


MHPU010117042016 	Received on	20.09.2016		
	Registered on	20.09.2016		
	Decided on	10.05.2024		
	Decided on	Ys.	Ms.	Ds.
		07	07	20

**IN THE DESIGNATED COURT OF SESSIONS JUDGE,
PUNE AT PUNE**

Present : Prabhakar P. Jadhav, Additional Sessions Judge,
Pune
[Date : 10.05.2024]

SESSIONS CASE NO. 706/2016
Exh. No.670

[FIR No. RC. 4/(S)/2014/Mum. of 2014 of CBI SCB Mumbai (Original C.R. No. 154/2013 registered with Deccan Police Station, Pune City) for the offence punishable under sections 302, 120B and 201 of the Indian Penal Code, 1860, section 16 of UAPA Act, 1967 and section 3(25) of the Indian Arms Act.]

Complainant	The State of Maharashtra		
Represented By	Shri. P. S. Suryawanshi, Learned Special P. P.		
Accused	1.	Dr. Virendrasinh Sharadchandra Tawde Age : 53 years, Occ : Sadhak of Sanatan Sanstha, R/at : H-55, Sanatan Sankul at Devad,	

	New Panvel, Post : ONGC, Dist : Raigad.
	2. Sachin Prakashrao Andure Age : 33 years, Occ : Private Service, R/at : Venu Niwas, Near Jain Mandir, Raja Bazaar, Aurangabad.
	3. Sharad Bhausahab Kalaskar Age : 28 years, Occ : Agriculturist, R/at : Village Kesapuri, Post : Daulatabad, Tal. and Dist. Aurangabad.
	4. Sanjiv Gajanan Punalekar Age : 46 years, Occ : Advocate, R/at : Flat No.25, Malkani Mahal, Self Help Co-op.Hsg. Soc. Ltd. Dr. Annie Besant Road, Worli, Mumbai.
	5. Vikram Vinay Bhave Age : 38 years, Occ : Service R/at : Room No. 17, Shri Gurudeve Datta, Maya Apartment, Shiv Nagar Devad Gaon, Tal. Panvel, Dist. Raigadh.
Represented By	Advocate Shri. Prakash Salshingikar, for accused Nos. 1 and 2. Advocate Smt. Suvarna Vast, for accused No.4. Advocate Shri. Virendra Ichalkaranjekar, for accused Nos. 3 and 5.

Date of offence	On or before 20.08.2013
Date of FIR	02.06.2014
Date of Charge-sheet	06.09.2016
Date of Framing of Charges	15.09.2021
Date of Commencement of evidence	29.10.2021

Date on which judgment is reserved	10.05.2024
Date of the Judgment	10.05.2024
Date of the Sentencing Order, if any.	10.05.2024

Accused Details

Rank of accused	Name of accused	Date of arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Period of detention undergone during trial for purpose of section 428 Cr.PC.
1.	Dr. Virendrasingh Sharadchandra Tawde	10.06.2016	In Jail	Under sections 302, 120B and 201 of the	Acquitted	-
2.	Sachin Prakashrao Andure	18.08.2018	In Jail	Indian Penal Code, 1860, section 16 of UAPA	Convicted	18.08.2018 to 10.05.2024
3.	Sharad Bhausheb Kalaskar	03.09.2018	In Jail	Act, 1967 and section 3(25) of the	Convicted	03.09.2018 to 10.05.2024
4.	Sanjiv Gajanan Punalekar	25.05.2019	06.07.2019	Indian Arms Act.	Acquitted	-
5.	Vikram Vinay Bhave	25.05.2019	13.05.2021		Acquitted	-

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

Rank	Name	Exh.Nos.	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
P.W.1	Avinash Dnyaneshwar Dawalbhakta	245	Resident of same building and floor of deceased Dr. Dabholkar/panch witness on documents i.e. newspaper, identity card of Govt. of Maharashtra of deceased Dr. Dabholkar and diary
P.W.2	Sham Nivrutti Marne	275	Panch witness on spot of incident
P.W.3	Navnath Bibhishan Rangat	284	Complainant
P.W.4	Dr. Hameed Narendra Dabholkar	293	Son of deceased Dr. Narendra Dabholkar
P.W.5	Dr. Vasudev Pralhad Paralikar	322	Panch on inquest panchanama
P.W.6	Kiran Keshav Kamble	330	Eye witness
P.W.7	Dr. Ajay Aniruddha Taware	356	Medical Officer, who conducted postmortem examination of dead

			body of deceased Dr. Dabholkar
P.W.8	Prashant @ Raju Shrimant Potdar	366	One of the activist of Andhashradha Nirmulan Samiti
P.W.9	Sanjay Arun Sadvilkar	390	Who came in contact with Sanatan Sanstha, Hindu Ekta, Shivpratishtan, Bajrang Dal and Vishwa Hindu Parishad
P.W.10	Somnath Bhagwan Dhayade	414	One of the subscriber of Sanatan Prabhat Weekly
P.W.11	Vishal Vikas Mainkar	420	Panch witness on panchanama - spots shown by accused Sachin Andure
P.W.12	Ritesh Kumar Gupta	424	Panch witness on panchanama - spots shown by accused Sharad Kalaskar
P.W.13	Nilesh Bhatu Wagh	432	Registered Clinical Psychologist under Rehabilitation Council of India (RCI), who prepared reports of the psychological assessments and forensic statement analysis report of

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			accused Sachin Andure and Sharad Kalaskar
PW.14	Vinay Manohar Kelkar	459	Eye witness
PW.15	Shirish Nagorao Mohod	463	Deputy secretary, Home Department, Mantralaya, Mumbai, who sanction accorded under UAPA Act, against accused Virendrasinh Tawde, Sanjiv Punalekar and Vikram Bhave
PW16	Manohar Shankar Joshi	481	Investigating Officer
PW17	Suresh Ganpat Kenjale	504	Police Inspector, who had taken down complaint of complainant and prepared seizure panchanama of clothes and articles of deceased Dr. Dabholkar
PW18	Virendra Ramvilas Mishra	511	D.C.P. H.Q.Pune City, who issued sanction under sec. 39 of the Arms Act
PW19	Sanjay Kumar Shyamkishor Prasad	526	Additional Chief Secretary, Housing Department and in charge of Additional Chief Secretary,

			Home Department, who accorded sanction under UAPA Act against accused Sachin Andure and Sharad Kalaskar
PW20	Subhash Ramrup Sing	540	Investigating Officer (CBI)

B. Defence Witnesses :-

Rank	Name	Exh.Nos.	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
DW1	Suvarna Jitendra Aaher	618	Sister of accused Sharad Bhausahab Kalaskar
DW2	Deepali Umesh Chalse	619	Sister of accused Sachin Prakashrao Andure

C. Court Witnesses : Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr.Nos.	Exhibit numbers	Description
1.	156 - PW18	Sanction Order u/s. 39 of Arms Act,

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		1959 for prosecution of accused Sachin Prakashrao Andure and Sharad Bhausaheb Kalaskar
2.	246 - PW1	Letter dated 20.08.2013 of Maharashtra Andhashraddha Nirmulan Samiti
3.	247 - PW1	One typed document
4.	248 - PW1	Niyojan form, Dist. Sangali
5.	249 - PW1	Letter dated 13.08.2013 of Doordarshan Kendra
6.	250 - PW1	One handwritten note
7.	251 - PW1	Sakal newspaper dated 19.08.2013, Pune City
8.	252 - PW1	One diary
9.	253 - PW1	Identity card of Dr. Narendra Dabholkar
10.	254 - PW1	Seizure Panchanama dated 21.08.2013 of Sakal newspaper, one diary, Identity card-Government of Maharashtra of Dr. Narendra Dabholkar
11.	276 - PW2	Spot panchanama dated 20.08.2013
12.	277 - PW2	Seizure panchanama dated 20.08.2013 of clothes and articles i.e. wallet, some cash amount, a bunch of keys, some chits, two cheques and visiting cards of deceased Dr. Narendra Dabholkar
13.	278 - PW2	Photograph at Sr. No.11 in CBI Charge-sheet
14.	285 - PW3	Complaint dated 20.08.2013
15.	294 - PW4	Letter dated 17.09.2012

16.	295	Report of Dog Squad
17.	296	Receipt dated 20.08.2013 in respect of handing over dead body of deceased Dr. Narendra Dabholkar
18.	297	Instructions dated 20.08.2013 given by Assistant Police Commissioner, Deccan Police Station, Pune regarding investigation of crime
19.	298	Copy of letter dated 07.06.2018 of Bhudargad Nagari Sahkari Patsanstha Maryadit, Gargoti, Dist. Kolhapur
20.	299	Copy of report dated 03.08.2017
21.	305 - PW4	Copy of letter dated 21.06.2013 to Senior P.I. Vishrambaug Wada Police Station, Pune in respect of taking action on bogus doctor by Dr. Narendra Dabholkar
22.	306 - PW4	Copy of letter dated 01.07.2013 to Collector, Pune in respect of taking action on bogus doctor by Dr. Narendra Dabholkar
23.	307 - PW4	Letter dated 23.04.2013 to Additional Commissioner of Pune Municipal Corporation in respect of taking immediate action on bogus doctor by Dr. Narendra Dabholkar
24.	308 - PW4	Copy of letter dated 26.02.2013 to Police Commissioner, Pune in respect of taking action on bogus doctor i.e. Dr. Sushma Kothari and Dr. Lohiya
25.	309 - PW4	Copy of letter dated 05.02.2013 in respect of taking action on bogus

		doctor
26.	310 - PW4	Copy of letter dated 20.05.2013 to Registrar, Maharashtra Medical Council, Mumbai in respect of taking action on Dr. Lohiya
27.	312 - PW4	Copy of Criminal Writ Petition No. 3512/2015 of the Hon'ble Bombay High Court
28.	323 - PW5	Inquest panchanama dated 20.08.2013 of dead body of Dr. Narendra Dabholkar
29.	331 to 334 - PW6	Four photographs of accused Nos. 2 & 3
30.	335 - PW6	Statement of witness Kiran Keshav Kamble under section 164 of the Code of Criminal Procedure
31.	340 - PW6	Portion mark A from statement dated 02.09.2013 of witness Kiran Keshav Kamble
32.	341 - PW6	Portion mark A of statement dated 25.12.2018 of witness Kiran Keshav Kamble
33.	343 - PW6	Sketch drawn as per details given by witness Kiran Keshav Kamble
34.	344 - PW6	Referred sketch drawn as per details given by witness Kiran Keshav Kamble
35.	345 - PW6	Referred Sketch
36.	346 - PW6	Arrest panchanama of Manish Ramvilas Nogori
37.	352 - PW6	Measurement map
38.	353 - PW6	Arrest panchanama of Vikas

		Ramawtar Khandelwal
39.	357 - PW7	Postmortem report of Dr. Narendra Dabholkar
40.	358 - PW7	Advance cause of death certificate dated 20.08.2013 of Dr. Narendra Dabholkar
41.	381 - PW7	Photograph of deceased
42.	382 - PW7	Photograph of deceased
43.	385 - PW7	Photograph of deceased
44.	386 - PW7	Photograph of deceased
45.	368 - PW8	Monthly of August 2013 of Samiti
46.	369 - PW8	Photocopy of receipt dated 25.03.2008
47.	370 - PW8	Photocopy of application dated 17.08.2013 to API Rahimatpur Police Station
48.	374 - PW8	Yearly publication of Andhashraddha Nirmulan Vartapatra for November-December 2011 of Andhashraddha Nirmulan Samiti
49.	375 - PW8	Yearly publication of Andhashraddha Nirmulan Vartapatra for November 2012 of Andhashraddha Nirmulan Samiti
50.	376 - PW8	Yearly publication of Andhashraddha Nirmulan Vartapatra for November – December 2018 of Andhashraddha Nirmulan Samiti
51.	391 - PW9	Statement of Sanjay Sadvilkar under section 164 of the Code of

		Criminal Procedure
52.	403	Letter dated 15.07.2022 from Civil & Criminal Court, Belapur, Navi Mumbai in respect of recording statement of witness Somnath Bhagwan Dhaygude under section 164 of the Code of Criminal Procedure
53.	410 - PW9	Certified copy of statement of witness Sanjay Sadvilkar recorded under section 313 of Code of Criminal Procedure in C.R. No. 39/2015 of Rajarampuri Police Station, Kolhapur
54.	415- PW10	Statement dated 27.08.2011 of witness Somnath Dhayade under section 164 of the Code of Criminal Procedure
55.	421 - PW11	Memorandum panchanama dated 18.08.2018 - by accused Sachin Andure
56.	425 - PW12	Memorandum panchanama dated 08.09.2018 - by accused Sharad Kalaskar
57.	441 - PW13	Letter dated 23.08.2018 of S.P. and Head of Branch CBI, SCB Navi Mumbai for psychological assessment of accused Sachin Andure
58.	442 - PW13	Forensic Psychological Assessment Report dated 25.08.2018 of accused Sachin Andure
59.	443 - PW13	Forensic Statement Analysis Report dated 31.08.2018 of accused Sachin

		Andure
60.	444 - PW13	Letter dated 07.09.2018 of SP & Head of Branch CBI, SCB, Navi Mumbai for Psychological Assessment and Forensic Statement Analysis of accused Sharad Kalaskar
61.	445 - PW13	Forensic Psychological Assessment Report dated 18.09.2018 of accused Sharad Kalaskar
62.	446 -PW13	Forensic Statement Analysis Report dated 19.09.2018 of accused Sharad Kalaskar
63.	447 - PW13	Letter dated 31.05.2019 of S.P and Head of Branch CBI, SCB, Navi Mumbai for conducting psychological assessment and forensic statement analysis of accused Sanjiv Punalekar
64.	448 - PW13	Forensic Psychological Assessment report dated 03.06.2019 of accused Sanjiv Punalekar
65.	449 - PW13	Report dated 04.06.2019 of Senior Scientific Officer - II (FPD) CFSL/CBI/Navi Mumbai
66.	460, 461 - PW14	Two photographs of accused Sharad Kalaskar
67.	462- PW14	Sketch (D-45)
68.	475- PW14	Sketch (D-111)
69.	464 - PW15	Sanction order dated 27.01.2020
70.	465 - PW15	Covering letter dated 27.01.2020
71.	467 - PW15	Covering letter dated 12.12.2019
72.	482 - PW16	Rough map of spot of incident

73.	483 - PW16	Report dated 20.08.2013
74.	484 - PW16	Office copy of covering letter dated 21.08.2013 (x-ray plates sent to Forensic Expert, F.S.L.Kalina Mumbai for examination)
75.	485 - PW16	Office copy of covering letter dated 21.08.2013 (blood, hair sample, nail clippings, two firearms bullets sent to Forensic Expert, F.S.L. Kalina Mumbai for examination)
76.	493 - PW16	Handwritten notes
77.	494 - PW16	Letter dated 07.12.2013
78.	495 - PW16	Report of Ballistic Expert (collectively)
79.	527 - PW19	Letter dated 30.04.2019 of SP, CBI for obtaining sanction order for prosecution u/s.16 of Unlawful Activities (Prevention) Act, 1967
80.	528 - PW19	Sanction order dated 21.05.2019 in respect of Unlawful Activities (Prevention) Act, 1967
81.	541 - PW20	Search list dated 01.06.2016
82.	542 - PW20	Production-cum-seizure-memo dated 01.06.2016
83.	543 - PW20	Memorandum dated 01.06.2016
84.	544 - PW20	Arrest memo dated 10.06.2016 of Virendrasinh Tawde
85.	549 - PW20	Memorandum dated 18.06.2016
86.	550 - PW20	Arrest memo dated 18.08.2018 of Sachin Andure
87.	556 - PW20	Notes in all four pages back to back
88.	559 - PW20	Order dated 22.08.2013 issued by

		ACP Crime-I Rajendra Bhamre filed with papers in D-6 file
89.	560 to 562 - PW20	Letters dated 25.08.2013 and 26.08.2013 in D-6 File regarding collection of CCTV footage
90.	563 - PW20	Seizure memo dated 02.06.2014
91.	568 - PW20	Letter dated 28.01.2014 issued by N.T. Kadam of Anti Extortion Cell, Thane to Court of learned JMFC, 1 st Court, Thane in respect of passing order for getting possession of seized muddemal
92.	572 - PW20	Copy of letter written by retired DSP Mr. V. G. Dhumne
93.	586 - PW20	Report dated 03.08.2017 of Assistant Charity Commissioner, Satara Division, Satara
94.	591 - PW20	Portion mark 'A' of statement dated 04.09.2016 of Vinay Kelkar
95.	592	Sketch (D-110)
96.	593	Sketch (D-112)
97.	595 - PW20	Portion mark 'A' of statement dated 08.03.2016 of Shri. Advilkar
98.	596 - PW20	Portion mark 'A' of statement of Shri. Somnath Dhayade

B. Defence :

Sr.No.	Exhibit numbers	Description
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C. Court Exhibits :

Sr.Nos.	Exhibit numbers	Description
1.	198	Charge dated 15.09.2021
2.	199 to 203	Plea statement of accused dated 15.09.2021
3.	604 to 608	Statements of accused under section 313 of Cr.P.C. dated 30.11.2023

D. Material Objects :

Muddemal in P.R.No. 267/2021 and V.P.R.No. 84/2021 are as under :-

Sr.Nos.	Description
1.	One video caset at the time of Post Mortem.
2.	Video CD at the time of funeral of Narendra Dabholkar.
3.	CD containing details of passengers traveled from Mumbai to Dubai.
4.	Video CD containing CCTV footages suspected accused moving on Motor cycle.
5.	Video CD containing CCTV footages suspected accused moving on Motor cycle.
6.	CD containing soft copy of 27 photographs.
7.	Photographs.
8.	One pair of spectacles.
9.	Pair of chappals.
10.	Small envelope containing hair of the deceased smeared in blood.
11.	Small envelope containing a piece of cotton smeared with blood.
12.	Small envelope containing cotton cloth used as

	control sample of blood.
13.	Envelope containing one pink coloured full sleeve shirt of the deceased smeared with blood.
14.	Envelope containing a ticket of Shivnari Bus, journey route from Pune railway station to Dadar(E), Mumbai.
15.	Envelope containing one white coloured sando baniyan of the deceased smeared in blood.
16.	Envelope containing the underwear of the deceased.
17.	Envelope containing full pant of the deceased.
18.	Envelope containing a bunch of 6 keys found in possession of the deceased.
19.	Envelope containing a dual SIM mobile of the deceased.
20.	Envelope containing one handkerchief and two white tissue papers found in possession of the deceased.
21.	Envelope containing one black coloured leather purse found in possession of the deceased.
22.	Envelope containing cash of Rs.2080 found in possession of the deceased.
23.	Envelope containing a ticket of Shivnari Bus for journey from Dadar, Mumbai to Pune Railway Station.
24.	Envelope containing a cheque bearing No.838946 drawn on United Bank of India.
25.	Envelope containing a cheque bearing No.869415 drawn on SBI.
26.	Envelope containing a bus ticket of State Transport Bus, issued for journey to be performed from Swargate, Pune to Satara.

27.	Envelope containing a letter addressed to Shri. Ganesh.
28.	Envelope containing one SIM card of Lica Mobile Company found in possession fo the deceased.
29.	Envelope containing one coloured passport size photograph of the deceased.
30.	Envelope containing a visiting card of Shri. JayuBhatkar of Doordarshan found in possession of the deceased.
31.	Envelope containing a visiting card of Shri. Mahavir Mane found in possession of the deceased.
32.	Envelope containing a bill issued by Sahkar Xerox Center, Satara found in possession of the deceased.
33.	Envelope containing coins of Rs.35 found in possession of the deceased.
34.	Small envelope containing 6 khaki coloured papers, 4 blank envelops, strings, etc.
35.	Small envelope containing khaki coloured papers, strings etc.
36.	Envelope containing 4 X-rays plates.
37.	One mobile phone TATA-LG-AD5235 not in working condition.
38.	One mobile Micromax in damaged condition.
39.	One pen-drive/blue-tooth.
40.	One mobile phone Videocon V1393. Two SIM and battery(Airtel).
41.	One mobile phone MAXX, MX1i, One BSNL SIM and battery.
42.	One mobile phone Z10x, Z214, one SIM and battery(Airtel).
43.	One internal hard disk with casting make western

	digital.
44.	One box containing 6 items - I) One small envelope containing one 7.65 mm live cartridge. II) One small envelope containing one 7.65 mm live cartridge. III) One small envelope containing one 7.65 mm used cartridge(empty). IV) One small envelope containing one 7.65 mm used cartridge(empty). V) One small envelope containing a plastic jar having one lead(fired round/cartridge). VI) One small envelope containing a plastic jar having one lead(fired round/cartridge).
45.	Attendance register of Pretty Secretes Shop, Aurangabad.
46.	Statement of Somnath Bhagwan Dhayde of Aurangabad recorded u/sec.164 of Cr.P.C.

J U D G M E N T
(Delivered on 10th May, 2024)

The accused are prosecuted for the offence of hatching conspiracy to commit murder of Dr. Narendra Dabholkar, in execution of said conspiracy to commit his murder, destroying evidence and indulging an unlawful activities.

The facts are as under :-

2] It is alleged by prosecution that Dr. Narendra Dabholkar aged 69 years old, was rationalist, social

worker and crusader against superstition from 1989, when he founded 'Maharashtra Andhashradha Nirmulan Samiti'. He was the force behind Andhashradha Nirmulan Bill -2005 also known as "**Anti Superstition Bill**", which was pending for legislation in August 2013, before the Maharashtra State Legislature. Organisations like Sanatan Sanstha and its sister organisations Hindu Janjagruti Samiti, Warkari Sampraday, were opposing the said bill. The said bill was passed by the State of Maharashtra on 24.08.2013 through ordinance, after the death of Dr. Narendra Dabholkar. There was enmity/hatred of Sanatan Sanstha against Dr. Narendra Dabholkar and Andhashradha Nirmulan Samiti (**ANIS**). Sanatan Sanstha was considering Dr. Narendra Dabholkar and his organisation as anti Hindu. Sanatan Sanstha and its activists had made agitations against Dr. Narendra Dabholkar and **ANIS** on various occasions at various places. Sanatan Sanstha was bitterly opposing Dr. Narendra Dabholkar and his organisation **ANIS**. Sanatan Sanstha had published various articles in "**Dainik Sanatan Prabhat**" the mouthpiece of Sanatan Sanstha. The Sanatan Sanstha was believing that Dr. Narendra Dabholkar was anti Hindu and he was the force behind Andhashradha Nirmulan Bill -2005, which was pending before the assembly of Maharashtra State.

3] In the background of above history, on 20.08.2013, at about 7-20 a.m., on Omkareshwar Bridge, within the limits of Deccan Police Station, Dr. Narendra Dabholkar was murdered by two unknown persons by firing bullets at him. Navnath Bibhishan Rangat, PSI attached to Vishrambaug Police Station, was on patrolling duty on the night between 19.08.2013 and 20.08.2013. On 19.08.2013, he joined his duties at 9-00 p.m. On 20.08.2013, in between 6-00 a.m. to 9-00 a.m., he was on patrolling duty near Omkareshwar Temple, Pune. He was patrolling along with Police Head Constable More. On the road, in front of Omkareshwar Temple, at about 7-20 a.m., he noticed goods carrier tempo was proceeding on the bridge towards Balgandharva Rangmandir. After passing of the said tempo, he noticed 3-4 persons had gathered on the east side of the bridge. He along with PHC More visited the said spot and found that a person aged about 70 years old was lying in the pool of blood. He also noticed two live cartridges and two empty cartridges on the said spot. He informed said incident to Police Inspector Sakunde of Vishrambaug Police Station and also informed the same to Control Room, by dialing No.100. One Kelkar was present on the spot, he informed that, two persons aged about 25 years old had been there, fired bullets and fled away on

motorcycle. After sometimes, the police of Deccan Police Station and other police had reached the spot. On checking the articles of the deceased, it was realized that the deceased was Dr. Narendra Dabholkar. The deceased was shifted in ambulance to Sassoon Hospital, Pune. The injured was declared dead. Thereafter, he lodged report in Deccan Police Station. Accordingly, C.R.No. 154/2013 was registered against unknown persons, for offence punishable under sections 302, 34 of the Indian Penal Code, 1860 and sections 3(25) of the Indian Arms Act.

4] After registration of crime, initially it was investigated by Deccan Police Station and subsequently by Crime Branch -1, Pune City. In view of order of the Hon'ble High Court, Bombay dated 09.05.2014, in PIL (Cri) No. 7/2014, the investigation was handed over to CBI Accordingly, the case was registered by CBI, SCB on 02.06.2014 and resumed the investigation.

5] During investigation by CBI, it was revealed that the accused No.1 Dr. Virendrasinh Sharadchandra Tawde, who had completed MBBS, DLO, DORL and post graduation in ENT, was practicing as Medical Practitioner. In 1995, he shifted to Kolhapur and started private practice. He discontinued his practice in the year 2000

and was associated with various activities of Sanatan Sanstha. In the year 2003, he became coordinator of Sanatan Sanstha in Kolhapur. In the year 2004, Hindu Janjagruti Samiti started its activities in Kolhapur and Dr. Virendrasinh Sharadchandra Tawde used to participate in those activities under the banner of Hindu Janjagruti Samiti (HJS). Because of those activities of Sanatan Sanstha, HJS, Dr. Virendrasinh Sharadchandra Tawde had personal differences/animosity with Dr. Narendra Dabholkar. He had personally made agitation against Dr. Narendra Dabholkar and attempted to disturb the programmes, in which, Dr. Narendra Dabholkar had participated. The involvement of Dr. Virendrasinh Sharadchandra Tawde in the murder of Dr. Narendra Dabholkar was revealed. He came to be arrested on 10.06.2016. In the investigation, it was revealed that the accused No.1 Dr. Virendrasinh Sharadchandra Tawde hatched criminal conspiracy to commit murder of Dr. Narendra Dabholkar. In pursuance of said criminal conspiracy, murder of Dr. Narendra Dabholkar was committed on 20.08.2013 at Omkareshwar Bridge, Pune. Accordingly, initial charge-sheet came to be filed against accused Dr. Virendrasinh Sharadchandra Tawde for the offence punishable under sections 120B, 302, 34 of the Indian Penal Code, 1860.

6] During further investigation, it was revealed that the accused No.2 Sachin Prakashrao Andure and accused No.3 Sharad Bhausahab Kalaskar, who were associated with Sanatan Sanstha and arrested by ATS Maharashtra, Mumbai in C.R.No.11/2018 registered with Kalachouky Police Station. Mumbai had played role in the murder of Dr. Narendra Dabholkar. Accordingly, CBI had taken custody of accused Nos. 2 and 3 in the present crime. Accused No.2 Sachin Prakashrao Andure came to be arrested on 18.08.2018 and accused No.3 Sharad Bhausahab Kalaskar, came to be arrested on 03.09.2018. The accused Nos. 2 and 3 admitted their roles in the offence and had shown the crime scene and route, by which, they had fled away. Said panchanama was carried out in the presence of independent panchas. After entire investigation against accused Nos. 2 and 3, it was revealed that they had murdered Dr. Narendra Dabholkar. Accordingly, supplementary charge-sheet came to be filed on 13.02.2019 for offence punishable under sections 120B, 302 of the Indian Penal Code, 1860, section 3(25) of the Indian Arms Act.

7] During further investigation, it was revealed that the accused No.4 Sanjiv Gajanan Punalekar and his assistant accused No.5 Vikram Bhave have played role in

murder of Dr. Narendra Dabholkar. On 17.09.2012 the accused No.4 Sanjiv Gajanan Punalekar had sent a letter to Dr. Narendra Dabholkar opposing the views of latter about water pollution due to Ganesh Visarjan. It was further revealed that the accused Sharad Bhausahab Kalaskar had visited the office of accused No.4 Sanjiv Gajanan Punalekar at 305, Birya House, 265, Perin, Nariman Street, Bazar Gate, Fort, Mumbai - 400001. At that time, accused No.5 Vikram Bhave, the assistant of accused No.4 Sanjiv Gajanan Punalekar was also present. The accused Sharad Bhausahab Kalaskar had told his role in murder of Dr. Narendra Dabholkar to accused No.4. Accused No.4 Sanjiv Gajanan Punalekar asked accused Sharad Bhausahab Kalaskar to destroy the firearms used in murder of Dr. Narendra Dabholkar and accordingly, the accused Sharad Bhausahab Kalaskar threw four country made pistols in **KHADI**. It was further revealed that the accused No.5 Vikram Bhave had arranged motorcycle for accused Nos. 2 and 3 to conduct recce about 15 days prior to the incident. He himself drove the motorcycle for said recce. The accused No.5 had shown route to accused Nos. 2 and 3 by which they should flee away. Thus, the accused No.5 was involved in hatching conspiracy to commit murder of Dr. Narendra Dabholkar and execution of actual murder. The accused No. 4 Sanjiv

Gajanan Punalekar and accused No.5 Vikram Bhave came to be arrested on 25.05.2019. After investigation, supplementary charge-sheet came to be filed against them on 20.11.2019 for offence punishable under sections 302, 201, 120B of the Indian Penal Code, 1860. As all accused were engaged in unlawful activities, they are also charged under section 16 of the Unlawful Activity (Prevention) Act, 1967.

8] My learned predecessor has framed charge against accused Nos. 1 to 5 at Exh. 198. The charge is framed against accused Nos. 1, 2, 3 and 5 for offence punishable under sections 120B, 302, 34 of the Indian Penal Code, 1860, section 16 of the Unlawful Activity (Prevention) Act, 1967, section 3(25), 27(1) and 27(3) of the Indian Arms Act. So far as accused No.4 is concerned, charge is framed against him for offence punishable under section 201 of the Indian Penal Code, 1860. All accused pleaded not guilty of the offence and claimed to be tried. The statements of accused under section 313 of the Criminal Procedure Code, are recorded at Exh. 604 to 608. The accused Nos. 3, 4 and 1 had filed written statement at Exh. Nos. 609, 610 and 611 respectively.

9] By filing written statements and through cross-examination of the witnesses, the accused have raised multiple defences. The first defence is of total denial, denying the involvement of any of the accused in the crime. It is also alleged by the defence that the deceased was not shot dead at the spot of incident and the body of the deceased was dumped on the spot of incident by carrying the same in the tempo. It is also alleged by the defence that there were number of enmities to the deceased and no investigation has been carried out in that direction. As per the defence, the long hair was found on the body of the deceased and no investigation is carried out in that direction. The accused have examined defence witnesses i.e. sisters of accused Nos. 2 and 3 to prove the defence of the alibi stating that on the day of incident, it was 'Rakshabandhan' and the accused Nos. 2 and 3 were at the houses of their sisters.

10] Apart from the statement recorded under section 313 of the Code of Criminal Procedure, the accused have filed their written statements. The written statement of accused Sharad Bhausaheb Kalaskar is at Exh. 609. The written statement of accused Sanjiv Punalekar is at Exh. 610. The written statement of accused No.1 Virendrasinh Tawde is at Exh. 611. In

detailed written statement filed at Exh. 609, the accused No.3 Sharad Kalaskar, has tried to demonstrate as to how he is falsely implicated in the crime. In said written statement he has made allegations against ATS and CBI. Interestingly, he has referred cases of Malegaon Explosives of the year 2006 and 2008. He has made allegations on some ATS Officers alleging that they had planted explosives and falsely implicated some Muslims and some Hindus in separate cases. In detailed written statement, he has travelled from cases of ATS of the year 2006 up to recent case of planting explosions near the house of Ambani. He has also referred the case about murder of Hiren Mansukh. Serious allegations are made against Paramveer Singh C.P, Mumbai. He has specifically alleged that the accused No.4 Sanjiv Punalekar was defending the accused in cases of ATS and made complaints against Paramveer Singh, and therefore, the accused No. 4 Sanjiv Punalekar, is falsely implicated in the present crime. He has also made allegations about police torture during investigation.

11] In written statement at Exh. 610, the accused No. 4 Sanjiv Punalekar has also made allegations against ATS and he tried to explain as to how he came in contact with the accused No.5 Vikram Bhawe, who was accused in

case of Malegaon Explosive. He has specifically mentioned that since the year 2008, he was representing the accused in cases of explosives registered at Thane, Madgaon, etc. He alleged that ATS had planted RDX and implicated innocent person. He tried to show how said fact was discovered by NIA after change of Central Government. He has also made allegations against the officers of ATS and CBI. In written statement at Exh. 611, the accused No.1 Virendrasinh Tawde has specifically alleged that the witness Sanjay Arun Sadvilkar has misappropriated 500 Kg. Silver of Ambabai temple, Kolhapur and he was implicated in criminal cases, and therefore, at the say of police and CBI, he has given false evidence.

12] On this point, the defence has relied upon Judgment dated 28.07.2020 in case **Parminder Kaur @ PP Kaur @ Soni Vs. State of Punjab in Criminal Appeal No. 283/2011**. In which, it is held that,

“Under the Code of Criminal Procedure, 1973 after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through section 313(1) (b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial Court in compliance with the mandate of section 313 (4). Such opportunity is a valuable right of the

accused in seek justice and defend oneself. Failure of the trial Court to fairly apply its mind and consider the defence, could endanger the conviction itself. Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities. Thus, once a plausible version has been put forth in defence at the section 313 of Cr.P.C. 1973, examination stage, then it is for the prosecution to negate such defense plea.”

13] It is pertinent to note that the written statement of accused No.3 Sharad Kalaskar filed at Exh. 609 is apparently prepared by his defence counsel. Admittedly, there is nothing wrong in preparing written statement by counsel on instruction of accused. However from the facts mentioned in the said written statement, it appears that it is prepared not only to raise his own defence but to create defence for other accused and more particularly accused No.4 Sanjiv Punalekar. Considering various allegations about planting of articles in Malegaon Explosive cases, it appears that, the written statement is filed to create evidence in those case, while raising defence about false implication. Certainly, there is no documentary evidence to explain police torture during investigation. I have gone through the written statements of accused. In minute details, those are to be considered

while appreciating evidence of prosecution witnesses and the documents proved through them.

14] Special PP. Shri. Suryawanshi has filed written arguments at Exh. 660. Advocate Shri. Omkar Nevgi, representing Hameed and Mukta Dabholkar filed written arguments at Exh. 634. Accused Nos. 1 and 2 have filed written arguments at Exh. 657. The accused Nos. 3 and 5 have filed written arguments at Exh. 656. I have gone through all these written arguments.

15] After going through the prosecution story, evidence on record and written and oral arguments advanced by both sides, following points arise for my determination, I record my findings thereon for reasons as stated below :-

<u>Sr. Nos.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1]	Does prosecution prove that before 7-20 a.m. of 20.08.2013, the accused Nos. 1 to 3 and 5 hatched criminal conspiracy to commit murder of Dr. Narendra Achyut Dabholkar ?	..	No.
2]	Does prosecution further	..	The offence

	prove that on 20.08.2013, at about 7-20 a.m., on the footpath of Omkareshwar Bridge, near Balgandharva Rang Mandir, Pune, in pursuance of abovesaid criminal conspiracy to commit murder of Dr. Narendra Achyut Dabholkar, the accused Nos. 2 and 3 had fired bullets from pistol against him and committed his murder ?		under sections 302 read with section 34 of the IPC is proved against accused Nos.2 and 3.
3]	Does prosecution further prove that during above mentioned period and place, the accused Nos. 1 to 3 and 5 in pursuance of aforesaid criminal conspiracy, committed murder of Dr. Narendra Achyut Dabholkar, by using firearms with intention of striking terror amongst the followers of Dr. Narendra Achyut Dabholkar ?	..	No.
4]	Does prosecution further prove that during above mentioned period and place, the accused Nos. 1 to 3 and 5 in pursuance of criminal conspiracy hatched by them as mentioned above had possessed and handled firearms i.e. pistols and cartridges in contravention of provisions under sections 3, 5	..	Offence under section 3(25) of the Indian Arms Act is proved against accused Nos. 2 and 3 only.

	and 7 of the Indian Arms Act ?		
5]	Does prosecution further prove that during above mentioned period and place, in the month of June 2018, in the office located at 305, Birya House, 265, Perin, Nariman Street, Bazar Gate, Fort, Mumbai - 400001, the accused No.4 knowing that the accused No.3 Sharad Kalaskar had committed offence of murder by firearms, asked accused No.3 to destroy the said firearms with intention to screen the offenders from legal punishment ?	..	No.
6]	What order ?	..	As per final order.

REASONS

16] In this case, the prosecution and defence has relied upon number of rulings/citations. Considering number of those rulings, it is not possible and expected that the facts and ratios in each ruling should be discussed at length. For better understanding, those rulings are mentioned here-in-below :-

List of Authorities on behalf of prosecution - (Exh. 632)

- 1] Laxmi Raj Shetty and another Vs. State of Tamil Nadu reported in (1988) 3 Supreme Court Cases 319
- 2] Umar Abdul Sakoor Sorathiya Vs. Intelligence Officer, Narcotic Control Bureau reported in (2000) 1 Supreme Court Cases 138
- 3] Shaikh Shakil Shaikh Khalil and others Vs. State of Maharashtra reported in 2017 DGLS (Bom.) 162
- 4] Mohd. Naushad Vs. State (Govt. of NCT of Delhi) reported in 2023 (4) Crimes 564 (SC)
- 5] Ajay Singh Vs. State of Maharashtra reported in (2007) 12 Supreme Court Cases 341
- 6] Chattar Singh and another Vs. State of Haryana reported in (2008) 14 Supreme Court Cases 667.

List of Authorities on behalf of prosecution - (Exh. 635)

- 1] State of Maharashtra Vs. Raju Chhannulal Birha reported in 2023 DGLS (Bom.) 5023 of the Hon'ble Bombay High Court (Nagpur Bench)
- 2] Judgment dated 18.05.2023 in case Captain Manjit Singh Viridi (Retd.) Vs. Hussain Mohammed Shattaf and others in Criminal Appeal No. 1399 of 2023.

List of Authorities on behalf of accused Nos. 3 and 5 (On the point of photo identification) :- (Exh 661)

- 1] Judgment dated 15.10.2004 in case P. Gopalakrishnan

Vs. Sadanand Naik and others in Appeal (Cri) 1197-1203 of 1998,

- 2] Judgment dated 30.08.2010 in case C. Muniappan and others Vs. State of Tamil Nadu in Criminal Appeal Nos. 127-130 of 2008,
- 3] Judgment dated 03.03.2010 in case Biju Vs. State in Criminal A. No. 1478, 1446, 1490, 1580 of 2002,
- 4] Judgment dated 11.07.2012 in case Mohd. Saleem @ Salim Vs. State in CRL.A. No. 347 of 2000,
- 5] Judgment dated 27.04.2007 in case Ravi @ Ravichandran Vs. State in Appeal (Cri) 636 of 2007,
- 6] Judgment dated 17.11.2005 in case Abuthagir @ Thagir and others Vs. State in Criminal Appeal No. 717 of 2003,
- 7] Judgment dated 07.03.1979 in case Kanan and others Vs. State of Kerala in Criminal Appeal No. 245 of 1973,
- 8] Ramkishan Mithanlal Sharma and others Vs. State of Bombay reported in AIR 1955 Supreme Court 104,
- 9] Judgment dated 11.11.2022 in case Gireesan Nair and others Vs. State of Kerala in Criminal Appeal Nos. 1864- 1865 of 2010,
- 10] Judgment dated 29.10.2020 in case Chunthuram Vs. State of Chhattisgarh in Criminal Appeal No. 1392 of 2011,
- 11] Dilip Mahendra Thapa and others Vs. The State of

Maharashtra reported in 2003(3) MHLJ 864,

- 12] Judgment dated 25.05.2017 in case Thrissur Vs. Unknown in CRL. A. No.2440 of 2010,
- 13] Vijayan and others Vs. The State reported in 1993 CRILJ 2364,
- 14] Karam Singh alias Karmu Vs. The State by the Inspector of Cbcid reported in AIR 1992 SC 1438,
- 15] Judgment dated 03.03.2015 in case Banti Vs. Himachal Pradesh in Cri. Appeal No. 94 of 2013,
- 16] Judgment dated 05.01.2023 in case Lucky @ Prashant Vs. The State of Madhya Pradesh in CRA No. 8222 of 2022,
- 17] Anthony @ Tony William Rosario Vs. The State of Maharashtra reported in 2003(4) MHLJ 892,
- 18] Subramanian Muttu Harijan and Vijay Vs. The State of Maharashtra reported in 2003(2) ALD (CRI) 118,
- 19] Shri. Mangesh Tanu Solkar and Shri Vs. The State of Maharashtra reported in 2003(2) ALD (CRI) 78,
- 20] Sayed Mohammed Owais Vs. State of Maharashtra reported in 2003(3) MHLJ 261 and
- 21] Rajesh Govind Jagesha Vs. State of Maharashtra reported in AIR 2000 Supreme Court 160.

List of Authorities on behalf of accused Nos. 3 and 5 (On the point of Act and Case Law) :- (Exh 645)

- 1] State of Orissa Vs. Brahmananda Nanda reported in

AIR1976 SC 2488

- 2] K.R. Purushothaman Vs. State of Kerala reported in (2005) 12 Supreme Court Cases 631
- 3] Judgment dated 26.08.2022 in case Munuwa @ Satish etc Vs. The State of Uttar Pradesh in Criminal Appeal Nos. 2224-2225/2010
- 4] Judgment dated 06.08.2019 in case Babu @ Fakkrudeen Vs. State Rep. by the Station House Officer, Odiansalai Police Station, Union of Puducherry in CrI. O.P. No. 20793/2019
- 5] Judgment dated 02.12.2014 in case Devendra @ Bitty Bhausaheb Padale and another Vs. The State of Maharashtra in Criminal Appeal No. 782/2011
- 6] Judgment dated 21.08.2003 in case Mousam Singha Roy and others Vs. State of West Bengal in Appeal (crl.) 231-234/2002
- 7] Judgment dated 09.10.2023 in case Naresh @ Nehru Vs. State of Haryana in Criminal Appeal No. 1786/2023
- 8] State (Government of NCT of Delhi) Vs. Nitin Gunwant Shah reported in (2016) 1 Supreme Court Cases 472.
- 9] Judgment dated 17.05.2019 in case Samresh Mridha Vs. The State of West Bengal and others in W.P. No. 1594(W)/2013
- 10] Judgment dated 28.07.2020 in case Parminder Kaur @ P.P. Kaur @ Soni Vs. State of Punjab in Criminal Appeal No. 283/2011

Accused Nos. 3 and 5 (On the point of Extra Judicial Confession) (Exh. 646) :-

- 1] Judgment dated 09.11.1995 in case Balwinder Singh Vs. State of Punjab in Criminal Appeal No. 192/1985
- 2] Judgment dated 24.02.2018 in case Boya Akuthota Nagaraju Vs. State Rep. By Public Prosecutor in Criminal Appeal No. 1324/2012
- 3] Judgment dated 08.11.2023 in case Prabhatbhai Aatabhai Dabhi Vs. State of Gujarat in Criminal Appeal No. 1926/2011
- 4] Nikhil Chandra Mondal Vs. State of West Bengal reported in 2023 LiveLaw (SC) 171
- 5] Judgment dated 10.08.2022 in case Saritha S. Nair Vs. Union of India and others in CRL. MC. No. 4130/2022 of the Hon'ble Kerala High Court
- 6] Judgment dated 29.11.2018 in case Harbans Singh alias Kala ans others Vs. State of Punjab and others in CRA-S-3330-SB/2017 and CRA-D-1-DB/2018 of the Punjab and Haryana High Court.

List of Authorities on behalf of accused Nos. 3 and 5 (On the point of sanction) :- (Exh 662)

- 1] Judgment in case Roopesh Vs. State of Kerala in Criminal Revision Petition No. 732/2019
- 2] Judgment dated 24.11.2022 in case State of Kerala Vs. Roopesh in Cri. A. No. 1192/2022

- 3] Judgment in case The Union of India through NIA, Kochi Vs. Shameer (A-6) in Cri. A.No. 12/2016
- 4] Judgment dated 26.06.2012 in case Ravi Sharma Vs. State of Jharkhand and others in W.P. (Cr.) No. 91/2012
- 5] Judgment dated 19.10.2011 in case Subhashree Das @ Mili Panda and others Vs. Unknown
- 6] Notification S.O. 1004(E)
- 7] Maharashtra Gazette dated 26.05.2010

List of Authorities on behalf of accused Nos. 3 and 5 (On the point of confession) :- (Exh 663)

- 1] Adambhai Sulemanbhai Ajmeri Vs. State of Gujarat reported in AIR Online 2014 SC 217.
- 2] Judgment dated 31.03.2010 in case Sunderlal Kanaiyalal Bhatija Vs. State of Maharashtra and others in Criminal Appeal No. 1222/2006
- 3] Judgment dated 06.05.2021 in case Vikram Vinay Bhave and others Vs. State of Maharashtra and others in Criminal Appeal No. 187/2020
- 4] The Karnataka Control of Organised Crime Act, 2000, Arrangement of section.

List of Authorities on behalf of accused Nos. 3 and 5 (On the point of Crime Reconstruction panchanama) :-

- 1] Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh reported in 2022 LiveLaw (SC) 843

- 2] Judgment dated 21.09.2023 in case Rajesh and another Vs. The State of Madhya Pradesh in Criminal Appeal Nos. 793-794 of 2022
- 3] Judgment dated 12.01.2023 in case Bobby Vs. State of Kerala in Criminal Appeal No. 1439 of 2009

List of Authorities on behalf of accused No. 4 (On the point of Act and Case Law) :- (Exh 648)

- 1] State of Kerala Vs. Raghavan etc. reported in 1974 CRILJ 1373
- 2] Baiju Vs. State of Kerala reported in 2019 DGLS (Ker.)635, the Hon'ble Kerala High Court
- 3] State of Madhya Pradesh Vs. Banshilal Behari reported in AIR 1958 MP 13
- 4] Nageshwar Yadav and others Vs. State of Bihar reported in 2004 DGLS (Pat.) 808
- 5] Angadh Rohidas Kadam and others Vs. State of Maharashtra and another reported in 2007(1) Bom.C.R. (Cri.)73
- 6] S.K.Rashid @ Abdul Rashid and another Vs. State of Bihar reported in 1987 (35) BLJR 335
- 7] Judgment dated 23.05.2023 of the Hon'ble Uttarakhand High Court in case Sukka @ Santokh Singh and another Vs. State of Uttarakhand, in Criminal Revision No. 61/2013
- 8] Mohamad Iqbal Farooq Sheikh and another Vs. State of Maharashtra reported in 2007 (Supp.)

Bom. C.R. 415

9] **State of Maharashtra Vs. Pralhad Champatrao Deshbhratar reported in 2005(1) Bom. C.R. (cri.)564.**

AS TO POINT NOS. 1 TO 5 :-

17] All points are related to each other and are arising out of one and same chain of incidents. Hence, those are discussed altogether.

18] In present case, initially C.R.No. 154/2013 registered with Deccan Police Station was being investigated by Crime Branch, Pune. During said investigation, it was revealed that accused No.1. Manish Ramdas Nogori @ Manya @ Rajubhai and No.2. Vikas Ramavtar Khandelwal were arrested by Mundhwa Police Station on 07.12.2013 in C.R.No. 620/2013 registered for offence punishable under sections 452, 387, 506(2), 120B of the Indian Penal Code, 1860, section 3(25) of the Indian Arms Act and section 37 read with section 135 of the Maharashtra Police Act. The investigation was being carried out by Shri. Rajendra Bhamare, Assistant Commissioner of Police of Crime Unit No.1 Pune City. ACP Shri. Rajendra Bhamare filed an affidavit on 25.04.2014 alleging involvement of accused in present crime and use

of firearms involved in C. R. No. 620/2013 of Mundhwa Police Station in the present crime. Accused No.1. Manish Ramdas Nogori @ Manya @ Rajubhai and No.2. Vikas Ramavtar Khandelwal were arrested in present crime on 20.01.2014 by obtaining their custody from the crime registered at Mumbai Police Station. However, ACP Shri. Rajendra Bhamare could not file charge-sheet within statutory period, and therefore, in response to the notice issued by the Court, he filed an affidavit at Exh. 639. The defence had harped upon the said affidavit and alleged that despite arrest of those accused as shooters, charge-sheet is not filed against them and present accused are falsely charge-sheeted. It further reveals that after investigation was transferred to CBI, accused Nos. 3. Amol Arvind Kale, No.4. Amit Ramchandra Dighwekar and No.5. Rajesh Bangera came to be arrested on 31.08.2018 and 05.09.2018. However, on 31.05.2023, CBI filed final report stating that no sufficient evidence to come forth to prosecute the accused Amol Arvind Kale, Amit Ramchandra Dighwekar and Rajesh Bangera, and therefore, they are not charge-sheeted. CBI further submitted that as accused Manish Ramdas Nogori @ Manya @ Rajubhai and Vikas Ramavtar Khandelwal were not found connected with present crime, they were discharged under section 169 of the Code of Criminal

Procedure. Thus, the accused Nos.1. Manish Ramdas Nogori @ Manya @ Rajubhai, No.2. Vikas Ramavtar Khandelwal, 3. Amol Arvind Kale, No.4. Amit Ramchandra Dighwekar and No.5. Rajesh Bangera are not charge-sheeted in the present crime. As already mentioned, present accused Nos. 1. Dr. Virendrasinh Sharadchandra Tawde, No.2. Sachin Prakashrao Andure, No.3. Sharad Bhausahab Kalaskar, No.4. Sanjiv Gajanan Punalekar and No.5. Vikram Vinay Bhave are specifically charge-sheeted by CBI. At the costs of repetition, it is again mentioned here that my learned Predecessor has already framed charge against them at Exh. 198. In view of all these developments, we have to see whether prosecution has established charges against charge-sheeted accused.

MOTIVE :-

19] The prosecution has come with specific allegations that Dr. Narendra Dabholkar was rationalist and crusader against superstition and founded 'Maharashtra Andhashradha Nirmulan Samiti' in the year 1989. He was the main force behind 'Andhashradha Nirmulan Bill-2005' which was passed after his death. The Sanatan Sanstha was opposing the ideology and activities

of Dr. Narendra Dabholkar. The Sanatan Sanstha was believing and alleging that Dr. Narendra Dabholkar was anti Hindu. There was bitter enmity between Sanatan Sanstha and Dr. Narendra Dabholkar. The enmity towards Dr. Narendra Dabholkar, i.e. the main motive in his murder. On the point of motive, prosecution has examined Dr. Hameed Narendra Dabholkar i.e. is son of the deceased Dr. Narendra Dabholkar, as PW4 at Exh. 293. The prosecution has also examined the activist and employee of ANIS namely Prashant @ Raju Shrimant Potdar, as PW8 at Exh. 366. On the point of motive of Sanatan Sanstha, particularly accused No.1 Dr. Virendrasinh Tawde, the prosecution has examined Sanjay Arun Sadvilkar as PW9 at Exh. 390.

20] PW4, Dr. Hameed Narendra Dabholkar has deposed that his father Dr. Narendra Dabholkar was working for Andhashradha Nirmulan (against superstitions), the organisation like Sanatan Sanstha were against the work of his father. There were altercations between office bearers of Sanatan Sanstha and Dr. Narendra Dabholkar. In 'Dainik Sanatan Prabhat' being published by Sanatan Sanstha, many articles were published against Dr. Narendra Dabholkar. Those were containing threats that if he would not stop the work of

‘Andhashradha Nirmulan’, he would be made next Gandhi. His father had filed complaint against Sanatan Sanstha with ATS Mumbai. His father was editor of weekly ‘Sadhana Saptahik’. In said weekly his father used to publish articles in connection with his work and also used to spread awareness against de-addiction and mental health. Even after strong opposition from Sanatan Sanstha, his father had continued work of ‘Andhashradha Nirmulan’. Therefore, his father was killed.

21] PW8 Prashant Potdar has deposed that he was activist of ANIS. Dr. Narendra Dabholkar was founder of the said organisation. PW8 was full time worker/activist of ANIS. ANIS is having 230 branches in Maharashtra, Goa and Belgaon - Karnataka. He was looking after managerial work for central office situated at Satara. Apart from work, against the superstition, ANIS was working for evil practices, black magic etc. and was arranging awareness programmes in schools, colleges and religious festivals. Deceased Dr. Narendra Dabholkar was editor of ‘Sadhana Weekly’ and used to visit Pune on Monday and Tuesday in respect of said work. The Sanatan Sanstha, Hindu Janjagruti Samiti and other Hindu organisations were opposing the work and activities of ANIS. The activists of those organisations used to secretly

attend the functions of ANIS and further used to publish totally perverse language in daily Sanatan Prabhat. They used defence Dr. Narendra Dabholkar and were extending threats and abuses on phone. One Narendra Maharaj had publicly issued threats to cut limbs of Dr. Narendra Dabholkar. It happened before 5-6 years of incident of murder of deceased. Dr. Narendra Dabholkar was taking efforts to pass the Bill against Superstition. The Sanatan Sanstha and other organisations as well as political parties Shivsena and BJP were opposing the said bill saying that it was against Hindu religion. After deceased had discussed said subject with political parties BJP and Shivsena and thereupon there was decrees in their opposition.

22] PW4 Hameed Dabholkar and PW8 Prashant Potdar are cross examined at length. The chief examination of PW4 is about one and half page whereas his cross-examination runs into twenty two and half pages. In said lengthy cross-examination conducted by advocate Shri. Prakash Salshingikar, various facts are brought on record. It is attempted to bring on record the differences of other persons and their opposition to Dr. Narendra Dabholkar. It is brought on record that the deceased had made complaints against various persons

for their activities of evil practices and black magic. The deceased was working against sacrifices of animal in the name of god/religion. The deceased was working against bogus doctors. He had made complaint against Dr. Lohiya alleging that he is bogus doctor. The deceased had also made complaint against the persons selling stones/diamonds alleging that those are magical stones. The deceased was also facing opposition from Warkari Sampraday. The said Warkari Sampraday was also against passing anti superstition bill. In march 2013, the deceased had criticized Aasaram Babu. One Malgonda Patil had published article extending threats of murder to the deceased. It is also suggested that advocate Varsha Deshpande was also having dispute with the deceased. Thus, in cross-examination of PW4, it is attempted to bring on record that deceased was facing opposition from various persons and organisations for his activists.

23] In further cross examination of PW4, the defence attempted to bring on record financial transactions of ANIS and his office bearers. It is also brought on record that the witness had protested against investigation being carried out by CBI as he was dissatisfied with said investigation. The witness could not produce any documentary evidence about threats

extended by Sanatan Sanstha or its activist to the deceased. However, at the same time, it is brought on record in cross examination itself that Sanatan Sanstha and its office bearers had made various complaints against ANIS and its trust to various tribunals and even before the Court. Certainly, we are not sitting here to enquire economic transaction of ANIS for its alleged irregularities. At this juncture, we have to see whether there were reasonable threats to the deceased from Sanatan Sanstha and its activists as well as sister organisations. It is open secret that institute like Sanatan Sanstha and Hindu Janjagruti Samiti were opposing the activities of ANIS and particularly, deceased Dr. Narendra Dabholkar blaming him.

24] PW8 Prashant Potdar is also cross-examined at length by advocate Shri. Prakash Salshingikar. In his cross-examination also, it is attempted to dispute the economical transactions of ANIS and alleged misuse of the its funds. In his cross-examination also, the opposition from various other persons from Sanatan Sanstha to deceased Dr. Narendra Dabholkar is brought on record. In cross-examination of this witness, it is brought on record that in the magazine of ANIS, there were articles to titled as **“Bhandafod”** and **“Pardafash”** In one such title of

'Bhandafod', there was article against one black magician, who was claiming that he used to talk with goddess Kalubai. After publication of said article, the black magician had admitted his guilt and tendered apology in writing. However, no police complaint was lodged against him. It was suggested that such matters were being compromised by ANIS by obtaining money from the concerned persons, but, same is straightway denied. It has also suggested in his cross-examination that ANIS had conducted raids at various places alleging black magic or superstition and made complaint alleging that magic or evil practices. However, no such complaint was received against Sanatan Sanstha. ANIS had made agitation against Hajrat Manlang Baba Dargah situated at village Katgun, Dist. Satara. Team of the ANIS had visited said Dargah to ascertain whether any evil practices had been followed. However, devotees of said Dargah had not allowed activists of ANIS to enter into said Dargah. Therefore, there was no action against said Dargah by ANIS and no police complaint was lodged. However, ANIS had made police complaint against one Tanhaji Kumbhar of the temple at Kadegaon. Out of said complaint, criminal case was registered. Similarly, on the police complaint by ANIS, criminal case was registered against Vitthal Shinde and two others in the Court of Phaltan. In

both those cases, the accused were acquitted. It is suggested that in both the cases, ANIS had taken money from those accused, and therefore, they were acquitted. The witness is further cross-examined about his remuneration and fund received from ANIS. It is further brought on record that one tempo-trax was purchased in his name by ANIS and it was being used for the activities of ANIS. It is brought on record about magazine published by ANIS, the funds raised by selling those magazines and towards advertisements published in said magazine. Some magazines are produced and proved through this witness are at Exh. 374, 375 and 376. In cross examination conducted by advocate Shri. Virendra Ichalkaranjekar for accused Nos. 3 and 5, it is brought on record that about 10-15 years prior to committing murder, there was acid attack on the deceased. There was also attack on Dr. Narendra Dabholkar and Dr. Shriram Lagu at Auarangabad. Said attack was by Hindu organisation and Shivsena. It is further brought on record that before the day of incident of murder, there was programme of the deceased on Doordarshan. In said programme there was discussion of 'Jat Panchayat'. This witness was referred the yearly magazine produced at Exh. 376. Said magazine is of November-December 2018. On the cover page of said book, there are few lines of Sant Soyarabai as under :-

‘देहींचा विटाळ देहींच जन्मला | सोवळा तो झाला कवण धर्म || विटाळ वांचोनी उत्पत्तेचे स्थान | कोण देह निर्माण नाही जगी ||’ by referring cover page of said book, it was suggested by advocate Shri. Ichalkaranjekar that in said picture, there was naked woman and the picture of bull (नंदी) is shown near her private part and temple is depicted at her buttocks. It is further suggested that at the private part of said woman there was temple bell. By referring those facts, it is suggested that ANIS is indulged in insulting Hindu god and goddess publicly in such magazine.

25] Thus, in cross-examination of PW8 also, the defence has attempted to bring on record enmity of various persons and institutes against deceased. At the same time, it is brought on record by defence itself that Sanatan Sanstha and its activists were making applications against deceased and ANIS to police stations, tribunals and filed complaint in the Court. In cross-examination of PW8, brought on record by the defence itself that one Rahul Solapure of Sanatan Sanstha had made complaint application to the Assistant Police Inspector, Rahmatpur against ANIS in respect of programme arranged on 18.08.2013. It is specifically suggested that Sanatan Sanstha and Hindu Janjagruti Samiti had made complaints against ANIS to the

Government and Charity Commissioner, therefore, the accused are falsely implicated in the crime. Thus, from cross-examination itself, it is crystal clear that Sanatan Sanstha, Hindu Janjagruti Samiti and all Hindu organisations were bitterly opposing the deceased and activities of ANIS. It is further established by defence itself by putting suggestions to the prosecution witness that the accused are connected with Sanatan Sanstha.

26] It is further to be noted here that even after the death of Dr. Narendra Dabholkar, the defence has demonstrated bitter opposition to the deceased and his activists by putting totally irrelevant and defamatory suggestions in cross-examination of the witness. Magazine produced at Exh. 376 and referred above is published in November-December 2018. Incident of murder of Dr. Narendra Dabholkar took place on 20.08.2013. Thus, the magazine was published after the period of more than five years from the death of Dr. Narendra Dabholkar. Despite said fact, the magazine at Exh. 376 is produced by defence on record to demonstrate how activists of ANIS and more particularly deceased Dr. Narendra Dabholkar were against Hindu religion. Interestingly, the above mentioned suggestions in cross-examination of PW8 by advocate Shri. Ichalkaranjkar by referring magazine Exh. 376,

cannot be imagined by ordinary layman. The picture on the cover page, are mere sketches and one cannot imagine the woman in said picture as shown to be naked. It is to be noted here that during final argument advocate Shri. Prakash Salshingikar argued about pictures of Hindu Goddesses drawn by artists M.F. Husain saying that he used to insult Hindu religion. Even in cross-examination of PW8, there are questions such as **“Do you know why Taslima Nasrin is residing in India ?”** **“Do you know for what reasons Salman Rashdi was receiving threats ?”**

27] Thus, not only from depositions of PW4 and PW8 but also from the suggestions put to them in cross examination and from the arguments of advocates defending the accused, it is crystal clear that Sanatan Sanstha, Hindu Janjagruti Samiti and allied Hindu organisations were nurturing bitter enmity against deceased Dr. Narendra Dabholkar. It is further admitted in cross-examination itself that the accused are connected with Sanatan Sanstha.

28] As already mentioned on the point of motive of Sanatan Sanstha and more particularly accused No.1 Dr. Virendrasinh Tawde, prosecution has examined Sanjay Arun Sadvilkar, PW9 at Exh. 390. He deposed that he is

residing at Bindu Chowk, Kolhapur and is running silver factory named as “**Shatakshi Silver**” manufacturing silver idols as per orders of the customers. After the death of his brother, in the year 2001 he decided to work for Hindu religion. He started coordinating people of Hindu religion. There was group of 300 to 350 persons from Kolhapur and nearby places. While working with them for Hindu ideology, he came in contact with Sanatan Sanstha, Hindu Ekta, Shivpratishtan, Bajrang Dal, Vishwa Hindu Parishad. In the year 2002, he came in contact with accused Virendrasinh Tawde of Sanatan Sanstha. In the year 2002, he invited Virendrasinh Tawde for Durgamata Daud arranged at the time of Navratra. Accused Virendrasinh Tawde used to guide them in all activities. Accused Virendrasinh Tawde used to visit his shop. In the year 2006, Dr. Narendra Dabholkar was invited as a speaker for programme arranged by Parit Samaj to celebrate Gadgebaba birth anniversary. MLA Suresh Salunkhe was the chief guest in said programme. Before said programme, Dr. Virendrasinh Tawde had visited his shop along with Ravi Limbkar and Madhukar Nazare and had told that as Dr. Narendra Dabholkar used to speak against Hindu religion, they should disrupt the said programme. The programme was arranged close to his shop. He had informed to two activists and visited venue

of said programme along with those two activists and accused Virendrasinh Tawde. Ravi Limbkar being reporter of Sanatan Prabhat occupied the chair for journalist. MLA Shri. Suresh Salunkhe approached them and asked about purpose of their visit. They had told to MLA Suresh Salunkhe that Dr. Narendra Dabholkar used to speak against Hindu religion, god and goddess, they had been there to disturb the programme. Thereafter, MLA Suresh Salunkhe had talk with Dr. Narendra Dabholkar and assured them that Dr. Narendra Dabholkar would speak only about Gadgebaba. They attended said entire programme. The programme was conducted peacefully. After programme, while Dr. Narendra Dabholkar was proceeding towards his parked car, accused Virendrasinh Tawde approached him along with them. There was hot altercations between accused Virendrasinh Tawde and Dr. Narendra Dabholkar. The witness further deposed that in the year 2008, Dr. Virendrasinh Tawde had stopped attending their programmes and meetings. On inquiry, with activist of Sanatan Sanstha, Madhukar Nazare, it was informed that Sanatan Sanstha had assigned some other responsibility to accused Virendrasinh Tawde. The witness further deposed that on 08.06.2012, he suffered from heart attack. Thereafter, he got withdrawn himself from the activities of Hindu Sanghatana. In April 2013, accused

Virendrasinh Tawde visited his shop and inquired about the same. The accused Virendrasinh Tawde had told that he wanted to make pistol for cause of Hindutwa and he should make pistol in his workshop. He told accused Virendrasinh Tawde that without going through pistol, he cannot manufacture the same. Accused Virendrasinh Tawde had told that he would arrange for pistol. After ten to fifteen days, accused Virendrasinh Tawde called him in different phone and asked to meet him near railway gate of Shahupuri, Kolhapur. Accordingly, he visited the said spot near toys stall. The accused Virendrasinh Tawde introduced the person aged about 35-37 years old and told that he would visit his shop to show pistol. After ten days of said incident, the accused Virendrasinh Tawde informed him on phone that person introduced by him, would visit his shop. Accordingly, said person visited his shop in presence of worker Aniruddha Sutar. The person sent by accused Virendrasinh Tawde had shown the pistol and revolver. After seeing those weapons he told said person that he would have to look at spare parts of those weapons and same would take time and asked the said person to visit after about eight days. After six to seven days, the accused Virendrasinh Tawde phoned him on public booth and told him that the person who had brought weapons was waiting for him in his shop. At that

time, he (PW9) suspected the intention of the accused Virendrasinh Tawde, as he was knowing his absence from the shop. Therefore, he (PW9) called upon Vijay Patil and informed that the person had visited his shop with weapons. At that time, Vijay Patil was at his native place at Kagal and told that he would sent any other person. However, the witness was not having faith any other person and told Vijay Patil that he would send back person with weapons and would call upon lateron. Thereafter, he informed said person who had got weapons to visit his shop after four days, assuring to manufacture weapons.

29] PW9 has further deposed that after two to three days, accused Virendrasinh Tawde visited his shop and expressed the displeasure as he had not done the work. Accused Virendrasinh Tawde had told that he would send two persons. He should allow them to stay at his house or in shop. Accused Virendrasinh Tawde had told that he should not arrange their stay in any Dharmashala or lodge. Accused Virendrasinh Tawde had told that those two persons have to study the timetable of some persons from Kolhapur. After said incident, Dr. Virendrasinh Tawde again called him on phone, after four to five days, he informed that he had sent two persons for

stay. Within two minutes, two persons visited his shop. However, he had not made any arrangement for stay of those two persons. He had asked those persons to visit after about four days. Thereafter, in July 2013, accused Virendrasinh Tawde again called him and expressed the displeasure for not helping him. At that time, the accused Virendrasinh Tawde told him that he wanted Chocklet i.e. bullets and cartridges for pistol. He told Virendrasinh Tawde that he would secure the same from Bangalore. Thereafter, while he was proceeding to Goa, accused Virendrasinh Tawde had phoned him on mobile. Accused Virendrasinh Tawde had told him that he would accompany him to Goa. However, he refused the same assuring to accompany to Bangalore after some time. The witness lastly on 20.08.2013, heard news of murder of Dr. Narendra Dabholkar. He suspected that the accused Virendrasinh Tawde was involved in conspiracy of said murder. Thereafter, he informed said fact to police Vijay Patil requesting to take appointment of senior police officer. Accordingly, Vijay Patil arranged meeting with Police Inspector Shrikant Mohite. After five to seven days, Vijay took him to 'Khusbu Dhaba' on Karad-Patan road and introduced officer of ATS. He disclosed chain of incidents to said police officer and expressed his suspicion. Thereafter, CBI officer Shri. Singh recorded his

statement at Navi Mumbai. After some days, his statement was recorded before the Court. Said statement is at Exh. 391.

30] PW9 is also cross-examined at length by advocate Shri. Vasant Bansode and advocate Shri. Salshingikar for accused Nos. 1 and 2 and the same is adopted by advocate Shri. Ichalkaranjekar for accused Nos. 3 and 5 and by Smt. Vast for accused No.4. In his cross-examination, it is brought on record that in Kolhapur case i.e. in case of murder of Govind Pansare also, the statement of this witness is recorded under section 164 of the Code of Criminal Procedure. The contradictions about the year of incident in programme arranged by Parit Samaj on occasion of Sant Gadgebaba birth anniversary is brought on record through the cross-examination of this witness. Whether said programme was arranged in the year 2003, 2004 or 2006, is disputed by bringing on record those contradictions about the year. It is specifically brought on record in cross-examination conducted by advocate Shri. Salshingikar that after the murder of Dr. Narendra Dabholkar, the witness has expressed his suspicion that the accused No.1 Virendrasinh Sharadchandra Tawde was involved in said murder. He has also told police and CBI some more

persons might have been involved in the murder. The witness has categorically admitted that he was not doing business of firearms. He had not disclosed any facts to anyone before his statement was recorded by CBI office. The witness further stated that as to how he narrated the facts to Dy. S.P. Ankit Goel and Then Police Inspector of Rajarampuri Police Station after the murder of Govind Pansare. Some allegations are made against the witnesses that he was assigned the work of Silver Chariot (रथ) of Kolhapur Temple without publishing any tender and in said work, he had misappropriated the funds. The witness admitted about the undertaking of the work of Silver Chariot (रथ) of Kolhapur temple but has denied corruption in the same. The witness was also suggested that as Sanatan Sanstha had exposed his corruption in the temple committee of Kolhapur, he falsely implicated office bearers of Sanatan Sanstha and its members in this case.

31] Certainly at this juncture, we are discussing about the motive behind murder of Dr. Narendra Dabholkar. The witness has categorically stated as to how he came in contact with accused No.1 Virendrasinh Sharadchandra Tawde and how accused No.1 Virendrasinh Sharadchandra Tawde was associated with the activities of Sanatan Sanstha against ANIS and

particularly Dr. Narendra Dabholkar. To that extent, the evidence of PW9 is nowhere shaken. On the contrary, the connection of accused No.1 with Sanatan Sanstha and his activities against ideology of ANIS and enmity with Dr. Narendra Dabholkar is duly established through this witness.

CAUSE OF DEATH/POST-MORTEM :-

32] The accused are charge-sheeted for the offence of murder of Dr. Narendra Dabholkar by hatching conspiracy and destruction of firearms. Under such circumstances, first of all it has to be seen whether Dr. Narendra Dabholkar met with homicidal death. On this point, prosecution has examined PW5 Vasudeo Pralhad Paralikar as a panch on Inquest panchanama. As deposed by him, he is practicing as a psychiatrist since last 39 years. Dr. Narendra Dabholkar was his relative. On 20.08.2013, while he was in the OPD, in Surya Hospital and examining his patient, he received information that Dr. Narendra Dabholkar was assassinated and dead body was taken to Sassoon Hospital, Pune. Accordingly, he went to Sassoon Hospital and visited mortuary. Various police officers were present there. At the request of one lady police officer, he agreed to be a panch on Inquest

panchanama.

He had seen dead body in the mortuary. Clothes of the body were removed and seized by police in his presence. The dead body was examined, injuries were noted and Inquest panchanama Exh. 323 was carried out. The witness has identified the signature on the panchanama and admitted its contents. The witness identified clothes of the deceased produced at Sr. No. 13, 15, 16 and 17.

On perusal of the Inquest panchanama Exh. 323, it reveals that vide MLC No. 14/2009 dated 20.08.2013 the Chief Medical Officer of Sassoon Hospital has declared Dr. Narendra Dabholkar is dead. As per said Inquest panchanama, there were injuries above right eyebrow near left eyebrow, on right side of the lips, on knee of the right leg and below the same. The injuries on right knee and below same was abrasion. There was discharge of semen. So also there was injury on the back side of the head and near above left eye.

This witness is cross-examined at length by advocate Shri. Salshingikar and advocate Smt. Vast. In cross-examination it is brought on record that the deceased was uncle of wife of the witness. He was closely connected with deceased Dr. Narendra Dabholkar and his son Hameed Dabholkar. It is further brought on record

that this witness being psychiatrist, was attached to Sassoon Hospital. He is examined at length about the actual procedure of Inquest panchanama, photograph of the same. It is attempted to dispute his presence by making suggestions that he being the close relatives, he ought to have been with the family members. However, his presence at the time of Inquest panchanama appears to be very natural. Through his evidence, Inquest panchanama is duly proved by the prosecution. The witness has categorically denied that he had seen any long hair on the dead body from neck to chest side. The witness has categorically denied that being close relative of the deceased, he merely signed the already prepared panchanama.

33] The prosecution has examined Dr. Ajay Aniruddha Taware, as PW7 at Exh. 356. As deposed by him, he was attached to B.J. Medical College Pune as a Professor in Forensic Medicine. His qualification is M.D. in Forensic Science. He had conducted more than 5000 autopsies, till the date of post-mortem in the present crime. On 20.08.2013, while he was on duty, dead body of Dr. Narendra Dabholkar was sent by PSI, Deccan Police Station. He along with Dr. Harshad Tatiya and Dr. Manoj Shinde conducted post mortem examination between 11-

15 hours to 12-30 hours. Before conducting post mortem examination, body was sent for X-ray examination to Radiology Department of Sassoon Hospital. During said post mortem examination, they had found following external injuries : -

- i) Firearm wound of entry present over chest on right side, 22 cm below right axilla, in anterior axillary line, 17 cm rightwards to midline, of size 1 cm x 1 cm with abrasion collar of 0.25 cm inferiorly, margins inverted, no evidence of burning singering, tattoing. On dissection the bullet passed through, skin, subcutaneous tissue, 7th intercostal space, pleura, lower lateral aspect of lower lobe of right lung, upper medial aspect of lower lobe of right lung, oesophagns, and was found lodged in muscles of neck on left side, recovered as bullet-1. The track is hemorrhagic and lacerated, reddish.

- ii) Firearm wound of entry present over right eyebrow medially of size 1cm x 0.5 cm, with 0.1 cm abrasion collar in surrounding margins inverted, no evidence of burning, signeing, tattoing. On dissection bullet passed through right eyebrow, skin, subcutaneous tissue, right frontal bone, meninges, right frontal

lobe, medial surface of left parietal lobe, left occipital lobe, meninges, skull, and exited through firearm exit wound over, left occipital region of head, 10 cm left to midline and 10 cm behind left ear, of size 0.5 cm x 0.5 cm, margins everted. On dissection all the tracks were hemorrhagic, lacerated and reddish.

iii) Firearm wound of entry present 5 cm behind right ear over right occipital region, 13 cm right to midline, of size 1 cm x 0.5 cm, margins inverted, no evidence of burning, singeing, tattooing. On dissection bullet passed through, scalp, occipital bone on right side, meninges right occipital lobe, medial surface of left parietal lobe and was found lodged into left frontal lobe, bullet was recovered as bullet-2. The track was hemorrhagic lacerated and reddish.

iv) Lacerated wound present over forehead on left side, 3 cm above left eyebrow, of size 2 cm x 0.5 cm x bone deep, margins irregular, reddish.

34] The witness further deposed that all these injuries were ante mortem and fresh. In injury Nos. 1 and

3, they found two bullets. Those were recovered and sealed. Those two bullets are at Sr. No. 44(1) and 44(2) and witness identified the same. The injury No.4 is possible due to fall. The injury Nos. 1, 2 and 3 are possible by firing bullets. These injuries individually or collectively are sufficient to cause death of a person in ordinary course of nature. Considering injuries, the death could be instant, definite and there can be no chance of survival.

35] He further deposed that on internal examination, they had noticed 500 ml. blood in right plural cavity. They had also noticed internal injuries to the body corresponding to the external injuries. All the organs were pale. They had preserved viscera as under :-

- i) Skin from entry wounds no.1 to 3 as mentioned above.
- ii) Skin from exit wound
- iii) Two bullets
- iv) Finger nail clippings
- v) Blood

36] The witness further deposed that all bottles were labelled and video recording of post mortem were handed over to police constable on duty in sealed envelope. After completion of post mortem examination, they had given cause of death due to traumatic and

hemorrhagic shock due to firearm injuries over head and chest. The post mortem report was written by Dr. Harish Tatiya and signed by himself for Dr. Tatiya and Dr. Shinde. The report is at Exh. 357. The advance cause of death certificate is at Exh. 358.

37] The chief examination of this witness is running into three and half pages whereas cross-examination conducted by advocates of defence is running into twenty six and half pages. The tenure of the witness attached to Sassoon Hospital from 2006 till 2021 is brought on record. In these years the witness is serving as a Assistant Professor, Associate Professor and Professor. At the same time, he was also working as Deputy Superintendent and Medical Superintendent and charge of various committees of the hospital in those period was with him. Those are 20 to 25 in numbers. He is cross-examined about dispute within his organ transplant committee and illegalities of organ transplant committee by Ruby Hall Clinic but we are not concerned about all those facts. He is also cross examined at length in respect of alleged negligence by him and case under section 304A of the Indian Penal Code, the structures by the Hon'ble High Court in various cases etc. However, we are not concerned about the same.

38] In cross examination, it is brought on record that in Inquest panchanama, police had noted abrasion on right knee and right shin of dead body. However, said injury is not mentioned in post mortem report. The witness has specifically stated that he had seen said portion in Inquest panchanama but as those were minor, he had not referred the same in post mortem and no inquiry was made by him with the police about the same. The witness is cross examined on the point of weight and height of the body, identification marks on the same and various terminologies so as to come to the conclusion of death in the present case. In cross-examination of this witness also, it is attempted to bring on record that there was long hair on the dead body. The witness categorically denied the same. The witness was shown photograph by transferring the digital photograph on mobile whatsApp. Even after seeing said digital photograph also the witness stated that it is thread. Unfortunately detailed cross-examination is conducted on the point of thickness of said object identified by witness as thread and hair of the deceased. On the basis of alleged long hair found on the body and reference of discharge of semen in Inquest panchanama, an attempt is made to draw inference that no investigation was carried out in that angle. Admittedly, passing of tools and discharge of semen in case of

homicidal death is common. In book titled as “The Essentials of Forensic Medicine and Toxicology - 33rd Edition, by Dr. R.S. Narayan Reddy and Dr. O.P. Murthy said fact is explained. In a Chapter on Postmortem changes while discussing Rigor Mortis, it is mentioned that *“The tests may be drawn up into the groin; semen may be forced out of the seminal vesicles, and the pupils may be partially contracted.”* However, the defence attempted to establish different facts and tarnish the image of the deceased. It appears that even after the death of Dr. Narendra Dabholkar, the defence has tried to encash every opportunity to tarnish his image. From cross-examination of Dr. Ajay Taware, it appears that it is mostly attempted to harass the witness and tarnish his image instead of disputing the cause of death. From the lengthy cross examination of PW7, nothing is brought on record to dispute his evidence, post mortem report and the cause of death of Dr. Narendra Dabholkar. Thus, the prosecution has proved beyond reasonable doubt that Dr. Narendra Dabholkar met with homicidal death.

ACTUAL INCIDENT :-

39] In the present case, PW3 Navnath Rangat has lodged complaint. His deposition is at Exh. 284. He

deposed that he was posted as ASI at Vishrambaug Police Station, Pune City. On 19.08.2013, he was on night patrolling duty. Duty hours were 9-00 p.m. of 19.08.2013 to 9-00 a.m. of 20.08.2013. On 20.08.2013, in between 6-00 a.m. to 9-00 p.m., he was deputed for 'Nakabandi' near Omkareshwar Temple for prevention of chain snatching near Omkareshwar Temple. He along with PHC More were standing in front of Omkareshwar Temple, at corner of road. At about 7-20 a.m., a goods carrier tempo was proceeding from Cosmos Bank side towards Balgandharav Rang Mandir. After passing said tempo, he had seen three to four persons had gathered on the east side of the bridge. He along with PHC More went to the said spot. They found that a person aged about 70 years was lying in pool of blood. Two live cartridges and two empty cartridges were found lying on the said spot. Thereafter immediately at about 7-25 a.m. he informed said fact on phone to Police Inspector Shri. Sakunde of Vishrambaug Police Station. Thereafter he dialed 100 number and informed about the incident to Control Room and requested for ambulance and police aid. While he was inquiring with the persons gathered on the spot, the person namely Shri. Kelkar told that two boys aged about 25 years old came on motorcycle, fired bullets and fled away on motorcycle towards Cosmos Bank side. After

some time, DCP Zone 1 Crime, P. I. Shri. Kenjale and API Smt. Salunkhe and some police staff arrived on the spot. Before their arrival, he tried to identify the injured. He found a wallet in the pocket of pant of the injured. There were two cheques of two different banks, bus tickets, chit and photograph in the said wallet. From those articles, he came to know that deceased was Dr. Narendra Dabholkar. He put those articles again in the valet and kept wallet in the pant of the injured. The injured was sent to Sassoon Hospital in ambulance. The police staff of Deccan Police Station were accompanied with injured. The injured was declared dead. Thereafter, he went to Deccan Police Station. Police Inspector Shri. Kenjale recorded his complaint. The complaint was recorded and FIR was registered at 9-30 p.m, Said complaint and FIR are at Exh. 285. The leather wallet, bus tickets, cheques and chits found in the wallet are marked as Article Nos. 21, 23, 26, 24, 25 and 27 respectively. The witness further deposed that Senior Police Inspector Shri. Joshi asked him to show the spot of incident. He had accompanied Senior Police Inspector Shri.Joshi and had shown the spot of incident. The panchanama of said spot was carried out in presence of panchas. On 04.07.2014, CBI Officer Shri.Chauhan had called upon him in the office situated at first floor at Khadki Police Station. CBI Officer Shri. Chauhan had

verified the complaint lodged by him. This witness is asked various questions about inquiry with him by CBI Officer Shri.Chauhan on 04.07.2014. The witness admitted that Shri.Chauhan had made detailed inquiry with him in reference to complaint lodged by him. It is attempted to establish in cross-examination that in submission before Shri. Chauhan, he had stated that while he was in police outpost, a person aged about 70-75 years old had been to said outpost, gave information about the incident. Thereafter, he made phone call to Senior Police Inspector and control room and thereafter he proceeded to the spot of incident. The portion mark "A" of the statement before CBI Officer Shri. Chauhan mentioning the above facts was shown to the witness, but, he straightway denied that he had stated said facts to Shri. Chauhan. It is further attempted to bring on record that the witness had gone to Sassoon Hospital in an ambulance accompanying injured and in Sassoon Hospital, he was controlling mob at the gate. It is further suggested that thereafter he was called at Balgandharav Outpost for inquiry. He went there. API Shri.Kenjale and ACP of Deccan Division were present at Balgandharav Outpost. In Balgandharav Outpost, his statement was recorded by Shri. Kenjale and he was allowed to go at about 2-30 p.m. However, all suggestions are denied by

the witness. The witness categorically denied the portion mark "B" in statement allegedly recorded by Shri. Chauhan and shown to him. In further cross-examination, the witness is questioned about CCTV footages and specifications of the goods carrier tempo which he had seen passing on said road. The witness could not give details about the same. It was specifically questioned that the dead body was thrown from the tempo, but, the witness categorically denied the said fact answering that the tempo had not stopped on the spot and had passed away. In cross-examination the witness stated that he had not heard sound of any firing. The dead body was about 70-80 ft from the spot where he was performing his duty of 'Nakabandi'. The Cosmos Bank is at the distance of more than 100 meters away from the said spot. They were not able to see the dead body from the spot of 'Nakabandi'. The ambulance had reached to the spot within 15 minutes. He had not attempted to take help of any person by halting any four wheeler to remove the injured to the hospital. He himself had tried to search motorcycle riders, who had fired bullets at deceased. He specifically answered that as seniors had already arrived within few minutes, he did not attempt to search the shooters. In cross-examination, it suggested that Shri. Kelkar had not narrated any incident to him nor he had

shown the spot at the time of panchanama, but, the witness had denied those suggestion. No photograph were taken in his presence of the spot of incident. In cross-examination, the FIR is referred to the witness wherein it is mentioned that the information was given in writing. But the witness has stated that he had orally narrated the incident and accordingly it was recorded in the police station. The witness is further cross-examined about 'Jat Panchayat' system of his caste, pistol bullet revolver and so on. It is attempted to bring on record that at the relevant time, the witness was not present on the spot of incident.

After going through the chief examination and lengthy cross-examination of this witness Shri. Navnath Rangat, it is crystal clear that his presence on the spot of incident has clearly made out. He merely set criminal law in motion by filing complaint. Admittedly, the complaint was lodged against unknown persons. Neither any assailants nor any organisation was mentioned in the complaint as accused. Under such circumstances, the complainant PW3 Navnath Rangat has no reason to lodge false complaint and depose falsely. Though, CBI Officer Shri. Chauhan is not examined as witness to prove the contents of statement of this witness, from the very contents of the complaint and unshaken testimony of the

witness, he can not be disbelieved.

40] The prosecution has examined Sham Nivrutti Marne, as PW2 at Exh. 275. He is a panch witness on spot panchanama. He deposed that on 20.08.2013, at 9-00 a.m., he received phone call from Deccan Police Station and accordingly, he had visited the spot. Police Officer Shri.Joshi and his staff and some others had gathered on the spot. Shri.Joshi told him that Dr. Narendra Dabholkar was murdered at the said spot and he should act as a panch on the spot panchanama. One Shri. Chitale was another panch. The spot was situated in the back side of Balgandharav Rang Mandir and in front of Omkareshwar Temple just before the end of bridge which is south north. On south side of the bridge, there is Cosmos bank. On north side, there is Savarkar Bhavan. The width of bridge was 70-80 ft. There are railings on both sides of the bridge. There was road divider on the bridge. On both sides of the bridge, there were footpaths. The spot of incident is on East side of the bridge. They had found blood lying on the spot. They had also found spectacles with one glass broken and having blood stains. A pair of chappal was also on the spot. They had found two live cartridges and two used cartridges lying on the spot of incident. The police seized all those articles and sealed

the same. At that time, a team of police officers had arrived. Said team collected samples of blood mixed soil and normal soil. The photographs of the spot were also taken. All articles were seized by police. Accordingly, panchanama Exh. 276 was prepared. The same bears his signature and signature of another panch and Shri. Joshi. The witness identified broken spectacle article "8", a pair of chappal article "9", live cartridges Sr. Nos. 44(1), 44(2), empty cartridges Sr. Nos. 44(3) and 44(4).

41] PW2 Sham Nivrutti Marne further deposed that on the same day, in the afternoon, he was again called by police. Accordingly, he went to the police station. The Police Officer Shri. Kenjale and his staff was there. Shri. Chitale was another panch. The clothes and other articles of daily use of Dr. Narendra Dabholkar were shown to the panchas. Those were seized and panchanama Exh. 277 was carried out. It bears his signature, signature of another panch Shri. Chitale. The witness identified following articles :-

- 1] **Article No.13 :- Pink shirt of deceased stained with blood and having small hole on the right side.**
- 2] **Article No.15 :- Vest (Banian) stained with blood and small hole on right side part.**

- 3] Article No.16 :- (Underwear)
 - 4] Article No.17 :- Full pant bearing white coloured stain
 - 5] Article No.18 :- Bunch of keys
 - 6] Article No.19 :- Samsung mobile handset
 - 7] Article No.20 :- Two tissue papers and one handkerchief
 - 8] Article No.21 :- Leather wallet
 - 9] Article No.22 :- Currency notes
 - 10] Article No.23 :- S.T. Bus ticket
 - 11] Article No.24 :- Cheque of Rs. 3,000/- in the name of "Anis".
 - 12] Article No. 25 :- Cheque in the name of Dr. Narendra Dabholkar of Rs. 5,130/-.
 - 13] Article No. 26 :- Bus ticket of Swargate to Satara.
 - 14] Article No. 27 :- Chit addressed to one Mr. Ganesh
 - 15] Article No.28 :- Mobile Sim Card
 - 16] Article No.29 :- Passport size photo of deceased Dr. Narendra Dabholkar
 - 17] Article No. 30 :- Visiting card of Mr. Jayu Bhatkar
 - 18] Article No. 31 :- Visiting card of Shri. Mahaveer Mane
 - 19] Article No. 32 :- Bill of xerox center
 - 20] Article No. 33 :- Some coins
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21] Article No. 14 :- Bus ticket

42] In cross-examination of this witness, he has admitted that he is engaged in the business of chinese food. He is on Peace Committee of Deccan Police Station. He renders help to the police as and when required. His phone number was with Police Inspector Shri. Joshi. Police Inspector Shri. Kenjale, API Shri. Salunkhe was having his mobile numbers. The witness denied on 04.07.2014, CBI Officer Shri. Chauhan had recorded his statement as per his say. He fairly admitted that he or other panch Shri. Chitale had not handled any articles seized in their presence. The witness had shown ignorance about the knowledge of size of bullet as 7.65 mm. He could not identify particular cartridge, if kept with other similar cartridges. He admitted that some hairs of small size were found on the spot of incident but he denied that a long hair of some woman were also found on the spot. He is cross-examined on the point of situation of the spot more particularly the poll at the distance of about 30-35 ft from the spot appearing in photograph Exh. 278. He further admitted that the articles were not seized by using wax. He had shown his ignorance as to who had got articles of deceased from the hospital. He has further shown ignorance of mobile

handset seized by prosecution and its IMEI number. The clothes of the deceased were kept in the pocket and were not shown to him by completely removing from those pockets. He was also shown photographs of the clothes and stain of the semen on the underwear. Those holes are likely to be of cuttings for C.A.Report. The witness denied that he was not present for the panchanama and he deposed by reading contents and instructions of police.

43] PW1 Avinash Dawalbhakta is a panch on panchanama of flat No. 305, Amey Apartment, situated at Shaniwar Peth, Pune. His deposition is at Exh. 245. He deposed that in August 2013, he was residing in flat in Amey Apartment, Shaniwar Peth, Pune. Deceased Dr. Dabholkar was residing in a flat on the same floor. Deceased Dr. Dabholkar used to visit one or two days in a week and was staying in said flat. On 21.08.2013, at 11-00 a.m he was called by police in flat No. 305. Deceased Dr. Dabholkar was residing in said flat. The police wanted to carry out panchanama and he was called as a panch. At that time, police officer, police staff and another panch Shri. Khedekar were present. Police had searched/seen said fact in his presence. There were articles of daily use of Dr. Narendra Dabholkar in said flat. There was one bag in said flat. The said bag was opened in his presence.

They had found diary and some documents. Those documents are at page No. 49 to 55 in charge-sheet. They had also found identity card of Dr. Narendra Dabholkar issued by Government of Maharashtra. The police had seized those articles. The diary, identity card and other documents seized from the flat are marked as Exh. Nos. 248 to 253. Accordingly, panchanama was carried out and same is at Exh. 254.

44] In cross-examination of this witness it is brought on record that he was called by Police Officer Shri. Raghunath Phuge. The panch Shri. Khedekar was working in Sadhana Press. Soon before the year 2008, office of Sadhana Press was there. There are six flats on each floor. This witness specifically deposed that at relevant time, there was no watchman and no CCTV cameras in their building. There was always flow of people visiting at flat No. 305. On 20.08.2013, he had received information of the incident at about 8-30 a.m. to 9-00 a.m. The flat owner Shri. R.R. Jadhav was not present in flat on the day of incident and on next day. While panchanama was being carried out, he had also visited his own flat in the mean time. He could not say whether any articles in the flat were shifted or changed in his presence.

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45] It is pertinent to note here that PW2 Sham Marane and PW1 Avinash Dawalbhakta both are natural witnesses. Sham Marane, member of Peace Committee and acquainted with police, had visited spot of incident at the request of police. He has categorically stated the situation of spot of incident and articles seized from the spot. The photographs of the spot of incident showing stain of blood, chappal, bullet etc. are produced on record and those are being referred in cross-examination of the witness. Considering those photographs and articles found, and cross-examination of PW2, the panchanama of spot of incident is duly proved. PW1 Avinash Dawalbhakta being resident of the same Apartment in Shaniwar Peth, Pune on the same floor, where the deceased used to visit, he is also natural witness. Though presence of deceased in the said flat soon before the incident is disputed, important documents such as Identity card and diary are seized from the said flat. It is interesting to note here that by referring the contents in the diary of the deceased, advocate of the accused have doubted the transactions of ANIS. The advocate particularly referred entries of monetary transactions taken into diary. It is also used by defence to demonstrate alleged threats to the deceased. The deceased had written in diary in 'Marathi' 'भंग्याचे मूल गेले तुला काय २५ लाख घे आणि गप्प बस नाही तर जीवे मारु'. By

referring said sentence in said diary, it is orally argued and mentioned in written argument Exh. 656 that no investigation is carried out in that direction. Thus, admittedly the daily used diary and identity card of the deceased are seized from flat No. 305 of Amey Apartment, Shaniwar Peth, Pune. It shows that the deceased was in said flat soon before his murder.

46] Prosecution has examined Kiran Keshav Kamble as PW6 at Exh. 330. He is alleged eye witness and is one of the star witness in the present crime. In his deposition, he has supported the prosecution. He deposed that he is serving as a sweeper in Pune Municipal Corporation. On 20.08.2013, he was deputed on Sambhaji Udyan Kothi. On that day, he was sweeping the road between Omkareshwar Temple to Khati Vadapav stall including the road divider. The another sweeper Smt. Meera Raju Chakale was also deputed along with him in said area. On 20.08.2013, he attended his work at above said place at about 6-30 a.m. After sweeping the said area, he was sitting on the road divider. At about 7-15 a.m., he noticed monkey and crows were chirping in said area. At that time, he heard noise like fire cracker. His attention was drawn towards the noise and he saw that two boys were firing on an aged person. Said aged person

collapsed. Thereafter those two boys ran towards police chowky. Those boys went towards motorcycle parked by the side of the police chowky and fled away on the said motorcycle. Out of those two boys, one was heighted and another was somewhat short in height. They were whitish in colour. Those boys who had fired gun shots, were present in Court at the time of the deposition. The witness identified accused Sachin Andure and Sharad Kalaskar as those two boys. The witness further deposed that after the incident, he rushed towards said aged person, who was lying on the road in pool of the blood. Thereafter, he proceeded for having tea along with Meerabai. Thereafter, he went to Modern Colony to complete his remaining work. Thereafter, his statement was recorded by police officer. He was called by Police Officer Shri. Singh, who had shown photographs. He had seen those photographs and identified the boys, he had has seen on the bridge, while shooting aged person. After identifying those photographs, he signed on it. The witness identified four photographs bearing signatures and produced at Exh. 331 to 334. The photographs at Exh. Nos. 331 to 332 are of accused Sachin Andure. The photographs at Exh. Nos. 333 and 334 are of accused Sharad Kalaskar. He further deposed that after said photographs identification, CBI Officer Shri. Singh asked him to attend the Court at

Shivajinagar. Accordingly, he attended the Court and his statement was recorded by Presiding Officer in camera. The said statement is at Exh. 335. While recording the said statement he was under stress and he forgot to give some details.

47] This witness is also cross-examined at length. In said cross-examination, the witness has admitted that sweeper Meera was not deputed along with him on said place at record of Corporation. The witness has volunteered that at that time, they had not taken specific permission for Meera to work with him. He further admitted that they were provided uniforms but they used to work in normal clothes. On the day of incident also, they were in normal clothes. He denied two wheeler/motorcycle including name of the company. The witness has stated that he knows name of the company manufacturing motorcycles and types of those motorcycles. The witness further admitted that he was not given duty of sweeping in front of area in front of police chowky. The police chowky is at the distance of one minute from the spot, where he was working. He had not seen barricades used for 'Nakabandi' by the side of Omkareshwar Temple. He had not seen any police before he noticed monkey at the said place. The witness further

admitted that Pune Police had met him for the first time on 02.09.2013. The police used to do 'Nakabandi' at the end of bridge, since prior to the incident and also after the day of incident. He had not visited the police station till 02.09.2013. On 02.09.2013, he had not disclosed the incident to the police. Even after the incident, sweeper Smt. Meera Chakale was attending duty along with him. The police had not inquired Smt.Meerabai in his presence. His statement was recorded in the office of Commissioner on 02.09.2013. In his further cross-examination, certain omissions in statement before police are brought on record. He had stated to police that on hearing noise like fire, his attention was drawn towards noise. He had stated that out of those two boys, one was heighted and another was short in height. Those are not appearing in his statement before the police. The witness has admitted that he had not heard noise of firing till 20.08.2013. On 20.08.2013, he had heard three sounds like fire cracker. Initially at the time of first fire, he thought firing was on the monkey, but, on the next firing, he had seen otherwise. The time gap of firing of bullets was one to four minutes or one to two seconds. The witness demonstrated the sound and gap between two sounds as ten to fifteen seconds.

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48] In cross-examination, this witness specifically stated that he was shown photographs of five to six persons. Some of them were small and some of them were big in size. He is further cross-examined in detail as to the description of the persons in those photographs. He specifically deposed that CBI Officer mentioned on the back side of the photograph that he identified the photographs and obtained his signature. The witness was again shown photographs produced at Exh. 331 to 334 and was asked questions about the description appearing in those photographs. The witness admitted that he had made statement before CBI recorded on 25.12.2018. He had stated that the photographs of two male persons namely Sachin Andure and Sharad Kalaskar were shown to him. He was further shown the sketches of unknown persons at Exh. 343 and 344, which he admitted to be drawn as per description given by him. He was also confronted with sketches of unknown persons. However, he denied that those were prepared as per his description. The witness admitted that while giving statement to the CBI officer, he had stated that the photographs produced at Exh. 331 to 334 resembles the killers. In further cross-examination, this witness was shown the City Survey Map of the incident drawn at Exh, 352. After going through the said map, the witness has

shown the spot where he was sitting on the divider, which is marked as “A” in the map itself. The spot, where he parked his motorcycle is marked as “B” in the said map. The witness has shown arrest panchanama, Exh. 346 and photograph of Vikas Khandelwal of arrest panchanama Exh. 353. The witness straightway stated that he had no occasion to see these two persons appearing in those photographs. The witness further denied that he was called by police to trace the assailants with the help of alleged divine power of planchette, which someone claimed to have it. The witness was further cross-examined about presence of activists of ANIS and tutoring by the police, CBI and activists of ANIS. The witness straightway denied those allegations but admitted that on the day of his deposition i.e. on 12.04.2022, he had a lunch with them (Activists of ANIS). It is important to note here that in cross-examination in para No. 36, the witness has categorically admitted that he had seen photographs of the accused in newspaper. Those were shown to him by CBI Officer.

49] The prosecution has examined PW14 Vinay Manohar Kelkar at Exh. 459. He is also an independent eye witness. He has deposed that he is residing at 273, Shaniwar Peth, Pune. He was in habit of going for

morning walk and jogging. On 20.08.2013, at about 7-00 a.m., he had returned from morning walk. After returning home, he relaxed for a while and went in the balcony. At that time, he saw an aged person proceeding on Balgandharav Bridge. Two other persons were walking behind him. At the end of said bridge, in front of his house, there is Omkareshwar Temple. Balgandharav theater is on another end of said bridge. In front of his house, there is 'Dashkriya Ghat' on one side of the bridge and Omkareshwar Temple on other side of the bridge. There is police chowky by the side of 'Dashkriya Ghat'. After seeing the said aged person walking on the bridge, he heard noise of bullet shots within one and one half minutes. He looked at the place from where he heard noise. He saw that the aged person was lying on the ground and two boys following him were running in reverse direction towards his home. He had noticed two to three monkeys passing on the railing of the bridge. Those two boys who were running towards police chowky, took motorcycle parked by the side of the police chowky and fled away towards Ramanbag School passing to his balcony. He had noticed number of motorcycle as 7756. Those two boys were aged between 25 to 30 years and were whitish in colour. One of them was having a black coloured sack-bag on his back. After some time, people

gathered on the spot and police had also arrived. There was a lady police and two gents. He visited the spot and found that the aged person was lying on the ground. He narrated the incident to lady police. Thereafter, he went to his office. He received phone call of police officer Shri. Bhamare. He narrated the incident to him. On inquiry by Shri. Bhamare, he had told that he would be able to identify the shooters. On the same day, police officer Shri. Joshi recorded his statement. The witness identified the accused Sachin Andure and Sharad Kalaskar present in the Court as those two shooters. He further deposed that on 27.12.2018, CBI Officer Shri. Singh had called upon him in CBI Office, Khadaki. Shri. Singh had shown him some photographs. He was shown ten to twelve photographs. Out of those photographs, he had taken two photographs of two different persons. He told CBI Officer Shri. Singh that the faces in those photographs were matching to the shooters to the extent of 80-85%. Accordingly, his statement was recorded. The photographs identified by him and bearing his endorsement are at Exh, 460 and 461. At the end of chief examination, the witness categorically stated that the aged person and boys behind him were proceeding towards Balgandharav theater. He had seen the boy wearing white cap had fired bullet by pistol.

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50] This witness is cross-examined at length by advocates of the accused. Some minor omissions are brought on record in his initial cross-examination by advocate Shri. Salshingikar, which are not material. In further cross-examination, the witness stated that he was present on the spot of incident for about ten minutes. At that time, Shri. Bhamare and Shri. Joshi were not present. After he narrated incident to the lady police, she had not recorded his statement and had merely noted down his mobile number. After about 45 minutes, he received phone call of Police Officer Shri. Bhamare. At about 10-00 to 10-30 a.m., he left his office and went to the police station. While giving statement on 20.08.2013, he had stated that a person wearing white cap, had fired bullets and had not stated that two boys had fired bullets. The photographs at Exh. 460 and 461 are shown to the witnesses and witness admitted that in photograph at Exh. 460, the accused is holding his name plate in his hands and the name can be read. He had given description of the clothes while giving statement before the police. The motorcycle rider was wearing white shirt or 'T' shirt and white cap. As per his description, the police had drawn sketch. The said sketch is at Exh. 462. On the day of incident, he had not seen any policeman on the bridge of Omkareshwar Temple side. He has not seen

any barricades near the temple on the said bridge. On 20.08.2013 i.e. on the day of incident, he had seen one Minanath Gaikwad, to whom he knows since prior to the incident. After about a week when he met Minanath Gaikwad, he had told him about the incident. The witness also shown the sketch produced at Exh. 475. It bears his signature. It was specifically suggested that the person in sketch, Exh. 475 is not a person who was driving the vehicle. On another occasion, the sketch of another person was also drawn under his instructions. The witness was confronted by showing the sketch, Exh. 462 and suggested that he does not resemble to any of the accused. However, the witness categorically stated that the teeth of accused Sachin Andure are like the sketch, Exh. 462. After the incident, the witness had not visited the police chowky near the spot of incident. He had not even made any phone call to any police. Before he had looked towards noise of firing, he had not realized of what the noise was. He had seen fire wound on the dead body, on the neck and head side. He could not see other injuries as the body was in prone condition. When he had reached to the spot of incident, the ambulance had not arrived on the spot. He had not seen chappal of the deceased on the spot. No photographs were taken in his presence. The witness is also confronted with the sketch,

Exh. 344 and 345. He specifically stated that those were not prepared as per description given by him. The witness specifically stated that Exh. 460 resembles with the sketch Exh. 462, which was drawn as per his description. The CBI Officer had not shown him the sketches produced at Exh. 343, 344 and 345. When he had seen the deceased while walking, he was in normal speed and was at the distance of 500 meters from his balcony. The deceased was lying on the ground at the distance of 400-500 meters from his balcony. In his first and second glance at the spot, the deceased had crossed 6-7 ft. distance. When the assailants came towards him and started the motorcycle, he was standing in the same place in his balcony. After the assailants went away, he went for both and thereafter went to the spot of incident. After having bath, he was about to leave for office and with that preparation he stepped out of his house. The witness fairly admitted that his behaviour in not responding immediately to the happenings, is incorrect. In further cross-examination of this witness, it is brought on record that 6-7 months prior to his deposition, some activists of Andhashraddha Nirmulan Samiti had met him. One Milind Deshmukh present in the Court, at the time of his deposition, is an activist of Andhashraddha Nirmulan and had met him. At the time of his deposition, there were

some activists of Andhashraddha Nirmulan Samiti, who were known to him. However, the witness denied that due to their pressure or threats, he is deposing in the Court. The witness has categorically admitted that after police recorded his statement, he had obtained copy of the same in his mobile. He was also having sketch of suspects in his mobile handset as well as mobile handset of his wife. He has further admitted that he had seen photographs of accused Nos. 2 and 3 in newspaper.

51] The prosecution has examined Suresh Ganpat Kenjale as PW17 at Exh. 504. He is retired Police Inspector. In between June 2012 to June 2014, he was attached to Deccan Police Station as Police Inspector Crimes. He deposed that on 20.08.2013, in the morning, while he was in his official residence at Somwar Peth, Pune, he had received phone call of Police Head Constable of Deccan Police Station. On said phonecall, he was informed that there was firing on Balgandharav Bridge and one person was injured. After receiving said information, he immediately went to Balgandharav Bridge in uniform within ten minutes. He found a person lying in pool of blood. He found two live bullets by the side of head of the injured. He also found two empty bullets at some distance from thigh of the injured. The spectacles

had broken, its glass was also lying on the spot. DCP Zone 1 Shri. Makarand Ranade and police staff of Deccan and Vishrambaug Police Station were present there. API Smt. Salunkhe of Deccan Police Station and Police Officer Shri. Rangat of Vishrambaug Police Station were present on the spot. He learnt that API Shri. Rangat was first in time had reached to the spot of incident. Shri. Rangat had informed the incident to Control Room and had called upon ambulance. While shifting injured in ambulance, he identified him as Dr. Narendra Dabholkar. He directed API Smt. Salunkhe to take injured to Sassoon Hospital. Thereafter, Police Inspector Shri. Manohar Joshi had been to the spot of incident. Shri. Manohar Joshi directed him to take Shri. Rangat to Deccan Police Station and recorded his complaint. Accordingly, he went to police station along with Shri. Rangat and recorded the complaint. The complaint is directly typed on computer by writer, which is at Exh. 285. Thereafter, he prepared FIR, obtained signature of Rangat on complaint and FIR. He also put his signatures. Accordingly, he registered C.R. No. 154/2013 and asked Mr. Rangat to go to the spot of incident. Thereafter, he communicated C.R. Number and sections applied to the Senior P. I. present on the spot. Thereafter, he submitted his report to his superiors. He further deposed that he had issued directions by calling

staff of Detection Branch of the police station for search of accused. He himself tried to search for accused. He again returned to the police station by 4-00 p.m. At about 4-30 p.m., Police Head Constable Shri. Khandare came to police station along with clothes and articles of the deceased. He called upon two panchas and seized those 21 articles vide panchanama Exh.277. He handed over FIR and panchanama to the Senior Police Inspector.

52] In cross-examination of this witness, it is brought on record that entrance of Omkareshwar bridge is within the jurisdiction of Deccan Police Station and no 'Nakabandi' was ordered in the morning of 20.08.2013. He recorded complaint of Shri. Rangat, after Senior Police Inspector Shri. Joshi directed him to do so. He was doing 'Nakabandi' near Omkareshwar Temple along with three other staff members. Those three staff members were not accompanied him, when he had gone to police station to record complaint of Shri.Rangat. He did not meet Shri. Rangat in Balgandharav Outpost and complaint was not recorded at the said Outpost. Shri. Rangat was with him till 9-30 p.m. and thereafter he did not meet him on that day. In the FIR it is mentioned that the complaint is in writing. The complaint was typed as stated by Shri. Rangat. The witness categorically admitted that injured

was lying on the spot for a considerable long time. He had tried to verify the condition of the injured. The witness has categorically denied that there was long hair on the neck of the injured. He learnt about death of the injured at about 12-00 noon. He has denied that panchas Shri. Chitale and Shri. Mane are frequently called by police for panchanamas. He further denied that he obtained their signatures on already prepared panchanamas.

53] PW16 Manohar Shankar Joshi is examined at Exh. 481. He was attached to Deccan Police Station as Senior Police Inspector from January, 2011 to March, 2014. He deposed that on 20.08.2013, while he was at home, at 7-45 to 7-50 a.m., API Smt. Salunkhe informed him on phone that a person was shot dead at Omkareshwar bridge. He asked Smt. Salunkhe to inform immediately to ACP Deccan and ACP-Zone 1. Thereafter, he immediately left for the spot of incident. He reached the spot at about 8-30 a.m. to 8-35 a.m. At that time, API Smt.Salunkhe, P. I.Sakunde, PSI Rangat and police staff of Vishranbaug and Deccan Police Stations as well as Police Inspector Shri. Kenjale were present there. He had seen the spot and took some information about the incident. Thereafter, he asked the Police Inspector Shri. Kenjale to

take complaint of PSI Shri. Rangat. He made phone calls to panchas Shri. Marane and Shri. Chitale. The panchas visited the spot of indent at about 9-45 a.m. In presence of two panchas, the spot panchanama was carried out. A pair of chappal and spectacles of the deceased, two live cartridges and two empty cartridges were seized from the spot of incident. Meanwhile, I Car had visited the spot and collected samples of blood, hairs etc. from the spot of incident. Photographs were also taken. Accordingly, spot panchanama was drawn. At the same time, Dog Squad was also called. The Dog from the squad was given smell of the pair of the chappal found on the spot of incident. As per the report of Dog Squad, the dog had proceeded towards Balgandharav theater upto Rajdhani Hotel and stopped there. The said report is at Exh. 285. The spot panchanama is at Exh. 276. The rough sketch of the spot of incident drawn by him is at Exh. 482. Meanwhile, he received information that the witness Shri. Vinay Kelkar had witnessed the incident. He called upon Shri. Vinay Kelkar in the police station and recorded his statement. API Smt. Salunkhe had taken body of the deceased to Sassoon Hospital. She had carried out Inquest panchanama and submitted request letter for post mortem. She had got done vedeography and photography of the post mortem. She collected clothes and other

articles of the deceased and submitted the same with the report signed by her. The report is at Exh. 483. On 21.08.2013, he submitted x-ray report of deceased for forensic expert's report. The letter forwarding muddamal is at Exh. 484. He had sent articles of the deceased particularly blood sample, hair sample, nail clippings, two firearms bullets recovered from the accused as well as bullets recovered from the body of the deceased and his clothes received from Medical Officer in sealed condition were forwarded to forensic expert, F.S.L. Kalina Mumbai. Said letter is at Exh. 485. Thereafter, further investigation was handed over to ACP Shri.Bhamare. Even after investigation was handed over to Shri. Bhamare, he was doing parallel investigation.

54] On perusal of chief examination of this witness, it is crystal clear that the investigation of the crime was with him for very limited period. In said period, he directed recording of the complaint, seized articles of the deceased and recorded statements of the eye witness Shri. Vinay Kelkar. In his detailed cross-examination, the defence has attempted to establish that PSI Shri.Rangat was not present on the spot and eye witness Shri. Vinay Kelkar is planted witness. In cross-examination, this witness stated that before sending PSI

Rangat for recording complaint, he had talk with him. The witness Shri. Vinay Kelkar had not met him before Shri. Rangat met him. The witness denied that PSI Rangat introduced Shri.Vinay Kelkar and had interrogated Shri.Vinay Kelkar before complaint of Shri. Rangat was recorded. He specifically stated that as Shri.Vinay Kelkar had not met him prior in point of time, he did not record his complaint. He admitted that FIR was registered before initiation of the spot panchanama. PSI Shri. Rangat had told him that he was on night duty and was doing 'Nakabandi' near Omkareshwar temple. He himself has not verified 'Nakabandi'. PSI Shri. Rangat had not told that he had heard noise of firing. He did not ask about the same to him. He had not asked to Shri. Rangat whether he had seen the assailants. He had given directions to API Shri. Jagdale to trace out the accused. Thereafter, he carried out the spot panchanama. API Shri. Jagdale was not having any information of assailants. API Shri. Jagdale had submitted report on 21.08.2013. After spot panchanama, he made an inquiry with many persons, but, no one had any knowledge of assailants, and therefore, he did not record statement of any witness. He had made an inquiry with persons regularly having morning walk. However, he had not received any positive information. He had collected information about sweepers deputed in

the area of the spot of incident. On 20.08.2013, the sweepers working in said area had left spot by completing their work. In further cross-examination, PW16 Shri. Joshi has admitted that panch Shri. Marne was known to him and he was having his mobile number. He was also having mobile number of another panch Shri. Rahul Chitale, who was motor mechanic and he was used to call upon him for vehicle of office. The witness specifically stated that when the panchas had been to the spot of incident, API Shri. Smt. Salunkhe was not present when I-Car visited the spot, while panchanama was going on. The witness specifically stated that there was pool of blood about two to two and half feet spread on the spot. Before recording statement of Shri. Vinay Kelkar, he had gone through FIR. However, he denied that he put questions to Shri. Vinay Kelkar on the basis of said FIR. In further cross-examination, some omissions of the witness Shri. Vinay Kelkar are brought on record. However, those are not material. The witness specifically stated that he had not seen the dead body on the spot, as injured was already shifted to the hospital from the spot of incident. The witness further denied that on 02.08.2013, at about 8-30 p.m, Shri. Rangat went to the Sassoon Hospital on duty to control the mob as per directions of Police Inspector Shri. Sakunde. He further denied that the statement of Shri.

Rangat was recorded in Balgandharav Police Chowky. The witness is further cross-examined as to whether he investigated about live cartridges and empty cartridges on the spot of incident and other aspects. However, as already mentioned the investigation with this witness was for very limited period and it was handed over to another Officer. Under such circumstances, it is not expected from him that during said limited period, he should have investigated on those angles.

55] In lengthy argument, delivered for days together and even in written argument, the evidence of PW6 Shri.Kiran Kamble, PW14 Shri. Vinay Kelkar, PW17 Shri. Suresh Kenjale and PW16 Shri. Manohar Joshi, is challenged by the defence on various angles. However, certainly the FIR is lodged against unknown persons. There are no allegations against any organisation or other accused in the FIR. Under such circumstances, it cannot be said that merely to implicate present accused, the FIR was lodged falsely. PW6 Shri. Kiran Kamble is a sweeper. PW14 is residing in the vicinity of the spot of incident. Their presence on the spot of incident is natural. The statement of PW14 was recorded on the same day of incident. The statement of PW6 was recorded on 02.09.2013. Their statements were recorded years before

arrest of present accused. Under such circumstances, it cannot be said that they are planted witnesses to falsely implicate present accused. The presence of PW3 Shri. Navnath Rangat on the spot of incident, is specifically stated by PW17 Shri. Suresh Kenjale and PW16 Shri. Manohar Joshi. They have categorically stated as to how PW3 Shri. Navnath Rangat informed them about the incident and how his complaint came to be recorded. The specific defence of the accused is that the dead body was dumped on the spot of incident from the tempo, which was noticed by PW3 Shri. Navnath Rangat. Said defence itself confirms the presence of PW3 on the spot of incident at the relevant time. Considering the status and educational qualification of Kiran Kamble and particularly his statement against unknown persons, the delay in recording the same, cannot be said to be fatal to the prosecution. From the evidence of witness that there was pool of blood about two to two and half feet on the spot of incident, (which can be seen in photographs of the spot of incident). The theory i.e. dead body was dumped on the spot of incident, is totally ruled out. Considering the sequence of the incident, recording of FIR and recording of statement of eye witnesses, the prosecution theory and evidence of these witness cannot be discarded labelling the same as false. So far as photo identification is

concerned, the said point is discussed here-in-before.

56] All above witness are in respect of initial investigation carried out by Pune Police. After investigation was handed over to CBI, it recorded statement of some witnesses PW10 Somnath Bhagwan Dhayade. His evidence is at Exh. 414. He deposed that he is running restaurant in the name as “Shradha Chat Bhandar” at Trimurti Chowk, Jawahar Colony, Aurangabad. His younger brother and his son helps him in said business. At the say of Shri. Chauhan, he had subscribed for ‘Sanatan Prabhat weekly’. He used to read the same. In said weekly, he used to read information about rites and rituals and different poojas of Hindu Dharma. The person delivered said weekly, used to inform him about different programmes of Hindu Janjagruti Samiti. He used to attend those programmes. In the year 2012, in one said programme of Hindu Janjagruti Samiti arranged on the ground in front of Gajanan Maharaj Temple Garkheda, he had met with Sachin Andure and Rushikesh Devdikar. They used to visit his restaurant occasionally. Accused Sachin Andure and Rushikesh Devdikar used to talk about Love Jihad and Hindutwa. On their asking, he had assured to provide food to the volunteers of Hindu Janjagruti Samiti. He came to know

about murder of Dr. Narendra Dabhokar on 20.08.2013. He learnt said fact from news on television. After said incident, after about 15 days of on new moon day, (अमावस्या) the accused Sachin Andure had been to his restaurant in the evening. As it was new moon day, the restaurant was closed. They used to keep the restaurant close on new moon day. He had gone to the restaurant to perform pooha-archa. At that time, accused Sachin Andure was sitting on the flatform (ओटा) of his hotel. After completing the pooja archa in the restaurant he approached the accused Sachin Andure. At that time, clothes of Sachin Andure were unclean and untidy, his hairs were scattered. He was not appearing to be well. He was appearing unhappy. He made inquiry with accused Sachin Andure by sitting beside him with compassion. He asked Sachin as to what had happened and why he was unhappy. Thereupon Sachin had told that he want to disclose something. Thereupon accused Sachin lowered his head and sat quietly. At this juncture, the accused Sachin told him in vernacular ‘मी नरेंद्र दाभोळकर यांना ठोकले आहे’ ‘ठोकले आहे’ means he killed Dr. Narendra Dabholkar by firing bullets. He further told that he was accompanied by accused Sharad Kalaskar, who also fired bullets and they both together killed Dr. Narendra Dabholkar. On hearing above said answer, he (PW10) was shocked. He

asked why he was confessing and why he was implicating him into the matter. Thereafter, he left the spot saying to the accused Sachin that he had some urgent work. At that time, the accused Sachin had asked him whether he would help his parents in case of his arrest. Thereafter at about 15-20 days, Rushikesh had visited his restaurant. He told Rushikesh that the accused Sachin had confessed his guilt with him. Thereupon Rushikesh replied "OK" and left the restaurant. The witness further deposed that on 22.08.2018, the CBI Officer had phoned him and asked about information in respect of murder of Dr. Narendra Dabholkar. On that day, in the late evening, CBI officer Shri. Patil had been to him with summons and asked to attend Mumbai Office of CBI. On 23.08.2018, at about 10-00 a.m. he reached office of CBI, Mumbai. CBI Officer Shri. Singh was present in the said office. He made inquiry with him and recorded his statement. Thereafter, on 28.08.2018, he was presented before the Court at Washi, Navi Mumbai by CBI Officer. The Judicial Officer in the said Court made inquiry with him in closed room and recorded his statement. Said statement is at Exh. 415.

57] In cross-examination of this witness, it is brought on record that after the disclosure by accused Sachin, till recording the statement by CBI on 22.08.2018,

the witness was busy in his routine activities. During said period, some police may used to visit his restaurant when others used to have breakfast. However, he had not disclosed about confession of the accused Sachin to any police or reported the same to any police station. On 22.08.2018, the CBI Officer Shri. Patil had met him at his residence at about 9-00 to 9-30 p.m. He was accompanied by 2-3 other persons. On 23.08.2018, when he visited office of CBI, Mumbai, he had seen accused Sachin in said office. He has visited CBI Office in his own car. In said office, he was not allowed to keep mobile and his driver was asked to wait outside. He was in CBI Office from 7-00 to 7-30 p.m. In CBI Office, he was somewhat frightened. In statement before CBI, he had stated that the programme of Hindu Janjagruti Samiti was held in the year 2012 and he met with accused Sachin Andure and Rushikesh Devadikar in said programme. However, the year of said programme is not mentioned in the statement. It is not mentioned in his statement that on the request of Sachin Andure and Rushikesh Devadikar, he had agreed to provide food to the volunteers. It is not mentioned in his statement that when Sachin had visited his restaurant, his clothes were unclean and untidy and his hairs were scattered. There is no reference of specific words of firing bullets in statement before CBI. It is not

mentioned that Sachin had told that Sharad Kalaskar had also fired bullet shots and they both together killed Dr. Narendra Dabholkar. In further cross-examination, the witness has asked about sharing the information given by accused Sachin with his wife but he stated that he had not disclosed the same to his wife. The witness is also cross-examined on the point of criminal case against his son in Fulambri Police Station for selling illicit liquor. However, though the witness admitted said fact, he specifically stated that said case was recently filed before about a year of his deposition.

PSYCHOLOGICAL ASSESSMENT :-

58] The prosecution has examined Nilesh Bhatu Wagh as PW13 at Exh. 432. He deposed that his educational qualification is M.A. Psychology, Diploma in Industrial Psychology, M.Phil in Medical and Social Psychology. He has cleared National Eligibility Test examination for lectureship in Psychology. He is Registered Clinical Psychologist under Rehabilitation Council of India. He is having more than 12 years experience in the field of Forensic and Clinical Psychology as a lecturer, Psychologist and Research Scholar. He joined as Senior Scientific Officer Grade II and since

2020, he was promoted to the post of Senior Scientific Officer Grade I. he had handled more than 200 cases involving more than 300 subjects i.e. persons to detect deception and prove innocence. He is recognized operator of Suspect Detection System i.e. Cogito Operator, Advanced. He is a Licensed Operator of Layered Voice Analysis. Both these instruments are of Israel. He takes interviews of the subjects in his office situated at CGO Complex, CBD Belapur. On 23.08.2018, he received request letter from S.P and Head of Branch, CBI, SCB, Navi Mumbai for psychological assessment of Sachin Prakashrao Andure. Said letter is at Exh. 441. On the same day, said Sachin was produced before him by Investigating Officer Shri. Singh, who had identified the subject. Initially, he discussed background and salient features of the case with Shri. Singh. Thereafter he made discussion/inquiry with subject i.e. Sachin Andure for psychological assessment. He interviewed the subject and collected the information. The subject i.e. Sachin Andure gave details about his arrest and the case. He observed that subject was co-operative, attentive, giving response to the questions and maintaining eye to eye contact. On the basis of psychological assessment, it can be inferred that the accused Sachin was truthful in his statement regarding the incident and his involvement. He had

suggested his polygraph examination with the consent of accused for precise opinion. Accordingly, he prepared report of psychological assessment, which is at Exh. 442. The accused Sachin Andure agreed to give statement in writing. On the next morning, the accused Sachin Andure was again produced before him. A pen and paper was provided to Sachin Andure and was asked to write his statement. The accused Sachin wrote down the statement, whatever he remembered and after completion, he signed all pages. He (PW13) also signed all those pages. The said exercise is called 'Forensic Statement Anyalysis'. While the accused was writing down his statement, he was observing the same and was taking notes of his behaviour while writing the statement. At the conclusion, it was his opinion that the accused Sachin Andure was truthful in his statement regarding the incident and found that he tried to conceal some role played by him in the incident. Accordingly, he prepared report Exh. 443.

59] PW13 further deposed that on 07.09.2018, he received request letter from S.P and Head of Branch, CBI, SCB, Navi Mumbai for psychological assessment and Forensic Statement Analysis of accused Sharad Kalaskar. Said letter is at Exh. 444. On 12.09.2018, the accused Sharad Kalaskar was produced before him by

Investigating Officer Shri. Singh. He followed same procedure for accused Sharad Kalaskar. On 12.09.2018, he orally discussed and interviewed and prepared report Exh.445. On the basis of Forensic Analysis Assessment, it was inferred that the accused Sharad Kalaskar gave truthful information about the incident and about his role in the offence. He had suggested his polygraph examination with his consent. On 13.09.2018, the accused Sharad Kalaskar was produced before him, as he had agreed to give statement in writing. On 13.09.2018, the accused was provided pen and paper and he wrote statement and signed all pages. The witness also signed those pages. After conclusion, it was opined that the accused Sharad Kalaskar was truthful in his statement regarding the incident and his involvement, he found that he tried to conceal some role played by him in the incident. Thereafter, he prepared report on 19.09.2018, which is at Exh. 446.

60] The witness has further deposed that on 31.05.2019, the accused Sanjiv Punalekar was produced before him with the letter from S.P and Head of Branch, CBI, ACB Navi Mumbai for psychological test. He made oral discussion and interviewed him. On the basis of Forensic Analysis Assessment, it was inferred that the

accused Sanjiv was hiding information regarding the details of persons involved and his role prior and after the incident. He had suggested polygraph examination. Accordingly, he submitted report at Exh. 448. Accused Sanjiv had refused to give any statement in writing. Thereafter, Sanjiv was handed over to CBI persons. Accordingly, the report is submitted, which is at Exh. 449.

61] PW13 is cross-examined at length. In said cross-examination, the witness was confronted with procedure of polygraph test and other scientific methods. Admittedly, confessional part of the statement of subject/accused cannot be read in evidence. While exhibiting reports in deposition of the witness specific note is made by my Learned Pre-decessor mentioning that the report of the expert is admissible to the extent of his opinion, so far as it relates to the confession of the accused or statement which incriminates the accused, will not be read in evidence. From the evidence of this witness, at the most, it can be inferred that the accused Sachin Andure and Sharad Kalaskar had made true disclosure without any mental or physical infirmities and they are reliable about their truthfulness in respect of incident and their involvement in the same.

CRIME RECONSTRUCTION :-

62] PW11 Vishal Mainkar examined at Exh. 420. He was serving as a Manager in Central Bank of India, at Zonal Office, M.G.Road, Pune. As deposed by him, on 18.08.2018, while he was in his office, he was told that he has to work as a panch for CBI. He was told to go to Pune Railway Station and thereafter GRP Police Chowky. He was accompanied by Chief Manager Raju Tiwari. They reached GRP police chowky at 11-30 a.m. The CBI Officer also reached at the police chowky. CBI Officer Shri. Singh introduced himself and told that the accused Sachin who was sitting with the team of CBI Officers in the vehicle and would disclose as to how incident had occurred. Thereafter, they had occupied in Maruti Ergita Car. CBI Officer, both panchas and accused were in said Ertiga Car. The accused had shown various places and route of escape and accordingly, panchanama Exh. 421 was carried out.

63] PW12 Ritesh Gupta examined at Exh. 424. He was serving as Inspector in the office of GST, Navi Mumbai. On 07.09.2018, he was told by senior officer that he had to go to GRP police station, Pune railway station on 08.09.2018, as panch for CBI. Accordingly, on

08.09.2018, he reached GRP police station, Pune at about 1-00 p.m. He was asked to meet CBI Officer Shri. Singh. The team of CBI Officer reached GRP police station at about 1-45 p.m. to 2-00 p.m. He approached CBI Officer Shri. Singh and introduced himself. CBI Officer Shri. Singh introduced other CBI Officer one Vinayak was another panch. Accused Sharad Kalaskar was present there. Thereafter they had left GRP police station in a vehicle along with accused Sharad Kalaskar, CBI Officer and another panch. The accused had shown various places and routes. Accordingly, panchanama Exh. 425 was carried out.

64] The evidence of PW11 and 12 are formal in nature. From the panchanama, proved through these witnesses, nothing is recovered or discovered at the instance of accused Sharad Kalaskar and Sachin Andure. Therefore, the cross-examination of these two witnesses is not discussed in detail.

SANCTION :-

65] The prosecution has examined Virendra Ramvilas Mishra as PW18 at Exh. 511. He has accorded sanction to prosecute the accused for offence under

section 39 of the Arms Act. Said sanction is at Exh. 156. As deposed by him, during the period, between 03.07.2019 to 04.09.2020, he was posted as D.C.P H.Q. Pune City. He was authorized to issue sanction under section 39 of the Arms Act vide circular dated 13.07.2019 issued by Commissioner of Police, Pune. On application from Mr. Nandkumar Niar, Superintendent of Police and Head of the Branch, CBI, Mumbai, he issued sanction Exh. 156. Before issuing said sanction, he had gone through the documents of investigation received from CBI with its report. He had also gone through the statement of accused Shrad Kalaskar recorded under Karnataka Control of Organised Crime Act by competent authority. He has also verified whether firearms used in the present crime were authorized firearms or not, from the District Collector and Police Commissioner, Aurangabad City.

This witness merely accorded sanction under section 39 of the Arms Act. He is cross-examined at length in respect of confession of accused Sharad Kalaskar under KCOC Act. However, the original statement of accused Sharad Kalaskar recorded by competent authority under KCOC Act, is not produced on record. Even it is not the case of prosecution that the said statement is proved in Special KCOC Court against accused Sharad Kalaskar. Certified copy of the proved confession is not produced on

record. However, as rightly admitted by defence in cross-examination and as per record, Dr. Narendra Dabholkar is murdered by firing bullets through firearms. Two bullets are retrieved from the body of deceased while conducting post mortem. There are eye witness stating that they had seen accused firing bullets at deceased. At the time of consideration of sanction, there was evidence in the form of statement of witnesses by identification of the accused. Under such circumstances, there is nothing irregular or illegal on the part of PW18 in according sanction under section 39 of the Arms Act.

66] Prosecution has examined Shirish Mohod as PW15 at Exh. 463. He accorded sanction for prosecution of accused Virendrasinh Tawade, Sanjiv Punalekar and Vikram Bhave for offence under section 16 of UAPA Act. As deposed by him, in January 2020, he was deputed as Deputy Secretary, Home Department, Mantralaya, Mumbai. On 12.12.2019 his office had received a letter from CBI, Special Crime Branch, Mumbai. The said letter was for taking cognizance of the offence by Court against accused Virendrasinh Tawde, Sanjiv Punalekar and Vikram Bhave. Along with said letter, papers of investigation were submitted by CBI. He studied those papers. It was opinion of the Government that there was

sufficient material for the Court to take cognizance of the offence against accused. He had submitted his report to the Home Minister. Accordingly, Home Minister issued directions for issuance of the sanction order. As per said directions, he issued sanction order which is at Exh. 464. Said sanction order was communicated to S.P, CBI, ACB Mumbai on 27.01.2020 by the officer, assisting him Desk Officer. Said letter is at Exh. 465.

In cross examination of this witness it is brought on record that letter dated 12.12.2014 issued by CBI was received by him on 17.12.2019. On 18.12.2019, he analysed the proposal within two and half hours. The proposal was under consideration with the Government during the period from 17.12.2019 to 27.01.2020. The proposal was forwarded by him to Principal Secretary on 18.12.2019. Thereafter, it was forwarded to Additional Chief Secretary and then to the Home Minister. The witness categorically admitted that as per rules under the Act, the decision of proposal has to be taken by Government within seven days.

67] The prosecution has examined Sanjay Kumar Shyamkishor Prasad as PW19, at Exh. 526. He deposed that in May 2019, he was posted as Additional Chief Secretary, Housing Department, State of Maharashtra,

Mumbai. On 06.05.2019, he received letter of S.P C.B.I. Government of Maharashtra. The letter was dated 30.04.2019 and it is at Exh. 527. By said letter, sanction for prosecution under section 16 of the Unlawful Activities (Prevention) Act was requested. The papers of investigation were submitted along with said letter. He forwarded the proposal for scrutiny to his Deputy Secretary and Under Secretary. After scrutiny, they put up positive note with recommendation. He was not present on that day. Therefore, the Deputy Secretary directly forwarded proposal to Home Minister. The Chief Minister himself was the Home Minister. He approved the proposal and sent to him. He had gone through the documents and then he forwarded it for issuing sanction. As it was fit case for issuance of sanction, he accorded sanction on 21.05.2019. The said sanction order is at Exh. 528.

I.O. :-

68] The prosecution has examined Subhash Ramrup Singh as PW20 at Exh. 540. He has carried out investigation, after investigation was handed over to CBI. He deposed that he joined CBI Special Crime Branch, Mumbai on 01.05.2013 as Deputy Superintendent of Police. He was promoted as Additional S.P on 25.06.2014

in the same branch and later on he was promoted as S.P. in the same branch on 26.07.2021. He retired on 31.12.2022. On 09.05.2014, the Hon'ble Bombay High Court passed an order in PIL No. 7/2014 and transferred investigation of present Crime No. 154/2013 with Deccan Police Station. On receipt of the order of the Hon'ble High Court and FIR, Crime was re-numbered as 4/S/2014 Mum. The case was re-numbered on 02.06.2014 under same sections of the FIR. Initially, the investigation was entrusted with Dy. S.P. Shri. B.S. Chauhan. The investigation was with Shri. Chauhan for the period between 02.06.2014 to 03.08.2015. After transfer of Dy S.P. Shri. Chauhan, the investigation was handed over to him. During investigation on 08.03.2016, he recorded statement of witness Sanjay Sadvilkar of Kolhapur. He got recorded statement of said witness under section 164 of the Code of Criminal Procedure before the Court of JMFC Washi. On 01.06.2016, he conducted search of house of accused Virendrasinh Tawde. Said house is Sanatan Sankul, Dewad, Panvel. Said house search was conducted under his direction by Dy. S.P. Shri. M.S. Patil of CBI, SCB, Mumbai. In said search, some incriminating material was seized in presence of panchas and said search list is at Exh. 541. On the same day, he had visited Ashram of Sanatan Sanstha at Devad, Panvel and seized

hard disk of computer of Sanatan Santha. Said seizure panchanama is at Exh. 542. Thereafter, accused Virendrasinh was taken into office of CBI at Belapur, Mumbai and print outs of e-mail on the account named as hsjvirentawade@gmail.com. were taken by accused himself. Memo of the same was prepared and it is at Exh. 543. On 10.06.2015, the accused Virendrasinh Tawde came to be arrested. The arrest panchanama is at Exh. 544. The print outs of the hard disk seized from Sanatan Sanstha were obtained on 18.06.2016 vide memorandum Exh. 549. From said material, it was revealed that the accused Virendrasinh had enmity with Dr. Narendra Dabholkar because of ideological differences between Dr. Narendra Dabholkar, his organisation ANIS and Sanatan Sanstha/HSJ. Therefore, he filed charge-sheet against Virendrasinh for offence under section 120B read with section 302 of the Indian Penal Code, 1860 on 06.09.2016.

69] PW20 further deposed that during further investigation, involvement of accused Sachin Andure of Aurangabad was revealed. He confessed his involvement in the crime. The accused agreed to show the route used by him to reach the spot of incident and route of escape. On 18.08.2018, crime reconstruction panchanama was

carried out in the presence of independent witness Shri. Rajiv Tiwari and Vishal Mainkar as per directions of accused Sachin Andure. Said panchanama is at Exh. 421. Thereafter, the accused Sachin Andure was arrested vide arrest memo at Exh. 550. On 22.08.2018, attendance register of shop viz. "Preety Secrets" at Aurangabad where the accused Sachin was working, was seized by Dy. S.P. Shri. M. S. Patil. As per the said attendance register, on 19.08.2013 and 20.08.2013, the accused Sachin was absent from duty. On 23.08.2018, he recorded statement of Somnath Dhayde. The statement of said witness was also recorded under section 164 of the Code of Criminal Procedure before JMFC Washi. On 23.08.2018 and 24.08.2018 Sachin was subjected to Forensic Psycho Analysis at C. F. S. L. Navi Mumbai.

70] PW20 further deposed that the accused Sharad Kalaskar was in custody of ATS Maharashtra Police in connection with Nalasopara Explosive case. On 03.09.2018, he obtained custody of Sharad Kalaskar in present crime. During interrogation, accused Sharad Kalaskar agreed to show scene of crime and escape route. Accordingly, on 08.09.2018, the accused Sharad Kalaskar was shown scene of crime and route in presence of independent witnesses. Accordingly, panchanama Exh.

425 was prepared. On 12.09.2018 and 13.09.2018 the accused Sharad Kalaskar had subjected to psychological assessment at CFSL, Navi Mumbai. During investigation, it was revealed that the accused Sanjiv Punalekar and Vikram Bhave are involved in the crime. As the criminal acts of the accused were falling under the category of UAPA Act, same was invoked on 25.10.2018. He collected statements of accused Sharad Kalaskar recorded under section 19 of the KCOG Act from the concerned Court at Bangalore, Karnataka. On 25.10.2018, the witness Kiran Kamble identified photos of accused Sharad Kalaskar and Sachin Andure. The signatures of the witnesses were obtained on said photographs produced at Exh. 331 to 334. On 27.12.2018, the witness Shri. Vinay Kelkar identified the photographs of the accused Sharad Kalaskar and put his signatures on those photographs produced at Exh. 460 and 461. On 13.02.2021, he filed charge-sheet against accused Sharad Kalaskar and Sachin Andure for offence under section 120B read with section 302 of the Indian Penal Code, section 3(5) of the Arms Act, sections 16 of the UAPA Act.

71] PW20 has further deposed that on 25.05.2019, he arrested accused Sanjiv Punalekar and Vikram Bhave. On 27.05.2019, two laptops of accused

Sanjiv were seized. On 08.06.2019, some printouts were taken from the hard disk of the accused Sanjiv. On 31.05.2019, the accused was subjected to Psychological Assessment. Its report was received on 30.08.2019. Said report was received on 03.06.2019. Accused Vikram Bhave had refused to undergo psychological assessment. After the investigation, he filed charge sheet against Sanjiv Punalekar and Vikram Bhave for offence under section 120B, 302, 201 of the Indian Penal Code with section 16 of the UAPA Act. He had obtained sanction under section 45 of the UAPA Act to prosecute accused Sachin Andure, Sharad Kalaskar, Sanjiv Punalekar and Vikram Bhave.

Chief examination of this witness is running into 13 pages. His cross-examination is running into 83 pages. In major portion of the said cross-examination totally irrelevant questions are put by the defence. The main contentions admitted by the witness in cross-examination are that till his retirement, he made efforts to secure weapons and motorcycle involved in this case but he could not succeed. In the entire bulky report of investigation papers, he has not placed reliance upon CCTV footages to prove allegations against any of the accused. No CDR records of any of the accused in present crime, accused earlier arrested and absolved and call

details of any of the witness though there mobile numbers were available, are obtained and relied upon. No digital evidence in respect of call details or location of those mobile numbers is relied upon by the investigating officer. During investigation, he made arrest of Hemant Shinde and Nilesh Shinde. Their names were revealed during investigation by Shri. Chauhan and whose polygraph tests were conducted with permission of the Court. However, those reports of polygraph test are not produced and relied upon by the investigation. Except the test conducted by PW13, no other test of any of the accused is conducted during investigation. No investigation is carried out in respect of SIM card found with the deceased. During further cross-examination of this witness also, it is brought on record that various other persons were having inimical terms with the deceased. So far as accused Sanjiv Punalekar is concerned, except the letter extracted from the laptop and produced on record at Exh. 294, no other incriminating evidence was found, during investigation. The house of accused Sachin was visited in search of weapon and firearms and bullets were seized from said house. Those weapons have no connection with the present crime. The witness admitted that during investigation, no witness was found stating that on 19.08.2013, he had seen Dr. Narendra Dabholkar

going to Amey Apartment or stating that on 20.08.2013, he had seen the deceased proceeding from said Apartment to Shaniwar Peth, Pune. No investigation is carried out in respect of cheques found with the deceased. No investigation was carried out in respect of diary, Exh. 252 belonging to the deceased. No test identification parade of the accused Sachin Andure and Sharad Kalaskar was conducted. As per charge-sheet, there are six eye witnesses. However, only witness Kiran Kamble and Vinay Kelkar are examined in the Court. The statements of Minanath Gaikwad, Prakash Kamble and Vitthal Kamble were relied upon, while filing charge-sheet but they are not examined in the Court. As per charge-sheet, photograph of suspect Vinay Pawar, was identified by witness Navnath Jadhav on 14.04.2016, but, said photograph is not shown to present eye witness. One bullet fired at deceased was missing and no attempts are made to search the same. PW2 has admitted that during investigation, it was revealed that the accused No.4 Sanjiv Punalekar was an advocate of accused Nos. 1 and 3 in this case, till the date of his arrest. After arrest, the accused No.4 had met with accused Nos. 1 and 3 on several occasions when they were in CBI custody.

As already mentioned too lengthy cross-examination of PW20 is conducted by the defence advocates. It is not

necessary to reproduce the entire contents of the same. The relevant and important aspect of his cross-examination are reproduced here-in-before and remaining important aspects will be discussed while appreciating the evidence of other witnesses.

72] Present case is very serious and is of national importance. Not only, Dr. Narendra Dabholkar is assassinated but an attempt is made to finish his ideology. Considering the seriousness and gravity of the offence and its overall importance, the evidence of PW1 to PW20 is discussed at length. An attempt is made to bring on record in one document, the evidence of all witnesses led by prosecution with detail particulars.

73] Here-in-before the evidence of PW5 Dr. Vasudeo Paralikar and PW7 Dr. Ajay Taware is discussed in detail on the point of cause of death. Through, the evidence of PW5, Inquest panchanama is proved, whereas the post mortem report is proved through PW7. The evidence of PW7 and post mortem report is challenged by the defence arguing that the weapon used in the crime is neither recovered nor shown to the medical officer, PW7. On this point, the defence has relied upon the decision of the Hon'ble Bombay High Court in **Judgment dated**
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02.12.2014 in case Devendra @ Bitty Bhausaheb Padale and another Vs. The State of Maharashtra in Criminal Appeal No. 782/2011. Interestingly, in said case also, Dr. Taware himself is a medical officer. The Hon'ble Bombay High Court observed in this case as under :-

“PW15 Dr. Ajay Taware who has performed the postmortem examination, has not given the description of the weapons which could have been used by the appellants in the crime, by which injuries appeared on the body of the deceased could be caused. This was imperative so as to have a definite finding of PW15 - Medical Officer as to whether the injuries in question as sustained by the deceased were inflicted using the weapons which are seized by the police. Further there is no evidence to show that when these weapons were seized at the behest of the accused, they were sealed in the presence of panchas which is of an implicit necessity in connecting the weapons to the offence as committed by the accused. In view of these serious infirmities, we are not in a position to persuade ourselves to sustain the finding of conviction as recorded by the Trial Court. We may observe that these infirmities do not in any manner conclusively establish the guilt of the accused and that guilt can be said to be established beyond reasonable doubt.”

74] It is interesting to note here that in the present case, the death is caused by firing bullets. Two bullets are retrieved from the body of the deceased.

Considering nature of the injury and retrieved of bullets, the cause of death as well as weapon of injury can be ascertained even by a man of ordinary prudence. Therefore, the evidence of PW7 cannot be challenged. The ratio of said ruling is certainly not squarely applicable to the present set of facts.

75] As already mentioned on the point of motive, the prosecution has examined PW4 Dr. Hameed Narendra Dabholkar, PW8 Prashant Potdar and PW9 Sanjay Sadvilkar. All these three witnesses have deposed in detail as to how Santan Sanstha, its activists and accused No.1 Virendrasinh Tawde were having inimical approach towards the deceased. In cross-examination of PW4, the defence itself brought on record differences of opinion and exchange of words between accused No.4 Sanjiv Punalekar and Dr. Narendra Dabholkar vide debate on television. From the verbal cross-examination of all prosecution witnesses and allegations levelled against them, the hatred feelings of Sanatan Sanstha and its activist against the deceased is brought on record. Considering the line of cross-examination conducted by defence counsels and their line of argument also, said hatred feelings can be realized. Thus though, it is brought on record through the cross-examination of witness that

apart from Sanatan Sanstha and its activists, many other persons and organisations were opposing the ideology of deceased, there is reliable evidence that Sanatan Sanstha was bitterly opposing the deceased and accused are connected with said Sanatan Sanstha and its sister organisation. Therefore, the motive is held to be proved as against the accused.

76] In order to prove the offence against any person, mere motive is not enough. At the same time, when there is evidence against commission of offence, motive for the same is irrelevant. When there is no direct evidence against particular accused, the motive alone will not establish charge against him. It is settled principle that along with strong motive or suspicion, there must be reliable evidence to convert said motive and suspicion in the evidence of involvement of the culprit. However, the evidence on record has to be scrutinized with great precaution. On this point, the defence has relied upon the decision of the Hon'ble Supreme Court in **judgment dated 21.08.2003 in case Mousam Singha Roy and others Vs. State of West Bengal in Appeal (crl.) 231-234/2002**. The Hon'ble Supreme Court has observed as under :-

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"Before we conclude, we must place on record the
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fact that we are not unaware of the degree of agony and frustration that may be caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.”

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77] In this case, the accused No.4 Sanjiv Punalekar is charge-sheeted for the offence of destroying evidence. At Exh. 198, my learned Predecessor has framed charge only under section 201 of the Indian Penal Code against accused No.4. As per charge-sheet, in the month of June 2018, the accused Sharad Kalaskar had visited chamber of the accused Sanjiv Punalekar. At that time, the accused Vikram Bhave was also present. Accused Sanjiv Punalekar advised accused Sharad Kalaskar to destroy firearms used in murder cases including murder case of Gauri Lankesh. Accordingly, on 23.07.2018, the accused Sharad Kalaskar threw four country made pistols in a KHADI while on the way of Nalasopara. Thus, except for an offence under section 201 of the Indian Penal Code, no charge is framed against accused Sanjiv Punalekar for any other offence. Here-in-before we have discussed evidence of PW1 to PW20. None of these witnesses have

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stated that they had witnessed or had personal knowledge about accused No.4 destroying the weapons or instructed the accused Sharad Kalaskar for doing so. As per prosecution story, the statement of accused Sharad Kalaskar was recorded by the competent authority, under Karnataka Control of Organised Crime Act. On the basis of said confession of accused Sharad Kalaskar the prosecution is making allegations against accused Sanjiv Punalekar. However, said confession of accused Sharad recorded under Karnataka Control of Organised Crime Act, is not proved before this Court by examining the witness i.e. officer, who recorded the same. It is also not the case of the prosecution that in the Court at Bangalore, in which, the case is pending, wherein the confession was recorded, has examined witness and the confession proved before the said Court. No certified copy of any such proved confession is produced on record. As admitted by PW20, Shri. S.R.Singh (Investigating Officer), except letter produced at Exh. 294 (sent by accused No.4 to the deceased), there is no other incriminating evidence against accused No.4 advocate Shri. Sanjiv Punalekar.

78] In this case, the accused are charge-sheeted for the offence under section 16 of the UAPA Act. To prosecute any accused for offence under said section,

sanction of competent authority is necessary. Section 45 of the UAPA Act speaks about cognizance of offence and Rule 3 of the UAPA, Rules provides time limit.

The provisions runs as under :-

The Unlawful Activities (Prevention) Act, 1967 :-

S.45. "Cognizance of offence :- (1) No Court shall take cognizance of any offence – (i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf; (ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government. (2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 :-

Rule 3. Time limit for making a recommendation by the Authority :- *The Authority shall, under sub section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government or as the case may be, the State Government within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.*

79] On the point of sanction under UAPA Act, the defence has relied upon following decisions :-

1] **Roopesh Vs. State of Kerala in Criminal Revision Petition No. 732/2019.**

In this case, the Hon'ble Kerala High Court has relied upon the decision of the Hon'ble Apex Court in case between **Rambhai Nathabhai Gadhvi and others Vs. State of Gujarat**. In the said case, the Hon'ble Supreme Court has observed importance of valid sanction. The Hon'ble Supreme Court has observed as under :-

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"Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the Sub-section is the permission to prosecute a particular person for the offence or offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the
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Court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the Court in order to enable the Court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the Court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction.”

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80] In present case, PW15 Shirish Mohod has admitted in his cross-examination that as per rules, the decision on proposal has to be taken by the Government within seven days. The proposal was under conciliation with the Government. On 17.12.2019 to 27.01.2020, he had received proposal dated 12.12.2019 on 17.12.2019 and on 18.12.2019, he analyzed the proposal and submitted his report to the Home Minister. The Home Minister issued directions for issuance of the sanction order under his signature and accordingly he issued sanction order. PW19, who accorded sanction against accused Sharad Kalaskar and Sachin Andure, has deposed that the

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letter issued by CBI dated 03.04.2019, was received by him on 06.05.2019. He forwarded the said proposal for verification to Deputy Secretary and Under Secretary. After scrutiny, they put up positive note with recommendation. He was not present in the office on that day, and therefore, Deputy Secretary directly forwarded the proposal to the Home Minister.

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81] After going through the evidence of PW15, Shirish Mohol and Sanjay Prasad, it reveals that neither time limit is followed in respect of sanction accorded by PW15 nor the proposal is considered personally by PW19. As deposed by PW15, he issued sanction as per the directions of the Home Minister. PW19 has not at all applied his mind to the proposal submitted by CBI. It clearly shows lack of seriousness on the part of PW15 and PW19 in according sanction. As already mentioned, the present case is very serious. Considering the status of deceased this case is of national importance. Despite the said fact, casual and negligent approach of PW15 and PW19, is not only shocking but requires condemnation. It shows that even through this case is of national importance, officers on high posts PW15 and PW19 have not shown utmost care and caution expected from them. Considering the evidence of PW15 and PW19 and above

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referred provisions, the sanction issued against accused in the present case is certainly not valid.

82] The accused No.1 Virendrasinh Tawde is charged along with other accused for offence punishable under sections 120B, 302, 34 of the Indian Penal Code, 1860, section 16 of the UAPA Act and section 3(25)(27) of the Arms Act. Admittedly there are no allegations that accused No.1 actually participated in the acts of firing against Dr. Narendra Dabholkar. Physical presence of accused No.1 on the spot of incident is not at all alleged. PW9 Sanjay Sadvilkar is not an eye witness. He is only witness who has deposed against accused No.1 and explained motive of accused No.1 in murder of Dr. Narendra Dabholkar. As already observed, the motive itself, cannot be evidence of actual involvement in the crime. The suspicion however strong, cannot take place of evidence. PW9 not being witness about actual incident, his evidence does not establish the actual involvement of the accused No.1 in the act of murder of Dr. Narendra Dabholkar. PW20 Shri. S.R.Singh has deposed that the search of house of accused No.1 was conducted on 01.06.2016 and incriminating documents were seized vide Exh. 541. On 01.06.2016 itself, the e-mail account of Virendrasinh Tawde was accessed, printouts were taken

and memorandum was prepared, which is at Exh. 543. As already mentioned, it is the case of the prosecution that confession of accused No.3 Sharad Kalaskar was recorded under KCOC Act. On the basis of all said material, the prosecution has alleged involvement of accused No.1 in the present crime. At the costs of repetition, it is again mentioned here that the charge against accused No.1 are mostly in respect of conspiracy with co-accused to commit murder of the deceased.

83] On the point of conspiracy, the prosecution has relied upon decision of the Hon'ble Supreme Court in case between **K.R. Purushothaman Vs. State of Kerala reported in (2005) 12 Supreme Court Cases 631**. In this case, the Hon'ble Supreme Court has observed as under : -

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"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 the 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 implication. 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
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usually deduced 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 the Penal Code. The unlawful agreement is sine qua 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.”

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84] The accused No. 5 Vikram Bhave is also charged along with accused Nos. 1, 2 and 3 for offence punishable under sections 302, 120B, 201 of the Indian Penal Code, section 16 of the UAPA Act and section 3(25) of the Arm Act. It is not alleged by the prosecution that the accused Vikram Bhave is actually involved in the act of murder i.e. firing bullet at deceased. There is no witness deposing that he had seen accused No.5 conspiring with rests of the accused and involving in

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actual murder of deceased Dr. Narendra Dabholkar. As per charge-sheet, this accused had arranged motorcycle for accused Nos. 2 and 3 to conduct recce about 15 days prior to the incident. It is alleged that he himself drove motorcycle for said recce and had shown route to accused Nos. 2 and 3 for fleeing away from the spot of incident. Certainly, there is no witness stating that he had seen accused No.5 Vikram Bhave along with accused Nos. 2 and 3 while conducting the recce. As already mentioned, prosecution has not relied upon any CCTC footages or CDR. SDR reports to establish presence of accused No. 5 at the spot and concerned route along with accused Nos. 2 and 3.

85] The prosecution has examined PW11 Vishal Mainkar at Exh. 420. He is a panch on Crime Reconstruction panchanama Exh.421, prepared at the instance of accused Sachin Andure. PW12 is examined at Exh.424 as a panch on panchanama of Crime Reconstruction at the instance of accused Sharad Kalaskar. The evidence of both these witnesses are already discussed at length. Even if evidence of these witnesses is accepted as it is, it can be seen that, they have not stated that the accused have expressed their willingness to show the spot and route. On going through the Crime

Reconstruction panchanama, Exh. 421 and 425, it reveals that those are not in the form as expected under section 27 of the Indian Evidence Act. It is not appearing from those panchanamas that at particular point of time, the accused expressed their willingness to show the spot of incident and escape route, and accordingly, their statements were initially recorded in the presence of panchas. Certainly, it does not appear that as per memorandum of accused, panchas, police and accused had proceeded to the spot and escape route. As pointed out by the defence, the panchanamas at Exh. 421 and 425 are replica of each other. The incident had occurred on 20.08.2013. The accused Sachin Andure and Sharad Kalaskar came to be arrested on 18.08.2018 and 03.09.2018 respectively. The alleged Reconstruction panchanamas were carried out on 18.08.2018 and 08.09.2018. Thus, those are carried out after the period of more than 5 years after incident. Till carrying out those panchanamas, local police and CBI Officers had already visited the spot, the residence of deceased and route in said area, on number of occasions. Neither any spot nor the route is in secluded place out of reach ordinary people. Under such circumstances, the reconstruction panchanama is merely a farce. At the costs of repetition, it is again mentioned here that the alleged confession of

accused recorded under KCOG Act is not at all proved by the prosecution.

86] Considering all these facts, certainly there is no reliable evidence against accused No. 5 to show that he had arranged motorcycle for accused Nos. 2 and 3 and had shown the route of the escape to them.
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87] There are specific allegations that the accused Nos. 2 and 3 in pursuance of conspiracy with other accused on 20.08.2013, had fired bullets against Dr. Narendra Dabholkar and committed his murder. The prosecution has come with specific allegations that PW6 Kiran Kamble, PW14 Vinay Kelkar are the eye witnesses. The evidence of both these witnesses is already discussed at length. The evidence of both these witnesses is challenged by the defence with specific allegations that the prosecution has planted both these witnesses and they were not present on the spot. In oral and written argument submitted on behalf of defence, it is specifically alleged that the prosecution has not proved that the PW6 was serving as a sweeper in Pune Municipal Corporation and at the relevant time, he was deputed for the work in the vicinity of spot of incident. The prosecution has not proved that PW14 is residing on the address given by him.

PW6 Kiran Kamble has stated that he is suffering from memory loss. He is unable to tell name of police officer, who recorded his statement. He is unable to tell name of sweeper working on the opposite side of the spot of incident. He had not identified any person in the jail. Though incident occurred on 20.08.2013, the statement of Kiran Kamble was recorded on 02.09.2013. There are contradictions in statement recorded by police and statement recorded under section 164 of the Code of Criminal Procedure. There is contradictions about the company of the motorcycle. There is contradictions in description of clothes stated before police and in deposition before this Court. PW6 Kiran Kamble had not identified the accused Sachin as stated in statement recorded under section 164 of the Code of Criminal Procedure, whereas he has identified him in the Court. On 25.12.2018, CBI had shown two photographs to PW6 Kiran Kamble but he had not identified one of them. It is further alleged that faces of shooters are 80-85% resembled to photos. In deposition before the Court, he has stated that those are resembling 70-80%.

88] PW14 could not describe woman police present on the spot and to whom, he narrated the incident. He had not seen another assailant and therefore

no sketch was prepared of said person. The sketches produced on record are not matching with the accused present before the Court. The witness has admitted that he was called for test identification parade but no such panchanama is produced in the Court. Both witnesses have stated that after the incident, they had seen photographs of the accused in newspapers. As deposed by PW14, he was shown the photographs of accused Sharad Kalaskar. The photographs of Sachin was not shown to him. He has also stated contradictory facts about the description of clothes. The photographs shown to the witness are bearing names of the accused. On all above points, the defence has disputed evidence of eye witness namely PW6 Kiran Kamble and PW14 Vinay Kelkar. On the point of eye witness, the defence has relied upon the decision of the Hon'ble Supreme Court in case between **State of Orissa Vs. Brahmananda Nanda reported in AIR 1976 SC 2488**. In this case, murder was committed in the night of 13th June 1969 and eye witness had stated name of accused in the morning of 15.06.1969. The eye witness was acquainted with the accused and it was alleged that out of fear, name was not stated. In these circumstances, the evidence of said eye witness was not relied upon.

89] On the point of contradictions in the evidence

of eye witness, the defence has relied upon following decisions :-

a] Judgment dated 26.08.2022 in case Munuwa @ Satish etc. Vs. The State of Uttar Pradesh in Criminal Appeal Nos. 2224-2225/2010. In which it is held that,

“Re:ocular witnesses : There are doubts about the conduct and testimony of the eye witnesses. The first such contradiction in the testimony of PW1 fundamentally challenges the premise that PW1 was an eye witness. In his testimony, PW1 initially denied being a witness to the actual commission of the crime, stating that :

“The shot was fired, when I had gone inside. When I brought an empty bottle, I saw accused Vimal Kumar, Munua and Gallu fleeing. These persons were fleeing southwards. When I saw accused persons fleeing, I had reached in verandah of the office.”

Later, in his cross-examination, PW1 stated that

“It is not so that as soon as I reached near stairs of the verandah carrying an empty bottle, the accused persons fired shots. And after firing shots in my presence, the accused persons fled northwards.”

The aforementioned contradictions in the evidence of PW1 and significant improvements in the testimony, cast doubts about his presence at the alleged place of occurrence of the crime. At least one thing is clear, he has not witnessed the accused firing at the deceased.”

b] Judgment dated 09.10.2023 in case Naresh @ Nehru Vs. State of Haryana, in Criminal Appeal No.

1786/2023 of the Hon'ble Supreme Court, in which it is observed that,

“As noticed hereinabove, the evidence of the eye witness should be of very sterling quality and calibre and it should not only instill confidence in the Court to accept the same but it should also be a version of such nature that can be accepted at its face value.”

c] State of Kerala Vs. Raghavan etc. reported in 1974 CRILJ 1373, in which it is observed that,

“Where the statements given by a witness on different occasions during the course of investigation are of conflicting nature on material points the position of the Public Prosecutor undoubtedly is not unenviable; even then he is expected to display a sense of detachment and fair play without being unduly influenced by a desire to secure the conviction of the accused at any cost. By attempting to withhold from the accused the inconvenient portion of the statement of the witness the Public Prosecutor does not play his true role in assisting the Court in correctly assessing the credibility of the witness or determining the degree of reliability of the oral evidence produced in the case. There may be course, rarely though, be cases in which the witness must have been substantially consistent in his statements, yet due to distorted or defective recording by some of the investigating officers, they may appear to be at variance from one another. Proved cases of dereliction of duties or deliberate distortion while recording statements of witnesses deserve to be dealt with by the State with a stern hand at the appropriate level, but the Court

cannot allow the prosecution to gain a premium on account of the lapses in the investigation of cases or penalise the accused for the failures of the prosecution.”

d] State of Madhya Pradesh Vs. Banshilal Behari reported in AIR 1958 MP 13. In which it is held that,

“Now as to the other statements of this witness, he says that when he went inside the house along with Mst. Bhanwari Bai, he saw the accused, standing there with his sword embedded in the neck of Banwari. I think, it is an utter lie, because in his statement to the police, Ex. D-2 he made no mention that he saw the accused, standing there with his sword thrust in the neck of Banwari.

He was confronted with this omission under section 145 of the Evidence Act, but he could offer no satisfactory explanations. Wigmore in his Treatise of Evidence has observed that failure to assert, a fact when it would have been natural to assert it, amounts in effect to an assertion of the non existence of the fact. In such cases, an omissions amounts to contradiction or inconsistency.

Now it is most natural that if this witness had seen the accused in a position to which he testified before the Additional Sessions Judge, he would have certainly stated it before the Police. This omission amounts to contradiction.”

90] On the point of photo identification, the defence has relied upon decision of the Hon’ble Supreme

Court in case of B. Gopalkrishnana Vs. Sadanand in Appeal (Cri) 1197-1203 of 1998. It is held that,

“There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction. But in the instant case, it appears that the investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eye witnesses and recorded their statements under section 161 of the Cr. P. C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance.

In the instant case, the High Court held that the witnesses had no occasion to properly identify the assailants as they had no previous acquaintance with them. The witnesses had been travelling in a vehicle while going to the factory, and if a group of worker were seen by them while travelling, it may not be easier for them to identify them. It cannot be said that the High Court has made a perverse

appreciation of evidence and the view taken is plausible and this is not a fit case where this Court can interfere with the acquittal passed by the High Court.

The criminal appeals are without any merits and they are dismissed.”

91] On the point of photograph identification, the prosecution has relied upon decisions of the Hon’ble Supreme Court in **Laxmi Raj Vs. State of Tamilnadu reported in 1988(3) SCC 319**. In this case, the Hon’ble Supreme Court has upheld identifications of the accused from the photographs shown to the witness. In this case, identification of accused through photograph and thereafter actual identification during trial is held as admissible.

92] The prosecution has further relied upon decision of the Hon’ble Supreme Court in case between **Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau reported in (2000)1 SCC 138**.

The Hon’ble Supreme Court has observed as under : -

“In the present case prosecution does not say that they would rest with the identification made by Mr. Mkhathwa when the photograph was shown to him. Prosecution has to examine him as a witness in the Court and he has to identify the accused in the Court. Then alone it would become

substantive evidence. But that does not mean that at this stage, the Court is disabled from considering the prospect of such a witness correctly identifying the appellant during trial. In so considering the Court can take into account the fact that during investigation, the photograph of the appellant was shown to the witness and he identified that person as the one whom he saw at the relevant time. It must be borne in mind that the appellant is not a proclaimed offender and we are not considering the eventuality in which he would be so proclaimed. So the observations made in Kartar Singh in a different context is of no avail to the appellant.”

93] It is pertinent to note here that the FIR was lodged against unknown person. At the costs of repetition, it is mentioned here that in the FIR, no suspicion was raised against any person or organisation. There were main allegations that two unknown persons had fired bullets and committed murder of Dr. Narendra Dabholkar. The prosecution has come with specific case that PW6 Kiran Kamble is a sweeper of Pune Municipal Corporation and was serving in the vicinity of spot at the relevant time. The statement was recorded on 02.09.2013. By that time also, involvement of any particular accused was not revealed or alleged. Under such circumstances, there is no question of planting this witness as against any of the accused including specifically accused Nos. 2 and 3. It is further to be noted here that after arrest of other accused,

(who are exonerated) test identification parade was conducted by the prosecution but the witness had not identified any of those persons. Had the prosecution wanted to create false evidence by planting this witness, it would have certainly managed the said test identification parade also. However, the witness has rightly not identified any of those persons. Being a sweeper, the status and education of this witness is also taken into consideration.

94] So far as PW14 is concerned, he is totally independent witness. His statement is recorded on 20.08.2013 i. e. on the day of incident itself. His presence on the spot of incident and witnessing the incident is certainly natural. He had also stated before the police that he had seen two unknown persons firing shots at the deceased. There is no question of planting this witness against accused Nos. 2 and 3. Much hue and cry is made out on the basis of distance from which this witness had seen the incident. So also, his evidence about identifying accused Nos. 2 and 3 is challenged arguing that he was standing in the balcony and shooters were wearing cap. Their faces were not visible. However, this witness has categorically stated that he had seen shooters while following the deceased and thereafter, passing through

his balcony, after approaching the motorcycle parked near the police chowky. Thus, there was ample time and opportunity for him to observe both the shooters. Considering the seriousness of the offence and its repercussions in the society, news were being published in all papers and the news were being flashed on digital media also. Under such circumstances, keeping watch on those news and taking follow up of the same is natural. Under such circumstances, PW6 and PW14 have fairly admitted that they had seen photographs of accused Nos. 2 and 3 in newspaper. Whether it is a lapse on the part of investigating machinery to publish photographs of accused is different aspect. It may be irregularity or lacuna in making identification of the shooters in the public. However, it is certainly not fatal considering the evidence of independent and innocent witnesses like PW6 and PW14. In the cross-examination of PW14, it is specifically brought on record that the sketch of assailants prepared on the basis of description given by PW14 does match with the photo of the accused.

95] It is further to be noted here that PW6 and PW14 are neither activists of ANIS nor connected with its work and the deceased in any way. They are totally independent. This fact itself makes their evidence strong.

The statement of PW6 and PW14 were recorded long before arrest of accused Nos. 2 and 3. At the time of recording statement by police, there was no interference by activists of ANIS. The PW6 and PW14 being star witnesses, keeping follow up of them by activists of ANIS is neither strange nor illegal. Now a days in maximum criminal cases, the witnesses turns hostile. Therefore, in some cases, where the victim or relatives of the victim are diligent, they engage independent advocates to assist the public prosecutor. There is nothing wrong to see and secure that the witness who has made statement before the police, sticks to his version during deposition in the Court. Now a days it is normal practice to keep follow up of prosecution witnesses in order to ensure that they do not resile from their earlier statement recorded during investigation. Under such circumstances, presence of activists of ANIS like Milind Deshmukh in the Court and keeping contact with the witnesses, is not objectionable. The witnesses have deposed as per their statements recorded by police during investigation. Those statements were recorded long before revealing names of present accused.

96] The prosecution has relied upon extra judicial confession made by accused Sachin Andure before PW10

Somnath Dhayade. The incident is dated 20.08.2013. The statement of this witness is recorded by CBI on 23.08.2018. The statement under section 164 of the Code of Criminal Procedure is recorded on 27.08.2018. The defence has disputed reliability of this witness on the ground that his statement was recorded after the period of more than five years. So also, as admitted by him, his son is an accused for illegally selling liquor. The witness has specifically deposed that the accused Sachin and Rushikesh is met him in the programme arranged by Hindu Janjagruti Samiti in the year 2012 in a ground in front of Gajanan Maharaj Temple at Garkheda. However, as per evidence submitted on record, no such programme was arranged on said ground. The witness has deposed that the accused Sachin Andure had told him that he and accused Sharad Kalaskar both fired bullets and killed Dr. Narendra Dabholkar. However, in a statement before CBI, there is no reference of accused Sharad Kalaskar, So also, in said statement recorded by CBI, there is no description about physical appearance of accused Sachin Andure when he allegedly meet the witness. It is also disputed that the accused Sachin Andure had requested the witness to help his parents even after his arrest. However, in a statement recorded under section 164 of the Code of Criminal Procedure, the said reference is in respect of

another accused Sharad Kalaskar. On all these points, evidence of PW10, is disputed by the defence. On the point of extra judicial confession, the defence has relied upon the decision of the Hon'ble High Court of Telagana and Andhra Pradesh in case between **Boya Akuthota Nagaraju Vs. State Rep. By Public Prosecutor in Criminal Appeal No. 1324/2012.** In this case, the Hon'ble High Court laid down the guidelines in respect of extra judicial confession. Those are as under :-

“From the law declared by the Apex Court in various judgment referred supra, the following guidelines emerged for deciding the evidentiary value of extra judicial confession and rely on such confession to record conviction of the accused.

(1) An extra-judicial confession to be admissible in evidence and one to be relied upon must fulfill the requirements of its voluntary character and truthfulness. The latter turns to be more important and the former is read from it in cases of retracted extra-judicial confessions.

(2) It is required to be established from the fact and evidence produced as to whether the accused did make the extra-judicial confession or not.

(3) The inculpatory statement, when separated from the exculpatory statement of the accused, must constitute the confession when tested on the requirements of section 24.

(4) The veracity of the extra-judicial confession is

read from the credibility of the persons to whom made, the circumstances in which made and the explanations of the delay between the receipt of confession by a person and its transmission to the police.

(5) Extra-judicial confessions if voluntary and true can be sufficient evidence to base conviction of the accused, but if the same is corroborated with some additional independent evidence, the rule of prudence also gets thereby satisfied. In the case of retracted extra-judicial confession such a corroboration turns to the all the more important to take this rule of prudence, the place of a rule of law.”

97] The defence has taken much efforts to establish that in the year 2012, there was no programme of Hindu Janjagruti Samiti in the ground in front of temple of Gajanan Maharaj of Garkheda. For that purpose, the defence has produced documents obtained under RTI, which are at Exh. 624 to 627. However, the witness has stated that he do not remember exact year of the said programme. So also, it is immaterial, in which year and in which programme, the accused Sachin Andure came in contact with PW10 Somnath Dhayade. It is enough to establish that the accused Sachin and PW10 Somnath Dhayade were acquainted with each other. This fact is admitted by the defence itself by putting specific suggestions in cross-examination of PW10. In para No.29

of his cross-examination, it is specifically suggested that *it would be correct to say that after the programme of Gajanan Maharaj Mandir, the accused Sachin Andure was met him for the period of further six months only.* Thus, it is crystal clear that the accused Sachin Andure and PW10 Somnath Dhayade were well acquainted with each other and accused Sachin Andure used to meet the witness. Though it is not mentioned in statement before CBI that the accused Sachin Andure had confessed that the accused Sharad Kalaskar had also fired bullets and both committed murder of Dr. Narendra Dabholkar. The reference of accused Sharad Kalaskar is established in cross-examination itself by referring the statement of witness recorded under section 164 of the Code of Criminal Procedure, wherein there is reference of accused Sharad Kalaskar.

98] Admittedly, as investigation of Pune Police was not satisfactory, the same was handed over to CBI. After CBI revealed connection between the accused Sachin Andure and PW10 Somnath Dhayade, they called upon him and recorded his statement. Considering the very purpose of handing over investigation to CBI and the facts revealed about extra judicial confession, the evidence of PW10 cannot be discarded as a planted

witness. He is totally an independent witness. He has no inimical terms with Sachin Andure or close relations with the victims and Sanatan Sanstha. Considering the guidelines for the extra judicial confession in the case of **Boya Akuthota Nagaraju Vs. State (supra)**, the evidence of PW10 does not suffer from any infirmity to discard the same. So also, it is important to note here that the evidence of PW10 about extra judicial confession made by the accused Sachin Andure, is not exclusive evidence against the accused. There are eye witnesses to the incident, who have fully supported the prosecution story and have identified both accused in the Court. Under such circumstances, the argument on behalf of defence disputing the evidence of PW10, are not at all acceptable.

99] The evidence of PW6 Kiran Kamble, PW14 Vinay Kelkar and PW10 Somnath Dhayade is to be considered collectively. The defence has challenged the evidence of each witness, in isolation. If the evidence of each witness is scrutinized in isolation, we may find infirmities in each witness. Certainly, there are material contradictions and omissions in the evidence of these witnesses. However, when there evidence is evaluated collectively, all these three witnesses are found trustworthy and fully reliable.

100] In the present case, the defence has examined defence witnesses raising defence of alibi in respect of accused Nos. 2 and 3. The defence witness No.1 Suvarna Jitendra Aaher is examined at Exh. 618. She has deposed that the accused Sharad Kalaskar is her younger brother. Her marriage is performed on 10.02.2008. On 10.08.2018, she learnt from the news of television channel that her brother Sharad Kalaskar and one Vaibhav Raut were arrested by police in Nalasopara case. In connection with said case, she had met advocate Sanjiv Punalekar, who was representing her brother. On 18.08.2018, photographs of Sharad Kalaskar and Sachin Andure were shown on various television channels with their names alleging that they were involved in Dr. Narendra Dabholkar murder case. After few days, they were arrested by CBI police. She came to know from news itself that the murder of Dr. Narendra Dabholkar was committed on 20.08.2013. She further realized that on 20.08.2013, it was a “**Rakshabandhan**”. On that day, she had visited her parent’s house, at **Kesapuri**, Post-Daulatabad, Taluka and District Sambhajinagar. On 20.08.2013, they had celebrated “**Rakshabandhan**” and thereafter, accused Sharad Kalaskar had gone to agricultural land for agricultural work. After arrest of

accused Sharad Kalaskar, she had tried to inform the said fact to advocate Shri. Sanjiv Punalekar and advocate Shri. Ichalkaranjekar, but, they had told that they will consider the said fact at right time. They had also told that at right time, she shall state said fact in the Court. Before few days of her deposition, she had received notice of the Court and accordingly, he attended the Court for deposition.

101] Defence witness No.2 Deepali Umesh Chalse is examined at Exh. 619. She has deposed that accused Sachin is her younger brother. Her marriage is solemnized on 08.05.2004. Before her marriage, she was residing with parents at Shrimant Galli, Saraf Bazar, Aurangabad. At present, she is residing with her in-laws at Panchamukhi Chowk, Dnyaneshwarnagar, Akola, Dist. Akola in joint family. On 16.08.2018, she received phone call of wife of accused Sachin Andure namely 'Sheetal'. She informed that police of ATS and CBI arrested Sachin Andure and had taken him alongwith them. On 18.08.2018, the news was being shown on the television that the accused Sharad Kalaskar and Sachin Andure were arrested in Dr.Narendra Dabholkar murder case. The photographs of Sachin Andure and Sharad Kalaskar were being shown with their names. After filing charge-sheet

in the Court, from said charge-sheet and news, it was revealed that Dr. Narendra Dabholkar was murdered on 20.08.2013. She realized that on 20.08.2013, it was a **“Rakshabandhan”**. After few days, she had met accused Sachin Andure in the Court and made aware to him that on said **“Rakshabandhan”**, he was at Akola with her and whether said fact can be told to the Court. She had also told the said fact to ‘Sheetal’ who had assured that she would tell the said fact to their advocate. The witness has further deposed that on the occasion of said **“Rakshabandhan”**, the accused Sachin Andure had phoned her on earlier date. At that time, the accused had told that he wanted to talk with her about his marriage. Accordingly, on the day of **“Rakshabandhan”**, the accused Sachin Andure had been to their house at Akola at 6-00 a.m. to 7-00 a.m. At that time, accused Sachin Andure had told that he was in love with one girl and was desiring love marriage. As their elder brother had performed inter- caste marriage and was residing separately because of differences with the parents, she was reluctant about said love marriage. She expressed said feelings to accused Sachin Andure. Accused Sachin Andure had tried to convince her to obtain permission for their love marriage from their parents. As she refused, accused Sachin Andure was unhappy. Thereafter, she tied

Rakhi to Sachin Andure and he left the house. In the year 2015, Sachin Andure married with the same girl i.e. 'Sheetal'.

102] It is pertinent to note here that defence witness No.1 Suvarna Aaher is serving as a teacher in Swami Vivekanand Vidyalaya, Indiranagar, Nasik. She had met with the accused Sanjiv, after arrest of accused Sharad Kalaskar by police in Nalasopara case. Thus, even before arrest of accused Sharad Kalaskar in case of murder of Dr. Narendra Dabholkar, the witness and the very accused were acquainted with advocate Shri. Sanjiv Punalekar. Advocate Shri. Sanjiv Punalekar is working for the members of Hindu organisations and other helpless persons, arrested by police in various cases. Considering the background of advocate Shri. Sanjiv Punalekar and devotion towards Hindus, he was well acquainted with all Hindu ceremonies and festivals. He was well acquainted with the date of murder of Dr. Narendra Dabholkar. Therefore, it can very well be concluded that it was well within the knowledge of advocate Shri. Sanjiv Punalekar that on 20.08.2013 i.e. on the day of murder of Dr.Narendra Dabholkar, it was **"Rakshabandhan"**. Under such circumstances, soon after the arrest of accused Sharad Kalaskar, the accused himself and defence witness

Suvarna Aaher were well acquainted with the fact that it was “**Rakshabandhan**” on 20.08.2013. Despite said fact, the fact that accused Sharad Kalaskar was with witness on the day of murder of Dr. Narendra Dabholkar, is not mentioned orally or in writing, till the witness entered in the witness box. It is interesting to note here that the witness herself stated that she used to meet the accused Sharad Kalaskar and advocate Shri. Sanjiv Punalekar, during pendency of the trial. The application was moved on behalf of accused to examine the defence witness by mentioning the name and showing the willingness to secure their presence. Despite the said fact, the witness has stated that advocates Shri. Sanjiv Punalekar and Shri. Ichalkaranjekar had told her that they would consider the said fact at right time, and therefore, after receiving the notice of the Court, she attended the Court as a witness. If we go through the deposition of Suvarna Aaher and deposition of defence witness No.2 Deepali Chalse, it appears that the statements are stereo type. DW1 Suvarna is serving as a teacher. Her husband is a contractor and her elder brother-in-law is serving in Taj Group of Hotels. Thus, DW1 Suvarna belongs to economically sound family. The husband of defence witness No.2 Deepali is photographer. He is having photo studio and visits various functions for videography. As deposed by DW2 Deepali,

accused Sachin Andure was having mobile at the relevant time. Despite all these admitted facts, the defence has not produced any photograph showing that on 20.08.2013, the accused Sharad Kalaskar and Sachin Andure had celebrated “**Rakshabandhan**”, with their respective sisters. Considering the status and background of accused Shri. Sanjiv Punalekar and his acquaintance with accused since prior to arrest present case, it cannot be believed that he did try to bring on record, before the deposition of defence witness that the accused Sharad Kalaskar and Sachin Andure were with their respective sisters on 20.08.2013 for celebrating “**Rakshabandhan**”. From chief examinations of both these witnesses and facts discussed above, the defence of alibi raised on behalf of accused No.2 and 3, is nothing but on after thought theory. The defence witness Nos. 1 and 2 are apparently deposing falsely in the Court. Therefore, their evidence is not at all reliable.

103] Thus, from the evidence of independent eye witness and evidence of independent witness about extra judicial confession, it is crystal clear that on 20.08.2013, the accused Sachin Andure and Sharad Kalaskar had fired bullets on Dr. Narendra Dabholkar and committed his murder.

104] As already observed, there is evidence of motive for murder of Dr. Narendra Dabholkar against accused No.1 Dr Virndrasinh Tawde. There is reasonable suspicion against accused No. 4. Sanjiv Punalekar and accused No.5. Vikram Bhave, showing their involvement in the present crime. However, the prosecution has failed to establish the involvement of accused Nos. 1, 4 and 5 by leading reliable evidence to convert motive and suspicion into the form of evidence showing their involvement in the crime. However, from the entire evidence on record, it is proved beyond reasonable doubt that, the accused No.2. Sachin Andure and accused No.3. Sharad Kalaskar committed murder of Dr. Narendra Dabholkar by firing bullets from firearms. The accused Nos. 2 and 3 have simultaneously and together have fired bullets with common intention to commit murder of Dr. Narendra Dabholkar. Therefore, the offence under section 302 read with section 34 of the Indian Penal Code, 1860 is proved beyond reasonable doubt against accused Nos. 2 and 3.

105] As already observed, the prosecution has not proved the offence under section 16 of the UAPA Act against any of the accused. So also, offence of conspiracy is not at all proved against any of the accused. Though

the offence under section 201 of the Indian Penal Code, for destroying firearms is not proved against accused No. 4. Sanjiv Punalekar, the fact that the firearms were used is proved from the very fact that two bullets were retrieved from the body of deceased. As accused Nos. 2 and 3 are held to have fired those bullets, firearms are used by them. Admittedly, during their interrogation, those firearms are not recovered. However, it is settled law that seizure of muddemal weapons is not mandatory to prove an offence. The use of firearms by accused Nos. 2 and 3 being proved, the offence punishable under section 3(25) of the Indian Arms Act (for using firearms without license) is duly proved against accused Nos. 2 and 3. To summarize, the offence punishable under sections 302 read with section 34 of the Indian Penal Code, 1860 and section 3(25) of the Indian Arms Act, is proved against accused No. 2 and 3 beyond reasonable doubt. No offence is proved against accused Nos. 1, 4 and 5. Hence, all points are answered accordingly.

QUANTUM OF SENTENCE :-

106] Heard advocate Shri. Ichalakaranjekar and advocate Shri. Salshingekar on the point of sentence. They submitted that as this is not a rarest of rare case, the

punishment of death is not attracted. Special PP. Shri. Suryawanshi, fairly submitted that he is also not claiming death punishment.

107] In this case, the accused Nos. 2 and 3 are convicted for offence punishable under sections 302 read with section 34 of the Indian Penal Code, 1860, section 3(25) of the Indian Arms Act. Section 302 attracts highest punishment of death or life imprisonment. Certainly, this is not a rarest rare case, attracting death penalty. Therefore, there is no other option except the imprisonment for life and at the same time proper fine has to be imposed upon the accused. While considering the quantum of fine, the compensation to be awarded to the heirs of the victim and the prosecution charges are required to be taken into consideration. In this case, deceased Dr. Narendra Dabholkar was fully devoted to the social work. The family members were not depending upon him. So also, they are not expecting any monetary compensation. However, Pune police and CBI have spent huge manpower and man hours in investigating the crime. The State has spent huge amount towards investigation and prosecution of the accused. An attempt ought to be made to recover some amount of said costs incurred by State.

108] Admittedly, except ideological differences with deceased Dr. Narendra Dabholkar, the accused Nos. 2 and 3 were not having any personal enmity or rivalry against Dr. Narendra Dabholkar. The murder is committed with very well prepared plan, which is executed by accused Nos. 2 and 3. Considering the economical and social status of the accused Nos. 2 and 3, they are not the master minds of the crime. The main master mind behind the crime is someone else. Pune police as well as CBI has failed to unearth those master minds. They have to introspect whether it is their failure or deliberate inaction on their part due to influence by any person in powers. It is interesting to note here that in the present case, charge-sheeted accused and defence counsels have not merely attempted to raise the defence. From unnecessary and irrelevant lengthy cross-examination of the prosecution witnesses and even in final argument, an attempt is made to tarnish image of the deceased. At the same time, the approach of the defence was to justify the killing of the deceased Dr. Narendra Dabholkar, by labelling him as anti Hindu. In said attempt, advocate Shri. Salshingikar referred the yearly magazine Exh. 376, which is published after more than five years, after the death of Dr. Narendra Dabholkar. The said approach is very strange and is

condemnable. As already observed, it is not an exclusive act of accused Nos. 2 and 3, but definitely, there is preplan by master minds. Unfortunately, the prosecution has failed to unmask those master minds.

109] It is further to be noted here that in present case, there is reference of confessional statement of accused Sharad Kalaskar recorded under KCOC Act. As the said statement is not proved before the Court, this Court has not discussed contents of the same and has not expressed any opinion as to whether it is correct or not ? Therefore, said confession may be proved before the concerned Court. In the present case, the CBI ought to have carried out detailed investigation in that angle.

110] Hereinbefore, it is held that the evidence of defence witness No.1 Suvarna Jitendra Aaher and No.2 Deepali Umesh Chalse, is false. However, it is a desperate attempt on their part to save their real brothers. They stepped into witness box at the advise of advocates of accused. Considering their background and status, it will not be just and proper to take any action against them for deposing falsely.

With all above observations, following order is passed.

ORDER

1] The accused **No.2. Sachin Prakashrao Andure** and **No.3. Sharad Bhausahab Kalaskar** are hereby **convicted** vide section 235(2) of the Code of Criminal Procedure, for the offence punishable under sections 302 read with section 34 of the Indian Penal Code, 1860, and section 3(25) of the Indian Arms Act and are sentenced to suffer **rigorous imprisonment for life** and fine of Rs. 5,00,000/- (Rupees Five Lacs Only) each. In default of payment of fine, they shall suffer simple imprisonment for one year.

2] The accused **No.2. Sachin Prakashrao Andure** and **No.3. Sharad Bhausahab Kalaskar** are hereby acquitted, vide section 235(1) of the Code of Criminal Procedure of the offence punishable under section 120B of the Indian Penal Code, 1860, sections 27(1) and 27(3) of the Indian Arms Act and section 16 of the UAPA Act, 1967.

3] The accused **No.1. Dr. Virendrasinh Sharadchandra Tawde**, **No.4. Sanjiv Gajanan Punalekar** and **No. 5 Vikram Vinay Bhawe** are hereby acquitted, vide section 235(1) of the Code of Criminal Procedure, of the offence punishable under sections 120B, 302, 201 read with section 34 of the Indian Penal Code, 1860, sections 3(25), 27(1) and 27(3) of the Indian Arms Act and

section 16 of the UAPA Act, 1967.

4] The accused No.1 **Dr. Virendrasinh Sharadchandra Tawde** is in jail, he be released forthwith, if not required in any other crime.

5] The accused Nos. 2 and 3 are in jail and are entitled for set off for the period already undergone in the jail.

6] The bail bonds of accused Nos. 4 and 5 shall stand cancelled.

7] Accused Nos. 1, 4 and 5 shall furnish P.R. bond to the tune of Rs. 15,000/- each, in view of section 437-A of Code of Criminal Procedure.

8] Muddemal be disposed off, after appeal period is over, as under :-

i] live cartridges/bullets be forwarded to District Magistrate, Pune for disposal as per rules.

ii] muddemal in the form of documents and electronic documents (DVDs., CDs. etc.) be preserved as documents in the file)

iii] muddemal clothes of the deceased be destroyed, if not claimed by the legal heirs of the deceased to preserve the same as 'memory'.

iv] muddemal articles belonging to deceased be handed over to the legal heirs of deceased or office bearer of 'Andhashraddha Nirmulan Samiti'.

v] the remaining worthless articles be destroyed.

9] Copy of Judgment be given to accused free of cost.

(Dictated and pronounced in open Court.)

Pune.

Date: 10.05.2024

(P.P.Jadhav)

Additional Sessions Judge, Pune.

CERTIFICATE

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

Name of Steno: Mrs. C.N. Jagtap, Steno (Grade-I)

Court name: P.P.Jadhav,

Additional Sessions Judge, Pune.

Date of Judgment : 10.05.2024

Judgment signed by presiding officer on : 10.05.2024

Judgment of PDF & uploaded on : 10.05.2024