

JPP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

CRIMINAL APPEAL NO. 388 OF 2009

1. Kamal Narayan Kanojia,
an Indian Inhabitant, aged about
23 years, residing at Panchal Chawl,
Near Ganesh Gymkhana, Tanaji Nagar,
Malad (E), Bombay.
(currently lodged in Thane Central Prison).

2. Kamlesh Hanumanprasad Kanojia,
and Indian Inhabitant, aged about
21 years, residing at Panchal Chawl,
Near Ganesh Gymkhana, Tanaji Nagar,
Malad (E), Bombay.
(currently lodged in Thane Central Prison).

3. Rajkumar Amrish Rawat,
an Indian Inhabitant, aged about
19 years, residing at Panchal Chawl,
Near Ganesh Gymkhana, Tanaji Nagar,
Malad (E), Bombay.
(currently lodged in Thane Central Prison). Appellants.
(Orig.Accused Nos.1,2 & 3)

V/s.

The State of Maharashtra
(at the instance of Charkop Police Station) ... Respondents.

Mr. Abhaykumar Apte, appointed Advocate for the Appellants.
Mrs. Sangeeta D. Shinde, APP for the State.

**CORAM : B.P. DHARMADHIKARI &
A.S. GADKARI, JJ.**

RESERVED ON : 29TH JULY, 2015.

PRONOUNCED ON : 13TH AUGUST 2015.

JUDGMENT (PER B.P. DHARMADHIKARI, J.) :-

By this Appeal filed under Section 374 of the Code of Criminal Procedure, the Appellants/Accused question their conviction by the 6th Ad-hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No. 6 of 2007 on 25th November 2008. These three Appellants are respectively Accused Nos. 1, 2 and 3 therein and they have been convicted for an offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to suffer life imprisonment and to pay

fine of Rs.2,000/- each. In default they have to further suffer rigorous imprisonment for three months. They have also been convicted for offence punishable under Section 392 read with 394 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/-. In default, they have to suffer rigorous imprisonment for two months. They are found guilty for offence punishable under Section 450 read with 34 of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each. In default of fine, they have to suffer rigorous imprisonment for two months.

2. The case of prosecution in brief is deceased Karan Chotelal Nirmal was residing at Room No.104/02, Chatrapati Shivaji Sankul, Charkop,

Kandivali – East, Mumbai alongwith his wife Nitu (deceased), son Ravi, aged about 5 years (deceased) and a daughter by name Asmita, aged about 3 and ½ years (deceased). He used to take contracts to wash and press clothes of workers of Industrial establishments and worked at Babubhai Chawl, Daftari Road, Malad (East). Accused No.1 Kamal worked with him for about 2 ½ years. Prior to incident, Kamal had gone to deceased Karan and demanded amount of Rs.2,000/- for work done by him with deceased Karan. Karan asked him to come to his residence. Accordingly, Accused No.1 Kamal went there and Karan informed him that he owed no dues and on the contrary, Kamal had to pay amount of Rs.12,000/- to Karan because of medical treatment expenditure incurred by Karan. After hearing this Accused No.1 Kamal got annoyed and threatened Karan with life and went back. The contract of

washing clothes was with a company where Karan and Kamal both were discharging it. Because of reduction in work, Karan had asked employer of that company to allot entire work to him and his brothers or then to Accused Kamal and others. That employer then discontinued giving work to Accused No.1 Kamal and Accused No.2 Kamlesh. Therefore, they had grudge against deceased Karan.

3. Consequently, on 4.9.2006 at about 12.30 in the noon, all accused persons with intention to commit murder and robbery entered the complex wherein Karan was residing with his family members. At that time they disclosed their incorrect identity to the watchman Ramsing Thapa at that complex, made signatures in the register. After entering room of Karan, they killed Karan, his wife Nitu, his son and

daughter by using knife and varvanta i.e.rolling stone. They took away ornaments of deceased Nitu, one mobile phone and cash of Rs.2,000/-. Uncle of deceased Karan by name Ramesh Nirmal (PW-7) then happened to be sitting in the staircase and he saw accused persons coming out of that room. He then went to room of Karan and saw dead bodies. He informed the incident to brothers of Karan namely Vinod Nirmal and Sonu Nirmal on telephone, who came to spot. Sonu (PW-1) then informed incident to Police. Police arrived at spot at about 1.30 p.m. and recorded FIR, drew inquest panchnama of dead bodies and after completing other formalities, sent dead bodies for postmortem examination. They have also seized some articles/properties from spot. Accused Nos. 2 and 3 were arrested from Kurla Terminus where they had purchased tickets for going to Lucknow while Accused No.1 was also arrested

little later on 4.9.2006 itself. During investigation, their blood stained clothes were seized, stolen ornaments and articles were recovered from Accused No.2. After report from Chemical Analyzer, the Charge-sheet was then filed on 1.12.2006 and in due course matter came to be committed to Sessions Court. With the permission of Court, the DNA profile of blood on clothes was obtained.

4. It is in this background that we have heard respective Counsel for parties.

5. Mr. Abhaykumar Apte, Advocate for the Appellants has submitted a list of circumstances used against the appellants by Trial Court as constituting a chain along with witnesses relied upon by it in support thereof. It is not in dispute that learned

Sessions Court has convicted accused persons on circumstantial evidence only. Those circumstances are :-

- (1) Previous enmity and dispute;
- (2) Accused persons were last seen coming out of room/block where deceased used to stay with his family and immediately thereafter, all the 4 occupants thereof were found murdered;
- (3) Accused Nos.2 and 3 attempted to flee away to Lucknow;
- (4) Articles 7 ornaments belonging to deceased and taken away from their residence were seized from Accused No.2;
- (5) Blood stained clothes were seized

at the instance of accused persons and
on it blood of deceased was found;
and

(6) In DNA profiling blood of different
groups on clothes of all three accused
was found to originate from one &
same person i.e. individuals.

(7) In identification parade accused
persons were identified by concerned
witnesses.

6. In the light of these circumstances, he has
submitted that motive of dispute by itself cannot be a
ground or a circumstance to constitute a chain. He
has invited attention to witness PW-1 Sonu to urge
that his evidence about alleged dispute or threat by
accused persons to deceased is not sufficient to prove

it. He has also relied upon the other material on record to show that this evidence is not credit worthy inasmuch as there have been material omissions.

7. According to him PW-7 Ramesh is liable to be ignored because of wrong or evasive answers. He has read out examination in-chief of PW-7 Ramesh to show that Ramesh and deceased Karan came from doctor on the date of incidence i.e. on 4.9.2006 and Ramesh only got down from that auto while deceased Karan proceeded further. In other words, he submits that Karan did not get down at his house, room and had proceeded further. As such, there was no question of Karan being found inside the house, that too killed by somebody. He, therefore, argues that this evidence of PW-7 Ramesh is itself doubtful and for personal reasons he has falsely implicated

accused persons. He points that all accused persons as also deceased and PW-7 as also PW-1 and PW-11 hail from same area and as such, the deposition of PW-7 cannot be accepted.

8. He also invites attention to deposition of a lady who participated in test identification parade and allegedly identified Accused No.1. He submits that this lady in Court has spoken truth and hence, her evidence is also insufficient to rope in the accused persons.

9. Proceeding further with test identification parade, he has invited attention to evidence of the Executive Magistrate who has conducted it to demonstrate how rules framed for conduct of identification parade have been violated and accused

persons have been victimized by putting them in line with persons dissimilar to them. He contends that said test identification parade therefore is liable to be ignored. He points out that panch witnesses for said identification parade, the Executive Magistrate and police as also witnesses who were to identify accused persons in it, all first assembled in police station and then came to jail in same vehicle. He also relies upon provisions of Rule 16(2) and (3) of rules regulating it to urge that simultaneously three such identification parades to identify three accused could not have been conducted. According to him, at a time only one row and one accused could have been exhibited before a witness.

10. Inviting attention to evidence of PW-1 Sonu, he states that Sonu came into picture after alleged

phone call of PW-7 Ramesh to him. However, Sonu's evidence does not support the facts narrated by Ramesh.

11. He has then read out evidence of PW-3 Umesh on seizure of articles from Accused Nos.2 and 3 at the time of arrest. He submits that according to prosecution, Accused Nos.2 and 3 were apprehended at Kurla Terminus but no panchnama has been drawn at that place. On the contrary, they have been brought to Police Station where witnesses are called and then the farce of seizure has been recorded. Therefore, panchnama at Exhibit 28 is liable to be discarded. He relies upon evidence of Police Officer PW-24 Prakash Jadhav to show that he was given duty to apprehend Accused Nos. 2 and 3 at said terminus and he was waiting there since 3.00 p.m. in

the afternoon. The arrest has been made when Accused Nos. 2 and 3 were standing in queue for purchasing tickets. Therefore, recovery of two railway tickets from them as alleged is impossible. Railway tickets have been planted only to fabricate a circumstance of the design to flee to Lucknow. He further states that in so far as recovery of blood stained clothes from Accused No.1 is concerned, the evidence of witnesses PW-19 and PW-16 does not inspire confidence and said recovery is from a public place. Evidence of PW-20 Pradeep is also assailed by contending that the recovery is alleged to be from a place behind public latrine. Two shirts and two pants have been seized together and hence that recovery is not binding and cannot be used against Accused No.3.

12. In the background of this recovery, report of Chemical Analyzer at Exhibit 105 is also relied upon to show that the blood group of accused persons could not be determined and hence the other findings therein about finding blood of group "AB" or "B" on alleged clothes of accused persons cannot advance the case of prosecution. He points out that hair in the hands of deceased Nitu did not match with hair of accused person and therefore, involvement of some other person in the crime is apparent.

13. According to Advocate Apte, Prakash Bharati (PW-15) who is examined to prove act of obtaining of signatures of accused persons on plain papers has not assisted prosecution at all. This person has not pointed out that the signatures were made by respective accused person in his presence on

separate piece. He further contends that those signatures were obtained to show that accused persons while entering the residential complex in which Karan resided, have made similar signatures but that purpose or the circumstance has failed.

14. The learned Counsel states that seizure of ornaments from Accused No.2 has not been convincingly established. Currency notes by itself cannot constitute an incriminating circumstance. Similarly, when police did not have description of ornaments used by deceased Nitu, the ornaments allegedly found with Accused No.2 Kamlesh could not have been accepted to be ornaments of said Nitu.

15. Our attention is drawn to evidence of PW-23 Vikas Bhujbal, who was then working as PSI. It is

pointed out that he was examined to show that he got information about murders at about 13.45 hours. Evidence of PW-24 Prakash, another PSI is also relied upon to demonstrate that he was given instructions to proceed to Kurla Terminus to arrest Accused Nos.2 and 3. According to him, how this intimation could given in advance when Accused No.1 was not arrested has not been brought on record. He points out that police authorities got information about commission of offence for the first time after 1.45 in the afternoon and this Officer goes to Railway Terminus at 3.00 p.m. Similarly, our attention is drawn to cross-examination of PI – Rajendra Gaikwad, examined as PW-26 to show that though he arrested Accused No.1 on 4.9.2006, he did not prepare any arrest panchnama.

16. Inviting attention to evidence of PW-27 - Shankarsingh Rajput, who was Investigating Officer, Advocate Apte urges that this Officer had collected fingerprints from spot of incidence but report of fingerprint expert in relation thereto has not been produced on record. He submits that this necessitates drawing of an adverse inference. He further submits that the entries made by person entering residential complex in register Exhibit 32 are not proved to be made by these Appellants. Watchman - Ramsing Thapa has not been produced before Court and examined to establish identity of Appellants. He contends that Ramsing Thapa informed police that two unknown persons had come and informed him that they were going to Room No.104 to meet deceased Karan. One unknown person came thereafter. Only this unknown person who came alone was asked to make entry in register by

Ramsing Thapa. These two earlier visitors were not called upon by Ramsing Thapa to disclose their identity or to record their arrival in register Exhibit 32.

17. Inviting attention to the fact that Police also obtained DNA report in this matter, he states that said DNA report was obtained as a last resort when the police authorities became doubtful about the circumstance of blood on clothes of accused persons. He submits that blood of deceased persons was collected first and thereafter recovery from accused persons has been shown to facilitate sprinkling of that blood on clothes of accused.

18. The blood on clothes of accused persons was explained by the Accused No.3 who had

sustained a bite injury in the previous night. This fact has not been investigated into by prosecution at all.

19. Paragraph 20 of cross-examination of Investigating Officer shows that clothes which were sealed were taken out for forwarding the same for DNA examination and were re-sealed. This creates doubt about entire process.

20. The delay in forwarding the blood samples of dead bodies for chemical analysis is also assailed by him and for that purpose he relies upon paragraph 26 of cross-examination of said witness. He contends that when law requires, the blood samples to be forwarded immediately, here the samples were forwarded belatedly i.e. on 11.9.2006.

21. Absence of description of ornaments in FIR is relied upon to urge that the alleged seizure of ornaments from Accused No.2 is not sufficient to connect any of accused persons with said crime. He has then taken us through remaining part of evidence of PW-27 to submit that omissions in evidence of various witnesses have been brought on record by putting the same to him.

22. He has commented upon conduct of PW-7 Ramesh strongly. According to learned Counsel, if PW-7 Ramesh had really seen accused persons getting down the stairs from residence of deceased Karan, it would have been natural for him to raise an alarm or to seek help of watchman or any other member of general public. He was aware of enmity (alleged) of Accused Nos.1 and 2 with deceased and

of alleged threat given by accused to him. Thus, not raising of any alarm to gather general public, not informing watchman or no attempt by him to catch other persons at spot, all show disinterest & an unnatural conduct. The said conduct proves that this witness was not at site on 4.9.2006 or in any case, has not seen accused persons there. He points out that watchman Ramsing Thapa would have been an independent and impartial witness to support the case of prosecution but he has been deliberately kept away. He relies upon Judgment of Division Bench of this Court reported at **[2004 (0) Supreme (Mah) 20537]** in the case of **Krishna @ Barkya Mangal Rajput v/s. State of Maharashtra** to submit that as presence of Appellants at the residence of Karan on 4.9.2006 has not been established by a cogent and clinching evidence, the conviction as ordered by Trial Court is unsustainable.

23. Reliance upon evidence of PW-11 Vinod, PW-1 Sonu by Trial Court is also challenged by pointing out that these persons are not only relatives but also interested witnesses. Omissions in their evidence are also strongly relied upon to urge that these witnesses cannot be relied upon at all. In order to substantiate the submission based upon absence of report of fingerprint expert, Advocate Apte seeks to rely upon **Krishna @ Barkya Mangal Rajput v/s. State of Maharashtra (Supra)**. Advocate Apte states that as test identification parade is illegal and recovery at the instance of Accused Nos.2 and 3 has not been proved as also there was no identification parade of ornaments, the conviction of accused persons by Trial Court should be set aside.

24. Learned APP Mrs. Shinde, on the other hand, submits that circumstances narrated above are constituting a chain complete in itself which leaves no doubt about guilt of accused persons and also rules out involvement of any third person in the matter. She has relied upon evidence of PW-1 to point out motive and evidence of PW-11 to point out quarrel and threat by accused persons. She further submits that PW-7 Ramesh has in cross-examination pointed out that Ramesh got down prior to house of Karan from auto rickshaw while deceased Karan went in that auto to his (Karan's) residence. She further submits that conduct of Ramesh is natural and initially he did not apprehend any crime. When he saw accused persons and blood stained clothes on their person, he immediately went to Karan's house and found the three murders. He then informed brothers of deceased. She also relies upon recovery of ornaments

worn by Nitu from pocket of full-pant of Accused No.2 Kamlesh. She submits that there was no reason for said accused to keep those ornaments worn by ladies in pocket of his full pant. She points out that even a wrist watch was kept by said accused in full pant pocket with a view to conceal it. The watch and ornaments were recognized by brother of deceased PW-11 Vinod. She also points out that entire family of Karan has been wiped out in the incidence. According to her, accused persons could have given explanation as to how these articles came in their possession but they have chosen not to speak about it.

25. Recovery of railway tickets from Accused No. 3 is urged to be a circumstance which shows that with ornaments and cash in their pocket, accused nos. 2 & 3 had planned to leave the town and to go to

their native place.

26. Similarly, witnesses have proved memorandum of admission and consequential recoveries under Section 27 of Indian Evidence Act at the instance of accused persons and accused persons have not taken any specific stance in relation to their clothes or then, about blood stains on their clothes. Chemical Analyzer's report is strongly relied upon to urge that blood group "AB" and "B" was seen on clothes of accused persons. In any case accused persons have not explained how human blood could come on clothes on all of them. She strongly relies upon DNA report to urge that this blood on clothes of accused persons was found to be of same origin and hence all accused persons were together at the residence of Karan. According to her, time of death

mentioned in postmortem report also shows that it was when Ramesh (PW-7) was returning to residence of Karan. She relies upon evidence of PW-27 particularly, in paragraph 26 to show that clothes were forwarded to Chemical Analyzer at the earliest and without undue delay. Obtaining of a DNA profile later therefore does not prejudice the accused at all.

27. Test identification parade conducted by Executive Magistrate – Mahadeo is relied upon by her to show that accused persons were identified by PW-7 and PW-15. Though PW-28 has turned hostile in Court, evidence of PW-15 is sufficient to support identification of Accused No.1 by her. She further contends that Accused Nos. 2 and 3 have been arrested when they were near window after purchasing tickets for proceeding to Lucknow after

they purchased tickets at 9.32 p.m.

28. To point out unpredictability of conduct of near relatives at the moment of crisis, she draws attention to the Judgment of Hon'ble Apex Court reported at **AIR 1985 SC page 1678** in the case of **Narayan Singh and Ors. v/s. State of M.P.** Similarly, to explain how in present matter the report of Chemical Analyzer clinches the issue, she seeks to rely upon Judgment of the Hon'ble Apex Court reported at **1991 (3) SCC 627** in the case of **Khujji @ Surendra Tiwari v/s. State of Madhya Pradesh**. She therefore prays for dismissal of Appeal as four gruesome murders have been committed in cold-blood by the accused persons.

29. We may here note that in present matter,

there are two witnesses with first name Umesh. One is Umesh Desai (PW-3) on arrest & personal search of accused 2 & 3 on 4.9.2006. The other person is Umesh Chudasama examined as PW-19 to substantiate discovery of bloodstained clothes of accused 1 on 8.9.2006. Similarly there are two Vinods. One is witness PW-6 Vinod Kadam while the other is younger brother of deceased Karan by name Vinod Nirmal examined as PW-11. Similarly the homicidal deaths, 4 in number, all amounting to murder are not in dispute before us.

30. PW-1 Sonu is the reporter in the matter. He is brother of deceased Karan. His deposition shows that accused persons were working with his brother and with himself and Accused No.1 Kamal had gone back to his village in Uttar Pradesh. After 4 to 5 months he returned to Bombay, Vinod, his younger

brother informed him that Kamal had come to demand cash amount of Rs.2,000/- from Karan and Karan had told Kamal that accounts would be settled on Sunday and balance amount would be paid to Kamal. On that Sunday PW-1 Sonu was at the house of his brother Karan. Wife of Karan and his two children were also there. Between 1.30 p.m. to 2.00 p.m. Kamal came to house of Karan. Accounts were then prepared and Karan pointed out that Kamal had to pay some cash to him. Kamal refused to pay that amount found recoverable by Karan and disputed it. Karan then told Kamal that he would not demand those dues and asked Kamal to leave. Kamal then threatened Karan and all his brothers with life and left house of Karan. His cross-examination in paragraph 6 reveals that he had narrated to police while recording of his statement that Kamal was working with his brother Karan for 2 and ½ years. He could not assign

any reason why said fact was not appearing in that statement. He accepted that he did not narrate to police that Kamal went to his village in Uttar Pradesh and came back to Bombay 4 to 5 months thereafter. He narrated to police that his brother Vinod told him about Kamal demanding amount of Rs.2,000/- from Karan. He could not assign any reason why said facts were not appearing in his police statement.

31. In paragraph 8 he has stated that he narrated to police while recording his statement that Accused No.1 Kamal had demanded amount from Karan, who called him on Sunday. He could not assign any reason why said fact did not figure in the police statement. He also deposed that he disclosed to police his visit to house of Karan on Sunday but again could not assign any reason why it was missing in

police statement. He stated that visit of Accused No.1 Kamal to residence of his brother Karan at about 1.30 to 2.00 p.m. was disclosed to police. He could not explain why the time of arrival of Kamal was missing in his police statement. He accepted that he did not inform police that on 3.9.2006 accused Kamal came to house of Karan and there was discussion on accounts between them. He did not narrate to police that Kamal demanded amount from his brother Karan. He did not narrate to police that his brother Karan had asked Kamal to leave house. He accepted that for the first time those facts were disclosed by him in Court. He did not communicate to police threat given by Kamal on 3.9.2006 to Karan and others. He accepted that he was deposing about it for the first time in Court. He had narrated to police that on 3.9.2006 he was working in his company from 10.00 a.m. to 3.00 p.m. but could not assign any reason as

to why that fact was not disclosed in police statement. He had narrated his visit to office of Karan but could not explain why it was not appearing in police statement. He did not remember whether he narrated to police that when he and his brother Karan were chit-chatting, his younger brother Vinod called him on his mobile and informed that Ramesh uncle had come to the house. He denied that he was disclosing said fact for the first time in Court. He had not informed police that Karan told Vinod on his mobile that uncle Ramesh should be asked to wait for him and he would reach house within short time. He stated that he had narrated to police that on 3.9.2006 he went to house of his brother Karan for dinner but he could not assign any reason as to why it was not disclosed in his statement. He had narrated to police that he himself, Vinod, Karan and uncle Ramesh took dinner at house of Karan but could not

explain why said fact did not figure in his police statement. He had narrated to police that on 3.9.2006 Sunil was residing alongwith Karan. He could not assign any reason as to why it was not mentioned in his police statement. He had narrated to police that after dinner he went for sleep at house of Babu. However, he could not assign any reason as to why police did not specifically mention that he went to sleep at the house of Babu. Thus fact of Kamal's visit & fact of dinner by him in that night with Karan & Ramesh finds support in his deposition.

32. Apart from this witness, on motive brother Vinod has also been examined as PW-11. His deposition shows that Karan was his elder brother. He has stated that Accused No.1 Kamal was looking after the business of Karan as a servant. His brother Karan

had started a glass factory in Malad (West) and Kamal looked after said work for about 15 days. Then he got a news of birth of a son to him. Karan therefore gave Kamal Rs.4,000/- and Kamal went to his village. He returned to Bombay after about three months. He then went to company of his brother Karan and demanded Rs.2,000/- on account of salary. His later deposition is on same lines as that of PW-1. He then deposes that on Sunday Kamal came to house of Karan and he was at the house of Karan at that time. His brother Sonu was also there. After Kamal came, witness Vinod left the house of Karan and returned back 20 to 25 minutes thereafter. At that time he saw Accused No.1 Kamal abusing his brother Karan standing outside the door. Kamal then threatened Karan with life. Upon inquiry Karan told him that he had incurred medical expenditure of Rs.12,000/- on treatment of Accused No.1 Kamal. He

had then advised Karan to report the matter to police but Karan ignored the threat. He deposes that thereafter, Kamal went at his village. At that time nephew Kamlesh of Accused No.1 Kamal was working with Vinod. He then speaks about distribution of work by employer of Divya Creation equally between Karan and Accused Nos. 1 and 2. He then added that 50% of work was allotted to Accused Nos.1 and 2 by the owner of factory where brother Sonu was doing work. Hence, Sonu was not getting requisite quantity of work and he had made a phone call to his elder brother Karan. Karan therefore talked with that owner and requested him to provide full work to Sonu. That owner accordingly agreed.

33. He then states that prior to occurrence of incidence, he was staying with his brother Karan. On

4.9.2006, he left house of his brother at about 10.15 a.m. to attend to work and at that time his elder brother Karan and uncle Ramesh were at the home alongwith family of Karan. At about 11.00 to 11.30 a.m. he got a phone call from Karan making enquiry about work. Karan told Vinod that he would attend to work after medical treatment of his uncle Ramesh. Then he got a telephonic message from his uncle Ramesh between 11.45 a.m. to 1.00 p.m. that Karan, his wife and two children were killed. His cross-examination in paragraph 10 reveals that his brother Karan had called Accused No.1 Kamal to work on contract prior to quarrel between the two. Accused No.1 Kamal demanded cash amount of Rs.2,000/- from his brother in year 2005. He could not tell for how many years Accused No.1 Kamal was working with his brother prior to demanding said amount of Rs.2,000/-. He denied that Accused No.2 Kamlesh

never worked with his brother Karan. He accepted that Accused No.3 Rajkumar never worked under control of Karan. He accepted that there was no quarrel between Karan and Accused No.2 Kamlesh. He denied that there was quarrel between Kamlesh and Sonu as Kamlesh took over 50% work load of Sonu. He accepted that his brother Sonu had made a grievance to owner of factory about it. The complaint was made by Sonu to owner of factory against Kamlesh and his companions viz. Accused No.3 Rajkumar and one Anuj. He denied that Accused No.1 Kamal was not serving as servant under control of Karan but he was partner of Karan. He could not give date and month of Sunday on which Accused No.1 Kamal came to house of Karan to demand cash amount of Rs.2,000/-. He accepted that Accused No.1 Kamal was their relative and resided in their village in Uttar Pradesh. He accepted that Kamal was residing

in loft of the house of deceased brother Karan at Ganesh Nagar when he came to Bombay for the first time from village. At that time their relations were cordial. There were no quarrels between his deceased brother Karan and Accused No.1 Kamal. There were no quarrels till Kamal and his wife went to village from Mumbai. He was not aware about talks between Karan and Accused No.1 Kamal when he was out of house for about 20 to 25 minutes on Sunday. He denied that when he came back, Kamal had already left out house of Karan. He accepted that Karan told him that Accused No.1 had come to demand cash of Rs.2,000/-. He deposed that when Kamal worked with Karan, his monthly salary was Rs.1,500/-. He denied that amount of Rs.2,000/- demanded by Accused No.1 Kamal was not in respect of his salary. He did not know the month for which salary was due to Kamal. He did not know whether Kamal had to pay

amount of Rs.12,000/- towards medical expenses to his brother. He denied that Kamal never came to house of Karan to demand cash of Rs.2,000/-. He stated that he narrated to police that Kamal gave threat that he would kill all the members of family of Karan and he deposed before Court that Kamal threatened Karan with life. He further deposed that his statement made before police was true. He did not remember that Accused No.1 Kamal gave threat to cause death to all family members of his brother when he deposed. He had asked his brother to lodge complaint to police but his brother did not do so. Incident of giving threat took place after Kamal returned to Bombay from his village. He denied that Accused No.1 Kamal had never given threat to his brother Karan. He stated that Kamal had come to company of Karan to demand cash amount of Rs.2,000/- for the year 2005. He denied that as

relations between his brother Karan and accused Kamal were good, Karan called Kamal from village to work on contract. He accepted that he had no knowledge about the boy who had come alongwith Accused Nos.1 and 2 to Mumbai to work with them. His remaining cross-examination is about the information given by PW-7 in relation to killing of Karan and his family.

34. PW-7 Ramesh is the first person, who according to prosecution witness saw bodies of Karan and his family members and who also saw accused persons leaving residence of Karan. Ramesh has in cross-examination of paragraph 4 deposed that he was not aware whether there was any dispute between his nephew Karan and Accused Nos.1 and 2. He also stated that Karan did not disclose to him

about any such dispute. Thus, on dispute between Karan on one hand and accused persons on other hand, PW-1 and PW-11 are the only witnesses examined by prosecution.

35. Perusal of evidence of PW-7 shows that he had been residing in Mumbai for about 35 years and deceased Karan @ Ramkaran was the son of his elder brother. Karan was doing business of pressing clothes in a factory. Ramesh was not aware of name of that factory. He has deposed that he is illiterate and about 18 months earlier on 31st March he had been to the house of his nephew Ramkaran at night hours. In the morning Karan asked him to go to dispensary as there was fracture injury to right hand of Ramesh. He has stated that he got his injury treated in the factory. On Sunday - 3rd day of English Calender

month, he went to house of his nephew Karan. At 7.00 p.m. he himself and his nephew Ramkaran went to dispensary. Doctor asked him to come in the morning on Monday. Therefore, they returned to house of Karan at about 12.30 hours in the noon. His nephew Karan did not step down from auto-rickshaw at his house but went ahead. There appeared to be some error either in narration or in recording of his evidence and deposition. We, therefore, attempted to find out from records whether any recording in Marathi is available. However, as per practice, his deposition has been translated & recorded only in English.

36. Ramesh has then deposed that after getting down from auto-rickshaw he proceeded to house of Karan. Karan was residing on first floor of building.

When he stepped up to the stairs, he felt some weakness and there was pain in the wrist joint. He therefore sat at the foot of the steps of the staircase of first floor. He heard noise of children of his nephew Karan. He felt that children might be knocking on the door. He sat on the staircase and at that time he saw Babua @ Kamlesh coming from the direction of the room of his nephew Karan. Babua was accompanied by a person having blackish colour, who was small in height. Kamlesh inquired how was he and he replied that everything was okay. Kamlesh (Accused No.2) then asked black person to hurry up and he addressed that person as Rajkumar. Therefore, he came to know name of that person. Both of them then went down the staircase. Thereafter, Kamal emerged from same direction. He was hiding his face and went ahead of the place where Ramesh was sitting. Ramesh saw blood stains on clothes of these

persons when they crossed him. He immediately went to room of his nephew Karan. He rang the doorbell and then pushed the door. Door opened & he saw his nephew Ramkaran @ Karan and his wife Nitu lying on the floor of the room in pool of blood. He also saw that Ravi, son of Karan was hanging to a fan in said room. Terrified he came out after shutting the door. He came on ground floor. There was a public telephone booth under the building. He called Vinod and Sonu and told them about killing of Karan, his wife and son. Within 15 minutes, Sonu and Vinod came there. Ramesh was crying at that time. Thereafter, Ramesh, Vinod and Sonu again went into the room. At that time he saw Asmita, daughter of Karan in water drum. All of them again came down and Sonu informed to police. Within 10 to 15 minutes, police came to the building. Again alongwith police they went to that room. Police recorded his

statement in the room. Police also prepared inquest panchanama. Three persons had crossed him when he was sitting on the step of a staircase of first floor. He told police that he could identify all those persons. He identified Accused No.2 Kamlesh, Accused No.3 Rajkumar and Accused No.1 Kamal present in the Court. He also stated that at that time Accused No.1 Kamal wore red colour shirt with print of flowers on it. He could not remember description of clothes worn by other two accused persons. He could not identify the clothes which Accused No.1 had worn at the time of incident. A torn red colour shirt shown to him was identified by him as belonging to deceased nephew Ramkaran @ Karan. He has deposed that his nephew Ramkaran brought Accused Nos.1 and 2 from village to Bombay. They were working with Ramkaran. He had an occasion to go to their working place where accused persons and Karan worked. They had come

to Bombay 7 to 8 years before incident. He saw Accused No.3 Rajkumar for the first time at the time of incidence. Thereafter, he saw him in Thana and third time he saw him in the Court. He then clarified that he saw him in Jail premises at Thane. He explained that by word "Thana" he meant premises of Thane Jail. He also referred to test identification parade held in Thane Jail for that purpose.

37. His cross-examination reveals that he had gone to dispensary at about 7.00 p.m. and doctor gave him massage. He was not aware of the name of doctor to whose hospital he had gone alongwith Karan for treatment. He has then stated that on that day doctor had asked him to come on next day. On second day at about 11.15 a.m. he went to hospital of doctor on foot. When he left house of Ramkaran to

see doctor, his other two nephews viz. Vinod and Sunil left for their work. It took about 10 minutes to reach the hospital from house of Karan. As there was not a single patient in the hospital at that time, doctor applied medicine on his injury within period of 45 minutes. He left dispensary of doctor at about 12.15 hours and returned to house by auto-rickshaw. He deposed that he narrated to police while recording of statement that when he returned back from the hospital, his nephew Karan was in auto-rickshaw and stepped down from auto-rickshaw and went ahead of him in the direction of room. He could not assign any reason as to why said fact was not disclosed in his police statement. He accepted that house of his nephew Karan is on first floor adjacent to staircase and lift. He denied that when a person comes on first floor from staircase, he could see the door of room of his nephew Karan. He stated that he never used to

enter directly in the room of his nephew Karan and used to sit on step of staircase after ringing door bell of his house.

38. He has deposed that within 5 minutes of his sitting on step of staircase, he heard the noise of children in the room of Ramkaran. He stated that on that day he sat on steps of staircase leading to second floor and not on the steps of the staircase to the first floor. PW-7 Ramesh further states that it was not correct to suggest that as he was suffering an injured wrist joint, it was not necessary for him to sit on staircase. He has further accepted that a person sitting on staircase where he had sat could not have seen Room No.104. He denied that after sitting on stairs for about five minutes, he did not feel it necessary to enter the said room. He accepted that

from the place where he was sitting, person entering Room No.104 or leaving it could not have been seen. He denied that after paying hire charges of auto-rickshaw, he took 15 minutes to reach the room of his nephew deceased Karan. Paragraph 6 of his cross-examination is about clothes worn by deceased Karan. He has denied that staircase were always in dark. He was not aware of school time of children of his nephew. As he thought that children were playing in room, he did not find it necessary to open the door of Room No.104. 2 to 3 minutes after hearing noise of knocking on door, he saw Accused Nos.1 and 2 passing in his front. He denied that he did not see them from the staircase. He denied that there was no talk between himself and Accused No.2 Kamlesh in stairs on that day. He denied that person sitting on steps of staircase leading to second floor could not have seen a person going down to ground floor from

first floor. He had knowledge that PW-1 Sonu and accused persons were doing work at Malad in different factories and therefore, he knew them even before occurrence of incident. He has stated that when Accused Nos.1 and 2 crossed him, he doubted their arrival in the building but he did not go immediately to the house of Karan. He did not remember whether lift room existed in front of place where he was sitting on stairs or then whether there was facility of the lift in that building. He denied that person sitting has to peep to the side of stairs to see a person coming to or going down from first floor. He accepted that he did not tell police that Accused No.2 Kamlesh wore red coloured shirt. He could not assign any reason why said fact was not disclosed in his statement. He accepted that for the first time he was disclosing said fact before Court. He denied that person cannot use his finger if his wrist joint has a

fracture. He further stated that after he rang the door bell, he pushed the door and as door opened, he could see dead bodies. He narrated to police that he had seen body of Ravi hanging on fan, however he could not assign any reason as to why police did not record said fact in his statement. He accepted that he did not disclose the incident in room to the neighbours. He volunteered that their doors were locked. He did not make any hue and cry and did not narrate that incident to watchman who was available on ground floor as he was frightened. He did not disclose that fact even to PCO booth owner. He made telephone call to Vinod and Sonu simultaneously. He did not call doctor. As he did not have knowledge to give information to police, he did not call police. In paragraph 7 he has deposed about identification parade. He has stated that he was knowing all three accused before he went to identify them. He denied

that police had asked him only to disclose name of three accused persons. He denied that he had not gone to house of Ramkaran on 3rd and 4th day of English Calender month. He stated that he was not remembering the month but volunteered that it was 9th month as per English Calender. He denied that he had not seen anything.

39. In his chief PW-11 Vinod- younger brother of deceased in paragraph 2 points out the dispute between PW-1 Sonu & Accused 1 Kamal about the quantity of work & then demand of Rs. 2,000/- by Kamal from Karan, meeting for settlement of account, presence of his other brother Sonu at residence of Karan on that day, Kamal abusing & threatening Karan to kill. We are referring to omissions in his deposition in later paragraph & hence, those portions

are not mentioned here. He has stated that he did stay with Karan prior to the incidence dated 4.9.2006. He deposes that the murders were informed to him by his uncle PW-7 Ramesh & then, he telephoned his brother Sonu (PW-1) & communicated the occurrence to him. PW-1 Sonu has also deposed on these lines only in paragraph 3 of his examination in chief. He has identified the ornaments seized from accused no. 2 Kamlesh as of his sister-in-law deceased Nitu. He also identified mobile found in pant pocket of accused 1 Kamal as of Nitu.

40. In cross-examination, he admits that he was residing at Ganesh Nagar since year 2004. However, he denied that he never resided with Karan & stated that he did reside for 7 to 8 months in year 2006. In paragraph 10, he accepted the suggestion given to

him that his brother Karan had told him that accused 1 Kamal came to demand Rs. 2,000/- to be true. Before that he denied the suggestion that when he returned back to house, Kamal had already left.

41. The omissions in statement of PW-11 Vinod brought on record by defence are contained in paragraph 8 of his cross-examination. He stated that he informed police about quarrel between Accused No.1 and worker of a company viz. Divya Creation which occurred in the month of December 2004. He could not explain as to why said fact did not figure in his statement recorded by police. He had also informed police that owner of that company terminated the contract of accused Kamal and his brother Anuj and his friend. Again he could not explain why it was not appearing in his police

statement. He had informed police that his brother Karan had started Glass Factory and had asked accused Kamal to look after that business as servant. He could not explain why said fact did not figure in his police statement. Other facts which he narrated to police are Karan giving Rs.4,000/- to Kamal to go to village, coming of Accused No.1 Kamal to factory of Karan and demanding cash amount of Rs.2,000/- and his brother Karan asking Kamal to come to his house on Sunday. He could not explain why these facts were not appearing in his police statement. He stated that he did not narrate to police that Accused Nos.1 and 2 had got 50% work of Divya Creation. He accepted that he was deposing said fact for the first time before Court.

42. The later part of his cross-examination in

paragraph 8 pertains to his assertion about going to Kurla Railway Terminus in search of accused with police, seeing there the accused No.2 Kamlesh and accused No.3 Rajkumar, police taking search of Accused No.2 Kamlesh and seizing cash of Rs.700/- from his pocket, search by police of Accused No.3 Rajkumar and finding of two railway tickets in his pocket and its seizure. He has deposed that he pointed out to police all these facts in his police statement but could not explain why these facts did not figure in it. These facts are after the incident and pertain to province of investigation. Police has examined PW-24 and PW-3 to substantiate it. Hence, failure either to narrate these facts on part of PW-11 Vinod or his failure to explain why those facts did not figure in his police statement, by itself, cannot vitiate his evidence and does not impeach his credibility.

43. PW-1 and PW-11 have been examined by prosecution to bring on record the motive. During their Section 313 of Cr.P.C. examination & at its end the trial court has put a question to them. Accused persons were at the end asked whether they wanted to add anything more in their defence. All Appellants/Accused have answered this last question by stating that case against them was false. Deceased Karan, PW-7 Ramesh and PW-1 Sonu wanted that accused persons should leave Bombay. They have further stated that prior to the incident, there was quarrel between accused persons and these persons. Hence, these persons were so deposing and implicated them in false case. It is added by each of them that they had good relations with Karan. The contradiction in stance in this respect itself is apparent. On one hand they point out the quarrel and desire of Karan and others that they

should leave Bombay and on the other hand, they also claim good relations with deceased Karan. Even Accused No. 3 Rajkumar claims good relations with Karan. In this view of matter, prosecution has succeeded in proving on record the dispute between accused persons & deceased. Therefore, the omissions in depositions noted by us supra do not cause any dent in the prosecution story.

44. PW-27 Shankarsingh Rajput is the Police Inspector, who at the relevant time was Police Inspector at Charkop Police Station. He has acted as Investigating Officer. His deposition in examination-in-chief shows that in the night of 4.9.2006, after arrest, all accused persons were sent to Bhagwati Hospital for their medical examination and a bite mark was noticed on finger of accused Rajkumar.

Then he has deposed about further investigation i.e. disclosure by accused persons about their clothes, entries in the register maintained at the complex where Flat No.104 of Karan is located, about statement of watchman Ramsingh Thapa and he has then pointed out that he filed charge-sheet after completing investigation and on the strength of C.A. Reports Exhibits 59,60,62,63,65 and 67. He has further stated that as advised by Chemical Analyzer, clothes of deceased persons and accused persons were thereafter sent for DNA test with permission of Court and the DNA test report have been placed at Exhibits 92 and 93. In paragraph 13 he has briefly mentioned his investigation about motive.

45. His cross-examination shows that the said Inspector reached spot at about 1.45 p.m. and

printed F.I.R. was filled in between 7.00 to 8.00 p.m. He has also deposed that after taking two male panchas ie witnesses for the purposes of spot panchanama, he felt it necessary to have a lady pancha also and hence, he also obtained signature of third witness on spot panchanama. He, in paragraph 17, accepted suggestion given by accused that medical certificate issued in respect of accused Rajkumar mentioned "history of assault, injury to left middle finger". Paragraph 20 of his cross-examination is about alleged belated sending of clothes of accused persons for DNA test. He has accepted in cross-examination that for that purpose the wrapped clothes were taken out from paper and again wrapped in paper and sealed. It is to be noted that after receipt of the Chemical Analyzer's report which is against accused persons, suggestion was given by the accused persons to him that said C.A. report was

against prosecution and therefore, clothes were sent for DNA test. This is not accepted by him. We find that this suggestion is also not supported by record.

46. In paragraph 23 Police Inspector Rajput has stated that portion that "deceased Karan and his wife were looking like dead" appearing in police statement of Ramesh Nirmal was recorded by him as per his say. He accepted that Ramesh Nirmal told Sonu on phone that "Kamal and his friends have committed crime" and he did not disclose name of other accused. He also accepted that fact that Ramesh Nirmal told on phone to Vinod (PW-11) and Sonu (PW-1), that Kamlesh, Kamal and their associate Rajkumar killed Karan and his wife has been correctly recorded. He accepted that there was no eye-witness. He denied that he did not record statement of Vinod

Nirmal (PW-11) on 4.9.2006. He has stated that as statement was recorded at 11.30 p.m. of 4.9.2006, therefore, that date has been mentioned instead of 5.9.2006. He could not tell the time at which recording of statement was concluded. He accepted that in said statement previously name "Kamal" was written and later on it was corrected to read "Kamlesh" as stated by witness Vinod. He has also accepted that watchman Ramsingh Thapa in his police statement stated that initially two persons went to Flat No.104 and then one person went there. He agreed that after 4.9.2006 on 2 or 3 occasions, Sonu and Vinod were called at Police Station.

47. In paragraph 26, PW-27 Rajput stated that he requested doctor to take blood samples of deceased on very same day. He further stated that he

did not take any precaution regarding blood samples during the period from its receipt by him till its forwarding to Forensic State Laboratory on 11.9.2006. He pointed out that intervening days i.e. 7th and 8th September 2006 were holidays and therefore, he forwarded the said samples on 11.9.2006. He further accepted that complainant Sonu (PW-1) did not give description in detail of ornaments in F.I.R. He accepted that in his complaint Sonu did state that some properties and cash was stolen from flat of Karan. In paragraph 28 omissions in statement of PW-1 Sonu have been put to him. He has accepted that Sonu did not state before him that Kamal had been to Mumbai 3 to 4 years prior to incident, that he worked with Karan for two to two and half years and went back to his village, his younger brother Vinod had told him that accused Kamal had come to house of Karan to demand

Rs.2,000/-, that Karan told him that accounts would be settled on Sunday and balance amount would be paid. These aspects are already referred to by us above. In paragraph 29 he has stated that witness Sonu did not state before him that there was dispute between them regarding allotment of work and on that day accused persons had not attended the work in his company. In paragraph 30 the omissions of PW-7 Ramesh have been put to him. He has accepted that Ramesh did not state that he had gone to house of deceased Karan in the night, that in the morning Karan asked him that they would go to dispensary as he was having injury on his right hand, that he told that he got injury treated in his factory, that deceased Karan did not step down from auto-rickshaw and went ahead, that he sat on footsteps near staircase of first floor, that he felt that children might be knocking the door, that therefore, he sat on

the staircase, that a person small in height, that the same time Kamal to whom he knew came from the direction of room of his nephew Karan, that he also saw Ravi hanging with fan, that he was frightened after seeing dead bodies, that after 15 minutes Sonu and Vinod came there, that he was crying when Sonu came to house, that then all of them came down, that again alongwith police he himself and Vinod and Sonu went to room, that Kamal wore red shirt having print of flowers with lines and strips, that prior to incident Ramesh had occasion to go to factory, that sometimes he visited their factory and sometimes accused used to come to his work place. Thus the fact that Kamlesh addressed the unknown person as Rajkumar figures in is police statement.

48. Paragraph 31 is about omissions of Vinod

(PW-11) put to this witness. He has stated that Vinod did not state before him that in the month of December 2004 there was quarrel between accused Kamal and workers of company of Divya Creation, owner of company terminated contract of Kamal, Anuj and his friend, that his brother Karan had started glass factory alongwith other partners, that he asked Kamal to look after that business as a servant, that Kamal worked there for 15 days, that thereafter, he received news of birth of a son to him at village, that therefore his brother gave Rs.4,000/- to Kamal, who went to his village, after three months Kamal returned to Mumbai, that after 2 to 3 days after his return Kamal went in Divya Creation and asked Karan to give him Rs.2,000/- on account of salary, his brother told him to come on Sunday to settle the account, that Kamal went to brother's home on Sunday, that as soon as Kamal reached

house of Karan, he (Vinod) left house of Karan and returned back 20 to 25 minutes thereafter, that he saw accused Kamal abusing his brother Karan by standing outside the door of house, that Kamal threatened that he would kill all (here it needs to be noted that omission is not in respect of threat but about threatening "all"). This witness has further stated that Vinod did not tell him that Kamal left house of Karan and Vinod asked his younger brother (Karan) about matter, that he advised Karan to lodge police report but Karan did not care about that threat, that Karan asked accused Kamlesh as to why he had left work, that at that time his uncle Ramesh, elder younger brother Karan, his wife and children were at home, that police asked him whether he could identify Kamal and Babua, that thereafter police took him to Kurla Railway Station and he saw Accused Nos. 2 and 3 standing on platform, that in his

presence police took search of accused Kamlesh and seized cash of Rs.700/-, watch of his brother Karan, ornaments of his sister-in-law from Accused No.2 Kamlesh, that they found two railway tickets in possession of accused Rajkumar and police seized it. We have already observed that for steps in investigation by police need not be reflected in statement of PW-11 Vinod.

49. It is in this light that we have appreciated evidence of PW-7 and PW-11. We therefore conclude that the prosecution has brought on record that there was a dispute between the two groups over the allotment of work or its distribution in contract of washing clothes of a factory. One group was of deceased Karan & his two brothers while the other was of accused nos. 1 & 2. Accused no. 3 formed part

of group of these accused. Thus, a hostility between the parties stands established. Deposition & evidence of PW-7 Ramesh is on "last seen". We will revert back to this evidence after considering the other material on record to find out whether it connects the accused with the crime. Evidence of PW-11 Vinod Nirmal about abuses & threat given by the accused 1 Kamal to deceased Karan has remained unshaken during his cross-examination. Vinod also brings on record presence of Sonu at the time when Kamal paid visit to Karan & threatened Karan.

50. After consideration of circumstances like motive & last seen, it will be appropriate to look into the evidence about seizure of wrist watch of deceased Karan or ornaments of deceased Nitu from the accused no. 2 Kamlesh @ Babua or seizure of railway tickets from the accused no. 3 Rajkumar. As per

prosecution, both these accused persons are taken in custody at Lokmanya Tilak Terminus, Kurla where they had gone to board a train proceeding to Lucknow, U.P. Needless to mention that in their S. 313 statements, these accused, except for general denial, has not taken any specific stand about it. They have not pointed out that at the time when police took them into custody, they were working at their usual place of work or then were at their residence or at any other place.

51. PW-11 Vinod Nirmal who happens to be the brother of Karan has deposed that after the police arrived at the crime scene & investigation began, he was asked whether he would be in position to identify the assailants Kamal & Kamlesh. On his saying "yes", police took him to Kurla Railway Terminus, where he pointed out accused Kamlesh on platform. Kamlesh

was with accused 3 Rajkumar. Police apprehended them at railway station itself. In cross-examination, he has stated that he had seen these accused persons when they were crossing platform & that, he had not seen Rajkumar at any time earlier. After apprehending the accused, they came to Charkop police station where the search of both accused was taken. Police found wrist watch of his brother Karan & ornaments of Nitu in pockets of Kamlesh & two railway tickets in pocket of Rajkumar.

52. PW-24 PSI Prakash Jadhav has given date of incidence as 4.9.2007 instead of 4.9.2006. Senior Police Inspector told him to proceed to Kurla Terminus as accused 1 Kamal & accused 2 Kamlesh were to board train there to go to their village. He went to Kurla railway station accordingly at about 3.00 pm with staff. At about 9.32 PM he arrested both the

accused when they were standing in a que near ticket window. He has deposed that brother of deceased who was knowing accused Kamlesh & Rajkumar was with them. Upon identification by him, he arrested both the accused & came to Charkop police station where he drew arrest panchanama. He proved arrest panchanama at Ex. 28. In personal search, he found & seized silver pendants having photo of goddess Laxmi. 2 gold ear-rings, 1 pendent having symbol OM, 1 gold ring, 2 ear tops, 1 white stone, 1 american diamond. All these ornaments are marked collectively as Art. H. He also seized total Rs. 700/- in 6 currency notes of Rs. 100/- denomination each, 1 note of Rs. 50, 2 notes of Rs. 10 & 6 notes of Rs. 5 denomination. These are collectively marked as Art. K. He seized one citizen company made wrist watch from Kamlesh. He also seized two railway tickets at Art. I from Rajkumar. He identified all these articles in

trial court.

53. His cross-examination shows that he was at Belapur court when he got the message of Sr.P.I. to go to Kurla Railway Terminus as there was possibility of accused coming there. He reached that railway station at 4.45 pm & then brother of deceased was not with him. He accepted that in arrest panchanama Ex. 28 he has not mentioned that accused were standing in queue near ticket window at the time of their arrest. He denied that he did not go to Kurla Station. He then points out time of his arrival at Charkop police station, asking staff to bring witnesses & going to cabin of Sr. P.I. Rajput. Pancha witnesses came there within two minutes. He denied that pancha witnesses stated that two railway tickets seized were from V.T. to Lucknow. He denied that those tickets were planted. He denied that Art. H

(coll.) or Art. K notes did not have blood stains. He accepted that wrist watch Art. I was not having blood stains. He was not aware whether such wrist watch is available in market. He denied that the articles were not seized from accused or that he obtained signatures of panchas on a ready panchanama. He accepted that he did not obtain signatures of accused on panchanama.

54. PW-3 Umesh Desai is the pancha witness on Ex. 28 & he proved it before PW-23 PSI entered the witness box. There is nothing in his cross-examination to discredit him or to doubt the panchanama at Ex. 28. He also identified the articles. In chief he stated that railway tickets were from C.S.T. i.e V. T. to Lucknow. In cross-examination when tickets were shown to him, he accepted that the same were from Tilak Nagar to Lucknow. Kurla

Terminus is also known as Tilak Nagar. He accepted that on the slip affixed to the articles below the signatures, there was no time & date. However as the tickets are on record, incorrect narration of its contents in panchanama, by itself is not sufficient to doubt the prosecution story in present facts where the arrest is in the light of previous intimation & at 9.32 PM which is the time of sale or issue appearing on two railway tickets. PW-11 Vinod also points out that accused 2 & 3 were apprehended at Kurla railway terminus. Perusal of Ex. 28 shows that it totally supports the evidence of these witnesses. It also describes the railway tickets correctly. Details of the ornaments seized with weight & valuation thereof done with the help of goldsmith Dhanpal Deoram Jain also finds mention. Thus, description of seized ornaments has come on record on 4.9.2006 itself.

55. PW-11 Vinod who stayed with the deceased Karan & Nitu identified the wrist watch of Karan & ornaments of Nitu. Vinod narrating to police that he could identify accused, his accompanying them to Kurla Station are the developments which occur as a part of investigation & not as a part of crime. Hence, his inability to explain why these facts do not figure in his police statement though he did narrate it, does not in any way prejudice the trial. Identification by a younger brother of a wrist watch of his brother or few ornaments of his sister-in-law need not be viewed with suspicion. It is to be noted here that the entire family of said brother was wiped out & as such, the surviving member who stayed with that family was only available to identify these articles. Accused had been given full opportunity to cross-examine him.

56. We therefore find that the arrest of accused 2 & 3 when they were about to leave for Lucknow with wrist watch of Karan, ornaments of Nitu is established by the prosecution. Bloodstains on the currency notes also prove that those currency notes were taken from the residence of deceased Karan. We will refer to the C.A. Report little later. Why the wrist watch was not on wrist or then ladies ornaments in such a number were in pocket of a male like accused 2, has not been explained by the accused. Possession of bloodstained currency notes by the accused 3 also is sufficient to implicate him.

57. PW-16 Dattaram Bhandari & PW-19 Umesh Chudasama are examined by the prosecution to prove seizure of bloodstained clothes of accused 1 Kamal while PW-20 Pradeep Shinde to prove seizure of bloodstained clothes of accused 2 Kamallesh &

accused 3 Rajkumar.

58. PW- 16 Dattaram has witnessed the memorandum by which accused 1 Kamal offered to show place where the clothes worn by him & mobile removed from the spot at the time of commission of offence were hidden. He also deposes about his accompanying police to the spot where Kamal took them & then handing over of the pant & shirt put on by him on said day. Accused 1 carried them to a room in his house & from loft thereof brought down those clothes. A mobile without seam card was also found in pocket of his full-pant. Dattaram has deposed that same were bloodstained. Accused could not succeed in shaking his credibility. This witness has proved memorandum at Ex. 74 & recovery panchanama at Ex. 75. He also identified the shirt & pant as Art. M & N. PW-19 Chudasama is the other witness on Ex. 74,

75 & on identification of clothes. He has also independently proved & supported the memorandum & recovery under S. 27 of the Evidence Act.

59. PW- 20 Pradeep Shinde proves memorandum & recovery under S. 27 of the Evidence Act from accused no. 2 Kamlesh on 7.9.2006. Kamlesh had thrown his clothes & clothes of accused 3 Rajkumar in a plastic bag behind a public latrine near Rotary Club at Juhu. He has proved memorandum of admission drawn at police station at Ex. 85 & recovery panchanama of a plastic bag containing the clothes searched out from the garbage by Kamlesh from behind the public latrine. He also identified those clothes which the trial court marked as Art. O1,O2 & Art. P1,P2. Plastic bag in which these clothes were found is identified & marked as Ex. O along with the packet which said bag was put by police. Pradeep

has deposed that the same were declared as clothes of himself & of Rajkumar by accused 2 Kamlesh. Panchanama Ex. 86 mentions that these clothes were bloodstained. Accused 2 Kamlesh pointed out his clothes & cloths of accused 3 Rajkumar. Blue colour full sleeve shirt & an ash coloured full-pant was his while the black coloured shirt with full sleeves & a bluish colour full pant was of Rajkumar. These clothes are described in detail in Ex. 86. Places at which these clothes were having the stains are also stated therein. Defence could not succeed in bringing on record any lacunae or other material to discard this recovery.

60. Evidence of PW-20 Pradeep shows that the accused no. 2 Kamlesh searched for the particular polythene bag in garbage used earlier by him & found it out. Thus, though this recovery can be said

to be from a place behind public latrine, two bloodstained shirts and two pants (of two accused in same crime) have been found in it together. Hence that recovery apart from clothes bring on record his knowledge that the clothes were together. Other evidence on record proves involvement of accused no. 3 also in the crime. We therefore find no merit in the contention that it is not binding and cannot be used against Accused No.3.

61. Report of the chemical analyzer & DNA report are questioned on the ground that the blood samples or the clothes were not forwarded immediately to the concerned experts. We find the contention that the articles were deliberately forwarded belatedly meaningless. It is the argument of Advocate Apte that after securing blood of deceased, it was sprinkled on the seized clothes &

then the same were sent to CA. After getting knowledge that this delay may have an adverse effect, the DNA report has been obtained. Evidence of PW-27 Shri Rajput, PI who conducted the investigation shows that he did request doctors conducting the PM to give the blood samples of deceased on 4.9.2006 itself. He had no documents to show the date on which he got those samples but according to him, he received the same on 7th or 8th September, 2006. Two intervening days thereafter, being Saturday & Sunday, he sent the same on 11.9.2006 i.e. Monday. He accepted the suggestion that clothes of the accused persons were seized by him before 11.9.2006. He denied that he sprinkled the blood of deceased on said clothes. These events & developments do not show any unreasonable delay in the matter.

62. Report of the CA at Ex. 59 shows that blood group of deceased Nitu could not be determined. CA report Ex. 63 shows blood group of deceased Karan to be "AB". Ex. 65 shows blood group of child Ravi to be "B". Ex. 67 shows blood group of child Asmita to be "B". Human blood is detected on the clothes worn by the accused appellants on 4.9.2006. Ex. 30 & 31 mentioned in the report of the chemical analyzer at Ex. 105 are the clothes of accused 1 Kamal, Ex. 26 & 27 are the clothes of accused 2 Kamlesh while Ex. 28 & 29 are the clothes of accused 3 Rajkumar. The position emerging can be briefly summarized as under :--

<u>Clothes of Accused</u>		<u>Blood group found.</u>
Ex. 30 Shirt of Kamal.		B & AB.
Ex.31 Full pant of Kamal.		Inconclusive.
Ex. 26 Shirt of Kamlesh.		AB.

Ex. 27 Full pant of Kamlesh.		AB.
Ex. 28 Shirt of Rajkumar.		AB.
Ex. 29 Full pant of Rajkumar.		B & AB.

These clothes were on person of the accused on 4.9.2006 when they killed Karan, Nitu, Ravi & Asmita. Their clothes have the bloodstains of either blood of deceased Karan or then Karan & his son/daughter. Ex. 104 shows that blood group of the accused persons could not be ascertained. Hair found on spot in hands of deceased Nitu are found dis-similar to the hair of accused persons vide Ex. 105 read with Ex. 103.

63. PW-22 Shrikant Ladhe is the assistant chemical analyzer examined by the prosecution to bring on record the DNA test results. He has proved report Ex. 93 on 22 clothes received by him for examination. These exhibits also include the clothes

of accused persons with clothes of the deceased. In report at Ex. 93 he has detected human blood on all these exhibits. He has also carried out DNA test to determine the source of blood on clothes of accused & that report is proved as Ex. 92. DNA extracted from bloodstains on Ex.1-T shirt of deceased Ravi Karan, Ex. 3 bed sheet found on his neck, Ex. 4 petticoat found on his neck, Ex. 8 Full Pant of deceased Karan, Ex. 10 odhani found on his neck, Ex.17 shirt & Ex. 18 full pant of accused 2 Kamlesh, Ex.19 shirt & Ex. 20 full pant of accused 3 Rajkumar, Ex.21 half-shirt & Ex. 22 full pant of accused 1 Kamal are analyzed & that report is proved by him as Ex. 92. Non-interpretable results were obtained on clothes of deceased Nitu & Asmita. His interpretation no. 2 in Ex. 92 reveals that DNA profile of blood on Ex. 4 petticoat found on neck of deceased Ravi Karan, Ex. 8 Full Pant of deceased Karan, Ex. 10 odhani

found on his neck, Ex.17 shirt & Ex. 18 full pant of accused Kamlesh, Ex.19 shirt & Ex. 20 full pant of accused Rajkumar, Ex.21 half bush shirt & Ex. 22 full pant of accused 1 Kamal are identical & from one & same source of male origin. DNA profile match with the maternal & paternal alleles in the source of blood. He has deposed on these lines & our attention has not been drawn to any thing adverse in his cross-examination. Sending of clothes for DNA analysis little late by itself can not render these results doubtful when the same were forwarded to CA immediately. This evidence on blood grouping & DNA analysis shows presence of all the appellants accused together at the residence of deceased Karan on 4.9.2006 & their participation in these multiple murders. Otherwise blood of same group emanating from same person could not have been detected on their clothes.

64. This also demonstrates hollowness in the argument of appellant no. 3 Rajkumar that he had an injury to his finger. While giving its history to doctor Shashikala Nadkarni (PW-18) on 5.9.2006 after his arrest, accused Rajkumar has disclosed injury to left middle finger to be by a bite of woman & injury to fore finger due to a stone. This doctor has deposed that though she had not mentioned the age of injury in the certificate Ex. 80, it was sustained within 24 hours. Even otherwise, there is no justification why this blood should travel to clothes of all accused or the on clothes of deceased Ravi s/o Karan. It is to be noted that even currency notes at Ex. 1 seized from accused 2 Kamlesh are stained with human blood s per CA report at Ex. 105. Thus there is cogent material on record to gather that all three accused were present at crime scene when it was given effect to & participated in it.

65. Appellants have assailed the mode & manner in which the test identification parade i.e. TIP has been conducted. It is true that Rule 16 of the rules framed to regulate TIP does not permit parading of more than one accused at a time and it enables the accused sought to be paraded to object to the persons with whom he is put. Panchanama of the proceedings ought to have expressly revealed grant of such an opportunity to the accused nos. 1, 2 & 3. But then as argued by Advocate Apte, PW-7 Ramesh already knew Kamal as also Kamlesh & therefore had to identify appellant no. 3 Rajkumar only. PW-28 Ujwala was to identify only accused no. 1 Kamal. Though proceedings of TIP prepared by Special Executive Magistrate PW-15 Mahadeo Bhingare note that Ujwala identified appellant accused 1 Kamal, in her deposition before the court she has denied it &

deposed that she was not in position to state the age of the young person who had asked her where the room no. 104 was situated & was not in position to identify him. She did not accept portion marked "A" in her police statement that she could identify the said person & when APP cross-examined her as she was declared hostile, she deposed that she did not identify that person in TI parade. PW-21 Uddhav Narwade who is witness to this TIP has however deposed as per proceedings at Ex. 72 & supports identification of accused Kamal by Ujwala. We are required to look into said exercise also qua accused 3 Rajkumar & his identification by PW-7 Ramesh. Proceedings at Ex. 72 record the identification parade conducted by PW-15 Mahadeo on 22.9.2006. Ages of the accused person as disclosed by them in TIP are - Kamal 22 years, Kamlesh 20 years & by Rajkumar as 19 years. SEM formed three rows of 6 persons each, In first row, 3

dummy persons were 19 years while one was 20 years old while remaining two were 22 years & 27 years old. In second row, two were 18 years, one was 19 years, one was 21 years, one was 28 years while the last was 52 years old. In third row, ages of dummy persons were 18 years, 20 years, 21 years, 22 years, 27 years & 32 years respectively. Accused persons were given option to stand in row of their choice thus eliminating any ground to raise the objection. This in effect shows that PW-7 Ramesh was required to identify Rajkumar out of total 19 persons as he already knew Kamal & Kamlesh. PW-28 Ujwala was expected to identify one accused ie Kamal out of total 21 persons. In this situation we reject the technical objection raised by Adv. Apte. As accused 1 Kamal & accused 2 Kamlesh were already known to PW-7 Ramesh, identification of accused 3 or appellant 3 Rajkumar by him only needs to be accepted by us.

Similarly, evidence of PW-15 SEM Mahadeo Bhingare & of PW- 21 Uddhav Narwade deserves credence over refusal of PW-28 Ujwala in Trial Court to identify accused no. 1 Kamal.

66. Prosecution has, therefore, apart from PW-7 Ramesh another uninterested witness PW-28 Ujwala who saw accused 1 Kamal at the residential complex where she & deceased Karan had their respective rooms or blocks. Thus, assertion of PW-7 Ramesh that he saw Kamal in said complex coming from the direction in which room of Karan is situated can not be disregarded. The finding of blood of deceased on clothes of all three accused also militates with the contention that PW-7 Ramesh did not see them at the spot & it needs to be rejected. It is seen that response of every individual in a given situation may vary & it is settled proposition that different

persons react differently in the same situation. Hence conduct of PW-7 Ramesh in first informing the crime to brothers of Karan can not be seen as an unnatural conduct. In any case, it does not cast any doubt on his trustworthiness.

67. PW-28 Ujwala during her cross-examination by APP after she was declared hostile has stated that watchman at the entrance of the complex maintained a register & every visitor was supposed to sign in it after disclosing the identity & the occupant to be contacted. Police had seized that register & also obtained specimen signatures of the accused persons. This material was sent to the handwriting expert but report of the said expert does not favour the prosecution. Fact is no such report is produced on record by the prosecution. Hence, this can not be viewed as an extenuating circumstance in the present

facts. Similarly, non-submission of a report on fingerprints lifted from the spot is not sufficient to exonerate them. Fact that hair in the hands of deceased Nitu did not match with hair of accused person or then possibility of the involvement of some other person in the crime is not sufficient in present facts to exonerate these three appellants.

68. We therefore find that circumstances constituting a chain & leading to conclusion of participation of three accused in these 4 murders has been proved on record by the prosecution. No circumstance incompatible with the presumption of their innocence is left out. Hence, there is no merit in this appeal.

69. Accordingly, we dismiss this appeal & uphold the conviction of the appellant accused. The

punishment as imposed in operative part of the impugned judgment dated 25.11.2008 delivered by 6th Ad hoc Additional Sessions Judge, Sewree, Mumbai is maintained. Muddemal property be dealt with as per the direction no. 6 contained in said operative part.

(A.S. GADKARI, J.)

(B.P. DHARMADHIKARI, J.)

At this stage Advocate Abhaykumar Apte points out that his fees have not been quantified. Looking to the assistance received and bulk of matter, we quantify fees of learned appointed Advocate at Rs.7,500/-.

(A.S. GADKARI, J.)

(B.P. DHARMADHIKARI, J.)