



2024:CGHC:31291-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 1054 of 2022**

1. Mohd. Yasin S/o Shri Mohd. Farukh, aged about 27 years R/o House No. - LIG 117, Housing Board Colony Sejbahar, Police Station - Mujgahan, District : Raipur, Chhattisgarh
2. Shekh Gufran Ahmad S/o Shri Shekh Jamil Ahmad, aged about 27 years R/o Santoshi Nagar, Near Good Luck Factory, Police Station - Tikrapara, District : Raipur, Chhattisgarh
3. Mohd. Aasif Ahmad S/o Shri Mohd. Farukh, aged about 30 years R/o House No. LIG 117, Housing Board Colony Sejbahar, Police Station - Mujgahan, District : Raipur, Chhattisgarh
4. Shekh Samir Ahmad S/o Late Shri Mahfuj Ahmad, aged about 27 years R/o Near Sumit Bazar, Santoshi Nagar, Police Station - Tikrapara, District : Raipur, Chhattisgarh

**... Appellants**

**versus**

State of Chhattisgarh Through The Station House Officer, Police Station Mujgahan, District : Raipur, Chhattisgarh

**... Respondent**

(Cause Title taken from Case Information System)

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For Appellant Nos. 1, 2 & 4 : Ms. Aditi Singhvi, Advocate  
For Appellant No. 3 : Mr. Hariom Rai, Advocate  
For Respondent/State : Mr. R.S. Marhas, Addl. Adv. General

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**  
**Hon'ble Mr. Bibhu Datta Guru, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**20.08.2024**

1. The appellants have preferred this appeal under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'CrPC') questioning the impugned judgment of conviction and order of sentence dated

03.03.2022 passed by the First Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 211/2017, whereby the trial Court has convicted and sentenced the appellants with a direction to run all the sentences concurrently in the following manner :

**For Appellant No.1 Mohd. Yasin :**

<b>CONVICTION</b>	<b>SENTENCE</b>
U/s 341 of IPC	Rigorous imprisonment for 01 month and fine of Rs. 500/- and in defaults of payment of fine amount, additional RI for 07 days
U/s 302 of IPC	Life imprisonment and fine of Rs. 1,000/- and in default of payment of fine amount, additional RI for 03 months
U/s 27 of the Arms Act	Rigorous imprisonment for 07 years and fine of Rs. 1,000/- and in defaults of payment of fine amount, additional RI for 03 months

**For Appellant No.2 Shekh Gufran Ahmad :**

<b>CONVICTION</b>	<b>SENTENCE</b>
U/s 341 of IPC	Rigorous imprisonment for 01 month and fine of Rs. 500/- and in defaults of payment of fine amount, additional RI for 07 days
U/s 302/34 of IPC	Life imprisonment and fine of Rs. 1,000/- and in default of payment of fine amount, additional RI for 03 months

**For Appellant No.3 Mohd. Aasif Ahmad :**

<b>CONVICTION</b>	<b>SENTENCE</b>
U/s 341 of IPC	Rigorous imprisonment for 01 month and fine of Rs. 500/- and in defaults of payment of fine amount, additional RI for 07 days

U/s 302/34 of IPC	Life imprisonment and fine of Rs. 1,000/- and in default of payment of fine amount, additional RI for 03 months
U/s 25(1-1A) of the Arms Act	Rigorous imprisonment for 05 years and fine of Rs. 1,000/- and in defaults of payment of fine amount, additional RI for 03 months

**For Appellant No.4 Shekh Samir Ahmad :**

CONVICTION	SENTENCE
U/s 341 of IPC	Rigorous imprisonment for 01 month and fine of Rs. 500/- and in defaults of payment of fine amount, additional RI for 07 days
U/s 302/34 of IPC	Life imprisonment and fine of Rs. 1,000/- and in default of payment of fine amount, additional RI for 03 months

2. Case of the prosecution, in brief, is that complainant Rajeev Bhosale (PW-1) does property dealing business, who has business relations with Bablu alias Irfan. On 15.06.2017, at around 9.30 pm, complainant Rajeev Bhosale met with Bablu alias Irfan at Pachpedhi Naka, Raipur, thereafter he came to his home with Bablu and from there at around 10.00 pm, he took Bablu alias Irfan along with his son Chaitanya Bhosle, aged 03 years to his father's house in Sejbahar in Innova car bearing registration No. MP 28-BD-4488 to wish his sister a happy birthday, from where after wishing her happy birthday and having food, while returning to his home with Bablu alias Irfan and his son, he was sitting in driving seat of his Innova car and Bablu alias Irfan was sitting on the seat next to him with his son Chaitanya in his lap. After that, as soon as the

complainant started moving his car, two people came from the front in a Pulsar bike and parked the said motor-cycle in front of his car and they stopped the car by giving a signal. At the same time, from behind two other persons came in other motor-cycle and stood on the side seat of the car, out of which, seeing the boy sitting behind in the motor cycle, Bablu alias Irfan said, Hey Asif, where, then, the person named Asif took out his pistol from his waist and fired a shot at Bablu's head, due to which Bablu alias Irfan got injured on his head and started bleeding, seeing the situation complainant Rajeev Bhosle got extremely scared and immediately took his car to his father's house and informed his brother Rahul about the incident and along with Rahul, he took injured Bablu to the District Hospital, Raipur for treatment. On the way to the hospital, Bablu alias Irfan died. It is stated that Bablu alias Irfan and Asif Muslim had an old rivalry.

3. After getting information about the incident, police of Police Station Mujgahan came to the spot in the night itself, to which complainant Rajeev Bhosale informed about the incident and lodged a report. On the basis of the report of the complainant, dehati nalishi was registered on the spot itself against the accused Asif and 03 others by the Police Station Mujgahan on zero basis for the offence punishable under Section 302, 34 IPC and after coming back to the police station, on the basis of dehati nalishi, First Information Report under Crime No. 155/2017 was registered by Inspector Hemchandra Verma for offence under Section 302/34 IPC against Asif Muslim and 3 others. In the meanwhile, after receiving the

written information (Ex.P-21) of death of Bablu alias Irfan sent by the Office of Emergency Medical Officer, District Hospital Raipur to Police Station Kotwali Raipur, an unnumbered case of accidental and untimely death was filed, and as the incident being related to Police Station Mujgahan, it was registered at zero and was sent to Police Station Mujgahan, on the basis of which, Merg No. 30/2017 was registered in Police Station Mujgahan. Inspector Hemchandra Verma immediately left for the District Hospital and proceeded with the Panchnama of the body of deceased Bablu alias Irfan, and after giving notice of Ex.P-6 to the witnesses, he prepared the Panchnama Ex.P-7 of the body of the deceased Bablu alias Irfan and along with the application, the body of the deceased was presented to the doctor through constable Arjun Sinha number 878 for getting the postmortem done. The postmortem on the dead body of the deceased was conducted by Dr. S.K. Bagh (PW-18), who found following injuries :-

- (i) Entry wound (small circular pattern lacerated wound) was present in the frontal part on the left side of the head, whose size was 1.5 cm;
- (ii) Another circular shaped entry wound was present in the zygomatic area above the cheek whose size was 1.5 cm (diameter).

There was a black spot around both the entry wounds. The margin of the injury was indented.

- (iii) Exit wound which is situated at right temporal region 5 cm above right ear sized 2.5 cm<sup>2</sup> brain, tissue and bone fragment protruded outside at scalp hair / sign of bleeding is present.

On opening the skull, a 7 mm tube was found in the central part of the brain. A metallic pellet was found, which was confiscated. The brain matter was injured due to the injuries, bleeding was widespread throughout the brain, and there were fractures in the internal bones of the skull. The direction of injuries was from left to right side.

As per opinion of the doctor, the cause of death was due to haemorrhage and shock as a result of firearm injury. Duration of death was 24 hours prior to postmortem examination and the death was homicidal in nature.

4. After postmortem, body of the deceased was handed over to his family members for shrouded burial to be done.
5. During the investigation, the investigating officer visited the incident site and inspected the spot and prepared a visual map of incident site vide Ex.P-5. The spot was inspected and the vehicle in which the incident took place was examined by calling a team of experts from the State Forensic Science Laboratory. Gray colored Innova car No.MP 28-BD-4488 in running condition in the possession of the complainant, the side glass behind the driver side window was broken, inside which two exhausted cartridge shells and the blood stain of the deceased fallen on the seat was removed with cotton and seized as per seizure sheet Ex.P-2. 15 pieces of broken window glass that had fallen in the car seat were seized and sealed as per seizure sheet Ex.P-33. The patwari had prepared the map of the incident site vide Ex.P-7. On 17.06.2017, accused Mohd. Yasin and Shekh Gufran were taken into custody, interrogated and their

memorandum statements were recorded vide Exs.P-15 & P-16 respectively and at the behest of accused Mohammad Yasin, country made pistol, live cartridges used in committing the incident and two mobile phones were seized as per seizure memo Ex.P-17 and motorcycle Hero Honda Passion Pro, a steel buttoned knife and an old black colored handset were seized from accused Shekh Gufran as per seizure memo Ex.P-18. Accused Mohd. Yasin and Shekh Gufran were identified through the Tehsildar from the complainant Rajeev Bhosale. On 24.06.2017, accused Mohd. Asif and Shekh Sameer were taken into custody and interrogated and their memorandum statements were recorded vide Exs.P-9 and P-10 respectively, a steel knife was seized at the instance accused Shekh Sameer Ahmed as per seizure memo Ex.P-11 and at the instance of accused Mohd. Asif, one country-made pistol, two live cartridges, old mobile and Pulsar motor cycle were seized as per the seizure sheet Ex.P-12. The identity of the accused was made through the Naib Tehsildar from the complainant. The accused were arrested as per the arrest memos Exs.P-13, P-14, P-19 and P-20. The seized articles were sent to the State Forensic Science Laboratory, Raipur for chemical examination as per the Superintendent of Police's memorandum Exs. P-40 and P-41 and receipts Exs. 24 and P-27 were obtained by sending them to the State Forensic Science Laboratory, Raipur (Chhattisgarh), from which the test report Exs. P-39, P-42 and P-43 of the State Forensic Science Laboratory, Raipur were obtained in relation to the seized property of the case.

6. The statements of complainant Rajeev Bhosle and witnesses Mohd. Sabir, Javed Khan, Jilani Raza Qadri, Rakesh Shriwas, Mrs. Mehjabeen Fatima were recorded. After investigation by the investigating officer, the charge-sheet was filed before the jurisdictional criminal court from where the case was committed to the Court of Sessions and ultimately, the First Additional Sessions Judge Raipur, received the case on transfer for hearing and disposal in accordance with law.
7. Charges against accused Mohd. Yasin under Sections 341, 302, 302/34 of IPC and Section 27 of the Arms Act, against the accused Shekh Gufran Ahmad under Sections 341, 302, 302/34 of IPC and Section 25 of the Arms Act, against Mohd. Aasif Ahmad under Sections 341, 302, 302/34 of IPC and Section 25 (1-1a) of the Arms Act and against accused Shekh Samir Ahmad under Sections 341, 302, 302/34 of IPC and Section 25(1)(1b-b) of the Arms Act were framed, the accused denied the crime and claimed for trial. The facts and circumstances revealed against the accused on the basis of oral and documentary evidence of the prosecution witnesses were put to them in the questionnaire during the statement of the accused under Section 313 CrPC, the accused denied all the circumstances revealed in the evidence and denied themselves expressing their innocence and being falsely implicated. It has been said that after the incident, it came to light that both the complainant and the deceased were doing big business and there were allegations of embezzlement and transactions worth lakhs between them and there were allegations of embezzlement between the complainant and the deceased and many cases have been registered against them in many districts.



Meanwhile, Bablu alias Irfan died, while there are allegations against the complainant and all his brothers for embezzlement of lakhs & crores of rupees and doing fraudulent activities, in which the complainant Rajeev Bhosle, his brother Rahul Bhosle and Rakesh Bhosle are in jail. They had no ill will in any way towards the deceased Bablu alias Irfan, those accused were completely unaware of his death, there was another person named Asif who used to work with the deceased and the complainant, on the basis of the same name Asif, those accused have been falsely implicated in this case.

8. So as to prove the complicity of the accused/appellants in the crime in question, prosecution has examined as many as 24 witnesses and exhibited 45 documents in support of its case.
9. The trial Court after completion of trial and after appreciating oral and documentary evidences available on record, by the impugned judgment dated 03.03.2022 convicted and sentenced the appellants in the manner mentioned in the opening paragraph of this judgment, against which this appeal under Section 374(2) of the CrPC has been preferred by them calling in question the impugned judgment.
10. Ms. Aditi Singhvi, learned counsel for the appellant Nos.1, 2 & 4 vehemently argued that the prosecution has failed to establish the identity of the appellants. It is the case of the prosecution that four accused persons had intercepted the vehicle of complainant Rajeev Bhosle (PW-1) and appellant No.3, Mohd. Aasif Ahmad, had approached the vehicle and shot the deceased. Perusal of statement of Rajeev Bhosle (PW-1) shows that he had stated before the trial Court that the accused persons were wearing masks

and appellant No.3 had put down his mask after which the deceased had acknowledged him as 'Asif' though the alleged eyewitness Rajeev Bhosle (PW-1) had identified the accused in test identification parade conducted before the Tehsildar, however, when he was asked to identify the accused in Court, he first refused to identify them and later on wrongly identified the accused. In para 24 of the cross examination, he has identified Shekh Sameer as Shekh Gufran and Shekh Gufran as Shekh Sameer, thereafter in paragraph 31 of the cross-examination, he has identified Mohd. Yaseen as Mohd. Asif. Therefore his version regarding identification of the accused cannot be relied upon especially looking to the fact that the incidents took place at around 12 a.m. and the accused were masked during the incident. In such a case, the version of the Rajeev Bhosle (PW-1) cannot be relied upon. She further submitted that Rajeev Bhosle (PW-1) himself was in custody at the time of his deposition and 5 different FIRs have been registered against him. She also submitted that the appellants have taken a specific plea in statement under Section 313 of CrPC, wherein they have stated that the deceased and Rajeev Bhosle (PW-1) had monetary transactions and cases have been registered against them. The appellants are not involved in the offence. The FIR has been lodged against Mohd. Asif and three others and the appellant Nos. 1, 2 & 4 have not been named in the FIR.

11. Ms. Singhai also submitted that so far as as appellant Nos. 2 and 4 are concerned, complainant Rajeev Bhosle (PW-1) has not identified them in the Court and further only knives have been

seized from Shekh Gufran Ahmad (appellant No.2) vide Ex.P-18 and also from Shekh Samir Ahmad (appellant No.4) vide Ex.P-11. The postmortem report (Ex.P-34) does not show any injury by knife as also the cause of death is hemorrhagic shock due to firearm injury, there is no admissible evidence against appellant Nos.2 and 4 and hence, they deserve to be acquitted.

12. Ms. Singhai further contended that it is also the case of the prosecution that one pistol was seized from Mohd. Yasin (appellant No.1) and upon ballistic examination of the same (Ex.P-42) with the empty cartridges seized from the place of incident, it was found that they were shot from the weapon seized from appellant No.1. However, the prosecution has failed to prove the chain of custody of the seized articles. The empty cartridges were seized from the place of incident on 16.06.2017 vide Ex.P-2 and the pistol was seized from appellant No.1 (Mohd. Yasin) on 17.06.2017 vide Ex.P-17, however, the same was sent for ballistic examination to the laboratory only on 11.09.2017 vide Ex.P-41 i.e. after more than 2 ½ months, hence, appellant No.1 also deserves to be acquitted.
13. Mr. Hariom Rai, learned counsel for the appellant No.3 submitted that it is the case of the prosecution that the deceased had taken the name of Asif before being shot by him, however merely taking the name Asif does not mean that it was appellant No.3 who had committed the offence. Rajeev Bhosle (PW-1) who is the eyewitness in the case had also failed to identify the appellant No.3 in Court. The incident had taken place in dark at night and hence, the version of PW-1 for identifying the appellant No.3 in

Identification Parade cannot be believed. Therefore, the prosecution has failed to establish the identification of the appellant No.3. He also submitted that as per prosecution, one pistol was seized from the appellant No.3, however, there is no evidence on record to show that the same has been used at the time of incident. Mohd. Sabir (PW-2) has been examined by the prosecution to establish the motive and it has been stated that the appellant No.3 has threatened the deceased, however, the same cannot become the basis of conviction. The appellant No.3 has taken a specific plea in statement under Section 313 of CrPC wherein he has stated that the deceased and complainant Rajeev Bhosle (PW-1) had monetary transactions and cases have been registered against them. The appellant has not enmity with the deceased and is not involved in the offence, hence, he deserves to be acquitted.

14. On the other hand, Mr. Ranbir Singh Marhas, learned Additional Advocate General, appearing for the State/respondent submitted that the offence committed by the appellants was heinous in nature and thus, the learned trial Court had rightly convicted them. He submitted that the trial Court had considered all the arguments made by the appellants and there was sufficient evidence to prove his guilt beyond a reasonable doubt. As such, the judgment of conviction and sentence awarded by the learned trial Court is just and proper warranting no interference.
15. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

16. The first question for consideration would be, whether death of deceased Bablu alias Irfan was homicidal in nature ?
17. The trial Court after appreciating oral and documentary evidence available on record, particularly, relying upon the statement of Dr. S.K. Bagh (PW-18), who conducted postmortem, has come to the conclusion that cause of death was due to haemorrhage and shock as a result of firearm injury and death was homicidal in nature. After hearing learned counsel for the parties and after considering the submissions, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Bablu alias Irfan was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.
18. Now, the next question for consideration would be whether the accused-appellants herein are the perpetrator of the crime in question ?
19. Conviction of the appellants is substantially based on the evidence of Rajeev Bhosle (PW-1), who is stated to be an eye-witness and who has identified the accused during the Test Identification Parade (Exs.P-3 & P-4) conducted by Naib Tehsildar, Nand Kishore Sinha (PW-19) and also based on the evidence of Mohd. Sabir (PW-2), who has proved the motive behind the murder of the deceased.
20. Admittedly, the F.I.R. (Ex.P-30) was lodged against Aasif Musalman and 3 others based on the dehati nalishi (Ex.P-1),

lodged by Rajeev Bhosle (PW-1), wherein it has been mentioned that he (P.W.-1), present on the spot, had seen properly the accused persons and can identify if they would come before him.

21. Informant Rajeev Bhosale (PW-1), while disclosing the situation of registering the case with Dehati Nalishi (Ex.P-1), came to the police station Mujgahan, after receiving the information on the spot and said that on 15.06.2017, he was while traveling in his Innova with Bablu alias Irfan had gone to Sejbahar home by car, that day was his sister's birthday, he and Bablu alias Irfan, after celebrating his sister's birthday, while returning to their home from Sejbahar to Aviya Planet at 10.30 to 11 pm in the same Innova Car No. MP-28BD-4488 at that time he was driving the car, Bablu alias Irfan was sitting next to the driving seat, his son Chaitanya, aged 3 years, was sitting in the lap of Bablu alias Irfan, they left the sister's house and had just reached to a distance of 500 meters and after passing one turn, as soon as he slowed down his car near the breaker, a motorcycle stopped in front of his car and another motorcycle came from behind his car, there were two persons in both the motorcycles, whose faces he had seen, from the front motorcycle, the person sitting on the back of the motor cycle and the person sitting on the back of the motor cycle had come from behind, got down from the driver's seat and came to the side where Bablu alias Irfan was sitting and knocked on the glass of the car. The person knocking on the glass removed his mask, seeing which Bablu alias Irfan said "Hey Asif" and opened the window cover on his side of the Innova. Meanwhile, the

person whom Bablu alias Irfan called "Hey Asif" had took out a gun from him and fired bullets at the head and chest of Bablu alias Irfan, after that they left from there, Bablu alias Irfan started bleeding from his mouth after being shot and his brain matter came out, he immediately turned his car and came back to his sister's house and told his mother, sister and family about the incident that happened with Bablu alias Irfan, who immediately called the police and his younger brother immediately took Bablu to the district hospital in the same car, from there his brother called and informed that Bablu alias Irfan had died. After about half an hour, when the police came to his sister's house, he took the police to the spot where the incident took place with Bablu alias Irfan and told them about the incident, on the basis of which the police filed a report. The incident is said to have been committed by Aasif and his three associates.

- 22.** Rajeev Bhosle (PW-1), who is stated to be an eye-witness of the incident, in paragraph 1 of his examination-in-chief has stated that he recognizes accused Mohd. Yasin, Shekh Gufran, Mohd. Aasif and Shekh Sameer Ahmed. In paragraph 2, he further stated that he recognize the deceased Mohd. Irfan, he has died. It is dated 15<sup>th</sup> June 2017, on the date of the incident, he was going to his home in Sejbahar in his Innova car with Bablu alias Irfan. That day was his sister's birthday, he and Bablu alias Irfan, after celebrating his sister's birthday, were going back to his house at Aviva Planet in Sejbahar at 10:30 to 11 pm in his Innova car number MP 28/BD4488 (wrongly mentioned as 0088). He had just reached a

distance of about 500 meters after leaving his sister's house, when after taking a turn he slowed down his vehicle near the speed breaker, then a motorcycle came from the front and stopped in front of his vehicle and the other motorcycle came from behind the car. There were two persons sitting in both the motorcycles whose faces he could see. The persons sitting behind both the motorcycles came down, at that time, they were wearing masks, one of them hit the glass on the driver's side seat of his Innova car. Bablu alias Irfan was sitting in that side. In paragraph 3, he further stated that the person, who knocked the glass of the car took off his mask, seeing which Bablu alias Irfan said 'Hey Aasif' and opened the glass of the window of the Innova on his side. Meanwhile, the person to whom Bablu alias Irfan had called 'Hey Aasif' took out the gun from himself and shot Bablu alias Irfan on his head and chest, after which they left from there. Bablu alias Irfan started bleeding from his face and his brain matter had come out. After that, he immediately turned his Innova car and went back to his sister's house and told about the incident that happened with Irfan to his sister, mother and family members who immediately called the police and his younger brother Rahul immediately took Irfan to the district hospital in the same car, from there his brother called and informed that Irfan had died. In paragraph 4, he has stated that after about half an hour, the police came to his sister's house, then he took them to the spot and told them about the incident that happened with Irfan. On the basis of which the police filed a report. While filing the report, he told that



the incident was caused by Aasif and his three associates. In paragraph 5, he has further stated that the police interrogated him and took his statement. He was made to identify the accused in the Tehsil Court. The Tehsildar had made five-six people stand together, left their mouths open and covered the remaining part. He had recognized the boys and the accused who had committed the incident among those persons. The identification proceedings were read out in the Tehsil office, on which he had signed. The people who murdered Bablu alias Irfan are the accused. He had shown the incident to police, of which the police had prepared a visual map. The patwari had come to investigate. He had also shown the Patwari the spot of incident whose map had been prepared by the Patwari. While seizing his car, the police also confiscated the cartridge casings lying inside the car, the blood that had fallen from the deceased with cotton wool and broken glass pieces. He also stated that while giving his statement to the police, he had told that he would recognize the boys who committed the incident.

- 23.** In para 24 of cross-examination, Rajeev Bhosle (PW-1) has identified Shekh Sameer as Shekh Gufran and Shekh Gufran as Shekh Sameer, thereafter in paragraph 31 of cross-examination, he has identified Mohd. Yaseen as Mohd. Aasif.
- 24.** Another witness Mohd. Sabir (PW-2) has stated in paragraph 2 of his examination-in-chief that he know Rajiv Bhosle, he is a friend of his brother Bablu alias Irfan. It is around 12:30 am on 16.06.2017 when a person informed him on phone that his brother has been

shot and has been brought to the district hospital, then he immediately came to the district hospital, Raipur, then he saw that his brother was being looked after by the doctor, he was shot in the head. His brother was brought to the hospital by Rajeev Bhosle's brother Rahul Bhosle and Harsh Bhosle, to whom he asked from where they had brought his brother and what happened. Then they told that they have brought Bablu alias Irfan from Sejbahar. 3-4 persons have shot. When he asked why brother Bablu alias Irfan had gone out, they told that it was Rajiv Bhosle's sister's birthday, hence Bablu alias Irfan had also come with Rajiv Bhosle and after the birthday party was over, when Rajiv Bhosle with Bablu alias Irfan were returning in the Innova car, four people who came on two motorcycle stopped the car in front of old Sejbahar police station and two of them shot him. When he asked whether Bablu Bhaiya had told anyone's name, they told that Bablu Bhaiya had said Aasif at the last moment. In paragraph 3, he further stated that Bablu alias Irfan died in the hospital itself. In the year 2000, his elder brother Bablu alias Irfan was accused in the murder case of Mohd. Yasin and Mohd. Aasif's father and went to jail, in that case his brother Bablu alias Irfan was acquitted by the Court. There was charge of murder on Mohd. Aasif in the year 2010, in which case he was released from jail on bail after 3-4 years. After that, one day he met Mohd. Aasif in Santoshi Nagar market, then Mohd. Aasif said that he have committed one murder, now the second is your brother's, my father was not allowed to celebrate Eid, now he will not let his brother celebrate Ramzan Eid. When he asked to his

brother Bablu whether Mohd. Aasif had also threatened him then Bablu told that in the Dargah of Halwai Line, Mohd. Aasif, Mohd. Yasin and his companions Shekh Gurfan and Sameer had threatened to kill him and once Bablu alias Irfan was also threatened near office at Pachpedi barrier. He also stated that Javed Khan, Jilai and Rakesh Shrivastava also know about the same.

25. In paragraph 4 of the cross-examination of Mohd. Sabir (PW-2), when he was asked whether he had any information about the fact that Bablu alias Irfan had a dispute with some people, this witness has specifically stated he had no information, as such, the evidence of this witness is doubtful. This witness has admitted that he did not lodge the complaint of threat in the police station, but has denied the position that the accused did not threaten the deceased Bablu alias Irfan.
26. Another prosecution witness, Javed Khan (PW 3) has stated in his examination-in-chief that Bablu alias Irfan used to come to his shop often. It was the year 2016-2017, at that time Dargah Urs was going on, then he met Bablu alias Irfan near Halwai Line Dargah and he and Bablu were sitting there, then Mohd. Yasin, Mohd. Aasif, Shekh Gufran and Shekh Sameer came there and started abusing Bablu alias Irfan. Mohammad Sameer had told Bablu alias Irfan that "I will take revenge of my father", there the accused argued and pushed Bablu alias Irfan and then left from there. About 20 days after the said incident, Bablu's brother Vicky had given the news through phone that Bablu was dead in the hospital, someone had shot him, then he immediately went to the district hospital, Raipur, where he

found Rahul Bhosle, who told him that Mohd. Yasin, Mohd. Aasif, Shekh Gufran and Shekh Sameer had shot Bablu, after some time Bablu alias Irfan died. In cross-examination this witness stated that "I will take revenge of my father" was not told by Mohd. Sameer, but it was told by Mohd. Aasif.

27. Another prosecution witness, Rakesh Shriwas (PW4), in his statement, while identifying the accused and identifying the deceased Bablu alias Irfan, has said that Bablu alias Irfan used to buy and sell land, his own office was in Pachpedi Naka, Raipur where he used to come sometimes. About two months before the incident, he was sitting in the office of Bablu alias Irfan at Pachpedi Naka, when at around 2 o'clock in the afternoon, Mohd. Yasin and Mohd. Aasif came with 3-4 people and abused Bablu alias Irfan, saying that "we will see", after that they left from there. He further stated that prior to the said incident, while Urs was going on in the Dargah of Halwai Line, then Mohd. Aasif and Mohd. Yasin had come there and abused Bablu alias Irfan and threatened by saying that "we will kill, we will see". In cross-examination, this witness has admitted that he did not lodge the complaint of threat in the police station, but has denied the position that the accused did not threaten the deceased Bablu alias Irfan by coming in front of him in his office and in the Urs of the Dargah of Halwai Line.

28. Another prosecution witness, Naib Tehsildar Nand Kishore (PW-19), who has conducted identification proceedings of accused, has stated that on 19.06.2017, after receiving memo from Police Station Mujgahan for conducting identification proceeding of accused

Mohd. Yasin and Shekh Gufran from complainant Rajeev Bhosle vide Ex.P-35, he has conducted identification proceeding of accused Mohd. Yasin and Shekh Gufran from complainant Rajeev Bhosle on 19.06.2017 at meeting hall of Tehsil Office, Raipur by mixing 04 other persons with accused Mohd. Yasin and Shekh Gufran, namely, Dilip Kumar, Hitesh Choubey, Pappu Sahu and Mahendra Bharti and all of those made to stand for identification were covered with a blanket from the neck down and they were let to stand by their own choice, thereafter, the person doing the identification *i.e.* Rajeev Bhosle was called into the room, from whom, among the 06 people standing for identification, he identified Md. Yasin and Shekh Gurfan, saying that they were sitting in bike at the spot of incident. He further stated that no policemen were present there when he conducted the identification process and prepared identification panchnama Ex.P-3.

- 29.** Naib Tehsildar Nand Kishore (PW-19) further stated that on 24.06.2017, after receiving memo from Police Station Mujgahan for conducting identification proceeding of accused Sameer Ahmad and Mohd. Aasif from complainant Rajeev Bhosle vide Ex.P-36, he has conducted identification proceeding of accused accused Sameer Ahmad and Mohd. Aasif from complainant Rajeev Bhosle on 24.06.2017 at meeting hall of Tehsil Office, Raipur by mixing 03 other persons with accused Sameer Ahmad and Mohd. Aasif, namely, Aagas S/o Bharat, David S/o Sunil and Sonu S/o Salim and all of those made to stand for identification were covered with a blanket from the neck down and they were let to stand by their own

choice, thereafter, the person doing the identification *i.e.* Rajeev Bhosle was called into the room, from whom, among the 05 people standing for identification, he identified Sameer Ahmad and Mohd. Aasif, saying that they were riding the bike at the spot of incident. He further stated that no policemen were present there when he conducted the identification process and prepared identification panchnama Ex.P-4. No such evidence came to light in the cross-examination of this witness, due to which the identification proceedings of the accused get tainted. Thus, the complainant's having seen the accused at the scene of the incident is also confirmed by his identification of the accused as a passerby who was standing among the persons included in the identification process.

30. It is settled principal of law that if the accused were not known to the prosecution witnesses and prosecution case is based only on the identification of the accused (T.I.P.) or on the identification produced before the Court, the prosecution must prove that the accused were not known to the prosecution witnesses prior to the occurrence and they had sufficient opportunity to see the special characteristics as well as identification marks on the person of the accused, committing the crime including identification marks on their faces. In addition to above, the prosecution also has to produce a link evidence to rule out of all the possibilities of opportunity of seeing the accused persons by the prosecution witnesses. Further, It is also settled principle of criminal jurisprudence that identification of accused by the witnesses

before the Court is substantive piece of evidence whereas evidence of TIP is very weak evidence, it has only the corroboratory value and where the offenders were unknown to the witnesses and the prosecution case is based only on the evidence of identification, prosecution has to prove that prosecution witnesses had proper and sufficient opportunity to see and identify the respondents and they had properly seen and identified them.

31. Identification in Court i.e. dock identification is a substantive piece of evidence and admissible in evidence. Test identification attaches only corroborative value, it is not sine qua non in every case. Test identification is a rule of prudence and caution for accusation. If dock identification is otherwise reliable, then reliance can be placed upon the same.
32. In the matter of ***Suraj Pal and others vs. State of Haryana***, reported in ***(1995) 2 SCC 64***, while dealing with the same question, it has been held by the Supreme Court that the dock identification is accepted if otherwise found to be reliable. Relevant portion reads thus:-

*“Before dealing with the various contentions advanced by the learned counsel for the appellants as referred to above, we shall first state the object, purpose and importance of the test identification parade. It may be pointed out that the holding of identification parade has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be eyewitnesses of the occurrence so*

*that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. That being so, in the very nature of things, the identification parade in such cases serves a dual purpose. It enables the investigating agency to ascertain to correctness or otherwise of the claim of those witnesses who claimed to have seen the offender of the crime as well as their capacity to identify him and on the other hand it saves the suspect from the sudden risk of being identified in the dock by such witnesses during the course of the trial. Thus practice of test identification as a mode of identifying an unknown person charged of an offence is an age-old method and it has worked well for the past several decades as a satisfactory mode and a well-founded method of criminal jurisprudence. It may also be noted that the substantive evidence of identifying witness is his evidence made in the court but in cases where the accused person is not known to the witnesses from before who claimed to have seen the incident, in that event identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time.”*

33. In the matter of ***Gireesan Nair Vs. State of Kerala***, reported in ***(2023) 1 SCC 180***, it has been held by the Supreme Court that TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained, instead it is used to corroborate the evidence given



by witnesses before a court of law at the time of trial. Relevant portion is reproduced as under:-

*29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P. [Matru v. State of U.P., (1971) 2 SCC 75, para 17: 1971 SCC (Cri) 391]; Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 41 & 43: (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42: (2010) 3 SCC (Cri) 1402]). The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. **Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial.** Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj [State of H.P. v. Lekh Raj, (2000) 1 SCC 247, para 3: 2000 SCC (Cri) 147] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42: (2010) 3 SCC (Cri) 1402]).”*

34. In the matter of **Sampat Tatyada Shinde v. State of Maharashtra**, reported in **AIR 1974 SC 791**, it has been held by the Supreme Court that the evidence of test identification is admissible under Section 9 of the Evidence Act. It can be used only to corroborate the substantive evidence given by the

witnesses in court regarding identification of the accused.

Relevant portion reads as under:-

*“The evidence of test identification is admissible under Section 9 of the Evidence Act; it is, at best, supporting evidence. It can be used only to corroborate the substantive evidence given by the witnesses in court regarding identification of the accused as the doer of the criminal act. The earlier identification made by the witnesses at the test identification parade, by itself, has no independent value. Nor is test identification the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification of the accused in court, as the perpetrator of the crime. The identify of the culprit can be fixed by circumstantial evidence also.”*

35. A perusal of the statement of Rajeev Bhosle (PW-1) would show that he has failed to identify the appellants in Court though he has identified the appellants correctly in Test Identification Parade before Naid Tehsildar. No witness of identification can be deemed reliable unless he is found to consistently identify an accused in TIP as well as in Court. It is a settled position of law that the evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained. Any false or wrong identification made on part of the witness becomes a

gateway to the wrongful conviction of an innocent for the crime which that person to all intents and purposes didn't commit.

36. The version of Rajeev Bhosle (PW-1) cannot be relied upon as has stated in his deposition that the appellants were masked and the incident took place at night and therefore incorrect identification of appellants by PW-1 in the Court questions the veracity of the witness and conviction cannot be based on such identification. The appellants have taken a specific defence that the deceased and Rajeev Bhosle (PW-1) were involved in monetary disputes in business and Rajeev Bhosle (PW-1) and his brothers were in jail for various offences.
37. Mere recovery of weapon from the appellants cannot become the basis of conviction when there is no established motive for commission of offence. In criminal cases, the guilt should be proved beyond any reasonable doubt that a reasonable man with ordinary prudence can have. There should be no doubt whether the accused is guilty or not. If there is slightest doubt, no matter how small it is, the benefit will go the accused. Further, the Court stated that it is a well settled principle of law that however strong a suspicion may be, it cannot take place of proof beyond reasonable doubt. The prosecution had utterly failed to prove the incriminating circumstances beyond reasonable doubt.
38. It is settled principles of law that evidence of sole witness needs to be considered with caution and after testing it against other material. Further, such evidence must inspire confidence and ought to be beyond suspicion. In the matter of ***State of Uttar***

**Pradesh Vs. Satveer and Other**, reported in **(2015) 9 SCC 44**, it has been held by the Hon'ble Supreme Court as under :

*“12. The last seen theory in the present case having dimensions in terms of time as well place, would certainly clinch the matter if the testimony of PW2 Mewa Ram is accepted. Everything hinges on his testimony. He is the sole witness. It was stated by this Court in **Joseph v. State of Kerala (2003) 1 SCC 465** that where there is a sole witness his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. Further, in **State of Haryana v. Inder Singh, (2003) 1 SCC 537** it was laid down that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court. Noticing these two Judgments this Court in **Ramnaresh v. State of Chhattisgarh (2012) 4 SCC 257** summed up the principles as under:*

*“27. The principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eye-witness to the crime. All that is needed is that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime.”*

*The evidence of the sole witness thus needs to be considered with caution and after testing it against other material and further, such evidence must inspire confidence and ought to be beyond suspicion.”*

39. Further in **Vikramjit Singh alias Vicky Vs. State of Punjab**, reported in **(2006) 12 SCC 306**, the Apex Court has opined:-

*“15. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.”*

40. Thus, in view of the foregoing, we are of the considered opinion that the prosecution was not able to prove its case beyond all reasonable doubt. By giving the benefit of doubt to the appellants, **Mohd. Yasin, Shekh Gufran Ahmad, Mohd. Aasif Ahmad and Shekh Samir Admad**, Criminal Appeal No.1054 of 2021 is **allowed**. The impugned judgment of conviction and order of sentence dated 03.03.2022 passed by the First Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 211/2017 is hereby set aside. The appellants are acquitted from all the charges. The appellants are reported to be in jail. They be released forthwith if not required in any other case.
41. Keeping in view the provisions of section 437-A of Cr.P.C., the appellants are directed to forthwith furnish a personal bond in

terms of Form No. 45 prescribed in the Code of Criminal Procedure of some of Rs. 25,000/- each with one reliable surety in the like amount before the court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

42. The trial court records along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-  
**(Bibhu Datta Guru)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice