



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO. 178 OF 2021

WITH

INTERIM APPLICATION NO. 1733 OF 2022

IN

APPEAL NO. 178 OF 2021

Roshan Jaywant Pagare ... Appellant/Applicant

vs.

State of Maharashtra ... Respondent

WITH

APPEAL NO. 181 OF 2021

WITH

INTERIM APPLICATION NO. 718 OF 2021

IN

APPEAL NO. 181 OF 2021

John @ Sunil Hari Kajale ... Appellant/Applicant

vs.

State of Maharashtra ... Respondent

WITH

APPEAL NO. 191 OF 2021

WITH

INTERIM APPLICATION NO. 741 OF 2021

IN

APPEAL NO. 191 OF 2021

Arif Shahjad Qureshi ... Appellant/Applicant

vs.

State of Maharashtra ... Respondent

WITH

APPEAL NO. 189 OF 2021

WITH

INTERIM APPLICATION NO. 735 OF 2021

IN

APPEAL NO. 189 OF 2021

Sharad Deepak Pagare ... Appellant/Applicant

vs.

State of Maharashtra ... Respondent

WITH

APPEAL NO. 634 OF 2024

Amar Ranjit Gangurde ... Appellant

vs.

State of Maharashtra ... Respondent

Ms. Pushpa Ganediwala a/w. Ms. Anima Mishra, Mr. Vinod Patil, Mr. Anuj Singh, Mr. Anshu Agrawal and Mr. Ankit Rathod for appellant in APEAL/178/21.

Mr. Vivek M. Punjabi a/w. Ms. Shweta Bhagchandani, Mr. Priyansh R. Jain and Ms. Parichhar Zaiwala for appellants in APEAL/191/21 & 181/21.

Mr. Aniket Kadam a/w. Ms. Abhilasha Pawar and Mr. Amit Icham for appellant in APEAL/189/21.

Mr. Ateet Shirodkar a/w. Mr. Bhavin Jain and Mr. Kunjan Makwana for appellant in APEAL/634/24.

Ms. Sangita Phad, APP for respondent-State in all appeals/applications.

**CORAM : MANISH PITALE &
MANJUSHA DESHPANDE, JJ**

RESERVED ON : 10th NOVEMBER 2025

PRONOUNCED ON : 1st DECEMBER 2025

JUDGMENT (PER MANISH PITALE, J.) :

. By these appeals, the appellants (original accused Nos.1 and 3 to 6) have challenged judgment and order dated 10.11.2020 passed by the Court of Additional Sessions Judge (Court No.6), Nashik, hereinafter referred to as the trial Court, whereby the appellants have been convicted and sentenced under Sections 302, 324, 143, 147, 148 and 307 of the Indian Penal Code, 1860 (IPC). They have been sentenced for imprisonment under the aforesaid provisions, for periods ranging between 6 months to rigorous imprisonment for life, along with directions to pay fine amounts, failing which specific sentences of imprisonment have been imposed. The original accused Nos.2, 7 and 8 were acquitted by the trial Court.

2. The case of the prosecution in brief is that in the night of 17.08.2017 at about 10:00 p.m., when Suraj Khode (PW.4) went for a walk and reached in the front of Happy Games Zone, Kala Nagar, Nashik, he met Amol Nikam (PW.5) and Nikhil More i.e. the deceased. They were talking on the stairs in the front of Happy

Games Zone, when suddenly John Kajale (A6) came from the side of the wall of Venkatesh Krupa Building and said to Nikhil More as to why he had been telling Pravin Kakad to beat Arif Qureshi (A1) and that he would not leave Nikhil More alive. Upon saying this, John Kajale (A6) gave two to three blows using a sickle on the head of Nikhil More and at this point in time, Suraj Khode (P.W.4) and Amol Nikam (P.W.5) started shouting. Sharad Pagare (A3) came to the spot and used a gun to fire one or two shots in the air and Arif Qureshi (A1) appeared on the scene and hit Nikhil More with a sickle on his body, while Roshan Pagare (A4) and Amar Gangurde (A5), gave chopper blows to Nikhil More on his abdomen. It is stated that while Suraj Khode (P.W.4) and Amol Nikam (P.W.5) tried to save Nikhil More, Arif Qureshi (A1) assaulted both of them with sickle blows, thereby causing injuries to the right hand and right thigh of Suraj Khode (P.W.4) and to the left side of back of Amol Nikam (P.W.5). Amar Gangurde (A5) also gave chopper blows on left shoulder and chest of Amol Nikam (P.W.5).

3. According to the prosecution, Sachin Kadam (P.W.6) and Ajay Pawar, who knew Suraj Khode (P.W.4), had reached the other side of the road near medical store to buy medicines, and upon watching the assault, they started pelting stones towards the accused persons. Sharad Pagare (A3) at that time, was pointing the gun towards Suraj Khode (P.W.4), who was lying on the floor. But, due to pelting of stones, his attention was diverted and the accused persons ran towards Sachin Kadam (P.W.6) and others across the road. At this point, Suraj Khode (P.W.4) and Amol Nikam (P.W.5) ran towards Balaji Square to save their lives, while Nikhil More was lying in injured condition in front of Happy Games Zone. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) then saw their other friends Gorakh Nathe and Saurabh Junagade at Balaji Square, whom they told about the

assault due to which, Nikhil More had been seriously injured. Thereupon, Suraj Khode (P.W.4) and Amol Nikam (P.W.5) and the said Gorakh Nathe and Saurabh Junagade returned to the spot of the incident and took the injured Nikhil More in the Maruti car of Gorakh Nathe to Sanjivani Hospital.

4. It is stated that upon reaching the said hospital, Nikhil More was lying still and when Suraj Khode (P.W.4) and others were standing in the porch of Sanjivani Hospital, police came and took Suraj Khode (P.W.4) and Amol Nikam (P.W.5) for treatment to Civil Hospital. While they were being treated at the Civil Hospital, they came to know about the death of Nikhil More. The police conducted spot panchanama as also inquest panchanama of dead body of Nikhil More. At 04:30 a.m. on 18.08.2017, the statement of Suraj Khode (P.W.4) was recorded, leading to registration of First Information Report (FIR) against the accused persons. The postmortem of the body of Nikhil More was conducted on 18.08.2017, wherein it was recorded that the said Nikhil More was brought dead at the Civil Hospital, Nashik on 18.08.2017 at 12:50 a.m. and postmortem was conducted on the same day between 09:00 a.m. to 12:30 p.m. The postmortem recorded 20 injuries on the body of Nikhil More, including one firearm injury. The cause of death was recorded as haemorrhagic shock due to combined effect of multiple stab injuries to chest and abdomen and firearm injury to abdomen, which were sufficient to cause death in ordinary course.

5. On completion of investigation, charge-sheet was submitted, wherein 8 accused persons were named, including the five appellants herein. The trial Court recorded evidence, wherein the prosecution examined 20 witnesses. These included 11 panch witnesses, 3 eye-witnesses i.e. Suraj Khode (P.W.4), Amol Nikam (P.W.5) and Sachin

Kadam (P.W.6), of whom P.W.4 and P.W.5 were injured eye-witnesses. Three doctors i.e. Dr. Sujit Mandke (P.W.10), Dr. Vijay Gade (P.W.11) and Dr. Anand Pawar (P.W.12) were also examined. Police Constable Dinesh Gumbade was examined as P.W. 18, who was the carrier of the relevant material and Investigating Officers i.e. Savita Sawara (P.W.19) and Walmik Shardul (P.W.20) were examined. A number of documents were exhibited during the course of trial, while certain materials were recorded as articles.

6. The prosecution closed its evidence, while the accused claimed total denial in their examination under Section 313 of Code of Criminal Procedure, 1973 (Cr.P.C.).

7. Upon considering the final arguments on behalf of the prosecution as well as the defendants, by the impugned judgment and order dated 10.11.2020, the trial Court acquitted accused Nos.2, 7 and 8, while convicting and sentencing accused Nos.1 and 3 to 6 (the appellants) in the aforesaid manner.

8. In its detailed judgment, the trial Court primarily relied upon the direct evidence of injured eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5), while disbelieving the evidence and even presence of Sachin Kadam (P.W.6), although the prosecution had claimed that he was an eye-witness to the incident. Considering the oral and documentary evidence on record, the trial Court found that the recoveries of weapons of assault i.e. choppers, knife and pistol, were not proved. The ballistic report being negative, could not be a factor for holding against the accused, including the appellants. It was held that minor inconsistencies and omissions in the evidence of the two injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5), could not inure to the benefit of the said accused

persons and therefore, they were convicted and sentenced in the aforesaid manner.

9. As regards accused Nos. 2, 7 and 8, the trial Court found the evidence falling short of proving their presence and involvement in the incident. Even the eye-witnesses to the incident had not initially named the said accused persons in their statements and considering the overall evidence, the trial Court granted benefit of doubt to the said accused persons.

10. Aggrieved by the impugned judgment and order of the trial Court, the appellants filed these appeals. Since the appellants continued to remain in jail and their bail applications were dismissed by this Court, the appeals were taken up for final hearing.

11. Mr. Vivek Punjabi, the learned counsel appearing for Arif Qureshi (A1) i.e. appellant in Criminal Appeal No.191 of 2021 and John Kajale (A6) i.e. appellant in Criminal Appeal No.181 of 2021, submitted that the trial Court committed grave error in convicting the said accused persons only on the evidence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5), as their evidence was tainted and tarnished by the fact that the trial Court itself disbelieved the evidence of Suraj Khode (P.W.4), who was also claimed to be an eye-witness by the prosecution. It was submitted that the trial Court doubted the evidence and even the presence of Suraj Khode (P.W.4) at the spot of the incident. The said PW.6 had deposed about the presence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5) and these two witnesses, in turn, had deposed about the presence of PW.6 at the spot of the incident. Once the evidence and even the presence of Sachin Kadam (P.W.6) was disbelieved by the trial Court, the evidence of the purported injured eye-witnesses Suraj Khode (P.W.4) and Amol

Nikam (P.W.5), ought to have been discarded by the trial Court.

12. It was further submitted that in any case, the evidence of an eye-witness has to be of sterling quality. The trial Court itself found inconsistencies and omissions in the evidence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5) and yet, it believed their version, while convicting the said accused persons. On the quality of evidence expected from an eye-witness, reliance was placed on the judgment of the Supreme Court in the case of *Vadivelu Thevar and another vs. State of Madras* (AIR 1957 SC 614). It was submitted that three categories of witnesses were classified in the said judgment i.e. wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. The said judgment laid down that in the third category of witnesses, the Court has to be circumspect and it must look for corroboration in material particulars. Relying on the observations made in the said judgment, it was submitted that the evidence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5), ought to have been discarded.

13. It was further submitted that there was no independent witness examined by the prosecution and even the panch witnesses were the friends of the deceased person. It was further submitted that crucial witnesses were not examined by the prosecution, including one Ajay Pawar, who was claimed to be accompanying Sachin Kadam (P.W.6) when the incident took place, and Gorakh Nathe and Saurabh Junagade, who accompanied Suraj Khode (P.W.4) and Amol Nikam (P.W.5), while taking the deceased Nikhil More to the hospital. The deceased was supposed to have been taken by these four persons in the Maruti car of Gorakh Nathe and yet, he was not examined and the car was also not seized. The prosecution also failed to examine Chetan Vitthal Pawar, who accompanied Amol

Nikam (P.W.5) to the hospital and similarly, failed to examine Saurabh Junagade, who had accompanied Suraj Khode (P.W.4) to the Civil Hospital, despite the fact that the names of these persons were recorded in the injury certificate issued to the injured eye-witnesses. The recovery of weapons of assault was disbelieved and the ballistic report was negative and yet, the trial Court convicted the said appellants.

14. It was further submitted that the evidence of the witnesses clearly established that the deceased as well as the purported eye-witnesses had enmity against the accused persons. In fact, Amol Nikam (P.W.5) was an accused in an FIR registered in the year 2016, wherein Arif Qureshi (A1) was the victim. This indicated that the accused persons were falsely implicated. In this context, it was significant that while Suraj Khode (P.W.4) was found to be fit to give his statement in the Civil Hospital at 11:50 p.m., his statement was recorded after more than 4 hours at 04:30 a.m. by the police, which led to registration of the FIR. The fact that there was enmity between the parties, indicated that while the assault did take place, the purported injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) falsely implicated the aforesaid accused persons, as the assault had been carried out by persons not known to the said witnesses. The trial Court completely failed to appreciate this aspect of the matter. The learned counsel placed reliance on the judgment of the Supreme Court in the case of *Khema @ Khem Chandra and others vs. State of Uttar Pradesh* [(2023) 10 SCC 451], wherein it was reiterated that previous enmity is a double-edged sword. On the one hand, it provides motive for crime and on the other hand, there is a possibility of false implication. On this basis, it was submitted that the appeals of the aforesaid accused persons ought to be allowed.

15. Mr. Aniket Nikam, the learned counsel appearing for Sharad Pagare (A3) i.e. appellant in Criminal Appeal No.189 of 2021, submitted that the said accused person is alleged to have used gun/pistol to cause firearm injury to the deceased. He submitted that there was a discrepancy in the statement of the injured eye-witness Suraj Khode (P.W.4) given during the course of investigation, wherein it was stated that the said accused person had fired in the air, while in the evidence before the Court, it was claimed that the said accused person fired towards the deceased. This was a major contradiction overlooked by the trial Court, while convicting the said appellant accused. It was submitted that the very recovery of pistol was disbelieved and the ballistic report was also found to be negative. It was submitted that the examination report of the clothes allegedly worn by the deceased at the time of the incident, showed that there were no bullet shot holes in the clothes of the deceased, thereby completely discrediting the case of the prosecution as against the said appellant accused (A3).

16. It was further submitted that the evidence of the alleged injured eye-witness Suraj Khode (P.W.4) and Amol Nikam (P.W.5) was tainted by the fact that the trial Court itself disbelieved the evidence of the alleged eye-witness Sachin Kadam (P.W.6). The previous enmity between the parties was emphasized upon, to contend that this was a case of false implication. It was submitted that the quality of evidence of the said alleged injured eye-witnesses was poor and yet, the trial Court believed their version. Reliance was placed on the judgment of the Supreme Court in the case of *Chunthuram vs. State of Chhattisgarh* [(2020) 10 SCC 733], to contend that when there were serious infirmities in the prosecution evidence, conviction of the accused deserves to be reversed, particularly when forensic evidence

also does not support the prosecution case and when two views are possible on the evidence on record, the benefit ought to be given to the accused. On this basis, it was submitted that the appeal of Sharad Pagare (A3) deserves to be allowed.

17. Ms. Pushpa Ganediwala, learned counsel appearing for Roshan Pagare (A4) i.e. appellant in Criminal Appeal No.178 of 2021, submitted that the said appellant had been falsely implicated due to previous enmity between the purported injured eye-witnesses and the accused persons. It was submitted that in the facts and circumstances of the present case, there was delay in registration of FIR as the incident took place, according to the prosecution, at about 10:00 p.m. on 17.08.2017, while the FIR was registered at about 04:30 a.m. on 18.08.2017. It was submitted that the police had taken the injured eye-witnesses to the Civil Hospital at about 11:15 p.m. A certificate was issued by a doctor at 11:50. p.m. that Suraj Khode (P.W.4) was fit to give his statement and yet, his statement was recorded after more than 4 hours at 04:30 a.m. on 18.08.2017, thereby showing that the time gap was utilized for falsely implicating the aforesaid accused persons along with the others, while the assault was carried out by some unknown persons. It was submitted that the evidence of Sachin Kadam (P.W.6) was discarded by the trial Court itself and this clearly tainted the evidence of purported eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5). It was unnatural conduct on their part not to have revealed the names of the assailants, who they knew and this indicated that the assault had been actually carried out by unknown persons.

18. It was further submitted that the trial Court disbelieved the recoveries of weapons of assault and the material on record created confusion, as three choppers were produced, while the investigating

officer PW. 20 denied recovery of the third chopper. According to the learned counsel for the appellant in the said appeal, a false theory was concocted by the investigating officers only with a view to falsely implicate the accused persons. Attention of this Court was invited to the weapons examination report, spot panchanama, inquest panchanama as also the panch witnesses relevant for these documents, to claim that the entire theory of the prosecution was not supported by such evidence.

19. Attention of this Court was also invited to the evidence of Dr. Sujit Mandke (PW.10), who was the doctor at Sanjivani Hospital. He saw the injured victim for the first time and while the injured eye-witnesses claimed that they and two other persons had accompanied the injured victim to the said hospital, the said doctor did not name them. It was further submitted that the said doctor had deposed that the persons gathered due to the incident, had stated that the assault was carried out by unknown persons. It was further submitted that the knife being embedded in the body of the victim, was not stated by the concerned panch witness, thereby creating serious doubt about the entire prosecution version as to the manner in which the assault was carried out on the deceased. It was submitted that since the recoveries were disbelieved and the ballistic report was also negative and the recovery of the blood-stained clothes was also not believed by the trial Court, the appellant could not have been convicted. On this basis, it was submitted that the appeal deserves to be allowed.

20. Mr. Ateet Shirodkar, the learned counsel appearing for Amar Gangurde (A5) i.e. appellant in Criminal Appeal No.634 of 2024, submitted that according to the prosecution, the weapon at Article 'X' was attributed to the aforesaid accused person, although the

evidence of the witnesses did not support the said version. The evidence of the witnesses demonstrated major inconsistencies and contradictions, as use of different weapons was attributed to the said appellant accused person, thereby creating serious doubt about prosecution version. The benefit of doubt ought to have been given to the said appellant.

21. It was further submitted that the evidence of the injured eye-witnesses itself was riddled with inconsistencies and contradictions, apart from the fact that such evidence stood tainted, due to the trial Court itself discarding the entire evidence and even the presence of the purported eye-witness Sachin Kadam (P.W.6). In such circumstances, the benefit of doubt ought to have been granted to the said accused and other accused persons, indicating that the trial Court judgment was rendered unsustainable. On this basis, it was submitted that the aforesaid appeal also deserves to be allowed.

22. On the other hand, Ms. Sangita Phad, learned APP for the respondent-State vehemently opposed the aforesaid contentions raised on behalf of the appellants/accused persons. It was submitted that in this case, there being two injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5), who have given direct evidence about the manner in which the accused persons carried out the brutal assault on the deceased, merely because evidence of Sachin Kadam (P.W.6), who was also stated to be an eye-witness, has been disbelieved, cannot adversely affect the prosecution case. It was submitted that in the present case, the trial Court adopted a correct approach of considering the said direct evidence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5), to analyse as to whether the ocular evidence can be believed. Having noted some minor inconsistencies, the trial Court correctly came to the conclusion that the direct

evidences of Suraj Khode (P.W.4) and Amol Nikam (P.W.5), were sufficient to prove the case of the prosecution. It was emphasized that the evidence of the said two injured eye-witnesses was consistent and trustworthy, demonstrating that the judgment of the trial Court does not deserve any interference.

23. It was submitted that in the facts of the present case, there was no question of the FIR being delayed. In fact, since Suraj Khode (P.W.4) and Amol Nikam (P.W.5) were both injured, when they intervened during the course of the brutal assault on the deceased, they were first required to be treated in Civil Hospital and thereafter, their statements could be recorded. There was nothing unnatural in the statement of Suraj Khode (P.W.4) being recorded at 04:30 a.m. in the Civil Hospital. Nothing much turned on the fact that a document recorded that he was fit for giving statement at 11:50 p.m. The trauma suffered by both the injured eye-witnesses cannot be ignored and in such circumstances, it can be stated that the FIR was promptly registered, leading to the investigation, prosecution and ultimate conviction of the appellants before this Court.

24. It was submitted that the inquest panchanama as well as postmortem report recorded the brutal manner in which the victim was assaulted, leading to his death. There are as many as 20 injuries, including one firearm injury, which collectively caused the death of the victim. In this context, reliance was placed on the medical evidence of Dr. Sujit Mandke (P.W.10), Dr. Vijay Gade (P.W.11) and Dr. Anand Pawar (P.W.12), to contend that the evidence of these witnesses collectively proved the injuries suffered by the victim and the cause of his death.

25. It was submitted that the fact that some of the witnesses had

criminal cases registered against them, could not be a factor to discredit their testimony, for the reason that their evidence was consistent and trustworthy. In this context, reliance was placed on the judgment of the Supreme Court in the case of *State of U.P. vs. Farid Khan and others* [(2005) 9 SCC 103].

26. It was further submitted that merely because the witnesses knew the victim or were his friends, could not be a ground to label them as interested witnesses to discard their testimony. Reliance was placed on the judgment of the Supreme Court in the case of *Baban Shankar Daphal and others vs. State of Maharashtra* (AIR 2025 SC 599), wherein the Supreme Court observed that the evidence of an interested witness cannot be discarded altogether, although it should be scrutinized with care and caution.

27. On the failure of the witnesses to disclose the names of the assailants at the time when the injured victim (deceased) was admitted to hospital, it was submitted that the said factor could never inure to the benefit of the accused persons, for the reason that a doctor is concerned with treating the victim and saving his life. Reliance was placed on the judgment of the Supreme Court in the case of *Pattipati Venkaiah vs. State of Andhra Pradesh* [(1985) 4 SCC 80], wherein the Supreme Court held that failure on the part of the eye-witnesses to disclose the names of the accused to the doctor, would not render their testimony doubtful.

28. On the trial Court disbelieving the recovery of weapons, it was submitted that if the findings are based on improper understanding of law, this Court could certainly re-assess the same. It was submitted that in the face of the direct evidence of the two injured witnesses in the form of Suraj Khode (P.W.4) and Amol Nikam (P.W.5), there is

hardly any scope for the appellants to claim that the victim was not assaulted in the manner as described by the said witnesses. Reliance was placed on the judgment of the Supreme Court in the case of *Sri Chikkegowda and others vs. State of Karnataka etc.* (**judgment and order dated 07.10.2025 in Criminal Appeal Nos.541-543 of 2015**), to contend that if there was conflict between the ocular evidence and medical evidence, the ocular evidence would prevail, unless found to be totally unreliable.

29. It was submitted that on the said touchstone, the evidence of the injured eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5), can be found to be totally trustworthy and hence, no fault can be found with the trial Court in relying upon their evidence, to hold against the appellants. It was submitted that prior enmity can certainly be the motive for assault on the victim and therefore, it cannot be used as a ground to claim false implication, unless there is substantial material to demonstrate the same. It was submitted that the trial Court was justified in holding that even if there were some minor lapses or inconsistencies, the same could not be a ground for acquittal, as the evidence on record was otherwise found to be cogent and trustworthy.

30. It was submitted that in the present case, the presence as well as the respective roles of the appellants (accused), were sufficiently made out by the evidence on record and minor inconsistencies ought to be ignored. It was submitted that therefore, the appeals deserve to be dismissed and the impugned judgment and order of the trial Court ought to be confirmed.

31. Having considered the impugned judgment and order of the trial Court in the light of the rival submissions, as also the evidence

and material on record, we find that in the present case, the entire emphasis of the prosecution has been on the evidence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5). The conviction of the appellants is entirely based on the testimony of these two injured eye-witnesses. Hence, it is necessary to consider the evidence of these two injured eye-witnesses to examine as to whether the trial Court in the present case was justified in returning the finding of conviction against the appellants, despite reaching findings against the prosecution on all the other factors relied upon by the prosecution. This becomes crucial in the present case for the reason that as per the law laid down by the Supreme Court in various judgments, including judgment in the cases of *Jarnail Singh & Ors. vs. State of Punjab* [(2009) 9 SCC 719] and *Brahm Swaroop & Anr. vs. State of Uttar Pradesh* [(2011) 6 SCC 288], the evidence of an injured eye-witness is trustworthy, as the presence of such a witness at the spot of the incident cannot be doubted due to the injuries suffered by such a witness. It would require strong reasoning for disbelieving the version of an injured eye-witness. It is precisely for this reason that the learned APP in these appeals also emphasized upon the evidence of the aforesaid two injured eye-witnesses, submitting that in the face of direct evidence of such witnesses, all other factors would pale into an insignificance.

32. Before considering the evidence of these two injured eye-witnesses, another aspect needs to be emphasized upon, which has been canvassed on behalf of the appellants in these appeals. The said aspect pertains to the issue of false implication of the appellants in the backdrop of the previous enmity between the victim and the eye-witnesses on the one hand and the accused on the other. It is a recognized principle that previous enmity is a double-edged weapon as it provides motive for crime on the one hand and the possibility of

false implication on the other, as reiterated by the Supreme Court in the case of *Khema @ Khem Chandra and others vs. State of Uttar Pradesh* (supra). The evidence on record does indicate previous enmity between the parties and a reference to the same shall be made hereinafter. But, before entering into the analysis with regard to the evidence of the two injured eye-witnesses and the possibility of false implication, it would be appropriate to first refer to the deficiencies in the prosecution case that are evident from the material on record. These have been accepted even by the trial Court in the impugned judgment and order.

33. The trial Court in the impugned judgment and order categorically found that the recovery of weapons was not proved by the prosecution. The observations made by the trial Court show that the recovery of weapons was riddled with doubtful circumstances and none of the weapons of assault, including choppers and pistol could be said to have been recovered in accordance with law. Thus, in the present case, the Court has to proceed on the basis that neither the choppers and knife allegedly used to assault the deceased nor the pistol that caused firearm injury to him, were recovered during the course of investigation. To that extent, the appellants are justified in relying upon this deficiency in the prosecution case.

34. Record shows that even the ballistic report was found to be negative. Hence, it has been concluded that while there was a firearm bullet injury to the deceased as a bullet was found lodged in his body in postmortem examination, there was no evidence on record to prove as to which firearm was used in the assault on the deceased. This is another deficiency in the case of the prosecution. None of the accused persons, including the appellants, could therefore be connected with any of the weapons of assault allegedly

used in the assault carried out on the deceased as well as the injured eye-witnesses.

35. The prosecution came with a case before the trial Court that there were three eye-witnesses to the incident, of whom Suraj Khode (P.W.4) and Amol Nikam (P.W.5) were injured eye-witnesses, while third eye-witness was Sachin Kadam (P.W.6). It is a matter of fact that upon analysis of the testimonies of these three eye-witnesses, the trial Court itself came to the conclusion that the testimony of Sachin Kadam (P.W.6) was full of omissions and improvements, thereby not only rendering his evidence untrustworthy, but creating a serious doubt about his very presence on the spot of the incident. Thus, this is another glaring deficiency in the case of the prosecution. In the context in which the incident is described by the three eye-witnesses where they have asserted the presence of each other at the spot of the incident, the evidence of Sachin Kadam (P.W.6) being full of omissions and improvements not only rendered his testimony untrustworthy, but it cut against the very case with which the prosecution had come to the Court against the accused persons. The findings rendered by the trial Court with regard to the evidence of Sachin Kadam (P.W.6), who is claimed to be an eye-witness to the incident, are crucial while considering the appeals filed by these appellants.

36. Although, the trial Court has itself found the evidence of Sachin Kadam (P.W.6) to be wholly untrustworthy, a reference to the contents thereof would be necessary to appreciate the contentions raised on behalf of the appellants, as also for appreciating the testimonies of the two injured eye-witnesses.

37. Sachin Kadam (P.W.6) claimed to have reached a spot across

the road from where the assault on the deceased and the injured eye-witnesses took place. He claimed to have reached a medical shop across the road and when there was commotion due to the assault, his attention was attracted towards the same and he claims to have seen the accused, including the appellants carrying out the assault on the deceased and the injured eye-witnesses. Thus, in his examination-in-chief, Sachin Kadam (P.W.6) claims to have seen the incident, the assailants whom he knew and also the deceased as well as the injured eye-witnesses. It is crucial to note that even the two injured witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) in their respective testimonies claimed that Sachin Kadam (P.W.6) had reached the medical shop across the road from the spot of the incident. The evidence of Sachin Kadam (P.W.6), who claimed to be a witness being discarded by the trial Court and his very presence being doubted, does place a shadow of doubt on the testimonies of injured eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5) at least to the extent that they stated about the presence of Sachin Kadam (P.W.6) when the incident took place. The trial Court in the impugned judgment and order recorded that although the evidence of Sachin Kadam (P.W.6), who claimed to be an eye-witness, was found full of omissions and improvements and his very presence at the spot was rendered doubtful, the evidence of the injured eye-witness would not be affected or tainted in any manner. This aspect becomes the heart of the matter in the present case. It also assumes great significance in the backdrop of the fact that the appellants claim false implication, while the occurrence of the incident, wherein the victim Nikhil More died and eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5), could certainly not be denied. According to the appellants, the assault was carried out on the deceased and the injured eye-witnesses by unknown persons, but due to previous

enmity, the appellants and the other accused persons were falsely implicated. It was also sought to be indicated that there was delay in registration of the FIR, as the statement of Sachin Kadam (P.W.6), which led to registration of the FIR, was recorded at 04:30 a.m. The incident was alleged to have taken place at 10:00 p.m. on the previous night. We are of the opinion that the FIR being registered at 04:30 a.m. on 18.08.2017 for an incident that took place on the previous night i.e. 17.08.2017, in itself cannot lead to a conclusion that the FIR was delayed. The fact that the two eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) were injured in the assault and the deceased was seriously injured, is a factor that cannot be ignored. In such cases, treatment of the injured can assume more importance than the formal registration of an FIR.

38. But, it is crucial to note that the accused persons, including the appellants were known to the eye-witnesses, including the two injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5). It was not the case of the prosecution that the assailants were unknown. The aforesaid two injured eye-witnesses have claimed that they along with two other persons i.e. Gorakh Nathe and Saurabh Junagade, took the injured victim Nikhil More (deceased) to nearby Sanjivani Hospital after the assault. The evidence of Dr. Sujit Mandke (P.W.10) of Sanjivani Hospital does not show the presence of the injured eye-witnesses and others, who claim to have brought the injured victim Nikhil More to the said hospital. The said witness has also stated in his cross-examination that the people gathered there at the hospital told the Police that some unknown persons had assaulted the victim Nikhil More. In fact, it was claimed that the Police had immediately reached the Sanjivani Hospital upon the injured victim Nikhil More being brought to the Sanjivani Hospital. The said witness also stated that he had not seen

any knife on the person of the said victim. This is contrary to the other evidence and material on record, including photograph showing a weapon of assault embedded in the chest of the said victim. It was also stated by the said witness i.e. Dr. Sujit Mandke (P.W.10) that 15 CCTVs cameras were installed in Sanjivani Hospital and that the Police neither saw the footage nor collected the same from the hospital pertaining to the relevant time period on 17.08.2017, when the injured victim Nikhil More was brought to the hospital.

39. It is a matter of record that neither Gorakh Nathe nor Saurabh Junagade were examined by the prosecution. Injured eye-witness Suraj Khode (P.W.4) in his examination-in-chief claimed that he along with the said two persons had taken injured victim Nikhil More to Sanjivani Hospital in the Maruti car belonging to Gorakh Nathe. Yet, the said persons were not examined by the prosecution.

40. According to the prosecution, since both Suraj Khode (P.W.4) and Amol Nikam (P.W.5) were injured in the assault, they were taken to the civil hospital. The evidence of Dr. Vijay Gade (P.W.11), working as a medical officer at the civil hospital and the medico-legal injury certificates pertaining to the aforesaid two injured eye-witnesses, show that Suraj Khode (P.W.4) was brought to the civil hospital by Saurabh Ahire and Amol Nikam (P.W.5) was brought to the civil hospital by Chetan Vitthal Pawar. These two persons were also not been examined by the prosecution. The aforesaid medico-legal injury certificates of the two injured eye-witnesses indeed show that Suraj Khode (P.W.4) suffered simple incised wounds on right upper arm and right thigh, while eye-witness Amol Nikam (P.W.5) had suffered two incised wounds on his back in scapular region, that were simple in nature. This material indeed shows that both the said eye-

witnesses were injured. But, it is crucial to note that both of them suffered simple injuries.

41. Since Police had taken the said injured eye-witnesses to the civil hospital, at 11:50 p.m. on 17.08.2017 itself, the Police had submitted an application to the Medical Officer at the civil hospital, asking as to whether both the said injured eye-witnesses were fit to give statements. The Medical officer at the civil hospital gave an endorsement at 11:50 p.m. on the said request letter itself that the patients were fit to give their statements. This assumes significance for the reason that despite the incident having taken place at 10:00 p.m. and the Police having immediately reached the Sanjivani Hospital, their statements were not immediately recorded by the Police.

42. The ordinary course of human conduct would expect the aforesaid injured witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) to have immediately informed the Police about the manner in which the incident took place and the persons responsible for the same, particularly when both claimed that they knew the assailants, who were the accused persons, including the appellants. In fact, the aforesaid two witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) could have informed the people gathered due to the commotion or atleast Dr. Sujit Mandke (P.W.10) at the Sanjivani Hospital about the persons involved in the assault. This could be said to be in consonance with the natural course of human conduct, as the said eye-witnesses, who were themselves injured in the assault, would be expected to ensure that the assailants were immediately apprehended. There is substance in the contention raised by the learned APP by relying upon the judgment of the Supreme Court in the case of *Pattipati Venkaiah vs. State of Andhra Pradesh* (supra)

that the testimony of the eye-witnesses cannot be rendered doubtful merely because they failed to disclose the names of the assailants to the doctor, as the doctor is more concerned with the treating the injured persons rather than recording the names of those responsible for the assault. In the facts of the present case, we find that although, the testimonies of the two injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5), would not be rendered doubtful for this reason, but their conduct appears to be unnatural, particularly in the backdrop of the specific contention of false implication raised on behalf of the appellants.

43. It is a matter of record that eventually, the statement of injured eye-witness i.e. Suraj Khode (P.W.4) was recorded at 04:30 a.m., leading to registration of the FIR. The statement of Amol Nikam (P.W.5) was recorded thereafter on 18.08.2017. It appears unnatural that the said two eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) having suffered injuries in the assault that caused the death of their friend Nikhil More, did not show any sense of urgency in telling any third person, who came in their contact immediately after the assault, including doctors and not even the Police, who had reached the Sanjivani Hospital immediately, about the details of the assailants. This becomes crucial when the identity of the assailants was already known to both the said injured eye-witnesses.

44. The evidence of the prosecution witnesses shows that as soon as the injured eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5) took the deceased to the Sanjivani Hospital, the Police reached at the said hospital and took the said two witnesses to the civil hospital. Thus, from the point in time when the said witnesses reached the Sanjivani Hospital around 11:00 p.m. on 17.08.2017, till 04:30 a.m. in the morning on 18.08.2017, the said two eye-witnesses

did not even whisper about the details of the assailants to anybody, much less the Police. Both these eye-witnesses were together throughout this period and yet, they did not find it appropriate to mention the identity of the assailants to any person during this period. This conduct can be said to be unnatural and it creates a doubt about the assertion on the part of these two injured eye-witnesses as regards the description of the assailants. There is material in the evidence led by the prosecution itself, showing that there was previous enmity, which is a double-edged sword that can provide motive for committing the crime and it can also lead to false implication in a given case. This is one case where we find that the unnatural conduct of the injured eye-witnesses creates a serious doubt about the appellants having been falsely implicated.

45. The testimonies on record, including those of these two injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) show that the incident took place near the spot where one Bhagwan Sanap was allegedly murdered by injured eye-witness Amol Nikam (P.W.5) and the deceased Nikhil More, thereby indicating that the said persons could have had other enemies also. The evidence further shows that offence was registered under Section 307 of the IPC against injured eye-witness Suraj Khode (P.W.4), Amol Nikam (P.W.5) and Sachin Kadam (P.W.6) at Mhasrul Police Station, Dist. Nashik, for assaulting Bhusan Pagare, who was the brother of accused No.4 Roshan Pagare. It has also come on record that Suraj Khode (P.W.4) was a witness against accused persons in another case. These factors do indicate rivalry between the parties and if the appellants had indeed assaulted the deceased Nikhil More in the presence of injured eye-witnesses in the aforesaid manner, there was no reason why the said two injured eye-witnesses did not divulge the identity of the assailants to anyone between the point in time that these two injured

eye-witnesses came in contact with the Police and the point in time when the statement of the injured eye-witness Suraj Khode (P.W.4) was recorded at 04:30 a.m. in the morning on 18.08.2017. This creates a strong suspicion about false implication of the appellants.

46. The aforesaid aspect has to be appreciated in conjunction with other material that has come to the fore in the evidence and the material on record. As noted hereinabove, the injured eye-witnesses failed to divulge about the assailants to either Dr. Sujit Mandke (P.W.10) of Sanjivani Hospital, whom they met immediately after the assault or Dr. Vijay Gade (P.W.11), the Medical Officer at the civil hospital, who examined them for their injuries. The prosecution failed to examine Gorakh Nathe, in whose Maruti car the injured eye-witness i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) allegedly took the deceased to Sanjivani Hospital along with Saurabh Junagade. Even Saurabh Junagade was not examined by the prosecution and the Maruti car was also not seized. These are glaring discrepancies in the case of the prosecution, for the reason that the persons who came in contact and were associated in taking the deceased and the injured eye-witnesses from the spot of the incident, were not even examined. It also appears to be against the natural course of human conduct that both the injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) failed to inform their relatives or the relatives of the deceased Nikhil More about the incident from their mobile phones. In other words, the information about the details of the assailants was kept to themselves by these witnesses throughout till 04:30 a.m. in the morning, which is inexplicable.

47. In such cases, insistence upon independent witness may not be justified, as persons who are not associated with the parties generally

do not like to be involved in the proceedings. But, absence of even a single independent witness in such a case when the ghastly assault took place in a populated neighbourhood creates suspicion. It is further compounded as the material on record shows that a number of panch witnesses were friends of the deceased Nikhil More and the injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5). In cross-examination, PW.1 (panch witness for spot panchanama), PW.2 (panch witness for inquest panchanama), PW.3 (panch witness for panchanama concerning seizure of clothes), PW.8 (panch witness for discovery panchanama of accused No.3-Sharad Pagare) and PW.9 (second panch witness for inquest panchanama), all conceded that they were friends of the deceased and the injured eye-witnesses. The prosecution could not find independent panch witnesses also, apart from the fact that the recoveries of all the weapons of assault were disbelieved by the trial Court itself. As noted hereinabove, the ballistic report was also negative. These factors taken together lend credence to the contention raised on behalf of the appellants that they were falsely implicated, as the only evidence relied upon by the trial Court was the testimonies of the two injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5).

48. It is also to be appreciated that both the injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) have stated about the presence of Sachin Kadam (P.W.6) and his alleged role of pelting stones along with others on the accused persons, due to which they were diverted. The said Sachin Kadam (P.W.6) also claimed to be an eye-witness and described his role in a similar manner, also claiming that he had seen the appellants assaulting the victim and the injured eye-witnesses. There were no stones recovered from the spot. The trial Court completely disbelieved Sachin Kadam (P.W.6) and his presence was also found to be doubtful. This factor taints the

evidence of injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5). Their presence cannot be doubted for the fact that they did suffer injuries, but their description of the incident, including the identities of the assailants, is rendered doubtful and tainted by the fact that the evidence of the purported third eye-witness Sachin Kadam (P.W.6) has been discarded by the trial Court.

49. It is also to be noted that no effort was made to recover the CCTV footage of the area where the incident took place or Sanjivani Hospital or even the civil hospital for 17.08.2017 and 18.08.2017.

50. Thus, the only two persons who claim to have identified the assailants in the present case, as being the accused persons and the appellants, were injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5). There is absolutely no corroborative material and even if their evidence can be said to be direct evidence, in the light of the factors noted hereinabove, their version is rendered doubtful and seriously tainted because the evidence of the third purported eye-witness Sachin Kadam (P.W.6) stood discarded by the trial Court itself. It is to be noted that this aspect assumes all the more significance in the light of recoveries not being accepted by the trial Court, the ballistic report being negative and most of the panch witnesses being friends of the deceased and the injured eye-witnesses, with no independent witness being examined by the prosecution. Any measure of doubt in the prosecution case must inure to the benefit of the accused.

51. In this context, reliance placed on behalf of the appellants on the judgment of the Supreme Court in the case of *Naresh @ Nehru vs. State of Haryana*, passed in **Criminal Appeal No.1786 of 2023** and other connected appeal, is apposite. In the said judgment, reference was made to an earlier judgment of the Supreme Court in the case of

Rai Sandeep @ Deepu alias Deepu vs. State (NCT of Delhi), [(2012) 8 SCC 21] and it was held that evidence of the eye-witness should be of very sterling quality and calibre and it should not only instil confidence in the Court to accept the same, but it should also be a version of such a nature that can be accepted on its face value. If the said test is applied to the evidence of Suraj Khode (P.W.4) and Amol Nikam (P.W.5), we find that it does not pass the said test and, in fact, their evidence appears to be tarnished, particularly because the trial Court itself discarded the evidence of third eye-witness i.e. Sachin Kadam (P.W.6).

52. In the context of credibility of an interested witness, the learned APP referred to judgment of the Supreme Court in the case of *Baban Shankar Daphal and others vs. State of Maharashtra* (supra). In the said judgment, a distinction is made between an 'interested witness' and a 'related witness'. A related witness is stated to be a person who has a relationship with the victim and whose presence at the spot of the incident is natural. An interested witness refers to a witness, who has a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused, due to enmity or for personal gain. In the present case, the injured eye-witnesses Suraj Khode (P.W.4) and Amol Nikam (P.W.5) cannot fit into the description of related witnesses, but they do answer the description of the term 'interested witnesses'. The prosecution evidence itself show that they were close friends of the deceased. They were co-accused persons along with the deceased in certain offences registered against them, atleast one of which concerned assault on the brother of one of the accused persons in this case. The aspect of previous enmity has been referred to hereinabove and therefore, it can be said that these witnesses did have a personal stake to falsely implicate the accused persons, including the appellants. The conduct

of these two injured eye-witnesses against the natural course of human conduct in failing to immediately inform any of the persons who came in touch with them, including the Police, about the details of the assailants in such an incident involving a brutal assault on their friend, further demonstrates that they had a personal stake in seeking to falsely implicate the appellants.

53. In the case of *Muluwa son of Binda & Ors. vs. The State of Madhya Pradesh* [(1976) 1 SCC 37], the Supreme Court found similar conduct of the daughter of the deceased suspicious, who failed to disclose anything about the incident even to the constables who escorted her and the injured persons to the hospital. She disclosed the details hours after the incident and this was found to be a major omission by the Supreme Court and it was held that such conduct did not appear to be natural of a person who had seen the occurrence. In the present case also, as noted hereinabove, the injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) claimed to be the eye-witnesses to the brutal assault on their associate i.e. the deceased Nikhil More at about 10:00 p.m. They were accompanied by other persons who took the deceased to the hospital. The other persons were not even examined by the prosecution. Atleast from the time, the said injured eye-witnesses reached Sanjivani Hospital i.e. around 11:00 p.m., the Police was constantly with them on way to the civil hospital, in the civil hospital and when the certificate of fitness to give statements was taken at 11:50 p.m. on 17.08.2017. Yet, throughout the night, the said injured eye-witnesses did not whisper a word to any person, including the Police, about the identity of the assailants and the manner of the assault. It was only at 04:30 a.m. in the morning that statement of injured eye-witness Suraj Khode (P.W.4) was recorded, which led to registration of the FIR. The statement of the other injured eye-

witness Amol Nikam (PW.5) was recorded later on 18.08.2017. The observations made by the Supreme Court in the aforesaid judgment of *Muluwa son of Binda & Ors. vs. The State of Madhya Pradesh* (supra) apply to the facts of the present case also, thereby demonstrating a serious infirmity and omission in the evidence of the said two injured eye-witnesses.

54. A reference has been made on behalf of the appellants to the judgment of the Supreme Court in the case of *Vadivelu Thevar and another vs. State of Madras* (supra). In this judgment, the Supreme Court has elaborated upon the categories of witnesses, classifying them into three categories i.e. wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. It has been categorically laid down in the said judgment that in the third category i.e. when the witness is neither wholly reliable nor wholly unreliable, the Court has to be circumspect in accepting the evidence of such witness and that the Court must look for corroboration in material particulars by reliable testimonies. This Court is of the opinion that both the injured eye-witnesses i.e. Suraj Khode (PW.4) and Amol Nikam (PW.5) indeed fall in the aforesaid third category. Since they suffered injuries, their presence at the time of the incident is established, but the manner in which they have described the incident implicating the accused persons, including the appellants, is shrouded in a cloud of doubt because of the background of serious previous enmity. The nature of evidence of these two witnesses required corroboration by other material particulars and testimonies. The testimony of the third purported eye-witness Sachin Kadam (PW.6) was found to be riddled with major contradictions and the trial Court itself discarded the same. The recoveries of weapons was disbelieved by the trial Court. The ballistic report was negative. As noted hereinabove, a number of panch witnesses were found to be

friends of the deceased and the injured eye-witnesses. Therefore, there is no credible corroboration of the evidence of the two injured eye-witnesses, thereby raising a serious doubt about their version involving the accused persons, including the appellants. Any doubt in such matters must accrue to the benefit of the accused. This aspect was not properly appreciated by the trial Court, while convicting the appellants, in the facts and circumstances of the present case.

55. The overall appreciation of the evidence and material on record demonstrates that while the incident indeed took place, but the evidence falls short of proving that the accused in the present case, including the appellants herein could be said to be responsible for the incident.

56. The learned APP relied upon judgment of the Supreme Court in the case of *Sri Chikkegowda and others vs. State of Karnataka etc.* (supra) for the proposition that ocular evidence must prevail over the medical evidence. There can be no quarrel with the said proposition. But, since this Court, for reasons recorded hereinabove, has found that the ocular evidence of injured eye-witnesses i.e. Suraj Khode (P.W.4) and Amol Nikam (P.W.5) is not reliable, the said judgment cannot be of any assistance to the prosecution. The learned APP further placed reliance on judgment of the Supreme Court in the case of *Ramji Singh & Ors. vs. State of Uttar Pradesh* [AIR 2020 SC 169], to contend that false implication ought not to be lightly inferred particularly in the light of the direct evidence of the injured eye-witnesses. In the said case, the Supreme Court found, as a matter of fact, that the complaint about the incident was recorded immediately after the occurrence, leaving no time to concoct a false case implicating those not involved. But, in the present case, it has been recorded hereinabove, that there was indeed a time lag and the

serious personal enmity between the parties in the backdrop indicated possibility of false implication. Thus, the said judgment can also not be of much assistance to the prosecution.

57. In such a situation, the trial Court could not have convicted the appellants by solely relying upon the evidence of the two injured eye-witnesses. Hence, the impugned judgment deserves to be interfered with.

58. In view of the above, we are of the opinion that the appeals deserve to be allowed and the appellants deserve to be acquitted.

59. Hence, the following order :

- (i) The appeals are allowed.
- (ii) The judgment and order dated 10.11.2020 passed by the Court of Additional Sessions Judge (Court No.6), Nashik, in Session Case No.141 of 2018, convicting and sentencing the appellants, is set aside.
- (iii) The appellants, who are in custody, shall be released forthwith, unless required in any other case.
- (iv) Before being released, the appellants shall execute P.R. Bonds in the sum of Rs.25,000/- each, under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437A of the Code of Criminal Procedure, 1973) for their appearance, in the event an appeal is preferred against their acquittal.

60. Pending applications, if any, also stand disposed of.

(MANJUSHA DESHPANDE, J.)

(MANISH PITALE, J.)