

SESSIONS CASE NO.188-2011

Registered on : 01.03.2011.Received on : 25.02.2011Decided on : 17.11.2022.

Duration : 11 08 16
 Years Months Days

SESSIONS CASE NO.788-2011

Registered on : 19.11.2011.Received on : 19.11.2011.Decided on : 17.11.2022.

Duration : 10 11 29
 Years Months Days

SESSIONS CASE NO.01-2020

Registered on : 01.01.2020.Received on : 01.01.2020.Decided on : 17.11.2022.

Duration : 02 10 16
 Years Months Days

Exh-249

IN THE COURT OF MCOCA SPECIAL JUDGE AT GREATER BOMBAY

(Exclusive Special Court constituted for the cases under
 MCOCA/TADA/POTA AND OTHER SESSIONS CASES
 against the accused-Rajendra Sadashiv Nikalje @ Chhota Rajan)

SESSIONS CASE NO.188 OF 2011
 (CNR NO. MHCC02-001909-2011)

ALONGWITH

SESSIONS CASE NO.788 OF 2011
 (CNR NO. MHCC02-009887-2011)

ALONGWITH

SESSIONS CASE NO.01 OF 2020
 (CNR NO. MHCC02-000008-2020)

The Central Bureau of Investigation, New Delhi (vide R.C.No.8(S)/2018/CBI/SCU-VI/Mumbai) & **The State of Maharashtra** (at the instance of DCBCID, Mumbai, C.R.No.107/2009, Nagpada Police Station, C.R. **Prosecution** No.207/2009)

Versus.

- 1) **Mohd. Ali Jaan Mohd. Shaikh @ Sameer,**
(Presently lodged in Mumbai Central Prison)
age : 38 years, Occupation : Toy Selling, R/o. Ramzan Ali Macchiwala Chawl, Room no.22, 4th Floor, 33-A, Tandel Street, Dongri, Mumbai-400 009.
- 2) **Pranay Manohar Rane @ Nana,**
(Presently lodged in Mumbai Central Prison)
age : 47 years, Occupation : Electrician & Plumber, R/o. Ankur Apartments, 4th Floor, Room no.406, Shastri Nagar, Vasai (West), Dist.Thane.
- 3) **Umed-ur-Rehman Ishrat Hussain Shaikh,**
(Presently lodged in Mumbai Central Prison)
age : about 38 years, Occupation : Restaurant, R/o. Amar Garden Complex, 'J' Wing, Flat no.301, Kausa-Mumbra Road, Opp. Kalsekar Hospital, Dist.Thane.
- 4) **Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Boss,**
(Presently lodged in Tihar Jail, Jail No.2, New Delhi) Age : 65 years (D.O.B. : 13.01.1957), Occupation : Business, R/o. 6/192 & 6/120, Tilak Nagar Colony, Chembur, Mumbai – 400 089, **Accused** Maharashtra.

**CORAM : HIS HONOUR THE SPECIAL JUDGE,
MCOCA/ POTA/NIA/TADA AND ADDL.
SESSIONS JUDGE SHRI A.M. PATIL**

C.R.NO. : 57.

DATE : 17.11.2022.

SPP Mr. P.D. Gharat for CBI/prosecution.
Adv. Mr. Nitin Sejpai for accused no.1 and 2.
Adv. Mr. Prakash Shetty for accused no.3.
Adv. Mr. Aakash Pandey a/w Adv. Mr. Sudeep Pasbola for accused no.4

JUDGMENT

(DICTATED IN OPEN COURT)

1. The accused are charged for the offences punishable under Sections 302, 307, 120B and 34 of the IPC, Section 27 of the Arms Act and Section 37(1)(a) of the Maharashtra Police Act, which is punishable u/s.135 of the said Act. All the accused are under trial prisoners.

2. It is the case of prosecution that on 29.07.2009, at 08.45 pm, when Chhote Miyan, Arshad Abrar Hussein, Abdul Wali Abdul Wahab Qureshi and Jagbhavan @ Jagmohan Ramlal Pal had present under the shed situated near Compound Gate, Opp. Ali Tower, Nagpada, Mumbai. Accused nos.1 and 2 armed with revolvers came there and opened fire on the above persons. After firing, accused nos.1 and 2 ran away from the spot. When Zahid Gulam Hasan Mir @ Chhote Miyan and Arshad Abrar Hussein were taken to Sir J.J. Hospital, they were declared 'brought dead'. In the said firing Abdul Wahab Qureshi and Jagbhavan @ Jagmohan Pal also sustained injury. Police Station, Nagpada registered Crime No.207/2009 under the above Sections.

3. On 01.08.2009, the case was transferred to DCB-CID, Unit-III Mumbai and registered vide DCB-CID, C.R. No.107/2009.

4. On 23.10.2010, accused nos.1 and 2 were arrested by Mumbai Police vide Crime No.DCB-CID 103/2010 under Section 379 r/w. 34 of

IPC. Police recovered one revolver 'TITAN TIGER' and four live cartridges were recovered on 27.10.2010. Accused nos.1 and 2 had disclosed their involvement in this case and also, in firing case of Aasif Dadhi. The weapon was sized from accused no.2 and it was sent to Ballistic Expert, FSL, Kalina, Mumbai for forensic examination. During identification parade, accused nos.1 and 2 were identified by the eye witnesses as the same who fired on the deceased and injured. After completion of investigation, DCB-CID, Mumbai filed charge-sheet against accused nos.1 and 2.

5. In the further investigation, it transpired that on the day of commission of crime, the accused no.3 was driving white color Maruti Esteem Car and after committing crime, accused nos.1 and 2 fled away from the spot in the said car. Accused no.3 was arrested on 21.07.2011. It was also transpired during investigation with accused no.3 that he carried out firing on the deceased on the instructions of Chhota Rajan i.e. accused no.4 because deceased and injured were belonging to the gang of 'Dawood Ibrahim'. It also transpired that accused no.3 was in constant touch with accused no.4 through mobile phone. During personal search of accused no.3, mobile phones, SIM cards, Bank receipts etc. were recovered and seized by the Police. The mobile phone was make of model 'Nokia 2690' and it was used for global SIM card. In the CDR of the said global SIM card from dated 01.09.2010 to 11.09.2011, all calls were incoming and there are 17 incoming calls from number +3444 which was using by accused no.4 Chhota Rajan. During investigation, it also transpired that after arrest of accused nos.1 and 2, accused no.3 fled to Goa because of apprehension of arrest. Thereafter, police filed supplementary charge-sheet against him by showing accused no.4 and one 'Guddu' as wanted accused.

6. Accused no.4 Chhota Rajan had given telephonic interview to one news reporter Jitendra Ram Dixit of Star News in the month of June-2010 and the conversation was broadcasted on 'Star News' and 'Star Majha' News Channels in the June-2010. Jitendra Ram Dixit had saved the conversation in his personal blog 'address to the nation' on his blog site, wherein, accused no.4 framed that he got the firing on Chhote Miyan and Aasif Dadhi. Again, on 19.05.2011, the reporter received another call from accused no.4 and had telephonic conversation. In the said conversation, accused no.4 clearly said that accused no.3 was his henchman and had carried on firing on Chhote Miyan and Aasif Dadhi on his behalf. The said news was broadcasted on Star News on 19.05.2011.

7. During further investigation, Police did not find complicity of one 'Guddu', a wanted accused in the crime. No evidence against 'Guddu' as emerged in this case and since he had divulged certain incriminating facts against accused no.4, he has been taken as a witness in this case.

8. Police found that the conspiracy was hatched by accused no.4 and executed by accused nos.1 to 3. They also found that accused no.3 was in direct contact with accused no.4 and also found that the murder of Chhote Miyan was the result of gang war between 'Chhota Rajan and Dawood Ibrahim'.

9. Considering the contents of the papers of investigation and after hearing the learned advocates for the State and accused, on 01.08.2014 and 18.07.2018, my learned predecessors has framed charge against accused nos.1 to 3 at Exh.19 & 19-A and separate charge against the

accused no.4 at Exh.58 for the offence punishable under Sections 302, 307, 120B and 34 of the IPC, Section 27 of the Arms Act and Section 37(1)(a) of the Maharashtra Police Act, which is punishable u/s.135 of the said Act and pleas of accused nos.1 to 4 are recorded at Exh.20 & 20-A, Exh.21 & 21-A, Exh.22 & 22-A and Exh.59 respectively. The contents of charge were explained to the accused in vernacular to which they pleaded not guilty and claimed to be tried.

10. The prosecution, thereafter, examined Jagmohan Ramlal Pal (PW-1), Abdul Wali Qureshi (PW-2), Sadanand Pundalik Kanade (PW-3), Ashok Bhuvaneshwar Thakur (PW-4), Divakar Gudda Shetty (PW-5), Kaisar Saifuddin Daudwala (PW-6), Bhagwan Singh Baghsingh Thakur (PW-7), Ajit Vasant Jadhav (PW-8), Nasir M. Khan (PW-9), Mohammad Rashid Khalil Ahmed Qureshi (PW-10), Vijay Madhavrao Kore (PW-11), Dr. Bhalchandra Gopinath Chikhalkar (PW-12), Vijay Hari Rathod (PW-13), Anil Narayan Gangawane (PW-14), Deepak Narayan Jadhav (PW-15), Dr. Yogesh Balasaheb Dukare (PW-16), Smt.Ashwini Ashok Powale (PW-17), Jitendra Ram Dixit (PW-18), Imran Mirchi (PW-19), Mohd. Kayum Mohd. Khawaz (PW-20), Sachin Digambar Adivrekar (PW-21) , Pramod Savlaram Karanje (PW-22), Deepak Jagannath Kundal (PW-23), Suresh Shankarrao Magdum (PW-24), Ramchnadra Putalaji Tanawade (PW-25), Deepak Rajaram Chavan (PW-26), Avdhut Shivaji Chavan (PW-27), Gulrez Hassan Jafari (PW-28), Puran Kumar (PW-29), Salis Luis Fernandes (PW-30), Santosh Atmaram Bagwe (PW-31), Aariz Chandra (PW-32), Shashikant Jagganath Khanolkar (PW-33), Amey Ashok Karekar (PW-34), Sanjay Prabhu Kamble (PW-35), and Nandkumar Maruti Gopale (PW-36). Thereafter, the prosecution filed evidence close pursis at Exh.223.

11. Thereafter, on 04.03.2022, the Court recorded statements of accused nos.1 to 3 and accused no.4 under Section 313 of the Code of Criminal Procedure at Exh.237 and 238 respectively. In the statement, the accused have taken defence to have implicated them falsely in this offence

12. From the above facts, following points arise for my consideration and I have recorded my findings thereon for reasons hereinafter stated :-

Sr. no.	Points	Findings
1	Does the prosecution prove that the death of Chhote Miyan and Arshad Abrar Hussein is homicidal?	Yes.
2	Does the prosecution prove that the accused in furtherance of their common intention committed murder of Chhote Miyan and Arshad Abrar Hussein ?	No.
3	Does the prosecution prove that accused in furtherance of their common intention attempted to kill Abdul Wali Abdul Wahab Qureshi and Jagbhavan @ Jagmohan Ramlal Pal ?	No.
4	Does the prosecution prove that the accused in pursuance of the criminal conspiracy committed murder of Chhote Miyan and Arshad Abrar Hussein ?	No.
5	Does the prosecution prove that in pursuance of criminal conspiracy the accused used firearms and ammunition without holding the license issued in accordance with the provisions of the Arms Act in contravention of	

Section 5 and thereby committed an offence punishable u/s.27 of the Arms Act ? No.

6 Does the prosecution prove that in pursuance of criminal conspiracy the accused carried firearms for causing physical violence, in violation of the Notification publicly promulgated in the area and thereby the accused have committed an offence u/s.37(1) (a) of the Maharashtra Police Act, which is punishable u/s.135 of the said Act ? No.

7 What order ? Accused are acquitted.

REASONS

AS TO POINT NO.1

13. To prove the homicidal death, the prosecution examined eye witnesses Jagmohan (PW-1), Abdul Wali (PW-2), Ashok Thakur (PW-4), Mohd. Rashid (PW-10) and other witnesses namely Bhagwan Singh (PW-7), Dr. Bhalchandra Gopinath Chikhalkar (PW-12) and Dr. Yogesh Balasaheb Dukare (PW-16).

14. In the evidence of Jagmohan (PW-1), it came on record that on 29.07.2009, Zahid Meer and his nephew Arshad Abrar had sat on plastic chairs under the shed which was opened from all sides. Abdul Wahab Qureshi (PW-2) was standing near Chhote Miyan and Ashok (PW-4) was doing some work near him. He heard sound of firing in between 08:30 pm to 08:45 pm and also heard word uttered by Zahid Meer as "Abe". He saw accused nos.1 and 2 holding revolvers. He further deposed that when he stood from the chair, one bullet penetrated in upper portion of his left thigh. He saw Abdul Wahab Qureshi (PW-2) in the lying condition on the ground. People present

nearby were running away after hearing sound of firing and then, accused nos.1 and 2 also ran away from the spot. He went near Chhote Miyan. He found Arshad sustaining bullet injuries. Chhote Miyan had sustained injuries on his head and his head was bowed down. Abdul Qureshi (PW-2) had also sustained injury of bullet on his right hand. He raised shout and thereafter, 4 to 5 persons came and took them in Sir J.J. Hospital in a taxi. He further deposed that Arshad and Chhote Miyan succumbed to the injuries.

15. In the evidence of Abdul Wali (PW-2), it came on record that in the year 2009, on the day of incident, he was with Chhote Miyan. Chhote Miyan had sat at some distance along with Arshad, Jagmohan and Ashok. He further deposed that incident took place at around 08:20 pm. He heard the sound of firing. He received a bullet injury on his right hand. He saw accused nos.1 and 2 while firing. After the incident, he was taken to Sir J.J. Hospital for treatment by the people who had gathered on the spot by way of taxi along with Arshad Bhai. He further deposed that Arshad and Zahid expired in the hospital and he was admitted there for 18 days for treating bullet injury on his right hand. He was operated in the Sir J.J. Hospital. He further deposed that Police recorded his statement in the hospital. He narrated about the assailants and the incident. He had sustained injury to his right hand, therefore, police obtained thumb impression of his left hand on his report (Exh.66).

16. In the evidence of Ashok Thakur (PW-4), it came on record that at the time of incident i.e. in the year 2009, he was working with Chhote Miyan. He used to do miscellaneous work as servant along with Jagmohan Pal. He further deposed that Chhote Miyan was the owner of

Firdos Guest House. On 29.07.2009, at about 08:30 pm to 09:00 pm, when Chhote Miyan had sat on the chair in front of Taj/Ali Towers along with him, his nephew Arshad Bhai, Pappu Qureshi and Jagmohan. That time accused nos.1 and 2 came there and opened fire on the head and chest of Chhote Miyan. Pappu Qureshi caught hold the person who fired, but, accused fired at the Pappu also and thereby, he fell down. Arshad was also fired by the accused. Jagbhavan also sustained bleeding injuries on his leg. Thereafter, he himself and Jagmohan took Chhote Miyan in the Sir J.J. Hospital by taxi.

17. In the evidence of another eye witness i.e. Mohd. Rashid (PW-10), it came on record that on 29.07.2009, at about 08:30 pm, he was smoking at Arab Galli, at that time, one white color Maruti car came from the side of 'दो टाकी'. Accused nos.1 to 3 got down from the car and went towards Ali Towers. Public were running here and there because of firing and accused were towards the car. They were having firearm in their hands. They boarded in the car and went away.

18. Apart from these eye witnesses, prosecution also examined Bhagwan Singh (PW-7). In his evidence, it came on record that on 30.07.2009, he was returning towards home. When he came near Arab Galli at the junction of Taj Cinema, he found crowd and therefore, he went there. Police was present there. One police constable asked him to help them and therefore, he expressed his willingness to act as panch. Police Constable introduced him with the Police Officer. He told his name to them. Police were writing something. Four chairs were inside the shed of Tarpatri on the footpath. Chairs had lain in scattered condition having blood stains on the two chairs. One chappal had also lain near the chair and its pair was at some distance. There was blood

on the chappal. One part of bullet also found there having blood on it. There was one small wooden cupboard and telephone instrument had put on it. At some distance, there was a car of silver color. Police note down its number. Police collected blood and soil from the spot and prepared panchanama (Exh.83).

19. So as to bringing of injured in the Sir J.J. Hospital is concerned, the prosecution examined Dr. Yogesh Balasaheb Dukare (PW-16). In his evidence, it came on record that on 29.07.2009, from 06:00 pm to 11:00 pm, he was on the rotational duty. At about, 08:55 pm, a patient namely Arshad Abrar was brought to his casualty department. His relatives gave history of trauma to head due to bullet at about 08:45 pm in front of Taj Theater. He examined Arshad Abrar. He did not find blood pressure, respiratory sound and moments. Heart sound was also absent. Pupils were fixed/dilated and ECG was flat. On local examination, he found one entry wound at left front parietal region of skull 0.5 c.m. in diameter. There was haematoma around the entry wound 4.00 c.m. X 3.00 c.m. in diameter. There was another entry wound over upper back just lateral to the thoraxis spine at T2, T3 level on left side around 0.5 c.m. in diameter. From all theses findings, he declared him as dead at 9:15 p.m. and body was handed over to P.C.No.25754 of J.J. Marg Police Station for further action. He prepared death summary of deceased as per Exh.137.

20. To prove the death of deceased Chhote Miyan and deceased Arshad Abrar to be homicidal death, the prosecution also examined Dr. Bhalchandra Chikhalkar (PW-12) to prove autopsy report of the dead bodies of Chhote Miyan and Arshad Abrar. In his evidence, it came on record that on 30.07.2009, he was on 24 hours postmortem duty. Dr.

M.E. Bansode and Dr.S.S. Bhise resident doctors were present along with him. Other Doctors namely Dr.G.D. Niturkar and Dr.R.G. Peddawad were also present. On that day, dead body of Arshad Abrar was brought to the hospital at 10:00 am and the dead body of Chhote Miyan was brought at 11:30 am. Both dead bodies were sent for autopsy by Nagpada Police Station. Simultaneously, the postmortem on both the dead bodies was performed. They started autopsy at 12:00 noon and completed at 01:30 pm. He further deposed that as per the inquest, the deceased had history of firearm injury by unknown persons on 29.07.2009 at 08.45 pm in front of Taj Theater Nagpada, Mumbai.

21. During autopsy, he found following external injuries on the dead body of Arshad Abrar:-

- (i) Firearm entry wound over left parietal region of scalp 0.5 cm in diameter situated 6 cm above left ear, 7 cm from lateral end of left eyebrow and 8.5 cm from top of head. On dissection, bullet passes through scalp, left parietal bone, left parietal lobe, right parietal lobe and lodged in posterior crnialfossa. One deformed bullet retrieved from their. Entire crack is lacerated and hemorrhage. Evidence of tattooing seen around the wound of entry over scalp.
- (ii) Firearm entry wound over upper back situated 9 cm below neck and 3 cm from medial margin of scapula at T3 (third thoracic vertebra) level, 0.5 cm in diameter, evidence of tattooing seen. On dissection, bullet passes through skin, subcutaneous tissue, intercostal muscle, left pleura, lower lobe of left lung, stomach, left lobe of liver and lodged in subcutaneous tissue of right lumber region. Entire track is lacerated and haemorrhagic.

- (iii) Graze abrasion over top of right shoulder 5x2 cm in size bright red in color.
- (iv) Abrated contusion over right lumbar region 0.5x0.5 cm in size corresponding to side from which bullet of injury no.2 was retrieved.

22. He further deposed that all the above injuries were antemortem. He expressed his opinion as to receiving of first injury mentioned in column No.17 at injury no.2 is possible if the person bend down in sitting position. He also found that the injury to the head was in the form of disfused haemorrhage under scalp over left fronto parietal region and contusion under scalp of size 4 cm x 2 cm over left parietal bone corresponding to injury no.1 of column no.17. Brain was lacerated. Left pleura lacerated. Lungs were pale. Left lung lacerated. 1000 cc fluid blood found in abdominal cavity. Stomach and liver was lacerated, Spleen and kidneys were pale. He further deposed that accordingly, he expressed his opinion as to cause of his death was haemorrhage and shock due to firearm injury. He also deposed that internal injuries, all are sufficient to cause death in ordinary course of nature and there was no chance of survival. He also deposed that rigor mortis was present and generalized over the body. There was no signs of decomposition and postmortem lividity was present on back except pressure points. He prepared postmortem report (Exh.106). He also opined that the distance of firing range must have been closed. Accordingly, death certificate (Exh.107) was also issued.

23. He further deposed that on the same day, during autopsy of dead body of Chhote Miyan, he found following external injuries :-

- (i) Firearm wound of entry seen on left fronto parietal region of size 0.7 diameter. Margins red colored inverted. Abrasion collar present. Wound is situated 8 cm above left ear, 5.5 cm left lateral to the midline, 174 cm above the heel and 7 cm above left eyebrow. No evidence of tattooing, blackening, burning and seining.
- (ii) Firearm wound of entry of size 1.5 cm X 0.5 cm present on chest at first intercostal space 3 cm left lateral to the midline, 19 cm from tip of the left shoulder, 18 cm below chin, 16 cm above and medial from left nipple. Margins of the wound red colored inverted. Abrasion collar present. No evidence of tattooing, blackening, burning and seining.
- (iii) Firearm wound of entry of size 1 cm X 0.5 cm present on right side of chest in fifth intercostal space situated 6 cm right lateral to the midline, 6 cm medial to right nipple, 24 cm below right shoulder blade. Margins of the wound red colored inverted. Abrasion collar present. No evidence of tattooing, blackening, burning and seining.
- (iv) Firearm wound of exit present on left occipital region of size 0.5 cm X 0.7 cm situated 11 cm from left ear 8 cm left lateral to midline. Margins are everted and red.

24. Out of the above four injuries, three were entry wound and one was exit wound. On dissection, he noted following track of bullets as under :-

- (i) Track 1- Firearm bullet pierces through the injury no.1 with infiltration of blood under the skin, goes through scalp, skull bone (fronto parietal region), duramater, frontal lobe anteriorly to the occipital lobe (left of brain), traversing the brain matter.

Bullet exit through injury no.4 by fracturing skull and scalp. Old track is red hemorrhagic. Direction of track anterior to posterior above downwards.

- (ii) Track 2- Firearm bullet entered through injury no.2 with infiltration of blood under the skin at first intercostal space. Bullet traversed trachea (fracture of tracheal ring fourth and fifth) to through and through injury in upper lobe of right lung piercing the muscles of posterior wall of right chest and bullet pierced 3rd intercostal space posteriorly. Bullet recovered subcutaneously and preserved for ballistic examination. Old track is red hemorrhagic. Direction of track left to right, medial to lateral oblique above downwards.
- (iii) Track 3- Firearm bullet entered through injury no.3 with infiltration of blood under the skin through the skin, subcutaneous fat, diversing the subcutaneous fat upto 8th intercostal space. Bullet entered abdominal cavity by piercing 8th intercostal space and fracturing 8th rib anteriorly on right side, piercing right side diaphragm. Bullet recovered in between liver and diaphragm. Direction of track anterior to posterior, above downwards right to left, oblique.

25. He further deposed that all the above injuries were antemortem and fresh and caused by firearm. He also found following internal injuries on the head and brain of Zahid Gulam Hasan Meer :-

- (i) Subgallial and subperisteal haemotom seen at left parieto temporal region and left parieto occipital region under the scalp of size 16 x 14 cm in red colored.
- (ii) Fracture of skull at left fronto parietal region, circular of size 1.5 cm diameter.

- (iii) Fracture of skull on left occipital region of size 1.5 cm diameter.
- (iv) Brain edematous and pale, lacerated with hemorrhagic lacerated track of firearm injuries with massive extradural hemorrhage, fronto parietal and occipital region. Subdural and subarechnoid as well as intracerebral hemorrhages seen in the brain.

26. He also found internal injuries in thorax :-

- (i) Fracture of left 1st intercostal space infiltration of blood along the line.
- (ii) Fracture of right intercostal space anteriorly and 8th rib anteriorly. Infiltration of blood seen.
- (iii) Fracture of 3rd intercostal space posteriorly on right side. Infiltration of blood seen.
- (iv) Pleura lacerated at right side.
- (v) Fracture of tracheal ring (4th and 5th).
- (vi) Right and left lung through and through perforating injury present at upper lobe right lung. Track is red hemorrhagic. Left lung intact. Both lungs pale.

27. He also found 1500 CC fluid and clotted blood present in the abdomen. As per his opinion, the cause of death is due to haemorrhage and shock due to firearm injuries. Afterwards, he prepared postmortem notes (Exh.108) and issued death certificate (Exh.109).

28. Lastly, he deposed that he recovered one bullet from the dead

body of Arshad and two bullets were recovered from the dead body of Chhote Miyan. Those bullets were recovered from the description of injuries as mentioned in column No.17 of the postmortem report. He sealed those bullets in container and also affixed label. He forwarded those bullets for ballistic examination to FSL, Kalina through Police. In such circumstances, it is proved that the death of Chhote Miyan and Arshad was caused due to bullet injuries. It means it is caused by the revolver. Thus, it is proved that the death of deceased persons is homicidal. Hence, I answer point no.1 in affirmative.

AS TO POINT NO.2

29. To prove charge against the accused nos.1 to 3, Prosecution examined eye witnesses viz. Jagmohan (PW-1), Abdul Wali (PW-2), Ashok (PW-4) and Mohd. Rashid (PW-10). Already their deposition has been discussed in the above paragraphs and hence, avoided to repeat the same.

30. To appreciate the evidence, it is also necessary to scrutinize the cross-examination of the above witnesses. In the cross-examination of the Jagmohan (PW-1), his testimony is that after the incident he was admitted in the J.J. Hospital for two days. He was taken there in a taxi. Some persons who were present on the spot had placed him in a taxi. He reached in the hospital at around 9 p.m. When he went there, he met with a constable. At that time constable did not make any enquiry with him. Later on, that constable made an enquiry with him. At that time his statement was not recorded. His treatment was started after 30 minutes of his admission in the hospital. His cloths were drenched in

the blood. After, 10-15 minutes police came there to enquire him. He was not feeling giddiness by the bullet injury. His statement was recorded in the hospital only once and there after no statement was recorded. It also came on record that his statement was not recorded on 29th but it was recorded on 30th i.e. one day later. Even his cloths were not seized by police. It was collected by the staff of the Hospital. No bullet was recovered from his body. He had taken discharged from the hospital on his own and thereafter he admitted in the Ravi Surgical Hospital. Police did not collect his medical papers. Even he did not go to Nagpada Police station to submit his medical papers and he was never called in the crime branch after the incident.

31. His statement was recorded by Deepak (PW-23). In his evidence it came on record that on 29.07.2009 at about 10.00 p.m., he went to J.J. Hospital and met injured Jagmohan (PW-1). He recorded his statement. He also deposed that constable Rathod took possession of the cloths of the injured and handed over to him.

32. The material contradiction and omission came in the evidence of Jagmohan (PW-1). During cross-examination he admitted that it did not happen that Abdul Wali Qureshi was running and he fell down in from of him i.e. portion marked-A. Even it came on record that it did not happen that as he chased the assailants, they fired on him. It also did not happen that the assailants fired at Chhote Miyan also. i.e. the portion marked-B. Both these portion marked were proved in the evidence of Deepak (PW-23) and those are marked as Exh. 171 (Colly.)

33. Even some omissions were proved by the defence from the cross-examination of the Jagmohan (PW-1). During cross-examination, he deposed that while giving statement he had stated to the police that after the incident Chhote Miyan had shouted “अबे”. He had also stated that after hearing the noise of firing he stood up from his chair and saw two persons standing near Chhote Miyan and Victim Arshad. He also heard noise of 3 to 4 bullet firing. Deepak (PW-23) deposed during cross-examination that Jagmohan (PW-1) did not state these facts to him while recording his statement. It is seen from the above depositions that Deepak is saying that he recorded statement of Jagmohan on 29.07.2009 and Jagmohan is saying that his statement was recorded by the Police on 30.07.2009. Jagmohan (PW-1) says that his cloths were taken by staff of hospital and Deepak is saying that constable Rathod had taken his cloths. This testimony of the witness does not inspire the confidence on the evidence of Jagmohan (PW-1) and it creates doubt.

34. Now it is also necessary to scrutinize the cross-examination of the Abdul Wali (PW-2). In his cross-examination it came on record that he was in the J.J. Hospital for 18 days. Except his statement, Statements of others were not recorded. After discharged from the hospital, he went to his village Jaunpur by train. After going to Jaunpur, he did not receive any phone call from police. It also came on record that when he was taken in the hospital, no EPR constable (Emergency Patient Registrar) was on duty. He was admitted there for 30-45 minutes. Police came there after 10-15 minutes. At that time he was not under any medical treatment. He had given thumb impression to the police when he was in casualty ward. Afterwards his X-ray was taken and then he was taken to the operation theater. It also came on record that his statement was not recorded in presence of doctor. He also admitted that

at the time of incident some construction work was going on near the spot of incident. Chhote Miyan and his nephew Arshad had sat on the chair and he was standing at a distance of 10-12 feet from them. Then the firing occurred suddenly.

35. Further the material omission came on record in the evidence of this witness i.e. while giving statement to the police he had stated to the police that he had seen the assailants who had fired on the Chhote Miyan and Arshad but Police did not record the same in his statement.

36. It also came on record that incident took place suddenly and assailants left immediately after firing. He did not narrate the Police about the cloths worn. Even he did not narrate about the cloths of the injured and the deceased. Even he did not narrate about the cloths of the assailants. While giving statement he had not stated that on the day of incident he was near the spot of incident since 7.00 p.m. and Chhote Miyan, Arshad and Ashok had sat together. Upon perusal of the testimony of this witness it is seen that there is material omission and moreover his testimony does not inspire confidence that really he was the eye witness of the incident. Even his entire statement before police is doubtful since the police had obtained only his thumb impression.

37. Now another eye witness is Ashok (PW-4). In his cross-examination it came on record that he was in the hospital for whole night along with Sajid, Afzal, Salimbhai, Ismail Bahi and other relatives of Chhote Miyan. They were waiting for post-mortem. They received the dead body on 30.07.2009 at about 4.00 PM. to 5.00 PM. Police did not ask him anything about incident whole night. On 30.07.2009 when police took him in Nagpada Police station and told about the incident

for the first time and till then he did not disclose anything about the incident to anybody. It also came on the record that at the time of incident he was standing near the shed. Further it came on record that his statement was recorded in Marathi and read over to him in Hindi. He did not hear the shouts of Chhote Miyan but he heard the sound of firing of 5 to 6 bullets. He further admitted that his statement that he heard the shouts of Chhote Miyan in his statement is not correct. He also admitted that the portion marked-A to D in his statement were not recorded as per his statement. He also deposed that he had stated to the police that he was standing near Chhote Miyan and Jagmohan was standing at some distance. Two boys came there and fired at the head of Chhote Miyan. This cross-examination of this witness also shows that he is not trustworthy witness and does not inspire the confidence.

38. Lastly, it is necessary to scrutinize the cross-examination of the Mohd. Rashid (PW-10). In the very beginning of his testimony, the contradiction is brought on record that on 29.07.2009 at about 8.30 p.m. he was standing near the D.B. Marg Police Chowky on Maulana Shaukat Ali Road. It means his deposition in the examination in chief that at that time he was present at Arab Galli proved to be a false. It also came on record that he attended the Funeral of the Chhote Miyan on 30.07.2009 at about 5.30 p.m. to 6.00 p.m. He did not disclose about the incident to anybody even in the Funeral Procession also. He also admitted that he did not disclose about the incident to the police deployed in the area for protection. After funeral, he returned to home from the graveyard at about 8.00 p.m. to 8.30 p.m. Thereafter, he went along with his sister at Mohd. Ali Road for shopping. He did not disclose the incident to the sister also. Even he did not disclose the same to anybody till 02.08.2009. Then he met with the two police employee and

disclosed about the incident. They took him in the crime branch, unit III, near N.M. Joshi Marg Police station. There his statement was recorded by the police. He also admitted that he personally did not go to the Nagpada or J.J. Marg Police station.

39. During cross-examination by accused no. 3, it came on record that his statement was recorded after three months of the incident by crime branch officer and he was never called at Nagpada Police station. This testimony of this witness creates doubt on his evidence before the court. He himself is blowing hot and cold at the same time and therefore his testimony can not be believed.

40. The prosecution further examined Sadanand (PW-3). In his evidence, it came on record that on 29.07.2009, he had gone alone to the Sir J.J. Hospital to see Chhote Miyan. Many people had gathered in the hospital. He saw one bullet injury on the forehead and middle of the chest of Chhote Miyan. The persons working in the hospital showed him the injuries on the body of Chhote Miyan. Thereafter, he put his signature on the inquest panchanama (Exh.68) which was written already. He further deposed that the other person also took his signature on the same.

41. The evidence of this witness is formal in nature. He is the pancha witness to the inquest panchanama (Exh.68). Nobody has disputed or raised question on the inquest panchanama. It is admitted fact the deceased died due to bullet injuries. It means definitely somebody has fired on the deceased by way of revolver.

42. In the evidence of Kaisar (PW-6), it came on record that on 11.08.2009, he was called by CBI at 4.15 pm in the area situated near Satrasta. When he went there, one witness namely Vaibhav and Mr.Kadam were present there. One bullet was lying near Liberty Store and footpath. Vaibhav took the bullet from his hand and throw it into the gutter. Thereafter, the said bullet was taken out by the BMC persons from the said gutter. Mr.Kadam took it in his possession and sealed it in a khaki envelope. He identified the said bullet and empty metal cover as the same as per Articles-29 and 30 and thereafter, Police prepared panchanama (Exh.81 colly.). He further deposed that while closing the shop, he picked up bullet which was lying in front of his shop.

43. The recovery of the bullet before this witness is concerned, until it is proved that the said bullet was with these accused and it was brought for firing on the deceased, the evidence of this witness is not much helpful to the prosecution. The said fact is absent in the evidence of the prosecution. There is no evidence on record as to this fact and therefore the recovery of bullet can not be itself a incriminating circumstances against the accused. Hence, the evidence of this witness is not useful in these facts and circumstances.

44. During investigation, Police interrogated accused no.2 and recovered revolver concealed by him. The prosecution examined Anil Gangawane (PW.14). In his evidence, it came on record that investigation of Crime no.103/2010 was entrusted with him. He was attached to Anti Theft Motor Vehicle Cell of DCB-CID as PSI. The

original crime of offence was registered with MRA Marg Police Station vide C.R. no.190/2010. On 23.10.2010, he arrested accused no.1 on suspicion from Dongri village. On the say of accused no.1, he also arrested accused no.2 vide arrest panchanama (Exh.116). After arrest of accused nos.1 and 2, he called two panchas and took personal search of accused nos.1 and 2. He found mobile phone having double SIM cards and Rs.180/- cash from accused no.1 and one mobile of Samsung company was found from accused no.2. He seized those articles and prepared panchanama (Exh.116).

45. Further, it came on record in his evidence that on 27.10.2010, when he was on duty, accused no.2 expressed his willingness to make voluntary statement. He called two panchas. In presence of panchas, accused no.2 told that he is ready to show the place where the firearm used in the offence was concealed. Accordingly, the memorandum statement of accused no.2 i.e. Exh.118 was prepared. Then, this witness along with panchas and accused no.2 proceeded to Vasai in Government vehicle. They went near Petrol Pump and Talav (lake). Near the school, accused showed a chawl. They met one old aged lady namely Vincent Fernandes. They went into the house. Above the top of the almirah, the articles were lying in scattered condition. Out of which, accused no.2 produce a revolver and cartridges kept in a plastic bag. He took the custody of revolver and four cartridges in presence panchas and prepared panchanama (Exh-118-A). The said revolver was of black color having handle of chocolate color and six chambers. He identified the said revolver as the same before the Court.

46. Prosecution did not examine any expert witness to prove that the

bullets injuries received by the deceased and injured were by the revolver recovered from the accused no. 2. Even prosecution did not prove the fact that the bullet injuries can be caused by the bullets recovered from the accused. Prosecution could have proved the said facts by examining the expert witnesses of forensic and doctors. But prosecution failed to prove the same.

47. At the time of argument, the learned advocate Shri Nitin Sejpal relied on the judgment of our Hon'ble Bombay High Court in the matter of **Rakesh @ Pintya Ramesh Rane Vs. The State of Maharashtra in Criminal Appeal No.257 of 2013** dated 01.10.2021. In this judgment, the Hon'ble High Court observed in para nos.46 to 49 as under :-

46. The next aspect is the arrest of Accused Nos.4 and 5 and recovery of the pistol at the instance of Accused No.5- Rakesh Rane. PW.25-Sr.PI Ganesh Gaikwad deposed that the investigation of the crime was handed over to him on 18 May 2010. He stated that on 17 May 2010, Uran Police Station had received a wireless message from Unit No.6 of Crime Branch, Chembur that to take over custody of Accused Nos.4, 5 and 6 who were booked in crime under the Arms Act and who had admitted their guilt in Crime No.45/2010, i.e. the one in question. PW.25 deposed that the police team obtained custody of Accused Nos.4, 5 and 6 on 19 May 2010. The Police Station at Chembur had seized the van in which Accused Nos.4, 5 and 6 were present. Three pistols ammunition were seized. The Prosecution has the examination report at Exh.286 that the cartridge (Exh.1) was test-fired through a pistol (Exh.5). The Prosecution has relied upon the examination report (Exh.172) that the cartridge fired from the pistol (Exh.5) and the empty shells of the cartridges with Exh.5- pistol. This aspect is put against the accused.

47. Mr.Gupte has argued at length on the aspect of anomaly between the size of bullets and the shells found on the spot as

mentioned in the spot panchanama. The spot panchanama (Exh.83) has specified that there were three empty shells of size 7.65 KF written on it and one live cartridge with 7.65 KF written on it. The Forensic Examination Report (Exh.172) mentions one intact cartridge with KF 7.65 and two 7.65 KF cartridges that were successfully fired through the pistol (Exh.5). The panchanama Ex.170 was drawn when Accused No.4 was searched, and the pistol was recovered. The cartridge had KF 7.65 written on it. P.W.18-API Nana Shinde attached to Chembur Police Station admitted that 7.62 mm and 7.65 mm are different cartridges. He admitted that cartridges seized under panchanama were 7.62 mm cartridges and that 7.65 mm cartridges were not seized under the panchanama. He also admitted that he had sent the firearms to the Ballistic Expert on 17 May 2010. He admitted that the examination report showed that the cartridges test-fired are of 7.65 mm.

48. Mr.Gupte made a grievance that an application was moved by the Prosecution below Exh.66 for correction in the panchanama in respect of the size of the cartridge, stating that it was mentioned as 7.62 due to inadvertence and this application was granted by the learned Sessions Judge when the advocate of Accused Nos.4 to 6 was absent. The Appellant stated It is to be noted that there was a mistake while panchanama was drawn at Chembur but the application was filed at the instance of Police Station, Uran. P.W.18-API Nana Shinde attached to Chembur Police Station; however, in his deposition had stressed that what was sent was 7.62 mm. He denied the suggestion that the cartridges sent were 7.65 mm in size and reiterated that they were 7.62 mm. There is, therefore, a clear anomaly between the pistols seized, cartridges found on the spot and the one sent to the forensic expert. As stated earlier, P.W.18- API Nana Shinde admitted that 7.62 mm and 7.65 mm are different cartridges. Therefore, this aspect is not conclusive as against the accused. Mr. Gupte rightly contends that even assuming that the cartridges were of 7.65 mm, all that could be put against the Appellants is that the pistol from which 7.65 mm bullets can be fired was found with Accused No.4 and this by itself will not be considered as basis for conviction.

49. Therefore, as regards Accused Nos.4 and 5, there is no trustworthy identification, and the recovery of the firearm and the cash also cannot be considered as corroborative evidence."

48. He further relied on the judgment of the Hon'ble Supreme Court in the judgment of **Pandurang Kalu Patil and another Vs. State of Maharashtra** reported in **2002 SCC (Cri) 371**. In this judgment, the Hon'ble Supreme Court observed in para nos.5 and 6 as under :-

"5. Even the recent decision in *State of Maharashtra v. Damu*, this Court followed *Pulikuri Kottaya* with approval. The fallacy committed by the Division Bench as per the impugned judgment is possibly on account of truncating the word "fact" in Section 27 of the Evidence Act from the adjoining word "discovered". The essence of Section 27 is that it was enacted as a proviso to the two preceding Sections (see Sec. 25 and 26) which imposed a complete ban on the admissibility of any confession made by an accused either to the police or to any one while the accused is in police custody. The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (investigating officer) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact. That is why Sir John Beaumont said in *Pulikuri Kottaya* that (AIR p.70, para 10) "it is fallacious to treat the "fact discovered" in the section as equivalent to the object produced". The following sentence of the learned law lord in the said decision, though terse, is eloquent in conveying the message highlighting the pith of the ratio (AIR p.70, para 10).

"Information supplied by the person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It

leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.(emphasis supplied)

6. Learned Judges in the impugned judgment laboured to show that the word "fact" can envelop an object also, and tried to project that the said aspect has not been taken into account by Their Lordships of the Privy Council. Here again we may repeat that the Division Bench had erred by not taking the import of the collocation of the words "discovery of a fact" as envisaged in Section 17. No doubt in a given case an object could also be a fact, but discovery of a fact cannot be equated with recovery of the object though the latter may help in the final shape of what exactly was the fact discovered pursuant to the information elicited from the accused. Thus the labour made in the impugned judgment by giving emphasis to the word "fact" disjuncted from the word "discovery" rendered the exercise in vain. Ratio in Pulikuri Kottaya thus remains unscathed."

49. In view of the ratio laid down in the above case, in the present case in hand, if suppose the police recovered the pistol and cartridge from the accused no. 2, then it was for the police to bring the evidence in respect of that those were used to do the crime. It must be brought on the record by the prosecution that the said weopan was used for firing on the deceased. Mere recovery of the weapon is not sufficient as per the above cited judgments and therefore this piece of the evidence is not much helpful to the prosecution.

50. Then, the prosecution examined Deepak Jadhav (PW.15) to prove the test identification parade carried out by him on dated 10.12.2010 as per Exh.134 and 134-A. Upon perusal Exh.134, it is seen that it is Test

Identification Parade panchanama carried out by this witness on 10.12.2010 in Central Prison, Arthur Road, Mumbai from 12:20 pm to 01:00 pm. It is also seen that as per the order of Collector, Mumbai City dated 08.12.2020, this witness along with panchas remained present in the said jail. He had taken care that prior to starting identification parade, witness and accused would not see to each other. He also asked to the witnesses and witnesses admitted that Police had not shown photographs of the accused. Two accused i.e. accused nos.1 and 2 were present on the spot where T.I.P. was to be carried out. He prepared two groups having six dummies in each group having the similar description as per the accused. In group no.2, accused no.1 stood at serial no.6 and in group no.1, accused no.2 stood at serial no.6. Thereafter, witness namely Jagbhavan Ramlal Pal (PW-1) was called to identify the accused in group no.1. Then, the said witness came and identified accused no.2 standing at serial no.6 by touching his hand and also identified accused no.1 standing at serial no.6 by touching his hand.

51. This witness had deposed that Jagmohan (PW-1) identified the accused no. 1 and 2 are the same in the TIP. So far as this evidence is concerned, the testimony of the Jagmohan (PW-1) is also important in respect of test identification parade. The corroboration to the evidence of this witness and Deepak (PW-26) by Jagmohan (PW-1) is necessary to prove the fact of identification substantially. Thus, the scrutiny of the cross-examination of the Jagmohan (PW-1) is also necessary. In his cross-examination it came on record that he had received the summon for attending the TIP (Test Identification Parade) and he directly went to the Arthur Road Jail after about one and half year to two years of the incident. He was taken in the jail after showing the summons. After

entrance one token was given to him and told him to wait in the hall situated in one shed. 10-12 persons had stood in the line for TIP. One or two persons had sat besides. All 12 dummies had different look. It also came on record that no body had asked him whether he had seen the accused at anytime after their arrest. Nobody asked him whether he had seen the photographs of the accused persons.

52. Even during cross-examination of Deepak Jadhav (PW-15), it came on record that it is not written in the panchanama Exh. 134 that he had selected the dummies. He also admitted that he did not ask witnesses whether the photographs of the accused have been shown to them by the police. He also admitted that he did not mention in Exh. 134 and Exh. 134-A that in which room the TIP was conducted.

53. In the cross-examination of Deepak (PW-26), it came on record that Collector office delayed the appointment of magistrate and Naib Tahasildar who was appointed was burdened with some other work.

54. It is also seen from the panchanama that thereafter, both accused changed their shirt and again accused no.2 stood at serial no.3 of group no.1 and accused no.1 stood at serial no.3 of group no.2. Thereafter, the another witness mainly Ashok Thakur (PW-4) was called. He came and identified both the accused as same.

55. Further in the evidence of the Deepak (PW-15), it came on record that the another witness Ashok Thakur (PW-4) identified the accused no. 1 and 2 as the same. It is necessary to see the cross-examination of

the Ashok (PW-4) and whether his testimony corroborates the evidence of Deepak (PW-15) and the Evidence of Deepak (PW-26). In the cross-examination of the Ashok (PW-4) it came on record that all the persons standing in the line for TIP were having different physical status. The TIP was carried out in the open ground and one police personnel had sat there. The said police personnel asked him to identify the accused and therefore he told about the accused to the said police employee.

56. It is also seen from the panchanama that thereafter, accused no.2 did not change his shirt and preferred to stand at serial no.5 in group no.1. But, accused no.1 changed his shirt and stood at serial no.3 of group no.1. Thereafter, the another witness mainly Mohd. Rashid (PW-10) was called. He came and identified both the accused as same.

57. Thereafter, in the evidence of the Deepak (PW-15), it came on record that the another witness Mohd. Rashid (PW-10) was called and he identified accused no. 1 and 2 as the same. In the cross-examination of the Mohd. Rashid (PW-10) it came on record that after the incident, he was available in Mumbai but he was called for the TIP after 3 to 4 months of the incident. He directly went to the Arthur Road Jail. He had not seen the other witnesses i.e. Jagmohan (PW-1), Ashok (PW-4) and Abdul Qureshi. It further came in his cross-examination that 18-20 persons were standing in the jail having different look.

58. It is also seen from the panchanama that thereafter, both accused changed their shirt and again accused no.2 stood at serial no.3 of group no.1 and accused no.1 stood at serial no.3 of group no.2. Thereafter, another witness mainly Vaibhav Patil was called. He came and identified

both the accused as same. But, prosecution did not examine Vaibhav Patil and only the testimony of Deepak Jadhav (PW-15) is not sufficient that too without any corroboration.

59. In the evidence of Smt.Ashwini Ashok Powale (PW-17), the Test Identification Parade is marked as Exh.142. It is seen from the panchanama Exh.142 that on 18.08.2011 at 11:50 am, she came to Arthur Road Jail, Mumbai along with two panchas and witness. The care was taken that accused and witnesses would not be seen to each other and also got confirmed that no photos of the accused were shown to the witnesses. Thereafter, she prepared a dummy group of six persons and accused no.3 Umed-ur-Rehman stood at serial no.5. Then, witness Mohd. Rashid (PW-10) came and identified accused by touching his hand who was standing at serial no.5.

60. It is also important to note that in the cross-examination of Abdul (PW-2) he identified the accused as the same before the Court after nine years and one month. Then the question arose why police did not carry out TIP of the accused by this witness during investigation. No reason is mentioned anywhere in the charge sheet nor it is explained any where by the prosecution.

61. At the time of argument, the learned Adv. Mr. Nitin Sejpal for accused no.1 and 2 relied on the various the Hon'ble Supreme Court and the Hon'ble High Court judgments.

62. He relied on the judgment of the Hon'ble Supreme Court of India

in **Soni Vs. State of Uttar Pradesh** reported in (1982) 3 SCC 368 (I). In this case, the identification parade was held after lapse of 42 days from the date of arrest of the appellant and therefore, the Hon'ble Supreme Court held that this delay in holding the identification parade throws a doubt on the genuineness thereof. Apart from that, it is difficult that after lapse of such a long time the witnesses would be remembering the facial expression of the appellant.

63. He further relied on the judgment of the Hon'ble Supreme Court of India in **Puttan @ Kamal Prasad Vs. State of Uttar Pradesh** reported in 1992 SCC (Cri) 833. It is held in that case that appellant arrested about one and half months after the occurrence and identification parade held about six months thereafter. No plausible explanation for inordinate delay in holding the identification parade was given and thereby, the Hon'ble Supreme Court held the said evidence not reliable.

64. He further relied on the judgment of the Hon'ble Supreme Court of India in **Girja Shankar Misra Vs. State of Uttar Pradesh** reported in 1994 SCC (Cri) 214. In the said case, there were inordinate delay and serious infirmities in holding test identification parade. Occurrence was taken place near about sunset and there was little opportunity to see the faces of culprits. Witness did not mention special features of miscreants in their statements before the Police and therefore, possibility of accused having been shown to the witnesses not ruled out.

65. He further relied on the judgment of the Hon'ble Supreme Court of India in **Rajesh Govind Jagesha Vs. State of Maharashtra** reported in

(1999) 8 SCC 428. It is held that the delay in holding identification parade has to be explained satisfactorily by the prosecution. The reason that the Magistrate in Bombay was not available is not satisfactory.

66. He further relied on the judgment of the Hon'ble Supreme Court of India in **Hari Nath and another Vs. State of Uttar Pradesh** reported in (1988) 1 SCC (Cri) 14. It is held in the said case that the test identification parade has only corroborative value. For admissibility of such evidence, the accused should be unknown to the prosecution witness before the test identification and the test identification should be held with reasonable promptitude after the occurrence of incident. It is also held that the test identification parade held after four months of the occurrence of dacoity with murder is unreliable.

67. In the cases **Soni, Puttan, Girja and Rajesh (Supra)**, the ratio has been laid down that the identification parade should be done at the earliest and if there is delay then that delay must be explained by prosecution. In the present case in hand it came on record that there is long delay in carrying out the TIP. The explanation given by the witness that the Naib Tahasildar had work load is not digestible in view of the ratio laid down in the above cases and thereby it can be said that prosecution has failed to prove the TIP of the accused at the hands of witnesses beyond reasonable doubt.

68. He further relied on the judgment of the Hon'ble Supreme Court of India in **State of Maharashtra Vs. Subhaiya Kanak Maniah and others** reported in X-1993(3) Crimes 466 in which injured witnesses had given

statement to the Police without giving any description and names of the culprits. Subsequent identification of the culprits either in the parade or in the Court does not inspire confidence. The incident occurred within a second.

69. In the present case in hand, it came in the evidence of the eye witnesses that they did not give any description of the accused to the police while recording their statements. Then, how the TIP can be believed to be proved beyond reasonable doubt.

70. He further relied on the judgment of the Hon'ble Bombay High Court in the matter of **Sanjay Dagadu Jadhav Vs. The State of Maharashtra** reported in **1997 ALL MR (Cri) 197**. It is held in that case that it is the duty of the Magistrate who is conducting identification parade and to ensure that identifying witnesses and the accused had no opportunity to see each other before the identification parade and to depose the same before the Court. In the present case in hand Deepak Jadhav (PW-15) himself admitted that that it is not written in the panchanama (Exh.134) that he had selected the dummies. He also admitted that he did not ask witnesses whether the photographs of the accused have been shown to them by the police. He also admitted that he did not mention in Exh. 134 and Exh. 134-A that in which room the TIP was conducted. In such circumstance the ration laid down in the present case is squarely applicable to the present case in hand.

71. He further relied on the judgment of the Hon'ble Bombay High Court in **State of Maharashtra Vs. Rajesh @ Kaka Madanlal Soni and**

others reported in 1998 All MR (Cri) 471. It is held that as per the criminal manual, it stipulates that it is incumbent for the Magistrate conducting identification to ensure that the dummies are more or less of the physical appearance and approximately of the same age, as the person to be identified. This can only be done if prior to the suspect being put up at the parade the Magistrate goes to the lock up and sees him. It is also held that the identification parade should be held at the earliest. The rationale is that human memory gets blurred with passage of time and may indeed get completely erased if an identification is held after two and half years, as is the case. In the present case in hand as discussed above the admission of Naib Tahasildar Deepak (PW-15) goes to roots of the case and put question mark on the reliability of the conduct of TIP.

72. Apart from the evidence of Test Identification Parade, the another important aspect in this case is that initially the offence was registered against the unknown persons and thereafter, the investigating officer had arrested two persons namely Jafar Raji Alam Khan @ Abbas and Mohd. Sakib Shahnawaj Aalam Khan on suspicion. Even, their Police Custody Remand were also sought. In spite of that, they were discharged from this crime without carrying any Test Identification Parade. During cross-examination, these facts were admitted by Deepak Chavan (PW-26). He also deposed that as the offence was not made out against them and therefore, their Test Identification Parade was not conducted. This admission on the part of this witness also goes to the roots of the case and create doubt on the entire case of the prosecution.

73. In the evidence of Imran Mirchi (PW-19), it came on record that in the year 2010 to 2011, he used to do mechanical work of repairing four wheeler in his garage namely Imran garage situated near Mumbra station. He also deposed that Maruti Esteem car bearing no.MH-01-S-9708 had been to his garage for repairing work. The said car used to be brought by the driver of accused no.3. In the year 2009, he had purchased the said vehicle for Rs.32,000/-.

74. The another witness namely Mohd. Kayum Mohd. Khawaz (PW-20) has deposed before the Court that he was having the Esteem car bearing registration no.MH-01-S-9708. The said vehicle was taken by the mother of accused no.3 at the time of marriage in her family. He had sold the said car to Imran Mirchi (PW-19) for Rs.32,000/-.

75. So far as using of car by accused no. 3 at the time of incident is concerned, no prosecution witnesses have claimed that the accused persons had come in the car bearing no. MH-01-S-9708. Even there is no witness who identified the car used by the accused at the time of incident is the same. Moreover, the identification of the accused no. 1 to 3 had come under the clouds of doubt as discussed in the above paragraphs and therefore, it cannot be said that the said car is the incriminating article used by the accused in the crime.

76. It is the case of prosecution that accused no.4 hatched conspiracy and it was executed by accused nos.1 to 3. To establish this fact, prosecution examined the most important witness namely Jitendra Ram Dixit (PW-18). In his evidence, it came on record that in June-2010, he

had taken interview of accused no.4 Chhota Rajan by way of phone. At that time, he was aware of the fact that with whom, he was talking was 'Chhota Rajan' since he had heard voice of 'Chhota Rajan' many times earlier. He had noted down that conversation in his notebook. The news about the said interview were aired on the 'Star News' and 'Star Majha' channels in the year 2010. He had posted the said conversation in question and answer form on his personal blog namely 'address to the nation' and the name of his website was www.jitendradiary.blogspot.com. During interview, he had asked Chhota Rajan about his gang, health and other questions related to underworld. He further deposed that during interview, Chhota Rajan disclosed him about the shootout on Aasif Dadhi and Chhote Miyan.

77. Again, prosecution examined Gulrez Hassan Jafari (PW-28) to connect accused no.4 with this crime. Prior to that, prosecution has also examined Jitendra Ram Dixit (PW-18). These witnesses are the main witnesses to connect accused no.4 with this crime. In the evidence of Gulrez Hassan Jafari (PW-28), it came on record that from 1988 to 2008, he used to reside at Chheda Nagar, Chembur. He had contact with accused no.4. He used to go to the house of mother of accused no.4. The mother of accused no.4 used to talk with accused no.4 from his phone. Once he received phone call of accused no.1 about wishing for the arrangements of 'Ganpati Festival'. He used to receive the phone calls from the number +301, +304 and other number of such types. He further deposed that he knows accused no.3 since Bhendi Bazar. He deposed that on the say of accused no.4, once he paid Rs.50,000/- and on the second occasion Rs.1,00,000/- to one boy as instructed by accused no.4. Lastly, he deposed that after some time, he saw news of

murder of Chhote Miyan and then, he received a phone call of accused no.4 informing that he had committed the said murder as the 'Chhote Miyan' was the man of 'Dawood'.

78. The witness Jitendra Dixit (PW-18) was cross-examined at length by the accused no.4. In his cross-examination he admitted the no record is available with his office about the news aired on star News and Star Maza channels about his conversation with Chhota Rajan. He had noted down the details of conversation between him and Chhota Rajan but he did not produce the same before police. The police also did not ask the same to him. He also deposed that he does not recall the phone number from which he had received the call. He also deposed that he was never called by Police to identify the voice of Chhota Rajan. Even he did not produce any recording which he had about the alleged voice of Chhota Rajan. Not only this, the witness deposed that the statement in blog, “हां ये सब सच है। मेरे पास पूरे इंटरव्यू की ऑडियो रिकॉर्डिंग है।” is incorrectly written. This testimony of this witness creates doubt on the fact that really whether he had received the call of Chhota Rajan or not. If he received the call then it was the duty of Investigating Office to collect all the evidence relating to the conversation between them and all call detail report. In absence of all other evidences, it cannot be said that any conversation was taken place in between this witness and Chhota Rajan.

79. In the cross-examination of the witness Gulrej (PW-28), it came on record that he did not receive the call of Chhota Rajan wishing him for the arrangements of the Ganapati festival at the house of mother of Chhota Rajan. He did not talk with Chhota Rajan on phone call at the

house of his mother. The mother of the Chhota Rajan used to talk by the phone of Santosh Sawant and he also talked with Chhota Rajan by the phone of Santosh Sawant. He also deposed that he did not know the mobile phone number of Santosh Sawant. He never personally met with the Chhota Rajan and did not hear his voice.

80. He also admitted that it did not happen that he gave Rs. 1 lakh to one boy at Ghodbunder who was sent by Umed Raheman i.e. accused no.3. He also deposed that the portion marked-A in his statement is not stated by him. Upon perusal of the cross-examination of this witness it can not be said that his examination chief is much useful for the prosecution and therefore his testimony can not be believed.

81. At the time of argument, the learned Advocate Mr.Pasbola relied on the judgment of our Hon'ble High Court in **Sitaram Vishnu Chalke Vs. State of Maharashtra** reported in **1993 Cri.L.J. 3364** and observed in para no.8 as under :-

"8. It is, therefore, amply clear that P.W. 6 Jotiram Dhondiba, himself asked the accused as to why he killed his father and the accused replied to that question by saying that he did it because his father used to quarrel. It is, therefore, clear that the accused had replied the question asked by P.W. 6 Jotiram and P.W. 6 Jotiram assumed that the accused had killed his father and on the said assumption he asked the question. By no stretch of imagination this can be considered to be an extra judicial confession made by the accused. As the matter of fact, the specific recitals of the F.T.R. Exh. 28, do not make out the case of any confession and it is abundantly clear that this witness P.W. 6 who thrust the liability on the shoulders of the accused for killing his father and the accused then admitted it. It may also further be noted that it is again mentioned in the F.I.R. Exh. 28 that when he reached his house at 8 a.m. in the

morning his wife Vaijayanta hold him that Vishnu was murdered by Sitaram. In spite of this, the witness P.W. 6 Jotiram, wants us to believe that he still retired to bed without doing anything and the next day morning he contacted P.W. 5 Ramchandra. It may be noted that Vaijayanta, the wife of this witness from whom he came to know about the involvement of the accused as the assailant, has not been examined by the prosecution. Another dead blow to this circumstantial piece of evidence is afforded by the sworn testimony of P.W. 7 Shankar the village Kotwal. This witness has stated in his evidence at Exhibit-29/1 that when P.W. 6 Jotiram came to his house at about 6-30 p.m., Jotiram told him that his brother was murdered and he (Jotiram) requested him to go with him to the Police Station. It is, therefore, clear from the evidence of the village Kotwal that what was narrated to him by P.W. 6 Jotiram was only to the effect that his brother Vishnu was murdered. The complicity and the involvement of the accused as the assailant of Vishnu is conspicuously absent when the incident is narrated by P.W. 6 Jotiram to this witness P.W. 7 Shankar. Therefore, if really the accused had made any extra judicial confession about his guilt, it was but natural and expected that P.W. 6 Jotiram, would also narrate about the said extral judicial confession to the Village Kotwal. In this connection, further the evidence of P.W. 7 Ramchandra Raghunath may also be considered. As stated above, P.W. 5 Ramchandra was working as co-labourer with deceased Vishnu on a construction of some Dam at the village and the prosecution has adduced his evidence in order to show that P.W. 5 Ramchandra noticed the dead body of Vishnu, lying in the house and he narrated this incident including the involvement of the accused to P.W. 6 Jotiram. P.W. 5 Ramchandra, however, in his evidence at Exh. 25, shatters the alleged source of information by him to P.W. 6 Jotiram. It is pertinent to note that P.W. 5 Ramchandra admits in his evidence at Exhibit 25, that when he saw the dead body of Vishnu lying in the pool of blood, he straightway proceeded to his house and nothing happened on his way to the house. The witness, therefore, emphatically admits that he did not meet P.W. 6 Jotiram. If this is so, then the information alleged to have been received by P.W. 6 Jotiram, also cannot be accepted and it loses its evidentiary value. Further P.W. 5 Ramchandra, appears to be a got-up witness. As stated

above, the witness was working as a labourer along with the deceased and on that day he had been to the house of Vishnu to enquire as to whether Vishnu was going to attend the work with him. The witness, however, admits that the day of incident was a Sunday and on Sunday there was no work at the site of the Dam. If this is accepted, then one fails to understand as to on what occasion P.W. 5 Ramchandra Raghunath had to go to the house of Vishnu and to make any enquiry. P.W. 5 Ramchandra had, therefore, no cause or occasion to go to the house of deceased Vishnu and if, this is so, the alleged information supplied by him to P.W. 6 Jotiram, in respect of the death of Vishnu, and involvement of the accused as the assailant loses all its force. P.W. 5 Ramchandra Raghunath admittedly does not involve the present accused in the commission of the alleged incident. Considering all these facts and circumstances on record, it is rather risky to rely on the circumstantial piece of evidence in the shape of extra judicial confession alleged to have been made by the accused to P.W. 6 Jotiram Dhondiba. We are, therefore, of the opinion that the learned Additional Sessions Judge was patently in error in relying on this circumstance, as sufficient to inspire confidence and to hold the appellant-accused guilty for the alleged offence of murder."

82. He further relied on the judgment of the Hon'ble Supreme Court in **P.K. Narayanan Vs. State of Kerala** reported in (1995) 1 SCC 142. The Hon'ble Supreme Court observed in para nos.6,9 and 10 as under :-

"6. The trial court having in the abovesaid manner held that A-2 and A-3 caused grievous hurt to the deceased, then proceeded to consider the third point namely whether there was a criminal conspiracy and whether A-2 and A-3 caused the death of the deceased at the instance and instigation of A-1 and in pursuance of the alleged conspiracy. The trial court, however, observed that A-2 and A-3 had no personal enmity or grudge towards the deceased but inferred that they would have committed the offence only at the behest of A-1. Strong reliance is also placed on the motive aspect. The evidence of PW 1, the father of the deceased, has been strongly relied upon. At this stage it is relevant to point out

that motive and preparation by themselves do not amount to conspiracy. It also relied on the evidence in respect of some of the investments made by A-2 and took the view inferentially that the said investments made by A-2 speaks a lot about A-1 namely that A-1 must have paid the same to A-2 for committing murder of the deceased. The trial court at one stage clearly pointed out that there is not even an allegation that A-1 paid A-2 for the murder of the deceased but proceeded to consider the evidence in respect of some of the investments made by A-2 for drawing the said inference. This is all the evidence relied upon to come to the conclusion that it was at the instance and instigation of A-1 that A-2 and A-3 caused the death of the deceased. The High Court proceeded somewhat in the same manner.

9. It is pertinent to note that the accused were also charged under [Section 120-B](#) read with [Section 201](#) alleging that in pursuance of the criminal conspiracy the accused tampered with the evidence of murder after the occurrence to screen the offenders and that a false information was given to the police. Both the courts below have held that there is no material whatsoever to establish the same. It can thus be seen that there is no material whatsoever to show that the accused who are alleged to have conspired did anything to cover up the crime. Therefore the only evidence relied upon by the prosecution in proof of the conspiracy is with reference to the few above mentioned circumstances prior to the murder and the only other subsequent circumstance relied upon by the prosecution is the conduct of A-1 in not consoling the father of the deceased. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by

circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation."

83. He further relied on the judgment of the Hon'ble Supreme Court in **K.R. Purushothaman Vs. State of Kerala** reported in **(2005) 12 SCC 631** in which, the Hon'ble Supreme Court observed in para nos.11 to 14 as under :-

11. [Section 120A](#) of I.P.C. defines 'criminal conspiracy.' According to this Section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designed a criminal conspiracy. [In Major EG Barsay v. State of Bombay](#), AIR (1961) SC 1762, Subba Rao J., speaking for the Court has said (SCR p.228):

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts."

12. In State through Superintendent of Police, CBI/SIT v. Nalini and Ors., JT (1999) 4 SC 106 it is observed by SSM Quadri J. at JT para 677: (SCC pp.568-69, para 662)

"In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences."

13. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In

most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is *sine quo non* for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not *per se* constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.

14. The suspicion can not take the place of a legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. Mohd. Yusuf Momin Vs. State of Maharashtra, AIR (1971) SC 885, that: (SCC pp.699-700, para 7)

"in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors constitute relevant material."

84. Upon perusal of ratio laid down in **Sitaram, P.K. Narayanan and K.R. Purushothaman (Supra)**, it is seen that prosecution failed to prove criminal conspiracy between the accused to commit murder of Chhote Miyan and Arshad Abrar. It is also seen from the cross-examination of Jitendra Dixit (PW-18) and Gulrej (PW-28) that their testimonies cannot be believed to prove criminal conspiracy in between accused.

85. In sum and substance, it is seen that the testimony of material alleged eye witnesses are not corroborating to each other. On the other hand the material contradictions and omissions have been proved in their cross-examination. Even they have given some material admission which are not helpful to the prosecution rather those are raising question mark on the fact whether they are the really eye witnesses or not. The other evidence like TIP is concerned, testimony of the eye witnesses shows that though they were available, they were not called for TIP at the earliest. The Naib Tahasildar Shri Deepak Jadhav (PW-15) had not selected the dummies similar to those of the accused who were going to be identified. Moreover, he did not ask the witnesses whether the photographs of the accused have been shown to them by the Police. Even he did not mention the place where the identification parade was carried out. It is seen from the testimony of one of the witness that one police employee was also present at the place of identification parade. Apart from that TIP of the accused by the witness Abdul (PW-2) was not carried out. He identified the accused before the Court after nine years and one month. These all things raise doubt on the carrying of TIP. Further it is settled position of law that TIP is not the substantial evidence and to believe the same some corroborative evidence is necessary, but prosecution failed to bring such evidence on record. Except this Prosecution also tried to connect the recovery of revolver

recovered from the accused no.2 in this case but as per the famous judgment of Pulikuri Kottaya it is settled that it is for the prosecution to prove that the weapon recovered must have been used in the crime. But in this case prosecution did not bring any evidence as to the use of revolver in this crime and therefore memorandum panchanama prepared under Section 27 of the Indian Evidence Act lost its sanctity. Further it is also seen that prosecution failed to prove the extra judicial confession made by the accused no. 4 to Jitendra Dixit (PW-18) because of testimony of Jitendra Dixit (PW-18) in his cross-examination. In the cross-examination he admitted that no record is available with his office about the news aired on star News and Star Maza about his conversation with Chhota Rajan. Lastly the most important is that the prosecution failed to prove criminal conspiracy between the accused or the accused made an agreement to commit an illegal act i.e. the murder of the Chhote Miyan and Arshad Abrar with an intention. In such circumstance, it can be said that prosecution failed to prove its case beyond reasonable doubt and thus accused are entitled to be acquitted. Hence, I answer point nos.2 to 6 in the negative and in answer to point no.7 pass the following order :-

ORDER

1. Accused no.1-Mohd. Ali Jaan Mohd. Shaikh @ Sameer, accused no.2-Pranay Manohar Rane @ Nana, accused no.3-Umed-ur-Rehman Ishrat Hussain Shaikh, accused no.4-Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Boss are acquitted of the offences punishable under Sections 302, 307, 120B and 34 of the IPC, Section 27 of the Arms Act and Section 37(1)(a) of the Maharashtra Police Act, which is punishable u/s.135 of the said Act vide section 235 of the Code of Criminal Procedure.

2. Accused no.1-Mohd. Ali Jaan Mohd. Shaikh @ Sameer, accused no.2-Pranay Manohar Rane @ Nana, accused no.3-Umed-ur-Rehman Ishrat Hussain Shaikh, accused no.4-Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Boss are under trial prisoners. They be released forthwith, if not required in any crime or case.
3. Accused no.1-Mohd. Ali Jaan Mohd. Shaikh @ Sameer, accused no.2-Pranay Manohar Rane @ Nana, accused no.3-Umed-ur-Rehman Ishrat Hussain Shaikh, accused no.4-Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Boss shall execute P.R. Bond of Rs.30,000/- (Rupees Thirty Thousands only) **each** with one surety in the like amount to appear before the Appellate Court as and when notice is issued within six months, as per the provisions of section 437-A of Code of Criminal Procedure.
4. The seized muddemal property i.e. the Valuable Articles (VPR) be preserved in this case till the decision of the appeal pending against judgment and order in Sessions Case nos.187 of 2011 @ 789 of 2011 @ 787 of 2019 before the Hon'ble High Court as some of the articles are common articles in this case and Sessions Case nos.187 of 2011 @ 789 of 2011 @ 787 of 2019.
5. The Currency notes of Rs.180/- (Article-63) be deposited in the treasury of the Government of Maharashtra. The description of currency notes be recorded and maintained.
6. The General Muddemal Articles be destroyed after appeal period is over.

7. The judgment is dictated and pronounced in the open Court.



(A.M. PATIL)
SPECIAL JUDGE

Date : 17.11.2022

Place : Mumbai

Exclusive Special Court constituted for the cases
under MCOCA/TADA/POTA AND OTHER SESSIONS CASES
against the accused-Rajendra Sadashiv Nikalje @ Chhota Rajan

Dictated and typed on : 17.11.2022.
Signed on : 17.11.2022.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER"

DATE : 18.11.2022, AT 12.52 P.M. MAHESH KESHAV SAKHARKAR
STENOGRAPHER GRADE-I

UPLOAD DATE AND TIME NAME OF STENOGRAPHER

Name of the Judge (with Court no.) : SHRI A.M. PATIL, C.R.NO.57.
Date of pronouncement of judgment/order : 17.11.2022.
Judgment/order signed by the P.O. on : 17.11.2022.
Judgment/order uploaded on : 18.11.2022, AT 12.52 P.M.