IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 738 OF 2018

Jaswantsingh s/o Udaysingh Chavan,
Aged about 39 years,
R/o Devi Police Line, Akola. .... APPELLANT

VERSUS

The State of Maharashtra,
through Police Station Officer,
Police Station Old City Akola,
District Akola. .... RESPONDENT

Mr. A.S. Mardikar, Senior Counsel a/b. Mr. P.V. Navlani, Counsel for the appellant,
Mr. Avinash Gupta, Senior Counsel/Special P.P. a/b. Mr. A.B. Badar, Addl.P.P. for the respondent/State.

CORAM : ANIL L. PANSARE & NIVEDITA P. MEHTA, JJ.

DATE OF RESERVING THE JUDGMENT : 17-02-2026
DATE OF PRONOUNCING THE JUDGMENT : 16-03-2026

JUDGMENT : (PER : NIVEDITA P. MEHTA, J.)

This appeal is directed against the judgment and order dated 27.09.2018 passed by the learned Additional Sessions Judge, Akola in Sessions Trial No. 35 of 2016. By the said judgment, the present appellant, original Accused No.3 – Jaswantsingh Udaysingh Chavan, has been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, "IPC") and Section 120-B of the IPC. He has

been sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/-, in default to suffer further rigorous imprisonment for one year for the offence under Section 302 read with Section 34 of the IPC. He has also been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one year for the offence under Section 120-B of the IPC. Both sentences are directed to run concurrently.

2. The prosecution case, in brief, is that deceased Kishor Madanlal Khatri was engaged in property and real estate business and had business dealings with several builders in the city, including Accused No.2 – Ranjitsingh Chungde, resident of Rajputpura, Akola. A mall was under construction on land owned by Accused No.2 behind City Kotwali Police Station, Akola. The deceased had acted as a mediator in the disputes that had arisen among the builders involved in the said construction. An agreement had been entered into between him and the developers of Balaji Mall at Akola for facilitating sale of shops in the said mall.

3. On 03.11.2015 at about 12:00 noon, the deceased had been called to Balaji Mall, by Delhi-based traders Khushwaji and Vikratji. At about 1:00 p.m., the deceased, the said traders and Accused No.2 discussed the proposed date of inauguration of the mall. Thereafter, Accused No.2 went home and returned to the mall in a white Tata Safari vehicle bearing registration No. MH-30/P-3040. The deceased left the mall along with Accused No.2 in the

said vehicle towards Somthana Shivar to see a field. It is further stated that when the deceased did not return, phone calls were made to him. Later in the afternoon, information was received that a dead body was found near Somthana. The body was identified as that of Kishor Khatri.

4. On the basis of the oral report lodged by PW8 – Dilip Khatri, Crime No. 169 of 2015 came to be registered at Old City Police Station, Akola for the offences punishable under Sections 302 of the IPC. During the course of investigation, the Investigating Officer visited the spot and prepared the spot and inquest panchnamas. Blood-stained soil, simple soil, broken pieces of rope and the mobile phone of the deceased were seized. On the same day, the Tata Safari vehicle bearing No. MH-30/P-3040, allegedly used in the commission of the offence, was found at the farm house of Accused No.2 and was seized along with two firearms and live cartridges. The post-mortem examination of the deceased was conducted. Subsequently, the present appellant came to be arrested. At his instance, a knife (Kukari) and certain clothes were seized under memorandum and recovery panchnamas. Statements of witnesses came to be recorded. Call Detail Records were also collected. Upon completion of investigation, charge-sheet came to be filed before the learned Judicial Magistrate First Class, who committed the case to the Court of Sessions. The learned trial Court framed charges against the accused persons, which is at Exhibit No. 48. Insofar as appellant is concerned, he was charged with offences punishable under Section 302 read with Section 34 and Section 120-B of the IPC, as well as Sections 4/25 and 27 of

the Arms Act, 1959. The accused persons pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined 21 witnesses, including the eye-witnesses, panch witnesses, medical officer, nodal officers and the investigating officers. Upon completion of prosecution evidence, the statements of the accused persons under Section 313 of the Code of Criminal Procedure were recorded, wherein they denied the allegations and claimed false implication.

5. Upon appreciation of the evidence on record, the learned trial Court held that the death of Kishor Khatri was homicidal, relying upon the post-mortem evidence which disclosed a deep incised injury on the neck and a fire-arm injury on the chest. The learned trial Court observed that the prosecution case rested upon both direct and circumstantial evidence. It found the testimony of PW 5 and PW 10 to be natural and reliable, holding that their account of the appellant assaulting the deceased with a Kukari and Accused No.2 firing at him was consistent with the medical evidence. The learned trial Court further observed that the circumstance of the deceased having been last seen in the company of Accused No.2 when they left Balaji Mall together, coupled with the recovery of the Tata Safari vehicle from the farm house of Accused No.2 on the same day, constituted strong incriminating circumstances. The seizure of fire-arms from the vehicle and the recovery of the Kukari at the instance of the present appellant were treated as corroborative links in the chain of circumstances. The Court also noted that Accused Nos.2 and 3 were not immediately available after the

incident and treated this conduct as an additional circumstance against them. On cumulative consideration of the ocular testimony and the surrounding circumstances, the learned trial Court concluded that the prosecution had succeeded in establishing that Accused Nos.2 and 3 had committed the murder of the deceased in furtherance of their common intention and pursuant to a criminal conspiracy. However, the charges under the Arms Act and the allegation against Accused Nos.1 and 4 were held not proved.

6. Mr. A.S. Mardikar, learned Senior Counsel for the appellant submits that the conviction under Sections 302 read with 34 and 120-B of the IPC is wholly unsustainable, as the prosecution has failed to prove the case beyond reasonable doubt. It is pointed out that the appellant is not named in the First Information Report and the initial suspicion was directed only against Accused No.2. There is no evidence to show that the appellant was last seen in the company of the deceased. The entire case against him rests primarily on the testimonies of PW 5 and PW 10, who claim to be eye-witnesses. It is submitted that the statements of PW 5 and PW 10 were recorded after an unexplained delay of five days. Their conduct in not informing the police or any authority, despite allegedly witnessing a brutal assault in broad daylight, is unnatural. The learned Senior Counsel further suggested that PW 5 and PW 10 are planted witnesses. Their presence at the spot has not been independently established, and material contradictions have been brought on record in their cross-examination. It is further contended that the Test

Identification Parade was not conducted in accordance with the prescribed procedure, thereby rendering the identification doubtful.

7. Learned Senior Counsel further submits that the alleged recovery of the knife at the instance of the appellant is unreliable. The recovery is from an open place accessible to all. The panch witness is a stock witness, and the timing of the memorandum and recovery proceedings create serious doubt about their genuineness. It is also pointed out that no blood was detected on the clothes allegedly recovered from the appellant and that the forensic evidence does not conclusively link him with the offence.

8. It is further submitted that no motive has been established against the appellant and that there is no material to show any prior meeting of minds so as to attract Section 120-B of the IPC. The investigation, according to the defence, suffers from serious lapses, including non-recovery of the bullet and failed to verify as to whether PW 5 and PW 10 had really visited Somthana. In these circumstances, it is contended that the prosecution case is doubtful and the appellant is entitled to acquittal.

9. *Per Contra*, Mr. Avinash Gupta, learned Senior Counsel/Special Public Prosecutor supported the impugned judgment and submitted that the prosecution has proved the guilt of the appellant. It is contended that the homicidal death of Kishor Khatri stands established by medical evidence. The testimony of PW 5 and PW 10, who have consistently deposed about the

assault by the appellant with a knife and firing by Accused No.2, inspires confidence and has been rightly accepted by the learned trial Court. It is further submitted that the recovery of the Kukari at the instance of the appellant, the seizure of the Tata Safari vehicle, the presence of blood stains therein, and the conduct of the appellant in absconding after the incident form a complete chain of circumstances. The medical opinion supports the prosecution version regarding the weapon used. According to the State, minor discrepancies or delay in recording statements do not affect the core of the prosecution case. It is, therefore, urged that no interference is called for.

10. We have heard Mr. A.S. Mardikar, learned Senior Counsel for the appellant and Mr. Avinash Gupta, learned Senior Counsel/Special Public Prosecutor appearing for the respondent-State. We have gone through the evidence, documents and the impugned judgment. Based on the material available, following points arise for our determination and reasons therefor are discussed hereinafter :

Points for Determination -

Sr. No.	Points	Findings
i	Whether the prosecution has proved that the death of Kishor Khatri was homicidal?	In the affirmative.
ii	Whether the circumstances relied upon by the prosecution form a complete chain unerringly pointing towards the guilt of the appellant?	In the affirmative.
iii	Whether the prosecution has proved that the appellant acted in furtherance of common intention and pursuant to a criminal conspiracy?	In the affirmative.
iv	Whether interference is called for in the impugned judgment?	In the negative.

v	What order?	As per final order.

REASONING

As to Point No. (i) :

11. There is no dispute as to the homicidal nature of the death. On 03.11.2015, the dead body of Kishor Madanlal Khatri was discovered on a Kachcha Road at Somthana Shivar. PW 2-Vaibhav Johare, who acted as a panch witness, deposed that blood stains were visible on the neck, chest, and hands of the deceased at the time the body was found. The spot panchnama as well as the inquest panchnama also record the presence of such blood marks.

12. PW 6-Dr. Nikhil Ingle conducted the post-mortem examination of the deceased. On external examination, as noted in Column No. 17 of the post-mortem report, he found the following ante-mortem injuries:

> *(i) A chopped wound over the lower border of the mandible starting from the left side, passing through the mid-line and extending up to the right angle of mandible, measuring 16 cm × 2 cm × bone deep; the left angle of the wound was 6 cm below the left angle of mouth and the right angle was 8 cm below the tip of right mastoid process; the wound was situated 8 cm above the suprasternal notch and was vertically placed;*
>
> *(ii) A chopped wound over the neck starting from the lower border of mandible and extending up to 3 cm away from the mid-line towards the right side, obliquely placed, measuring 10 cm × 1 cm × muscle deep, situated 3 cm below Injury No. 1 and 5 cm above the suprasternal notch;*

(iii) Multiple small abrasions over the right cheek, ranging in size from 3 cm × 1.5 cm to 1.5 cm × 0.5 cm, with irregular margins, reddish in colour;

(iv) A lacerated wound over the right shoulder, obliquely placed, measuring 7 cm × 1 cm × muscle deep, margins blood infiltrated and reddish in colour;

(v) A lacerated gunshot entry wound over the mid-line of the chest between the two nipples, 12 cm from each nipple, 25 cm above the umbilicus and 11.5 cm below the suprasternal notch, measuring 0.8 cm × 0.8 cm × cavity deep; margins irregular with abrasion collar, reddish brown; circular in shape with surrounding area inflamed and pinkish; the direction of the wound was inward and downward;

(vi) An abrasion over the right side of chest, vertically placed, measuring 1 cm × 1 cm, reddish in colour;

(vii) A lacerated wound over the right side of abdomen, 11 cm lateral and upward to umbilicus and 19 cm below right nipple, measuring 3.5 cm × 1 cm × muscle deep, margins infiltrated and reddish;

(viii) A lacerated gunshot exit wound over the right side of back, mid 1/3rd, 10 cm lateral from mid-line, measuring 0.7 cm × 0.5 cm × cavity deep, margins blood infiltrated and reddish;

(ix) A chopped wound over the middle phalanx of the middle finger of right hand, measuring 4 cm × 2 cm × bone deep, margins blood infiltrated and reddish; and

(x) A chopped wound over the distal phalanx of the ring finger of right hand, measuring 3 cm × 2 cm × bone deep, margins blood infiltrated and reddish.

13. On examination of dead body, he noticed that *rigor mortis* was partly present all over body. Therefore, he opined that the death might have been caused between 12 to 24 hours of the post-mortem examination. He

further clarified that Injury No. 8 was corresponding to Injury No. 5 and both could have been caused by a firearm and were sufficient in the ordinary course of nature to cause death. He also opined that injury No. 1 was independently sufficient to cause death due to profuse haemorrhage, and that in the present case the internal organs such as pleura, larynx, trachea, bronchi, left lung and large vessels were pale due to excessive loss of blood.

14. In Column No. 20 relating to thorax, he found a circular gunshot hole over the mid 1/3rd of sternum measuring 0.9 cm × 0.9 cm corresponding to injury No. 5; a corresponding circular hole in the right pleura of the same size; lacerated gunshot wound through and through the lower lobe of right lung; lacerated gunshot wound through and through upper right pericardium; and lacerated gunshot wound through and through right atrium of the heart. The large vessels were intact but pale. The track of the bullet passed through skin, subcutaneous tissues, sternum, pleura, right lung, pericardium, right atrium and diaphragm, and exited through the 9th intercostal space.

15. He further stated that the abrasions, incised wounds and chopped wounds could be caused by the weapon shown to him (Art. 36), that injury Nos. 3, 4, 6 and 7 could also be caused by the said weapon, and that injury Nos. 9 and 10 were possible in case of resistance by the victim. According to him, the cause of death was haemorrhage and shock due to injuries to vital organs in a case of firearm injury.

16. The ballistic evidence lends assurance to the medical findings. PW 13-Dr. Nitin Longadage, the Ballistic Expert, has opined that the empty cartridge case examined by him had been fired from one of the country-made pistols seized in the case. He has also detected metallic residues on the shirt and skin pieces of the deceased consistent with the passage of a bullet. Though certain limitations were brought out in cross-examination, nothing has emerged to discredit the presence of a firearm injury.

17. Apart from the fire-arm injury, the incised injury on the neck clearly suggests use of a sharp-edged weapon. The defence has not suggested that these injuries could be self-inflicted or accidental. The nature of injuries does not admit of such a possibility. The combined effect of the medical and forensic evidence leaves no room for doubt that the death was the result of a deliberate assault.

18. We, therefore, hold that the prosecution has proved that the death of Kishor Khatri was homicidal. Accordingly, Point No. (i) stands answered in the affirmative.

As to Point No. (ii) :

19. The prosecution has examined PW 5-Prashant Naghat (Exh.171) and PW 10-Ravindra Dutonde as eye-witnesses. Both have stated that on 03.11.2015 at about 1.15 p.m., while proceeding along the kachcha road from Somthana towards the National Highway, they noticed a white Tata-Safari vehicle parked by the roadside. According to them, Accused No.2 and

the present appellant were standing near one unknown person, and after a brief exchange, the appellant inflicted a knife blow on the neck of that person, whereupon Accused No.2 fired gun at him.

20. Learned Senior Counsel for the appellant has strongly contended that PW 5 and PW 10 are chance witnesses and in fact planted witnesses. It is submitted that their presence at Somthana on the date of incident is doubtful. It was argued that PW 5 claimed that he had gone to Somthana for bringing chopped fodder, whereas fodder was available in Akola itself within short distance from his house. It was further contended that PW 10 had no house or agricultural land at Somthana and, therefore, there was no occasion for him to visit that village on the date of incident. Reliance was also placed on the evidence of PW 4-Police Patil Kishor Dutonde to contend that there was no regular fodder market at Somthana.

21. PW 5 has stated that he and PW 10 had gone to Somthana by motorcycle as PW 10 intended to bring chopped fodder for the cow. PW 10 has also stated that he and PW 5 had gone to Somthana and had first visited the house of his uncle where they found the house locked. He further stated that when the fodder owner was not found available, PW 10 informed him that there was an open plot in front of his house which he intended to purchase and that the owner of the plot was residing near the National Highway and for that purpose they proceeded towards the National Highway by the kachcha road. During that journey they witnessed the incident. In re-

examination, PW 10 produced documents relating to the house of his uncle Devidas Dutonde at Somthana, including a copy of Aadhar Card (Exh.212) and property related record (Exh.213). The production of these documents lends assurance to his statement that his uncle resided at Somthana and that he had occasion to visit the village.

22. The evidence of PW 4, Police Patil Kishor Dutonde, only shows that fodder was not ordinarily sold in the village. That by itself does not render the explanation of PW 5 and PW 10 false. Their presence on a public road cannot be rejected merely because the precise purpose of their visit has not been independently corroborated. The prosecution is not required to establish the exact reason for the presence of a witness at the spot when his testimony regarding the occurrence is otherwise found reliable.

23. The defence has emphasised that PW 10 admitted that no house stood in his own name or in the name of his father at Somthana. However, PW 10 has consistently stated that the house belonged to his uncle and that he had gone there on the date of occurrence. The documents produced by him support this part of his testimony. The mere fact that the property was not in his own name does not render his presence doubtful.

24. The place of occurrence is a kachcha road connecting Somthana to the National Highway and is surrounded by agricultural fields. The incident occurred in broad daylight. The presence of travellers on such a road cannot

be regarded as unusual. The evidence on record does not establish that the presence of PW 5 and PW 10 on that road at the relevant time was impossible or unnatural.

25. The law is well settled that the evidence of a so-called chance witness cannot be discarded merely on that ground if his presence is otherwise natural and his testimony is found reliable. In ***Rana Pratap and others v. State of Haryana, (1983) 3 SCC 327***, the Hon'ble Supreme Court has observed that the expression "chance witness" is borrowed from countries where crimes are usually committed in secluded places, and that in our conditions where people frequently move about in public places, the presence of such witnesses cannot be regarded as unnatural. Similarly, in ***Thangaiya v. State of Tamil Nadu*, (2005) 9 SCC 650**, it has been held that evidence of chance witnesses requires careful scrutiny but cannot be rejected solely on that ground when their presence is satisfactorily explained. The relevant paragraphs of the said judgments are reproduced as below –

Paragraph No. 3 of ***Rana Pratap*** (supra) is as under –

> *"3. There were three eye-witnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned counsel described both the independent witnesses as 'chance witnesses' implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passersby will be*

> *witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."*

Paragraph No. 8 of ***Thangaiya*** (supra) is as follow -

> *"8. Coming to the plea of the accused that PW 3 was a "chance witness" who has not explained how he happened to be at the alleged place of occurrence, it has to be noted that the said witness was an independent witness. There was not even a suggestion to the witness that he had any animosity towards the accused. In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter of explaining their presence. Therefore, there is no substance in the plea that PW 3's evidence which is clear and cogent is to be discarded."*

26. The principles laid down in ***Manoj and others v. State of Madhya Pradesh, (2023) 2 SCC 353***, relied upon by the defence, only require that the evidence of such witnesses be carefully scrutinized. Having subjected the testimony of PW 5 and PW 10 to such scrutiny, we find that the evidence

emerging in record shows that PW 10 has connection with his native place and his uncle was residing there. It can also be seen from the evidence of PW 4 that Shri Devidas Dutonde (uncle of PW 10), was a resident of village Somthana and the father of PW 10 was also residing there. Hence, their presence at the spot cannot be said to be improbable and their version inspires confidence.

27. The mere fact that PW 5 and PW 10 were not personally acquainted with the deceased does not render their evidence unreliable. Both have stated that they witnessed an assault upon an unknown person and subsequently vide newspaper they came to know that the deceased was Kishor Khatri. Further, the testimony of PW 10 strengthened when in cross-examination he described the deceased as a middle-aged man of about 45 years, having a light complexion and long hair. This description matched with the appearance of the deceased as reflected in the photographs produced at Exh.198 to Exh. 210. Moreover, there is no suggestion pointed out by the Investigating Officer about their statements being made up or fabricated. Their evidence finds assurance from the medical evidence which discloses both sharp and firearm injuries corresponding to their version.

28. It is true that both witnesses came forward after a few days and disclosed what they had seen. Though such delay warrants careful scrutiny, it is not fatal if the evidence is otherwise consistent and trustworthy. The learned Senior Counsel for the appellant has relied on the judgment ***Lahu***

Kamlakar Patil & Anr. V. State of Maharashtra, (2013) 6 SCC 417 to contend that while there cannot be uniformity in human reaction, the court has to keep in mind that if the conduct of the witness is so unnatural and not in accord with acceptable human behaviour, his testimony becomes questionable and can likely be discarded.

29. In the above judgment relied by the learned Senior Counsel for the appellant, the witness's conduct in not informing anyone of the incident was observed as defying normal human behaviour. However, in the present case in hand both the eye witnesses, PW 5 and PW 10 had narrated the incident to their close ones. Their conduct of being hesitant in immediately approaching the police can be affirmed as it involved persons of high influence, which cannot be viewed as wholly unnatural. However, both have admitted this circumstance and have been cross-examined at length and their statement remained unchallenged by the defence. The alleged contradictions between PW 5 and PW 10 do not go to the root of the matter. On the material aspects i.e. the presence of the white Tata Safari vehicle, the assault by the appellant with a sharp weapon on the neck, which is in consonance with the medical evidence and the subsequent firing by Accused No.2, both witnesses are consistent. The identification of the appellant has not been shaken in cross-examination, nor has any motive suggested for false implication.

30. Having subjected the testimony of PW 5 and PW 10 to careful scrutiny, we do not find that their presence at the spot is so improbable as to

discard their evidence. The suggestion that they were chance witnesses is not supported by any material on record. Their testimony regarding the assault remains consistent on material particulars and finds support from the medical evidence. It can further be seen from their conduct that they would not have deposed against the Accused No. 2 and the appellant without reason, especially as they were in fear of Accused No. 2, who was an influential person. The very fact that they chose to depose despite of being under fear of Accused No. 2 advances credibility to their version and dismisses the possibility of false allegation.

31. Apart from the ocular account of PW 5 and PW 10, the prosecution relies upon certain surrounding circumstances. From the evidence of PW 1 Ashok Dhanuka (Exh.132) and PW 3-Pranvirsingh Kushwah, it emerges that prior to the occurrence of the offence the deceased had left Balaji Mall in the company of Accused No.2 in the white Tata Safari vehicle bearing No. MH-30/P-3040. When the deceased did not return for a considerable time, PW 1 contacted him telephonically. During the first conversation the deceased requested him to wait at the Mall, and during the second call at about 1.15 p.m. he informed PW 1 that he was with Accused No.2 and others at a field in Somthana Shivar and asked him to return home.

32. PW 5 and PW 10 have stated that at about 1.00 to 1.15 p.m., while proceeding towards a plot near the National Highway by the Kachcha road from Somthana, they noticed a white Tata Safari vehicle parked by the

roadside with one person sitting inside and three persons standing nearby. They identified Accused No.2 and the present appellant amongst them. The said vehicle was found on the very same day at the farm house of Accused No.2. The seizure panchnama (Exh.144) shows that two country-made pistols were recovered from the dashboard and blood stains were noticed on the seat cover. These facts provide important corroboration to the ocular account.

33. The ballistic evidence of PW 13-Dr. Nitin Longadage (Exh.236) further strengthens the prosecution case. He has opined that the empty cartridge case (Exh.5) had been fired from the country-made pistol marked as Exh.1, and the barrel washing disclosed residue of prior firing. Though the bullet which caused death was not recovered, the expert evidence establishes that the cartridge case recovered from the scene corresponded with the pistol seized from the vehicle and that the weapon had been used for firing prior to examination. This evidence supports the prosecution version regarding use of a firearm during the occurrence.

34. Insofar as the present appellant is concerned, the prosecution relies upon the recovery of a Kukari at his instance pursuant to a memorandum statement. The memorandum and recovery panchnamas show that the appellant agreed to show the place where the weapon was concealed, and in pursuance thereof he led the police and panch witnesses to the spot and took out the Kukari concealed beneath a mango tree. The

Medical Officer has opined that the incised injury on the neck was possible by such weapon.

35. Learned Senior Counsel for the appellant contended that the recovery cannot be relied upon since the memorandum does not contain a detailed description of the place of concealment. Reliance was placed on ***Adina & Anr. vs. State of Maharashtra, 2024 SCC OnLine Bom 2474, Manoj Madanlal Tekam vs. State of Maharashtra, 2014 SCC OnLine Bom 1236, State of Karnataka vs. David Rozario and Another, (2002) 7 SCC 728, and Subramanya vs. State of Karnataka (2023) 11 SCC 255*** to submit that in absence of a specific disclosure the recovery is inadmissible under Section 27 of the Indian Evidence Act.

36. It is true that the memorandum does not describe the precise location in detail. However, the evidence clearly shows that the discovery of the weapon was a direct consequence of the information supplied by the appellant. The requirement of Section 27 of the Indian Evidence Act is that the information must relate distinctly to the fact discovered, which includes not merely the object but also the knowledge of the accused as to the place of concealment. When the accused himself leads the police to the spot and produces the weapon, the requirement of discovery stands satisfied even if the memorandum does not contain elaborate particulars. The decisions relied upon by the appellant turned on facts where the disclosure statements were vague and the discovery itself was doubtful. In the present case the recovery

is duly proved through the evidence of the panch witnesses and the Investigating Officer and is consistent with the medical evidence. The recovery of the Kukari therefore constitutes a relevant incriminating circumstance.

37. The Hon'ble Supreme Court in case of ***Boby v. State of Kerala, (2023) 15 SCC 760*** has in detail delve upon the scope of Section 27 of the Indian Evidence Act. It referred to its earlier judgment in case of ***State of Karnataka v. David Rozario, (2002) 7 SCC 728*** wherein it was held that the statement which is admissible under Section 27 is the one which is the information leading to discovery. Accordingly, the Court further held that it is necessary for the benefit of both accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The Court therefore held that the basic idea embedded in Section 27 of the Indian Evidence Act is the doctrine of confirmation by subsequent event. The Hon'ble Supreme Court referred to Three Judge Bench in ***Subramanya v. State of Karnataka, (2023) 11 SCC 255.*** The Court referred to Section 27 of the Evidence Act and observes thus :

> *"If the accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the*

> *weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden.* *(Para 32)*
>
> *Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act."*

Prior thereto the Hon'ble Supreme Court referred to the well celebrated judgment of the Privy Council in case of ***Pulukuri Kotayya v. King-Emperor*** , 1946 SCC OnLine PC 47 wherein the Court held that -

> "*Section 27 of the Evidence Act requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to the said fact. The information as to past user, or the past history, of the object produced is not related to its discovery.*"

The Hon'ble Supreme Court then referred to another judgment of ***Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80*** and observed as under :

> *"40. A perusal of para 71 of Suresh Chandra Bahri case would reveal that the Court has reiterated that the two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. The Court held that the provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence."*

As could be seen in none of the judgments referred to by the Hon'ble Supreme Court and also in its finding the Court held that it is mandatory for the accused to give details or description of place of concealment, rather in the case of ***David Rozario*** (supra), the Supreme Court observed that the information given by the accused should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. In the case of ***Subramanya*** (supra), the Supreme Court observed that when the accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, then the first thing the Investigating Officer should do is to call two independent witnesses.

38. Thus what is important is the free will and volition of the accused to make a statement. If the accused has to make a statement on his own free will and volition, the Court or the investigating agency cannot expect a particular format of making statement. In a given case, the accused may say that he will lead the police to the place where he had hidden the weapon and in the other he may broadly describe the place saying that the weapon is kept

in the house but without describing the exact place in the house or may provide exact details. Thus what is important is not the form of the statement but discovery of facts on the basis of statement made by the accused while he was in custody. That being so, the discovery made of a fact in terms of Section 27 of the Indian Evidence Act cannot be ignored only for the reason that detailed description of place of concealment was not given by the accused. In fact, to expect the accused to give details of description of place of concealment will attract a risk. Mr. Gupta, learned Senior Counsel/ Special Public Prosecutor has rightly argued that if such details are given while in custody, the possibility of removing the weapon/article from the place or planting the same cannot be ruled out. The realistic approach will concur this possibility.

Thus, the judgments referred to by the appellant will be of no help, in fact two out of four judgments were referred to by the Supreme Court in ***Boby's*** case. The first judgment is in the case of ***State of Karnataka v. David Rozario*** (supra) and the second ***Subramanya vs. State of Karnataka*** (supra). We did not find in the said judgments that the law is laid down that in absence of detailed description of place of concealment of the weapon/article, the recovery is inadmissible under Section 27 of the Indian Evidence Act. What is held is that information given should be recorded and proved. However, there is nothing to show that the voluntary statement should contain the detailed description of the place of concealment. In fact, such expectation would take away the essence of involuntariness to make statement by the accused. It all depends on the ability to express oneself and,

therefore, to expect accused to make a voluntary statement in a particular manner runs contrary to the provision itself. The other two judgments referred to by the appellant are such that in the case of ***Manoj Madanlal Tekam*** (supra), the Supreme Court has not considered the law laid down in the landmark judgment of ***Pulukuri Kotayya*** (supra). In the case of ***Adina and Another*** (supra), though the judgment of Privy Council is considered, the law laid down in ***Boby's*** case is not considered. That being so and taking into account the consistent view of the Supreme Court, we do not find any substance in the argument of the appellant that in absence of a detailed description of place of concealment in the first part of muddemal, the recovery is inadmissible. The argument is accordingly rejected.

39. It has also come in evidence through PW 18 that a communication was addressed to the SRPF Headquarters where the appellant was attached seeking details of his duty chart, and it was reported that the appellant had remained absent from duty from 02.11.2015. Though the defence contended that the officer who supplied such information was not examined and the letter (Exh.259) could not be relied upon, it is significant that in his statement under Section 313 of the Code of Criminal Procedure the appellant did not assert that he was present on duty during the relevant period till his arrest on 08.12.2015. While abscondence by itself is not conclusive proof of guilt, unexplained absence around the date of occurrence is a relevant circumstance under Section 8 of the Evidence Act and may be considered along with other evidence on record.

40. Learned Senior Counsel for the appellant further contended that the investigation suffered from certain lapses such as non-recovery of the bullet, absence of fingerprint examination and non-examination of tyre marks. It is true that the investigation is not free from imperfections. However, minor lapses on the part of the investigating agency in the present case do not necessarily enure to the benefit of the accused when the substantive evidence otherwise inspires confidence. The principal circumstances, namely the presence of the accused with the deceased, the vehicle used in the occurrence, the recovery of firearms and cartridge case, the recovery of the sharp weapon and the medical evidence remain unaffected by such omissions.

41. Reliance was placed on ***Ashish Batham vs. State of Madhya Pradesh, (2002) 7 SCC 317; Sudama Pandey and others vs. State of Bihar, (2002) 1 SCC 679; Subhash Chand vs. State of Rajasthan, (2002) 1 SCC 702; and Varun Chaudhary vs. State of Rajasthan, (2011) 12 SCC 545*** to contend that the circumstances do not form a complete chain. The principles laid down in the said decisions are well settled in cases resting purely on circumstantial evidence. The present case, however, rests primarily on reliable ocular testimony of PW 5 and PW 10 which stands corroborated by medical and ballistic evidence. The surrounding circumstances serve as additional assurance to the prosecution version. The omissions pointed out in investigation do not affect the core of the prosecution case and the decisions relied upon are, therefore, distinguishable on facts.

42. When the aforesaid circumstances are considered together with the ocular and medical evidence, they form a consistent chain pointing towards the guilt of the appellant and are incompatible with any reasonable hypothesis of innocence. Hence, we answer Point No. (ii) in the affirmative.

As for Point No. (iii) :

43. The question that arises next is whether the prosecution has proved that the present appellant acted in furtherance of common intention with Accused No.2 and that the offence was the result of a criminal conspiracy. The offence of conspiracy under *Section 120-B of the IPC* requires proof of an agreement between two or more persons to commit an illegal act. Such agreement is seldom proved by direct evidence and may legitimately be inferred from proved circumstances and the conduct of the parties before, during and after the occurrence. At the same time, such inference must rest upon established facts and not upon mere conjecture.

44. Learned Senior Counsel for the appellant submitted that no motive has been established against the appellant and that there is no evidence of prior meeting of minds. It was contended that in the absence of clear proof of conspiracy, conviction under *Section 120-B of the IPC* cannot be sustained. Reliance was placed upon ***K.R. Purushothaman vs. State of Kerala, (2005) 12 SCC 631***, particularly paragraphs 11 to 15, wherein it is observed that conspiracy cannot be inferred merely on suspicion and that the agreement between conspirators must be established by reliable evidence.

45. It is true that there is no direct evidence showing the manner in which the appellant reached the place of occurrence or the precise agreement between the accused persons. However, absence of such direct evidence is not unusual in cases of conspiracy. The law only requires that the surrounding circumstances should reasonably indicate a meeting of minds.

46. The evidence on record shows that on the day of occurrence, the deceased left Balaji Mall with Accused No.2 in the Tata Safari vehicle owned by him. PW 1 also deposed that during telephonic conversation, the deceased informed him that he was at Somthana Shivar with Accused No.2 and his associates shortly before the occurrence. Within a short span thereafter, the deceased was found dead at Somthana Shivar. The ocular evidence of PW 5 and PW 10 establishes that both Accused No.2 and the present appellant were present with the deceased at the spot. According to them, the appellant first inflicted a blow with a Kukari on the neck of the deceased and immediately thereafter Accused No.2 fired a gunshot. The sequence of events indicates coordinated action and not an isolated or accidental occurrence.

47. The place of occurrence is a kachcha road surrounded by fields and not a place of usual public congregation. The deceased was taken there by Accused No.2 in his own vehicle. The appellant was also present at that spot armed with a deadly weapon. The use of two different lethal weapons, namely a sharp-edged Kukari and a firearm, and the successive assault on

vital parts of the body clearly indicate preparation and concert rather than a sudden quarrel.

48. The subsequent conduct also lends assurance to the prosecution case. The Tata Safari vehicle used in the occurrence was removed from the spot and found at the farm house of Accused No.2. The appellant remained absent from duty from the relevant period and was arrested after a lapse of time. The fact that immediately after commission of crime both the appellant and Accused No. 2 absconded, this has relevance under Section 8 of Indian Evidence Act. Though abscondence by itself is not conclusive, it constitutes a relevant circumstance when considered along with the other evidence on record.

49. So far as Section 34 of the IPC is concerned, the evidence unmistakably shows that the appellant and Accused No.2 acted in furtherance of a common intention. The appellant inflicted a blow with a deadly weapon on a vital part of the body and the co-accused immediately followed it with a gunshot. The assault was sequential and complementary. Even if the fatal injury is attributed to the firearm, the role of the appellant in initiating the assault by a dangerous weapon clearly attracts Section 34 of the IPC.

50. The reliance placed by the defence on ***K.R. Purushothaman*** (supra) does not advance the case of the appellant. In said case, the conviction for conspiracy was found unsustainable as the prosecution had failed to establish

any connecting circumstances showing a prior agreement between the accused. The present case stands on a different footing. Here, the presence of both accused persons with the deceased at a secluded place, the fact that both were armed with deadly weapons, the coordinated manner of assault and the subsequent conduct of the accused persons constitute a chain of circumstances reasonably pointing towards a prior meeting of minds.

51. Though the precise motive behind the offence is not established in detail, the evidence of PW 3 and the agreement (Exh.104) show the involvement of the deceased in the affairs of Balaji Mall and his dealings with Accused No.2. In any event, where there is reliable ocular evidence of participation in the crime, absence of proof of motive is not fatal to the prosecution case.

52. Upon cumulative consideration of the evidence, we are satisfied that the prosecution has proved beyond reasonable doubt that the appellant acted in furtherance of common intention with Accused No.2 and that the offence was committed pursuant to a pre-arranged plan. Accordingly, Point No. (iii) is answered in the affirmative.

As to Point No (iv) :

53. In view of the foregoing discussion, we find that the prosecution has succeeded in establishing, beyond reasonable doubt, the homicidal death of Kishor Madanlal Khatri and the active participation of the present

appellant in the commission of the offence. The ocular evidence of PW 5 and PW 10 stands corroborated by the medical and ballistic evidence, the recoveries effected during investigation, and the surrounding circumstances including the unexplained absence of the appellant from duty immediately around the date of occurrence. The findings recorded are based upon proper appreciation of evidence and do not suffer from perversity, misapplication of law, or overlooking of material evidence.

54. In view of aforesaid discussion and the evidence on record, both documentary and oral, we are of the considered opinion that the learned Sessions Judge was completely justified in convicting the present appellant for the offence under Section 302 read with Section 34 and Section 120-B of the IPC. Accordingly, Point No. (iv) is answered in the negative.

55. The appeal, being devoid of merit, deserves to be dismissed. Hence, we proceed to pass the following order -

Order

(i) The Criminal Appeal stands dismissed.

(ii) The conviction and sentence imposed upon the appellant for the offences punishable under Section 302 read with Section 34 and Section 120-B of the IPC are hereby confirmed.

(Nivedita P. Mehta, J.) **(Anil L. Pansare, J.)**

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