IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.243 OF 2013
ALONG WITH
CRIMINAL APPLICATION NO.756 OF 2016
WITH
CRIMINAL APPLICATION NO.330 OF 2017
WITH
CRIMINAL APPLICATION NO.755 OF 2017
WITH
CRIMINAL APPLICATION NO.1206 OF 2017
WITH
CRIMINAL APPLICATION NO.1341 OF 2017
WITH
CRIMINAL APPLICATION NO.195 OF 2018
WITH
CRIMINAL APPLICATION NO.933 OF 2018
WITH
CRIMINAL APPLICATION NO.441 OF 2015

1. Bhikubhai Dayaram Thanki
   Age - 44 yrs., Occ.- Business,
   R/o. Panchvati Society,
   Porbandar, Gujarat.
2. Jitendra Shantilal Modha,
   Age - 37 yrs., Occ.- Hotel,
   R/o. 11/2, Vishal Chaitanya
   Society, Kasarwadi, Pune. .... Appellant
   (Orig. Accd. No.5 & 6)

versus

The State of Maharashtra ... Respondent

ALONG WITH
CRIMINAL APPEAL NO.20 OF 2013

Chhotu @ Arvind Vitthalbhai Choudhary
@ Patel
Age - 34 yrs., Occ.- Driver,
R/o. Samta Subhandpura, Baroda,
Gujarat. .... Appellant
(Orig. Accd. No.4)

versus

The State of Maharashtra ... Respondent

ALONG WITH
CRIMINAL APPEAL NO.244 OF 2013
WITH
CRIMINAL APPLICATION NO.136 OF 2017
WITH
CRIMINAL APPLICATION NO.871 OF 2018
WITH
CRIMINAL APPLICATION NO.193 OF 2018
WITH
CRIMINAL APPLICATION NO.402 OF 2018
WITH
CRIMINAL APPLICATION NO.601 OF 2018
WITH
CRIMINAL APPLICATION NO.1010 OF 2018
WITH
CRIMINAL APPLICATION NO.1069 OF 2018

1. Prasad Jagannath Shetty,
   Age - 30 yrs., Occ.- Labour,
   R/o. Samta, Baroda,
   Originally from Karnataka.
2. Chhotu @ Ghisaiwala @ Ravitsing
   Savindersing Bhadoriya @ Rajput.
   Age - Adult, Occ.- Labour,
   R/o. Umaraithga, Dist. Agra,
   Uttar Pradesh.
3. Nitin Shantilal Modha,
   Age - Adult, Occ. - Nil,
   R/p. Kasarwadi, Pune. .... Appellants
   (Orig. Accd Nos.2, 10, 11)

versus

The State of Maharashtra ... Respondent

ALONG WITH
CRIMINAL APPEAL NO.871 OF 2018

Prasad Jagannath Shetty.
Age - 42 years, Occ.- Labour
R/o. Samta Baroda,
Originally from Buntwal Taluka,
D.K., Mangalore, Karnataka .... Appellant
(Original Accused No.2)

versus

The State of Maharashtra ... Respondent

…….

- Mr.V.B. Koshe a/w Mr.Anil Kulkarni i/b. Mr.Sachin Deokar, Advocates for the Appellants in Appeal No.243/13 (Original Accused Nos.5 and 6).
- Mr.Sachin Deokar, Advocate for the Appellant No.2 (Original Accused No.10) in Appeal No.244/13.
- Mr.Satyavrat Joshi a/w Mr.Nitesh J. Mohite, Advocate for the Appellant (Original Accused No.4) in Appeal No.20/13.
- Mr.Prakash L. Shetty a/w Mr.Abhijeet Magade, Advocate for the Appellant (Original Accused No.2) in Appeal No.871/18.
- Mr.Nitin Shantilal Modha, Appellant No.3 - in person (Original Accused No.11) in Appeal No.244/13.
- Mrs.S.V. Sonawane, APP for the State/Respondent in all the Appeals and connected Applications.

CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 06th AUGUST, 2018.

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. All these Appeals are preferred by various accused in MCOCA Special Case No.01 of 2006 on the file of the learned Special Judge, at Pune. The Criminal Appeal No.243/13 is preferred by the original accused Nos.5 and 6. The Criminal Appeal No.244/13 is preferred by the accused Nos.2, 10 and 11 and however, subsequently the accused No.2 wanted his Appeal to be heard separately and therefore on his behalf, separate Appeal memo was filed and the Criminal Appeal on his behalf was numbered as Criminal Appeal No.871/18. The Criminal

Appeal No.20/13 is preferred by the original accused No.4. Since all these Appeals arise out of same set of facts and since in all these Appeals, the same judgment of the trial Court is challenged, all these Appeals are disposed of by this common judgment. For the sake of convenience all the Appellants in these different Appeals are referred hereinafter by their status as the accused in the MCOCA Special Case No.1 of 2006.

2. To further clarify, the names of the accused before the trial Court are as under;

Accused No.1	-	Mohammed Ali Abbas Ali
Accused No.2	-	Prasad Jagannath Shetty
Accused No.3	-	Jagmalsing Bhuraram Choudhary
Accused No.4	-	Chhotu @ Arvind Vitthalbhai Choudhary @ Patel
Accused No.5	-	Bhikubhai Dayaram Thanki
Accused No.6	-	Jitendra Shantilal Modha
Accused No.7	-	Samad Boga Gadhvi @ Kariya
Accused No.8	-	Ajay Parvat Gadhvi
Accused No.9	-	Dinesh Karsanbhai Tukadia
Accused No.10	-	Chhotu Ghisaiwala @ Ravitsing Savindersing Bhadoriya @ Rajput
Accused No.11	-	Nitin Shantilal Modha

3. Originally there were 11 accused before the learned Special Judge, Pune, designated under Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as MCOCA). At the conclusion of the trial, all the Appellants were convicted and rest of the accused were acquitted. The Appellants/Accused were convicted and sentenced as under;

(1) Accused Nos.2, 4, 5, 6, 10 and 11 were convicted for commission of offence punishable u/s 120-B of IPC and were sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo further rigorous imprisonment for six months.

(2) Accused Nos.2, 4, 5, 6, 10 and 11 were convicted for commission of offence punishable u/s 364-A r/w 120-B of IPC and were sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo further rigorous imprisonment for six months.

(3) Accused Nos.2, 4, 5, 6, 10 and 11 were convicted for commission of offence punishable u/s 344 r/w 109 of IPC and were sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default of payment of fine to suffer further rigorous imprisonment for three months.

(4) Accused Nos.2, 10 and 11 were convicted for commission of offence punishable u/s 302 IPC and were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine to suffer further rigorous imprisonment for six months.

(5) Accused Nos.2, 10 and 11 were convicted for commission of offence punishable u/s 201 r/w 120-B of IPC and were sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each and in default of payment of fine to suffer further rigorous imprisonment for six months.

(6) Accused No.11 was convicted for commission of

offence punishable u/s 392 of IPC and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer further rigorous imprisonment for six months.

(7) *Accused No.11 was further convicted for commission of offence punishable u/s 404 of IPC and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer further rigorous imprisonment for six months.*

(8) *Accused Nos.2, 4, 5, 6, 10 and 11 were convicted for commission of offence punishable u/s 3(2) of —MCOCA and were sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5 lacs each and in default of payment of fine to suffer further rigorous imprisonment for two years.*

(3) *Accused Nos.2, 4, 5, 6, 10 and 11 were convicted for commission of offence punishable u/s 3(4) of MCOCA and were sentenced to suffer rigorous*

imprisonment for seven years and to pay a fine of Rs.5 lacs each and in default of payment of fine to suffer further rigorous imprisonment for two years.

(4) All the sentences were directed to run concurrently. The accused were given set off u/s 428 of Cr.P.C.

(5) The other accused were acquitted from the various charges they were charged with.

4. The prosecution story in brief is as follows:

One Satinder Ramlal Sahani had his business of Car Interiors and owned a shop by the name “A-1 Motor and Car Decor”. The shop was at Nasik Phata, Mumbai-Pune Highway at Pune. Satinder Sahani had two sons and a daughter. His son Sagar was assisting him in his business. On 14/08/2005, at around 09.30 p.m., Sagar Sahani was returning home after day's work and after purchasing food from a hotel. He was returning in his Santro car. Sagar was abducted while he was returning home. At about 02.30 a.m. in the night Sagar's father received a phone call. The caller told him that Sagar was in his custody and demanded a ransom of Rs.2 Crores to release him. The caller told him that he was calling from Karachi. Satinder Sahani started searching for his son with the help of his friends and relatives. On the next day morning, i.e. on 15/08/2005 he lodged a complaint with Pimpri Police Station. On 16th and 17th of August 2005, the same caller called Satinder Sahani and demanded the amount. Satinder approached police again and he was directed to lodge the FIR with the Crime Branch. Accordingly he lodged his FIR with the Crime Branch, Pune. On 20/08/2005 the same person called Satinder Sahani and told him that a cassette containing voice of his son Sagar was kept within the premises of Khandoba Temple at Akurdi. Satinder informed this fact to the Crime Branch. They told Satinder's cousin to go to the temple and collect the cassette. Satinder's cousin brought the said cassette. Till 21/08/2005 there was no progress in finding Sagar and therefore out of desperation Satinder Sahani decided to pay the ransom amount and requested police not to investigate the matter further. He negotiated the ransom amount with the abductor and the demand was brought down to Rs.15 lakhs. He was directed to make payment to one Kadarbhai at Mumbai, who was available at Sitaram building, Crawford Market in Mumbai. Satinder Sahani collected the amount from his relatives and on 24/08/2005 made the payment to a person on that address. He did not meet Kadarbhai, but one Shamshuddin collected the amount from him and gave some vague receipt. Satinder was told that his son would return home shortly. However, Sagar never returned home and instead, on 28/08/2005, Satinder was informed that a body matching description of Sagar was found in Gujrat. Satinder's cousin went with police to Gujarat and identified the body. The body was brought to Pune. Section 302 of the Indian Penal Code was added to the offence which was registered with Pimpri Police Station on 19/08/2005 vide C.R.No.267/05.

5. It is the prosecution case that after abducting Sagar, he was taken to various places in Gujarat and ultimately on

25/08/2005 he was murdered in a Sumo vehicle in District Balsad. It is alleged that the accused No.2 slit the throat of the deceased with a knife. The body was dropped there itself and the accused returned to Baroda. On the way the car was washed with soap and then was parked at Baroda.

6. On 05/09/2005, the Investigating Officer received an information that a Sumo vehicle used in the crime was found in Baroda. The police officers went to Baroda and with the help of experts, removed different articles from the said Sumo vehicle and the vehicle itself was seized. During the course of investigation, the Investigating Officer found the involvement of the accused Nos.2, 3, 4 and those three were arrested on 08/09/2005. During the investigation the police found that all the accused had stayed at various lodges and rooms. The investigating agency collected the extracts of the hotel registers and recorded the statement of various witnesses in respect of the stay of these accused at various places. During the course of investigation, the accused No.5 was arrested on 09/09/2005.

Accused No.6 was arrested on 10/09/2005, accused No.10 was arrested on 02/02/2006 and the accused No.11 was arrested on 21/07/2006. Further investigation was carried out in respect of ownership of the Sumo Vehicle, which was traced to the accused No.5. Different mobile handsets used by the accused were recovered from different persons. On 15/09/2005, at the instance of the accused No.2, a knife and his clothes were recovered from the house of his friend Raja Pille. These articles were kept in a cupboard in Raja Pille's house. According to the prosecution case the ransom amount was transacted through Hawala racket and the amount of Rs.2,75,000/- was paid to the accused No.11 at Baroda. The amount was paid through a courier company by Pruthvi Enterprises.

7. On 26/09/2005 a Test Identification parade was held by Nayab Tehsidar, to enable the witnesses to identify the accused. It is the prosecution case that these witnesses identified some of the accused. The seized articles were sent for chemical analysis. During the course of investigation it was revealed that

one Sayyed Abed Husain and one Vicky @ Aftab Alam were the kingpins in the said offence, who were indulging in such activities. Therefore a proposal for applying MCOCA was sent to the Additional Commissioner of Police on 08/11/2005. On 22/11/2005 the ACP, Crime Branch, Pune accorded approval to invoke provisions of MCOCA against the accused and nominated ACP, Crime Branch Mr.Sanjay Jadhav to conduct the investigation under MCOCA. Further investigation was conducted by ACP Sanjay Jadhav. During the course of investigation, confessions of the accused Nos.3, 4, 10 and 11 were recorded on different dates under the provisions of section 18 of the MCOCA. Apart from these accused, confession of one Narayan Govindbhai Jameriya was recorded. He subsequently turned approver after he was granted pardon by the Special Judge. At the conclusion of the investigation sanction u/s 23(2) of MCOCA was accorded by the competent authority on 21/02/2006 and the charge-sheet was filed before the Special Court. One more Test Identification Parade was held on 30/06/2006 in respect of accused No.10. Accused No.11 was arrested on 21/07/2006 in this crime and subsequently supplementary charge-sheet was also filed. The learned Special Judge took cognizance of the case and the case was tried before him vide MCOCA Special Case No.1/06.

8. Before the charges were framed, one of the arrested accused namely Narayan Jameriya made an application for seeking tender of pardon. The learned Special Judge referred him to Chief Judicial Magistrate for recording statement u/s 164 of Cr.P.C. on 18/12/2010. The learned Judicial Magistrate accordingly recorded his statement and forwarded it to the learned Special Judge in a sealed envelope. On 18/01/2011, the learned Special Judge granted pardon to said Narayan Jameriya on the condition that he would be examined as a witness and he would remain as an under trial prisoner until the termination of the trial. Thereafter the charges were framed on 03/05/2011. All the accused denied the charges against them and did not plead guilty.

9. During trial, the prosecution examined 57 witnesses and the defence examined 8 witnesses. At the conclusion of the trial, the learned Trial Judge was pleased to pass the impugned Judgment and Order as mentioned earlier.

10. We have heard learned Counsel Mr.Mr.V.B. Koshe, Mr.Sachin Deokar, Mr.Satyavrat Joshi, Mr.Prakash L. Shetty for the Appellants and learned APP Mrs. S.V. Sonawane for the State of Maharashtra. We have also heard Mr.Nitin Shantilal Modha, (Original Accused No.11) - in person.

11. Before turning to contentious issues in this case, it is necessary to refer to some facts which are either not challenged or are sufficiently proved by the prosecution. The evidence of P.W.2 Satinder Ramlal Sahani, the father of the deceased Sagar, is not seriously challenged. He is a trustworthy witness and we see no reason to disbelieve his version regarding the abduction of his son and payment of ransom by him. P.W.2 Satinder Sahani has deposed that he was in the business of car decor and

had a shop by name "A-1 Motor and Car Decor" since 2000. After two shops from his shop, there was one Prachi hotel which was owned and run by one Shantilal Modha. This Shantilal Modha was one of the accused, but had passed away before the trial could begin. He was the father of accused Nos.6 and 11.

Accused No.5 was the brother in law of the accused Nos.6 and 11. P.W.2 has deposed that Prachi Hotel was run by Shantilal Modha and accused No.6 Jitendra Shantilal Modha. Accused No.5 and 11 used to visit them and P.W.2 was knowing all of them. P.W.2 has deposed that on 14/08/2005 he had been to Mumbai in respect of some business work. Sagar opened the shop at 10.00 a.m. P.W.2 reached his home in Pune at about 07.30 p.m. He had telephonic talk with Sagar at about 08.30 p.m. Sagar informed him that he was returning home within 15-20 minutes. P.W.2 told him to bring parcel of food from Kundan hotel while returning. Sagar thereafter never returned home. At about 10.00 p.m. P.W.2 made enquiries with Kundan hotel, but he was informed that Sagar had left with the food parcel at about 09.15 p.m. P.W.2 then searched for Sagar at his usual places. He even searched in hospitals and made enquiries with police authorities. P.W.2 has deposed that Sagar was driving a silver Santro car bearing registration No.MH-16-E-2104. At about 02.30 – 02.45 a.m. he received a call on his mobile phone. The caller told him that he was calling from Karachi and that P.W.2's son was in his custody. The caller demanded ransom amount of Rs.2 crores and threatened to cause harm to Sagar if ransom was not paid. P.W.2 has mentioned 008821621364636 as the phone number from where the caller had called for ransom. On the next day morning, P.W.2's friends and relatives took frantic search for Sagar. At about 07.00 a.m. P.W.2 was informed by his nephew that Sagar's car was found near Somatane Phata on Pune-Mumbai Highway on the side of the road. P.W.2 therefore approached Pimpri police station and made a complaint about missing of his son Sagar. P.W.2 did not lodge FIR at that point of time caring for safety of his son. The said complaint regarding missing of Sagar is produced on record at Ex.249. P.W.2 has further deposed that telephone calls for ransom amount were repeated on 16th, 17th and 18th August 2005. Therefore on the advice of the police authorities on 19/08/2005 P.W.2 lodged his FIR. The FIR was registered at Pimpri Police Station vide C.R.No.267/05 u/s 364-A of the Indian Penal Code. The FIR is produced on record at Ex.250. The investigation was conducted by the Crime Branch, Pune. P.W.2 has further deposed that on 20/08/2005 at about 01.00 p.m. when he was in the office of Crime Branch, he received a telephone call from the same number. The caller informed him that a cassette containing Sagar's voice was kept under a tree within the premises of Khandoba Temple at Akurdi. The police sent P.W.2's cousin Sudhir Sahani and Suresh Rupesha to collect the cassette. Both of them went there and brought the box sealed with red tape. The box contained a cassette which was played in the police station. The cassette did contain Sagar's voice according to P.W.2.

12. P.W.2 has further deposed that Sagar had purchased two SIM cards. This fact was not known to P.W.2. Sagar used

these SIM cards to have regular conversation with his friend. However, during the entire investigation, there is no further reference to these two phone numbers and no investigation was carried out in respect of the conversation between these two phone numbers. Sagar used phone number 9822796036 for conversation with his friend. The other SIM card was given to his friend by Sagar himself.

13. P.W.2 has further deposed that there was no progress in the investigation in finding Sagar. Therefore the family got worried and became desperate. Following the discussion in the family, P.W.2 decided to pay the ransom amount. P.W.2 has deposed that he requested the police authorities not to interfere for the sake of life of his son. P.W.2 has further deposed that, on 23/08/2005, he negotiated with the abductor and ransom amount was reduced to Rs.15 lakhs. In their discussion, P.W.2 was told by the caller that he could pay the amount through “Hawala” and directed P.W.2 to contact one Kadarbhai at Mumbai. The abductor gave Kadarbhai's telephone number and

address as “3rd floor, Sitaram building, Crawford Market, Mumbai.” P.W.2 has further deposed that on 24/08/2005, he went to Mumbai with his cousin Suresh Rupesha and their drivers. They reached Sitaram Building at about 05.30 p.m. When they went to that office, they did not meet Kadarbhai, but instead met a person named Samshuddin, who claimed to be Kadarbhai's brother. This Shamshuddin was also one of the accused, but he absconded and did not face the trial. P.W.2 has further deposed that when he was in Shamshuddin's office, at that time also he received a phone call from the abductor. In the meantime Shamshuddin went inside and had conversation with somebody. After 5 minutes, he came back and showed his willingness to accept the amount. Rs.15 lakhs in cash were given to him by P.W.2. On P.W.2's insistence Shamshuddin gave him a receipt which contained some cryptic writing. P.W.2 then returned to Pune. He further deposed that on his way back, he again received a phone call from the abductor, who informed P.W.2 that Sagar would be sent home shortly.

14. P.W.2 wrongly identified the accused No.2 as the person who had accepted money. However, he corrected himself by saying that neither of the persons accepting money was present in the Court. The Advocate for accused No.1 stated that he did not dispute the identity of the accused No.1 as the person who was present with Shamshuddin at the office of Hawala Agent. Thus, prosecution case is that the accused No.1 was the person who was accompanying Shamshuddin when the ransom amount was paid by P.W.2 to Shamshuddin. Even thereafter Sagar did not return home and instead on 28/08/2005, the police authorities informed P.W.2 and his cousin Sudhir Sahani that a dead body was located in Gujarat. Sudhir Sahani went there with the police and identified the dead body as being that of Sagar. The articles which were found on the body were shown to P.W.2. In the Court, he duly identified the jacket waist belt, remote key of Sagar's car, mobile and wrist thread as the articles belonging to Sagar. In September 2005, he was called by the police authorities to identify the articles, which were recovered from the house of the accused No.10 during

investigation. At that time and in the Court, P.W.2 identified his visiting cards and a receipt towards payment of fees in Wadia College on behalf of Sagar. He also identified the audio cassette, which was shown to him in Court and which was collected by his cousin Sudhir Sahani from the temple.

15. There is not much challenge by the defence to the evidence of P.W.2. Almost all the facts in his deposition are undisputed.

16. The prosecution has led evidence to show how the dead body was discovered. For that purpose, the prosecution has examined P.W.34 Bistubhai Valubhai Ghutiya. He was the Sarpanch at village Mandava, Kaparala, District Balsad, Gujarat. On 26/08/2005 at about 10.00 p.m. he was informed by one Kisanbhai that a dead body was lying at Chondighatta. This witness along with Kisanbhai went to the spot, where the dead body was lying. There was a forest near the road and there were no street lights. Therefore they could not see the dead body. In the morning they went to Kaparala Police Station and informed

the police about the dead body. They went to the spot again with the police and saw the dead body lying in the forest at Chondighatta. There was an injury on the throat of the dead body. Kaparala police took his FIR and an offence was registered at that police station. His evidence is supported by evidence of P.W.36 Bhimjubhai Ramajibhai Radiya, who had first seen the dead body. He informed about the same to the Up-Sarpanch and then went to the house of P.W.34 and informed P.W.34 about the dead body. Similar evidence is given by P.W.37 Kisanbhai Raghubhai Konti. He was the Deputy Sarpanch of village Mandava. According to him, on 26/08/2005 at about 05.30 p.m., P.W.36 Bhimjubhai Radiya informed him about locating a dead body. According to P.W.36 Bhimjubhai and P.W.37 Kisanbhai, P.W.34 Bistubhai was not at his house in the night and he was informed only in the morning. Except for this minor discrepancy, the evidence of these three witnesses on the point of finding of the body is reliable. There is hardly any doubt about the fact that the body was first seen by P.W.36, who informed about the same to P.W.37 and in turn both of them informed this fact to P.W.34. Subsequently police were informed as deposed by P.W.34.

17. P.W.35 Jamubhai Sukalabhai Ghutiya was a Panch when the inquest Panchanama was conducted by the Kaparala Police. P.W.35 Jamubhai has deposed that a mobile phone, a belt, a jacket and jeans were found on the person on the dead body. P.W.38 Jamsubhai Janyabhai Patara is the Pancha in whose presence these articles were seized by Kaparala police on 27/08/2005 under a Panchanama, which is produced at Ex.371. P.W.44 PSI Rambhai Vithabai Zala of Kaparala Police Station has deposed about lodging of the FIR after discovering the dead body. He further deposed that on 29/08/2005 Sudhir Sahani identified the dead body at Kasturba Hospital, Walsad. On 30/08/2005, all the investigation papers were handed over to PI Rajendra Joshi from Pune, who was investigating the case of Sagar's abduction.

18. The prosecution has examined P.W.43 Dr.Harjeet Pal Singh, who had conducted the post-mortem examination on

27/08/2005 on the dead body. He was working as a Medical Officer at Community Health Center, Nanaponda, since April 2000. He found following injuries on the dead body.

(1) *Incised wound extending form 2" below the right ramus to left side 1" below the angle of mandible, size 5" long and 2" depth in the center in the center and 1" in the sides.*

(2) *Carotid arteries and jugular were cut. Infrahyoid muscle torn. Thyrohyoid membrane and ligaments are torn.*

(3) *Whole of the wound was covered with maggots. Maggot was also present inside the trachea.*

(4) *Bruise, yellow in colour, size – 2 cm x 1 cm at of right knee*

(5) *Small abrasion right side of forehead.*

The cause of death was mentioned as “Hemorrhagic shock due to chop wound over neck”.

19. Even on this aspect there is no dispute that deceased had died due to chop wound on his throat.

20. **Approver's Evidence -:**

In this background, we are considering the contentious issues in this case. The prosecution has examined P.W.1 Narayan Jamria as an Approver. The prosecution has heavily relied on his evidence. Before discussing the evidence of the Approver, it is necessary to refer to the principles regarding appreciation of evidence of an Approver. In this regard, it is advantageous to refer to some of the guiding principles laid down by the Hon'ble Supreme Court.

21. The case of ***Chandra Prakash Vs. State of Rajasthan, reported in (2014) 8 SCC 340*** is one such case where the Hon'ble Supreme Court has discussed the principles regarding appreciation of evidence of an Approver. After referring to section 133 of the Evidence Act, which reads thus;

> *"133. **Accomplice** – An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it*

proceeds upon the uncorroborated testimony of an accomplice.”

and the illustration (b) of Section 114 of the Evidence Act which reads thus;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.”

The Hon'ble Supreme Court in paragraph No.40 has observed thus;

40. “Having stated the legal position with regard to the statutory provisions, presently we shall proceed to consider the requisite tests to be applied to accept the credibility of the testimony of the approver. At this juncture, we may sit in a time machine and quote a passage from Sarwan Singh Rattan Singh v. State of Punjab reported in AIR 1957 SC 637wherein it has been held as follows:

“7. ...An accomplice is undoubtedly a competent witness under the Evidence Act, 1872. There can be, however, no doubt that the very fact that he has

participated in the commission of the offence introduces a serious stain in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence.

It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.

In other words, the appreciation of an *approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver.*

8....Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is considered by criminal courts. "

22. In paragraph No.41 of the same judgment the Hon'ble Supreme Court has referred to an earlier judgment in the case of ***Ravinder Singh Vs. State of Haryana, reported in (1975) 3 SCC 742*** and has reproduced the observations therein as under;

"12. An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable

catalogue of events that had taken place. ... Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. "

23. These principles laid down in the case of Chandra Prakash Vs. State of Rajasthan (supra) were reiterated in the case of ***Khokan Giri alias Madhab Vs. State of West Bengal, as reported in 2017 (12) SCC 767***. In paragraph No.16 of the said judgment it is observed thus;

"15. It was, however, argued by learned Counsel appearing for the Appellant that the High Court went wrong in giving undue importance to the testimony of Raju Rao and basing the conviction of the appellant thereupon in the absence of independent corroborative evidence in material particulars. He submitted that law in this respect is well trenched in series of judgments. He referred to the judgment of this Court in Chandra Prakash v. State of Rajasthan, reported in 2014 (8) SCC 340, wherein this Court had occasion to revisit the entire case law on the subject and the principle has been

succinctly and lucidly stated therein. It is stated by the learned Counsel for the appellant that Section 114 Illustration (b) has to be read along with Section 133 of the Act, which deals with the statement of accomplice. It was his submission that, no doubt, as per the said provisions, an accomplice can be a competent witness against an accused person and the conviction also would not be treated as illegal merely because it proceeds upon the incorroborative testimony of the accomplice. However, at the same time, Section 114 Illustration (b) also lays down that an accomplice is unworthy of credit unless he is corroborated in material particulars. It is for this reason, the Court restated the principle to the effect that though the accomplice would be competent to give evidence, it is a rule of practice that it would almost always be unsafe to convict upon his testimony alone. What is required is that, as a matter of practice, the evidence of the accomplice should not be accepted without corroboration in material particulars. Further, such corroboration must connect the accused with crime and also that this corroboration must be from an independent source, meaning thereby, one accomplice cannot corroborate another."

24. Thus, the principles laid down by the Hon'ble Supreme

Court guide us to test the evidence of the approver in this case. As the aforementioned judgments have laid down, the prosecution has to first establish that the approver is a reliable witness and then secondly his evidence should receive sufficient corroboration in material particulars. In addition, Khokan Giri's case has also laid down that such corroboration must come from an independent source, meaning thereby one accomplice cannot corroborate another. These principles are important in the instant case because the prosecution is also relying on the confessions of some of the accused recorded u/s 18 of the MCOCA.

25. In this connection, it is necessary to see as to how P.W.1 Narayan Jamria, was tendered pardon by the Special Judge. The record shows that P.W.1 himself submitted an application dated 25/10/2010 before the Special Court expressing his desire to become approver. He had also shown his willingness to narrate the entire incident including his participation in the entire episode. The application is on record at Ex.164. It is necessary to mention at this stage, that, the

approver had given a confessional statement which was recorded u/s 18 of the MCOCA during investigation. The application for grant of Pardon (Ex.164) was forwarded to the Special Court by the Superintendent of Yerwada Central Prison, Pune, along with a forwarding letter. After that, the learned Special Judge directed that Narayan Jameriya should be produced before him on 09/12/2010. On that day, the Special Judge recorded his statement. On 18/12/2010 the learned Special Judge by his order below Ex.161 mentioned that on 18/12/2010, the said accused (at that time he was still an accused in the case) was produced before him, the contents of the application were verified. The learned Judge observed that the said accused was directly concerned in the offence alleged and/or a privy to the offence alleged against him and that his evidence could be obtained in the matter to reveal the truth. The learned Judge referred the accused to the Chief Judicial Magistrate, for recording his statement u/s 164 of Cr.P.C. On 18/01/2011 the learned Special Judge passed another order below Ex.161. It was observed thus;

"Upon perusing the statement of the applicant/accused no.4 this Court is satisfied that the applicant/accused no.4 on his own volition is ready and willing to make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as a principal or abater [sic.](abettor), in the commission thereof. This Court is also satisfied that the applicant/accused no.4 is neither forced nor intimidated, pressurized by any other person nor he was promised any consideration to become an approver. Thus, the applicant is ready to willfuly concede before this Court all the circumstances in respect of the offences by full and total disclosure thereof. Hence, the following order :

ORDER

1. Accused viz: Narayan Govindbhai Jamriya, has [sic.](is) tendered a pardon on the condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abater [sic.](abettor), in the commission thereof.

2. He shall be examined as a witness in the instant matter.

3. He shall remain as an under-trial prisoner until termination of the trial.”

26. The charges were framed against the accused on 03/05/2011. The prosecution opened its evidence by examining the approver Narayan Jameriya as its prosecution witness No.1. Before the Court, the P.W.1 has deposed that, in the year 2000 he was employed as a driver on tankers of Jay-Sagar Petrol Pump, Porbandar. Accused No.5 Bhikubhai Thanki was working at the same petrol pump as a clerk. According to P.W.1 i.e. the approver, the accused No.5 had left his job in the year 2003 and had started his own travel company by purchasing two Sumo vehicles, one Qualis and one Indica Car. He had also purchased one Bus. P.W.1 worked for the accused No.5 for two months on the same bus. The accused No.5 did not pay his wages. Accused No.5's business incurred losses and had to be closed. Accused No.5 assured him that, his dues would be paid once his brother-in-law Nitin Modha i.e. accused No.11 sent money from Dubai. Accused No.5 had also engaged another driver Samad Boga Gadhvi @ Kariya i.e. accused No.7 (acquitted in this case).

P.W.1 has further deposed that except one Sumo, all the vehicles of accused No.5 were seized by the Finance Companies and therefore accused No.5 sent that Sumo to Pune to avoid its seizure. In July 2005, accused No.7 informed P.W.1 that accused No.11 had come from Dubai and called P.W.1 to meet him. P.W.1 met accused Nos.7 and 11 at a place called Bhot-Patiya on the highway. At that time, the accused No.11 made a phone call from one hotel called Hotel Randal. During conversation, the accused No.7 told P.W.1 that accused No.5 had opened a restaurant with financial help of accused No.11 and they were required to move to Pune to settle their accounts. Accused No.11 asked P.W.1 whether he was interested in working as his driver for his tourist business. P.W.1 has thereafter described his visits to Pune with other accused. He has given details of the different hotels where they had stayed on these occasions. On the way to Pune they had stopped at Kashimira in Hotel Divya Palace. Thereafter they went to Pune. Accused No.11 told P.W.1 that he had given hotel known as Ashapura Dining Hall at Nigadi, Pune to accused No.5. Hotel Prachi at Nigadi was run by accused No.6

and his father. Accused No.7 and P.W.1 then went back to Gujarat. On the way they had again stayed at Hotel Divya Palace at Kashimira. P.W.1 has described that during their stay at Pune, he had seen Sagar meeting accused No.11. Sagar had told accused No.11 that he would arrange for a music deck and interior items for his car.

27. P.W.1 has further deposed that after he returned to his village Bhot, after 15 days accused No.11 called him again to Baroda. On the way to Baroda when he had reached Surat, accused No.11 called him and asked him to wait at Surat. After two days accused No.11 came to Surat in an Indica car. There were three other persons in the car besides accused No.11. They were accused Nos.2, 4 and 10. Thereafter on the say of the accused No.11, P.W.1 hired a Siena car from one of his acquaintances Dinesh Tukadia. All these accused and P.W.1 then went to Pune in those Indica and Siena cars. Dinesh Tukadia was the original accused No.9, who was acquitted from the case. Accused No.9 also accompanied them. On the way to Pune they

again halted at Hotel Divya Palace at Kashimira near Mumbai. On the next day they took a halt at Hotel Kohinoor in Chinchwad, Pune. According to P.W.1 he entered his name as "Narayan Thakkar". At about 08.00 p.m. accused No.6 came to meet accused No.11. P.W.1 has deposed that accused No.6 instructed accused No.11 not to come out of the hotel so as to keep his visit to Pune as a secret. P.W.1 has further deposed that they stayed at Hotel Kohinoor for about three days. Accused No.6 used to meet accused No.11 at 08.00 p.m. every day. After three days they shifted to another hotel named White House, where they stayed for three days more. During their stay at Hotel White House, when accused No.11 had gone out for some work he had forgotten his mobile in the hotel. According to P.W.1 there was a call from a number starting from 0097. P.W.1 took that call. The caller told him to inform accused No.11 that Bhai had called from Dubai. When accused No.11 returned to the hotel, P.W.1 told him about the phone call. P.W.1 has further deposed that accused No.11 got angry and immediately decided to proceed towards Mumbai. P.W.1 has further deposed that at that time he was expecting a Santro car going from there and directed P.W.1 to follow that car. Accordingly, P.W.1 drove the car following a Santro car till Nigadi bridge, but could not reach it and the Santro car went out of sight. Thereafter all the accused who had come to Pune, went to Ashapura Dining Hall. P.W.1 further deposed that there was quarrel between accused Nos.6 and 11 on the ground that accused No.6 had not given proper information about Sagar. All these accused then left for Gujarat and reached Surat on the next day. P.W.1 has further deposed that accused No.11 was hard pressed for money. Therefore he pledged his two gold chains with a goldsmith for Rs.12,500/- out of which Rs.5,000/- was paid to accused No.9 towards fare for his Siena Car. The balance amount was promised by accused No.11 to accused No.9. Accused Nos.2 and 10 went to Baroda. P.W.1 made arrangement for accused No.11 to stay in Surat. P.W.1 took a room in Hotel Ashirwad at Surat. At that time, accused No.11 told him that after accused Nos.2 and 10 returned to Surat, they were going to Pune and from there, they would go for an outing in Sumo car. P.W.1 has further deposed that he then stayed with his brother in Surat. Accused No.11 called him after 3 days and told that he was coming back to Surat from Pune. Accused No.11 returned to Surat in a Sumo car bearing No.GJ-11-E-4992. He did not possess the documents for the said car. P.W.1 has further deposed that there was a lien on the said vehicle and to avoid seizure of the car accused No.5 had taken it to Pune. P.W.1 has further deposed that accused No.11 broke both the number plates on the car and got number GJ-14-E-4992 painted on the new number plates. P.W.1 has further deposed that he himself received a phone call on his mobile phone from a number starting with 0097. The caller told him that an amount of Rs.20,000/- had been deposited in UAE Bank in his name as suggested by accused No.11. P.W.1 and accused No.11 went to UAE Bank. P.W.1 furnished his identity car and he was paid Rs.19,500/-, which he duly handed over to accused No.11.

28. On 13/08/2005 accused No.11 received some call. He got angry and threw three idols of God from the dashboard of

the vehicle. P.W.1 has further deposed that accused No.11 told him to take the car to Pune. This time P.W.1, accused Nos.2, 10 and 11 proceeded towards Pune in the Sumo vehicle. On the way alternator of the car broke down. After replacing it, they reached outskirts of Pune at about 07.30 p.m. Around 08.00 p.m. they passed Nigadi Bridge near Pune. Accused No.11 asked P.W.1 to turn the vehicle towards Mumbai and park it by the side of the road.

29. P.W.1 followed his instructions. P.W.1 has further deposed that accused No.11 told him that he, accused Nos.2 and 10 would stop the Santro car, which he was expecting and they would sit in the car and then P.W.1 was to follow with his car. P.W.1 has further deposed that after 10-15 minutes, the Santro car came. Accused No.11 signaled the driver to stop the car. Sagar was driving that car. It was stopped. The aforementioned three accused entered the car and then the Santro car proceeded from there. P.W.1 was directed to follow the car in his Sumo and since Santro car was driven at slow speed he overtook it and

stopped after Nigadi bridge. At that time, accused No.2 sat on the driver's seat in the Santro car and drove for some distance. After some time both the cars were stopped and accused Nos.10, 11 and Sagar sat in Sumo. Accused No.2 continued driving Santro car. P.W.1 further deposed that Sagar asked accused No.11 as to where he was being taken. Sagar told accused No.11 that he wanted to go home as he had brought food for his old mother and that his father was not at home. At that time, accused No.11 told Sagar that he would be released once he received ransom from Sagar's father. Accused No.11 further added that in the meantime they would have an outing at Khandala. P.W.1 further deposed that Sagar told accused No.11 that they were friends and this act on the part of accused No.11 was not expected. The Santro car was stopped near Dehugaon on old highway. Sagar was made to lock it with his key. Thereafter all of them including the accused No.2 sat in the Sumo vehicle. P.W.1 himself was driving Sumo. They proceeded towards Khandala. When they crossed toll plaza and Khandala, Sagar reminded accused No.11 that they were to stop at

Khandala and further asked as to where they were going. Accused No.11 then told him that they were proceeding towards Gujarat. P.W.1 further deposed that accused No.11 took P.W.1's mobile and started calling somebody at Dubai. P.W.1 has further narrated about their journey towards Gujarat. At 03.00 a.m. they entered Gujarat. At about 08.00 a.m. on 15/08/2005 they reached Baroda. At Baroda they met accused No.4, who drove their Sumo to a place called Karjan, which was at a distance of about 25-30 kms from Baroda. He arranged for some accommodation. In the evening, accused No.4 brought food for them. On 16/08/2005 accused No.4 arranged for another premises near Swaminarayan Temple. Accused No.4 brought some necessary articles for their stay. They stayed there for 3 days. Food was arranged by accused Nos.3 and 4. P.W.1 has further deposed that after 3-4 days, accused No.11 recorded Sagar's voice on a small audio cassette.

30. In paragraph No.12 of his deposition P.W.1 has specifically deposed that during this period once he was alone

with Sagar. At that time, according to P.W.1 he offered to drop Sagar at Pune by Sumo if Sagar had any money with him. P.W.1 has deposed that Sagar informed him that Rs.5,000/-, which he had, was snatched by accused No.11 when he was abducted. In his further deposition, P.W.1 in the same paragraph No.12 has stated that, in the evening Sagar told accused No.11, that, P.W.1 was ready to drop him at Pune. Accused No.11 scolded and threatened P.W.1 and gave threats to his life. According to P.W.1, accused No.11 threatened him that he could eliminate P.W.1 and his family by telling Dubai's Bhai. At that time, accused No.11 directed accused No.2 to take Sagar's search. During search Rs.24,000/- cash was removed from socks worn by Sagar. P.W.1 has further stated that on the next day, accused No.11 brought Reliance mobile phone for accused No.2. By then 7 days had passed.

31. On 22/08/2005 they had breakfast at a place called Tarapur and then proceeded towards Anand Road. On the way, accused No.11 called Sagar's father and made Sagar talk with

him. Sagar spoke to his father and told that if the ransom was not paid, he would be killed by the abductors. Accused No.2 told Sagar's father that he was giving 8 hours to fulfill the demand, otherwise Sagar would be killed. Thereafter accused No.11 directed P.W.1 to take their vehicle to a place called Chotila. Accused No.11 called accused No.5 to that place. There they stayed in Shrinagina hotel, in two rooms. P.W.1 has deposed that Sagar was persistently asking accused No.11 as to when he would be released. P.W.1 has further deposed that accused No.4 informed him that accused No.11 had sent accused No.4 to Pune to drop one audio cassette at a temple, which he accordingly had done.

32. P.W.1 has further deposed that, on 23/08/2005 they went to a place called Sarkhes near Ahmedabad and stayed in some hotel. They left that place at 03.00 p.m. on the next day. On 25/08/2005 at about 03.00 a.m. they stopped at hotel Bhagyodaya, which was on the way from Wapi to Balsad. At about 10.00 a.m. suddenly Gujarat Police entered the hotel and

took search. At that time, accused No.11 told the police that they were tourists, and were proceeding to Bhavnagar. Thereafter all the accused and Sagar left the hotel at 03.00 p.m. and reached Wapi. Accused No.11 directed to take the vehicle towards Nasik. When they reached Gujarat border, accused No.11 told them that they were going to Pune via Express Highway. The vehicle was passing through a dense forest. P.W.1 has further deposed that accused No.11 took out a knife from below his seat and handed it over to accused No.2. Sagar pleaded with them not to kill him. P.W.1 has further deposed that the light inside the vehicle was switched on. When he turned to look behind he saw that accused No.2 slit Sagar's throat. Accused No.10 had caught his hands and legs. They were helped by accused No.11. There was a pool of blood in the car. After some distance accused No.11 asked P.W.1 to stop the car by the side of the road. Accused Nos.2, 10 and 11 threw Sagar's body in the forest. Sagar's clothes were thrown from the vehicle. Accused No.11 changed his clothes near a place called Kaprala. Accused No.1 had taken out gold chain and bracelet from

Sagar's body. Accused No.11 directed P.W.1 to take the Sumo vehicle towards Baroda. According to P.W.1 he was threatened by accused No.11 and was told that he should not disclose about the incident to anybody. Accused Nos.2 and 10 washed the vehicle at a petrol pump after passing Surat.

33. P.W.1 has further deposed that they again went to some hotel near a place called Karjan at about 03.00 a.m. On the next day at about 07.00 a.m., they left for Baroda. When they went to Siddharth hotel, accused No.2 washed his bloodstained clothes. At about 12.00 p.m., accused No.11 gave accused Nos.2, 10 and P.W.1 Rs.50,000/- each. P.W.1 and accused No.11 left accused Nos.2 and 10 and went towards bus stand. On the way accused No.11 again requested P.W.1 to return the amount as he was in need of money. P.W.1 returned Rs.30,000/- to accused No.11. Accused No.11 further requested P.W.1 to pay another amount of Rs.12,500/- to the goldsmith and take back the gold ornaments from him. After 4-5 days accused No.11 came to Surat and collected his gold ornaments

from P.W.1. He also took away the remaining amount of Rs.6,000/- from P.W.1 as he was in dire need of money. According to P.W.1, accused No.11 promised to settle his account once he got his amount from Bhai at Dubai. After that P.W.1 did not accompany accused No.11. P.W.1 tried to call accused Nos.5 and 11 many times, but they did not respond. P.W.1 has further deposed that he had started receiving threatening calls from accused No.2 telling him not to disclose the incident to anybody. P.W.1 then went to his village Bhot. On 05/09/2005 he received a call from accused No.5 and he was called to Hirabaug. P.W.1 went there and he was arrested by the police. Thereafter he has deposed as to how he made an application for seeking tender of pardon and how he was granted pardon. P.W.1 also deposed that during the course of investigation on his expressing his desire, his confessional statement was recorded by the police officers. Such statement was recorded on 07/12/2005. The confessional statement is produced on record at Ex.229.

34. This is the evidence of P.W.1 as mentioned hereinabove. Reading his evidence as he has deposed in the examination-in-chief, shows that the offence he has described, if it has taken place in that manner, is extremely serious and diabolical. However, it is necessary to scrutinize his evidence extremely carefully. As mentioned earlier, his evidence has to pass the test laid down by the Hon'ble Supreme Court in appreciation of evidence of an approver as mentioned earlier. For that purpose it is necessary to see whether his evidence passes the test of reliability, whether he has given his evidence voluntarily, whether his evidence is a truthful version of the actual events and whether entire series of incident as narrated by him is probable. For the said purpose, it is necessary to consider his cross-examination. In his cross-examination he has admitted that Ex.161 was not in his handwriting. Prior to making that application, he had addressed two applications to the Special Court for early commencement of the trial because his financial condition was poor. In the year 2011, P.W.1 himself had visited Sasoon Hospital on 7-8 occasions on account of his

aliments related to blood pressure and heart condition. He has deposed in his cross-examination that after his arrest, he was sent to jail on 23/09/2005 and at that time he was kept in the high security ward of the jail for about a year. Then for about 7-8 months he was kept in the jail hospital. He has admitted in his cross-examination in paragraph No.29 that he was kept in the mental ward for about 7-8 months. He further admitted in paragraph No.26 of his cross-examination that since January 2008, he was in Anda Cell. That means he was kept in solitary confinement since January 2008. In this background, when P.W.1 sought pardon from the trial Court on the condition of making full disclosure of the offence we cannot overlook the fact that he was required to be kept in a mental ward. Thereafter he was shifted to solitary confinement which is torture in itself. Therefore, it is difficult to hold that the P.W.1 had genuinely expressed his desire to turn approver without there being any coercion or inducement. P.W.1 obviously was aware that if the pardon was granted to him, all this torture would come to end.

35. From his cross-examination it is necessary to test his version for its truthfulness. According his deposition, he made three trips to Pune. The first trip was innocuous. The second trip was possibly an aborted effort to abduct Sagar and third trip was the important trip when Sagar was actually abducted. Perusal of his cross-examination shows that after giving elaborate details about various instances, his memory suddenly failed during cross-examination and he has given evasive answers to all important questions. In his cross-examination he had stated that he did not remember the date when they reached Pune. On the second occasion he did not remember the date when they had stayed at Kohinoor hotel at Chinchwad, Divya Palace Hotel and White House Hotel. He did not remember the date on which he received a call from Dubai. He did not remember the name of the goldsmith with whom ornaments of accused No.11 were pledged. He has admitted that there were about 5 toll plazas on Pune-Surat road. He has further stated in paragraph No.41 of his cross-examination that Sagar was wearing T shirt and jeans and he was with P.W.1 for about 7 days. But he did not recall the

colour of his clothes. He did not remember the date on which accused No.4 was sent to Pune to deposit the cassette. In this connection at this stage, it is also necessary to refer to deposition of P.W.21 police constable Shantilal Vitthal Wasava attached to Wapi, GIDC police station. He has deposed that on 25/08/2005 they had searched Bhagyodaya Guest House. He has deposed that he had seen a boy of 21 years of age and later on, the police from Pune Crime Branch had shown photograph of the same boy whom P.W.21 had seen with the accused at Bhagyoday Guest House.

36. Thus, from the cross-examination of P.W.1, it becomes clear that he has not given truthful answers to inconvenient questions. His story is intrinsically improbable. It is inexplicable that the accused could abduct a boy who was about 21-22 years of age, could move around with him at various places and stay at various places without ever threatening him with any weapon. There is no mention in the deposition of P.W.1 that the abducted boy was ever threatened by any weapon by any of the

accused during this period. Their vehicle in which the abducted boy was also travelling, had passed through many toll plazas and on 25/08/2005 even the police officers had searched the room where they were staying. On none of these occasions this boy had raised any alarm or had lodged any protest or had sought help. This fact is hard to digest. In fact, when according to P.W.1 he had offered his help to Sagar for rescuing him and taking him to Pune, strangely Sagar had not only declined the offer, but had told the accused No.11 about P.W.1's offer. This fact is also difficult to understand. P.W.1's version that on that occasion, after a few days, amount was forcibly taken out from Sagar's socks, is another example of a fact which is improbable. Sagar did not carry any luggage, so he had no place to hide that amount and yet the accused could recover the amount from him only after a few days from his abduction, this story is also unbelievable.

37. Moreover, the P.W.1 had portrayed himself as a mute spectator from the beginning till the end of the entire episode.

He has deposed that even he was willing to help Sagar reach his home in Pune. Thus, there is a clear attempt on his part to distance himself from rest of the accused and the entire incident. His attempt shows that his evidence is hardly inculpatory.

38. For these reasons mentioned hereinabove, we are of the opinion that the P.W.1 is not a reliable witness. In that view of the matter, the question of seeking corroboration to his evidence does not arise. P.W.1's evidence needs to be rejected in totality.

39. **Stay at various places** -:

The prosecution has examined many other witnesses to prove different circumstances against the accused. Some of the witnesses are pertaining to various hotels, where the accused had stayed at various stages.

40. P.W.10 Ashish Bhargaviprasad Pande, was the Manager with Hotel Siddharth at Baroda. He had produced his

register showing entry dated 26/08/2005 in the name of Pradeep Pille and Narayan Joshi. The entry mentioned arrival of vehicle No.CJ-14-E-4992. The visitors had left at 10.45 a.m. on 26/08/2005. This witness has not identified any of the accused in the Court. The prosecution has not led cogent evidence to establish that the said entry was in the handwriting of any particular accused.

41. P.W.11 Sunil Poojabhai Rajput was a Pancha in whose presence, the said extract was seized. According to him, at that time, there was one accused with the police, but he did not identify that person in the Court. The Panchanama is produced at Ex.274 and in the Panchanama the name of the accused No.2 is mentioned who was present when that extract from the register was seized.

42. P.W.12 Rameshbhai Kantilal Patel was a Pancha in whose presence register of hotel Pooja was seized. According to him, his Panchanama was carried out on 16/09/2005 and he

identified accused Nos.5 and 11 as the accused who were present at the time of such seizure Panchanama. It needs to be mentioned here that on 16/09/2005, the accused No.11 was not even arrested. The Panchanama is produced at Ex.277. The Panchanama shows that the extract was dated 30/08/2005, which is five days after the alleged commission of murder and hence is not very relevant.

43. P.W.13 Yogesh Gajendrabhai Jaiswal was the owner of Shri Nagina Guest House & Restaurant at Chotila, District Surendra Nagar, Gujarat. He had produced the entry in his register dated 22/08/2005. According to him, the guests in his hotel had come in a Tata Sumo vehicle and there were five persons. The number of Tata Sumo Vehicle was mentioned in the register was as CJ-14-E-4992. This witness had identified the accused No.5 as one of the persons who had come to his hotel on 22/08/2005. According to him, he was called for the Test Identification Parade in Pune, but he did not remember as to how many accused he identified in the said parade.

44. The evidence of the prosecution in respect of these hotels hardly matters because there is no proper identification of the accused and handwriting of the accused in those registers are not proved to be those of any of the accused through reliable evidence of the handwriting expert's opinion.

45. The prosecution has examined P.W.15 Jayantibhai Bhailalbhai Patel who had made arrangements for the stay of the accused on 15/08/2005 at Baroda. He has deposed that on 14/09/2005, the police had showed him a photograph of a boy named Sagar. This witness has deposed that he had come to his house on 15/08/2005 with accused Nos.4 and 6. He was called for Test Identification Parade on 05/10/2005. He has deposed in his evidence that he identified 2-3 persons in the Test Identification Parade and had further pointed out accused Nos.3 and 11. However, on 05/10/2005, the accused No.11 was not even arrested. Therefore P.W.15's claim that he has identified accused No.11 in the parade, is not correct. In the cross-

examination he has admitted that the accused No.11 was not present in the jail when the test identification parade was held. Therefore it appears that he is deposing mainly to involve accused No.11. He has not clearly identified any of the accused except accused No.3, who is already acquitted. Therefore even his evidence does not help the prosecution.

46. P.W.24 Vinubhai Fakirbhai Patel has deposed that in August 2005, the accused No.4 along with 4-5 others had stayed in a premises in front of this witness's house. He has deposed that those persons had come in a white four wheeler and were accompanied by a boy aged 20-21 years and they stayed at the rented premises for about 8-10 days. He has deposed that in the Test Identification Parade held on 05/10/2005, he had identified accused Nos.4 and 11. Here again, it is necessary to mention that on that day accused No.11 was not even arrested. Thus, concerted efforts on the part of the prosecution witnesses show that everyone wanted to involve the accused No.11 in some manner, though their capacity to identify the other

accused was highly doubtful. He further deposed that on another occasion i.e. on 30/06/2006 he identified accused Nos.4 and 11. This time also he mentioned that he identified accused No.11. From this evidence it is quite clear that accused No.11 is the main target of the prosecution. This witness has not deposed that he had seen the photograph of the boy and therefore it cannot be said that he had seen Sagar with these accused. Moreover, he has deposed that these persons had stayed at that rented premises in Baroda for 8-10 days, which is not even the prosecution case and therefore his evidence runs contrary to the version of P.W.1.

47. **Jeweller's evidence regarding accused No.11's ornaments** -:

The prosecution has examined P.W.14 Jayesh Ghotalal Jogani, who was the jeweller with whom the gold ornaments of accused No.11 were pledged. He had given Rs.12,500/- for the same. He has produced the bill at Ex.282 and a receipt for Rs.12,500/- at Ex.283. None of these documents bear the signature of the accused No.11. This witness again had identified accused No.11 for the first time in the Court after a gap of more than six years. During investigation, the police did not seize, demand or ask for the register maintained by him. This witness has given a specious explanation that at the time of advancing the loan, even P.W.1's signature was not obtained on the bill, as P.W.1 and accused No.11 were in a hurry. Similarly, at the time of repayment of the amount, the signature of P.W.1 was not obtained and no explanation was offered for the same.

48. **Recovery of knife and clothes at the instance of Accused No.2** -:

The prosecution has examined P.W.28 Deepak Bhikaji Janje to prove that the murder weapon i.e. the knife and clothes worn by the accused No.2 at the time of commission of murder, were recovered at his instance. He has deposed that on 15/09/2005, the accused No.2 made a statement in his presence that he was willing to show the house of Raja Pille in Baroda where he had kept his clothes and the knife. Pursuant to his statement, the police and the Panchas along with the accused No.2 went to Raja Pille's house. There was a cupboard in the hall, from where the accused No.2 took out a bundle which contained a T shirt, a pant and a knife. The knife was kept in a cover. The articles were seized under Panchanama. In his cross-examination he has admitted that there were four persons in the house and the house was in a society. He has further admitted that the Almirah from where the articles were seized was in daily use and it was unlocked. Thus, it can be said that those articles and the cupboard was accessible to at least four persons in the house. The cupboard was used daily and therefore such recovery cannot be said to be from a place where it was within the exclusive knowledge of the accused or where the accused had “concealed” the articles. Therefore this recovery is not in consonance with the requirement of section 27 of the Indian Evidence Act and therefore even this circumstance cannot be held as proved against the accused and in particular against the accused No.2. The prosecution has not examined the said Raja Pille to support this evidence either.

49. **<u>Seizure of Sumo vehicle and articles found inside -:</u>**

In this connection, the prosecution has examined P.W.8 Ajit Shitalbhai Kahar. He has deposed that he knew one Dilipbhai, who in turn introduced him to the accused No.11. On 31/07/2005 this witness along with accused No.11 and accused No.5 went to purchase the Sumo vehicle from old vehicle market at Surat. However, accused No.11 did not like any vehicle and no vehicle was purchased. Then they returned to railway station. Accused No.11 told this witness to accompany him to Mumbai. P.W.8 declined. P.W.8 has further deposed that accused Nos.5 and 11 hired an Indica car and left towards Mumbai. P.W.8 has further deposed that while he was proceeding to Baroda by railway, accused No.11 in gave him a spare key of Sumo and told that the Sumo vehicle was brought to the place of Dilipbhai. Accused No.11 further directed him to take the Sumo from there to P.W.8's own residence. According to P.W.8, accused No.11 told him the registration number of the Sumo vehicle as GJ-14-E-4992. P.W.8 has further deposed that he reached Baroda in the night and went to Dilipbhai's residence to take the vehicle. He then parked that Sumo at his residence. After two days he received a telephonic call from accused No.11 asking about the same. Accused No.11 further told him to cover the vehicle with the plastic cover kept in the rear portion of the car. P.W.8 has further deposed that after five days police authorities came to his house, took key of the vehicle from him, removed the cover and opened the vehicle. The police officers took some samples from the articles inside the car. They also removed the steering wheel, knob of the gear, seats etc. from the car. If his statement is read in continuity, it appears that he along with accused Nos.11 and 5 had gone to Surat from Baroda to purchase a Sumo vehicle. They did not like any car and therefore they did not buy any vehicle. In same context, he further added that they returned to railway station and P.W.8 declined to accompany accused No.11 to Mumbai. P.W.8 in the same context has further added that while he was proceeding to Baroda by train, accused No.11 gave him spare key of Sumo vehicle and in that night itself P.W.8 had parked that car in front of his house. The bare reading of this evidence shows that the Sumo vehicle was parked in front of his house by this witness P.W.8 from 31/07/2005 itself. If that is the prosecution case, then further prosecution case that the said Sumo vehicle was used in abducting and murdering the deceased after 15/08/2005, cannot be true.

50. P.W.9 Chandrasing Narayansing Solanki was a Pancha in whose presence, the seizure Panchanama of the Sumo vehicle was conducted. He has deposed about taking the samples from inside the vehicle. In his cross-examination he has stated that the person with white beard was showing the articles inside the vehicle. The Panchanama is produced on record at Ex.269. The Panchanama does not mention that any of the accused was guiding the police to seize the articles from inside the car. The police had seized many articles from inside the car including a used packet of washing powder and the other articles including matting, CD player, spanners, mobile chargers etc. There were two idols of God in the car, which again is contrary to the

evidence of approver who had stated that the accused No.11 had thrown away idols of God.

51. The prosecution has also examined P.W.16 Dilip Jayantilal Joshi in this connection. He knew accused No.5 as he was related to him. According to P.W.16 accused No.5 introduced this witness to accused No.11. He has deposed that he had met accused Nos.11, 2 and 3 on 28/07/2005. The accused No.3 had sustained injury due to fall from the motorcycle. On the next day, the accused No.11 told this witness that he wanted to recover an amount from a person and asked him to assist accused No.11 in his mission. But this witness declined. He has deposed that on 26/08/2005 he had met accused Nos.5 and 11 at Porbandar. He has further deposed that after 2-3 days he received a call on his landline phone from P.W.8 Ajit Kahar that he wanted to shift the Sumo vehicle to ST colony. P.W.16 tried to contact accused No.11, but he was not reachable on phone. He has deposed that he remembered that accused No.11 owned a Sumo vehicle which had registration

number as GJ-11-E-4992. He further deposed that next day morning the police authorities came to his stall and told about the incident of abduction to him. In the cross-examination P.W.16 has admitted that during the period from 16/08/2005 to 25/08/2005 accused Nos.11 and 5 used to visit his stall. Accused No.5 came on 22/08/2005 and at that time P.W.8 Ajit was driving Sumo vehicle. This version is a different twist to the prosecution story as neither P.W.8 Ajit nor P.W.1 have deposed that between 16/08/2005 till date of the murder P.W.8 was ever with the accused and was driving the car. The prosecution has not clearly established this aspect of the matter. P.W.8 is not made an accused and therefore it is difficult to establish the link between recovery of the Sumo vehicle with any of the accused. P.W.8's evidence as mentioned earlier shows that the vehicle was parked at his residence much prior to the incident, though P.W.16's evidence shows that it could have been parked after commission of the murder. In any case, there is no consistency in the evidence.

52. P.W.54 PI Rajendra Surendra Joshi has produced a letter at Ex.543 addressed by the RTO, Amreli to the Inspector of Police, Crime Branch, Pune, mentioning that the number GJ-14-E-4992 was not assigned to any vehicle. So obviously this number was fake. But the prosecution has not led further cogent evidence to show that the said Sumo vehicle was in fact owned by accused No.5 by referring to the chasis number. No financer is examined. The prosecution case is that the accused No.5 had purchased this vehicle with the help of financers and to avoid seizure of the vehicle as he was unable to pay the amount, this vehicle was concealed at Pune and subequently used in the crime.

53. **<u>Recovery of articles from the house of the accused No.10</u>** -:

In this connection, the prosecution has examined P.W.42 Pramodkumar Ramavatar Sharma and the Investigating Officer. P.W.42 was a Pancha residing at Umredha, District-Agra, UP. He has deposed that on 06/09/2005, the police had called him to act as a Pancha for taking search of the house of Ravitsingh Bhadoriya. The house was locked. The police broke open the lock and entered. There were locks to the inner rooms. Those locks were also broken. There was a Almirah inside. Even lock of the Almirah was broken open. A blue coloured polythene bag was recovered from the said Almirah, which contained a few articles including visiting cards of A-1 Motor and Car Decor, receipt of M/s. Sagar Mat and the receipt of Central Park Hotel, Pune. In the cross-examination he has deposed that the police did not show him any search warrant. He has deposed that he did not know as to whether police from Maharashtra or UP had gone to the said house before the Panchanama. According to him, the house was owned by one Savindarsingh. The owner was not called. He has further deposed that police tried to find persons from the neighbourhood, but they could not get anyone. He has deposed that Ravitsingh Bhadoriya i.e. the accused No.10 was known to him as he was the resident of the same village Umredha and he was his neighbour. The Panchanama is produced on record at Ex.390. This Panchanama was conducted under the supervision of PSI K.P. Chaudhary of Crime Branch, Pune, with the help of PSI G.P. Singh attached to Balauni Police Station, District-Agara. PSI K.P. Chaudhary is not examined by the prosecution and therefore the steps taken for entering the house and conducting the seizure Panchanama is not established by the prosecution. The prosecution has not led any evidence to show the ownership or occupation of the said house which can be connected to the accused No.10. Even the evidence of the Pancha P.W.42 is vague in that behalf. Therefore we are of the view that this seizure of articles from the said house, cannot be connected to the accused No.10 or to any other accused.

54. **Recovery of mobile phones** -:

The prosecution has examined P.W.22 Amjad Shaha Mohammad Shah, as a Pancha for seizure of the mobile phones of Nokia company. This witness was called by the office of ATS, Ahmedabad on 06/09/2005. In his presence two persons named Arif and Imran produced those phones. In his cross-examination he has admitted that those phones were already kept on the table and Police Officer Mr.Pandya had told him that they were seized from Arif and Imran. He has deposed that he had no information in respect of serial number and IMEI number of the mobile phones. The Panchanama is produced on record at Ex.304. The Panchanama mentioned IMEI numbers. According to the averments in the Panchanama, the mobile bearing No.IMEI No.351108302248840 was used by the accused by inserting SIM card of the mobile number of the deceased Sagar.

55. The prosecution has examined P.W.33 Arif Idrisbhai Khatri, who was working with M/s Neema Telecom, Vadodara. The shop was owned by Imran Shaikh. He used to repair mobile phones. He has further deposed that on 20/08/2005 two persons visited his shop and purchased a second hand mobile phone of Nokia make, Model No.3610. They returned again on 22/08/2005 with the complaint that it was not working. Therefore this witness gave them another model bearing No.3350 of Nokia make. On 25/08/2005 they again returned to this witness's shop and sold the Nokia phone No.3350. On

06/09/2005, the police authorities approached them and made enquiries about the Nokia handset i.e. the Nokia 3350. At that time, P.W.33 had sold that handset to one Narendra. He has further deposed that he was called after a month to Yerwada Central Prison for Test Identification Parade, where he identified one accused i.e. accused No.3. Again this witness has also identified accused No.11 at the time of deposition. He was shown mobile Article No.134, which this witness claimed that the accused No.11 had sold to him and which was in turn was sold to one Narendra. The prosecution has not examined Narendra and has not established properly as to how this handset came in possession of the police. However, the prosecution has examined P.W.26 Naresh Shyam Navani, who has deposed that in August 2005, he had purchased one Nokia phone Model No.3650 from one Arif Khatri. That phone was seized by the officers of Crime Branch, Pune, on 15/09/2005 from this witness and he identified the handset at Article No.134. P.W.33 has identified Article No.134 as the Model No.3350 and this Naresh Navani (P.W.26) has identified the

Nokia Model No.3650 as the Article No.134. The prosecution has not taken care to remove this apparent discrepancy in the numbers. In any case, this appears to be a far fetched attempt on the part of the prosecution to connect that particular handset with the accused No.11 to establish that the said phone was used by accused No.11, by inserting SIM card of the mobile number of Sagar, to call his father. Thus, prosecution has not satisfactorily established this circumstance to connect the seized handsets with the accused.

56. At this stage, it is necessary to highlight one more aspect in this matter regarding the telephonic calls and conversation. In the entire evidence, the prosecution has not produced any call detail record of any of the phone numbers showing their tower locations and other details. According to the prosecution case, there were many phone calls from July 2005 to August 2005 by these accused persons. Some of the accused were arrested in September 2005. In the entire investigation the prosecution has not produced the telephonic call details of any

of the accused to show their telephonic conversation inter se or to show calls made to the father of the deceased. In our opinion, this is a very significant lacuna in the prosecution case, which compels us to draw an adverse inference that, if such evidence was produced it would not have supported prosecution case or would have been contrary to the prosecution case. In this connection, the illustration (g) of section 114 of the Evidence Act, would be applicable.

57. Section 114 of the Evidence Act to enables the Court to presume existence of certain facts. The particular illustration (g) reads thus;

> *(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;*

58. Same illustration is applicable for non-production of other important evidence. Allegedly the accused had crossed many toll plazas with the deceased. No record from any of the toll plaza was produced to show that a particular vehicle

through which the accused and the deceased had travelled, had crossed many toll plazas. On these two aspects, an adverse inference needs to be dawn against the prosecution case.

59. **<u>Transfer of money</u>** -:

In this connection, the prosecution case is that P.W.2 paid money to one Samshuddin at Sitaram building, Crawford Market in Mumbai. He was directed by the caller that the money should be paid to Kadarbhai. However, P.W.2 did not meet any Kadarabhi. Samshuddin was an accused in this case and he was absconding. He did not face the trial. The prosecution case is that the money which was paid as ransom amount, was transferred through Hawala racket and out of that amount, an amount of Rs.2,75,000/- was paid to the accused No.11. The prosecution has examined P.W.25 Santosh Rangrao Mane, who was a Pancha witness. He has deposed that on 16/02/2006, the accused No.10 gave statement in his presence showing his willingness to point out the office of the courier, from where the amount of Rs.2,75,000/- was received. The accused No.10

guided the police party and the Pancha to a place called Mandavi at Baroda and showed a courier shop. The shop owner produced a receipt showing the name of M/s Prithvi Enterprises who had sent the money and the name of the accused No.11 appeared as the person to whom it was delivered. The receipt is produced at Ex.331. The Panchanama is produced on record at Ex.330. The prosecution did not establish that the said receipt at Ex.331 had signature of either accused No.11 or any other accused in token of having received the money. The owner of the courier also produced a photocopy of a receipt of UAE Exchange and Financial Services Ltd, Baroda Branch dated 22/08/2005, which is produced on record at Ex.332. Again in this receipt the accused No.11's name is mentioned as the receiver. However, again there is no signature of the accused No.11 on the said receipt.

60. The prosecution has examined P.W.40 Mukeshbhai Karsanbhai Patel, who was working as a Manager with Patel Vishnubhai Kantilal Company, engaged in courier services.

P.W.40 was working in the Mumbai Branch. He has deposed that on 25/08/2005 a person approached their office at Mumbai and handed over amount of Rs.2,75,000/-, which was dispatched to Baroda. On the receipt, the said person mentioned the name of Prithvi Enterprises as the name of the sender and it was to be delivered to Nitin Modha (accused No.11). P.W.40's office then sent that amount to their Baroda office. The receipt at Ex.331 was identified by this witness. As mentioned earlier, the said receipt does not bear the signature of any of the accused. The prosecution has examined P.W.30 Vishnubhai Babalbhai Patel who was working as a Manager in the same courier company i.e. Vishnubhai Kantibhai Angdia, at Baroda. He has deposed that on 26/08/2005, the amount of Rs.2,75,000/- was received from their branch at Mumbai and it was received in the name of Nitin Modha. The memo sent along with the amount mentioned the name of Prithvi Enterprises as the name of the sender. It is produced at Ex.347. Again this document does not bear signature of any of the accused including accused No.11. P.W.30 has further deposed that a person named Nitin Modha came to their office at Baroda. He showed them a memo of UAE Exchange and Financial Services Ltd. and his identity proof. On that, the said amount of Rs.2,75,000/- was handed over to him. P.W.30 has further identified the accused No.11 in the Court as the person who had collected the said amount. P.W.30 was not made to identify the suspects in the identification parade and he had identified the accused No.11 for the first time in the Court during trial. The photocopy of UAE Exchange and Financial Services Ltd., is produced on record at Ex.332 through the evidence of P.W.25 Santosh Mane, the Pancha from Baroda mentioning the date as 22/08/2005 and the amount as Rs.5,000/-. The name of the receiver was mentioned as Nitin Modha and sender's name was Mohammed Ali, UAE. The prosecution has not proved that there was signature of any of the accused including accused No.11 on this receipt. There was absolutely no investigation in respect of the identity of the said Prithvi Enterprises, whose name appeared as the sender in respect of Rs.2,75,000/-. There is no investigation to trace the identity of the person who had deposited the said amount with P.W.40's courier officer at Mumbai. Therefore through this witness the prosecution has failed to establish that the amount of Rs.2,75,000/- was paid to the accused No.11 as a part of the ransom amount. The prosecution has not examined any employee of the aforementioned UAE Exchange and Financial Services Ltd. and there is no investigation in that direction.

61. **Handwriting** -:

The prosecution has examined P.W.17 Kishor Gangadhar Pagare, the Pancha in whose presence specimen handwriting of accused No.2 was obtained. P.W.18 Rajendra Prabhaka Kulkarni was a Pancha in whose presence specimen handwriting of the accused Nos.2 and 5 were obtained. P.W.19 Uttam Kisan Awale was a Pancha in whose presence specimen handwriting of accused No.4 Chhotu @ Arvind was obtained. P.W.20 Pandurang Eknath Dixit was another Pancha in whose presence the specimen handwriting of P.W.1 was obtained. The prosecution had seized extract of various registers and it was an attempt made by the prosecution to connect these accused with the allegedly false entries made in these registers. For the said purpose, the prosecution has produced an opinion of handwriting experts at Ex.565. However, the evidence in this regard of false entries, if any, will not be very material in this case, unless the prosecution was successful in pointing out that those entries pertained to the dates on which the deceased was present with the accused in those hotels and if some witnesses from these hotels, had deposed about this fact. However, the prosecution has not led any evidence through any witness who had seen the deceased present with the accused at any of these hotels and therefore extract of the registers and the handwriting on the same, will not be a material piece of evidence in this case. Even, the learned trial judge in his Judgment has discussed this aspect from paragraph Nos.237 to 243 and the learned Special Judge has categorically observed that the effort of the Investigating Officer to obtain specimen signatures and handwriting for tallying with the disputed handwriting had gone in vain and the said evidence is not helpful to the prosecution to substantiate the evidence against the accused. In this background, we are not inclined to place much reliance on this evidence of handwriting expert's opinion. Moreover, this opinion is brought on record through the evidence of Investigating Officer and the expert is not examined.

62. **<u>Identification Parade</u>** -:

P.W.41 Vitthal Bhalchandra Joshi was the Resident Nayab Tahesildar at Haveli Office. He had conducted the Test Identification Parade on 05/10/2005 at Yerwada Central Prison. The accused Nos.2, 3, 4, 5, 6 and P.W.1 Narayan Jameriya (then accused) were made to stand in the parade. The parade was conducted for two accused at a time. The persons Yogesh Jaiswal, Jaywantibhai Patel, Govardhan Gupta, Suketu Patel, Rajesh Jaswantising Raj, Ravi Shetty, Harish Shetty, Vinubhai Patel, Arif Khatri, Smt.Naina Mahida, Smt.Ushaben Patel and Irman Shaikh were asked to identify the suspects. Only some of them are examined as the prosecution witnesses. We have already referred to the evidence of such witnesses in foregoing paragraphs. We reiterate that identification of the accused by the witnesses is not important in this case unless the accused were seen in the company of the deceased at any point of time and on this account the prosecution has not led any such evidence. Therefore the evidence in respect of the identification parade does not carry any significance. The accused travelling together and residing at different places, is not an incriminating circumstance except showing their association with each other.

63. P.W.45 Sandesh Ravindra Shirke was the Special Executive Magistrate, who had conducted another identification parade on 30/06/2006. At that time, accused No.10 was put in the parade as a suspect and the witnesses Dinubhai Fakirbhai Patel, Ishwarbhai Chimanbhai Patel, Paras Lakabhai Dodiya, Parvinbhai Bachhubhai Patel, Jayantibhai Bhailal Patel, Dilip Jayantilal Joshi and Ushaben Vishnubhai Patel were asked to identify and none of them has deposed that this accused was seen with the deceased at any point of time.

64. P.W.6 Raju Nagu Shetty was a Manager in Kohinoor lodge. According to him, on 30/07/2005, some customers had come to his lodge. He had produced the register before the police and he had identified accused Nos.5 and 2 in the identification parade. He also identified the accused No.11 for the first time in Court as a person accompanying them. This witness deposes about the stay of the accused at his hotel on 30/07/2005 i.e. during the first visit to Pune and at that time, the deceased was not with the accused even as per the prosecution. P.W.7 Samet Montulal Mitra was a manager with White House Hotel at Chinchwad. He has deposed about the halt of the accused at his hotel on 01/08/2005. He has also produced the entry in his register in the name of Narayan Joshi. He has deposed that he had identified accused Nos.4, 5 and 6 at the identification parade. In addition, like other witnesses he also identified accused No.11 in the Court. Even on these occasions i.e. from 01/08/2005 to 04/08/2005, the deceased was not with the accused.

65. **<u>Cassette containing Sagar's voice</u>** -:

P.W.3 Sudhir Ramprakash Sahani was a cousin of P.W.2 Satindar Sahani. He has deposed about abduction of Sagar on 15/08/2005, and the news he received on the night of 15/08/2005. He has further deposed that, on 19/08/2005, he along with Suresh Rupesha (P.W.4) went to Khandoba Temple and picked up a box containing audio cassette kept below a tree. He has deposed that the cassette was played in the office of the crime branch and the cassette contained voice of Sagar. This witness has also identified the dead body on 28/08/2005 as mentioned earlier. P.W.4 Suresh Rupesha was a partner of P.W.2 Satinder in their earlier business of lottery tickets. He has deposed about the finding of the cassette below a tree as deposed by P.W.3. This witness had also accompanied P.W.2 when the ransom amount was paid at Sitaram building, Crawford Market in Mumbai. Thus, these witnesses have deposed that the cassette was played in the crime branch and they had identified the voice of Sagar. However, unless the prosecution proved connection of this cassette with any of the accused, it is not an incriminating piece of evidence. To establish this circumstance, the prosecution has relied on the evidence of P.W.1 and the confessions of the accused recorded under the provisions of section 18 of the MCOC Act. Therefore there is no independent evidence to show that any of the accused was instrumental in keeping this cassette in the temple.

66. **Offence under MCOCA** -:

The learned Trial Judge has convicted all the accused for the commission of offence under the provisions of MCOCA. The accused Nos.2, 4, 5, 6, 10 and 11 were convicted for offence u/s 3(2) and u/s 3(4) of MCOCA. Section 3(2) and section 3(4) read thus -:

> *3(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to minimum fine of rupees five lacs.*

3(4) *Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.*

67. To establish commission of offences under MCOCA the prosecution had to prove that the accused had committed the offence of organized crime. At this stage, it is necessary to refer to some relevant definitions. Section 2(d), 2(e) and 2(f) read thus -:

2(d) *"continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;*

2(e) "organised crime" means any continuing unlawful activity by an individual singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

2(f) "organised crime syndicate" means a group of two or more persons who, acting either singly of collectively, as a syndicate or gang indulge in activities of organised crime;

68. As per the definition of continuing unlawful activity, it is necessary for the prosecution to prove existence of more than one charge-sheets in respect of the syndicate before a competent Court in respect of cognizable offences punishable with imprisonment for three years or more within a preceding period of ten years and that the Courts in question have taken cognizance of such offences. In the instant case, though in

paragraph No.275 of his Judgment, the learned trial Judge has enumerated the offences against one Sayyed Abed Hussain Alibhai, Vickey @ Aftab Alam Mohammad Ayub and accused No.8 Ajay Gadhavi, we have not found any of these charge-sheets in the record and precedings before this Court. With the assistance of the defence counsel as well as the learned APP, we have carefully gone through the record and proceedings and it is an admitted fact on behalf of both, the prosecution and defence, that such charge-sheet copies are not there in the record and proceedings of the case. The prosecution has not produced any of the charge-sheets through any of the prosecution witnesses. The prosecution has not produced on record any of the orders passed by the competent Courts taking cognizance of such charge-sheets. Thus, there is not only absence of any charge-sheet before the Court, but even the orders taking cognizance by the competent Court are not before the Court. No evidence is led to show that the competent Courts have taken cognizance. Therefore the prosecution has not proved the basic requirements of section 2(d) of MCOC Act. While proving case under MCOCA, the prosecution has to prove that there exists more than one charge-sheet against the syndicate, cognizance of such charge-sheet is taken by the concerned competent Court and the crime in question which is being tried before the Special Court, is in continuation of unlawful activity which would fall within the meaning of “organised crime” as defined u/s 2(e) of MCOCA. In the instant case, the prosecution has failed to prove that the present accused had committed any offence as a continuing unlawful activity. Apart from that, it is not even the prosecution case that any of the accused facing the trial before the Special Court in the instant case, had more than one charge-sheets filed against him in any competent Court of which cognizance was already taken.

69. The prosecution has examined P.W.54 PI Rajendra Surendra Joshi, Crime Branch, Pune, who was investigating in the case. He has deposed that, during investigation it was revealed that there was involvement of absconding accused Sayyed Abed Hussain Alibhai and Vickey @ Aftab Alam

Mohammad Ayub. According to him they were the king-pins in the present offence and accordingly P.W.54 sent a report to Pimpri police station on 07/11/2005. He has further deposed that after obtaining documents and information regarding the previous offences involving the aforesaid absconding accused, he sent a proposal to Additional Commissioner of Police, Pune to invoke provisions of MCOCA on 08/11/2005. P.W.52, the then Additional Commissioner of Police, Crime Branch, Pune, Mr.Ashok Ganesh Dhivare, accorded permission to invoke provisions of MCOC Act on 25/11/2005. The said order u/s 23(1)(a) of MCOCA passed by him is produced on record at Ex.473. P.W.52 further directed the ACP, Crime Branch, Pune to conduct the investigation. Even this order, at Ex.473, does not mention any of the charge-sheets against any of the accused. P.W.53 Dhananjay Namdeorao Jadhav, the then Commissioner of Police and Additional Director General of Police at Pune, accorded sanction u/s 23(2) of MCOCA for prosecuting the accused under the provisions of the said Act. The sanction is produced at Ex.480 and another sanction in respect of accused

No.11 is produced at Ex.481. Even these two sanctioning orders do not mention the earlier charge-sheets making the accused liable to be prosecuted for commission of the offence punishable under MCOCA. Thus, there is no evidence on record in respect of the previous charge-sheets against the accused or absconding accused and there are no orders of the competent Courts produced on record, showing cognizance of the said offences having been taken by the competent Courts. Merely because, the sanction is accorded by the competent authority, the offence is not automatically proved. The sanction only enables the Special Court to take cognizance of the offence under MCOCA. However, the prosecution still has to prove the commission of offence under MCOCA by leading evidence during trial. In the present case, the prosecution has miserably failed to lead evidence in respect of any such offence and therefore offence under the MCOCA is not proved against any of the accused.

70. **Confessions** -:

Another important aspect in the instant case is the evidentiary value of the confessions of some of the accused recorded u/s 18 of the MCOCA. Sub-section(1) of the section 18 reads thus ;

Section 18 – Certain confessions made to police officer to be taken into consideration -

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (I of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police as recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused abettor or conspirator;

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

71. Sub-section (2) to (6) of section 18 of MCOC Act provide for the procedure which is required to be followed by the officer while recording such confessions. Section 29 of

MCOCA gives power to State Government to make rules for carrying out the purpose of MCOCA. Accordingly, the rules known as The Maharashtra Control of Organised Crime Rules, 1999, are formulated by the Government of Maharashtra. Rule 3 provides for the procedure for recording of confession u/s 18 of the MCOCA.

72. We have already held that the offences under MCOCA are not proved by the prosecution in the present case, therefore the question remains as to what is the effect of the confessions recorded under the provisions of MCOCA. This aspect is dealt by the Hon'ble Supreme Court in the case of ***State of Tamilnadu Vs. Nalini & Ors., reported in 1999 Cr.L.J. 3124***. The discussion on this point can be found from paragraph Nos.407 to 423 of the Judgment reported in Criminal Law Journal. The Hon'ble Supreme Court was considering the evidentiary value of confessions recorded u/s 15 of the Terrorist and Disruptive Activities (Prevention) Act (for short 'TADA'). Section 15 of TADA is similar to section 18 of the MCOCA. The Hon'ble

Supreme Court considered the effect of acquittal under TADA on the confessions recorded u/s 15 of TADA. The Hon'ble Supreme Court has held that the confessions recorded u/s 15 of TADA in such cases, where the accused are acquitted of TADA are still admissible. The Hon'ble Supreme Court took into consideration the provisions of section 12 of TADA which provides that the designated Court can also try the other offence while trying the offence under TADA. A similar provision is found u/s 7 of MCOCA, which provides for the powers of Special Court to try other offences while trying the offence under MCOCA. Thus, the discussion made by the Hon'ble Supreme Court in Nalini's case would be squarely applicable to the provisions of MCOCA in respect of the confessions recorded u/s 18 of MCOCA. While concluding the discussion under this topic, the Hon'ble Supreme Court in paragraph No.423 of the said Judgment has observed thus;

> *"423. In view of the above discussions, we hold the confessions of the accused in the present case to be voluntarily and validly made under Section 15 of TADA confession of an accused is admissible*

against co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the quality of evidence that matters. As to what value is to be attached to a confession will fall within the domain of appreciation of evidence. As a matter of prudence Court may look for some corroboration if confession is to be used against a co-accused though that will again be with the sphere of appraisal of evidence."

73. Therefore, though we have held that, the prosecution has failed to prove the offences under MCOCA, still the confessions recorded u/s 18 of the MCOCA would be admissible subject to the conditions mentioned by the Hon'ble Supreme Court in Nalini's case (supra). It is clearly observed by the Hon'ble Supreme Court that the confession of an accused recorded u/s 15 of TADA (in the present case u/s 18 of the MCOCA) is admissible against co-accused as a substantive evidence. The substantive evidence would not mean that it should be treated automatically as substantial evidence. The quality of the evidence is important. What value is to be

attached to a confession would fall within the domain of appreciation of evidence. The Hon'ble Supreme Court has further laid down that as a matter of prudence Court may look for some corroboration if confession is to be used against the co-accused and that would again be within the sphere of appraisal of evidence.

74. Keeping these principles in mind, we proceed to consider the evidence led by the prosecution, in respect of confessions of some of the accused. The prosecution has produced on record the confessions of accused Nos.3, 4, 10 and 11. Besides these accused, the confession of P.W.1 was also recorded during the investigation much before he had turned approver. The confession of P.W.1 recorded during investigation cannot be taken as a substantive piece of evidence because provision to sub-section 1 of section 18 of MCOCA provides that such confession shall be admissible provided that the co-accused abattor or conspirator is charged and tried in the same case together with the accused. In the present case, the P.W.1 was

granted pardon and therefore he was neither charged nor tried in the same case, together with the other accused and therefore his confession recorded u/s 18 of the MCOCA cannot be treated as a substantive piece of evidence.

75. Thus, the confessions of accused Nos.3, 4, 10 and 11 are important in this case. P.W.46 Mahesh Ramakant Ghurye, was the DCP Zone-I, Pune, at the relevant time. He has deposed that on 06/12/2005 he received a communication from ACP Pune in respect of recording of confessional statement of accused No.3 Jagmalsing Choudhary. He thereafter directed the said accused to be produced before him. P.W.46 Mahesh Gurye then verified that the said accused indeed wanted to make a confession. P.W.46 gave him time of 24 hours to reflect upon his desire to give confession. He was not handed over to the Investigating Officer, but was instead kept in the custody of Faraskhana Police Station and his statement was recorded on 09/12/2005 after again ascertaining that he was voluntarily giving his statement. His voluntary statement is produced on

record at Ex.413. In his confession accused No.3 has stated that he was doing a job of marble fitting. Accused No.10 used to work with him around December 2004 for some days. He had purchased one Indica car and accused No.4 was working as a driver with him. On 28/07/2005 he met accused No.2. He informed accused No.3 that he was going to Pune to abduct a boy and asked as to whether accused No.3 was willing to join him. Accused No.3 declined. In the same night, accused No.3 suffered an accident as his motorcycle slipped. He had suffered head injury and was admitted to hospital. In the hospital accused Nos.2 and 10 met him and told him that they are going to abduct a boy in Pune and they wanted his Indica car. Accused No.3 gave his car. Accused No.4 who was the driver of the car went with the accused Nos.2, 10 and others. Accused No.4 informed him after 2-3 days that they were returning back and there was no abduction on that occasion. P.W.3 has however stated that on 15/08/2005 at around 07.00 a.m. accused No.3 called him on his mobile phone and asked accused No.3 to meet him. During their meeting accused No.2 told him to make arrangements for their stay. With some efforts accused No.3 made some arrangements in the night. Accused No.3 requested his friend Bhagirath to provide his room for one night. When accused No.2 and others came there, he introduced accused No.3 to accused No.11 and told him that the boy accompanying him was accused No.11's friend and they wanted to extract money from his father. Accused No.3 was also introduced to one Naranbhai as the driver of accused No.11's car. At that time, accused No.3 had heard accused No.10 telling Sagar that they should play cards. On the next day i.e. on 16/08/2005, accused No.3 told accused No.4 to vacate the room as he wanted to return the room to his friend Bhagirath. Thereafter all these persons went to Gujarat Housing Board colony. Accused No.3 brought plastic dishes and glasses on the say of accused No.10 who had given money for that. On 18/08/2005, the accused No.11 told him that they wanted to send a cassette containing Sagar's voice to Pune. Accused No.11 gave Rs.2,500/- to accused No.4. Accused No.3 dropped accused No.4 at the bus stand. On 19/08/2005 accused No.11 purchased two SIM cards and one secondhand Nokia phone and gave them to accused No.3. They were purchased from one Arifbhai. After that accused No.11 had taken him to one STD ISD telephone booth. Accused No.3 has stated that accused No.11 made some phone call and phone number started from 0097. Accused No.3 has further stated that accused No.11 told him that he spoke to one Alibhai at Dubai who was their Boss. He further told accused No.3 that within a couple of days he was expecting payment of ransom amount from Sagar's father, but he did not intend to send back Sagar and then also threatened accused No.3. On 20/08/2005 accused No.4 told him that he had kept that cassette in a temple at Pune. Accused No.4 further told him that he was not aware of their plans earlier and that he had accompanied them to Pune because of greed for money. Accused No.3 told accused No.4 that they should rescue Sagar. Accused No.3 then took accused No.10 aside. They went to accused No.4's house. He suggested that they should help Sagar go back to his house. Accused No.3 gave him a chit to be handed over to Sagar. Accused No.3 further told accused No.10 to obtain Sagar's father's number from Sagar. On 21/08/2005 accused No.3 again went to the place where those persons were staying. He saw that accused No.10 was talking with Sagar. Accused No.3 took a visiting card of Sagar's shop from accused No.10 and then called Sagar's father on his mobile phone. He told Sagar's father that his son was safe and that he should not pay any ransom amount. After the telephone call, he waited for 10 minutes at that telephone booth, but he did not receive any call from Sagar's father. On 22/08/2005 he told accused No.10 that he wanted to go for a job on a new site. Accused No.3 got the feeling that accused No.2 came to know about his plan of helping Sagar. From then onwards accused No.11 threatened him. In the evening when he went to the place where those persons were staying, he saw that they had already left.

76. After recording this confession, P.W.46 typed his certificate that the confessional statement was given voluntarily. The further provision of producing the said accused before JMFC was followed.

77. P.W.49 the then DCP, Zone-II, Crime Branch, Pune, Mr.Anant Dattatray Shinde recorded the confessional statement of accused No.4 on 20/12/2005. The said accused was produced before him on 19/12/2005. P.W.49 gave him sufficient time to contemplate over his decision to give confession and after completing requirements of law, the statement was recorded and even after recording his confession, further procedural formalities were completed except that there was no certification about voluntariness of the confession at the end of the confessional statement as required under Sub-Rule 6 of Rule 3 of the aforementioned MCOC Rules. However, the Hon'ble Supreme Court in the case of ***Mohd. Farooq Abdul Gafur & Anr. Vs. State of Maharashtra, as reported in (2010) 14 Supreme Court Cases 641***, in paragraph Nos.68 to 73 has discussed this aspect and has held that as other procedural requirements are completed, then absence of such certification would not make any difference.

78. The confessional statement itself was recorded in Marathi. Accused No.4 has more or less told the same story as told by accused No.3. In addition, he has described their first trip to Pune from 01/08/2005 to 05/08/2005, when they could not abduct Sagar. Thereafter he described about the events which occurred after 15/08/2005. On that day in the morning accused No.3 told him that he had to arrange for stay of his friends. Accused No.4 made their arrangements in his maternal aunt's house for a day for about 5-6 hours at Kambola. Thereafter in the night, accused No.3 made their arrangement in his friend Bhagirath's room and then on the next day at Gujarat Housing Board building in Baroda. Accused No.4 made arrangements for necessary articles and also for food parcels. On 18/08/2005 accused No.4 was forced by accused No.11 to go to Pune to keep the cassette in a temple in Pune. Accused No.4 has stated in his confession that he went to Pune and kept the box in the temple. He called accused No.11 from Pune but accused No.11 scolded him for calling from Pune on his mobile phone. Thereafter accused No.4 came back to Pune and from 22/08/2005 he did not know what happened.

79. P.W.48 Chaggan Hiralal Wakade, the then DCP Zone-I, Pune, recorded the confessional statement of accused No.11 on 10/08/2006. After complying with the requirements of provisions of MCOC Rules in respect of recording of confessions. Accused No.11 was arrested on 21/07/2006. In this case after recording of his confession, the further procedural formalities of producing him before the Chief Judicial Magistrate were completed. He was kept in the custody of PI Vishrambaug Police Station before his confessional statement was recorded. In his confession he has stated that he was working in Sharjah. There he came in contact with Vicky, Asif who were residents of Mumbai and one Abid from Hyderabad. They offered him to pay money if he could abduct some rich boy for ransom. Accused No.11 agreed to do the job. When he came to India, he met original accused No.7 Samad Boga Gadhvi and told him about what Vicky had told him. Accused No.7 Samad spoke to those people and agreed to do that job for them. The said Samad introduced him to P.W.1. Accused No.5 was already knowing

P.W.1. Thereafter all of them came to Pune and had discussion with accused No.6 and planned to abduct Sagar. Thereafter Samad & Narayan went back to Gujarat and accused No.11 himself went to Sharjah. After 10-15 days he again came back to India with the financial help from Asif. After coming to India, P.W.1 introduced him to accused No.2. Accused No.2 was in need of money at that time. Accused Nos.11 and P.W.1 told accused No.2 about the plan to abduct somebody. Accused No.2 then introduced accused No.11 to accused Nos.3, 4 and 10. They also showed their willingness to execute the plan. Thereafter accused No.11's story runs on the similar lines as deposed by P.W.1. His confessional statement mentions three phone numbers. The SIM cards were purchased by him in Baroda. His confessional statement mentions that on 23/08/2005, the accused No.5 met him in Chotila. Accused No.11 told accused No.5 that he had come there with his friends and that accused No.5 should not meet his friends. On 24/08/2005 they left from there. On 25/08/2005, when they were in a lodge, at around 11.00 a.m. the police searched their lodge. At that time they told the police that they had come from Mumbai. Thereafter accused No.11 has stated as to how he came to know that ransom amount was paid and how they committed murder of Sagar. After commission of offence he stayed at Porbandar for a few days and then on 02/09/2005 he went to Sharjah. He came back on 13/07/2006 and was arrested at Delhi. Before ending his confessional statement accused No.11 has stated that his father and accused No.5 were totally unaware about the entire plan and incident.

80. P.W.50 Shahaji Shrirangrao Solanke, the then DCP Head Quarters, Pune, has recorded the confessional statement of accused No.10. He has also deposed about complying with the procedural requirement before and after recording of the confessional statement and about the voluntariness of the confession. Accused No.10 in his confessional statement has deposed that he was originally from Utter Pradesh. He came to Baroda and was working with Jagmalsingh i.e. accused No.3. On 27/08/2005, he met accused No.2 and accused No.11. Accused

No.11 was introduced to him by accused No.3. On 28/07/2005 accused No.3 told him that the accused Nos.4, 10 and 11 were going to Pune and they were planning to abduct a boy and that accused No.10 should also accompany them as they would get good money. Accused No.10 agreed to participate in the plan. Thereafter his confessional statement runs on the similar lines as those of P.W.1 and confession of accused No.11. In Addition, he has stated that Sagar was abducted at the point of knife. He has also stated that on 19/08/2005, accused No.3 told him that he would give a chit to Sagar and accused No.10 gave that chit to Sagar. Sagar returned the chit after reading it. Accused No.10 told this to accused No.11. Then accused No.11 got suspicious and then they left from Baroda on 22/08/2005. Thereafter he has stated as to how the murder was committed and how money was collected by accused No.11 on 26/08/2005.

81. All these confessions have to be considered in view of the observations of Hon'ble Supreme Court in the Judgment which we have referred earlier. Though, all these confessions

are admissible, their evidentiary value will have to be tested. Each of these confessions cannot be read in isolation. They have to be tested with all the other circumstances and all the other evidence led by the prosecution in this case including the evidence of the approver i.e. P.W.1.

82. As far as the confession of accused No.3 is concerned, his tenor of the confession is almost exculpatory. In fact according to him at one point he had offered to help Sagar to rescue himself and had called his father. This is not supported by P.W.2 Sagar's father. Accused No.10 in his confession attributed much important role to accused No.3 and shows his active participation. Accused No.3 is already acquitted from the case.

83. Accused No.4 has made a statement in his confession that he had provided necessary articles and food to the accused and on the say of accused No.11 had gone to Pune to drop the cassette. As mentioned earlier, the evidence regarding the

cassette is not satisfactorily proved by the prosecution. He had gone with the other accused to Pune in the Indica car on the earlier occasion.

84. Accused No.10 has mentioned about the main incident more or less similar to the deposition given by P.W.1 and described by the accused No.11 in his confessional statement. Apart from that, he has stated that he was introduced to accused No.11 by accused No.3. Accused No.10, is the only person who has stated in his confessional statement that Sagar was abducted at the point of knife. No other witness or accused including the P.W.1 has come up with this story.

85. The very significant aspect about accused No.11's confessional statement is the last line which reads that his father and accused No.5 were totally unaware of the hatching of the conspiracy and execution of plan. Accused No.11 was arrested on 21/07/2006. At that time his father and accused No.5 his brother-in-law were already arrested. Therefore there is a clear

attempt on his part to save them. Therefore it is doubtful as to whether his confessional statement was given by him voluntarily.

86. The main criticism in respect of the evidence of P.W.1 is still applicable to all these confessional statement. It is extremely difficult to believe that Sagar could be abducted as easily as is described by all the witnesses and the accused. Except accused No.10 nobody says that he was abducted at the point of knife. Even if it is asumed that he was abducted at the point of knife, even then his further behaviour in inexplicable. They had crossed many toll plazas from 15/08/2005 to 26/08/2005. They had shifted to a few places and had met many strangers and other people. On one occasion i.e. on 25/08/2005 even the police officers had reached Bhagyodaya Guest House making search and on none of these occasions Sagar made any protest or made any attempt to run away. Accused No.3 had offered to help him. P.W.1 had independently offered to help him and yet instead of taking opportunity Sagar

did nothing, which is very hard to believe. The investigating machinery had all the telephone numbers to trace the call detail records. But this exercise was not done; and as mentioned earlier it is a case where adverse inference must be drawn against the prosecution. It is not the prosecution case that for the entire 10 days Sagar was constantly kept under threat. The provision of MCOCA and in particular of Sub-Rule 8 of MCOC Rules mentions that after completing formalities, the police officers recording the confession should supply copy of the confession recorded by him to the Investigating Officer for the purpose of investigation. Thus, after the first confessional statement was recorded, the prosecution story was crystallized. Therefore it was not difficult for the Investigating Agency to collect evidence to support this version. However, as we have discussed earlier, the prosecution did not produce any reliable evidence in respect of any of the circumstances.

87. Therefore, though the confessional statements are admissible, we do not think them to be reliable pieces of

evidence, on which, conviction can safely be based. Though, there is no requirement by law that such confession must be corroborated, but when we are not satisfied with the reliability of such confessions, it is necessary to turn to other circumstances which in the present case are not sufficiently proved by the prosecution. Therefore, even the evidence in the nature of confessions of all these accused does not prove the guilt of the accused beyond reasonable doubt.

88. **Defence witness** -:

In this case 8 defence witnesses were examined. D.W.1 Baba Tukaram Gaikwad and D.W.2 Atul Hari Pawar were the prisoners, who were used as dummies in the identification parade held on 06/10/2005. D.W.1 Baba Gaikwad has deposed that he has not taken part in the Test Identification Parade held on 06/10/2005. He has deposed that he was never called in connection with the identification of the accused. D.W.2 Atul Pawar has similarly deposed that he was never called in connection with the identification of the accused by jail authorities. Both these witnesses were cross-examined on behalf of the prosecution. We have already discussed the evidence of Test Identification Parade and therefore the evidence of these two witnesses is not material in the context of the case.

89. D.W.3 Rajendra Tanbaji Dhamne was the Superintendent of Yerawada Jail from March 2005 to June 2009. He has deposed that P.W.1, the approver was brought to Yerwada Jail on 23/09/2005. In initial stages, he was lodged in circle No.1 and was shifted to Anda Cell. Till deposition of D.W.3 Rajendra Dhamne, P.W.1 was kept in Anda Cell. We have already dealt with the aspect of the P.W.1 being kept in Anda Cell. The evidence of D.W.3 shows that for a considerable period and even after the deposition of P.W.1 in Court, he was in Anda Cell.

90. D.W.4 Balu Maruti Tupe was a prisoner in Yerwada prison from March 2005 till 2008 and thereafter from 24/01/2012 till his deposition in Court in June 2012. He was

knowing P.W.1 as both were detained in the same barrack. He has deposed that P.W.1 used to quarrel with the co-accused Jagmalsingh Choudhary and Chhotu Choudhary. According to D.W.4 Balu Tupe, P.W.1 used to demand money from Jagmalsingh and Chhotu and used to threaten them if the money was not paid, he would become witness for prosecution. He has also deposed that P.W.1 used to tell him that the police officers from Crime Branch had requested him to become a witness for the prosecution and that he had settled the issue with the police officers for an amount of Rs.3 lakhs, which was paid to his family members. He was cross-examined by the Special Public Prosecutor on behalf of the prosecution. Beyond his word, there is nothing to corroborate his version. However, the fact remains that the P.W.1 was in a disturbed state of mind and was kept in Anda Cell, is emphasized through his evidence.

91. D.W.5 Ketan Ramanlal Khatri was working for evening newspaper 'Akila' published from Rajkot. D.W.5 Sneha Hrishikesh Vaidya was a journalist working for daily newspaper

'Sandesh', which was also published from Rajkot. Both these witnesses have produced news items published in the newspapers. However, these news reports have no authenticity and therefore they cannot be taken into consideration either in favour of the defence or in favour of the prosecution.

92. D.W.7 Dahyaji Govarji Vanjara was the DIG, Gujarat at the relevant time. He was examined by the defence to show that the investigation was conducted in a different direction and some other accused were arrested in connection with the present crime. However, this witness has given evasive answers and has stated that he did not remember about the facts when asked about the investigation of the offence. D.W.8 Dr.Rajkumar Pandiyan was the SP, ATS, Gujarat. Their Investigating Agency had provided assistance to the Crime Branch, Pune in the investigation. He has admitted that he had interrogated some local persons, but did not provide further details. He has admitted that he had interrogated Imran and Arif Shaikh from Baroda. He has not furnished further details. He has admitted

that he had sought sanction for interception of telephone calls and he had received information through interception. He has further deposed that it was not useful for further investigation. Thus, even his evidence is not of significance except for the fact that he has admitted that he had interrogated some other persons in connection with the present Crime and that some telephone calls were intercepted.

93. As a result of the discussion made hereinabove, we are of the opinion that the prosecution has not established its case beyond reasonable doubt and therefore the benefit of doubt must be given to the accused. With the result, the Appeals succeed. Hence following order :

ORDER

1. The Appeals are allowed.

2. The order of conviction and sentence as recorded by the learned Special Judge (under MCOCA), Pune, vide Judgment and Order dated 07/12/2012 in MCOCA Special Case No.1 of 2006 is quashed and set aside.

3. The Accused are acquitted of the charges charged with.

4. The Appellants are directed to be set at liberty forthwith, if not required in any other case.

5. If fine amount is paid, the same shall be refunded to the Appellants.

6. Since the Appeals are allowed, all the pending Applications are disposed off.

(SARANG V. KOTWAL, J.) **(B. R. GAVAI, J.)**