

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 469 OF 2003**

Vijay Bhivajirao Palande,
Adult, Indian Inhabitant,
Residing at B/11, Mittal Park,
Ruia Park, J.M. Road, Juhu,
Mumbai – 400 053
(At present lodged in
Kolhapur Jail)

...Appellant

Versus

The State of Maharashtra
(At the instance of
D.N. Nagar Police Station)

...Respondent

Ms. Rohini M. Dandekar, appointed Advocate for the Appellant

Mrs. G. P. Mulekar, A.P.P for the Respondents-State

**CORAM : SMT. V. K. TAHILRAMANI &
REVATI MOHITE DERE, JJ.**

**RESERVED ON : 24th FEBRUARY, 2017
PRONOUNCED ON : 29th JUNE, 2017**

JUDGMENT (Per Revati Mohite Dere, J.) :

1. By this appeal, the appellant has impugned the judgment and order dated 11th, 12th, 13th, 16th and 17th December, 2002 passed by the learned Additional Sessions Judge, Mumbai, in Sessions Case No. 1321 of 1998, convicting and sentencing him as under:

- for the offence punishable under Section 449 of the Indian Penal Code ('IPC'), to suffer RI for 7 years and to pay fine of Rs. 15,000/-, in default, to suffer SI for 6 months;
- for the offence punishable under Section 364 of the IPC, to suffer RI for 7 years and to pay fine of Rs. 15,000/-, in default, to suffer SI for 6 months;
- for the offence punishable under Section 302 of the IPC, to suffer imprisonment for life and to pay fine of Rs. 25,000/-, in default, to suffer SI for 1 year;
- for the offence punishable under Section 201 of the IPC, to suffer RI for 5 years and to pay fine of Rs. 10,000/-, in default, to suffer SI for 6 months;
- for the offence punishable under Section 404 of the IPC, to suffer RI for 3 years and to pay fine of Rs. 10,000/-, in default, to suffer SI for 3 months;

All the aforesaid sentences were directed to run concurrently.

The appellant was, however, acquitted of the offences punishable under Sections 364A, 420, 465, 469 and 471 of the IPC.

The learned Sessions Judge by the same judgment and order, was pleased to acquit co-accused Emad Ahmed Hudib/Hudaib @ David John D'Souza @ Jackie (hereinafter for the sake of brevity referred to as `David'), of all the offences with which he was charged. The State has not preferred an appeal against his acquittal.

2. Before advertng to the actual facts of the case, it is pertinent to note, that the appellant and the co-accused David were arrested in 2 cases. They were arrested in connection with C.R. No. **100 of 1998** registered with the **D. N. Nagar Police Station, Mumbai** for the offences punishable under Sections 449, 364, 302, 201, 364A, 404, 420, 465, 469, 471 r/w 34 of the IPC, where the principal allegations against the appellant and David, were of abducting and murdering **Swaraj Ranjan Das** (present case). The very same accused i.e. appellant and David were also arrested in connection with C.R. No. **400 of 1998** registered with the Juhu Police Station, Mumbai, for the offences punishable under Sections 449, 464, 302, 201, 364A r/w 34 of the IPC, where the principal allegations again, were of abducting

and murdering **Anup Ranjan Das**, son of Swaraj Ranjan Das. Two separate CRs were registered, although the accused in both the CRs were the same, as deceased-Swaraj Ranjan Das, residing within the jurisdiction of D. N. Nagar Police Station, went missing from there, whereas, deceased Anup residing within the jurisdiction of Juhu Police Station, went missing from within the said jurisdiction. It is also pertinent to note, that although separate charge-sheets were filed in both the C.Rs., common evidence was led in both the said cases. The learned Additional Sessions Judge, Mumbai by a separate judgment and order passed in S.C.No.1320 of 1998 was pleased to acquit the appellant and David, of all the charges including the principal charge of causing the death of Anup Ranjan Das. (The said case arose out of C.R. No. 400 of 1998, registered with the Juhu Police Station). It may be noted, that the State has not preferred any appeal against the acquittal of the appellant and David in the said case i.e. Sessions Case No. 1320 of 1998 (Juhu Case). Hence, we are concerned only with Sessions Case No. 1321 of 1998 in which the appellant has been convicted as aforesaid in para 1. As noted earlier, no appeal has been filed by the State

against the acquittal of David from the said Session Case i.e. S.C.No.1321 of 1998.

3. Although, in the present appeal before us, we are concerned only with the conviction of the appellant for the murder of Swaraj Ranjan Das, it would be necessary while dealing with the prosecution case, to set out the entire prosecution case, including the allegations against the appellant vis-à-vis Anup Ranjan Das, as the facts are overlapping and as common evidence was led in both the Sessions cases.

4. The prosecution case in brief is as under:

Swaraj Ranjan Das (deceased) was residing with his daughter Sushmita (PW 1), his wife Usha (PW 4) and son Abhijit in Flat No. 204, "Magic Carpet", Juhu Versova Link Road, Andheri (West), Mumbai (hereinafter, for the sake of brevity, referred to as '**Magic Carpet' flat**). Swaraj Ranjan Das had another son, by the name Anup Ranjan Das (deceased), who was residing in Flat No. B/11, Ground Floor, Mittal Park, Ruia Park, Juhu, Mumbai (hereinafter, for the sake of brevity, referred to as '**Mittal Park** ')

flat). The said flat at Mittal Park was acquired by Swaraj Ranjan Das in 1992. The appellant-Vijay Palande, a friend of Anup Das, is stated to have known Anup Das, for about 3-4 years prior to the incident. It is stated that the appellant was not only a frequent visitor to the said Mittal Park flat, where Anup Das was residing, but would also occasionally stay there.

Anup Das was implicated in a murder case i.e. murder of his brother-in-law Rajeev Bhattacharya (wife's brother) and was arrested and lodged in Arthur Road Jail in connection with the said case. In Arthur Road Jail, Anup became friendly with David (original accused No. 2). After Anup's and David's release from jail, David also started frequenting Anup's residence at Mittal Park.

According to the prosecution, Anup's mother Usha (PW 4) would sleep at the 'Mittal Park' flat at night and would return to the 'Magic Carpet' flat in the morning. It is alleged that on 17th January, 1998, Anup, the appellant and David decided to go to a Hill Station, for a holiday and on 18th January, 1998, at

about 7:00 a.m., the three of them set out from the 'Mittal Park' flat, to go to Khandala. After Anup left with the appellant and David, Usha (PW 4) returned to her 'Magic Carpet' flat. Anup was not seen thereafter.

The appellant thereafter started frequenting the Magic Carpet flat, where Anup's parents and sister were residing. Sushmita (PW 1) is alleged to have questioned the appellant, about the whereabouts of her brother Anup, his address and telephone number, however, the appellant did not give any information and instead told Sushmita (PW 1), that Anup was staying in a hotel at Khandala and was doing some important work.

On 25th January, 1998, the appellant is stated to have visited the Magic Carpet flat at about 4:00 p.m and disclosed to Sushmita (PW 1) and Usha (PW 4), that Anup was at Khandala and that he was busy completing some important work and was preparing for his case. David is also stated to have joined the appellant. Both, are alleged to have told Sushmita (PW 1) and

Usha (PW 4), that Anup was in need of Rs. 25,000/-. The appellant is also stated to have told Swaraj Ranjan Das, who was present at home, that Anup had given a message that his father should bring Rs. 25,000/-. Pursuant to the said disclosure, Swaraj Ranjan Das carried Rs. 25,000/- and left with the appellant and David, for Khandala. Thereafter, according to the prosecution, the appellant and David started visiting the Magic Carpet flat, almost every alternate day, to meet Sushmita and Usha. It is alleged that whenever Sushmita and Usha inquired about the whereabouts of Anup and Swaraj Ranjan Das, the appellant disclosed that they were engaged in some important work and that they were safe, but refused to disclose the address where they were staying or give their contact numbers.

On 29th January, 1998, the appellant visited the 'Magic Carpet' flat. Again, when Sushmita (PW 1) is stated to have asked the appellant about the whereabouts of her brother (Anup) and father (Swaraj), the appellant disclosed that they were still busy in some important work and would come only after completing the same. On 2nd/3rd February, 1998, David is stated

to have visited 'Magic Carpet' at about 4:00 p.m. and disclosed to Sushmita (PW 1) and Usha (PW 4), that Anup had asked him to take the Maruti 800 Car, to the garage for repairs. Accordingly, Usha (PW 4) accompanied David to the 'Mittal Park' flat and handed over the keys to him, for getting the car repaired. On 5th February, 1998, the appellant is stated to have called Sushmita (PW 1) and disclosed to her, that the Pune Police had arrested Anup and that they could possibly arrest her and her mother and suggested that both of them should leave home. The appellant is also stated to have informed Sushmita (PW 1) that Swaraj Ranjan Das was admitted to the hospital. Sushmita felt that they had not done any wrong, and hence, decided not to leave their residence. According to the prosecution, within some time, David called Sushmita and informed her, about Anup's arrest. When Sushmita asked David, about the whereabouts of her father-Swaraj Ranjan Das, he is stated to have disclosed, that he was in a hotel. As there was some doubt and discrepancy with regard to the whereabouts given by both i.e. the appellant and David, Sushmita felt that something was amiss and accordingly refused to leave her residence.

On 7th February, 1998, Sushmita (PW1) lodged a missing complaint with the D. N. Nagar Police Station, as her father-Swaraj Ranjan Das had gone missing. PSI Budha Sawant (PW 38) recorded the said complaint in the Missing Major Persons Register at Serial No. 17/98 (Exhibit 55). The photograph of Swaraj Ranjan Das was also supplied by Sushmita and the same is at Exhibit 54. In the said missing complaint, Sushmita has stated that Swaraj Ranjan Das had left the house with the appellant and David and had not returned since then.

On 19th February, 1998, the watchman of 'Mittal Park' telephonically informed Sushmita (PW 1), that the appellant alongwith one male and few ladies, had entered the 'Mittal Park' flat by opening the lock. Pursuant thereto, Sushmita (PW 1), Usha (PW 4) and Abhijit (Sushmita's and Anup's brother) visited the 'Mittal Park' flat, to verify the said fact. On finding that some persons had entered the flat, Sushmita visited the Juhu Police Station and returned with the police. The appellant was seen in the flat and was taken to the Juhu Police Station. Thereafter, the

Juhu Police recorded the statements of Sushmita, Usha and the appellant. It appears, that the appellant produced xerox copies of documents to show his ownership in respect of the Mittal Carpet flat i.e. Power of Attorney, purportedly given by Swaraj Ranjan Das to the appellant, Deed of Confirmation executed by Swaraj Ranjan Das, Ration Card of the appellant, having address of Mittal Park and acknowledgment of payments made towards consideration for the said flat. The Juhu Police registered a missing complaint in respect of Anup Das in the early hours of 20th February, 1998, being Exhibit 174. It was stated in the said complaint, that Anup, left the house (Mittal Park flat) on 18th January, 1998 at 7:00 a.m., with his friends i.e. the appellant and David, but had not returned home and about the appellant's presence in the Mittal Park flat on 19th February, 1998. The same was recorded by PW 34-Hindurao Pharande, PSI, Juhu Police Station. On the very same day i.e. 20th February, 1998, the D.N. Nagar Police, also recorded Sushmita's statement.

After about 2 to 3 days, Sushmita started receiving anonymous calls demanding Rs. 5 lakhs, for giving information

about the whereabouts of her father-Swaraj Ranjan Das and brother-Anup Das. Sushmita (PW 1) suspected that the said calls were being made by the appellant and David, with the intention of extorting money from them. Accordingly, Sushmita's statement was again recorded by the D.N. Nagar Police on 25th February, 1998. The said statement was treated as an FIR, pursuant to which, C.R. No. 100 of 1998 was registered as against the appellant and David, alleging an offence punishable under Section 365 r/w 34 of IPC.

5. It appears, that the appellant was first arrested on **28th July, 1998** in connection with C.R. No. 292 of 1998 registered with the Borivali Police Station, as against the appellant, one Simi Sood and others, for the alleged offences punishable under Sections 465, 467, 471, 419, 420 r/w 411 of the IPC. Though, initially the appellant was granted anticipatory bail in the D. N. Nagar case on 20th March, 1998, subsequently after Section 302 etc. were added, the appellant was arrested in the D. N. Nagar case on **2nd April, 1998**. On 7th August, 1998, Sushmita took the D. N. Nagar police, to the place where David

was working and got David arrested. Accordingly, Sushmita's statement was recorded by the D.N. Nagar Police, on 7th August, 1998.

6. On 10th August, 1998, Sushmita's complaint (Exhibit 57) was recorded by the Juhu Police, pursuant to which CR No. 400 of 1998, was registered, as against the appellant and David, for the alleged offences punishable under Sections 341, 342, 364 r/w 34 of the IPC. Pursuant thereto, the appellant was arrested in the said Juhu case on 13th August, 1998 and David was arrested on 27th August, 1998.

7. Whilst in police custody in the D. N. Nagar case, David made a disclosure statement on 11th August, 1998, stating that he will show the two spots where the dead bodies were thrown i.e. one spot at Shirval Phata at Anduri Village, Lonand Road, Taluka Khandala, District Satara and other at Kumbharli Ghat, Taluka Chiplun, District Ratnagiri. Accordingly, David took the police to Lonand and showed the spot where the dead body was thrown. On inquiry with the Lonand Police, it was revealed that a

dead body with stab wounds was recovered by them on 26th January, 1998, and offences under Sections 302, 201 r/w 34 of the IPC was registered with the Lonand Police Station vide C.R. No. 9 of 1998. The clothes on the dead body, which were seized by the Lonand Police, were handed over by the Lonand Police, to the officers of the D. N. Nagar Police Station, alongwith the photographs of the dead body. The body found at Lonand was that of Swaraj Ranjan Das, who was abducted on 25th January, 1998. Thereafter, David led the police to Kumbharli Ghat and showed the spot where the dead body of Anup was thrown. As the dead body was not found at the spot, the D. N. Nagar Police made inquiries with the Alore Police, within whose jurisdiction the dead body is stated to have been thrown. The Alore police informed the D.N. Nagar Police, that they had recovered a dead body of a male in the age group, 35-40 years on 28th January, 1998. The said dead body was stated to be in a decomposed state. The Alore Police had accordingly registered an A.D.R, being A.D.R No. 2 of 1998. According to the prosecution, the said dead body was of Anup Das. The Alore Police also handed over the clothes which were found on the dead body, to the D. N.

Nagar Police, which were taken charge of, alongwith the photographs. The disclosure statement made by David to the D. N. Nagar Police on 11th August, 1998 was before he was shown arrested in the Juhu case i.e. C.R. No. 400 of 1998.

8. According to the prosecution, PW 36-PSI Ahmed Pathan, had arrested the appellant and Simi Sood on 28th July, 1998 from the Mittal Park flat, in connection with C.R. No. 292 of 1998, registered with the Borivali Police Station, for the offences punishable under Sections 465, 467, 471, 420 r/w 114 IPC. During his interrogation in the Borivali case, the appellant is alleged to have made a disclosure statement on 10th August, 1998, in the presence of panchas, that he will show the places, where he and David had thrown the dead bodies of Swaraj Ranjan Das and Anup, at Khandala and Kumbharli Ghats, respectively. The said panchanama is at Exhibit 141. According to the prosecution, pursuant thereto, the appellant led the police party to Kumbharli ghat, took them walking to a small bridge and pointed out a place, below the bridge, where mile stone with figure `6' was fixed and pointed out the place where

the dead body of Anup was thrown. However, nothing was found. The police, thereafter, proceeded to Alore Police Station, Chiplun, and enquired whether a dead body was found in the said area, under their jurisdiction. The Alore police are stated to have informed about finding of a corpse of a young man, six months prior, and about an ADR, having being registered. Thereafter, on 11th August, 1998, the appellant is stated to have led the police and panchas to Shirval Village, Satara Road; stopped the vehicle and taken the party to a spot, at a distance of 15 ft. from the road and showed the spot, where the dead body of Swaraj Ranjan Das was thrown. However, the dead body was not found. Since, the area fell within the jurisdiction of Lonand Police Station, inquiry was made with the said police station. On inquiry, it was revealed that a dead body of a 60 year old man was recovered from that site, and that the Lonand Police had registered C.R. No. 2 of 1998, alleging offences punishable under Sections 302, 201 r/w 34 of the IPC, as against unknown persons and that the case was being investigated by the Local Crime Branch. PW 7-Kisan Nanaware (Panch-inquest panchanama), PW 8-Shyamrao Dhaigude (who had seen the

dead body first in time and informed the police) and PW 9- Rajendra Galande (Police Officer, Lonand Police Station), have proved the finding of a dead body (Swaraj Ranjan Das) on 26th January, 1998. They have also identified the clothes found on the dead body.

9. On 15th August, 1998, pursuant to the disclosure statement made by David, Tata Siera Car No. MH-04-N-3342 was recovered from an open space near Ruia Park, Juhu. The said panchanama is at Exhibit 124. It is alleged by the prosecution that the said Tata Siera car was used to abduct Anup Das on 18th January, 1998 and Swaraj Ranjan Das on 25th January, 1998.

10. On 18th August, 1998, David again made a disclosure statement to the D. N. Nagar Police and offered to show the place where the Maruti 800 Car bearing No. MH-04-X-3432 was kept. Pursuant to the disclosure statement, David led the police and panchas to Alaknanda Society, Dattani Park, Kandivli (East), Mumbai. Accordingly, the Maruti Car belonging to Anup Das was seized vide panchanama Exhibit 63. It may be noted that it is the

prosecution case, that on 3rd February, 1998, David had visited the Mittal Park flat and disclosed to Sushmita and Usha, that Anup Das had asked him to take the Maruti 800 Car to the garage for repairs.

11. On 22nd August, 1998, the appellant made a disclosure statement in the presence of panchas, that he would show the place where the Tata Siera Car was taken for servicing and for wash. Accordingly, the appellant led the police and panchas to Vikas Petrol Pump at Juhu-Versova Link Road. The panchanama is at Exhibit 213. The police seized the Bill Book (Article 11) from Ajar Anwar Baig (PW 20) i.e. the person to whom the car was given for servicing and washing. The appellant also led the police to Prakash Petrol Pump near Chandan Cinema, Juhu, to show the place where he had purchased loose petrol in January, 1998. The said panchanama, is at Exhibit 214. The statement of Ramdhani Ratan Yadav (PW 5), a cashier at the said Petrol Pump was recorded in support thereof.

12. The appellant also took the police and panchas to the premises of Kanoj Arts, Opposite Juhu Church and showed the place where he had given the seat covers of Tata Siera for wash. Balkrishna Budhaji Pawar (PW 6) has been examined to prove the entry which was made in the Register on 20th January, 1998. The said panchanama is at Exhibit 215.

13. On 22nd August, 1998, David also made a disclosure statement offering to show the Chemist shop from where Morphine injection was purchased by him. Accordingly, he led the police and the panchas to M/s. Pinkle Medical Stores and pointed out the person i.e. Ashok Bhikaji Shinde (PW 17), who had sold him the Morphine Injection on 13th January, 1998. Accordingly, the panchanama was drawn. (This disclosure is in respect of D. N. Nagar Case i.e. the death of Swaraj Ranjan Das).

14. On 30th August, 1998, the appellant made a disclosure statement (Exhibit 113) in the presence of PW 16 - Jayaram L. K. Gopal (panch) and offered to show the place where he had concealed the chloroform bottle and knife used in the

commission of the offence. Accordingly, the appellant led the police party and panchas to flat No. B/11, Mittal Park and removed the chloroform bottle (Article 13) and knife (Article 12) from a garden pot. The said articles were seized under a panchanama (Exhibit 114).

15. It may be noted, that on 18th August, 1998, the learned Metropolitan Magistrate, Andheri, Mumbai, had directed that both the cases i.e. C.R. No. 400 of 1998 registered with the Juhu Police Station and C.R. No. 100 of 1998 registered with the D. N. Nagar Police Station, be jointly investigated. By an administrative order dated 27th August, 1998 (Exhibit 211), DCP, Zone VII directed PI Ramesh Vitthal Keni (PW 43) to carry out the investigation in both the cases. For the sake of brevity, the case registered with the Juhu Police Station will hereinafter, be referred to as '**Juhu case**' and the case registered with the D.N. Nagar Police Station will be referred to as '**D.N. Nagar case**'.

16. During the course of investigation, both, the D. N. Nagar Police and the Juhu Police recorded the statements of

Sushmita (PW 1), Usha (PW 4) and several others. It was also revealed in the course of investigation that the 'Mittal Park' flat was involved in the offence and hence, documents were secured from the Secretary of the Mittal Park Cooperative Housing Society. The Secretary of the Mittal Park Society produced xerox copies of the documents submitted by the appellant's family i.e. the Ration Card showing occupation of the said flat by the appellant and his family since April, 1994; receipt for Rs. 4,50,000/- purportedly signed by Swaraj Ranjan Das; receipt for Rs. 5,48,000/- signed by Mr. Abhijit Das on behalf of his father- Swaraj Ranjan Das, alleged confirmation letter/receipt of full payment and giving physical possession of the flat, purportedly signed by Swaraj Ranjan Das; and the General Power of Attorney, Clause IV of which authorises the appellant to transfer the flat to his name. According to the prosecution, the said documents, allegedly executed between the appellant and Swaraj Ranjan Das were forged and fabricated documents and were submitted to the society to show, that the appellant had purchased the Mittal Park flat from Swaraj Ranjan Das, sometime in October, 1997. According to Sushmita and Usha, the

signatures appearing on the said documents were not that of Swaraj Ranjan Das and that the signatures appearing on the said documents were forged.

17. Thereafter, the D. N. Nagar Police recorded the statement of Arun Kumar Mittal (PW 29), the developer of 'Mittal Park' at Juhu and took charge of the second copy of the Agreement for Sale of the flat from him; recorded the statement of Advocate Ramraj Raghunath Yadav (PW 31) in connection with the execution of the documents, including the Power of Attorney, purportedly given by Swaraj Ranjan Das to the appellant; recorded the statement of Ranjita Ramesh Talekar (PW 24), who was working in the Rationing Office at Vile Parle, in connection with the Ration Card, issued in the name of the appellant, having address of Mittal Park; and recorded the statement of the Special Metropolitan Magistrate, Borivali-Shri Prabhakar Vithal Inamdar (PW 30), in connection with the execution of the Power of Attorney, purportedly given by Swaraj Ranjan Das in favour of the appellant, before him. The police also took search of the flat in respect of articles lying in the Mittal Court flat and drew a

panchanama. Two notices dated 31st March, 1998 and 1st April, 1998 (Exhibits 270 and 271) were also issued to the appellant under Section 91 of the Code of Criminal Procedure for production of the original documents, in respect of the Mittal Park flat. However, he did not produce the original documents. Notices were also issued to David and others to produce original documents in respect of the said flat. However, they too, did not produce the original documents. On 31st October, 1998, the Mittal Park flat was sealed under a panchanama.

18. After completion of investigation, charge-sheet was filed in the D. N. Nagar case in the Court of the Metropolitan Magistrate at Andheri, Mumbai vide C.C. No. 484 of 1998. As far as the Juhu case is concerned, the charge-sheet was filed in the same Court vide C.C. No. 490 of 1998. Both these cases i.e. the Juhu case and D. N. Nagar case were committed to the Court of Sessions on 18th November, 1998.

19. Charges were framed as against the appellant and co-accused on 8th November, 2000 in the D. N. Nagar case. Both

the accused pleaded not guilty and claimed to be tried. The learned Sessions Judge vide order dated 20th November, 2001, directed that common evidence be recorded in both the cases and the defence gave its no objection to the same.

20. The appellant pleaded not guilty and claimed to be tried. According to the appellant, he was falsely implicated in the said case.

21. The prosecution in support of its case, examined 43 witnesses. In order to prove the evidence of last seen, the prosecution examined PW 1 Sushmita Swaraj Das (daughter of Swaraj Ranjan Das) and PW 4-Usha Swaraj Das (wife of Swaraj Ranjan Das). PW 3-Manojkumar K. Pandey, the panch to the disclosure statement made by the appellant, pursuant to which a bottle containing Chloroform and knife were recovered from the house of Anup Ranjan Das, was declared hostile; PW 5-Ramdhari Yadav, petrol pump attendant from whom the appellant purchased loose petrol was also declared hostile; Balkrishna B. Pawar, an employee of K. Arts Dry Cleaners, where

the appellant had given the Tata Siera seat covers for washing was examined as PW 6. It may be noted that nothing incriminating was found and hence his evidence is not of much assistance. PW 7-Kisan Dagdu Nanavare, is the panch to the inquest panchanama of the dead body (Swaraj Ranjan Das); PW 8-Shyamrao B. Dhaigude, is the person who informed the Lonand Police Station, of a dead body (Swaraj Ranjan Das) lying in the field; PW 9-Rajendra Vasant Galande, PSI Lonand Police Station, is the officer who recorded the panchanama of the dead body (Swaraj Ranjan Das); PW 10-Ayubmiya A. R. Patait, is the panch to the seizure of clothes of deceased (Anup); PW 11-Vishwas R. Pawar, is the person who saw a decomposed dead body (allegedly of Anup) at Kumbharli Ghat, Chiplun; PW 12-Ravindra R. Indulkar, is the panch to the exhumation of the dead body i.e. human skeleton allegedly of Anup Das; PW 13-Ashok K. Ponkshe, is the Medical Officer, Primary Health Centre, Shirgaon, who conducted the autopsy on the dead body (Anup); PW 14-Sachin N. Raut, is the employee of Tarang Photo Studio, who had taken the photographs of the dead body (Anup); PW 15-Kishore R. Jain, is the owner of Prabhu Jewellers, where David had allegedly sold

Anup's gold wrist watch and golden chain; PW 16-Jayaram L. K. Gopal, is the panch to the disclosure statement made by the appellant, pursuant to which a Chloroform bottle and knife were discovered. The said articles were recovered from Anup's flat. The panchanama is at Exhibit 114. PW 17-Ashok B. Shinde, is the employee of M/s. Pinkle Medical Store, Juhu, from where David had purchased Morphine Injection. The said witness produced the cash memo/bill dated 10th January, 1998; PW 18-Jeevan R. Shirsat, is the panch to the disclosure statement made by David, with respect to wrist watch and belt; PW 19-Mahesh G. Jain, is an employee of Vinod Jewellers, where David sold Anup's gold chain; PW 20-Ajgar Anwar Beig, is the petrol pump attendant, where the Tata Siera Car was washed. He has produced the bill (Article 11). The said witness was declared hostile. PW 21-Sheetal S. Mohite, is the panch to the exhumation of dead body (Anup's) i.e. skeleton was taken into custody after exhumation; PW 22-Mainuddin H. Shaikh, is the panch to the disclosure statement made by David, pursuant to which, Tata Siera allegedly used in the commission of the offence was recovered; PW 23-Dr. Prahlad N. Sable, is the Medical

Officer, Rural Hospital, Khandala, who performed the post-mortem of Swaraj Ranjan Das on 26th January, 1998. The post-mortem is at Exhibit 127; PW 24-Ranjita R. Talekar, is the Rationing Officer, who submitted her report dated 4th September, 1999 which is at Exhibit 133; PW 25-Darshil Tolani, is the panch to the disclosure statement made by the appellant, that he will show the spot where the dead bodies of Swaraj Ranjan Das and Anup Das were thrown by him i.e. at Lonand and Kumbharli Ghat; PW 26-Krishnavisha R. Dubey, the watchman of Mittal Park. The said witness informed Sushmita (PW 1) about appellant's entry into Anup's flat; PW 27-Ramranjan Tiwari, is the Security Supervisor of Mittal Park. He has disclosed that Anup was residing in the said flat and that the appellant was a frequent visitor in the said flat and that Swaraj Ranjan Das was the owner of the said flat. PW 28 – Anoop Karnik is the owner of Karnik Chemists, from where the appellant had purchased Morphine. The said witness was declared hostile. PW 29-Arun Kumar Mittal, is the partner of M/s. Juhu Constructions, from whom Swaraj Ranjan Das has purchased the flat at Mittal Park. PW 30-Prabhakar Inamdar, is the Special Metropolitan

Magistrate, before whom the Power of Attorney was purportedly executed by Swaraj Ranjan Das in favour of the appellant, on 4th October, 1996; PW 31-Ramraj Yadav, is the Advocate who has identified the said Power of Attorney. He has stated that the person who disclosed to him that he was Swaraj Ranjan Das, was not the same person in the photograph (Exhibit - 54); PW 32-Ram Narayan Surve, is the panch to the search panchanama dated 8th September, 1998 drawn at Mittal Park. The said panchanama is at Exhibit 165. PW 33-Abrar Ahmed Shaikh, is the person who prepared the duplicate key for the vehicle i.e. Tata Siera, pursuant to the disclosure made by David. PW 34-Hindurao Pharande, PSI, Juhu Police Station, is the officer who recorded the missing complaint i.e. missing of Anup Das; PW 35-Anil Sahgal, is the Secretary of Mittal Park, who produced the true copies of documents, submitted to him, by the two ladies staying in Anup's flat. PW 36- PSI Ahmed Pathan, is the Officer of Borivali Police Station; PW 37-Jagdish Engineer, is the Notary Public, who certified the Power of Attorney and other documents as true copies; PW 38-Buddha Sawant, PSI D. N. Nagar Police Station, is the officer, who received the missing complaint of

Swaraj Ranjan Das, Neelam Nerurkar, an acquaintance of David, to whom David had disclosed that he had purchased a Maruti Car, was examined as PW 39; PW 40-Vasant Bagal, is the officer, Alore Police Station (with regard to the dead body of Anup Das); PW 41-Ibrahim Khan, is the panch to the arrest panchanama (David); PW 42-Hotokashi Banaji, is the agent to whom a call was made for booking a resort at Mahableshtar, in the name of Mr. Das; and Ramesh Keni, P.I., D. N. Nagar Police Station, who investigated both the C.Rs, registered with the D. N. Nagar Police Station and Juhu Police Station from 27th August, 1998, was examined as PW 43.

22. The defence did not examine any witness. The learned Judge, after hearing the parties, was pleased to convict only the appellant in Sessions Case No. 1321 of 1998 (D.N.Nagar Case), for the offences as stated in para 1, whereas, by a separate judgment and order, was pleased to acquit the appellant and David of all the offences in Sessions Case No. 1320 of 1998 (Juhu Case).

23. It is not necessary for us to advert to in detail, the investigation done by the Juhu Police Station vis-à-vis abduction and murder of Anup Das, since on the basis of the investigation done in the said case and the evidence collected pursuant thereto, the appellant and David were acquitted of the said charge and other related offences. The acquittal was principally on the premise, that the prosecution had failed to establish that the dead body was that of Anup. As noted earlier, no appeal has been preferred by the State, challenging the acquittal of the appellant and David and as such the same has attained finality.

24. Ms. Rohini Dandekar, appointed Advocate for the appellant assailed the judgment and order on several grounds. She submitted that the prosecution case rests entirely on circumstantial evidence and that the prosecution had failed to prove each of the circumstance as against the appellant, beyond reasonable doubt. She submitted that there are several omissions, improvements and contradictions which have been elicited in the cross-examination of Sushmita (PW 1) and Usha (PW 4), which go to the root of the matter, thus making the

prosecution case suspicious. She further submitted that PW 1-Sushmita and PW 4-Usha, have made material improvements in their evidence, with respect to when Swaraj Ranjan Das left the Magic Carpet flat with the appellant, the vehicle in which they travelled, the dates when the appellant visited their flat, etc. She submitted that according to PW 1-Sushmita and PW 4-Usha, Swaraj Ranjan Das left with the appellant on 26th January, 1998 when infact, Swaraj Ranjan Das's dead body was seen on 26th January, 1998, in the afternoon. She further submitted that the alleged recovery of chloroform bottle at the instance of the applicant is of no consequence, inasmuch as, the prosecution has not proved, that chloroform was used in the commission of the offence. According to Ms. Dandekar, recovery of the Tata Siera Car is also of no consequence, as nothing incriminating was found in the said vehicle. She further submitted that the documents i.e. Power of Attorney, etc. have not been proved by the prosecution, inasmuch as, the original documents have not been placed on record. She further submitted that even according to the evidence of PW 35-Anil Sahgal, Secretary of Mittal Park, the concerned documents relied upon by the

prosecution, were not submitted by the appellant but, by some ladies. Learned Counsel submitted, that the prosecution had failed to forge the chain required in a case, resting on circumstantial evidence and as such the benefit of the same be given to the appellant.

25. Learned A.P.P supported the judgment and order. She submitted that there is ample evidence i.e. circumstances against the appellant. She submitted that the evidence of Sushmita (PW 1) and Usha (PW 4), with respect to Swaraj Ranjan Das being last seen together with the appellant inspires confidence. She submitted that merely because there is a discrepancy in the date, the same will not in any way affect the credibility of the said witnesses. She further submitted that the omissions, that have come on record are not material omissions, and as such do not affect the substratum of the prosecution case. She submitted that evidence of both Sushmita (PW 1) and Usha (PW 4), is consistent with each other, with respect to all material particulars and instills confidence. She further submitted that the recovery of a knife at the instance of the

appellant from the terrace garden of Mittal Park, is also an incriminating circumstance as against the appellant. Learned A.P.P further submitted that the medical evidence that has come on record shows that the injuries were possible by the said weapon. Learned A.P.P further submitted that Swaraj Ranjan Das was last seen in the company of Sushmita (PW 1) and Usha (PW 4) on 25th January, 1998 and his dead body was found on 26th January, 1998, by the Lonand Police, Satara. She submitted that the dead body of Swaraj Ranjan Das and his clothes were identified by Sushmita (PW 1) and Usha (PW 4) and that the said evidence is consistent with the missing report which was lodged by Sushmita (PW 1) on 7th February, 1998. She further submitted that the evidence of PW 26-K. R. Dubey, the watchman of Mittal Park reveals that on 19th February, 1998, the appellant forcibly entered the Mittal Park flat, owned by Swaraj Ranjan Das and where Anup was staying. She further submitted that the appellant had forged the signatures of Swaraj Ranjan Das in the Power of Attorney, purportedly executed on 4th October, 1997, before PW 30-Prabhakar Inamdar [Special Metropolitan Magistrate, Borivali (East)] and identified by PW 31-Advocate

Ramraj Yadav. She submitted that the evidence of PW 30 – Inamdar (Special Executive Magistrate), shows that the person, who was brought by the appellant, in whose favour the Power of Attorney was given, was not Swaraj Ranjan Das. She further submitted that the family of the appellant had submitted forged documents, allegedly executed by Swaraj Ranjan Das, in favour of the appellant vis-à-vis the 'Mittal Park' flat, to the Secretary of Mittal Park i.e. PW 35- Anil Sahgal. According to her, the motive for abducting and murdering Swaraj Ranjan Das was apparent i.e. the appellant wanted to take over the Mittal Park flat, belonging to Swaraj Ranjan Das. She submitted that considering the overwhelming material as against the appellant, the appeal be dismissed.

26. We have heard learned Counsel for the appellant and the learned A.P.P at length and have scrutinized the evidence and the documents on record, with their assistance. Having given our anxious consideration to the material on record, we are of the opinion that the appeal ought to be dismissed for the reasons stated hereinunder.

27. At the outset, we express our anguish, in the manner in which the investigation has been conducted, by both the Police Stations i.e. D. N. Nagar Police Station and Juhu Police Station, and the police apathy in the said case. We also express our anguish, that the State has not preferred an appeal against the acquittal of David in the D. N. Nagar case nor has challenged the judgment and order of acquittal of the appellant and David in the Juhu case. No doubt, both these cases rest on circumstantial evidence, but after going through the common evidence led, it appears that there is sufficient material to show the complicity of both the accused, in both the cases i.e. Juhu case and D.N. Nagar case. However, in the absence of any appeal against acquittal, in the Juhu case and as against David in the present case (D.N Nagar case), we proceed to deal with appeal filed by the appellant, against his conviction in the D.N. Nagar case i.e. for the murder of Swaraj Ranjan Das.

28. As noted earlier, the prosecution case rests entirely on circumstantial evidence. The law in this regard is well settled

in a catena of judgments. The Apex Court in the case of ***Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh***¹ has observed in para 10 as under:

“10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

29. Keeping in the mind the aforesaid settled principles, we now proceed to deal with the evidence and circumstances *qua* the appellant.

30. The first circumstance against the appellant is of last seen. In order to prove the said circumstance of last seen, the

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prosecution has examined Sushmita (PW 1) and Usha (PW 4), the daughter and wife of Swaraj Ranjan Das, respectively.

31. PW 1-Sushmita in her evidence has deposed; that Anup Das was her brother and Swaraj Ranjan Das was her father; that the appellant was working as a Steward in 'Copper Chimney' restaurant at Juhu and due to Anup's frequent visits to the said restaurant since 1995, the appellant and Anup Das became friends; that in 1997, Anup's brother-in-law Rajeev Bhattacharya was murdered and Anup was arrested in connection with the said murder; that whilst in jail, Anup got acquainted with David; and that after Anup and David were released on bail, David also started visiting the residence of Anup Das at Mittal Park. According to PW 1-Sushmita, on 17th January, 1998 at about 10:30 p.m., her mother, father and she had gone to the Mittal Park flat, where Anup Das was residing; that when they reached the flat, the appellant and David were in the house and that Anup was packing his bag, as they were going to Khandala; that on 17th January, 1998, her mother Usha (PW 4) stayed in the Mittal Park flat whereas, she and her father

returned back to the Magic Carpet flat. According to PW 1- Sushmita, on the next day, i.e. on 18th January, 1998, Usha (PW 4) returned back to the Magic Carpet flat and informed, that Anup had left for Khandala with the appellant and David at about 7:30 a.m, in a Tata Siera Car; that on 19th January, 1998, appellant came to the Magic Carpet flat, and on being asked by her and her mother Usha (PW 4) about the whereabouts of Anup, disclosed that he was at Khandala. She has deposed that though she sought the address and telephone numbers of the hotel where Anup was staying, the appellant refused to give the same. She has stated that the appellant again visited them on 21st, 23rd, 24th and 25th January, 1998 and on being asked by her and Usha (PW 4), he avoided giving the address and telephone number of the place where Anup was staying. She has further stated that on 25th January, 1998, the appellant came to the Magic Carpet flat, when her parents i.e. Usha (PW 4) and Swaraj Ranjan Das were also there, and disclosed to them, that Anup had asked his father (Swaraj Ranjan Das) to deliver a diary containing names and telephone numbers of Advocates and an amount of Rs. 25,000/- for preparing his case; that pursuant

thereto, Swaraj Ranjan Das accompanied the appellant and David with Rs. 25,000/- and the diary at about 3:00 p.m; and that she and Usha (PW 4) saw Swaraj Ranjan Das leaving with the appellant and David, in a Tata Siera Car. The appellant is alleged to have told her and Usha (PW 4) that they were going to Khandala, where Anup was staying. According to PW 1- Sushmita, thereafter, both, the appellant and David started visiting the Magic Carpet flat, almost every alternate day, till about 1st February, 1998. She has stated that when she asked the appellant about Swaraj Ranjan Das and Anup, he disclosed that they were working on an important matter and were busy preparing for the case, however, refused to disclose the address and telephone numbers. Sushmita has further deposed that on 3rd February, 1998, David came to the Magic Carpet flat at about 3:00 p.m. and asked for Anup's Maruti Car key. David is stated to have disclosed, that Anup had asked him to get the car repaired, pursuant to which, Usha (PW 4) handed over the keys to David. The said Maruti 800 Car was in the name of Ranu Bhattacharya, i.e. the wife of Anup Das. David is stated to have taken the Car which was parked in the parking area of the Magic Carpet.

According to Sushmita, on 4th February, 1998, at about 10:00 p.m, the appellant called her and informed, that Anup was arrested by the Pune Police and that the police were likely to also arrest her and her mother and suggested that they too should pack their bags and go with him. When questioned about the whereabouts of her father, the appellant disclosed that her father was sick and was admitted to the hospital, however, he did not disclose the name and address of the hospital. The appellant also told that he would be waiting for them on the ground floor. PW 1-Sushmita has stated that after about half an hour, David also telephoned and disclosed that Anup was arrested by Pune Police. However, when asked about the whereabouts of Swaraj Ranjan Das, David disclosed that Swaraj Ranjan Das was staying in a hotel. According to Sushmita, considering the inconsistent information given by the appellant and David, about Swaraj Ranjan Das's whereabouts, she became suspicious and decided not to leave home. Sushmita has stated that on 6th February, 1998, at about 11:00 a.m., she went to the D. N. Nagar Police Station alongwith her mother Usha (PW 4) and narrated the facts, i.e. the circumstances in which her brother

Anup and father Swaraj Ranjan Das left with the appellant and David. She disclosed that the appellant and David were not disclosing their whereabouts. On 7th February, 1998, Sushmita and her mother-Usha again went to the D. N. Nagar Police Station, where Sushmita's statement was recorded by PW 38-PSI Buddha Sawant, D. N. Nagar Police Station. In the said statement, PW 1-Sushmita has disclosed how her father had gone with the appellant and David to Khandala with Rs. 25,000/- to give Anup and had not returned home since then. She had also furnished a photograph of her father. Accordingly, the D.N. Nagar Police registered Sushmita's missing complaint. Sushmita has identified the photograph, which is stapled on page 18 of Register No. 1 "Missing Major Persons" for the year 1998 (Exhibit 53). She has identified her father's photograph and the missing complaint lodged by her (Exhibit 55A).

32. As far as missing of Anup Das was concerned, she was asked to lodge a complaint with the Juhu Police Station, as Anup Das had gone missing from his residence at Mittal Park, which fell within the jurisdiction of the Juhu Police Station. She has

stated that pursuant thereto, she and her mother-Usha visited the Juhu Police Station on the very same day i.e. 7th February, 1998, however, their complaint was not recorded on the ground, that their brother Anup had gone with the appellant and David on his own accord. According to Sushmita, on 19th February, 1998 at about 7:00 p.m., she received a call from K. R. Dubey (PW 26), the watchman working at Mittal Park, who informed her that the appellant and few women had occupied Anup's flat at Mittal Park, by opening its lock. She has stated that pursuant to the said information, she visited the D.N. Nagar Police Station and thereafter proceeded with the police to the Mittal Park flat. She has stated that her mother-Usha and brother-Abhijit had also come to the Mittal Park flat. According to PW 1-Sushmita, they saw that 3-4 ladies were present in the said flat. The said ladies disclosed that the said flat was purchased by them. PW 1-Sushmita has stated that the D.N. Nagar Police informed her, that the flat was within the jurisdiction of Juhu Police Station and that she should approach them. Pursuant thereto, she visited the Juhu Police Station and returned with 5-6 constables; that the said flat was opened by a woman, by the name Simi; that Simi

showed a receipt to the constable and told them that Swaraj Ranjan Das had sold the said flat to the appellant. The police entered the flat and later, took all of them, including the appellant, who was found hiding in the terrace of Anup's flat, to the Juhu Police Station. At the Juhu Police Station, the police recorded the statements of Sushmita, her mother-Usha (PW 4), brother Abhijit and the appellant. On 20th February, 1998, the Juhu Police registered Sushmita's missing complaint in respect of Anup Das. On 21st February, 1998, at about 11:00 a.m., PW 1-Sushmita received an anonymous call. The caller informed her, that if she wanted to know the whereabouts of her brother and father, she should keep a sum of Rs. 5 lakhs ready. According to Sushmita, when she insisted on hearing the voice of her father and brother, the phone was disconnected. The same demand was again made on the next day i.e. on 22nd February, 1998 at about 11:30 p.m. According to PW 1-Sushmita, she suspected that the calls were made by the appellant and David. On 23rd February, 1998, at about 7:30 p.m, PW 1-Sushmita went to the D.N. Nagar Police Station and disclosed about the phone calls and demand of Rs. 5 lakhs, however, her complaint was not

registered. On 25th February, 1998, at about 7:30 p.m., PW 1-Sushmita's complaint was recorded. The said complaint was treated as an FIR and the same is marked as Exhibit 56. PW 1-Sushmita has deposed that despite inquiries with the Police regarding the progress of her complaint, no progress was reported in the said case i.e. missing of her father Swaraj Ranjan Das till 7th August, 1998. According to PW 1-Sushmita, on 7th August, 1998, she showed the place where David was working, pursuant to which, David was arrested by PW 43-PI Keni. She has stated that on 10th August, 1998, a separate complaint/FIR was registered with the Juhu Police Station, with regard to the abduction of her brother Anup Das, on 18th January, 1998. The said complaint lodged on 10th August, 1998, was treated as an FIR (Exhibit 57).

33. On 12th August, 1998, 2-3 constables visited PW 1-Sushmita's flat at Magic Carpet and asked her, her mother-Usha and brother-Abhijit, to meet Shri Ambadas, in-charge of Unit-X of Crime Branch, C.I.D. at Kandivli Office. Accordingly, all of them visited the said Office. Shri Ambadas

showed 4 photographs. PW 1-Sushmita has stated that she identified 2 photographs, as that of her brother-Anup Das and 2, of her father-Swaraj Ranjan Das. PW 1-Sushmita identified the photographs of her father, on the basis of his appearance, as well as, the apparels worn by her father. As far as Anup Das's photographs were concerned, she identified him on the basis of the hands, as the face was burnt and was black. Sushmita's mother-Usha (PW 4) and brother-Abhijit also identified Swaraj Ranjan Das in the photograph. Thereafter, Sushmita alongwith PW 4-Usha and Abhijit visited the D. N. Nagar Police Station on the same day i.e. on 12th August, 1998 at about 4:30 p.m. and met PI Keni (PW 43). PW 43-PI Keni showed them the same photographs, which were shown by Shri Ambadas. Sushmita identified the said photographs of her father i.e. Swaraj Ranjan Das. The said photographs were marked as 'X' and 'X-1' for identification.

34. On 21st August, 1998, Sushmita was summoned by PW 43-PI Keni to the D. N. Nagar Police Station. She was shown the wrist watch of 'Omex' Company, having gold strap and gold

dial, and a gold chain. Sushmita identified the items, as belonging to her brother Anup Das. On 2nd September, 1998, Sushmita was again summoned by PI Keni. PI Keni showed her a Power of Attorney purportedly executed by her father on a Rs. 100/- stamp paper, in favour of the appellant. According to PW 1-Sushmita, the signature on the said document was not that of her father- Swaraj Ranjan Das, but had been forged. On 6th September, 1998, Sushmita and PW 4-Usha were called to the D. N. Nagar Police Station. P.I. Keni sent Sushmita alongwith some police officers and constables to the Mittal Park flat alongwith the appellant. PW 1-Sushmita and her mother Usha identified the articles in the said flat i.e. refrigerator, T.V., washing machine, A.C., computer, furniture, etc. as belonging to her brother-Anup Das. Accordingly, panchanama of the said articles was drawn. On 13th October, 1998, Sushmita was again called to the D. N. Nagar Police Station, where P.I. Keni showed her some clothes, i.e. blue colour terricot pants stained with mud, white half sleeve shirt with blue and purple stripes in torn condition stained with blood, a sweater in a torn condition, also stained with blood, one banian, underwear and leather belt.

Sushmita identified the said articles as that of her father Swaraj Ranjan Das and disclosed that he had worn the said clothes while leaving the house on 25th January, 1998, with the appellant and David. She also identified the clothes of Anup Das.

35. Sushmita was cross-examined at great length. A major part of her cross-examination, was devoted to bring on record, the omissions, improvements and contradictions in Sushmita's several statements, which were exhibited. A perusal of the examination-in-chief of PW 1-Sushmita shows that all the minute details, right from 17th January, 1998 till lodging of her complaint and even thereafter, as deposed to, are not reflected in her FIR/statements. The trial Court has bracketed all the omissions and has marked the same in the notes of evidence. According to us, the said omissions, improvements and contradictions do not, in any way, affect the substratum of the prosecution case and cannot be said to be material omissions and improvements.

36. Even if the so called material omissions, improvements and contradictions are ignored, the gist of PW 1-Sushmita's substantive evidence, is as under;

(i) It has come in Sushmita's evidence that she was residing with her father, mother and brother-Abhijit at the 'Magic Carpet' flat, whereas, her brother-Anup was staying at the 'Mittal Park' flat, which was in the name of her father-Swaraj Ranjan Das. She has stated that Anup was friendly with the appellant for a couple of years, prior to the incident. She has stated that the appellant was working in the Copper Chimney restaurant, and as Anup and all of them used to visit the said restaurant, Anup and the appellant had become friendly. She has stated that her brother-Anup was accused of murdering his brother-in-law, as a result of which, Anup was arrested and whilst in jail, he met David. She has stated that after the release of Anup and David from jail, sometime in December, 1997, David also started visiting Anup's residence. She has further stated that during the day, her mother-Usha (PW 4) would live in the Magic Carpet flat and in the night, she would reside with Anup, in the Mittal Park

flat. She has stated that on 18th January, 1998, at about 7:00 a.m., the appellant, David and Anup left home, disclosing to PW 4-Usha that they were going to a Hill Station. She has stated that thereafter, every one or two days, the appellant would visit the Magic Carpet flat. She has stated that on 25th/26th January, 1998, at about 4:00 p.m., the appellant came home and pursuant thereto, her father-Swaraj Ranjan Das left with the appellant alongwith Rs. 25,000/-. According to Sushmita, thereafter, the appellant and David were frequently visiting their house, however, neither Anup nor Swaraj Ranjan Das returned home. She has further stated that when she asked the appellant and David, about her father and brother's whereabouts, and sought details, they refused to disclose the same. She has further stated that on 29th January, 1998, the appellant had come home and when she and her mother asked for Anup's number, the appellant stated that he would give the number later. She has further stated that on 3rd February, 1998, David came home to take Anup's Maruti car. She has stated that her mother Usha went with David to the Magic Carpet flat and handed over the car keys to him. She has further stated that on

4th February, 1998, the appellant called and disclosed that the Pune police had arrested Anup, and that they were likely to arrest them (Sushmita and Usha) and hence, they should accompany him. She has stated that she and her mother refused to leave their residence. According to Sushmita, she lodged a missing complaint on 8th February, 1998 (Exhibit 55A) with regard to missing of her father-Swaraj Ranjan Das. Sushmita has stated that she had disclosed in the said complaint, that the appellant and David, both Anup's friends, had come home on 25th January, 1998 at about 4:00 a.m. and informed them that Anup was at Khandala and that he required Rs. 25,000/-; that the appellant and David disclosed that Swaraj Ranjan Das will have to accompany them to Khandala to give the said money and accordingly, all of them i.e. the appellant, David and Swaraj Ranjan Das left for Khandala. She has stated that her father-Swaraj Ranjan Das did not return home thereafter, however, the appellant and David would intermittently call and sometimes visit them. She has further stated that, her father had not returned home and despite search, they were unable to find him. She has given the description of her father-Swaraj Ranjan Das

and the clothes worn by him, when he left the residence. The said missing complaint is exhibited as Exhibit 55A. (The main discrepancy in Sushmita's evidence and the missing complaint and FIR is the date i.e. when Swaraj Ranjan Das left home with the appellant and David. In her evidence, Sushmita has disclosed the date as 25th January, 1998, whereas, in the missing complaint and FIR, it is mentioned as 26th January, 1998. We will deal with the said discrepancy a little later, while analysing the evidence). She has further stated that on 19th February, 1998, the watchman of Mittal Park flat disclosed, that the appellant and some ladies had forcibly entered the said flat, pursuant to which, she informed the Juhu Police Station. Accordingly, the Juhu Police came and all were taken to the Juhu Police Station, where, the police recorded her, her mother's and the appellant's statements. Sushmita has also disclosed that the Mittal Park flat was purchased by her father and that her brother-Anup was residing in the said flat.

(ii) Sushmita has further stated that thereafter, for 2 - 3 days, she started receiving unknown calls and that the said

persons were demanding Rs.5 lakhs, for disclosing the whereabouts of her brother and father. She has stated that she suspected that, it was the appellant and David, who were calling, and trying to extract money from them. She has further stated that both, her father and brother had left with the appellant and David and that they had not returned thereafter, and that there was no contact with them. She has stated that although the appellant and David were visiting their residence thereafter, they were refusing to disclose the whereabouts of her father and brother. She has stated that she suspected that the calls demanding money, were being made by the appellant and that her father was confined by the said persons. Accordingly, she lodged a complaint as against the appellant and David. Pursuant to her statement dated 25th February, 1998, the police registered C.R. No. 100 of 1998, as against the appellant and David, alleging an offence punishable under Section 365 r/w 34 of the IPC.

37. Sushmita's evidence also shows, that on her disclosing the whereabouts of David, the D. N. Nagar Police

arrested David on 7th August, 1998, pursuant to which, Sushmita's statement was again recorded. Sushmita's evidence shows that her statement was again recorded on 12th August, 1998, after PI Keni showed her the photographs of her father-Swaraj Ranjan Das, received from Lonand Police. She has stated that she had identified her father in the photographs as well as the clothes worn by him.

38. Usha, wife of Swaraj Ranjan Das has been examined by the prosecution, as PW 4. PW 4-Usha is also the mother of Anup Das. Her evidence is on similar lines as that of PW 1-Sushmita. She has deposed that on 17th January, 1998 at about 7:00 p.m, she along with her daughter-Sushmita and husband-Swaraj Ranjan Das visited the Mittal Park flat, where Anup was residing; that Anup was packing his bag; that the appellant and David were present in the house; that the appellant disclosed that all of them were going to Khandala on 18th January, 1998; that thereafter, her husband Swaraj Ranjan Das and daughter-Sushmita returned to their Magic Carpet flat, whereas, she stayed back with Anup. She has stated that on the next day i.e.

on 18th January, 1998, at about 7:30 a.m., Anup, the appellant and David left home. According to Usha, Anup told her that they had cancelled their program of going to Mahabaleshwar, and were instead going to Khandala. Usha saw them leaving in a Tata Siera Car. She has stated that after completing the household work, she returned to the Magic Carpet flat and informed her husband and daughter about the same. Thereafter, PW 4-Usha has set out the details of visits and calls made by the appellant from time to time. She has also stated that whenever the appellant and David were asked about the whereabouts of Anup, they refused to divulge the details, stating that he was at a safe place and was doing some important work.

39. According to PW 4, on 25th January, 1998, appellant came to their residence. She has stated that her daughter Sushmita and husband Swaraj Ranjan Das were present at home and that the appellant disclosed that Anup required the diary containing the names of the Advocates and a sum of Rs. 25,000/- and that Anup had asked his father to bring the same. She has further stated that on 25th January, 1998 at about

3:30 p.m, Swaraj Ranjan Das accompanied the appellant and David in a Tata Siera Car. The evidence of PW 4-Usha, is again on similar lines as that of PW 1-Sushmita, with regard to the visits and telephone calls made by the appellant and the non-disclosure by the appellant about the whereabouts of Anup and Swaraj Ranjan Das.

40. According to PW 4-Usha, on 3rd February, 1998, David came and asked her for Anup's Maruti Car key and disclosed that Anup had asked him, to take the car for repairs. She has stated that pursuant thereto, she handed over the car keys to David. She has also disclosed about the calls made by the appellant and David, informing them, that Anup Das was arrested by the Pune Police and also about the likelihood of the police arresting her and her daughter. She has also deposed about the discrepancies in the version of the appellant and David with regard to the whereabouts of Swaraj Ranjan Das and the conduct of the police. According to Usha, on 19th February, 1998, the watchman of Mittal Park informed them that the appellant and his family had entered Anup's flat, pursuant to which they went

to the said flat. She has stated that her daughter went to the Juhu Police Station and returned with the Police after which all of them including the appellant were taken to the Juhu Police Station. She has stated that the Juhu Police started writing her statement, even before she started narrating and when she objected, they asked her to keep quiet and again said that her husband and son had run away. She has stated that her condition was bad, however, despite this, she and her daughter kept visiting the police stations. The evidence of PW 4-Usha is again on similar lines as that of PW 1, with regard to being called by Shri Ambadas for identifying the photographs. She has stated that she had identified the photographs, as being of her husband-Swaraj Ranjan Das and son-Anup Das.

41. The said witness was also cross-examined at length. Certain omissions, improvements and contradictions were brought on record. Several questions were put to the witness, regarding the Company-Usha Pharmaceuticals Pvt. Ltd., etc. and with regard to the transactions of the said Company. Several suggestions made by the Advocate for the appellant were

categorically denied by her i.e. she had not seen Anup Das going with the appellant and David on 18th January, 1998; that, she had not seen her husband accompanying the appellant and David, etc.

42. We may again note, that none of the omissions/improvements/contradictions can be termed as material, and such, that would affect the substratum of the prosecution case. If the so called omissions, improvements and contradictions are ignored, the gist of the evidence of Usha, which is consistent with her statements, is as under :

(i) According to Usha, she was residing with her husband and daughter-Sushmita at the 'Magic Carpet' flat, whereas Anup was staying in the Mittal Park flat; (ii) That every night, she would stay in the Mittal Park flat with Anup and would return to the Magic Carpet flat, every morning; (iii) That on 18th January, 1998, at 7:30 a.m., Anup and his friends, i.e. appellant and David, left together, to go to a Hill Station and after doing some work, she returned to the Magic Carpet flat; (iv) That every one/two days, the appellant would visit their flat; (v) That

whenever her daughter asked the appellant and David about Anup's whereabouts i.e. address and phone number, they did not provide the said information and would say that Anup was busy in some important work; (vi) That on 25th / 26th January, 1998, the appellant came to the Magic Carpet flat and disclosed that Anup was at Khandala. According to Usha, when she questioned the appellant about the whereabouts of Anup, he disclosed that Anup was at Khandala and that he had stayed back to complete some important work. She has stated that the appellant told them, that Anup was in need of Rs. 25,000/- and had asked for the said amount to be sent. She has stated that her husband-Swaraj Ranjan Das was also present in the house and that as Anup was in need of money, Swaraj Ranjan Das went with the appellant and David with Rs. 25,000/-; (vii) That, thereafter, the appellant started visiting their house. According to PW 4-Usha, whenever her daughter asked the appellant, about the whereabouts of her husband and son, the appellant would say, that both were busy in preparing the case; (viii) That on 3rd February, 1998 in the evening, David came home and disclosed that he was taking Anup's Maruti 800 Car for

repairs. She has stated that pursuant thereto, she accompanied David to Mittal Park, in which premises, the car was parked and handed over the car keys to David; (ix) That later, the appellant called and disclosed that Anup was arrested by the Pune Police and that the Police were also likely to arrest them and asked them to leave their house; (x) That on 19th February, 1998, the watchman of Mittal Park called and disclosed that the appellant and his family had forcibly entered the Mittal Park flat, pursuant to which, they went to the said flat; (xi) That she identified the photos of her husband and son, as shown by police.

43. We have considered and gone through the entire evidence of PW 1-Sushmita and PW 4-Usha, including the omissions, improvements and contradictions and are of the opinion, that their evidence inspires confidence and that they are trustworthy and natural witnesses. The question is, whether the omissions/improvements/contradictions are such, that they affect the substratum of the prosecution case. The answer is an emphatic 'NO'. The gist of the substantive evidence of PW 1-Sushmita and PW 4-Usha, which is consistent with their

statements show, that all the material allegations have been set out by the said witnesses. Although, there is a discrepancy with regard to the date, when Swaraj Ranjan Das left home, the same cannot be said to be so material, in the peculiar facts of this case, as the appellant was visiting the Magic Carpet flat, every second day, after 18th January, 1998. It is an obvious mistake in the date, which was subsequently rectified by the witnesses in their statements dated 12th August, 1998. The dead body of Swaraj Ranjan Das was found on 26th January, 1998, at Lonand and hence, the date mentioned in the missing report/FIR, as 26th January, 1998, on the face of it, appears to be a mistake. It will have to be borne in mind, that Sushmita's statement (missing complaint) was recorded, for the first time, by the police on 7th February, 1998. It is also evident, that both these witnesses have consistently, from the very beginning stated, that Swaraj Ranjan Das had left home with the appellant and David and was never seen thereafter. The body of Swaraj Ranjan Das was found by the Lonand Police on 26th January, 1998. Considering the same, the discrepancy in the date mentioned in the missing report and in the FIR as 26th January,

1998, clearly appears to be an error and that the same has been corrected by the witnesses, in their subsequent statements dated 12th August, 1998 and in their substantive evidence, as 25th January, 1998. It is pertinent to note, and has come on record, that the appellant and David were visiting the Magic Carpet flat, every second day, after 18th February, 1998, and even after 25th February, 1998. Thus, in the facts, the non-mentioning of the correct date, does not assume much significance. There are also omissions with respect to certain other dates, as to when the appellant and David came home, to the Magic Carpet flat and with respect to the vehicle i.e. Tata Siera in which the deceased Swaraj Ranjan Das allegedly left with the appellant, the diary containing advocates' names allegedly sought by Anup, etc. However, the said omissions cannot be termed as omissions/improvements in stricto sensu. It is well-settled that an FIR is not an encyclopedia of facts, concerning the crime. Merely because the minutest details of occurrence have not been mentioned in the FIR/statements, the same would not make the prosecution case vulnerable/doubtful. Merely because the exact dates, some details including the

vehicle in which Swaraj Ranjan Das left with the appellant have not been mentioned, would not in any way, affect the substratum of the prosecution case. The evidence of both the witnesses inspires confidence and appears to be natural and trustworthy. The omissions/improvements on record, will have to also be considered, keeping in mind, the manner in which the police have handled/investigated the case. Police apathy, callousness and indifference is visible from the time, PW 1-Sushmita and PW 4-Usha, visited the D.N. Nagar Police Station to lodge a missing complaint, which was finally taken by the police on 7th February, 1998. The two ladies i.e. PW 1-Sushmita and PW 4-Usha, were made to run from one police station to other, citing jurisdictional issues. None took the allegations seriously. Infact, even after the missing complaint was lodged with the D.N. Nagar Police Station, no serious investigation or even inquiry was done by the police, as according to them, Swaraj Ranjan Das had gone, on his own accord, with the appellant and David. Infact, the missing complaint of Sushmita, with regard to Anup going missing also met a similar fate. First reluctance to record the missing complaint and after it was registered on 20th February,

1998, no serious investigation was done, even by the Juhu Police. It is also pertinent to note, that in the Juhu case (Anup's case) the police registered the FIR only on 10th August, 1998 (Exhibit - 57) No doubt, it appeared that Anup and Swaraj had gone voluntarily with the appellant and David, but the fact remained, that they were taken by making a misrepresentation and that they did not return thereafter, when infact, the appellant and David kept visiting Sushmita and Usha and disclosed to them that Anup and Swaraj Ranjan Das were safe, but refused to disclose their address and telephone numbers. This very conduct, should have raised some suspicion for the police, to atleast start some inquiry/investigation, but nothing was done. No efforts, whatsoever, were made by the police to even call and question the appellant and David. Infact, it is a matter of record, that it was PW 1-Sushmita, who traced David and took the police with her, pursuant to which, he was arrested on 7th August, 1998. Police apathy is writ large in the said case, at every stage, starting from the manner in which the case was initially handled, when, PW 1-Sushmita and PW 4-Usha approached the police, disclosing to them, that Anup and Swaraj

Ranjan Das, who had gone with the appellant and David, were missing since then, and later their callous approach in the investigation. Infact, almost till August 1998, no serious investigation was done. Keeping in mind the said fact, the evidence on record will have to be appreciated. Police apathy and lapses in investigation cannot as a rule, always benefit an accused. It would depend on the facts of each case and the evidence adduced in the case. Fortunately, in the present case, the evidence shows, that all the material facts have come in the FIR/statements and have also been deposed to, by the witnesses. The minute details set out by both, PW 1-Sushmita and PW 4-Usha inspire confidence and merely because the same are not disclosed to, in the FIR/statements, do not, in the facts, make the prosecution case even remotely doubtful.

44. Considering the evidence on record, we find that the prosecution has proved the circumstance of Swaraj Ranjan Das, being last seen in the company of the appellant. What emerges from the evidence of PW 1-Sushmita and PW 4-Usha is as under:

- (i) That PW 4-Usha stayed overnight in Mittal Park flat, i.e. on 17th January, 1998 and at that time, the appellant and David were present in the flat and that Anup was packing his bag;
- (ii) That the appellant, David and Anup left for Khandala, on 18th January, 1998 at 7:30 a.m. after disclosing the same to PW 4-Usha, that they were going to Khandala for a holiday;
- (iii) That Usha (PW 4) returned to the Magic Carpet flat on 18th morning and informed Sushmita (PW 1) that Anup had left with the appellant and David, for Khandala;
- (iv) That the appellant started visiting them or calling them from 19th January, 1998 onwards, every other day. Whenever, the appellant visited or called, he avoided furnishing the details about Anup, despite being requested to furnish the same and stated that Anup was busy preparing his case and was doing important work;
- (v) That on 25th January, 1998, the appellant came home and disclosed, that Anup was in need of Rs. 25,000/- and had asked his father-Swaraj Ranjan Das, to come with the same;

(vi) That Swaraj Ranjan Das left with the appellant and David, saying that he was going to Khandala, where Anup was staying;

(vii) That Swaraj Ranjan Das did not return home after that;

(viii) That the appellant and David kept contacting PW 1-Sushmita and PW 4-Usha, either by visiting them personally or on phone, every second day, and every time, when asked to provide the address and telephone numbers of the place, where Anup Das and Swaraj Das were staying, the same was not provided. The appellant only informed that both of them were safe and were busy in some important work;

(ix) That the appellant telephoned Sushmita and told her that she and her mother should pack their bags and come along with them, as the Pune Police had arrested Anup Das and were also likely to arrest them;

(x) That a missing complaint dated 7th February, 1998 (Exhibit 55) was lodged. In the said missing complaint, Sushmita had stated that her father-Swaraj Ranjan Das had gone with the appellant and David, with Rs. 25,000; as according to the

appellant, Anup was in need of the same, and that he had not returned since then;

(xi) That a complaint/FIR was registered with the D. N. Nagar Police Station on 25th February, 1998, as against the appellant and David alleging an offence punishable under Section 364 r/w 34 of the IPC;

(xii) That the dead body of **Swaraj Ranjan Das** was found on 26th January, 1998 by the Lonand Police Station; that the Lonand Police Station had registered a case being CR No. 9 of 1998, as against unknown persons, for the alleged offence punishable under Sections 302, 201 r/w 34 of the IPC;

(xiii) that multiple injuries were found on the said body, showing that it was a homicidal death; and

(xiv) That the clothes of the deceased which were seized by the Lonand Police were later again shown and seized under a panchanama, by the D.N. Nagar Police Station. The said clothes were identified by PW 1-Sushmita and PW 4-Usha. The said

clothes matched the description of the clothes given by Sushmita in the missing complaint. The witnesses i.e. PW 1-Sushmita and PW 4-Usha also identified the photograph of Swaraj Ranjan Das, taken by the Lonand Police. The said photo matches the admitted photo of Swaraj Ranjan Das, given to the D.N.Nagar Police, at the time of lodging of a Missing Complaint.

45. A careful perusal of the evidence of both these witnesses shows, that Swaraj Ranjan Das left the Magic Carpet flat on 25th January, 1998 alongwith the appellant, pursuant to the misrepresentation made by the appellant, that Anup was in need of money and had asked his father-Swaraj Ranjan Das to bring Rs. 25,000/- with him. Thus, the evidence of both these witnesses i.e. PW 1-Sushmita and PW 4-Usha shows that Swaraj Ranjan Das was last seen by them, in the company of the appellant. Swaraj Ranjan Das's body was found on 26th January, 1998. The evidence of the doctor who conducted the post-mortem on deceased Swaraj Ranjan Das shows, that Swaraj Ranjan Das died in the intervening night between 25th January, 1998 and 26th January, 1998. PW 23-Dr. Pralhad Sable, was

attached to the Rural Hospital, Khandala, Satara, at the relevant time. He has deposed, that when he performed post-mortem on the dead body (Swaraj Ranjan Das) on 26th January, 1998, he noticed in all 9 incised wounds. He has stated that all the wounds were penetrating wounds and were on vital parts of the body i.e. lung and liver. Wounds were also found on both the wrists. Dr. Sable performed the post-mortem on 26th January, 1998 between 8:00 p.m and 9:00 p.m, at the request of Lonand Police. Dr. Sable has also mentioned the clothes found on the dead body. The medical evidence shows that Swaraj Ranjan Das died on 26th January, 1998 between 2:00 a.m to 8:00 a.m. It appears that the injuries were ante-mortem and the cause of death was stated to be “haemorrhagic shock due to multiple incised wounds and injury to right lung and liver.” The said injuries were stated to have been caused by hard and sharp object. From the evidence on record, it is apparent that there was close proximity between the time when Swaraj Ranjan Das was last seen together with the appellant on 25th January, 1998 at about 3.30 p.m, and the time when Swaraj Ranjan Das's body was found at Shirval Phata at Anduri Village, Lonand Road,

Taluka Khandala, Satara on 26th January, 1998, in the afternoon. It is evident, from the evidence on record, that Swaraj Ranjan Das was induced by the appellant, by deceitful means, to accompany him. The evidence of PW 1-Sushmita and PW 4-Usha is cogent, consistent, reliable, trustworthy and credible. Infact despite the lengthy cross-examination, their evidence has remained unshaken. Thus, the prosecution has proved that Swaraj Ranjan Das was last seen together in the company of the appellant.

46. As far as the identity of the dead body of Swaraj Ranjan Das is concerned, the same has been proved by the prosecution, by bringing cogent and credible evidence on record. As has come in the evidence of PW 1-Sushmita, she had given a photograph of her father-Swaraj Ranjan Das, at the time of lodging a missing complaint with the D. N. Nagar Police Station on 7th February, 1998. She has also given the description of the clothes worn by Swaraj Ranjan Das, when he left the house with the appellant and David. PW 1-Sushmita and PW 4-Usha have also identified the photographs of the dead body as

being of Swaraj Ranjan Das. The said photographs were taken by PW 9- Rajendra Vasant Galande, PSI Lonand Police Station on 26th January, 1998, when the inquest panchanama (Exhibit 93) was recorded. The said inquest panchanama sets out in detail the clothes found on the dead body. The dead body was sent for post-mortem examination alongwith the clothes and the doctor performing the post-mortem was required to cut the clothes. Accordingly, the clothes were seized by constable Gujar under a seizure panchanama (Exhibit 96) on 26th January, 1998. The evidence of PW 43-PI Ramesh Vitthal Keni, Investigating Officer also shows that he had taken custody of the said clothes, seized by the Lonand Police Station and had brought the same, to the D. N. Nagar Police Station in connection with C. R. No. 100 OF 1998. PW 1-Sushmita and PW 4-Usha have identified the clothes found on the dead body, as being that of Swaraj Ranjan Das. They have stated that these were the clothes worn by him when he left home on 25th January, 1998, with the appellant. The same is also recorded in the panchanama which is at Exhibit 65. PW 2-Sitaram Mahadeo Pandit is a panch witness to the said panchanama. The prosecution has also through the evidence of

PW 7-Kisan Nanavare, PW 8-Shyamrao Dhaigude, PW 9-Rajendra Galande proved the clothes found on the dead body. PW 8-Shyamrao Dhaigude, a resident of village Anduri, has stated that on 26th January, 1998, two persons informed him at 2:00 p.m., about a dead body lying in Dada Andore's field, pursuant to which, he informed the Lonand Police Station, on phone. He has stated that the police came to the spot at about 2:15-2:30 p.m. The body was of an unknown person. Photographs of the dead body were taken. He has identified the said photographs. According to PW 7-Kisan Nanavare, when he was proceeding to his field, he saw a dead body and found that the police were present at the spot. He has stated that he acted as a panch to the inquest panchanama. According to PW 8-Dhaigude, the deceased was seen wearing a blue coloured full pant, checked half shirt, sweater and a half banyan. He noticed injuries on the chest, hands and legs of the deceased. He has proved the inquest panchanama, which is at Exhibit-93. He has identified the clothes found on deceased i. e. Articles 3 to 8 as well as the photographs of the deceased person. Nothing material has been elicited in the cross-examination of both these witnesses to

discredit their testimony. PW 9-API Rajendra Galande was attached to the Lonand Police Station as a PSI in 1998 and was in-charge of the said Police Station. He has stated that on 26th January, 1998, HC Bhosale informed him at about 2:30 p.m., that a dead body of 50 year old person was lying on the Lonand-Shirval road. Thereafter, PW 8- Dhaigude and his team proceeded towards the said place; on reaching the spot, they called the Panchas and drew the inquest panchanama; and that they noticed 9 injuries on the chest. He has stated that the deceased had worn a full pant, half shirt, sweater, sando banyan and half pant. Accordingly, inquest panchanama was drawn. Thereafter, photographer was called and photographs of the dead body were taken. Body was taken to PHC, for post mortem. Thereafter, spot panchanama was drawn (Exhibit 95-A). As the body was of an unknown person, an FIR was lodged, vide CR No.9 of 1998, alleging offences punishable under Sections 302, 201 r/w 34 of the IPC, as against unknown persons. After conducting the post-mortem, PC Gujar produced the clothes of the deceased before PCO, Lonand Police Station and the same were seized under a panchanama (Exhibit 96-A). On 18th March,

1998, the investigation was handed over to Local Crime Branch, Satara. He has identified the clothes seized and the photographs taken. As noted earlier, PW 1-Sushmita and PW 4-Usha have identified the said clothes seized by Lonand Police, in the presence of PW 2-Sitaram Pandit (Panch) on 13th October, 1998. The said witnesses i. e. Sushmita and Usha have deposed that those were the very same clothes worn by Swaraj Ranjan Das on 25th January, 1998, when he left with the appellant, to go to Khandala to give Rs. 25,000/- to Anup. Considering the material on record, we find that the prosecution has established that the clothes which were seized were that of Swaraj Ranjan Das and that the dead body was of Swaraj Ranjan Das. In addition, the witnesses PW 1-Sushmita and PW 4-Usha, have identified the photos taken by the Lonand Police, as that of Swaraj Ranjan Das. The said photos match the photograph of Swaraj Ranjan Das in the Missing Register.

47. As far as motive is concerned, it is evident from the material on record that the appellant wanted to usurp the flat, where Anup Das was residing i.e. at Mittal Park and which stood

in the name of Swaraj Ranjan Das. The prosecution in order to establish the same, has examined as many as 6 to 7 witnesses. It appears that the appellant had forged and prepared documents in his favour i.e. Power of Attorney and Ration Card in respect of flat at Mittal Park which stood in the name of Swaraj Ranjan Das. It appears that in order to grab the property, the appellant first took Anup Das on 17th January, 1998, after which, Anup Das never returned; that the appellant informed PW 1- Sushmita and other family members including Swaraj Ranjan Das (deceased) that Anup wanted Rs. 25,000/- and had asked his father to bring the same to him; that pursuant to the representation made by the appellant, Swaraj Ranjan Das accompanied him along with Rs. 25,000/- on 25th January 1998 after which, his dead body was found by the Lonand Police Station on 26th January, 1998. It is pertinent to note, that the appellant had created forged and bogus documents i.e. Power of Attorney, etc, prior to the demise of Swaraj Ranjan Das. The evidence of PW 29-Arun Mittal, Partner of M/s.Juhu Constructions, shows that Swaraj Ranjan Das had purchased the flat at Mittal Park i.e. B-11 in 1992. The evidence of other witnesses i.e. PW

26-Krishnavisha Dubey, PW 27-Ramranjan Tiwari and PW 35-Anil Sahgal, shows that Anup was residing in the said flat. Although, according to the appellant, he had purchased the said flat from Swaraj Ranjan Das, no material/documents have been produced by him, to show that any consideration was paid by the appellant to Swaraj Ranjan Das. The evidence of PW 30-Prabhakar Inamdar, Special Executive Magistrate at Borivali shows that the Power of Attorney was executed before him purportedly by Swaraj Ranjan Das in favour of the appellant on 4th October, 1997. The said witness has identified his signature and seal on the said Power of Attorney. PW 30-Prabhakar Inamdar has further deposed that the person shown to him in the photograph Exhibit 54 (i.e. Swaraj Ranjan Das) was not the executant of the Power of Attorney, which was executed before him. He has, however, identified the appellant as being the person who was present before him. Thus, the evidence of PW 30-Prabhakar shows that some person had impersonated Swaraj Ranjan Das before PW 30-Prabhakar Inamdar, the Special Executive Magistrate. Similarly, PW 31-Advocate Ramraj Yadav, on the basis of the photographs, has also stated that it was not

Swaraj Ranjan Das who had executed the Power of Attorney before him. It is pertinent to note, that by virtue of the said Power of Attorney, purportedly given by Swaraj Ranjan Das to the appellant on 4th October, 1997, the appellant was given the right to sell the property at Mittal Park. As far as PW 35-Anil Sahgal, Secretary of the Mittal Park Society, is concerned, he had stated that the said flat, being flat No. B-11, Mittal Park, was sought to be transferred in the name of the appellant, by tendering notarized true copies of the documents, being Exhibit 186 (colly). According to PW 35-Anil Sahgal, sometime in July, two ladies claiming to be the family members of the appellant, had approached him with a request letter and other documents, for transferring the said flat at Mittal Park, belonging to Swaraj Ranjan Das, in the appellant's name. He has stated that subsequently, he had handed over the said documents to the police. No doubt, the appellant himself had not submitted the documents to the Secretary (PW 35), but the fact remains, that on the basis of the said documents, the said flat was sought to be transferred in the appellant's name. The prosecution has also examined PW 37-Jagdish Engineer, a Notary Public. The said

witness has stated that he had verified the original Power of Attorney which was in favour of the appellant and the ration card in the name of the appellant and had then certified the documents at Exhibit 186 (colly) as true copies. From a perusal of the evidence of PW 37-Jagdish Engineer, it appears that the original documents were in existence and were in the custody of the appellant, on the basis of which, he certified the xerox copies as true copies. No doubt, the original documents have not been placed on record, but notice under Section 91 Cr.P.C was issued to the appellant to produce the original copies of the said documents. However, the same were not produced by the appellant. The evidence of PW 26-Krishnavisha Dubey, watchman of Mittal Park shows that the appellant had come to the Mittal Park flat on 19th February, 1998 with some ladies and that they opened the lock and entered the said flat. The evidence on record also shows that when Sushmita (PW 1) was informed by PW 26-Dubey, she came to the Mittal Park flat along with her mother and brother and thereafter with the police. Infact, if the statement of the appellant under Section 313 is perused, the appellant has not denied the execution of the

Power of Attorney and other documents (except ration card). Infact, according to the appellant, he had purchased the said Mittal Park flat in 1994 from Swaraj Ranjan Das and it was Anup who was staying with him till 1995 (Answers to Question No. 118, 126, 130). As noted earlier, the appellant has not produced any document in support thereof i.e. bank statements to show that consideration was paid etc. From a perusal of the aforesaid evidence, it appears that the appellant, in a systematic way to usurp the property of Swaraj Ranjan Das, had created and forged documents, and for usurping the said property, had abducted and murdered Swaraj Ranjan Das.

48. Apart from the aforesaid evidence, the conduct of the appellant in visiting the flat at Magic Carpet, where PW 1-Sushmita and PW 4-Usha were residing first, after Anup left on 17th January, 1998 and then on 25th January, 1998 and continuously thereafter, also speaks volumes. It is evident that after Anup left on 17th January, 1998, the appellant started visiting the Magic Carpet flat and when questioned by PW 1-Sushmita about the whereabouts of her brother, the appellant

refused to give the address and telephone numbers of the place where he was staying and only disclosed that he was safe. That on 25th January, 1998, the appellant came to the Magic Carpet flat and disclosed that Anup was in need of Rs. 25,000/- and had asked Swaraj Ranjan Das to bring the same, pursuant to which, Swaraj Ranjan Das accompanied the appellant. Thereafter, Swaraj Ranjan Das's body was found on 26th January, 1998 by the Lonand Police. That thereafter, the appellant started visiting and calling Sushmita and Usha and when questioned about the whereabouts of Swaraj Ranjan Das, informed that he was safe, but refused to give the contact details. Infact, on 3rd February, 1998, the appellant called and informed PW 1-Sushmita that Anup Das was arrested by Pune Police and that her father was admitted in a hospital, when in fact, his dead body was found by the Lonand Police on 26th January, 1998. The said conduct of the appellant, prior and subsequent, clearly shows that the appellant was aware that Swaraj Ranjan Das was not in Khandala, as was being disclosed by him to PW 1-Sushmita and PW 4-Usha. The said conduct, prior and subsequent, also is a factor and a strong circumstance against the appellant.

49. Considering the material and circumstances on record, we are of the firm opinion, that the prosecution has established all the circumstances as against the appellant, by cogent and reliable evidence. All the established circumstances unerringly point to the guilt of the appellant. The Learned Judge has rightly convicted the appellant for the offences as mentioned in para 1.

50. Considering the aforesaid, there is no merit in the appeal. The appeal is dismissed.

51. We express our appreciation and gratitude for the able assistance rendered by Ms. Rohini Dandekar, appointed Advocate. Her fees is quantified at Rs. 20,000/-.

52. Registry to forward a copy of this Judgment to the appellant, who is lodged in Kolhapur Jail.

(REVATI MOHITE DERE, J.)

(V. K. TAHILRAMANI, J.)