

MHPU010072872016



Received on :- 27.06.2016
Registered on :- 28.06.2016
Decided on :- 23.03.2026
Duration :- Y. M. Ds.
9 8 24

IN THE COURT OF SESSIONS JUDGE: AT PUNE
(Presided over by **Mahendra K. Mahajan**)

Sessions Case No.387/2016

Exh. 169
(FIR No. 33/2015 at Alankar
Police Station, District : Pune)

Complainant	The State of Maharashtra
Represented By	Shri. P. N. Bombatkar, Ld. PP. for the State.
Accused	01. Sanjay Anant Mohol Age : 48 years, Occ. Nil R/o- 128-5/B, Phalke plot, near Shani temple, Dattawadi, Pune. 02. Sambhaji Sadashiv Kamble Age : 36 years. Occ: Nil R/o- Bhimnagar, Shila Vihar colony, Paud road, Kothrud, Pune.
Represented By	Shri. S. B. Deokar, Ld. Advocate, for accused No.1. Smt. N. S. Vartak, Ld. Advocate for accused No.2.

Sessions Case No. 387/2016

Date of offence	23.02.2016
Date of FIR	23.02.2016
Date of Charge-sheet	11.05.2016
Date of Framing of Charge	18.09.2017
Date of commencement of evidence	21.09.2018
Date on which judgment is reserved	07.03.2026
Date of the Judgment	23.03.2026
Date of the Sentencing Order, if any	20.03.2026

Accused Details

Name of Accused	Date of Arrest	Date of Released on Bail	Offences charged with	Whether acquitted or convicted	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P. C.
Sanjay Anant Mohol	23.02.2016	03.05.2024	302 R/w. 34 of the IPC, U/s. 4 R/w. 25 of the Arms Act and U/s. 37 (1) R/w. 135 of the Bombay Police Act.	Convicted	Since 23.02.2016 till 03.05.2024
Sambhaji Sadashiv Kamble	23.02.2016	28.11.2024	- do -	Convicted	Since 23.02.2016 till 28.11.2024

A. List of prosecution witnesses:

Rank	Name	Exh. Nos.	Nature of Evidence
1	Shivaji Namdeo Shinde	23	Informant
2	Ajay Ramesh Nivangune	46	Spot panch

3	Raju Bapu Pawar	79	Witness
4	Jitendra Kundli Aher	81	Eye witness
5	Datta Sadhu Koditkar	88	Eye witness
6	Shrishkumar Vishnupant Dharaskar	91	Pvt. Medical practitioner
7	Pandurang siddhanna Ganeshkar	94	Auto rickshaw driver
8	Gautam Mahadev Ghanvazir	96	Seizure panch of CCTV footage
9	Istiaz Shakil Shaikh	98	Collected CCTV footage and DCR
10	Sunil Baban Malve	111	Witness
11	Dr. Hemant Vithoba Vaidya	112	Conducted postmortem
12	Shrikant Ashok Chavan	119	Carrier of muddemal property to RFSL
13	Dr. Kaustubh Sudhakar Dindorkar	122	Medical officer of Deenanath Mangeshkar hospital.
14	Sushil Vinayakrao Bobade	126	Prepared inquest panchanama
15	Bhagwat Gunaji Misal	128	Carried out part investigation
16	Vijaykumar Appasaheb Shinde	141	Carried out part investigation
17	Ganesh Bhagwat Mali	150	Carried out part investigation
18	Chagan Hilal Wakde	160	Issued preventive order U/s. 37 (1) (3) of the B.P. Act.

B. Prosecution exhibits :

Sr. No.	Exh. Nos.	Description.
1	24	Complaint

Sessions Case No. 387/2016

2	25	F.I.R.
3	47	Spot panchanama
4	48	Seizure panchanama of clothes
5	86	Statement U/s. 164 of the Cr.P.C. of PW4 Jitendra Kundlik Aher.
6	93	Extract of OPD register dt.23.02.2016
7	97	Seizure panchanama of Sparsh prime company DVR from Shramsafalya shop.
8	113	Postmortem examination report
9	114	Advance death certificate
10	116	Death summary
11	120	Request letter
12	127	Detailed report of samples of viscera
13	129	Office order to get medical examination
14	130,131	Letters to collect blood samples
15	132	Letter dt. 22.03.2016 to Sassoon hospital
16	133	Reminder letter to CA
17	134	Letter dt. 04.,04.2016 to CJM for recording statement U/s.164 of the Cr.P.C.
18	135 to 138	04 CA reports.
19	142	Extract of station diary.
20	143	Extract of station diary.
21	144	Report
22	145	Report
23	146	Report dt. 25.02.2016
24	147	Report to Court about addition of section
25	151	Letter to Sr. PI.
26	152	Report about station diary entry
27	153	Report about station diary entry

28	154	Report of entry of station diary.
29	161	Order dt. 11.02.2016

C. Prosecution objects :

Article -A	White coloured half sleeves bloodstained shirt
Article -B	Blue coloured jeans pant
Article -C	White coloured baniyan
Article-D	Sickle
Article-E	Grey colour shoe
Articles -F and G	Two stones – 1 small and 1 big
Article-H	Blue coloured shirt
Article-I	Chocolate coloured pant
Article-J	White coloured shirt
Article-K	Blue coloured jeans
Article-L and L-1	DVR and paper label
ARTICLE-A	Copy of RC book, permit of auto
Article-M and N.	02 CDs with CCTV footage copied

D. Defence Exhibits :

Sr. No.	Exh. Nos.	Proved/ Attested by	Description.
--	--	--	----- Nil -----

E. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	11	Charge
2	12, 13	Plea of both accused.
3	164 and 165	Statement U/s. 313 of the Cr.PC. of accused Nos.1 and 2.

F. Admitted documents by defence:-

Sr. No	Exh. Nos.	Description.
1	89	Inquest panchanama (admitted by accused)
2	90	Seizure panchnama (Admitted by accused)

- J U D G M E N T -

(Delivered on 23rd March, 2026)

Accused Nos.1 and 2 have been tried for the offences punishable under Section 302 R/w. 34 of the Indian Penal Code, 1860, ('the *IPC* for short), U/s. 4 R/w. 25 of the Arms Act and U/s. 37 (1) R/w. 135 of the Bombay Police Act.

The story of the prosecution is that:-

02. The deceased Sagar Shivaji Shinde was residing in the Kedar Empire building at flat No. 208. On 23.02.2016 at 10.30 a.m., he was proceeding in front of Rasika Apartment on Activa towards Karishma chowk. At that time, both accused followed him in Duster 4 wheeler car bearing No. MH-12/LJ-4747 and gave dash to him. The deceased fell on the road. Thereafter he tried to ran away from the spot. The accused chased him and accused Sanjay Anant Mohol gave blow of sickle on his head and hand. The second accused Sambhaji Sadashiv Kamble took that sickle and gave blow on his head and hand. Thereafter, they gave a blow of stone on his head and person and committed

the murder. The reason for the murder is accused No.1 is having an illicit relations with one Sarika Sandip Chavan R/o-deceased building. There was nuisance to the occupants of that building. The deceased, his friend and occupants convinced the accused not to have a contact with that lady and beat the accused Sanjay Mohol. Having grudge about that, both the accused committed the murder. The incident was noticed by eye witnesses. The informant / father came on the spot and thereafter along with one witness, he took the injured in the Deenanath Mangeshkar hospital in a rickshaw. The deceased made the dying declaration to the father and one witness about assault by both the accused. During the treatment, accused succumbed to injuries. On the basis of report of informant, a Crime No. 20/2016 was registered on the same day at 13.00 Hrs. U/s. 307 R/w. 34 of the IPC, U/s. 4/25 of the Arms and U/s. 37 (i) R/w. 135 of the Bombay Police Act. After the death, offence U/s. 302 of the IPC was added against both the accused.

03. In the investigation, spot panchanama was prepared by P.W. 17, articles were seized from the spot, inquest panchanama and postmortem were conducted on the dead body. Investigation Officer (P.W. 16) arrested the accused from the Duster car bearing No. MH-12/LJ-4747, personal search was conducted, the

duster car was seized, the blood stain clothes of the accused were also seized vide Exh. 43. He sent the accused for medical examination. After the death of deceased, he applied Sec. 302 of the IPC. The statements of witnesses were recorded. CCTV footage in DVR were found, the DVR was seized vide panchanama (Exh. 97) by P.W. 17. The seized property was sent to the RFSL, CA reports are filed on record. In investigation, it was revealed that, the offences were committed by both the accused, so charge-sheet came to be filed in the Court of JMFC, Pune. The offence is of Sessions triable, it was committed to the Court of Sessions vide Sec. 209 of the Cr.P.C.

04. The charge was framed against the accused vide Exh.11. The prosecution examined in all 18 witnesses. The statements of the accused U/Sec. 313 of the Cr.P.C. were recorded (Exh.135 and Exh. 136). The defence of the accused was of denial. It was the specific defence of the accused that they were wrongly implicated in a case.

05. Heard, Mr. P. N. Bombatkar learned Public Prosecutor for the State, Shri. S. B. Devkar and Smt. N. S. Vartak for accused Nos.1 and 2 respectively.

06. Following points arise for determination. My finding against each point is as under for the reasons given below:-

Sr. No	Points	Findings
01.	Does the prosecution prove that death of deceased is homicidal?	In the affirmative.
02.	Does the prosecution prove that on 23.02.2016 at about 10.30 a.m., in front of Welcome India Snacks Centre and Balaji travels situated on the ground floor of Sarika Apartment, Karve road, Pune, both accused in furtherance of their common intention committed murder by intentionally and knowingly causing the death of Sagar Shivaji Shinde and thereby committed an offence punishable U/s. 302 R/w. 34 of the Indian Penal Code?	In the affirmative.
03.	Does the prosecution further prove that both the accused on the aforesaid date, time and place, and in furtherance of their common intention, found in possession of sickle in contravention of Sec. 4 of the Arms Act, 1959 and thereby committed an offence punishable U/s. 4 R/w. 25 of the Arms Act?	In the negative.
04.	Does the prosecution further prove that both the accused on the aforesaid date, time and place, and in furtherance of their common intention, were found in possession of deadly weapon i.e. sickle and thereby committed breach of the prohibitory order passed by the Jt.	

	Commissioner of Police U/s. 37 (1) R/w.135 of the Bombay Police Act?	In the affirmative.
05.	What order?	Accused are convicted.

- REASONS -

Submissions of the Advocates:

07. The Learned Public Prosecutor Shri. P. N. Bombatkar argued that, it is the case of direct evidence of eye witnesses. There is also dying declaration to the father by the deceased within a some minutes of the incident. The report was lodged around 01.00 p.m. There is also CCTV footage showing involvement of the accused. There is motive behind the crime. All the witnesses supported the prosecution case. So prosecution succeeded to prove the offences against the accused beyond reasonable doubt. He submitted bullet points of his argument dated 06.03.2016 (Exh. 168).

He placed the reliance on the following **citations:-**

01. **Akshay Kailas Purohit Vs. State of Maharashtra, 2019 ALL MR (Cri) 3323** wherein it is held that:-

‘Mere delay in recording the statements of witnesses by itself cannot be a ground to discard his testimony’.

02. **State of U.P Vs. Satish, (2005) 3 SCC 114,** wherein it is held that:-

“It is to be noted that the explanation when offered by I.O. on being questioned on the aspect of delayed

examination, by the accused has to be tested by the Court on the touchstone of credibility.”

03. Animireddy Venkata Ramana and Ors Vs. Public Prosecutor H.C. of A.P AIR 2009 Supreme Court 1603, wherein it is held that :-

“So far as sufficiency of the light for identification of the witnesses to identify the accused is concerned, suffice it to say that they belonged to the same village. They have been fighting litigations for years. It is too much to say that even in that situation the identity of the accused persons would not be known to the prosecution witnesses. All the passengers were sitting in their respective seats for a long time. They boarded the bus at the same place. Their destinations were same. The High Court, in our opinion, has rightly noticed that as the deceased and the accused persons were sitting just behind the seat of the conductor where a light was on, it was possible for the prosecution witnesses to identify the accused persons committing the offence”.

04. Prem Vs. Daula and Ors, AIR 1997 Supreme Court 715, wherein it is held that:-

“Evidence of eye witnesses reliable. Their presence at the place of occurrence proved. Doctor examining deceased expressing some doubt regarding nature of injury and weapon of offence. Since it was forceful blow possibility of deep injury having been caused by it. Accused liable to be convicted”.

05. Mani Ram Vs. State of Rajasthan, AIR 1993 Supreme Court 2453, wherein it is held that:-

“Opinion by doctor that digestion begins in one or one and half hours. Eye witnesses to murder stating that deceased took food at 1030 and was short at 1.30 a.m. presence of undigested food in his stomach cannot be said to believe version of eye witnesses”.

06. Vijay Pal Vs. State (GNCT) of Delhi 2015 Cri.L.J. 2041, it is held that:-

“Oral dying declaration made to brother who immediately rushed to spot that her husband has poured kerosene and set her ablaze is found credible., plea that no such statement could be made by deceased to her brother as she sustained 100% burn injuries. Not tenable”.

07. Yusuf Alamash Daryavardi and Anr Vs. State of Maharashtra, 2005 ALL MR (Cri) 1507, wherein it is held that: -

“Human blood found on clothes of accused. Group of blood could not be identified. Absence of any other defence theory as to how the blood stains appeared on clothes of the accused as well as that of deceased. It is held that, conclusion has to be drawn that the blood stains on the clothes of all the concerned were of deceased which was the result of assault at relevant time and place”.

08. Asok Kumar Chaudhary and Ors Vs. State of Bihar, 2008 ALL MR (Cri) 2013 (SC), wherein it is held that:-

“Incident taking place in market place around 6 p.m. Members of the public were generally insensitive and reluctant to come forward to report and depose about crime. Hence, it would be erroneous to lay down as a rule of universal application that failure to produce public witness can give rise to adverse inference against prosecution”.

09. Malhu Yadav and Ors. Vs. State of Bihar, 2002 AIR SCW 2218, wherein it is held that:-

“Fact that some of the witnesses were relatives of the victim’s family, is no ground to reject their evidence as untrustworthy. What is expected is to analyze and scrutinize the same with due care and caution before accepting or acting upon the same”.

08. On the other hand, the learned Advocates Shri. Devkar and Smt. Vartak submitted that the dying declaration is improbable in view of the nature of the injuries and nature of incident. The eye witnesses are got up witnesses. Their conduct is unnatural. Their statements were recorded after one month. There is no any explanation how rickshaw driver was revealed to the investigating Officer. The different witnesses stated the different facts about the motive. The relevant witnesses Sarika and the resident of building of

deceased are not examined. The information about the admission of injured was not sent by Deenanath Mangeshkar hospital to the police. The CCTV cameras of the hospital were not seized. The CCTV footage showing attendance of the witnesses and actual incident were not seized. The faces of accused persons are not seen in CCTV footage, certificate U/s. 65-B of the Indian Evidence Act is not obtained, the CA reports are not helpful.

09. There are discrepancies about timing of incident, timing of admission of the injured / deceased to Deenamath Mangeshkar hospital, the FIR was manipulated, the evidence of doctor who examined the accused No.1 does not inspire the confidence. It is improbable that within the short span, the accused examined themselves before the medical Officer and wondering on the same road until they are apprehended by the police, the spot panchanama and seizure of articles from the spot are also doubtful as the spot was not protected. All the witnesses are interested witnesses. The sum and substance, it is the argument that there is reasonable doubt from the evidence, conduct of the witnesses and discrepancies. They have also filed written notes of argument (Exh. 167) and placed reliance on the following citations:-

01) Baldev Singh Vs. State of Punjab, AIR 1991 Supreme Court 31, wherein it is held that-

“Statement of accused U/s. 161 is not substantial piece of evidence. Accused cannot be convicted on basis of statement before police”.

02) Ashraf Hussain Shah Vs. State of Maharashtra, 1996 (2) Crimes 309, it is held that:-

“Appellant inflicted blows with dagger on head neck and other parts of the body of deceased. Prosecution relying on evidence of two eye witnesses. Both witnesses were friend of deceased and their conduct is not reporting to the police, the incident was highly unnatural and improbable. Unexplained delay of two days in recording statement of one witness by police U/s. 161 Cr.PC. Contradiction between evidence and version in FIR. Material to indicate that FIR was lodged after deliberation. Conviction unsustainable”.

03) Shivaji Shankara Zagade Vs. State of Maharashtra, 2022 DGLS (Bom) 284, it is held that:-

“There is no evidence that how accused came to be arrested after two days and why his medical examination was not conducted immediately after the arrest as per Sec. 53 of the Cr.PC.”

04) Ishwar Singh Vs. The State of U.P AIR 1976 Supreme court 2423, it is held that:-

“It is well established that witnesses essential to the unfolding of the narrative on which the prosecution is based must be examined”.

05) Bashir Shah and Ors. Vs. State of Rajasthan, 1994 Cri.L.J. 2526, it is held that:-

“Physical and mental fitness of maker, injured an old man of 60 years and receiving as many as 24 grievous injuries, not fit to make any statement, particularly when medical evidence is to the effect that injured’s condition was deteriorating very fast, and in ocular evidence, site plan not showing place from where eye witnesses were alleged to have seen occurrence, omission fatal”.

AS TO POINT NOS. 1 to 4:-

10. To prove the offence of murder U/s. 302 of the IPC, the prosecution has to prove that deceased died

homicidal death. In this case, the homicidal death is not challenged and disputed by the accused persons. Only the question of challenge is, who assaulted the deceased. The prosecution to prove the homicidal death relied on the evidence of Medical Officers who examined the deceased in the hospital of Deenanath Mangeshkar and Medical Officer who conducted the postmortem. The Medical Officer P.W. 13 Dr. Kaustubh Sudhakar Dindorkar (Exh. 122) is the consultant neurosurgeon of Deenanath Mangeshkar hospital. He deposed

“On 23.02.2016, a person by name Sagar Shivaji Shinde was admitted in the said hospital. He was admitted with a history of injuries on head and he was brought to the hospital at about 11.00 a.m. Our hospital had provided the documents regarding treatment and admission of that patient to the police. Now, the bunch of documents collectively marked as Exh.116 is now shown to me. In the document title as ‘ER Case Sheet’, the history of the patient is mentioned. After his admission, patient started undergoing emergency treatment, assessment and was shifted to ICU. Patient had sustained multiple injuries over the head which were lacerated wounds with visible fracture of the skull, some injuries were on chin and abrasions over the neck, trunk and lacerated injuries to the right hand. On 23.02.2016, said patient was shifted out of ICU for having C.T. Scan. As per C.T. Scan report of the whole body, there were fractures on the skull at multiple places in the frontal bone, parital bone and temporal bone. Patient also suffered fracture on nosal bone maxilla and he had some injuries to the spleen and fracture of the right hand amongst other multiple injuries. The injuries mentioned above are possible with an assault with scythe (Koyta) and stone. These injuries can be fatal. After examination, I had treated that patient. Death summary has been given under my supervision.

As per the CT scan report, the pharyngeal and laryngeal airway is well maintained with no evidence of any narrowing, extrinsic impression or indentation. The vocal cords show normal appearances. The thyroid cartilage appears well preserved. No NGT, ETT and CVP line ar sen in situ. It means that there were no internal injuries to the larynx and pharynx. When the patient was admitted in our hospital, he was in an unconscious state of mind. If there

are no internal injuries to the larynx and pharynx of the patient and if he is not unconscious, then such person can speak.”

11. PW. 14 deposed that on 25.02.2016, he received the information from SHO Sonawane about the death of Sagar Shivaji Shinde in Deenanath Mangeshkar hospital and he was asked to perform further formalities. He reached at hospital and effected panchanama of dead body in presence of panchas at Exh. 89. The Medical Officer of Sassoon hospital handed over advance death certificate, letter of viscera and two sealed bottles of viscera. He gave detailed report of the same which is at Exh. 127. The defence has admitted the inquest panchanama and the seizure panchanama of clothes of the deceased.

12. Another doctor P.W. 11 Hemant Vithoba Vaidya (Exh. 112) of Sassoon General Hospital, Pune after examination of dead body of the deceased found following injuries on his person:-

1. Stitches wound present over right frontal region, extending from mid-line up to a point situated 04 cm above right eyebrow, oblique infero laterally, of length 07 cm with 09 staples in situ.
2. Stitches wound present over left side of forehead, extending from a point situated 04 cm left lateral to mid-line, 05 cm above left eyebrow up to a point situated 08 cm above right ear tragus, oblique infero laterally, of length 15 cm with 18 staples in situ.
3. Stitches wound present over right side of forehead, extending from a point situated 01 cm right lateral to mid-line and 15 cm above right eyebrow upto a point situated 06 cm above right ear tragus, oblique infero laterally, of length 16 cm cm 19 staples in situ.
4. Stitches wound present over left side of face, situated over chin, extend obliquely upward and laterally to left side upto a point situated 08 cam left lateral to mid-line and 05 cm below outer canthus of left eye, oblique superolaterally, of length 11 cm with 11 stitches in situ.

5. Two abrasions present over left maxillary region, situated 2.5 cm below left eye, of sizes 02 cm x 01 cm and 01 cm x 0.5 cm, irregular, dark red.
6. Incised wound present over left parieto occipital region, situated 01 cm left lateral to midline and 10 cm above left mastoid, of size 06 cm x 0.5 cm x muscle deep, oblique infero posteriorly, margins clean cut, dark red.
7. Incised wound present over left parieto occipital region extending from mid-line up to a point situated 08 cm above and left lateral to occipital protuberance, of size 06 cm x 0.5 cm X subcutaneous deep, oblique infero laterally, margins clean cut dark red.
8. Incised wound present over right parieto occipital region, situated 02 cm right lateral to mid-line upto a point situated 06 cm above and lateral to occipital protuberance, of size 05 cm X 0.1 cm X subcutaneous deep, oblique infero laterally margins clean cut, dark red.
9. Incised wound present over right parieto occipital region, situated 0.5 cm right lateral to mid-line and 8.5 cm above and right to occipital protuberance, directed below upward of size 4 cm X 0.5 cm X muscle deep, oblique infero laterally, margins clean cut, dark red.
10. Abrasion present over right parieto occipital region, situated 02 cm right lateral to mid-line, of size 02 cm X 01 cm, Irregular, dark red.
11. Abrasion present over left lateral aspect of the neck situated 04 cm lateral to midline and 04 cm below left angle of mandible of size 03 cm of 01 cm, irregular, red.
12. Multiple contusions present over both sides of back, lower 2/3rd, over an area of size 32 cm x 28 cm of sizes varying from 10 cm X 02 cm to 05 cm X 01 cm, irregular, dark red.
13. Contusion present over middle one third of back, extending to both sides of mid-line of size 31 cm X 01 cm, irregular, dark red.
14. Abrasion present over middle one third of back, situated 09 cm left lateral to midline, of size 07 cm X 01 cm, irregular, dark red.
15. Abrasion present over left axillary fold, anteriorly, of size 03 cm X 01 cm, dark red.
16. Abrasion present over left arm middle one third, laterally of size 05 cm X. 03 cm, dark red.
17. Multiple abrasions present over left arm, lower one third, laterally over an area of size 04 cm X 02 cm, of sizes varying from 02 cm X 01 cm X 0.5 cm, irregular, dark red.
18. Incised wound present over left arm, lower one third, ventrally, situated 03 cm proximal to left wrist joint, oblique infero laterally of size 04 cm X 05 cm X subcutaneous deep, margins clean cut, dark red.
19. Multiple abrasions present over right arm, lower one third and elbow, posteriorly over an area of size 06 cm X 04 cm, of sizes varying from 02 cm X 01 cm to 01 cm. x 0.5 cm. irregular, dark red.
20. Stitched wound present over right forearm, upper one third, ventrally, situated 07 cm below elbow joint, oblique infero laterally of length 09 cm with 08 staples in situ
21. Abrasion present over right forearm, laterally situated 02 cm above and medial to injury No. 20 of size 04 cm X 02 cm, irregular, dark, red.
22. Stitched wound present over right forearm dorsally situated 15 cm distal to elbow joint, horizontal, of length 07 cm with 06 staples in situ with evidence of fracture of underlying bone.

23. Stitched wound present over right forearm, dorsally, situated 05 cm distal to injury no 22 and 06 cm proximal to wrist joint horizontal, of length 03 cm with 02 staples in situ.

24. Incised wound present over right hand, dorsally, of size 3.5 cm X 0.5 cm X subcutaneous deep, directing oblique infero laterally towards right hand thumb base, margins clean cut, dark red.

25. Contusion present over right hand dorsum, of size 8 cm.X 06 cm, irregular, dark red.

26. Lacerated wound present over middle phalanx of right hand middle finger dorsally of size 2.5 cm X 0.5 cm X subcutaneous deep, oblique, dark red and

27. Abrasion present over right knee, anteriorly of size 05 cm X 02 cm irregular, dark red.

The injuries mentioned in column No. 17 were antemortem in nature. On internal examination of head, we noticed following injuries as reflected in column No. 19 of the P M. notes.

The description of those injuries is as under:-

1) Undercalp haematoma present over bilateral fronto-parieto temporo occipital region of size 32 cm X 28 cm, irregular, red.

(i) Cut fracture present over right frontal region, of size 07 cm X 02 cm corresponding to injury No. 1 of column No. 17, Dura torned and brain matter oozes out from the injury.

(ii) Cut fracture present over frontal region of size 17 cm X 02cm, corresponding to injury No. 2 of column No. 17, underlying dura torned and brain matter oozes out.

(iii) Cut fracture present over forehead of size 15 cm X 02 cm. corresponding to injury No. 3 of column No. 17, underlying dura torned, brain matter oozes out.

(iv) Linear fracture present over left fronto parietal region of size 0.5 cm X 0.3 cm, oblique extravasation of blood at margin, red

Dura:- Torned corresponding to injury No. 1, 2, 3 of column No. 17.

Brain: Lacerations present over brain corresponding to injuries No. 1, 2 and 3 of column No. 17, Extradural hematoma present over bilateral parietal region of about 100 grams, red Subdural hematoma present over bilateral fronto parieto temporal region of about 200 grams, red. Subgrachnoid hemorrhage present all over brain, red.

2) On internal examination of thorax and abdomen there were no injuries. On completion of postmortem examination, we preserved articles for chemical analysis in two bottles as bottle 1 blood for grouping, bottle 2 – nails from fingers. The bottles were packed, labelled, sealed and handed over to on duty police. We issued cause of death certificate after postmortem examination mentioning cause of death as due to chop injuries. Accordingly, we issued the postmortem examination report. Now, the postmortem examination report is shown to me. It is the same report. It bears my signature as well as signatures

of Dr. A. B. Shinde and Dr. A. A. Taware The contents therein are true and correct. It is marked Exh. 113. Now the advance death certificate is shown to me. It is the same certificate. It bears my signature as well as signatures of Dr. A. B. Shinde and Dr. A. A. Taware. The contents therein are true and correct. It is marked as Exh. 114. My opinion regarding cause of death of deceased Sagar Shivaji Shinde is due to chop injuries The injuries mentioned in column No. 17 and 19 of Exh. 113 sufficient to cause death of a person in ordinary course of nature.

13. The witness was further shown the two stones article F and G and sickle Article D. According to him, injuries Nos. 5, 10 to 17, 19, 21, 25 to 27 mentioned in column No.17 are possible by both stones. The injuries sustained to the head of deceased mentioned in column No.19 and corresponding surface injuries mentioned in column No.17 i. e. 4, 6 to 9, 18, 22, 24 are possible by sickle.

14. Thus, considering the number and nature of injuries, the suicidal or accidental injuries are ruled out. Therefore, the homicidal death of the deceased due to assault and the weapon as deposed by the doctor is proved.

Incident and eye witnesses:-

15. There are 02 eye witnesses examined by the prosecution. PW.4 Jitendra Aher and PW. 5 Datta Koditkar. PW. 4 Jitendra is the friend of the Sagar Shinde, Sunil Malve, Raju Pawar, Santosh Mohite and Rahul Chobe who are resident of Kedar building. The witness was driver and on holiday, he used to go to the Kedar building to meet his friends. On 23.02.2016 at

about 10.00 a.m. after meeting Santosh Mohite and Rahul Choudhary, he came out of the building, he proceeded 100 meter ahead and thereafter he had seen the incident.

16. P.W.5 Datta Sadu Koditkar is resident of Kedar building. The deceased was a distant nephew. On 23.02.2016, at about 10.30 a.m., he was proceeding to approach to his tempo. At that time, he has seen the incident. Both the witnesses somewhat in similar manner deposed that one Mehendi colour Duster car came behind from PW4 overtake him, Duster vehicle gave cut to the Activa, after giving cut, the Activa rider fell down. That Activa rider after falling on ground, rushed towards Rasika Apartment at Balaji Travel. From duster car, two persons alighted, they were Sanjay Mohol and Sambhaji Kamble. Sambhaji Kamble caught hold that Activa rider, Sanjay Mohol assaulted that Activa rider with sickle on his head and hand with same sickle, Sambhaji Kamble then made assault on the head and hand of Activa rider. The Activa rider was Sagar Shinde. Sagar Shinde fell on the ground, then both Sanjay Mohol and Sambhaji Kamble hit stones on the person of Sagar Shinde. Those accused left the sickle on the spot and fled away from the said place in that Duster car. The registered number of car was MH-12/LJ-4747. On seeing that, P.W.4 got afraid and made hue and cry, uttering “खुन झाला, खुन झाला”. Then Satish

Mohite and father of Sagar Shinde came there. They shifted Sagar Shinde to the hospital through hired Auto. P.W.4 identified his signature and proved the contents in the statement U/s. 164 of Cr.P.C. at Exh. 86.

17. P.W.5's version is similar about the manner of incident as deposed by P.W.4. He was also frightened due to said incident. The father Shivaji Shinde, Raju Babu Pawar came there and thereafter Shivaji Shinde, Raju Babu Pawar took the injured to the hospital in auto rickshaw. Both the witnesses identified the sickle Article-D, stones Articles-F and G which were found by them on the spot of incident.

18. The evidence of these two witnesses were challenged on the ground that they are interested witnesses, friend and the relatives. They have not made hue and cry, they have not contacted with father of deceased, they have not attended the funeral and they have not informed this incident to police till their statements were recorded on 02.03.2016 and 01.03.2016. The reliance is placed by the defence and prosecution on the citation in respect of belayed statement of the witnesses.

19. From the judgments of the Division Bench of Hon'ble Supreme Court, it is ruled down that recording of delayed statement itself is not a ground to discard the evidence of the eye witnesses. If there is an

explanation which is plausible and the evidence is cogent, believable, the eye witnesses whose statements recorded, delayed can be relied on. Thus, the appreciation of such evidence of the eye witnesses defers from case to case and there is no any straight jacket formula. So it is to be seen whether the evidence of these witnesses can be discarded only on the ground of belated statements on 02.03.2016 and 01.03.2016.

20. The incident occurred on 23.02.2016 around 10.30 a.m. on the public road near Rasika Apartment. Two persons assaulted the deceased in such a manner that it was intention and knowledge that death would be the result of beating incident. The deceased was assaulted by sickle and two stones. The injuries sustained by the deceased show that how brutally he was murdered. In such circumstances, fear in the mind of witnesses who had seen the incident was but natural. Time and again the Hon'ble Supreme Court and High Court have observed that in such type of brutal murder cases on public places, nobody comes forward to give evidence against the culprit. The time and place of incident clearly indicates that the incident must have seen by number of witnesses but only two witnesses has come forward. They have explained that due to incident, they fear, they were frightened. P.W. 4 was out of station, and therefore, there was delay for approaching them to the police station. Both of these

witnesses approached on their own accord to police station. The delay of 7 to 8 days in reporting the incident to police having regard to the manner of incident and fearful condition cannot be seems to be unreasonable, unexplained delay.

21. P.W. 4 being a friend and P.W.5 being a distant relative cannot be said to be the interested witnesses to falsely implicate the accused, as they were not having any enmity against the accused. What was the enmity between the deceased and the accused would be discussed later on.

22. When the incident take place at the places where it is not noticeable by general public, there is darkness or it is committed within a houses or closed premises then in that case, on doubt, there may be falsely implication by the relatives or friends. There is no such position in this case. Non disclosure of incident to father or police prior to the statement is also due to the fear. In such type of delayed statements, the Court has to see whether there is any corroboration to the evidence of such witnesses. In view of the above cited cases of Hon'ble Supreme Court, I am not inclined to discard the evidence of these two witnesses holding that they are the got-up witnesses to support the prosecution.

Dying Declaration:-

23. There are 04 witnesses related to the dying declaration. PW.1 Shivaji Shinde is the father of deceased. His evidence disclosed that at about 10.30 a.m. when he came in the parking in their building, the people from their building were running towards Rasika Apartment by saying that somebody assaulted. He rushed towards said apartment. His son Sagar was lying in blood of pool in front of hotel Welcome India and Balaji Tavel. He had sustained injuries by sharp weapon on his head and right hand. The sickle and stone with bloodstained were lying on the spot. He took his son to Deenanath hospital in auto with help of Raju Bapu Pawar. On the way to hospital, his son told that, before 03 days, there was quarrel with Sanjay Mohol and Sambaji Kamble. They both came by duster 04 wheeler bearing registration No. MH-12/LJ-4747 and assaulted on his head and right hand by sickle and also gave a blow of stones and caused grievous injuries. Thereafter, they ran away by the said car. After some time, police came to hospital and inquired. Thereafter, he lodged the complaint in Alankar police station. He proved Exh. 24 and Exh. 25.

24. P.W.3 supported the evidence of above witness. He also rushed there, father came after him, he saw deceased lying there, bloodstained sickle and

bloodstained stones were also seen. He and father Sagar Shinde took the deceased in an auto to Deenanath Mangeshkar hospital. Sagar told them in rickshaw the incident as narrated by the father.

25. P.W. 7 Pandurnag Ganesh is the rickshaw driver. According to him, at the spot of incident, two persons stopped his auto rickshaw. Those two persons put injured in the auto rickshaw, thereafter he reached with all these 03 persons to Deenanath Mangeshkar hospital. The injured was un-boarded from auto rickshaw, thereafter he left the premises. On 08.03.2016, he was inquired.

This witness was not having concerned with the deceased and the accused persons. He has also not connected with the police. He was auto driver in whose rickshaw, the injured was taken to hospital. The eye witnesses, the witnesses on dying declaration clearly stated that the injured was taken in the auto. In the investigation, the investigating Officer has traced out the auto rickshaw driver and recorded his statement. Only because it has not come on record how I.O. has traced out him, his evidence cannot be disbelieved as argued by the defence.

26. P.W.10 Sunil Baban Malve is also resident of Kedar Empire building. Hearing the shouts, he came down to the spot of incident. He came to know that

Sagar Shinde was assaulted and he was taken to Deenanath hospital. Sagar was in ICU. Shivaji, the father of Sagar met him there. He told him that Sagar was assaulted by Sanjay Mohol and Sambhaji Kamble. He returned back to his house after waiting there for some time.

27. The dying declaration and evidence of father and P.W. 3 were challenged on the ground that looking to the injuries sustained by the deceased, he was unconscious when admitted in Deenanath hospital, it was impossible for him to narrate the incident mentioning the details of the vehicle. The reliance is placed by both the sides on the citation at Sr. No. 6 of the prosecution and at Sr. No.5 of the defence as referred above.

28. From the evidence of above witnesses and Medical Officer of Deenanath Mangeshkar hospital, it is seen that incident occurred at around 10.30 a.m., immediately father and Raju Pawar came to the spot, took injured in auto of P.W.7 to Deenanath Mangeshkar hospital, they reached there around 11.00 a.m. So there was a 30 minutes. During that period, whether the deceased was able speak, it is to be seen.

On this point, evidence of P.W. 11 and P.W. 13 is relevant. In cross-examination, P.W.11 was referred the death summary and injuries mentioned in the death

summary. He was also cross examined about muscles of the throat and cheeks and the movements of tongs in paragraph No.5. He denied that on sustaining such injuries, the central nervous system immediately get damaged. P.W.13 specifically stated that the position about the vocal cord, thyroid cartilage, NGT, ETT and CVP, no internal injuries to larynx and pharynx. The specialist who examined the patient deposed that if there are no internal injuries to larynx and pharynx to patient, if he is not unconscious, then such person can speak. The witness unable to state whether the said patient might have become suddenly unconscious immediately after the alleged assault. He further stated that it may not be entirely correct to say that due to such an assault, immediately the patient could not speak at all. From the evidence of this witness, it is clear that the deceased was able to speak if he was not unconscious.

29. In such situation, the evidence of father and Raju Pawar cannot be disbelieved because within a short span of incident, deceased was put in auto rickshaw. It is but natural for the father to inquire with the deceased and deceased narrated the incident. The Court cannot disbelieve that dying declaration and evidence on the ground that it was not possible for the deceased to depose the description of the vehicle. When the incident took place, the assailants were known by

deceased. The vehicle was also seen by deceased. Therefore, narrating of the description of the vehicle including the number cannot be an impossible fact.

30. The Hon'ble Supreme Court in the above cited case of prosecution, observed that in case of 100% burn injuries, the evidence of dying declaration cannot be disbelieved on the ground of nature, number and percentage of injuries. In our case, the evidence of Neuro surgeon is important in that aspect and therefore, I am of the view that the dying declaration is believable.

31. The auto rickshaw driver has not stated about the dying declaration. Whether he was supposed to hear the conversation between three persons in the auto rickshaw on the passengers seat, the answer is 'no'. He was professional person. He was having concentration on his driving. Therefore, non deposed by him any conversation or specifically dying declaration is not fatal to the case of prosecution.

32. The evidence of P.W.10 is relevant about immediately in the hospital, the father informed him that his son was assaulted by both of the accused. Beside the dying declaration, the father was not having any knowledge about assailants, and therefore, that fact is also corroborates about the dying declaration.

33. I have gone through the facts in cited cases of the defence. The nature of dying declaration and the person to whom dying declaration was made was totally different, and therefore, it was not accepted in that case.

First Information Report:-

34. P.W. 15 Bhagwat Gunaji Misal was attached to Alankar police station as Sr.PI. on that day Crime bearing No. 33/2016 was registered on the basis of information lodged by Shivaji Namdeo Shinde. Shivaji Namdeo Shinde has proved the FIR (Exh. 24) and printed FIR (Exh. 25). P.W.17 reduced into the writing that FIR. He registered the Crime No. 33/2016. The printed FIR disclosed that on 23.02.2016, around 13.00 Hrs. the information was received to the police station and General Diary Reference No. 14/2016 was taken. Initially it was registered U/s. 307 of the IPC. In the FIR, the informant clearly stated about the dying declaration.

35. The learned Advocate for the defence pointed out that there was discrepancy about timing of admission of the deceased in Deenanath Mangeshkar hospital. The death summary (Exh.116) reveals that date and taking of admission 23.02.2016 at 12.02 noon. It has come in the evidence of doctor that the patient was admitted in the hospital at 11.00 a.m. In cross-

examination it has come that the witness firstly saw the patient at 12.00 O'clock on 23.02.2016. As per the evidence of P.W.1, 22 to 25 minutes were required for reaching to Deenanath Mangeshkar hospital. Considering all these aspects, there is no doubt that the injured was brought in the hospital around 11.00 a.m. After completing the necessary formalities, he was admitted and thereafter at 12 noon, P.W. 13 examined him. Thus, there is no any doubt that incident took place around 10.30 a.m., he was hospitalized at around 11.00 a.m. and FIR was lodged at 01.00 p.m.

36. The receipt of information about the assault was made and injured was taken to the hospital does not mean that it was first information report. P.W.16 in cross-examination admitted that on 23.02.2016, at about 10.30 to 11.00 a.m., he visited the spot, he was present there for about half an hour. On the basis of this fact, it was the argument of the defence that the crime should have been registered by P.W. 16. I am not inclined to accept this argument on the ground that it was the duty of the police Officer to rush the spot of incident where such type of offence was occurred. It is the responsibility of the I.O to take necessary steps in respect of sending the injured to hospitalization, to keep the spot of incident as it is and therefore, the P.W 16 was not supposed to lodge the report on the initial information of assault. In view of this position, it is not

acceptable that FIR was lodged by the father cannot be treated as FIR but it should be treated as statement U/s. 161 of the Cr.P.C. as argued by the defence.

Spot of incident:-

37. PW. 2 Ajay Ramesh Nivangune is the panch and P.W. 17 Ganesh Bhagwat Mane PSI /I.O. conducted the spot panchanama. P.W.17 Ganesh went to spot of incident at 13.10 Hrs. The letter about proceeding to spot is proved at Exh. 151. He called I-Car. PW.2 Ajay Ramesh Nivgune Government servant was directed on request of the police to act as a panch witness. He went along with police on the spot of incident. PSI Mane, other panch witness Madhare and one person by name Shivaji Shinde were there. Shivaji Shinde narrated the incident mentioned the name of accused. He showed the spot of incident in front of Welcome India Snacks Centre and in front of Balaji Travels.

At the spot, one sickle having bloodstained, and hairs lying on the chamber, one big stone with bloodstains, one more stone with bloodstains, one gray colour bloodstained sport shoe were lying on the spot. Police seized all the articles. Those were wrapped in brown paper, police affixed label with brown paper, panchanama was prepared at Exh. 47. He identified sickle (Article-D), gray Colour

shoe (Article-E), two stones one small and one big (Articles- F and G), map was also prepared and panchanama was conducted. The spot panchanama disclosed that total 08 articles were seized. The map is also there. In view of the oral evidence of both the witnesses and the documentary evidence, the spot of incident and spot panchanama are proved.

CCTV footage and seizure of DVR:-

38. The concerned witnesses are P.W.8 Gautam Mahadev Ghanvazir, P.W.9 Istiaz Shaikh and P.W. 17 Ganesh Bhagwat Mali I.O.

It has come in the evidence of P.W. 17 I.O. that they came to know about there were CCTV on the shop namely Shram Safalay Sweets of accused. He called two panchas. In presence of panchas, the CCTV footage were verified, it was found that incident was captured in camera No.2. P.W.9 deposed that on 23.02.2016, he was called by Police Officer Shri. Mane, he was called in front of Rasika Apartment. He went there between 02.30 p.m to 02.45 p.m. Shri. Mane and two panchas were present there. They went in Shram Safalay Bakery and Ice cream Parlour. There was a boy namely Akash Pawar. They noticed CCTV cameras there. They went inside the bakery. There was CCTV footage recorded through camera No.2, the time of those CCTV footage were 10.30 a.m. to 11.00 a.m. and second

segment was 11.00 to 11.34 a.m. Mane asked him to collect those footage in pen drive. Accordingly, footage were collected in pen drive. The DVR was of Sprash Prime. Police seized that DVR at that time. Police prepared panchanama of entire business. The panch witness also corroborated this fact. The panch witness proved the panchanama (Exh. 97). The DVR was identified (Article-L). He identified paper label having his signature (Article L-1). P.W.9 and P.W.17 also identified that DVR. In the panchanama (Exh. 97), only one DVR of black colour Sparsh Prime H-264 model No. SX1104 was seized. At the time of description and value of that DVR, DVR Sparsh prime H-264 model No. 561104 is shown. So there is discrepancy about figure SX and 56 at respective places. On the basis of this discrepancy, it cannot be said that two DVRs were seized because the entire panchanama shows that there was only one DVR and except the above two figures, the remaining description is the same, and therefore, there is no merit in the argument that two DVRs were seized.

39. The original DVR of Sprash Prime SX-1104 which was seized run before the Court on the computer of the Court. It has come in the evidence of P.W.17 that in CCTV footage at time 10:55:59, two persons were seen chasing a person and those two persons were beating that person. At 10:56:32, it is seen that out of those two persons, one person went

towards other side from below the camera uplift one big stone and goes in front of the camera. Those two persons seen in the above CCTV footage are the accused in this case. Out of those persons, one person is having sickle in his hand and he was beating that another person by sickle. The person who lifted the stone is accused Sambhaji Kamble. All the above facts are seen in the CCTV footage recorded in Camera No.2. He identified the accused before the Court being the same Sanjay Mohol and Sambhaji Kamble. In cross-examination, the witness was suggested that the faces of those two accused were not seen. It was also suggested that except footage of camera No.2, footage of other camera was not seized. He explained that entire DVR is seized in which all the CCTV footage were captured.

40. DVR is the preliminary evidence. That DVR was seized and the CCTV footage in the DVR were seen in the Court in presence of defence lawyers. Therefore, for seizure of DVR and proof of CCTV footage from the DVR, no certificate U/s.65-B of The Indian Evidence Act is necessary. As primary evidence is before the Court, certificate U/s.65-B of the Act required for secondary evidence was not necessary. It is important to mention that CCTV footage is of the camera on outer side of the shop of the accused.

41. The relevant facts about two persons and person beaten by those two persons are captured in CCTV footage. If the relevant aspects were not captured in CCTV footage, those are not important. It is also important to note that if all the facts from start of incident till end of incident had been captured in CCTV footage, definitely it would have been seen by the investigating officer at that time and before the Court. Therefore, CCTV footage as deposed by the witnesses are relevant and important. So, the CCTV footage, seizure of DVR, finding of two accused and injured in that footage are proved.

Arrest of the accused:-

42. PW.16 Vijaykumar Appasaheb Shinde is the Investigating Officer. On 23.02.2016, after registration of crime No.33/2016, further investigation was assigned to him. He proceeded Chandni chowk area for investigation by taking entry in station dairy (Exh. 142). He conducted search of accused in that area. He found Duster car bearing No. MH-12/LJ-4747 on Chandni chowk to Paud road. As they moved towards the Duster car by alighting from their car, two accused persons attempted to run away from Duster car. They chased them and caught-hold them. On inquiry with them, they told their names as Sanjay Mohol and Sambhaji Kamble. They found blood stain on the clothes

wore by them. He also found some injuries on their fingers. They took them in the custody and brought them to police station. On inquiry with them, they confessed of having committed the crime. Therefore, he took custody of car in presence of two panch witnesses and their personal search was also conducted. A panchanama (Exh. 48) was prepared. He also proved Exh. 143. He sent both accused to Sassoon hospital for their medical examination. The station diary entry (Exh. 144) is proved. It was reported to him that Medical Officer in Sassoon hospital admitted accused Sanjay Mohol and another accused was kept in police locker. He identified the report about that at Exh. 145. He identified the panchanama Exh. 90. After the death of injured Sagar, he added the offence U/s. 302 of the IPC. The report is at Exh. 146. He identified both the accused in the Court.

43. P.W.2 Ajay Ramesh Nivangune panch witness deposed that on 23.03.2016 at about 04.00 p.m. police called him in police station, another panch was Rajendra Mandhare. Police staff and accused were there. Accused told their names as Sanjay Mohol and Sambhaji Kamble. Both accused were having injuries on their fingers of right hand. There was bandage of fingers of right hand of both the accused. Accused Sanjay Mohol showed his car of Duster company. Both accused gave their bloodstained clothes to the police. Light blue

colour shirt of half sleeves with lining and chocolate colour pant are of accused Mohol, white colour shirt and blue colour jean pant are of accused Sambhaji. He proved the panchanama at Exh. 48. He identified those clothes as Articles- H, I, J and K. He also identified both accused present before the Court. The evidence of investigating Officer and the panch witness is corroborated by the personal search and arrest panchanama (Exh. 48).

44. The learned Defence Advocate submitted that it is unbelievable that the accused were moving on the road giving opportunity to the police Officer to arrest them. This argument is not acceptable on the ground that the prompt action was taken by the I.O. PW. 16. From the report, the description of the car and name of the accused were in the knowledge of I.O., therefore, after noticing the Duster car, the investigation Officer apprehended the accused.

45. The learned Advocate for the defence has submitted that Sec. 53 of the Code of Criminal Procedure, 1973 is not followed. The accused was not sent for medical examination. The documents about medical examination of accused are not on record and the doctor who examined the accused after the arrest is not examined. What the investigating officer proved that that station diary entry Exh.144 which was taken in

respect of sending the accused for medical examination. It is also deposed that accused Sanjay Mohol was admitted in Sassoon hospital and another accused was kept in the locker. If the accused had been sent to the medical examination, the document should have been brought on record, so it is the lapsed on the part of Investigating officer. This aspect was not challenged before the Magistrate Court when accused were produced. The negligence of the I.O. cannot affect the prosecution case if there is a cogent and believable evidence.

Subsequent conduct of the accused:-

46. As the accused were having bandage on their hands, the I.O. inquired with them and after that, they visited doctor Shririshkumar Vishnupant Dharaskar (P.W. 6). His deposition disclosed that on 01.03.2016, police had come in his hospital along with both accused. Thereafter he clarified that only one accused on 26.02.2016 had taken treatment in his hospital at Gotawade phata around 11.30 a.m. Said accused had injury to his right hand. On inquiry, accused told him that his vehicle slept, and therefore, he suffered injury. When the witness was not convinced about injury and asked him about another reason, accused said that he should just applied dressing to his injury. Both injuries were sharp. The witness applied dressing to said

injuries and gave T.T. injection to said accused. Both accused left his hospital. The xerox copy of the original register was exhibited at Exh. 93 as secondary evidence. In that register, there is name of Sanjay Mohol.

Having gone through the cross-examination, it is seen that the witness was cross examined in detailed, but there is nothing brought on record to disbelieve the document (Exh. 93) and the evidence of the Medical Officer. In that extract, the name of Mohol Sanjay is specifically mentioned, Rs. 200/- were paid, dressing and injection are noted down. In that register, some of the expenses of Tea, snacks are mentioned. But only because of that, that document cannot be seen with doubt. The evidence of this witness is also supported by the personal search and arrest panchanama about dressing of one of the accused. Dressing of another accused was not done by this witness. By whom it was done is unanswered. But it will not make a difference about evidence of visiting of two accused to hospital, Sanjay Mohol was checked by him and medically treated him.

47. The accused has totally denied the involvement in the offence. So it was not the duty of prosecution to explain the injuries on the person of accused. The accused having the injuries on his person and there was bandage on his hand, both the facts were

in his exclusive knowledge. Therefore, he ought to have explained those facts, but he had not explained those facts. Looking to the incident around 10.30 a.m. accused was examined around 11.30 a.m., both accused were arrested while in the duster car on the same day in noon hours, all these facts connect them to the incident and it reveals that in the incident, the injuries must have sustained by the accused.

Motive of the offence:-

48. P.W. 10 Sunil Malve specifically deposed that he knows Sanjay Mohol and Sambhaji Kamble by faces. Sanjay Mohol was running bakery and dairy by name Swami Samarth in Rasika Apartment. Said Sanjay was on visiting terms with lady Sarika, on second floor of Kedar Apartment. Prior to two years of incident, in his presence, Sagar Shinde asked Sanjay Mohol, not to come in the said building. Thereafter also, Sanjay Mohol was on visiting terms. One and half years prior to incident, verbal altercation had taken place between Sagar Shinde and Sanjay Mohol, at that time, he himself Amol Jadhav and Santosh Mohite were there. In that incident, Sagar had assaulted Sanjay Mohol. Out of that anger, Sanjay Mohol might have assaulted Sagar Shinde. He also know Sambhaji Kamble, who used to sit in the bakery of Sanjay Mohol. He identified both the accused.

49. The eye witnesses P.W. 4 and 5 in their deposition also deposed about these facts. P.W.1 deposed about the dying declaration in which the deceased narrated them about; before 03 days, there was quarrel with Sanjay Mohol and Sambhaji Kamble. P.W.3 Raju Pawar also resident of Kedar Empire building deposed about the relations between Sanjay Mohol with one woman, the quarrel between deceased and both the accused etc.

50. The I.O. has not recorded the statement of Sarika, the woman with whom the accused Sanjay Mohol was having illicit relations. That was a relevant witness to prove the illicit relationship. It is to be considered whether a woman resident of the same building of Kedar, is ready to give the statement admitting her illicit relations. The statement of the resident of Kedar building are recorded and in which they have specifically stated the relation of Sanjay Mohol with that woman, nuisance of that aspect to the resident, accused were apprised, there was quarrel between accused and deceased, so there is no any reason not to accept the deposition of all these witnesses about illicit relations with that lady.

51. The DVR having CCTV footage was of the accused No.1 Sanjay Mohol's bakery. So there was no

any point to record the statement of him. Not recording the statement of employee whose name was stated by I.O. does not make effect on the seizure of DVR which is duly proved and run before the Court.

CA reports, finding of the blood on the accused clothes, sickle:-

52. P.W.15 retired Senior P. I. is one of the Investigating Officers. It reveals from his evidence that on 27.02.2016, PSI Mane was ordered to get done medical examination of the accused. The office order is proved at Exh. 129. He also proved Exhs. 130 and 131, letters to Sassoon hospital for collection of blood sample of both accused after blood test. On 29.02.2016, he sent the seized property to the RFSL for getting chemical examination of articles. That letter is proved at Exh.120. The muddemal was sent through P.C. Shri. Chavan. There is acknowledgment of RFSL on that Exh. 120. The CA reports are proved at Exh. 135 to 138 as per the provision of Sec. 294 of the Cr.P.C. He filed the charge-sheet. The findings of CA reports are as under:-

01.Description of parcel/s

Two sealed bottle seals intact and as per copy sent. Description of articles contains in the parcel/s:-

1. Blood in a plastic bottle labelled – sugar Shivaji Shinde (MLPM No. 914/16) and
2. Nail Clippings in a plastic bottle labelled – Sagar Shivaji Shinde (MLPM No. 914/16).

Result of analysis:-

Exhibit (2) is stained with bloodstained Species origin and blood grouping results are as follows:-

Exh No.	Blood /semen	Species origin	ABO grouping
1	Blood	Not attempted	Inconclusive.
2	Blood	Human	Inconclusive

Description of parcel/s

One sealed cardboard box, seals intact device undecipherable.

Description of articles contains in the parcel/s:-

1. Blood in a phial labelled. In R.L.Sanjay Anant Mohol, MLC No. 431/16

Exhibit (1) in a cardboard box.

Result of analysis:-

Blood group of exhibit (1) cannot be determined as the results are inconclusive.

Description of parcel/s:-

One sealed cardboard box, seals intact device undecipherable

Description of articles contains in the parcel/s:-

1. Blood in a phial labelled. In R.L.Samhaji Sadashiv Kamble, MLC No. 2128/16.

Exhibit (1) in a cardboard box.

Result of analysis:-

Blood group of exhibit (1) cannot be determined as the results are inconclusive.

Description of parcel/s

Thirteen sealed parcels, seals intact and as per copy sent...

Description of articles contains in the parcel/s

1. Koyta wrapped paper labelled A,
2. Shoe wrapped paper labelled – B,
3. Small cloth piece wrapped paper labelled – C,
4. Small cloth piece wrapped pape labelled – D
5. hair wrapped paper labelled – E,
6. Small cloth piece wrapped paper labelled – F,

7. half shirt wrapped paper labelled – G,
8. Full pant wrapped paper labelled – H,
9. Half shirt wrapped paper labelled – I,
10. Full pant wrapped paper labelled – J,
11. Half shirt (cut) wrapped paper labelled – K,
12. Sando Banian (cut) wrapped paper labelled – L,
13. Full pant wrapped paper labelled – M.

Result of Analysis

Exh No.	Blood /semen	Species origin	ABO grouping
1	Blood	Human	Inconclusive.
2	Blood	Human	Inconclusive
3	Blood	Human	Inconclusive.
4	Blood	Human	Inconclusive
5	Blood	Human	Inconclusive.
7	Blood	Human	Inconclusive
8	Blood	Human	Inconclusive.
9	Blood	Human	Inconclusive
10	Blood	Human	Inconclusive.
11	Blood	Human	Inconclusive
12	Blood	Human	Inconclusive.
13	Blood	Human	Inconclusive

The result of the morphological and microscopic examination of hair as follows:-

Exhibit (5) is human hair.

53. From the report of CA specifically Exh. 138, the human blood was found on sickle and the clothes of deceased and accused persons. This aspect is also relevant and supporting the prosecution case. The human blood found on the sickle reveals that it was used in the commission of offence which was seized from the spot of incident. How the human blood was found on the clothe of accused was required to be

explained by the accused, but it was nowhere explained. So, it is also one of the points against the accused.

Contravention of provision of The Bombay Police Act and Arms Act:-

54. The charge was framed against the accused U/s. 37 (1) R/w. 135 of the Bombay Police Act. In that regard, the prosecution examined P.W.18 Chagan Hilal Wakde. His evidence indicates that on 11.02.2016, he was attached to Police Commissioner Office, Pune as Additional Police Commissioner, Crime and having charge of Jt. Police Commissioner, Pune, One proposal was received to their office from DCP (Special Branch) regarding extension of notification issued U/s. 37 (1) (3) R/w. 135 of the Bombay Police Act. On the basis of that proposal and having the power of Competent Authority, he issued order U/s. 37 (1) (3) from 13.02.2016 to 26.02.2016 for 14 days. It was the preventive order preventing the persons to carry articles or material mentioned. In that order, prevention of articles used for the commission of bodily offences were ordered. That order is dated 11.02.2016. It is at Exh. 161. The above order was circulated to various police stations and published in official Gazette of Pune. The incident occurred on 23.02.2016 during the period from 13.02.2016 to 26.02.2016. Thus, prohibitory order U/s. 37 (1)(3) R/w. 135 of the Bombay Police Act, Exh. 161 is proved.

55. So far as offence U/s. 4 R/w. 25 of the Arms Act, there is no evidence about any notification in the official gazette issued by the Central Government directing that this section shall apply to Pune and thereupon, no person shall acquire, have in his possession, or carry in that area Arms of such class or description as may be specified in that notification. Therefore, in absence of notification of Central Government, Sec. 4 R/w. 25 of the Arms Act is not attracted.

Offences:-

56. From the evidence on record, it has come that, both the accused were convinced by the occupants of the society not to come in the society. Accused No. 1 was beaten. Accused No.2 is the friend of accused No.1. Both of them came in the Duster car along with sickle. They assaulted the deceased with sickle and stones. They fled away from the spot together. They were arrested together from the Duster car. So all these aspects are sufficient to prove that it was the common intention of both the accused to commit the murder of deceased.

The assault on the deceased by both the accused is proved by the corroborating evidence of eye witnesses, witness on dying declaration, medical evidence about nature of injuries and weapons by which

those were inflicted. There is also evidence supporting to the prosecution case about subsequent conduct of accused taking the treatment on the injuries sustained in the assault. On the same day, accused were arrested. Accused are seen in CCTV footage in the camera of accused No.1. The DVR and CCTV footage are proved. The CA reports are also supporting about finding of bloodstained on the sickle and clothes of the deceased and accused. The blood was human blood. There was no any explanation by the accused about why they were in the same Duster car, why there were injures on their persons, why there were bloodstained on their clothes. There is a motive to both of the accused to commit the murder. There is prohibitory order under Bombay Police Act for carrying the weapon i.e. sickle. Therefore, the cumulative effect of all these aspects is that the prosecution succeeded to prove the offence U/s. 302 R/w. 34 of the IPC and U/s. 37 (1) (3) R/w. 135 of the Bombay Police Act beyond reasonable doubt. My findings to point Nos. 1, 2 and 4 are in the affirmative.

57. As there is no any notification about Sec. 4 of the Central Government, hence, offence U/s. 4 R/w. 25 of the Arms Act is not proved. My finding to point No. 3 is in the negative. The accused are held guilty for the offences U/s. 302 R/w. 34 of the IPC and U/s. 37 (1) (3) R/w. 135 of the Bombay Police Act. So as this

stage, accused are required to be heard on the point of sentence.

Pune

(**Mahendra K. Mahajan**)

Date: 23/03/2026

Sessions Judge, Pune.

58. Heard both the accused. Accused No.1 Sanjay Mohol submitted that he has not committed any offence. Accused No.2 Smbhaji Kamble stated that he has not committed any offence and he has been implicated falsely.

59. The Ld. Advocate Shri. S. B. Deokar submitted that it is not the rarest of rare case, hence, minimum punishment is attracted. On behalf of Ld. Advocate Smt. Varkat, Advocate Shri. Deokar submitted that the minimum punishment prescribed for the offence is attracted.

60. Learned Public Prosecutor Shri. Bombatkar submitted that the offence was committed on the day hours, it was committed on public place, the nature and number of injuries reveals that deceased was murdered brutally by giving number of blows. Before the court, there is no repentance seems from the accused behaviour. He submitted that looking to gravity of the offence, considering the injuries, the life imprisonment up to the natural death may be imposed against both of the accused.

61. It is rightly pointed out by Shri. Devkar that it is not a rarest of rare case for attracting the death penalty. Even learned Public Prosecutor has not sought that penalty of death. So it is only to be considered whether the life imprisonment or life imprisonment up to natural death is attracted. I have gone through the facts, circumstances and evidence on record. The age of the accused was 39 years of accused No. 1 and 27 years of accused No. 2 was at the time of the offence. So more than half of the entire life is to be lived by them if normal life is considered as 60 years. Considering the general age of death more than 65 to 70 in Indian society, more than 40 years life is remained of them. It is not argued by both of the accused or Advocate of the accused, but it seems that both must have been married and having families considering their age, they also must have the parents. In such circumstances, I am of the considered view that, the life imprisonment up to the natural death is not attracted. Therefore, life imprisonment along with fine amount of Rs. 25,000/- each, in default of fine amount, 02 years rigorous imprisonment is attracted for the offence U/s. 302 R/w. 34 of the IPC.

62. So far as offence U/s. 37 R/w. 135 of The Bombay Police Act, both the accused are sentenced to suffer the simple imprisonment of one year and fine amount of Rs. 2,000/- each. In default of fine amount,

they shall suffer further simple imprisonment of two months. My finding to the point is accordingly. Hence, the order:-

ORDER

1) Accused **Sanjay Anant Mohol and Sambhaji Sadashiv Kamble** are hereby convicted vide Section 235 (2) of the Cr.P.C., for the offences punishable under sections 302 R/w. 34 of the Indian Penal Code, 1860 and U/s. 37 (1) (3) R/w. 135 of the Bombay Police Act.

2) Accused **Sanjay Anant Mohol and Sambhaji Sadashiv Kamble** are hereby convicted, vide Section 235 (2) of the Cr.P.C., for the offence punishable under section **302 R/w. 34 of the Indian Penal Code** and sentenced to suffer imprisonment for life and shall also be liable to pay fine of **Rs. 25,000/-** (Rs. Twenty Five Thousand only) each, in default to suffer 02 (two) years rigorous imprisonment.

3) Accused **Sanjay Anant Mohol and Sambhaji Sadashiv Kamble** are hereby convicted, vide Section 235 (2) of the Cr.P.C., for the offence punishable under section **37 (1) (3) R/w. 135** of the Bombay Police Act and sentenced to suffer simple imprisonment for **one (one) year** and to **pay fine of Rs. 2,000/- each**, in default of fine amount, they shall suffer simple imprisonment of **two months**.

- 4) Both the sentences shall run concurrently.
- 5) Accused **Sanjay Anant Mohol** and accused **Sambhaji Sadashiv Kamble** are hereby **acquitted**, vide Section 235 (1) of the Cr.PC., for the offence punishable under section 4 R/w. 25 of the Arms Act.
- 6) The period of detention of accused No.1 Sanjay Anant Mohol from 23.02.2016 till 03.05.2024 and accused No.2 Sambhaji Sadashiv Kamble from 23.02.2016 to 28.11.2024 respectively undergone by them during the investigation and the trial shall be set off under section 428 of Cr.PC.
- 7) Out of fine amount deposited by the accused, Rs. 25,000/- fine amount be paid to the legal heirs of deceased Sagar. As the compensation to the legal heirs of the deceased is not sufficient from the fine amount, the District Legal Services Authority, Pune is recommended to consider the payment of compensation under section 357 (A) (3) of the Cr.PC. to be paid to the father of the deceased and children of deceased.
- 8) Following properties Viz:-
- (a) Article -A White coloured half sleeves bloodstained shirt; Article -B - Blue coloured jeans pant; Article-C-White coloured baniyan; Article-E-Grey colour shoes; Articles-F and G Two stones–1 small and 1 big; Article-H Blue coloured shirt; Article-I- Chocolate coloured pant; Article-J-White coloured shirt; Article-K-

Blue coloured jeans; M and N-02 CDs with CCTV footage copied, being worthless be destroyed as per the rules.

(b) Article – L DVR be given to owner i.e. accused No.1 Sanjay Anant Mohol as per the rules.

(c) Article ‘D’ sickle, be sent to the District Collector for its disposal according to law.

The properties be disposed of after the appeal period is over and after confirmation that there is no pending appeal or delay condonation application for filing appeal.

The copy of the judgment be supplied to the accused free of costs.

Sessions Case No. 387/2016 is disposed of accordingly.

(The judgment declared in open Court.)

Pune
Date: 23/03/2026

(**Mahendra K. Mahajan**)
Sessions Judge, Pune.