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the said case, the accused was tried for the offences punishable under Sections 302 and 506(II) of IPC and Section 3, 25(1-B) (a) read with Section 27(1) of Arms Act, 1959 and he has been convicted for all the three offence. cri-appeal-471-05.sxw 2. As per the prosecution case, PW-1 Madhukar Jadhav (Shimpi) begot two sons Ravindra Jadhav (the deceased) and Dilip, the present accused from his first wife Suman and two more children from his second wife Pratibha i.e. son- Ajay and daughter- Ashwini. PW-1 Madhukar Jadhav was a contractor at Dombivili and was residing with his family initially, at the bungalow "Parishram". Ravindra Jadhav became a contractor and had a job in the Middle East. Whereas, the accused became a Homeopathy Doctor. Ravindra Jadhav was married to PW-9 Sangeeta on 15.6.1983 and within two years thereafter, he returned to India and settled down at Dombivli as a contractor and begot a son by name Rahul. Accused-Dilip got married and begot a son - Nilesh. Both brothers with their spouses stayed as a joint family at "Parishram" till the year 1994. On account of disputes between the brothers, Ravindra and his wife Sangeeta moved out to Navsuchi Apartments, Kandivali Road, Dombivli (East). However, PW-1 Madhukar Jadhav was staying separately with his second wife Pratibha and two children. It appears that after few years Ravindra and his wife reoccupied the bungalow "Parishram" and accused-Dilip Jadhav along with his family shifted to village Revati in Kalyan Taluka. He cri-appeal-471-05.sxw constructed the Dhaba by name Nilesh Punjab Dhaba and adjacent to the said Dhaba he has his residence. The differences between the brothers could not be settled and on the other hand, court cases came to be filed against each other, including criminal complaints. PW-9- Sangeeta Jadhav had also moved the appropriate forums under the Maharashtra Co- Operative Societies' Act, 1960 for a membership of Ragsudha Co.Op.Scy., Ganesh Nagar, which was opposed by the accused-Dilip Jadhav. She had also filed criminal complaints against the accused in the court of Judicial Magistrate First Class at Kalyan. The brothers were not on visiting terms and the relations had strained to the extreme. 3. On 16.12.2002, PW-1 Madhukar Jadhav persuaded the deceased Ravindra Jadhav to accompany him to meet the accused-Dilip Jadhav at Nilesh Punjab Dhaba so as to settle the disputes between them and PW-3 Jagdish Pagare drove the TATA Esteem vehicle of Ravindra along with PW-1 Madhukar Jadhav and Ravindra Jadhav. They left the house of Ravindra at 5.00 p.m. and few hundred meters before Nilesh Punjab Dhaba the vehicle was stopped. PW-1 Madhukar went to Nilesh Dhaba to talk to accused-Dilip and both of them came back to the TATA Esteem vehicle where Ravindra and PW-3-Jagdish Pagare were waiting cri-appeal-471-05.sxw and at the instance of accused-Dilip, the visiting party went to Nilesh Dhaba. While they were sitting around the round table and were offered Pohe/snacks, the accused-Dilip went behind Ravindra and took out a Pistol from his pocket and fired one bullet on the temple of Ravindra and Ravindra collapsed. The accused had threatened PW-1 and PW-3 not to give evidence and not to file any complaint. After sometime, the accused left Nilesh Dhaba and PW-1 and PW-3 went to the house of Ravindra and informed his wife Sangeeta PW-9 at about 7.00 p.m., about the incident. PW-1-Madhukar Jadhav, along with Rahul and

PW 9 -Sangeeta, went to Titwala Police station at the first instance and from there they went to Kalyan Taluka police station where the complaint of PW-1-Madhukar was recorded by Anil Pawar-PW-12. In the meanwhile, Ravindra was taken to the rural hospital at Goveli and he was declared dead. After the complaint of PW-1-Madhukar, CR No.139 of 2002 came to be registered and inquest panchnama (at Exh.32) and spot panchanama (at Exh.28) was drawn. The accused surrendered himself at the police station at about 9.00 p.m. and was arrested vide arrest panchnama at Exh.92, on the very same day. On completion of the investigation and on receipt of CA report, including the report from a ballistic expert, the charge-sheet was cri-appeal-471-05.sxw filed. 4. The prosecution examined in all 17 witnesses, including PW-2 Dayanand Bachare, spot panch, PW-4- Balaram Aagiwale, inquest panch, PW-10 Mangal Shelar as the panch witness. PW-10-Mangal Shelar turned hostile and he was a witness for the recovery of the weapon as well as the arrest panchnama at Exh.92. The prosecution relied upon PW-1 Madhukar Jadhav and PW-3 Jagdish Pagare, as the eye-witnesses. However, PW-1 Madhukar turned hostile though his statement under Section 164 of Cr.PC was also recorded before the Special Judicial Magistrate PW-6 Prmod Bagadi. PW-8- Bhaskar Pandurang Mohonkar, Police constable, PW-12 - Anil Pawar (Investigating Officer), PW-13- Rajaram Dongre, PSI, PW-14- Ashok Wankhede, and PW-17- Dattatray Pandhare, API are the police personnel, whereas PW-15- Sudhakar Ramteke was examined as the Ballistic expert. PW-11 Parashram Bhalekar was the Tahasildar who was examined to bring on record the earlier property disputes between the brothers. PW-16-Iqbalsingh Chahel was the sanctioning officer who had passed the order dated 11.11.2003 granting sanction to prosecute the accused under the Arms Act, 1959. The accused did not examine any cri-appeal-471-05.sxw witnesses in defence, but, in his statement recorded under Section 313 of Cr.PC, he denied his complicity in the crime. At the same time, in the cross examination of PW-4- Balaram Aagiwale, inquest panch, the defence tried to take the plea of alibi and claimed that the accused-Dilip was, between 5.00 to 9.00 p.m. on the date of the incident, with the Orthopedic Surgeon along with PW-4 and he was not at the spot of offence. However, no independent witness had been examined in support of his plea nor the accused stepped in the witness-box to examine himself. 5. The trial court considered the prosecution evidence and submissions made by the rival parties and held that Ravindra died a homicidal death by the fire arm injury caused to him on 16.12.2002, the accused had intentionally committed the murder of Ravindra by firing a bullet from his pistol and the pistol was without licence. The trial court also held that immediately after the incident of firing, the accused committed criminal intimidation by threatening the complainant, PW-1 Madhukar Jadhav and PW-3 Jagdish Pagare. During the pendency of this trial, the accused was not released on bail, and therefore, he is undergoing the sentence at the Nasik Road Central Prison at Nasik, as at present. cri-appeal-471-05.sxw 6. As per Mr. Shivarkar, the learned counsel for the appellant- accused, the main eye-witness PW-1 Madhukar Jadhav had turned hostile, and therefore, he ought to be discarded as a prosecution witness. The second eye witness PW-3 Jagdish Pagare, Mr. Shivarkar submitted that

his statement was recorded after two weeks from the date of the incident and his testimony before the trial court suffered from material contradictions and improvements and therefore, he has also become an unreliable witness. At some places the weapon used in the incident is claimed to be revolver, whereas at other places it is claimed to be a pistol and though PW-15 Sudhakar Ramteke had stated that the fire bullet which killed Ravindra was fired from the pistol article no.1A, in the recovery panchanama as well as in the investigation papers, the weapon has been referred to as a revolver and what was recovered allegedly at the behest of the accused was not a pistol. He further submitted that the recovery panchama was not signed by the accused and PW-10 Mangal Shelar turned hostile and therefore the recovery panchanama could not be relied upon thereby making the recovery of weapon unreliable. He also pointed out that the description of the place of incident as was sought to be brought on record through PW-3- Jagdish Pagare suffers from major errors and made the witness vulnerable cri-appeal-471-05.sxw and therefore it would not be safe to rely upon the testimony of the said witness. The learned counsel referred to the post mortem report and more particularly, the noting that semi-digested food was found in the stomach of the deceased and this circumstance, would indicate that before leaving his house, the deceased had eaten some food. But PW-9 Sangeeta in her depositions had submitted that she left her house on the date of the incident at 3.00 p.m. and before leaving her house she had served tea to the deceased and PW-1 Madhukar. On this ground it was urged that PW-9 Sangeeta is also a doubtful witness and more so, when in her cross examination, there material were contradictions pointed out. When the injury was by a fire arm and there was a doubt as to whether the fire arm was a pistol or a revolver the benefit of doubt must go to the accused. The Investigating Officer had not sent an F.I.R. in time and it had not reached the concerned Judicial Magistrate till 21.12.2002. This delay has not been explained in the evidence of the PW-12 Anil Pawar (I.O.) and on that ground also the prosecution case is vitiated. It was also pointed out that a number of witnesses were cited along with the charge-sheet, but all of them were not examined. No neighbors of Nilesh Punjab Dhaba were examined by the prosecution to support its case that the incident had taken place in the premises i.e. Nilesh Dhaba. By referring to the testimony of PW-1 cri-appeal-471-05.sxw Madhukar Jadhav, it was sought to be contended that Ravindra did not sustain the fire injury in the premises of Nilesh Punjab Dhaba and in any case, he cannot be treated as prosecution witness. The F.I.R. was registered at 8.45 p.m. i.e. after the inquest panchnama and spot panchnama was drawn and therefore, it can only be treated as a statement under Section 161 of Cr. PC. It was also submitted that the prosecution could not prove its case beyond reasonable doubt and both the eye-witnesses did not inspire confidence to support the case of the prosecution. Even the motive behind the crime could not be established by the prosecution by brining on record some cogent evidence. Mr. Shivarkar, therefore, urged that for all these reasons the order of conviction and sentence has to be set aside and the accessed deserves to be acquitted. The learned counsel placed reliance on the following decisions: i) Puran Singh Vs. State of Uttaranchal reported in (2008) 3 Supreme Court Cases

795; ii) Sukhwant Singh Vs. State of Punjab reported in AIR 1995 SCW 2200; iii) Ham Singh Vs. State of U.P. reported in AIR 1976 SC 2423; iv) Jackaran Singh Vs. State of Punjab reported in AIR 1995 SC 2345; cri-appeal-471-05.sxw v) Keshoram Bora Vs. State of Assam reported in AIR 1978 SC 1096; vi) State of AP Vs/ Punati Ramulu & Ors reported in 1994 Supp(I) Supreme Court cases 590; vii) Ramesh Baburao Devaskar & ors Vs. State of Maharashtra reported in 2007(4) Crimes 140 (SC) 7. Mrs. Deshmukh, the learned APP on the other hand supported the order of conviction and sentence. As per her the failure to obtain the signature of the accused on his memorandum of statement under Section 27 of the Evidence Act (Exh.94) has not affected the prosecution case in any way and it is not a material circumstance to weaken its case. PW-1 Madhukar though turned hostile, his statement under Section 164 of Cr. PC was recorded before the Judicial Magistrate PW-6 Pramod Bagadi and this witness was subjected to a detail cross examination by the Special P.P. The evidence of PW-1 Madhukar Jadhav, therefore, cannot be discarded in its totality and he cannot be discarded from the witnesses of the prosecution. In the evidence of PW-9- Sangeeta Jadhav all the relevant documents, some of which are registered documents, are brought on record so as to indicate that the disputes between the brothers on the property matters had reached an extreme end, and they were not on talking terms. PW-11 Parashram Bhalekar has also proved some of the documents regarding the cri-appeal-471-05.sxw disputes between the brothers over the property matters. She pointed out that PW-4 Balaram Aagiwale who was used by the defence to support its case of alibi, was reexamined by the Special PP so as to point out that the evidence in support of the accused was required to be discarded. As per Mrs. Deshmukh, the prosecution case is supported by the evidence of PW-1 Madhukar Jadhav, PW-3 Jagdish Pagare and PW-9 Sangeeta Jadhav and read with the evidence of the ballistic expert PW-15 Sudhakar Ramteke and the Special Judicial Magistrate PW-6-Pramod Bagadi. She pointed out that during the evidence of PW-15 Sudhakar Ramteke, the prosecution has placed on record sufficient material to point out the distinction between a revolver and a pistol and what was used by the accused while firing the bullet on the head of the deceased was a pistol and not a revolver. The minor discrepancies or errors in the evidence of PW-3 Jagdish Pagare regarding the locations of the hotel/Dhaba, poultry farm or the temple cannot weaken the case of the prosecution. Mrs. Deshmukh therefore, urged that the order of conviction and sentence be confirmed and the appeal be dismissed. She has placed reliance upon the following decisions: i) Golakonda Venkateshwara Rao Vs. State of A.P. reported in (2003) 9 Supreme Court Cases 277; ii) Pandurang Chandrakant Mhatre & Ors. Vs. State of Maharashtra reported in (2009) 10 Supreme Court Cases 773; cri-appeal-471-05.sxw iii) R. Prakash Vs. State of Karnatataka reported in (2004) 9 Supreme Court Cases 27; iv) Shaikh Ayub Vs. State of Maharashtra reported in (1998) 9 Supreme Court Cases 521. 8. PW-7 Santosh Patil who was a Medical Officer at Goveli Rural Hospital had conducted postmortem and signed the postmortem report at Exh.59. He stated before the trial court that the dead body received on 16.12.2002 at about 7.30 p.m. was brought by PW-8 Mohankar, the police constable and A.P.I. Pawar was also

there. The said dead body was referred for postmortem on 17.12.2002. The postmortem was carried out between 11.00 a.m. to 12.15 p.m. on 17.12.2002. The external injuries noticed on the dead body of the deceased were as under; “1) wound of entry over right preauricular region area 1cm oval in shape in front of Tragus size 0.8 cm x 0.5 cm bone deep, 2mm wide blackening all around the wound edges margins inverted, evidence of bleeding (+) 2) Exit wound over right lower part of occipital areas, oval shape, size 2.5 x 1 cm everted edges brain tissue seen protruding out through wound, evidence of bleeding (+). No other external injuries over the body. Blackening on wound is due to (1) force energy through which bullet causing burning mark and (2) some bullets have datenite powder while piercing causing black mark. As there cri-appeal-471-05.sxw is blackening to the injury I can say it was fired from very near close distance. Due to bullet piercing through skin, edges are gone inside (+) means presence of blood, outside the injury.” The internal injuries noticed in the dead body of the deceased were as under: “I have also mentioned the internal injuries and these are in column no.19 of the P.M. Report and they are as under: (i) Evidence of oozing of blood in scalp layer around wound tract at right occipital area (injury no.2) (ii) Evidence of fracture at tentorium inferiorly at base of the skull right side. (iii) Evidence of fracture at exit wound lower part of right occipital bone. Injury to the brain: (i) Meninges torn at entry wound at base of skull right side anteriorly and exit wound right occipital lobe posteriorly. (ii) Meninges congested around entry and exit wounds. (iii) Evidence of sub-dural haematoma right occipital lobe and postero medial surface of left occipital lobe of cerebrum. Brain: (i) Evidence of lacerate injury to right occipital lobe of cerebrum in its lower surface with evidence of diffuse tissue bleeding around the wound tract, no evidence of bullet or pellets inside the brain.” cri-appeal-471-05.sxw As per the Doctor PW-7, the death of Ravindra Jadhav was caused by “shock due to extensive injury to brain with right sub-dural haematoma due to fire arm injury”. The Doctor further clarified that the bullet fired injury was of entry and exit. He also stated that the inquest panchanama was drawn in the hospital itself, and it mentioned bullet shot injuries. He also admitted that the police did not show him, even during the trial and till he was in witness box, the arm which was used and recovered. This witness was reexamined by the Special P.P. so as to rule out the allegations of the defence that Ravindra had committed suicide. He pointed out that in case of suicide there will not be a second exit injury as was seen in the case of Ravindra. This witness proved that Ravindra died a homicidal death and on account of injuries he sustained by the bullet shot from a fire arm (article-1A). The defence has not seriously disputed that Ravindra died by fire arm injury and it was claimed that it was not a bullet fired by the accused. 9. Coming to the issue raised by Mr. Shivarkar, the learned Counsel for the appellant-accused, that the prosecution was not clear as to whether the weapon used and recovered was the same or whether it was a revolver or a pistol, the evidence on record does not leave any doubt in this cri-appeal-471-05.sxw regard. It is a fact that the recovered weapon from the house of the accused is referred to as a revolver of England make article-H (at Exh.51), whereas, in the CA report at Exh.55, the weapon is of country made

pistol bearing body no.133094. PW-15-Sudhakar stated before the court that he was working as an Assistant Chemical Analyzer in the Ballistic Division and he was competent to give his opinion about the fire arms. He pointed out that he had received a parcel marked 'H' containing one country make pistol and having body no.83094 and he had taken the said number in the register. He also offered to produce the register, if so required. He clarified that the correct number of the body was 83094 and not 133094. He also stated that the physical measurement of the pistol was taken and he found that pistol was in mechanically working condition. He further stated that while testing was done, nitrite was detected in the barrel washing showing that the pistol was used for firing prior to its receipt in the laboratory. The said pistol was capable of chambering 7.65 m.m. pistol cartridge and he had carried out the test firing of the pistol by using one cartridge from Exh. 2 and confirmed a successful test from the very pistol (article -1A). He had thereafter carried out microscopic comparison of the empty in Exh.3 with the cartridge that was fired from the country made pistol in Exh.1 under comparison microscope, and the firing pin impression marks tallied cri-appeal-471-05.sxw amongst themselves (Exh.109). Exh.3 was the empty of the fired cartridge. He also stated that the pistol was country made and it was so because the standard fire arm has a proof of marking and also the number would be clearly visible. His attention was drawn to the CA report at Exh.55. He pointed out that he had drawn a sketch of the weapon as a routine practice and for the identification of the weapon. He had confirmed the sketch at Exh.110 and clarified that there is difference between a revolver and a pistol as well as a gun and a rifle. At Exh.109 is the forensic science laboratory report and it specifically mentioned that one country made pistol with body no.133094 and this was clarified by the witness so as to point out that body number was not 133094 but it was 83094. Mr. Shivarkar, also placed on record some literature so as to point out the difference between a revolver and a pistol. As per the same, a revolver has a cylinder that holds multiple cartridges and turns them so that they match up with the firing mechanism and the barrel. Whereas a pistol can be a handgun that is not a revolver and is any short-barreled weapon designed to be fired with one hand. It is a handgun that self-loads from a box magazine after each shot. A pistol could be an automatic/self loading or revolving. If the weapon has a magazine, undoubtedly it will be a pistol cri-appeal-471-05.sxw and the sketch at Exh.110 of the weapon confirmed by PW-15 as a magazine and thus undoubtedly the weapon used was a pistol and not a revolver. PW-15 further confirmed that the empty bullet collected from the spot of incident under the panchnama at Exh-28 was fired from the pistol, Article 1-A. 10. PW-4 Balaram Agiwale was the witness of arrest panchanama at Exh.92 and recovery of the weapon i.e. the pistol. He turned hostile. However, that by itself could not go against the prosecution. In his statement recorded under Section 313 of Cr. PC the accused admitted that he surrendered to the police(Question-113). In reply to the said question, the accused admitted that he surrendered of his own to the police on 16.12.20002 between 21.10 and 21.40 p.m. and during that period, arrest panchanam at Exh.92 was prepared and he was arrested. PW-10 Mangal Shelar admitted before the court that he knew the accused about last

three years as the owner of Nilesh Punjab Dhaba. He also admitted that Bhagwan Dhumal had supplied materials for construction of the said Dhaba and he was the employee of the said Bhagwan Dhumal. He admitted that memorandum and discovery panchanama dated 21.12.2002 were signed by him. However, he stated that he signed because police asked him to sign it. cri-appeal-471-05.sxw He did not ask the police regarding the reasons for his signature obtained on the panchanama dated 21.12.2002 not did ask the police to read out the contents of the panchanama. PW-12- Anil Pawar was the API at the Kalyan Taluka police station on the date of the incident. He verified the arrest panchanama at Exh.92 which was signed by PW-10 Mangal Shelar and Bhagwan Dhumal. He stated that on 21.12.2002, while accused was in the police custody, he informed them that the weapon was kept in his cupboard and he was ready to discover the same. The memorandum of his statement was prepared at Exh.95. Thereafter, he along with witnesses went to Nilesh Dhaba and they went in the bungalow of the accused. There was a hall in the south-east corner and there was a cupboard and from which the accused produced a revolver. There were three bullets in the magazine and one was in the chamber. It was sealed and he and the panchas had signed thereon. Labels of their signatures were affixed and the panchama was drawn at Exh.94. The Investigating Officer did not obtain the signature of the accused on both these panchanamas and the same has not affected the prosecution case. The learned APP rightly referred in this regard to the decision in the case of Gowalkonda Vs. Venkatesh Rao (Supra). In the instant case the disclosure leading to the recovery of the weapon i.e. pistol has been fortified and confirmed by the evidence of PW-15 Ramteke, the cri-appeal-471-05.sxw ballistic expert when he stated before the court that the bullet fired on the deceased was from the very same pistol- Article 1-A before the court. The provisions of Section 27 of Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently, the said information can safely be allowed to be given in evidence. We, therefore, do not find any substance in the arguments that failure to obtain signatures of the accused on the Exh.94 weakened the case of the prosecution. 11. Let us now examine witnesses, viz PW-3 Jagdish Pagare and PW-9- Sangeeta. During the evidence of PW-9- Sangeeta a number of documents were placed on record and exhibited. She had filed Appeal Nos. 9 to 12 of 2002 before the Dy.Registrar, Co-Operative Society, Kalyan Taluka when present accused was shown as intervenor no.1/respondent no. 4 with the deceased Ravindra as Defendant no.2/respondent no.5. The judgment is at Exh.175 which indicates that the accused had opposed the membership of PW-9- Sangeeta in respect of Rag-sudha Co-Op.Hsg.Scy. At Exh.76 is the order passed by the Divisional Joint Registrar of Co- Operative Societies at the intance of the accused in a Revision cri-appeal-471-05.sxw A0pplication. The Order passed by the Dy. Registrar, at Exh.75 was under challenge in the said Revision Application and it was dismissed. Exh.77A is a copy of the charge-sheet arising from F.I.R. No.56 of 2000 and the complainant was PW-9 Sangeeta, whereas the accused were the present accused and his wife Swati. Similarly, the document at Exh.78A is a copy of



the charge-sheet arising from CR No.61 of 2000. The complainant was PW-9-Sangeeta and the accused were the present accused along with his mother Suman. She stated before the trial court that till 1994 she was staying as a member of the joint family with the accused and his mother. However, on account of domestic quarrels, her family was compelled to leave the said bungalow and started to reside at Navsuchi Apt, Kandivli Road. She further stated that the quarrels were between her husband on one side and the accused and his mother on the other side. She stated that at about 7.30 p.m. on 16.12.2002 PW-1 Madhukar Jadhav and PW-3 Jagdish Pagare reached her house. PW-3 Jagdish Pagare had gone with PW-1 Madhukar and Ravindra driving the vehicle. She found that PW-1 Madhukar and PW-3 Jagdish Pagare were worried and frightened and they asked her to accompany them to go to Titwala police station immediately. PW-1- Madhukar Jadhav had told her that accused had shot a bullet at Ravindra at Nilesch Punjab Dhaba. PW-1 Madhukar Jadhav further told her cri-appeal-471-05.sxw that Ravindra was not ready to come to Dhaba and because he and accused requested Ravindra, he went to the Dhaba. They went to Titwala Police station by rickshaw at about 8.00 p.m. and her son was also with them. PW-1 Madhukar gave his report to the police station and whatever information given by PW-1 Madhukar was reduced in writing by the police. The police had read over the said information on which Madhukar had signed. Ravindra's sister by name Chitra also reached the police station and all of them returned by her car to the house. On 17.12.2002, dead body of Ravindra was received at about 2.00 p.m. She identified the articles-4 to 6 as the pant, and shirt which were on the dead body. She was not aware whether there was any ancestral property of the family for partition between her husband and the accused and her father-in-law, and she was also not aware whether there is any such partition. She denied the suggestion that she had filed a false case against the accused so as to deny him the share in the family property. 12. PW-1 Madhukar had stated before the court that his first wife Suman was residing with the accused who owned the said Dhaba. The deceased was residing at Dombivli along with his wife Sangeeta and the cri-appeal-471-05.sxw son. He admitted that on 14.12.2002 he went to the house of Ravindra and he stayed there but he did not know the exact date. However, on the next day he and Ravindra went by car to meet the accused and the car was driven by PW-3 Jagdish Pagare. They had started from Dombivli at about 5.00 p.m and reached the Nilesch Dhaba between 6.00 to 6.15 p.m. He and Ravindra entered the Dhaba where four chairs were around each table and they sat in the chairs. Several people rushed to the Dhaba and were shouting and the customers in the Dhaba started running here and there as there was a blast and heavy burst noise "Faat" was heard and blood started oozing from the chest of Ravindra. He was shocked and stunned and Ravindra collapsed from the chair. He tried to lift him and shouted for help. He called PW-3 Jagdish Pagare and both of them tried to lift Ravindra, but could not do so. They somehow left the Dhaba and went to the car. They could not start the car, by which they had gone to the Dhaba, and therefore, they picked up a Rickshaw and reached the house of Ravindra and thereafter went to the Police Station and narrated the incident. He reported the incident to the police

station. He signed the complaint. By this time, the dead body of Ravindra had reached the hospital. When he was called by the police station, the accused was also present. The F.I.R. was shown to him and he admitted his signature. He cri-appeal-471-05.sxw also admitted his signature on the Panchanama. At this stage, the prosecutor declared this witness hostile because he denied that while he and Ravindra were sitting in the Dhaba, the accused came from behind and fired the pistol. Though this witness was declared hostile, his testimony proved that on the date of the incident he along with deceased had left the house of the deceased by a car driven by PW-3 Jagdish so as to go and meet the accused at Nilesh Dhaba. While they were sitting in the Nilesh Dhaba, Ravindra received bullet injuries, which resulted in his death. Immediately thereafter he rushed to the Kalyan Police station and there from to the house of the deceased, and informed PW-9 Sangeeta about the incident. We have already referred to the evidence of PW-9 Sangeeta and more particularly, the information given to her by PW-1 Madhukar on the date of incident at about 7.00 p.m. The evidence of these witnesses read together proved the prosecution case that PW-1 had informed that the accused had fired bullet from his pistol and killed Ravindra while they were sitting in Nilesh Dhaba between 6.15 to 6.30 p.m. We, therefore, do not find any substance in the contentions of Mr. Shivarkar that the prosecution could not establish the place of incident and more particularly, that the incident had taken place in the Dhaba. In his cross examination conducted by the Special PP, PW-1-Madhukar admitted that he was cri-appeal-471-05.sxw mentally disturbed because of the said incident. He also admitted that he was in the police station for about 30 to 45 minutes. He was also in the cabin of police officer who asked him about the incident and he narrated the incident as deposed. His signature was already obtained. This portion of the evidence was corroborated by PW-12- Anil Pawar and PW 9 - Sangeeta. He stated before the trial court that on 16.12.2002, PW-1 Madhukar went to the police station at about 8.00 p.m. The Police constable brought PW-1 Madhukar to his cabin and along with him there was a lady and a boy. PW-1-Madhukar told that the lady was his daughter- in-law and the boy was the grand-son. PW-12 Anil Pawar did not remember the name of the daughter-in-law. The complainant stated before him that his elder son Ravindra was residing at Dombivli and the accused was residing at Goveli and for many years there were disputes between them over the properties and the complainant tried to settle the disputes. The accused had his Dhaba at Goveli by name Nilesh Dhaba. The complainant further informed that his son Ravindra and his friend Jagdish Pagare PW-3 went to compromise the matter at about 6.30 p.m. and while an altercation was going on, suddenly accused took out the pistol and fired at the deceased Ravindra. The complainant and PW-3-Jagdsh Pagare were threatened by the accused. cri-appeal-471-05.sxw PW-12 - Anil Pawar (Investigating Officer) further stated that the complaint of PW-1- Madhukar Jadhav was recorded in the presence of PSI Shri Dongre in writing by the Police Constable Shri Wankhade as per the information given by PW-1- Madhukar Jadhav. His statement so recorded was shown to him. He read over it and he was called upon to verify whether its contents were as per his narrations and PW-1 Madhukar agreed

that it was correct. PSI Shri Dongre came to be examined as PW-13 and stated before the court that on 16.12.2002, while he was attached to the Kalyan Police Station as PSI, he was on duty from 8.00 a.m. to 8.00 p.m. 13. The statement of PW-1 Madhukar Jadhav was recorded under Section 164 of Cr. PC by PW-6-Special Judicial Magistrate Pramod Bagadi on 3.1.2003. PW-6-Special Judicial Magistrate Pramod Bagadi stated before the trial court that he was the Superintendent in the court at Kalyan for the last three years and he had seven years experience as a Judicial Magistrate and was empowered to record the confession/statement as per the Notification in this regard. On 2.1.2003, he has received a written intimation from the Judicial Magistrate First Class to record the statement of PW-1 Madhukar Jadhav in CR No.I-139 of 2001 and accordingly PW-1 cri-appeal-471-05.sxw Madhukar was presented on 3.1.2003 in the court of J.M.F.C. at Kalyan and he started recording the statement at 8.00 a.m. and completed at 8.30 a.m. on the very day. In his cross examination, this statement recorded under Section 164 of Cr. PC was put to the witness and it was pointed out that the portion from (1) A" and "(2) H" at Exh.42 to 49 was not narrated to him by PW-1 Madhukar Jadhav and in reply the witness denied such a suggestion specifically. Exhibits 47 and 48 read as under: Exh.47: As soon as, we reached the hotel, Dilip showed us his entire hotel by making round there and we sat on the table- chairs, in the outside varandh. Dilip asked his servant to prepare 'Poha' and accordingly his servant came by taking Poha. When we told that we did not take poha and tea, he brought and kept cold drinks for us. Exh.48: At the time Dilip was not sitting with us and he was walking around us. When we were sitting taking poha, all of a sudden Dilip behind Ravindra and took out a revolver from his right pant pocket and fired bullet at Ravindra. Ravindra dropped his neck at the spot itself, where he was sitting. Thus, even if PW-1 Madhukar Jadhav turned hostile before cri-appeal-471-05.sxw the trial court and retracted from his own previous statement that while he himself and Ravindra sitting in the Dhaba, accused came and took out Pistol and fired on the temple of Ravindra, the evidence of PW-12- Anil Pawar and PW 13 - Rajaram Dongre proved that PW-1 Madhukar was a witness to the incident in which the accused no.1 fired his pistol on the temple of the deceased during the incident. 14 Coming to the evidence of PW 3 - Jagdish Pagare, the second eye-witness, it is clear that he was known to the deceased as well as the accused and he was on talking terms with both of them. He stated before the trial court that on 16.12.2002, the deceased and PW-1- Madhukar had contacted him at about 11.00 a.m and requested him to drive the TATA Esteem vehicle of the deceased Ravindra so as to go and meet the accused in his Dhaba. He was not free at that time, and therefore, suggested that after 4.00 p.m. they could go to the Dhaba. He went to the house of the deceased at 4.00 p.m. and drove the TATA Esteem vehicle along with PW-1 Madhukar Jadhav and the deceased. The vehicle was parked at a distance of about 1/2 km before the Dhaba at the instance of the deceased as he had suggested PW-1 Madhukar alone should go and meet the accused. The vehicle was parked facing Kalyan and PW-1 Madhukar went to the Dhaba cri-appeal-471-05.sxw while he and the deceased waited in the car. After some time PW-1 Madhukar along with the

accused and his son came to the vehicle and accused told the deceased to come to the Dbaha but the deceased did not respond. Therefore, PW-1 Madhukar requested the deceased. Thereafter, all of them went to the Dhaba by the vehicle. On reaching the Dhaba, the accused had shown them the premises and they sat around table on three chairs. The accused was standing and deceased did not eat or drink and while they were talking, all of a sudden they heard a noise as "Phat" and the deceased fell down. PW-3 - Jagdish Pagare noticed that accused had pointed out a revolver towards the witnesses and said "if you give evidence in court I will shoot you". PW-1 asked the accused why did he kill Ravindra and further said kill him (PW-1) also. The accused just went ahead and then PW-3-Jagdish along with PW-1 Madhukar came out of the premises. They left their vehicle there and came to Kalyan by rickshaw. They went to Dombivli to Ravindra's house. On reaching the house of deceased, they told Ravindra's wife that Ravindra was shot by Accused- Dilip and thereafter all of them went to Titwala Police Station and PW-9 Sangeeta was with them. PW-12 Anil Pawar was in the cabin in the police station and the complaint was recorded as per the statement made by PW-1 Madhukar to PW-12 Anil Pawar. After recording the complaint, they went cri-appeal-471-05.sxw to the hospital and then to home. In his cross examination, he stated that he new Ravindra as well as Dilip for about 5 to 10 years prior to the incident and he used to go to both of them as a friend. He also admitted that Ravindra had not talked to him regarding the property disputes and Ravindra also did not call him to mediate the disputes. He further stated that while he was driving the deceased's TATA Esteem car, the deceased was sitting beside him, and PW-1 Madhukar sat on rear seat and the distance between the hotel and Dombivli may be around 15-20 km and he took 30-40 minutes to reach the hotel. While he was driving to Dhaba the deceased and PW-1 did not talk. In his cross examination he was asked the location of poultry farm and Banian tree. He gave wrong locations. Having regard to the sketch at Exh.110, that by itself could not be a reason to discard this witness as unreliable. He denied the suggestion in his cross examination that while in the Dhaba while Ravindra and PW-1 Madhukar were sitting, all of a sudden Ravindra fell down. From the record it is clear that the statement of this witness was recorded on 18.12.2002. The testimony of this witness also clearly showed that PW-1 Madhukar was present at the time of the incident and he was also threatened by the accused after he shot dead Ravindra. PW 3 - Jagdish supported the case of the prosecution and the trial court was justified in accepting him as a cri-appeal-471-05.sxw reliable eye-witness to the incident. He was a third party and had no interest either in the disputes between the two brothers or any of the family affairs of either of the brothers. He was a common friend on visiting terms with both of them. He happened to accompany PW-1 Madhukar and Ravindra only because his help was sought to drive the car to visit the Dhaba and he conceded to the said request. His evidence is cogent and does not suffer from any exaggeration. 15. There are some other issues which Mr. Shivarkar, the learned counsel for the appellant-accused wanted to press and we deem it fit to deal with them as well. It was submitted that an FIR was submitted to the learned Judicial Magistrate

belatedly. However, the record indicates that it was dispatched on 17.12.2002. PW-12 Anil Pawar was given such a suggestion and he denied that an FIR was not forwarded to the court in time. Mrs. Deshmukh, the learned APP in this regard rightly relied upon the decision of the Supreme Court in the case of Shaikh Ayub (Supra). In that case, the Supreme Court held that even though the FIR had reached the Magistrate after three days, that delay could not, in view of the cri-appeal-471-05.sxw other evidence, create any doubt regarding its genuineness. Mr. Shivarkar also submitted that PW 9 - Sangeeta Jadhav is the wife and PW 3 - Jagdish Pagare was the close friend of the deceased and, therefore, both of them could not be trusted as witnesses. We have already noted that PW 3 - Jagdish Pagare was a friend of the deceased as well as the accused and even if PW-9 is the wife of the deceased, that by itself cannot be a reason to discard her evidence. There is no proposition in law which lays down that the evidence of close relations is per se unreliable. However, all that the law requires is that evidence of the witnesses who are in close relationships is required to be read with care and caution. The court should also look for corroboration. 16. PW-1 Madhukar lost his one son in the incident and in front of his eyes it was he who had requested the deceased to visit the Dhaba along with him and meet the accused so as to settle the inter se disputes between two. This was a natural move by the father with a genuine concern to see that the disputes were brought to an end. The deceased was reluctant to and visit the accused but on the request made by PW-1 Madhukar, he agreed. From the time of the incident till his statement was recorded by cri-appeal-471-05.sxw the Special Judicial Magistrate PW-6 Pramod Bagadi, on 3.1.2003 he was consistently stating before the authorities that it was the accused who killed the deceased. But after about more than one year, when he stepped in the witness box he appeared to have deliberately turned hostile, perhaps under the fear that his second son would be spending his life in jail and he thought his retraction would help the accused herein. But law does not recognize the relationship and it goes by the facts. It was also submitted by Mr. Shivarkar, the learned counsel for the appellant-accused that the inquest panchanama and spot panchanama were drawn before the FIR was lodged on 16.12.2002. However, we have noticed that in the inquest panchanama at Exh.32, there is a reference to CR No.I-139-2002. There is one more circumstance which must be recorded which was also considered by the trial court. The Post Mortem Report showed that the bullet was fired from a close distance and an empty cartridge was detected at the site of the incident. At the time of the incident, and while the deceased, PW-1 Madhukar, PW-3 Jagdish Pagare rested around the table of the Dhaba, there was no one other than the accused and therefore, it was he alone who fired the bullet shot and killed his brother. On assessment of the evidence, we do cri-appeal-471-05.sxw not find any case to disturb the conviction under Section 302 of IPC, as recorded by the trial court. 17. PW 16 - Iqbalsingh Chahel was the sanctioning authority under the Arms Act. The charge framed against the accused at Exh.8 also speaks about the additional charge of possession of unlicensed revolver in contravention of Section 7 of the Arms Act, and thereby committed an offence punishable under Section 3 read with Section 25 (1)(b) of

the said Act. However, the sanction order dated 11.11.2003 is only in respect of holding of unlicensed cartridges which were recovered from the house of the accused and there is no sanction for possessing unlicensed weapon/pistol. At the same time the trial court did not frame a charge against the accused for offence punishable under Section 25(1-B)(b) of the Arms Act for possession of unlicensed cartridges. Hence, on this ground, the order of conviction and sentence under Section 25(1-B)(a) read with Section 27(1) of the Arms Act, 1959 is vitiated and it required to be quashed to that extent. 18. In the premise, we are satisfied that the reasoning set out by the trial court under Section 302 and 506(2) of IPC is based on the proper cri-appeal-471-05.sxw appreciation of the evidence of the prosecution and, therefore, the order of conviction and sentence challenged in this appeal does not call for any interference and the said order of conviction and sentence for both offences deserves to be confirmed. At the same time, the accused deserves to be acquitted under the Arms Act. 19. Hence, this appeal succeeds partly. The order of conviction and sentence for the offences punishable under Sections 302 and 506(2) of IPC passed in Sessions Case No.150 of 2003 is hereby confirmed. Whereas the order of conviction and sentence under Section 25(1-B)(a) read with Section 27(1) of the Arms Act is hereby quashed and set aside. (U. D. SALVI,J.) (B. H. MARLAPALLE,J.)