

Presented on : 04.04.2007
Registered on: 04.04.2007
Decided on : 22.07.2021
Duration : Ys. Ms. Ds.
14 03 18

IN THE COURT OF THE SESSIONS JUDGE & SPECIAL
JUDGE UNDER THE MAHARASHTRA CONTROL OF
ORGANIZED CRIME ACT, 1999 PUNE.

Presided over by Shri A.N. Sirsikar
Addl. Sessions Judge & Addl. Spl. Judge Under MCOC Act,
Pune.

MCOCA CASE NO. 02/2007
(CNR-MH-PU-01-003229-2007)

Exh.

State of Maharashtra
[Through Kothrud Police Station,
Pune, Vide Cr. No. 562/2006]

... Prosecution

V/s.

- 1] **Sachin Nivrutti Pote.**
Age 24 years, Occ.: Nil.
R/o. 1314, Sadashivpeth,
Joshiwada, Pune.
- 2] **Pandurang Vitthal Mohol (Deceased)**
- 3] **Sanjay @ Kalya Mahipati Kangude.**
Age 29 years, Occ.: Garage.
R/a. Khilarewadi, Plot No.15,
Chawl No.1, Erandawana, Pune.
- 4] **Samya @ Sameer Mehboob Shaikh**
Age 24 years, Occ.: Cable.

R/a. Galli No.5, Near Chabukswar Clinic,
Karvenagar, Pune.

5] Dinesh Khadaksing Aavji (Deceased)

6] Sachin Sopan Marne

Age 21 years, Occ.: Education.

R/a. 47/1, More Sramik Vasahat,
Paud Road, Near Bedekar Ganpati,
Pune.

7] Ganesh Nivrutti Marne

Age 35 years, Occ.: Nil.

R/a. Plot No.15, Khilarwadi,
Karve Road, Pune.

8] Rahul Ramchandra Taru

Age 35 years, Occ.: Nil.

R/a. 354, Bhoiraj Society,
Shailaja Bungalow, Sahakarnagar
No.1, Pune.

9] Anil Waghul Khilare

Age 43 Years, Occ.: Labour.

R/a. 571, Shukrawar Peth,
Gajraj Chowk, Shivaji Road,
Pune.

10] Vijay Mahipati Kangude @ Kaltya

Age 29 years, Occ.: Wireman

R/a. Plot no.15, Khilarewadi,
Opp. Sanjivan Hospital, Pune.

11] Jameer Mehboob Shaikh @ Jamya

Age 26 years, Occ.: Meat Shop.

R/a. Karvenagar, Parijat Colony,
Galli No.5, Kothrud, Pune.

**12] Indraneel Chandrabhushan Mishra @ Vinya
(Deceased)**

13] Santosh Ramchandra Lande

Age 29 years, Occ.: Nil

R/a. Plot No.15, Opp. Sanjivan Hospital,
Khilarewadi, Pune.

14] Deepak Kisan Mokashi

Age 25 years, Occ.: Nil.

R/a. Flat No.15, Khilarewadi,
Pune.

15] Sharad Tukaram Vitkar

Age 29 years, Occ.: Cable Business.

R/a. Near Sai Mandir, Vadarwadi,
Karvenagar, Pune – 52.

16] Nilesh Kisan Mazire

Age 31 years, Occ.: Nil.

R/a. Hingane Home Colony,
Karvenagar, Pune.

17] Rahim Mohammed Shaikh @ Shannu

Age 37 years, Occ.: Fabrication.

R/a. Shrikripa Apartment, Flat No.31,
Kondhwa (K), Pune.

18] Dattatraya Dhondiba Kalbhor

Age 29 years, Occ.: Nil

R/a. Plot No.15, Khilarewadi,
Erandawana, Pune.

... Accused.

Offence punishable under sections 302, 307, 143, 147, 148, 149, 120-B, 109, 341, 427 of the Indian Penal Code, under Sections 3 (25),4(25) of the Arms Act, under Section 37(1) r/w. Section 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of The Maharashtra Control Of Organized Crime Act 1999.

Appearances:-

Ld. Special Public Prosecutor Smt. Nilima Vartak, Shri. S.M.Kalbhor, Smt. Ujjawala Pawar and Shri. Vilas Patare for the State.

Ld. Advocate Shri.D.V.Patil and Sidharth Patil for accused No.1.

Ld. Advocate Shri. Sudhir Shah for accused Nos.3,4,5,10 & 11.

Ld. Advocate Shri. D.S. Bhoite for accused No.6.

Ld. Advocate Shri. Sudeep Pasbola for accused No.7 & 8.

Ld. Advocates Shri. N.D.Pawar, Advocate Harshad Nimbalkar for accused No.9.

Ld. Advocate Shri.S.R.Bhosale for accused Nos.2,12,13,14 & 18.

Ld. Advocate Shri. Vidyadhar Koshe for accused No.15.

Ld. Advocate Shri.Vipul Dushing for accused No.16.

Ld. Advocate Shri.Sanjay Navgire for accused No.17.

J U D G M E N T

[Delivered in open court on : 22.07.2021]

Accused are being prosecuted for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 120-B, 109, 341, 427 of the Indian Penal Code, 1860 (for short 'IPC'), under Sections 3(25), 4(25) of the Arms Act, under Section 37(1) r/w. Section 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of The Maharashtra Control of Organized Crime Act, 1999 (for short, 'the MCOC Act').

2] The prosecution case arises on the basis of FIR dated 04.10.2006 filed by Prakash Dagadu Karpe, resident of Mutha, Tal. Mulshi, District Pune. One Sandip Shankar Mohol

was working as the Vice President of General Kamgar Union, Nationalist Congress Party. He was sarpanch of village Mutha. He along with other villagers such as Suresh Dnyanoba Marne, Vikas Mahadeo Mohol, used to visit Pune along with Sandip Mohol.

3] On 04.10.2006 at about 10.30 a.m. he along with Suresh Marne, Vikas Mohol and Sandip Mohol in Scorpio car bearing registration No. MH-12-CY-0082 was coming to Pune from Mutha. Vikas Mohol was driving the car. Suresh Marne sat adjacent to the driver's seat, while the informant and Sandip Mohol sat on middle seat. On the way to Pune, Suresh Marne made phone call on the mobile of Ramesh Bhosale and he was called near Vanaz Company at Paud road. Accordingly, Ramesh Bhosale came in a chowk near Vanaz Company. Ramesh Bhosale sat on the front seat of the Scorpio beside the driver's seat, while Suresh Marne came on middle seat and sat behind the driver's seat. Sandip Mohol sat on the left side of the middle seat and the informant sat in between Sandip Mohol and Suresh Marne. The glasses of the windows of Scorpio car were closed. They were proceeding to meet cousin brother of Saneep Mohol namely Deepak Karpe at Shaniwarpeth, Pune. At about 11.30 a.m. Scorpio car was stopped at the traffic signal at Paud Phata Flyover. Suddenly 7-8 persons on 3-4 motorcycles came from behind the Scorpio. They parked their motorcycles on road. They were armed with sickles, choppers, knives, etc. Accused Sachin Pote and Ganesh Marne came

towards left side of the Scorpio car. Accused Sachin Pote was having helmet in his left hand and was holding pistol in his right hand. At that time Ramesh Bhosale alerted Sandip Mohol. Accused Sachin Pote fired on the glass of the Scorpio where Sandip Mohol had sat. The accused Ganesh Marne, Nilesh Mazire, Anil Khilare, Santosh Lande and others broke the rear side glass of driver's side of the Scorpio by means of sickles, chopper and knives etc. At the same time the accused Sachin Pote fired 6 bullets towards chest, abdomen, waist and left hand of Sandip Mohol. Ramesh Bhosale deboarded from the vehicle. The accused Sachin Pote fired towards him, but bullet did not come out from the pistol. He heard only noise from the pistol. The assailants thereafter fled. Ramesh Bhosale again boarded in the vehicle. They proceeded by the same vehicle towards Sanjivan Hospital for treatment of Sandip Mohol. During the course of treatment Sandip Mohol succumbed to injuries.

4] According to informant prior to the incidence there was quarrel between Sandip Mohol as well as Sachin Pote and Ganesh Marne at Khilarewadi. Sandip Mohol was made Vice President of General Kamgar Union, therefore, Sachin Pote and Ganesh Marne were having grudge against him.

5] Prior to lodging of FIR the Senior Police Inspector of Kothrud Police Station Mr. Rajaram Yashwant Shinde, who on receipt of telephonic message from the Police Station Officer

about the incidence, rushed to the spot. He also came to know that Sandip Mohol was injured in the firing and was admitted in Sanjivan Hospital. Police Inspector (Crime) Mr. Gautam Deshmukh had gone to Sanjivan Hospital.

6] Mr. Rajaram Shinde called two panchas and prepared spot panchanama Exh. 627. Two motorcycles bearing registration Nos. MH-12-BZ-5653, MH-12-CL-7468 which were lying on the spot were seized. A sickle, black colour helmet, Nokia mobile handset, a chopper, 5 empty shells, a magazine, two live cartridges and pieces of broken glass found on the spot were also seized.

7] Investigation car (Mobile Lab) was called on the spot. Mr. S.R.Lokhande, the Assistant Scientific Officer from Pune Police collected the blood samples and other articles found on the spot. Police Constable Photographer Mr. Kulkarni snapped the photographs.

8] Mr. Shinde thereafter went to Sanjivan Hospital where he came to know that Sandip Mohol succumbed to injuries. He found Scorpio car in the premises of the hospital. He sent the Scorpio car to Police Station. He returned to Kothrud Police Station and in presence of two panchas seized Scorpio car under panchanama Exh.370. He found front bumper of left side of the vehicle was bent, fiber was broken, left side glass panel of middle seat was broken. There were

pieces of glass lying on the seat. The seat was stained with blood. There was pair of footwear (Chappal) below the middle seat. A bullet, kukari, paper files, box files, books, letter heads, personal executive diary, etc. found in the car were also seized.

9] Police Inspector Mr. Gautam Deshmukh who was present in Sanjivan Hospital collected two bullets from Dr. Lokhande. Said bullets were seized under panchanama Exh.376. Mr. Deshmukh sent the body for postmortem to Sassoona Hospital. He drew inquest panchanama Exh. 372. On conclusion of postmortem, Medical Officer of Sassoona Hospital gave him sealed bottles containing bullets, blood of deceased and samples of skin of deceased. He also received papers of treatment from Sanjivan Hospital. He handed over the same to Police Inspector Mr. Shinde.

10] On the basis of FIR filed by Prakash Karpe, Crime No. 562/2006 was registered at 7.35 p.m. of 04.10.2006 at Kothrud Police Station. Mr. Rajaram Shinde made further investigation. Clothes of deceased were seized under panchanama Exh.531. He recorded statements of some of the witnesses. The clothes and the bottles of samples collected from Sassoona Hospital were sent for chemical analysis.

11] On 07.10.2006 the accused Nos.1 to 4 i.e. Sachin Nivrutti Pote, Pandurang Vitthal Mohol, Sanjay Mahipati Kangude and Sameer Mehboob Shaikh were arrested under

panchanama. Their blood stained clothes were seized. On 08.10.2006 the accused No.5 Dinesh Aavji and accused No.6 Sachin Sopan Marne were arrested.

12] On 10.10.2006 whilst in police custody the accused Sachin Pote made disclosure statement which was recorded in presence of panchas and in pursuance of which a pistol was seized from stone quarry under panchanama Exhs. 473 and 474.

13] On the same day in pursuance of statement made by the accused Pandurang Mohol a motorcycle bearing No.MH12-QB-9755 used in crime was seized from Chhatre Hall, Karve Road.

14] On the same day the accused Sameer Shaikh made disclosure statement and a sickle from Vasundhara Pandit Farm was seized under panchanama Exh. 502.

15] On 11.10.2006 in pursuance of information given by accused Sanjay Kangude a motorcycle bearing No.MH-12-CS-7618 used in crime was discovered from Parvati area under panchanama Exh.471.

16] Simultaneously Crime Branch of Pune police were also making investigation. On 22.10.200 Police Inspector Bhanupratap Barge of Crime Branch received information that

the other accused were hiding in Ambejogai, Parali Vaijanath, Gangakhed area. He deputed API Raghunath Phuge to take search of the accused in that area. On confirmation of the news Mr. Barge on 23.10.2006 proceeded towards Gangakhed. On 24.10.2006 he found accused Ganesh Marne proceeding in Santro Car on Gangakhed-Ambejogai road, while other accused Nos.8 to 16 were found in Quails car bearing No. MH-12-BP-2872 on Ambejogai-Kalamb road. He brought them along with the vehicles at the office of Crime Branch. The vehicles were searched. Three swords, one chopper, one sickle and two satturs were found in Quails car, while a sickle was found in Santro car. They were seized under panchanama. Personal search of the accused was taken. Mobile phone and cash was found, which were seized under panchanama Exh.511.

17] On 28.10.2006 while making interrogation, accused Ganesh Marne made disclosure statement, in pursuance of which a pistol having magazine and six bullets kept in the cupboard in a house at Khilarewadi was seized under panchanama Exh.450. Mr. Barge also recorded the statements of some of the witnesses.

18] On 30.10.2006 the accused Santosh Lande made disclosure statement and a chopper concealed in the bushes from the campus of Cipla company was discovered under panchanama Exh.602.

19] On 31.10.2006 the accused Nilesh Mazire made disclosure statement and a sickle from the bushes on Pune-Bangalore highway was discovered under panchanama Exh.553.

20] He collected the information in respect of six seized motorcycles from Regional Transport Office, Pune.

21] Correspondence was made with the mobile companies for collecting CDRs of the mobiles of the accused.

22] Mr. Barge made request to the Executive Magistrate for conducting test identification parade in Yerawada Central Prison, Pune.

23] During the course of investigation he came to know that number of offences were registered against the accused, they are the members of organised crime syndicate. On 20.12.2006 he forwarded proposal for invocation of provisions of MCOC Act to the Additional Commissioner of Police (Crimes), who on 31.12.2006 granted approval under Section 23(1)(a) of the MCOC Act.

24] Investigation revealed that friend of accused namely Anil Marne was murdered by the gang. Deceased Sandip Mohol was behind the murder of Anil Marne. In order to take revenge of his murder the accused hatched conspiracy to

commit murder of Sandip Mohol.

25] It was found that the accused No.7 provided weapons such as revolver to accused No.1. Accused No.17 Rahim Shaikh was the member of conspiracy. After commission of offence he carried the accused in Qualis car bearing No.MH-12-BP-2872 and dropped them at Lonavla. He also provided the vehicle to the accused and helped them in escaping after commission of the offence.

26] Assistant Commissioner of Police Sanjay Jadhav made further investigation. He made correspondence with mobile companies for getting CDRs of the mobiles of the accused. He also made correspondence with financial institutions and other government departments for getting information in respect of the properties acquired by the accused. He collected certified copies of the charge-sheets of earlier cases filed against the accused. He then made request for getting sanction to prosecute the accused. The Commissioner of Police, Pune accorded sanction under Section 23(2) of the MCOC Act. The investigating officer thereafter filed charge-sheet in this Court.

27] On hearing, charge below Exh.301 is framed against all the accused for the offences punishable under Sections 120-B, 143, 147, 148, 149, 302, 307, 341, 427, 109 of the IPC, under Section 3(25), 4(25) of the Arms Act and under

Section 37(1) r/w, Section 135 of the Maharashtra Police Act. The charge for the offence punishable under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of the MCOC Act is framed against the accused Nos. 1 to 7 and 9 to 18. Initially while framing charge, charge of conspiracy was only framed against the accused No.7 Ganesh Marne. Subsequently, additional charge was framed against him below Exh.810. The contents of the charge were read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

28] In view of order dated 21.08.2008 below Exh.99 the accused No.8 Rahul Ramchandra Taru is discharged in respect of the offences punishable under the provisions of MCOC Act.

29] In order to bring home the guilt of the accused for the offences levelled against them, the prosecution has examined in all 76 witnesses. For the purpose of convenience they are grouped in the following manner.

Eye Witnesses :

1	P.W.7	Police Naik Balu Waman Gaikwad	Exh.400	
2	P.W.10	Ramchandra Santu Kadam	Exh.416	
3	P.W.11	Police Constable Haridas Khandu Shegar	Exh.417	
4	P.W.12	Police Naik	Exh.422	

		Ganesh Ramchandra Godse		
5	P.W.13	Retd. ASI Abasaheb Shamrao Abadaire	Exh.432	
6	P.W.14	Vikas Mahadeo Mohol	Exh.437	
7	P.W.24	Suresh Dnyanoba Marne	Exh.485	
8	P.W.26	Babasaheb Chandrakant Supekar	Exh.490	
9	P.W.30	Prakash Dagadu Karpe	Exh.512	
10	P.W.41	Amar Vikram Dhakne	Exh.563	

Expert witnesses :

1	P.W.4	Ramesh Sadashiv Lohande	Exh. 391	Scientific Assistant who collected blood from the spot.
2	P.W.42	Dr.Savita Ganesh	Exh. 564	CMO from Sanjivan Hospital who gave treatment to deceased.
3	P.W.57	Dr.Rahul Shashikant Lokhande	Exh.595	Medical Officer of Sanjivan Hospital, Karve Road, Pune, who gave treatment to Sandip Mohol.
4	P.W.60	Shamsunder Shridhar Munj	Exh.608	Ballistic expert.
5	P.W.63	Dr.Ganesh	Exh.622	Who conducted

		Pandurang Pujari		postmortem.
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Panch witnesses :

1	P.W.1	Sanddep Ramchandra Shedge	Exh. 369	Panch of seizure of Scorpio vehicle Exh.370
2	P.W.2	Chandrakant Vasantrao Chaudhary	Exh. 371	Panch of inquest panchanama Exh.372
3	P.W.3	Shankar Atmaram Shedge	Exh. 375	Panch on spot panchanama Exh.627
4	P.W.15	Mohan Appa Kodat	Exh.442	Panch of memorandum panchanama and seizure of motorcycle, by accused Vijay Kangude.
5	P.W.17	Sachin Mohan Kasale	Exh.448	Panch of memorandum panchanama and seizure of pistol by accused No.7 Ganesh marne. So also in respect of seizure of motorcycle from accused Jameer Shaikh.
6	P.W.18	Amol Avinash Mandavkar	Exh.456	Panch in respect of memorandum panchanama of Anil Khilare of recovery of motorcycle, as well as panch of memorandum panchanama of accused Indranil Mishra of recovery of motorcycle.
7	P.W.19	Pandurang Bhikoba Dangat	Exh.464	Panch on seizure of clothes of accused Sanchin Marne and Dinesh Aawji.

8	P.W.20	Goga Chandrakant Supekar	Exh.469	Panch of memorandum panchanama and seizure of Hero Honda Splendor motorcycle from accused Sanjay Kangude.
9	P.W.21	Pappu Bandu Shinde	Exh.472	Panch of memorandum panchanama of recovery of pistol of accused Sachin Pote.
10	P.W.23	Sameer @ Sagar Shivaji Shinde	Exh.478	Panch of memorandum panchanama of seizure of motorcycle by accused Pandurang Mohol.
11	P.W.25	Dattatraya Chandrakant Shevkar	Exh.489	Panch of seizure of Santro car who along with weapons.
12	P.W.27	Sudhir Vasant Pathak	Exh.500	Panch of memorandum panchanama in respect of seizure of sickle by accused Sameer Shaikh.
13	P.W.28	Namdeo Narayan Kunjir	Exh.504	Panch of seizure panchanama in respect of mobile handsets.
14	P.W.29	Dilip Nanayan Todkar	Exh.510	Panch of Personal search panchanama of accused dated 25.10.2006.
15	P.W.32	Chetan Ramdas Patole	Exh.530	Panch in respect of seizure of clothes of deceased.
16	P.W.33	Ashish Anil Kulkarni	Exh.532	Panch in respect of seizure of clothes of accused.
17	P.W.36	Bapu Narayan Pawar	Exh. 548	Panch of memorandum panchanama in respect of seizure of sickle, by accused Dattatraya

				Kalbhor.
18	P.W.37	Satish Kalidas Kendale	Exh.551	Panch of memorandum panchanama of accused Nilesh Mazire regarding recovery of sickle.
19	P.W.58	Ganesh Sadashiv Lekawale	Exh.598	Panch of memorandum panchanama of accused Jameer Shaikh regarding recovery of sickle. Also panch of memorandum panchanama of accused Santosh Lande regarding recovery of Sattur.

Other Witnesses :

1	P.W.16	Sanjay Kantilal Kirad	Exh.447	Owner of Scorpio car
2	P.W.22	Vinod Baban Supekar	Exh.477	The motorcycle owner who was dashed by Scorpio car.
3	P.W.31	Shailendra Shivram Mengade	Exh.529	To whom some of the accused met, prior to the incidence at Karvenagar.
4	P.W.34	Ganesh Dashrath Gaikwad	Exh.540	Person holding sim card which was given by Narendra Gaikwad to accused Rahul Taru.
5	P.W.35	Ravindra Mahipal bane	Exh.542	Owner of sim card which was being used by accused Dipak Mokashi
6	P.W.38	Ganesh Mahabal Shetti	Exh.559	Hotel owner, who obtained loan from accused No.7

7	P.W.39	Laxman Maruti Sathe	Exh.560	Who had given motorcycle to Indranil Mishra.
8	P.W.40	Raju Maruti Sathe	Exh.561	The Estate Agent who paid Rs.80,000/- to the accused Ganesh marne
9	P.W.43	Kisan Mahadeo Dok	Exh.566	Who had given sim card through his friend Pappu Mokashi to Ganesh Marne
10	P.W.44	Kishor Eknath Suryawanshi	Exh.567	Owner of motorcycle which was given to accused Santosh Lande.
11	P.W.45	Dnyaneshwar @ Mauli Vitthal Javalkar.	Exh.573	On the point of enmity between deceased and Ganesh Marne
12	Exh.46	Duryodhan Somnath Nanaware	Exh.574	Sim card of Airtel company given to accused Sachin Pote.
13	Exh.47	Arjun Rangnath Ghughe	Exh.575	Who had given motorcycle to Sachin Pote
14	Exh.48	Samir Suresh Hagawane	Exh.576	Who had given motorcycle to Mahesh Pote.
15	Exh.49	Namdeo Dattatray Navle	Exh.578	Owner of farm house where Ramesh Khedekar along with accused No.7 and his friend stayed in the night of 9.10.2006.
16	P.W.50	Ramesh Baban Khedekar	Exh.579	Friend of Ganesh Marne who asked him for arranging dinner and stay.
17	P.W.51	Shivraj Vitthalrao Kadam-Patil	Exh.582	Owner of Pawan lodge Tuljapur.
18	P.W.52	Vijaykumar	Exh.584	Owner of poultry farm at

		Kisanrao Deshmukh		Ambejogai, who made arrangement for stay of accused for 2-3 days
19	P.W.53	Satish Pralhad Gangne	Exh.585	Who met accused Ganesh Marne and others at Ambejogai.
20	P.W.54	Baban Pandurang Gite	Exh.586	Who made arrangement for stay of accused Ganesh Marne in the farm house at Ambejogai, Parali
21	P.W.55	Ashok Ramratan Mali	Exh.591	Employee from Gajanan Maharaj Math, Pandharpur where accused stayed on 5.10.2006.
22	P.W.56	Nandkishor Ganesh Thakre	Exh.594	Employee from Gajanan Maharaj Math, Pandharpur.
23	P.W.59	Vilas Dnyanoba Mohol	Exh.606	Friend of Ganesh Marne, who was with accused from 4.10.2006 to 24.10.2006
24	P.W.65	Chandrakant Kisan Bhor	Exh.659	Nodal Officer from Reliance Communications.
25	P.W.70	Chetan Shridhar More	Exh.714	Nodal Officer of Airtel Company.
26	Exh.75	Sachin Mahadeo Shinde	Exh.753	Nodal Officer with Idea Mobile Company.

Police witnesses in the investigation :

1	P.W.5	Dattatraya Chintaman Kulkarni	Exh.393	Photographer of Pune police
2	P.W.6	Sharad	Exh.395	Photographer of Pune

		Gorakhnath Kshatriya		Police.
3	P.W.8	PHC Mohan Dashrath Dhomkar	Exh.404	Carrier
4	P.W.9	Police Naik Rajendra Shankar Chavan	Exh.412	Carrier
5	P.W.61	Sandesh Ravindra Shirke	Exh.618	Nayab Tahasildar, who conducted test identification parade.
6	P.W.62	Brahmanand Raosaheb Naikawade	Exh.620	The investigating officer, who arrested accused Sachin Marne and Dinesh Aawji, made report.
7	P.W.64	Rajaram yashwant Shinde	Exh.626	The investigating officer from Kothrud Police Station who made initial investigation.
8	P.W.66	Nitin Vijay Jadhav	Exh.664	The investigating officer from Crime branch.
9	P.W.67	Goutam Digambar Deshmukh	Exh.670	The investigating officer who visited Sanjivan Hospital.
10	P.W.68	Raghunath Vithal Phuge	Exh.671	The investigating officer from Crime Branch.
11	P.W.69	Bhanupratap Shankarrao Barge	Exh.687	The investigating officer from Crime Branch.
12	P.W.71	Sanjay Bajirao Jadhav	Exh.717	The investigating officer who made investigation after invocation of MCOC Act.
13	P.W.72	Vinod Damodar Satav	Exh.738	The investigating officer who made part of investigation after

				invocation of MCOC Act.
14	P.W.73	Rajendrasing Shersing	Exh.746	I.G. Nagpur, who granted approval order Exh.709 for invocation of MCOC Act.
15	P.W.74	Chhagan Hilal Wakade	Exh.750	Deputy Commissioner of Police who granted sanction under the Arms Act.
16	Exh.76	Jayant Yashwant Umranikar	Exh.760	Commissioner of police, who granted sanction for filing charge-sheet under MCOC Act.

30] Besides the oral evidence, the prosecution has relied upon number of documents such as station diary entries, FIR, panchanamas, chemical analysis reports, correspondence, approval and sanction orders, etc.

31] From the manner of the cross examination and from the statement of accused recorded under Section 313 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), it seems that their defence is of total denial and false implication.

32] Accused No.7 has taken defence of alibi. In support of his defence he has examined Umesh Ramanarayan Bhutada and also placed on record some documents to show that at the time of incidence he had gone to Mumbai to meet the then Energy Minister Mr. Dilip Walse Patil. Other accused have not examined defence witness.

33] On hearing Ld. Special Public Prosecutor, Ld. Advocates for the accused and after going through record as well as after considering written arguments filed by the parties, following points arise for my determination and I have recorded findings against them with the reasons given below:-

Sr.No.	Points	Findings
1.	Whether death of Sandip Shankar Mohol was homicidal ?	Yes.
2.	Whether the prosecution has proved that on or before 04.10.2006 at about 11.30 hrs. or thereabout, on a public road, near Shraddha Pan Centre, Near the signal underneath flyover bridge, Kothrud, the accused Nos.1 to 18 agreed to do or caused to be done an illegal act that is to commit murder of Sandip Mohol ?	No.
3.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an unlawful assembly having common object of committing murder of Sandip Mohol ?	Proved to the extent of accused Nos.1,2, 11 & 13 only.
4.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an unlawful assembly, in prosecution of the aforesaid common object of such assembly, committed the offence of	Proved to the extent of accused Nos.1,2, 11 & 13 only.

	rioting?	
5.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an unlawful assembly, in prosecution of the aforesaid common object of such assembly, committed the offence of rioting and at that time were armed with deadly weapons such as firearm, sickle, chopper, etc.?	Proved to the extent of accused Nos.1,2, 11 & 13 only.
6.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an unlawful assembly, in prosecution of the aforesaid common object of committing murder of Sandip Mohol, which they knew to be likely to be committed in prosecution of common object of said assembly and the accused being the member of such assembly, intentionally and knowingly committed murder of Sandip Mohol?	Proved to the extent of accused Nos.1,2, 11 & 13 only.
7.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, in pursuance of aforesaid criminal conspiracy, committed murder of Sandip Mohol?	No.
8.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were	No.

	the members of an unlawful assembly, in prosecution of the aforesaid common object, attempted to fire bullet from the pistol, with such intention or knowledge and under such circumstances that if by that act the accused had caused the death of witness Ramesh Baban Bhosale, the accused would have been guilty of murder?	
9.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, in pursuance of aforesaid criminal conspiracy, attempted to fire bullet from the pistol, with such intention or knowledge and under such circumstances that if by that act the accused had caused the death of witness Ramesh Baban Bhosale, the accused would have been guilty of murder?	No.
10.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an unlawful assembly, wrongfully restrained deceased Sandip Mohol ?	No.
11.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, in pursuance of aforesaid criminal conspiracy wrongfully restrained deceased Sandip Mohol ?	No.
12.	Whether the prosecution has further proved	Proved

	that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an unlawful assembly, in prosecution of aforesaid common object of such assembly, committed mischief and thereby caused loss or damage to Scorpio four wheeler vehicle No.MH-12-CY-82?	to the extent of accused Nos.1,2, 11 & 13 only.
13.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, in pursuance of aforesaid criminal conspiracy committed mischief and thereby caused loss or damage to Scorpio four wheeler vehicle No.MH-12-CY-82?	No.
14.	Whether the prosecution has further proved that the accused Nos.1 to 6 and 8 to 18 on the aforesaid, day, date time and place and during the course of same transaction, committed the offence of murder of Sandip Mohol and attempted to commit murder of witness Ramesh Baban Bhosale and accused No.7 provided revolver and cartridges to accused No.1 for committing the said offence and said offence is committed in consequence of abetment of accused No.7?	No.
15.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, in contravention of provisions of Section 3 of the Arms Act, were found in possession of firearms without valid licence?	No.

16.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, in contravention of provisions of Section 4 of the Arms Act, were found in possession of arms other than firearms, without having valid licence?	No.
17.	Whether the prosecution has further proved that the accused Nos.1 to 18 on the aforesaid, day, date time and place and during the course of same transaction, found in possession of deadly weapons like sword , chopper and fire arm etc. as well as formed assembly of more than five persons and thereby committed breach of the order lawfully promulgated by the Commissioner of Police, Pune which was then in existence?	No.
18.	Whether the prosecution has further proved that the accused Nos.1 to 7 & 9 to 18, ten years preceding 04.10.2006 were indulged in continuing unlawful activity by commission of cognizable offences punishable with imprisonment of three years or more such as murder, attempt to commit murder, theft, dacoity, extortion, money laundering under taken either singly or jointly, either as member of organised crime syndicate or on behalf of such syndicate by the use of violence or threat or violence or intimidation or coercion or other unlawful means, with the objective of gaining pecuniary benefits or under economic or other advantage and in continuation of such unlawful activity committed murder of Sandip Mohol on aforesaid day, date, time and place, either as a member of a gang or	No.

	on behalf of such organised crime syndicate which resulted in death of Sandip Mohol ?	
19	Whether the prosecution has further proved that accused Nos.1 to 7 & 9 to 18, during the preceding ten years to 04.10.2006, were the members of organized crime syndicate and acted singly or jointly either as a member of organized crime syndicate or on behalf of such syndicate with use of violence, intimidation or other unlawful means, committed such body and property offences, namely murder, attempt to murder, preparation of dacoity, robbery, theft etc., for pecuniary gain, and such offence resulted into any other offence than murder?	No.
20.	Whether the prosecution has further proved that on the aforesaid day, date, time and place and during the course of same transaction, the accused Nos.1 to 7 & 9 to 18 committed murder of Sandip Mohol, attempted to commit murder of witness Ramesh Baban Bhosale, organised crime which resulted in death of Sandip Mohol and accused No.7 by providing revolver and cartridges to accused for committing the said offence, conspired or attempted to commit or advocated, abetted or knowingly facilitated commission of the aforesaid organized crime?	No.
21	Whether the prosecution has further proved that the accused Nos.1 to 7 & 9 to 18 on the aforesaid, day, date time and place and during the course of same transaction, were the members of an organised crime	No.

	syndicate ?	
22.	What order?	As per final order.

R E A S O N S

34] According to ld. Special Public Prosecutor the evidence of eye witnesses corroborated by other circumstantial evidence is sufficient to establish the guilt of the accused. There are certain omissions in the evidence of eye witnesses which are bound to occur because evidence was recorded after a period of 5 years. The witnesses have identified the accused in test identification parade. The offence is committed in a planned manner due to previous enmity. The accused absconded after the commission of offence. This also shows their involvement in the commission of the offence.

35] Per contra, the ld. Advocates for the accused assailed the evidence on various grounds. They have filed voluminous written notes of arguments and relied upon number of case laws. According to them, there is delay in lodging of FIR. The test identification parade has not been conducted in accordance with the provisions of Criminal Manual. The conduct of the eye witnesses is not natural. Independent witnesses have not been examined. Most of the witnesses are interested witnesses. Material witnesses are not examined.

There is variance in the ocular evidence, medical evidence and the evidence of ballistic experts. The recovery of articles are not proved. Motive is not proved. Therefore, the accused cannot be convicted.

Point No. 1 (Homicidal death) :

36] All the eye witnesses have specifically stated that when the Scorpio car was stopped near the traffic signal of Paud road flyover, a person in the car was fired from the revolver by a person who came on motorcycle.

37] It has come on record from the evidence of other inmates of the Scorpio car that Sandip Mohol was injured and was brought at Sanjivan Hospital.

38] P.W.42 Dr. Savita Ganesh, who at the relevant time was working as Casualty Medical Officer at Sanjivan Hospital, has categorically stated that on 04.10.2006 she was performing duty from 9 a.m. to 4 p.m. At about 12 O'Clock Sandip Mohol was brought to the hospital. He was unconscious and bleeding profusely. She along with her colleague Dr. Rahul Lokhande, another Medical Officer started preliminary treatment.

39] P.W.57 Dr. Rahul Lokhande, who examined Sandip Mohol found following injuries on his person :

1. Entry wound at Mammary region over heart corresponding exit wound was exactly at back side of first injury, viz. Infrascapular area.
2. Right iliac fossa.
3. Supra pubic wound.
4. Left thigh upper 1/3rd, it was corresponding exit wound on left lower back, with bleeding.

40] He treated the patient and at 1.30 p.m. Sandip was declared dead. His evidence is corroborated by medical papers Exh.596 of Sanjivan Hospital. In medical papers he has specifically mentioned that Sandip Mohol was brought to casualty ward with alleged history of gunshot wounds with profused bleeding with active bleeding from wounds and mouth. Mr. Rahul Lokhande found two empty cartridges in the clothes of Sandip Mohol, which he handed over to P.W.67 P.I. Gautam Deshmukh.

41] The dead body of Sandip Mohol was sent to Sassoon Hospital for postmortem, where P.W.67 Gautam Deshmukh in presence of P.W.2 Chandrakant Chaudhari prepared inquest panchanama Exh.372. In the inquest panchanama also it is mentioned that there were injuries on the body.

42] P.W.63 Dr. Ganesh Pujari, who at the relevant time was attached to Sassoon Hospital as Assistant Lecturer, conducted postmortem examination on same day from 6.20

p.m. to 7.30 p.m. On external examination he found following injuries on the dead body :

1. Circular wound of entry on left side of chest 2 cms, medial to nipple, 0.5 cms, above it, measuring 1.5 cms diameter, opening in throatic cavity. Margins inverted. Surrounding area of 0.5 cms., abraded. No tattooing or singeing.

2. Circular wound of entry over lateral aspect of left thigh at the level of inguinal ligament, measuring 1 cms diameter. Margins inverted, surrounding area of 0.5 cms abraded. No tattooing or singeing.

3. Circular wound of entry, middle of right buttock, measuring 0.5 cms in diameter, surrounding area of 0.25 cms abraded. No tattooing or singeing. Margins inverted.

4. Circular wound of entry on back, 1.5 cms rigidity lateral to midline and at the level of sacral promontory measuring 0.75 cms in diameter, surrounding area of 0.5 cms abraded. Margins inverted. No tattooing or singeing.

5. Puncture mark, right cubital fossa. Surrounding area of 1.5 cms, diameter contused (therapeutic).

6. Circular wound of entry, on medial aspect of left forearm, at the junction of upper and middle one third of forearm, measuring 0.75 cms in diameter. Margins inverted. No tattooing or singeing.

7. Elliptical wound of exit, on anteromedial aspect of left forearm, 2 cms above the level of corresponding wound of entry, measuring 1 x 0.75 cms. Margins everted.

8. Circular wound of exit right side of abdomen, 14 cms lateral to umbilicus, measuring 1 cm in diameter. Margins everted.

9. Circular wound of exit, 3 cms above base of penis, measuring 1 cms in diameter. Margins everted.

10. Elliptical wound of entry, left side of back, at the level of angle of scapula, measuring 1.5 x 1 cm. Surrounding area of 0.25 cms abraded. Margins inverted. No tattooing or singeing.

43] On internal examination, he found following injuries on the dead body :

Track of wound, corresponding to external injury No.1 :

- : lacerations of third intercostal space, measuring 4 x 2 cms,
- : lacerations of hilum of left lung, measuring 3 cms in diameter,
- : lacerations of pleura over lowerlobe of left lung, 5 x 4 cms,
- : lacerations of lower lobe of left lung, 5 x 3 cms, involving whole of the thickness,
- : lacerations of pericardium, 3 x 2 cms,
- : lacerations of base of arota, 3 x 2 cms,
- : lacerations of auricle 2 cms indiameter.

Bullet found embedded subcutaneous 5 cms below the level of sternal angle.

Track of wound corresponding to external injury No.2 :

- : irregular fracture of left iliuim, 4 x 3 cms,
- : lacerations of inestinal coils,
- : lacerations of mesentery,
- : lacerations of whold of the bladder,

: lacerations of whole of the caecum,
Bullet found lying loose in right iliac fossa.

Track of wound, joining external injury No.3 (wound of entry) and 8 (wound of exit)

: Irregular fracture of right ischium, 3 x 2 cms,
: lacerations of intestinal coils,
: lacerations of peritoneum, 1 cm in diameter.

Track of wound joining external injury Nos. 4(wound of entry) and 9 (wound of exit) :

: lacerations of intestinal coils.

Track of wound joining external injury Nos.6 (wound of entry) and 7 (wound of exit) :

: lacerations of corresponding soft tissues including vessels, 5 cms in diameter.
: irregular fracture of shaft of left ulna.

Track of wound, corresponding to external injury No.10 :

: irregular fracture of left scapula, 4 x 3 cms,
: lacerations of aorta, 3.5 x 2 cms,
: lacerations of pleura over middle lobe of right lung, 5 x 5.5 cms.
: lacerations of middle lobe of right lung, through and through, 5 x 4 x 9 cms.
Bullet found embedded subcutaneous third intercostal space on right side, anteriorly.

44] He recovered 3 bullets from the body, which were handed over to the police. He along with Dr. M.S.Wabale prepared postmortem notes Exh.623 and opined that death was caused due to traumatic and haemorrhagic shock as a result of

firearm injuries.

45] As per report Exh.650 of P.W.67 Mr. Gautam Deshmukh, the pieces of skin and clothes of the deceased were collected from Sassoon Hospital. They were sent along with bullets and other articles to the Ballistic expert.

46] P.W.60 Mr. Shamsundar Munj, who is serving as Assistant Chemical Analyzer in Ballistic Department has conducted the analysis. As per report Exh.609 of Mr. Munj metallic, copper and lead around the periphery of shot holes on the skin pieces were consistent with a passage and wipe of copper jacketed bullet. As per report Exh.611 of Mr. Munj, metal lead and powder residue were detected around the periphery of encircled shot holes on the shirt, banian, full pant and underwear (of the deceased) and they were consistent with the passage and wipe of copper jacketed bullet.

47] The above referred expert witnesses have been cross examined by the defence, but their version about cause of death has not been shattered. It is therefore, can be safely inferred that the death of Sandip Mohol was caused due to firearm injuries and as such it was homicidal death. Point No.1 is answered accordingly.

Point No. 2 (Conspiracy) :

48] Prosecution has come with a case that one Anil Marne was friend of accused. He was murdered. Accused suspected that deceased was behind the murder of Anil Marne and therefore, they hatched the conspiracy and committed murder of Sandip Mohol. It is also case of prosecution that the accused were having previous quarrel with deceased Sandip Mohol. Deceased was gaining political supremacy, therefore, they were having grudge against him. This was also one of the reason for committing murder.

49] For proving the factum of conspiracy, prosecution has to prove that there was agreement between the persons for doing an illegal act. In view of law laid down in State V/s. Nalini, AIR 1999 SC 2640, conspiracy can be proved either by direct evidence or by circumstantial evidence. Direct evidence in respect of conspiracy is seldom available. Conspiracy is always hatched in secrecy. In the absence of direct evidence, same can be inferred from the circumstances as well as from the conduct of the parties.

50] In the present case also there is no direct evidence about conspiracy. The prosecution has tried to prove the factum of conspiracy by way of circumstantial evidence.

51] The informant P.W.30 Prakash Karpe in his

evidence has specifically stated that there were quarrels between deceased and the accused. His version in this regard has not been shattered in cross examination.

52] Prosecution has also examined P.W.45 Dnyaneshwar Jawalkar. He was knowing the deceased since 14 years. He was also knowing accused No.1 Sachin Pote and the accused No.7 Ganesh Marne, who were earlier his friends. According to him in the year 2005 there was quarrel between deceased Sandip Mohol and accused No.7 Ganesh Marne at Khilarewadi, which was settled by Subhash Marne, who is relative of accused No.7 Ganesh Marne and one Rajabhau Karpe, who is relative of deceased.

53] He has also stated that in the year 2005 his friend Pradip Shinde obtained loan from one Aniruddha Naik, who is the friend of accused No.7 Ganesh Marne. As Pradip Shinde could not repay the loan in time, Aniruddha Naik, accused No.1 Sachin Pote, accused No.7 Ganesh Marne and accused No.10 Vijay Kangude assaulted Pradip Shinde. He has further stated that accused No.7 Ganesh Marne called him for discussion in respect of dispute of Pradip Shinde. Therefore, he along with his friend Ravi Khese went to Khilarewadi on motorcycle. He talked with accused No.7 Ganesh Marne, but he (accused No.7 Ganesh Marne) as well as Aniruddha Naik, accused No.1 Sachin Pote and accused No. 10 Vijay Kangude abused and assaulted him. They attempted to commit his murder by means of sickle,

chopper and knife. In that regard he filed FIR at Deccan Police Station against them. His brother in law Raju Bharekar was brought at the office of Anil Marne where he was abused and assaulted for withdrawing the FIR. But the matter was not reported to the police. Twenty days thereafter, Anil Marne was killed at Salunke Vihar. He has further stated that since after commission of murder of Anil Marne, accused No.7 Ganesh Marne and his friends had kept watch on deceased Sandip Mohol and thereafter, he was killed at Paud road. This witness was one of the accused in Anil Marne's murder case. But the prosecution has not filed any document to show that deceased was behind the murder of Anil Marne. Assuming that the accused were having grudge against the deceased on account of murder of Anil Marne, this circumstance is not sufficient to establish conspiracy.

54] Although the informant in his evidence has stated that there was previous quarrel between the accused and deceased Sandip Mohol, this alone is not sufficient for drawing inference of conspiracy.

55] The evidence of investigating officer such as P.W. 64 Rajaram Shinde, P.W.69 Bhanupratap Barge and P.W.71 Sanjay Jadhav is totally silent about previous dispute of deceased with the accused. There is no evidence in the form of CDRs of mobiles of the accused to show the meeting of minds or interaction of accused for committing murder of Sandip Mohol.

In the absence of positive, direct or circumstantial evidence, it is difficult to draw inference that the accused hatched the conspiracy to commit murder of deceased Sandip Mohol. Point no.2 is accordingly answered in the negative.

Point Nos. 3 to 13 :

56] As the point Nos.3 to 13 are correlated with each other, I have taken them for discussion collectively.

57] Before appreciation of evidence produced by the prosecution, it is necessary to mention some guiding principles regarding the duty and approach of the Court while appreciating evidence in a criminal trial. Hon'ble Supreme Court in a case State of Maharashtra V/s. Siraj Ahmed Nisar Ahmed (2007)5 S.C.C. 161 has held that the Court first has to see whether the evidence of witnesses read as a whole, appears to have ring of truth. Once the same expression is formed, the Court must scrutinize the evidence, more particularly keeping in view the defence, drawbacks and the infirmities pointed out in the evidence, as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies of trivial matter not touching the core of the matter in issue, hyper technical approach by taking sentence out of context here or there from the evidence, attaching importance to some technical error committed by investigating

officer not going to the root of the matter, would not permit rejection of the evidence as a whole.

58] Hon'ble Supreme Court in a case Leela Ram V/s. State of Haryana (1999) 9 SCC 525, has also held that the discrepancies cannot affect the credibility of the witnesses. Corroboration of evidence with mathematical niceties should not be expected in criminal cases. It is further held that there are bound to be some discrepancies between narrations of different witnesses when they speak on details, and unless the contradictions of material dimensions, the same should not be used to jettison the evidence in its entirety. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

59] The present case is based on direct as well as circumstantial evidence. As discussed above, prosecution has examined in all 10 eye witnesses.

60] Before evaluating the evidence of eye witnesses, it is necessary to mention the topography of the spot. The spot is situated at Paud road below Paud Phata flyover, Kothrud, Pune. It is near the traffic junction where from 4 roads passes, one proceeds towards Deccan Gymkhana, another towards Paud road (Paud gaon), 3rd proceeds from Deccan Gymkhana to

Kothrud bus depot. There is one more road which proceeds towards Abhinav school. It is one of the biggest traffic junction of Pune city. It is always busy of traffic. At peak hours there is heavy traffic. There are traffic signals below the flyover.

61] It is a case of prosecution that incidence occurred at the traffic signal when the deceased in Scorpio car was proceeding from Paud road towards Deccan. Due to red signal Scorpio car was stopped. The incidence occurred when the traffic signal was red i.e. within few minutes. Kothrud police station is at walking distance from the spot. There are various handcarts, tempo stand, vegetable stalls near that traffic junction.

62] During the course of investigation the test identification parade was conducted by P.W.61 Sandesh Ravindra Shirke, the then Nayab Tahasildar (Executive Magistrate) of Haveli, Pune at Yerawada Central Prison. In order to prove the report of identification parade the prosecution has examined Mr. Sandesh Shirke. In the identification parade, the eye witnesses have identified some of the accused.

63] The ld. Advocates for the accused on the point of identification have relied on the following decisions :

(i) Hon'ble Supreme Court in a case Amitsingh Thakur V/s. State of Maharashtra, 2007 ALL MR (Cri.) 1393

(SC) has held that the evidence of test identification parade is not a substantive evidence. It can only be used as corroborative of the statement in Court. Main object is to test memory of witnesses based upon first impression and to decide whether they can be cited as eye witnesses. It is desirable that test is conducted as soon as possible.

(ii) In Suresh Chandra Bahri V/s.State of Bihar, 1995 Supp (1) SCC 80, it was held that the substantive evidence of the witness is his evidence in the Court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witnesses later in Court at the trial.

(iii) In a case Nirmal Poasi V/s. State of Bihar, 2003 ALL MR (Cri.) 1606 (S.C.), it has been held that in case of dacoity conviction cannot be based solely on identification in parade or in Court, there must be some corroborative evidence.

(iv) In a case of Kanan and others V/s. State of Kerala, AIR 1979 SC 1127, it has been held that when a witness identifies the accused in the Court who is not known to him, his evidence is absolutely valueless unless there has been previous test identification parade to test his powers of observations. The idea of holding test identification parade under Section 9 is to test the veracity of the witness on the question of capability to identify an unknown person whom the

witness may have seen only once. If no test identification parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.

(v) Similar principle is laid down in Ashok Ramchandra Charade V/s.State of Maharashtra, 2003(2) B.Cr.C.2341 Bombay High Court.

(vi) In a case Chandra Shekhar Bind V/s. State of Bihar, 2001 ALL MR (Cri.) 2158, in respect of offence punishable under Section 302, 149 of the IPC presence of witnesses on scene of incident was not denied. False implication was ruled out. Benefit of doubt was given to the accused who was not identified by more than one witness, while conviction of other accused who were identified by two witnesses was confirmed.

(vii) In a case Deepak Dnyaneshwar Navgire V/s. State of Maharashtra, 2005 ALL MR (Cri.) 336 the evidence regarding identification of accused was not supported by material testimony of other witnesses. It was held that conviction cannot be based solely on evidence of identification of accused.

(viii) In Ramkisan Mithalal Sharma V/s. State of Bombay, AIR 1955 SC 104 it has been held that-

“Test identification parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject matter of the offence or to identify the persons who are concerned in the

offence. They are not held merely for the purpose of identifying property or person irrespective of their connection with the offence. Whether the police officers interrogate the identifying witnesses or the panch witnesses who are procured by the Police to do so, the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject matter of the offence or the persons who are concerned in the offence.

It is further held that when the test identification parade is carried out by the police in their presence, no distinction can be made between the statements made to the police officers and the statements made to the panch witnesses called by the police officers while conducting the test identification parades”.

64] According to Id. Advocates for the accused, the report of identification has no evidentiary value. I have gone through said decision. The identification parade in the case before the Hon'ble Supreme Court was held on 16th January and 22nd January 1951 in presence of police officers, therefore, it was held that the statement made by the witnesses would be hit by the provisions of Section 161 of the Cr.P.C.

65] In the present case the identification parade is conducted by the Executive Magistrate and not by the police officer. Therefore, the above decision is of no avail to the present case.

66] According to ld. Advocates for the accused, there is delay in holding the identification parade which is fatal to the case.

67] It appears from the record that the accused Nos.1 to 4 were arrested on 07.10.2006, accused Nos.5 and 6 were arrested on 08.10.2006, while accused Nos.7 to 16 were arrested on 25.10.2006, accused No.17 was arrested on 20.11.2006 and accused No.18 was arrested on 04.07.2007. The identification parade of accused Nos.1 to 16 was conducted on 18.11.2006.

68] In a case Suresh Vyankati Chavan V/s. The State of Maharashtra, 2019 ALL MR (Cri.) 887 Bombay identification parade was conducted after 40 days in respect of one accused and in respect of other accused after 5 years from the date of incidence. The procedure was also not followed, therefore, the evidence of identification parade was not taken into consideration.

69] In a case State of Maharashtra V/s. Syed Umar Sayed Abbas and others, 2016 ALL MR (Cri.) 1345 (SC) the test identification parade was conducted after 1½ month and one year, held not proper.

70] In a case Ayyub V/s. State of U.P., 2002 DGLS

(SC) 247 the test identification parade was done 43 days after arrest under the supervision of Judicial Magistrate. Judicial Magistrate who supervised the identification parade passed away subsequently, therefore, was not examined. Hon'ble Supreme Court do not find any apparent infirmity in the test identification parade conducted by the prosecution.

71] The ld. Advocates for the accused on the point of delay have also relied upon the cases, Rajesh Govind Jagesha V/s. State of Maharashtra, 2000 ALL MR (Cri.) 258 SC and Mohammad Iqbal Faruq Shaikh V/s. State of Maharashtra, 2007 (supp.) Bom.C.R. 415 Bombay, In both the cases there was delay in holding test identification parade which was not satisfactorily explained. Therefore, evidence of identification parade was not relied on.

72] After going through all above referred decisions, I think the evidence of test identification parade was not rejected only on the ground of delay, but there were other infirmities for rejection.

73] In the present case all accused were not arrested at once. Most of the accused were arrested on 25.10.2006. The identification parade was held on 18.11.2006. The remand reports placed on record show that the accused were produced before the court under veil. Therefore, there was no possibility of seeing them by the witnesses. Remand reports show that the

accused were in police custody till 06.11.2006. The test identification parade was conducted within 12 days after remanding the accused to judicial custody.

74] As per the evidence of P.W.61 on 08.11.2006 he received letter from police inspector of Anti Extortion Squad requesting him to conduct test identification parade of the accused. On 13.11.2006 he wrote letter to Superintendent, Yerawada Central Prison requesting him to keep the accused present for the identification parade. This shows that some time was consumed in making correspondence between government departments/officers. In view of this, in my opinion, it cannot be said that there was inordinate delay in holding test identification parade.

75] The ld. Advocates for the accused have submitted that the test identification parade has not been conducted in accordance with the provisions of Criminal Manual. In this regard they relied upon the cases Vilas Vasantrao Patil V/s. The State of Maharashtra, 1996 Cri.L.J. 1854 and Rakesh Harilal Kahar V/s. State of Maharashtra, 2006 ALL MR (Cri.) 3062 Bombay.

76] In Criminal Manual (which is issued by Hon'ble Bombay High Court for the guidance of the Criminal Courts and Officers of subordinate to it), there is specific provision made in Para.No.16 about the procedure to be followed while

holding the identification parade. It is mentioned in Para.16(2) that-

16(2) : *The Magistrates holding identification parades should follow all the guidelines given below which are illustrative and may not be exhaustive. Exercise of the discretion of the Officer concerned would be the sole criterion. The following principles enumerated by Archbold in his treatise “Criminal Pleading, Evidence and Practice” would mutatis mutandis apply to the identification parades, with suitable variations consistent with our law and decided cases.*

(a) *The object of an identification parade is to make sure that the ability of the witness to recognise the suspect has been fairly and adequately tested.*

(b) *It should be fair and seem to be fair and every precaution must be taken to exclude any suspicion of unfairness or risk of erroneous identification through the witnesses' attention being directed specially to the suspected persons instead of equally to all the persons to be paraded.*

(c) *The officer concerned with the case against the suspect, if present, must not take part in conducting the parade.*

(d) *The parade should be arranged by an officer who is not a police officer.*

(e) *After the commencement of the identification parade, every thing in respect of it should take place in the presence and hearing of the suspect including any instructions to the witnesses attending it as to the procedure that is to be*

adopted.

(f) All unauthorised persons should be strictly excluded from the place of identification parade.

(g) The witnesses should be prevented from seeing the suspect before he is paraded with other persons, and witnesses who have previously seen a photograph or description of the suspect should not be led in identifying the suspect by reason of their collection of the photograph or description, as for instance by being shown the photograph or description, before the parade.

(h) The suspect should be placed among persons (if practicable eight or more) who are as far as possible of the same age, height, general appearance (including standard of dress and grooming) and position in life. Two suspects of roughly of similar appearance should be paraded with atleast twelve other persons. Where, however, the two suspects are not similar in appearance or where there are more than two suspects, separate parades should be held using different persons on each parade.

(i) All members of a group of suspects more than two should not be paraded together. There should be more parades than one, each including not more than two. Two suspects of obviously dissimilar appearance should not be included in the same parade. Identification numbers should be concealed.

(j) The suspect should be allowed to select his own position in the line and should be expressly asked if he has any objection to the persons present with him or the arrangements

made. He should be informed that if he so desires, he should have his advocate (or a friend) present at the identification parade.

(k) The witness should be introduced one by one and, on leaving, should not be allowed to communicate with witnesses waiting to see the persons paraded; and the suspect should be informed that he is free to change his position after each witness has left.

(l) The witness should be asked whether the person he has come to identify is on the parade. He should be told that if he cannot make a positive identification, it is open for him to say so.

(m) Generally, a witness should be asked to touch any person whom he purports to identify, but if the witness is nervous at the prospect of having to do that (in cases where the witness is a woman or a child who has been victim of a sexual or violent assault or other frightening experience) and if prefers not to touch the person, identification by pointing out should be permitted.

(n) If a witness indicates someone, but is unable to identify him positively, this fact should be carefully noted by the officer conducting the parade and every other circumstances, (such as whether the suspect or any other person is identified or not), connected with it should be noted.

(o) If any request is made by a witness, for example to see the suspect with his hat on or his hat off or to see the person walk or to hear the person speak and there being no

objection to the person paraded as asked for, the incident should be recorded,

(p) Where a parade has to be held, in prison, a prison officer should be present throughout in charge of the discipline of the prisoners who would take part. Otherwise, the police officer unconnected with the case, ought to be responsible for the parade. It must be ensured that the parade is conducted in the same way as a parade outside prison.

77] In Para.16(3) (xi) it is specifically mentioned that when the witnesses arrives at the place of identification parade the Executive Magistrate should question him and ascertain from him whether he had an opportunity to see the culprits at any time subsequent to the offence or after the arrest. He may either record the statement separately or make a reference to that statement in his memorandum.

78] According to ld. Advocates for the accused in Rakesh Kahar's case supra the Special Executive Officer did not verify the fact as to whether the witnesses had an opportunity to see the suspects or their photograph prior to parade and therefore, the identification parade was discarded.

79] According to ld. Advocates for the accused in this case also P.W.61 Sandesh Shirke did not verify this fact and as such identification parade will have to be discarded.

80] It is true that in Para.10 of the cross examination he has admitted that he did not make inquiry with the panch witnesses whether they had an opportunity to see the accused prior to test identification parade. There is no reference about the compliance of this provision in memorandum of identification Exh.617. I think, the admission given in Para.No.10 of the cross examination by P.W.61 is in respect of the panch witnesses in whose presence the identification parade was conducted. As per Criminal Manual the Executive Magistrate has to ascertain from the witnesses who were produced for the purpose of identification of the culprits

81] In Rakesh Kahar's case supra even the other mandatory requirements of Criminal Manual were not followed. The Executive Magistrate did not inform the suspect that it is open for him to change his clothes before being paraded if he so desire. Therefore, identification parade was discarded.

82] In the present case on perusal of evidence as well as memorandum of report Exh.617 it appears that P.W.61 Sandesh Shirke on each round of identification parade has given an opportunity to the accused for changing the clothes. He has followed other mandatory requirements mentioned in the Criminal Manual.

83] In Vilas Patil's case supra the parade was not arranged in a room or place which was such that identifying

witnesses as well as the persons connected with the police were not able to look into, different sets of dummies were not arranged.

84] As per the evidence of P.W.61 Mr. Sandesh Shirke the identification parade was conducted at Tilak Yard of Yerawada Central Prison. Although Mr. Shirke has admitted that in all 13 rounds dummies were same. The memorandum Exh.617 shows that in each round dummies were changed. As per the evidence of Mr. Shirke witnesses were asked to sit in a hall situated nearby entrance of the jail and identification parade was conducted at Tilak Yard. The accused were brought at the open space adjacent to Tilak Yard. The identification parade was conducted by Mr. Shirke, who is having experience of holding 100 identification parades.

85] The 1d. Advocates for the accused have submitted that there is contravention of provisions of Para. No.16(2) (p) of the Criminal Manual. P.W.61 Mr. Shirke is not sure as to whether any representative of jail authority was present at the time of test identification parade. It seems that this provision is made to ensure that proper discipline is maintained while conducting the test identification parade. It has come on record that 2 persons from the jail administration were present outside the room where identification parade was conducted.

86] The 1d. Advocates for the accused have also

submitted that except the name, age and address, no other particulars of dummies are mentioned in memorandum Exh.617. According to them, it is necessary to mention the height, complexion, facial impressions of the dummy persons. However, they have not pointed out such specific provision in Criminal Manual. In Para.16(2)(h) it is mentioned that the suspects should be placed among the persons who are as far as possible of same age, height, general appearance.

87] The Id. Advocates for the accused have also relied upon a case Ramcharan Budhiram Gupta V/s. State of Maharashtra, 1996(1) B.Cr.C.285 wherein it was held that the chances of suspects being shown to the witnesses prior to their test identification parade should be eliminated and the prosecution has to adduce link evidence to show that from the time of arrest till lodging in jail the faces of suspects were kept veiled and no one has an opportunity to see them. It is further held that the identification parade should be held in jail and Criminal Manual has to be followed. More than 2 suspects at a time should not be put for identification in one parade.

88] It is true that the prosecution has not produced oral evidence, but the remand reports show that when the accused were produced for remand in courts, they were veiled. As discussed above, P.W.61 Mr. Shirke has followed the provisions of Criminal Manual.

89] In view of all above aspects, in my opinion, the evidence regarding test identification parade cannot be discarded.

90] As per prosecution P.W.14 Vikas Mohol, P.W.24 Suresh Marne, P.W.30 Prakash Karpe and one Ramesh Bhosale (who is not examined) were travelling along with deceased in Scorpio car.

91] According to Id. Advocates for the accused, the persons who allegedly were with deceased in the Scorpio car are the interested witnesses, therefore, their evidence cannot be relied on. I am aware about the well settled principle of law that evidence of interested witnesses cannot be discarded in toto, but it has to be scrutinized minutely.

92] According to P.W.14 Vikas Mohol, deceased was his friend and was working as Sarpanch of village Mutha. He being friend of the deceased his evidence is to be scrutinized carefully.

93] On the day of incidence he along with deceased P.W.24 Suresh Marne and P.W.30 Prakash Karpe in Scorpio car was coming from village Mutha to Shaniwarpeth, Pune. He was driving the vehicle. P.W.24 Suresh Marne was sitting adjacent to his seat. On the way they picked up Ramesh Bhosale at Vanaz square, Kothrud, Pune, who sat adjacent to

the driver's seat. While Suresh Marne sat on middle seat along with deceased and P.W.30 Prakash Karpe. He has specifically stated that deceased sat on extreme left side on middle seat of Scorpio car. When the vehicle was stopped at signal below Paud Phata bridge, 8-10 persons armed with weapons like sickles, choppers, knives on 3-4 motorcycles came there. A person who was holding helmet and black colour pistol in his right hand shot 4-5 bullets towards deceased. He has further stated that the assailants broke left, right and rear side glasses of the vehicle. He has specifically stated that the person who made firing was accused No.1 Sachin Pote, while other assailants were accused No.7 Ganesh Marne, accused No.16 Nilesh Mazire, accused No.9 Anil Khilare, accused No.4 Sameer Shaikh and accused No.13 Santosh Lande. According to him, he knew the assailants as deceased had shown them to him when he had been with him at Khilare Vasti, Pune. But in Court he has identified accused No.16 Nilesh Mazire, accused No.7 Ganesh Marne, accused No.9 Anil Khilare, accused No.14 Dipak Mokashi, accused No.4 Sameer Shaikh and accused No.1 Sachin Pote.

94] It is pertinent to note that although this witness has identified six accused in the Court, but in identification parade he has identified only 3 accused such as accused No.5 Dinesh Aavji (since deceased), accused No.14 Dipak Mokashi and accused No.16 Nilesh Mazire. His evidence in respect of establishing identity of the assailants is not reliable. He has

vaguely stated that he knew the accused as they were shown to him by deceased when they were coming to Pune via Khilare Vasti. But this is improved version. He has not stated this fact in his statement before the police.

95] It may be noted that in his statement under section 161 of Cr.P.C. before the police he has mentioned that he was knowing the accused No.1 Sachin Pote, accused No.7 Ganesh Marne, accused No.16 Nilesh Mazire, accused No.9 Anil Khilare, accused No.4 Sameer Shaikh and accused No.13 Santosh Lande by face. While in cross examination he has admitted that on one occasion when he was coming with deceased in four wheeler from Mutha, deceased showed him the persons mentioned in his statement recorded under Section 161 of the Cr.P.C. He has further clarified that deceased showed him the persons when they were proceeding from the bank of the river. He has admitted that he had seen them in a glimpse of a second. They were shown from 20-25 ft. 7-8 persons were shown to him on the road when the traffic was going on. They were standing on road. He has specifically admitted that prior to the incidence it was the only occasion for him to see them. He saw when some of them were standing on right side of the road, some of them were facing towards the vehicle where from he was proceeding and some of them were facing opposite the vehicle.

96] He has further admitted that in his statement before

police he made a statement that he was knowing accused No.16 Nilesh Mazire. His admissions show that he saw the persons mentioned in the statement only on one occasion prior to the incidence that too in a moving vehicle proceeding from the road. At that time some of them were even not facing towards his vehicle.

97] When he was knowing six accused as mentioned in his examination in chief prior to the incidence, he should have identified them in test identification parade. But he identified accused No.5 Dinesh Aavji (since deceased), accused No.14 Dipak Mokashi, accused No.16 Nilesh Mazire only. There is no clarification as to why he did not identify the persons mentioned in his statement under Section 161 of the Cr.P.C. in the test identification parade.

98] In the test identification parade he has mentioned the role of the accused to whom he identified. As per the identification report Exh.617 this witness had seen accused No.5 Dinesh Aavji (since deceased) while breaking the right hand side glass of the vehicle, accused no. 14 Dipak Mokashi was standing in front of Scorpio car, while accused No.16 Nilesh Mazire was standing in front of Scorpio car at the right side and pointed pistol towards him. It is surprising to note that the fact of pointing of pistol towards him has not been stated by him in his statement under Section 161 of the Cr.P.C., but same has been stated in supplementary statement dated

07.11.2006. He has clarified that as he was frightened he did not state this fact in his statement. He has also admitted that the person who pointed pistol towards him was not knowing to him at that time. Ramesh Bhosale told him the name of that persons after one or two hours of the incidence. It may be noted that Ramesh Bhosale has not been examined by the prosecution. It is also to be noted that this witness has admitted that while recording statement dated 04.10.2006 he has stated that one person was standing in front of the scorpio car pointing pistol towards him. This is material omission. He has not specifically stated that he made such clarification in supplementary statement. In statement recorded on 04.10.2006 before police there is reference of name of accused Nilesh Mazire, but his specific role has not been stated. He has also admitted that his statement was recorded after holding of test identification parade. After test identification parade he told police about use of second pistol i.e. the person was standing in front of him pointing pistol towards him. But actually no statement after test identification parade is recorded.

99] This witness was on middle seat behind driver's seat, while deceased was on same seat on left side. He has admitted that when the pistol was shown to him he bent down the head and therefore, he could not see what was happened on his back. It is therefore, difficult that he would have seen the persons who were breaking the glasses and were firing on the left side. The theory of this witness that the person was

standing in front of him pointing pistol towards him is exaggerated and not believable, because other witnesses have not stated this fact. This witness in Para.No.18 of his cross examination admitted that at the time of incidence he had seen only one person holding pistol. Prosecution has come with a case that accused No.1 Sachin Pote fired towards deceased. This witness is not sure as to exactly who was holding pistol. Considering all these aspects, it is difficult to believe his version on the point of establishing identity of the assailants.

100] P.W.24 Suresh Marne, another person traveling with deceased in Scorpio car has also stated same story. According to him, initially he sat adjacent to the driver's seat, but when at Vanaz square Ramesh Bhosale boarded in the vehicle, this witness sat on the middle seat, while Ramesh Bhosale occupied front seat adjacent to driver. He further stated that when their vehicle came near Paud Phata traffic signal, Ramesh Bhosale saw in rear view mirror that the persons on 3-4 motorcycles came behind Scorpio car. He has specifically stated that a person holding revolver came from the left side of the vehicle and fired shot on the deceased Sandip Mohol. Other assailants started breaking the vehicle by means of chopper, sickles, swords, etc. The assailants thereafter ran in all directions towards stalls by the side of the road. He has specifically stated that the persons who attacked were accused No.1 Sachin Pote, accused No.7 Ganesh Marne, accused No.9 Anil Khilare, accused No.16 Nilesh Mazire and accused No.2

Pandurang Mohol (since deceased). He has specifically stated that the accused No.1 Sachin Pote fired from the black colour revolver towards deceased.

101] According to him, he was called for test identification parade at Yerawada Central Prison wherein he identified accused No.7 Ganesh Marne, accused No. 9 Anil Khilare, accused No.1 Sachin Pote, accused No.4 Sameer Shaikh, accused No.3 Sanjay Kangude and accused No.13 Santosh Lande. In Court hall he correctly identified accused No.7 Ganesh Marne, accused No.1 Sachin Pote, accused No.9 Anil Khilare, accused No.3 Sanjay Kangude, accused No.4 Sameer Shaikh and accused No.13 Santosh Lande. However, he identified accused No.2 Pandurang Mohol (since deceased) as accused Kangude.

102] This witness is childhood friend of deceased. It seems that he was close associate of deceased because the deceased was bearing his daily expenses. He used to meet deceased daily. It may be noted that although he has stated the names of some of the accused and identified them in the Court, he has not clarified as to whether he was acquainted with the accused prior to the incidence. On perusal of report of identification parade Exh.617, it seems that he has identified only accused No.3 Sanjay Kangude, accused No.4 Sameer Shaikh, accused No. 10 Vijay Kangude and accused No.16 Nilesh Mazire. In Para.no.25 of the cross examination he

admitted that when he was accompanied with deceased, he (deceased) used to show his rivals, enemies, but did not tell him the cause of enmity. Deceased had shown him 5-7 persons when they were proceeding in four wheeler. In Para.No.32 he has admitted that reason of knowing the persons i.e. accused was on account of showing them by the deceased as his enemies. But his evidence is very vague. He has not stated specifically when and which of the accused were shown to him by the deceased. If the persons were shown to him prior to the incidence he should have identified them in test identification parade. As stated above, he has not identified accused No.7 Ganesh Marne, accused No.9 Anil Khilare and accused No.2 Pandurang Mohol (since deceased). In Court hall also he identified accused Kangude as Pandurang Mohol. The fact that deceased had shown him the accused such as Sachin Pote, Ganesh Marne, Nilesh Mazire, Sameer Shaikh, Anil Khilare and Santosh Lande, is his improved version. He has not stated so in his statement recorded under Section 161 of the Cr.P.C. This is material omission.

103] As per report of identification parade, according to this witness accused No.16 Nilesh Mazire was standing in front of Scorpio car towards left side. As per the evidence of P.W.14 Vikas Kohol, accused No.16 Nilesh Mazire was standing in front of the vehicle pointing pistol towards him, but this witness has specifically denied this fact. On the contrary, according to him, he had seen only one pistol.

104] It is pertinent to note that accused No.2 Pandurang Mohol is resident of same village i.e. Mutha. It has come on record that population of village is around 1500. P.W.14 Vikas Mohol, this witness as well as P.W.30 Prakash Karpe all are resident of Mutha, but still he has not been identified correctly in test identification parade as well as in court. P.W.24 Suresh Marne has admitted that he as well as P.W.14 Vikas Mohol and P.W.30 Prakash Karpe and accused No.2 Pandurang Mohol being resident of same village are knowing each other since childhood.

105] He has admitted that prior to the incidence on several occasions he had seen accused No.7, but still he has not been identified in test identification parade. As far as accused No.9 Anil Khilare is concerned, he has not been identified in the test identification parade by this witness. He has been identified in the Court. In this regard in Para.No.38 he has given admission that when he came to the court for giving evidence, the accused were already sitting the dock and he had seen them.

106] He has admitted that he had seen only the persons at the time of incidence whose names have been mentioned in the statement given before the police. But in evidence he has stated the names of other accused than mentioned in the statement before the police. He could not clarify the accused to whom he identified in the test identification parade. He even

could not tell their names as well as role played by them.

107] P.W. 24 in his cross examination has admitted that he sustained injury due to breaking of glass of Scorpio. But he was not referred for medical examination. According to ld. Advocates for the accused in view of this, his presence on spot is doubtful. In support of their submissions they have relied upon a case, **Gorle S. Naidu V/s. State of A.P., AIR 2004 SC 1169.** In a case before Hon'ble Supreme Court large number of accused alleged to have assaulted the deceased persons as well as eye witnesses accompanied them. But the injured did not get examine.

108] In the present case there are no allegations that except the deceased other witnesses were attacked by the assailants. The admission given by the witness is very vague. There is nothing to show that he sustained grievous injury requiring treatment. Only on this ground his presence on spot cannot be doubted.

109] P.W.30 Prakash Karpe, at the relevant time was also travelling through Scorpio car. He being paternal cousin of the deceased i.e. son of paternal aunt of the deceased, is interested witness. As per his version 4 two wheelers came in front of their vehicle at Paud Phata signal. Accused No.1 Sachin Pote holding helmet in one hand and pistol in another fired on the windshield. He fired 4-5 shots from the pistol

towards deceased. Thereafter, the accused Anil Khilare, Ganesh Marne attacked on the rear and right side windshield by chopper and sickles. Ramesh Bhosale got down from the vehicle. At that time the accused No.1 Sachin Pote attempted to fire from his pistol towards Ramesh Bhosale. However, bullet did not fire. In view of directions given by accused Ganesh Marne assailants fled. This witness has filed FIR Exh.513 at Kothrud police station mentioning the names of the assailants such as Sachin Pote, Ganesh Marne, Nilesh Mazire, Anil Khilare, Santosh Lande and other 3-4 unknown persons. According to him, he was knowing the accused Ganesh Marne, Sachin Pote, Anil Khilare since prior to the incidence because there were quarrels between them and the deceased. This witness in the test identification parade has identified accused No.1 Sachin Pote, accused No.6 Sachin Marne, accused No.9 Anil Khilare and accused No.11 Jameer Shaikh. However, in the Court he has identified the accused No.1 Sachin Pote, accused No.6 Sachin Marne, accused No.9 Anil Khilare, accused No.7 Ganesh Marne and accused No. 13 Santosh Lande. He has not clarified as to why he could not identify the accused Ganesh in test identification parade when he was knowing him since prior to the incidence and despite of mentioning his name in the FIR. As per his examination in chief, he is only knowing accused No.7 Ganesh Marne, accused No.1 Sachin Pote and accused No.9 Anil Khilare. But in FIR he has also mentioned the name of accused No.16 Nilesh Mazire. However, this witness neither in test identification parade nor in the Court

identified the accused Nilesh Mazire.

110] It is significant to note that in FIR Exh.513 he has mentioned that he was knowing the assailants Sachin Pote, Ganesh Marne, Nilesh Mazire, Anil Khilare and Santosh Lande by face. But in evidence he has stated that he was knowing them by name. He has not mentioned the name of accused No.6 Sachin Marne in FIR.

111] In Para.No.34 of the cross examination he has admitted that he identified the accused No.1 Sachin Pote, accused No.7 Ganesh Marne and accused No.9 Anil Khilare on account of previous enmity with them. But there is no mention of details of his enmity either in FIR or in examination in chief.

112] As per the version of P.W.14 Vikas Mohol, P.W.24 Suresh Marne and P.W.30 Prakash Karpe, Ramesh Bhosale who was sitting on the front seat of Scorpio car had seen the assailants coming towards the vehicle and alerted the deceased and other inmates of the vehicles. He told names of some of the assailants to other witnesses in the car. But he has not been examined by the prosecution.

113] After the incidence P.W.14 Vikas Mohol who was driving the Scorpio car went to Sanjivan Hospital, where Sandip Mohol was admitted at about 12.05 p.m. The case papers Exh.596 of Sanjivan Hospital show that Sandip Mohol when

brought to the hospital was unconscious. He was declared dead at 1.30 p.m. There after the body was sent to Sassoon Hospital for postmortem. P.W.14, P.W.24 and P.W.30 were at Sanjivan Hospital for considerable period. During that period number of villagers and other persons gathered. Some police officers have also visited the hospital, but none of them disclosed the names of the assailants to anybody. They were having mobile phones, but did not inform anybody about the incidence and names of the assailants.

114] They have also admitted that they did not disclose the names of the assailants to the doctors who were treating the deceased.

115] The ld. Advocates for the accused in this regard have relied upon the cases, Devinder V/s. State of Maharashtra, 1997 SCC (Cri.) 570 and State of Maharashtra V/s. Ahmed Gulam Nabi Shaikh, 1997 Cri.L.J. 2377. In both the decisions the eye witnesses did not tell the names of the assailants to anybody after seeing the incidence till recording of the statement by the police. This fact was held to be unnatural. Benefit of doubt in such circumstance was given to the accused.

116] The ld. Advocates for the accused have relied upon a case State of Rajasthan V/s. Mohan Lal, 2009 SAR (Cri.) 543 SC. In that case on the basis of unnatural conduct of eye

witnesses their evidence was disbelieved. As the eye witnesses did not make any effort to save the deceased from assaults, their conduct was held unnatural making their presence at the place of occurrence doubtful.

117] In the present case the incident occurred within few minutes at the traffic signal. P.W.14, P.W.24 and P.W.30 immediately after the incidence rushed to Sanjivan Hospital. They were not armed with any weapon. Sandip Mohol was fired from pistol. In such circumstances there was no scope for them to save the deceased.

118] The ld. Advocates for the accused have assailed the evidence of eye witnesses, particularly of P.W.14, P.W.24 and P.W.30, who were travelling along with the deceased in Scorpio car. After the incidence all of them went to Sanjivan Hospital. They were at Sanjivan Hospital for considerable period. Since admission till the dead body was shifted to Sassoon Hospital, they were at Sanjivan Hospital. It has come on record that during that period number of police officers visited the hospital, but they did not give information about the incidence to the police. Even they did not tell the names of assailants to the doctors who were treating Sandip Mohol. It has also come on record that on getting knowledge about the incidence number of persons from village Mutha gathered at Sanjivan Hospital. The witnesses were having mobile phones with them, but still they did not inform anybody about the details of the incidence.

I think that the conduct is unnatural.

119] According to Id. Advocates for the accused, P.W.14, P.W.24 and P.W.30 after the incidence immediately did not approach to Kothrud Police Station for lodging FIR. Their conduct is not natural. In this regard they relied upon a case **Sudarshan and Anr. V/s. State of Maharashtra, 2014 AIR SCW 3600 SC.** In that case the complainant and his friends, after the incidence of murder went to the advocate 15 k.m. away instead of going to Police Station to report the matter which was held to be unusual and abnormal conduct. Considering peculiar facts of the case, it was held that involvement of accused in the crime was doubtful. In my view, P.W.14, P.W.24 and P.W.30 have not given satisfactory explanation for not filing of FIR before 7.35 p.m. of 04.10.2006. On this ground alone the case cannot be discarded.

120] As per panchanama of the Scorpio car and the case papers of Sanjivan Hospital, it appears that deceased was profusely bleeding when admitted in the hospital. The informant and other two persons in the Scorpio car have admitted that they put the deceased on the stretcher, so also the informant and P.W.24 Suresh Marne were sitting on the middle seat, therefore, their clothes were stained with blood. They along with Ramesh Bhosale from Sassoon Hospital came at Kothrud police station for lodging FIR on same clothes, but still their blood stained clothes have not been seized by the

police.

121] The ld. Advocates for the accused in this regard have relied upon a case Khima Vikamshi and others V/s. State of Gujarat, 2003 SCC (Cri.) 1825 wherein failure on the part of investigating agency to recover blood stained clothes of the witnesses who were holding body of the victim, their presence at the time of incidence was held to be doubtful.

122] In my view, it was the fault on the part of the investigating officer to not to recover the blood stained clothes of the witnesses. On this ground the evidence of P.W.14, P.W.24 and P.W.30 cannot be discarded in toto. From station diary entry of Kothrud Police Station, it appears that Scorpio vehicle while proceeding ahead to the signal, dashed to the auto rickshaw which was in front of it causing injuries to the passengers and damage to auto rickshaw. In that regard an offence has been registered against P.W.14 Vikas Mohol, the driver of the Scorpio under Section 279 of the IPC. The panchanama Exh. 370 of seizure of Scorpio also shows that front side pumper was bent. Deceased and the witnesses are from same village Mutha. They were closely associated with the deceased. It is therefore, possible that they together were coming from Mutha to Pune.

123] For the aforesaid reasons, the evidence of P.W.14 Vikas Mohol, P.W.24 Suresh Marne and P.W.30 Prakash Karpe

regarding establishing the identity of the accused is not reliable, but their version regarding the manner in which the incidence was occurred cannot be discarded.

124] It is pertinent to note that P.W.24 called cousin of deceased namely Chandrakant Mohol at Sanjivan Hospital. His name is appearing in the case paper as the person who brought the deceased in the hospital. As per the evidence of P.W.14, P.W.24 and P.W.30, Chandrakant Mohol gave information to the doctors. At that time also P.W.14, P.W.24 and P.W.30 who were having knowledge of the names of the assailants could have given the information to the doctors, but as per the version of Dr. Savita Ganesh, she received information that unknown persons fired towards Sandip Mohol and accordingly she informed Deccan Police Station.

125] According to ld. Advocates for the accused, Chandrakant Mohol is material witness who gave information to the doctors at Sanjivan Hospital. His non examination is fatal to the case. Case papers and evidence of Dr. Savita Ganesh show that Chandrakant admitted Sandip Mohol in the hospital. He is serving as peon in MIT College. He was not in Scorpio, he was called by P.W.24 in the hospital. Papers show that he being cousin brother of the deceased took responsibility of payment of bill of hospital. He has not witnessed the incidence. His non examination is not fatal to the case.

126] The another eye witness P.W.26 Babasaheb Supekar, who at the relevant time was working as Collection Agent in GE Countrywide Finance Company. As per his version, on 04.10.2006 at about 11.30 a.m. he was standing near the tea stall of Paud Phata. He heard noise like firing of crackers and noticed that accused Sachin Pote and others were breaking the windshield of Scorpio. It may be noted that this witness is the President of Consumer Protection Wing, Kothrud, of Nationalist Congress Party. As per the allegation in FIR deceased Sandip Mohol was also associated with the same party. It has come on record that cousin of deceased namely Suresh Mohol, who was also the office bearers of Nationalist Congress Party, Pune. This witness being interested witness, his evidence is to be scrutinized minutely. I think his evidence to some extent is vague. He has only stated name of accused Sachin Pote in his examination in chief and his act to the extent of breaking of windshield. No other eye witness has stated that accused Sachin Pote was breaking the windshield. On the other hand, it has come on record that he was holding helmet in one hand and pistol in another hand. He has not stated the names of other assailants or their overt acts. He clarified that as Sachin Pote used to visit his locality frequently he is knowing him. In the court he has identified accused No.16 Nilesh Mazire, accused No.15 Sharad Vitkar, accused No.4 Sameer Shaikh, accused No.1 Sachin Pote, accused No.7 Ganesh Marne and accused No.2 Pandurang Mohol. However, in the test identification parade he has identified accused No.2 Pandurang

Mohol and accused No.15 Sharad Vitkar only. He has not identified accused No.1 Sachin Pote. There is no clarification as to why he did not identify accused No.1 in the test identification parade. This witness seems to be local leader of political party in Pune. Some offences have been registered against him. But inspite of witnessing the incidence, he did not inform about it either to the police or anybody else. After 8-10 days of the incidence he approached Kothrud Police Station. They advised him to go to the office of Commissioner of Police where his statement was recorded.

127] It appears that P.W.69 Bhanupratap Barge recorded his statement on 06.11.2006 i.e. after one month and 2 days of the incidence.

128] The ld. Advocates for the accused have relied upon a case Ganesh Patel V/s. State of Maharashtra, AIR 1979 SC 135, wherein it is held that the statements of the witnesses under Section 161 of the Cr.P.C. are to be recorded promptly. Delay in recording the statements of material witnesses casts a cloud of suspicion in credibility of prosecution story.

129] As the witness is politically influential person, the explanation given by him that after the incidence he was frightened and therefore, went home and did not tell about it to anybody else is not believable. His conduct seems to be unnatural. He has even not mentioned the approximate

number of the assailants who were breaking the windshield of the Scorpio. He has not clarified as to how he identified the accused Pandurang Mohol and Sharad Vitkar in the identification parade. He has not stated the role played by them in the evidence. In the court besides Sharad Vitkar and Pandurang Mohol, he identified accused Nilesh Mazire, Sachin Pote and Ganesh Marne, but not clarified specific reasons for their identification. It is not clear as to whether he was knowing them since prior to the incidence. His evidence is not reliable.

130] P.W.41 Amar Dhakane is the another eye witness. According to him, at the relevant time he on motorcycle was proceeding towards Deccan along with Nitin Sangle. His motorcycle was stopped due to red signal at Paud cross road. He further stated that a Scorpio car was also halted at the signal and at that time 3-4 persons broke the glass panel of the Scorpio car. He also heard noise like bursting of crackers. When the signal became green he proceeded towards Deccan Gymkhana. He has not identified any of the assailants. His statement is also recorded after one month of the incidence.

131] The other eye witnesses such as P.W.7 Balu Gaikwad, P.W.10 Ramchandra Kadam, P.W.11 Haridas Shegar, P.W.12 Ganesh Godse and P.W.13 Abasaheb Abadgire are the police witnesses. They are independent witnesses, therefore, their evidence is of vital importance. They have no reasons to

falsely implicate the accused.

132] The assailants were unknown to them, therefore, their evidence of identification in test identification parade as well as in the Court is relevant and important.

133] P.W.7 Balu Gaikwad on the day of incidence being Police Naik was performing reserve duty at Kothrud Police Station from 9 a.m. At 11.30 a.m. he was proceeding to a tea stall near by signal. He heard noise. He saw black colour Scorpio standing at the signal and 4-5 persons standing at the right side of the Scorpio with sickles. According to him one of them fired from revolver from the rear side. The assailants ran at the different directions. Scorpio thereafter proceeded towards Deccan Gymkhana. He has also seen two motorcycles lying at the signal, one helmet, 2 sickles, one magazine, 2 empty shells of cartridges. He along with other police staff protected the place with the help of barricades. Although he has attended the test identification parade, but could not identify any of the accused. He also could not identify any of the accused in the Court.

134] As per his cross examination he was not aware as to who from the Scorpio was fired. He witnessed the incidence from the distance of 100 ft.

135] To some extent there is discrepancy in his evidence,

because bullets were fired from left side of the Scorpio. But he has stated that fire was made from rear side. His evidence is recorded after five years, some discrepancy in narrating the incidence is bound to occur. It is not of vital importance.

136] P.W.10 Ramchandra Santu Kadam was working as the Assistant Police Inspector at Kothrud Police Station. On the day of incidence at the relevant time he along with Police Constable Shegar had been to a tea stall near the spot for a cup of tea. He has stated that at about 11.30 p.m. he saw Scorpio vehicle at the traffic signal. There were 4-5 motorcycles near Scorpio car. The persons on the motorcycle sieged the vehicle from all sides. One of the person holding helmet and revolver in his hand fired on the Scorpio. The Scorpio proceeded when the signal became green. The persons on the motorcycles started running away from the spot. He tried to follow them, but they succeeded in fleeing from the spot. He kept barricades on the spot. The traffic police also came there to regularize the traffic. He also noticed magazine, 4-5 empty shells of cartridges, motorcycles lying on the spot.

137] In the test identification parade he identified accused No.11 Jameer Shaikh. He identified him accordingly in the Court also.

138] In the cross examination he has admitted that he had been to the stall of P.W.3 Shankarrao Shedge, who is a

panch witness of spot panchanama. At the time of test identification parade this witness has identified accused No.11 Jameer Shaikh and clarified that he had seen him running away on two wheeler towards Karve statue after the incidence. But he has no stated this fact in the evidence. He has also admitted that at the relevant time he was head of Intelligence Branch of Kothrud Police Station and Police Constable Shegar was his assistant. He has also admitted that accused and the witnesses were brought to Kothrud Police Station during the course of initial investigation.

139] The ld. Advocates for the accused in this regard have relied upon a case Vijay Dadasaheb Bhosale V/s. State of Maharashtra, 2007(1) Bom.C.R.(Cri.) 717. In that case before test identification parade faces of accused were not covered when brought before Executive Magistrate. They were kept in sub-jail where they could be easily seen. Photographs of accused were exhibited on wall of police station and witnesses frequently visited police station. It was held that sufficient precaution was not taken by the prosecution so as to prevent the witnesses from seeing the suspects before they were paraded and as such accused were acquitted.

140] The ld. Advocates for the accused have also relied upon a case, Mahabir V/s. State of Delhi, 2008 DGLS(SC) 564 SC. In that case of robbery with murder the accused persons were brought to the hospital and were shown to eye

witnesses. The accused persons were shown to the witnesses prior to test identification parade. In view of this, it was held that test identification parade was of no consequence.

141] The ld. Advocates for the accused in view of admission of this witness have submitted that his evidence cannot be relied on because he was having an opportunity to see the accused prior to the test identification parade. As per remand report the accused No.11 Jameer Shaikh was arrested on 25.10.2006 by police officer of Crime Branch. The office of Crime Branch is situated in the Police Commissioner's office, Pune, which is far away from Kothrud Police Station. Remand report shows that accused were produced in the Court under veil. It has come on record in the evidence of P.W.11 Mr. Shegar that Kothrud Police Station consist of a big hall and adjoining room. There is nothing to show that Kothrud Police Station was having lockup. There is no specific evidence to show that particularly this accused was brought at Kothrud Police Station. On the other hand there is sufficient material to indicate that this accused was interrogated at the office of Crime Branch. On the basis of such vague admission it can not be believed that this witness had seen the accused No.11 Jameer Shaikh at Kothrud Police Station.

142] Although this witness has admitted that after the incidence due to panic, people started running in all direction, but he has correctly identified accused No.11 as a person who

was running away on motorcycle towards Karve statue. He has also been identified by another eye witness P.W.13 Abasaheb Abadgire.

143] P.W.11 Haridas Shegar at the relevant time was working as Police Constable at Kothrud Police Station. At the time of incidence he along with P.W.10 Ramchandra Kadam had been to a tea stall near the signal. He noticed Scorpio vehicle standing at Paud Phata signal. 10-15 persons came on motorcycles. They attacked the Scorpio vehicle. The person holding helmet and revolver fired on Scorpio. 4-5 persons fled towards Kothrud, while Scorpio car proceeded towards Pune. He along with Kadam followed the assailants on the road below flyover, but they succeeded in fleeing. The spot was protected with the help of barricades. He further stated that he found helmet, 2 motorcycles, 2 sickles and magazine of bullets., 2 empty cartridges on the spot. In the test identification parade he identified accused No.1 Sachin Pote as he had seen him firing at the time of incidence. He came to know his name as Sachin Pote. He has correctly identified accused No.1 Sachin Pote in the Court.

144] Accused have produced on record extract of Station Diary Exh.418 of Kothrud Police Station, wherein there is entry that on 04.10.2006 at 6.45 a.m. this witness along with other police personnels visited 16 religious places and did not notice any untoward incidence. This witness has admitted

correctness of the entry Exh.418. He has also admitted that in the intervening night of 03.10.2006 to 04.10.2006 he was on duty from 9 p.m. to 9 a.m. In my opinion on the basis of this entry his presence near the spot cannot be doubted because there is corroboration from the evidence of P.W.10 Kadam about his presence on the spot, who has categorically stated that at the relevant time he had been to the tea stall along with this witness for a cup of tea. It has come on record that this witness is working in Intelligence Branch of Kothrud Police Station headed by Mr. Kadam. There is nothing to show that this witness is supposed to perform duty in particular fixed hours only.

145] The tea stall is on the left side of the road. The attack was made from the left side of the Scorpio which was heading towards Deccan side. Therefore, it was easy for both of them to see the assailants.

146] In the test identification parade this witness has identified accused No.1 and stated that he was present on the spot. But in evidence he has stated the specific role of accused No.1. I think only on this ground his evidence cannot be discarded.

147] P.W.12 Ganesh Godse at the relevant time was performing duty as Police Naik at traffic signal at Paud Phata. He has also stated about the incidence. According to him on 4-

5 two wheelers 8-10 persons armed with knives, came near the Scorpio and started breaking the glasses. He heard 5-6 sounds of firing on Scorpio. He also found two persons fleeing towards Nalstop. He followed them, but they succeeded in fleeing. The spot was barricaded. He regularized the traffic. In the test identification parade he identified accused No.2 Pandurang Mohol and accused No.13 Santosh Lande as the persons who fled on the motorcycle after the incidence. He also correctly identified them in the Court.

148] The accused placed on record the extract of police duty register of this witness received under Right to Information Act from the Assistant Commissioner of Police, Pune, which shows that on 04.10.2006 from 8 a.m. to 1 p.m. and from 4 p.m. to 9 p.m. this witness as well as P.W.13 ASI Abasaheb Abadgire were assigned duty at Paud Phata flyover signal i.e. at the spot. As per the version of this witness, he followed the assailants till Nalstop signal i.e. next signal, therefore, he was having sufficient opportunity and time to see the assailants. There is minor improvement in his evidence. Although in his statement before police he has stated that he followed the persons fleeing, but in evidence has stated that he followed them up to Nal Stop. In my view considering facts of the case it is not material omission.

149] P.W.13 Abasaheb Abadgire, who at the relevant time was working as ASI (Traffic) at Kothrud Traffic Division

and was performing duty at Paud Phata Traffic Singal below the over bridge. According to him he saw 5-6 persons attacking the Scorpio car with weapons like chopper and sattur. They broke the glasses of Scorpio. When he was approaching the Scorpio, he heard noise of firing from the left side of Scorpio. The miscreants fled towards Nalstop, hillock and towards Karve statue.

150] In the test identification parade he identified accused No.2 Pandurang Mohol (since deceased) and accused No.11 Jameer Shaikh. In the Court also he identified them correctly. He has also specifically stated in evidence that he had seen the accused No.2 and accused No.11 breaking the glasses of Scorpio.

151] The accused No.1 below list Exh.433 has produced on record a rough map of the spot. The witness has admitted the factual aspects mentioned in the map. Taking note of the location of the signal and the spot where Scorpio was stopped, it can be said that the spot was visible from the signal where the witness was present. This witness was standing 50-60 ft. away from the spot, therefore, the spot was easily visible to him.

152] Although the police witnesses who witnessed the incidence have been cross examined extensively, but nothing has come on record so as to discard their testimony. They have

no reason to depose against the accused. Their presence on the spot is natural.

153] The 1d. Advocates for the accused have submitted that the police witnesses who are working in Kothrud Police Station have opportunity to see the accused prior to the test identification parade, therefore, their evidence cannot be relied on.

154] It is to be noted that P.W.12 and P.W.13 were attached to Kothrud Traffic Division, which has separate office and not concerned with the Kothrud Police Station.

155] It is true that some of the witnesses have admitted that initial investigation was carried out by Kothrud Police Station. Some of the accused i.e. Accused Nos.1 to 6 were arrested by Kothrud Police Station, the accused and the witnesses were brought at Police Station. It has come on record that Kothrud Police Station consists of a big hall and adjoining room. There is nothing to show that there are lockups available at Kothrud Police Station. The suggestions were given to the witnesses that they had seen the accused prior to the test identification parade at Police Station, which have been denied by them.

156] The police witnesses have admitted that the photographs of the accused in serious offences are displayed at

the Police Stations. But there is no material to show that the photographs of the accused in this case were displayed on the notice board of Kothrud Police Station.

157] According to ld. Advocates for the accused there are number of stalls adjacent to the spot of incident. Independent witnesses were available, but they have not been examined. Therefore, the accused are entitled for benefit of doubt. In support of this submission, they have relied on a case, Awadhesh and another V/s. State of Madhya Pradesh, 1988 SCC (Cri.) 361.

158] The ld. Advocates for the accused have relied upon a case Badruddin Rukonddim Karpude V/s. State of Maharashtra, 1981 Cri.L.J.729 SC, wherein only interested prosecution witnesses were examined. There were lot of improvements in prosecution story propounded by them at investigation stage in material particulars. It was held that reliance could not be placed on testimony of such witnesses.

159] In my opinion although P.W.14, P.W.24, P.W.26 and P.W.30 are interested witnesses, but there are police witnesses who are independent witnesses. They have no animosity with the accused. In view of decision in Siraj Ahmed's case supra, the evidence as a whole has to be considered and the undue importance to minor discrepancies is not to be given.

Evidence Regarding Different Panchanamas :

160] Besides the ocular evidence, the prosecution has also relied upon the evidence of the panch witnesses. P.W.1 Sandip Shedge in whose presence Scorpio car bearing No.MH-12-CY-0082 was seized under panchanama Exh.370. The panchanama shows that a Kookari, pair of footwear, pieces of broken glass, blood, files, books, diary, etc. were seized. This witness is relative of the deceased, but his evidence has not been shattered in cross examination. He has stated correct facts as mentioned in the panchanama Exh.370.

161] Prosecution has proved the contents of inquest panchanama from the evidence of P.W.2 Chandrakant Chaudhari.

162] P.W.3 Shankar Shedge is a panch witness of spot panchanama Exh.627. He is having tea stall near the spot. Although he has admitted about signing of spot panchanama, has denied of verifying the spot. According to him there are 3-4 tea stalls near his tea stall and the traffic junction is always busy. The contents of spot panchanama have been proved from the evidence of investigating officer P.W.64 Rajaram Shinde.

163] P.W.15 Mohan Kodat is a panch witness in respect of discovery panchanama made by the accused Vijay Kangude. According to prosecution, the accused Vijay Kangude used

motorcycle bearing No.MH-20-AH-6121 and after the incidence he concealed it near Poona Hospital which was discovered under panchanama Exh.443 and 444. this witness seems to be close relative of the deceased. He has stated about the statement made by the accused Vijay Kangude and the discovery of motorcycle. His evidence is shattered in the cross examination because he admitted that he was told by the police officer that motorcycle was seized from the accused No.10. He did not converse with accused No.10 Vijay Kangude. Moreover in my view there is no criminality regarding seizure of the motorcycle because there is no other evidence to show that this motorcycle was used while committing the offence.

164] P.W.18 Amol Mandavkar is a panch witness in respect of discovery panchanamas made by the accused Anil Khilare and the accused Indraneel Mishra regarding the motorcycles. Although this witness has stated about the statements made by the accused Indraneel Mishra and Anil Khilare and discovery of motorcycles in pursuance of it, but he could not identify the accused who made such statements. He identified accused No.3 Sanjay Kangude as accused Indraneel Mishra and could not identify accused Anil Khilare in the Court.

165] P.W.20 Goga Supekar is a panch witness of memorandum panchanama made by accused Sanjay Kangude regarding discovery of Hero Honda Splendor motorcycle from the bottom of hillock Parvati. A motorcycle bearing No.MH-12-

CS-7611 was discovered on 11.10.2006 from Parvati area. The panchanama Exh.471 shows that the motorcycle was parked in front of a stall at the bottom of Parvati.

166] As per the evidence of P.W.22 Vinod Supekar on 04.10.2006 he had been to Paud Phata to repair the coin box telephone on the motorcycle No.MH-12-CS-7611. After finishing the work when he was opening the lock of the motorcycle somebody pushed him from behind and fled on his motorcycle. However, he has admitted that the persons who took his motorcycle wore helmets. This witness was not called for test identification parade.

167] No doubt under panchanama Exh.471 the motorcycle bearing registration No.MH-12-CS-7611 was recovered in pursuance of information given by the accused Sanjay Kangude. This witness P.W.20 Goga Supekar is a member of Nationalist Congress party to which deceased and his cousin Suresh Mohol belong. The panchanama Exh.471 shows that it was drawn at the place where from discovery was made. But as per the version of this witness he signed the panchanamas after reaching Kothrud Police Station and then left the Police Station. According to him, he signed at 3-4 places. As per his admissions he had signed memorandum as well as recovery panchanama Exh.470 and 471 after returning from Parvati.

168] P.W.23 Sameer Shinde is a panch witness regarding discovery of motorcycle bearing registration No.MH-12-AB-9755 in pursuance of statement made by accused No.2 Pandurang Mohol (since deceased). He has stated about drawing of panchanama Exh. 479 and 480 in his presence. This witness is also a member of Nationalist Congress Party. Although discovery is proved from his evidence, but there is no material to show that the said motorcycle was used in commission of the offence.

169] P.W.19 Pandurang Dangat is a panch witness in respect of seizure of clothes of the accused Sachin Marne and the accused Dinesh Aavji (since deceased). According to him, on 08.10.2006 the accused Sachin Marne and Dinesh Aavji were present in Kothrud Police Station on 08.10.2006 and they produced clothes which were seized under panchanama Exh.465. He has not identified the accused who produced the clothes. It appears that he is habitual panch witness. He is acting as a panch witness for Kothrud Police Station since last 10 years.

170] P.W.33 Ashish Kulkarni is a panch witness regarding panchanama Exh.533 dated 07.10.2006 in respect of seizure of clothes of the accused Sachin Pote, Vijay Kangude, Sameer Shaikh and Pandurang Mohol. This witness neither could tell the names of the accused nor could identify them. He also could not identify the clothes seized in his presence under

panchaanama Exh.533.

171] P.W.32 Chetan Patole is a panch witness of panchanama Exh.531 regarding seizure of clothes of deceased as well as blood sample, bullets retrieved from the body and the samples of skin of the deceased. He has admitted about drawing of panchanama Exh.531 in his presence. But he could not tell as to whom the clothes belongs which were seized in his presence.

172] P.W.27 Sudhir Phatak is a panch witness in respect of memorandum panchanama made by the accused Sameer Shaikh regarding discovery of a sickle. This witness has stated about drawing of panchanama Exhs. 501 and 502 in his presence. But he could not identify the accused i.e. the person who made statement.

173] P.W.36 Bapu Narayan Pawar is a panch witness in respect of discovery panchamama of seizure of sickle at the instance of accused Dattatraya Kalbhor. As per his version on 08.10.2006 when he was standing near the stall in front of office of Police Commissioner, Pune, he was called at Anti Extortion Squad Office. Some accused were present in the office. He was asked to sign the panchanamas. He admitted signing of memorandum and seizure panchanamas Exhs.549 and 550, but denied of statement made by the accused Dattatraya Kalbhor and discovery of sickle. He has been cross

examined by the prosecution, but nothing incriminating has come on record. In his cross examination he has admitted that he is habitual panch witness. He has specifically admitted that he signed the panchanama to help the police.

174] P.W.37 Satish Kenjale is a panch witness in respect of discovery of sickle in pursuance of information given by the accused Nilesh Mazire. According to prosecution on 31.10.2006 accused Nilesh Mazire made statement wherein he expressed willingness to show the place where he concealed the sickle. In pursuance of his statement a sickle was discovered from the bushes adjacent to Pune-Mumbai highway. This witness has narrated the story as mentioned in panchanama Exh.552 and 553. But his version is shattered in cross examination. As per panchanama Exh.553 same was drawn at the place where from discovery was made, but this witness has admitted that both the panchanamas were prepared at police station. Although according to him and as per the panchanamas statement and discovery was made by the accused Nilesh Mazire, but in the Court hall he identified the accused Sanjay Kangude as the person who made statement under panchanama Exh.552 and 553.

175] P.W.58 Ganesh Sadashiv Lekawale is a panch witness regarding discovery of sickle made by accused Jameer Shaikh as well as discovery of chopper made by accused Santosh Lande. In his examination in chief he has stated about

the statements made by the accused Jameer Shaikh and Santosh Lande as well as discoveries of sickle and chopper under panchanamas Exhs.599 to 602. He has correctly identified the accused Jameer Shaikh and the accused Santosh Lande. From his cross examination it appears that he is interested witness. He is the neighbour of Raju Sathe, who is maternal uncle of the deceased. At the relevant time he was residing at Shaniwarpeth, but came in Camp area which is far away from his place of residence. As per his story when he along with his friend Tapkir were roaming on M.G.Road, Camp, were accosted by a Constable from Crime Branch and he was called at Crime Branch for panchanama. The office of Crime Branch, Pune situates in the campus of Police Commissioner Office, Pune. He has admitted that the entry of every inmate is required to be made at the gate of the office of Police Commissioner, Pune. The certified copy of extract of entry register is placed on record. There is no entry of his name in the said register pertaining to 30.10.2006, i.e. on the date when panchanamas were drawn.

176] He has admitted that he was told by the police officer that one accused will take them at some place, he will produce sickle and chopper. It means that the disclosure was not made by the accused but the police officer. He has specifically admitted that police officer had made discussion with him for 10-15 minutes. According to him, he did not hear about any statement made by the accused. He is even not able

to tell the correct name of the accused Santosh Lande. He referred him as Santosh Landge. He has specifically admitted that he was keen interested in the investigation of the case and was observing the events occurred during the investigation. All these admissions show that he is interested person. His admissions show that the discovery was not made in accordance with the provisions of Section 27 of the Evidence Act.

177] All above articles that is motorcycles, sickles, choppers, recovered at the instance of the accused have no specific identification marks. Therefore, it is difficult to infer that they were used while committing the offence.

178] P.W.19 Pandurang Dangat is a panch witness in respect of seizure of clothes of the accused Sachin Marne and Dinesh Aavji. According to him, relatives of accused produced clothes of the accused at the Police Station and the same were sealed and seized in his presence under panchanama Exh. 465. However, this witness seems to be habitual panch witness. He has specifically admitted that since last 10 years he has been acting as a panch witness of Kothrud Police Station.

179] P.W.29 Dilip Todkar is a panch witness in whose presence 4 mobile handsets and cash was seized under panchanama Exh.511 from accused Genesh Marne, accused Rahul Taru, accused Sameer Shaikh and accused Vijay

Kangude. No doubt he has admitted correctness of panchanama Exh.511. But he could not identify the accused as well as the properties seized in his presence. He even could not tell the exact number of persons from whom the mobile handsets were seized. There is no investigation that particular sim number was used by the accused from when such seizure was made. No CDRs in respect of such phones are collected.

180] P.W.25 Dattatraya Shevkar, an auto rickshaw driver, in whose presence Santro car, Qualis car loaded with weapons were seized under panchanama dated 25.10.2006. It appears that separate offence was registered against some of the accused for possessing weapons. A copy of panchamama Article-A is produced on record.

181] As per the version of P.W.69 Bhanupratap Barge, a Police Inspector from Crime Branch, Pune, on 22.10.2006 he received secret information that some of the accused were in Ambejogai, Parali Vaijanath, Beed, Gangakhed area. He deputed P.W.68 Raghunath Phuge for taking search of the accused in that area. In the night of 22.10.2006 he got confirmation from Mr. Phuge about the presence of accused in that area. Therefore, on 24.10.2006 he reached Gangakhed. He on 24.10.2006 at 5.30 p.m. at Ambejogai, noticed one Santro car in which accused No.7 Ganesh Marne was traveling. On the basis of information received by him, he on 25.10.2006 in morning also found Qualis car bearing registration No.MH-

12-BP-2872 on Ambejogai-Kalamb road. He brought accused Nos.7 to 16 traveling in the Santro Car and Qualis car along with the said vehicles at the office of Crime Branch, Pune. Thereafter in presence of P.W.25 search of the vehicles was taken in which a Sattur was found in Santro car, while in Quails car one Sattur, 2 Khanjirs, 3 swords were found. P.W.25 Dattatraya Shevkar has accordingly stated about the recovery of weapons from the said vehicles. But his version is shattered in the cross examination. He could not tell registration number of Santro Car and Qualis car. He even could not tell colour of Santro car as well as other details of Qualis car. He did not inspect the weapons personally. He could not tell the number of papers signed by him.

182] It may be noted that Santro car and Qualis car along with the accused were found in Ambejogai area which is about 300 kilometer away from Pune. As per the version of Mr. Barge on the way to Pune he crossed number of police stations. He could have took search of the vehicles on the spot or at the nearest police station. There is no satisfactory explanation by the prosecution as to why immediately on noticing the vehicles along with the accused they were not searched.

183] In view of this, the alleged recovery of weapons from Santro car and Quails car is not believable.

184] P.W.21 Pappu Shinde is a panch witness in respect

of discovery of weapon i.e. revolver at the instance of accused No.1 Sachin Pote. P.W.21 Pappu Shinde who is resident of Gadwand, Tal. Mulshi and the driver by profession, on 10.10.2006 had been to Pune for work and was standing near Kothrud Police Outpost. He was called by the Police Constable. He has specifically stated about the statement made by the accused No.1 Sachin Pote in memorandum panchanama Exh.473 and discovery of revolver Article 47 under panchanama Exh.474. The recovery was made from the groove of the tree near pigeon hole racks, from the place which is just at 5-10 minutes walking distance from the police station.

185] P.W.64 Rajaram Shinde, the Senior Police Inspector of Kothrud Police Station has drawn panchanama. It is pertinent to note that as per the version of Mr. Shinde the accused Sachin Pote made statement under panchanama Exh.473 in presence of panch witnesses. This P.W.21 has admitted about the presence of Mr. Shinde at the police station. It appears from his cross examination that police were having knowledge about the place of concealment of revolver. He has admitted that Police Inspector Mr. Shinde told him that the accused Sachin Pote has to discover a revolver hidden in the groove of the tree behind the sheds near pigeon hole in accordance with memorandum statement given by him. He thereafter gave consent to act as a panch witness. It means that memorandum panchanama was already drawn before he reached the police station. As per the recovery panchanama

Exh.474 it was drawn at the place where from the recovery was made. But according to this witness both the panchanamas were drawn in police station.

186] According to prosecution one Ganesh Mohol is the brother of deceased and this witness is the driver on the four wheeler of Ganesh Mohol. Initially in the cross examination he has stated that he is not acquainted with Ganesh Mohol, but subsequently he has admitted that he is the driver on the four wheeler of Ganesh Marne.

187] In view this, the evidence of this witness regarding discovery at the instance of accused No.1 Sachin Pote cannot be relied on.

188] P.W.17 Sachin Kasle is a panch witness regarding discovery of pistol at the instance of accused No.7 Ganesh Marne. P.W.17 Sachin Kasle is resident of Shaniwarpeth, Pune. He was knowing the deceased since childhood. According to him on 28.10.2006 he along with Sunil Thorat went to the office of Police Commissioner,Pune in connection with the work of Sunil Thorat, at that time some police officers requested him to act as a panch witness. He had seen the accused under veil in the office. His veil was removed. He made statement and expressed his willingness to show the place where pistol was concealed, which was recorded under memorandum panchanama Exh.449. Thereafter at the instance of accused

Ganesh Marne in government vehicle they proceeded Khilare Vasti. The vehicle was stopped near Mamata General Stores. The recovery of pistol and live cartridges from the cupboard of a house was made under panchanama Exh.450. It is to be noted that although in examination in chief he has stated that the accused No.7 Ganesh Marne has made such statement, but he could not identify him in the Court correctly. He identified the accused Nilesh Mazire as the accused Ganesh Marne, who made such statement.

189] I think the recovery was made in most casual manner. As per the evidence of this witness at the instance of accused Ganesh Marne they went to Khilarewadi. The accused took key from the neighbour and opened the lock of the house where from recovery was made. He also admitted that Khilarwadi area is densely populated. There are number of houses in that area. In panchanama it is mentioned that accused Ganesh Marne took the key of that house from one Raju Maruti Sathe. It is not clear as to why key of the house was kept with Mr. Sathe. No document is collected in respect of the house where from discovery was made to show how the accused is concerned with that place. There is no investigation as to whether anybody else was also residing in that house. Surprisingly, Mr. Barge in his cross examination has admitted that he did not feel it necessary to record statements of the neighbours in order to find out at to who was residing in that house.

190] It is pertinent to note that Mr. Barge has recorded the statement of Raju Maruti Sathe in respect of another monetary transaction with accused Ganesh Marne. But he did not make inquiry in respect of the house where from the recovery of revolver was made.

191] P.W.40 Raju Sathe in cross examination has admitted that the key of house of Ganesh Marne was never with him. He has also denied the fact that police came to his house and demanded the key of the house of Ganesh Marne. Although evidence regarding recovery of weapon was very important piece of evidence, I think investigation in this regard was made in improper manner.

192] Evidence of P.W.17 Sachin Kasale is shattered in cross examination. The panchanama Exhs.450 and 451 were drawn by Mr. Barge. He has admitted that except Mr. Phuge he did not meet any other police officer. It is Mr. Phuge who told the panch witnesses that they had to go to Khilarewadi. Similarly Mr. Phuge told them that they apprehended accused who are going to discover the pistol. This witness as well as another panch witness Sunil Thorat had no conversation with the person who was under veil.

193] He could not tell the name of the person who gave key of that house. According to him, Mr. Phuge went inside the

house and came out with pistol and told that he found the same inside the house. He also took out cartridges from the revolver, packed the revolver as well as cartridges in polythene bag. It means that the panch witnesses did not go inside the house. It is also to be noted that at that time number of persons from the neighbourhood were gathered, but still inquiry was not made in respect of ownership of that house.

194] It appears that on same day the accused Jameer Shaikh has also made statement in presence of this witness leading to the discovery of motorcycle from the Dhaba at Somatne Phata. But this witness also could not correctly identify the accused Jameer Shaikh. He identified the accused Sachin Marne as Jameer Shaikh. He has further admitted that it is Mr. Phuge who told them that motorcycle needs to be seized from Somatane Phata. Except obtaining signatures of panchas nothing was done at the office. In view of such admissions it is difficult to believe that recovery of weapon and motorcycles were made at the instance of accused Ganesh Marne and Jameer Shaikh respectively.

195] The ld. Advocate for accused No.7 has relied upon a case Ashraf Hussain Shah V/s. State of Maharashtra, 1996 Cri.L.J. 3141, wherein there was seizure of blood stained clothes and knife, but there was no proof that the articles were sealed and they were so sealed till being sent for chemical analysis. In such circumstances, it was held that the evidence

of recovery is liable to be rejected.

196] In the present case also the witnesses have not specifically stated that articles seized under panchanamas were sealed in their presence.

197] The ld. Advocates for the accused in respect of recovery of articles have relied upon a case, Tulshiram Bhanudas Kamble V/s. State of Maharashtra, 2000 Cri.L.J. 1566 Bombay. In that case it has been held that the investigating officer after recovery of articles was required to affix lac seals on them immediately. If it was not done, no evidentiary value is attached to such recovery.

198] It was observed that in the light of such infirmity, the defence version that the investigating officer has sprinkled human blood on the recovered articles was probable. In the present case none of the weapon recovered at the instance of the accused was stained with blood. There is no evidence that all the articles seized were affixed with lac seal. Assuming that the evidence regarding recovery of articles is not in conformity with law laid down in Tulshiram Kamble's case, I think there is other strong evidence on record against some of the accused.

199] The ld. Advocates for the accused relying upon a case Pramod Kumar V/s. The State, 1990 Cri.L.J. 68 Delhi High Court, have submitted that the accused were taken out

for recovery of weapons, motorcycles, there was possibility of their being seen by the witnesses, therefore, no much weightage can be given to identification parade.

200] In respect of drawing of panchanama of accused No.7 there is reference in panchanamas Exhs. 449 and 450 that his face was muffled with cloth. But there is no such reference in discovery panchanama of other accused. It may be noted that Pune is a metropolitan city. Discovery is made at the instance of accused from the different parts of the city. P.W.14, P.W.24 and P.W.30 are residents of village Mutha, while other police eye witnesses were not part of the investigation team. Therefore, the possibility that the accused who were taken out for recovery of weapons being seen by the witnesses is bleak.

201] P.W.28 Namdeo Narayan Kunjir is a panch witness in respect of seizure panchanama Exh.505 of mobile handsets of accused. This witness on 25.10.2006 was called at the office of Anti Extortion Cell, Pune. A person namely Mohol produced four mobile hand sets which were seized under panchanama Exh.505. This witness seems to be habitual panch witness, because he has admitted that on number of occasions he acted as a panch witness. He even could not remember as to whether he acted as a panch witness in MCOC Act cases before the Special Court.

202] As per panchanama Exh.505, P.W.59 Vilas

Dnyanoba Mohol has produced four mobile handsets, one of Nokia company, another of Reliance company and other two were of Samsung company. According to him, the accused Rahul Taru handed over four mobile hand sets and the same were of Ganesh Marne, Pappu Mokashi, Jameer Shaikh and Vijay Kangude. But evidence of P.W.9 Vilas Mohol is totally silent about handing over of mobile by accused Rahul Taru. Although it is alleged that the four mobile handsets were belonging to accused, there is no investigation in respect of CDRs or tower location of handsets on the basis of IMEI numbers of the handsets

203] As per the spot panchanama motorcycle bearing registration no.MH-12-CN-7468 was found on the spot after the incidence. According to prosecution P.W.39 Laxman Maruti Sathe is the owner of the said motorcycle and at the relevant time had given the same to accused Indraneel Mishra. But he has not supported the case. He has given the statement Exh.561 before the Judicial Magistrate under Section 164 of the Cr.P.C.. He has admitted about it, but in cross examination he has clarified that as the police threatened him that in case if he fails to give statement, he will be made accused, he gave the statement.

204] According to prosecution P.W.44 Kishor Suryawanshi had obtained handloan of Rs.10,000/- from the accused Santosh Lande and in lieu of which he handed over his

Hero Honda Splendor motorcycle bearing registration No.MH-12-DM-8721 to accused Santosh Lande. He has not supported the case. He has even denied that the accused Santosh Lande is his friend.

205] The spot panchanama Exh.627 shows that the motorcycle bearing registration No.MH-12-BT-5203 was found on the spot. According to prosecution, P.W.47 Arjun Ghuge was using the motorcycle bearing No. MH-12-BT-5203 belonging to Mahesh Pote and on the day of incidence gave it to accused No.1. This witness has denied this fact. He has admitted the fact that he was working as the driver on the Ambulance belonging to mother of accused No.1 namely Usha Pote and left Pune due to fear of accused No.1. Again in cross examination he admitted that he left Pune as he was not having residential place.

206] It is further case of the prosecution that actually P.W.48 Sameer Hagawane is the owner of motorcycle bearing registration No.MB-12-BT-5203. He obtained handloan of Rs.10,000/- from Mahesh Pote, but he could not repay the loan and as such gave the said motorcycle to Mahesh Pote for his use. This witness in his evidence has admitted the fact that he purchased the said motorcycle. But according to him, on 03.10.2006 he parked the motorcycle in front of his house and on the next day morning it was found missing. On the same day police came to his house from whom he came to know that

the motorcycle was used in commission of offence. He has denied the fact that he gave the motorcycle to Mahesh Pote in lieu of loan of Rs.10,000/-.

207] It is therefore, not proved that the motorcycles found on spot have concern with any of the accused.

208] According to 1d. Special Public Prosecutor even though the panch witnesses on recovery and other panchanamas have not supported the case, the recovery and contents of panchanamas have been proved from the evidence of investigating officers who prepared such panchanamas. I have already discussed this aspect. The police were already knowing the disclosure statement by the accused before arrival of the panchas. In some of the panchanamas even the presence of the investigating officer who alleged to have prepared the panchanama is doubtful. Considering defence of the accused it cannot be said that the contents of recovery and other panchanamas have been proved from the evidence of the investigating officer only.

209] P.W.16 Sanjay Kirad is the owner of Scorpio vehicle bearing registration No.MH-12-CY-0082. According to his evidence on the request of deceased he gave Scorpio for his use a day before the incidence because the vehicle of deceased was given for servicing. He saw his vehicle in the news bulletin on television. He rushed to Sanjivan Hospital and found his

vehicle thereat.

Evidence Regarding Mobile Simcards :

210] According to prosecution the accused were using the mobile simcards which were registered in the name of different persons. Accused No.1 Sachin Pote was using simcard of Airtel company bearing No. 9860703136 standing in the name of Duryodhan Samarth Nanaware. Accused Ganesh Nivrutti Marne was using the simcard of Reliance and Idea company bearing Nos. 9326185910 and 9922222392 standing in the name of Kisan Dok and Indraneel Mishra respectively. Accused Rahul Ramchandra Taru was using simcard of Reliance company bearing No. 9326076733 standing in the name of Ganesh Gaikwad. Accused Anil Khilare was using simcard of Airtel company bearing No. 9860752252 standing in the name of Chandrakant Chandanshive. Accused Vijay Kanduge was using simcard of Reliance company bearing Nos. 9326875925 and 9371102136 standing in the name of Dipak Late and himself respectively. Accused Indraneel Mishra was using the simcard of Reliance company bearing No.9325416121 standing in the name of Sachin Shah. Accused Dipak Mokashi was using simcard of Reliance company bearing No. 9326840762 standing in the name of Ravindra Bane. Accused Pandurang Mohol was using simcards of Reliance and Airtel company bearing Nos. 9326890784 and 9890001608 standing in the names of himself and Mayur Goswami respectively.

Accused Sameer Shaikh was using simcard of Reliance company bearing No. 9371818186 standing in the name of Bhushan Taru. Accused Jameer Shaikh was using simcard of Idea company bearing No.9850819878 standing in his name. Accused Nilesh Mazire was using simcard of Airtel company bearing No. 9960024600 standing in his name.

211] P.W.34 Ganesh Gaikwad is examined to prove the fact that accused Rahul Taru was using the simcard standing in his name. He has specifically stated that Reliance cell phone no. 9326076733 was registered in his name. His cousin Narendra Bhaskar Gaikwad obtained the said mobile connection in his name. Narendra Gaikwad told him that he gave the said cell phone to Rahul Taru. It may be noted that Narendra Gaikwad has not been examined. His evidence has material improvements. He has not stated before the police the fact that Narendra Gaikwad told him that he gave the said cell phone to accused Rahul Taru.

212] P.W.35 Ravindra Bane, according to prosecution, has given his Reliance cell phone no. 9326840762 to Dipak Mokashi, but this witness has not supported the case. He has been cross examined, but nothing could be elicited except denial.

213] His statement Exh.543 under Section 164 of the Cr.P.C. is recorded before the Magistrate. However, he has

clarified that he made such statement due to fear. Police threatened him to give such statement otherwise he will be made an accused. He even could not tell as to whether accused Dipak Mokashi was present in the Court.

214] P.W.43 Kisan Dok alleged to have given his simcard no. 9326185910 of Reliance company to accused No.7 Ganesh Marne. According to the prosecution accused Dipak Mokashi gave the simcard to accused Ganesh Marne. As per his evidence he gave the documents and photographs to Pappu Mokashi, but he could not identify Pappu Mokashi i.e. Dipak Mokash present before the Court. He has also given same clarification for recording of statement before the Magistrate.

215] P.W.46 Duryodhan Nanaware is a person whose mobile no. 9860743136 of Airtel company was being used by accused No.1 Sachin Pote. According to prosecution, this witness was residing in the premises of accused No.1 Sachin Pote. But he has not supported the case. The fact that the accused Sachin Pote was using that mobile number has been denied by him.

216] Prosecution has placed on record the call detail record of the above referred mobile numbers. For proving the same, prosecution has examined P.W.65 Chandrakant Kisan Bhor, P.W.70 Chetan Sridhar More and P.W.75 Sachin Mahadeo Shinde, who are Nodal Officers from Reliance

Communications, Airtel and Idea Company respectively.

217] The evidence of P.W.65 Chandrakant Bhor was recorded in the year 2012. According to him, since 5 years he has been serving as Nodal Officer in Reliance Communication company. But he could not identify the signatures on the letters issued on behalf of the company along with CDRs. He also could not identify the signatures on the letters and certificates. The CDRs and the correspondence exchanged between the company and the investigating officer, therefore, could not be proved.

218] P.W.70 Chetan More is serving as Nodal Officer in Airtel company from April 2009. It is alleged by the prosecution that the mobile Nos. of Airtel company 9860752252, 9890001608 and 9960024600 were being used by accused Anil Khilare, Pandurang Mohol and Nilesh Mazire. The first number was standing in the name of Chandrakant Chandanshive, but he has not been examined.

219] P.W.75 Sachin Shinde is working as Nodal Officer in Idea company from October 2004. According to him, mobile Nos. 9850819878 and 9922222392 were standing in the name of accused Jameer Shaikh and Indraneel Mishra respectively. Mobile No. 9822674186 was standing in the name of accused Rahim Shaikh. The CDRs are filed below Exhs. 756, 757 and 758. From the evidence of this witness it is proved that the

above referred 3 numbers were standing in the name of accused Jameer Shaikh, Indraneel Mishra and Rahim Shaikh. In Exh.756 i.e. CDR in respect of mobile No. 9850819878 tower locations are mentioned. According to prosecution the incidence occurred at 11.30 a.m. There is no tower location mentioned in Exh.756 when the incidence was occurred. The tower location is appearing only when incoming call was received. It is also to be noted that none of the electronic evidence is supported by the certificate under Section 65-B of the Evidence Act. Electronic evidence is not proved in accordance with the provisions of the Evidence Act.

Evidence regarding Conduct of Accused after incidence :

220] According to prosecution after the incidence the accused Sachin Pote, Rahul Taru and Santosh Lande met P.w.31 Shailendra Mengade at the clinic of Dr. Jaya Joshi and at their request he dropped them in his car at Lonavla. But he has denied this fact.

221] According to prosecution after commission of offence the accused Nos. 7 to 18 were absconded. Accused Nos.7 to 16 were arrested on 25.10.2006. During this period they left Pune and visited different places in Maharashtra such as Mahabaleshwar, Ganpatipule, Pandharpur, Tuljapur, Ambejogai, Parali, etc. In order to prove this fact the

prosecution has examined some witnesses.

222] It is the case of the prosecution that P.W.38 Ganesh Shetty, a hotelier had obtained hand loan of Rs.1,50,000/- from accused No.7 Ganesh Marne. He was paying monthly interest to him. On 19.10.2006 accused Ganesh Marne made phone call to him and as per his instructions he firstly paid Rs.7,000/- and then Rs.25,000/-. This witness has not supported the case. He has denied of having acquaintance with the accused Ganesh Marne. He has specifically denied about the monetary transaction with him and the payment of money as alleged by the prosecution.

223] P.W.40 Raju Sathe on 20.10.2006 alleged to have given Rs.80,000/- to one Nilesh as per the instructions of accused No.7 Ganesh Marne. This amount was in respect of transaction of flat. But this witness has also not supported the case.

224] P.W.49 Namdeo Dattatraya Navale is having farm house at village Sodne Makhana, Tal. Haveli, Dist. Pune. According to prosecution in the night of 09.10.2006 P.W.50 Ramesh Khedekar who is the friend of accused No.7 Ganesh Marne, along with accused had stayed in his farm house. Both P.W.49 Namdeo Navale and P.W.50 Ramesh Khedekar have denied this fact.

225] According to prosecution, the accused Nos.7 to 16 on 05.10.2006 visited Tuljapur and stayed in Pawan Lodge owned by P.W.50 Shivraj Vithaldas Kadam. This witness has produced customer register Exh.583 in which there is entry that one Bhushan Hagawane along with 15 persons came to the lodge at 5.30 a.m. of 05.10.2006 and left the lodge at 2 p.m. According to prosecution the accused Rahul Taru told his name as Bhushan Hagawane. But this witness could not identify any of the accused present before the Court. He was not called for identification parade of the accused.

226] It is the case of the prosecution that on 05.10.2006 from Tuljapur the accused went to Pandharpur and stayed in a room at Gajanan Maharaj Math. Prosecution in this regard has examined P.W.55 Ashok Mali and P.W.56 Nandkishor Thakare, the employees of the said Math. As per the evidence of P.W.55 Ashok Mali on 05.10.2006 at about 8.15 p.m. one Bhushan Sachin Hagawane along with 20 persons came in vehicle bearing registration No.MH-12-CR-4466 and left the premises on next day at 5.30 p.m. He produced the extract of register Exh.592. This witness also could not identify any of the accused in the Court hall. According to him daily 3000 pilgrims visited his institute and therefore, it is difficult to remember each and every visitor. P.W.56 Nandkishor Thakare also could not identify any of the accused in the Court.

227] P.W.52 Vijay Kumar Deshmukh is having Poultry

Farm at village Parali. According to prosecution, one Satish Gangale who is the friend of Ganesh Marne visited Ambejogai and stayed at his Poultry Farm. This witness has admitted the fact of acquaintance with Ganesh Marne through Satish Gangane, but denied that they stayed in his Poultry Farm.

228] As per the version of P.W.53 Satish Gangane, Ganesh Marne alone came to Ambejogai for pilgrimage. He along with Vijaykumar Deshmukh and accused Ganesh Marne took dinner. He stayed in the farm house. He has denied that the accused Ganesh Marne was accompanied by his friends. He has admitted about giving of statement before the Magistrate, but has clarified that he was kept in the office of Crime Branch for 10 days and was released only when he showed his willingness to give statement before the Magistrate. He was threatened to be arrested.

229] P.W.54 Baban Gite resident of Parali got acquainted with the accused Ganesh Marne through Satish Gangane. According to him, on 26.10.2006 accused Ganesh Marne and Satish Gangane had been to his office. Their friend Ramesh Bhutada invited him for dinner in the farm house of his maternal uncle. Satish Gangane and Ganesh Marne stayed in the farm house. He denied the fact that Ganesh Marne was accompanied with his friends.

230] P.W.59 Vilas Mohol is alleged to be with accused

Ganesh Marne and others from 04.10.2006 till 24.10.2006. But he has denied this fact.

231] According to ld. Special Public Prosecutor, the accused Nos.7 to 16 after commission of offence absconded, this circumstance shows that they have committed the offence. In this regard the ld. Advocates of the accused have relied upon a case, Dr. Sunil Cliffor Daniel V/s. State of Punjab, 2012 Cri.L.J. 4657 SC, wherein it has been held that mere act of absconding on the part of the accused alone does not necessarily lead to a final conclusion regarding the guilt of the accused, because even an innocent person may become panic stricken and try to evade arrest, when suspected wrongly of committing a grave crime such is the instinct of self preservation.

232] In view of above decision, even if it is assumed that accused Nos.7 to 16 were absconded after commission of offence, this cannot be a reason or circumstance to presume their guilt.

Evidence of Investigation :

233] The investigation was carried out by number of police officers.

234] P.W.5 Dattatraya Kulkarni and P.W.6 Sharad

Kshatriya who are working as photographers attached to investigation car of Pune police had snapped the photographs of the spot, Scorpio, deceased. They are filed at Exhs.394/1 to 394/16.

235] P.W.8 Police Head Constable Mohan Dhomkar and P.W.9 Police Naik Rajendra Chavan who carried the muddemal from police station to the office of Chemical Analyzer have stated about their role.

236] P.W.62 Brahmanand Naikwadi, who at the relevant time was working as Assistant Police Inspector, Kothrud Police Station, on 08.10.2006 went to Khilarewadi and arrested the accused Sachin Marne and Dinesh Aavji. He seized their clothes under panchanama Exh. 465 and accordingly submitted report Exh.621 to the Police Inspector Mr. Shinde.

237] As far as seizure of clothes is concerned, he has admitted that wax seal was not applied on the packet of seized clothes.

238] The ld. Advocate for the accused No.1 relying upon a case Kaluram V/s. State of Himachal Pradesh, AIR 1973 SC 2773 has objected for exhibiting report Exh.621 made by this witness to Police Inspector regarding arrest of two accused. According to him, it has no evidentiary value being hit by provisions of Section 162 of the Cr.P.C.

239] I think no much weightage is required to be given to Exh.621 because there is specific oral evidence regarding arrest of the accused Sachin Marne and Dinesh Aawji.

240] According to prosecution initially P.W.64 Rajaram Shinde was entrusted with the investigation. At the same time the team of Crime Branch headed by P.W.69 Police Inspector Bhanuprarap Barge was also carrying the investigation. They were assisted by other police officers.

241] P.W.66 Nitin Jadhav at the relevant time was working as Police Sub-Inspector at Crime Branch, Pune. On 28.10.2006 as per the instructions of Mr. Barge, he made interrogation with accused Vijay Kangude, prepared memorandum panchanama Exh.443 in respect of recovery of Yamaha motorcycle No.MH-20-AH-6121. Similarly on 29.10.2006 and 30.10.2006 in pursuance of interrogation with the accused Indraneel Mishra and Jameer Shaikh under memorandum panchanamas Exhs. 457 and 599 the motorcycle and sickle were discovered. He also visited the hotels at Ganpatipule and Mahabaleshwar, recorded statements of hotel owners where accused stayed after commission of offence.

242] It is significant to note that he could not identify the accused who made statement before him correctly. Moreover, from the letters Exhs. 667 and 668 written by Mr. Barge to him,

it appears that the accused Vijay Kangude and Indraneel Mishra had made statements before Mr. barge regarding the concealment of the articles which were to be discovered. It means that prior to drawing of memorandum panchanamas, Mr. Barge was aware about the concealment of motorcycles which were to be discovered at the instance of the accused. The memorandum panchanamas drawn by this witness therefore, cannot be said to be in accordance with the provisions of Section 27 of the Evidence Act.

243] P.W.67 Gautam Deshmukh was working as Police Inspector Crime of Kothrud Police Station. On getting information about the incidence he went to Sanjivan Hospital. He received the bullets from the Medical Officer, Sanjivan Hospital. He made arrangement for sending the dead body to Sassoon Hospital, prepared inquest panchanama as well as collected the clothes, blood sample and skin sample of deceased.

244] P.W.68 Raghunath Phuge was working as API at crime Branch. On getting information in respect of whereabouts of absconding accused he went to Ambejogai, Parali Vaijanath for making search of the accused. He accordingly gave information to Mr. Barge and on 24.10.2006 and 25.10.2006 the accused along with Santro Car and Qualis car were apprehended at Ambejogai, Parali area.

245] He also made interrogation with accused Jameer Shaikh. He has also prepared discovery panchanama Exh.451 in respect of seizure of motorcycle made at the instance of accused Jameer Shaikh. He also recorded statement of some of the witnesses by visiting Pandharpur, Tuljapur, ambejogai, etc.

246] P.W.71 Sanjay Bajirao Jadhav was working as Assistant Commissioner of Police (Crimes), Pune. After invocation of the provisions of MCOC Act, he was entrusted with the investigation. He has made correspondence to various departments for the purpose of investigation in respect of properties accumulated by the accused and also made correspondence with mobile companies for getting CDRs of the mobiles of the accused.

247] P.W.72 Vinod Satav in the capacity of Senior Police Inspector of Crime Branch, Pune also made correspondence for getting CDRs of mobiles of some of the accused.

248] P.W.73 Rajendrasing Shersing was working as Additional Commissioner of Police, Pune. He accorded approval order Exh.747 under Section 23(1)(a) of the MCOC Act.

249] P.W.76 Jayant Umranikar, the then Commissioner of Police, Pune accorded sanction Exh.761 for filing charge-sheet against the accused under the provisions of MCOC Act.

While P.W.74 Chhagan Wakade, the then Deputy Commissioner of Police, Pune accorded sanction Exh.752 under the Arms Act against the accused Sachin Pote and Ganesh Mane.

Regarding F.I.R.:

250] According to ld. Advocates for the accused the information given by P.W.30 Prakash Karpe vide Exh.513 cannot be a FIR. Exh.513 was filed at 7.35 p.m. of 04.10.2006, but prior to that the Police Station Officer received information from Sanjivan Hospital about the cognizable offence. The investigation was commenced on the basis of the information received from the hospital.

251] Per contra, according to prosecution the information received from the hospital was cryptic and same cannot be treated as FIR.

252] The ld. Advocates for the accused have relied upon a case **Ramesh Baburao Devaskar V/s. State of Maharashtra, 2008 ALL MR (Cri.) 293 SC**, wherein it has been held that FIR need not be encyclopedic. The information received from the officer in-charge of the police station of commission of cognizable offence must be reduced in writing so as to enable him to start investigation. It can be lodged by anybody, but it should not be sketchy so as to make initiation of investigation on the basis thereof impossible. It is observed that in a murder

case FIR cannot be lodged after drawing of inquest.

253] The ld. Advocates for the accused have also relied upon a case Sunil Kumar and others V/s. State of M.P., AIR 1997 SC 940 wherein it has been held that telephonic information to the police station about cognizable offence recorded in daily diary book, not mentioning names of assailants, on that basis investigation started, same has to be treated as FIR.

254] The ld. Advocates for the accused relying upon a case Soma Bhai V/s. State of Gujarat, AIR 1975 SC 1453 have submitted that telephonic information reduced to writing by the Police Station Office constitute FIR.

255] P.W.64 Rajaram Shinde who was Senior Inspector of Kothrud Police Station, at the time of incidence had gone near Cumins Company in respect of investigation in another crime, he received telephonic message of Police Station Officer about the incidence. He immediately rushed to the spot and prepared spot panchanama in between 12.15 noon to 1.15 p.m. He also came to know that P.W.67 Gautam Deshmukh, the another Police Inspector of same police station had gone to Sanjivan Hospital.

256] As per the evidence of P.W.42 Dr. Savita Ganesh on admission of Sandip Mohol in the hospital, she informed

Deccan Police Station that some unknown persons fired at the patient and the injured has received bullet injuries on knee, back and abdomen.

257] Mr. Shinde has admitted that he was on the spot till 1.30 p.m. Thereafter he reached the police station and found that the information was received from Deccan Police Station about the incidence. The defence has placed on record the entry in station diary. The entry Exh.649 shows that Kothrud Police Station received information from Deccan Police Station that Sandip Mohol was injured in firing and was admitted at Sanjivan Hospital. The entry further shows that the Police Station Officer of Kothrud Police Station informed this fact to another Police Inspector Mr. Gautam Deshmukh, who left the Police Station.

258] There is another entry Exh.648 which was received at 2.35 pm. by the Police Station Officer of Kothrud Police Station. Dr. Savita Ganesh from Sanjivani Hospital informed Deccan Police Station that unknown persons below Paud Phata over bridge fired four bullets on Sandip Mohol and while undergoing treatment he expired.

259] Inquest panchanama Exh. 372 was drawn by Mr. Gautam Deshmukh in between 3.45 p.m. to 4.45 p.m. Mr. Gautam Deshmukh before drawing of inquest panchanama had also received the bullets from doctors of Sanjivani Hospital.

Before lodging of FIR Exh.513 he also received sealed bottle containing sample of blood of deceased, his blood stained clothes, samples of skin of the deceased. P.W.30 and other two witnesses who were in Scorpio along with deceased were at Sanjivani Hospital and thereafter they went to Sassoon Hospital where the body was taken for postmortem.

260] There is sufficient material to show that the investigation was commenced prior to filing of the alleged FIR Exh.513.

261] In my opinion, the information regarding the commission of cognizable offence which was received by the Police Station Officer cannot be said to be a cryptic information because the place of incidence and name of the deceased was mentioned in the said information.

262] In view of law laid down in Ramesh Deoskar's case and Sunil Kumar's case supra, in my view, information received by Kothrud Police Station and the entry made in the station diary of Kothrud Police Station at 12.10 noon vide Exh.649 should be treated as FIR. Exh.513 i.e. the information given by P.w.30 Prakash Karpe cannot be said to be the FIR. In view of decision of Hon'ble Supreme Court in a case State of Andhra Pradesh V/s. Punati Ramulu, 1994 SCC (cri.) 734, same has to be treated as statement made during the course of investigation under Section 161 of the Cr.P.C..

263] It is also to be noted that number of police witnesses who have witnessed the incidence also did not file FIR.

Expert Evidence :

264] The ld. Advocates for the accused have submitted that the medical evidence as well as the evidence of ballistic expert P.W.60 Shamsunder Munj is contradictory with the evidence of eye witnesses and as such the ocular evidence particularly of P.W.14, P.W.24 and P.W.30 cannot be relied on. As per the version of ocular witnesses bullets were fired when the deceased was sitting in Scorpio car. As per the version of P.W.57 Dr. Rahul Lokhande injury No.4 caused on left thigh upper 1/3rd corresponding exit wound on left lower back with bleeding was found. The entry wound was found on the front side of left thigh and exited from left lower back. Dr. Lokhande has admitted that injury No.4 must have been caused when the deceased was in standing position. But the witnesses who were in Scorpio car have admitted that deceased did not change the position at the time of firing of bullet. In view of this, according ld. Advocates for the accused, the case of prosecution that deceased was fired when he was inside Scorpio car is not believable.

265] The ld. Advocates for the accused in support of their contentions have relied upon a case, Avadhesh and Anr., V/s.

State of Madhya Pradesh, 1988 SCC (cri.) 361, wherein a direction of injuries on the body of the deceased found to be from upper part to lower part and bullet found to be ante posteriorly, doctors opinion that gun shots fired from a higher level than that of the deceased was inconsistently the testimony of eye witness. In such circumstance, version of eye witnesses was held to be doubtful.

266] They also relied upon a case Babu Dhaku Kharat V/s. State of Maharashtra, 1999 Bom. C.R. (Cri.) 569, wherein the ocular evidence of interested witnesses was not supported by medical evidence and the independent witnesses, though available were not examined. It was held that it would not be safe to rely on such evidence.

267] The medical evidence is always corroborative evidence. It has come on record that the incidence occurred within few minutes at the traffic junction when the signal was red. The attack was made from the left side of Scorpio car by the assailants who were more than 7-8 in numbers. Deceased was seated on the middle seat on left side of the vehicle, therefore, it would not have been possible for him to deboard from the vehicle.

268] As discussed above, although P.W.14, P.W.24 and P.W.30 are interested witnesses, there is convincing evidence of independent eye witnesses.

269] According to ld. Advocates for the accused, P.W.60 Shamsunder Munj, a Ballistic Expert, examined two country made pistols, empties, bullets, cartridges, magazines, samples of skin, etc. He opined that the powder range in respect of two weapons examined by him would be within 3 ft.

270] P.W.63 Dr. Ganesh Pujari, who conducted the postmortem, has stated that he does not notice singeing tattooing, scorching, powder deposit or blackening around the entry wounds of deceased, which are signs of firing from close range. He also opined that the distance between pistol and the body must have been more than 3 ft., but could not give maximum distance. According to ld. Advocates for the accused as per the versions of eye witnesses, firing was made from close range.

271] I think none of the eye witnesses stated the exact distance from which firing was made. In view of other evidence only on the basis of the admissions given by the expert witnesses, the case cannot be doubted.

272] As per the evidence of P.W.60 Shamsunder Munj, he received two country made pistols Exhibit-1 which was seized at the instance of accused No.1 Sachin Pote and Exhibit-7 i.e. another country made pistol which was seized at the instance of accused No. 7 Ganesh Marne. He examined the bullets

retrieved from the body and opined that they were fired from the pistol Exhibit-7 and not from the pistol Exhibit-1.

273] According to ld. Advocates for the accused, although the recovery of pistols from the accused No.1 and accused No.7 have not been proved, in view of such contradictory evidence, the ocular evidence cannot be relied on. The ld. Advocates for the accused in this regard have relied upon a case, **Puran Singh V/s. State of Uttarakhand, 2008 Cri.L.J. 1058 (SC)** wherein as per the opinion of ballistic expert the bullet which caused injury to the deceased was not fired from the gun said to have been used by the appellant-accused. Prosecution was not successful in bringing home guilt of the accused and establishing that it was the same gun which had caused firearm injury. The accused in such circumstance was held to be entitled for benefit of doubt.

274] The ld. Advocates for the accused has also relied on a case **Brijpalsing V/s. State of M.P., AIR 2003 SC 2460**. In this case also the version of eye witnesses was contradictory to the report of ballistic expert, which raises doubt about the presence of eye witnesses on the spot.

275] Hon'ble Supreme Court considering peculiar facts in above referred cases, has given benefit of doubt to the accused.

276] Moreover, Hon'ble Supreme Court recently in a case

Rakesh and another V/s. State of U.P., 2021 SCC Online SC 451 dated 06.07.2021 has held that for convicting the accused recovery of the weapon used in commission of offence is not a sine qua non. The evidence of doctor or medical officer is his opinion and not evidence of eye witness to the incidence. It is held that merely because the ballistic report shows that bullet recovered does not match with the gun recovered, the credible and reliable deposition of the prosecution witnesses cannot be discarded. It is also observed that one is required to consider entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too the question asked by the defence in the cross examination cannot be considered standalone. It is also held that there may be minor contradictions which do not go to the root of the matter, cannot be basis for disbelieving the evidence.

277] The ld. Advocates for the accused relying upon a case, **Bhagirath V/s. State of M.P., AIR 1976 SC 975 and Kali Ram V/s. Stateof H.P., 1974 Cri.L.J. 1 SC** have submitted that, in criminal trial onus is upon the prosecution to prove the case. It has to prove the ingredients of the offence. It must have to stand on his own legs and cannot take advantage of weaknesses of the defence.

278] I think there is no doubt about the proposition of law laid down by Hon'ble Supreme Court. It is the duty of the prosecution to prove its case.

279] The ld. Advocates for the accused have relied upon a case Ram Ashrit V/s. State of Bihar, 1981 Cri.L.J. 484 SC in which it is held that in a murder case if all material witnesses were either related or otherwise interested, their testimony had to pass the test of close and severe scrutiny before their testimony could be safely acted upon. In the absence of corroboration to the material extent in all material particulars, it was extremely hazardous to convict the accused.

280] In my view, this decision is not applicable to the present case. Although P.w.14, P.W.24 and P.W.30 are interested witnesses, the case against some of the accused is proved from the evidence of other independent police witnesses.

281] The ld. Advocates for the accused on the point of delay in lodging the FIR have relied upon the cases, Dilawar Singh V/s. State of Delhi, AIR 2007 SC 3234, Kartar Singh V/s. State, 1988 (2) Crimes (HC) 634 Delhi High Court and Mubarak Shaikh V/s. State of West Bengal, 2011 Cri.L.J.1677 Calcutta High Court.

282] I have already discussed the issue that the information received by the Police station Officer of Kothrud Police Station vide sation diary entry Exh.649 is the FIR. The statement made by P.w.30 vide Exh.513 therefore, cannot be

treated as FIR, which is a statement under Section 161 of the Cr.P.C.. The station diary entry Exh. 649 was made at 12.10 noon, investigation was immediately commenced. Therefore, it cannot be said that there was delay in lodging the FIR.

283] The ld. Advocates for the accused have pointed out the admissions given by P.W.4 Ramesh Lokhande, a Scientific Assistant of Pune Police, who collected the samples of blood. He has admitted that when he went on the spot a Scorpio vehicle was thereat, while he also noticed blood spilled at a distance of 100 ft. towards the traffic signal on the spot.

284] This witness has given evidence after more than 5 years of the incidence. There is specific evidence that the deceased and other witnesses proceeded in the same vehicle from the spot to Sanjivan Hospital. Scorpio car was found in the hospital not only to its owner Sanjay Kirad, but also to the police officers. The investigating officer has specifically stated that he brought Scorpio car from Sanjivani Hospital to the police station.

285] As far as spilling of blood is concerned, I think there are two possibilities. As per the evidence of Dr. Savita Ganesh and the case papers of Sanjivani Hospital, when the deceased was brought in the hospital he was profusely bleeding. The case papers show that the clothes of the deceased were full of blood. Blood was falling from the throat. In view of this, there

was possibility that the blood might have been fallen from the Scorpio on the road. Second possibility is that the blood fallen on the road might be of other person, who is not connected with the offence, because it is a flowing road always busy of traffic.

286] There are specific allegations that after firing bullet towards Sandip Mohol, when Ramesh Bhosale was trying to deboard from the vehicle the accused No.1 also attempted to fire bullet towards him, but the bullet could not be fired from the pistol. It has also come on record that Ramesh Bhosale, who sat on the front seat, noticed the assailants coming towards Scorpio car and he alerted deceased and other inmates of the vehicle. P.W.24 has admitted that Ramesh Bhosale told him name of the accused Nilesh Mazire as a person who was holding the pistol. Ramesh Bhosale was accompanied with other witnesses up to Sanjivani Hospital. He thereafter went to Sassoon Hospital. P.W.14, P.W.24 and P.W.30 thereafter along with Ramesh Bhosale came to Kothrud Police Station for lodging report Eh.315. It is significant to note that evidence of P.W.14 and P.W.24 is totally silent about the attempt made by accused No.1 to commit murder of Ramesh Bhosale. Only P.W.30 has stated about it.

287] As per the report of test identification parade, Ramesh Bhosale has identified the accused No.1 Sachin Pote, accused No.2 Pandurang Mohol, accused No.6 Sachin Marne

and accused No.9 Anil Khilare.

288] As per the evidence of P.W.67 Mr. Barge, after the test identification parade, Ramesh Bhosale made complaint that he was threatened by the accused Sachin Pote, Ganesh Marne and Rahul Taru during the test identification parade. Mr. Barge, therefore, made report Exh.406 to the Collector, Pune.

289] In view of all these aspects, Ramesh Bhosale being material witness, his examination was necessary.

290] The ld. Advocates for the accused in this regard have relied upon a case, Thulia Kali V/s. The State of T.N., 1972 Cri.L.J.1296, wherein it has been held that if material witnesses are not examined, adverse inference can be drawn against the prosecution.

291] I have gone through the said decision. Hon'ble Supreme Court acquitted the accused not only because of non examination of material witnesses, but the other evidence produced was not reliable.

292] The ld. Advocates for the accused have submitted that the deceased was gangster having number of enemies, therefore, he might have been killed by other persons. In support of their contention, they relied upon a case, State of Madhya Pradesh V/s. Budhiya, AIR 1972 SC 644 and State

of U.P. V/s. Madan Mohan, AIR 1989 SC 1519.

293] I think when there is specific evidence of eye witnesses against the accused, this aspect is not required to be considered.

294] The ld. Advocates for the accused have pointed out that no other inmates of Scorpio car than deceased sustained any injury, therefore, presence of P.W.14, P.W.24 and P.W.30 in the Scorpio car itself is doubtful. It is true that in Scorpio car pieces of broken glass were found. They were also found on the spot. Generally safety glasses are used in vehicles. The possibility of causing of injury due to breaking of such glass is very less. It is the deceased who was sitting on extreme left side on middle seat of the Scorpio car. Even he did not sustain any injury due to breaking of glass. On this ground evidence of eye witnesses i.e. inmates of the Scorpio cannot be discarded.

295] The ld. Special Public Prosecutor has submitted that as the witnesses were threatened by the accused during the course of test identification parade, due to fear they did not identify the accused, but they have correctly identified them in the Court.

296] It is pertinent to note that none of the eye witness present at the time of test identification parade, has stated about the threats given by the accused. They could have make

clarification in the evidence. Even the evidence of P.W.61 Mr. Shirke is totally silent about it. On the other hand he has admitted that proper care was taken so that no pressure should be brought on the witnesses.

297] As stated above, as per the version of Mr. Barge only Ramesh Bhosale made complaint about the threats given by the accused, but he has not been examined. The complaint made by him is not placed on record. The investigating officer even did not take care of recording the statement of Ramesh Bhosale after the test identification parade as well as of P.W.61 Mr. Shirke.

298] The ld. Advocates for the accused have also submitted that the motive of offence is not proved. In this regard the defence has relied upon a case, **Badam Singh V/s. State of Madhya Pradesh, AIR 2004 SC 26**. It has been held that Motive has significance even in cases of ocular evidence, when such evidence appears to be suspected.

299] Prosecution has come with a case that the accused Sachin Pote, Ganesh Marne and others were having previous quarrel with the deceased Sandip Mohol. One Anil Marne who was close associate of the accused was murdered. The accused were suspecting that Sandip Mohol was behind the murder of Anil Marne and therefore, in a planned manner Sandip Mohol was murdered.

300] P.W.30 Prakash Karpe has specifically stated that he knew the accused because there was quarrels between the deceased and the accused. He could not state the details of the quarrel, but his version about the previous quarrel has not been shattered in the cross examination.

301] P.W.45 Dnyaneshwar Jawalkar was knowing the deceased since 14 years. Deceased was wrestler. This witness is also a wrestler. According to him, the accused Ganesh Marne and Sachin Pote were also his friends earlier. In the year 2005 there was quarrel between Ganesh Marne and deceased Sandip Mohol at Khilarewadi. However, the matter was not reported to the police and the same was settled by mediation of the relatives of the accused and the deceased namely Subhash Marne and Rajabhau Karpe. He has further stated that in the year 2005 his friend Pradip Shinde obtained loan from the friend of Ganesh Marne, namely Aniruddha Naik. On account of repayment of loan there was quarrel, in which this witness was assaulted by Ganesh Marne, Sachin Pote, Vijay Kangude and Aniruddha Naik. He has further stated that his brother in law Raju Bharekar was taken to the office of Anil Marne where he was abused and assaulted for withdrawing the complaint filed by this witness against them and thereafter 20 days Anil Marne was killed at Salunke Vihar. In the case of murder of Anil Marne, this witness and his friends were arrested. According to him, after murder of Anil Marne, Ganesh Marne

and his friends had kept surveillance over the activities of Sandip Mohol.

302] In respect of assault made by the accused Ganesh Marne and others and this witness, offence under Section 307 of the IPC was registered against them and they were prosecuted in Sessions case No. 96/2006 and are acquitted. Evidence of P.W.45 Dnyaneshwar Jawalkar was recorded in Sessions Case No. 96/2006. He was confronted with the evidence given by him in that case, wherein he has stated some contrary facts. He has denied of being one of the witness in the murder case of Sandip Mohol (present case). In his earlier evidence he has stated to be acquainted with deceased Sandip Mohol being wrestler, but denied that deceased was his friend. He has admitted that he was not present at the time of alleged quarrel between the deceased and the accused Ganesh marne occurred in the year 2005 at Khilarewadi. He has specifically stated that the said dispute was settled at the mediation of Rajabhau Karpe and Subhash Marne, the relatives of deceased and the accused respectively. As the matter was not reported to police, the documentary evidence in this regard cannot be expected.

303] The judgment in Sessions Case No.96/2006 is placed on record which shows that the accused Sachin Pote, Ganesh Marne, Vijay Kangude and others were prosecuted for attempting to commit murder of P.W.45 Dnyaneshwar Jawalkar

and have been acquitted for want of evidence. He has specifically stated that his brother in law was called at the office of Anil Marne and was threatened for withdrawal of the FIR filed by him against the accused Ganesh Marne and others. This shows that present accused were associated with Anil Marne. I think this evidence is sufficient to show that the accused Sachin Pote and Ganesh Marne were having previous dispute with the deceased.

304] According to prosecution the incidence is the outcome of gang war. Although the prosecution has not brought any material to show existence of such gang, but a suggestion was given to P.W.14 Vikas Mohol in Para.No.16 of the cross examination that he being member of Sandip Mohol gang deposed falsely, which he has denied

305] I think the evidence placed on record is sufficient to draw an inference that the accused were having motive for committing the offence.

Defects In Investigation :

306] The ld. Advocates for the accused have pointed out the defects in the investigation and submitted that benefit of such infirmities should be given to the accused.

307] It has come on record that police from Kothrud

Police Station as well as Crime Branch, Pune were making investigation. I do agree with the submissions of ld. Advocates for the accused that there are certain defects in the investigation which are not explained or clarified.

(a) After getting the information about the incidence, Police Inspector Mr. Deshmukh visited Sanjivani Hospital where 4 persons who were in Scorpio along with deceased were present. They were in the hospital till the body of the deceased was taken to Sassoon Hospital. The police witnesses who witnessed the incidence immediately reported the matter to the police station, but there is no prompt lodging of FIR.

(b) The statements of some of the eye witnesses were not recorded promptly.

(c) After holding of identification parade, the supplementary statements of the witnesses have not been recorded.

(d) One of the witness Ramesh Bhosale made allegation about the threats given by the accused at the time of test identification parade. In this regard his supplementary statement was not recorded. The Executive Magistrate Mr. Shirke who conducted the test identification parade, his statement in respect of threatening was not recorded.

(e) P.W.14, P.W.24 and P.W.30 who were with the deceased, their blood stained clothes were not seized.

(f) No proper procedure was followed while preparing discovery panchanamas under Section 27 of the

Evidence Act.

(g) No oral or documentary evidence is collected in respect of house where from the recovery of pistol was made at the instance of accused No.7.

(h) As per the spot panchanama Nokia Mobile handset and simcard bearing no.9890573443 was found. There is no investigation in respect of ownership of this mobile handset as well as simcard.

(i) A sickle, two motorcycles were found on the spot, but there is no evidence to show that the services of Finger Print Expert were utilized to verify the finger prints on the weapon as well as on two motorcycles.

(j) CDRs and tower locations of mobiles of the accused have not been collected. Electronic evidence is not produced in proper manner.

(k) The documents pertaining to murder case of Anil Marne are not produced.

(l) The accused Nos.7 to 16 were found in Ambejogai area in Santro car and Quails car, no documentary evidence is collected about the ownership of the said vehicles. The weapons found in the said vehicles were not seized on the spot. The fact that the accused Nos.7 to 16 were apprehended by Pune police was not informed to the nearest Police Stations.

308] I think it is a case of brutal murder committed in a broad day light on road, the investigation should have been given to some experienced police officer.

309] However, in my view the accused cannot take benefit of faulty investigation, when there is specific ocular evidence against them.

310] In a case Lathwinder Singh and others V/s. State of Punjab, 2003 Cri.L.J. 3058 SC, there was veracity in evidence of witnesses and the investigating officer. There were circumstances showing that documents were prepared in police station. Therefore, accused were acquitted.

311] In the present case there is no such veracity on material point in evidence of eye witnesses and the investigating officer.

312] For proving the offences against the public tranquility as contemplated under Chapter VIII of the IPC, prosecution has to prove that there was an assembly of 5 or more persons having one of the common object mentioned in Section 141 of the IPC.

313] The police witnesses as well as other eye witnesses have stated about the number of assailants. There is evidence to show that the assembly was of more than 5 persons, some of them were breaking the glasses of Scorpio and it is accused No.1 who fired bullets towards deceased.

314] For holding the accused guilty under Section 149 of the IPC, it is not necessary to establish identify of all the persons of unlawful assembly. Prosecution has established identity of accused Nos.1,2,11 and 13 only. But the eye witnesses have testified about the presence of other members of the assembly.

315] The common object will have to be determined on the basis of the attending facts and circumstances of the case. It can be ascertained on the basis of nature of the arms used, behaviour of the members and nature of the assembly. It has come on record that some of the assailants broke the glasses of Scorpio car for facilitating the attack on deceased. They came on motorcycles, attacked deceased when the car was stopped at the signal for few minutes. The attack was made in a planned manner. They were armed with deadly weapons. Considering the manner in which the attack was made, it can be said that the accused were having intention to commit murder of Sandip Mohol. All these facts are sufficient to draw an inference that the common object of such assembly was to commit murder of Sandip Mohol.

316] The members of the unlawful assembly caused mischief to the Scorpio car by breaking the glasses. It is alleged that the accused by standing in front of the Scorpio car obstructed way and thereby wrongfully restrained the deceased and other witnesses. Incidence occurred at traffic junction

when signal was red. It has come on record that some other vehicles were ahead of the Scorpio. The Scorpio proceeded when the signal turned green. None of the eye witness has specifically stated that the way of the Scorpio was obstructed by any of the accused. The offence under Section 341 of the IPC is not proved.

317] Although the accused no.1 alone has committed murder, in the light of provisions of Section 149 of the IPC mere membership of unlawful assembly is sufficient and every member is vicariously liable for the acts done by others in prosecution of common object of the unlawful assembly. Therefore, the accused Nos.11 and 13 being member of the assembly, are also vicariously liable for the acts done by accused No.1 and others in prosecution of common object of the assembly. Similarly, in order to achieve the common object of committing murder the glasses of Scorpio were broken, therefore, accused Nos.1, 11 and 13 are also guilty of committing the offence of mischief.

318] I therefore, hold that the prosecution has successfully established the guilt of the accused Nos.1, 11 and 13 for the offences punishable under Sections 143, 147, 148, 149, 302 and 427 of the IPC. Point Nos.3 to 13 are accordingly answered.

Point No. 14 (Abetment) :

319] It is alleged by the prosecution that accused No.17 was the member of conspiracy and after commission of offence he provided his Qualis car bearing No.MH-12-BP-2872 to other accused for facilitating their escape.

320] As per evidence of P.W.67 Mr. Barge, the accused Nos.7 to 16 were found in Ambejogai, Parali Vaijanath area. The accused Nos.8 to 16 were apprehended when they were proceeding in Qualis car. Said Qualis car was seized under panchanama dated 20.12.2006. For proving said panchanama, prosecution has examined P.W.28 Namdeo Kunjir. I have already discussed his evidence in earlier part of the judgment. As per the version of Mr. Barge, the accused Nos. 8 to 16 along with Qualis car were apprehended on 25.10.2006 but the vehicle was seized on 20.12.2006. The documents pertaining to ownership of Qualis car are not produced on record. There is no evidence to show that this car belongs to accused No.17. As discussed above, the offence of conspiracy is not proved against any of the accused.

321] It is also alleged by the prosecution that the accused No.7 provided pistols and the cartridges to accused No.1 for committing the offence and caused abetment. In view of aforesaid discussion, recovery of weapons from accused No.1 as well as accused No.7 is not duly proved. There is no other

evidence that accused No.7 provided the weapons to other accused. Point No.14 is answered in the negative.

Point Nos.15 & 16 (Arms Act) :

322] For proving the offence punishable under Section 3(25), 4(25) of the Arms Act, the prosecution has to prove that the accused were in possession of the weapons mentioned in Section 3 & 4 of the Arms Act. As discussed above, the recovery panchanamas have not been proved properly. Conscious possession of the weapons with the accused have not been proved. Therefore, point Nos. 15 & 16 will have to be answered in the negative.

Point No.17 (Breach of prohibitory order) :

323] According to prosecution on the date of incidence the prohibitory order Exh.710 was issued by the Joint Commissioner of Police, Pune under Section 37(1)(3) of the Maharashtra Police Act. The accused formed assembly of 5 or more persons, were armed with weapons and as such made contravention of the prohibitory order. Mr. Barge in his evidence has stated that the prohibitory order Exh.710 was valid from 23.09.2006 to 06.10.2006. For proving the offence under Section 135 of the Maharashtra Police Act, prosecution has to prove that the prohibitory order issued under Section 37 was properly promulgated. Promulgation means pasting at

corners street, publishing by beat of drum and publishing in news papers. There is no evidence on record to show that the order was promulgated in accordance with the provisions of law. Therefore, point No. 17 is answered in the negative.

324] Accused No.7 has taken a plea of alibi as contemplated under Section 11 of the Evidence Act. However, as the prosecution has failed to establish the case against him, there is no need to consider the defence of alibi.

Point Nos. 18 to 21 (MCOC Act offence :

325] The MCOC Act was enacted in the year 1999 and it came into force on 24th February 1999. In statement and object it is mentioned that -

“Organized crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money, laundering, etc. the illegal wealth and black money generated by the organized crime is very huge and has serious adverse effect on our economy. It is seen that the organized criminal syndicate make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is a reason to believe that organized criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organized criminals made extensive use of wire and oral communications in their criminal

activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organized crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime.”

326] In order to understand the organised crime, it is necessary to see the definitions of Sections 2(d), 2(e), 2(f) and Section 3. Those are as under :

Section 2(d) : “Continuing unlawful activity” means an activity prohibited by law for the time being inforce, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

Section 2(e) : “Organised Crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

Section 2(f) : “Organised crime syndicate”

means a group of two or more persons who, acting either singly or collectively, as an syndicate or gang indulge in activities of organised crime.

327] The ld. Advocates for the accused relying upon the cases Ranjeetsing Sharma V/s. State of Maharashtra, 2005 All M.R. (Cri.) 1538 S.C., State of Maharashtra V/s. Lalit Somdatt Nagpal, (2007) 2 SCC 241, State of Maharashtra V/s. Bharat Baburao Gavhane, 2006 ALL M.R. (Cri.) 2895, State of Maharashtra V/s. Jagan Gagansing Nepali, 2011 (3) Bom. C.R. (Cri.) 790 and State of Maharashtra V/s. Gopal Pande, 2018 ALL MR (Cri.) 4235, have submitted that as the provisions of MCOC Act are stringent in nature they will have to be strictly interpreted .

328] Hon'ble Supreme Court in Ranjeet Singh Sharma's case supra has observed that -

“in other words, an offence falling within the definition of organized crime and committed by an organized crime syndicate is the offence contemplated by statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more in relation to such offences more than one charge sheet may be filed. As we have indicated herein before, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOC”.

329] Hon'ble Bombay High Court in Bharat Gavane's case supra has held that merely stating that the gang leader and his associates run an organized crime syndicate with a view to gaining pecuniary benefits and other advantages and supremacy over rival gang by use of violence, intimidation and other coercive means is not enough. Hon'ble Bombay High Court in Gopal Pandey's case supra has also observed that if the ingredients of the term continuing unlawful activity or organised crime are not satisfied, the accused cannot be punished under the provisions of MCOC Act.

330] Hon'ble Bombay High Court in a case Sherbahadur Akram Khan V/s. State of Maharashtra, 2007(1) Bom.C.R. (Cri.)26 has also observed that the unlawful activity must be relatable to pecuniary advantage or economic gain to the accused. The words in Section 2(e) that "the objective of gaining pecuniary benefit or gain undue advantage" will have to be given some effective meaning. Applying the principle of "ejusdem generis" the words "other advantage" would have to be interpreted in the same manner as the previous terms "pecuniary benefits" or "undue economic advantage". It is further observed that a quarrel at a water tap which resulted in violence cannot be an offence which falls within this definition. Assault on some persons also cannot be considered an offence which has not been undertaken for pecuniary gain or other undue advantage.

331] Hon'ble Bombay High Court in Jagan Nepali's case supra, in Para.No.38 has observed that , “*if there are some altercations between two businessmen within four corners of shop and as a result of which one of them slaps to other, by no stretch of imagination it can be said to be an offence for which MCOC Act to be invoked. Similarly, a dispute between two brothers on some property issue and even assault and that too by a deadly weapon would not come in the ambit of MCOC Act.*

The legislative intent is clear, the MCOCA is for curbing the organizd crime. Unless there is prima facie material, firstly, to establish that there is an organised crime syndicate and, secondly, that organized crime has been committed by any member of the organized crime syndicate or any person on behalf of such syndicate, the provisions of MCOCA cannot be invoked. In the earlier paragraph we have discussed in detail as to what are the ingredients so as to constitute an offence of organized crime. The prosecution will, therefore, have to firstly establish that there is an organised crime syndicate. It will have to satisfy that there exist the ingredients of continuing unlawful activity. It will thereafter have to satisfy that the ingredients of the organized crime as spelt out by us hereinbefore exist, prior to invoking the provisions of MCOCA. We are, therefore, unable to accept the contention that if the wider meaning is given, the MCOCA can be invoked even for sundry offences. As held by the Apex Court in the case of Ranjitsing Brahmajeetsing Sharma (supra), merely because the person who cheats or commits a criminal breach of

trust more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. By the same analogy, if a person commits murder more than once, would not by itself be sufficient to attract the provisions of MCOCA. At the cost of repetition, we make it clear that unless all the ingredients to constitute the offence punishable under MCOCA are available, it will not be permissible to invoke the provisions of MCOCA”.

332] It is therefore, clear that mere filing of previous two charge-sheets is not sufficient, but it must be shown that the previous offences have nexus with the commission of organized crime which the MCOC Act seeks to be control.

333] Hon'ble Bombay High Court in a case, Praful Shende V/s. State of Maharashtra, 2009 All M.R.(Cri.) 470 has observed that continuation of past criminal activities can be proved by filing certified copies of the charge-sheets.

334] Prosecution has placed on record the certified copies of the earlier charge-sheets filed against some of the accused below Exh.1186.

335] It is alleged that accused Anil Khilare along with others on 05.06.1993 has committed the offence punishable under Section 307 of the IPC. In that regard Crime No.104/1994 was registered at Khadak Police Station. So also the accused Anil Khilare along with others on 10.02.1996 has

committed the offence punishable under Section 506(2), 507 r/w. 34 of the IPC vide crime No.137/1996 registered at Swargate Police Station. However, in view of law laid down by Hon'ble Supreme Court in **Prasad Shrikant Purohit V/s. State of Maharashtra, AIR 2015 SC 2514**, as the said offences have been committed more than 10 years ago from the date of offence committed in the present case, they are not required to be considered for the purpose of determining continuing unlawful activity.

336] In respect of charge-sheet in crime No. 561/1998 registered at Kothrud Police Station for the offence 323, 324, 504 of the IPC, it seems that the accused No.10 Vijay Mahipati Kangude along with others on 10.12.1998 assaulted Vishal Sing Vishwakarma and Suresh Vishwakarma. Said offence was committed on account of previous quarrel with waiter from Malhar Hotel.

337] Second charge-sheet is in respect of Crime No.31/2000 registered at Paud Police Station under Section 302, 201 r/w. 34 of the IPC. It is alleged that the accused No.10 Vijay Kangude and accused No.13 Santosh Lande in furtherance of common intention with others, on 16.02.2000 committed murder of Vilas Shivaji Pol. The offence was committed on account of previous quarrel of accused Santosh Lande and Vijay Kangude occurred in the marriage ceremony at Shindewadi.

338] The next charge-sheet is filed by Sahakarnagar Police Station in crime No.87/2000 under section 323, 324, 506, r/w. 34 of the IPC against accused No.8 Rahul Taru and others. It is alleged that the accused No.8 Rahul Taru outraged the modesty of sister of the informant namely Ritesh Dhiwar. This offence was also committed in individual capacity.

339] Next charge-sheet is filed by Vishrambag Police Station in Crime No. 295/2000 for the offence punishable under Sections 324, 504 r/w.34 of the IPC against accused No.1 Sachin Pote and others. It is alleged that the accused Sachin Pote and others on account of previous dispute assaulted the informant Kishor Digamber Bhaskar.

340] Next charge-sheet is filed by Khadak Police Station vide Crime No.78/2002 for the offence punishable under Section 307, 147, 148, 149, 326, 324 against accused No.13 Santosh Lande and accused No.16 Nilesh Mazire. It is alleged that on 23.05.2002 in the marriage of Dnyaneshwar Jawalkar, Mangesh Konde and his friends assaulted Nilesh Thakkar. Therefore, on 28.05.2002 at about 10 p.m. the accused Santosh Lande, Nilesh Mazire and others attempted to commit murder of the informant and other witnesses.

341] Crime No.158/2002 under Section 302 r/w. 34 of the IPC registered at Vishrambag Police Station against accused

No.1 Sachin Pote and accused No.16 Nilesh Mazire. The incidence was occurred on account of previous quarrel with the deceased Nitin @ Aba Vishwanath Nagarkar.

342] In crime No. 426/2003 under Section 307, 120B, 324 r/w. 34 of the IPC, under Section 3(25) of the Arms Act registered at Deccan Police Station, it is alleged that there was enmity between the witnesses Prakshant Kale and Anil Marne, therefore, Anil Marne, accused No.7 Ganesh Marne, accused No.10 Vijay Kangude and others attempted to commit murder of Virendra Bhujbal and Prashant Kale.

343] Crime No.90/2004 under Section 307, 325, 143, 147, 149, 337, 506, 427 of IPC was registered at Kothrud Police Station occurred due to political vendetta. It is alleged that the accused No.15 Sharad Vitkar and other persons were supporters of Shivsena party, while the informant Pramod Kondhare and others were supporters of Nationalist Congress Party.

344] Crime No. 341/2004 under section 323, 324, 427, 504 r/w. 34 of the IPC was registered at Kothrud Police Station against accused No.7 Ganesh Marne and others. It is alleged that he along with others on 26.06.2004 at about 9 p.m. assaulted Vijay Thombare, Ganpat Jori and Pradip Nakte. The incidence occurred as the informant's son namely Vijay Thombare caused damage to the auto rickshaw of the co-accused Nigin Jogawade.

345] Crime No.199/2005 under Section 307, 323, 324, 326, 120-B of IPC was registered at Deccan Police Station against the accused No.16 Nilesh Mazire and others. It is alleged that the accused Nilesh and others were having previous enmity with the informant Vipul Parekh.

346] Crime No.322/2005 under Section 307 r/w. 34 of the IPC was registered against accused No.7 Ganesh Marne, accused No.10 Vijay Kangude and accused No.1 Sachin Pote and others. One Aniruddha Naik advanced hand loan to Pradeep Shinde who is friend of the informant Nitin Jawalkar. He did not repay the amount. It is alleged that on that count the accused attempted to commit murder of Nitin Jawalkar.

347] All above offences of assault were committed in individual capacity. Most of them were committed on account of previous quarrel or dispute of some of the accused with the other persons.

348] Crime No.144/2000 under Section 387 r/w, 34 of the IPC was registered at Swargate Police Station against accused No.9 Anil Khilare and others. It is alleged that the accused on 10.05.2000 at about 2.35 p.m. at Marketyard, Pune demanded extortion of Rs.50,000/- from the informant Pandurang Harale.

349] Crime No. 211/2001 under section 392 r/w. 34 of the IPC was registered at Vishrambag Police Station against accused No.1 Sachin Pote and other persons. It is alleged that they on 22.09.2001 at 10.40 p.m. at Laxmiroad, Pune committed robbery of Kinetic Honda Scooter of Dinesh Agarwal.

350] Crime No.113/2006 was registered at Sahakarnagar Police Station against accused Rahul Taru and others. It is alleged that the accused Rahul Taru was doing illegal money lending business. He advanced loan to the informant Pramod Kamble. As he did not repay the loan the other co-accused on the instructions of Rahul forcibly took computer and other articles from the office of the informant Pramod Kamble.

351] Although above two offences have been committed with an objective of pecuniary gain, but considering the allegations made therein it can be inferred that they have been committed in individual capacity and not on behalf of gang.

352] Hon'ble Bombay High Court in a case **Madan Ramkrishna Gangawani V/s. State of Maharashtra, 2009 ALL MR (Cri.) 1447** has held that offence of organized crime is constituted by at least one instance of continuation, apart from continuing unlawful activity evidenced by more than one charge-sheet in preceding ten years.

353] It means that prosecution for constituting continuing unlawful activity, must prove commission of present offence against the accused. As discussed above the prosecution has not proved the offence against the accused except accused Nos.1, 11 and 13.

354] It is alleged by the prosecution that the accused No.7 Ganesh Marne is the gang leader. He along with the co-accused is running a crime syndicate with a view to gain pecuniary benefits and advantages and to have supremacy over the rival gang of the deceased. It is further case of the prosecution that the offences have been committed in order to gain supremacy. It may be noted that the term gang leader is not defined specifically under the MCOC Act. Hon'ble Bombay High Court in Bharat Gavane's case supra has held that mere statement that particular accused is a gang leader and he with the help of his associates is running a crime syndicate is not sufficient. There must be sufficient material. In the present case as discussed above, there is nothing on record to show existence of organised crime syndicate headed by accused No.7.

355] In view of above discussion, it can be safely inferred that the prosecution has failed to establish essential ingredients of any of the offence punishable under the provisions of MCOC Act against the accused. Point Nos.18 to 21 are answered in the negative.

356] In the light of above discussion, the accused Nos.1, 11 & 13 are convicted for the offences punishable under Sections 143, 147, 148, 149, 302 and 427 of the IPC.

357] At this stage I have heard the accused Nos. 1, 11 & 13 as well as their advocates on the point of sentence. Accused have not made any submissions. Their advocates have prayed to impose minimum sentence. According to ld. Special Public Prosecutor Mr. Vilas Patare, sentence of life imprisonment would be just and proper.

358] As the accused are convicted under Section 148 of the IPC, which is the aggravated form of offence under Section 143, 147, there is no need to convict them separately for the offence under Section 143 and 147 of the IPC.

359] Directing the accused Nos.1, 11 and 13 to suffer rigorous imprisonment for a period of 3 years for the offence punishable under Sections 143, 147, 148, 149 of the IPC and to suffer rigorous imprisonment for a period of 2 years for the offence punishable under Section 427 of the IPC, will be just and proper.

360] The prescribed punishment for the offence punishable under Section 302 of the IPC is death or imprisonment for life. The normal sentence for murder is imprisonment for life. Hon'ble Supreme Court in a case

Bacchansing V/s. State, 1980 Cri.L.J.636 SC and Machhising V/s. State, 1983 Cri.L.J. 1457 SC has laid down guiding principles as to when the death sentence can be awarded. It can be awarded in the rarest rear case. Although it is a case of brutal murder, committed in broad day light and at one of the busiest traffic signal of Pune city, this alone cannot be a sufficient circumstance for imposing death penalty.

361] Therefore, if the accused Nos.1,11 and 13 are directed to suffer life imprisonment and fine of Rs.1,000/- each, same will be just and proper.

362] In view of aforesaid discussion following order is passed :

ORDER

1] Accused No.1 Sachin Nivrutti Pote, accused No.11 Jameer Mehboob Shaikh and accused No.13 Santosh Ramchandra Lande are convicted vide Section 235(2) of the Code of Criminal Procedure, for the offences punishable under Sections 143, 147, 148, 149, 302 and 427 of the Indian Penal Code, 1860.

2] Each of them is directed to suffer imprisonment for life and to pay fine of **Rs.1000/- (Rupees One Thousand only)** for the offence punishable under section

302 of the Indian Penal Code, 1860. In default of payment of fine, each of them is directed to suffer rigorous imprisonment for a period of **Six months**.

3] Each of them is directed to suffer rigorous imprisonment for the period of **three years** for the offences punishable under sections 143,147,148,149 of the Indian Penal Code, 1860.

4] Each of them is directed to suffer rigorous imprisonment for the period of **two years** for the offence punishable under section 427 of the Indian Penal Code, 1860.

5] Accused No.1 Sachin Nivrutti Pote, accused No.11 Jameer Mehboob Shaikh and accused No.13 Santosh Ramchandra Lande are acquitted, vide Section 235(1) of the Code of Criminal Procedure, of the offences punishable under Sections 307, 341, 120-B, 109 of the Indian Penal Code, 1860, under Sections 3(25), 4(25) of the Arms Act, under Section 37(1) r/w. 135 of the Maharashtra Police Act, and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of The Maharashtra Control Of Organized Crime Act 1999.

6] The accused Nos. 3 to 10 & 14 to 18 are hereby acquitted vide Section 235(1) of the Code of Criminal Procedure, of the offences punishable under Sections 143, 147, 148, 149, 302, 341, 427, 120-B, 109 of the Indian

Penal Code, under Sections 3(25), 4(25) of the Arms Act, under Section 37(1) r/w. Section 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of The Maharashtra Control Of Organized Crime Act 1999.

7] Accused No.1 Sachin Nivrutti Pote was behind the bars from 07.10.2006 to 24.01.2014, accused No.11 Jameer Mehboob Shaikh was behind the bars from 25.10.2006 to 25.10.2007 and accused No.13 Santosh Ramchandra Lande was behind the bars from 25.10.2006 to 01.02.2011. They are entitled for set off for the period of detention they have undergone, under Section 428 of the Code of Criminal Procedure.

8] All the substantive sentences of imprisonment shall run concurrently.

9] Accused No.1 Sachin Nivrutti Pote, accused No.11 Jameer Mehboob Shaikh and accused No.13 Santosh Ramchandra Lande shall surrender their bail bonds.

10] The bail bonds of the accused Nos. 3 to 10 & 14 to 18 are hereby cancelled.

11] The accused Nos.3 to 10 and 14 to 18 are directed to furnish bail of Rs.15,000/- each under Section 437-A of the Code of Criminal Procedure.

12] The interim custody of muddemal properties such as Hero Honda Splendor motorcycle bearing No.MH-12-BT 5203, Hero Honda Splendor motorcycle bearing No.MH-12-DF-8721, Hero Honda Splendor motorcycle bearing no.MH-12-DB-9755, Hero Honda motorcycle bearing No.MH-12-CN-7468, Hero Honda motorcycle bearing No.MH-12-CS-7611, Bajaj Wind motorcycle bearing No.MH-12-BZ-5653, Mahindra and Mahindra Scorpio car bearing No.MH-12-CY-0082, Qualis car bearing No. MH-12-BP-2872 is already given to its rightful owners, the said orders are made absolute. As per the report of Kothrud Police Station the muddemal property i.e. Yamaha Motorcycle bearing No. MH-20-AH-6121 and Bajaj Motorcycle No.MH-12-BL-833 are already sold in auction and sale proceeds have been credited to government.

13] The muddemal properties i.e. 5 sickles, 2 choppers, 5 empty shells, magazine, 8 live cartridges, Kukari, 3 bullets, 2 country made revolvers be sent to District Magistrate, Pune for disposal according to law.

14] The muddemal property such as Helmet, clothes, pieces of glass, paper files, box files, books, letterhead books, report books, executive diary, Chappal pair be destroyed.

15] The muddemal property such as 6 Nokia mobile handsets, 1 Reliance mobile handset, 2 Samsung mobile handsets be sold in public auction and the sale proceeds be

credited to government.

16] The seized cash be credited to government.

17] The order regarding disposal of muddemal property shall be effective, after expiry of an appeal period.

18] Copy of this judgment be given to the accused Nos.1, 11 and 13 free of cost.

19] The accused have been explained their right to appeal against the order of this Court.

(Dictated and pronounced in open Court.)

Sd/-

Pune.

(A.N.Sirsikar)

Date: 22.07.2021

Additional Sessions Judge &
Addl. Special Judge under MCOC Act,
Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno: Mrs. D.D.Deshpande, Steno (Grade-I)

Court name: Shri. A.N. Sirsikar
Additional Sessions Judge and Spl Judge,
Pune.

Date of Judgment : 22.07.2021.

Judgment signed by presiding officer on: 22.07.2021.

Judgment uploaded on: 23.07.2021