
(1997) 07 BOM CK 0007

In the Bombay High Court

Case No : Confirmation Case No. 1 of 1996 and Crim. Appeal No. 285 of 1996

State of Maharashtra

APPELLANT

Vs

Ravindra @ Ravi Bansi Gohar and Others

RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:

Arms Act, 1959 — Section 28
Constitution of India, 1950 — Article 22
Criminal Procedure Code, 1973 (CrPC) — Section 357, 366
Penal Code, 1860 (IPC) — Section 114, 120B, 148, 149, 25

Citation : (1997) 99 BOMLR 140

Hon'ble Judges : V.P. Tipnis, J;A.B Palkar, J

Bench : Division Bench

Judgement

V.P. Tipnis, J.—Four accused persons namely Ravindra @ Ravi Bansi Gohar, Rajendra @ Rajubhai Tarachand Sankat, Kishor @ Kishya Amarsingh Maheshkar and Vinod Bhika Maria were charged and tried in three Sessions Cases being Sessions Case Nos. 1063 of 1987, 1396 of 1988 and 45 of 1996 in respect of the crime registered as C.R. No. 123 of 1987 of Agripada Police Station Mumbai, which was subsequently numbered as DCB CID C.R. No. 107 of 1987. All the three sessions cases were tried together as they related to the same incident.

2. The aforesaid four accused alongwith several others were charged with offence u/s 302 read with 120B IPC, Section 302 read with Section 149 IPC, and several other Sections to which we will make a detailed reference later on. Broadly stated accused named above alongwith others were charged for having committed murder of one Babu Gopal Reshim as also one police constable by name Hari Shravan Ahire at about 3.30 a.m. on 5.3.1987 by breaking open the police lock up of Agripada police station situate at Satrasta Jacob Circle Bombay. During the course of this incident accused are alleged to have used fire arms like revolvers as also country made bombs and that is how the accused were also charged for various offences under the provisions of Arms Act, 1959.

3. It is the case of the prosecution that in the early hours of 5th March, 1987 two motor taxies were hired by about 8 persons at Bombay Central. The taxies were directed to be taken from Bombay Central to Nana Chowk and thereafter to Chowpatty and further to Teenbatti. At Teenbatti they were asked to take right turn and soon thereafter a left turn. Thereafter the taxi drivers were directed to halt the taxies. The taxi drivers were assaulted and threatened with dire consequences and were made to leave the taxies. There were four persons in each taxi. These taxies were driven further without taxi drivers and it appears to be the case of the prosecution that the culprits involved in breaking open the lock up at Satrasta came to the spot by those taxies. Taxi drivers thereafter went to the Gamdevi Police Station and lodged a complaint about the incident. It further appears that the taxies were found abandoned in Deonar area near Chembur at Bombay. Though it is the case of the prosecution that the thumb impression of accused No. 4 was found on the back seat of one of the taxies, as far as this part of the story of the prosecution is concerned admittedly none of the taxi drivers have been examined and in fact on the allegations and charges with respect, there to the learned trial Judge has completely acquitted all the accused. The State having filed no appeal against the said order of acquittal it is unnecessary to consider that aspect of the matter.

4. Coming to relevant core story of prosecution it is alleged that on 5.3.1987 at about 3.30 a.m. several persons, about 8 to 12 came to Satrasta Police lock up from the opening in the compound wall from Sane Guruji Marg. They were throwing country made bombs. By throwing one of the bombs at the police post (guard chowki), which is just in front of the lock up, the armed guard by name Maruti Mane was injured. Thereafter four persons came to the front entrance of the lockup. P.W. 2 Uttam Gharte who had the key of the lock up was at the gate. He was threatened and key was demanded from him. Upon refusal of Uttam to hand over the key, the group retreated and threw bombs at the iron wire mesh which was in front of cell No. 1. Through that wire mesh four persons having fire arms fired in the direction of cell No. 1. Thereafter they entered the gate, went inside through lobby near the door of the rear lobby of the lock up. They came back. Thereafter one of the accused broke open the lock of the gate of front lobby. All the four persons entered through the said gate and also entered cell No. 1 wherein the deceased Babu Gopal Reshim was detained. They fired at Babu Gopal Reshim. Then they came back shouting some slogans. They also threw bombs in the area under the stair case which is treated as resting room by the guards, and all of them thereafter went out and ran away again towards Sane Guruji Path. In the process Babu Gopal Reshim was killed. One police constable by name Ahire also sustained injuries which ultimately resulted in his death. Several other policemen had some minor injuries. We will have occasion to refer to the details of this incident at appropriate stages.

5. The prosecution examined P.W. 2 Uttam Vishnu Gharte, P.W. 12 Ashok Dinkar Chakranarayan, P.W. 4 Chandrakant S. Sawant and P.W. 21 Mohamad Shakil Mohamad Ibrahim Ansari who was also one of the persons detained in the lockup

and was occupant of adjoining cell No. 2. Uttam and Ashok were unarmed police constables and were on duty at the lock up. The key of the lock up at the relevant time was with Uttam. Chandrakant Sawant was also a police constable incharge of the lock up register and was present on the ground floor of the building housing office of the Assistant Commissioner of Police of the area. This building is in the vicinity of the lockup. Out of these four witnesses Mohamad Shakil Mohd. Ibrahim Ansari was declared hostile witness.

6. So far as the medical evidence is concerned the prosecution examined P.W. 6 Dr. Apte who examined police constable Ahire and who also performed autopsy on the dead body of said Ahire. P.W. 7 Dr. Khade is a doctor who performed autopsy on the dead body of Babu Reshim. P.W. 8 Dr. Vaidya examined several police constables including" deceased Ahire, and injured police constable Abaji Mane and Kokitkar as also P.W. 2 Gharte. P.W. 9 Dr. Maniar examined one Mohan Narayan who was occupying cell No. 1 alongwith Babu Reshim at the relevant time. Ahire had been treated in the hospital for several days and therefore the prosecution has also examined P.W. 11 Dr. Patil, P.W. 13, Dr. Joshi who treated Ahire during his stay in the hospital.

7. The third set of witnesses is regarding the identification parades. P.W. 18 is Mr. Parikh who held identification parade on 8.7.1987, P.W. 22 is one Mr. Choubal who held identification parade on 3.1.1996 and P.W. 23 is one Mr. Gaikwad who held identification parade on 20.7.1987. The prosecution also examined P.W. 1 Dhemre who has drawn the sketch map of the lock up as well as the building where the office of the Asst. Commissioner of Police is housed. The map is drawn to the scale and is at Exh. 13. P.W. 3 Kulkarni is the photographer who took photos of the various parts of the building at the lock up. P.W. 19 is one Jumledhar photographer who took finger print of accused No. 4 found in the back seat of the taxi. P.W. 5 is one Mr. Chile who is panch for panchanama of scene of offence. P.W. 10 is one Mr. Sattar who is panch while finger prints of accused No. 4 from the taxies were taken. P.W. 15 Sonawanc is a finger print expert.

8. The last group of witnesses consist of police witnesses who deposed as to the investigation. P.W. 20 is PSI Deshmukh who was at the relevant time attached to Ulhasnagar police station and who had arrested present accused Nos. 1, 2 and 3 in respect of some incident at Bharmanpada locality of Ulhasnagar. P.W. 24 is API Angre, who brought the accused No. 4 from Tihar jail Delhi on 23.11.1995. P.W. 25 is the Police Inspector Tikam of DCB CID who initially assisted in the investigation and later on took over the investigation. P.W. 26 is one Tejale, Senior Police Inspector CID.P.W. 17 is ACP Zende and P.W. 29 is the ACP Bhalerao. Bhalerao and Zende were attached to Agripada police Station at the relevant time in the capacity of Inspector and Senior Inspector of police respectively. These were the officers who immediately rushed to the police lock up after receipt of the information of attack on the police lock up. P.W. 14 is PI Sawant attached to Gamdevi Police Station who had recorded information regarding stealing of taxies from Bombay Central given by one of the taxi

drivers. P.W. 28 is one Ravi Chandra Kaul who was examined as expert of explosives.

9. On the basis of the deposition of these witnesses and other documents in the form of panchanamas, notes of medical treatment, as also post mortem notes, the learned Additional Sessions Judge, Greater Bombay by his judgment and order dated 25.4.1996 convicted accused No. 1 Ravindra @ Ravi Banshi Gohar, accused No. 2 Rajendra 9 Rajabhai Tarachand Sankat and accused No. 3 Kishor @ Kisha Amarsingh Maheshkar for offences punishable u/s 302 read with Section 149 and 34 of IPC for murder of Babu Gopal Reshim and each of them was sentenced to death. The learned Judge ordered that each of them be hanged by neck until he dies. The learned Judge convicted accused No. 4 Vinod Bhika Maria for offences punishable u/s 302 read with Section 149 IPC for murder of Babu Gopal Reshim and sentenced him to suffer RI for life and to pay a fine of Rs. 10,000/- in default to suffer RI for one year.

10. All the four accused were found guilty of offence of murder of Police Constable Ahire and each of them was convicted for offence punishable u/s 302 read with Section 149 IPC and each of them was sentenced to suffer RI for life and fine of Rs. 10,000/- and in default RI for one year. All the four accused were convicted for offence u/s 460 read with Section 149 IPC and each of them was sentenced to suffer RI for 10 years and fine in the sum of Rs. 5000/- and in default to suffer RI for six months and each of them was convicted for offence u/s 332 read with Section 149 IPC and sentenced to suffer RI for 3 years and fine in the sum of Rs. 1000/- and in default to suffer RI for 3 months. Each of them was convicted for offence u/s 148 IPC and sentenced to suffer RI for 3 years and fine in the sum of Rs. 5,000/- and in default to suffer RI for six months. Each of them was convicted for offence u/s 25(11A) of the Indian Arms Act read with Section 149 IPC and each of them was sentenced to suffer RI for 7 years and fine in the sum of Rs. 5,000/- and in default to suffer RI for six months. Each of them was also convicted for offence u/s 28 of the Indian Arms Act read with Section 149 IPC and each of them was sentenced to suffer RI for 7 years and fine in the sum of Rs. 5,000/- and in default to suffer RI for six months. The substantive sentences for imprisonment were directed to run concurrently. Fine if recovered was made payable to the heirs and family members of the deceased police constable Shri Ahire as compensation u/s 357 of Cri.P.C.

11. As the learned Addl. Sessions Judge awarded sentence of death to accused Nos. 1, 2 and 3 a Reference for confirmation of death sentence is made u/s 366 of the Cr. P.C. All the four accused have also preferred Criminal Appeal No. 285 of 1996 challenging the order of conviction and sentence passed by the learned Trial Judge against each of them. That is how both these matters i.e. confirmation case No. 1 of 1996 and criminal appeal No. 285 of 1996 are being heard together and are being disposed of by this common judgment.

12. We have heard Shri Ovalekar learned Counsel for the original accused and Shri Rajiv Patil Ld. Addl. Public Prosecutor for the State in both the matters. With

the assistance of the Ld. Counsel for both sides we have gone through the entire parole as well as documentary evidence. We have heard detailed and exhaustive arguments from the Ld. Counsel for the accused as well as Ld. Addl. Public Prosecutor.

13. Before referring to several submissions made by Shri Ovalekar in support of the appeal and arguments and submissions of Shri Patil, we find it convenient to first refer to the evidence as adduced by the prosecution in the matter.

14. P.W. 2 Uttam Gharte has stated that he was police constable at Agripada police station in the year 1987. He resumed duty on 2.3.1987. Lock up duty was assigned to him for two nights between 3rd to 5th March of 1987. Thereafter he has narrated the details regarding his duty hours as also duty hours of police constable Buckle No. 4239 i.e. P.W. 12 Ashok who was also on duty along with him. This witness had stated that the police lock up known as satrasta lock up is also called Jacob Circle Lock Up. The lock up is a two stoned building i.e. ground plus two stories and accused are detained on all the three floors. The inmates of ground floor are from Agripada Police Station. Inmates of list floor arc from all police stations and they are all ladies. Inmates of 2nd floor are from Tardco police station and Worli police station which police stations have no lock up for detaining suspects. Guard cabin which is in front of the lock up was wooden structure without door. Open place below the stair case of the lock up was used by the policemen as resting place at that time. The gate at the rear side of lock up was always closed at that time. The main gate of lock up could not be closed at that time. The witness has further stated that the witness and the police constable P.C. No. 4239, P.W. 12 Ashok were attached to Agripada Police Station on 4th and 5th March. 1987. This witness reported to his duty at 5.p.m on 4.3.1987. He was supposed to be on duty till 9 a.m. on the following day i.e. 5.3.1987. P.W. 12 was also along with him. In all 8 police officers were given duty to keep watch at the chowki at the front side of the police station as well as the back side of the police station. Two of them were with armed rifles out of 8 officers used to keep watch while the remaining six used to sleep. The height of the outer wall of the lock up was about 2 feet and above the iron rods were fixed and iron grills were also fixed and attached to these iron rods. The witness has described that there were gaps of 1 inch diameter under to that iron grills, obviously what he means as is clear if one sees the photographs, is that it was covered by the iron wire mesh. There was iron gate at the entrance of the lock up and the gate was open at that time. As soon as one enters the lock up through the main entrance, there is another door towards the left side leading to the passage in front of lock up and the said door was closed by putting lock. The key of the lock was with the witness when he was on duty during the night between 4th and 5th March, 1987. After the said iron door there is a passage of about 20 to 25 feet long and 2 to 3 feet of breadth. Adjoining the passage there are 5 cells. The iron doors are attached to the cells but there was no provision to put the locks. The doors of the cell were made of iron and iron bars. The prisoners in the cells could be visible from the open ground in front of the lock up

where that chowki was standing. The witness has further stated that one tube light at each 4 corners of the lock up was fixed. There was a tube light just inside the lock up which is adjoining the main entrance of the police lock up. There were two electric bulbs at each side of the passage inside the lock up. At the extreme end of the passage is the latrine and at that place there was a electric bulb. There was one electric bulb inside the first cell and for the remaining four cells one electric bulb was attached to two cells that is two bulbs for 4 cells. The witness took charge at 5 p.m. on 4.3.1987. There were 28 prisoners inside the lock up. Prisoner Babu Reshim and one Mohan Kudapalli were in cell No. 1. P.W. 12 was on duty from 5 p.m. to 9 p.m. during which time this witness was resting on the bench below the stair case. Then this witness resumed his duty at 9 p.m. and did it till 12 midnight when P.W. 12 took over from this witness and this witness rested. This witness started his duty again at 3 a.m. Door at the backside of the lock up was closed permanently. There was no gate towards east side compound wall of the office of ACP. The compound wall on the southern side of the office of ACP was in dilapidated condition. The witness has stated that there was electric pole touching the footpath near the opening towards the eastern side compound wall of the office of ACP. The electric light from the said electric pole and from the lock up was available in the open space of the office of ACP. 15. The witness has further stated that he knew one Kisha prior to the incident. The witness identified accused No. 3 Kishore @ Kisha Amarsingh in court. The witness further stated that he knew Vija. Vija is no more and that the witness knew both these persons for about 7 to 8 months prior to the incident. The witness further stated that at about 3 a.m. on 5.3.1987 his associate P.C. No. 4239 i.e. P.W. 12 Ashok handed over the charge to him and rested on the bench which was just below the stair case. This witness checked the number of the prisoners who were inside the cells, put the lock to the inside door of the lock up and then sat on the stool which is outside the door. At about 3.30 a.m., witness has stated that he saw 4/5 persons coming from Sane Guruji Marg side and they were making noise like crackers. They were coming towards the lock up side. They rushed towards him. He identified two of them. They were Vija and Kisha. They stood on the step which was just outside and adjoining the main door of the lock up. The distance between himself and Kisha and Vija was 2/3 foot. The main door of the lock up was open. Both of them were holding revolvers with them. Both of them pointed the revolver towards the chest of the witness. Both of them abused him asking him to handover the key of the lock of the police lock up. The remaining two assailants were standing just near to Vija and Kisha. Both of them armed with revolvers. The witness refused to handover the key to Kisha and Vija. Kisha and Vija just went behind and came in front of iron jali, in front of cell No. 1. The witness heard the noise of explosion of bomb in front of cell No. 1. Smoke followed noise. Kisha and two others started firing towards cell No. 1. Witness stated that persons who were with Vija and Kisha are present in court and he identified accused No. 1 and 2 as those two other persons. The witness has stated that there was shouting and commotion in the lock up on account of noise of firing. The witness saw someone throwing bombs

towards the resting place inside the lock up near the stair case. All the four persons including Vija and Kisha broke open the lock and rushed inside the lock up. All four persons fired when they were in the passage in front of the cells. All rushed inside cell No. 1. Witness stated that he was not knowing the other persons who were with Kisha and Vija. One out of these two unknown persons broke open the lock. Witness identified the said person as accused No. 1 i.e. Ravi. The lock was broke open by iron bar and hammer. Witness heard the noise of firing from inside the cell No. 1. One of the bombs thrown fell just near the leg and after explosion the witness sustained injuries to both his legs. The witness thereafter took shelter under the staircase. Witness stated that these persons were throwing bombs and one of them stood at the door of the lock up saying "run, those want to run" "Jisko Bhagna Hai who bhag jao". The witness stated that it is Vija who uttered these words and he was holding a revolver in his hands at that time. All those four persons ran towards Sane Guruji Marg side. One constable named Takke was the Senior Sipahi (guard commander) at that time. He was inside the guard room during that time. He fired towards four assailants but nobody was injured. He fired from the rifle which he was holding. The entire incident took place within 10 to 12 minutes. One guard sipahi named Ahire was also in the guard room under the stair case who was injured during the firing. After the persons left the witness checked the cells and found Babu Reshim resting against the wall in a pool of blood. Bar and the broken lock were lying on the floor near the inside door of the lock up. The witness stated that the accused Vija and Kisha made an attempt to grab the key during which the right side pocket of his shirt was torn. The witness also saw bullet injuries caused to the little finger of the leg of prisoner Mohan Kudapalli in cell No. 1 alongwith Babu Reshim. The noise of explosion of bombs was continuing till the departure of the assailants. While running away from the place of incident assailants were shouting "Bharat Mata Ki Jai". The witness further stated that when his associate P.W. 12 Ashok came towards him, he told him to wait near the door of the lock up and then he left to see the clerk in the office of the ACP which was just adjoining to the lock up. The witness went and told the concerned clerk i.e. P.W. 4 Chandrakant Sawant about Babu Reshim being injured. P.W. 4 Sawant informed that he had already reported the incident to Agripada police station. P.W. 4 Sawant also informed this witness that the assailants have cut the wire of the telephone of his office. The witness came back to the lock up. P.W. 4 Sawant accompanied him. Within 5/7 minutes Police Inspector Bhalerao and Senior Inspector Zende arrived at the place. The witness narrated the entire incident to them. His statement was reduced into writing. The statement was read over and explained to him and thereafter witness put his signature thereon. The witness identified Exhibit 24 which is the First Information Report.

16. The witness further stated that soon after recording of the FIR the panchanama of scene of offence was drawn. He was referred to the police hospital for examination and medical treatment. Witness took medical treatment for about 21 days. On 8.7.1987 the witness attended the identification parade in

the office of the Crime Branch CID Crawford Market. One Justice of Peace was sitting inside the room (witness is obviously referring to Special Executive Magistrate i.e. Shri Parikh). The witness saw 10 to 12 persons standing in the parade. He identified accused No. 2 Raju a @ Bhaya and Kisha i.e. accused No. 3. Thereafter the witness sat in the room upto 3 p.m. At about 3.30 p.m. witness was again called for identification. He went to the room where identification parade was held. He saw about 12 persons in the parade and he identified assailant Ravi accused No. 1. The witness identified him as one of the persons who was standing in front of cell No. 1 and who fired the gun towards that cell. He also identified accused No. 1 as assailant who broke open the lock of the police lockup. The witness has deposed that he was also present at the time of the panchanama of scene of offence which was drawn by P.I, Zende. In the cross examination this witness stated that the panchanama of scene of offence was over at about 9.30 a.m. and the witness reached the Nair Hospital at about 10.30 a.m. The witness has further stated that only one police constable was on duty at the chowki outside and that was one Shri Mane. The witness has also stated that one must cross the chowki before reaching the police lock up from Sane Guruji Marg. The witness further admitted that he was holding the key of the entrance of the ground floor only and that he was holding key of the lock affixed to the entrance to the passage which was at the rear side of the ground floor. The witness has stated that he was near the entrance gate of the lock up right from commencement of the incident till the assailants ran away from the place of incident. The witness denied the suggestion that since the assailants started throwing bombs towards him he went below the stair case for self protection. The witness further denied the suggestion that since the bombs started exploding he and other security guards went to rear passager with a view to hiding themselves from assailants. The witnesses admitted that Takke and other 5 police officers was armed with weapons and these officers were in the place near the stair case in the lock up at the time of incident. The witness stated that if it is true that he heard the noise of explosion of bombs near the chowki for the first time when it came from Sane Guruji Marg side. He became alert and P.W. 12 Ashok woke up and they heard the noise of first explosion of bombs. Thereafter they heard noise of second explosion near the chowki. The witness admitted that Takke and 5 other police officers woke up at the time of 2nd explosion near the police chowki. The witness has further stated that the distance between the bench and the entrance of the passage was about 2/3 feet.

17. The witness has further stated that inside the compound there are no electric lights except the light fitted to the lock up. There were four tube lights on four corners of the lock up building. The witness has stated that when he heard the first explosion of bomb, person on duty in the guard room was seen in the guard room (witness is obviously referring to guard chowki outside the lock up). The witness also admitted that one armed constable also remained on duty in third chowki behind the lock up building. The witness has stated that the constable Takke, deceased constable Ahire as also constables Dashrat Narsu Kokitkar,

Mahadeo Ishwar, Karate, Prakash Nivruti Pachare were present on the night of the incident. They were below the stair case (which is referred to as guard room) on the ground floor of the lock up building. Ashok P.W. 12 was also present below the stair case. Thus total 7 police constables were on the ground floor at the time of that incident. Excepting the witness and P.W. 12 Ashok all other persons were armed with rifles. The witness further stated that he left at 10 a.m. for hospital and returned at about 11 a.m. He came back to the lock up. He stated that his statement was recorded by Police Officer Bhalerao for about 2 hours between 12 to 2 p.m. The witness denied a suggestion that there was darkness in the lock up building. In his further cross examination the witness has stated that he checked the lock up at about 3.05 a.m. and within 5/6 minutes he heard the noise of crackers coming from Sane Guruji Marg and at that time 7/8 persons were coming running from the direction of Sane Guruji Marg. The witness stated that he had not told the police that he saw only 4/5 persons. The witness admitted that he had stated before the police that he saw 4/5 persons coming from the direction of Sane Guruji Marg making the sound of firing of crackers. Witness court not assign any reason for the same. The witness admitted that even in the examination in chief he had stated that he saw 4/5 persons coming from the Sane Guruji Road. The witness further stated that in the beginning he saw only 4/5 persons and in the course of incident he saw 7/8 persons. He saw 7/8 persons while they returned back and ran away after the incident. After the incident while they were running away there were 7/8 persons. The witness stated that he did not count, they may be even 10 to 12 persons. In the further cross examination the witness has stated that it is not correct to say that Ashok woke up when the sound of crackers from the direction of Sane Guruji Marg came. Ashok, according to the witness woke up at about 3.20 a.m. Ashok was lying on the bench.

18. The witness further stated that when the bomb was hurled at the guard cabin, there was smoke somewhat, but when bombs were hurled at the lock up it was smoke all round and at that time nothing was visible. The witness stated that the place below the stair case in the lock is known as guard room. The witness has stated that 2 persons must have thrown about 20 to 25 bombs. The witness was standing at the entrance of south eastern corner of the lock up building and the persons throwing the bombs were standing on the other side. About 15 bombs were thrown towards the guard room. Ashok at that time had ran inside and below the stair case. Four other constables were also below the stair case. The witness further stated that before single bomb was hurled Vija and Kisha had come to him and when these persons came to him not a single bomb was thrown towards the lock up and firing had not taken place at that time. The witness denied the suggestion that all the constables ran towards the rear passage, Ashok opened the lock of the rear passage and all ran towards the rear side of passage and were hiding there. The witness has stated that he knew a person by name Vija Kanjari @ Vija Uttekar. Vija Kanjari and Vija Uttekar are the same person. The witness categorically stated that it is false to suggest that they are

different persons. The witness has stated that he knew Kisha residing in Kanjarwada and was gunda of the locality and he heard that his name was in the mavali register. The witness has admitted that he did not tell the police that Kisha is gunda of the locality or that his name is in the mavali register. He also did not state that Kisha was resident of Kanjarwada. The witness stated that he cannot assign any reason why it is not specifically mentioned in the FIR that hammer, was also used to break open the lock. The witness denied the suggestion that he ran away since bombs were hurled. He further stated that the tube lights were broken because of the bomb hurling. However, he cannot state when the tube lights were broken. The witness denied the suggestion that in the beginning itself the tube lights were broken by throwing of bombs. The witness denied that due to bombarding lights of the entire building had gone and there was darkness. The witness denied that due to smoke and darkness everything was invisible. The witness volunteered that it is true that there was smoke but because of the breeze it was dispersed. (Witness has actually stated that it is true that there was smoke but because of wind it became visible). The witness has further stated that it is not correct to suggest that there were only four persons and one of them threw bomb. The witness stated that he does not remember if he has stated before the police that one of four persons threw bomb. The witness further stated that at the time when the said four persons entered the lock up nobody was near him. At that time bomb was being hurled at him and bombarding was going on and that is why he could not close the door of the lock up. The witness stated that he had stated the same before the police but cannot assign any reason by it is not so stated. The witness further stated that he talked to Sawant havaldar and Sawant was the first person to whom he had talked. The witness did not remember whether he had told Sawant about Kisha as one of the four persons. The witness further stated that his statement was recorded on 6.3.1987 He was shown the photographs of Vijay Babulal Uttekar. He was also shown the photograph of Kishor Maheshkar either on 5.3.1987 or 6.3.1987. The witness stated that he does not remember whether he was shown the photo of Ravi Bansi or the photo of Rajendra Sankat. The witness stated that he does not remember whether four photos were shown to him. The witness admitted that he was shown photo of accused No. 3 Kishor. However, the witness volunteered that he already knew Kishor, The witness further stated that he was shown photo of accused No. 1 Ravi after the incident and before the parade. The witness further admitted that he was shown the photo of accused No. 2 after the incident and before the parade.

19. P.W. 12 Ashok Dinkar Chakranarayan is the other police constable on duty at the lock up alongwith P.W. 2 at the relevant time. He has stated that during night between 4.3.1987 and 5.3.1987 from 9 p.m. to 12 mid night Gharte was on duty. From 12 midnight to 3 a.m. the witness was on duty. The witness was sitting by the side of Gharte on a bench. At about 3.30 a.m. he heard sound of crackers from towards Sane Guruji Marg. One bomb was thrown at sentry booth, big sound of explosion was heard. The witness stood by the side of the stair

case. At that time bombarding was going on. He raised shout calling persons on duty who were taking rest in guard room. 4/5 persons came towards lock up room. At that time while he was looking for P.C. No. 16031 Gharte the witness saw one person breaking open the lock of the lock up door. He was striking on the lock by iron rod in hand of that person, and he was trying to break open the lock. The witness had gone towards the guard room to inform guard commander, so the firing could be done. Then he went to ACP room to inform lock up incharge Sawant, when they came back towards lock up with Shri Sawant at that time the witness saw Babu Reshim suspect in the lock up in a pool of blood. One police constable Ahire was injured in the bombarding. Gharte was also injured. However, this witness was not injured. Witness further stated that one assailant was about 25 to 30 years of age with sallow complexion, medium built, with long hair. The witness stated that he knew him and his name is Ravi Bansi. The witness came to know about his name at the time of identification parade (The exact record of the sentence is "I knew him his name is Ravi Bansi"). The witness has further stated that he had seen a person who was trying to break open the lock, he was 25 to 30 yrs with sallow complexion, with long hair. At that time the witness saw him from backside. The witness was at about 3/4 feet distance from the person who was trying to break open the lock. On 8.7.1987 the witness was called for identification parade. 10 to 12 persons were standing in the room. Out of them he pointed out the offender, who had launched an attack on lock up. The witness identified him as the person who broke open the lock. The witness identified accused No. 1 Ravindra Bansi in court as the person who was trying to break open the lock. The witness admitted in the cross examination that after he heard big explosion from Sane Guruji Marg he got up and started seeing round about because he was startled. Gharte was also looking round about and that both of them saw one bomb being thrown towards the sentry room (the witness is obviously making reference to the cabin or booth outside the lock up where armed sentry is on duty). At that time there was smoke nearby. The witness stated that at that time they were standing near the bench and soon after the bombarding started towards the guard room the witness stated that one was able to some but little bit hazy. The witness stated that it is correct that not a single bomb was hurled while he was by the side of Mr. Gharte. After one or two were thrown the witness left the place where he was standing and went Toward the guard room. The place under the stair case approximately 8" x 26" which is called as guard room, (this is obviously not correct as is evident from the sketch drawn to the scale which clearly shows that the entire portion in front of the main entrance gate of lock up is 8" x 26" out of which approximately half portion is covered by the stair case. The portion underneath the stair case as per the map would be about 4" x 20") The witness stated that he went 3/4 feet away from the guard room. After one or two bombs were hurled the witness went by the side of the stair case. The witness stated that he had seen 4/5 persons who entered inside the guard room when he went by the side of stair case. The distance between the stair case and the steps at the entrance is about 2 to 3 feet. 4/5 persons had entered inside through the

place, Gharte standing at the main door. According to the witness Gharte was standing on the bench. 2/3 person took round of guard room. Below the stair case 3/4 constables were sleeping. They woke up. P.C. Ahire and Takke who were below the stair case. The witness admitted that one person was in the guard room on duty and another was behind the lock up and 4/5 person were sleeping below the stair case. After the bomb was hurled all the constables woke up. They did not try to catch hold the culprits. The witness stated that because of the smoke it was no visible and therefore he could not tell whether they had sticks, iron bars, revolvers etc. He has not told the police about having seen 3/4 persons entering in the guard room. He had not told the police that he saw 4/5 persons that night. He did not tell about weapons seen in the hands of 4/5 person. When 3/4 persons returned from guard room he saw a person breaking open the lock. The witness had seen the iron rod in the hand of that person. It was about 1 to 1.5 feet in length and it was having dimension of about 1 inch. He saw the person breaking open the lock with iron rod by striking on the lock. He had told police of having seen rod in the hand of that person but he did not remember whether it was exactly iron rod or what weapon. Only one person was striking to open the lock. The witness had told police about the description of the person who was trying to open the lock. The witness has stated that between March, 1987 to July, 1987 he was on duty with Agripada police station. There is a mavali register maintained in that police station. In that register, photographs of mavali are maintained. The witness did not remember whether Ravi Bansi's name is there in the mavali register or that his photo is there, the witness stated that he does not remember whether he was shown photograph of Ravi Bansi. He did not see Ravi doing anything else except breaking open the lock. The witness denied a suggestion that he was shown the photograph of accused Ravi Bansi before he attended the identification parade. The witness stated that at the time when the door was being broken hurling of bombs had stopped. The witness further stated that it is true that where the bombs were hurled it was not visible. The witness admitted that it is true that due to deafening sound he was startled and was not understanding what to do. The witness denied suggestion that he ran away to the rear side after the bombs were thrown.

20. P.W. 4. was attached to Agripada police station from 1984 to 1988 as police havaladar and at the relevant time was assigned the duty as lock up clerk. Said lock up is known as Satrasta lock up. The witness had alternate duty at night and at day time every week. Duty of the witness was to receive prisoners in custody, hand them over to the cell and make payment towards bhatta and make necessary entries in the relevant registers. This witness was on duty on the night of 4.3.1987 and his duty hours were 5 p.m. on 4.3.1987 to 9 a.m. on 5.3.1987. The witness took round in the lock up at 5 p.m. on 4.3.1987, he took the signatures of Inspector (Administration) on the concerned registers at about 9 p.m. and returned to the lock up. He took entries in the concerned registers immediately after midnight regarding the date of 5.3.1987. He completed the work of taking entries in the relevant registers at about 3 a.m. on 5.3.1987. He

was doing this work on the ground floor of the office of the ACP and he was resting after completion of work. At about 3.30 a.m. he heard the noise like crackers coming from lock up side. He heard the big noise like crackers or the explosion of bombs. The witness turned back and contacted writer of Agripada Police station Shri Dhade on telephone. He informed Shri Dhade that some gundas are attacking the lock up and exploding bombs and he should send duty constables with officer to the lock up immediately. Then the witness stated that he started contacting control room on telephone. One person came in his front and said in Hindi "telephone se haat ja" (Get away from the telephone). The witness had stated that the person also said that if the witness does not get moved he will throw a bomb. The witness started climbing up the steps towards the ACP office. At the same time one of the constables from Nagpur started coming down by the same stair case. The person who had threatened the witness threw a bomb which struck the constable from Nagpur. The said constable sustained severe bleeding injuries. The witness immediately turned back and saw the same person who had thrown the bomb. The said person cut the telephone wire. The age of that person was around 25 yrs. He was wearing grey coloured jerkin. He had worn white coloured full pant. He left the place after cutting telephone wire. Thereafter the witness went to home guard office. The said office is at a distance of about 40 feet from the office of ACP. Another police constable also arrived in the home guard office, From there the witness informed the police control room on telephone about the incident and started coming back towards the lock up side. At that time they heard the shouting noise of many persons as "Bajrang Bali ki Jai". When he reached the lock up everything was quiet. Gharte informed him that some assailants attacked the lock up forcibly entered the lock up, exploded the bombs and killed Babu Reshim. He also informed the witness that the assailants also fired towards the lock up. The witness entered the lock up and saw injured Babu Reshim in a sitting position inside the lock up. One bomb of the size of coconut was lying near the body of Babu Reshim. Babu Reshim was dead. P.I. Bhalerao arrived at the spot and started drawing panchanama. He started recording their statement. Witness was called at Arthur Road jail on 3.1.1996 for identification parade. In the parade witness identified accused No. 4. He identified accused as the person who had thrown the bomb towards the constable from Nagpur at the time of the incident. The witness stated that he also identified him as an assailant who had cut the telephone wire. The witness in the cross examination admitted that he could see the smoke only towards the lock up side and he could not see anything else on account of smoke. He could not see any police officer who were in the said lock up on account of smoke. The witness has further admitted that at that time person who cut the "telephone wire was unknown to him. The witness stated that he does not know whether in the year 1985 in crime No. 227 of 1985 at Agripada Police station accused Vinod Bhika Maria was involved or not. The witness stated that he does not remember whether he had written the name of Bansi in the lock up "register. The witness also did not remember whether he had written the name of Kishore Maheshkar. The witness stated that he never saw accused Ravi

Bansi and accused Kishore in the lock up. The witness denied the suggestion that accused Ravi Bansi and Kishore were detained in or about June 1985. The witness stated that in June, 1985 he was sick. The witness stated that he does not know whether in C.R. No. 564 of Agripada Police Station the accused Ravi, Kishore and Vinod were detained in the lock up and that he had seen accused Ravi, Kishore and Vinod detained in the lock up in December, 1986. The witness also stated that he does not know whether on or about 10.1.1987 the said accused were detained in respect of C.R. No. 22 of 1987 of Agripada police station. The witness denied the suggestion that from January till the end of February, 1987 these accused were detained in the lock up and this witness had seen them in the lock up. The witness stated that he had heard the name of Vijay Uttkar. He also knew him as gunda, but he had not seen him at any time before the incident. The witness denied that he had seen the name and photograph of the accused Ravi, Kishore and Vinod in maval register. He stated that he was not shown their photographs. He has further stated that in the open place there is no electric pole as such there is no lighting arrangement and there is no electricity arrangement in guard cabin. The witness stated that he had gone in front of the lock up after the incident. There were electric lights. Electric lights were on the ground and first floor. In further cross examination the witness has stated that he identified accused No. 4 as the person who cut the telephone wire. The witness could not explain as to why it is not so recorded in the memorandum of test identification. The witness stated that he has not identified this person as person who threw the bomb at him on 5.3.1987. The witness could not state why the Special Executive Magistrate recorded that the witness identified the person as the person who threw bomb at the witness. The witness has stated that he told the police that person cut the telephone wire but he could not assign any reason why it was not mentioned in memorandum that this is the person who cut off the telephone wire. The witness could not assign any reason why it was so recorded in his supplementary statement.

21. The fourth and the last eye witness is P.W. 21 Mohd. Shakil Mohd. Ibrahim Ansari. He has stated that on 4.3.1987 he was in the lock up at Satrasta. He was in the 2nd room on the ground floor. There were about 4/5 other suspects with him. He was playing cards in the passage of the cell. Havaladar on duty asked them to sleep. The witness did not sleep because he heard sound of explosion from the road side. One bomb was exploded near the leg of constable having rifle. The constable holding rifle ran away and witness also ran inside the room out of fear. The witness saw smoke due to bomb explosion. Lights went off due to explosion. Thereafter he heard the noise of firing and explosion of bombs. Thereafter the witness has stated that the police came and his statement was recorded. He heard firing by the side of his room. He saw that the person in the adjoining room had died. The witness stated that he did not see any person throwing bombs or any person who was firing. The witness was again called at Matunga police station for identification of persons who ran away. The witness identified constable who ran away with rifle. The witness stated that there is

nobody in the court whom he had identified. At that stage Learned Public Prosecutor declared the witness as hostile and sought permission to cross examine him. The witness has stated that the statement recorded by the police was not read over and explained to him. The witness stated that Vijay Kanjari is known to him but he does not have acquaintance with Vijay Kanjari and Kisha. In the further cross-examination the witness has stated that it is true that he was hearing the abuses from the neighbouring room that Babu Reshim uttered "Vijay Ye Achha Nahin Hai Jo Kuch Hai Bhar Hai". The witness has admitted that he was called at DCB CID Crime Branch for test identification parade and out of the persons who were standing in front of the Special Executive Magistrate he had identified three persons. However, he stated that it is not correct that he had seen persons at the time of incident. The witness volunteered; there is danger to his life, if he goes out of the court hall, questioned the witness who will save his life? In the cross examination by the Ld. Advocate for the accused he stated that he heard big explosion sound. He also had seen bomb thrown to the guard room and sentry constable leave his rifle and ran away at that time. Lights in the lock up went off and there was darkness. All police men ran away because of fear. Hurling of bombs and fire was going on for 5 to 10 minutes. The witness also stated that before the test identification parade he was shown the photographs of accused persons. There were two photos of Vijay Uttekar and Vijay Kanjari.

22. We have reproduced exhaustively the account given by these four eye witnesses and we will be dealing with several important submissions made by Shri Ovalekar learned Counsel for the accused regarding the evidence of the aforesaid eye witnesses at appropriate stage. The object of reproducing the eye witness account exhaustively is that being the most crucial evidence in this case it was thought appropriate to refer to every single detail deposed to by these witnesses.

23. The evidence of P.W. 18 Shri Parikh shows that the witness is Special Executive Magistrate for about 24 years. He held two test identification parades on 8th July, 1983. In the first parade P.W. 2 Gharte identified accused No. 2 Raju and accused No. 3 Kishore. Ashok Chakranarayan could not identify any suspects in the first identification parade. Another test identification parade was held on the very day later on, in which Uttam Gharte P.W. 2 at first glance could not identify anybody but when he again moved through the parade he identified accused No. 1 Ravi. P.W. 17 Ashok also identified accused No. 1 Ravi. In the cross examination of this witness there is nothing of special notice though it was emphasized by the defence that this witness in paragraph 6 has stated that the witness Gharte told him that at about 3.30 a.m. some 8 to 10 unknown persons came towards the lock up by throwing bombs at the police constables who were on duty.

24. P.W. 22 Narendra Yeshwant Choubal was also working as Executive Magistrate. He held identification parade on 3.1.1996 in which parade P.W. 4 Sawant identified accused No. 4 Vinod Bhika Maria as the person who threw

bomb on him on 5.3.1987 when he was on duty at Jacob Circle police lock up. In the cross examination Shri Choubal has admitted that the identifying witness P.W. 4 did not tell him that the person identified was the person who cut off the telephone wire.

25. P.W. 5 is a panch for panchanama of scene of offence. He has deposed that on 5.3.1987 he was asked to be a panch to the panchanama at the scene of offence in which several articles were also collected. He has stated that the panchanama was being drawn from 4 a.m. to 9.30 a.m. that the lights inside the lock up were off. The panchanama was drawn in the light of torches. In the cross examination the witness has admitted that no electric light was available when he entered the compound; that the lights in the lock up room were also off, that when he entered the compound there was dark and torches were made available and used by the police officers at the time of panchanama of scene of offence. The police naik Ukkam was standing near the entrammels of the lock up in the police uniform. Initially the panchanama at the office of the ACP was completed. Then panchanama of the lock up side was completed. One guard by name Maruti Mane was standing near the chowki out side the lock up. The panchanama at Exh. 53 which is proved by this witness reveals that before the lock up there is open court yard, after entering the compound there is a peepal tree to the right and next to it is the office of the ACP Nagpada Division Mumbai. It is one storied building. The main entrance to the said building is towards the junction of Satrasta and the rear door is towards the lock up. On the ground floor of the said building, after the panch and other members entered the building through back door, to the right hand side there is the office of the Police Commissioner CID Crime Prevention Division. Just in front of the same there is the office of the Civil Defence. To the south of this there is a door which opens in a room. In the said room there is telephone stand on the wall. P.W. 4 Sawant pointed out the telephone wire which was cut off. When one comes out of the room in the direction of the main entrance of the building, to the left there is a stair case leading to the first floor where the office of the ACP Nagpada Division is situated. The panchanama mentions that in the open space, like passage, at the front entrance of the building, there were jute threads which are used for tying country made bombs. After going by the stair case on the 1st floor, in the northern corner of the stair case pool of blood was noticed. There is a police chowki of 3" x 3" facing the lock up. At that place also jute threads used for tying the country made bombs were found and were attached. There were also burnt outer covers of the bomb at that place. The said jute threads and parts of outer cover, scraped from the wooden chowki, were also attached. There is a police lock up beyond this chowki which consist of a building having two stories. At the entrance of the said building tube light lamp, tin stand and iron pole is seen fallen on the ground. Pieces of glasses of tube lights are also seen which were attached. On the slab of the ground floor inside the lock up and towards the slab there were bluish, smoky whitish spots on the wall. Outside the wire mesh in front of the first room i.e. cell No. 1 of the lock up, empties from Order 38 and

Order 32 revolvers, 25 in number were attached. Wall inside the cell was also blackened due to explosion of bomb. One country made bomb (sutali bomb) was also found inside the lock up. Another country made bomb was found in front of the lock up. Another country made bomb was found behind the tree near the police chowki. Bombs were also taken in possession of by the Dy. Controller of Explosives who alongwith the team had arrived at the spot. Bombs were put into bucket filled with water. Another country made bomb from behind the lock up was also attached. After entering the lock up one live cartridge bearing Order 32 & WLKF written on it was found. Near steps in front of the window and in front of outer mesh live cartridges bearing Order 32 & WLKF mark was found. There is a window of 8" x 4" to cell No. 1. There are iron bars to this window and outside there is iron wire mesh. Below the said window at about one foot there is a hole of about 2 and half inches diameter. It was also noticed that cement near the entrance of the stair case was removed due to the bomb explosion. The place near about the stair case is darkened due to bomb explosion. Place under the stair case was found spread with parts of covers of the country made bombs and they was attached. After entering through the entrance of the lock up passage in the front one iron lock was found on the floor there are marks of hammering on the said lock; there are also marks of hammering over the wall adjoining the door. There are 5 cells adjoining inner passage. The rear side of the cells is covered by the bars and iron mesh. Cell No. 1 is closed by door of 8".4" x 9".3" and the door is of iron bars and at the centre there is a small door of 3"x6".8". The said door opens outside in the passage. The door was open. Inside there is a room of 16".9" x 10".3". Behind the said room there is a window of 6".3" x 6".3" covered by iron bars. In the south west corner of the room dead body of Babu Reshim was seen. The body was rested on the wall. The tongue was protruding from the mouth. The body was smeared with blood. There was one country made bomb near the legs which was taken in possession by the explosive experts. There were several injuries on the dead body of Babu Reshim which are mentioned in the panchanama. There was sledge hammer near the body. Blood was everywhere on the floor. There were marks of bullets on the wall at 8 to 9 places. There were also bullet marks on the wall towards the south. Inside the wall near the dead body 17 used bullets were found. There were bullet marks on the iron bars of the door of the cell. After coming out of the lock up and going out of the opening, which is the entrance from the compound on the Sane Guruji Marg, panchas found marks of explosion of bombs and jute threads.

26. P.W. 6 Dr. Vasudha Apte conducted the post mortem examination of the deceased Ahire, She noticed following external and internal injuries:

External

(i) Abrasion 4 cm x 3 cm in the admit I.C.S (Internal coastal space) in left anterior auxiliary line. Internal i) Left side of thorax contained about 300ml of liquid blood.

ii) Peritoneal cavity contained about 250 ml of blood.

iii) Left lung lower lobe showed contusion and partial collapse cut surface showed oozing of blood. About 100ml of blood clots in the mediastinum.

iv) Right lung query patchy consolidation lower lobe, v) Anterior surface of left atrium and left ventricle multiple haemorrhagic spots.

vi) Left kidney showed a perinephric haematoma about 100ml near the upper of left kidney. There was no renal tear.

vii) No injury was noticed on the scalp, skull, brain and spinal cord. There was no fracture of axial or limb skeleton.

In her opinion the probable cause of death was contusion of lung, haemo thorax, perinephric haematoma, hemorrhage peritoneum and shock. The nature of death was unnatural. In the opinion of the doctor the internal injuries, mentioned above could have been caused by accidental fall on any hard and blunt object. However she ruled out the said possibility since there were no corresponding external injuries on the body of the deceased. She further opined that the cause of internal injuries might be sudden compression followed by de-compression of the lung tissues which are air filled. The internal injuries were sufficient in the ordinary course of nature to cause death. The aforesaid injuries could have been caused as a result of the bomb blast.

27. P.W. 8 Dr. Vaidya examined one P.C. Abaji at 4 a.m. on 5.3.1987. He had multiple punctured wounds all over the body. There was fresh active bleeding from the wounds. The patient gave the history of bomb blast at 3.30 a.m. On the very day at about 4.20 a.m. Ahire was brought to the hospital. He examined Ahire. Abrasions all over left thoracic region were found and the abrasions were sub cut deep. The history of bomb blast was given by these patients. Ahire was referred to the expert i.e. Emergency Surgery Registrar for necessary treatment. This witness also examined the police constable Mane at 4.20 a.m. Mane had abrasion of 1 " diameter on posterior aspect of left thigh, fresh bleeding and his trousers were torn on the posterior part. There was no entry or exit wound. The patient gave the history of injury on the right arm by bullet but he did not notice any external injury on the right arm so he was referred to emergency Orthopaedic Registrar for necessary treatment. He also examined P.W. 2 Uttam and noticed multiple punctured wounds over left leg and right leg. There was active fresh bleeding on both the legs. At the same he also examined a person by name Kokitkar and found punctured wound over left thigh Anterior Lateral aspect. There was bleeding with regard to the said wound. The history was of bomb blast. Witness produced original casualty register at Exh. 55.

28. P.W. 11 Dr. Patil was associate professor and Cardio Vascular and Thoracic Surgeon. On 5.3.1987 Ahire was referred to him. On examination he found that the patient was slightly breathless and air entry in left chest was reduced. X-ray showed possible rupture of left diaphragm. Emergency exploration was advised which was done between 1.4 p.m. to 2.45 p.m. on 5.3.1987. Post operatively he was not reversed from anesthesia and was put on mechanical ventilation in view

of injury to his lungs. This doctor examined Ahire daily from 5.3.1987 until the patient died on 10.3.1987 at 11.55 p.m. He found small contusion of 2cm x 1 cm over 8th intercostal on mid auxiliary. He found eventuation of diaphragm which means sudden ballooning of elevation of diaphragm with abdominal contents gone into chest causing respiratory embarrassment or difficulty. This eventuation was repaired at the time of operation. Then the patient was put on ventilator post operative (mechanical ventilation) because the patient had suffered contusion of the lungs and also the diaphragm was repaired. Hence he was not expected to breath normally after the operation. Thereafter the doctor had given day to day examination and treatment. However, ultimately on 10.3.1987 Ahire succumbed to his injuries. In the opinion of the doctor injury observed in respect of Ahire was characteristic blast injury in which the shock waves caused damage to the internal organs. Though externally there may not be the evidence of injury, depending upon the extent of damage to internal organs in the body the terminal event i.e. death takes place after few days. The doctor proved and produced notes from the hospital papers at Exh. 71.

29. Dr. Joshi P.W. 13 also referred to the treatment being given to Ahire.

30. P.W. 9 Dr. Maniar was attached to the Nair Hospital and on 5.3.1987 at about 6.p.m. patient by name Mohan Narayan was brought to the hospital. On examination he noticed 2 wounds on the right second toe admeasuring 1 cm x 1cm on dorsal of proximal phalanx. The other one was half cm x half on collar aspect on the proximal phalanx. There was no neuro vascular damage. There was comminuted fracture of proximal phalanx on X-ray and there was no retain foreign body seen. Minor operation of cleaning and debridement without anaesthesia was performed.

31. Dr. Khade P.W. 7 performed autopsy on Babu Reshim and has produced post mortem notes thereof at Exh. 57. Dr. Khade found following external injuries:

(i) Incised wound, left forehead, verticle, 9x2 cms cavity deep, spindle shaped, underneath bones are fractured bone pieces with brain matter, protruding out.

(ii) Incised wound, left partial region, obliquely placed 9x1 cm cavity deep with comminuted fracture of the bone.

(iii) CLW placed across the anterior half of upper injury (No. 2) 4 x 0.5cm bone deep.

(iv) I.W. on vertex in the midline A.P. 4 x 0.3cm (over partial region) bone deep.

(v) Firearm injury entry Lt frontal region 4cms above the Lt. eyebrow size 7mm diameter, circular wound with contusion collar on upper and medial part width 3 mm edges inverted.

(vi) FAI entry on Rt forehead. 2 cms above the medial and of Rt eyebrow size 5mm diameter with contusion collar on lower and medial aspect with 5mm.

(vii) Entry (FA) On centre of Rt eye brow, size 5mm diameter with conclusion

collar on medial aspect width 4 mm edges inverted.

(viii) Ext. of above wound (7) sita on Rt temporal region near eye brow size 7 x 5mm oval in shape.

(ix) Entry (FA) on Rt maxilla, size 2 cm x 1.0 cm oval in shape with contusion collar on lower aspect with 5mm edges inverted.

(x) Exit wound over (Rt) external at junction of pinna and lobule externally splitting of skin as soon margins everted size 2 cm x 0.5 cm.

(xi) Entry wound on posterior aspect of ear lobule (Rt) size 0.5 diameter edges contused and inverted.

(xii) Exit wound behind and below (Rt) mandibular joint, size 0.5 cm diameter edges everted.

(xiii) Entry just medial to axillary line 7 cm above and lateral to nipple (Rt) side of chest, size 1 cm x 0.5 cm with contusion collar seen extending medially size 2 x 0.8 cms edges inverted.

(xiv) Entry wound on lower lip just lateral to midline size 0.5 cm diameter with contusion collar around width 0.2 cm.

(xv) Exit. 2 cm below the base of Rt axilla, size 1 x 0.2 cm edges everted. (xvi) Entry Rt. Arm upper 3rd medial side size. 1 x 0.2 cm edges contused and inverted.

(xvii) Scratch abrasion on (Rt) side chest anteriorly medial to Rt nipple oblique 4 x 0.1 cm with tailing 3 cms laterally.

(xviii) Incised wound, running from Lt. shoulder top medially over Lt clavicle size 9 x 0.5 cm with tailing 8 cm medially skin deep,

(xix) Entry lateral aspect, Lt. arm, mid 1/ 3rd size 0.9 x 0.6 cm contusion collar of 1.2 cm medial and anteriorly edges inverted.

(xx) Incised wound on mid portion Lt. arm laterally 5 x 0.5 skin deep obliquely placed with tailing 4cms going posteriorly.

(xxi) Scratch abrasion crossing above injury in mid portion 9 x 0.1 cm.

(xxii) Entry wound just above Lt. elbow joint, size 0.8 cm diameter with contusion collar on lower aspect 0.5 cm.

(xxiii) Entry wound at junction of wrist and palm of Lt. hand ulnar border, size 0.5cms diameter, edged inverted.

(xxiv) Exit on lateral aspect of hypothenar eminence Lt. hand (palm) size 0.4 x 0.4 cms edges everted.

Similarly Dr. Khade noticed the following internal injuries:

(i) with reference to external injury Nos. 1 to 4 scalp is injured, left front It. temporal It. partial, bones are fractured into multiple pieces, causing laceration and hemorrhage of left frontal temporal and partial lobes of cerebrum with trauma to meninges.

(ii) with reference to external injury No. 5 scalp is contused, It. frontal bone shows entry wound size 1cm diameter. On It. lateral side, it is in continuations of comminuted fractures due to above mentioned injuries edges beveled. Lt. frontal lobe, show beside laceration and hemorrhage multiple small pieces of disintegrated bullet (retrieved for CA) supra orbital plate is fractured post aspect, with opening into it. maxillary sinus from where a bit of fragments were retrieved in this area.

(iii) with reference to external injury No. 6 A defaced this bullet lead retrieved from (Rt) occipital lobe of cerebrum, bullet has entered through (Rt) side frontal bone (size 1 x 1 cm oval in shape, beveling inwards, injured the meninges, travelled backwards and laterally upto (Rt) parieto occipital joint through cerebrum where it injured the meninges 1cm diameter and got deflected medially downwards and ultimately lodge in (Rt) occipital lobe. The channel formed enroute, shows laceration of brain with hemorrhage.

(iv) with reference to external injury Nos. 7 and 8 external injury No. 7 is a entry wound and No. 8 is respective exit is injured muscles (scalp) dented the bone frontal end exoted.

(v) with reference to external injury No. 9 the bullet has fractured maxilla bone externally, pallet internally and lodged into the back of mouth lateral to cervical vertebra No. 3 and 4 on Rt. side causing hemorrhage in mouth and around (bullet retrieved).

(vi) with reference to external injury No. 10 to 13 - A bullet entered the upper lip (injury No. 13) travelled through lip for 1cm passed behind the mandibular joint Rt. from inside the mouth comes out, externally injury No. 12 to enter Rt. ear lobule external injury No. 11 to lacerate it thus exited, eternally injury No. 10, laceration and hemorrhage along the channel seen.

(vii) with reference to external injury Nos. 14 to 16-A bullet enters (Rt) chest external injury No. 14 comes out in axilla, externally injury No. 15 to enter in Rt arm externally injury No. 16 causing laceration, enroute of chest muscle. (Channel is 4 cm in length). The channel formed in Rt arm. 3 cm muscle deep at the end at which a bullet is retrieved, laceration of muscle and hemorrhage in middle part of (Rt) arm, direction front to lateral arm downwards.

(viii.) with reference to external injury No. 19-A bullet (lead) is retrieved on lateral aspect of It. arm at the end of channel formed, 3 cms in length with laceration of muscle and hemorrhage.

(ix) with reference to external injury No. 22-A bullet retrieved from lower 3rd of It. arm posteriorly at the end of channel running upwards from entry length 9 cm

laceration of muscles along the route with hemorrhage noted.

In the opinion of Doctor the probable cause of death was acute head injury due to fire arm wounds and fairly heavy sharp impacts. The death was unnatural. In the opinion of the doctor the external injury Nos. 1, 2, and 4 could have been caused by fairly heavy and sharp edged weapon like small sword etc. External injury No. 3 could have been caused by hard and blunt object like iron rod etc. External injuries No. 18, 20 and 21 could have been caused by sharp edged weapon. External injury No. 3 is possible by the hammer Article 22 now before the court. All remaining injuries could have been caused by fire arms.

32. P.W. 20 P.S.I. Deshmukh was attached to the Ulhasnagar police station at the relevant time. The firing incident was reported from Dharampada at Ulhasnagar. Injured by name Vijay Jagannath Rothe @ Pai was taken to the hospital. Three persons were noticed going out of the gate of the hospital. Persons informed the police officer that those were the persons connected in the firing of Dharampada. They were arrested. Accused Nos. 1 and 3 in this case were among those three persons. One person was admitted in the hospital for injury on the arm. He told his name as Rajendra Mali. Two persons i.e. accused Nos. 1 and 3 in this case were arrested at 5.15 a.m. on 28.6.1987. In the interrogation it was revealed that they were involved in respect of Reshim murder case at Jacob Circle lock up. Investigation revealed that Rajendra injured person had given false name and his real name was Raju Tarachand Sankat who is accused No. 2 before the court.

33. P.W. 25 Tikam was attached to DCB CID Crime Branch. On 5.3.1987 early in the morning he received a telephone call from ACP Dhond informing him about the serious incident at Satrasta lock up. This police officer immediately visited Satrasta lock up and got acquainted with the facts of the incident and on the instructions of ACP Dhond he started parallel enquiry in the incident with the assistance of PSI Satam, PSI Gaikwad and other police force. In accordance with the inquiry names of some of the suspects were disclosed by Agripada police station. Police were making effort to arrest the suspects. On 29.6.1987 information was received by ACP Dhond from Ulhasnagar Police Station to the effect that some suspects involved in Satrasta lock up incident were arrested by the Ulhasnagar police. Tikam immediately went to Ulhasnagar police station and interrogated accused No. 1 Ravi Bansi and accused No. 3 Kishore as also one Mohan Dhobi who were available in the police custody at Ulhasnagar. Accused Raju Bhaya was also questioned who was admitted in the hospital. Two transfer warrants were obtained. Custody of accused Nos. 1, 2 and 3 was obtained on 4.7.1987. Investigation was taken over by DCP CID from Agripada Police Station as also from Gamdevi Police Station. Tikam has stated that statements of various eye witnesses were recorded by the Agripada Police Station in the course of investigation. Statements of Shakil Ahmed Wali Mohd. Shaikh, Yasimkhan Sayed Khan, Shambhunath Lalbihari, Mushtak Mohd, Lalji Prajapati, Sureshi Hajarimal were also recorded. However these witnesses are not traceable at their last known address. The police made enquiries regarding their whereabouts under

the guidance of PI Gaikwad but they could not be traced. Tikam further states that there was another eye witness Mohan Kudapalli who was inmate of cell No. 1 at the relevant time. He was also searched at the last known address but could not be traced. The police constable 1996 was deputed to inquire about the whereabouts of Mohan but he could not be traced at Vishakhapattanam at his last known address. In the cross examination the witness admitted that copy of the statement of witness Mohan was not given to the court or to the defence when charge sheet was filed. In the course of investigation witness came to know that there were 7 guards on night duty during the night of incident they were Nandkumar Takke (guard commander), Rajendra More, Maruti Mane, Dashrath Narsu Kokitkar, Madhav Karande, Prakash Pachale and deceased Ahire, The witness stated that accused Nos. 1 to 4 including Dhobi were in custody of DCB CID between 4.7.1987 and 8.7.1987 and that they were produced before the Magistrate on 5.7.1987.

34. P.W. 24 is one Angre attached to the DCB CID Branch as Assistant Inspector of Police. He has stated that on 23.11.1995 the accused No. 4 Vinod Bhika Maria was brought to the court by PSI Nitin Bhowale Patil pursuant to production warrant issued earlier by the Ld. Magistrate. He was brought from Tihar Jail Delhi. In the cross examination the witness has admitted that P.W. 4 Sawant had not stated that the accused Vinod Bhika Maria had cut off the telephone wire in his supplementary statement before the court.

35. P.W. 17 was working as Senior Inspector of Police attached to the Agripada Police Station at the relevant time. Upon telephonic message he visited Jacob circle lock up at about 3.50 a.m. He noticed exploded and unexploded bombs in the compound of the Jacob Circle lock up. He found tube light fitted on the outside of the lock up was broken and burn marks were noticed. Grill door of the lock up were broken. Lock was lying down as also one iron bar. He noticed Babu Reshim lying in one corner of the room with his head smashed and bullet injuries on his body, One hammer was also seen lying there. There were several marks of bullets on the walls of the cell as also at the rear side of the cell. Telephone wire fitted in the lock up register room in the adjacent building, which he called ACP building, was pulled down and damaged. After initial examination of the spot he stated that he recorded statement of P.W. 2 Gharte and same was treated as First Information Report and offence was registered at Agripada Police station vide C.R. No. 123 of 1987. Thereafter Zende called panchas and panchanama of scene of offence was recorded. Photographer was summoned, finger print experts, explosive experts were also summoned. Messages were transmitted about the wanted people in the crime. Ahire (deceased constable), Eknath Choudhari (constable from Nagpur who was injured), Uttam Gharte, Abaji Palande, Dashrath Narsu Kokitkar, Maruti Arjun Mane, Mohan Narayan Kudapalli (inmate of lock up with deceased Babu Reshim) were referred to medical treatment. The statements of witnesses i.e. Chandrakant Sawant, Mohd. Shakil Mohd Ibrahim Ansari, Shambhunath Lalbihari Mishra, Mushtak Ahmed Asfak Khan, Lalji Kisan Prajapati, Rajendra Parshuram, Ambawatkar, Eknath Choudhari,

Abaji Palande, Dashrath Kokitkar, Maruti Mane were recorded. Dead body of Babu Reshim was sent for post mortem. There was tension in the locality therefore bandobast was arranged. Bombs, bullets, clothes, remains of exploded bombs, collected from the scene of offence, were sent to respective experts. All articles under various forms were sent to Chemical Analyzer. Zende has stated that on 5.3.1987 he had recorded the statements of witnesses that he had shown photographs of persons suspected in this case to witness i.e. to all witnesses whose statements were recorded (who had described the offenders). At Gamdevi police station cases of robbery were reported involving robbery of taxies and Zende has shown photographs of suspects to the witnesses in that case. In the cross examination Zcnde has stated that after reaching the lock up at 3.50 a.m. first thing he did was to record the FIR of Shri Gharte but he did not take charge of the clothes of Shri Gharte. Zende denied that statement of Gharte was recorded much after the panchanama of scene of offence. The statement of Takke was recorded on 5.3.1987. He was guard commander. The statement of Rajendra More was also recorded on 5.3.1987. He was on guard duty at the rear side of the lockup. Zende admitted to have recorded the statement of P.C. Karande, and P.C. Pacharcon 5.3.1987 Zende admitted that panchanama on Exhibit 53 C.R. number is not mentioned though he denied the suggestion that FIR was not recorded when the panchanama Exh. 53 was drawn. Time when the statements were recorded was not mentioned in the police statement. Zende further stated that there was no specific mention in the FIR that Kisha @ Kishor Maria was from the locality. FIR proforma was filled on 5.3.1987 itself. Name Kishor is not mentioned in the body of the FIR as also the name of Maria and Laksha were not mentioned in the body of the FIR. 36. P.W. 27 Bhalerao was Police Inspector attached to Agripada Police Station at the relevant time. He also went to the police station alongwith Sr. Inspector Zende. On reaching he had recorded the statements of Gharlc, under the supervision of Zende. Crime was registered. Then statement of Chandrakant Sawant and Ashok Chakranarayan were recorded on 5.3 1987. He also recorded supplementary statement of Gharte on 4.3.1987. In the cross examination this witness has admitted that on 6.3. 1987 photographs of some of the accused Vijay Utkar, Kishor @ Kisha, Ravi Bansi and others were shown to Mr. Gharte. Photographs of Rajendra @ Bhave were also shown to Mr. Gharte.

Bhalerao was shown report regarding arrest in C.R. No. 227 of 1985 of Agripada Police Station wherein on 26.8.1985 three persons by name Ravi Bansi Gohar, Vinod Bhika Maria and Kishor Amarsingh Mhaiskar were arrested u/s 326, 114 IPC. On 21.10.1985 a charge sheet was filed against them. Bhalerao stated that he had no idea whether these people remained in custody till 21.10.1985. Bhalerao admitted that in case of C.R. No. 564/86 Ravi Bansi Gohar, Vinod Bhika Maria, and Kishor Amarsingh Mhaiskar were arrested on 6.1.1987 and they were in custody till 9.1.1987. Bhalerao further stated that in C.R. No. 22 of 1987 Rajesh Prithviraj Utkar, Raju Tarachand Utkar and Jamil A. Qureshi were arrested. Bhalerao expressed his inability to say when they were arrested or when they

were released.

37. Last witness whose evidence is relevant is P.W. 28 Ravi Chandra Kaul. He is the Controller of Explosives. Upon receipt of call from the police control room in March, 1987, this witness alongwith his junior Reddy went to Agripada Police Station. Five oval shape objects were shown to them by the police authority under C.R. No. 123187 of Agripada Police Station. After opening the bottle in which the objects were kept, three objects admeasured about 4 cm x 3 cm approximately containing orange colour powder inside it, intermixed with stone pieces. Other two objects were of larger size of 7 cm x 4 cm. It also contained orange colour substance intermixed with stone and glass pieces. The objects were sent to forensic Science Laboratory, Kalina, Bombay. The laboratory report revealed that the objects contained arsenic sulphide and chlorate of potassium. Upon the report of the Analysis and physical examination of the object Mr. Reddy opined that each of three oval shaped objects were throw downs containing an explosive mixture of potassium chlorate and arsenic sulphite, the manufacturing, possession and storage of which is prohibited by the Government of India vide its notification No. GSR 574. The other two objects were found to be home made bombs of throw down type containing a mixture of potassium chlorate and arsenic sulphide. The witness further stated that such bombs can explode by way of friction or impact the energy produced as the result of friction of impact causes a chemical reaction between potassium chlorate and arsenic sulphide. This results in dissipation of energy which makes the other ingredients like stone pieces and glass pieces to fly with high velocity and penetrate surrounding objects or persons. The bombs of this type generate smoke, it depends on quantity of chemicals involved and percentage of each chemical. In the estimation of the witness about 4 to 5 meters of the area surrounding the place of impact should be affected. The smoke generated by home made bomb as well as by unauthorised throw downs will be all pervasive. People beyond 4 to 5 meters can see it in scratches. Hand made bomb thrown at close range can cause death of persons or serious injury. The explosion of such type of bomb can also cause deafness or impairment in hearing because of noise and shock waves produced. Type of injuries caused by such explosion are by nature of burns and impregnation due to projectiles flying as a result of explosion. Sudden change of inside pressure bodies may not be caused by such explosion. When the attention of this witness was invited to Exh. 71 which contained observations of doctors regarding injuries on the body of deceased Ahire, the witness stated that impairment of hearing is possible by means of explosion. Abrassion are also possible. Witness stated that it is difficult for him to visualise how the lungs injuries will be caused. Chest injury is possible in this case. The smoke inhaled due to explosion of bombs will cause breathing problems. Chemical reaction causes burn injuries. The extent of injury will depend upon as to how the bomb affected the body, it can be superficial if the explosion exposure is less longer. Explosion of close range can cause burn injuries which would be more drastic. In the cross examination by the accused this witness has stated that he is not an

expert with medical science and had no occasion to treat any injured due to explosion.

38. In the light of the aforesaid evidence on record now we proceed to deal with the various submissions made by Shri Ovalekar learned Counsel for the accused. Shri Ovalekar contended that the evidence of P.W. 2 Uttam Gharte cannot be said to be evidence of a witness who could be classified as a reliable witness. Shri Ovalekar in this behalf firstly contended that if one looks at the timing of the duty of this witness as stated in para 14 of the evidence of this witness, then this witness must be resting between 3 a.m. to 6 a.m. We do not find any merit in this submission because P.W. 2 begins his evidence by saying that he resumed duty on 2.3.1987 after leave of one month. Then he states that he reported for duty at 5 p.m. on 3.3.1987 and paragraph 14 of his evidence obviously refers to his duty hours on 3.3.1987. This fact is absolutely clear as in para 31 of the evidence of this witness he specifically refers to his duty hours on the night between 4th and 5th March, 1987 wherein this witness categorically states that he and P.W. 12 were on duty during that night. After describing about the presence of about 8 other officers and the general situation of the lock up and the lights therein in para 33 the witness has given details of the duty hours of this witness as well as of P.W. 12 which leaves no manner of doubt that this witness was on duty at 3 a.m. on 5.3.1987. This is also fully corroborated by the evidence of P.W. 12.

39. Shri Ovalekar next submitted that it is simply unbelievable that when seven police constables armed with rifles did not and could not dare to come forward and, must have obviously gone for hiding and when there was large scale firing and bombarding is it possible and probable that P.W. 2 and P.W. 12 who were unarmed constables would be present all throughout and would watch everything. The story in the submission of Shri Ovalekar, is improbable and unnatural. Though very impressive on close scrutiny the submission does not hold water. Undoubtedly armed constables did not offer any resistance. However, we cannot forget that P.W. 2 and P.W. 12 were on duty of checking the inmates of lock up; they had alternate duty for 3 hours each and when one would be resting the other would be sitting just outside the lock up gate and more importantly the key of the lock up to the gate of lock up was with P.W. 2 which would naturally be handed over to P.W. 12 when he takes over charge. If one looks at the plan coupled with the description given by these two witnesses it is clear that just in front of the lock up where these witnesses are supposed to sit alternatively the width of the 7.6 feet, length of the passage going from the front gate to the rear gate is 26.10 ft. Out of this portion, the portion of about 4 x 20ft is covered by the stair case. The remaining open passage from front gate to rear gate would therefore be about 3.6 ft in width and 26 ft. long. Both these witnesses have stated that underneath the stair case space was treated as guard room and at that time about 5 guards were resting there. We have given details of the narration of both the witnesses which shows that there were atleast four armed persons who had come with revolvers. In this situation we do not find anything,

so unnatural that P.W. 2 should stand in front of the lock up, may be he has moved here and there but in our opinion there was no scope for him to run out of lock up because if he would have attempted the assailants would have tried to kill him. Inside it was a small long passage. Other important thing which we noticed is that the evidence clearly shows that despite refusal of this witness to hand over the key he was not hurt. We cannot refrain from feeling that the P.W. 2 and P.W. 12 some how got a feeling that they are not going to be hurt and in fact apart from minor injuries by the bomb explosion, only to the legs of P.W. 2, there are no other injuries. P.W. 12 in fact remained unhurt without any injury whatsoever. As the very presence of P.W. 2 and P.W. 12 in our opinion was most natural as they were assigned specific duty during that night, their presence can hardly be doubted. In the very situation we find that there was hardly any place for them to hide or run away. The place under the staircase was already crowded by at least 6 guards. Though the conduct appears to be slightly unnatural on the face of it, in the facts and circumstances of the case we do not think that on this count the evidence given by P.W. 2 or for that matter of P.W. 12 should be totally held to be absolutely unreliable or should be clearly discarded.

40. Shri Ovalekar also referred to the fact that these two witnesses say that Ahire was injured by firing whereas Ahire does not have any firearm injury. We are not much impressed by this submission. It is not the case of this witness that this witness saw Ahire being injured in particular incident. After the event, when Ahire was found injured may be that this witness imagined that Ahire was injured by the firing, as all the assailants had resorted to firing continuously. Shri Ovalekar then referred to the mentioning of the fact that there was smoke out of explosion of bombs. Undoubtedly explosion of bombs must have resulted into smoke and that must have obstructed the normal viewing of any witness. After having read the evidence of the P.W. 2 and P.W. 12 we cannot come to the conclusion that throughout the period there was so much smoke that it was not possible at all for any one to see anything. On the contrary the witness P.W. 2 in his cross examination has categorically stated that before the single bomb was hurled Vijay and Kishore had come to him. When these two persons came to him not a single bomb was hurled towards the lock up and firing had not taken place at that time. The evidence in our opinion clearly shows that about 4/5 persons came from Sane Guruji Marg and at least 4 persons were seen at the lock up, all were having revolvers. They first tried to get the key from P.W. 2 Ghartc, upon failure they came in front of the iron wire mesh in front of cell No. 1 and possibly tried to break the same by explosion of bomb. They also fired inside the lock up i.e. cell No. 1 from outside the mesh. Thereafter all the four went inside and one of them broke open the lock by iron bar and sledge hammer. The evidence of P.W. 2 further shows that all the four persons went inside in front of cell No. 1 and fired through their revolvers and in fact they went inside the cell No. 1. Now if the assailants could meticulously do all these things, it is reasonable to hold that visibility near the lock up and around must have been there at least intermittently. It is impossible to have exact evidence as to when each bomb

exploded. There must have been some time gap between the explosion of different bombs and firing. We do not think that on the basis of the evidence it is possible to come to the conclusion that it was impossible for these two witnesses to see what was happening and on that count their evidence should be totally discarded.

41. Shri Ovalekar next contended that the eye witnesses' evidence is not consistent with the medical evidence. In this behalf Shri Ovalekar brought to our notice several incised wounds found on the dead body of Babu Reshim. Skull was almost broken. Doctor clearly has stated that this incised wounds and some other wounds indicate use of hard and blunt weapons. Shri Ovalekar contended that this witness P.W. 2 does not refer to these injuries being caused by "any particular weapon by any of the accused. However, it has to be appreciated that after four assailants went inside the lock up this witness in the very situation could not have seen anything as to what happened inside the cell No. 1. If one looks at the sketch map of lock up room it clearly shows that person standing outside the lock door of the lock up may not be in a position to see what was happening in cell No. 1 which is a large room measuring 16' x 10'. This fact by itself in our opinion is not sufficient to come to the conclusion that the account of the witnesses is inconsistent with the medical evidence. Shri Ovalekar also referred to the injuries suffered by P.W. 2 Gharte which are punctured wounds as deposed by P.W. 8 Dr. Vaidya. These injuries in our opinion in fact corroborate presence of this witness and such injuries are obviously possible by projectiles from crude bombs. Therefore, we find it difficult to discard the evidence of this witness on the ground that it is generally improbable or his conduct is unnatural. Shri Ovalekar also submitted that evidence of P.W. 12 Ashok is also unnatural and unbelievable. He had no injury at all. He was unarmed and therefore it is doubtful whether this witness saw anything. After careful reading of the evidence of P.W. 2 and P.W. 12 on the contrary we are of the opinion that both these witnesses are truthful. P.W. 2 Uttam was sitting just in front of the steps. He has categorically stated that when four persons came Vijay, and Kishore asked him to hand over the key by abusing. Upon refusal they tried to snatch the key from the upper pocket of his uniform. Thereafter they retreated and then they exploded bombs in front of the wire mesh in front of cell No. 1. All the four persons fired from there. Thereafter they came inside. One of them broke open the lock, then all four went inside and fired as also threw bombs. Afterwards all of them came out shouting slogans and ran away. P.W. 12 Ashok does not say anything about Vijay and Kishore coming and enquiring with P.W. 2 about the key and abusing P.W. 2 we do not find the evidence is unnatural on this count because as per the evidence of P.W. 2 at 3 a.m. he took over the charge and at that time P.W. 12 Ashok went and lied on the bench which was near the stair case. Therefore when P.W. 2 was sitting it is natural that P.W. 12 was not with him. Undoubtedly we are conscious that P.W. 12 in his evidence has stated that after his duty was over he was sitting on the bench by the side of P.W. 12. We do not find much in this for the simple reason that the place in front of the inner gate of lock up which leads

to the passage to the lock up is hardly 4x4 ft, immediately there is stair case and there is a bench. In fact all this is in the vicinity of 4 to 5 ft. After retiring P.W. 12 must be resting on the bench. That is how naturally when bomb was hurled outside wire mesh and the firing was commenced he must have come to know and he must have tried to see what was happening. Immediately next step was opening of the door by breaking open the lock by accused No. 1. In the very situation it is not reasonable to expect very exact evidence of these witnesses regarding the chronology of events. This we say because of one cardinal fact that both the witnesses were detailed on specific duty of checking the inmates and looking the front door opening in the passage of the lock up every three hours. Shri Ovalekar also led emphasis on the evidence of P.W. 2 in para 16 where P.W. 2 has stated that at the time when four persons entered inside the lock up nobody was near him. At that time bomb was being thrown at him and that is how he could not close the door of the lock up. Shri Ovalekar therefore submitted that the evidence of P.W. 2 cancels the evidence of P.W. 12 and vice versa. It is not reliable because the P.W. 2 professed to have seen accused No. 1 breaking open the lock. It is not possible to accept this submission. In the very nature of things P.W. 2 or for that matter P.W. 12 must have been so much overawed by what was happening that when the witness says that nobody was near him, it must be understood as he has not seen anybody. The witness was watching what the accused were doing. In fact not only P.W. 12 but other six guards were within 6 to 8 ft under the stair case. Not much could be made of this so as to discard the evidence of these two witnesses totally.

42. Shri Ovalekar then submitted that particular evidence of identification of particular accused by these two witnesses should not be accepted, even if it is held that these two witnesses had seen what has happened. So far as the identification of accused Nos. 1, 2 and 3 by P.W. 2 Uttam is concerned, Shri Ovalekar submitted that description in the FIR given by this witness is too general. Even approximate age group is not mentioned. No other details are mentioned. Shri Ovalekar further submitted that in the evidence P.W. 2 states that it is accused No. 1 who broke open the lock whereas in the first information report there is no specific mention but general mention that accused broke open the lock. Shri Ovalekar also submitted that Special Executive Magistrate who held identification parade P.W. 18 Mr. Parikh in para 6 of his evidence admitted that P.W. 2 told him that he saw 8 to 10 unknown persons. Shri Ovalekar also pointed out that the photographs of accused Nos. 1, 2, and 3 were shown to these witnesses immediately on 5th or 6th. Therefore the identification by these witnesses of accused Nos. 1 and 2 should be discarded. Shri Ovalekar also emphasised the fact that it was night time. Attack was also sudden. Assailants were constantly moving throwing bombs and firing. Smoke was generated, tube lights were destroyed. The witnesses must have been terrified and afraid of their own life and therefore could not have been in a frame of mind to see and remember exactly what had happened so as to enable them to identify the assailants later on. So far as the accused No. 3 Kishor is concerned, Shri

Ovalekar submitted that the FIR mentions the name Keshya and this word would indicate that the name of the person must be Keshav and not Kishore as Kishore would be called as "Kisha" and not "Keshya". Shri Ovalekar further submitted that though P.W. 2 claims to have known accused No. 3 he does not give any details as to in what manner and how P.W. 2 knows accused No. 3. Shri Ovalekar also submitted that the experienced investigating officer like Sr. Inspector Zende must have asked a question on this aspect while recording the statement and absence of the details regarding how P.W. 2 knew accused No. 3 clearly indicates that accused No. 3 was not known to P.W. 2. Shri Ovalekar also made a reference to Column No. 4 of the proforma of FIR where the names of accused are mentioned as under:

1. Vijya @ Vijay Utkar

2. Keshya @ Kishor, Marraiyya, Laksha and other 9 -10 persons.

Shri Ovalekar therefore submitted that this identification by P.W. 2 of accused No. 1, 2 and 3 has to be completely discarded. In this regard it must be appreciated that after this incident which must have overwhelmed every one concerned, absence of all details in FIR does not by itself make that prosecution case doubtful. It is relevant to notice that in the statement which is treated as first information report P.W. 2 has clearly stated that Vijay and Kishor whom he knew came near him. The FIR also states that lock was broken open and all entered inside. The fact that the witness had not mentioned that it is the accused No. 1 who broke open the lock in our opinion in the circumstances of the case is not serious omission. As a matter of fact P.W. 12 very categorically and clearly stated the same in his evidence. Not giving of details as to how P.W. 12 knew accused in FIR is also not fatal or is not of such importance which should persuade us to doubt the testimony of P.W. 2. In fact we find FIR has given many details and one witness says that he knew a particular accused in the situation the witness may give details or may not give details but that by itself cannot be sufficient to discard the testimony of this witness to the effect that he knew Vijay and Kishor. We are also not impressed by the submission of Shri Ovalekar that the S.E.M says that P.W. 2 told him that 8 to 10 unknown persons came towards the lock up. In our opinion in fact this is clearly hearsay and cannot be utilised for doubting the testimony of P.W. 2 when he was not asked or it was not suggested to P.W. 2 that he has told the SEM a different story. The emphasis led by Shri Ovalekar on the eye witnesses referring to accused No. 3 as Keshya and not Kisha is also not so important as to discard the testimony of this witness. People may use quite different short forms while calling persons by their names. Though normally Shri Ovalekar is right that short version "Keshya" would indicate the name "Keshav" whereas "Kishore" would normally be called "Kisha". However, there cannot be such absolute rule. What is important is to find out whether P.W. 2 in fact knew accused No. 3 or not. It is relevant in this behalf to refer to suggestion made to P.W. 25 P.I. Tikam wherein it was clearly suggested that Kishore Maheshkar was arrested on 21.10.1985 in a case registered at

Agripada Police Station and further Kishore Maheshkar was also arrested alongwith others on 6.1.1987 and were in custody till 9.1.1987. In his statement accused No. 3 in an answer to question 8 regarding identification of accused No. 3 by P.W. 2 accused No. 3 has stated that in 1985-86 he was arrested in criminal case by Agripada Police Station and for 8 to 10 days he was in the lock up with Ravi Bansi Gohar and Vinod Bhika Maria and their photos were taken by police therefore P.W. 2 identified him. The evidence on record coupled with this answer clearly shows that accused No. 1 as also accused No. 3 were the inmates of the lock up at Satrasta on some occasions. P.W. 2 has also described Vijay and Kisha as known gundas in the locality. On the basis of the material on record there is absolutely no reason to doubt the fact that P.W. 2 must be knowing accused No. 3. Similar is the case with P.W. 12 when he identifies accused No. 1 Ravi. Shri Ovalekar submitted that even for this witness it must have been difficult to identify anyone inasmuch there was constant smoke of explosion. Shri Ovalekar further emphasised the fact that this witness has failed to identify accused Nos. 2 and 3 in the identification parade and therefore the identification of accused No. 1 by this witness is extremely hazardous, to be relied upon to conclude the involvement of accused No. 1. P W. 12 Ashok in his evidence has stated that at 3 a.m. he was on duty. He was sitting by the side of Gharte on bench. At 3.30 a.m. he heard sound of crackers. One bomb was thrown at the sentry booth, big sound of explosion was heard and he stood by the side of the stair case. Four-five persons had come towards the lock up room at that time while he was looking for P.W. 2 he saw one person breaking open the lock of the lock up door. He was striking on the lock. There was iron rod in the hands of the person and he was trying to break open the lock. The witness had gone towards the guard room to inform the guard commander so the firing could be done. Commander Takke had opened firing accordingly. In his evidence he states that one assailant was about 25 to 30 years of age with sallow complexion, medium built with long hair. Then he says "I know him his name is Ravi Bansi". He came to know about his name at the time of identification parade. Undoubtedly the evidence is not properly recorded but we will have to make sense of this sentence and in view of the fact that the witness has stated that he came to know about his name at the time of identification parade. Earlier sentence must be read as "I knew him. His name is Ravi Bansi". In para 6 the witness has stated that he had seen person who was trying to break open the lock. He was 25 to 30 years of age with sallow complexion medium built, with long hair. At that time the witness saw him from backside. Shri Ovalekar also emphasised that this witness had seen him from backside, therefore he could not be in a position to identify him. Firstly P.W. 12 knew accused No. 1. Secondly distance between the side of the stair case and the iron gate lock of which was broken by this accused is hardly 4 to 5 feet as is evident from the map. It is not as if accused No. 1 must have been constantly showing his back to the witness. In fact the accused must be moving. In these circumstance and when this witness has clearly described the accused No. 1 and more importantly when this witness already knew accused No. 1, we do not find anything to doubt the identification of accused No. 1 by P.W. 12. In fact evidence

of P.W. 2 corroborates P.W. 12 so far the identification of accused No. 1 is concerned. In this behalf we have already referred to the evidence of P.I. Tikam. Accused No. 1 also in his examination in answer to question No. 27 regarding identification by P.W. 12 states that accused No. 1 was arrested by Agripada police station in the year 1985 and he was in lock up for about one week and photographs were also taken by the police. Therefore P.W. 12 identified him as this accused also appears to have been inmate of Satrasta lock up for sometime and we see nothing unnatural if P.W. 12 must have known this accused No. 1.

43. Most important objection raised by Shri Ovalekar regarding identification is regarding showing of photograph of accused Nos. 1, 2 and 3 to these witnesses. In this behalf before going to the relevant evidence on record we would like to refer to various authorities cited by Shri Ovalekar. Shri Ovalekar relied upon the decision of the Apex Court in the matter of *Suryamoorthi and Another Vs. Govindaswamy and Others*, and particularly para 10 thereof which reads as under:

Two identification parades were held in the course of investigation. At the first identification parade. P.W. 1 identified all the seven accused persons whereas P.W. 2 identified three of them namely accused No.s 2, 6 and 7 alone. It is, however, in evidence that before the identification parades were held the photographs of the accused persons had appeared in the local daily newspapers. Besides, the accused persons were in the lock up for a few days before the identification parades were held and therefore the possibility of their having been shown to the witnesses cannot be ruled out altogether. We do not, therefore attach much importance to the identification made at the identification parades. However, it must be realised that the number of accused No. 1 was mentioned in the complain A/xh. P-1 and accused Nos. 4 and 7 were already known to P.W.I. The find of money from these three accused persons lends corroboration to the evidence of P.W.s 1 and 7. We do not convict the other accused not because we doubt the evidence of P.W.I and 2 but because adopt a cautious approach and look for corroboration having regard to the facts and circumstances of the case.

Shri Ovalekar next relied upon the decision of the Single Judge of Punjab Haryana High Court reported in *Jaimal Singh v. State of Haryana*, 1988(3) Crimes 442 and paragraph 10 in particular. After having read the paragraph we are of the opinion that in the facts and circumstances of this case it may not be of much help to the appellants accused. In the aforesaid case the photographs of the appellants were shown to the identifying witnesses. However, even then the identifying witnesses failed to identify two appellants and it was observed that the failure of identifying witnesses to identify the two appellants does not lead to any inferences in favour of the prosecution to show that they were not shown to the witnesses before the parade. The burden is always on the prosecution to establish that after the crime, the assailants was not shown to the witnesses before the identification parade was held. Shri Ovalekar then relied upon the decision reported in *Laxmipat Choraria and Others Vs. State of Maharashtra*, ,

and paragraph 21 thereof in particular which reads as under:

The next question is whether Ethyl Wongd's identification of Laxmipat and Balchand, whose photographs were shown to her at the Air Terminal at Bombay should be accepted. Reference in this connection has been made to English cases in which it has been laid down that the showing of a large number of photographs to a witness and asking him to pick out that of the suspect is a proper procedure but showing a photograph and asking the witness whether it is of the offender is improper. We need not refer to these cases because we entirely agree with the proposition. There can be no doubt that if the intention is to rely on the identification of the suspect by a witness his ability to identify should be tested without showing him the suspect or his photograph, or furnishing him the data for identification. Showing a photograph prior to the identification makes the identification worthless.

44. Coming to the evidence regarding showing of photographs, so far as P.W. 2 is concerned, in paragraph 17 P.W. 2 has categorically admitted that he was shown photograph of Vijay Utkar and Kishor accused No. 3 on 5.3.1987 or 6.3.1987. In the later part he has clearly admitted that he was shown photo of accused No. 1 Ravi after the incident and before the parade. He has also admitted that he was also shown photographs of accused No. 2 after the incident and before the parade. The evidence of P.W. 17 Zende shows that he had shown the photographs of present suspects in this case to all witnesses whose statements were recorded (who had described the offenders).

45. The question is what is the effect of showing of photographs. Normally identification parade is held with a view to seeing whether unknown culprits could be identified by the witnesses and if the culprit is already known to the witnesses there is hardly any weight that could be given to the evidence in the identification parade. If the photograph of a particular unknown person-accused is shown prior to the parade obviously subsequent identification by the witness in the identification parade must be held to be worthless as held by the Supreme Court. However, on the basis of the evidence on the record we have come to the conclusion that accused No. 3 was known to the P.W. 2 and accused No. 1 was known to P.W. 12. In these circumstances if the police officers just to ensure earlier identity of accused who were already known to the witnesses and further the said fact was confirmed by holding identification parade soon after the accused were arrested in the facts and circumstances of the case we do not see that it creates any infirmity in the case of the prosecution so far as the identification of accused No. 1 by P.W. 12 and accused No. 3 by P.W. 2 is concerned. We must emphasize the fact that the material on record in our opinion clearly shows that high degree of probability of P.W. 2 knowing the accused No. 3 and P.W. 12 knowing the accused No. 1, the witnesses being police officers attached to the Agripada Police Station and the accused being inmates of the lock up in recent past of the occurrence of the incident in question. However on the very reasoning we have to discard the identification of accused No. 2 by

P.W. 2 and for more serious reasons identification of accused No. 4 by P.W. 4 Sawant. So far as the identification of accused No. 2 is concerned admittedly P.W. 2 does not state that he knew accused No. 2 before hand. The name of accused No. 2 does not find mention in the earlier statement. In such circumstances if the photograph of accused No. 2 was shown to P.W. 2 which as stated earlier is an admitted position then subsequent identification of accused No. 2 will have to be discarded. So far as accused No. 4 is concerned the case is worst for the prosecution. Accused No. 4 was found in Tihar Jail, Delhi and was brought before the court under production warrant on 23.11.1995 and the test identification parade was held on 31.1.1996 wherein P.W. 4 Sawant has identified accused No. 4. First circumstance which we must take into consideration is that the incident took place in the early hours of 5.3.1987. Sawant does not claim to know the accused No. 4. Thus we find it extremely difficult and hazardous to accept identification of accused No. 4 by P.W. 4 Sawant almost after 9 years. Secondly there is another infirmity even in the identification parade after such a long lapse of time. P.W. 4 Sawant in his evidence stated that he had identified accused No. 4 as a person who had thrown the bomb towards the constable from Nagpur at the time of the incident and that he also identified accused as assailant who had cut the telephone wire whereas P.W. 22 the Executive Magistrate Choubal has stated that P.W. 4 Sawant identified accused No. 4 as the person who threw the bomb on Sawant on 5.3.1987 when he was on duty at Jacob Circle Police lock up. In his supplementary statement of P.W. 4 Sawant recorded after identification parade he has stated that he identified accused No. 4 as one of the accused persons whom he had seen throwing bomb on the lock up. All these contradictions are proved. In these circumstances we find it extremely hazardous to accept the evidence of identification in respect of accused No. 4 on the testimony of P.W. 4 Sawant.

46. Before referring to further submissions of Shri Ovalekar on several other aspects we would like to notice that the evidence of P.W. 2 Uttam Gharte and P.W. 12 Ashok is hardly shaken in the cross examination. On all material points there is hardly anything in the cross-examination which should persuade us to doubt the testimony. No contradictions or omissions worth mentioning have been brought on record. We have already dealt with the submission of Shri Ovalekar on improbability and unnatural conduct on the part of these witnesses. On the basis of the evidence on record to which we have made detailed reference in the earlier part of our judgment, there cannot be any doubt that P.W. 2 and P.W. 12 were present at the time of the incident, they were most natural witnesses, they had reason to be there, their evidence is not shaken by any thing brought in the cross examination in the form of any material omission or any serious contradictions. Their statements were recorded immediately. Injuries suffered by deceased Babu Reshim and the post mortem notes, finding of several used up bullets and empties and the evidence of explosion of several country made bombs, very clearly corroborate the evidence of P.W. 2 and P.W. 12. The evidence in our opinion also suggests that there were atleast 5 persons who attacked.

Four persons were actually seen by P.W. 2 and P.W. 12. In fact P.W. 2 says that about 4 to 5 persons came from Sane Guruji Path. In addition to that P.W. 4 Sawant who was present in the near vicinity on the ground floor of ACP Office also says how one person came and threatened him to be away from the telephone, how the very person threw the bomb on the stair case of the first floor which injured constable from Nagpur one Eknath and how subsequently the very person cut off the telephone wire. These two incidents cannot be unconnected. But these persons were acting in concert and in execution of well planned attack on the lock up. The incident as described in details by P.W. 2 and P.W. 12 as also part of it by P.W. 4 Sawant coupled with spot panchanama and the post mortem notes in respect of Babu Reshim leave no manner of doubt that several persons more than five, had a well planned attack on the lock up with the sole purpose of committing murder of Babu Reshim. Narration regarding the incident by P.W. 2 and P.W. 12 in our opinion also stands corroborated to some extent even by the evidence of hostile witness P.W. 21 Mohd Shakil Ansari. We see no good reason as to why that evidence should be discarded. Shri Ovalekar did submit that all the accused were known to the police, they were from the same locality, it was shameful for the police department that such an incident should have taken place and a police lock up guarded by armed police, at least 7 to 8 in number, should have been broken open and person killed, as such police were definitely interested in finding out culprits and if not atleast the some scope goats. The accused who were from the locality and who were having criminal antecedents known to the police must have been the easiest scope goats. We have given our serious consideration to this submission. However, after scrutinising the evidence we do not see any ground to discard the evidence of these two witnesses on this plea that the police must be interested in booking some culprits or other if not the real one. The material on record clearly shows that several persons, atleast five, attacked the police lock up, it was concerted effort well planned, the persons who were attacking the lock up knew the topography extremely well including the details of physical situation of the lock up and where Babu Reshim was kept and all the other details. The manner in which the operation was carried out is suggestive of the fact that all those who committed murder were aware of the smallest detail of the situation of the lock up.

47. The evidence as we have discussed also clinchingly shows that accused No. 1 Ravi and accused No. 3 Kishor were definitely the persons from amongst the 4 or 5 persons who attacked the lock up. Identification of accused No. 2 by P.W. 2 and identification of accused No. 4 by P.W. 4 Sawant cannot be accepted as v e find it extremely hazardous to hold these accused guilty on the solitary evidence of identification which is full of infirmities which we have already discussed. Accused Nos. 2 and 4 therefore cannot be said to have been proved to be the members of the group of persons who attacked the lock up. Their involvement in the crime is not proved beyond reasonable doubt and they will have to be given benefit of doubt.

48. The next important submission of Shri. Ovalekar is that adverse inference should be drawn against the prosecution as many material witnesses were not examined and only inference that could legitimately be drawn is that if examined they would not have supported the prosecution case. The record clearly shows that there was one inmate alongwith Babu Reshim whose name was Mohan Narayan. In fact he was injured and was treated. Undoubtedly Mohan would have been a very material witness as he was the occupant of cell No. 1 at the relevant time alongwith Babu Reshim. P.I. Tikam, P.W. 25 in his evidence in para 5 has stated that the eye witness Mohan Kudapalli who was the inmate of cell No. 1 was also searched at his last known address but he could not be traced. P.C. 1996 was deputed to enquire about the whereabouts of Mohan Kudapalli but he could not be traced at Vishakhapattanam at his last known address. Thus it is the case of prosecution that Mohan Kudapalli could not be examined as he was not available. It has come on record that during the incident one armed constable Takke was not only present but he was alleged to have fired two rounds from his rifle. This witness Takke is also not examined. Tikam in his evidence has stated that according to his investigation it was revealed that at the time of the incident Nandkumar Takke, (guard commander) Rajendra More, Maruti Mane, Dashrath Narsu Kokitkar, Madhav Karande, Prakash Pachale and deceased Ahire were constables who were present on duty. In addition to Eknath Choudhari constable from Nagpur who was in ACP office and one Abaji Palande were also there. As far as Mohan Kudapalli is concerned we have already referred to the case of prosecution that he was not available. Eknath as per purshis given by the prosecution at Exh. 102 was also not traceable at his address. Maruti Mane, Abaji Palande, Dashrath Narsu Kokitkar were not examined as per the purshis at Exh. 102 as they had failed to see and describe the accused before the court. So far as Nandkumar Takke, Rajendra More, Madhav Karande, and Prakash Pachale are concerned the prosecution has offered no explanation as to why they were not examined. The witness like Mohan Kudapalli and Eknath Choudhari who were not available could not have been examined and just because they were not examined we find it difficult to conclude that they would not have supported the prosecution. Unless material on record shows some deliberate oblique motive for the prosecution for not examining the witnesses, mere non examination of the witnesses would not justify adverse inference against the prosecution as has been urged by Shri Ovalekar. So far as Nandkumar Takke, Rajendra More, Maruti Mane, Dashrath Narsu Kokitkar, Madhav Karande, Prakash Pachale are concerned as per the evidence of Tikam his investigation revealed that they were on duty and in fact Maruti Mane and Dashrath Kokitkar were injured and were treated. However, the learned Addl. Public Prosecutor Shri Patil submitted that they were all police witnesses, their evidence could have been repetitive in nature or may be that their evidence was not useful for the involvement of the accused. Having gone through the evidence on record and the evidence of P.W. 2 and P.W. 12 as also of P.W. 4 Sawant we are of the opinion that though it would have been better if prosecution had examined these witnesses to avoid any such allegation, non examination of these witnesses in the facts and circumstances of the case is

not fatal to the prosecution. Unless the witnesses are material to unfold the prosecution case the prosecution has the discretion to examine whatever witness it chooses to examine. After having read the evidence of P.W. 2 and P.W. 12 as also of P.W. 4 and in the light of the evidence of P.W. 2 and P.W. 12 in particular we find that all these armed guards were under the stair case and may be that they would not have added anything more to the prosecution case. We do not propose to dwell into the question as to what they could have said or what they must have said in the statements. On the basis of the material on record we do not find any oblique motive on the part of the prosecution in not examining the said witnesses. We may refer to the authorities cited in this behalf by Shri Ovalekar as well as by Shri Patil. Addl. P.P. Shri Ovalekar in this behalf has cited a well known decision of the Supreme Court reported in *Habeeb Mohammad Vs. The State of Hyderabad*, Shri Ovalekar in particular relied upon the following observations in the said case:

In a long series of decision the view taken in India was, as was expressed by Jenkis C.J. in *Ram Ranjan Roy Vs. Emperor*, that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly with a full sense of the responsibility attaching to his position and that he should in a capital case place before the court the testimony of all the available eye witnesses, though brought to the court by the defence and though they give different accounts, and that the rule is not a technical one, but founded on common sense and humanity.

This view so widely expressed was not fully accepted by their Lordships of the Privy Council in AIR 1936 289 (Privy Council), that came from Ceylon, but at the same time their Lordships affirmed the proposition that it was the duty of the prosecution to examine all material witnesses who could give an account of narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Bibani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamadar, in the absence of Bibani and other witnesses admittedly present on the scene, cannot be said to have been arrived after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.

49. Shri Patil, Addl. Public Prosecutor cited the decision of the Apex Court reported in *State of U.P. Vs. Anil Singh*, wherein in paragraph 13 the Apex Court observed that "Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable". He also relied upon the decision of the Apex Court reported in *M.A. Abdulla Kunhi and others Vs. The State of Kerala*, wherein in paragraph 5 the Apex Court in the facts and circumstances of the case observed that "It is rightly pointed out by

the High Court that it is not necessary that all the persons present should be examined." In our opinion the position is well settled i.e all the witnesses which are necessary to unfold the prosecution case have to be examined. It is not necessary that all the witnesses must be examined and it is for the prosecution to decide which witnesses should be examined and unless there is some oblique or ulterior motive in not examining a particular witness, no adverse inference could be drawn against the prosecution. On the basis of the material on the record of this case some of the witnesses are shown to be not available and therefore not examined and some witnesses were not examined because in the opinion of the prosecution they have failed to set or describe any thing about the accused before the Court. There are also couple of witnesses for the non examination of whom the prosecution has not offered any explanation. However, the Ld Addl. P.P. before us has argued that their evidence could have been repetitive in nature. On the basis of the material on record we do not find any justification to draw adverse inference against the prosecution for non examination of the said witnesses as alleged by Shri Ovalekar.

50. Shri Ovalekar then submitted that the prosecution has not proved that the death of Ahire is a homicidal death. Shri Ovalekar submitted that what is proved is only the death of Ahire during the incident. However, nobody has seen that anybody attacked Ahire, anybody threw any bomb at Ahire, in fact evidence is silent as to in what circumstances Ahire was injured, which ultimately resulted in his death. That Ahire was present cannot be doubted, that he was injured during the incident is also proved, that as a matter of fact he died in consequence of the injuries is also proved satisfactorily by adequate evidence. Undoubtedly there is no direct evidence to show that any particular person threw bomb at Ahire. However, in our opinion in the facts and circumstances of the case it would make no difference. The evidence clearly show that a group of persons who attacked the lock up went on throwing bombs indiscriminately, they had revolvers and they fired in the direction of cell No. 1 from outside and thereafter after entering the cell No. 1 at Babu Reshim. Person or persons present who threw bombs indiscriminately were knowing that they were attacking the police lock up where several persons are detained as also several police officials are detailed on duty. Such persons must be foisted with normal consequences of their actions. Anybody knowing that the place is occupied by human beings, throws hand bombs or other explosives indiscriminately must be held responsible for the normal consequences and knowledge of which could be fastened on that person. We do not want to dwell more upon it as in our opinions the definition of Section 299 IPC as also Section 300 Fourthly, covers the case, i.e. "Except in the cases hereinafter excepted, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death...or Fourthly- "If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid". Illustration (d) is also applicable in the facts and

circumstances of the case which is as under:

A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

51. Shri Ovalekar emphasized the fact that in all probability the intention of the accused must be to deter the police officers from coming near the accused and it cannot be the intention of either causing death or such bodily injury which would result into death. We are of the clear opinion that the persons are shown to have thrown bombs indiscriminately and also underneath the stair case where 5 or 6 armed guards were resting. Any person who indiscriminately throws bombs knowing presence of human beings must be fastened with the knowledge that it is likely that his act would cause death. The evidence on record very clearly shows that the death of Ahire caused due to the bomb blast. The evidence of doctors in this behalf in our opinion is conclusive. Shri Ovalekar did submit that the evidence of explosive expert Shri Kaul shows that could not visualize how the injury could have been caused to Ahire. We have already referred to the evidence of doctors and especially of P.W. 11 Dr. Patil which clearly points out how Ahire could have suffered internal injuries due to the impact of airwaves due to explosion of bombs even without causing any external injury. We prefer the evidence of medical experts regarding the possibility of injuries to Ahire to that of Shri Kaul who is an expert of explosive. In fact in the cross-examination Shri Kaul has categorically stated that he is not an expert on this aspect of the matter. As such we do not find much merit in the submission of Shri Ovalekar that the prosecution has not proved that death of A hire was homicidal.

52. Shri Ovalekar also found fault with the prosecution that Ahire was another witness who suffered injuries and in fact died as a consequence thereof and the fact that his statement was not recorded creates an infirmity in the prosecution case. In this behalf Shri Ovalekar has brought to our notice page 29 of Exh, 71 which is the hospital record containing notes of various doctors treating Ahire. Shri Ovalekar pointed out that on 9.3.1987 Ahire as shown to be conscious and well oriented. Shri Ovalekar submitted that this shows that it was possible to record the statement of Ahire. May be it was possible, but on the basis of evidence we find it extremely difficult to come to a positive and categorical conclusion that it was so possible. In fact the evidence of Dr. Vaidya P.W. 8 and Dr. Patil P.W. 11, shows that all throughout Ahire was required to be under treatment and was in very serious condition, The evidence of Dr. Patil especially shows that on 5.3.1987 Ahire was referred to him. He was slightly breathless. X-ray showed possible rupture of left diaphragm. Emergency exploration was advised. Exploration was done with thoracic left Thoracic to my between 1.45 p.m. to 2.45 p.m. on 5.3. 1987. Dr. has further stated that post operatively he was not reversed from anesthesia and was put on mechanical ventilation in view of injury to his lungs. Dr. further stated that he had examined Ahire daily from 5.3.1987 until patient died on 10.3.1987 at 11.55 p.m. Reading the entire

evidence we find that it cannot be categorically calculated that it was possible to record the statement of Ahire. This is all the more so because in the very nature of things the investigating officer could have been cross examined on this aspect and on this aspect the investigating officer is not at all asked any question. For the aforesaid reasons we do not find any merit in the submission of Shri Ovalekar that the non recording of the statement of Shri Ahire introduces any infirmity in the prosecution case.

53. Shri Ovalekar next submitted that P.W. 2 as well as P.W. 12 have referred to the fact that the armed police constable Takke fired two rounds from 0303 rifle. However, not a single empty of such cartridge is found in the entire complex as the panchanama wherein several empties as well as used cartridges were found, do not include such two implies fired from 0303 rifle. However, Exhibit 33 shows at Sri. No. 10 rifle 0303 and at Sri. No. 11 two empties of rifle No. 303. Exhibit 33 is a forwarding letter dated 18.3.1987 to the Chemical Analyser Maharashtra Government. Exhibit 35 is the report of the Chemical Analyser wherein there is a report regarding 303 rifle as also two empties of 303 rifle and the opinion that the said rifle was used for firing prior to its receipt in the laboratory and the two empties showing that they were fired from the aforesaid rifle. Shri Ovalekar submitted that there is no material on record as to where from these empties of rifle was attached. Undoubtedly there is no material to show as to what point of time these rifle or empties were attached if at all. However, even on this aspect when the prosecution has produced the letter forwarding these articles and the report of the Chemical Analyser it would have been better if the investigating officer was cross examined with reference to these documents. May be that these articles were attached later on or may be that Takke never fired. However, in the facts and circumstances of the case it would not affect the core of the prosecution case, Admittedly nobody was injured after firing by Takke. That Takke fired has been mentioned by P.W. 2 and P.W. 12. These two witnesses were examined and no contradiction or omission is brought on record so far as this part of the evidence is concerned. Taking over all view of the matter we do not find enough justification to give any importance to this fact as the investigating officer was not cross examined in that behalf nor any question was asked in the cross examination of P.W. 2 or P.W. 12 nor any commission or contradiction has been brought on record on this count.

54. Shri Ovalekar also addressed us on the aspect as to whether Exh. 24 could be treated as a FIR. He pointed out that the statement of P.W. 2 Uttam Gharte, which is treated as the first information report is quite exhaustive statement and it could not have been recorded within a short time of 15 to 20 minutes P.I. Zende has categorically stated that he reached Satrasta lock up at about 3.50 a.m. and after inspecting the site immediately recorded the statement of P.W. 2 Uttam which was treated as the FIR and crime was registered. After recording the statement scene of offence panchanama was prepared. Shri Ovalekar brought to our notice that on the scene of offence panchanama C.R. No. is not mentioned, the submission being if the FIR was already recorded and crime was

already registered, normally C.R. number would be found on the panchanama of scene of offence. But more important aspect of the matter brought to our notice by Shri Ovalekar is that though P.W. 2 Gharte states that after arrival of Shri Zende he narrated the entire incident and the statement was reduced into writing, in the cross examination this witness has categorically admitted that police started drawing panchanama of scene of offence at about 4.30 a.m. It lasted upto 9 a.m. That his statement was recorded after he had come from the hospital that he left for hospital at about 10 a.m. He was there for about half hour, he returned to lock up at about 11 a.m. and then his statement was recorded by police officer Bhalerao. His statement was recorded for two hours between 12 to 2 p.m. This admission clearly shows that the statement of P.W. 2 Uttam was recorded between 12 to 2 p.m. Looking to the fact that the panchanama of scene of offence which must have taken considerable time and it is also the case of prosecution that it was started at 4.30 a.m. and lasted upto 9.30 a.m., even probabilities suggest that the statement of P.W. 2 was recorded not at 4.15 a.m. as alleged but later on. The question is what would be the effect. In our opinion only effect of the same would be that Exh. 24 would cease to be the first information report and cannot be used for the purpose of corroboration of evidence of P.W. 2. It would merely be a previous statement to the police by the witness. However, in the facts and circumstances of the case the matter does not assume much importance because as stated earlier there is hardly any material omission or contradiction brought on record in the cross examination of PW2 and therefore his parole evidence before the court remains unshaken. Shri Ovalekar also made a submission regarding the FIR Exh, 24. He read the entire statement of PW 2 Uttam and submitted in the context the sentence "they there 10 to 12 persons (Te andaje daha bara loke hote) and "along with the accompanying persons" (Tyancha Sathidasarah) appear to be added subsequently. Whether they were added immediately after the completion of the statement of the witness, at his behest or otherwise is not clear. Here again in our opinion this aspect does not assume much importance because earlier also the witness has clearly stated that he saw 4/5 persons coming from the direction of Sane Guruji Marg. As already discussed on the basis of the evidence on record we have no manner of doubt that several persons minimum five may be more, had launched the attack. As is evident from the attack on P.W. 4 Sawant all persons might not have gone near the lock up as in the very nature of things, some persons from the group had to be at the other point, from which police could have approached the lock up. In view of the aforesaid assuming that Exh. 24 is not the first information report it does not effect the prosecution case adversely. Shri Ovalekar in relation to this FIR further submitted that in the statement P.W. 2 Uttam has referred to "Vijya and Keshya" whereas in column No. 4 the names of accused are mentioned as under;

1. Vijya @ Vijay Utekar

2. Keshya @ Kishore, Marraiyya, Laksha and other 9-10 persons

Shri Ovalekar submitted that therefore as a matter of fact name of accused No. 3 is not mentioned at all in the FIR. It must be appreciated that in the cross examination P.W. 2 Uttam has categorically stated that he knew person by name Vijay Kanjari Vijay Utekar. He has added that Vijay Kanjari and Vijay Utekar is the same person. Secondly though it is not clear as to the source of the names mentioned in column No. 4 of the FIR, so far as the statement of Uttam Gharte is concerned he has clearly mentioned that Vijya and Keshya, the persons known to him came near him. We have already dealt with the submission of Shri Ovalekar regarding the short name of Keshya and as such we do not find any substance in the submission of Shri Ovalekar that as a matter of fact the name of accused No. 3 is not at all mentioned in the aforesaid document i.e. statement which is treated as FIR.

55. In the aforesaid circumstances and for the reasons aforesaid we are of the view that the original accused No. 2 Rajendar @ Rajubhai Tarachand Sankat is not proved to be one of the persons who were the members of the unlawful assembly. It is hazardous to rely upon the evidence of identification by P.W. 2. Similarly original accused No. 4 Vinod Bhika Maria also is not proved to be one of the members of the unlawful assembly. If the evidence falls short in showing that the accused No. 2 Rajendra and accused No. 4 Vinod were members of the unlawful assembly, no charge could be said to have been proved against them and both of them will have to be acquitted of all the charges against them. So far as accused No. 1 Ravindra @ Ravi Bansi Gohar and accused No. 3 Kishor @ Kishya Amarsingh Maheshkar are concerned the evidence clearly shows that they were members of the unlawful assembly common object of which was to break open the lock up even by use of arms and committing murder of Babu Reshim. As already discussed in the process police constable Ahire was also killed and all members of the unlawful assembly will have to be held guilty for the offences committed during the course of this incident on the basis of Section 149 of IPC. Looking to the evidence regarding, the overt act on the part of the accused No. 1 Ravindra and accused No. 3 Kishor there can be no doubt that not only they were members of the unlawful assembly but they also shared the common intention of committing murder of Babu Reshim.

56. In the result the conviction of accused No. 1 Ravindra @ Ravi Bansi Gohar and accused No. 3 Kishor @ Kishya Amarsingh Maheshkar for offence punishable u/s 302 read with Section 149 of IPC and for offence punishable u/s 302 read with Section 34 of IPC for murder of Babu Gopal Reshim has to be confirmed and is hereby confirmed. Similarly on the basis of the evidence we have discussed earlier the conviction of accused No. 1 Ravindra @ Ravi Bansi Gohar and accused No. 3 Kishor @ Kishya Amarsingh Maheshkar for offence punishable u/s 302 read with Section 149 of IPC for committing murder of Han Shravan Ahire police constable and sentence to suffer RI for life and a fine of Rs. 10,000/ in default to RI for one year has to be confirmed and is hereby confirmed. The conviction of accused No. 1 Ravindra @ Ravi Bansi Gohar and accused No. 3 Kishor @ Kishya Amarsingh Maheshkar for offence punishable u/s 460 read with Section 149 of

IPC and sentence of R.I. for 10 years and a fine in the sum of Rs. 5,000/- each in default to R.I. for six months as also conviction for offence punishable u/s 332 read with Section 149 IPC and sentence to suffer RI for three years and a fine of Rs. 1000/- in default to suffer RI for three months; conviction for offence punishable u/s 28 of Indian Arms Act read with Sub-section 149 of IPC and sentence to suffer RI for seven years and also a fine of Rs. 5,000 in default to RI for six months and conviction for offence punishable u/s 25(1A) of the IPC read with Section 149 of IPC and sentence to suffer RI for seven years and a fine of Rs. 5,000/- in default to suffer RI for six months shall have to be confirmed and are hereby confirmed.

57. So far as accused No. 2 Rajendra Rajubhai Tarachand Sankat and accused No. 4 Vinod Bhika Maria are concerned, evidence falls short to prove conclusively and beyond reasonable doubt their involvement in the crime and therefore their appeal will have to be allowed and is hereby allowed and the conviction and sentence of accused No. 2 Rajendra at Rajubhai Tarachand Sankat and accused No. 4 Vinod Bhika Maria under all charges will have to be set aside and accused no 2 Rajendra Tarachand Sankat and accused No. 4 Vinod Bhika Maria are acquitted of all the charges with which they were charged.

58. That brings us to the question of sentence. The learned Judge of the trial court has imposed sentence of death penalty on original accused No. 1 Ravindra @ Ravi Bansi Gohar, as also on accused No. 3 Kishor @ Kishya Amarsingh Maheshkar. We have heard the learned Counsel on both sides on the issue of sentence of death. Shri Ovalekar has submitted that it is a settled law that the sentence of death should be awarded in a rarest of the rare case. He relied upon the decision of the Apex Court reported in- Karnesh Kumar Singh and Others Vs. The State of Uttar Pradesh, . In paragraph 16 of the said decision while considering the sentence of death imposed on the appellants therein the Apex Court, observed as under;

In imposing the sentence of death on these four appellants, the trial court made a distinction between them on the one hand and the rest of the appellants on the other, The distinction was made on the ground that three of them were armed with firearms and that they all fired at Lai Singh simultaneously, that appellant Chhetrapal had shot at Harihar also and finally, that appellant Kaushal had given a hatchet blow to Harihar. In our view the evidence on which this distinction was made cannot be said to be fully satisfactory. It is true that P.W.I while giving evidence stated that the three appellants" had fired simultaneously at Lal Singh that Chhetrapal had also fired at Harihar and that Kaushal had given a hatched blow to him. But the FIR merely states that three shots were fired at Lai Singh but does not state that they were fired by the three appellants simultaneously, nor does it state that Chhetrapal had fired at Harihar after he had been dragged out on the road. It is hardly conceivable that if P.W. 1 had seen these appellants firing either at Lai Singh or at Harihar, he would have forgotten to make a positive statement about it in the FIR. In view of this omission, it is difficult to

build the conclusion with any certainty on his subsequent statement that the three appellants had simultaneously fired at Lai Singh and that Chhetrapal has shot at Harihar after he had been brought out of the house. The possibility of any one or two of them having fired the three shots in quick succession, cannot, therefore be ruled out. In that case the distinction made on the basis that all the three of them had fired at Lai Singh cannot be sustained. Therefore, the reason given by the trial Judge for imposing the extreme penalty on these four appellants as against the rest becomes difficult to sustain.

We do not think that this case helps the submission of the accused Nos. 1 and 3 before us. Shri Ovalekar submitted that four alongwith nine others were charged and it is not clear as to who committed the murder and therefore the death sentence is not called for. We are unable to agree with this submission. The evidence on record clearly shows that accused No. 1. Ravindra. @ Ravi Bansi Gohar and accuse No. 3 Kishore @ Kishya Amarsingh Maheshkar and the deceased accused Vijay and one other person were the four persons who had firstly confronted P.W. 2. These four persons after failing to get the keys from P.W. 2 went outside in front of the iron mesh, someone exploded bomb, they fired through the wire mesh in cell No. 1 where Babu Reshim was detained. Thereafter all the four rushed inside. Accused No. 1 broke open the lock, all four went, inside and from the inner door of cell which was open they fired at Babu Reshim. The bullet injuries found on the person of Babu Reshim as also other injuries clearly show that it was the work of several persons. Therefore this is not a case where actual participation in the crime of murder by accused No. 1 or accused No. 3 is in any way in doubt. They were identified as members of the group who had reached the lock up and launches the concerted attack.

59. Shri Ovalekar then submitted that the death sentence should not be awarded in as much the identification even if held to be proved cannot be absolute and the possibility of some other persons being found as the real perpetrator later on cannot be ruled out absolutely. Shri Ovalekar submitted that such things have happened and therefore irretrievable sentence of death should not be awarded. In our opinion if there was any doubt about or regarding the identity of accused persons, accused could be entitled to the benefit of doubt and will have to be acquitted. Once on the basis of the evidence we found it to be cogent and trustworthy and once we held that the accused No. 1 was known to P.W. 12 and accused No. 3 was known to P.W. 2 and once we hold that their version as to the presence of these two accused at the time of incident is acceptable and true then at the lime of sentence there is no question of entertaining any further doubt. This aspect would be relevant to find out the involvement of the accused in the crime but will not in our opinion be relevant on the question of sentence.

60. Shri Patil, Learned Addl. Public Prosecutor brought to our notice the decision of the Apex Court reported in Rajendra Prasad v. The State of Uttar Pradesh 1979 SC 916 and in paragraph 82 thereof the Apex Court has given condense guidelines. He equally relied upon the observations of the Apex Court as under:

But with the development of the complex industrial society there has come into existence a class of murderers who indulge in a nefarious activity solely for personal, monetary or property gain. These white-collar criminals in appropriate cases do deserve capital punishment as the law now stands, both as deterrent and as putting an end to an active mind indulging in incurably nefarious activities. It is such characteristics that determine more or less the gravity and the character of the offence and offender. We may venture that sometimes there is big money in the subtle "murder" business disguised as economic offences or industrial clashes; and there social justice in certain circumstances punctures "soft" justice and opts for lethal sentence. Where intractable mafia shows up in mordacious profusion, the sentence of death must, reluctantly though, defend society

7. The survival of an orderly society without which the extinction of human rights is a probability compels the higher protection of the law to those officers who are charged with the fearless and risky discharge of hazardous duties in strategic situations. Those officers of law, like policemen on duty or soldiers and the like have to perform their functions even in the face of threat of violence sometimes in conditions of great handicap. If they are killed by designers of murder and the law does not express its strong condemnation in extreme penalization, justice to those called upon to defend justice may fail. This facet of social justice also may in certain circumstances and at certain stages of societal life demand death sentence

61. Shri Patil also brought to our notice the leading case on the issue i.e. Bachan Singh Vs. State of Punjab, contains aggravating circumstances as suggested by the learned Counsel appearing in the matter. In paragraph 201 the Apex Court has observed that "Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other". The aggravating circumstances mentioned are:

(a) if the murder has been committed on previous planning and involve extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of member of any police force or of any public servant and was committed

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty was such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or....

62. Shri Ovalekar urged that the facts and circumstances of the case clearly show this is not a case where the State Machinery has failed due to superior

terrorist force but in fact there appears to be connivance of the concerned policemen. It is impossible that such an event would take place unless the police had connived but for which such an event could not have been committed in the manner described. Shri Ovalekar submitted that in the facts and circumstances of the case blame must be shared by the police equally. Such being the case Shri Ovalekar submitted extreme penalty of death is not called for. We must state that we had an advantage of extremely lucid, precise and studied arguments of Shri Ovalekar. He brought to our notice all the circumstances and ultimately referring to Lord Krishna's counselling to Arjuna, he submitted that he has pointed out all the facts and circumstances of the case and extorted that we ponder deeply on the same and decide the matter as per dictates of our conscience. Indeed the matter had many disturbing aspects. We have given our anxious and careful thought to all the aspects of the case. We must record that when there were about 7 armed guards with rifles and ammunitions it defies our understanding and imagination as to how not a single policeman offered any resistance and how every member of the unlawful assembly consisting of several accused, escaped. The circumstances on record also indicate that somehow the perpetrators had decided not to hurt any policeman. We cannot lightly brush aside the bold statement of Shri Ovalekar that there was an element of connivance. In the very nature of things it is impossible to conclusively say on this aspect in these proceedings. However, the real question is assuming that Shri Ovalekar is right in his submission that there is an element of connivance, should it be a reason for not awarding death penalty if in the facts and circumstances and on the principles involved the crime deserves the same.

63. In our opinion the case is indeed rarest of rare one. Babu Reshim was in the police lock up, which lock up; was, also inhabited by several other accused and was guarded not only by armed guard in front of the police lock up but also by armed guard behind the police lock up. Just by the side of the cell and underneath the staircase there were at least five armed police constables resting, having their weapons. To attack, such police lock up so heavily guarded, and which is in the same precincts where the Assistant Commissioner of Police office is situated and some constables are also present inside the said building shows not only extraordinary courage on the part of the perpetrators of the crime but in fact it shows absolute contempt for law and order, the lawful authority of the police and in fact the State. Committing murder in this fashion throws challenge not only to police force but also to the entire State. Even if the submission of Shri Ovalekar regarding the alleged connivance of the police is taken into consideration the crime must be viewed extremely seriously and such crime should deserve severest penalty. We have also to take into consideration that assailants have also thrown country made bombs indiscriminately and in large number, which resulted into death of police constable Ahire in the very incident. Thus in fact the accused have caused death of two persons. After having given our anxious thought to all the facts and circumstances of the case we are of the opinion that the extreme penalty of death sentence is warranted to any one who

is proved to be involved in this most unusual crime.

64. Accordingly the death sentence awarded to accused No. 1 Ravindra @ Ravi Bansi Gohar and accused No. 3 Kishor @ Kishya Amarsingh Maheshkar by the Learned Additional Sessions Judge, Greater Bombay by his judgment and order dated 25th April 1996 for offence punishable u/s 302 read with Section 149 of IPC and Section 34 of IPC for murder of Babu Gopal Reshim is hereby confirmed.

65. The confirmation case No. 1 of 1996 and the Criminal Appeal No. 285 of 1996 stand disposed of accordingly.

66. Before parting with this case we must make some observations regarding the recording of the evidence by the Ld Judge of the trial court. We feel that the Ld. Judge should have been more careful while recording the evidence. After reading the entire evidence it is clear that the witnesses have referred to the Satrasta police lock up to a guard chowki (wooden cabin) in Front of the lock up as also to the guard room which is a place underneath the staircase. It is also clear that Agripada Police Station as such is situated at some distance. While witnesses have referred to these different places they have committed obvious mistake by calling the guard chowki as guard room and lock up as police station. If the Judge was careful such mistake would not have taken place while recording the evidence. It is very much essential that while recording evidence the Judge should be alert and if any confusion is likely to take place, it is the duty of the Judge to record the clear and correct statement in the deposition of the witness. He should get the matter clarified then and there because afterwards it becomes very difficult to remedy the situation. It is therefore, very important that the Ld. Judge of the trial court should be alert and should be careful so that the evidence could be recorded properly. In this case we have found that P.W. 2 in para 31 of "his statement has stated that in all 8 police officers were given duty to keep watch at the chowki at the front side of the "police station" as well as the backside of the "police station". In the context of entire statement what the witness obviously meant was "Satrasta police lock up" and not the "police station". There is also confusion while guard room is mentioned when, obviously the witness has referred to the "guard chowki", in front of lock up as "guard room" refers to the place under the stair case within the lock up. Most serious lapse is while recording the evidence of P.W. 12 Ashok Chakranarayan. Para 4 of his deposition is as under:

One assailant was about 25 to 30 yrs. of age with sallow complexion, medium built with longhair. I knew him his name of Ravi Bansi. I came to know about his name at the time of T.I. Parade.

We have already discussed this part of the evidence and in view of the last sentence in the para we have already held that the witness must have stated "I knew him. His name is Ravi Bansi. I came to know about his name at the tune of T.I. Parade". Had the Ld. Judge been more carefully and alert, the evidence would not have been recorded in the fashion in which it has been recorded. We

must emphasize that the Ld. Judge of the trial court must be extremely careful and must make efforts to follow the evidence and deposition while the witness is deposing and it is the duty of the Ld. Judge to immediately get the clarification from the witness and record clear evidence. At many places we have also found that the language used in recording the deposition is faulty possibly because of incorrect translation. If the Judge isn't sure of the correct translation it is advisable that at such places actual vernacular deposition should also be reproduced in the bracket. We are making these observations as in our opinion incorrect recording of evidence may result into a very serious consequence of miscarriage of justice in a given case. Instances of such careless recording of evidence are on the rising and we feel it necessary to bring these serious lapses to the notice of all the Judges of the subordinate courts with a view to impress upon the Ld. Judges of the trial court the importance and necessity of being constantly alert and careful while recording evidence. We direct the Registry to forward this paragraph of the Judgment to all the subordinate Courts for their guidance and information.

67. Another feature of which must make a mention is the way in which the paper book of this confirmation case has been prepared. The deposition of some witnesses are not printed on consequent pages but appear to have been printed in accordance with the actual chronology in which the deposition were recorded. For example deposition of P.W. 2 Uttam Gharte begins on page 123. On page 124 after the deposition is completed on 3.2.1995, we find exhibit 19 i.e. some application is reproduced then on page 125 deposition of P.W. 3 is reproduced and at the foot of the page again deposition of P.W. 2 is continued. The deposition is continued till page 133 and thereafter the deposition of this witness is to be found on page 239. We are sure that this method of printing of paper book is certainly not as per the rules and guidelines of the Criminal Manual laying down the method of preparation of paper book. Similar is the situation in respect of deposition of P.W. 4. It begins on page 145, continues upto page 148, thereafter further deposition is printed on page 230. This causes a lot of inconvenience to the appellate court which should be avoided. The Registry should take note of this and should immediately take corrective measures by bringing this to the notice of all concerned.