It is further argued that the evidence of P. W. 21 P. C. Yogesh Wagh is valueless as he has no personal knowledge regarding used weapons and he has not stated in the statement that he received five articles in sealed condition. P. W. 22 P. C. Bhagwat Patil had brought blood samples of A-2, A-4, A-5 and A-6 from Civil Hospital, Dhule. He do not remember the sequence of taking blood samples of accused persons. He do not remember the name of ASI who accompanied him. His signature was not taken in the hospital. Thus, his evidence is not reliable.

35. The argument as regards the evidence of P. W. 13, P. W. 14, P. W. 27, P. W. 28, P. W. 29, P. W. 30, P. W. 31 & P. W. 32 will be referred at appropriate stage. 42 citations relied upon by learned advocate of accused will be referred at appropriate stage.

ARGUMENT OF ADVOCATE OF ACCUSED No. 2:

36. Learned advocate of accused No. 2 Mr. Satyajit Patil tendered written notes of arguments at Exh. 1111. Gist of the said argument is that in FIR it is mentioned that A-2 was holding sickle but there is no allegation of overt act of use of sickle by A-2. FIR nowhere indicates any allegation about sharing of common intention to commit offence nor there is any whisper about specific role played by A-2. From the supplementary statement of informant certain developments and after thought role of A-2 as to abusing and arriving near the vehicle of the deceased is mentioned but description of sickle is not there. So, A-2 is falsely implicated in the present crime. It is also mentioned in supplementary statement of P. W. 27 that A-2 and other accused encircled deceased Vaibhav but the same is not mentioned in FIR. In the alleged incident dated 06/06/2018 and 07/06/2018 there is no role attributed to A-2. He is resident of Wadi-Bhokar area and has no concern with Balapur

Grampanchayat election. Thus, he has no concern with rivalry of A-1 and deceased Raosaheb.

37. It is next submitted that sickle is not recovered at the instance of A-2. Although one sword is recovered at his instance used by A-11, there is no mention in FIR about use of sword by A-11. A-2 had no enmity and no concern with both the deceased, hence only allegation of forming unlawful assembly and possession of weapon without its use weakens the prosecution case. In the FIR and supplementary statement of informant vague and general allegations are made against A-2. Prosecution failed to bring any motive of A-2 which would lend him to share common intention to cause harm to both deceased. The presence of A-2 on the day of incident is also not brought on record beyond reasonable doubt.

38. It is next submitted that on Exh. 329 there ought to have been signature of A-2, but in fact the signature in column No. 7 of Exh. 329 i.e. disclosure statement is of A-6 whose disclosure statement dated 10/06/2018 is at Exh. 333 where his signature was necessary, perhaps in that place signature of A-2 is taken on Exh. 333 in column No. 7. So, also on memorandum panchnama

Exh. 332 at Sr. No. 1 signature of A-2 ought to have been taken by the investigating officer, but the signature of A-3 is taken and on memorandum panchnama of A-3 at Exh. 334 the signature of A-2 is taken. All this shows that the memorandum panchnamas prepared by investigation officer are not genuine and prepared only to implicate A-2 falsely in the present case. Further, totally contradictory visuals and audio recording have been put forth before the Court which would signify that alleged memorandum panchnamas Exhs. 332 & 334 are prepared falsely. Compound memorandum panchnamas of two or more accused have been drawn which creates serious doubt about the same.

39. It is next submitted that on perusal of Exh. 850 and entire video recording in connection with Exh. 329 and 332 it is clear that A-2 was forcefully accompanied by the police to his house, was beaten and was under tremendous pressure of the police machinery for disclosing the place of concealment of weapon. The Kangi (Grain Storage tin) which was kept behind the house of A-2 having walls, ceiling and open door is accessible to all and thus A-2 was not having exclusive control over it as admitted by P. W. 10 in his cross-examination. Thus, the recovery memos are

doubtful. The recovered sword was in unusable condition as appears from the evidence of P. W.10 & P. W. 32.

40. It is next submitted that independent eye witnesses residing in the locality where alleged incident took place, are not examined. The injured eye witness Hitesh @ Shendya, Omprakash Patil, Yogesh Patil are not examined though available. The evidence of P. W.27 & P. W. 28 contradicts each other. P. W. 28 for the first time in his statement recorded under Section 164 of the Cr. P. C. stated that A-2 assaulted deceased Vaibhav and same is nothing but clear attempt of false implication of A-2. P. W. 25 is nothing but hearsay witness about the alleged incident dated 08/06/2018. The evidence of P. W. 32 the investigation officer has entirely washed out the prosecution case against A-2. Learned advocate cited 8 judgments vide list Exh. 1113. Those will be referred at the appropriate stage.

ARGUMENT OF ADVOCATE OF ACCUSED Nos. 4 & 6

41. Learned advocate of accused Nos. 4 and 6, Mr. Akil Ismail tendered written notes of arguments at Exh. 1094. Gist of the said argument is that in cross-examination of P. W. 32 the I. O.

certain admissions such as sustaining grievous injuries by A-4, not obtaining opinion of medical officer about said injury, injuries caused by sharp weapon, A-4 was treated at Cottage Hospital, Parola but not obtaining MLC of A-4 issued by said hospital, not recording statement of any witness as regards sustaining injuries by A-4 have been brought on record. As per settled legal position, the injuries on the person of accused has to be explained by the prosecution. Failure of the prosecution in explaining the same is nothing but suppressing the genesis and occurrence of the incident. On perusal of FSL reports, it is clear that seized clothes of A-4 were stained with blood Group 'O' and the same is blood group of A-4. It is not explained by prosecution as to how his own blood was found on his clothes. There is absolutely no investigation in that regard. In his statement under Section 313 of the Cr. P. C. at Para 5 & 6 A-4 has clearly explained the injuries on his person.

42. Injured Hitesh @ Shendya accompanied both the deceased right from the beginning and he too sustained grievous injuries on the day of incident. However, he is not examined by the prosecution. As regards the recovery of knife at the instance of A-6 the same arguments advanced by learned advocate of A-2 is

submitted relying upon the signatures of A-2 & A-3 on Exh. 329, 330, 333 & 334. The argument as regards the evidence of P. W. 13, P. W. 14, P. W. 27, P. W. 28, P. W. 29, P. W. 30, P. W. 31 & P. W. 32 will be referred at appropriate stage. 24 citations relied upon by learned advocate of accused vide list Exh. 1095 will be referred at appropriate stage.

ARGUMENT OF ADVOCATE OF ACCUSED No 5:

43. Learned advocate of A-5 Mr. S. R. Patil tendered written notes of arguments at Exh. 1098. Gist of the said argument is that A-5 was not present on the spot of incident on 08/06/2018. Thus, the defense of alibi is taken by A-5. It is submitted that in cross-examination of P. W. 31 PI Satish Mhasu Gorade, he admitted that he had visited Hotel Poonam at Amalner and drawn panchnama in presence of two witnesses but the same is not produced on record. He further admitted that at the time of hearing of bail application filed by A-5 CCTV footage of Hotel Poonam was produced before the Hon'ble High Court, Bench at Aurangabad in a Pen Drive and he had personally seen the said footage dated 08/06/2018 from 7:00 am to 11:30 pm. A-5 was visible from 3:00 pm to 5:22 pm in Hotel Poonam and again from 7.14 pm to 8.06 pm. Therefore,

according to learned advocate from the cross-examination of P. W. 31 it is clear that A-5 was in Amalner at the time of incident.

44. It is further submitted that in cross-examination of P. W. 31 as per CCTV footage of Camera No. 3, in Hotel Poonam from 5:22:06 to 5:22:36 hours A-5 was seen leaving the Hotel and proceeding to somewhere from the Hotel. He further admitted that on the same day in Camera No. 3 of Hotel Poonam between 7:13:17 to 7:13:20 A-5 was seen entering the said Hotel and from 4:00 pm to 5:22 pm he was seen sitting at the counter of said Hotel. Though this witness admitted that he submitted the report Exh. 769 before the Hon'ble High Court, but has not produced the said evidence before this Court under Section 173 (8) of the Cr. P. C.

45. It is next submitted that the pen drive and Hard Disk containing CCTV footage are available with the prosecution but it has been suppressed deliberately. As regards the absence of A-5 in the Hotel from 5:22 to 7:13 pm on 08/06/2018 he examined D. W. 1 Raja Suresh Paradhi, the Manager of Hotel Poonam whose evidence is consistent and reliable that between the aforesaid

period A-5 was present in Amalner. The argument as regards the evidence of P. W. 13, P. W. 14, P. W. 27, P. W. 28, P. W. 29, P. W. 30, P. W. 31 & P. W. 32 will be referred at appropriate stage. 08 citations relied upon by learned advocate of accused vide list Exh. 1100 will be referred at appropriate stage.

ARGUMENT OF ADVOCATE OF ACCUSED Nos. 10 & 13

46. Learned advocate of accused Nos. 10 & 13 Mr. Akil Ismail tendered written notes of arguments at Exh. 1101. Gist of the said argument is that the evidence of P. W. 27 informant and eye witness P. W. 28 Harish is not consistent with each other. They are interested and inimical witnesses. The features like physic like age, height, complexion of A-10 & A-13 is not stated by P. W. 27 and 28. According to P. W. 27 the incident lasted for about five minutes. TIPs were held after about one and half to five and half months of alleged incident. So, it is just impossible for any ordinary human being to remember the facial appearance of culprits. Thus, the identification of A-10 & A-13 is doubtful.

47. It is further submitted that P. W. 28 too did not attribute any specific overt act to those four unknown persons. He stated

that only one of them was healthy and dwarf person holding a rod. The description of other three unknown accused persons such as their age, height, complexion etc., is not deposed by him nor it is stated before police. No specific overt act is attributed to A-10 & A-13.

48. It is next submitted by learned advocate that from the cross-examination of P. W. 24 the Nayab Tahsildar to hold TIP on 26/07/2018 & 21/12/2018, it has come on record that he did not follow the guidelines and the provision of Criminal Manual in respect of holding TIP. So, his evidence is of no use for prosecution. Nothing has been recovered from the possession of A-10 & A-13 during their police custody remand. Even their clothes are not seized. The Skoda Car allegedly seized during investigation is also not linked with A-10 & A-13. Except weapon MO A-6 Kukari, MO A-7 sword, MO A-8 knife and MO A-9 bumper rod, no other weapons are seized during investigation from other accused. Thus, prosecution failed to prove the guilt of A-10 & A-13 beyond reasonable doubt. Learned advocate cited 4 judgments vide list Exh. 1102. Those will be referred at appropriate stage.

ARGUMENT OF ADVOCATE OF ACCUSED Nos. 9 & 12

49. Learned advocate of accused Nos. 9 & 12 Mr. B. B. Waghmare, vehemently submitted that admittedly A-9 was not present at spot of incident, but it is alleged that he assisted A-6 in fleeing away from the spot on motorcycle. Although, it is alleged that A-9 was involved in the conspiracy of committing murder of both the deceased, the evidence of P. W. 9 Vijay Shukla and P. W. 17 Musaddique Ansari is silent as regards presence of A-9 at the time of hatching conspiracy and near Honda Showroom before the incident. It is further submitted that at the most Section 212 of the I. P. C. is attracted against the accused.

50. His next submission is that in cross-examination of P. W. 32, the I. O., she admitted that the video recording of disclosure statement of A-9 is not done though it is done in respect of other accused persons. The assistance of Amalner police was not taken nor they were intimated though action was taken in the jurisdiction of Amalner Police Station. It was not a situation where accused would have run or any urgency was there. The assistance of Amalner police station is not taken so that illegality in taking the said action would not reveal. Learned advocate further submitted

that P. W. 32 admitted that it is not mentioned below disclosure statement of A-9 that it was read over to him, he admitted the same and therefore signed on it. She further admitted that the place from where the motorcycle was seized was easily accessible to all, and therefore, the recovery under Section 27 of the Evidence Act at the instance of accused is of no use for the prosecution.

51. According to learned advocate the CDRs of accused persons would not lead to infer that A-9 was member of conspiracy. P. W. 9 Vijay has not stated the name of A-9 in the alleged conspiracy. Criminal case cannot be based on presumption and only on the basis of identification of voice of other accused persons, A-9 cannot be linked with the allegations as made in the FIR.

52. As far as the evidence of P. W. 12 recovery panch Tushar Baisane is considered, learned advocate argued that he reached in the police station at 3.30 pm and they proceeded towards the place at 4.15 pm. It means the statement of A-9 was not recorded immediately, and thus, plantation of evidence cannot be ruled out. Taking A-6 on motorcycle after occurrence of incident cannot be

considered as conspiracy though it is act of harboring the offender. There is no evidence that A-9 assisted A-6 in committing the crime. Learned advocate further submitted that engine number and chassis number of seized motorcycle as per disclosure statement of A-9 is not mentioned in memorandum panchnama.

53. As far as role of A-12 is concerned, learned advocate submitted that P. W. 9 Vijay has not uttered name of A-12 in his evidence. Thus, he was not a member of alleged conspiracy. Even in evidence of P. W. 17 Mussaddique Ansari, presence of A-12 is not disclosed. Ghav (Knife) is not seized at the instance of A-12. The evidence of P. W. 27 as regards role of A-12 in the incident is contradictory in FIR and supplementary statement, so, it cannot be relied upon. As per cross-examination of P. W. 27, the distance between house of A-12 and Pawanputra Vyayamshala is 1 Km. Therefore, there was no reason for A-12 to remain present on 31/01/2018 for the program of Dandi Pournima arranged by A-1.

54. Learned advocate further referred para No. 64 of cross-examination of P. W. 32, the I. O., wherein she admitted that in CDR report Exh. 747 obtained during investigation on 08/06/2018

the location of mobile phone of A-12 is at old post office, near Sardar Patel Niwas J. B. Road Dhule at 17.57.55, 18.16.46, 18.37.01, 19.00.10 hours. He further submitted that P. W. 32 admitted that tower location of spot of incident is not reflected in Exh. 747. So, according to learned advocate it shows that A-12 was not present on the spot of incident at the relevant time.

ARGUMENT OF ADVOCATE OF ACCUSED No. 11:

55. Learned advocate of accused No. 11 Mr. N. S. Chavan argued that Exh. 404 is the newspaper daily Murder dated 09/06/2018. The highlighted portion as regards aggressive conduct of both the deceased and evidence of P. W. 18 Mr. Garde the newspaper editor shows that the said information was received from police. So, it can be relied upon. As has been brought in the cross-examination of P. W. 27, he along with his family members were having no concern with Balapur Grampanchayat election. It was the dispute between Sumit Pawar and Rajesh Pawar. As regards the threatening incidents dated 31/01/2018 and 07/06/2018, no cases are filed by informant, however record of the present case reveals that P. W. 27 & P. W. 28 filed many non-cognizable cases against A-1 & others. This conduct of P. W. 27

shows that after enlargement of A-1 on bail, he was taking constant efforts to send him behind bars.

56. His next submission is that although deceased Raosaheb, Vaibhav and P. W. 28 had seen the accused persons holding weapons in their hands, they chose to alight from vehicle which is contrary to normal human behaviour. The arguments in respect of evidence of P. W. 27, 28, 29, 30, 31 & 32 will be referred at appropriate stage. According to learned advocate biased investigation is conducted by P. W. 32. A-11 was not present on the spot of incident on 08/06/2018. At that time he was present in Tanishka Mobile Shop from 3.26.08 to 5.57.30. Learned advocate further referred the evidence of D. W. 1 Sanjay Dattatraya Pawar to prove the defense of alibi raised by A-11. The same will be referred at the stage of discussion of evidence on plea of alibi.

AS TO POINT NO. 1 :-

57. Defense did not seriously dispute that deceased Raosaheb and Vaibhav met with homicidal death. It is disputed that the accused persons by forming unlawful assembly committed deadly assault on them by means of dangerous weapons. P. W. 27

and P. W. 28 have deposed about the homicidal death of both the deceased. The postmortem report of deceased Raosaheb at Exh. 356 issued by P. W. 13 Dr. Ramesh Gadhari, the autopsy surgeon also states that he noticed 17 external injuries on dead boy of Raosaheb as under :-

(1) Chop wound present over right temporo occipital region extending to right parotid region of face passing through right ear pinna, situated 5cm behind lateral angle of right eye of size 16cmx3cmxbone deep. Underlying bone fractured, right ear pinna cut through and through. Both margins of wound are clean cut.

(2) Chop wound present over right temporo occipital region extending to right zygomatic region of face, placed antero posteriorly, of size 18cm x 3cm x bone deep. Underlying bone fractured, brain matter exposed to exterior. Both margins of wound are clean cut.

(3) Chop wound present over right fronto parietal region, obliquely placed, situated 2cm from midline and 10cm behind right eyebrow, of size 15cmx2cmxbone deep. Underlying bone fractured. Both margins of wound re clean cut.

(4) Chop wound present over bilateral parietal region, transversely placed, situated 12cm behind glabella, of size 18cm x 3cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(5) Chop wound present over left fronto parietal region, obliquely placed, situated 2cm from midline and 6cm behind left eyebrow, of size 9cm x 1cm x bone deep. Underlying bone fractured. Both margins of would are clean cut.

(6) Abrasion present over forehead on both sides,

situated 1cm behind glabella, of size 8cm x 7cm, reddish.

(7) Abrasion present over bridge of nose, of size 5cm x 2 cm, reddish.

(8) Abrasion present over upper third of right arm over lateral aspect, of size 5cm x 1cm reddish.

(9) Linear abrasion present over lower third of right arm over lateral aspect, of size 5cm x 0.5cm reddish.

(10) Multiple abrasions present over knuckles of fingers and dorsum of right hand, of sizes varying from 1cm x 0.5cm to 0.5cm x 0.5cm, reddish.

(11) Sutured wound present over upper third of anterolateral aspect of left arm with 7 intact stitches in situ, on opening stitches a chop wound of size 10cm x 3cm x muscle deep present. Both margins of wound are clean cut.

(12) Sutured wound present over dorsum of left hand with 3 intact stitches in situ, on opening stitches a chop wound of size 3.5cm x 1 cm x bone deep present. Underlying bone fractured. Both margins of wound are clean cut.

(13) Multiple abrasions present over knuckles of fingers and dorsum of left hand, of sizes varying from 1 cm x 0.5 cm to 0.5 cm x 0.5 cm reddish.

(14) Stab wound present over right side of middle third of back, situated 3cm from midline and 20 cm above coccyx, of size 4cm x 1.5cm x cavity deep, both angles pointed and both margins clean cut, blood oozing through injury.

(15) Stab wound present over right side of middle third of back, situated 3cm from midline and 24cm below injury no. 14, of size 1cm x 0.25cm x muscle deep, both angles pointed and both margins clean cut, blood oozing through injury.

(16) Stab wound present over middle third of back in midline, situated 3cm medial to injury no. 14, of size 1cm x 0.25cm x muscle deep, both angles pointed and both margins clean cut, blood oozing through injury.

(17) Linear abrasion present over right side of middle third of back, situated 1cm medial to injury no. 14 of size 1cm x 0.25cm, reddish.

58. According to Dr. Gadhari the above injuries were ante mortem and fresh. Injuries No. 1 to 5, 11 & 12 can be possible by heavy to moderately heavy sharp edged weapon and injuries No. 9, 14 to 17 can be possible by sharp pointed weapon and injuries No. 6, 7, 8, 10 & 13 can be possible by hard and blunt impact. According to him, on internal examination of brain, Meninges were cut over both frontal regions, corresponding to injuries Nos. 1 & 2 mentioned in column No. 17. Brain was exposed to exterior, and lacerations present over both frontal regions corresponding to injuries Nos. 1 & 2 mentioned in column No. 17.

59. In his opinion probable cause of death is “ *chop wounds over head with stab injury to back*”. He opined that injuries No. 1 to 6 & 14 in column No. 17 along with corresponding internal damage mentioned in column No. 19, 21 & 22 were sufficient in ordinary course of nature to cause death.

60. Dr. Gadhari further testified that on the same day he along with Dr. N. K. Chaudhary conducted autopsy on the dead body of Vaibhav Patil between 11:30 am to 12:30 pm. The P. M. report is at Exh. 360. Sixteen external injuries noticed by P. W. 13 on the dead body of Vaibhav are as under :-

(1) Chop wound present over left side of face extending to left side of frontal region passing through left orbit and left eyeball, of size 23cm x 2cm x cavity deep. Underlying bone fractured, brain matter exposed to exterior, left eyeball ruptured. Both margins of wound are clean cut.

(2) Chop wound present over left side of face obliquely extending to right side of forehead passing through left side of bridge of nose and root of nose, of size 17cm x 2cm x bone deep. Underlying bone fractured, brain matter exposed to exterior. Both margins of wound are clean cut.

(3) Chop wound present over right side of frontal region, of size 4cm x 2 cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(4) Chop wound present over right fronto-parietal region, of size 7cm x 1cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(5) Chop wound present over right parietal region, situated 1cm behind injuryno.4, of size 4cm x 1cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(6) Chop wound present over midline of fronto-parietal region, of size 7cm x 1cm x bone deep. Underlying bones fractured. Both margins of wound are clean cut.

(7) Chop wound present over midline of parietal region, situated 1cm behind injury no. 6, of size 7cm x 1cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(8) Chop wound present over dorsum of left hand, vertically placed, of size 2.5cm x 1cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(9) Chop wound present over dorsal aspect of base of left little finger, transversally placed, of size 2.5cm x 1cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(10) Chop wound present over palmar aspect of middle phalanx of left ring finger, transversally placed, of size 3cm x 1cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(11) Chop wound present over dorsum of left hand, of size 5cm x 2cm x bone deep. Underlying bone fractured. Both margins of wound are clean cut.

(12) Stab wound present over right side of chest, situated 8 cm below suprasternal notch, obliquely placed, lateral end placed infero-laterally & medial end placed in midline, of size 5cm x 1.5cm x cavity deep. Both angles pointed and both margins clean cut, blood oozing through injury. On dissection middle third of body of sternum fractured and stab injury present in anterior pericardium.

(13) Stab wound present over left lateral aspect of chest, situated in anterior axillary line and 8cm lateral to left nipple, vertically placed, of size 5cm x 2cm x cavity deep. Both angles pointed and both margins clean cut, blood oozing through injury. On dissection left 6th rib fractured and stab injury present in upper lobe of left lung.

(14) Stab wound present over left lateral aspect of chest, situated in mid- axillary line, vertically placed, of

size 2cm x 1cm x muscle deep, both angles pointed and both margins clean cut, blood oozing through injury.

(15) Stab wound present over left lumbar region of abdomen, situated 10cm from anterior superior iliac spine, of size 3cm x 2cm x muscle deep, both angles pointed and both margins clean cut, blood oozing through injury.

(16) Stab wound present over right suprascapular region, situated 5cm from midline and 4 cm above right scapular spine, of size 3cm x 1cm x muscle deep, both angles pointed and both margins clean cut, blood oozing through injury.

61. P. W. 13 opined that injuries were ante mortem and fresh. Injury Nos. 1 to 11 can be possible by heavy to moderately heavy sharp edged weapon and injuries No. 12 to 16 can be possible by sharp edged pointed weapon. In his opinion, probable cause of death is “*chop wounds over head with stab injury to chest and abdomen*”. He further opined that injuries No. 1 to 7, 12 & 13 mentioned in column No. 17 along with corresponding internal damage mentioned in column No. 19 & 20 were individually sufficient in ordinary course of nature to cause death. Similarly, injuries mentioned in column No. 17 along with corresponding internal damage mentioned in column No. 19 & 20 were collectively sufficient in ordinary course of nature to cause death.

62. Dr. Gadhari further testified that on 20/06/2018 & 25/06/2018 as per requisition letters and on receipt of sealed weapons he examined sword, kukari, knife, and steel rod. According to him the injuries mentioned in column No 17, 19 20 21 & 22 of Exh. 356 & 360 are possible by use of such weapons. He also identified the said weapons MO-6, MO-7, MO-8 & MO-9 before the Court. As regards the homicidal death of Raosaheb and Vaibhav nothing has been brought on record in cross-examination of P. W. 13 to discredit his evidence.

63. The inquest panchnama of deceased Raosaheb is proved through the evidence of P. W 1 the panch Mayurchandra Pawar. The inquest panchnama is at Exh. 290. P. W. 1 further identified T-shirt and underwear Article-A & B stained with blood on the dead body of deceased Raosaheb. In his cross-examination it has come on record that he is not aware whether another panch Kailas Thackare is the father-in-law of deceased Vaibhav He denied that he and P. W. 27 are recovery agents of ICICI Bank.

64. P. W. 2 Prashant Sakharam Patil is the inquest panch of panchnama of dead body of deceased Vaibhav. He proved the

inquest panchnama at Exh. 294. He further identified the photographs of the dead body vide Exhs. 293/1 to 293/15 and identified Article-C, D, E & F, the blood stained clothes on the body of deceased Vaibhav. In his cross-examination it is brought on record that he had undergone training of human rights with the police department. He denied that since then he is having good relation with the police officers.

65. Considering the evidence of P. W. 13 Dr. Gadhari as regards the nature of injuries mentioned in the Postmortem reports and the inquest panchas P. W. 1 & P. W. 2 there is no difficulty in arriving at conclusion that Raosaheb and Vaibhav died due to the injuries sustained by them as mentioned in Exh. 356 & 360 and the nature of death is homicidal. Accordingly, **point No. 1 is answered in affirmative.**

AS TO POINT NOS. 2 TO 5, 7 & 8 :-

DEFECT IN THE CHARGE

66. Learned advocate of accused Nos. 4, 6, 10 & 13 criticized the charge framed against the accused persons vide Exh 216. He submitted that the charge is defective. It is framed under

nine heads. The alleged incident occurred on 08/06/2018. The place is shown Borse Nagar, Deopur in the charge and in the subsequent head '*on the aforesaid date, time and place*', is mentioned which apparently discloses that the incident occurred at 6:00 pm at Borse Nagar, at Deopur.

67. His next submission is that Section 302 & 120-B of the IPC are distinct offence, still charge is framed under Section 302 r/w 120-B against the accused. Simplicitor charge under Section 302 is not framed and even charge under Section 302 r/w Section 149 of the IPC is also not framed. To attract Section 120-B of the IPC, charge under Section 109 of the IPC is also not framed against the accused. Thus, according to learned advocate the charge framed against accused persons is defective and it vitiates the entire trial.

68. On perusal of charge framed at Exh. 216 it indicates the date of incident 08/06/2018 at 6.00 pm and place Borse Nagar, Deopur is mentioned. It is not disputed by A-4 and A-6 that their house is situated in Borse Nagar. Not mentioning specific place in Borse Nagar would not vitiate the trial. Further, the time of

incident as per FIR is 6.00 pm and the same is mentioned in the charge.

69. The charge under Section 307, 341 and 201 of the IPC is framed with the aid of Section 149 of the IPC. Therefore, merely non framing of charge under Section 302 of IPC without aid of Section 149 and framing of the said charge with the aid of Section 120-B of the IPC would not in any way vitiate the trial for the simple reason that while framing charge my learned predecessor specifically mentioned that the accused persons by conspiring with each other did commit murder of Raosaheb and Vaibhav by knowingly and intentionally. The irregularity committed is in respect of framing charge under Section 302 of the IPC with the aid of Section 120-B instead of Section 149. If the charge of conspiracy is brought on record, and the consequent result of the same i.e. the murder, then framing of charge under Section 302/120 B of I. P. C. is not an irregularity.

70. It also appears from the charge that the accused persons are charged for the offence punishable under Sections 143, 147, 148 of the IPC in which it has been mentioned that the

accused persons were members of an unlawful assembly and in carrying out the common object of that assembly they committed murder of Raosaheb and Vaibhav by carrying deadly weapons in their hands. Thus, from the various heads of the charge framed vide Exh. 216 it can be said that the ingredients for the offence under Section 302 r/w Section 149 and Section 120-B of the IPC were specifically brought to the notice of all the accused. At the most it can be said that it is irregularity while framing charge by not specifically mentioning Section 149 of the IPC with Section 302 of the IPC. In that view Section 464 of the Cr. P. C. is applicable. It reads as under :-

464. Effect of omission to frame, or absence of, or error in, charge.- (1) *No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.*

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may, -

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be

recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit;

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

71. As far as charge under Section 109 of the IPC is concerned, in view of Section 120-B (1) where no express provision is made in the Court for the punishment of such a conspiracy, the offender shall be punished in the same manner as if he had abetted such offence. Thus, the abetment of committing the offence pursuant to the criminal conspiracy is included in Section 120-B of the IPC. As such non framing charge with the aid of Section 109 of the IPC against the accused would not cause any prejudice to them. Further, on going through the provisions of Section 464 of Cr. P. C., it is clear that by committing error in the framing of charge, learned advocate of accused has not shown that any failure of justice or prejudice has been caused to the accused. The prosecution witnesses are cross-examined in detail as regards the charge U/s. 302, 120-B r/w 149 of the I. P. C. Thus, the argument

of learned advocate in that regard needs to be turned down.

EVIDENCE OF EYE WITNESSES

72. The major plank of the prosecution evidence is on the testimony of P. W. 27 informant Prashant Dagajirao Patil, the younger brother of deceased Raosaheb and uncle of deceased Vaibhav and P. W. 28 Harish Shinde, their maid in the houses of Raosaheb in Saraswati Colony and Wankhedkar Nagar.

73. P. W. 27 testified that on 31/01/2018 A-1 had arranged a program of dandi pournima between 8.00 to 8.30 pm in lane No. 6 in front of Pawanputra Vyayam Shala. P. W. 27 & deceased Raosaheb had been to that place to attend the said program of erecting pole. His evidence is that A-1, A-11 & Raju Pawar raised a dispute with him and deceased Raosaheb. A-1 objected about their attendance in the program, had an altercation with them by saying "तुम्ही येथे का आलात तुम्ही आमच्या भानगडीत का येता व आमच्या दुश्मनासोबत का राहता". At that time A-4, A-5, A-6, A-3, A-2 & A-12 were present at that place. According to P. W. 27 PI Pardeshi attached to Azadnagar Police Station arrived there and he along with others resolved the dispute between them.

74. P. W. 27 further testified that on 06/06/2018 around 4.30 pm when deceased Vaibhav was proceeding on motorcycle from Dutta Mandir Square, A-4 proceeding from opposite side on motorcycle gave a scornful look towards him. He further testified that on 07/06/2018 at 11.30 am he along with his younger brother Omprakash Patil had been to Zilha Parishad Dhule to meet Z. P. President where A-11 had an altercation with them and threatened them. P. W. 27 along with Omprakash tried to convince him and case back. On the same day at 7.30 pm when P. W. 27 and deceased Vaibhav were sitting on the bench near their house in Saraswati Colony, A-3 Harshal arrived there with his two companions and threatened Vaibhav to kill.

75. As regards the main incident, P. W. 27 deposed that on 08/06/2018 at 5.30 pm their maid Hitesh @ Aakash had been to deceased Raosaheb for providing medicines. He proceeded from Saraswati Colony towards Wankhedkar Nagar. At that time A-6 chased him up to Wankhedkar Nagar. Hitesh informed him about the said incident on phone. As P. W. 27 suspected A-6, he along with Omprakash and nephew Yogesh the elder son of deceased Raosaheb immediately proceeded on motorcycle from Saraswati

colony towards Wankhedkar Nagar.

76. It is further the evidence of P. W. 27 that at that time P. W. 28 Harish Shinde and deceased Vaibhav were taking deceased Raosaheb in Scorpio Vehicle from Wankhedkar Nagar to Saraswati colony. While they were proceeding from the house of A-4 and A-6 at Borse Nagar between 6.00 to 6.15 pm both A-4 & A-6 intercepted their vehicle. P. W. 27 along with Omprakash and Yogesh had seen A-4, A-6, A-11, A-5, A-2, A-3 A-12 and other four unknown persons assaulting Raosaheb and Vaibhav by deadly weapons such as sword, kukari, knife, Ghav, Bumper rod and sickle. As per evidence of P. W. 27 A-1 was holding sword, A-4 was holding kukari, A-6 was holding weapon, A-5 was holding sword, A-2 & A-3 were holding sickles and A-12 was holding Ghav weapon. One healthy and dwarf person was holding bumper rod. P. W. 27 testified that the accused persons by holding dangerous weapons were giving successive blows on head, face and body parts of Raosaheb and Vaibhav. So, P. W. 27 Omprakash and Yogesh by making uproar went ahead. According to P. W. 27 at that time four unknown persons assaulted Hitesh @ Aakash and P. W. 28 Harish. P. W. 28 was assaulted on his hand whereas Harish was

assaulted on his head. Due to the blow dealt on the head of Harish, he became unconscious. Since all the accused persons saw P. W. 27, P. W. 28, Omprakash and Yogesh, they fled away from the spot of incident. It is the evidence of P. W. 27 that while fleeing away A-11 said to A-4 "बाजीराव नानाना फोन करुन सांगा की, त्यांनी सांगितल्याप्रमाणे रावसाहेब व त्यांचा मुलगा वैभव यांचा काटा काढला आहे".

77. According to P. W. 27 since Raosaheb, Vaibhav, Hitesh and P. W. 28 were lying in injured condition, he along with Omprakash and Yogesh lifted them in Scorpio and went in Siddheshwar Hospital. On examination doctor declared Vaibhav brought dead and after sometime Raosaheb succumbed to the injuries.

78. The evidence of P. W. 27 further discloses that between 9.00 to 9.30 pm he went in West Deopur Police Station for lodging report. He proved the report Exh. 588. P. W. 27 further deposed about conducting inquest panchanamas on dead bodies of Raosaheb and Vaibhav on 09/06/2018 in Civil Hospital, Dhule. On 10/06/2018 he produced his clothes and clothes of deceased Raosaheb, Omprakash, Yogesh, P. W. 28 and Hitesh in the police

station. He identified the said clothes as Article A to Q and weapons kukari, sword, knife, steel rod / bumper and small knife as MO-A-6 to MO-A-9 and MO A-15.

79. P. W. 27 further testified that on 11/06/2018 he along with Omprakash, Yogesh, Harish and P. W. 28 went to spot of incident. Police verified the spot shown by him. On the same day, he produced Scorpio Vehicle in the police station as per letter dated 10/06/2018 by P. W. 32 the I. O. API Sarita Bhand. The samples of blood stains on seat belt, seat cover, matin, door handle and below the side window glass were collected from the scorpio vehicle.

80. It is the evidence of P. W. 27 that on 26/07/2018 and on 21/12/2018 he had gone to Central Prison Dhule for TIP and he identified four unknown accused persons i.e. A-7 Darshan, A-8 Bhagwan, A-10 Arjun and A-13 Bhushan Pagare.

81. The FIR at Exh. 588 lodged by PW 27 is mainly disputed by the defense on the ground that the station diary entry No. 20/2018 at 19.00 hours as reflected from the spot panchnama Exh. 493 thereby disclosing commission of cognizable offence of

double murder naming A-4, A-6, A-11 & other persons is the first information report. Thus, report Exh. 528 recorded thereafter is hit by Section 162 of the Cr. P. C. and cannot be read in evidence. Further P. W. 32 accordingly is the first informant and the entire investigation conducted by her is vitiated. She cannot be first informant as well as an investigating officer in the said crime.

82. Admittedly, in the case in hand, spot panchnama Exh. 493 is drawn before lodging FIR Exh. 588. The reason is obvious that the news of double murder must have been spread like wild fire in the city. The receipt of information is not a condition precedent for investigation though ordinarily investigation is undertaken on information received by police officer. So, there is no irregularity in conducting spot panchnama before receiving report by the informant.

83. On close scrutiny of Exh. 493 it indicates that station diary entry No. 20/2018 at 19.00 hours was taken pursuant to the information received that on 08/06/2018 at 6:00 pm while deceased Raosaheb and Vaibhav were proceeding in Scorpio vehicle towards Saraswati Nagar, A-4, A-6, A-11 and other persons

intercepted their vehicle, committed deadly assault on them by dangerous and sharp weapons. Admittedly, the station diary entry No. 20/18 recorded on 19:00 hours is not produced on record by prosecution.

84. In this regard Section 154 (1) of the Cr. P. C. reads as under :-

154. Information in cognizable cases. - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

85. Thus, an information given under Sub Section 1 of Section 154 of Cr. P. C. is known as FIR, and it is the earliest and the First Information of cognizable offence recorded by the officer in charge of police station. It makes the commencement of investigation and ended in either report under Section 169 or under Section 173 of the Cr. P. C. The recitals of Exh. 493 in specific terms discloses commission of cognizable offence from the reference of station diary entry No. 20/2018, thereby naming some

of the accused persons, time of incident and names of both the deceased also. So, it is the FIR in the present case though not produced on record.

86. In this context, learned advocate of A- 1, 3, 7, 8, 11 & learned advocate of A-4, 6, 10, 13 placed reliance on **State of U. P V/s. Bhagwant Kishor Joshi, AIR 1964 SC 221, Somappa Vamanappa Madar Shankarappa Ravanappa Kaddi V/s. State of Mysore, AIR 1979 SC 1831, Durga Rohi V/s. The State 1986 Cr. L. J. 1620 Calcutta High Court, H. C. Karigowda @ Shrinivas and others V/s. State of Karnataka 2013, SCC online KAR 6 (Karnataka High Court), Pradeep Narayanrao Rajgure V/s. State of Maharashtra, 2004 ALL MR (Cri.) 1308 (Bombay High Court).** On the contrary, learned Public Prosecutor placed reliance on **Anand Mohan V/s. State of Bihar 2012 ALL SCR 2062, Patai @ Krushnakumar V/s. State of U. P. 2010 ALL SCR 1598,** in the judgments relied upon by learned P. P. it is held by Hon'ble Supreme Court that “ *cryptic message regarding occurrence cannot be termed as FIR. So also, wireless message sent soon after incident was cryptic and did not sufficiently disclose nature of offence committed*”. In that circumstances, subsequently typed information

lodged by informant was held to be treated as FIR instead of wireless message.

87. As against this, in the judgments relied upon by learned defense advocates, it is held that “ *the station diary entry which discloses commission of cognizable offence shall have to be treated as FIR, and the subsequent statement of witnesses recorded cannot be treated as FIR, but it shall only be a statement recorded in the course of investigation under Section 162 of Cr. P. C.*”

88. In view of the law laid down in the cited judgments referred above, in the case in hand station diary entry No. 20/2018 recorded at 19.00 hours is not a cryptic message, but it discloses the commission of cognizable offence with time, place of occurrence and names of some of the accused persons. Hence, the same being first information of the offence, on the basis of which spot panchnama Exh. 493 was drawn, subsequent statement of informant P. W. 27 Prashant Patil marked at Exh. 588 as FIR is hit by Section 162 of the Cr. P. C. The same cannot be read in evidence and its use is for the purpose of contradiction only.

89. Now, another contention raised by learned defense advocates is that once Exh. 588 is hit by Section 162 of Cr. P. C., P. W. 32, the investigation officer becomes informant and the entire investigation conducted by her vitiates the trial since the informant cannot be the investigation officer in the same crime. I am not swayed away by the submission advanced by the learned advocate for the simple reason that by conducting investigation by P. W. 32 in the present case though she may be formal informant, no prejudice is caused to any of the accused. Even P. W. 32 is not the victim of the crime, but P. W. 27 and his family members are the victims of the crime. As such the investigation conducted by P. W. 32 did not vitiate the trial. Further, rejection of Exh. 588 as FIR would not detract the testimony of eye witnesses which will have to be assessed on its own merits. Even if, station diary entry 20/2018 recorded at 19.00 hours is not produced on record, it cannot be said to be suppressed deliberately as the contents of the same can very well be ascertained from the recitals of spot panchnama Exh. 493. Had it been the intention of the I. O. to suppress station diary entry, then certainly she would not have mentioned the same while writing spot panchnama. Eventually, I am of the opinion that the investigation conducted by P. W. 32 is not advantageous to the

defence on the ground that it vitiates the trial. At the most it can be said that P. W. 32 is formal informant who set the criminal law in motion by recording station diary entry and considering the serious nature of crime, she visited the spot of incident and drawn spot panchnama Exh. 493.

90. In view of foregoing discussion, since it is held that station diary entry No. 20/2018 is the first information of the cognizable offence, all the objections raised by learned defense advocates that there is delay in lodging FIR since incident occurred between 6:00 to 6:15 pm and FIR was registered at 00:58 hours on 09/06/2018, Exh. 588 is dated 08/06/2018 at the top and bottom whereas registration of crime is on 09/06/2018, it is concocted, after thought and filed with due deliberation and the searching cross-examination of P. W. 27 on that point are washed out since the earliest information of crime was already recorded in station diary entry No. 20/2018 and now the same cannot be treated as after thought. Although the source of information is not disclosed as per recitals of station diary entry mentioned in Exh. 493 and according P. W. 27 in his cross-examination, as per his say he is the first person to disclose the commission of crime to P. W. 32, it is

quite natural that he was referring the same as regards the recitals of Exh. 588.

91. It has further come in the cross-examination of P. W. 27 and P. W. 28 Harish that both of them were asked by the doctors and police about the incident. It is quite natural conduct of doctors and police on receipt information of double murder to inquire with the victims. It is not expected that each and every information received in such manner needs to be recorded in writing. The cross-examination of P. W. 27, P. W.28 & P. W.32 in that respect by learned defense advocate is thus futile. So, I do not find it necessary to discuss the judgments cited by all the defense advocates and learned P. P. on the point of delay in lodging the FIR.

92. The evidence of P. W. 27 is further attacked by the defense on the ground that the incident dated 31/01/2018 of dandi pournima, the incident dated 06/06/2018 of giving scornful look by A-4 to deceased Vaibhav while proceeding on motorcycle from opposite side, the incident dated 07/06/2018 in the premises of Z. P. Dhule where A-11 threatened P. W. 27 and Omprakash Patil and the incident dated 07/06/2018 at 7.30 pm of threatening

deceased Vaibhav by A-3 with two unknown persons, have not been proved on record.

93. Admittedly, there is no evidence of any witness except the evidence of P. W. 27 that the incidents dated 06/06/2018 and 07/06/2018 did occur as deposed by him. However, as regards the incident dated 31/01/2018 P. W. 25 Amit Pawar is examined by prosecution. He is nephew of A-1 and cousin of A-11. He deposed that on 31/01/2018 a program of erecting Holi Pole was arranged in lane No. 6 at Pawanputra chok where he along with Sumit Pawar, P. W. 27, deceased Raosaheb, Rajesh Pawar, A-1 and other members of mandal were present. They all were waiting for release of Lunar eclipse. At that time A-1, A-4, A-3, A-2, A-5 and A-12 arrived there with 15 to 20 people and were making haste to erect the pole. Deceased Raosaheb tried to convince them, but A-1 was instigating them. A-1 also abused there and started creating ruckus. Then according to P. W. 25 police van arrived there and they all left the place. He came to know on 08/06/2018 that murder of Raosaheb and Vaibhav was committed. He identified the recitals of his statement recorded by Magistrate at Exh. 487,

94. In cross-examination P. W. 25 stated that Pawanputara mandal is registered institution. The president of mandal is Ganpat Sajan Pawar, the elder brother of A-1 and his uncle. It is brought on record in cross-examination of P. W. 25 that he performed inter caste marriage in 2004, some criminal cases are filed against him and his family members and A-1 was under trial prisoner in one case for three months. P. W.- 25 denied that therefore, other members of Pawar family severed relation with him. Although he admitted that he along with P. W. 27, A-4 and deceased Raosaheb were not the members of Pawanputra Mitra Mandal, he denied that they were not present on 31/01/2018 at the time of Dandi Pournima programme.

95. In the light of evidence of P. W. 25 if the evidence and cross-examination of P. W. 27 is perused, it indicates that he had not stated about presence of P. W. 25 on 31/01/2018. He had not stated the date 31/01/2018 and time 8.00 to 8.30 pm in his statement recorded by police. He voluntarily made statement that since it was the program of Dandi Pournima of current year, police informed him that it is not necessary to mention any date and time. In the cross-examination on behalf of learned advocate of A-5, P. W.

27 admitted in para No. 48 that they used to remain present for the holi festival as they were having good relation with A-1 and his family members. He denied that because of the said good relation with A-1, he along with deceased Raosaheb remain present for the holi program arranged in the year 2018 but voluntarily stated that they were invited by P. W. 25 and his brother Sumit Pawar. This suggestion itself shows the presence of P. W. 27 and deceased Raosaheb in the program of Dandi Pournima arranged by A-1. So, not mentioning the date of Dandi Pournima by P. W. 27 is not material. P. W. 27 further admitted in cross-examination that in the FIR (Now statement) and his supplementary statement that he has not mentioned the cause of their rift with A-1.

96. It is further suggested to P. W. 27 that the dispute of Holi festival was limited to the extent of P. W. 27 & deceased Raosaheb. It has further come in the cross-examination of P. W. 27 that police themselves arrived there at the time of incident and he had not called them. He further admitted that A-5 was present in the rush of people gathered on 31/01/2018. It is his admission that he could not tell the names of people who intervened in the matter.

97. From the tenor of cross-examination of P. W. 27, it has come on record that there arose some dispute on 31/01/2018 on the eve of Dandi Pournima between A-1 and deceased Raosaheb and that was the reason of arrival of police there. When P. W. 27 and his family members were having cordial relation with A-1 and his family members, they were attending the program in lane No. 6 every year. Since there was rift between A-1 and deceased Raosaheb it was but natural that A-1 disliked the presence of P. W. 27 and deceased Raosaheb on 31/01/2018 and that must have been the reason of dispute between them. Further, there was no reason for police to reach there without there being any serious matter. From the cross-examination itself it is seen that the dispute was resolved by the police, and therefore, no complaint of the said incident was filed by any members of both the groups. Thus, it has come on record that due to rift between A-1 and others on one hand and P. W. 27, deceased Raosaheb on the other hand, dispute arose on 31/01/2018. It is nowhere disputed by defense that no such program of Dandi Pournima was arranged on 31/01/2018 in lane No. 6 by A-1. I have already held that there is no convincing evidence as regards the alleged incident dated 06/06/2018 and 07/06/2018 as deposed by P. W. 27.

98. It has come in the cross-examination of P. W. 25 Amit Pawar that his statement was recorded by police on 06/07/2018 and between 08/06/2018 to 06/07/2018 he was present in Dhule city. He further stated that on 06/07/2018 he disclosed before police for the first time about the incident dated 31/01/2018 and about information received by him as regards the incident dated 08/06/2018.

99. Learned P. P. has drawn inspiration from **Samadhan Laxman Dandage V/s. State of Maharashtra, 2021 ALL MR (Cri.) 1250 (Bombay High Court) & Akshay Kailash Purohit V/s. State of Maharashtra, 2019 ALL MR (Cri.) 3323 (Bombay High Court)** and argued that mere delay in recording statement of a witness is not a ground to discard his testimony. In both these cases there was delay of 5 and 4 days respectively to record the statements of witnesses.

100. In the case in hand, the statement of P. W. 25 was recorded after 28 days of the incident. As regards the delay in recording the statement of P. W. 25, nothing is asked to P. W. 32 about the said delay by defense. So, the defence cannot get any

benefit about the same. In this context, a useful reference can be made to the case of **State of U. P V/s. Satish, (2005) 3 SCC 114** wherein the Hon'ble Supreme Court laid down in para No. 18 that “ *as regards delayed examination of certain witnesses, this Court in several decisions has held that unless the I. O. is categorically asked as to why there was delay in examination of witnesses, the defence cannot gain any advantage there from. It cannot be laid down as a rule of universal application that if there is delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible, and acceptable, and the Court accepts the same as plausible, there is no reason to interfere with the conclusion*”. In view of the aforesaid proposition I have no hesitation to hold that the delay in recording the statements of P. W. 25 Amit is non advantageous to the defence.

101. The evidence of P. W. 25 Amit Pawar discloses that at the occasion of election of Balapur Grampanchayat, there was rift between deceased Raosaheb and A-1 and after that their relation was more strained after the incident of Dandi Pournima. The said

evidence of P. W. 25 is not at all challenged in cross-examination by the learned defense advocate, and therefore, the same can be accepted to infer that the relation between Raosaheb and A-1 were strained and there was enmity between them. Thus, the evidence of P. W. 25 is consistent with the evidence of P. W. 27 in respect of the incident dated 31/01/2018 and the enmity between both the sides.

102. As far as the argument of learned advocate of A-4, 6, 10 & 13 that in the background of enmity between both the parties, there was no reason for P. W. 27 and deceased Raosaheb to attend the program of Dandi Pournima, it is stated by P. W. 27 that they were called by P. W. 25. Even if the presence of P. W. 25 is not there in the statement of P. W. 27, it is immaterial as the incident was with regard to the dispute arose there. Mere friendship of P. W. 25 with P. W. 27 not specifically admitted by P. W. 25 but admitted by P. W. 27, is no ground to discard the testimony of P. W. 25.

103. P. W. 18 Rajendra Garde is the editor of daily Murder. He deposed about the news of the incident of Dandi Pournima dated 31/01/2018 published in daily Murder. In his evidence the

copy of daily Murder dated 01/02/2018 is proved at Exh. 200. The newspaper dated 09/06/2018 is at Exh. 404. Even if both the newspapers dated 01/02/2018 and 09/06/2018 are considered, those reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. Therefore, the newspaper being secondary evidence of its contents, is not admissible without proper proof of its contents. The evidence on record in that respect has to be appreciated.

104. The evidence of P. W. 27 is further disputed by defence advocate on the ground that it is self-contradictory. On one hand P. W. 27 deposed that their maid Hitesh @ Aakash had been to Raosaheb for providing medicines and subsequently he deposed that P. W. 28 and deceased Vaibhav were proceeding to take deceased Raosaheb towards Saraswati Colony. In this context, on perusal of evidence of P. W. 27 it indicates that in para 5 he deposed that at that time P. W. 28 with deceased Vaibhav were proceeding in Scorpio Vehicle with deceased Raosaheb towards Saraswati Colony. Thus, it appears that the deposition of P. W. 27 in that respect is misconstrued by learned defence advocate and it is not necessary to discuss further on the said aspect.

105. It is further argued that from the cross examination of P. W. 27 it is clear that house of Artibai where deceased Raosaheb was residing, deceased Vaibhav was also present. However, there is no evidence on this point. It is further submitted that when, how and deceased Vaibhav accompanied deceased Raosaheb in Scorpio vehicle is not brought on record. It is not the evidence of P. W. 27 about the presence of Vaibhav in the house of Wankhedkar Nagar. In my opinion, the said explanation as regards the presence of Vaibhav in the house of Wankhedkar Nagar has come in the evidence of P. W. 28 Harish and the same will be considered at appropriate stage.

106. It is next submitted by learned defense advocate that from the cross-examination of P. W. 27 & P. W. 28, it is also clear that there were other roads available for the deceased to reach his house in Saraswati Colony, from Wankhedkar Nagar. Taking into consideration the inimical terms between both the parties, there was no reason for the deceased persons to proceed from the house of A-4 and A-6. According to defence advocates their conduct demonstrates that the reason was not to proceed towards Saraswati Colony, but it was something different. Even if it is

considered that other roads were available to the deceased to proceed towards Saraswati Colony from Wankhedkar Nagar, the explanation in that regard is itself given by P. W. 27 & P. W. 28 that the road proceeding from the house of A-4 was their routine user way. One cannot insist or demand that in the background of enmity between the parties, the prosecution witnesses should use another road. It is their choice to proceed or not from a particular road.

107. The presence of P. W. 27 on the spot of incident is seriously disputed by the defence. It is argued that in para No. 30 of cross-examination of P. W. 27 he could not tell whether the house of A-4 is single storied or double storied. He stated that there was tar road in front of the house of A-4. He is unable to tell the width of the road. Thus, according to learned defence advocate, if P. W. 27 had been on the spot of incident, then there was no reason for him not to tell the directions and user of the house of A-4 and whether it was single storied or double storied. It is further argued that though P. W. 27 deposed that there is tar road in front of house of A-4, on perusal of spot panchnama Exh. 493, there is no mention that there is tar road. On the contrary, it is mentioned in Exh. 493

that the soil was trampled (सँदळ) meaning that there was no tar road.

108. It is further contended by learned advocates that in para No. 41 of cross-examination P. W. 27 stated that approximately at about 6.10 pm maid Hitesh rang him and informed that he reached at house in Wankhedkar Nagar. P. W. 27 further admitted that he was not knowing whether Hitesh and Raosaheb were about to leave the house at Wankhedkar Nagar. The cross-examination further reflects that P. W. 27 was sitting in the compound of his house when he received the phone call of Hitesh. Thus, when P. W. 27 was present at his house at 6.10 pm and the alleged incident had taken place between 6.00 to 6.15 pm then according to learned advocates it is not just possible for P. W. 27 to reach the spot of incident and witness the alleged incident.

109. The evidence of P. W. 27 is further assailed on the ground that he is chance witness, relative of both the deceased and thus being interested witness, his testimony cannot be relied upon. On the contrary, learned P. P. submitted that relative is a natural witness. If his evidence is cogent, reliable and trustworthy and his testimony may not be disbelieved if it is otherwise reliable. To lend

support to the aforesaid submission, he placed reliance on **State of U. P. V/s. Naresh and others, 2011 Cr. L. J. 2162** wherein Hon'ble Supreme Court observed that “ *the evidence of related witness cannot be discarded solely on the ground of his relationship with victim of offence*”. If plea of false implication is raised, defence has to lay down foundation therefor. It is held in para 25 that “*unless the discrepancies, contradictions, inconsistencies affect core of prosecution, it cannot be basis to reject evidence. Normal discrepancies are bound to occur in depositions of witnesses due to errors of observation, errors of memory due to mental dislocation at the time of the occurrence*”. It is further held in para 24 & 28 that “ *failure to give name of one accused, by itself cannot tilt balance in favour of accused. The rejection of evidence of witnesses who were with the victim on the ground that they were relatives and rejection of evidence of injured witnesses on the basis of discrepancies in the evidence is not proper*”.

110. In **Vijendra Singh V/s. State of U. P. 2017 ALL MR (Cri.) 833 SCC** relied upon by learned P. P. it is held by Hon'ble Supreme Court that “ *in a murder case, testimony of related witness, evidence of eye witnesses related to deceased stating in*

detail about previous enmity between parties, their presence at spot, weapons that carried by accused persons, their proximity to shed and establishment of identity of all four accused cannot be discarded on ground that they are interested witnesses. There is distinction between a witness who is related and an interested witness. A relative is a natural witness cannot be regarded as an interested witness.

111. In **Angnoo and Others V/s. State of U. P. 1971 Cr. L. J., 285** the Hon'ble Supreme Court in para No. 7 & 8 observed that “*so far as the possibility of recognizing the appellants is concerned, all the witnesses have stated that they arrived within a distance of about 50 steps while the assault was still going on. All the appellants were well known to the witnesses, and there is no reason to doubt their evidence that they were able to recognize all the 10 of them. Persons well known can be recognized within a very short time. The appellants were seen by them while continuing the attack and while they were going away after completing the assault.* It is further held that the very circumstance of being brother of deceased would add to the value of his evidence because he would be interested in ensuring that the real culprits

responsible for the murder of Mahadev are punished and not innocent person.

112. On the other hand, learned advocate of A-4, 6, 10, 13 cited the judgments in **Pawan @ Rajendrasingh and another V/s. State of Haryana 2017 (2) Crimes 7 SC**. The Hon'ble Supreme Court held in para 8 to 12 that “*the testimony of chance witnesses cannot be accepted unless corroborated from other evidence on record. When motive of crime is not clear and FIR is based on suspicion, conviction is not sustainable.*”

113. In the background of aforesaid pronouncements, the evidence of P. W. 27 needs careful scrutiny. In para 41 onward of cross-examination of P. W. 27 he stated that he did not call Raosaheb after receiving phone call of Hitesh. He conceded that neither Hitesh nor Raosaheb informed him that they had left from Wankhedkar Nagar and that police did not seize his cell phone during investigation. He is unable to tell whether the call record of his cell phone was verified by police during investigation.

114. From the evidence and cross-examination of P. W. 27, it

is clear that he proceeded towards spot of incident on receiving phone call of Hitesh. Admittedly, Hitesh is not examined in the present case. P. W. 29 Pravin Tanawade, Nodal Officer Reliance Jio testified that on 15/11/2018 he received letter Exh. 645 by S. P. Office, Dhule thereby calling to examine CDR and issuance of certificate under Section 65-B in respect of mobile No. 8459325344 for the period between 06/06/2018 to 09/06/2018. Accordingly, he examined the said record and issued letter dated 22/11/2018. He further testified that activation of mobile No. 8459325344 was in the name of Hitesh Rajendra Deore. Activation date was 04/02/2018. As per CDR of said mobile number P. W. 29 testified that the entry at Sr. 174 shows that from mobile No. 8459325344 a call was made to mobile No. 918208825240 on 08/06/2018 from 18.08.37 to 18.09.27 hours. The duration of the call was 50 seconds. Its tower location was Walwadi, Gavale Nagar, Tal. Dist. Dhule. The CDR is at Exh. 647 and its details are at Sr. Nos. 1 to 198. The certificate issued by P. W. 29 under Section 65-B of the Indian Evidence Act is at Exh. 648. Learned P. P. argued that mobile number 918208825240 is of Yogesh Patil and it has come in the cross-examination of P. W. 27 that the phone call of Hitesh was received on mobile phone of Yogesh. In cross-examination of P.

W. 27 at para 66 it is suggested to him that he received the phone call of Hitesh at 6.10 pm. This suggestion itself shows receiving of phone call by P. W. 27. It is further suggested that when Hitesh rang him, he informed P. W. 17 that he was at the house of Wankhedkar Nagar. From the tenor of cross-examination of P. W. 27 it is clear that on receiving phone call by Hitesh between 6.08 to 6.10 pm, P. W. 27 Omprakash and Yogesh proceeded towards Wankhedkar Nagar.

115. In para 42 of cross-examination P. W. 27 stated that he had seen the accused persons on the date of incident from a distance of about 60 to 70 feet. He did not notice any weapons in the hands of both the deceased and P. W. 28 Harish. When he was asked as to whether he felt to run away from that place he replied that he did not run away as he had to save his brother and nephew. P. W. 27 further stated that the entire incident took place within 2 minutes. When he was asked as to whether he tried to intervene he replied that the assault was completed when he reached near both the deceased. If this evidence of P. W. 27 is considered in the light of cross-examination of P. W. 28 at para 22, he stated that when Raosaheb fell down, at that time he saw P. W. 27, Omprakash

and Yogesh arrived there. His evidence further unfolds that they and other people were making uproar. At that time A-4 and other unknown persons fled away on the motorcycles along with weapons towards Vyankatesh Guarden.

116. In para No. 18 of cross-examination of P. W. 27 he admitted portion marked 'A', 'B' & 'C' in his supplementary statement. Portion marked 'A' is in respect of actual incident. Portion marked 'B' indicates that when P. W. 27 arrived at spot of incident, at that time A-4 and the accused persons with him had killed Vaibhav by means of dangerous weapons, Hitesh @ Aakash was lying unconscious and in injured condition on the spot and P. W. 28 Harish was seeking help. Portion marked 'C' indicates that the people were gathered at that place and he was not knowing as to who were the assailants from the people present there. From the portion marked 'A', 'B' & 'C' the irresistible conclusion that has to be drawn is that P. W. 27 along with Omprakash and Yogesh arrived on the spot when the actual assault had taken place. Thus, from the cross-examination of P. W. 27 & P. W. 28 Harish, it has been brought on record by defense that P. W. 27, Omprakash and Yogesh had seen the assailants while fleeing away from the spot

along with weapons in their hands. It has further come on record that when P. W. 27, Omprakash and Yogesh and other people were making uproar, after arriving near the spot, the assailants fled away from the spot.

117. Now, it is the contention of learned defense advocates that since P. W. 27 had not seen the actual incident, his entire testimony needs to be washed out. I am not inclined to accept the said submission for the simple reason that though it is brought on record that P. W. 27 along with Omprakash and Yogesh arrived on the spot after the assault was completed, he had seen the assailants while fleeing away along with the weapons in their hands. This lends support from the question put to P. W. 27 in cross-examination in para No. 22 as to whether he had not stated before police while lodging FIR and in supplementary statement as to what the accused persons had done with the weapons in their hands to which the reply of P. W. 27 is that he had stated about fleeing away of the accused persons with the weapons. The presence of P. W. 27 at the spot of incident after completion of assault, but noticing the assailants while fleeing away is thus natural and reliable. Eventually, his entire evidence need not be

brushed aside. He is thus, not wholly unreliable witness.

118. The evidence of eye witness P. W. 28 Harish Shinde is criticized by defense on the ground that he is interested witness, his evidence is inconsistent with the evidence of P. W. 27 and that he has not properly identified the spot of incident. I have already held in aforementioned paragraphs that P. W. 27 arrived on the spot while assailants were fleeing away from there. So, now the inconsistencies pointed out by learned defense advocates in the evidence of P. W. 27 & P. W. 28 need not be considered and the evidence of P. W. 28 has to be assessed independently.

119. P. W. 28 Harish was admittedly the maid in the house of deceased Raosaheb at Saraswati Colony and Wankhedkar Nagar. He deposed that deceased Raosaheb used to go to the house of Aarati Patil (residing with Raosaheb in the house at Wankhedkar Nagar) to sleep. According to him, Raosaheb used to watch television overnight and used to sleep between 4.30 to 5.30 am. He used to wake up between 3.00 to 3.30 am and sometimes his lunch box was provided from the house at Saraswati Colony. When P. W. 28 testified about the incident dated 31/01/2018 of Dandi

Pournima which has already been discussed.

120. As regards the incident dated 08/06/2018 P. W. 28 testified that on that day between 2.30 to 3.00 pm while he was at Garud Complex deceased Vaibhav rangd him and informed that they have to go for purchasing clothes in the market so he should come at Hotel Heem. Vaibhav told him that he had proceeded along with his wife. After passing of sometime Vaibhav along with his wife arrived near Hotel Heem in Scorpio vehicle. P. W. 28 boarded in the vehicle and they proceeded towards the market. Meanwhile they took driver Munna Kaka near Deopur Masjid. All of them when went to cool club on Agra road and purchased some clothes for Vaibhav.

121. It is the evidence of P. W. 28 that deceased Raosaheb rangd Vaibhav to come home for taking him to Saraswati Colony. Then they dropped Munna Kaka near Deopur Masjid and Ashwini, the wife of Vaibhav at her parental house in Rajguru Nagar, Deopur Dhule. According to P. W. 28 they reached at the house of Wankhedkar Nagar between 5.30 to 6.00 pm. Hitesh @ Aakash was also present there. Raosaheb was standing on the ota of the

house. P. W. 28 along with Raosaheb and Vaibhav proceeded in Scorpio vehicle towards house at Saraswati colony. P. W. 28 further testified that Vaibhav was driving the vehicle, Raosaheb was sitting besides him, and he was sitting on the back side seat. Hitesh was proceeding behind them on Mystro Vehicle.

122. It is the evidence of P. W. 28 that when they were proceeding in front of the house of A-4 & A-6, they both intercepted their vehicle and started abusing them. At that time A-2, A-3- A-5, A-11, A 12 and other four unknown persons arrived near their vehicle and started abusing them. They were holding dangerous weapons like sword, kukari, knife Ghav and rod. When P. W. 28, Raosaheb and Vaibhav alighted from the vehicle, A-3, A-5 & A-12 scuffled with Raosaheb and abused them. A-11 assaulted Raosaheb from behind on his head by means of sword. One healthy and dwarf person assaulted on the head of Raosaheb by means of rod, so Raosaheb fell down. He further testified that then A-4 assaulted Raosaheb with successive blows of kukari in his hand. According to P. W. 28, Hitesh went ahead to save Raosaheb by lifting stone in his hands, at that time the healthy and dwarf person dealt a blow of rod on his head, so he became unconscious.

Then Vaibhav by lifting stone on the ground tried to assault A-4 in order to save Raosaheb. At that time A-2, A-3, A-5 & A-12 surrounded Vaibhav. A-6 stabbed Vaibhav with knife in his hand for four to five times. A-4 dealt successive blows of kukari on the head and face of Vaibhav. When P. W. 28 tried to run away from the spot, three unknown persons and A-4 surrounded him. One unknown person dealt a blow of rod on his right hand, so he fell down. At that time he saw P. W. 27, Omprakash and Yogesh arriving there. They along with people present there made uproar. So, A-4 and three unknown persons fled away on their motorcycles with weapons towards Vyankatesh Garden.

123. It is the evidence of P. W. 28 that while leaving the spot, they said "बाजीराव नानांना सांगा त्यांच्या सांगण्याप्रमाणे रावसाहेब व त्यांच्या मुलाचा आम्ही काटा काढला आहे.", then P. W. 28 along with Vaibhav, Raosaheb and Harish were taken in Scorpio vehicle by P. W. 27, Omprakash and Yogesh in the hospital. Vaibhav died on the spot whereas Raosaheb was declared dead in the hospital after sometime of their arrival. His statement by police was recorded on 18/06/2018 and by the Magistrate on 07/06/2018. The statement recorded by Magistrate is at Exh. 603.

124. P. W. 28 further testified about attending TIP in Dhule Central Prison on 26/07/2018 & 21/12/2018. According to him, he identified A-7 Darshan and A-8 Bhagwan on 26/07/2018 and he identified A-10 Arjun and A-13 Bhushan Pagare on 21/12/2018. He identified all the four unknown accused and the seized weapons MO-6, 7, 8, 9 & 15 i.e. Kukari, sword, knife, bumper rod and small knife. He further identified seized clothes of deceased Raosaheb, Vaibhav, Hitesh and of himself as Articles 'A, G, C, D, P, Q, N & O'.

125. P. W. 28 faced searching cross-examination by five defense advocates. The evidence of P. W. 28 is assailed many on the ground that his evidence is totally silent as to from where deceased Raosaheb was picked up, how and when he accompanied deceased Vaibhav and P. W. 28. In this context, on perusal of evidence of P. W. 28, it is specifically deposed that Raosaheb ranged Vaibhav and called him at the house in Wankhedkar Nagar. At that time P. W. 28 was with Vaibhav and they reached at Wankhedkar Nagar between 5:30 to 6:00 in Scorpio vehicle where Raosaheb was standing on ota and Hitesh was also present. Then P. W. 28, Raosaheb and Vaibhav proceeded towards the house in Saraswati Colony. He also deposed about their sitting position in Scorpio

Vehicle. Hence, the objection raised by learned defense advocates is not sustainable.

126. Next, his evidence is challenged on the ground that the conduct of P. W. 28, Raosaheb and Vaibhav is unnatural and contrary to the conduct of an ordinary human being. According to learned advocates if A-4 & A-6 intercepted their vehicle, abused them, then A-2, A-3, A-5, A-11, A-12 and other four unknown persons arrived there armed with deadly weapons like kukari, knife, ghav and rod, then there was no reason for them to alight from the vehicle. P. W. 28 stated in cross-examination that no damage was caused to the Scorpio, it did not happen that they were forcibly removed from the vehicle, and Vaibhav did not speed the vehicle though it was a road from where two vehicles at a time can easily proceed.

127. It is further submitted that P. W. 28 in his cross-examination in para No 42 stated that after the accused arrived in front the car, Vaibhav suddenly applied the brakes. However, the tyre marks were not imprinted on the road. In para No. 41 P. W. 28 stated that A-4 & A-6 were standing by the side of road. Thus,

according to learned advocates, there was no reason for Vaibhav to apply brakes considering the standing position of A-4 and A-6 by the side of road. Further according to learned advocate, no tyre marks were noticed at the time of drawing spot panchanama Exh. 493. In this context, even if it is considered that A-4 & A-6 were standing by the side of road, it is specifically stated by P. W. 28 that their vehicle was intercepted by them. He further stated in cross-examination that A-4 & A-6 arrived in front of their vehicle. It is further stated by P. W. 28 in cross-examination in para 42 that as soon as their vehicle stopped, the other accused arrived there. It shows that while proceeding towards Saraswati Colony, P. W. 28, deceased Raosaheb and Vaibhav had seen only A-4 and A-6 near their house and then other accused arrived here by holding dangerous weapons in their hands. In the background of enmity between both the groups and the dispute dated 31/01/2018, the conduct of alighting Raosahneb and Vaibhav from the vehicle is not unnatural. This must have been the reason of not causing any damage to the Scorpio by accused persons. Had there been any attempt by the accused persons to cause damage to the vehicle by the weapons in their hands, then certainly Vaibhav would have speed the vehicle to avoid the assault. Thus the conduct of

Raosahab, Vaibhav and P. W. 28 cannot be said to be unnatural. Merely because they dared to alight, in absence of any overt act done by accused, it cannot be inferred that they were aggressors. In this respect in para No. 53 P. W. 28 denied that deceased Raosahab always used to possess a weapon like kukari. A feeble attempt is thus made by defense to show that deceased Raosahab himself used kukari in the incident but when denied by P. W. 28, further suggestions were dropped. Daring to alight from vehicle did not justify any violent act of accused persons.

128. Question was asked to P. W. 28 in para No. 28 that he is having close and good relation with P. W. 27, he being brother of deceased Raosahab to which P. W. 28 replied that there was close and good relations with him. It is quite natural that P. W. 28 was working as maid in both the houses of deceased Raosahab and he was having close relations with P. W. 27, but the same cannot be a ground to disbelieve his entire version since he has no reason or any enmity with any of the accused persons to implicate them falsely in an offence of double murder. He cannot be said to be an interested witness to implicate nine accused persons on say of his master only to please him.

129. As regards the identification of MO A-9 as bumper rod, learned defense advocate submitted that in the statement before police and before Court P. W. 28 had not stated whether the rod was wooden or iron rod. When he was confronted with MO A-9, in para No. 19 he stated that it was bumper rod of a vehicle. On perusal of cross-examination of P. W. 28, it is suggested to him that even earlier also he could not give any description of the rod. This suggestion itself shows that only rod was mentioned by P. W. 28 while giving statement before police and before Court and when confronted with MO A-9 he identified it as bumper rod of a vehicle. P. W. 28 has identified MO A-9 that was seen by him in the hands of healthy and dwarf person at the time of incident, and therefore, I find no substance in the objection raised by defense advocate about identification of MO A-9. Even P. W. 28 was suggested during cross-examination about their sitting position in the Scorpio vehicle. In cross examination he admitted that there are other roads available to proceed towards Saraswati colony from Wankhedkar Nagar besides the road proceeding from the house of A-4 & A-6. He voluntarily stated that it was their user way. He further admitted in para No. 30 that he was sitting in the vehicle facing front side. These suggestions themselves indicate the presence of

P. W. 28 in the Scorpio Vehicle with Raosaheb and Vaibhav.

130. In this context the observations in **Balu Sudam Khade V/s. State of Maharashtra AIR 2023 SC 1736** and **Rakeshkumar @ Babli V/s. State of Haryana AIR 1987 SC 690** relied upon by learned P. P. are worth to note. It is held in the said judgments that “*suggestions put by defence counsel to a witness in the cross-examination, if found to be incriminating in the nature in any manner would definitely bind the accused as the accused cannot get away on plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client*”. True that during cross-examination with a view to discredit the witness or to establish the defense suggestions are put to witness, but the suggestions in the case in hand put to P. W. 28 itself shows that his presence on the spot and in the Scorpio Vehicle is admitted by the defense.

131. It is next submitted by learned defense advocates that in cross-examination of P. W. 28 it has come on record that during the period of two to three hours when he was present in the hospital, police arrived there, inquired with him and he narrated

the incident to police. However, his statement was recorded after three days of the incident i.e. on 11/06/2018. Thus, according to learned advocates when P. W. 28 was interrogated in the hospital itself and he narrated the incident to police at that time there was no reason for the investigating agency not to record the statement of P. W. 28 at the first possible opportunity. The record shows that the police on receiving the information of double murder went in Siddheshwar Hospital. It has come in the evidence of P. W. 32 I. O. that on receipt of the information of the incident, she had taken station diary entry of the incident and proceeded towards the spot. Meanwhile she received information that injured were admitted in Siddheshwar Hospital, so she went there. In such circumstances, the conduct of police in making inquiry with the injured and P. W. 27 about incident is most probable. Further, considering the gravity of offence, the first impulse of the investigation officer must have been to rush to the spot of incident and not to record the statements of witnesses in the hospital itself when Raosaheb was in serious condition and Vaibhav was already dead. Thus no weightage needs to be given to the defense of not recording the statement of P. W. 28 in the hospital.

132. As far as the delay of three days in recording the statement of P. W. 28, P. W. 32, the investigating officer is not asked about the said delay in her cross-examination. Learned advocate of A-4, 6, 10 & 13 cited the judgment in **Shahid Khan V/s. State of Rajasthan (2016) 4 SCC (Cri.) 211**. It is held by Hon'ble Supreme Court that “ *statements of eye witnesses recorded after three days of incident is not explained and therefore delay in recording statement casts a serious doubt about they being eye witnesses to occurrence*. In that case P. W. 24 & 25 whose statements were recorded after three days of the incident, were residents of Kota which was at distance of 150 kms from Jhalawar town where incident occurred. They came to meet deceased. However, P. W. 9 and P. W. 19, the brothers of deceased did not state that they had seen P. W. 24 & 25 at the occurrence place. In the complaint also their names were not mentioned. In that eventuality the delay was held fatal to prosecution case. In the case in hand, such are not the facts. As already discussed, in view of observations in the matter of **Samadhan Dandage and Akshay Purohit's case (Supra)**, mere delay in recording statement of a witness is not a ground to discard his testimony. Thus, the said delay is not advantageous to defense.

133. So far as the injury sustained by P. W. 28, he testified that one healthy and dwarf person dealt a blow of bumper rod on his right hand so he fell down. In cross-examination he stated that he received bleeding injury. He further stated that doctor did not make any inquiry with him about the injury sustained by him and the injuries sustained by both the deceased. It has come in the evidence of P. W. 14 Dr. Jitendra Thakur that history of assault was given by Hitesh @ Aakash. So, it is probable that the same was not inquired with P. W. 28

134. Admittedly, the injury certificate of P. W. 28 is not tendered on record nor any medical officer is examined to prove the injury sustained by him. It is not the case of prosecution that P. W. 28 sustained any grievous injury. In this context, P. W. 32 the I. O. admitted in cross-examination that she has not filed any documents in the charge sheet about the injuries sustained by P. W. 28 but she voluntarily stated that the said document was not received. Therefore, not filing his injury certificate on record and not examining the medical officer is not fatal to the prosecution case. Therefore, this must have been the reason of remaining silent by P. W. 28 in the hospital in respect of disclosing history to the

doctor. By no stretch of imagination, it can be said that he is projected as an eye witness by the prosecution. At this stage it is pertinent to note that in para No. 58 of cross-examination of P. W. 27 a question was put to him that portion mark 'A' in his statement is mentioned as per information provided by Hitesh and Harish to which he answered that information was provided by them. If portion mark A referred to P. W. 27 is perused it shows that when he arrived on the spot of incident, Vaibhav was deadly assaulted and A-4 along with the persons present with him fled away from the spot and Aakash was lying unconscious whereas P. W. 28 Harish was seeking help, both of them were present on the spot of incident. It itself corroborates the testimony of P. W. 28 that he was present on the spot of incident and had witnessed the incident.

135. As regards the actual assault, it is disputed by defense that when P. W. 28 had seen only A-4 & A-6 then from where, when and how rest of the accused persons arrived on the spot of incident, is not stated by P. W. 28. According to learned defense advocate, there is nothing in the spot panchnama Exh. 493 that there was any place where accused persons could hide themselves in nearby vicinity. No such secluded place is shown in the spot panchnama.

In this respect cross-examination of P. W. 28 in para No. 30 & 42 discloses that when breaks of their vehicle were applied, then other accused persons arrived there from rear side of the vehicle. Thus, it was not necessary for accused persons to hide anywhere when P. W. 28 specifically stated that they arrived there by holding dangerous weapons in their hand. Since there is enmity between A-1 and deceased Raosaheb, A-4 & A-6 must have been knowing the user way of deceased Raosaheb and therefore, arrival of other accused persons on the spot as testified by P. W. 28 appears justifiable.

136. It is brought on record by defense advocate that P. W. 28 could not state the approximate length and diameter of MO A-9 bumper rod. P. W. 28 further stated that the rod was hit from the back of Raosaheb. So, he fell down. A-11 hit Raosaheb on head with sword before he was assaulted by means of rod. He further admitted that Raosaheb did not fell down after being assaulted with rod. Raosaheb was assaulted on head from back side by means of sword. P. W. 28 further stated that he could not describe the said assault any further. He further admitted that Raosaheb fell down after being assaulted by means of rod and sword and other

blows were dealt on Raosaheb after he fell down on the ground.

137. It is further brought on record in cross-examination of P. W. 28 in para Nos. 27 & 28 that even after he was assaulted by an unknown person with rod, the accused continued to assault him. When he was being assaulted, the accused were also making assault on others. It is further brought on record that while giving statement before Magistrate vide Exh. 603 P. W. 28 stated that Hitesh lifted a stone on the ground and went forward to save Raosaheb, at that time healthy and dwarf person who was assaulting on head of Raosaheb by means of rod, struck Hitesh on his head with the rod, so he became unconscious. P. W. 28 could not assign any reason about the said contradiction brought on record. He further admitted that he had not mentioned the length and width of the weapons while giving statement before police. In this respect law is well settled that the statement under Section 164 of the Cr. Pc. Is used for corroboration and for the purpose of contradiction. The contradiction as above brought on record in the evidence of P. W. 28 is thus immaterial since Hitesh is not examined by the prosecution.

138. P. W. 28 is an injured witness, therefore, his testimony is entitled for special weightage. Convincing evidence is required to discredit an injured witness. Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies in it. It is brought on record in the cross-examination of P. W. 28 that from the time of intercepting the vehicle till he fell down on the ground, the incident occurred within 2 to 3 minutes. In such circumstances, P. W. 28 is not supposed to remember the exact number of blows inflicted by the accused persons and also to remember which blow was inflicted by which accused, on which part of the body of both the deceased. From the evidence of P. W. 28 it is apparent that the assault took place within 2 to 3 minutes i.e. a very short duration, as such, it is not easy for him to remember how many blows in all were inflicted by the accused persons and which accused inflicted the blow by a particular weapon on which body part of both the deceased. Still the testimony of P. W. 28 inspires confidence still he stated about injuries sustained by both the deceased on their head, face, abdomen and back. He has further identified A-2, A-3, A-4, A-5, A-6, A-11 & A-12 who were present on the spot of incident with

dangerous weapon. It is brought in the cross-examination of P. W. 28 that he did not intervene in the assault nor he run away from the spot of incident. In **Yashwant Pandurang Keer V/s. State of Maharashtra, 2015 ALL MR (Cri.) 3768** relied upon by learned P. P. the Division Bench of Hon'ble Bombay High Court held in para No. 30 & 31 that *“a witness can be expected to intervene in the assault only when he is confident of over powering the assailants. It is further observed that it is judicially recognized that there is no set rule that one must react in a particular way. The natural reaction of a person is unpredictable. Everyone reacts in his own way and hence natural behaviour is difficult to prove by credible evidence. Thus, the conduct of witness in not trying to chase accused, is not unnatural”*. Applying the said observations to the case in hand, the reason of not intervening in the assault by P. W. 28 is thus natural. He has also identified unknown accused persons i.e. A- 7, 8, 10 & 13. The evidence of their identification and the plea of alibi raised by A-5 & A-11 will be discussed at appropriate stage while considering the evidence of P. W. 24 the Nayab Tahsildar and defence witnesses.

NON EXAMINATION OF INDEPENDENT WITNESSES :-

139. The evidence of P. W. 28 is further assailed by learned defense advocates on the ground that though the incident was witnessed by the people in the locality, where A-4 & A-6 resides, none of them is examined by the prosecution. So, evidence of P. W. 28 is not corroborated though independent witnesses were available. Considering the defense raised, on perusal of cross-examination of P. W. 32, the I. O. at para No. 45 it discloses that the spot of incident is residential locality. According to I. O. she recorded statements of Dipak Pralhad Borse, Avinash Daulatrao Bhosale, and Nandini Avinash Bhosale who are local residents near the house of A-4 & A-6. She further stated that she had not verified the CCTV footage in the CCTV Cameras installed near the houses of Badgujar, Bhosale and Borse. However, she denied that the CCTV footage was not collected as the incident was recorded in the said cameras. The record nowhere shows that any CCTV camera was installed near the spot of incident. It is nowhere admitted by P. W. 32 that in fact CCTV cameras were installed near the houses of Badgujar, Bhosale and Borse.

140. It has come in the evidence of P. W. 28 that when P. W.

27, Omprakash and Yogesh arrived on the spot, they along with other people present there were making uproar, so all the accused persons fled away from the spot. In the back ground of this evidence of P. W. 28 & P. W. 32, the evidence of P. W. 28 is strongly challenged by defense on the ground of non-examination of independent witnesses. To buttress his submission, learned advocate of A-4, 6, 10 & 13 cited judicial pronouncements in **Hem Raj and others V/s. State of Haryana, 2005 Cr. L. J. 2152**. It is observed by Hon'ble Supreme Court that “ *the fact that no independent witness though available was examined and not even an explanation was sought to be given for not examining such witness, is a serious infirmity in the prosecution case*”. On the other hand, learned P. P. cited the judgment in **Appabhai and another V/s. State of Gujarat AIR 1988 S. C., 696** wherein Hon'ble Supreme Court observed that “ *failure of prosecution to examine independent witnesses need not necessarily be thrown out its case on that ground only*. It is further observed in para No. 11 as under :-

“Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is

between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The Court, however, must bear in mind that witness to a serious crime may not react in a normal manner. Nor do they react uniformly. The horrors stricken witness at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. It is further held that, contradictions in evidence of victim of assault is no ground to reject his entire testimony”.

141. Learned P. P. further cited the judgment in **State of U. P. V/s. Naresh and others, 2011 Cr. L. J., 2162** wherein it is observed that *“evidence of injured witness is accorded special status. It is unlikely that he has spared the actual assailant in order to falsely implicate someone else. His evidence should be relied upon unless there are major contradictions and discrepancies therein. Independent witness may not come forward and give evidence in such case where accused killed one person and injured another. Non-examination of independent witness cannot be a ground to*

disbelieve evidence of related witness. Normal discrepancies are bound to occur in depositions of witnesses due to errors of observations, errors of memory due to mental disposition at the time of occurrence”.

142. Learned P. P. further relied on **State of U. P. V/s. Anil Singh AIR 1988 Supreme Court, 1998**. It is observed that “*rejection of prosecution version only on ground that all witnesses to occurrence were not examined, is not proper. It is also not proper to reject the case for want of corroboration by independent witnesses, if the case made out is otherwise true and acceptable”.*

143. In **Hem Raj (Supra)** it is observed that P. W. 4 would have reached near the spot almost the attack was over. The possibility of his seeing all the accused attacking the deceased with weapons from a distance of 30 feet or more, that too, in the night time was held doubtful. In that circumstances the examination of independent witness was held necessary. In the case in hand, P. W. 28 Harish testified about the details of incident i.e. murderous assault by the accused persons on Raosaheb and Vaibhav. Since it was a day time, he could identify them properly. Thus, the

observations in Hem Raj are not applicable to the case in hand.

144. Applying the ratio laid down in **Appabhai and State of U. P V/s. Anil Singh**, in the case in hand, the evidence of P. W. 28 Harish is found reliable as regards the actual incident. Even if it is considered that some of the persons in the locality had witnessed the incident, on witnessing total murder of two persons with deadly weapons causing severe injuries to them as noted in the postmortem report Exh. 356 & 360, it is quite natural that no one would dare to depose against such assailants out of fear or their reluctance to assist investigating agency. Thus, non-examination of independent witnesses is not advantageous to the defence.

NON EXAMINATION OF EYE WITNESS HITESH @ AAKASH, OMPRAKASH PATIL AND YOGESH PATIL :

145. Record indicates that Hitesh is one of the injured witness in the incident dated 08/06/2018. His injury certificate is proved by P. W. 14 Dr. Jitendra Thakur, the Director of Siddheshwar Multispecialty Hospital, Dhule. On 08/06/2018 both the deceased and Hitesh was examined by him. He found cut lacerated wound over left peri orbital region and blunt trauma to left leg of Hitesh.

The injury certificate is at Exh. 373. He is admittedly not examined by prosecution. Record shows that vide Exh. 662 report he was served by affixing the witness summons at Mhasdi and Surpan. Vide report Exh. 626 at Surpan residence, his uncle disclosed that he was not residing there and was residing with his sister at Mhasdi. Statements of Arun Pawar and sister of Hitesh namely Harshali are also filed on record with the summons report disclosing that Aakash was not residing there. It indicates that efforts were taken by the prosecution to secure his presence to record his evidence. Then vide Exh. 701 witness Hitesh filed application that he has fear from P. W. 27 informant, but he is ready to depose before the Court. Thereafter, prosecution filed dropping pursis of witness Hitesh. Learned advocate of accused A-1, 3, 7, 8 & 11 placed reliance on **Bhand Garh V/s. State of Aasam, reported in 1984 Cr. L. J., 217 (Gauhati High Court)**. It is observed that “*prosecution withholding very material witness, inference under Section 114 of the Evidence Act can be drawn that if examined, they would have given lie to prosecution case*”. On the other hand, learned P. P. relied on **Somabhai V/s. State of Gujarat AIR 1975 SC 1453** wherein Hon’ble Supreme Court laid down that “*where the prosecution had given up one of the material eye*

witness to the occurrence on the ground that he was a close relation to the accused, his non examination did not at all destroy the fabric of the prosecution case which was proved by evidence of other eye witnesses and corroborated by the evidence of other witnesses". In the case in hand, Hitesh @ Aakash is not a witness who is the close relation to any of the accused. Therefore, the cited judgment is not applicable to the facts of the present case.

146. In **Masalti V/s. State of U. P. AIR 1965 SC, 202** it is held that *where a criminal Court has to deal with evidence pertaining to commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three more witnesses who give consistent account of the incident".*

147. In the background of the observations laid down in the cited judgments, it is well settled proposition of law that the prosecution is having full discretion to examine the witnesses before Court. The Court has to look into the quality of evidence and not the quantity. Non-examination of some of the witnesses is not always fatal to the prosecution case. In the case in hand,

evidence of P. W. 28 Harish is convincing and reliable. Considering the summons report of Hiesh @ Aakash and his application before the Court, it is quite possible that the prosecution has chosen not to examine him. Whether he was won over or not is immaterial in the background of his filing application before the Court. Omprakash Patil is the younger brother of P. W. 27 and Yogesh Patil is his nephew. He is the elder son of deceased Raosaheb. I have already observed while appreciating the evidence of P. W. 27 that he along with Omprakash and Yogesh arrived on the spot when the assault was completed and when they along with other people were raising shouts, accused persons fled away from the spot along with weapons in their hands. They are the persons who took both the deceased, Hitesh and P. W. 28 to Siddheshwar Hospital. So, this might be the reason that Omprakash and Yogesh are not examined by the prosecution. In the facts and circumstances of the case, and considering the choice of prosecution to examine a particular witness, no prejudice has been caused to defense by non-examination of Hitesh Omprakash and Yogesh and eventually, it does not seriously affect the prosecution version in any manner.

OCULAR EVIDENCE AND MEDICAL EVIDENCE:

148. The evidence of P. W. 28 is assailed on the ground that it is not consistent with the medical evidence. Learned defense advocates pointed out following circumstances brought in the cross-examination of P. W. 28.

- (i) After alighting from Scorpio vehicle, the first assault was made on Raosaheb. He denied that first blow on Raosaheb was from front side.
- (ii) After sustaining the blows Raosaheb fell down on the ground in prone position.
- (iii) When the last blow was given to Raosaheb, at that time also he was lying on the ground.
- (iv) Raosaheb sustained injuries on his head and waist.

149. Learned advocates further pointed out following circumstances in cross-examination of P. W. 28 as regards the injuries on deceased Vaibhav.

- (i) Vaibhav was lying on the ground in supine position facing sky.
- (ii) He sustained injuries on his abdomen and face.
- (iii) He was stabbed for four to five times.

150. According to learned defense advocates there were no injuries noticed on back and waist of Raosaheb. Similarly, there were no injuries on abdomen of Vaibhav as noticed by P. W. 13 Dr.

Ramesh Gadhari. This contradiction between evidence of P. W. 28 & P. W. 13 along with the postmortem report Exh. 356 & 360 is a strong ground to discard the evidence of P. W. 28. Learned advocate of A-4, 6, 10 & 13 cited the judicial pronouncement in **State of Rajasthan V/s. Magni Ram 2004, SCC (Cri.) 428 and Sunil Kundu and another V/s. State of Jharkhand, 2013, Cr. L. J. 2339**. It is held by the Hon'ble Supreme Court that “ *testimony of eye witnesses totally inconsistent with medical evidence and suffering from improvements. In such circumstances rule that ocular evidence has precedence over medical evidence, cannot be applied.*”

151. Keeping in mind the observations of Hon'ble Supreme Court in aforesaid pronouncements , it is well settled that in case of discrepancy between medical and ocular evidence, the general rule is that the credible and trustworthy ocular evidence prevails especially when the medical evidence does not completely contradict the version given by eye witnesses. In the case in hand, evidence of P. W. 28 discloses that successive blows by various dangerous weapons such as sword, kukari, knife and bumper rod were inflicted on Raosaheb and Vaibhav. The incident of assault occurred within 2 to 3 minutes. Thus, the witness who has

witnessed an incident of double murder which was over within a few minutes, is not supposed to remember the exact number of blows inflicted by the accused persons, and also to remember which blow was inflicted on which body part of deceased.

152. According to P. W. 28, Raosaheb was assaulted on his head and waist whereas Vaibhav was assaulted on abdomen and face. The chop wounds sustained by Raosaheb as per P. M. Report and as stated by P. W. 13 Dr. Gadhari are on the right temporo occipital region, right fronto parietal region, bilateral parietal region, left fronto parietal region, abrasions on knuckles of fingers, nose, right arm, stab wound over right side of middle third of back, right side of third of back.

153. As per P. M. report of deceased Vaibhav, P. W. 13 Dr. Gadhari stated that he noticed chop wounds on left side of face, right side of frontal region, right fronto parietal region, right parietal region, midline of fronto parietal region, chop wound on left fingers, stab wounds on right side of chest, left lateral aspect of chest in anterior and in mid axillary line. Thus, it is evident that P. W. 28 described the infliction of the injuries on Raosaheb and

Vaibhav on a region which may not be accurate from the point of view of human anatomy, but the same are capable of being understood in ordinary man's language to be the injuries in an area which is proximate and the same is corroborated by the evidence of P. W. 13 Dr. Ramesh Gadhari. The evidence of P. W. 13 especially the injuries noticed by him on dead bodies of Raosaheb and Vaibhav as per column No. 17 of P. M. Report are on the head, face, back, abdomen and chest. Thus, the body parts of deceased Raosaheb and Vaibhav on which injuries were inflicted by accused persons by means of dangerous weapons have been narrated by P. W. 28 and the same may not be said to be inconsistent with the medical evidence adduced by P. W. `13 Dr. Gadhari. Just because more injuries were found on the bodies of both the deceased as disclosed in P. M. Report that could have possibly been inflicted by the weapons used in the offence, it cannot make the ocular evidence of P. W. 28 unreliable. His evidence is consistent and reliable as regards the occurrence of incident and presence of accused persons on spot of incident with dangerous weapons.

MEDICAL EVIDENCE BY P. W. 13 & P. W. 14 :

154. The evidence of P. W. 13 is challenged by learned

defense advocates on following grounds :-

- (i) The chop wounds referred by P. W. 13 are not mentioned in medical dictionary.
- (ii) Though he stated that weapons were in sealed condition, he was unable to state as to whose seals were there on the weapons.
- (iii) He stated about resealing of weapons MO A-6 to MO A-9, but throughout his evidence, he was not confronted with those seals.
- (iv) He admitted that when the weapons were shown to him, those were not in sealed condition. Thus, doubt arises about resealing of weapons by P. W. 13.
- (v) P. W. 13 admitted that reddish brownish stains may be incriminating and red colour of blood stains remain for about 1 to 2 days after 10 to 11 days red colour may turn blackish. Vide Exh. 362 & 364 he mentioned colour of stains as brownish.
- (vi) The alleged incident took place on 08/06/2018 and weapons were examined by P. W. 13 on 20/06/2018 & 25/06/2018 i.e. after about 14 to 18 days. So, the colour of blood stains allegedly present on weapons ought to have been blackish and not brownish, as stated by P. W. 13.
- (vii) P. W. 13 could not state by whom and when weapons examined by him were seized.

155. Learned advocate of A-4, 6, 10 & 13 cited the judgment in **Babudas V/s. State of M. P, 2003 SCC (Cri.) 1749**, in this case the wrist watch was seized on 28/05/1988 and was sealed before panchas. When the sealed packet was opened before Court, it was

found that it was wrapped in a newspaper dated 03/06/1988. The I. O. could not give any explanation and a witness Nayab Tahsildar deposed that it was opened before him on 15/06/1988 for its identification by P. W. 10. In that circumstances, it is observed by Hon'ble Supreme Court that *“opening and resealing of the same in the absence of Panchayatdars who appended their signatures to the sealed packet, was lost by opening of the packet in their absence”*.

156. In the case in hand, there is specific evidence of P. W. 13 that he received the weapons in sealed condition on 20/06/2018 and 25/06/2018. After examination, he resealed the weapons and handed over to the Police Constable. The letters Exhs. **416, 361, & 363** issued by P. W. 32 I. O. shows that sealed articles were forwarded to P. W. 13 along with sample of police station seal. So, also Exh. 362 & 364 the opinion letter issued by P. W. 13 shows that articles were resealed and forwarded to P. W. 32 along with sample of Civil Hospital Seal. Then by letter Exhs. 416 & 419 the sealed MO-6 to MO-9 were forwarded to FSL Nashik for its examination. C. A. reports are tendered on record vide Exhs. 842/1 to 842/15. Therefore, the weapons not found in sealed condition at the time of confronting P. W. 13 only indicates that after Chemical Analysis

those were sent without sealing since the chemical analysis was over. The cited judgment in the case of Babudas is thus, not applicable to the facts of the present case.

157. As regards the seizure of weapons, it is not the job of medical officer and he is not supposed to explain who had seized the weapons which were forwarded to him for examination. Further, the evidence as regards the resealing of MO A-6 to MO A-9 is testified by P. W. 13 and no inconsistency is noticed in his evidence since he himself had resealed the weapons and handed over to the police constable for forwarding the same to P. W. 32.

158. Much has been argued by learned defense advocates for A-4, 6, 8, 10, 13 on fresh injuries noticed on the dead bodies of Raosaheb and Vaibhav by P. W. 13. According to him, P. W. 13 has not mentioned the time and age of injuries though he stated that the injuries caused within 24 hours are fresh. Learned advocate cited the judgment in **State of U. P. V/s. Guru Charan 2010 (2) SCC (Cri.) 465** wherein Hon'ble Supreme Court has laid down that fresh injuries could be termed as injuries within 4 to 8 hours, but not more than 8 hours. In the case in hand, the opinion of P. W. 13 in

this respect may not be reliable, but it nowhere indicates that the evidence of P. W. 13 in respect of cause of death of Raosaheb and Vaibhav and injuries noticed by P. W. 13 on their dead bodies is unreliable.

159. Learned advocate of A-1, 3, 7, 8 & 11 raised very basic objection on the evidence of P. W. 13 that P. M. reports Exhs. 356 and 360 are secondary evidence. P. W. 13 admitted in cross-examination that there is register maintained in which P. M. Reports are serially kept in original form. He admitted that it is not mentioned in Exh. 356 & 360 that they are not original documents. He further admitted that it is not mentioned in those reports that they are prepared on the basis of original register kept in their office. Thus, according to learned advocate, if Exh. 356 and 360 are not originals, then they cannot be read in evidence. Although the submission of learned advocate appears attractive, it is not convincing since P. W. 13 denied that Exh. 356 & 360 are prepared on the basis of original register. Since the postmortem of Raosaheb and Vaibhav is conducted by P. W. 13 along with Dr. K. N. Chaudhary, and P. M. reports were issued accordingly, those can be read in evidence being original documents. For the same reason

the argument of learned advocate of A-4, 6, 10 & 13 that non production of rough notes on the basis of which Exh. 356 & 360 are prepared, needs to be turned down.

160. Learned advocate of A-1, 3, 7, 11 further criticized the evidence of P. W. 13 on the ground that chop wounds mentioned by him in Exh. 356 & 360 are not shown in Taber's Cyclopaedic Medical Dictionary. There is no wound like chop wound. Thus, the findings of P. W. 13 are imaginary and observations regarding chop wounds will have to be ignored especially when they are claimed to be on vital parts of body. In this context, the cause of death mentioned in Exhs. 356 & 360 by P. W. 13 is “ ***chop wounds over head with stab injury to back***” and ***chop wounds over head with stab injury to chest and abdomen***”. He further opined that injury No. 1 to 6 & 14 in Exh. 356 and injury Nos. 1 to 7, 12 & 13 in Exh. 360 were sufficient in ordinary course of nature to cause death. He further opined that those injuries are possible by heavy to moderately heavy sharp edged weapon. So, mere mention of chop wounds by P. W. 13 cannot be said that his opinion is inconsistent with weapon used in the offence.

161. The photographs of deceased Raosaheb and Vaibhav at Exhs. 291/1 to 291/9 and Exhs. 293/1 to 293/15 are evident in this regard. Those photographs are disputed by defense advocates on the ground that photographer is not examined and there is no certificate under Section 65-B of the Evidence Act. Learned advocate of A-1, 3, 7, 8, 11 cited the judgment in **Mohd. Arif @ Ashfaq V/s. State (NCT of Delhi) AIR 2023 SC (Supp) 1922** wherein it is held that “ *electronic evidence in form of CDRs without any appropriate certificate under Section 65-B (4) must not be taken into account*”. According to learned advocate in the case in hand, there are CDRs, various photographs which are taken with the help of electronic cameras, many of those do not have certificates under Section 65-B issued by concern persons and in case of photographs cameraman, developer of photographs etc., have not given such certificate. So, such photos and CDRs are inadmissible.

162. Admittedly, in this case photographer who have clicked the photographs is not examined nor certificate under Section 65-B are produced on record. However, on perusal of cross-examination of P. W. 1 Mayurchandra Pawar and P. W. 2 Prashant Sakharam Patil

it shows that they testified about clicking of photographs Exhs. 291/1 to 291/9 and Exhs. 293/1 to 293/15 in their presence. Even P. W. 1 was asked specific question that he could not say that the condition of dead body was the same as appearing in the photographs to which he replied that photos were clicked in his presence. Though both the witnesses stated in cross-examination that they have seen the photographs for the first time in the Court and they could not tell whether clicking of photographs is mentioned or not in inquest panchnama, both of them identified that the photographs were clicked at the time of conducting inquest panchnama. It is stated by P. W. 1 in cross-examination that while observing the condition of dead body, photographs were clicked.

163. In this regard learned P. P. cited the judgment in **Ronald Fernandes V/s. Mrs. Rita Pinto Testamentary Suit No. 190/1999 dated 08/05/2013**. In this case the admissibility of the documents of the witness was considered. It is observed by the Hon'ble Bombay High Court that “ *the negative has to be proved by the person who has taken a photograph. The person taking the photograph or the person present when it was taken can depose as*

to its taking photographs which is done upon such identification. Consequently, it is held that the parties and place in that case which are admitted by the photograph makes the photograph, a document admissible in evidence. Its appreciation would be subject, of course, to the cross-examination of witness.

164. From the cross-examination of P. W. 1 & P. W. 2 nothing substantial is brought on record to discard their evidence as regards clicking of photographs of deceased Raosaheb and Vaibhav in their presence. Even it is not disputed that those are of Raosaheb and Vaibhav. Eventually, these photographs can be read in evidence. From the said photographs it is seen that the injuries mentioned by P. W. 13 in Exhs. 356 & 360 are chop wounds that is caused by heavy to moderately heavy and sharp edged weapons. The depth and length of chop wounds mentioned in P. M. reports shows that significant force was used. So, the opinion of P. W. 13 in respect of nature of injuries mentioned in column No. 17 of Exhs. 356 & 360 cannot be said to be inconsistent. The grievous and life threatening injuries noticed by P. W. 13 on the dead bodies of Raosaheb and Vaibhav by no stretch of imagination can be disbelieved merely because the word 'chop wound' is not

mentioned in the dictionary referred by learned defense advocate.

165. As far as fracture injuries mentioned in Exhs. 356, P. W. 13 stated in cross-examination that he had ascertained the fracture injuries by palpation. Although he stated that X-ray reports are conclusive for ascertaining the fracture injuries, he denied that fracture injuries can be ascertained only by X-ray examination. In cross-examination P. W. 13 admitted that they did not notice that deceased Raosaheb was examined or treated by any doctor. He further admitted that injury No. 11 & 12 in Exh. 356 were sutured wounds and he do not know who had sutured those wounds. He further admitted that suturing of the wound is indicative of the fact that the deceased was treated in other hospital. P. W. 13 further admitted that they were not informed by the police as to who had treated and what kind of treatment was given to deceased persons. Thus, according to learned defense advocates the deceased were examined at some other place also. Even if it is considered that injuries Nos. 11 & 12 are sutured wounds, those were noticed on the left arm of deceased Raosaheb and not on vital parts of body. Admittedly, P. W. 14 Dr. Jitendra Thakur has also not stated about the sutured wounds on deceased Raosaheb, but his evidence

indicates that both the deceased were brought in Siddheshwar Hospital at 6:30 pm. Vaibhav was brought dead and Raosaheb was in very serious condition and they tried to revive him but he succumbed to the injuries. This must have been reason for P. W. 14 not to mention all the injuries on the dead body of Raosaheb in the injury certificate. Similarly, as Vaibhav was brought dead in the hospital, there was no reason for P. W. 14 to mention his injuries in medical certificate Exh. 371. Mere suturing of wounds would not lead to infer that deceased were taken to any other hospital besides Siddheshwar Hospital.

166. One of the main contention raised by learned defense advocates is that P. W. 13 Dr. Gadhari admitted in cross-examination that size of stab wound corresponds to the size of weapon. He further admitted that injury No. 14, 15 & 16 in Exh. 356 are varying in size. Though it is denied that steel rod which is an elongated object, it will always cause contused lacerated wound and those are always possible by hard and blunt object. P. W. 13 further admitted that MO A-9 is not a pointed object and denied that it cannot cause abrasion.

167. It is true that generally, sharp edged weapons caused incised wound while lacerated wounds are usually inflicted by blunt objects. Any how, when the ocular evidence establishes that accused persons used sword, sickle, kukari, knife, rod and when the medical evidence demonstrate that both the deceased sustained multiple serious injuries, the ocular and medical evidence cannot be disbelieved only on the ground of variation in injuries and the object with which the injuries were caused. There is no such discrepancy in ocular and medical evidence brought on record which would go to the root of matter and diminishes the value of medical evidence. Thus, the objections raised by defense advocates on the evidence of P. W. 13 & P. W. 14 did not discard their evidence. The aspect of blood stains on seized weapons will be considered at the stage appreciating evidence of recovery at the instance of A-2, A-3, A-6 & A-8.

INJURIES SUSTAINED BY ACCUSED NO. 4

168. From the tenor of cross-examination of prosecution witnesses, it is tried to bring on record that both the deceased were aggressors and they arrived near the house of A-4 to commit deadly assault on him. True that it is brought on record that A-4

sustained grievous injuries. Exh. 791 is the injury certificate of A-4. It reflects history of alleged assault on 08/06/2018 at 6:30 pm. It was narrated by A-4. He was referred from Cottage Hospital, Parola on 08/06/2018 to Civil Hospital, Dhule. As per Exh. 791, A-4 sustained following injuries.

- (i) Incised wound over left cheek 5 x 1 x 1cm
- (ii) Incised wound of left pinna (through and through) cutting pinna in two parts, injury extending behind left pinna over mastoid 6 x 2 x 2 cm
- (iii) Already surgical sutured wound present of about 3 cm in length.

169. The nature of injuries was grievous, probably caused with hard and sharp object. Learned advocate of A-4 submitted that prosecution has not explained the injuries on person of A-4, and therefore, prosecution case is doubtful. In this regard he placed reliance on the reported judgment in case of **Laxmi Singh and others V/s. State of Bihar, (1975) 4 SCC 394**. It was a case of assault in which prosecution / victim failed to explain the injuries on the person of accused. In **State of Punjab V/s. Rajinder Singh (2010) 2 SCC (Cri.) 704**. It was a case of inconsistency between medical evidence and ocular evidence. As per defense version the injuries were caused by complainant party to the members of

accused party. Defense version was not even taken into consideration by I. O., more particularly when two senior police officers had given a report favourable to the accused.

170. In **Faizal Hamidkhan Noor V/s. State of Maharashtra, (2011) 1 B. Cr. C. 43 (Bombay High Court)** it is observed that "*it is duty of the investigation officer to investigate into injuries suffered by accused and explain the same*". In **Raghunath V/s. State of Haryana 2003 Cr. L. J., SC 401**. It was a case of contradictions in evidence rendering presence of complainant and two injured eye witnesses doubtful at the place of occurrence. There was material contradiction between the evidence of two injured eye witnesses as to receiving injuries by accused. So, their presence on spot was held doubtful. In **Baburam and others V/s. State of Punjab (2008) 1 Crimes 405 SC** it is held that non explanation of injuries sustained by accused at the time of occurrence or in the course of altercation is very important circumstance. In **Suresh Maruti Shinde V/s. State of Maharashtra 2018 ALL MR (Cri.) 3328 (Bombay High Court)**. It was a case of serious injuries suffered by accused. Eye witnesses claimed to have seen entire incidence, yet failed to explain injuries suffered by him. In **Krishnegowda and**

others V/s. State of Karnataka 2017 (2) Crimes 34 (SC). It was a case of contradiction between medical and ocular evidence. There were severe contradictions in oral evidence. Names of accused No. 2 & accused No. 5 were not given to police at earlier point of time and injuries to accused were not explained.

171. In the case in hand, it is not that prosecution has suppressed the injuries suffered by A-4. The arrest panchnama of A-4 at Exh. 380 is admitted by defense. Admittedly, accused was arrested on 09/06/2018 i.e. on very next day of incident. Exh. 380 indicates stitches on left ear, left cheek, injury on hand and near thumb. Stitches were seen applied on said injury.

172. P. W. 16 PHC Nana Magan Pawar is examined at Exh. 391. He testified that since 2016 he is attached to Parola Police Station. On 08/06/2018 he was on duty as PSO in Parola Police Station from 8.00 pm to 8.00 am on next day. Police Constable R. N. Patil, Narendra Patil and others were on duty with him. He further testified that around 10.00 pm on 08/06/2018 one person arrived in police station with bleeding injuries, disclosed his name as Jayraj Shamkant Patil. When he was asked about the injuries

sustained by him, he explained that there was fight between his younger brother and deceased Raosaheb, he was scared and while running he fell down on the road and suffered injuries. Then P. W. 16 reported the matter to his senior officer Mr. Lahare who informed it to the Police Inspector Vijay Sonar. A-4 was sent to Cottage Hospital, Parola along with a medical memo with police constable Rahul Patil. As P. W. 16 and others got suspicion, they ranged Deopur Police Station, Dhule and on inquiry, they came to know that Raosaheb was killed by A-4 with sharp weapon. Eventually, armed police were appointed at Cottage Hospital. After arriving Dhule Police at Cottage Hospital, A-4 was taken at Dhule.

173. P. W. 16 has proved station diary entry Nos. 28/18 at 23.02 hours of arrival of A-4 in the police station and entry No. 29/2018 at 23.26 hours of handing over custody of A-4 to Dhule police. Now it has come in the cross-examination of P. W. 16 that though he had taken first entry in station diary within 10 to 15 minutes of arrival of A-4 in the police station, and second entry within 40 to 50 minutes thereafter though A-4 had come in the police station at 10.00 pm whereas entries Exhs. 392 and 393 proved by P. W. 16 were taken at 23.02 and 23.26 hours. Both

these entries are disputed by defense since P. W. 16 had taken the said entries on 08/06/2018 and those were printed on 26/06/2018 by Prakash Ratan Choudhary. It contradicts the evidence of P. W. 16 that those entries were taken by police constable Rahul Patil. In this respect, even if it is considered that accused arrived in Parola Police Station at 10.00 pm and entries were made at 23.02 and 23.26 hours, the evidence of P. W. 16 itself shows that as they got suspicion about the information received from A-4, they made inquiry with Deopur Police station and then armed police were appointed in Cottage Hospital, Parola. Further, the station diary entries being public documents, those can be relied upon as regards the arrival of A-4 and handing over his custody to Dhule Police. Those were printed on 26/06/2018 but taken on 08/06/2018. So, the evidence of P. W. 16 in that regard need not be disputed.

174. True that the medical certificate of A-4 issued by Cottage Hospital, Parola is not filed on record. The letter Exh. 817 is evident to show that P. W. 32, the investigation officer issued letter to medical officer, Cottage Hospital, Parola for providing medical certificate of A-4, the number of ambulance in which A-4

was sent to Dhule and the relevant medical papers. As per cross-examination of P. W. 32 these documents were not received from the hospital. So, it cannot be said that P. W. 32 has not made any investigation as regards injuries of A-4. Not recording statement of A-4 would not mean that no investigation was done. The evidence of P. W. 16 PHC Nana Pawar as regards the grievous injuries sustained by A-4 appears to be quite impossible by fall on the road while running away but then the same has to be considered along with other evidence on record. In this context, P. W. 28 Harish, eye witness of the incident had not deposed anything about the injuries of A-4 in his examination-in-chief.

175. In cross-examination P. W. 28 was questioned as to who received injuries in the incident and he replied that he along with Raosaheb, Vaibhav, Hitesh @ Aakash and A-4 were injured. Then he voluntarily made statement that while A-2 was assaulting deceased Raosaheb by weapon, at that time A4 was injured. This voluntary statement by P. W. 28 is assailed by learned advocate of A-4, 6, 10 & 13 on the ground that it is not explained in examination-in-chief, the weapon used by A-2 is not specified and it is not stated as to whether deceased Raosaheb warded off the

blow and therefore, A-4 received injuries. In this context reverting back to the injuries in column No. 17 of P. M. report of deceased Raosaheb at Exh. 356, it is seen that injuries Nos. 8, 9, 11, 12, 13 i.e. abrasions were caused on upper third of right arm, lower third of right arm, left arm and dorsum of left hand. Therefore, it is quite possible that while warding off the severe blows of dangerous weapons by deceased Raosaheb, A-4 received these injuries.

176. It is clear that P. W. 28 Harish has not stated anything about warding off the blows by deceased Raosaheb, but then he has witnessed the incident of assault by means of dangerous weapons on two persons which was over within few minutes and he is not supposed to remember the exact number of blows inflicted on both the deceased and also to remember which blow was inflicted by which accused person. It is when the question was put by defence about injured persons in the incident, P. W. 28 has made voluntary statement. It is made in response to the question put up by defence and the same can be relied upon. Therefore, the observations in the cited judgment in **A. R. Brothers V/s. State of Maharashtra, Criminal Application No. 2252/1998 decided on 11/09/1998** by Hon'ble Bombay High Court, is not applicable to

the voluntary statement made by P. W. 28 in response to the question put by learned defence advocate.

177. In his statement under Section 313 of Cr. P. C. A-4 stated that his own blood having blood group 'O' was noticed on his seized clothes of which no explanation was given by prosecution. He stated that on 08/06/2018 between 5.30 to 6.00 pm he along with his parents were present in their house at Borse Nagar. At that time deceased Raosaheb, Vaibhav and other 4 to 5 persons arrived in a four wheeler with deadly weapons, called him out side the house, and before he could understand anything, they committed deadly assault on him. He was scared by such sudden attack and was grievously injured on his ear, head and hand. According to him the deceased were the aggressors. He fled away from the place to save himself.

178. If the statement of A-4 is considered in the light of evidence of P. W. 28 and medical evidence on record, it is clear that P. W. 28 had seen A-4 assaulting both the deceased along with other accused persons. Though it is the statement of A-4 that he fled away from the spot, as per evidence of P. W. 16, he arrived in Parola

Police Station at 10.00 pm and was referred to Cottage Hospital, Parola. It itself shows that in the deadly assault A-4 received grievous injuries and those are explained by prosecution. The nature of injuries sustained by both the deceased as per their P. M. reports Exhs. 356 & 360 coupled with the evidence of P. W. 28 Harish do not have any basis to suggest that A-4 and other accused had reasonable apprehension of imminent danger to life of A-4 to justify causing the brutal murder of Raosaheb and Vaibhav. Multiple chop wounds and deep stab wounds noticed by P. W. 13 with their sizes in Exh. 356 & 360 certainly demonstrates that the accused persons were the aggressors and therefore, both the deceased succumbed to the injuries in the deadly assault committed with dangerous weapon.

179. As per the oral evidence with medical evidence the accused persons even after inflicting blows on vital body parts i.e. head of both the deceased, continued with the assault. This indicates that the level of force used by accused persons exceeded than what was necessary at that time. Such action on the part of accused persons is nothing but an act of aggression. Eventually, A-4 cannot claim any benefit of receiving grievous injuries in the

incident and the cited judgments relied upon by learned advocate with due respect are not applicable to the case in hand.

SPOT OF INCIDENT AND TIME OF INCIDENT :-

180. P. W. 26 Gaurav Khairnar is the spot panch. He proved spot panchnama Exh. 493. P. W. 28 Harish stated in cross-examination in para No. 21 that incident took place adjacent the house of A-4 in one plot. He further stated that it did not take place in front of house of A-4. It is not disputed that plot No. 12-B is owned by Shamkant Patil, the father of A-4 & A-6 and Plot No. 12-A is located adjacent to plot No. 12-B. P. W. 26 could not remember whether blood was found on the place where the soil was trampled. According to him, trampled soil was portion of plot and user way. He could not remember whether pool of blood was noticed in front of plot No. 12-B.

181. As per cross-examination of P. W. 28 Harish all the blows inflicted on Raosaheb and Vaibhav were inflicted in front of house of A-4 i.e. plot No. 12-B. He stated that it did not happen that after making assault Raosaheb and Vaibhav tried to run towards the house of A-4. If this evidence is considered in the light

of recitals of spot panchnama Exh. 493, it indicates that trampled soil was seen in front of Plot No. 12-B and pool of blood was noticed at three places on plot No. 12-A. I have already observed that P. W. 28 witnessing double murder by many assailants may have stated in examination-in-chief about intercepting their vehicle in front of house of A-4, it itself by no stretch of imagination can be said that pool of blood noticed at three places on plot No. 12-A are not the result of murderous assault that took place in presence of P. W. 28. While facing searching cross-examination, P. W. 28 in para No. 19 could not describe the assault on Raosaheb by means of sword anymore. Thus, from the oral evidence of P. W. 26 & 28 along with the recitals of Exh. 493 it cannot be said that spot of incident is different than deposed by prosecution witnesses. It is not the case where the spot of incident is altogether different and stated in variance with the recitals of Exh. 493.

182. As far as the time of incident is considered, it is shown between 6.00 to 6.15 pm. P. W. 28 consistently deposed that he along with Vaibhav reached at the house in Wankhedkar Nagar between 5.30 to 6.00 p. m. and thereafter they proceeded with Raosaheb towards Saraswati Colony. So, the incident must have

been occurred thereafter between 6.00 to 6.15 pm. In this respect the injury certificate issued by P. W. 14 Dr. Jitendra Thakur indicates that both the deceased were brought in Siddheshwar Hospital, Dhule around 6.30 pm. The evidence of P. W. 27 & 28 also indicates that both the deceased were taken to Siddheshwar Hospital in Scorpio Vehicle after occurrence of incident. The distance between Siddheshwar Hospital and the spot of incident as per the evidence of P. W. 27 & P. W. 28 is 4 kms. Therefore, it would not have taken more than 10 to 15 minutes to take both the deceased to Siddheshwar Hospital from the spot of incident.

RECOVERY OF CLOTHES OF DECEASED RAOSAHEB, VAIBHAV, P. W. 27, P. W. 28, OMPRAKASH PATIL, YOGESH PATIL AND HITESH @ AAKASH :

183. P. W. 1 Mayurchandra Pawar is the panch witness of inquest panchnama of dead body of deceased Raosaheb. He identified the clothes of Raosaheb Article 'A' & 'B'. P. W. 2 Prashant Sakharam is the panch witness of inquest panchnama of dead body of deceased Vaibhav. He identified the clothes of Vaibhav Article 'C' to 'F'. As regards the evidence of P. W. 2 Prashant even if it is considered that he had gone to postmortem room earlier on

two to three occasions, it itself is no ground to reject his testimony. Merely, because he visited postmortem room, his evidence is found creditworthy as nothing material has been extracted in his cross-examination. His evidence requires usual scrutiny. The evidence of P. W. 1 Mayurchandra Pawar is also consistent and reliable and nothing material is elicited from his cross-examination to discredit his version. The aspect of clicking photographs and exhibition of the same is already considered while appreciating the evidence of P. W. 13 Dr. Ramesh Gadhari. Thus, the evidence of P. W. 1 & 2 is consistent as regards drawing of inquest panchnama of both the dead bodies of deceased, snapping photographs of their dead bodies and seizure of clothes of both the deceased.

184. As far as seizure of clothes of P. W. 27, P. W. 28, Omprakash, Yogesh and Hitesh is considered, the evidence of P. W. 3 Sandip Pardeshi is material. He testified about the seizure of clothes of P. W. 27, P. W. 28, Omprakash, Yogesh and Hitesh. As regards the difference in the stab marks and scissor marks on T shirt and shirt of deceased Raosaheb and Vaibhav brought on record in cross-examination of P. W. 3, the same is evident from the evidence of P. W. 13 Dr. Gadhari. So, the admission of P. W. 3 as

regards scissor marks on T shirt and shirt has no significance. The chemical analyzer report at Exh. 842/5 indicates that on the clothes of Raosaheb and Vaibhav, sandle, pair of chappal recovered from the spot of incident blood of group B and AB was noticed, however, blood group of deceased Raosaheb is not detected. It is quite natural that after committing deadly assault on both the deceased, their clothes were stained with their own blood.

185. Admittedly, on 10/06/2018 P. W. 27 Prashant Patil produced one night pant of deceased Raosaheb, his clothes and clothes of Omprakash, Yogesh, Hitesh & P. W. 28 Harish in West Deopur Police Station. Those were seized by P. W. 32 in presence of P. W. 3. The said clothes are Article -'G' to 'Q'. Although P. W. 27, P. W. 28, Omprakash, Yogesh and Hitesh were present in the hospital and at the time when P. W. 27 had gone to the police station on 08/06/2018 his clothes and clothes of other witnesses were not seized by P. W. 32. It shows casual approach of P. W. 32 in not seizing the clothes of prosecution witnesses at the earliest possible opportunity. Therefore, due to production of said clothes by P. W. 27, it only shows that since I. O. failed to seize the clothes, P. W. 27 produced the said clothes in the police station and same can be a

circumstance to indicate that while taking both the deceased in hospital, clothes of P. W. 27, P. W. 28 & others were stained with blood of both the deceased.

SEIZURE OF CLOTHES OF A-2, A-3, A-4 & A-6 :-

186. The evidence of P. W. 4 Kiran Pitamber Patil is material as regards seizure of clothes of A-2, A-3, A-4 & A-6. On 10/06/2018 he was called by P. W. 32. There A-2, A-3 & A-4 were present. Article R, S, T, U, V i.e. clothes of A-4, Article W, X, Y i.e. clothes of A-2 and Article A1, A2 and A3 are the clothes of A-3 were seized in his presence and seizure panchnama Exh. 306 was drawn. The evidence of P. W. 4 further unfolds that on 11/06/2018 the clothes of A-6 Article A4, A5 were seized in his presence and seizure panchnama Exh. 307 was drawn.

187. The recovery of clothes of A-4 and A-6 is strongly disputed by their learned advocate and finally it is submitted that on clothes of A-4 blood stains with blood group 'O' was noticed whereas Exh. 307 nowhere discloses blood stains on seized clothes of A-6, but C. A. report indicates blood stains on T shirt of A-6.

188. I have already held that A-4 was injured on 08/06/2018 and his injuries are explained by prosecution. As per C. A. report Exh. 842/13 blood group of A-4 is 'O'. So, it is not an incriminating circumstance that blood group 'O' was noticed on his seized clothes. On perusal of Exh. 307 i.e. seizure panchnama of clothes of A-6, no blood stains were noticed on his clothes while drawing panchnama. P. W. 4 Kiran has also stated so. Surprisingly, C. A. report Exh. 842/5 indicates that Exh. 37 i.e. half sleeves T shirt of A-6 (as per letter Exh. 427 issued by I. O.) seized in presence of P. W. 4 has one blood stain. When Exh. 307 itself indicates absence of blood stains on T shirt of A-6, the question arose as to how it was revealed in Exh. 842/5. Eventually, the seizure of clothes of A-6 is found dubious and possibility of plantation of blood on his T shirt cannot be ruled out.

189. On further scrutiny of evidence of P. W. 4 with Exh. 306 blood stains on clothes of A-3 seized in his presence were not noticed. It is also evident from C. A. report Exh. 842/5. As per said report no blood stains were noticed on Exhs. 23, 24 & 25 i.e. clothes of A-3 (As per letter Exh. 427). Thus, no incriminating evidence as regards recovery of clothes of accused A-3 & A-6 is

brought on record. Exh. 306 reflects that dark and light blue colour jeans plant of A-2 was seized in presence of PW. 4 along with his other clothes. Jeans is Article 'W' having blood stain on upper side left leg portion. C. A. report Exh. 842/5 indicates that Exhs. 19, 20 & 21 i.e. clothes of A-2 has few blood stains on Exh. 19 located on right side upper portion, Exh. 21 has few blood stains on front portion and other stain is on backside portion. No blood is detected on Exh. 20. Exh. 19 is jeans pant, Exh. 20 is half sleeves shirt and Exh. 21 is underwear of A-2. Exh. 19 has blood stains on right side upper portion whereas Exh. 306 indicates that blood stains were noticed on upper side of left leg portion of jeans pant. Thus, again question arose as to how blood stains were noticed on right side leg portion of jeans pant instead of left side and on underwear when the blood stains were not noticed on Exh. 21 while drawing Exh. 306. This again shows the recovery of clothes of A-2, and A-6 dubious and possibility of plantation of blood on those clothes cannot be ruled out. Eventually, the seizure of clothes of A-2, A-3 & A-6 is not advantageous to prosecution. It again shows the casual approach of investigation officer in mentioning the blood stains on seized clothes of accused persons.

SEIZURE OF SCORPIO MH-18-W-5778:

190. P. W. 5 Sanjay Pimple is the panch witness in whose presence Scorpio Car bearing Registration No. MH-18-W-5778 produced by P. W. 27 on 11/06/2018 was seized. It is already come on record that both the deceased Hitesh and P. W. 28 Harish were taken to Siddheshwar Hospital in the said car by P. W. 27, Omprakash and Yogesh on 08/06/2018, after occurrence of incident. The seizure panchnama is at Exh. 312. It is one more example of negligence of P. W. 32 while mentioning registration number of Scorpio vehicle in Exh. 312. The registration number of Scorpio vehicle is MH-18-W-5778. P. W. 5 Sanjay has also stated so. However, its registration number in Exh. 312 is MH-18-AF-5778. Even if it is considered that inadvertently the said number might have been mentioned in Exh. 312, it was produced by informant on 11/06/2018 as per letter issued by P. W. 32 on 10/06/2018.

191. As per C. A. report Exh. 842/5 and letter issued by P. W. 32 at Exh. 427, Exhs. No. 40 to 56 in Exh. 842/5 are the samples of seat cover, rubber mat, rexine, seat belt, the sandle seized from Scorpio. Blood stain of human origin were noticed on Exh. 40 To 43, 45, 47, 49, 51, 53 & 55. Those can be considered as

a corroborative piece of evidence that both the deceased were taken from the said vehicle in the hospital, and therefore, the blood was detected on some of the samples collected from the said vehicle.

SEIZURE OF FOUR VEHICLES :-

192. It is the case of prosecution that two wheelers four in number have been seized in presence of panchas which were used by accused persons while fleeing away from the spot of incident. P. W. 6 Gaurav Kothavade, P. W. 7 Tushar Wagh and P. W. 8 Vijay Vasave are the panch witnesses who testified that on 18/06/2018, 21/06/2018 and 19/06/2018 respectively black colour Bajaj Motorcycle bearing Registration No. MH-11-BC-4144, Black colour Honda Activa bearing Registration No. MH-18-BB-5513, Black Colour Honda Shine Motorcycle bearing Registration No. MH-18-AK-3513 and Red colour Hero Honda Pleasure Motorcycle bearing Registration No. MH-18-AD-3920 were seized in their presence, vide seizure memo Exh. 314, 318 & 320 respectively.

193. Vide Exh. 314 two vehicles and vide Exhs. 318 & 320 one motorcycle each was seized. However, there is no evidence

about its usage in fleeing away by the accused persons. Merely, because one of the vehicle i.e. Honda Activa is registered in the name of A-4, it cannot be said that it was used after occurrence of incident. In fact it is alleged that accused fled away on motorcycles and it is unexpected that anyone could notice the registration number of said vehicles.

**SEIZURE OF KUKARI MO A-6 SWORD MO A-7, KNIFE MO A-8,
AND ROD / BUMPER ROD MO A-9 :-**

194. P. W. 10 panch Uday Subhash Chaudhary and his colleague, the revenue assistant were called on 10/06/2018 by P. W. 32 in West Deopur Police Station. There P. W. 32 API Sarita Bhand and other police personnel were present. A-2 Bhupesh was there. He stated in presence of panchas that he was ready to show the place where sword was kept (handed over to him by A-11 for concealment). Accordingly, the memorandum panchnama was drawn at Exh. 329.

195. Then A-3 Harshal was brought there. He stated in presence of panchas that he was ready to show the place where the Kukari was kept (handed over to him by A-4). The memorandum

panchnama was drawn at Exh. 330. Both the panchas A-2, A-3 and police then proceeded towards the place shown by A-3 near Hire Medical College and Hospital on National Highway No. 6 towards left side in front of Hotel Chandradip Regency where construction was in progress. There A-3 took them towards one Nala and from the bushes of Subabul the kukari was taken out by A-3. It had blood stains and soil.

196. Then both the panchas with police, A-2 & A-3, proceeded towards the place shown by A-2. They went towards Walvadi, Yashodhan Colony as shown by A-2 near a dilapidated house. The vehicle was stopped there as shown by A-2. Then A-2 went at the backside of the said house and took out a sword from a kangi (grain storage tin). Accordingly, common panchnama of this process was drawn by P. W. 32 at Exh. 332. After the said process P. W. 10 and another panch went to police station and then to their house.

197. The evidence of P. W. 10 further discloses that on the same day after taking dinner, he received phone call from West Deopur Police Station and was again called there. He went there.

Another panch was present there. A-6 was called. He stated in presence of panchas that he is ready to show the place of concealment of knife. The memorandum panchnama was drawn as per Exh. 333.

198. The two panchas, police and A-6 proceeded towards the place as shown by A-6 from Parola to Jalgaon. After crossing Girna river bridge, A-6 pointed the board of Khote Nagar and at his instance, they proceeded in a lane. A-6 had shown a house where the vehicle was stopped. Then he went near the shed behind the said house of Suresh Patil who is acquainted with A-6. The knife was taken out which was kept in a box. The police drew panchnama of seizure of knife as per Exh. 334. The photographs of the said process were clicked as per Exhs. 335/1 to 335/3.

199. The evidence of P. W. 32 API Sarita Bhand reveals that as per disclosure statements of A-2, A-3 & A-6, sword, kukari and knife were seized from the places shown by the accused persons. In cross-examination P. W. 32 stated that the entire process of panchnama was video-graphed. It was taken in a memory card that was played in the Court. There are three files containing 16 &

5 video recordings in the said memory card. P. W. 32 was confronted with those video recordings and some colour printouts are taken out while recording evidence. Those are at Exh. 848 to 851 and Exh. 861 to 863. Memory Card is MO A-10/2. It is suggested to P. W. 32 by showing video recordings in MO-A-10/2 that A-2, A-3 & A-6 were kept under tremendous pressure for giving disclosure statement but the same is denied by her. She has not identified the voice of SDPO Hire in the video recording. The said video recording was not shown to P. W. 10 Uday Chaudhary. Although P. W. 32 denied that there is signature of A-3 on Exh. 329, the disclosure statement of A-2 and there is signature of A-2 on Exh. 330 the disclosure statement of A-3, she admitted that the signatures on Exh. 329 and serial number 1 on Exh. 332 are identical. She admitted that the signatures on Exh. 330 and the signature at Sr. No. 2 on Exh. 332 are identical. It reveals that signature of A-2 was taken on disclosure statement of A-3 whereas signature of A-3 was taken on disclosure statement of A-2. There is no dispute as regards signatures of A-2 & A-3 on Exh. 332, the seizure panchnama of sword and kukari.

200. Learned advocate of A-1, 3, 7, 8, 11 cited the

judgments on the issue of recovery under Section 27 of the Indian Evidence Act in the matters of **Avinash and others V/s. State of Maharashtra, 2023 (4) Bom CR 240**, **Ravindra Kumar V/s. State of NCT of Delhi, 2024 (4) Scale 178**, **Nabi Mohd Chand Husain and others V/s. State of Maharashtra 1980 Cr. L. J. 860 Bom C. R.**, **Gajanan V/s. State of Maharashtra Criminal Appeal No. 425/21 dated 20/01/2026 (Bom H. C.)**, **Ramesh Maruti Gondhali V/s. State of Maharashtra, Criminal Appeal No. 5661- 5676 of 2024 dated 27/02/2025 (S.C.)**, **Renuka Prasad V/s. State 2025 SCC Online S. C. 1074**, **Rajender Singh and others V/s. State of Uttaranchal 2025 AIR SC 4764**.

201. Learned advocate of A-4, 6, 10, 13 cited the judgments in **Babudas V/s. State of M. P., 2003 SCC (Cri.) 1749**, **Pralhad Gunwant Madhar and another V/s. State of Maharashtra, 2018 ALL MR (Cri) 1838**, **Sharad Ramchandra Rahate V/s. State of Maharashtra, 2021 Cr. L. J. 4911**, **Mohammad Iqbal @ Munna S/o. Abdul Sattar and another V/s. State of Maharashtra 2016 ALL MR (Cri) 4530 Bom H. C.**, **Rajkumar Bhavanidin Dube and another V/s. State of Maharashtra, ALL MR (Cri.) 2765**.

202. Learned Advocate of A-2 cited the judgments in the matters of **State of Maharashtra V/s. Ajit Sinh Sitaram Desai, 2021 ALL MR (Cri.) 971, Bom. H. C., Sandeep V/s. State of Maharashtra Cri. Appeal No. 237/2019 dated 10/02/2023 Bom H. C., Musheer Khan @ Badshah Khan and another V/s. State of M. P. 2010 AIR SC 762, Sanjay Keshavrao Dhote V/s. State of Maharashtra 2007 ALL MR (Cri) 2762, Bom H. C., Bhaskar V/s. State of Maharashtra, Criminal Appeal No. 431/2020 dated 09/07/2024. As against this, learned P. P. cited the judgment in the matter of **Suresh Chandra Bahri V/s. State of Bihar, AIR 1994 SC 2420.****

203. The law relating to discovery of fact under Section 27 is set in landmark judgment of **Pulukuri Kottaya V/s. Emperor AIR 1947 PC 67.** It is with reference to the concealment of some object and not the object itself which object recovered must be connected to the crime to pin the guilt on the accused, who was instrumental in making the recovery by supplying the information of concealment. Section 27 is based on “*doctrine of confirmation by subsequent events*”. Recently, the Hon’ble Supreme Court in the case of **Shahaja @ Shahajan Ismile Mohd. Shaikh V/s. State of Maharashtra, Criminal Appeal 739/2017 dated 14/07/2022** laid

down the conditions necessary for applicability of Section 27 of the Act as under :-

- (i) Discovery of fact in consequence of an information received from accused.
- (ii) Discovery of such fact to be deposed to.
- (iii) The accused must be in police custody when he gave information.
- (iv) So much of information as it relates distinctly to the fact thereby discovered is admissible.

Two conditions for application of Section 27.

- (i) Information must be such as has caused discovery of the fact and
- (ii) Information must relate distinctly to the fact discovered.

204. Having gone through the judgments relied upon by both the sides and keeping in mind the guidelines laid down by Hon'ble Supreme Court, as noted above, In this case A-2, A-3 & A-6 were in police custody on the relevant dates of memorandum panchnama. The disclosure statements made by them were relating to the places and the information which was within their knowledge only. The place in Khote Nagar, near construction of Hotel Chandradip Residency and behind the dilapidated house were not within the knowledge of police unless and until disclosed

by them. Thus, they were having exclusive control over the said places.

205. Taking signature of A-2 on disclosure statement of A-3 and vice versa brought on record again shows the error committed by oversight of P. W. 32. Though she denied the same, she admitted the difference between those signatures when confronted with seizure panchnama Exh. 332 and the signatures thereon at Sr. Nos. 1 & 2. But, fact remains that Exh. 332 bear the signatures of A-2 & A-3 and pursuant to their disclosure statement discovery was the place and ultimately kukari and sword were recovered in presence of P. W. 10. Discovery of weapon only is not contemplated under Section 27, it also relates to the discovery of a fact. The disclosure of the places as discussed by A-2, A-3 and A-6 is nothing but discovery of a fact in consequence of the information received and the recovery of MO A-6, MO A-7 and MO A-8 were made at the instance of A-2, A-3 & A-6 based on their disclosure statements.

206. The memorandum panchnama of A-2 & A-3 shows that the sword was handed over to A-2 by A-11 and kukari was handed over to A-3 by A-4. In this context by relying upon the

observations in **Nabi Mohd. Chand Husain's case (Supra)** considering the limited admissibility of the information that is allowed to be proved under Section 27 of the Evidence Act, the informatory statement leading to discovery is primarily evidence of incriminating nature against the informing accused and not against the co-accused. Its use would depend upon other evidence and its evaluation by the Court. In this case though the fact discovered i.e. the concealment of object at a place known to A-2 & A-3 is a circumstance that can be used against them except its use by A-4 & A-11 and handing over the same by them to conceal. Therefore, the disclosure statements of A-2 & A-3 are restricted for showing the place of concealment of object and recovery of the same only.

207. A feeble attempt has been made by defense to discredit the testimony of P. W. 10 & P. W. 32 by relying upon the video graphed process of memorandum panchnama to show that accused were put under tremendous pressure to disclose the place of concealment of objects, but the same is denied by P. W. 32 in cross-examination. It is already observed that the places shown by A-2, A-3 & A-6 were in their exclusive knowledge and control.

208. The evidence of P. W. 11 Chhotu Mhadu Patil reveals that on 22/06/2018 he was in the office of Talathi at Deopur. On say of his senior officer, he went to West Deopur Police Station with another panch Hiralal Mali at 1:30 pm. A-8 Bhagwan was over there. He stated in presence of panchas that he was ready to show the place where rod was thrown, and their blood stained clothes were burnt. The memorandum panchnama was drawn at Exh. 340.

209. Both the panchas, police and A-8 then proceeded to the place shown by A-8 from Sakri road, Kusumba to Ner. On crossing bridge on river, there was a board showing 'diversion ahead 500 meters'. At the distance of 60 feet from the board vehicle was stopped at the instance of accused. By the left side of road, there was a channel. From the thorns in the channel A-8 took out the rod (MO-9) and also shown the place where the clothes were burnt. The soil mixed ash was noticed there. The panchnama of this entire process was drawn at Exh. 341, and rod and soil mixed with ash was seized. In Exh. 332, 334 and 341 there is mention of seizure and labelling the weapons on separate packet.

210. Exh. 842/4 is the FSL report of MO A-6 Kukari, MO A-7 sword and MO A-8 knife recovered recovered at the instance of A-2, A-3 & A-6. The blood group on MO A-8 is inconclusive. However, in Exh. 334 there is no mention of blood stains on Mo A-8. MO A-6 kukari was stained with blood and it is mentioned in Exh. 332. Exh. 842/4 also indicates that blood stain of human origin was found on kukari. There is no mention of blood on sword MO A-7 in Exh. 332 and in Exh. 842/4. If this evidence is perused with the evidence of P. W. 13 Dr. Gadhari, he deposed that brownish stains were present on sword on blade and handle at places which is contrary to Exh. 332 & 842/4. He also noticed brownish and reddish stains over blade and handle of Kukari, over blade of knife and on rod. Though Kukari is stained with blood, as per opinion of P. W. 13 brownish and reddish stains on weapon after 10 to 11 days may appear black. The recovery of kukari, sword and knife was made on 10/06/2018 whereas recovery of rod was made on 22/06/2018. When blood stains were not noticed at the time of recovery of sword, knife and rod, how those were mentioned by P. W. 13 is suspicious. Though kukari was found stained with blood and it is mentioned in seizure panchnama, there is one more aspect which needs consideration. In all the recovery

panchnamas of weapons i.e. in Exh. 332 & 341, there is no mention that those weapons were sealed. It is only mentioned that cloth cover was wrapped on weapons and labels of signature of P. W. 32 and of panchas was pasted on it. In such circumstances, question arose as to when those weapons were sealed and forwarded to P. W. 13 because he noticed that the weapons were received in sealed condition. Eventually, though kukari was stained with blood as per Exh. 332 and as per Exh. 842/4, non sealing of weapons on the respective places itself shows that these recoveries are dubious. Thus, the recoveries are kept out of consideration.

211. At the time of drawing panchnama Exh. 341 ash of burnt clothes mixed with soil was seized. Exh. 842/2 FSL report did disclose that earth mixed with ash Exh. 2 is detected with remnants of clothe. However, non sealing of weapons and the label containing ash mixed with soil is not convincing to connect A -8 with Section 201 of the I. P. C. The requisite link of evidence is not presented by prosecution so as to establish that the recovery articles were sealed on the places concerned itself on the date of seizure. Therefore, the same cannot be relied upon.

212. Even if recovery of weapons MO 8 and MO 9 is brushed aside, it is not necessarily fatal to the prosecution case especially when there exists strong and reliable testimony of eye witness P. W. 28. When the ocular evidence is duly corroborated by medical evidence, the suspicious recovery of some articles becomes inconsequential.

213. In the case in hand, the evidence of P. W. 27 & P. W. 28 reveals that immediately after commission of the offence, the accused persons fled from the spot of incident carrying the weapons of offence. Ordinarily after commission of the offence, disposal or concealment of the weapon lies exclusively within the personal knowledge of the accused unless it is established that the weapons were abandoned at the spot itself. If the accused refrains from disclosing the location or there is lapse in the process of sealing of weapon recovered at the instance of accused persons, the evidence of eye witness cannot be faulted for the same reason. It is not that the medical evidence in the present case is totally inconsistent with the ocular evidence of P. W. 28. So, the suspicious recovery of MO A-6 to A-9 is not significant and thus not advantageous to the defence. Fleeing away from the spot of

incident carrying away the weapons used in the commission of offence is a subsequent conduct of the accused persons relevant under Section 8 of the Indian Evidence Act. Thus, the recovery of MO 15 the small knife from the spot of incident but not sent for finger print analysis is not significant as it is not the defense that deceased were holding MO-15 and no such suggestion is put to any prosecution witness.

ROLE OF A-9 IN HARBORING A-6

214. It is the case of prosecution that A-9 assisted A-6 in fleeing away from the spot of incident. P. W. 12 Tushar Baisane Senior Assistant Z. P. Dhule testified that on 30/06/2018 he along with Dadabhau Chaure, the Junior Assistant received the order of Chief Executive Officer. By that order they were sent to West Deopur Police Station. He then went to police station where Dadabhau came behind him. They met P. W. 32 API Bhand. A-9 was brought there. He stated in presence of panchas that he was ready to show the place where motorcycle was parked which was used to drop A-6 to that village. The memorandum panchnama was drawn as per Exh. 345.

215. Both the panchas, A-9 and Police then proceeded towards Amalner via Parola road, Fagne, then to Amalner to Chopada, Shirpur and reached at Ghodgaon via Galangi. As stated by A-9 they stopped the vehicle in a lane and proceeded on foot. Then he pointed out black colour Hero Honda Splendor Motorcycle MH-18-AG-0548. Then police drew seizure panchnama of motorcycle as per Exh. 346. The photograph Exh. 347 is identified by P. W. 12. He identified himself, A-9, P. W. 32 and another panch in the said photograph. This photograph is objected by learned advocate of A-9. The persons in the photograph are identified P. W. 12. He stated that it was clicked before him at the place where motorcycle was parked and shown by A-9. Therefore, the photograph can be relied upon. The engine and chassis number of of motorcycle is not mentioned in Exh. 346, but the fact remains that police were not having any knowledge about the place from where the motorcycle was discovered. It was within the exclusive knowledge of A-9. Though place was open from where motorcycle was seized, its registration number was known only to A-9 and it was seized on the basis of information provided by him.

216. As per the evidence of P. W. 30 Dattaram Angre the

Nodal Officer, CDR of mobile number 9226872713 of A-9 from 01/06/2018 to 09/06/2018 is at page 282/35 to 282/40 at Exh. 683. The application of A-9 to mobile company is at Exh. 678. As per Exh. 683 on 08/06/2018 at 17.45 hours a call was received on the mobile number of 9130100416 i.e. phone number of A-6. Phone calls were made to A-4 by A-9 at 18.20.02 hours, 18.30.17 hours and 18.42.57 hours. Phone number of A-4 as per evidence of P. W. 30 is 9595292323. The said phone numbers are not disputed by the defence. Certificate issued by P. W. 30 under Section 65-B of the Evidence Act is at Exh. 673. Thus, it is a strong circumstance against A-9 to infer that he harbored A-6 by means of conveyance having knowledge that A-6 has committed an offence, as defined in Section 52-A of the I. P. C.

217. Now, even if the primary charge under Section 302 / 120 B of the IPC is framed against A-9, the evidence on record indicate that he provided transport to A-6, the conspirator, to escape. It is part of same transaction and from the cross-examination of prosecution witnesses by learned advocate of A-9, he had fair opportunity to defend himself and he is not prejudiced by not framing the specific charge under Section 212 of the IPC.

He had ample opportunity to defend himself against the same.

IDENTIFICATION OF A-7, 8, 10 & 13:-

218. A-7, 8, 10 & 13 are four unknown assailants seen by P. W. 27 & 28 on the day of incident. A-7 was arrested on 16/06/2018, A-8 was arrested on 18/06/2018, A-10 was arrested on 05/10/2018 and A-13 was arrested on 13/10/2018. TIP of A-7 and A-8 was held on 26/07/2018 and of A-10 & A-13 was held on 21/12/2018 in Central Prison, Dhule by P. W. 24 Milindkumar Ramdas Wagh, Nayab Tahsildar, Amalner. Before discussing his evidence, judicial pronouncements relied upon by both the parties are worth to note. Learned advocate of A-1, 3, 7, 8, 11 relied upon **Gireesan Nair V/s. State of Kerala 2023 S. C. (Supp.) 1896, State of Maharashtra V/s. Rajendrasingh Bahadursingh Tak and others, 2019 ALL MR (Cri) 1464 Bom. H. C., Mahesh Rohidas Kinalkar and others V/s. State of Goa, 2005 (2) Bom C. R. (Cri.) 670, Ramchandra Bhudiram Gupta and others V/s. State of Maharashtra, Wakil Singh and others V/s. State of Bihar AIR 1981 S. C. 1392, the State of Maharashtra V/s. Rajesh @ Kaka Madanlal Soni and others, 1998 ALL MR (Cri.) 471.**

219. Learned Advocate of A-10 & 13 cited the judgments in **Harqbahadur Logbahadur Bhandari @ Raju V/s. State of Maharashtra, 2021 ALL MR (Cri.) 3777, Sayed Mohd Owais V/s. State of Maharashtra, 2002 ALL MR (Cri.) 2472 Bom H. C.** On the other hand, learned P. P cited the judgments in **Subal Gorai V/s. State of West Bengal 2013 Cr. L. J. 3626 (S. C.) Pramod Mandal V/s. State of Bihar (2004)13 S. C. C. 150, Murarilal Jivaram Sharma and others V/s. State of Maharashtra AIR 1997 S. C. 1593, State of Maharashtra V/s. Suresh (2000) 1 SCC 471.** Learned defense advocate further referred para No. 16 of Criminal Manual in respect of guidelines for holding T. I. Parade.

220. In the background of the facts and law laid down in all the cited judgments above, it is well settled that :-

(i) In cases where the witnesses had ample opportunity to see the accused before the TIP is held, it may adversely affect the trial.

(ii) It is the duty of the prosecution to establish before the Court that right from the day of arrest the accused was kept veiled to rule out the possibility of his face being seen.

(iii) If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through Photographs or via media (Newspaper, Television, Etc.) the evidence of TIP is not admissible as a valid piece of evidence.

(iv) Even a TIP conducted in the presence of police officer is not

admissible.

(v) It should be ensured while accused persons were being brought from the lock up to TIP room, the identifying witnesses did not have an opportunity to see the accused persons.

(vi) The Criminal Manual stipulates to ensure that the dummies are more or less of the same physical appearance approximately of same age.

(vii) There is no fixed rule as regards the period within which TIP must be held or number of identifying witnesses. It is for the Court to decide on the facts and circumstances of the case and evidence adduced whether to accept or reject the evidence of TIP.

(viii) TIP belong to the stage of investigation, and therefore, it is desirable to held them at the earliest opportunity.

(ix) TIP do not constitute substantive evidence and these are governed by Section 162 of the Cr. P. C.

221. P. W. 24 testified that on 26/07/2018 he conducted TIP of A-7 and A-8 and on 21/12/2018 TIP of A-10 & A-13 was conducted in Dhule prison. Memorandum panchnama of TIP of A-7 and A-8 by P. W. 28 is at Exh. 436 and map is at Exh. 434. Similarly, memorandum panchnama of TIP of A-10 & A-13 by P. W. 28 is at Exh. 469, 471 and maps are at Exh. 470 & 472. Some witnesses identified A-7, A-8, A-10 & A-13 and some of them did not identify them. None of them is examined by the prosecution.

222. In cross-examination of P. W. 24 it has come on record that description of dummies i.e. their general appearance, height, colour, hair, gait eyes, ear, nose, whether clean shaved or having beard, body shape etc., are not recorded anywhere. Even in the case of any accused, he did not note the said description. P. W. 24 admitted that the appearance of dummies and of accused should be at least similar. He had not mentioned in the memorandum that there was situation where the witnesses could not see each other while proceeding towards the hall. As regards delay in holding TIP, he could not state any reason. He stated that TIP was held immediately after request was made. P. W. 31 PI Satish Gorade was also asked about the delay in holding TIP but he could not state anything.

223. The evidence of P. W. 24 indicate that he had not followed some of the guidelines in Criminal Manual and as per the observations laid down in the cited judgments for holding TIP. There is delay of 38 days in holding TIP of A-7 & A-8 and delay of 67 days in holding TIP of A-10 & A-13 after their arrest. The necessary correspondence in respect of holding T. I. Parade is not put to P. W. 24 and P. W. 31 in their respective cross-examination.

Further P. W. 27 & 28 has identified A-7, A-8, A-10 & A-13 by touching them out of the dummy accused. They denied that they had seen the accused persons before holding TIP. Learned P. J. argued that the remand report dated 15/10/2018 and 17/10/2018 shows that A-10 & A-13 respectively were produced before the remand court by masking their face with black cloth. On perusal of remand papers it is seen that on 05/10/2018, 10/10/2018, 14/10/2018, 15/10/2018 and 17/10/2018, A-10 & A-13 were produced before the Court by masking their faces through black cloth. Apart from it even if the TIP is kept out of consideration, by not following proper procedure by P. W. 24 at the time of holding TIP Parade, P. W. 28 was present on the spot of incident. He had sufficient opportunity to notice the features of unknown assailants. One of the assailant i.e. A-8, the healthy and dwarf person dealt rod on his right hand. So, identification by A-7, A-8, A-10 & A-13 by him from the witness box cannot be disbelieved even though their description was not mentioned by him while recording his statement. It is not brought on record by defence that the photographs of the unknown assailants were published in public newspaper or else where. It is not that P. W. 28 for the first time identified the accused persons before the Court. So, the evidence

of TIP can be used as a corroborative circumstance for the evidence of P. W. 28 in the Court. Thus, the presence of A-7, A-8, A-10 & A-13 at the spot of incident is evident.

EVIDENCE OF NODAL OFFICERS:

224. Prosecution has examined P. W. 29 Pravin Panurang Tanawade and P. W. 30 Dattaram Shantaram Angre. P. W.30 is working as Nodal officer at Idea celluler since 2006. Due to merger of Vodafone and Idea in 2018, he is currently working in that company. His office received letter dated 15/11/2018 from S. P. Office, Dhule vide Exh. 672 and asked the details of eight mobile numbers for various duration from 01/06/2018 to 09/06/2018. He forwarded details of the said mobile numbers as per information vide Exhs. 673/1 and certificate under Section 65-B vide Exh. 673/2. The said mobile numbers were registered in the name of A-11, A-4, A-6, Rahul Kalu Patil and A-9. As per letter dated 15/11/2018 at Exh. 684 P. W. 30 sent reply dated 28/02/2024 at Exh. 685/1, certificate under Section 65-B at Exh. 685/2.

225. P. W. 29 Pravin Tanawade was working in Reliance Jio

since September 2015. His office received a letter dated 15/11/2018 vide Exh. 645 from S. P. Office, Dhule and asked the details of mobile number 8459325344 for the duration 06/06/2018 to 09/06/2018. He forwarded the details of said mobile number as per Exh. 646. CDR of said mobile number is at Exh. 647 and certificate is at Exh. 648.

226. As per testimony of Nodal Officers as above, the mobile numbers provided to them to furnish details of name of customer and name of subscriber along with copy of customer application form (CAF) are provided to the investigating officer. The details are as under :-

Sr. No.	Mobile Number	Name of Customer	Name of Subscriber	CAF	CDR	SDR
1.	8459325344	Hitesh Deore	Reliance Jio	646	647	----
2.	8087057227	Govind Pawar (A-11)	VI	674	679	----
3.	9595292323	Jayraj Patil (A-4)	VI	675	680	----
4.	9130100416	Rushikesh Patil (A-6)	VI	676	681	----
5.	9527747323	Rahul Balu Patil	VI	677	682	----
6.	92268722712	Sandip Velis (A-9)	VI	678	683	----
7.	9823011803	Govind Pawar (A-11)	VI	-----	687	686
8.	9158504439	A-4	VI	-----	689	688
9.	9823980355	Bhushan Kapkar (A-12)	VI	----	691	690
10.	9823023427	Subhash Sajan (A-1)	VI	---	-----	692

227. Exh. 743 to 748 the CDRs filed along with charge sheet are admitted by defence at the stage of recording evidence of P. W.

30. From the testimony of P. W. 30 it has come on record that from 07/06/2018 to 08/06/2018 A-2, A-3, A-4, A-6, A-7, A-11 were in contact with each other through mobile phone.

228. The law relating to admissibility of electronic evidence has been settled by Hon'ble Supreme Court in the case of **Anwar P. V. V/s. P. K. Basheer (2014) 10 SCC 473**. The said decision is clarified in **Arjun Panditrao Khotkar V/s. Kailash Ghorantyal (2020) 7 SCC 1**. In the present case P. W. 30 had mentioned in the certificate that the information is to the best of his knowledge and belief. All the safeguards have been taken while issuing the said certificate. The testimony of P. W. 28 with CDR, SDRs proved by P. W. 30 if considered, it shows that A-2, A-3, A-4, A-6, A-7, A-11 were in contact with each other from 07/06/2018 to 08/06/2018 and even after the occurrence of incident. By admitting CDR at Exhs. 743 to 748 defence has tried to bring on record that at the time of incident A-11 & A-12 were not present on the spot of incident. The CDR filed by P. W. 30 are also disputed by defense on the ground that it has 13 columns whereas the CDRs filed along with charge-sheet has 9 columns and explanation of the same is not given by P. W. 30. From the evidence of P. W.30, it is clear that

the CDRs and SDRs were prepared as per the letters issued from the office of S. P. Dhule, and those filed along with the charge-sheet are admitted by the defense. Though the same are denied by P. W. 30, those are admitted by P. W. 32 in her cross-examination. However, mere on the basis of CDRs and SDRs the substantive evidence of P. W. 28 cannot be ignored as regards the presence of accused persons on the spot of incident.

PLEA OF ALIBI BY A-5 & A-11”

229. A-5 raised the defence of alibi. It is his contention that on the day of incident he was at Amalner. He is falsely implicated in the present case at the instance of P. W. 27. In support of his contention he examined D. W. 1 Raja Suresh Paradhi. His evidence unfolds that he knows A-5 and father of A-4, Shamkant uncle. He was manager in Poonam Hotel Amalner owned by Kishor Lalwani. The said Hotel was run by A-5 and Shamkant Kaka. It is located in Lulla Market, Subhash Chouk, Amalner. Since 2017 he is working as Manager of Hotel Poonam. Prior to 20 to 25 days of 08/06/2018 A-5 and Shamkant were running the said Hotel.

230. It is further testified by D. W. 1 that he used to attend

the duty in Poonam Hotel between 11.00 am to 5.15 pm and again between 7.00 pm to 11.30 pm. On 08/06/2018 he had gone in the Hotel at 11.00 am. A-5 arrived there after 30 to 45 minutes. He was present in the Hotel till 5. 15 to 5.30 hours. At 5.15 to 5.30 A-5 was about to proceed at his room taken on rent in front of Cotton Market. He further testified that on 08/06/2018 at 5.30 pm he proceeded towards his house on the two wheeler of A-5. A-5 was with him and he was riding the motorcycle. It was splendor motorcycle but he could not remember its colour. According to him he left A-5 at his room, and went there in the market with his wife on the motorcycle of A-5. There is distance of 50 meters between the room of A-5 and the house of D. W. 1. While he was in the market with his wife, after purchasing grocery and vegetables he received phone call of A-5 and informed that A-5 received phone call of Shamkant uncle A-5 further informed that he was called in the Hotel.

231. According to D. W. 1 Shamkant Kaka was present in the Hotel on that day since 7.30 am. Then D. W. 1 left his wife at house, took A-5 and both of them reached in the Hotel on motorcycle at 6.30 pm. He went inside the Hotel but A-5 was

talking with someone outside the Hotel. After 5 to 10 minutes A-5 entered in the Hotel. While D. W. 1 was operating the computer, A-5 and Shamkant uncle were talking with each other. Both of them were present in the Hotel till 8.00 to 8.30 pm. Then both of them left the Hotel.

232. The evidence of D. W. 1 further discloses the arrival of Dhule Police in Hotel Poonam and the action taken by them with the CCTV camera and its room in the Hotel. According to D. W. 1 in the year 2018 Dhule to Amalner was single road and work of the said road was in progress. At that time it took one hour to reach from Amalner to Dhule on motorcycle.

233. Learned P. P. cited the judgment in the matter of **Binay Kumar Singh V/s. State of Bihar AIR 1997 Supreme Court 322** wherein it is observed that *it is basic law that in a criminal case in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused had adopted the defence of alibi. But, once the*

prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude possibility of his presence at the place of occurrence. In **Akhtar Hussein Mohiddin Ali Shaikh and another V/s. State of Maharashtra, 2015 ALL MR (Cri.) 1420**, it is observed by Hon'ble Division Bench of High Court of Bombay that *plea of alibi is not tenable when there was no evidence showing that at relevant time accused was at a particular place, which is far away from spot of incident.*

234. Learned advocate of A-5 relied upon the report Exh. 769 filed by P. W. 31 PI Satish Gorade before the Hon'ble High Court at the time of hearing bail application of A-5. The said order of Hon'ble High Court thereby directing to produce CCTV footage of presence of A-5 is set aside in Criminal Appeal No. 55256/2021 dated 19/11/2021 by the Hon'ble Supreme Court by observing that *it is also made clear that the Court has not expressed anything on merits of the matter.* The report Exh. 769 is admitted by P. W. 31. As per the said report DVR and Hard disc in Hotel Poonam, Amalner, was not seized since the Hotel owner Vinod Lalwani informed that the DVR is corrupt and new DVR is installed in the Hotel.

235. The CCTV footage in the pen drive was verified by P. W. 31 and it was noticed that on 08/06/2018 from 7.00 am to 11.30 pm the CCTV footage was collected in the said pen drive. From 3.00 pm to 5.22 pm on 08/06/2018 A-5 was seen in the Hotel. At 7.14 pm he was seen entering in the Hotel and remained there till 8.06 pm. It is further mentioned in the said report that between 5.22.06 to 5.22.36 A-5 was seen proceeding on motorcycle from the Hotel. This corroborates the evidence of D. W. 1 Raja Paradhi that he went with A-5 on the bike of A-5 at 5.22 pm from the Hotel. The suggestion of defence that there is no record in the police station of return of pen drive and hard disk to the person who produced it, is admitted by him. However, the report Exh. 769 discloses that the hard disk in Hotel Poonam was corrupt and therefore, the question of its production in the police station, does not arise. It shows that P. W. 31 has replied without verifying the record.

236. The testimony of D. W. 1 Raja Paradhi further discloses that Shamkant Uncle and A-5 were talking with each other for 5 to 10 minutes after 6.30 pm. According to learned P. P. it also falsifies the defence of A-4 in his cross-examination that while he was

present with his parents on 08/06/2018 at 5.30 pm, both the deceased arrived there. However, the statement recorded under Section 313 of the Cr. P. C. is not substantive piece of evidence and the submission of learned P. P. in that respect needs to be ignored. Although D. W. 1 testified that Dhule Amalner road construction work was in progress in 2018 he admitted in cross-examination that the said construction work was not in progress in 2018. According to learned advocate of A-5 and report Exh. 769, from 5.22 pm to 7.14 pm, he was not present in Hotel Poonam.

237. The evidence of D. W. 1 Raja discloses that Dhule, Fagne, Amalner distance is 30 to 35 kms. From the evidence of D. W. 1 and the report Exh. 769 it is clear that on 08/06/2018 A-5 was in Hotel Poonam from 3.00 pm to 5.22 pm and then from 7.14 pm to 8.06 pm. The distance between Dhule – Fagne – Amalner is 30 to 35 Kms. Therefore, it is highly impossible that A-5 after 5.22 pm will arrive on motorcycle from Amalner to Dhule, will join the unlawful assembly of accused persons and after committing crime will again go in Hotel Poonam at Amalner and will remain there till 8.06 pm. Though it was transpired in the investigation about the presence of A-5 in Hotel Poonam on 08/06/2018 till 5.22 pm, the

investigating officer has not filed any record in respect of the same nor recorded the statement of any witness to show that A-5 was not present on the day of incident. Thus, it has come on record that A-5 was at Amalner on the day of incident and he was not present on the spot. However, for that reason the evidence of P. W. 28 cannot be brushed aside in toto.

238. A-11 has also taken the defense of alibi. According to him, at the time of alleged incident on 08/06/2018 he was present in Tanisha Mobile, Parola road, Dhule and the same is evident from the CCTV footage of Tanisha Mobile, Parola Road Traders Association, Agra road and Surya Peripherals. To support his contention A-11 examined his cousin D. W. 1 Sanjay Dattatraya Pawar. The evidence of Sanjay discloses that he is B. Sc., M. C. M. Graduate. He owns Tara Electronics at Parola road, Dhule. The name of A-11 is Govind Subhash Pawar as per record. On 08/06/2018 he was sitting in his shop. At 2.00 pm A-11 arrived there and informed him that he wish to purchase mobile phone on finance and if there is any hurdle, he will rang him.

239. D. W. 1 further testified that at 7.00 pm he got

information that police van arrived to take A-1. A-1 is his uncle. On next day Sanjay got information that the names of A-1 & A-11 have been implicated in the murder case. So, he went in Tanisha mobile, verified the CCTV footage and noticed that A-11 was there. Then he verified the mobile bill of A-11 and got knowledge that it was purchased from Tanisha Mobile. D. W. 1 Sanjay then went outside Tanisha Mobile and verified the CCTV footage in the said locality. He found that A-11 was also seen in the CCTV footage of Parola Road Traders Association and Surya Peripherals and Pawan Putra Square. He disclosed the said information to P.W. 32. Initially, she avoided him but then asked to provide the said CCTV footage in a pen drive.

240. The evidence of D. W. 1 Sanjay further discloses that he requested the owners of Tanisha Mobile, Parola Road Traders Association and Surya Peripherals for providing DVR which was provided in the pen drive. On 20/06/2018 he purchased all the three DVRs. A new DVR was provided by him to Tanisha Mobile purchased from Nisha Computer. Surya Peripherals and Parola Road Traders Association secured amount from D. W. 1 as they themselves were purchasing new DVRs. In further evidence of D.

W. 1 Sanjay all the CCTV footage collected in the three DVRs were played in the Court and various colour printouts were taken out to indicate the presence of A-11 in Tanisha Mobile and in the CCTV footages of Parola Road Traders Association and Surya Peripherals. Those are at Exhs. 921 to 936.

241. In cross-examination of D. W. 1 Sanjay various printouts of CCTV footages from the three DVRs were taken out. Those are at Exhs. 998 to 1005 and 1009 to 1017. It is pertinent to note that in the report Exh. 769 filed by P. W. 31 before the Hon'ble High Court it is mentioned that on inquiry with Tanisha Mobile, Surya Peripherals and Parola road Signal Chouk about the hard disk containing CCTV footage, it was informed that D. W. 1 Sanjay Pawar, the cousin brother of A-11 had taken custody of those DVRs. DVR of Tanisha Mobile is Article-B, DVR of Parola road Traders Association is Article-'C' and its hard disk is Article C-1, DVR of Surya Peripherals is Article-D. All these articles are produced by D. W. 1 at the time of recording his evidence. Those were write block by D. W. 1 Sanjay as per his evidence, and therefore, print outs of the same were not possible. So, the colour prints of CCTV footage collected in pen drove were taken out. Pen drive 'E' contains CCTV

footage of Tanisha Mobile, Pendrive 'F' is CCTV footage of Parola Road Traders Association, and Pendrive 'G' is the CCTV footage of Surya Peripherals. According to D. W. 1 Sanjay hard disk has its own operating system and if anyone tried to tamper the data, it is stored in its root directory. He further testified that as per CCTV footage dated 08/06/2018 A-11 was seen in the city from 3.26 pm to 6.33.41 pm.

242. In cross-examination the CCTV footage dated 08/06/2018 in Article B' was played and it was noticed that the CCTV footage on 08/06/2018 from 08.40.49 to 22.40.41 was not seen. The 24 hours format or 12 hours format is also not noticed in the same. One person was also seen continuously operating the mouse in Tanisha Mobile on 09/06/2018. Material admission is elicited in the cross-examination of D. W. 1 Sanjay that if some part of the recording is not visible then it means someone has deleted or modified the footage. The CCTV footage of various duration on 08/06/2018 in the articles produced by the D.W. 1 is also found missing as per his cross-examination. Thus, from the testimony of D. W. 1 possibility of tampering Article-B- cannot be ruled out. Further, A-11 was in Dhule City on 08/06/2018, therefore, the spot

of incident not being far away from Tanisha Mobile, the plea of alibi raised by any A-11 fails.

FORMING UNLAWFUL ASSEMBLY BY A-2 TO A-4, A-6 TO A-8 & A-10 TO A-13

243. On this aspect learned advocate of A-2 cited the judgment in the matter of **Kuldip Yadav and others V/s. State of Bihar, 2011 AIR SC 1736**. It is held that “*before recording conviction under Section 149 of IPC essential ingredients of Section 141 must be established. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object*”. In that case four of the accused were armed with gun but no gunshot injury was inflicted against any of the injured prosecution witnesses. Overt act was attributed to accused No. 1 only towards the murder of deceased. In that circumstances it is held that *common object was not known to anybody. The version of eye witnesses was also disputed on account of their relationship with deceased.*

244. Learned P. P. cited the judgment in **Bikau Pandey and others V/s. State of Bihar, 2003 AIR S. C. 6624**. It is held by Hon'ble Supreme Court that *it cannot be laid down as a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of unlawful assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141*. In **Muthuramlingum and Others V/s. State of Tamil Nadu, 2017 ALL SCR (Cri.) 24** it is held that *unlawful assembly – overt act is not always an inflexible requirement of rule of law to establish culpability of a member of an unlawful assembly – without unlawful object no assembly becomes an unlawful assembly*.

245. In the present case, the evidence on record discloses that A-2 to A-4, A-6 to A-8 and A-10 to A-13 attacked both the deceased mercilessly with weapons. From the nature of injuries sustained by both the deceased, their depth and length it shows that the attack was so heinous that P. W. 28 may not have noted type of some weapons carried by each accused and that was the

reason of discrepancy in making description of weapons in the hands of all the accused persons and their role narrated by P. W. 28. The object of the members of unlawful assembly by attacking both the deceased would certainly depict that it was unlawful. By no stretch of imagination it can be said that, bystanders are roped in this case with the aid of Section 149 of the I. P. C. The conduct of A-2 to A-4, A-6 to A-8 and A-10 to A-13 before attack by forming unlawful assembly, carrying deadly weapons in hand, conduct at the time of attack and after the attack in fleeing away from the spot carrying deadly weapons in their hands clearly indicates that they were members of unlawful assembly, the common object of which was to commit murder of both the deceased. Therefore, in such circumstances overt act of each accused is not required to be proved and those who might not have used weapons, or used different weapons than stated by P. W. 28, would also be liable to be convicted. Thus, the submission of learned advocate of A-2 that koyata was seen in the hands of A-2 by P. W. 28, but it is not seized, has no significance.

MOTIVE

246. Learned defense advocate for A-4, 6, 10, 13 submitted

that on the point of motive prosecution relied on evidence of P. W. 25 Amit Pawar but his statement is recorded after one month of the incident though he was available in Dhule. The motive of all the accused has not been proved by the prosecution. As already discussed earlier, the delay in recording statement of P. W. 25 is not fatal to prosecution case. The rift between A-1 and deceased Raosaheb has come on record. This is a case based on direct evidence of eye witness, so motive becomes insignificant.

IRREGULARITIES IN INVESTIGATION :

247. P. W. 32 API Sarita Bhand during investigation has not seized the clothes of P. W. 27, P. W. 28, Omprakash, Yogesh and Hitesh. Therefore, those were produced by P. W. 27. She mentioned incorrect registration number in the seizure panchnama of Scorpio vehicle, she had taken signature of A-2 on the disclosure statement of A-3 and vice versa. She had not mentioned the blood stains on clothes seized during the investigation and the sealing of seized weapons is also not mentioned in the seizure panchnamas concerned. It is also noticed that on each date of the hearing, the informant was present and learned defence advocate submitted that due to extraordinary interest taken by the informant in the

present case during investigation, shows that the investigation was done at his instance only with the intention to falsely implicate the accused person. It is thus, biased investigation. Even if it is considered that some irregularities have been committed by P. W. 32 during investigation, the same are not advantageous to defence. It is not glaring defect. The presence of informant during the trial is obvious as he has lost his elder brother and nephew were brutally murdered by the accused persons. It cannot be inferred that due to presence of the informant at all stages of trial he had taken extraordinary interest in the case.

248. In view of foregoing discussion, it has come on record that on the day of incident A-2 to A-4, A-6 to A-8 and A-10 to A-13 by forming unlawful assembly, A-4 and A-6 intercepted the vehicle of deceased Raosaheb and Vaibhav and all of them committed deadly assault on Raosaheb and Vaibhav by means of dangerous weapons in their hands. The result of the said assault is sustaining life threatening injuries by Raosaheb and Vaibhav. Vaibhav died on the spot of incident whereas Raosaheb succumbed to the injuries in Siddheshwar Hospital. There is no evidence that A-8 destroyed the clothes of himself and of accused No. A-7, A-10 & A-13 after

occurrence of incident. Eventually, **point No. 8 is answered in negative, and point Nos. 2 to 5 & 7 are answered accordingly.**

AS TO POINT NO. 10:-

249. As far as conspiracy by accused persons to commit murder of deceased Raosaheb and Vaibhav, there is evidence of P. W. 9 Vijay Shambhunath Shukla. The law is well settled that it is difficult to prove conspiracy by direct evidence. Section 120-A of the IPC defines criminal conspiracy as under :-

120-A. 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.

250. Section 120-B of the IPC provides the punishment for an offence of criminal conspiracy. The basic ingredients of the offence of criminal conspiracy are -

(a) an agreement between two or more persons

(b) the agreement must relate to doing or causing to be done either ;

(i) an illegal act or

(ii) an act which is not in illegal itself but is done by illegal means.

251. Thus, meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. A conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the intention of the conspirators.

252. In the case in hand, there is direct evidence of P. W. 9 Vijay Shukla on conspiracy hatched by accused persons. He testified about the rift between A-1 and deceased Raosaheb at the time of election of Balapur Grampanchayat. He is acquainted rather he was a good friend of A-1 and deceased Raosaheb since last 30 to 35 years. He used to meet A-1 daily at Swastik Talkies. He is also acquainted with A-4, A-5, A-11, A-12 deceased Vaibhav, P. W. 27 and P. W. 25 Amit Pawar.

253. P. W. 9 further testified about the incident dated 31/01/2018 occurred on the occasion of Dandi Pournima. According to him, at that time altercation took place between A-1, A-4, A-5, A-11 & A-12 on one hand and deceased Raosaheb, P. W. 25 and Sumit Pawar on the other hand. At that time deceased Raosaheb supported P. W. 25 and Sumit Pawar whereas A-4 and his friends supported A-1 & A-11. The said dispute was resolved by police who arrived there. It is the evidence of P. W. 9 that thereafter A-1, A-4, A-5, A-11, A-12 and others left the place and sent to Swastik Talkies. At that time A-1 said to P. W. 9 “ विजु दांडा गाडल्यावरुन रावसाहेब पाटील बरोबर भानगड झाली आहे, त्याला समजावुन दे. ” So, P. W. 9 came to know that dispute arose between A-1 and deceased Raosaheb. According to him A-1 was saying to A-4 and other boys that A-4 alone is sufficient for Raoshya. A-1 assured A-4 that he should not be afraid of and if something happens he will get him released in any case. At that time P. W. 9 tried to convince A-1, A-4, A-11 & other boys by saying "असे काही करू नका, रावसाहेब पण आपलाच माणूस आहे."

254. On the incident of actual conspiracy hatched by accused person, P. W. 9 deposed that on 07/06/2018 between 11.15 to 11.30 pm he had been to Swastik Talkies for playing cards. At that

time A-4, A-11 and about 20 to 25 other persons assembled in the front room of Swastik Talkies. He identified the voice of A-4 and A-11. They along with their friends were discussing to teach lesson to deceased Raosaheb. It is further the evidence of P. W. 9 that on the said discussion somebody said “ रावशाला वार जरी केला तरी तो घाबरून जाईल”. Then A-11 said to A-4 that even if he cut Raosaheb into pieces, his father will get him released and his father had settled number of such cases. A-11 further said to A-4 "तु पाय पुढे उचलला आहे तर मागे हटू नको". P. W. 9 testified that by cuffing he left the place without looking at any of the accused.

255. The evidence of P. W. 9 further shows that his statement was recorded by police on 24/07/2018 and before Magistrate on 13/08/2018 vide Exh. 324. The evidence of this witness is criticized by defense on the ground that he is a got up witness and informant is instrumental in planting this witness. According to learned advocate of A-4, A-6, A-10 & A-13 considering the evidence of P. W. 9 at para 3 i.e. actual part of hatching conspiracy, it is not a case as defined under Section 120-A of the IPC. It is not sufficient to establish the ingredients of Section 120-A of the IPC. He is an interested witness. Only A-4 and A-11 were discussing

about deceased Raosaheb and there is no reference of deceased Vaibhav in the said discussion. According to learned advocate there is nothing in the evidence of P. W. 9 as to when and where A-4 would eliminate deceased Raosaheb and the manner of the same. Apart from A-4 & A-11 other accused were not party to the so called conspiracy.

256. Learned advocate further submitted that 13 accused are implicated in the present case. Under what circumstances, where, when and how they entered into said conspiracy is not there in the evidence of P. W. 9 or in any other evidence on record. Identity of other 20 to 25 persons present with A-4 & A-11 is not established. The persons present in the theater are not examined by the prosecution to substantiate the contention of P. W. 9. There was no reason for P. W. 9 to leave the place by cuffing. Neither A-4 & A-11 nor 20 to 25 persons who were present in the theater noticed him nor restrained him. Learned advocate further submitted that from the evidence of P. W. 9 it appears that he has identified the persons talking about the conspiracy as A-4 & A-11 by identification of their voice. He is not confronted with the voice of A-4 & A-11 during the investigation. As other 20 to 25 persons were present there, it

is difficult to believe that P. W. 9 had an opportunity to hear and distinguish clearly the dialogues between A-4 & A-11.

257. Learned advocate of accused No. A-2 submitted that there is no explanation rendered by police nor by P. W. 9 for his late recording of statement i.e. almost 40 to 42 days after the alleged incident of murder which creates doubt and suspicion on its credibility. He is not a reliable witness. According to learned advocate there are discrepancies in the statements of P. W. 9 recorded under Section 161 and 164 of the Cr. P. C. as regards the time when he reached Swastik Talkies and as regards the presence of A-4 & A-11 inside the room and that he saw A-4, A-11 and A-2 with other 20 to 25 boys.

258. It is further submitted that the admission given by P. W. 9 that he attended funeral of deceased persons, met informant and again attended 10th day ritual program, but remained silent about knowledge of conspiracy is highly doubtful and conduct of P. W. 9 shows that he is interested in false implication of accused persons in the conspiracy. He has not made any allegation of conspiracy against A-2. Similar arguments are advanced by learned advocate

of accused A-1, 3, 7 8 & 11.

259. The alleged incident occurred on 08/06/2018 and statement of P. W. 9 Vijay was recorded by P. W. 32 the I. O. on 24/07/2018 i.e. after 46 days of the incident. The reason for late disclosure of the incident by P. W. 9 is deposed by him that he did not dare to disclose the same to informant because A-1 was his close friend than deceased Raosaheb, he used to meet him daily whereas he used to meet Raosaheb for 30 to 40 times in 365 days. He further submitted that he knows the nature of A-1 being his close friend. If this explanation of P. W. 9 Vijay is considered in the light of cross-examination of P. W. 32, it shows that P. W. 32 recorded the statement of P. W. 9 when he himself remain present in the police station. She admitted that no reference of name of P. W. 9 had come during investigation before recording his statement. It is quite natural that his name was not surfaced during investigation since he did not disclose the incident to anyone till recording of his statement. The fear in the mind of P. W. 9 about some of the accused is a plausible explanation given by him for not disclosing the conspiracy overheard by him in Swastik Talkies. It is not the fault of investigation officer for delay in recording his

statement since she was not aware of the conspiracy hatched by accused persons which was overheard by P. W. 9 on 07/06/2018.

260. P. W. 9 specifically deposed that he identified voice of A-4 & A-11 since he knows A-11 from his childhood and A-4 since last 7 to 8 years. Thus, there was no necessity to confront P. W. 9 with the voice of A-4 & A-11 during investigation. It has come in the evidence of P. W. 9 that along with A-4 & A-11 other 20 to 25 boys were also present in front room of Swastik Talkies. So, according to learned advocate of accused persons it is highly impossible that P. W. 9 would have heard the voice and dialogue between A-4 & A-11 in such chaos. On perusal of evidence of P. W. 9, it is nowhere stated that all the 20 to 25 boys along with A-4 & A-11 were talking with each other and in that chaos, he overheard the conversation. It is his specific evidence that he heard the voice of A-4 and A-11 in respect of conspiracy of eliminating deceased Raosaheb.

261. It is further tried to bring on record by defense that the distance between outer room and office of A-1 is 150 feet. P. W. 9 had not met A-4 and A-11 on 07/06/2018 but he had seen them

while entering in outer room. However, P. W. 9 denied that he was in the club for playing cards though he had gone there for playing cards. Thus, the defence that P. W. 9 could heard the conversation between A-4 & A-11 considering the distance of 150 feet between the office of A-1 and outer room is falsified by his evidence.

262. In his statement under Section 164 of Cr. P. C., P. W. 9 stated that along with A-4, A-11, A-5 & A-12 were also present in Swastik Talkies. The purpose of the statement under Section 164 of the Cr. P. C. is for corroboration and contradiction. Thus, the presence of A-5 & A-2 on 07/06/2018 in Swastik Talkies is thus not evident. In-fact the presence of only A-4 and A-11 is evident from the evidence of P. W. 9 on 07/06/2018 in Swastik Talkies.

263. Learned advocate of A-1, A-3, A-7, A-8 A-11 relied upon the observations in **S. Arul Raja V/s. State of Tamil Nadu 2010 AIR SCW 5923** wherein it is observed that “*witnesses of first two meetings turned hostile, presence of accused at first meeting was not proved. Hence, entitled for acquittal under Section 120-B of the IPC*”. It was the case of conspiracy based on circumstantial evidence. In **State (Government of NCT of New Delhi) V/s. Nitin**

Gunwant Shah 2015 AIR SCW 5347, the presence of all the accused in Delhi was proved but the involvement of the vehicles in commission of the crime was not proved. Any prior meeting of mind of accused or any action was also not proved against accused. In that circumstances, the appeal against the acquittal was dismissed. In **Fakruddin V/s. State of Madhya-Pradesh, AIR 1967 SC 1326** accused Fakruddin alone was left and it was not established with whom he conspired. So, he was acquitted. In **Sahebrao Pralhad Ingole V/s. State of Maharashtra, 2025 Cr. L. J. 425**, the Hon'ble Division Bench of High Court held that "*mere communication between accused through phone does not establish conspiracy unless corroborated by substantive evidence of intent and unlawful agreement*".

264. As against this, learned P. P. cited the judgment in **Kehar Singh & others V/s. State of (Delhi Administration) AIR 1988 SC 1883**. The Hon'ble Supreme Court has explained the gist of the offence of the conspiracy thus - "*it lies not in doing the act or effecting the purpose for which the conspiracy was formed, nor in attempting to do them, nor in enticing others to do them but in forming of the scheme or agreement between the parties.*"

Agreement is essential. Mere knowledge or even a discussion, of the plan is not per se enough ,

265. Reverting back to the facts of the case, the conversation between A-4, A-11 and the assurance of A-1 to get relieved from any case if any incident happens, undoubtedly shows that there was meeting of mind and agreement between them to eliminate Raosaheb. Although there is no reference in the said meeting about eliminating Vaibhav, the evidence has come on record that on the day of incident he was also murdered by the accused persons who were present on the spot. Though conspiracy is committed in secrecy, P. W. 9 overheard the conversation between A-4 and A-11 while they were in the room of Swastik Talkies, and therefore, could not see P. W. 9 who was outside the said room.

266. CDR at Exh. 679 to 683, 686 to 689 and 692 indicates that from 06/06/2018 to 08/06/2018 A-1, A-2, A-3, A-4, A-6, A-7 & A-11 were in contact with each other. A-1 & A-9 were admittedly not present on the spot of incident. It is already held that A-9 assisted A-6 in fleeing away from the spot. It certainly shown that pursuant to the agreement A-4 & A-11 on 07/06/2018 and earlier

meeting of A-1, A-4 & A-11 after dispute of 31/01/2018 about giving assurance to A-4 to get relieved him from any situation, can be inferred as an agreement between them. The conduct of A-2 to A-4, A-6 to A-8 and A-10 to A-13 on 08/06/2018 to form unlawful assembly by carrying dangerous weapons and in order to accomplice the said object, forms a chain of events from which the conclusion about the guilt of accused persons can be drawn. Although there is no CDR of A-8, A-10, & A-13 on record, but their presence on the spot is evident from the testimony of P. W. 28.

267. The CCTV footage collected by P. W. 17 near Chai Tapari and Kalyani Dairy to show the presence of accused persons on 08/06/2018 before incident is not displayed in the Court due to scratch on C. D. MO A-10 & MO A-10/1. Learned advocate of A-1, A-3, A-7, A-8 A-11 cited the judgment in **Sahebrao Pralhad Ingole V/s. State of Maharashtra, 2025 Cr. L. J. 425, Bom. H. C.** wherein it is held that “ *CDRs and SDRs – mere communication between accused does not establish conspiracy unless corroborated by substantive evidence of intent and unlawful agreement. Inference of conspiracy cannot be drawn solely on phone records.* In this case, apart from CDRs and SDRs of accused persons, there is

incident dated 07/06/2018 witnessed by P. W. 9 Vijay, the dialogues between A-4, A-11, subsequently forming unlawful assembly by accused persons, committing brutal murder of Raosaheb and Vaibhav and while leaving the spot uttering the words to inform A-1 as regards the accomplishment of task which is relevant under Section 10 of the Evidence Act are the circumstances which shows the involvement of A-1 to A-4, A-6 to A-8 and A-10 to A-13 in conspiracy to do an illegal act. Further, the cited judgment is based on circumstantial evidence. Hence, with due respect it is not applicable to the case in hand.

268. The record is evident from the aforesaid circumstances that by communication on phone and by the deed committed on 08/06/2018 by A-2 to A-4, A-6 to A-8 and A-10 to A-13, they joined the conspiracy. The presence of each accused in the prior meeting is not necessary. A-8, A-10 & A-13 had gone along with other conspirators on the spot of incident. Thus, they were associated with the other accused persons. The criminal act done in furtherance of conspiracy is established by the sequence of evidence and the conduct of accused. The criminal act done in furtherance of conspiracy is evident from the acts and also the

words uttered by co-accused on spot to show that the task in view of the conspiracy was accomplished.

269. Learned advocate of A-1, A-3, A-7, A-8 and A-11 relied upon **Makhansing V/s. State of Punjab, AIR 1988 SC 1705** wherein it is observed that “*extra judicial confession is a weak type of evidence. Confession of co-accused could be used only in support of evidence and could not be made foundation for conviction*”. Relying upon the said observation learned advocate argued that the words used by the accused persons to inform A-1 about the accomplishment of task is an extra judicial confession and cannot be used against co-accused.

270. In the cited judgment relied upon by learned advocate, the accused went to P. W. 3 to make an extra judicial confession. Such are not the facts of the present case. The utterance of words by the accused person with A-4 are relevant under Section 10 of the Evidence Act “things said or done by conspirator in reference to common design”. It implies that if evidence of existence of conspiracy is given and accepted, the evidence of acts and statements made by anyone of the conspirator is admissible against

all. Thus, the utterance of words as deposed by P. W. 28 in respect of information to be provided to A-1 on phone that the task of elimination of Raosaheb and Vaibhav is completed, may be by any conspirator, is admissible against all the accused and it is not an extra judicial confession as argued by learned defence advocate.

271. In view of foregoing discussion, hatching of conspiracy is thus made out against A-1 to A-4, A-6 to A-8 & A-10 & A-13. Pursuant to the conspiracy hatched by them A-2 to A-4, A-6 to A-8 & A-10 to A-13 formed unlawful assembly by carrying dangerous weapons, assaulted deceased Raosaheb and Vaibhav who died in the said assault. Eventually, **point No. 10 is answered in the affirmative.**

AS TO POINT NOS. 6 & 9 :-

272. The accused persons are charged with the offence punishable under Section 307 r/w 149 of the I. P. C. Hitesh @ Aakash who suffered grievous injuries in the incident is not examined. Therefore, the offence punishable under Section 307 is not proved. As regards the allegations made under Section 135 of Bombay Police Act, there is no evidence adduced on record.

Eventually, both the charge against the accused fails and **point Nos. 6 & 9 are answered in negative.**

AS TO POINT NO. 11:

273. In the light of foregoing discussion and the findings of point Nos. 2 to 5, 7 8 & 10 the offence punishable under Section 302 r/w 120-B of I. P. C. against accused Nos. 1 to 4, 6 to 8 and 10 to 13 is proved whereas the offence punishable under Section 302 r/w 149 of the IPC is proved against accused Nos. 2 to 4, 6 to 8, 10 to 13. Further, offence under Section 143, 147, 148 r/w 149 of the I. P. C. have been proved against those accused persons. Offence punishable under Section 212 of the I. P. C. is proved against accused No. 9. In view of defence of alibi and the finding that accused No. 5 was not present on the spot of incident, no offence is proved against him. At this stage, accused No. 2 to 6 & 8 to 13 are produced through Superintendent of Jail, Dhule. Accused No. 7 is present. Accused No. 1 was produced through video conferencing by Superintendent of Jail Dhule. Since accused No. 5 is acquitted from the aforesaid offences his separate order as to his acquittal along with order releasing him on bail vide Section 437-A of the Criminal Procedure Code is passed below Exh. 1 and the matter is

posted for hearing of rest of the accused on point of sentence on 11/03/2026.

Dhule :
Date : 09/03/2026

(Jayshri R. Pulate)
Additional Sessions Judge,
Dhule.

Date : 11/03/2026

274. Today accused Nos. 1 to 4, 6 to 13, are produced from the jail authority. Learned P. P. Mr. D. Y. Tavar and learned advocate Mr. N. G. Dusane for P. W. 27 is present. P. W. 27 Prashant Dagajirao Patil is present. Learned advocate of accused Nos. 1, 3, 7, 8, 11 Mr. P. B. Patil, learned advocate of accused Nos. 4, 6, 10, 13 Mr. Akil Ismail, learned advocate of accused No. 2 Mr. Satyajeet Patil, learned advocate for accused Nos. 9 & 12 Mr. B. B. Waghmare are present.

275. Learned P. P. submitted that deceased Vaibhav got married before one month of the incident. Therefore, compensation as per Section 357 A of the Cr. P. C. be awarded in favour of wife of deceased Vaibhav and Raosaheb. It is further submitted that brutal murder of father and son has been committed by accused persons. Therefore, message must go to the society that

the accused who had committed such brutal murders should not get any benefit of their age or family background and death penalty may kindly be awarded. Alternate submission of learned P. P. is that if the Hon'ble Court comes to the conclusion that death penalty cannot be awarded, then in view of observation in the case of **Muthuramlingum and Others V/s. State of Tamil Nadu, 2017 ALL SCR (Cri.) 24** imprisonment for life for multiple murders be superimposed over each other so that any remission may not be claimed by the accused persons.

276. It is submitted by A-1 that he is 76 years old suffering from various ailments including diabetes and high blood pressure. His wife, unmarried daughter, daughter-in-law and grand children will suffer if harsh punishment is awarded to him since his son is also held guilty in the present case. Therefore he prayed for leniency.

277. It is submitted by A-2 that his father is suffering from various ailments and mother is bed ridden. He is unmarried. A-3 submitted that his father is a diabetic patient and had undergone eye surgery. He prayed for leniency. A-4 submitted that he along

with his brother A-6 are falsely implicated in the present case. Their father died during the pendency of present case and mother is residing alone in the house. He prayed for leniency. A-6 submitted that he along with his brother are behind bars since last 8 years. Their father died during pendency and therefore, leniency be shown while awarding punishment. A-7 submitted that he has widowed mother having no siblings. He prayed for leniency. A-8 submitted that he has four sisters and old aged parents. There is no one to look after them. He prayed for leniency. A-9 submitted that due to his incarceration, his father died. His mother is earning her livelihood by washing utensils and clothes at the house of other people. Therefore, he prayed for leniency. A-10 submitted that he is not concerned with the case. His parents are having ailments of diabetes and high blood pressure. A-11 submitted that he along with his father A-1 are falsely implicated in the present case. They are behind bars since last 8 years. His wife, children and mother will suffer if maximum punishment is awarded. A-12 submitted that since last six months his mother is bed-ridden and he is their only child. A-13 submitted that he is behind bars since last 8 years when his son was 2 to 3 years old.

278. Learned advocate of A-1, 3, 7, 8 & 11 submitted that this is not rarest of rare case. There was no pre planning and therefore, minimum punishment be awarded. Learned advocate of A-2 submitted that the mother of A-2 is bed ridden. He has no criminal antecedents. He is unmarried. Therefore, leniency be shown while awarding punishment. Advocate of A-4, 6, 10 & 13 submitted that at the time of incident all the accused were in their 20's. No criminal antecedents of A-4, 6, 10, 13 are brought on record. They are behind bars since 8 years. There is no complaint that they misbehaved in jail. It is not argued by learned P. P. that unless the accused persons are eliminated, society will not be safe. Therefore, according to learned advocate punishment of single life imprisonment will serve the purpose.

279. Learned advocate further referred the case of **Bachan Singh V/s. State of Punjab, AIR 1980, SC 898** and **Machhi Singh V/s. State of Punjab, AIR 1983, SC 957**. Learned advocate for A-9 & 12 submitted that minimum fine amount be awarded to A-9 as he is held guilty under Section 212 of the IPC. As regards A-12 it is submitted that considering the role of A-12 there is no reason to award maximum punishment to him. His family background may

kindly be considered. Today this Court heard all the accused persons as well as learned P. P. and learned defence advocates. Both the parties relied on citations. Looking to the submissions of both the sides, matter is adjourned and scheduled on 12/03/2026 for pronouncement of sentence.

Dhule :
Date : 11/03/2026

(Jayshri R. Pulate)
Additional Sessions Judge,
Dhule.

Date : 12/03/2026

RAREST OF RARE CASE :

280. Having considered the submissions of both the sides and as per the mandate of law in the case of **Bachan Singh and Machhi Singh (Supra)**, it is to be seen whether the case falls within the category of rarest of rare case. Hon'ble Supreme Court has laid down the aggravating as well as mitigating circumstances, to be weighed by the Court, while determining as to whether case under consideration requires extreme penalty of death. In the matter of **Muthuramlingum (Supra)** it is held that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively.

Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso-facto result in remission of the sentence awarded to the prisoner for the other.

281. In view of the guidelines laid down in the cited judgments, if applied for the facts of present case, the aggravating and mitigating circumstances are as under :-

AGGRAVATING CIRCUMSTANCES

1. Enmity between A-1 and deceased Raosaheb.
2. Criminal conspiracy hatched by A-1 with other accused persons.
3. Brutal murder of Raosaheb and Vaibhav by means of dangerous weapons committed by the accused persons.
4. The nature of injuries sustained by both the deceased and noticed in their Postmortem Reports.

MITIGATING CIRCUMSTANCES

1. No criminal antecedents against any accused persons.
2. A-1 is aged 75 years presently.
3. The father of A-4, A-6, A-9 died during pendency of case.
4. Young age of A-2 to 4, 6 to 8 & 10 to 13. Their family

members are dependent on them.

282. Considering the aggravated and mitigating circumstances noted above and considering the age of the accused persons there is possibility of reformation of them which is an important factor needs to be taken into account as mitigating circumstance before sentencing them to death. As rightly submitted by learned advocate of A-4, 6, 10 & 13 no circumstance is brought on record that unless death penalty is awarded to the accused persons, society will not be safe. As regards awarding multiple life imprisonment, I am of the opinion that considering the mitigating circumstances as noted above, and considering the old age of A-1 and young age of A-2 to A-4, A-6 to A-8, A-10 to A-13, the present crime does not fall within the category of '*rarest of rare case*'. Therefore, death penalty cannot be awarded. Record indicates that brutal murder of Raosaheb and Vaibhav has been committed by accused persons by forming unlawful assembly. As such imprisonment for life on two counts and fine shall be imposed while sentencing accused Nos. 1 to 4, 6 to 8, 10 to 13 under Section 302, 120-B r/w 149 of the I. P. C.. The Offence under Section 143, 147, 148 r/w 149 of the I. P. C. is proved against A-2

to A-4, A-6 to A-8 and A-10 to A-13. Offence under Section 341 of the IPC is proved against A-4 and A-6. Offence under Section 212 of the I. P. C. is proved against A-9.

COMPENSATION TO VICTIMS

283. Section 357 of the Code of Criminal Procedure empowers the Court to award compensation to victims while passing judgment of conviction. In this case, the wife of deceased Raosaheb (Mother of Vaibhav) and wife of deceased Vaibhav are the victims. Section 357-A of the Code of Criminal Procedure provides victim compensation scheme. Section 357-A (2) provides that whenever recommendation is made by the Court for compensation to the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub section (1).

DISPOSAL OF MUDDEMAL PROPERTIES

284. The vehicles Skoda Car bearing Registration No. MH-15-DJ-3700, two wheelers bearing Registration No. MH-11-BC-4144, MH-18-BB-5513, MH-18-AC-3513, MH-18-AD-3920, are of

old model and not claimed by anyone. Therefore, West Deopur Police Station is directed to sell in scrap all the said vehicles and the amount received shall be credited to State, after appeal period is over.

285. Article-B, C, C-1 & D the hard disks and DVR, Pen drive Article-E, F & G, are produced by DW-1 Sanjay Dattatraya Pawar while recording his evidence. Therefore, those are required to be given in his custody. The CD's MO-10, MO-10/1 & Memory Card MO-10/2 be sent to computer section, Dhule and crushed into pieces in presence of Superintendent of District Court, and then Clerk, concerned shall file necessary compliance report with a note in a muddemal property register. Accordingly, for the answer of **point No. 11**, I proceed to pass following order.

ORDER

- (1) Accused Nos. **1. Bajirao @ Subhash Sajan Pawar, 2. Bhupesh Valmik Patil, 3. Harshad @ Dadu Ravindra Patil, 4. Jairaj Shamkant Patil, 6. Rushikesh Shamkant Patil, 7. Darshan Ambadas Pardeshi, 8. Bhagwan Nanabhau Ahire, 9. Sandeep @ Vikki Deelip Velis, 10. Appa @ Arjun Bhagwan Ahire, 11. Gaurav Bajirao Pawar, 12. Bhushan Baburao**

Kapkar and 13. Bhushan Nimba Pagare are hereby convicted vide Section 235 (2) of the Code of Criminal Procedure, as under :-

- (i) For commission of the offense punishable U/s. 302, 120-B of the Indian Penal Code, the accused No. 1 is sentenced to suffer **Imprisonment for life (on two counts)** and fine of **Rs. 10,000/-** (Rs. Ten Thousand Only). In default of payment of fine, he shall suffer Rigorous Imprisonment for period of Six Months.
- (ii) For commission of the offense punishable U/s. 302, 120-B r/w 149 of the Indian Penal Code, the accused Nos. **2 to 4, 6 to 8 & 10 to 13** are sentenced to suffer **Imprisonment for life (on two counts)** and fine of **Rs. 10,000/-** (Rs. Ten Thousand Only) each. In default of payment of fine, they shall suffer Rigorous Imprisonment for period of Six Months.
- (iii) For commission of the offense punishable U/s. 143 r/w 149 of the Indian Penal Code, the accused Nos. 2 to 4, 6 to 8 & 10 to 13 are sentenced to suffer **Rigorous Imprisonment for One Month**, and fine of **Rs. 500/-** (Rs. Five Hundred Only) each. In default of payment of fine, they shall suffer Simple Imprisonment for period of eight days.

- (iv) For commission of the offense punishable U/s. 147 r/w 149 of the Indian Penal Code, the accused Nos. 2 to 4, 6 to 8 & 10 to 13 are sentenced to suffer **Rigorous Imprisonment for Six Months**, and fine of **Rs. 500/-** (Rs. Five Hundred Only) each. In default of payment of fine, they shall suffer Simple Imprisonment for period of One Month.
- (v) For commission of the offense punishable U/s. 148 r/w 149 of the Indian Penal Code, the accused Nos. 2 to 4, 6 to 8 & 10 to 13 are sentenced to suffer **Rigorous Imprisonment for One Year**, and fine of **Rs. 500/-** (Rs. Five Hundred Only) each. In default of payment of fine, they shall suffer Simple Imprisonment for period of One Month.
- (vi) For commission of the offense punishable U/s. 341 r/w 34 of the Indian Penal Code, the accused Nos. 4 & 6 are sentenced to suffer **Simple Imprisonment for One month** and fine of **Rs. 500/-** (Rs. Five Hundred Only) each. In default of payment of fine, they shall suffer Simple Imprisonment for period of Eight days.
- (vii) For commission of the offense punishable U/s. 212 of the Indian Penal Code, the accused No. 9 is sentenced to suffer **Rigorous Imprisonment for Five**

years and fine of **Rs. 1000/-** (Rs. One Thousand Only). In default of payment of fine, he shall suffer Simple Imprisonment for period of One month.

- (2) The period of sentence of A-9 is over, in view of Section 428 of the Cr. P. C. He shall be set at liberty, if not required in any other crime, upon deposit of fine imposed on him, as above.
- (3) All the above sentences to run concurrently.
- (4) Accused Nos. **1 to 4, 6 to 8 & 10 to 13** are entitled for benefit of set off for the detention period undergone by them, as per Section 428 of the Code of Criminal Procedure. Period of detention of A-1 to A-4, A-6 to A-8 and A-10 to A-13 can be considered by the State at relevant time, if in case of remission of sentence of imprisonment for life.
- (5) Accused Nos. **2 to 4, 6 to 13** are hereby acquitted of the offenses punishable under Section 307 r/w 149 of the Indian Penal Code, and under Section 135 of the Bombay Police Act, vide Section 235 (1) of the Cr. P. C.
- (6) Accused No. **5. Vaibhav @ Sonu Arun Pawar** is hereby acquitted of the offenses punishable under

Section 143, 147, 148, 302, 307, 341, 201, r/w Sec. 149 & 120-B of the Indian Penal Code and under Section Section 37 (1) (3) / 135 of B. P. Act.vide Section 235 (1) of the Cr. P. C.

- (7) The accused No. 5 be released on bail on furnishing P. R. & S. B. of Rs. 50,000/-(Rs. Fifty Thousand Only) with surety in the like amount vide Section 437-A of the Cr. P. C. He has already furnished the bail and bonds as per order dated 09/03/2026 & he is set at liberty on that day itself.
- (8) The Muddemal Properties, i.e. the vehicles Skoda Car bearing Registration No. MH-15-DJ-3700, two wheelers bearing Registration No. MH-11-BC-4144, MH-18-BB-5513, MH-18-AC-3513, MH-18-AD-3920, are of old model and not claimed by anyone. Therefore, West Deopur Police Station is directed to sell in scrap all the said vehicles and the amount received shall be credited to State, after appeal period is over.
- (9) The muddemal property i.e. **Article-B, C, C-1 & D the hard disks and DVR, Pen drive Article-E, F & G**, are produced by DW-1 Sanjay Dattatraya Pawar while recording his evidence. Therefore, it be given in his custody, after appeal period is over. After issuing notice, if D. W. 1 do not appear, the

said muddemal property be sent to computer section for its disposal, according to law.

- (10) The muddemal property i.e. the CD's **MO-10, MO-10/1 & Memory Card MO-10/2** are kept in the file. Those be deposited in muddemal section and then be sent to computer section, Dhule and crushed into pieces in presence of Superintendent of District Court, Dhule and then Clerk, concerned shall file necessary compliance report with a note in a muddemal property register, after appeal period is over.
- (11) The muddemal property i.e. **Sword MO-07** be sent to District Magistrate, Dhule for its disposal, according to law, after appeal period is over.
- (12) The remaining muddemal property i.e. **MO-6 Kukari, MO-8 knife, MO-9 Bumper rod, MO-15 small knife, MO-11 to 14 & 16 to 19** and Seized clothes **Article A to Z & A-1 to A-5**, and rest of the muddemal, if any, being worthless be destroyed after appeal period is over.
- (13) Copy of this judgment and order be provided to the accused Nos. 1 to 4, 6 to 13 free of cost, forthwith U/s. 363 (1) of the Code of Criminal Procedure.

- (14) Accused are made aware of their right to file appeal against the judgment of conviction and sentence, before the Hon'ble High Court within 30 days from the date of sentence.
- (15) A recommendation be sent to District Legal Services Authority, Dhule vide Section 357-A (3) of the Code of Criminal Procedure for compensation to victims i.e. wife of deceased Raosaheb and wife of deceased Vaibhav under the Victim Compensation Scheme.
- (16) Copy of this judgment be forwarded to District Magistrate, Dhule vide Section 365 of the Code of Criminal Procedure.
- (17) Judgment pronounced in open Court.

Dhule :

(Jayshri R. Pulate)

Date : 12/03/2026

Additional Sessions Judge, Dhule.

I certify that the contents of this PDF File are word to word as per original Judgment/Order.

Name of the Steno : Pravin R. Pande
Name of the Court : Additional Sessions Judge, Dhule
Judgment delivered on : 09/03/2026
Judgment signed by P.O. : 12/03/2026
PDF Uploading Date : 13/03/2026
Sd/-xxx

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