

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 4 OF 1995**

Kanakraj Bhimraj Jain,
Age 39 years, Resi : 16/16,
Navajeevan Society,
Bombay 400 00

...Appellant

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO. 33 OF 1995**

Satyandra Dinnath Mishra,
Age 24 years, Occu. Driver,
R/o Vaijanath Sapra, Raniganj,
Kotwa (U.P.)
(At presetn in Yervada Central
Prison, Pune)

...Appellant
(Orig.Accused)

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO. 637 OF 1994**

Santbali Dwarika Barai,
Age about 65 years,
Occupation : Business,
Residing in front of Roplas Company,
Gamgarh Society, Pimpri,
PUNE – 411 018

...Appellant
(Orig. Accused No. 6)

Versus

The State of Maharashtra

...Respondent

Mr. N. S. Mundargi for the Appellant in Criminal Appeal No.4 of 1995

Mr. N. S. Nevshe, appointed Advocate for the Appellant in Criminal Appeal No. 33 of 1995

Mr. A. N. Misre i/b Mr. N. V. Vechalekar for the Appellant in Criminal Appeal No. 637 of 1994

Mr. H. J. Dedia, A.P.P for the Respondent-State

**CORAM : SMT. V. K. TAHILRAMANI &
REVATI MOHITE DERE, JJ.
MONDAY, 9th JANUARY, 2017**

JUDGMENT (Per Revati Mohite Dere, J.) :

1. Criminal Appeal No. 637 of 1994 is preferred by Santbali Dwarika Barai (original accused No. 6); Criminal Appeal No. 4 of 1995 by Kanakraj Bhimraj Jain (original accused No. 5) and Criminal Appeal No. 33 of 1995 is preferred by Satyendra Dinanath Mishra (original accused No.1).

2. The aforesaid 3 appeals are directed against the judgment and order dated 30th November, 1994 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 233 of 1993, convicting and sentencing the appellants as under :

- The appellant Satyendra Dinanath Mishra - for the offence punishable under Section 302 of the Indian Penal Code ('IPC'), to suffer RI for life and to pay fine of Rs. 500/-, in default, to suffer RI for 9 months;
- The appellant Kanakraj Jain and Santbali Dwarika Barai - for the offence punishable under Section 411 of the IPC, to suffer RI for 1 year and to pay fine of Rs. 2,000/- each, in default, to suffer RI for 9 months.

3. The prosecution case in brief is as under :

Subha Purushottam Yadav (deceased) was working as a watchman with Dixit Chemical Private Limited, Pimpri and was related to Pollavan Yadav (PW 1-complainant). Subha Yadav was residing in the out-house of the Company. PW 1's elder brother, Ram Yadav was also working as a watchman in the very same Company, whereas, Pollavan was running a grocery shop. Pollavan was sometimes doing the duty of a watchman in place of his brother-Ram. From 30th July, 1991, Pollavan was on duty, as his brother-Ram had gone to his native place. On 11th August, 1991, Vijay Yadav's brother came to the Company at about 8:00 a.m., when Pollavan was on duty, and informed that Vijay was unwell and asked Pollavan to go, if he so desired. Pursuant thereto, Pollavan went home.

At about 8:00 p.m. on the very same day i.e. on 11th August, 1991, Pollavan came back to the Company and found that there was darkness all around and accordingly, went near the gate of the Company and called out for Subha. As Pollavan did not receive any response, he went to Subha's room and found that it was locked. As there was darkness, instead of entering the Company premises, Pollavan went to Dalco Company, where his brother Udayraj was working and disclosed to him that he had not received any response from Subha, and that he was afraid, as there was darkness. Pursuant thereto, Pollavan and his brother went to Subha's maternal uncle's house and made inquiries. They learnt that Subha had not gone to his house. Thereafter, Pollavan, his brother-Udayraj and Subha's maternal uncle came back to the Company, entered the Company premises, switched on the light button and found one person lying facing downwards, covered in a quilt. The body was of Subha. They saw injuries on his back and found that his clothes were stained with blood. This was at about 8:30 p.m. Immediately, thereafter, they went to the Pimpri Police Chowky, pursuant to which, the complaint/FIR of Pollavan was registered vide C.R. No. 308 of 1991, for the offence punishable under Section 302 of the IPC. The said FIR/complaint was lodged as against unknown persons.

After registration of the FIR, PI Sarjerao Mokashi (PW 17) commenced with the investigation, drew the inquest panchanama (Exhibit 28), prepared the spot panchanama (Exhibit 33), sent the body for post-mortem examination, seized the quilt and other articles under a panchanama (Exhibit 23) etc. Thereafter, the statements of the witnesses were recorded and the appellants and other accused were arrested. Rs. 1 lakh was recovered at the instance of appellant-Satyendra Mishra on 12th August, 1991, and the same was seized under a panchanama (Exhibit 44/1). Clothes and knife were also recovered at the instance of appellant-Satyendra Mishra on 18th August, 1991 and the same were seized under a panchanama (Exhibit 38). Stainless steel sheets were seized from appellant-Kanakraj Jain, from his workshop on 21st August, 1991, under a panchanama (Exhibit 42).

After investigation, charge-sheet was filed as against the appellants and other accused for the offences punishable under Sections 302, 394, 411 r/w 34 of the IPC. As the offences were sessions triable, the case was committed to the Court of Sessions.

The appellants pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication.

The prosecution, in support of its case, examined 17 witnesses. PW 1 – Pollavan V. Yadav (complainant), who was working as a watchman in the Company i.e. Dixit Chemicals Pvt. Ltd. at the relevant time, as his brother, Ram Yadav had gone to his native place; PW 2 – Gautam Chabukswar, panch to the spot panchanama; PW 3 – Mohan Rokade, panch to the recovery of knife and clothes at the instance of appellant - Satyendra Mishra; PW 4 – Chandrakant Kurle, panch to the seizure of stainless steel sheets from appellant-Kanakraj Jain; PW 5 – Purushottam Dasnani, panch to the recovery of Rs. 1,00,000/- at the instance of appellant-Satyendra Mishra; PW 6 – Sopan Sawant, panch to the disclosure statement made by appellant-Satyendra, that he will show the place where the offence was committed; PW 7 – Jalindar Tikone, fisherman, who removed the clothes pursuant to the disclosure statement made by appellant-Satyendra Mishra, from a quarry filled with water; PW 8 – Mhasku Chandilkar, fisherman, who pulled out a knife at the instance of appellant- Satyendra Mishra, also from the same quarry; PW 9 – Mukund Dixit, the Director of Dixit

Chemicals Pvt. Ltd., who disclosed the commission of theft of stainless steel sheets from the Company; PW 10 – Dr. Laxman Pherwani, who conducted the post-mortem examination; PW 11 – Imtiyaz Khan, the owner from whom the vehicle was taken on rent by appellant- Santbali; PW 13 – Jayendra Lalan, the tempo driver, who transported the stainless steel sheets from Andheri to Khetwadi, after the commission of the alleged offence; PW 14 - Mohd. Zubed Inamdar, driver of the truck in which the stainless steel sheets were transported; PW 15 – Majid Chougule, cleaner on the said truck; PW 16 – Murlidhar Nikam and PW 17- Sarjerao Mokashi, the Investigating Officers, who carried out the investigation.

After considering the evidence on record, the learned Judge was pleased to convict and sentence the appellants as aforesaid in Para 2. As original accused No. 3 – Bachhalal Yadav was absconding, the trial was separated and had proceeded against the appellants and other co-accused. The learned Judge, vide the same impugned order, was pleased to acquit co-accused-Rajendra Yadav of the offence punishable under Section 302 and 394 of the IPC as well as co-accused Nasir Mohammed Garibmulla of the offence punishable under Section 411 of the IPC.

4. Learned Counsel for the appellants assailed the judgment and order on several grounds. It was contended that the only evidence as against the appellant-Satyendra Mishra was recovery of blood-stained clothes and knife and recovery of Rs. 1,00,000/-. It was submitted that a perusal of the evidence of PW 3 – Mohan Rokade, PW 7 – Jalindar Tikone and PW 8 – Mhasku Chandilkar, would show that there were several discrepancies and inconsistencies in the evidence of the said witnesses, thus, making the said recoveries doubtful. According to the learned Counsel, there is nothing on record to show that any of the appellants had any motive to cause the death of Subha, much less, the evidence relating to last seen, etc. It was submitted that considering the infirmities and inconsistencies in the recovery evidence, that being the only evidence *qua* appellant-Satyendra, no conviction could be recorded against him, on the basis of the said evidence. As far as appellants-Kanakraj Jain and Santbali Barai are concerned, it was submitted that once having been acquitted under Section 394 of the IPC, no conviction could have been recorded under Section 411 of the IPC. Learned Counsel for the appellants submitted that even the evidence adduced by the prosecution, to bring home the charge under Section 411 is concerned, suffers from several infirmities

and loopholes. Learned Counsel for the appellants-Kanakraj Jain and Santbali, relied on the evidence of PW 4 – Chandrakant Kurle, PW 12- Ekbal Memon, PW 14 – Mohd. Zubed Inamdar, PW 15 – Majid Chougule, PW 16 – Murlidhar Nikam and PW 17 – Sarjerao Mokashi, to show the discrepancies and inconsistencies in their evidence. It was submitted that the link evidence with regard to transportation of the goods i.e. stainless steel plates, was missing, making the said seizure doubtful. It was submitted that the seized stainless steel sheets were not only more in number, but even there was a discrepancy in the size, from what was allegedly stolen.

5. Perused the evidence with the assistance of the learned Counsel for the appellants and the learned A.P.P.

6. At the outset, it is pertinent to note, that there are no eye-witnesses in the said case, and that the prosecution case rests entirely on circumstantial evidence. At the cost of repetition, it is also pertinent to note, that the appellants have been acquitted of the offence punishable under Section 394 of the IPC for want of evidence. As far as appellant-

Satyendra is concerned, the only evidence qua him, is recovery of Rs. 1,00,000/- on 12th August, 1991 and recovery of blood stained clothes and blood stained knife on 18th August, 1991. This is the only evidence, on the basis of which appellant-Satyendra has been convicted for the offence punishable under Section 302 of the IPC. As far as, appellants-Kanakraj Jain and Santbali Barai are concerned, the only evidence, on the basis of which a conviction under Section 411 of the IPC is recorded, is seizure of stolen goods i.e. stainless steel sheets from appellant-Kanakraj Jain and hiring of the truck in which the sheets were loaded, by appellant-Santbali. We find that the evidence adduced by the prosecution, in this regard, suffers from several inconsistencies, rendering the same doubtful. We will, in detail, elaborate the reasons for arriving at the said conclusion.

7. PW 1 – Pollavan Yadav is the complainant in the said case. He has stated that the incident took place on 11th August, 1991. He has stated that Subha (deceased) was related to him and was working as a watchman in Dixit Chemicals Pvt. Ltd. and that his elder brother Ram Yadav was also working as a watchman in the said Company. According to Pollavan, he was on duty as a watchman, in place of his brother-Ram. He has stated that

on 11th August, 1991, at about 8:00 a.m., Vijay Yadav's brother came to the Company and stated that his brother-Vijay was unwell and told him that he could go home, if he wanted. He has stated that he accordingly went home. According to Pollavan when he came back to the Company to perform his duty, he noticed that there was darkness due to electricity failure. He has stated that he went to Subha's room and called out to him, however, he did not receive any response. He has stated that as he did not receive any response, he went to the neighbouring Company, where his brother Udayraj was performing his duty and disclosed to him, that there were no lights and that Subha was not on duty; that pursuant thereto, he and his brother Udayraj went to the house of Subha's maternal uncle to inquire as to whether Subha had come to his residence; that Subha's maternal uncle informed that Subha had not come and hence, all of them returned to the Company, switched on the light and searched for Subha. According to Pollavan, he saw the body of Subha in the premises of the said Company and found that it was covered with a quilt with his face downwards and that there were injuries on his back. Pursuant thereto, all of them went to the Pimpri Police Chowky and lodged a complaint, which is at Exhibit 28. The complaint was lodged as against the unknown persons alleging an

offence punishable under Section 302 of the IPC. Thereafter, the police came to the spot, drew the spot panchanama, prepared the inquest panchanama and sent the body for post-mortem examination. PW 10 – Dr. Pherwani performed the post-mortem and opined the cause of death of Subha as “traumatic and hemorrhagic shock due to multiple stab injuries.” As there is no dispute to the inquest panchanama, spot panchanama or the post-mortem report, it is not necessary to deal with the witnesses examined in that behalf. There is also no dispute, that Subha died a homicidal death.

8. In order to prove recovery of Rs.1 lakh, at the instance of appellant-Satyendra, the prosecution examined PW 5 – Purushottam Dasnani (Panch). A perusal of the evidence of this witness shows that on 12th August, 1991, he was called to the police station. He has stated that the appellant-Satyendra, in his presence agreed to produce cash of Rs. 1 lakh and accordingly, memorandum panchanama was drawn, which is at Exhibit 44. PW 5 – Purushottam has stated that pursuant thereto, Satyendra led the panchas and police staff in a vehicle to Telco Road, Kundalwadi. He has stated that when the vehicle arrived near a chawl, Satyendra asked the vehicle to stop and took them to Room No. 4 of that chawl and with a key,

opened the lock of that door. He has stated that Satyendra entered the room and removed the money which was kept behind a photograph hanging on the wall. He has stated that the money was wrapped in a handkerchief and on opening the handkerchief, 8 bundles of Rs. 100 denomination, 1 bundle containing 100 notes of Rs. 100; 2 bundles of Rs. 50 denomination i.e. 1 bundle containing 100 notes of Rs. 50, 49 notes of Rs. 100/- denomination and 102 notes of Rs. 50/- denominations, totalling Rs. 1 lakh, were found. He has stated that a panchanama of the notes was drawn on the spot. The said panchanama is at Exhibit 44/1.

The evidence of PW 5-Purushottam is contrary to the evidence of PW 17- Sarjerao Mokashi (Investigating Officer) vis-a-vis recovery of Rs. 1 lakh. PW 17 – Mokashi in his cross-examination, has admitted that the key was with him and that he had opened the lock. Apart from the same, there is nothing on record to show that the house from where the said amount was recovered, belonged to appellant-Satyendra or that he was in the possession of the same. Both, the said witnesses are silent on this aspect. Neither is there any evidence to show that the said amount of Rs. 1 lakh which was recovered at the instance of appellant-Satyendra was paid

to him, by any person towards sale of the stainless steel sheets allegedly stolen from the Company. It is pertinent to note, that no evidence has been adduced by the prosecution in this behalf. The witness i.e. PW 5 has admitted in his cross that there was no number on the room nor were there name boards on the wall of the building (chawl). He has admitted that he had not seen any utensils in that room and that Satyendra had showed the place where the bundle of notes was kept, however, the same was removed by the police. Considering the aforesaid infirmities that have come on record, we are of the opinion that the recovery evidence of Rs. 1 lakh at the instance of appellant-Satyendra, does not inspire confidence and as such is doubtful.

PW 5–Purushottam has also acted as a panch to panchanama dated 13th August, 1991 at Exhibit 45 (where appellant-Satyendra is alleged to have produced his shirt) and panchanama dated 13th August, 1991 at Exhibit 46 (where accused-Rajendra is alleged to have produced his pant and shirt). As far as the panchanama dated 13th August, 1991 at Exhibit 45 is concerned, PW 5 – Purushottam has, in his examination-in-chief, stated that on 13th August, 1991, he was called to the police station and that the

appellant-Satyendra produced his shirt in his presence, pursuant to which, a panchanama was drawn. It is pertinent to note that the said shirt (Article 20) which was attached on 13th August, 1991 is not in any way, incriminating. No witness has stated that the appellant-Satyendra had worn the said shirt (Article 20) nor were any blood stains found on the same.

According to PW 5-Purushottam, on 3rd September, 1991, he was again called to the police station. He has stated in his examination-in-chief, that he does not remember the accused, who was present in the police station on that day. He has stated that one panchanama was drawn and his signature was obtained on the same. He has further stated that the accused, police staff and PSI sat in a jeep and that the accused took them via Bombay-Pune Road to one Hotel Roxy at Pimpri Chowk and showed the place where he had received the money. He has stated that pursuant to the same, a panchanama was drawn. The said witness has identified appellant-Satyendra as being the person who had shown the place. The said witness in his cross-examination, has admitted that nothing was found at the place in front of Roxy Hotel and that in the panchanamas Exhibits 47 and 48, the name of the appellant-Satyendra has not been mentioned. Nothing

incriminating was found on the spot. Even otherwise, the statement/disclosure has not been made by any of the appellants.

9. In order to prove recovery of clothes and knife at the instance of appellant-Satyendra, the prosecution placed reliance on the evidence of PW 3-Mohan Rokade, PW 7-Jalindar Tikone, PW 8 – Mhasku Chandilkar and PW 17-Sarjerao Mokashi.

10. A perusal of the evidence of PW 3-Mohan Rokade shows that he was called to the Police Station, Pimpri, on 13th and 18th August, 1991. PW 3-Mohan has stated that on 13th August, 1991, he was called to the Police Station, Pimpri and that two accused were present there. He has stated that the appellant-Satyendra agreed to show the place where the knife and pant was thrown, pursuant to which, a memorandum was drawn, which is at Exhibit 35. He has stated that the appellant-Satyendra took them to a place behind Telco Company, where there was a stone quarry filled with water. He has stated that the swimmers took search for the said articles, however, nothing was found. Accordingly, panchanama at Exhibit 36 was drawn.

Again on 18th August, 1991, PW 3-Mohan was called to the Police Station, where the appellant-Satyendra again made a statement that he would show the place where the knife and pant were thrown. Accordingly, memorandum panchanama at Exhibit 37 was drawn. He has stated that the appellant-Satyendra took all of them to the said place; that one person took out one bundle from the said place and another person found a knife. He has stated that the cloth bundle was opened and one jean pant was found in the same. Accordingly, the said article i.e. jean pant and knife was seized. The said panchanama is at Exhibit 38. He has identified appellant-Satyendra as being the same person, pursuant to whose statement the articles were recovered.

A perusal of the cross-examination of the said witness shows that the said panch is a habitual panch, inasmuch as, he has deposed in several NDPS cases registered with the said police Station. The said witness in his cross-examination has stated, that on 13th August, 1991, the police had disclosed to him, that Satyendra had agreed to produce the knife and clothes. He has categorically stated that on 13th August, 1991, he had reached the police station at about 12:20 pm, and has denied the fact, that

he had reached the police station at about 3:00 p.m. and that within 15 minutes, the memorandum was drawn. It may be noted here, that the memorandum panchanama at Exhibit 35, dated 13th August, 1991 shows that the panchanama had started at 3:00 p.m. and was over by 3:15 p.m. and not as stated by the said witness. The said witness has also stated that he does not remember whether they reached the spot at about 3:15 p.m. and the panchanama was over by 5:30 pm. According to PW 3 – Mohan, they reached the spot at 12:45 p.m. and had returned to the police chowky at about 2:45 - 3:00 p.m and that he signed the two panchanamas at about 3:15 p.m, after which he went home.

As far as the panchanama dated 18th August, 1991 is concerned, PW 3-Mohan in his cross-examination, has stated that at about 5:00 p.m., he was called to the Police Station, where appellant-Satyendra again made a disclosure statement. He has stated that the memorandum was drawn within 5 to 6 minutes and that they reached the spot thereafter, at about 5: 20 pm. He has admitted that he had signed on four documents, but was not aware whether co-accused Rajendra had also made a disclosure statement which was recorded between 12:00 to 12:20 p.m. on

18th August, 1991. It is pertinent to note, that the said witness was also a panch to the disclosure statement made by co-accused Rajendra, and the panchanama drawn pursuant thereto. The evidence on record shows, that two panchanamas were drawn on 18th August, 1991, at the same time, one, pursuant to the disclosure statement made by the appellant-Satyendra and the other pursuant to the disclosure statement made by co-accused Rajendra Yadav. Both, at the same time i.e. 12 noon to 12:20 p.m. It is difficult to comprehend how simultaneous disclosures were made by both, the appellant-Satyendra and Rajendra, in the presence of the same panch.

The aforesaid timings mentioned by PW 3-Mohan, in his evidence, are inconsistent and contrary to the timings mentioned in the panchanama Exhibits 38 and 39, and the evidence of PW 7-Jalindar (who pulled out the clothes from the quarry filled with water) and PW 8-Mhasku, (the person who pulled out a knife from the water).

11. A perusal of the evidence of PW 7 – Jalindar Tikone and PW 8 – Mhasku Chandilkar also shows that there are several material inconsistencies in their evidence. As noted earlier, PW 7 – Jalindar, a

fisherman pulled out the clothes from the water at the instance of appellant-Satyendra, the second time i.e. on 18th August, 1991. The said witness has stated that what was found was a pant (Article 17) and a shirt (Article 13), whereas, the panchanama (Exhibit 38) shows that two pants were recovered. As far as PW 8-Mhasku Chandilkar, the second fisherman is concerned, he pulled out the knife from the water. The said witness has not identified the appellant-Satyendra. A perusal of the evidence of both these witnesses show, that the timings disclosed by them, are completely in variance with each other, with regard to both the panchanamas, one drawn on 13th and the other, on 18th August, 1991. As far as panchanama dated 13th August, 1991 is concerned, PW 7 – Jalindar has stated that he alongwith other fishermen were called to the police station 3 years prior, were made to sit in a vehicle and the police took them behind Telco; that the appellant threw a stone in the quarry and showed the place. He has stated that 4-5 persons entered the water and took search, however, nothing was found. It has come in the cross-examination of PW 7-Jalindar, that for the first time (13th August, 1991), he was called to the Police Station at 9:00 a.m; that he was thereafter taken to a stone quarry at about 9:00 a.m. and after swimming for about 1½ hours, he returned back to his house at

4:00 p.m. Whereas, the evidence of PW 8 – Mhasku shows that he was called by the police 3 years prior; that he was taken to the stone quarry, after which he entered the water, searched for an hour and found nothing. He has stated that he returned by 12 noon. The said witness has admitted in his cross-examination, that the said quarry had no compound and was freely accessible to all.

12. With regard to second panchanama drawn on 18th August, 1991, PW 7 – Jalindar in his cross-examination has stated that he found a pant (Article 17) and a shirt (Article 13) in the water at about 3:00 to 3:30 pm; that the said clothes were in a bundle; and that he pulled out the said clothes from the water. As far as PW 8 – Mhasku is concerned, he has stated that for the second time, he was called to the police station at 8:00 a.m; that he went to the stone quarry, entered the water and found a knife after 1/1½ hours in the water. He has admitted in his cross-examination that the said place was the same place where he had gone earlier on 13th, when nothing was found on that day. According to PW 8-Mhasku, for the second time, they went to the quarry at about 8 a.m and returned at about 12 noon. The appellant-Satyendra has not been identified by this witness.

A perusal of the panchanama dated 18th August, 1991 (Exhibit 38) shows that the panchanama was drawn between 12:30 p.m. and 2:30 p.m.

13. The recovery evidence against appellant-Satyendra of clothes, knife and Rs. 1 lakh does not inspire confidence, considering several material inconsistencies and discrepancies in the evidence of the witnesses *inter se* and the documents i.e. panchanamas. We are of the opinion, that it is unsafe to place implicit reliance on the said evidence, adduced by the prosecution in this regard, this being the only evidence against appellant-Satyendra. Considering the same, we are of the opinion, that the prosecution has failed to bring home the charge against the appellant-Satyendra, for the offence under Section 302 of the IPC.

14. Now coming to the evidence *qua* appellants – Kanakraj Jain and Santbali Barai, in order to bring home the charge under Section 411 of the IPC *qua* them, the prosecution has relied on the evidence of PW 12-Ekbal Memon (the owner of the vehicle in which the stolen goods were transported); PW 14-Mohd. Zubed Inamdar (driver of the said truck), PW 15-Majid Chougule (cleaner of the truck); PW 4-Chandrakant Kurlle (panch

to the panchanama (seizure of stainless steel sheets) at Exhibit 42); PW 13- Jayendra Lalan, the person who transported the goods from Andheri to Khetwadi; PW 16 - IO Murlidhar Nikam and PW 17- I.O. Sarjerao Mokashi. From a perusal of the evidence of these witnesses, we find that the link evidence, which is necessary to connect the appellants – Kanakraj Jain and Santbali Barai to the recovery of stainless sheets is completely amiss. We find that there are several inconsistencies and discrepancies in the evidence of the said witnesses, examined by the prosecution in this behalf. It appears that no investigation was done by the police, with respect to whom the stolen articles, which were sold to i.e. Mulla and Magdum, before they reached the appellant-Kanakraj Jain.

15. The evidence of PW 14 – Mohd. Zubed Inamdar, driver of the truck shows that on 11th August, 1991, he took the truck (MXL 7498) to appellant-Santbali for loading goods from the godown at Nehru Nagar, Pune. He has stated that cleaner Majid (PW 15) was in the truck. According to PW 14-Mohd. Zubed, the appellant – Santbali and his son told him that the loading of the goods is to be done at two places, one from Nehru Nagar and another from Pimpri and that the same will be around

4 p.m. According to PW 14, at about 4 – 4:30 pm, when appellant-Santbali woke him up, one person had come on a Kinetic vehicle and that the said person and Santbali's son asked him to carry the empty truck for weighment, pursuant to which, the truck was weighed. He has stated that Santbali's son showed his inability as he had fractured his leg, so the person who had come on Kinetic, took him to the place of weighment, pursuant to which, the truck was weighed. He has further stated that after weighing the truck, the said person made two more persons sit in the truck and carried the truck via Morewadi Road; that on the way to Morewadi, that person picked up another person in the truck and the truck arrived in front of a Company at Pimpri. He has stated that he did not know the name of the said Company. According to PW 14 – Mohd. Zubed, the said three persons got down from the truck and went and within a short time, returned near the truck and asked them to bring the truck inside the Company. He has stated that the sheets were loaded in the truck and thereafter, the loaded truck was again taken for weighing at Chikhali Kata. He has stated that appellant-Santbali had earlier loaded steel scrap from the godown and after loading the truck, he, PW 15-Majid, appellant-Santbali and his son went to Bombay Sakinaka, where the truck was unloaded. According to him, after

collecting the transportation charges, he took the truck to the Byculla Office. He has identified the appellant-Santbali and original accused No. 2- Rajendra Yadav, as being the persons in the truck. He has identified Nasir Mohd. Khan as the man who came on the Kinetic vehicle. It appears from the cross-examination of the said witness, that he has not given the description of the accused to the police, when his statement was recorded when he was in the police station for 3 to 4 days. He has admitted that the police had shown two accused to him, on the day of recording of the evidence. The evidence of the said witness shows that he has named Makbul as the person on the Kinetic Honda and the same name has also come in the panchanama, at Exhibit 47, however, despite the same, he has refused to depose Makbul's name, as being the person who came on a Kinetic Scooter. Certain material omissions have come in the cross-examination of the said witness, i.e. it was the appellant-Santbali, who told to him that the goods were to be loaded at two places; and that Santbali told him to load the truck, pursuant to which, the truck was loaded and after loading the truck, appellant-Santbali and his son were in the truck upto Bombay.

16. The evidence of PW 15 – Majid Chougule shows that he along with PW 14 were in the police station for about 8 days in the custody of the police and that the police interrogated them for 8 days. He has admitted that he had not given the description of the accused to the police. He has admitted that he was knowing Makbul, who had come on a Kinetic Honda, on that day and who had taken the truck for weighment.

17. A perusal of the evidence of the said two witnesses does not inspire confidence, considering the material inconsistencies, discrepancies omissions and improvements in their evidence.

18. The evidence of PW 4-Chandrakant Kurle, panch to the seizure of stainless steel sheets from the godown of appellant-Kanakraj Jain also appears to be doubtful. A perusal of the evidence of PW 4 – Chandrakant Kurle and PW 13- Jayendra Lalan also shows that the panchanama regarding seizure of the stainless steel sheets took place at Pimpri and not Jogeshwari, as mentioned in the panchanamas. According to the said witnesses, the panchanama was drawn on returning to Pimpri

from Jogeshwari, however, Exhibit 42 i.e. the panchanama of seizure of stainless steel sheets shows that the same was drawn at Jogeshwari. The prosecution has also not brought on record who transported the goods from Khetwadi to Jogeshwari and as such, the said link evidence is also amiss. Apart from the aforesaid, a perusal of the remand report (Exhibit 18) dated 22nd August, 1991 shows that the police had stated that the articles are yet to be recovered, whereas, it appears from the evidence of PW 13-Jayendra Lalan, PW 4-Chandrakant Kurle and PW 16 – Murlidhar Nikam (I.O.), that the said articles i.e. stainless steel sheets were seized on 21st itself, pursuant to which, the panchanama was drawn. The evidence of PW 17-PI Sarjerao Mokashi shows that he had sent PW 16 –Murlidhar Nikam to Mumbai on 19th August and that PW 16 – Nikam returned on 22nd August, 1991 which is contrary to the evidence of other witnesses namely PW 16-Murlidhar Nikam, PW 4-Chandrakant Kurle and PW 13-Jayendra Lalan and the panchanama, Exhibit 42. There is also a discrepancy in the articles alleged to have been stolen (stainless steel sheets) and what was recovered at the instance of appellant-Kanakraj Jain, in terms of size, thickness and number. It is pertinent to note that PW 6 – Mukund Dixit, Director of Dixit Chemicals Pvt. Ltd. has stated that 20 to 22 sheets of different sizes were

missing; whereas, what was stated in the remand report was that 17 sheets were missing; whereas, what was actually recovered were 40 stainless steel sheets of equal size. There is also some doubt whether the letters 'DCM' were embossed on the said sheets. It is also pertinent to note, that the sheets i.e. subject matter of the stolen property were not produced during trial and as such, could not be identified.

19. Considering the manner in which the investigation has been conducted and the discrepancies in the recovery evidence, it would be unsafe to rely on the said evidence. We are, therefore, of the opinion that the recovery of the stainless steel sheets from appellant – Kanakraj Jain has not been proved by the prosecution, as against appellants - Kanakraj Jain Santbali Barai.

20. Considering the overall material on record and for the reasons as stated hereinabove, the appeals are allowed. The impugned judgment and order convicting the appellant-Satyendra for the offence under Section 302 and the appellants-Kanakraj Jain and Santbali Barai, for the offence under Section 411 are quashed and set-aside and the appellants are acquitted of

the offence with which they are charged. The bail bonds of the appellants shall stand cancelled and the sureties discharged.

(REVATI MOHITE DERE, J.)

(V. K. TAHILRAMANI, J.)