

Received on	13/02/2013
Registered on	13/02/2013
Decided on	15/03/2019
Duration	Ys Ms Ds 06 01 02

IN THE COURT OF SESSIONS, AT : SATARA

(Presided over by R.D.Deshpande, Additional Sessions Judge)

Sessions Case No.26/2013

CNR-MHST01-000334-2013

Exhibit No.

State of Maharashtra,	}	
Through Satara City Police Station,	}	<u>Prosecution</u>
Satara.	}	

Versus

- | | | | |
|----|---|---|----------------|
| 1. | Ramashish Ramjatan Yadav, | } | |
| | Age : 32 Years. Occu. Furniture Business, | } | |
| | R/o. Rautpar Thana Jagaha, | } | |
| | Taluka – Basgaon, District-Gorakhpur, | } | |
| | Uttar Pradesh, Now Residing at-Near | } | |
| | Kanase Dhaba, Behind Shivraj Petrol | } | |
| | Pump, Godoli, Satara. | } | |
| 2. | Vishnunand Ramai Yadav, | } | |
| | Age : 36 Years. Occu. Scrap Business, | } | |
| | R/o.42/3, Deshmukhnagar, | } | |
| | Godoli, Satara. | } | |
| 3. | Sarwan Ramnaresh Yadav, | } | <u>Accused</u> |
| | Age-25 Years. Occu. Scrap Business, | } | |
| | R/o.Sadaiyaa, Post-Karaiyya, | } | |
| | Taluka Itava, District-Siddharthnagar, | } | |
| | Uttar Pradesh, Now Residing at | } | |
| | Deshmukhnagar, Godoli, Satara. | } | |

- | | | | |
|----|---|---|----------------|
| 4. | Arvind Bhavara Paswan, | } | |
| | Age – 22 Years. Occu. Centering Business, | } | |
| | R/o. Deshmukhnagar, Godoli, Satara. | } | |
| | Permanent Resident of Mullupur, | } | |
| | Post – Pachruki, Taluka and District-Siwan, | } | |
| | Bihar State. | } | |
| 5. | Ramkhilawan Babali Benkar, | } | <u>Accused</u> |
| | Age – 41 Years, Occu. Scrap Business, | } | |
| | R/o. Opposite Gurav Gas Station, N.H.4, | } | |
| | Wadhe, Taluka and District – Satara. | } | |
| | Permanent Resident of Sawada, | } | |
| | Post – Pahlani, Taluka and District-Bandha, | } | |
| | State - Uttar Pradesh. | } | |

Appearances :-

D.G.P. Mr. M. N. Kulkarni, for the Prosecution.
Advocate Mrs. A. R. Gadhave, Aid to Prosecution.
Advocate Mr. D. S. Ghadage for accused No.1.
Advocate Mr. R. K.Dhaigude, for accused Nos.2 to 5.

J U D G M E N T

(Delivered on 15th March, 2019)

1. Accused Nos. 1 to 5 stand prosecuted for the offences punishable under sections 143, 147, 148, 302 and 286 read with section 149 of the Indian Penal Code and under section 37(1)(3) punishable under section 135 of the Maharashtra Police Act, 1951. Accused No.1 also stands prosecuted for the offence under section 3 punishable under section 25 of the Arms Act, 1959.

2. **Case of the prosecution can succinctly be stated as under :-**

On 28/09/2012, there was an immersion procession of

idol of Lord Ganesh of Ashtavinayak Ganeshotsav Mandal, Deshmukhnagar, MIDC, Satara. Procession was started at about 6.00 p.m. Mayur Brass Band, Raviwar Peth, Satara was called for the procession. About 25 to 30 boys, ladies, girls and others participated in the procession. There are lanes in the old MIDC, Deshmukhnagar, Satara. The procession started from the first lane and it came in the lane of house of accused No.2. Prior to that one Dhanavade Madam worshiped the idol of Lord Ganesh and then procession went in front of house of accused No.2. That time accused No.2 insisted to play two songs in front of his door. Accordingly two songs were played.

3. When the songs were being played by the band, accused No.1, accused No.4 and others namely Virender Yadav, Rajbeer Yadav, Ramkumar Yadav, Amarkumar Yadav, Surender Yadav, Pradipkumar Dhuria etc. were dancing in that procession senselessly. The members of Ashtavinayak Ganeshotsav Mandal namely Govind Salunkhe, Pramod Jagadale, Parikshit Jagadale and their father Yuvraj Jagadale, Aashish Ghanvat, Pankaj Patil, Suryakant Patil, Shekhar Kale etc. were standing aside the procession. After two songs were played in front of house of accused No.2, Govind Salunkhe and Jagadale brothers took lead to take the procession ahead. Being enraged, accused Nos.1 and 2 in a heat of anger and out of previous enmity along-with above-named other accused, manhandled the activists of Ashtavinayak Ganeshotsav Mandal at about 8.15 p.m.

4. That time accused No.1 by going inside the house of accused No.2 again came in the procession and opened fire in the air. He abused Govind Salunkhe and Yuvraj Jagadale and from the distance of 10 to 12 feet, pointed out pistol upon Govind Salunkhe and fired one bullet. Govind Salunkhe fell down. The people in the procession caught hold the persons who were quarreling. The brother of Govind Salunkhe namely Namdeo Salunkhe went to him and saw that the blood was oozing from his stomach. Namdeo along-with Jatin Patel, his maternal uncle Kashinath Deshmukh, Aashish Ghanvat and Pankaj Patil lifted Govind Salunkhe and took him to the Civil Hospital, Satara by the four-wheeler of Dr. Dhumal. While undergoing medical treatment, he succumbed to the injury.

5. Namdeo Dattatray Salunkhe i.e. the brother of Govind went to Satara City Police Station and lodged the FIR against these accused and other unknown persons. It was recorded by API Sandbhor. Thereby he registered Crime No. 583/2012 against all the accused for the above-said offences.

6. API Kadam prepared the inquest panchanama on the dead-body of deceased Govind and sent the corpse for Post-mortem. It was conducted by Dr. Aaditi Patil. During Post-mortem, she took out the fired bullet from the stomach of deceased Govind and handed it over to the police. Blood and skin samples were obtained and the samples along-with clothes of the deceased were

handed over to the police for sending those for analysis. Further investigation was handed over to PI A. B. Gholap. He perused the FIR lodged by the brother of deceased namely Namdeo Salunkhe. He proceeded to the spot along-with two panchas at Deshmukhnagar, Godoli and prepared its panchanama in their presence. On the spot and in front of house of accused No.2, he found two empties of fired bullets and one live cartridge. He seized those under panchanama and those were sealed in the presence of two panchas.

7. Then he took search of house of accused No.2 and found one country-made pistol in the ply-wood rack of the bedroom of his house. He seized it under the House Search Panchanama. Then he arrested accused Nos.1 and 2 under panchanamas. Clothes of accused No.1 were also seized under that panchanama. The clothes on the dead-body were brought by police official Jadhav and those also came to be seized under panchanama. Then he seized the I-10 car of accused No.2 and Suzuki motorcycle of accused No.1 under separate panchanamas. He collected Prohibitory Order promulgated by the District Magistrate, Satara. He recorded statements of witnesses. He got medically examined the witnesses who were injured in the incident and collected their injury certificates.

8. Then he collected Post-mortem notes of deceased Govind. He sent the hand-wash of accused No.1, sample of water

and clothes of deceased Govind to the Regional Forensic Science Laboratory, Kalina, Mumbai on 07/11/2012. Prior to that, on 28/10/2012, he sent two empties of fired bullets, one live cartridge and one bullet found in the stomach of deceased Govind Salunkhe along-with seized pistol and clothes of accused No.1 to the Ballistic Expert of Regional Forensic Science Laboratory, Kalina, Mumbai. On 10/12/2012, he sent the sealed blood and skin samples of deceased Govind to the Regional Forensic Science Laboratory, Kalina, Mumbai. C.A. reports were received. He included those in police papers. After completion of further investigation, he submitted the charge-sheet.

9. After the case was committed to this Court as per section 209 of the Code of Criminal Procedure, 1973, prosecution opened it's case as per section 226 of the Code, by filing the Draft charge on 09/05/2013, along-with report under section 294 of the Code and list of documents. One of the accused namely Ramkumar Jagai Yadav absconded during pendency of trial. His presence could not be secured. Therefore my learned predecessor by passing order on 14/07/2015, separated his trial from these accused. After taking into consideration the material on record, my learned predecessor framed the charge against all the accused at Exh.110 for the above-said offences. It was read over and explained to them in vernacular. They understood the same. But they abjured their guilt and claimed the trial.

10. In support of its case, prosecution examined as many as ten witnesses. Then all the incriminating circumstances which appeared against accused Nos.1 to 5 in the evidence of prosecution were put to them by invoking provisions of section 313 of the Code of Criminal Procedure, 1973. So far as defence of accused No.1 is concerned, it is of alibi and that he is innocent. According to him, he is falsely implicated by the informant. He has no concern with the seized pistol and the bullets. So far as the defence of accused Nos.2 to 5 is concerned, it is of total denial. According to them, merely on the ground that alleged incident took place in front of house of accused No.2 and they are from outside State, they are falsely implicated.

11. Following points arise for my determination and I record my findings against each of them for the reasons given below :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Does the prosecution prove that Govind Dattatray Salunkhe met with homicidal death ?	Yes.
2	Does it further prove that on 28/09/2012 at about 8.15 p.m. to 8.30 p.m. in front of the house of accused No.2 on the road at Deshmukhnagar, Godoli, Satara, accused Nos. 1 to 5 formed an unlawful assembly, the common object of which was to assault the informant Namdeo Dattatray Salunkhe and his brother Govind Dattatray Salunkhe and witnesses ?	No.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
3	Does it further prove that on the above-said date, time and place, accused Nos. 1 to 5 were members of an unlawful assembly and in prosecution of the common object of that assembly i.e. to assault the informant Namdeo Dattatray Salunkhe and his brother Govind Dattatray Salunkhe and others, committed the offence of rioting ?	No.
4	Does it further prove that on the above-said date, time and place, accused Nos. 1 to 5 were members of an unlawful assembly and in prosecution of the common object of that assembly i.e. to assault the informant Namdeo Dattatray Salunkhe and his brother Govind Dattatray Salunkhe and others, did commit the offence of rioting armed with deadly weapons like pistol, used as a weapon of offence and likely to cause death ?	No.
5	Does it further prove that on the above-said date, time and place, accused Nos. 1 to 5 were members of an unlawful assembly and in prosecution of the common object of that assembly i.e. to assault the informant Namdeo Dattatray Salunkhe and his brother Govind Dattatray Salunkhe, to wit: accused No.1 committed murder by intentionally or knowingly causing the death of Govind Dattatray Salunkhe by firing the bullet on his stomach from his pistol and thereby all of them committed an offence of murder ?	Partly Yes.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
6	Does it further prove that on the above-said date, time and place, accused No.1 was found in possession of the fire arm i.e. the pistol without holding the license and in contravention of the provisions of section 3 of the Arms Act, 1959 ?	No.
7	Does it further prove that on the above-said date, time and place, accused Nos. 1 to 5 were members of an unlawful assembly and in prosecution of the common object of that assembly, accused Nos.1 to 5 by their rash and negligent conduct with respect to explosive substance, endangered the human life ?	No.
8	Does it further prove that on the above-said date, time and place, accused Nos. 1 to 5 in defiance of the prohibitory order promulgated by the District Magistrate, Satara prohibiting the carrying of arms, weapons and forming an assembly, they were found carrying arms/weapons, to wit: accused No.1 was found carrying weapon i.e. the pistol and accused Nos.1 to 5 formed an unlawful assembly in contravention of section 37(1)(3) of the Maharashtra Police Act, 1951?	No.
9	What offence, if any, committed by either of the accused ?	An offence under section 302 of the Indian Penal Code by accused No.1.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
10	What order ?	Accused No.1 is convicted and accused Nos.2 to 5 are acquitted.

REASONS

12. In order to bring home the guilt of accused persons, prosecution examined as many as ten witnesses. P.W.1 Jagannath Nana Salunkhe at Exh.128 is the panch witness to the inquest panchanama of the dead-body of deceased and seizure of his clothes. P.W.2 Sachin Maruti Tambe at Exh.133 is the panch witness to the arrest panchanamas of accused Nos.1 and 2, seizure of their mobile handsets, clothes of deceased and accused No.1 and vehicles of accused Nos.1 and 2. P.W.3 Aashish Appasaheb Ghanvat at Exh.143 is an eye witness and panch witness to the spot panchanama and seizure of empties of fired bullets, live cartridge and House Search panchanama of accused No.2 and seizure of pistol from his house. P.W.4 Namdeo Jagannath Salunkhe at Exh.153 is an informant and brother of deceased who has lodged the FIR against accused persons. P.W.5 Dr. Aaditi Vilas Patil at Exh.190 is the Medical Officer of Civil Hospital, Satara who has performed autopsy on the dead-body of deceased Govind. P.W.6 Balu Vitthal Bunge, Police Naik at Exh.204, P.W.7 Rahul

Bhaguji Murhe, Police Naik at Exh.206 and P.W.8 Police Naik Nandkumar Bhiku Jadhav at Exh.210 are the carriers of seized samples and muddemal to C.A. Laboratory. P.W.9 Vasudeo Vijay Patil at Exh.217 is the Ballistic Expert and lastly P.W.10 PI Annasaheb Balasaheb Gholap at Exh.235 is an Investigating Officer.

13. Prosecution relied upon inquest panchanama on the dead-body of deceased Govind Salunkhe at Exh.129, seizure panchanama of mobile of accused No.1 at Exh.134 and that of two mobile handsets of accused No.2 at Exh.135, seizure panchanama of clothes of accused No.1 at Exh.136, seizure panchanama of clothes of deceased at Exh.137, seizure panchanama of I-10 car and Suzuki motorcycle at Exh.138, spot panchanama at Exh.144, Search panchanama of house of accused No.2 at Exh.145, the FIR lodged by P.W.4 Namdeo Salunkhe at Exh.157, Post-mortem notes at Exh.192, letters written by Investigating Officer P.W.10 PI Gholap for sending the samples and muddemal to C.A. Laboratory at Exh.236 to 238, C.A. reports at Exh.220 to 224, 262 and 264. Then prosecution closed its evidence by filing pursis at Exh.253.

14. Accused No.1 in his defence has produced on record the photographs of the spot of incident. Those were admitted by the informant P.W.4 Namdeo Salunkhe during his examination on oath and therefore those were marked at Exh.171 to 173.

Point No.1 :-

15. Case of the prosecution as emerges out from the evidence adduced by it is that on 28/09/2012 at about 8.30 p.m., all the accused formed an unlawful assembly, the common object of which was to assault and kill Govind Dattatray Salunkhe. In prosecution of the common object of that unlawful assembly, being enraged by the fact that deceased Govind did not allow him and others to dance more on the songs played on the band and he tried to take immersion procession ahead, accused No.1 indiscriminately fired bullet on his stomach and thus committed homicidal death of deceased Govind amounting to murder.

16. DGP Mr. Kulkarni vehemently argued that there are two eye witnesses who have actually seen accused No.1 while firing bullet on deceased Govind i.e. P.W.3 Aashish Ghanvat and P.W.4 Namdeo Dattatray Salunkhe i.e. brother of the deceased Govind. Apart from these eye witnesses, prosecution's case is supported by an inquest panchanama at Exh.129 in which injuries found on the dead-body are categorically mentioned. Inquest panchanama at Exh.129 further finds support from the Post-mortem notes at Exh.192 prepared by P.W.5 Dr. Aaditi Patil. The Ballistic Expert P.W.9 Vasudeo Patil after carrying out analysis of the weapon i.e. pistol and bullet which was found in the body of deceased Govind, has opined that the bullet Article-K was fired from the pistol Article-J. Therefore according to him, with the help of oral and documentary evidence, prosecution has succeeded in

proving that death of the deceased Govind was homicidal and it was not suicidal or accidental.

17. Advocate Mr. D. S. Ghadage for accused No.1 strongly replied that in the inquest panchanama at Exh.129 there is mention of only one injury, while in the Post-mortem notes at Exh.192, there is mention of two injuries. Prosecution has not explained this basic defect. Apart from that, P.W.5 Dr. Patil found 200 c.c. Grayish coloured fluid in the stomach of deceased Govind. But she did not preserve it. Thereby the defence of accused No.1 that at the relevant time, deceased Govind was under influence of liquor and he himself fired the bullet on his stomach cannot be ruled out. Moreover there were chances of piercing the bullet Article-K in the body of deceased Govind subsequently. Since there were alcohol contents in the blood sample of deceased Govind, it was not sent for analysis immediately by the Investigating Officer P.W.10 PI Gholap. In that event it was haemolysed and as such it is reported by the C.A. that it was unsuitable for analysis as it was haemolysed. Same is the case with sample of skin of deceased Govind.

18. He further replied that testimony of eye witnesses i.e. P.W.3 Aashish Ghanvat and P.W.4 Namdeo Salunkhe is shattered to an extent during their cross-examination. There are vital contradictions and omissions brought on record during their cross-examination. Moreover P.W.5 Dr. Patil in her cross-examination

has categorically admitted that she could not form an opinion as to what was the nature of wound found on the dead-body of deceased Govind, whether it was homicidal, suicidal, accidental or self inflicted. As such prosecution has not succeeded in proving beyond doubt that death of the deceased Govind was homicidal.

19. After careful scrutiny of an eye witnesses i.e. P.W.3 Aashish Ghanvat and P.W.4 Namdeo Salunkhe, it is seen that, both of them have actually witnessed the incident. They were the participants in the immersion procession of idol of Lord Ganesh of Ashtavinayak Ganeshotsav Mandal, old MIDC, Deshmukhnagar, Satara. Both of them, during their evidence have testified on oath that when immersion procession came in front of the house of accused No.2, there was forceful insistence to play two songs on the band and all the accused wanted to dance on those two songs. Their forceful request was considered and two songs were played on the band.

20. But thereafter also, all the accused wanted to dance more on the songs played on the music band. Since the procession was getting late, deceased Govind took active lead in taking it ahead by ignoring the forceful request of accused persons. But accused No.1 was enraged regarding decision of deceased Govind in taking active lead to take the immersion procession ahead and he took out the revolver, opened fire in air and thereafter he fired another bullet on the stomach of deceased Govind. Due to which

he was about to fall down, but was attended by the persons gathered. He was taken to the Civil Hospital by the four-wheeler of Dr.Dhumal. The medical treatment was given to him. In the hospital, he was attended by P.W.5 Dr. Aaditi Patil and Civil Surgeon, Dr. Kurhade. Since his vital parts were critical, in spite of giving him the treatment i.e. IV fluid, blood etc., he could not survive and he was declared dead at 10.10 p.m. by Civil Surgeon Dr. Kurhade.

21. Thereafter, API Kadam of Satara City Police Station performed inquest panchanama on the dead-body of deceased Govind in the presence of two panchas namely P.W.1 Jagannath Salunkhe and one Patole. That panchanama is duly proved in the evidence of P.W.1 Jagannath Salunkhe and it was marked as Exh.129.

22. P.W.1 Jagannath Salunkhe testified on oath that at the relevant time, he had been to the Civil Hospital, Satara to see his father-in-law who was admitted there. P.W.4 Namdeo Dattatray Salunkhe i.e. the brother of deceased Govind shown them the dead-body of his deceased brother Govind in ICU. He found on the right side of his *Kurta* one blood stained and circular hole. By removing his clothes, they examined the dead-body. There was one big injury on the right side near the back and stomach of deceased Govind. The blood was coming out of it and accordingly inquest panchanama at Exh.129 was prepared and it came to be

proved from his mouth.

23. After going through the inquest panchanama at Exh.129, it is seen that two injuries found on the dead-body of deceased Govind are very much mentioned in that panchanama. The first injury is on right mid axillary line 25 c.m. below axilla and 21 c.m. from umbilicus. At the same time, second injury was in the form of contusion of 2 c.m. diameter of black coloured 35 c.m. from left axilla and 18 c.m. from umbilicus. The same two injuries are reflected in column No.17 of the Post-mortem notes at Exh.192. P.W.5 Dr. Patil has categorically stated in her evidence these two injuries as follows :

1. Penetrating injury oval in shape on right mid axillary line 25 c.m. below axilla and 21 c.m. from umbilicus of size 1 c.m. x 1 c.m. into deep cavity. Around wound margin blackish in colour. Margins are inverted. No active bleedin from wound. Wound is reddish in colour.
2. Contusion of 4 c.m. x 3 c.m., bluish red in colour over anterior abdominal wall in left lumbar region, 18 c.m. from umbilicus just about anterior superior iliac spine.

As such I did not find any substance in the arguments of advocate Mr. Ghadage for accused No.1 that there is difference in the injuries as mentioned in the inquest panchanama at Exh.129 and Post-mortem notes at Exh.192.

24. Regarding inquest panchanama, the provisions of section 174 of the Code of Criminal Procedure, 1973 are more specific on this point. But this provision is having very limited scope and is confined to the inquiry as to the apparent cause of death. It is somewhat with the discovery whether in a given case the death was accidental, suicidal or homicidal or caused by an animal and in what manner and by what instrument the injuries on the dead-body appeared to have been inflicted. It is for this limited purpose, the persons acquainted with facts of the case are summoned and examined under section 175.

25. In the case at hands, prosecution has examined eye witnesses P.W.3 Aashish Ghanvat and P.W.4 Namdeo Salunkhe, an informant. Their testimony finds corroboration from the Post-mortem notes at Exh.192 prepared by P.W.5 Dr. Aaditi Patil. She has testified on oath that she was on duty as a Medical Officer at Civil Hospital, Satara from 8.00 p.m. on 28/09/2012 till 8.00 a.m. on 29/09/2012. At about 8.45 p.m. on 28/09/2012, the patient namely Govind Salunkhe was brought to the Civil Hospital by Sachin Patil and others. He was having injury on the right side. He was unconscious and gasping. He was admitted as an indoor patient and MLC was registered.

26. Then she informed Satara City Police Station by the letter at Exh.191. She arranged for blood and carried out further examination. Then the patient was handed over to the Civil

Surgeon Dr. Kurhade and he declared him dead at 10.10 p.m. Then police prepared inquest panchanama on the dead-body and it was handed over to her for Post-mortem at 1.30 a.m. The body was sent for x-ray. She conducted the Post-mortem in between 2.00 a.m. to 3.30 a.m. under MLC No. 8565. She noticed two injuries on his body as reproduced above and which were mentioned by her in column No.17 of the Post-mortem notes at Exh.192. There was no other injury on the dead-body.

27. She further testified that she found 200 c.c. grayish fluid in the stomach of deceased Govind. But it was without any smell. In her cross-examination, she admitted that she did not collect that 200 c.c. grayish fluid and she also did not preserve the Viscera. On this ground, her testimony is tried to be assailed by the defence advocate Mr. Ghadage that deliberately these things are not done since there were alcohol contents in the body of deceased Govind. But I did not find any substance in this particular argument because the Post-mortem notes at Exh.192 as well as while deposing on oath, P.W.5 Dr. Patil has testified that though she found 200 c.c. grayish fluid, it was without any smell. Though she did not preserve the Viscera, according to her, it is required to be preserved only when it is the case of poisoning and if anything suspicious is noted. She has recovered the bullet from the stomach of deceased Govind below muscle of injury No.2 and therefore she did not preserve the Viscera. The blood and skin samples obtained by her were immediately handed over to the police for sending

those to the C.A. Laboratory.

28. It is true that the blood and skin sample was found by the C.A. to be haemolysed as there was late on the part of P.W.10 PI Gholap in sending those samples to the C.A. Laboratory. He has explained that he wanted to send entire muddemal property together and therefore there was late on his part. This is merely an irregularity in the investigation and according to me, no serious prejudice has been caused thereby to the accused. Because 200 c.c. grayish fluid which was found in the stomach of deceased Govind was without any odour. Had it been smelling of alcohol then certainly P.W.5 Dr. Patil should have noted this fact in the Post-mortem notes at Exh.192. But when she did not find odour in the 200 c.c. grayish fluid found in the stomach of deceased Govind, arguments of the defence advocate Mr.Ghadage that there were alcohol contents in his body are not worth consideration.

29. P.W.5 Dr. Patil has further testified that the Post-mortem notes at Exh.192 are in her handwriting. Those bear her sign and contents therein are true and correct. She has given the cause of death of deceased Govind to be due to hemorrhagic shock due to fire arm injury. In her cross-examination, she has admitted that she could not opine as if injury No.1 as mentioned in column No.17 of the Post-mortem notes at Exh.192 was homicidal, suicidal, accidental or self inflicted. But she has categorically stated that the cause of death of deceased Govind to be due to

hemorrhagic shock due to fire arm injury.

30. The Ballistic Expert P.W.9 Patil who has analyzed the pistol Article-J and the bullet Article-K, has opined that the bullet Article-K was fired from the pistol Article-J. Therefore, it can safely be concluded that death of deceased Govind was homicidal as it was caused due to hemorrhagic shock due to fire arm injury caused to him on his stomach by accused No.1 by his pistol Article-J.

31. Considering the overelming evidence and particularly taking into account the nature of injuries found on the dead-body of deceased Govind, it can safely be concluded that his death was caused due to fire arm injury as accused No.1 fired bullet on his stomach by the pistol Article-J and he met with homicidal death. I also did not find any substance in the arguments of the defence that the bullet Article-K might have been subsequently pierced in the stomach of deceased Govind or that he might have self inflicted the injuries found on his person under the influence of liquor.

32. On the point of non-preservation of Viscera, advocate of accused No.1 Mr. Ghadage placed his reliance on the case of **Dev Kanya Tiwari Vs. State of U.P., reported in 2018 All SCR (Cri) 616**, in which it is held by Hon'ble Apex Court that, "when the Post-mortem report though supported by prosecution, non-

preservation of Viscera by doctor, remains fatal to the prosecution's case. Circumstances ample to strengthen the case of the defence that deceased committed suicide. Conviction for the offence punishable under section 302 of the Indian Penal Code was set aside.”

33. I have carefully gone through facts of this cited case. Therein case of the prosecution was that accused wife and in-laws of the deceased, murdered him by strangulation. Whereas defence of the accused was that the deceased committed suicide by consuming poison. The view recorded by independent panch witnesses and also by the Investigating Officer that it was a case of poisoning, was duly supported by the evidence of witnesses. Prosecution however failed to take steps to preserve the Viscera. The informant nowhere in his evidence mentioned about noticing of ligature mark on the neck of the deceased nor agitated cause of death during panchanama.

34. In this fact situation, it was held by Hon'ble Apex Court that, non-preservation of the Viscera by the Doctor was fatal to the prosecution's case and thereby the circumstances ample to strengthen case of the accused that deceased committed suicide. However, facts of this cited case are altogether different with the case at hands. In this case, though accused No.1 has raised the defence of consumption of alcohol by the deceased Govind or regarding self inflicting of the injuries noticed on his body, there is

not a single circumstance on record which creates doubt in the mind of this Court about plausibility of this particular defence raised by accused No.1.

35. Bare putting of suggestions to that effect to the Investigating Officer P.W.10 PI Gholap and Medical Officer P.W.5 Dr.Patil who conducted Post-mortem would be of no avail. It was for the accused No.1 to bring on record at-least some material by way of preponderance of probabilities in support of his this particular defence. But as discussed earlier, P.W.5 Dr. Aaditi Patil who has conducted the Post-mortem, has categorically stated in her evidence on oath that though she found 200 c.c. grayish coloured fluid in the blood of deceased Govind, it was without any odour or smell. She as well as Investigating Officer P.W.10 PI Gholap strongly refuted suggestions put to them by the defence advocate Mr. Ghadage that deceased Govind died due to self inflicting of injuries under influence of liquor.

36. Apart from that, there is nothing on record to show that deceased Govind, when he participated in the immersion procession, was under influence of liquor or that he was armed with any weapon. These things should have been noticed by the eye witnesses at the time of preparation of inquest panchanama on his dead-body at Exh.129 regarding smelling of his mouth with alcohol etc. But absolutely there is nothing on record to show that death of deceased Govind was either suicidal or due to self

inflicting of injuries. Therefore with due respect, the law laid down by Hon'ble Apex Court in the above cited case is not helpful to accused No.1. In the result, I answer this Point in the affirmative.

Points No.2, 3 and 4 :-

37. It is the case of prosecution that at the relevant time, accused Nos.1 to 5 along-with other accused formed an unlawful assembly, the common object of which was to assault deceased Govind, informant P.W.4 Namdeo and witnesses. In prosecution of the common object of that unlawful assembly, they did assault informant P.W.4 Namdeo, deceased Govind and the witnesses. That at the relevant time, they also committed an offence of rioting by using force and violence in such unlawful assembly armed with deadly weapons.

38. So far as FIR lodged by informant P.W.4 Namdeo is concerned which is on record at Exh.157, he has stated that at the relevant time, accused Nos.1 to 3 and some others namely Arvind Yadav, Achayber Yadav and Birender Yadav were senselessly dancing in the immersion procession of idol of Lord Ganesh. Out of previous quarrels and since the deceased Govind and others refused their request to dance more by playing more songs, all of them manhandled the activists of Ashtavinayak Ganeshotsav Mandal. He has also spoken about the role played by accused No.1 that he suddenly fired in open air and then by giving abuses to the witness Yuvraj Jagadale and deceased Govind by pointing the

pistol Article-J on deceased Govind, he fired bullet on him from the distance of 10 to 12 feet.

39. At the same time, in his examination on oath, he has not spoken about the incident of manhandling by accused persons either to Yuvraj Jagadale or his brother deceased Govind. He has not even uttered a single whisper against accused Nos.3 to 5. On the contrary, he admitted that in his supplementary statement dated 16/12/2012 and by way of portion marked Exh.174, he stated to the police that he mistakenly uttered the names of Arvind Yadav, Achayber Yadav and Birender Yadav to be the members of that assembly. While deposing on oath, he has also not uttered the single whisper against accused Nos.3 to 5 or about any role played by them in the procession.

40. So far as another eye witness P.W.3 Aashish Ghanvat is concerned, he has also not spoken about the quarrels in the procession in between accused persons and Jagadale family. Regarding giving of abuses by accused No.1, opening the fire in air etc., he admitted in his cross-examination that though he stated such contents to the police, he could not assign any reason as to why those are not finding their place in his statement before the police. He has also not uttered a single whisper against accused Nos.3 to 5. Even he was not in a position to identify them before the Court. Investigating Officer P.W.10 PI Gholap has categorically admitted that it did not transpire in his investigation that all these

accused conspired to commit alleged offences.

41. By highlighting the above-said facts, the defence advocates Mr. Ghadage and Mr. Dhaigude vehemently argued that the evidence that is brought on record by the prosecution is not fulfilling the requirements of the offences punishable under sections 143, 147 and 148 of the Indian Penal Code. There is no evidence on record to show that these accused formed an unlawful assembly and in prosecution of common object of that unlawful assembly, they were armed with deadly weapons or that they committed an offence of rioting and assaulted deceased Govind, informant P.W.4 Namdeo and witnesses.

42. DGP Mr. Kulkarni fairly submitted during the course of arguments that prosecution has not brought on record convincing evidence against accused Nos.3 to 5, but there is ample evidence against accused Nos.1 and 2.

43. In order to constitute an offences punishable under sections 143, 147 and 148, the basic thing prosecution is required to prove is that there must be an assembly of five or more persons, the object of such assembly was any one of the five objects specified in section 141 as follows :-

First. – Two overawe by criminal force, or show of criminal force the Central or any State Government

Second. – To resist the execution of any law, or of any legal

process; or

Third. – To commit any mischief or criminal trespass, or other offence; or

Fourth. – By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way,.....
or

Fifth. – By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

44. It is not in dispute that at the relevant time, there was immersion procession of idol of Lord Ganesh proceeding and passing from the lanes in the Deshmukhnagar, old MIDC, Satara. It is the story of prosecution that when the immersion procession came in front of house of accused No.2, all these accused made request to play two songs by the band and to dance. Accordingly they performed the dance on two songs which were played by the band. They further insisted to play two more songs on band and to dance. But their such request was not considered by the activists of Ashtavinayak Ganeshotsav Mandal as the procession was getting late. Being enraged on this ground as well as on account of previous quarrels, accused Nos.1 to 5 have committed all these three offences.

45. However while deposing on oath, informant P.W.4

Namdeo categorically admitted that he has never stated to the police while lodging the FIR at Exh.157 that there were previous quarrels in between him and deceased Govind on one hand and accused Nos.1 to 5 on the other hand. On the contrary, he categorically admitted in his cross-examination by both the defence advocates that there was no previous rivalry in between him and deceased Govind on one hand and accused Nos.1 to 5 on the other hand. The FIR discloses that previously there were some quarrels in between accused Nos.1 and 2 and Jagadale family. But prosecution has not examined any of the member of Jagadale family in this case nor there is convincing evidence brought on record to that effect. Therefore to determine the guilt of accused persons, it is only required to be seen about the incident that has taken place on 28/09/2012 at the time of immersion procession of idol of Lord Ganesh.

46. Though in the FIR at Exh.157, P.W.4 informant Namdeo has stated to the police about the incident of manhandling by accused Nos.1, 2 and others, while deposing on oath, he has not uttered a single word about this particular act of accused Nos.1 and 2. Moreover, he has not uttered a single whisper against accused Nos.3 to 5 regarding the incident of manhandling or shoving and pommeling either to him, to his brother deceased Govind or other witnesses. It is only mentioned by him that accused Nos.1, 2 and their associates were dancing senselessly in the said procession.

47. So far as accused Nos.2 to 5 and their role are concerned, nowhere it is the case of prosecution that either they were armed with any weapons and that too deadly weapons or that they made use of such deadly weapons in the procession. The only role attributed to them is that they were dancing senselessly in the said procession. Under such circumstances, it cannot be said that accused Nos.1 to 5 formed an assembly and that too an unlawful assembly at the relevant time and the common object of such assembly was unlawful.

48. Section 149 of the Indian Penal Code has its foundation on constructive liability which is the sine-qua-non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in section 141. When common object of an unlawful assembly is not proved, accused persons cannot be convicted for the offences punishable under sections 143, 147 and 148. The crucial question to determine is whether the assembly consisted of 5 or more persons and whether said persons entertained one or more of the common objects, as specified in section 141.

49. 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 an unlawful assembly, it cannot be said that he

is member of such 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. The word 'object' means the purpose or design and in order to make it common, it must be shared by all. In other words, the object should be common to the persons who compose the assembly that is to say they should be aware of it and concur in it. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and object may exist only upto a particular stage and not thereafter.

50. But if the object of an assembly is not unlawful then the act cannot attract section 141. So any person forming such an assembly cannot be convicted either under section 147 or 149. To participate in the immersion procession of idol of Lord Ganesh cannot be said to be an unlawful assembly or its object to be unlawful. On the contrary, the FIR at Exh.157 discloses that there were quarrels in between two groups. But since the informant P.W.4 Namdeo has not stated so while deposing on oath, it cannot be said that accused Nos.1 and 2 or others formed an unlawful assembly.

51. Moreover the prosecution has miserably failed to prove that at the relevant time, there was assembly of five or more persons. Because as discussed earlier, though in the FIR at Exh.157

P.W.4 informant Namdeo speaks about accused No.1 and 2 and some others, in his supplementary statement and the portion marked Exh.174 which came to be proved from the Investigating Officer, he has categorically admitted that there was no previous rivalry in between accused Nos.1 and 2 on one hand and he and his deceased brother Govind on the other hand. He has mistakenly stated the names of other accused namely Arvind Yadav, Achayber Yadav and Birender Yadav. While deposing on oath he has not at all stated that there was assembly of five or more persons or that in prosecution of common object of that assembly they either manhandled or shoved or pommelled him and his deceased brother Govind. Therefore the basic ingredients and requirements of section 141 of the Indian Penal Code are lacking from the evidence that is adduced by the prosecution.

52. P.W.3 Aashish Ghanvat, another eye witness has also not spoken anything about accused Nos.3 to 5 and he even did not identify them before the Court. As such, when at the relevant time there was no assembly of five or more persons and that too an unlawful assembly within the meaning of section 141 then it cannot form the basis of the offences punishable under sections 143, 147 or 148 of the Indian Penal Code. Prosecution has also miserably failed to prove that there was an unlawful object of such assembly which was common to persons composing such assembly or that all of them were aware about it and they concurred in it.

53. The word 'knew' used in the second branch of section 141 implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. As held by Hon'ble Apex Court in the case of **Amar Singh Vs. State of Punjab, reported in AIR 1987 Supreme Court, 826**, when prosecution has failed to prove an assembly of five or more persons and that too an unlawful assembly and when three of them were acquitted then remaining persons cannot be convicted under sections 148 and 149.

54. Though in the FIR as well as while deposing on oath, the word used by informant P.W.4 Namdeo and eye witness P.W.3 Aashish Ghanvat are 'accused Nos.1 and 2 and their companions', the Investigating Officer P.W.10 PI Gholap has not conducted identification parade. Law is settled that where the members of an unlawful assembly is quite large then it would be prudent to insist on the identification of the accused persons by at-least two reliable witnesses as is held by Hon'ble Apex Court in the case of **Binaykumar Singh Vs. State of Bihar, reported in AIR 1997, Supreme Court, 322**.

55. However, as admitted by P.W.10 PI Gholap, he did not conduct identification parade of accused persons. P.W.4 Namdeo further categorically admitted that so many Bihari Boys were brought to Police Station after this incident. But there was no identification parade held by Investigating Officer P.W.10 PI

Gholap nor he identified remaining accused persons. On the contrary, he has clinchingly admitted in his cross-examination that he has mistakenly stated the names of some of the accused persons i.e. Arvind Yadav, Achayber Yadav and Birender Yadav etc. to the police.

56. Under such circumstances, there is absolutely no evidence brought on record by the prosecution that at the relevant time, accused Nos.1 to 5 were members of an unlawful assembly, the common object of which was one of the five as specified in section 141 and in prosecution of the common object of that unlawful assembly either they assaulted the informant P.W.4 Namdeo, deceased Govind and other witnesses. So far as case of accused No.1 is concerned, it stands on different footing that at the relevant time he was armed with the deadly weapon i.e. country made pistol Article-J and he fired bullet Article-K from it on the person of deceased Govind in which he was seriously injured. At the same time, he alone cannot be convicted for the offence punishable under section 148 of the Indian Penal Code. Because the basic ingredient of section 141 of the Code that there must be an unlawful assembly of five or more persons is lacking from the evidence of the prosecution. Prosecution has miserably failed to establish that accused Nos.1 to 5 by their active participation being members of an unlawful assembly or otherwise shared the common object of the unlawful assembly. As discussed earlier, mere presence in an unlawful assembly does not make such person

a member of an unlawful assembly unless it is shown that he shared some common object along-with others.

57. From the facts and circumstances brought on record, it cannot be said safely that accused Nos. 2 to 5 being members of that unlawful assembly were knowing the likelihood of the offence being committed and that too in prosecution of that object. Their course of conduct or behaviour at or near the scene of offence and after the commission of offence was not such as to hold them to be members of an unlawful assembly.

58. In order to prove an offence under section 148, the essential ingredients are that accused must be a members of an unlawful assembly, they must have used force or violence in prosecution of the common object of the assembly and they must be armed with deadly weapons. But as discussed earlier, the basic ingredient of an unlawful assembly of five or more persons that too unlawful assembly is not attracted from the evidence adduced by the prosecution. The Investigating Officer P.W.10 IP Gholap has candidly admitted that it did not transpire in his investigation that accused Nos.1 to 5 or others conspired to commit alleged offences. In the event and for want of evidence, I answer all these Points in the negative.

Point No.5 :-

59. By highlighting the oral and documentary evidence on

record DGP Mr. Kulkarni, apart from submitting written notes of his arguments at Exh.260, has also advanced oral arguments. He vehemently argued that at the relevant time, the immersion procession of idol of Lord Ganesh of Ashtavinayak Ganeshotsav Mandal, Deshmukhnagar, old MIDC was in progress. There was no bustle or any chaos in that procession. The procession was simple in nature. An eye witnesses P.W.4 Namdeo Salunkhe and P.W.3 Aashish Ghanvat along-with deceased Govind and others participated in the procession. When the procession reached in front of house of accused No.2, his wife worshiped idol of Lord Ganesh. Accused Nos.1 and 2 and their companions asked to play two songs on the band as they wanted to dance. Accordingly two songs were played. Thereafter the procession was being taken ahead. Deceased Govind took active role in taking the procession ahead. That time accused were enraged and out of anger, accused No.1 abused deceased Govind and he opened fire in air and thereafter fired another bullet on his stomach. He was attended by the persons participated in the procession. He was taken to the Civil Hospital. But during treatment, he was declared dead. P.W.4 Namdeo i.e. his brother lodged FIR. Prosecution has examined as many as ten witnesses. Inquest panchanama at Exh.129 came to be proved from the mouth of P.W.1 Jagannath. It is describing the injuries those were found on the dead-body of deceased Govind, the gun shot hole on his *Kurta* and blood stains.

60. He further argued that P.W.3 Aashish Ghanvat apart

from being an eye witness, is also a panch witness to the spot panchanama at Exh.144 by which two empties of fired bullets and one live cartridge, Article-G, H, I came to be seized from the spot. He is also the panch witness to the House Search panchanama of the house of accused No.2 at Exh.145. Thereby the pistol used by accused No.1 in committing murder of deceased Govind came to be seized which is at Article-J. P.W.5 Dr.Patil has performed the Post-mortem and Post-mortem notes at Exh.192 are duly proved from her mouth. She has testified that death of the deceased Govind was caused due to hemorrhagic shock due to fire arm injury.

61. According to him, seized cartridge, pistol, blood sample, skin sample, clothes of deceased and clothes of accused No.1 were carried by the carriers P.W.6 to P.W.8 namely Bunage, Murhe and Jadhav to the C.A. Laboratories. Reports of the C.A. are on record. Apart from that, the prosecution has examined Ballistic Expert P.W.9 Patil who has analyzed the fire arm i.e. pistol Article-J so also the bullet Article-K which was found in the stomach of deceased Govind at the time of Post-mortem. He has given his opinion that the bullet Article-K was fired from the pistol Article-J. The Investigating Officer P.W.10 PI Gholap has also testified on oath that all the accused by joining an unlawful assembly and accused No.1 in particular, committed murder of deceased Govind by firing bullet Article-K on his stomach. After commission of this serious offence, all the accused fled away in the house of accused

No.2. It shows their subsequent conduct and guilty mind.

62. He lastly submitted that when accused No.1 came in the immersion procession with a loaded pistol, it goes to show his mentality and criminal mind. All the accused have violated promulgative order issued by the District Magistrate, Satara and have committed serious offence. There was no reason for the informant P.W.4 Namdeo to implicate them falsely merely on the ground that they are from outsider State. Because all the accused are residing at Satara since last 25 years. Though there are some discrepancies in the case of the prosecution, those are minor. When there is direct evidence on record in the form of P.W.3 Aashish Ghanvat and P.W.4 informant Namdeo, other evidence on record by way of expert's evidence, recovery of weapon etc. is to be assessed as a corroborative piece of evidence. The defence raised by all the accused is not at all probable. Prosecution has succeeded in proving guilt of accused persons beyond the shadow of doubt for the offence punishable under section 302 read with section 149 of the Indian Penal Code and therefore according to him, all of them may be held guilty for this offence.

63. He relied upon following cases :-

i. **Legal heirs of Phanidhar Das Vs. State of Assam, reported in 2014(1) Gau LD 63**, in which it is held by Hon'ble Gauhati High Court that, "P.W.24 Ballistic Expert has examined the revolver bearing No. 161-11892 whereas the revolver bore the

number 16H-1892. On comparing the two numbers, we find the error which is crept in describing the number of the revolver, was merely the clerical in nature.”

ii. **Prem Kumar and another Vs. State of Bihar, reported in 1995(1) Crimes (SC) 889**, in which it is held by Hon'ble Apex Court that, “when there is sufficient direct evidence regarding the commission of offence, the question of motive will not loom large in the mind of the Court.”

64. The defence advocate Mr. Ghadage for accused No.1 took an exception to the oral and documentary evidence on record and strongly replied that genesis of the crime is suppressed by the prosecution. By inviting my attention to the police statement of P.W.3 Aashish Ghanvat and the portion in it as marked as Exh.239, he argued that at the relevant time, there was scuffle in between accused Nos.1 and 2 and Jagadale brothers and their father. Jagadale brothers and their father were injured in that incident and medical treatment was provided to them. But neither of these witnesses have been examined by the prosecution which goes to show that genesis of the crime is suppressed and its benefit must be given to the accused. According to him, the so called eye witnesses P.W.3 Aashish Ghanvat and P.W.4 Namdeo have categorically admitted during their cross-examination that there was no previous rivalry in between accused persons and them. Under these circumstances, the prosecution has not brought on record the motive behind the commission of offence. When there

was no motive behind the commission of offence, when there were no previous quarrels then accused persons and especially accused No.1 cannot be convicted for any offence.

65. In support of his this particular argument, he placed his reliance on the case of **Badam Singh Vs. State of Madhya Pradesh, reported in 2004 Cri. L.J. 22**, in which it is held by Hon'ble Apex Court that, “when conduct of the prosecution witnesses was most unnatural and no motive for offence was established then prosecution's case as well as veracity of witnesses becomes doubtful and accused was held liable to be acquitted. When evidence to prove the circumstances of motive is very shaky and appears to be very weak, the same cannot be believed as a reason to commit murder of the victim. Accused was held entitled to get benefit of the same and was acquitted.”

66. In support of his argument on the point of suppression of genesis of the crime by prosecution, advocate of accused No.1 Mr. Ghadage placed his reliance on the case of **Mohan Ganpati Sathe Vs. State of Maharashtra, reported in 2016 ALL M R (Cri) 3972**, in which it is held by Hon'ble Bombay High Court that, “fact that prosecution witnesses as well as some of accused had sustained injuries in course of same incident clearly indicates that both groups were involved in free fight ensued due to previous incident of eve teasing. Suppression of facts as well as genesis of incident assumes greater significance and renders defence

plausible.”

67. He further strongly replied that at the relevant time, there was no light facility on the spot of incident. In that event, in the night time at about 8.30 p.m., it was not possible for an eye witnesses to see the pistol Article-J in the hands of accused No.1 when they have given description of the same while deposing on oath. According to him, informant P.W.4 Namdeo has categorically admitted the photographs of the spot of incident at Exh.171 to 173 produced on record by the defence to be the same and as per the factual situation. From those photographs of the spot of incident, it is seen that there is no provision for electric light on the spot and therefore there was no reason for the so called eye witnesses to see accused No.1 armed with any weapon and that too to give particulars about the pistol Article-J. Apart from that, both the eye witnesses have made contradictory statements regarding the manner and direction of the procession. Investigating Officer P.W.10 PI Gholap did not obtain the certificate from the MSEDCL about availability of the electric light on the spot of incident at the relevant time.

68. According to him, the pistol Article-J has no concern with accused No.1. It has not been seized from his possession on the basis of any disclosure statement made by him. It is allegedly seized by the Investigating Officer P.W.10 PI Gholap by way of house search panchanama of the house of accused No.2 at

Exh.145. However to that effect statements of the family members of accused No.2 have not been recorded. The Investigating Officer did not obtain any document to show that the said house really belongs to accused No.2. The so called sign on the panchanama at Exh.145 is not of wife of accused No.2. No finger prints on the seized pistol Article-J were taken. When the said pistol Article-J came to be seized and sealed according to P.W.10 PI Gholap on the spot itself then there was no reason for informant P.W.4 Namdeo to see it again in the police station. It goes to show that the seals were tampered. There is huge gap in sending the seized muddemal to C.A. Laboratory which also creates doubt about the genuineness of the prosecution's case. There is vast difference in the description of the pistol which was actually sent for analysis to the C.A. Laboratory and which was actually seized under panchanama at Exh.145. Because the panchanama at Exh.145 and panch witness P.W.3 Aashish Ghanvat speak its number as 7775, while the Ballistic Expert P.W.9 Patil has analyzed the pistol having number as 1115. Prosecution has not at all explained this material discrepancy which goes to the root of the prosecution's case and the benefit of which must be given to the accused.

69. Apart from that, according to him and as admitted by P.W.9 Patil, he did not find any gun shot residue or powder on the pistol Article-J so also on the *Kurta* Article-A of the deceased Govind. Therefore entire exercise carried out by the prosecution is doubtful as there is no mention of pistol number in the letter sent

to C.A. by Investigating Officer P.W.10 PI Gholap which is on record at Exh.237. There was no proper sealing of blood and skin samples and those were allowed to be haemolysed as they were not promptly sent to the C.A. Laboratory. There was no proper sealing.

70. According to him, testimony of Ballistic Expert P.W.9 Patil is shattered to an extent in his cross-examination. Thereby case of the prosecution cannot be believed. Regarding the bullet Article-K which allegedly came to be found in the stomach of deceased Govind at the time of Post-mortem, there is no seizure panchanama of said bullet. It was not properly sealed by P.W.5 Dr. Patil. No vital organs were ruptured from the entry wound upto the second wound noticed on his dead-body. Grayish coloured fluid of 200 c.c. is not obtained by way of sample by P.W.5 Dr. Patil. There was no opacity in the transit of the bullet. It goes to show that it cannot be said safely that the bullet Article-K was really fired from the pistol Article-J by accused No.1. Therefore, according to him, these are the loopholes in the fire arm investigation and the benefit of the same is also required to be given to the accused No.1.

71. In this regard, he relied upon following cases :-

i. **Pankaj Vs. State of Rajasthan, reported in ABC 2016(II) 138 SC**, in which it is held by Hon'ble Apex Court that, "when the bullet recovered during the course of investigation had

not been connected with the weapon, when there was no material to connect the gun shot injury was due to the shot fired from the fire arm of the appellant accused, when no motive was proved clearly the circumstances in which appellant was alleged to have fired at the distance were also not proved then the benefit of doubt was given to the accused and he was acquitted.

ii. **Nankaunoo Vs. State of U.P., reported in 2016 ALL SCR (Cri) 394**, in which it is held by Hon'ble Apex Court that, “sufficiency of injury to cause death must be proved and cannot be inferred from the fact that the death has taken place. Prosecution has failed to elicit from the doctors that said gun shot injury caused rupture of any important blood vessel and that it was sufficient in ordinary course in nature to cause the death then looking to situs and nature of injury and in absence of evidence of doctor, the conviction under section 302 of the Indian Penal Code was altered to section 304 (Part I).

iii. **State of Maharashtra Vs. Shivdas Nana Bhagat, reported in 2005 ALL MR (Cri) 2102**, in which it is held by Hon'ble Bombay High Court that, “Expert's opinion and his evidence also needs corroboration and supporting evidence and it cannot be said to be the conclusive proof.”

iv. **State of Maharashtra Vs. Kisan Vitthal Bhusar, reported in 2018 ALL MR (Cri) 1170**, in which it is held by Hon'ble Bombay High Court that, “when weapon as well as clothes of accused were sent for chemical analysis after two months then its benefit was given to accused and acquittal was held proper.”

v. **State of Bihar Vs. Hanuman Koeri (Singh), reported in 1968 Law Suit (PAT) 198**, in which it is held by Hon'ble Patna High Court that, “the comparison micro-scope and other materials have not been produced and as such there can be no guarantee that the expert had either examined the gun and cartridge with the help of those materials at all. Prosecution is under duty to produce every scrap of material which would help in coming to a just decision irrespective of the fact that whether those materials go against the prosecution or in its favour.”

vi. **Mahavir Singh Vs. State of Madhya Pradesh, reported in 2016 ALL SCR (Cri) 1787**, in which it is held by Hon'ble Apex Court that, “when there is contradiction between ocular testimony and medical evidence as regards the distance and height of assaulter while inflicting grievous injury to deceased and when evidence of doctor was not clear and definite to say exactly from what position and distance assaulter could have fired gun then the prosecution failed to establish that bullet had been fired with fire arm seized from accused. When investigation was sloppy in collecting evidence then conviction of accused held liable to be set aside.”

vii. **Mohammad Rafique Abdul Rahim Shaikh Vs. State of Gujarat, reported in 2018 ALL SCR (Cri) 1489**, in which it is held by Hon'ble Apex Court that, “when accused was not found in actual possession of weapons or even the house then the prosecution failed to establish intention and consciousness of accused of fire arms found in his house and therefore his

conviction was set aside.”

viii. **Jakaran Singh Vs. State of Punjab reported in AIR 1995 Supreme Court, 2345**, in which it is held by Hon'ble Apex Court that, “when the statement under section 27 does not bear signature or thumb impression of accused, the panch witnesses are also not examined then the said statement would be rendered unreliable. When appellant has denied ownership of the crime revolver and prosecution has led no evidence to show that the crime weapon belonged to appellant, when there is no other circumstance pressed into aid by the prosecution then it was held that prosecution has failed to establish its case beyond reasonable doubt.”

ix. **Babu Ramchandra Shinde Vs. State of Maharashtra, reported in 2005 ALL M R (Cri) 1707**, in which it is held by Hon'ble Bombay High Court that, “when there was improper sealing of the weapons and blood stained clothes before sending them to Chemical analyzer then it is relevant factor against the prosecution. Therefore no support can be taken from the Chemical Analyzer's report as such, lacunae raises doubt in the prosecution's case.”

72. He further replied that the testimony of prosecution's witnesses is also suffering from material contradictions as regards removal of the clothes on the dead-body of deceased Govind either before or at the time of Post-mortem examination. The clothes were produced before the panchas not by his real brother P.W.4

Namdeo or by any of the relatives, but those were surprisingly produced by one police official namely Jadhav who is not examined by the prosecution. The panch witness on the seizure of such clothes i.e. P.W.2 Tambe has stated altogether different time of the said panchanama and it creates doubt. The clothes were not identified by the relatives of the deceased and therefore those cannot be said to be of deceased Govind and its benefit may be given to accused No.1.

73. According to him, original FIR is not on record. The person who has recorded the FIR of P.W.4 Namdeo i.e. API Sandbhor is not examined by the prosecution. Moreover it is anti-timed because according to him, deceased Govind was declared dead by the Civil Surgeon Dr. Kurhade at 10.10 p.m. while the informant P.W.4 Namdeo has testified that after lodging the FIR, he came back to Civil Hospital at 9.45 p.m. i.e. before deceased Govind was declared dead. This is the serious defect in the case of prosecution and benefit of which must be given to accused No.1. He further replied that as admitted by P.W.1 Namdeo that at the time of lodging of the FIR, he was not in proper state of mind and therefore possibility of telling falsely name of accused No.1 by him cannot be ruled out. He has falsely implicated accused No.1 in this crime merely because he is from outside State. Because he was not knowing accused No.1 personally prior to the incident and merely by way of discussion at Civil Hospital and with the police, he has falsely stated his name. The Post-mortem notes at Exh.192 and

especially the probable cause of death mentioned in it by P.W.5 Dr. Patil is premature, for want of preservation of Viscera. An important link in between the weapon allegedly used in the commission of offence i.e. the pistol Article-J and the bullet and empties at Articles-G, H, I and K and accused No.1 is not established by the prosecution. Investigating Officer P.W.10 PI Gholap has categorically admitted in his cross-examination that the bullet was fired in the mob which goes to show that an offence punishable under section 302 of the Indian Penal Code is not established.

74. According to him, there is absolutely no evidence adduced by the prosecution to show that accused No.1 at the relevant time was present on the spot, he was having any motive or intention to commit the offence and that by firing bullet Article-K on the stomach of deceased Govind by means of pistol Article-J he committed his murder. Therefore he submitted that by giving benefit of doubt for the above-said discrepancies in the evidence of prosecution, accused No.1 may be acquitted from this offence.

75. Advocate Mr. Dhaigude for accused Nos.2 to 5 also took an exception to the evidence adduced by the prosecution and vehemently replied that prosecution has failed to establish that at the relevant time, there was unlawful assembly formed by accused Nos.1 to 5. There is absolutely no evidence adduced by the prosecution against accused Nos.2 to 5. Their mere presence on

the spot of incident would not be sufficient to hold them liable for the vicarious liability for the alleged offence. Merely after the incident, accused Nos.2 to 5 ran inside the house of accused No.2 would not be sufficient to prove their guilt as they did not actually participate in the commission of alleged offence. As admitted by both the eye witnesses during their cross-examination, there was no quarrel or dispute in between deceased Govind, P.W.4 Namdeo and accused Nos.2 to 5. There was no previous rivalry. Neither of the accused Nos.2 to 5 have touched the bodies of either deceased Govind or any of the witnesses. On the contrary, there is ample evidence on record from the cross-examination of prosecution's witnesses that accused No.2 being member of Ashtavinayak Ganeshotsav Mandal has always given financial help to Mandal for festival and arranging procession etc.

76. According to him, though the weapon is allegedly seized from the house of accused No.2, prosecution has failed to prove his ownership over that weapon. Said panchanama is also not proved beyond doubt. Mere recovery of weapon from the house of accused No.2 would not be sufficient to hold him guilty. As admitted by P.W.10 PI Gholap, he did not find that accused persons conspired to commit alleged offence. Accused Nos.2 to 5 have absolutely not committed any offence. No proper procedure was followed for house search panchanama of house of accused No.2. Copy of panchanama was not handed over to the wife of accused No.2. Their statements are also not recorded. The weapon

was not found concealed in the cupboard of house of the accused No.2. But it was found kept on the clothes. P.W.3 Aashish Ghanvat has categorically admitted in his cross-examination that he did not know as to who is the owner of pistol Article-J, from where and from whom it was brought. According to him, in totality of the circumstances, accused Nos.2 to 5 are not found to have committed any offence and therefore he submitted that they may be acquitted.

77. In reply, DGP Mr. Kulkarni vehemently submitted that there is clerical mistake regarding number of the pistol Article-J. But so far as description of pistol Article-J is concerned either in the seizure panchanama at Exh.145, letter Exh.237 and depositions of witnesses are concerned, it matches perfectly. Moreover the muddemal receipt which was prepared immediately after the seizure also gives the same particulars. For that purpose, he again placed his reliance on the cited case **Legal Heirs of Phanidhar Das Vs. State of Assam**. According to him, as admitted by P.W.4 Namdeo, his FIR was typewritten by the police on the computer and it was also handwritten. His handwritten FIR is on record at Exh.157 which bears sign of P.W.4 Namdeo and which is very much admitted by him so also the contents of said FIR to be true and correct. Therefore this is merely an irregularity which does not go to the root of the prosecution's case. Upon asked by the predecessor of this Court, the then defence advocate Mr. Shinde has also produced on record the xerox copy of the FIR at

Exh.157 along-with pursis at Exh.154 which was handwritten in prescribed proforma. Therefore there is no ambiguity so far as time of lodging of the FIR and it cannot be said to be anti-timed. The pistol Article-J as well as the bullet Article-K are identified by all the witnesses on oath and there is also no ambiguity so far as these muddemal articles are concerned.

78. According to him, though there are some minor discrepancies or loopholes in the evidence of prosecution's witnesses or in conducting investigation, taking into consideration the nature and seriousness of the offence, its benefit may not be given to the accused. All the cited cases on which the defence advocate Mr. Ghadage placed his reliance are altogether on different footings and therefore according to him, those are not helpful to accused No.1.

79. While answering Point No.1, I had already discussed at length that taking into account the nature of injuries sustained by deceased Govind, his death was caused by the bullet Article-K which was fired from the pistol Article-J and as such he met with homicidal death. It propels me to the authorship of the crime. As discussed earlier, prosecution endeavored to establish guilt of accused persons by leading evidence of eye witnesses to the occurrence in the form of P.W.4 Namdeo and P.W.3 Aashish Ghanvat. It has adduced circumstantial evidence in the form of seizure of pistol Article-J under house search panchanama of the

house of accused No.2 at Exh.145, spot panchanama at Exh.144 by which the empties and live cartridge came to be seized.

80. Prosecution is heavily relying upon the oral testimony of an eye witnesses P.W.4 informant Namdeo and P.W.3 Aashish Ghanvat. It is not in dispute that at the relevant time, the immersion procession of idol of Lord Ganesh of Ashtavinayak Ganeshotsav Mandal, Deshmukhnagar was in process. There was no bustle, hurry or scurry in that procession. It is true that P.W.3 Aashish Ghanvat and P.W.4 Namdeo have spoken about different directions and lanes during the course of their evidence on oath. But the explanation has come on record from their own mouths that the middle lane is narrow and the vehicles could not pass by that lane and therefore while naming the lanes, there is discrepancy which is crept on record during their evidence. Moreover when the procession has to pass by different lanes, it can safely be gathered that after passing the first lane it has to change its direction in order to come in the subsequent lane and in that event, there is some discrepancy in the testimony of both these witnesses. But it is minor in nature. In fact it is not the discrepancy in the eyes of law and its benefit cannot go to accused persons. The presence of both these eye witnesses in the immersion procession was but natural as both of them are the activists of the Ashtavinayak Ganeshotsav Mandal, Deshmukhnagar and are residing in the same locality.

81. Not only that, deceased Govind also being an activist of said Ganeshotsav Mandal, was participating in the same procession. Their presence was natural on the spot. It emerges out from the oral evidence of both these witnesses that when the immersion procession came in front of house of accused No.2, his wife worshiped idol of Lord Ganesh by performing the *Aarti*. Not only that she also distributed the *Prasad* to the participants in the procession. That time, accused Nos.1 and 2 along-with their companions, as per the prosecution, participated in the procession and made request to the activists of the said Ganeshotsav Mandal to play two songs on the band and they wanted to dance on it. Though it was 8.15 p.m., their such request was considered. Mayur Brass Band played two songs on it and accused Nos.1 and 2 along-with their companions performed their dance. But thereafter also accused Nos.1 and 2 made forceful request and insisted to play two more songs as they wanted to dance more. But since the procession was getting late, deceased Govind was taking lead in taking the procession ahead.

82. That time, accused No.1 being enraged of the fact that his request was not allowed, he suddenly fired one bullet in air by taking out the pistol which was with him. Thereafter he fired another bullet on deceased Govind on his stomach and due to which he moved behind and was about to fall, but he was attended by the participants in the procession. In this regard, much stress is given by accused No.1 in his defence that as if really deceased

Govind was fallen down the ground or he was attended before his fall on the ground. This is in view of the fact that his clothes were not smeared with the soil or mud. But this in my opinion is not the matter worth consideration. Because what is required to be seen is that immediately after the bullet was fired on his stomach, the persons gathered there including P.W.3 Aashish Ghanvat and his brother P.W.4 Namdeo took him to Dr.Dhumal and by his four-wheeler, he was taken to the Civil Hospital. The clothes of deceased Govind and especially the *Kurta* on which the bullet was fired was not smeared with too much blood as the bullet pierced in his stomach. However, there was blood stain and the hole on the spot at which the bullet hit his stomach. Therefore the fact that the clothes of the persons attending him were not smeared with blood or the blood was not found in the vehicle of Dr. Dhumal are the things which pale into insignificance.

83. Thereby the presence of accused No.1 and 2 is clearly established on the spot of incident by the account of eye witnesses P.W.3 Aashish Ghanvat and P.W.4 Namdeo. It has also come on record in the evidence of prosecution that after accused No.1 fired bullet on the stomach of deceased Govind, he along-with other accused rushed in the house of accused No.2. This fact is also seen by both these eye witnesses. The subsequent conduct especially on the part of accused No.1 speaks volume about his guilty act. Otherwise there was no reason for him to rush inside the house of accused No.2.

84. In his statement before the police, P.W.3 Aashish Ghanvat, according to Investigating Officer, P.W.10 PI Gholap, stated to him that since the request of dancing more was not allowed, there was chaos due to scuffle in between Jagadale family and accused Nos.1 and 2. In that event, accused No.1 fired the bullet in the crowd. But P.W.1 Aashish Ghanvat has refused on oath to have stated such portion Exh.239 to the Investigating Officer P.W.10 PI Gholap which came to be proved from his mouth. But what is material is his evidence on oath. While deposing on oath, he has not uttered a single whisper that there was scuffle in between accused Nos.1 and 2 and Jagadale family, there was chaos and after opening fire in the air, accused No.1 was covered by the persons in the procession. However the fact remains that accused No.1, at the relevant time was armed with deadly weapon like pistol Article-J and he fired the bullet Article-K from it by pointing it towards deceased Govind as is stated by his brother P.W.4 Namdeo in his FIR at Exh.157 as well as in his evidence on oath.

85. A strenuous arguments were also made by the defence advocate Mr. Ghadage that on the spot there was no electric light facility at the relevant time. Since it was 8.30 p.m. and due to dark nothing was visible to anybody due to noise of fire crackers and chaos that took place in the procession. For that purpose, he is heavily relying upon the photographs of the spot at Exh.171 to 173 which are admitted by the informant P.W.4 Namdeo. He invited

my attention to those photographs and argued that though there is electric pole being seen in those photographs on the spot, there is no electric light installed on that pole. But this argument is strange in my view. This is because the spot panchanama at Exh.144 which came to be prepared immediately after the incident by P.W.10 PI Gholap with the help of panch witness P.W.3 Aashish Ghanvat clearly indicates presence of electric pole on the spot of incident. Not only that there is note at the fag end of said panchanama that it came to be prepared in the light on the electric pole.

86. One more aspect which does not escape from the sight is that along-with the spot panchanama at Exh.144, map of the spot of incident is annexed by the Investigating Officer P.W.10 PI Gholap. Said map discloses that on the spot of incident, the road is 15.5 feet in width. The panchanama reflects that to both the sides of road, there are two storeyed houses which are being seen in the photographs at Exh.171 to 173. At the night time of 8.30 p.m., the persons who are residing in these houses are not supposed to keep dark just in front of their houses. Judicial note can be taken that electric lights of all the houses in front of their doors were burning at the relevant time. Apart from that, it being an immersion procession of idol of Lord Ganesh, it was also not supposed to pass in the dark when there was Mayur Brass Band and Banjo Party and especially when the children and women in the area participated in that procession. A note can safely be taken that there was ample light facility at the time of alleged incident as it has taken place on

the road having small width of 15.5 feet and to both of its sides, there are residential houses including electric pole. Moreover a positive suggestion was put by the advocate of accused No.1 to the panch witness P.W.3 Aashish Ghanvat in his cross-examination about existence of such electric pole to the southern side of house of accused No.2. Under such circumstances, I did not find any substance in the arguments of the defence advocate of accused No.1 that there was no light facility on the spot of incident at the relevant time.

87. It is true that P.W.10 PI Gholap did not obtain certificate from the MSEDCL about burning of such light and its facility on the spot. However in my opinion, in view of the fact situation which is brought on record by the defence itself by way of the photographs at Exh.171 to 173, it can safely be said that there was ample light facility due to existence of residential houses to both the sides of that road. Moreover independent light facility was also there as there was immersion procession facility of idol of Lord Ganesh.

88. Apart from that, it cannot be ignored that the photographs at Exh.171 to 173 came to be tendered in evidence by the defence on 22/11/2017. But the incident in question has taken place on 28/09/2012. There is huge gap of about five years in between these two dates. We are required to see the position on the date of incident and not on the date when these photographs

were snapped. Moreover no witness is examined by the defence i.e. the photographer who has snapped these photographs in order to show as to exactly on which date these photographs were snapped and whether those covered entire fact situation on the spot.

89. Evidence of prosecution is further assailed by the defence advocate of accused No.1 Mr. Ghadage on the point that prosecution has suppressed the genesis of the crime as it has not examined Jagadale brothers or their father with whom there was scuffle just prior to the incident. It is seen from the evidence that there was previous quarrel in between accused Nos.1 and 2 and Jagadale family. But so far as the incident in question is concerned, accused No.1 from his pistol Article-J has fired bullet Article-K by pointing it towards deceased Govind and not towards Jagadale family. The informant P.W.4 Namdeo, in his FIR at Exh.157 as well as while deposing on oath has categorically stated these things. Therefore there is no question of suppression of genesis of crime according to me by the prosecution.

90. I have carefully gone through facts of the cited case **Mohan Ganpati Sathe Vs. State of Maharashtra**, on which defence advocate Mr. Ghadage placed his reliance. But facts of this cited case are altogether different from the case at hands. In this cited case, the location and nature of injury as well as upward track of pellets support the defence theory that the injuries

sustained by deceased could be caused due to accidental firing of gun shot. Fact that accused had sustained injuries on fingers of both the hands and failure to explain these injuries lends support to the defence that incident had occurred in a manner stated by the accused and thus probabilizes defence that gun has discharged in course of scuffle. In that context, it was held that suppression of facts as well as genesis of the crime assumes greater significance and renders the defence plausible.

91. These facts are altogether different with the case at hands. There is absolutely no evidence or circumstance on record to show that there was accidental firing by the accused No.1 and due to such firing of a gun shot either he was injured or lend support to his defence. On the contrary, there is ample evidence on record by way of eye witnesses that by pointing out his pistol Article-J, he fired bullet Article-K on deceased Govind on his stomach since he was taking lead in taking the procession ahead by disallowing the request of accused Nos.1 and 2 to dance more on the songs played by the brass band. Since facts of this cited case are altogether different, with due respect the law laid down therein is not coming to the help of accused No.1.

92. It is true that Investigating Officer P.W.10 PI Gholap in his cross-examination has admitted that it was transpired in the investigation that prior to the incident, there was scuffle in between accused Nos.1 and 2 and Jagadale family. But that

incident was altogether different and which has nothing to do with the firing of bullet on deceased Govind. As admitted by both the eye witnesses, there was no previous rivalry in between P.W.4 Namdeo and his deceased brother Govind and accused persons. But the motive behind the commission of offence on the part of accused No.1 developed in view of the fact that, Govind did not allow his request to dance more and took active lead in taking the procession ahead.

93. Apart from that, this being the case of direct evidence and as held by Hon'ble Apex Court in the cited case **Prem Kumar Vs. State of Bihar**, on which DGP Mr. Kulkarni placed his reliance, when there is direct evidence regarding the commission of offence, the question of motive will not loom large in the mind of the Court. When accused No.1 participated in the immersion procession of Lord Ganesh, armed with deadly weapon like pistol Article-J, this by itself shows the preparation on his part regarding commission of offence and being enraged by disallowing of his request to dance more on the songs played by band, he fired bullet from his pistol Article-J on the stomach of deceased Govind. This was clear indication of motive on his part. Moreover subsequent conduct on his part to flee away from the spot and in the house of accused No.2 lends assurance to the fact that he was having motive behind commission of this offence and he was prepared for that.

94. Immediately after the incident, P.W.10 PI Gholap reached to the spot and in the presence of P.W.3 Aashish Ghanvat and another panch witness prepared the panchanama of the spot at Exh.144 in the light of the electric pole. Thereby he found on the spot two empties of fired bullets and live cartridge Articles G, H, I. Those came to be seized on the spot itself by fixing the labels of signatures of panchas upon them. These empties and live cartridge as well as signs on their labels are identified by panch witness P.W.3 Aashish Ghanvat in his evidence on oath.

95. So far as pistol Article-J is concerned, after preparation of the spot panchanama, P.W.10 PI Gholap in the presence of said panchas, took house search of the house of accused No.2 with the consent of his wife and in her presence. Thereby the pistol Article-J came to be recovered from the rack of his bed-room kept on the clothes. P.W.3 Ghanvat has stated on oath that upon asked about pistol Article-J, wife of accused No.2 told them that after accused No.1 fired bullet from said pistol on the stomach of deceased Govind, he came inside their house and hidden that pistol in the rack of the cupboard. Search and seizure panchanama at Exh.145 of the house of accused No.2 bears sign of wife of accused No.2 as stated on oath by P.W.3 Aashish Ghanvat and Investigating Officer P.W.10 PI Gholap. Therefore though there is no disclosure statement of accused No.1 recorded by P.W.10 PI Gholap or that the pistol Article-j is not immediately recovered from the custody of accused No.1, this is the minor discrepancy in the investigation

the benefit of which would not go to accused No.1. Because the pistol Article-J is also identified by both the eye witnesses P.W.3 Aashish Ghanvat and P.W.4 informant Namdeo Salunkhe during their evidence on oath in the open Court.

96. As discussed earlier, there was ample light facility and therefore both these witnesses were having occasion to see the pistol Article-J at the hands of accused No.1 and accordingly they have told its particulars while deposing on oath. Therefore an important link in between the pistol Article-J and act of accused No.1 in firing bullet from it on the stomach of deceased Govind is clearly established in my opinion.

97. It is true that Investigating Officer P.W.10 PI Gholap has not recorded statements of family members of accused No.2. But a reasonable inference can be drawn that although their statements would have been recorded by Investigating Officer P.W.10 PI Gholap, possibility of they, deposing in favour of prosecution was very less. It would have been a futile exercise in my opinion. Apart from that, the panchanama at Exh.145 reflects that before entering the house of accused No.2, his wife was asked as if she wanted to take search of the panchas and police, to which she refused. Under such circumstances, there was no question of planting the pistol Article-J in the house of accused No.2 by anybody else. Thus an important link in between the accused No.1 and the pistol Article-J and his act of firing of bullet Article-k from

the pistol Article-J on the stomach of deceased Govind Salunkhe is clearly established by the prosecution.

98. Coming to the FIR at Exh.157, it was strenuously argued by the defence advocate Mr. Ghadage for accused No.1 that the original FIR is not on record. This is the basic defect which goes to the root of the prosecution's case. Moreover the FIR is anti-timed as the informant P.W.4 Namdeo has admitted in his cross-examination that after lodging the FIR, he came back to the Civil Hospital at 9.45 p.m. That time he was not asked to bring the medicines by the doctor. Govind was declared dead by the Civil Surgeon Dr. Kurhade at 10.10 p.m. It goes to show that the FIR is anti-timed. The benefit of this defect is required to be given to the accused No.1.

99. DGP Mr. Kulkarni fairly conceded that the FIR typewritten on the computer is incomplete as 6 to 7 lines in it at the bottom are not printed. At the same time, according to him, the FIR at Exh.157 which is handwritten and in the prescribed format is very much on record which came to be proved from the mouth of P.W.4 Namdeo during his evidence. Its time is mentioned as 11.15 p.m. Though in the computer typewritten FIR, no time is mentioned, in the handwritten copy at Exh.157, the time is very much mentioned. Thus this is the minor discrepancy.

100. There appears substance in the arguments of DGP Mr.

Kulkarni. In the computerized FIR, time of lodging is not mentioned. At the same time, the handwritten copy in prescribed format is very much on record produced by the prosecution which came to be proved from the mouth of informant P.W.4 Namdeo. It is marked as Exh.157. On that FIR, time of lodging it is very much mentioned i.e. 11.15 p.m. Apart from that, the defence advocate for accused No.1 himself along-with pursis at Exh.154 has produced on record its copy. Thereby entire contents in the computerized FIR are being seen including the sign of informant P.W.4 Namdeo and the PSO API Sandbhor. When the FIR in the prescribed format at Exh.157 is very much on record and its contents are proved from the mouth of informant P.W.4 Namdeo, in my opinion, it is a minor discrepancy. It does not go to the root of the prosecution's case and thereby no prejudice has been caused to accused No.1. Because on this point, he has cross-examined material witness i.e. P.W.4 Namdeo at length.

101. It is seriously required to be taken into consideration that the FIR at Exh.157 was lodged by P.W.4 Namdeo on 28/09/2012 while he deposed on oath before this Court on 21/12/2017. Due to time gap of more than five years, there might have been some mistake on his part due to evading of memory and accordingly he has told the time of coming back to the Civil Hospital after lodging of the FIR to be of 9.45 p.m. But the document which is very much on record may not lie. The FIR at Exh.157 clearly shows that it came to be lodged at 11.15 p.m. It

cannot be said that it is anti-timed.

102. In this regard, defence advocate Mr. Ghadage placed his reliance on the cited case **State of Maharashtra Vs. Abdul Rehman Gulam Nabi Shaikh**. I have carefully gone through facts of this cited case. Therein the FIR was not carrying signature or thumb impression of informant and no explanation was given for it by the PSO who recorded that FIR. But such is not the position in the case at hands. The FIR at Exh.157 so also its copy which is produced by the defence advocate himself along-with pursis at Exh.154 very much bear signs of informant P.W.4 Namdeo and those are admitted by him. When the FIR at Exh.157 is very much proved and brought on record by the prosecution explaining the irregularity then with due respect, the law laid down in this cited case is not coming to the help of accused No.1 as the facts are not identical.

103. The next important aspect needs to be considered is the Post-mortem examination on the dead-body of deceased Govind conducted by P.W.5 Dr. Aaditi Patil. While answering Point No.1 in the affirmative, I had discussed at length that the inquest panchanama at Exh.129 was duly proved from the mouth of panch witness P.W.1 Jagannath. Regarding removal of clothes on the dead-body of deceased Govind either at the time of inquest panchanama at Exh.129 or while conducting the autopsy, it is tried to be argued by advocate Mr. Ghadage for accused No.1 that the

witnesses i.e. P.W.1 Jagannath and P.W.5 Dr. Patil as well as informant P.W.4 Namdeo have made contradictory statements regarding removal of clothes.

104. But after careful scrutiny of the oral testimony of P.W.1 Jagannath, it is seen that, though in his examination-in-chief he testified that inquest panchanama was prepared after removal of the clothes on the dead-body of deceased Govind, the defence advocate for accused No.1 put a specific question to him in his cross-examination which is recorded by my learned predecessor in question-answer form. He was asked whether the clothes on the dead-body were removed. To which he answered that the clothes were not removed, but those were pulled up. P.W.5 Dr. Patil also has testified on oath that she did not cut open the clothes on the dead-body of deceased Govind but she removed those clothes and were handed over to API Kadam. Therefore in my opinion, there is also no controversy in between witnesses of the prosecution on this point.

105. P.W.5 Dr. Patil has categorically testified on oath that at the relevant time, she was on duty as a Medical Officer at Civil Hospital, Satara. At about 8.45 p.m., patient Govind Salunkhe was brought to the hospital by Sachin Patil and others. He was unconscious and gasping. She admitted him as an indoor patient. His MLC was registered and immediately she informed about it to the Satara City Police Station by way of letter at Exh.191. After

giving primary treatment to the patient, she made contact with the on-call surgeon Dr. Kurhade. Then she made arrangement for blood and also carried out the blood investigation. But Dr. Kurhade declared him as dead at 10.10 p.m.

106. After inquest panchanama, dead-body was handed over to her at about 1.30 a.m. and accordingly she conducted Post-mortem in between 2.00 a.m. to 3.30 a.m. She noted two injuries on the dead-body of deceased Govind which are described fully in the earlier part of the judgment. Injury No.1 was penetrating injury oval in shape of right mid axillary line 21 c.m. below axilla and 25 c.m. from umbilicus of size 1 c.m. X 1 c.m. into deep cavity. Around wound margin blackish in colour. Though there was no active bleeding from wound, it has come on record that she found around 3 liters of blood in the peritoneal cavity due to piercing of bullet Article-K. Injury No.2 was contusion of 4 c.m. X 3 c.m. bluish red in over anterior abdominal wall in left lumbar region and 18 c.m. from umbilicus.

107. Regarding this particular location of injury No.1 defence advocate Mr. Ghadage for accused No.1 strongly submitted that the witnesses i.e. P.W.3 Aashish Ghanvat, informant P.W.4 Namdeo and Investigating Officer P.W.10 PI Gholap are speaking about the location about that injury on the stomach and in between the back and stomach. As against this, injury No.1 mentioned in the Post-mortem notes at Exh.192 was

found just below the right arm pit. It creates doubt especially when the witnesses have admitted that deceased Govind was not dancing in the immersion procession by raising his hands upwards. Therefore it was not possible that the bullet would hit just below his right arm pit.

108. But it would require no opinion that the witnesses i.e. P.W.3 Aashish Ghanvat, P.W.4 Namdeo so also Investigating Officer P.W.10 PI Gholap are not an expert witnesses in this field. They have testified on oath the location which was noticed by them. As against this, the Post-mortem examination is conducted by an expert witness i.e. P.W.5 Dr. Patil and she has carried out measurements of both the wounds on the dead-body of deceased Govind. Accordingly she has stated that injury No.1 was on right mid axillary line 21 c.m. below axilla and 25 c.m. from umbilicus of size 1 c.m. X 1 c.m. Thereby it is seen that injury No.1 was found not just below the right arm pit. But it was below axilla and 25 c.m. from umbilicus. Under such circumstances, I did not find any contradictory locations in the depositions of above-said witnesses.

109. It is further in the evidence of P.W.5 Dr. Patil that both these injuries were anti-mortem. The Post-mortem was started and during internal examination on opening of the abdomen, three liters of blood was present in the peritoneal cavity. There was huge retroperitoneal clot extending from diaphragm to pelvis brime

approximately 1.5 liter. Interior vena cava through and through perforating injury of 1 c.m. X 1 c.m., 4 c.m. above bifurcation. There was injury to the small intestine also. Perforation at mesentric border of jejunal approximately 150 c.m. distal to devodinojejunal junction of 1 c.m. x 1 c.m.

110. From the external injury No.1, she followed the track of dissection till injury No.2 and under the skin in the muscle, she found the bullet Article-K. She immediately handed it over to the police along-with skin sample and blood sample. The Post-mortem notes came to be proved from her mouth and has given the cause of death to be due to hemorrhagic shock due to fire injury.

111. In her cross-examination she admitted that she could not form any opinion as if the nature of injury No.1 was homicidal, suicidal or accidental. At the same time, while answering Point No.1 in the affirmative, I had already reached the conclusion that injury No.1 on the dead-body of deceased Govind was only because of the bullet fired by accused No.1 from his pistol Article-J and said bullet Article-K came to be recovered from his stomach during Post-mortem examination. P.W.5 Dr. Patil has given an alternate possibility that after sustaining of injury No.1, the patient may die due to cardiac arrest or mental shock. At the same time, after conducting the Post-mortem, she has categorically stated that death of the deceased Govind was caused due to hemorrhagic shock due to fire arm injury and not on account of cardiac arrest or

mental shock.

112. Her testimony was tried to be assailed on the ground that she has not performed the Post-mortem as per the Medical Jurisprudence. But after going through her entire examination-in-chief, it is seen that she also possesses the knowledge of fire arm injuries as she had the subject of Forensic Medicines while undergoing MBBS Course and therefore she stated that she is having basic knowledge about it. The bullet Article-K according to the defence advocate Mr. Ghadage was not seized under panchanama and therefore it creates doubt. But it is the usual practice that if any foreign body is recovered by the Medical Officer conducting Post-mortem then they used to hand it over to the police immediately. Moreover at the time of performing Post-mortem, only Medical Officers who are conducting the Post-mortem and their attendants used to be present in the concerned room. Therefore it would not be helpful for the defence that there is no separate panchanama of the bullet Article-K prepared by the Investigating Officer P.W.10 PI Gholap.

113. While answering Point No.1, I had already discussed at length that so far as injuries mentioned in the inquest panchanama at Exh.129 and in the Post-mortem notes at Exh.192 are concerned, there is no difference in the injuries noted in both these documents. Injury No.2 seems to have been found on the dead-body due to internal hitting of the bullet Article-K at that particular

portion and it was in the form of contusion i.e. reddish bluish of the skin due to blunt trauma. According to P.W.5 Dr. Patil, she has perfectly done the measurements of the wounds. She did not find any blackening in internal organs in between injury No.1 and injury No.2 though according to her, track was reddish in colour.

114. In this regard, the defence advocate Mr. Ghadage for accused No.1 submitted that when there was no blackening and when P.W.5 Dr. Patil did not find any metallic part or residue in between injuries No.1 and 2, it goes to show that the bullet Article-K was pierced in the body of deceased Govind from the injury No.2. But in my opinion, this argument is fallacious because P.W.5 Dr. Patil has categorically stated that the entry wound is injury No.1 and she has opined the nature of injuries in between injury No.1 and injury No.2 to be penetrating and perforating. She has also started the Post-mortem examination by following the track of dissection from external injury No.1 to injury No.2.

115. It is worth to note that injury No.2 is not the external injury, but it is internal injury by way of only contusion of bluish red in colour of the skin due to blunt trauma as the bullet hit to the intestine part below that injury. She has further testified that injury No.1 is the only entry mark for piercing the foreign body in the body of the victim. Thus, it is also clearly established by the prosecution with the help of oral testimony of P.W.5 Dr. Patil coupled with her Post-mortem notes at Exh.192 that death of

deceased Govind was caused due to hemorrhagic shock due to fire injury which is mentioned in Post-mortem notes. Though she has given shape of entry wound No.1 to be oval and Dr. Kurhade has stated it to be circular in shape, according to her shape of the wound noted by her in the Case-paper on the first examination is not there and site is there.

116. Testimony of P.W.5 Dr. Patil is further assailed by the defence advocate Mr. Ghadage for accused No.1 that she did not properly seal the bullet Article-K and blood and skin samples. But she denied these things in her cross-examination. She stated that she properly sealed the bullet Article-K though she did not wash it so also the blood and skin samples and she has stated the procedure followed by her. The Chemical Analyzer's Report at Exh.262 regarding the samples also speaks that the seals were perfect and as per the copy sent. In her cross-examination, it has come on record that in the Forms which were required to be filled by her, she found some chemical. According to her, it might have been due to improper handling by the police machinery. But she denied that such seals were not properly put, those were tampered etc.

117. In this regard, the defence advocate Mr. Ghadage for accused No.1 placed his reliance on the cited case **Balu Ramchandra Shinde Vs. State of Maharashtra**. In this cited case the weapons and blood stained clothes were not properly sealed

before sending them to the Chemical Analyzer. It was held that, it was relevant factor against the prosecution and no support can be taken from the Chemical Analyzer's report as such and lacunae raised doubt. But so far as case at hands is concerned, the seal is in respect of blood and skin and the bullet Article-K and not in respect of blood and weapons. Moreover as said earlier, the Chemical Analyzer in his report at Exh.262 has categorically stated that the seals were perfect and as per the copy sent. Since facts of this cited case are not identical with the case at hands, with due respect, the law laid down therein is not helpful to accused No.1.

118. Seized clothes, weapon, blood and skin samples of deceased Govind so also the bullet Article-K found in his stomach were carried to the Regional Forensic Science Laboratory, Kalina, Mumbai by the carriers P.W.6 Police Naik Balu Bunage, P.W.7 Rahul Bhaguji Murhe, the then Police Naik of Satara City Police Station and P.W.8 Police Naik Nandkumar Jadhav. All these three witnesses have testified on oath about receiving of samples by them from the Civil Hospital, from the Investigating Officer P.W.10 PI Gholap and handing over those samples to the C.A. Laboratory at Mumbai. During their cross-examination nothing worthwhile could be gathered so as to disbelieve them or regarding the custody of these samples during the intervening period or regarding the seals etc.

119. Coming to the testimony of another star witness i.e.

Ballistic Expert P.W.9 Vasudeo Patil, it is in his evidence that he is M.Sc. Organic Chemistry. In the yearly Forensic Science Conference, his five research papers have been published. In between the years 2005 to 2015, he was working as a Ballistic Expert at Mumbai. He has spoken about receiving of samples handed over to him by the above-said witnesses.

120. According to him, on 29/10/2012 he received one sealed envelope along-with letter from Medical Officer, General Hospital, Satara through Police Naik, B. No. 1036 i.e. P.W.7 Murhe. There was one copper jacketed bullet having brushing marks which was put in glass fial labeled as Post-mortem No.493/2012 and patient's name as Govind Dattatray Salunkhe. After carrying out primary formalities, he carried out its analysis and has opined that it is a fired 7.65 m.m. pistol bullet. Presence of brushing marks on it shows that it was fired from smooth bore barrel weapon. Accordingly he issued Analysis Report and which is on record at Exh.222 which came to be proved from his mouth.

121. Thereafter he received six sealed parcels along-with forwarding letter from PI of Satara City Police Station in Crime No. 583/2012 through Police Naik, B. No.1036 i.e. P.W.7 Murhe. All the six parcels were perfect in their seals and as per the copy sent. Those included one country-made pistol with magazine having crude number and marking number as 1115 auto pistol made in USA only ITPY SUPPLY wrapped IN paper marked as Exhibit No.1.

One KF 7.65 m.m. pistol cartridge having light indentation on the cap wrapped in paper marked as Exhibit No.2. One KF 7.65 m.m. pistol empty having indentation on the cap wrapped in paper marked as Exhibit No.3. One K.F.7.65 m.m. pistol empty having indentation on the cap wrapped in paper marked Exhibit No.4. One half T shirt wrapped in paper marked as Exhibit No.5 and one full Jean pant wrapped in paper marked as Exhibit No.6.

122. Two pistol empties of 7.65 m.m. and one pistol cartridge of 7.65 m.m. received by him are those which came to be seized by Investigating Officer P.W.10 PI Gholap under panchanama of the spot at Exh.144. He opined after conducting analysis that Exhibit No.1 is the country-made pistol in working condition. It is capable of chambering and firing 7.65 m.m. pistol cartridges. Residue of fired ammunition nitrite was detected in the barrel washings of the pistol Exhibit No.1 showing that it was used for firing prior to its receipt in the laboratory.

123. He further testified that 7.65 m.m. pistol cartridge from the laboratory stock was used for test firing through country-made pistol which in this case is marked as Article-J. According to him, one of the 7.65 m.m. cartridge was having very light indentation on the cap and therefore it was not suitable for ballistic comparison. The empties in Exhibit No.3 and 4 are the fired 7.65 m.m. pistol cartridge case and the characteristic features of the firing pin impression on the empties Exhibit No.3 and 4 i.e.

Articles-G and H in this case tally between themselves when examined under comparison micro-scope and with that on the cartridge test fire through the country-made pistol Article-J showing that these empties have fired from the country-made pistol in Exhibit No.1.

124. The copper jacketed bullet i.e. Article-K received from Medical Officer, General Hospital, Satara i.e. P.W.5 Dr. Aaditi Patil under Post-mortem No. 493/2012, according to him, is a fired 7.65 m.m. pistol bullet. The characteristic lengthwise brushing marks examined under comparison microscope on the bullet in Exhibit No.1 of BL-711/12 tally with the bullet test fired from the country-made pistol in Exhibit No.1 i.e. Article-J showing that the copper jacketed bullet Article-K has been fired from the country-made pistol Article-J in this case.

125. According to him, nothing of note in relevance to the fired gun shot residues (GSR) were detected on the clothes in Exhibit 5 and 6 i.e. the T shirt and full jean pant. That means the clothes of accused No.1 which came to be seized under his arrest panchanama, no fired gun shot residues were detected on those clothes. Accordingly he prepared Analysis Report and which is on record at Exh.223. He identified all the articles analyzed by him i.e. the empties of fired bullets Article-G and H, live cartridge Article-I, pistol Article-J and fired bullet Article-K which came to be removed from the stomach of deceased Govind at the time of his

Post-mortem. He opined that the bullet Article-K was fired from the country-made pistol Article-J.

126. Thereafter on 08/11/2012 he received four sealed parcels from Investigating Officer, P.W.10 PI Gholap of Satara City Police Station through Police Naik, B. No. 1470 i.e. P.W.8 Nandkumar Jadhav. The description of the articles was one full open *Kurta* (cut) wrapped in paper, one full jean pant wrapped in paper, one under-wear(cut) wrapped in paper and two X-ray plates. Those were bearing Crime No. 583/2012 of Satara City Police Station. He conducted analysis of all those clothes. The result of analysis was detection of metallic copper and lead in absence of blackening and powder residues around the periphery of encircled shot hole on the full open *Kurta* i.e. Article-A in this case was consistent with the passage and wipe of copper jacketed bullet having been fired from beyond the powder range of the weapon. The shot hole was not observed on the clothes i.e. the jean pant and under-wear. Opacity in relevance to the fired bullet/shot was also not observed, according to him, on the X-ray plates received from the Civil Hospital. Accordingly he submitted his Analysis Report which came to be proved from his mouth and which is on record at Exh.224. On the *Kurta* Article-A, shot hole was encircled in red ink and it was on right auxiliary side. This particular description clearly matches with the description of the clothes mentioned in the inquest panchanama at Exh.129.

127. Testimony of P.W.9 Patil was strongly assailed by the defence advocate Mr. Ghadage for accused No.1 that he has not produced on record the microscopic photographs, he did not send the barrel washings to the Investigating Officer P.W.10, PI Gholap. He also did not produce on record any document to show that he really took 7.65 m.m. bullet from the stock of the laboratory and successfully test fired it through the pistol Article-J. According to him, since he did not find any opacity in the X-ray plates, it cannot be said safely that the bullet Article-K was really pierced in the stomach of deceased Govind. Therefore according to him, in view of these basic defects in the analysis of P.W.9 Patil, the Ballistic Expert, his testimony is not helpful to the prosecution.

128. But I did not find any substance in this particular argument advanced by the defence advocate Mr. Ghadage. Because P.W.9 Patil is the Ballistic Expert having vast experience in this field since in the yearly Forensic Science Conferences, his research papers are also found published. Merely he did not produce on record the microscopic photographs or he did not produce on record the document regarding test fired bullet from the laboratory and did not send the barrel washings to the Investigating Officer P.W.10, PI Gholap, his testimony which inspires confidence cannot be brushed aside lightly. He was consistent in stating that he found the shot hole on the *Kurta* Article-A which was encircled in red ink. There was detection of metallic copper and lead in absence of blackening and powder

residues around the periphery of encircled shot hole and it was consistent with the passage and wipe of copper jacketed bullet Article-K having been fired from beyond the powder range of the weapon i.e. from beyond the distance of 2 feet.

129. On the pistol Article-J also P.W.9 Patil has found the residue of the fired ammunition nitrite in the barrel washings and that it was used for firing prior to its receipt in the laboratory. He has also opined that the copper jacketed bullet Article-k has been fired from the pistol Article-J. From the microscopic examination, he found the fire pin impression of bullet Article-k and test fired bullet from the stock of the laboratory to be the same. He admitted that he did not reconstruct the bullet Article-K. But that is merely an irregularity in my opinion. Though no opacity is found in the X-ray plates, it is proved by the prosecution beyond doubt that the bullet Article-K was successfully fired from the pistol Article-J and therefore it pierced in the body of deceased Govind from entry wound No.1 as mentioned in the Post-mortem notes at Exh.192 and it reached upto the internal wound No.2 as mentioned in the said notes. The small intestine and other body parts were ruptured due to piercing of the bullet.

130. P.W.9 Patil, the Ballistic Expert did not search for finger prints on the pistol Article-J. According to him, it was not necessary for him to give the identification mark to the every removable part of the pistol Article-J sent for examination. He was

not able to tell the distance at which the fired empties would fall if those are fired from the pistol Article-J. He did not find any soil on empties on the Articles G-1 and H-1. He did not notice any blood or tissue on the copper jacketed bullet Article-K. He further testified that due to fired bullet, the skin would not be burnt, but it can be damaged badly due to cavitation and shock wave effect. These things are very much mentioned in the Post-mortem notes at Exh.192 and have been categorically stated by Medical Officer P.W.5 Dr. Aaditi who conducted Post-mortem on the dead-body of deceased Govind.

131. According to Ballistic Expert P.W.9 Patil, there were uncountable brushing marks on the fired bullet Article-K and on the empties Article-G-1 and H-1. There was single fire pin impression. He noticed said identification mark on the Pistol Article-J i.e. superficial lengthwise unique brushing marks on fired bullet Article-K. He did not compare the live cartridge Article-I-1 with empties Articles G-1 and H-1 and fired bullet Article-K. According to him, if a person is shot beyond the powder range i.e. beyond the distance of 2 feet then there can be no features like burning, blackening, tattooing, scorching, gases and micro-particle deposit. There was only one hole which was found on the *Kurta* Article-A of deceased Govind. He found the residue of nitrite on the fired empties and bullet, but he did not mention about it in his report. If the nitrite is found on the bullet then it may or may not be found on the clothes of the victim. If the pistol Article-J is kept idle

then it would not get rusted. There was indentation on percussion cap of cartridge Article I-1.

132. He did not insert cartridge Article I-1 in the magazine of pistol Article-J. He did not take extract of barrel wash of the pistol Article-J after test firing. He did not find extractor, breech, ejector or chamber marks on the bullet Article-K. But he denied that merely to oblige the prosecution, he has sent back the test fired bullet as the bullet Article-K. He further denied that he has stated about the brushing marks of his comparison microscope to be the brushing marks on the empties articles G-1 and H-1 and fired bullet Article-K. His remaining cross-examination was in the form of suggestions and denials and he strongly refuted all the suggestions put to him.

133. His testimony is strongly tried to be assailed by the defence advocate Mr. Ghadage for accused No.1 on the ground that P.W.5 Dr. Patil has mentioned the number of pistol Article-J in his report as 1115 while in the seizure panchanama at Exh.145 it is mentioned as 7775. According to him, the pistol which was searched and seized by way of panchanama at Exh.145 was replaced by the Investigating Officer P.W.10 PI Gholap and he sent some other pistol bearing No.1115 to Ballistic Expert P.W.9 Patil to help the prosecution and the deceased.

134. DGP Mr. Kulkarni strongly assailed these arguments of

defence advocate and replied that there may not be mention about the number of pistol in the letter at Exh.237 which was sent by the Investigating Officer P.W.10 PI Gholap. But the description of that pistol Article-J is very much mentioned in the seizure panchanama at Exh.145 so also in the letter at Exh.237. There may be error of judgment in reading and marking the number of pistol as No. 1115 by P.W.9 Patil instead of 7775. But this is not the major discrepancy and its benefit may not be given to the accused.

135. There appears substance in the argument of DGP Mr. Kulkarni. Because keeping aside the number of pistol, if other description of the pistol Article-J in the recovery panchanama at Exh.145 and the letter written by Investigating Officer P.W.10 PI Gholap at Exh.237 to the Ballistic Expert P.W.9 Patil is compared then it is seen that it is the same pistol Article-J which came to be seized under panchanama at Exh.145. The same was sent to the C.A. Laboratory, Kalina, Mumbai by letter at Exh.237 and which was received and analyzed by the Ballistic Expert P.W.9 Patil. There may be an error of judgment in reading the figure '777' as '111'. Therefore that is the minor discrepancy in the case of prosecution and its benefit cannot be given to the accused No.1 in a serious offence like this. Thus the testimony of Ballistic Expert P.W.9 Patil also comes to the help of prosecution. Thereby it is clearly established that the bullet Article-K was fired from the pistol Article-J. Thus an important link in between accused No.1, the pistol Article-j and the fired bullet Article-K is clearly

established which goes to show that accused No.1 fired the bullet Article-K from his pistol Article-J on the stomach of deceased Govind and in the result, he died due to hemorrhagic shock due to fire arm injury.

136. In this regard the cases cited by defence advocate Mr. Ghadage are also required to be discussed. In the cited case **State of Maharashtra Vs. Shivdas Nana Bhagat**, it was held that an Expert's opinion and his evidence needs corroboration and supporting evidence and it cannot be said to be the conclusive proof. But so far as case at hands is concerned, there is ample oral evidence of eye witnesses P.W.3 Aashish Ghanvat and the informant P.W.4 Namdeo who have actually seen accused No.1 while firing bullet Article-K from the pistol Article-J on the stomach of deceased Govind. P.W.5 Dr. Patil has removed that bullet Article-K from his dead-body during the Post-mortem and has stated the cause of death to be hemorrhagic shock due to fire arm injury. Thus the testimony and opinion of witness P.W.9 Patil finds support from other evidence on record so also the corroboration.

137. In this cited case the bullet was not placed on record or proved or sent for chemical examination and as such an important link in between the weapon, injury, and accused was not established. Facts of this cited case are altogether different from the case at hands. Therefore with due respect the law laid down

therein is not coming to the help of accused No.1.

138. In another cited case **State of Maharashtra Vs. Kisan Vitthal Bhusar**, weapon as well as clothes were sent for chemical analysis after two months of seizure. No explanation was offered with regard to placement of these articles during the period of two months and the benefit of which was given to accused and he was acquitted. But so far as case at hands is concerned, as admitted by P.W.9 Patil, the Ballistic Expert, if the pistol Article-J is kept idle or unused, it would not get rusted. Moreover the seized pistol Article-J, empties Articles-G-1 and H-1 and the bullet Article-K were properly placed by the Investigating Officer P.W.10 PI Gholap, though they were sent to the CA Laboratory belatedly. He has offered explanation so far as seized pistol Article-J is concerned that he was not having an idea as to which laboratory it was to be sent and in order to send all the muddemal articles together, he did not send other articles to the laboratory immediately. Since facts of this cited case are also not identical with the case at hands, with due respect the law laid down therein is not helpful to accused No.1.

139. In the third cited case **Mahavir Singh Vs. State of Madhya Pradesh**, evidence of Doctor was not clear and definite to say exactly from what position and distance the assaulter could have fired the gun shot. The prosecution failed to establish that the bullet had been fired from the fire arm seized from accused. But in

the case at hands, the Ballistic Expert P.W.9 has testified on oath that from the pistol Article-J the bullet Article-K was fired from the distance of beyond 2 feet i.e. beyond the powder range. Moreover informant P.W.4 Namdeo in the FIR at Exh.157 has categorically stated that accused No.1 fired bullet on the stomach of deceased Govind from the distance of 10 to 12 feet. It is successfully established by the prosecution that the bullet Article-K was fired with the fire arm i.e. country-made pistol Article-J which came to be seized under house search panchanama at Exh.145. Since facts of this cited case being not identical with the case at hands, with due respect the law laid down therein is also not helpful to accused No.1.

140. In the next cited case **Jakran Singh Vs. State of Punjab**, recovery memo of the revolver and cartridges did not bear the sign or thumb impression of the accused and when he denied his ownership of the crime revolver and no evidence was led to connect him with the crime, it was held that prosecution has failed to prove its case beyond reasonable doubt. But these facts are not identical with the case at hands. In this case, there is no disclosure statement of accused No.1 which came to be either made by him or recorded by the Investigating Officer P.W.10 PI Gholap and therefore there was no question of his sign or thumb impression on it. So far as ownership of accused No.1 over the revolver Article-J and his connection with the crime is concerned, it is clearly established by the prosecution with the help of house search and

seizure panchanama at Exh.145 and oral testimony of eye witnesses. Therefore as the facts of this cited case are also not identical with the case at hands, with due respect the law laid down therein is not helpful to accused No.1.

141. In the next cited case **Shri. Nandkishore Naik Vs. State of Goa**, there was statement of co-accused that accused fired a shot on the deceased. But it was not corroborated by the medical evidence showing that deceased sustained two injuries, one on the chest and another on the cheek. There were statements of witnesses who were their co-accused that accused fired gun shot on the deceased. Since their evidence was hear-say and not admissible in evidence, guilt of the accused held not proved beyond doubt. But these facts are not identical with the facts in the case at hands. Because in the case at hands, there is ample convincing evidence on record by way of an eye witnesses P.W.3 Aashish Ghanvat and the informant P.W.4 Namdeo which is not at all hear-say in nature. They have actually seen the incident. Their evidence is supported by medical evidence as well as by the evidence of Ballistic Expert. As such facts of this cited case being altogether different with the case at hands, with due respect the law laid down therein is also not coming to the help of accused No.1.

142. The next cited case **Kanan Vs. State of Kerala** speaks about test identification parade. The law laid down in this cited

case may be helpful to accused Nos.3 to 5 who were not known to the witnesses of the prosecution prior to the incident. But so far accused Nos.1 and 2 are concerned, the law laid down in this cited case is not coming to their help. Because in the FIR at Exh.157, accused No.1 is specifically named by him disclosing about the earlier quarrels which took place in between him and Santosh Kenjale and others in the same colony. Under these circumstances it was not necessary for the prosecution to hold identification parade for identification of accused No.1 at the hands of informant P.W.4 Namdeo. So far as other eye witness P.W.3 Aashish Ghanvat is concerned, he has actually seen the accused No.1 while firing the bullet from his pistol Article-J on the stomach of deceased Govind and he has also identified him before the Court. Therefore with due respect the law laid down in this cited case is also not helpful to accused No.1.

143. In the next cited case **Abasaheb s/o. Balasaheb Varkhade Vs. State of Maharashtra**, there was no eye witness to the incident nor there was evidence regarding actual incident of assault or destruction of evidence. Evidence of witness who saw accused persons near place of incident by itself was too scanty to hold accused guilty. Other circumstances proved like quarrel in an earlier incident or recovery of motorcycles of accused persons were held not sufficient to form a chain of circumstances. Alleged discovery of pistol was held not duly established and therefore conviction of accused persons was set aside. It was also observed

that since there was discrepancy in the number of pistol which was seized and sent for analysis, it was held that it is doubtful as to what was seized and what was examined.

144. So far as case at hands is concerned, admittedly there is difference of the number on the pistol Article-J noted by Investigating Officer P.W.10 PI Gholap and Ballistic Expert P.W.9 Patil. However other facts of the cited case are concerned, those are altogether different. There are an eye witnesses in this case in the form of P.W.3 Aashish Ghanvat and the informant P.W.4 Namdeo. However, it is already discussed by me at length that there may be an error of judgment on the part of P.W.9 Patil in reading and mentioning the number of the pistol Article-J in his report. But so far as other facts of this cited case are concerned, those are altogether different. Evidence of eye witnesses is not scanty, but it is inspiring confidence. The seizure of pistol Article-J is duly proved from the mouth of P.W.3 Aashish Ghanvat, the panch witness and the Investigating Officer, P.W.10 PI Gholap. Since facts of this cited case are also not identical with the case at hands, with due respect the law laid down therein is not helpful to accused No.1.

145. In order to constitute an offence of murder, it is necessary to go through the provisions of section 300 of the Indian Penal Code. This provision speaks as follows :-

Section 300. Murder. – Except in the cases hereinafter excepted,

culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly. – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly. – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly. – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

146. Exceptions 1 to 5 under this provision speak as to when culpable homicide is not murder. Nowhere it is the case of accused No.1 or accused Nos.2 to 5 that their case falls under either of the exceptions No.1 to 5 as given under section 300 of the Indian Penal Code. Therefore in order to determine the guilt of accused persons, it is necessary to see whether the prosecution has succeeded in proving the case of murder as contemplated under section 300 under any of its four ingredients.

Culpable homicide when amounts to murder. – When the Court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting murder”, the problem is to be approached in three stages. The question to be

considered at first stage is whether the accused has done an act by doing which he has caused the death of another person. Proof of such causal connection between the act of the accused and the death leads to the second stage for consideration whether that act of the accused amounts to “culpable homicide” as defined in section 299. If the answer of this question is *prima-facie* found in the affirmative, the stage is reached for considering the operation of section 300 of the Indian Penal Code. This is the stage at which the Court should determine whether the acts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in section 300. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder punishable under the first or the second part of section 304, depending respectively on whether the second or the third clause of section 299 is applicable. If the question is found to be positive, but comes within any of the Exceptions enumerated in section 300, the offence would still be culpable homicide not amounting to murder punishable under the first part of section 304. But sometimes the facts are so intertwined and the second and third stages are so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages. It was held so by Hon'ble Apex Court in the case of **State of A.P. Vs. R. Punneyya**, reported in AIR 1977 Supreme Court 45 and **Morcha Vs. State of Rajasthan**, reported in AIR 1979 Supreme Court 80.

147. After careful analysis of the evidence brought on record by the prosecution, it is clearly established that the act by which accused No.1 caused the death of deceased Govind, has been done with the intention of causing death or with the intention of causing such bodily injury and that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause the death.

148. Apart from that, accused No.1 while committing such act was knowing that his act was so imminently dangerous that it must in all probabilities would cause death or such bodily injury as was likely to cause death and committed such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Because he has fired the bullet on the vital body part of deceased Govind i.e. the stomach in which there is digestive system and other vital organs. It is true that only two organs in the track were ruptured. But as opined by an expert witness i.e. P.W.5 Dr. Aaditi Patil, deceased Govind died due to hemorrhagic shock due to fire arm injury. Apart from that the Ballistic Expert P.W.9 Vasudeo Patil also opined that the bullet Article-K was fired from the pistol Article-J.

149. Defence Advocate Mr. Ghadage for accused No.1 strenuously argued that alleged offence would fall under section 304 (later part) of the Indian Penal Code and not under section 302. For that purpose, he invited my attention to the cross-

examination of Investigating Officer P.W.10 PI Gholap in which he categorically admitted that when accused No.1 after firing the bullet in the air, was covered by the persons gathered in the procession, he fired bullet in the crowd. But this particular admission cannot be picked alone while determining the guilt of accused persons. The testimony of informant P.W.4 Namdeo is more important who in his FIR at Exh.157 as well as while deposing on oath has categorically stated that since deceased Govind raised obstruction to accused No.1 for further dance on songs played on the band, being enraged he pointed out the pistol Article-J on Govind and fired bullet on his stomach. Therefore thereby accused No.1 intended to kill deceased Govind as he raised obstruction to him by trying to take the immersion procession ahead.

150. Apart from that, illustration No.(d) given under section 300 of the Indian Penal Code is more important for this purpose. It states that “A without any excuse fires a loaded canon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.” In the case at hands, there is convincing evidence which has come on record that accused No.1 by pointing his pistol Article-J fired bullet on the stomach of Govind and therefore as opined by P.W.5 Dr. Patil, he died due to hemorrhagic shock due to fire arm injury.

151. While answering Points No.2 to 4 in the negative, I had reached the conclusion that there was no unlawful assembly as such, formed by accused Nos.2 to 5 since they did not share the common object and in prosecution of the common object of that unlawful assembly all of them were not intending to cause death of deceased Govind. It cannot be said safely that accused Nos.2 to 5 were knowing that an offence punishable under section 302 of the Indian Penal Code was likely to be committed by accused No.1 in prosecution of that unlawful assembly. Whether a person of such unlawful assembly was aware with regard to the likelihood of any offence or not depends on the circumstances of each case. Background of incident, motive, the nature of assembly, the nature of arms carried by members of the unlawful assembly, the course of their conduct at the time or after the actual commission of crime or soon before would be relevant factors for drawing an inference in that behalf. Common object means the purpose or design shared by all the members which may be formed at any stage. It is to be ascertained from the acts and conducts of the individuals concerned and surrounding circumstances.

152. But after taking into consideration evidence adduced by the prosecution, it cannot be said safely so far as accused Nos.2 to 5 are concerned that they were either having motive to commit murder of deceased Govind or that was their common object shared by them with accused No.1 soon before, at the time or after the commission of actual crime. Because they were not armed with

deadly weapons. They merely joined the immersion procession for dancing in that procession. After accused No.1 fired bullet on deceased Govind, all of them rushed inside the house of accused No.2. But merely by their this particular subsequent conduct, it cannot be said that they were the members of an unlawful assembly and shared common object with accused No.1 to commit murder of deceased Govind by firing the bullet on his stomach. This is because as admitted by almost all the prosecution's witnesses, there is no previous enmity or rivalry in between P.W.4 Namdeo and deceased Govind on one part and accused Nos.1 to 5 on the other.

153. Defence advocate Mr. Ghadage further argued that after accused No.1 fired bullet in the air, nobody reacted against him and it creates doubt about actual act of accused No.1. But human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime, reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far as removed from the spot as possible. Some may remain tight-lipped overawed either on account of antecedents of the assailant or threats given by him. Each one

reacts in his special way even in similar circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in wholly unrealistic and unimaginative way. It was held so by Hon'ble Apex Court in the case of **State of Uttar Pradesh Vs. Devendra Singh**, reported in AIR 2004 Supreme Court, 3690.

154. In the case at hands there is material on record to show that deceased Govind was an innocent person who participated in the immersion procession and was intending to take ahead the procession peacefully by ignoring the act of accused No.1 in firing the bullet in open air. But when deceased Govind tried to take the immersion procession ahead by ignoring forceful request of accused No.1 to dance more, he fired bullet on his stomach. Merely on the ground that the persons participated in the immersion procession did not react in a particular way, as held by Hon'ble Apex Court in the above cited case, it would be unrealistic and unimaginative way to appreciate their evidence.

155. The witnesses play a vital role in facilitating the Court to arrive at a correct finding on disputed questions of facts and to find out the truth. Witnesses are the eyes and ears of justice and they are the backbone in the decision making process. In search of the truth, the witnesses play that sacred role of the sun which eliminates the darkness of ignorance and illuminates the face of

justice, encircled by devils of humanity and compassion. The term 'appreciation' is not defined under any law. It means assessment of material facts from the evidence of a witness. It involves weighing the credibility and reliability of the evidence presented in the Court. While appreciating and marshaling the evidence of witnesses, the Court is duty bound to separate irrelevant facts. Law does not expect a witness to give a parrot like statement. If given, it may be used to argue by the defence that such evidence is of a tutored witness. Such evidence can be relied upon if found cogent and convincing. No criminal case is free from minor discrepancies or insignificant aspects. Normal discrepancy do not corrode credibility of witnesses. The approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Duty of the Court is to separate chaff from the grain and then to act upon the grain.

156. So far as P.W.3 Aashish Ghanvat is concerned, he is an independent witness examined by the prosecution who has actually witnessed the incident and has also acted as a panch witness to the spot panchanama at Exh.144 and house search panchanama of the house of accused No.2 and seizure of pistol Article-J at Exh.145. He appears to have given his evidence in a natural and straight forward manner. No doubt there are some discrepancies brought on record during his cross-examination in his evidence, but those are not of much importance. He is corroborated in material particulars by another eye witness and

brother of deceased i.e. P.W.4 Namdeo who has also witnessed the incident by his eyes. He cannot be branded to be an interested witness, he being the blood relative of deceased Govind. Because he was also present in that procession and has actually witnessed the incident. As held by Hon'ble Apex Court in the catena of decisions that a close relative who is natural witness cannot be regarded as an interested witness. But his evidence is to be tested in the light of preponderance of probabilities, previous statement, surrounding circumstances and to rule out the possibility of false implication.

157. So far as case at hands is concerned, there was absolutely no reason for P.W.3 Aashish Ghanvat or P.W.4 informant Namdeo to implicate falsely accused No.1 as both of them admitted that they were not on rival terms with accused No.1 prior to the incident. Under such circumstances, evidence of eye witnesses P.W.3 Aashish Ghanvat and P.W.4 Namdeo cannot be straight way discarded branding them as an interested witnesses.

158. Accused No.1 in his defence has raised the ground of alibi and false implication. So far as false implication is concerned, as discussed by me at length, I did not find any substance in this particular defence because there was no previous rivalry or enmity in between P.W.4 Namdeo and him so also with eye witness P.W.3 Aashish.

159. So far as defence of alibi is concerned, the word 'alibi' means and implies in common acceptance 'elsewhere'. It is a defence based on the physical impossibility of participation of a crime by an accused in placing the latter in a location other than the scene of crime at the relevant time. Shortly put the presence of the accused elsewhere when an offence was committed. But mere putting a bare suggestion to that effect to the witnesses of the prosecution would not suffice for accused No.1. He was not supposed to prove this particular defence beyond the shadow of doubt, but at-least he should have brought on record any evidence as contemplated under section 11 of the Evidence Act, 1872 that at the relevant time, he was not at the spot of incident, but was elsewhere. The burden was lying upon him to prove that his case falls under alibi. But he did not discharge his this particular burden and therefore I did not find any substance in his this particular defence.

160. As discussed earlier, accused No.1 murdered deceased Govind being enraged by the fact that he tried to take the immersion procession ahead as it was getting late, by firing gun shot on his stomach i.e. a vital body part. That injury inflicted by accused No.1 on the stomach of deceased Govind was sufficient to cause death and actually death has taken place due to such gun shot injury, thereby causing rupture of his intestines etc. Therefore looking to the situs and injury, I have no hesitation to reach the conclusion that it is proved by the prosecution beyond the shadow

of doubt that he committed murder of deceased Govind by firing the bullet on his stomach from his pistol Article-J. But so far as accused Nos.2 to 5 are concerned they cannot be held guilty for this particular offence as though they were present on the spot, they did not share common object along-with accused No.1 being members of that assembly to cause death of deceased Govind by fire arm injury. In the result, I answer Point No.5 partly in the affirmative by holding that accused No.1 is guilty of an offence of committing murder of deceased Govind by firing bullet on his stomach.

Point No.6 :-

161. Accused No.1 is further charged for having committed an offence under section 3 punishable under section 25 of the Arms Act, 1959 since he was found in possession of a fire arm i.e. pistol Article-J without licence issued in accordance with the provisions of section 3 of the said Act and the rules made thereunder.

162. In this regard defence Advocate Mr. Ghadage for accused No.1 vehemently argued that in order to bring home an offence under section 3 punishable under section 25 of the Arms Act against accused No.1, it was incumbent upon the Investigating Officer P.W.10 PI Gholap to obtain sanction of the District Magistrate, Satara under section 39 of the said Act. But since he did not obtain such sanction and it is not placed on record, accused No.1 cannot be held guilty for this offence.

163. There appears substance in this particular submission of the defence advocate Mr. Ghadage. Because in order to prove an offence under section 3 punishable under section 25 of the Arms Act, 1959, it was mandatory upon the Investigating Officer P.W.10 PI Gholap to obtain sanction of the District Magistrate, Satara under section 39 of the said Act. As per this provision, no prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the District Magistrate.

164. But when P.W.10 PI Gholap was confronted with this particular provision in his cross-examination by the defence advocate Mr. Ghadage, he has clinchingly admitted that he did not obtain such sanction from the District Magistrate nor it is placed on record. Therefore for want of sanction under section 39 of the Arms Act, 1959, accused No.1 cannot be held guilty for the offence under section 3 punishable under section 25 of the Arms Act, 1959 though actually he was found in possession of such fire arm at the time of commission of offence. In the result, I answer this Point in the negative.

Point No.7 :-

165. Further it is the case of prosecution that at the relevant time, accused Nos.1 to 5 being members of an unlawful assembly and in prosecution of the common object of that unlawful assembly, accused No.1 fired bullet from the pistol Article-J so

rashly and negligently as to endanger the human life.

166. Section 286 of the Indian Penal Code speaks about negligent conduct with respect to explosive substance. The word 'explosive substance' is defined under section 2 of the Explosive Substances Act, 1908. As per this provision, explosive substance shall be deemed to include any materials for making any explosive substance, also any apparatus, machine, implement or material used, or intended to be used or adopted for causing or aiding in causing any explosion in or with any explosive substance, also any part of any such apparatus, machine or implement.

167. But from the oral and documentary evidence that has been brought on record by the prosecution, there is nothing on record to show that at the relevant time, accused Nos.1 to 5 carried any explosive substance with them. Apart from that, so far as act of accused No.1 in firing the bullet from his pistol Article-J on the stomach of deceased Govind is concerned, it cannot be said that his act was so rash or negligent. Because while answering other Points, I had already discussed at length that intentionally he committed the murder of deceased Govind by firing bullet on his stomach from the pistol Article-J as he protested accused No.1 in taking the immersion procession ahead and did not allow to stop for his dance on the songs played by the music band.

168. So far as accused Nos.2 to 5 are concerned, I had

already reached the conclusion that they were not at all the members of an unlawful assembly and they did not share any common object with accused No.1 to commit alleged offences. There is absolutely no evidence on record to show that at the relevant time, accused Nos.1 to 5 formed an unlawful assembly and in prosecution of that unlawful assembly, by their negligent act with any explosive substance, they endangered the human life. Therefore for want of evidence, I am constrained to answer this Point in the negative.

Point No.8 :-

169. Accused Nos.1 to 5 are further charged for the offence under section 37(1)(3) read with section 135 of the Maharashtra Police Act, 1951. According to the prosecution, at the relevant time, for preservation of public peace and safety, the prohibitory order was promulgated by the District Magistrate, Satara in the vicinity of Satara City from carrying ams, guns etc. or any other articles which are capable of being used for causing physical violence and prohibiting any assembly or procession whenever and so long as it considered that prohibition to be necessary for the preservation of public order. Such prohibition order was in force at the relevant time.

170. But it is surprising to note that Investigating Officer P.W.10 PI Gholap though has spoken about such prohibitory order promulgated by the District Magistrate, Satara, he did not place on

record such order passed by the District Magistrate in writing, signed by him mentioning the specific date, time and place, venue, duration and period of prohibition. Hon'ble Bombay High Court in the case of **Badrinath Terpal Vs. State of Maharashtra, reported in 1983 Mh. L. R. Bom. 134** has held that, “in order that there is valid prohibitory order, it must be required to be in writing and signed by the Collector of the District mentioning the specific date, time, place, venue, duration and operative period of prohibition. In order there must be detail recital with reasoning of an existence of necessity to proclaim the prohibitory order in a strict manner and not beyond the reasons.”

171. But as said by me earlier, prosecution has not placed on record such notification or it's authenticated copy. Moreover, prosecution has not examined any witness to that effect from the office of the District Magistrate to prove such order. When such order is not on record and when the Investigating Officer, P.W.10 PI Gholap has not uttered a single whisper regarding this particular crime committed by accused Nos. 1 to 5, they cannot be held guilty for the offence under section 37(1)(3) read with section 135 of the Maharashtra Police Act, 1951. In the result I answer this Point also in the negative.

Point No.9 :-

172. In view of my affirmative finding to Point No.1 and partly affirmative finding to Point No.5, it becomes ample clear

that accused No.1 is found to have committed an offence of murder punishable under section 302 of the Indian Penal Code as he intentionally killed the deceased Govind Dattatray Salunkhe by firing the bullet Article-K on his stomach from the pistol Article-J. Accused Nos.2 to 5 are not found to have committed any offence. In the result I answer this Point accordingly.

173. Here I take the pause to hear accused No.1 on the point of sentence.

Satara.

(R.D.Deshpande)

Dt.15/03/2019

Additional Sessions Judge, Satara.

Point No.10 :-

174. I heard the accused on the point of sentence. He submitted that he has not committed any offence and that too murder of deceased Govind Salunkhe. He may be acquitted. Upon asked about his family background, accused No.1 submitted that he has five children. His elder son is studying in High-School. I also heard his advocate Mr. D. S. Ghadage. He also submitted that accused No.1 has not committed any offence. He is innocent and he may be acquitted.

175. The DGP Mr. Kulkarni fairly conceded that offence proved against accused No.1 is not falling under the category of rarest of rare case. Therefore he submitted that the punishment of imprisonment for life may be imposed upon accused No.1.

176. There appears substance in the arguments of DGP Mr. Kulkarni. Hon'ble Apex Court in the case of **Vasant Sampat Dupare Vs. State of Maharashtra, reported in 2015 Cri.L.J. 774 (S.C.)**, in its larger Bench judgment has laid down certain propositions and guidelines. To apply said guidelines, the following questions are required to be answered. (a) is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for the death sentence ? (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

177. Taking into consideration the nature of offence, there is no something uncommon about this crime which renders sentence of imprisonment for life inadequate. After considering the mitigating circumstances which speak in favour of accused No.1 and also taking into consideration the fact that his antecedents are not brought on record, this offence does not fall under the category of rarest rare case. Therefore, as contemplated under section 302 of the Indian Penal Code, the sentence of imprisonment for life is the punishment which deserves to be awarded to accused No.1. Since the offence punishable under section 302 of the Indian Penal Code is punishable either with death or imprisonment for life, the question of extending benefit of probation does not arise at all. Hence the order follows :

ORDER

1	As per section 235(2) of the Code of Criminal Procedure, 1973, accused No.1 is convicted for the offence punishable under section 302 of the Indian Penal Code and he is sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.1000/- (Rs. One thousand only). In default of payment of fine, he to suffer further Simple Imprisonment for two months.
2	Accused No.1 is in jail since 29/09/2012. His pre-conviction detention period shall be set-off against the sentence of his imprisonment as per section 428 of the Code of Criminal Procedure, 1973.
3	As per section 235(1) of the Code of Criminal procedure, 1973, accused Nos.2 to 5 are acquitted of the offence punishable under section 302 read with section 149 of the Indian Penal Code.
4	As per section 235(1) of the Code of Criminal procedure, 1973, accused Nos.1 to 5 are acquitted of the offences punishable under sections 143, 147, 148 and also for the offence punishable under section 286 read with section 149 of the Indian Penal Code.
5	As per section 235(1) of the Code of Criminal procedure, 1973 accused No.1 is also acquitted of the offence under section 3 punishable under section 25 of the Arms Act, 1959.
6	As per section 235(1) of the Code of Criminal procedure, 1973, accused Nos.1 to 5 are also acquitted of the offence under section 37(1)(3) punishable under section 135 of the Maharashtra Police Act, 1951.

7	Trial to proceed against accused Ramkumar Jagai Yadav who has absconded during pendency of trial.
8	Muddemal property be preserved for the trial of absconding accused.
9	Copy of this judgment be supplied to accused No.1 free of costs as per section 363(1) of the Code of Criminal Procedure, 1973.
10	Copy of the finding and sentence be sent to the District Magistrate, Satara as per section 365 of the Code of Criminal Procedure, 1973.
11	As per section 437-A of the Code of Criminal Procedure, 1973, accused Nos. 2 to 5 are directed to furnish fresh P. R. Bonds of Rs.15,000/- by each with one surety in the like amount by each and such bail bonds shall be in force for the period of six months.
	<i>(Judgment is dictated and pronounced in open Court)</i>

Satara.

Dt.15/03/2019

(R.D.Deshpande)

Additional Sessions Judge, Satara.

Dictated on	07/03, 08/03 & 09/03/2019
Transcribed and typed on	07/03, 08/03 & 09 to 12/03/2019
Checked on	13/03, 14/03 & 15/03/2019
Signed and uploaded on	15/03/2019
Transcribed, typed and Uploaded by	(D.R.Gade) Stenographer(H.G.)