



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**[1] CRIMINAL APPEAL NO.350 OF 2019**

Akshay Yuvraj Patil .....Appellant  
Versus  
The State of Maharashtra .....Respondent

....  
**WITH**

**[2] CRIMINAL APPEAL NO.355 OF 2019**

Santosh Sham Kotewad .....Appellant  
Versus  
The State of Maharashtra .....Respondent

....  
**WITH**

**INTERIM APPLICATION NO.3957 OF 2024  
IN  
CRIMINAL APPEAL NO.355 OF 2019**

....  
**WITH**

**INTERIM APPLICATION NO.1342 OF 2024  
IN  
CRIMINAL APPEAL NO.355 OF 2019**

....  
**WITH**

**[3] CRIMINAL APPEAL NO.915 OF 2019**

Kavoo @ Fransis Patrick Manwel .....Appellant  
Versus  
The State of Maharashtra .....Respondent

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Mr. Aniket Vagal, Advocate a/w. Ms. Savvy Kolhekar, Kunal Pednekar, Ms.Juhi Kadu for the Appellants in Appeal/355/2019 & Appeal/915/2019.

Ms. Prabha U. Badadare, Advocate for the Appellant in Appeal/350/2019.

Ms. P.N. Dabholkar, APP for the Respondent-State.

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**CORAM : SARANG V. KOTWAL &  
ADVAIT M. SETHNA, JJ.**

**DATE : 20<sup>th</sup> AUGUST, 2025**

**ORAL JUDGMENT : [PER SARANG V. KOTWAL, J.]**

1. All these three Appeals are being disposed of by this common Judgment and Order because they arise out of the same Sessions Case. For the sake of convenience, all the Appellants are referred to either by their names or by their status before the trial Court as accused. The Criminal Appeal No.355/2019 is preferred by the original accused No.1 Santosh Kotewad, the Criminal Appeal No.350/2019 is preferred by the original accused No.2 Akshay Yuvraj Patil, and the Criminal Appeal No.915/2019 is preferred by the original accused No.3 Kavoo @ Fransis Patrick Manwel.

2. We have heard Mr. Aniket Vagal, learned counsel for the Appellants in Criminal Appeal Nos.355/2019 & 915/2019, Ms. Prabha Badadare, learned counsel for the Appellant in Criminal Appeal No.350/2019 and Ms. P.N. Dabholkar, learned APP for the Respondent-State.

3. The Appellants/accused have challenged the judgment and order dated 2.2.2019 passed by the Additional Sessions Judge-

10, Nashik in Sessions Case No.273/2015. They were convicted for commission of the offence punishable under Section 302 read with 34 of IPC and they were sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- each and in default to suffer further SI for one month. There was the fourth accused i.e. accused No.4 Juned Tarabak Choudhari. He was acquitted from the charge of commission of offences punishable under Sections 201 and 109 read with 34 of IPC. The Appellants were arrested on 5.6.2015 and since then they are in custody.

4. The prosecution case is that one Shailesh, who is the deceased in this case, and the first informant Sajan Thakare were cousins. They were fish sellers. On 31.5.2015 at about 9.30 p.m. they went to a liquor shop and bought liquor. There was some minor incident with the accused No.1 Santosh, who got angry. He left the shop and came back with the other two accused. There are allegations that Shailesh was assaulted with sharp weapons. The accused went away on a two-wheeler. The first informant Sajan took the injured Shailesh to the hospital, but, Shailesh succumbed to his injuries. Sajan lodged his FIR vide C.R. No.185/2015 with Bhadrakali police station, Nashik Road. The investigation

commenced. All the Appellants were arrested on 5.6.2015. There are allegations that they had travelled together in a four-wheeler. At the instance of the accused No.1, a chopper was recovered from a distant place in a different District. According to the investigation, there was one more witness i.e. PW-8 Govind Sutar, who had seen the accused going away from the spot on a two-wheeler. One of the accused was holding a sharp weapon at that time. Arrangements were made to conduct the test identification parade. Both the main witnesses i.e. the first informant Sajan and PW-8 Govind identified the accused in the test identification parade. In the meantime, the investigation was going on. The statements of various witnesses were recorded. The postmortem examination revealed that there was a deep stab wound piercing the heart, resulting in the death of deceased Shailesh. The clothes of the deceased were seized. The seized articles and the weapons were sent for Chemical Analysis. It was the prosecution case that one of the accused was having a pistol with him which was shown to PW-1 for threatening him. That pistol was also recovered. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session, Nashik.

5. During the trial, the prosecution examined thirteen witnesses including the two main witnesses PW-1 Sajan Thakare (the first informant) and PW-8 Govind Sutar who had seen the accused going away from the spot after the incident. The prosecution also examined the Medical Officer, the Naib Tahsildar who had conducted the test identification parade, the panchas and the police witnesses including the investigating officers.

6. The defence of the accused was of total denial. The learned Judge considered the evidence and heard the arguments. He relied on the evidence of PW-1 and PW-8. He did not find any inconsistency in their evidence. In his opinion, the narration given by PW-1 prevailed over the medical evidence. There was a stab injury on the chest, as was deposed by PW-1. To that extent, the medical evidence supported PW-1's version. The learned Judge also relied on the recovery of weapon. Based on all these circumstances and the direct evidence, the learned Judge convicted the accused.

7. PW-1 Sajan Thakare is the main important witness in this case. He was not only the first informant but he was the only eye witness examined by the prosecution who claimed to have

actually seen the incident of stabbing. He deposed that the deceased Shailesh was his cousin. Both of them were earning their livelihood by selling fish. On 31.5.2015 around 9.30 p.m., they purchased liquor at Kit-kat Corner. They went near Sagar Rasvanti. They purchased a water bottle and a soft-drink bottle. At that time, the accused No.1 Santosh had gone to that shop to buy cigarette. He pushed the water-bottle. It fell down. Shailesh picked it up and confronted the accused No.1 Santosh. PW-1 further deposed that Santosh behaved arrogantly and blew cigarette smoke on Shailesh's face. The accused No.1 then left the place. PW-1 and Shailesh started going towards their vehicle. All the three accused started creating trouble. The accused Nos.1 & 2 took out sharp weapons. The accused No.3 took out a pistol. PW-1 and Shailesh got scared and they started running away from that spot. The accused No.3 Kavoo pointed out the pistol towards PW-1. The accused No.2 Akshay and Shailesh started quarreling. PW-1 rescued himself and went towards the crowd that had gathered there. All the three accused dragged Shailesh towards a cycle repairing shop. Shailesh fell on the ground. The accused No.1 Santosh stabbed him with a knife in the chest. The accused No.2 also stabbed him in the

stomach. The accused No.3 took out a sharp weapon and assaulted Shailesh. At that time PW-1 was in the crowd. All the accused then went away on a red-coloured motorcycle. PW-1 noted down the registration number but he was not sure whether it was MH 15 1440 or 4015. Shailesh was seriously injured. Therefore, PW-1 wrapped his shirt around Shailesh's wounds and took him in a rickshaw to Wockhardt Hospital. There, he was advised to take Shailesh to the Civil Hospital. PW-1 called his friend Karan More and informed him about the incident. In the meantime, one Rahul Thakare called on Shailesh's phone. PW-1 answered it and informed him about the incident and further requested him to inform the family members of Shailesh. PW-1 then took Shailesh to the Civil Hospital. By that time, Shailesh's family members had reached there but the doctor declared him dead. The police came there. PW-1 then went to Bhadrakali police station and gave his statement. It was treated as FIR. It is produced on record at Exhibit-35. He showed the spot of incident to the police. Shailesh's foot-wears and the blood spilled on the spot were collected.

8. PW-1 further deposed that on 29.6.2015, the police called him to the Central Jail for test identification parade.

According to him, he identified all the three accused in that test identification parade. Then he was asked to identify the red-coloured two-wheeler at Bhadrakali police station. At the same time, the police showed him both the weapons and the pistol. His statement under Section 164 of Cr.P.C. was recorded. That statement is produced on record at Exhibit-37. He described the weapons as a silver coloured pistol and one chopper having handle. He identified all the three accused in the Court. The learned Judge recorded that PW-1 correctly identified all the three accused sitting in the dock.

9. In the cross-examination, PW-1 stated that he understood the difference between a sickle, a chopper and a knife. He admitted that his statement was recorded by the learned Magistrate. He had not mentioned the names of the accused. He also admitted that he had not mentioned their names when he lodged his report. He admitted that, for the first time in the court at the time of recording of his deposition, he had mentioned the names of the accused along with specific roles attributed to them. He further admitted that he learnt about the accuseds' names after his statement was recorded under Section 164 of Cr.P.C. He did not



know PW-8 Govind Sutar. There were at least 10 to 12 persons in the crowd that had gathered there. He was then asked about certain omissions from his statement recorded under Section 164 of Cr.P.C.. He could not explain as to why certain facts deposed by him were not in the statement recorded under Section 164 of Cr.P.C. He could not explain as to why his statement did not contain the fact that the accused No.1 Santosh and his two accomplices were intimidating PW-1 and Shailesh and that the accused Nos.1 & 2 took out sharp weapons and that PW-1 and Shailesh started running. He also could not explain why his statement did not mention that he ran towards the crowd. The prosecution did not examine the Magistrate who had recorded the statement under Section 164 of Cr.P.C.. Therefore, these omissions from that statement will have to be taken into consideration. There is some significance attached to these omissions. His statement recorded under Section 164 of Cr.P.C. also did not mention that the accused No.1 Santosh assaulted Shailesh by a knife on the chest. He admitted that he had not stated in his statement under Section 164 of Cr.P.C. that three persons had dragged Shailesh towards a cycle repairing shop. He had not stated that Shailesh had fallen down.

He had not stated that all the three accused had assaulted Shailesh. He had also not stated that they had gone away on their red-coloured motorcycle. He could not explain as to why these important facts were not mentioned in his statement under Section 164 of Cr.PC.. In his further cross-examination, he referred to the incident of some trouble caused in the Civil Hospital, Nashik when Shailesh was declared dead. The most important feature of his cross-examination is contained in paragraphs-8 and 9. Those two paragraphs referred to the identity of the accused. He categorically admitted that the accused were produced before the Court on two occasions for obtaining their police custody; and that he had seen the accused No.1 in the Court at that time; but he denied having seen the accused Nos.2 & 3 in the Court at that time. Importantly he has further admitted that when the accused were arrested, the police recorded his statement at the police station and that the police informed him at that time regarding the arrest of the accused. He has further admitted that he was present in the police station for half an hour and the police had shown the arrested accused to him. He further admitted that, 'after that' he was called for the test identification parade. At that time one boy by the

name Govind Kore was also present. He further admitted that he was not knowing the accused prior to 31.5.2015. He had gone to the police station with his blood stained clothes but at that time the police did not seize his clothes. They were seized after two to three days. The police themselves had brought him to the spot of incident. He did not remember whether the person who was with him was Govind Sutar or not.

According to him, nobody from the crowd chased the accused. He had not sought any help from the crowd to catch the accused. According to him, the accused inflicted four injuries on the chest and stomach of Shailesh. He denied the suggestion that he was deposing falsely.

The FIR, produced on record at Exhibit-34, describes the incident but he did not know the accused and, therefore, their names are not mentioned. The description of the assailants is mentioned. The FIR was lodged at 11.50 p.m. on 31.5.2015 at Bhadrakali police station vide C.R. No.I-185/2015. The FIR is substantially similar to his deposition. All the omissions are with reference to the statement recorded under Section 164 of Cr.PC.. In that statement he had attributed the assault only to one of the

accused out of the three accused. Apart from that there is no detailed description of the incident. This statement was recorded by the learned Magistrate, Nashik on 9.7.2015. In that statement, he has mentioned that one of the accused had shown a gun to this witness and the other two assaulted Shailesh with a chopper.

10. PW-8 Govind Sutar is another important witness. Though he had not seen the actual assault but he had seen the accused going away from the spot immediately after the incident. He deposed that on 31.5.2015 at about 9.45 p.m. he had started from Pandit Colony and was proceeding towards Panchshil Nagar. When he reached Kit-kat Corner, he saw the crowd in front of Sagar Raswanti Gruha. He saw that one person was shouting. He had sustained injuries on his chest. One person was present with that injured person. At that time, PW-8 saw three persons going away from the spot on a white and red coloured motorcycle. He deposed that he had noted the registration number of the motorcycle in his mind by looking at it. According to him, the registration number was MH 15 1440. The person sitting as a second pillion rider was

holding a knife. It was a big knife. All the three persons were young. PW-8 then went towards the crowd. The injured person was put in an auto-rickshaw and was taken to Wockhardt Hospital. PW-8 followed that rickshaw on his bike. The injured was not admitted in the Wockhardt Hospital. He was asked to be taken to the Civil Hospital. PW-8 also followed them to the Civil Hospital. There, the injured person was declared dead. Then PW-8 went back to his aunt's house. But then he corrected himself and stated that he went to the spot. The police were present there. He told the police that he had seen part of the incident and that he had noted the motorcycle number on which those three persons ran away. The police noted the number given by him. The police took his details for contacting him. After two days, he was called to Bhadrakali police station and his statement was recorded. After that, he was asked to visit Nashik Road Jail to attend the test identification parade. According to him, he identified all the three accused persons from about 15 to 20 persons. He identified the accused Nos.1, 2 and 4 as the persons who had gone away on that motorcycle.

In the cross-examination, he was asked about his

supplementary statement recorded on 23.6.2015 but he categorically stated that the important portions from that statement were not stated by him to the police. He was cross-examined regarding some omissions from his statement recorded on 31.5.2015. According to him, he had stated before the police that he had noted the number of the motorcycle in his mind, but, he could not explain why this fact was not mentioned in his police statement. He could not explain as to why his police statement did not mention that he had told the police that he had seen part of the incident and that the police had noted down his name and number for future reference. He denied the suggestion that he was shown the photographs or the accused before the test identification parade was held.

11. PW-7 Narendra Wagh was a Naib Tahsildar who conducted the test identification parade. He deposed that he received the requisition on 17.6.2015 from Bhadrakali police station. The test identification parade was arranged on 29.6.2015. Two panchas were provided by the police. Eighteen inmates from the jail were made available for the purpose of conducting the test identification parade. He explained to the accused that they could

stand any where among those eighteen inmates. The accused took their position as per their wish. PW-1 Sajan Thakare was taken for identification. He identified the accused by touching them. Then PW-7 asked the pancha to call the other witness Govind Sutar. He again asked the accused whether they wanted to change their position or clothes. They changed their positions. The other witness Govind Sutar identified the three accused by touching them. The panchnama of the test identification parade was recorded. A chart showing the identification was also prepared. The panchnama and the chart were produced on record at Exhibit-62.

In the cross-examination he admitted that he did not ascertain from the panchas whether the police had shown the accused to them prior to the incident or not. The test identification parade was conducted in the canteen, but he could not tell whether there were windows to the canteen room. At the time of conducting the test identification parade he was present in the *varanda* inside the refreshment center. The witnesses who were to identify the accused were outside the jail. From the place where he was sitting he could not see anything that was happening outside.

He had called the witnesses one by one by asking the security personnel of the jail to call them. He could not see who had gone to call them and how they came inside. The jail authorities had brought the dummies at the place of test identification parade. First the accused persons were brought inside the room. He could not see the room from where the dummies and the accused were brought. The witnesses did not state about the role played by the accused when they identified those accused. He could not tell whether the police had shown the photographs of the accused to the witnesses before the test identification parade.

12. PW-6 Dr. Thakur had conducted the postmortem examination. He has deposed that he conducted the postmortem examination on 1.6.2015. The deceased Shailesh had suffered one stab wound of the size 13 cm x 6 cm x 9 cm over front of right side of chest. The track of wound was through skin, subcutaneous tissue, 4<sup>th</sup> and 5<sup>th</sup> intercostal spaces muscle intercostal arteries, nerves, pericardium, right lung lateral boarder and right ventricle of heart ending into ventricular cavity. The direction of wound was inward and downward. There was no internal injury on the scalp or skull. In his opinion, the cause of death was hemorrhage



shock due to stab wound on right side of chest. The injuries were sufficient to cause death in ordinary course of nature. The reports were produced on record at Exhibit-56. In the cross-examination he admitted that there was only one injury on the dead body as described in column No.17 of the postmortem notes.

13. Apart from these important witnesses, the prosecution examined some panchas whose evidence does not make much difference either to the prosecution or to the defence. PW-2 Sandeep Dongre was pancha for the spot panchnama. The spot of incident is hardly in dispute. The spot panchnama is produced on record at Exhibit-41. PW-3 Dhiraj Pardeshi was a pancha in whose presence the clothes of the deceased were seized. PW-4 Jaysinddha Pardeshi was a pancha for the inquest panchnama. PW-5 Narendra Kakade was a pancha in whose presence the car, in which the accused had traveled together, was seized.

14. PW-9 Kalim Khan was a driver of a private vehicle who had taken the police officers and the accused No.1 at the spot from where the weapon was recovered. According to him, they had gone towards Nanded via Aurangabad. When they reached the river before Nanded city, the accused, the police staff and the

pancha went towards the river-bed and came back after half an hour. Then they travelled back in his vehicle. He identified the accused No.1 Santosh, who had led the police to that spot; but he has not deposed anything further. It is not explained as to why the police staff, the pancha witnesses and the accused travelled by a private vehicle to effect recovery of the weapon.

15. PW-10 Suraj Kamble was a pancha witness in whose presence the police seized the pistol and blue coloured shoes from the accused No.1 Santosh. According to him, the blue coloured shoes were having blood stains. That panchnama was produced on record at Exhibit-73. He identified the accused No.1.

In the cross-examination, he admitted that when he entered the police station the pistol was already kept on the table. He further deposed that he was also present when the police seized one mobile phone and black coloured shoes from the accused No.2. In the cross-examination he admitted that both these articles were already kept on the table when he went to the police station. Those panchnamas are produced on record at Exhibits-73 & 75.

16. PWs-11, 12 and 13 are the investigating officers who had conducted the investigation at different stages. PW-11 ACP

Walmik Patil was the first investigating officer. He was handed over investigation after the FIR was lodged. He conducted the spot panchnama and seized the articles from the spot.

17. PW-12 PI Dhakane had carried out the major part of the investigation. He was handed over the investigation from 1.6.2015. He deposed that as per the report that was lodged, there was discrepancy in the registration number of the motorcycle. Therefore, he issued a letter to the RTO mentioning both the numbers and called details of the ownerships of those vehicles. Said letter is produced on record at Exhibit-88. This letter is of some importance. It mentions that it was sent on 1.6.2015. The letter mentions two numbers MH 15 4041 OR 1440. The RTO was requested to provide information of those two vehicles. The middle letters of the registration numbers were not provided. Therefore, the RTO gave information regarding four vehicles, out of which the vehicle bearing No.MH 15 EU 1440 was alleged to be related to the present offence. PW-12 stated that the owner of that vehicle was Kabir Deelip Chabukswar and he informed that it was used by his brother Sayid Kadir Kureshi. According to the said Sayid Kureshi, this vehicle was given to the accused No.4 Juned Chaudhary on

31.3.2015. That two-wheeler was seized under a panchnama at Exhibit-43. PW-12 then recorded statements of various witnesses. He sent the articles, including the pistol, for Chemical Analysis. On 5.6.2015, the Senior Inspector of police of Bhadrakali police station received the information that the accused were travelling in a car and that car had reached Mumbai Naka area. A trap was laid and they were arrested. The accused Nos.1, 2 & 4 were found sitting in the car. The accused No.3 was also arrested subsequently. Their personal search was taken. A pistol was found with the accused No.1. It was seized. The accused No.2 had a mobile phone. The accused No.3 was brought to the police station by PSI Ware. His arrest panchnama was separately prepared. On 8.6.2015, the accused No.1 showed his willingness to show the place where the weapon was concealed. PW-12 then engaged a private vehicle and went towards Nanded via Aurangabad. The accused No.1 had shown the place where he had thrown the weapon in the river. He took out a chopper which was lying near a bush. The panchnama is produced on record at Exhibit-95. On 10.6.2015 again at the instance of the accused No.1 his clothes were recovered from his aunt's house. PW-12 then arranged to conduct the test

identification parade.

In his cross-examination, the contrary portions and omissions from the statements of the witnesses were proved. He denied the suggestion that he allowed the witnesses to see the accused when the accused were in the police station. According to him, one more witness Ramesh Panghavane was asked to participate in the test identification parade.

18. PW-13 API Shelke was the third investigating officer. He had made arrangement to record statements of the witnesses under Section 164 of Cr.P.C.. At the conclusion of the investigation he had filed the charge-sheet in the Court.

19. Learned counsel for the Appellant made the following submissions :

- i. The police had not shown the chopper and the pistol recovered during the investigation to the witnesses in the Court.
- ii. The witnesses PW-1 Sajan Thakare and PW-8 Govind Sutar could not have been present at the spot. Their evidence is not supporting each other. According to PW-1 Sajan, the incident had occurred because of the assault caused by the accused Nos.1, 2 and 3; but

PW-8 Govind had identified the accused Nos.1, 2 and 4 in the Court.

- iii. PW-1 Sajan has stated that all the three accused gave blows with sharp weapons on Shailesh; and in particular the accused Nos.1 & 2 had assaulted the deceased on chest and stomach. However, the medical evidence shows that there was only one stab injury on the chest. There was no injury on the stomach and, therefore, there is clear conflict between the ocular and the medical evidence.
- iv. The identity of the accused is extremely doubtful and the prosecution has not led cogent evidence to prove their identity. The accused No.1 was produced in the Court at the time of police custody remand, as is admitted by PW-1 who has further admitted that he had seen the accused No.1 in the Court at that time. Learned counsel, therefore, submitted that obviously the subsequent identification in the test identification parade and in the Court loses all its significance.
- v. PW-1 Sajan has also admitted that when the accused were arrested he was called to the police station and at that time the police had shown the arrested accused to them. This means that the subsequent test identification parade was a mere farce. It has no significance at

all.

- vi. Learned counsel further submitted that even the evidence of PW-8 Govind Sutar is not trustworthy. He had not actually seen the incident. He was a chance witness. He has made a mistake in identifying the accused No.4 in the Court. He has not identified the accused No.3 in the Court. He has improved his version during his deposition on material aspect. He was obviously trying to help the police and the prosecution. He had not clearly given the vehicle number to the police. According to him he had gone to the spot immediately from the hospital and had informed the police regarding what he had seen and about the registration number but the letter sent to the RTO does not make reference to such a registration number. Thus, in any case it is the omission from his police statement that he had given registration number to the police.
- vii. Learned counsel submitted that the police have not taken sufficient precaution to conceal the identity of the accused before the test identification parade was held. There is no other connecting evidence as far as the accused are concerned. Therefore, benefit of doubt must be given to the accused.

viii. The recoveries are fake and are not proved through reliable evidence.

20. Learned APP, on the other hand, submitted that identification in the court is the most important aspect. PW-1 Sajan Thakare has properly identified all the three accused in the Court by way of substantive identification and, therefore, the prosecution case cannot be thrown out on the argument of doubtful identification as canvassed by the learned counsel for the accused. PW-1 Sajan Thakare and PW-8 Govind Sutar both are truthful witnesses. PW-1 Sajan Thakare was a natural witness. He was throughout present with the deceased. He has described the incident in detail. She submitted that though there is difference in the number of injuries narrated by him and the actual injury found during the postmortem examination, this is quite understandable because PW-1 was under shock when the incident had taken place. The main incident is narrated in sufficient details and with clarity by PW-1 Sajan. He has described the roles played by each of the accused. He had sufficient opportunity to see the incident. There is no doubt that there was an injury on the chest which is attributed to the accused No.1. To that extent, there is no



contradiction. The evidence was recorded after two years from the incident. Therefore, some minor contradictions were bound to occur. She submitted that all the necessary safety measures were followed by the Naib Tahsildar in conducting the test identification.

21. We have considered these submissions. The most important aspect in this case is identity of the assailants. From the evidence we are not satisfied that the prosecution has proved that the Appellants were the assailants. Their identity is not proved through reliable evidence. Admissions given by PW-1 Sajan in his cross-examination actually destroy the prosecution case. PW-1 Sajan has admitted that the accused No.1 was produced in the Court for the purpose of taking his police custody and at that time he had seen the accused No.1 in the Court. He further admitted that when the accused were arrested, the police had called him. He was present in the police station for half an hour. At that time, one Govind Kore was also present with him and at that time the police had shown the arrested accused to them and only after that they were called for the test identification parade. These admissions completely destroy the prosecution case as far as identification of the accused by this witness is concerned.

22. In the same context it must be noted that the cross-examination of PW-1 Sajan reveals that the police had not taken sufficient precautions to conceal the identity of the arrested accused from the witnesses. The evidence of PW-8 Govind Sutar in respect of identity also loses its significance. As discussed earlier, PW-8 Govind Sutar has not correctly identified the assailants in the Court. According to him, he had identified the accused Nos.1, 2 and 4 in the Court at the time of his deposition; whereas the prosecution case is that at the time of incident the accused Nos.1, 2 and 3 were present and they had run away from the spot on their motorcycle. The accused No.4 was not at the scene. He was not even charged for commission of offence punishable under Section 302 read with 34 of IPC. The only charge against him was under Sections 201 and 109 of IPC. It is not the prosecution case that he was present at the spot. Therefore, there is a clear mistake on the part of PW-8 Govind Sutar in identifying the accused No.4 in the Court. Therefore, it is not safe to rely on his identification of the other accused i.e. accused Nos.1, 2 and 3 at the time of test identification parade. Since the entire prosecution case rests on the identification of the accused it was absolutely important for the

prosecution to have established this fact beyond reasonable doubt.

23. Apart from that, the procedure followed by the Naib Tahsildar PW-7 Narendra Wagh in conducting the test identification parade also is quite unsatisfactory. He has admitted in his cross-examination that from the place where he was sitting he was unable to see what was going on outside. He could not see whether the witnesses could have seen the accused before they entered the room for identification parade. He admitted that the accused were brought inside the identification room and thereafter the dummies were brought. Therefore, it was quite possible that the witnesses had seen these two separate groups and therefore it was easier to identify the accused. He has not taken precaution to verify from the witnesses as to whether the police had shown the accused or their photographs to these witnesses before they were subjected to this test identification parade. He has not deposed as to whether the witnesses could communicate with each other between the two sets of test identification parade when the witnesses had identified the suspects in two different stages. After conducting the test identification parade he had not recorded the exact role played by the assailants according to those witnesses.

All these shortcomings in following the safe procedure for test identification parade add to weakness of the prosecution case.

24. Therefore, the cumulative effect of all this discussion only leads to one conclusion that the prosecution has failed to establish identity of the assailants and the prosecution has failed to prove that the Appellants were the assailants in this case.

25. The rest of the circumstances are not material. As rightly submitted by learned counsel for the Appellants the weapons were not produced in the Court and they were not shown to the witnesses. The C.A. report shows that blood on the clothes of the deceased was inconclusive as far as the blood grouping was concerned. There is no other incriminating piece of circumstance against the present Appellants.

26. There is also force in the submissions of learned counsel for the Appellants that PW-1 Sajan Thakare had stated that all the three accused gave blows with their sharp weapons on the deceased Shailesh; however there was only one injury on his person. This discrepancy has also remained unexplained.

27. The registration number of the two-wheeler, on which the accused had left the place, also assumes importance. According

to PW-8 Govind Sutar he had immediately gone to the spot on 31.5.2015 itself and had informed the police about the registration number but the letter of the Investigating Officer addressed to the RTO gives only numbers given by the first informant in his FIR. It is quite clear that the investigating agency was groping in the dark. They did not have any concrete information to nail down the accused. Even after the accused were arrested there is hardly any material connecting the Appellants to the crime.

28. There was no charge framed under the Arms Act. Therefore, the seizure of pistol from the accused No.1 is hardly of any significance. It has also remained unexplained as to why the accused would travel for a long distance to a different district to conceal the weapon. There are too many lacunas and unexplained features in the prosecution evidence. Sufficient doubt arose against the prosecution case. Therefore, the benefit of doubt must go to the accused and they deserve to be acquitted.

29. Hence, the following order :

**:: O R D E R ::**

- i. The Appeal Nos.350/2019, 355/2019 & 915/2019 are allowed.

- ii. The judgment and order 2.2.2019 passed by the learned District Judge-10 & Additional Sessions Judge, Nashik in Sessions Case No.273/2015 convicting and sentencing the accused, is set aside. The Appellants are acquitted of all the charges.
- iii. The Appellants are in custody. They shall be released forthwith, if not required in any other case.
- iv. Before being released, the Appellants shall execute a P.R. bond in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand Only) to secure their presence in case an Appeal against acquittal is preferred. This bond shall be executed under the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023.
- v. Criminal Appeals are disposed of accordingly. With disposal of the Appeals, the connected Applications are also disposed of.

( ADVAIT M. SETHNA, J.)

(SARANG V. KOTWAL, J.)

PRADIPKUMAR  
PRAKASHRAO  
DESHMANE

Deshmane (PS)

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