

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.530 OF 2012

Anita @ Meena Rajendra	]	
Khandabale,	]	
Age : 37 yrs	]	
Residing at B 21/10, Lower	]	
Indira Nagar, Bibvewadi, Pune.	]	
(Presently in judicial custody in	]	
the Yerwada Central Prison,	]	... Appellant/
Yerwada, Pune)	]	Orig.Accd.No.1

V/s.

The State of Maharashtra	]	... Respondent
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Mr. Vijay Hiremath for Appellant/Original Accused No.1.
Smt. V. R. Bhonsale, APP for State/Respondent.

WITH

CRIMINAL APPEAL NO.510 OF 2014

Ajay Anant Ghag,	]	
Age:40 yrs, Occupation : Service	]	
B 20/10, Lower Indira Nagar,	]	
Bibvewadi, Pune.	]	... Appellant/
(At present in Yerwada jail, Pune)	]	Orig.Accd.No.2

V/s.

The State of Maharashtra	]	... Respondent
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Mr. Harshad Bhadbhade for Appellant/Original Accused No.2.
Smt. V. R. Bhonsale, APP for State/Respondent.

CORAM :- SMT. V. K. TAHILRAMANI AND
SMT. I. K. JAIN, JJ.

RESERVED ON :- JANUARY 21, 2015
PRONOUNCED ON :- FEBRUARY 25, 2015

JUDGMENT (PER SMT. I. K. JAIN, J.) :-

Criminal Appeal 530 of 2012 has been preferred by the original accused No.1 Anita alias Meena Rajendra Khandabale. The original accused No.2 Ajay Anant Ghag has preferred Criminal Appeal No.510 of 2014. In both the appeals, Appellants have challenged their conviction and sentence passed by the learned 8th Additional Sessions Judge, Pune in Sessions Case No.418 of 2008 vide Judgment and Order dated 20.01.2012. By the said Judgment and Order, the learned Additional Sessions Judge convicted and sentenced the Appellants as under :-

Convicted u/S.	Sentenced to
120-B IPC	Rigorous imprisonment for 10 years and fine of Rs. 2,500/- each, in default rigorous imprisonment for 6 months each.
302 r/w. 34 IPC	Imprisonment for life and fine of Rs.2,500/- each, in default rigorous imprisonment for 6 months each.
394 r/w. 120-B IPC	Imprisonment for life and fine of Rs.2,500/- each, in default rigorous imprisonment for 6 months each.

The learned Sessions Judge directed that the substantive sentences of imprisonment shall run concurrently.

2. For the sake of convenience, we shall refer the Appellants as they were referred before the trial Court i.e. Anita alias Meena Rajendra Khandabale as original accused No.1 and Ajay Anant Ghag as original accused No.2.

3. The prosecution case briefly stated is as under :-

That Dattatraya Pedanna Yemul was the owner of Peshwai Creation and Shrimant Collection, Pune. He used to wear Gold ornaments like goaf, chain, bracelet, rings and wrist watch. He was acquainted to accused No.1 Anita, a married lady. Dattatraya Yemul used to take accused No.1 Anita on his two wheeler to Taljai hill.

4. Accused No.2 Ajay and accused No.1 Anita had close relations. Both the accused were residing for some time at Lower Indiranagar, Bibvewadi, Pune.

5. On 08/03/2008 accused No.1 Anita purchased tablets Atvin - 2 mg from a medical shop and pedha from Sweet Mart. In the evening, she called Dattatraya Yemul on mobile no.9822601053 and asked him to come to Gajanan Maharaj Chowk, Laxminagar, Pune. Dattatraya went there on his Activa MH-12-CM-9935. Anita gave him pedha to eat. She

had already mixed two tablets of Atvin – 2 mg in pedha. Both of them then had sugarcane juice at Raswanti of Samrat Dharwatkar in front of Shinde High School. From there they went towards Taljai hill.

6. PW 29 Balasaheb Dhere was the friend of Dattatraya Yemul. He used to go to Taljai hill for evening walk. When Dattatraya and Anita had been to Taljai hill, Balasaheb came there in his 800 Maruti car. While returning, his car did not start. So Balasaheb was waiting for the mechanic to come. He saw Dattatraya and Anita on Activa and talked to them. Balasaheb also noticed that accused No.2 Ajay was standing at some distance with his Hero Honda motorcycle and exchange of gestures going on between Anita and Ajay. Balasaheb inquired with Dattatraya who disclosed that they had come in search of purse of Anita which was lost. Thereafter, Dattatraya and Anita went away from Taljai hill.

7. On 09/03/2008 at around 7.00 to 07.30 a.m., two boys PW 4 Jafar Shaikh and PW 7 Samir Sayyed came to play cricket on the cricket ground at Taljai hill. They saw a person lying in the bushes at some distance. They informed

Sahakarnagar Police Station. PW 33 API Sunil Kulkarni rushed to the spot along with the police staff, photographer and dog squad. They saw an injured person lying dead. C.R.No.88 of 2008 was registered against unknown person under Section 302 of the IPC on written report of PW 1 PSI Yadav.

8. It was followed by spot panchanama drawn in the presence of panch witnesses. Two wheeler Activa was lying on the spot. The same was seized. API Kulkarni noticed a stone kept on the back of the deceased and other articles viz. chappal, knife, nylon rope lying there. The articles were seized at the time of recording spot panchanama. Rough sketch of scene of offence was drawn. Photographs were taken. No clue could be traced by the dog squad. Family members of deceased were informed. The dead body was sent for post mortem to Sasoon Hospital. Inquest panchanama was prepared by PSI Yadav in Sasoon Hospital.

9. Dr. Ajay Taware was the Medical officer on duty at Sasoon Hospital. He conducted post-mortem examination. Multiple incised and chop wounds were found on the dead body. Doctor opined probable cause of death due to traumatic and hemorrhagic shock due to chop and blunt

injuries over the head with stab injuries on the neck.

10. On 09/03/2008 morning after receiving telephonic call from Sahakarnagar Police Station, Amol and Rahul, sons of the deceased, came to Sasoon Hospital dead house and identified the dead body as of their father. They informed police that their father used to wear gold ornaments. On 08.03.2008, he carried cash of Rs.5,000/- and was wearing gold bracelet of 15 tolas, 2 gold chains and 2 gold rings but police could find only a wrist watch and one gold ring on the person of dead body. On receiving information from the sons of deceased, investigation proceeded. PW 32 PI Shinde, PW 33 API Sunil Kulkarni and PW 34 PSI Sachin Patil of Sahakarnagar Police Station conducted the investigation.

11. During investigation, call details were collected. It was revealed that deceased received last call on 08.03.2008 from mobile number 9860692134. The sim card of this mobile was in the name of PW 14 Pradip Kurki. Pradip had given it to his friend PW 13 Ravi Kannur who lost the same at Sinhgad fort on 02.03.2008. Later it was seized from accused no.1 Anita.

12. It was further revealed during investigation that before using the sim card which was lost, another sim card bearing No.9766049110 was being used in the same mobile handset. It was found in the name of Mukund Vaidya. Accused No.1 Anita was using the sim card which was lost at Sinhgad. Many calls were exchanged between mobile numbers 9860692134 with accused no.1 Anita and 9326058466 in the name of accused No.2 Ajay. On the basis of exchange of telephone calls, investigating agency arrested accused No.1 Anita alias Meena on 12.03.2008. Two mobile handsets were seized from her.

13. When in police custody, accused No.1 Anita had shown the spot to police from where she got sim card at Sinhgad. She also gave memorandum to discover the ornaments. At her instance gold ornaments concealed in earthen flowerpot at the terrace of the house were recovered. Accused No.2 was arrested on 15/03/2008 on the basis of call detail report (CDR). Mobile no.9326058466 was seized from him in the presence of panchas.

14. On 18/03/2008 accused No.2 Ajay gave a memorandum. At his instance gold ornaments of deceased

and clothes of accused having blood stains were recovered. Seized articles and samples collected from Sasoon Hospital were sent to Chemical Analyzer. On 10/04/2008, test identification parade in respect of accused No.2 Ajay was conducted by Special Executive Officer PW 31 Asha Holkar. PW 29 Balasaheb Dhere identified accused No.2 in the test identification parade. The statements of witnesses were recorded. On completion of investigation, charge sheet came to be filed against the Appellants/accused before Judicial Magistrate First Class, Pune. In due course, case was committed to the Court of Sessions.

15. Charge was framed against the Appellants/accused Nos.1 and 2 under Sections 328 read with 120B, in the alternative 328 read with 34; 302 read with 120B, in the alternative 302 read with 34; 404 read with 120B, in the alternative, 404 read with 34 and 394 of the Indian Penal Code. The Appellants pleaded not guilty to the charge and claimed to be tried. Their defence was of total denial and false implication.

16. On going through the evidence of prosecution witnesses, learned Additional Sessions Judge convicted and

sentenced the Appellants as stated hereinbefore in para 1. Hence, this appeal questioning the correctness of Judgment of conviction and Order of sentence.

17. We have heard the learned Advocates for Appellants/accused nos.1 and 2 and the learned APP for State. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence on record. After meticulously considering the same, we are of the opinion that there is no merit in the Appeal for the reasons mentioned below.

18. Needless to say that in a case of murder, factum of homicidal death is to be established by the prosecution beyond reasonable doubt. PW 22 Dr. Taware was a Medical Officer on duty at Sasoon Hospital. On 09/03/2008, he conducted post-mortem examination on the dead body and found several chop, stab and incised wounds all over the body. The corresponding internal injuries were also noticed on the head and thorax. According to Dr. Taware, all the injuries, except one i.e. laceration from left forehead to left shoulder vertically left chin to left occipital region, were fresh

and ante-mortem. The approximate time of death was within 12 to 18 hours before post-mortem examination. Dr. Taware conducted post-mortem between 4.30 to 5.45 p.m. It indicates that death must have been caused before 4.30 a.m. on 09/03/2008. Doctor opined the cause of death due to traumatic hemorrhagic shock due to chop and blunt injuries over head with stab injuries over neck.

19. It appears from spot panchanama (Exh.137) that a knife, nylon rope having bloodstains and a stone which was found on the back of the body were seized at the time of recording panchanama. These articles were shown to Medical Officer. He opined that injuries in Column Nos.12, 14 and 15 are possible with nylon rope. The stab and incised wound can be caused by knife and chop wound over right occipital region of head can be caused with the stone. It is stated by Dr. Taware that the external injuries cumulatively with internal injuries were sufficient in the ordinary course of nature to cause death.

20. During the course of arguments, learned Advocates for the Appellants vehemently contended that possibility of causing death due to animal bite cannot be

ruled out in view of the admissions brought in the cross-examination of the two boys PW 4 Jafar and PW 7 Samir. It is the prosecution case that on 09/03/2008 at around 7 to 7.30 a.m. Jafar and Samir were playing cricket in the cricket ground at Taljai Hill. They noticed one person lying in injured condition in the bushes at some distance. They informed the police. PW 4 Jafar stated in cross-examination that there were 3-4 dogs near the dead body. He denied that the dogs present near the dead body were biting the dead body. PW 7 Samir had also not stated that the dogs were biting the dead body. Even if it is assumed for a moment that the dogs were near the dead body, then also considering the medical evidence, nature of the injuries noticed on the dead body during post-mortem examination and the evidence of PW 22 Dr. Taware, submission made on behalf of Appellants does not appear to be true.

21. Besides the medical evidence, prosecution has placed reliance on inquest panchanama (Exh.33), photographs of the deceased (Arts.1 to 12) proved by Photographer PW 5 Nemichand Chavan, spot panchanama (Exh.137), rough sketch of the scene of offence (Exh.138) to show that death in question was a homicidal death.

Appellants could not elicit anything contrary in the cross-examination of PW 22 Dr. Taware. Therefore considering the post-mortem report (Exh.108), testimony of PW 22 Dr. Taware, panchanamas referred above and photographs, we find that factum of homicidal death is proved beyond reasonable doubt.

22. To establish that accused are the authors of commission of crime, prosecution case exclusively rests on circumstantial evidence. On the law relating to circumstantial evidence, learned APP Mrs. Bhonsale relied upon ***Prakash V/s. State of Rajasthan***¹. The Supreme Court has reiterated the well settled propositions of law on circumstantial evidence in this case. In the catena of decisions, the Supreme Court has held that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. A legal trend would further show that for a conviction in murder case on circumstantial evidence, following conditions must be fulfilled:

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- i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, they should not be explainable on any other hypothesis except that the accused is guilty.
- iii) The circumstances should be of a conclusive nature and tendency.
- iv) They should exclude every possible hypothesis except the one to be proved.
- v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability, the act must have been done by the accused and the accused alone.

23. Keeping in view the settled law on circumstantial evidence, the evidence of prosecution witnesses examined in the present case needs to be scrutinized. Prosecution has examined in all 34 witnesses in support of its case. The

conviction of Appellants is based on the following circumstances:

- (A) THE DECEASED WAS LAST SEEN IN THE COMPANY OF ACCUSED.**
- (B) DECEASED WAS WELL ACQUAINED TO ACCUSED NO.1.**
- (C) ACCUSED NOS.1 AND 2 WERE WELL ACQUAINTED TO EACH OTHER.**
- (D) RECOVERY OF GOLD ORNAMENTS AT THE INSTANCE OF ACCUSED NOS.1 AND 2.**
- (E) C. A. REPORTS.**

24. **(A) THE DECEASED WAS LAST SEEN IN THE COMPANY OF ACCUSED.**

(B) DECEASED WAS WELL ACQUAINED TO ACCUSED NO.1.

(i) These circumstances are co-related. According to prosecution, Dattatraya Yemul was acquainted to accused no.1 Anita. She was a married lady. On 08/03/2008 at about 8.30 to 9.00 p.m., Anita phoned Dattatraya and called him near Gajanan Maharaj Temple. Dattatraya used to wear gold ornaments and accused Nos.1 and 2 planned to rob Dattatraya.

(ii) PW 10 Laxminarayan Bandi was the manager of Peshvai Creation. He stated that on 08/03/2008, Dattatraya told him that he wanted to help some person and he has been called with a cash of Rs.5,000/-. Accordingly Dattatraya left on his Activa scooter with cash of Rs.5,000/-.

(iii) Thereafter Dattatraya and Anita were seen by PW 25 Maruti Khopade at his Raswanti. PW 25 Maruti stated that both Dattatraya and Anita had been to his Raswanti. They had sugarcane juice. Then they left on scooter towards Taljai Hill.

(iv) PW 21 Amol is the son of deceased. He stated that on 08/03/2008, it was birthday of his brother Rahul. In the evening at about 9 to 9.15 p.m., his father told him that he is going to help one person and so they may celebrate birthday of Rahul in his absence. He also stated that they celebrated the birthday in Hotel Garden Court, Chandni Chowk. They were there till 1.30 a.m. but his father did not come. On 09/03/2008 at about 7 to 7.30 a.m., their chauffeur Vyankatesh Dasa came to the house and inquired about Anna (Dattatraya). Amol asked him to go to their flat at Guruwar Peth and find out whether Anna was there. After

some time, Vyankatesh returned and informed that flat at Guruwar Peth was locked and in the parking, two wheeler of Anna was not found. So Amol tried to contact Dattatraya on mobile. It was switched off. Amol informed his brother Rahul. Then they went in search of their father. He was not found. Police officer Jagdale of Sahakarnagar Police Station called Amol on phone and told him to come to Peshwai shop. They went to Peshwai shop. From there, they were taken by police to Sasoon dead house. They saw dead body of their father and identified the same. It was noticed by them that except one gold ring and Titan wristwatch, other gold ornaments on the person of their father were missing. The mobile handset of Dattatraya was also not found. Amol stated that his father was wearing gold bracelet of about 15 tolas having his name in English, one goaf having round design, a chain with pendent of Swastik and rings. Those ornaments were not on his person. From the evidence of PW 21 Amol, it is clear that whereabouts of Dattatraya were not known after 9-9.15 p.m. of 08/03/2008. PW 29 Balasaheb lastly seen Dattatraya on that day at 9.30 p.m. in the company of both the accused. Before that, PW 6 Deepak Sharma who was a watchman at Peshwai Creations, saw Dattatraya Yemul in the shop on 08/03/3008 at about 9.00

p.m. and then he saw Dattatraya leaving the shop.

(v) On last seen, evidence of PW 29 Balasaheb Dhere is important. He was a friend of Dattatraya. Balasaheb was running Hotel Pyasa situated at Mandai. He is suffering from diabetes and so daily in the evening he was going to Taljai Hill for walk. Dattatraya used to come to his hotel during night for chit-chatting. His hotel remained opened till 1.30 a.m. He stated that 4-5 times he saw Anita with Dattatraya at Taljai Hill and Dattatraya introduced her to him. He identified accused no.1 before the Court as the same lady.

(vi) In his further evidence, PW 29 Balasaheb said that on 08/03/2008 at about 9.30 p.m., he had seen Dattatraya and Anita at Taljai Hill. At about 7.30 p.m., Balasaheb had been to Taljai Hill in his Maruti car. He parked his car in open cricket ground and walked towards Taljai Hill. At 9.30 p.m. he returned to cricket ground where his car was parked. He tried to start his car but it could not. So he called mechanic on phone. He was waiting for the mechanic to come. That time he saw Anita and Dattatraya coming on Activa. Seeing Balasaheb, Dattatraya stopped and told that they had come in search of Anita's purse. It is stated by PW 29 Balasaheb

that at that time, one person was standing with a motorcycle at about 25 ft. from them. He saw gestures going on between Anita and that person. Balasaheb called that person to push his car but he avoided. He identified that person as accused no.2 before the Court.

(vii) The evidence of PW 29 Balasaheb has been assailed on the ground that his statement was recorded on 27/03/2008 and delay has not been explained. Another ground of attack is that PW 29 Balasaheb could not state description of clothes of accused no.2. He was not knowing accused no.2. Prosecution has not brought any evidence regarding availability of lights at the relevant time which makes the evidence of Balasaheb doubtful.

(viii) It is pertinent to note that letter dated 22/12/2011 (Exh.197) issued by M.S.E.B. Junior Engineer was produced by the prosecution during trial. This letter is admitted by the accused. It shows existence of sufficient light from the bottom of Taljai Hill to Taljai Temple. In view of this uncontroverted letter, defence of non-availability of street lights at Taljai Hill at the relevant time would not be available to the defence.

(ix) During investigation, PW 31 Tahsildar Asha Holkar conducted test identification parade on 10/04/2008. Accused no.2 was identified by PW 29 Balasaheb. Accordingly, memorandum of identification (Exh.124) was drawn by Tahsildar Asha Holkar. PW 31 Asha Holkar is an independent witness. Nothing could be brought in her cross-examination to disbelieve her testimony.

(x) So far as delay in recording statement of PW 29 Balasaheb is concerned, it can be seen from his evidence and the evidence of Investigating Officer PW 32 PI Shinde that Balasaheb was not available at Pune as he was immediately required to go to Sangli due to the death of his niece. Till the religious ceremonies were over, he was at Sangli for about 13 days. According to PW 29 Balasaheb, on the next day he came to know through newspaper that murder of his friend Dattatraya was committed. But he could not contact police as during that period, his mental condition was disturbed. In view of the explanation given by PW 29 Balasaheb and IO PI Shinde, delay in recording the statement would not come in a way and their testimonies can be safely relied upon. Through the evidence PW 29 Balasaheb Dhere, prosecution has established that the deceased was seen lastly in the

company of accused on 08/03/2008 at about 9.30 p.m. at Taljai Hill. Prosecution has also proved that deceased was well acquainted to accused no.1 Anita.

25. (C) ACCUSED NOS.1 AND 2 WERE WELL ACQUAINTED TO EACH OTHER.

(i) Accused Nos.1 and 2 have denied that they were knowing each other. To prove the *inter se* acquaintance of accused, prosecution has relied upon two sets of evidence i.e. oral and CDR. PW 19 Sandeep Pasalkar was resident of Lower Indiranagar, Bibvewadi, Pune. According to him, he was residing there since 25 years. Accused no.1 Anita was residing intervening one house from the house of Sandeep. Accused no.2 was also residing in the same locality since 4-5 years. He knew both the accused. His further evidence shows that there was love affair between Anita and Ajay. It was known in the locality. Sandeep had seen Anita and Ajay 5-6 times going on motorcycle of Ajay. He had cordial relations with both the accused. The trial Court has not accepted the evidence of this witness to the extent that there was love affair between accused nos.1 and 2 as it is an omission. Rest of the evidence of Sandeep has been believed. It is pertinent to note that PW 19 Sandeep knew

the family background of accused no.1 Anita. He stated that Anita was serving as nurse. The financial condition of Anita was poor. He also stated that married life of Anita and her husband was smooth. Sandeep had seen 5-6 times Anita and Ajay going on two wheeler of Ajay. Nothing is brought in the cross-examination to show that Sandeep has a reason to grind an axe against the accused. Therefore, we find that trial Court has rightly relied upon the evidence of PW 19 Sandeep.

(ii) The next witness is PW 2 Dattatraya Khatate. He was running a tea stall near 4 wheeler parkings at Sinhgad. He stated that on 18/03/2008, police had come to his stall and inquired about the lady brought by them. He told the police that before 15 days, the said lady had come with one man at Sinhgad and after having tea at his stall, they went away. PW 2 Khatate identified accused no.1 as the same lady and accused no.2 as the same man. He thus corroborates the evidence of PW 19 Sandeep.

(iii) Regarding call details, prosecution examined PW 8 Mukund Vaidya, PW 11 Narsing Adep, PW 13 Ravi Kannur, PW 14 Pradip Kurki, PW 15 Chetan Patil, PW 16 Dattatraya Angre, PW 28 Sadanand Sutar and PW 34 PSI Sachin Patil.

(iv) During the investigating of PW 34 PSI Patil, it was revealed that last 4 calls received on the mobile of the deceased were from mobile no.9860692134. He therefore collected the details of the calls from Airtel company. The sim card was found in the name of PW 14 Pradip Kurki. It was also informed that prior to 02/03/2008 in the said mobile handset sim card of said company bearing no.9766049110 was being used which was in the name of PW 8 Mukund Vaidya. Accordingly he inquired from Mukund Vaidya.

(v) PW 8 Mukund Vaidya stated in the evidence that his aunt was admitted in the hospital. That time accused no.1 was working as nurse. She was looking after his aunt. In order to contact whenever required, PW 8 Mukund had given his mobile handset having sim card no.9766049110 to accused Meena in the month of November 2007. It was of Nokia company having IMEI No.358073018958800. PW 8 Mukund did not take back the said mobile from accused no.1 Anita @ Meena. That time Mukund was using mobile no.9822066496. The mobile handset given by PW 8 Mukund to accused no.1 was seized from her at the time of her arrest. This fact is fortified by the evidence of PW 9 panch witness Sukmal Dhiwar. Seizure panchanama (Exh.79) proved by

PW 9 Sukmal and the Investigating Officer shows that another mobile handset which was seized from accused no.1 Anita was of Reliance company bearing no.9326844274. It belonged to accused no.2 Ajay.

(vi) After arrest of accused no.2 Ajay on 15/03/2008, one mobile handset bearing no.9326058466 was recovered from him. It was in the name of accused Ajay. Seizure panchanama (Ex.53) has been proved by PW 2 Sagar Aute and Investigating Officer PW 33 API Sunil Kulkarni.

(vii) PW 15 Chetan Patil was the Nodal Officer serving in Airtel company. He submitted call details, details of IMEI and tower location in respect of mobile no.9860692134 for the period from 01/03/2008 to 09/03/2008. These details are at Exh.83 (B, C and D). It is stated by PW 15 Chetan that their computer system is automatic regarding incoming and outgoing calls in respect of sim cards of their company and there is no possibility of tampering the computerized record.

(viii) Another witness PW 16 Dattatraya Angre was the Nodal Officer of Idea Cellular Limited. He furnished the call details from 10/02/2008 to 09/03/2008 of the mobile of

deceased i.e. 9822601053. The details are at Exh.83 (A). The call details at Exh.83 (C/1 to C/14) show that there was exchange of calls between mobiles used by accused no.1 Anita and PW 8 Mukund Vaidya and also Anita and accused no.2 Ajay. Number of entries of exchange of calls are mentioned in Exh.83 (C/1 to C/14).

(ix) Accused no.1 Anita has denied the use of mobile no.9860692134. In this connection, evidence of PW 18 Sachin Patil and Investigating Officer PW 33 API Sunil Kulkarni is relevant. When accused no.1 was in police custody, she gave memorandum to show the place where she could get the said mobile. The memorandum is at Exh.93. In pursuance to memorandum, she had shown the spot at Sinhgad from where she got the said mobile. It is stated by PW 13 Ravi Kannur that he was using sim card of his friend PW 14 Pradip. On 02/03/2008 they had been to Sinhgad. That time sim card bearing no.9860692134 belonging to Pradip was lost. The evidence of panch PW 18 Sachin Patil and the Investigating Officer PW 33 API Kulkarni shows that accused no.1 had shown the spot where she found the said mobile. Nothing is brought in their cross-examination to disbelieve their testimonies. It shows that accused no.1

Anita was using the said sim card. The exchange of number of calls further shows that accused nos.1 and 2 were well acquainted to each other. In this respect, prosecution also examined PW 27 Suresh Ramwade and PW 28 Sadanand Sutar who received calls from the father of Meena from mobile no.9860692134.

(x) PW 15 Chetan Patil has proved Exh.83 (D-1 to D-5). The last six entries dated 08/03/2008 between 12.00 a.m. and 9.17 p.m. clearly indicate that calls were received on the mobile of deceased from mobile no.9860692134 which was used by accused no.1 Anita. She was the one who talked last with the deceased on the day of incident. Thus, CDRs at Exh.83 (A to D) do establish beyond doubt that accused nos.1 and 2 were acquainted to each other.

(xi) In addition to the above evidence, we find evidence of PW 30 Pramod Oswal who stated that on 13/03/2008, accused no.1 had shown the house of accused no.2 Ajay. Panchanama (Exh.120) was accordingly prepared. If accused no.1 was not knowing accused no.2 Ajay, there was no reason for her to know his house. This falsifies her defence and proves her acquaintance with accused no.2 Ajay.

**26. (D) RECOVERY OF GOLD ORNAMENTS AT THE
INSTANCE OF ACCUSED NOS.1 AND 2.**

(i) Another clinching circumstance against both the accused is recovery of gold ornaments at their instance under Section 27 of the Evidence Act. As indicated above, PW 21 Amol stated that his father used to wear gold ornaments. Except the ring and Titan wristwatch, ornaments were not found on his person when they saw the dead body.

(ii) On 15/03/2008, accused no.1 was in police custody. PW 12 Jagadish Gujarathi and Pankaj Misal were present as panchas. In their presence, she made a voluntary statement to produce the ornaments concealed by her at the terrace of her house in earthen flowerpot. The memorandum (Exh.85) was accordingly drawn by PW 33 API Kulkarni. Thereafter accused no.1 Anita led the police and panchas to her house at Room No.17, in a chawl, by the jeep. By taking them at the terrace, she took out the ornaments which were concealed in earthen flowerpot. The goldsmith PW 23 Pravinkumar Oswal was called. He weighed the ornaments. Its seizure panchanama (Ex.86) was drawn. The ornaments which were recovered at the instance of accused no.1 Anita were consisting of one gold bracelet, a gold goaf and one

gold ring. On the bracelet, name of Dattatraya was embossed. PW 21 Amol had stated that on the bracelet, name of his father was embossed in English. Accused no.1 Anita has not explained the circumstances under which she came in possession of these ornaments. In the absence of reasonable explanation, we find that evidence on discovery of ornaments at the instance of accused no.1 Anita can be safely relied upon.

(iii) So far as accused no.2 Ajay is concerned, he gave memorandum in the presence of panch PW 18 Sachin and PW 32 PI Shinde on 18/03/2008 when he was in police custody. Memorandum (Exh.96) was drawn accordingly. At the instance of accused no.2 Ajay, gold chain and gold ring were recovered vide seizure panchanama (Exh.97). The evidence of PW 18 Sachin and PW 32 PI Shinde shows that pendent of Swastik was found in the middle of the gold chain. PW 21 Amol had stated in his evidence that his father was wearing the gold chain having pendent of Swastik. The ornaments recovered at the instance of accused no.2 Ajay were weighed by goldsmith PW 20 Sadashiv Dhanawade. PW 21 Amol identified the ornaments belonging to his father. So from the above evidence, prosecution has succeeded in

proving discovery of gold ornaments of Dattatraya Yemul at the instance of accused nos.1 and 2. This is another incriminating circumstance against the accused.

27. So far as the other witnesses are concerned, through the evidence of PW 1 PSI Yadav prosecution has proved FIR Exh.31. PW 3 Ramkrishan Chakradeo is a witness showing absence of accused no.1 Ajay from 26/01/2008 onward in the shop Chitale Bandhu where he was working.

28. (E) C. A. REPORTS.

(i) In addition to the above circumstances, prosecution has placed reliance of CA reports. CA report (Exh.15) shows that saree of accused no.1 Anita and pants and shirt of accused no.2 Ajay which were seized during investigation, were stained with blood at places and that was of human origin having 'B' group. PW 10 Bandi, Manager of Peshwai Creation, has specifically stated that deceased Dattatraya had donated blood to him when he was in need and the blood group of Dattatraya was 'B'. The bloodstains of group 'B' were also found on the clothes of deceased, sample of earth, pair of chappal of deceased, nylon rope and knife, as can be seen from CA report (Exh.16).

(ii) So far as blood group of accused no.1 Anita is concerned, it can be seen from CA report (Exh.14) that her blood group was 'O'. It can be seen from CA report (Exh.13) that blood group of accused no.2 Ajay could not be determined as results were inconclusive. Accused have not challenged the blood group of deceased as 'B' and of accused no.1 as 'O'. It is not the case of accused no.2 Ajay that his blood group was 'B'. Under these circumstances, it can be safely concluded that the bloodstains which were found on the clothes of both the accused were of blood group 'B' which was the blood group of the deceased. Under Section 106 of the Evidence Act, accused ought to have furnished reasonable explanation in respect to the CA reports (Exhs.14 and 15). Accused failed for the same and so needle tilts in favour of the prosecution.

29. All these circumstances conclusively prove that all links in the chain are so complete that they do not lead any reasonable ground for a conclusion consistent with the hypothesis of the innocence of the accused. On the contrary, the same are of exclusive nature consistent only with the hypothesis of the guilt of the accused and conclusively lead to an irresistible conclusion that the accused and accused

alone are responsible for the commission of crime. As such, we do not find merit in the Appeals. Appeals are dismissed.

30. Office to communicate this order to the Appellants through the concerned jail authorities.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)