

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 397 OF 2016
WITH
CRIMINAL APPEAL NO. 426 OF 2016

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Criminal Appeal No. 397 of 2016

APPELLANT : Pramod S/o Madhavrao Rannavare,
Aged about 39 years, Occu. Agriculturist,
R/o Hanuman Nagar, Wadgaon,
Tah. and Dist. Yavatmal.

VERSUS

RESPONDENT : The State of Maharashtra,
through Police Station Officer,
Police Station, Deoli, Dist. Wardha.

With

Criminal Appeal No. 426 of 2016

APPELLANTS : 1] Nitin Madhukarrao Ghadge,
Aged 27 years, Occu. Labourer,
R/o Bhagyodaya Society, Ram Nagar,
Wadgaon, Tah. & Dist. Yavatmal.

2] Monika Manoj Bhabat,
Aged about 37 years, Occu. Household,
R/o C.R.P.F. Camp, Nagpur.
Tah. & Dist. Nagpur.

3] Aashish Ramdas Kathale,
Aged about 24 years, Occu. Agriculturist,
R/o Kalgaon, Tah. Digra, Dist. Yavatmal.

VERSUS

RESPONDENT : The State of Maharashtra,
through Police Station Officer,
Police Station, Deoli, Dist. Wardha.

Mr. Avinash V. Gupta, Senior Advocate with Mr. Akash A. Gupta,
Advocate for the appellant in Cri.Appeal No. 397/2016
Mr. Mahesh Rai, Advocate for appellants in Cri.Appeal No.426/16
Mr. S. S. Doifode, A. P. P for the respondent/State in both appeals.

CORAM : V. M. DESHPANDE and AMIT B. BORKAR, JJ.

Judgment Reserved on : 13.08.2021

Judgment Pronounced on : 7.10.2021

JUDGMENT [Per V. M. Deshpande, J.]

These two appeals are filed against the judgment and order of conviction passed by the learned Additional Sessions Judge, Wardha in Sessions Case No. 11/2014 dated 27/09/2016. By the impugned judgment and order of conviction, the appellants in these two appeals were convicted for the offence punishable under Sections 302, 364 and 201 read with Section 34 of the Indian Penal Code. Life imprisonment on each count is the punishment imposed upon them for the offence punishable under Sections 302 and 364 of the Indian Penal Code together with fine of Rs.10,000/- by each of them on each count. Insofar as conviction under Section 201 of the Indian Penal Code is concerned, the learned Judge has imposed

sentence of rigorous imprisonment for three years along with fine of Rs.5,000/- by each of them.

2. Criminal Appeal No.397/2016 is filed by accused Pramod Rannavare, whereas Criminal Appeal No. 426/2016 is filed by accused Nitin Ghadge, Monika Bhabat and Ashish Kathale. In the Charge framed by the learned trial Judge (Exh.12), accused Monika was shown as accused no.1, accused Pramod was shown as accused no.2, accused Ashish was shown as accused no.3 and accused Nitin was shown as accused no.4. In this judgment, they will be referred to by their said position.

3. Since these two appeals arise out of the same judgment, they were heard together and they are being decided by this common judgment.

4. Accused no.2 Pramod is represented by learned Senior Advocate Shri Avinash V. Gupta with learned counsel Shri Akash A. Gupta. Accused no.1 Monika, accused no.3 Ashish and accused no.4 Nitin are represented by learned counsel Shri Mahesh Rai. Learned

Additional Public Prosecutor Shri S.S. Doifode represented the State in these two appeals.

5. As per the Charge, all the accused persons in furtherance of their common intention on 01.10.2013, at about noon time at mouza Wafgaon area committed murder of Manoj Bhabat and after committing his murder thrown the dead body. The learned Judge framed the charge for the offence punishable under Section 364, 302 and 201 read with section 34 of the Indian Penal Code.

6. All the accused persons denied the charge and claimed for their trial. In order to prove the charge and in order to bring home their guilt in the trial, the prosecution has examined in all 29 witnesses and also relied upon numerous documents, which were duly proved during the course of the trial.

7. Deceased Manoj and accused no.1 Monika were husband and wife. According to the prosecution, there were illicit relations in between accused no.1 Monika and accused no.2 Pramod

and therefore, they with the help of accused nos.3 and 4 committed murder of Manoj.

PROSECUTION CASE

8. PW5 Sanjay Wawre is the first person who noticed the dead body of an unknown person on 04.10.2013. On the said day, at about 4.00 to 4.30 p.m., he was returning to his house at Wafgaon from his agricultural field. On the way he stopped for urinating. That time he noticed legs of human body below the bridge. Therefore, he got scared. After some time, one another person came there and along with him he went near the bridge to notice that a dead body was lying under the bridge. He, therefore, informed the said fact to Police Station, Deoli.

9. On 04.10.2013, Vijay Dhawale (PW13) was attached to Police Station, Deoli as Police Head Constable. He went to the spot. In the meanwhile, Sanjay Waware (PW5) gave intimation (Exh.292) in respect noticing dead body in decomposed condition and therefore, action be taken. Accordingly, Accidental Death No.

56/2013 under Section 173 of Cr. P.C. was registered by HC Vijay Dhawale and he conducted enquiry. During enquiry, Vijay Dhawale recorded spot panchanama (Exh.187). The spot was shown by Sanjay Waware. The spot of the incident was within the area of Wafgaon to Ratnapur road under the bridge. On the spot, Aadhar Card, Election identity card, one shoe, hand gloves, one socks, bed sheet etc. were found. Spot panchanama was drawn in the presence of panch witness Vijay Deonade (PW17) and Sachin Bire (PW18). They were called to act as panchas in view of the summons issued to them by HC Vijay Dhawale. Summons is at Exh.186.

Aadhar Card and election identity card were in the name of Manoj Bhabat. The articles found on the spot were seized under separate seizure panchanama (Exh.188) in presence of panchas.

10. When HC Vijay Dhawale saw the dead body, he noticed injuries on stomach, back and thigh. He sent the dead body for post mortem at Sewagram Hospital by giving requisition to the Medical Officer, Sewagram (Exh.190). He also done enquiry (Exh.189). Provisional post mortem report (Exh.162) was received. He

submitted his Murg report to the Police Station Officer. It is dated 05.10.2013 (Exh.191). Along with the report, all the enquiry papers were submitted.

11. On considering the contents of the report (Exh.191) and perusal of the documents, PW25 Dhananjay Sayare, Police Station Officer of Police Station, Deoli decided to register an offence punishable under Section 302 of the Indian Penal Code by putting his endorsement on the report submitted by HC Vijay Dhawale. Accordingly, PW25 Dhananjay Sayare, himself registered the crime against unknown persons vide Crime No. 149/2013. Printed first information report is at Exh.192.

12. Identity of the deceased as Manoj Bhabat was determined in view of the Aadhar Card and election identity card, which were found lying near the dead body. PC Deepak Krupale produced the bundle of clothes of the deceased, which were given to him in sealed condition by the Doctor. The said sealed bundle was seized under seizure memo (Exh.213). The prosecution evidence would show that PW1 Kusum, mother of the deceased and his sister

Padma (PW4), who came to village Bramhanwada at her parental house, were called by Madhavrao Dhawde of the said village. Accordingly, they reached to his house. At his house, police informed them that one dead body was found and Aadhar Card of Manoj was found near the dead body. This happened in the night of 04.10.2013. On 05.10.2013, these two ladies were called at Kasturba Hospital, Sewagram to identify the dead body. They along with Vandana, another sister of the deceased who was also called by Padma (PW4), reached to the hospital and she identified the dead body. After the statements of the relatives were recorded, the Investigating Officer in view of the suspicion raised by the relatives against accused no.1 Monika, arrested her by giving intimation to one of her relative Seema Mahatme. That intimation is at Exh.303. Arrest form of accused no.1 Monika is at Exh.304. The happening of the said day in respect of the crime was recorded in the Station Diary. Extract of the said Station Diary entry is at Exh.305.

After arrest of accused Monika, she was interrogated. During investigation, the Investigating Officer found involvement of some other persons.

13. During investigation, the Investigating Officer received information that two persons involved in the crime are coming to Yavatmal. He, therefore, along with Vijay (PW17) and Sachin (PW18) went to Yavatmal. Before taking them with him, the Investigating Officer gave summons to them (Exh. 215). They reached to Wadgaon area of Yavatmal. As informed, police waited near Bhagyoday Society. They noticed one white colour car reaching there. It was Indigo car bearing registration No. MH-29/K-7154. The said car was stopped near Bhagyoday Society. The person who was sitting beside the driver came out of the car and tried to flee away, however he was caught by police. The driver was also called and he disclosed his identity as Pramod Rannavare (accused no.2).

14. On personal search of Pramod, the Investigating Officer found one mobile phone and cash amount of Rs.51,000/-. Search of the car was also made. That time, police party found that the seat covers were not there on the rear seat. However, there were some blood stains. The cell phone and cash amount of Rs.51,000/- recovered from the person of accused no.2 were seized. Similarly,

Indigo car was also seized from his possession. These all three were seized under seizure panchanama (Exh.217).

15. The another person, who was caught, disclosed his identity as Nitin (accused no.4). His personal search was also made and in that one mobile phone and cash amount of Rs.8,000/- were found from his person. The Investigating Officer seized the same in presence of panchas under seizure memo (Exh.216).

16. The Investigating Officer on physical verification of both these accused found injuries on their hand. During interrogation, they revealed about another person Ashish Kathale, resident of Kalgaon. The accused persons shown the house of Ashish. The Investigating Officer went near his house and gave a call. Responding to that call, one person came out of the house and on enquiry, he disclosed his identity as Ashish Kathale. During his personal search, one mobile and cash amount of Rs.7,500/- were found. Those were seized in presence of the panchas under seizure panchanama (Exh.219). Thereafter, the Investigating Officer arrested these three

accused by preparing arrest panchanama (Exh.220). Their arrest forms are at Exhs.310 to 312.

The Investigating Officer took entry of all these proceedings in the Station Diary. Extract of the Station Diary dated 10.10.2013 is at Exh.313.

17. On 11.10.2013, again notice was given to panch Vijay (PW17) and Sachin (PW18). It is at Exh.221. Accordingly, they came to the police station. Thereafter, the Investigating Officer took out accused no.2 Pramod from lock-up and made enquiries with him in presence of panch witnesses. He gave his voluntary statement that he will show the spot of the incident. Accordingly, accused Pramod took them to Power Grid situated at MIDC, Deoli, then to Madkona, Kalamb Road. Thereafter, he took them to Kalgaon area and shown the place where the dead body was found. The Investigating Officer recorded all these proceedings in running panchanama (Exh.222).

18. On 12.10.2013, the Investigating Officer along with arrested accused Monika and police staff came to Central Reserve Police Force camp, Nagpur, where the deceased was residing with

Monika. In presence of panchas, the lock of quarter of the deceased was broke open and from the said residential quarter, two mobile phones, one sim card, sim card cover, cash amount of Rs.10,500/-, saree, blouse and two handkerchiefs were seized in presence of panchas. The seizure panchanama is at Exh.149. The said panchanama bears signatures of the panchas as well as accused Monika. From Nagpur, police came back to police station, Deoli. The Investigating Officer took entry of these proceedings in the station diary. Extract of station diary dated 12.10.2013 is at Exh.317.

19. On 13.10.2013, accused Ashish (accused no.3) volunteered to give his disclosure statement. Therefore, the investigating Officer gave summons to panchas (Exh.223). In presence of panchas, accused Ashish gave his statement that he is ready to disclose the place where two wheeler Activa of the deceased is kept and to show the place where the weapons were concealed. He also volunteered to disclose the place where his clothes and mobile is concealed. The admissible portion is marked as Exh.224. In pursuance to the disclosure statement, police party was led by accused Ashish along with panchas. He first took them to village

Kalgaon. There he took them at his house. From his house, he took out clothes and mobile phone from one bag, which was kept in the house. Thereafter he took them in one agricultural field at Kalgaon. In that agricultural field, near Mango tree, he shown the spot where he concealed the weapon beneath the ground. On digging, two knives wrapped in newspaper were found. Those were having blood stains. Thereafter, he took the police party to Jagruti Parking park, situated at Chhatrapati square, Wardha Road, Nagpur. There he shown one black colour Active vehicle having registration No. MH-29/W-1287. All these proceedings were recorded in the seizure panchanama (Exh.225). It is to be mentioned here that all the articles which were seized from the places which were shown by accused Ashish in presence of the panchas, were not only seized on the spot but they were sealed on the spot itself in presence of the panchas.

20. During the course of investigation, on 14.10.2013, the Investigating Officer issued separate letters in the name of Kasturba Hospital, Sewagram for obtaining blood samples and nail clipping of accused Pramod, Ashish and Nitin. Those are at Exhs.320 to 322.

On the same day, he gave three different letters to Kasturba Hospital, Sewagram for giving reports in respect of the injuries on the person of three accused. Those letters are at Exhs.165 to 167. Similarly, a request was also made to the hospital authorities for giving report in respect of blood stains on the rear seat of Indigo car vide request letter (Exh.164). In response to the letter (Exh.164), the Medical Officer sent sample of the rear seat containing blood stains along with PC Imran in sealed condition. He seized the said under seizure panchanama (Exh.227).

The Medical Officer also sent blood samples of three accused in sealed condition. Those sealed sample bottles were seized under seizure panchanama (Exh.226).

21. On 16.10.2018, the Investigating Officer again called panchas by giving summons (Exh.228). In their presence, accused Pramod gave his voluntary statement about his clothes, seat cover of car and motorcycle, which was concealed at his house at Wadgaon, at Yavatmal. The admissible portion is at Exh.229. Similarly, accused Nitin also gave his voluntary statement to disclose about the mobile phone of deceased Manoj and to show the place at Shivaji

Garden, Yavatmal where he threw the pieces of sim card of deceased Manoj. The admissible portion of his statement is at Exh.230.

Thereafter, police party along with accused Pramod and Nitin along with panchas proceeded for Yavatmal at the house of accused Pramod at Wadgaon. There, he took out the keys concealed below brick and opened the lock. He took them to kitchen room and from one almirah, of the kitchen, he produced two seat covers and one pant, on which blood stains were found. Those were seized and sealed in presence of the panchas by preparing seizure panchanama (Exh.231). Similarly, accused Pramod also showed a motorcycle having registration No. MH-29/AB-1601 kept behind his house. That was also seized under same seizure panchanama (Exh.231).

22. Similarly, accused Nitin took police party to his house at Wadgaon of Yavatmal. From his house, he produced mobile phone of deceased Manoj. It was of Nokia company. It was seized. Thereafter, he took the police party to Shivaji Garden, Yavatmal. He showed the place where the pieces of sim card were thrown. After search, those were found there in two pieces. It was a sim card of Vodafone company. The articles recovered from the spot shown by accused

Nitin were seized under seizure memo (Exh.232). Thereafter, the police party came to Police Station, Deoli and the Investigating Officer took entry of the proceedings of the day in the Station Diary. Extract of the station diary is at Exh.323.

On 19.10.2013, the Investigating Officer informed the learned Chief Judicial Magistrate about adding of other penal provisions.

23. During the course of interrogation, it was revealed to the Investigating Officer by accused Monika that she had withdrawn the amount from the bank. Therefore, on 25.10.2013, the Investigating Officer issued two letters to the State Bank of India, requesting to furnish details of the accounts of Monika.

24. On 28.10.2013, the Investigating Officer issued four separate letters for weapon query of injuries found on three accused persons to Kasturba Hospital, Sewagram, under Exhs.171 to 174. In response to the said, he received report (Exhs.175 to 178). The weapons were sent to the Doctor in sealed condition.

25. On 28.10.2013, the Investigating Officer issued letter to the Superintendent of Police, Wardha for providing SDR of broken sim card, seized at the instance of accused Nitin. It is marked as Exh.329. Also a letter was given to the Superintendent of Police, Wardha for providing CDR of mobile phone of accused persons and deceased Manoj. It is at Exh.330.

On 07.11.2013, the Investigating Officer sent the seized articles in sealed condition along with HC Vijay Dhawale (PW13). The duty pass given to HC Vijay is at Exh.194. After depositing the muddemal with the Chemical Analyser, HC Vijay Dhawale submitted compliance report (Exh.194). The invoice challan is at Exh.331. On 22.11.2013, the Investigating Officer sent the weapons seized in sealed condition to the Chemical Analyser. It is at Exh.282. It was sent through PC Pramod Dudhankar (PW23) by giving duty pass (Exh.281). PC Pramod Dudhankar placed invoice challan in Exh.283.

26. On 29.11.2013, a letter was given to the Special Judicial Magistrate for recording statement of the witness under Section 164 of the Code of Criminal Procedure. On the same day, he gave a letter

to the learned Judicial Magistrate, First Class for giving permission to conduct Test Identification Parade of accused Monika and Pramod. The said letter is at Exh.334. On 30.11.2013, he issued a letter to the Executive Magistrate to conduct test identification parade of accused Monika and Pramod as permitted by the learned Judicial Magistrate First Class. The letter given to the Executive Magistrate is at Exh.335. He received the report of test identification parade along with covering letter. He also conducted the investigation in respect of Indigo car. During investigation, it was found that deceased Manoj was serving at Central Reserve Police Force and because of his service, he was required to be transferred at various States and during that accused Monika used to stay at Yavatmal only and love relation between them were developed. When this fact was came to the knowledge of the deceased, he was murdered.

On 06.01.2014, after completion of the investigation, charge-sheet was filed. After the charge sheet was filed, on 09.05.2014 Chemical Analyser's reports were received. Those are placed on record. Articles 1 to 16, 18, 20, 22 to 26, 28 to 37 which were the articles seized during the course of investigation.

27. The learned jurisdictional Magistrate, in whose Court final report was presented, found that the offence was exclusively triable by the Court of Sessions and therefore, he committed the case to the Sessions Court. There it was registered as Sessions Case No. 11/2014. Total 29 prosecution witnesses were examined. After closure pursis was filed by the learned Public Prosecutor, who was in charge of the trial, statements of the accused persons under Section 313 of the Code of Criminal Procedure were recorded by the learned Judge of the trial Court. All the incriminating evidence were brought to their notice during their examination to give them an opportunity to offer their explanation. No defence witness was examined by any of the accused. According to accused no.1 Monika, she is being falsely implicated by the relatives of her husband because their relation with her were not cordial and they were intending to get all the compensation amount of the deceased. She also stated that PW10 Gopal is having close relation with them and therefore, he is deposing against her. The other accused persons did state that all the witnesses are stating against them at the behest of the Investigating Officer and they are falsely implicated.

28. The learned Judge, before whom the trial was conducted, after appreciating the entire prosecution case found that the prosecution was successful to bring home the guilt of accused persons and accordingly he delivered the judgment, which is impugned in this appeal.

ARGUMENTS

29. We have heard Shri Avinash V. Gupta. Learned Senior Advocate for accused no.2 Pramod. Though, the remaining accused were represented by different counsel Shri Mahesh Rai, he did not submit anything on their behalf rather he chose to adopt all the arguments advanced by the learned senior Advocate, because even their case was also covered by learned senior Advocate in his submissions.

30. Summary of the arguments of learned senior Advocate is cataloged as under :

- a] There is no eye -witness account. The prosecution could not complete the chain of events as required.

- b] The prosecution could not prove motive exclusively.
- c] The amount withdrawn by accused no.1 Monika from the bank cannot be an incriminating circumstance since it was her money.
- d] Seizure of Rs.51,000/- from the person of accused no.2 Pramod cannot be an incriminating circumstance because one of the prosecution witness did state that he does illegal money lending.
- e] All the recoveries made during the course of the investigation must go because those were not seized in presence of independent panch witnesses, but the panch witnesses were the puppet of police machinery.
- f] The CDR reports has no evidencial value because the certificate purported to be issued under Section 65-B of the Evidence Act are not in conformity with the provisions of law.
- g] Noticing of blood on the clothes of the accused persons cannot be an incriminating circumstance because even according to the prosecution, at the time of their arrest they were having injuries.

31. Primarily, the learned Senior Advocate kept reliance on the authoritative pronouncements of the Hon'ble Apex Court in *Anwar PV .VS. P K. Basheer and others*, reported in *(2014) 10 SCC 473* and in *Arjun Panditrao Khotkar .vs. Kailas Kushanrao Gorantyal and others*, reported in *(2020) 7 SCC 1*, to buttress his submission that the electronic evidence must go and cannot be relied upon. He submitted that if said electronic evidence is discarded, then there is hardly any evidence in the prosecution case. He, therefore, prayed that both the appeals be allowed and the appellants who are in jail be set at liberty.

32. Per contra, Mr. S.S. Doifode, learned Additional Public Prosecutor for the State vehemently opposed the submissions. He in detail submitted with vehemance the prosecution case. It is his submission that the learned Judge of the trial Court has not committed any error in recording finding of guilt against each accused. He, therefore, prayed for dismissal of the appeals.

ANALYSIS OF PROSECUTION CASE

33. From the entire evidence on record, it is clear that there is no eye-witness account in this case. The Hon'ble Apex Court in

Sharad Birdhichand Sarda .vs. State of Maharashtra, reported in (1984) 4 SCC 116 is the guiding lamp in respect of the decisions in the cases solely based on circumstantial evidence. The Hon'ble Apex Court has given following five guidelines :-

- a. *The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established ;*
- b. *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty ;*
- c. *The circumstances should be of a conclusive nature and tendency ;*
- d. *They should exclude every possible hypothesis except the one to be proved, and*
- e. *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

NATURE OF DEATH

34. After the dead body of unknown person was found, steps were taken by the Investigating Officer for its identification. The dead body was identified as of Manoj Bhabat.

35. On 05.10.2013, dead body of Manoj was sent to Kasturba Hospital, Sewagram for its post mortem. Team of Doctors conducted post mortem. Dr. Pawan Wankhade (PW11) was examined to prove the post mortem report. His evidence would show that during post mortem, following injuries were found on the person of deceased.

i] Incised wound over the lateral aspect of right thigh, size 6 cm x 3 cm, margins were sharp, tailing was present, towards upper end wound was horizontally placed. Floor of the wound was swollen due to decomposition. At some place margins are eaten by the maggots. The colour of the floor of the wound is bluish black and colour of margins pinkish.

ii] Stab wound was present over right side of the chest 2 cm below medial 1/3rd of right clavicle (Collar bone) of size 3 cm x 2 cm, thoracic cavity deep, dark brown in colour, obliquely down word in direction wound was triangular in shape, margins were clean cut. The floor of the wound showed altered blood and some maggots. Surrounded area of wound was dark bluish in colour due to effusion of blood. Cut fracture of the second rib was appreciated and hemorrhage was appreciated at the cut ends of the ribs.

iii] Stab wound was present over the left side of the abdomen about 3 cm. above and lateral to the umbilicus of size 3 cm x 1.5 cm, abdominal cavity deep, pinkish white in colour, directed vertically

upwards beveling was present over upper margin of the wound, margins were clean cut and contused.”

36. The injuries were found to be ante mortem. During internal examination, the autopsy surgeon found decomposition changes of the lungs, brain heart, liver, spleen, kidney. During post mortem, it was also found that blood was inflicted around the thoracic wall. Final post mortem report is at Exh.161.

37. Looking to the evidence of the Doctor and the injuries as noticed in the post mortem report (Exh.161), it is clear that Manoj's death was not only unnatural one, but it was homicidal one.

EXAMINATION OF WEAPONS BY AUTOPSY SURGEON.

38. Evidence of Dr. Pawan Wankhade (PW11) would show that on 28.10.2013, the hospital where he was working, received letters (Exhs.171 to 174) and weapons for examination and opinion. The said were received by Dr. Vishal Surwade, another Doctor and member of the team who conducted post mortem, as, it could be

seen that Dr. Vishal Surwade's name appeared at the end of post mortem report.

Be that as it may. Dr. Wankhade (PW11) identified signature of Dr. Vishal Surwade on the report (Exh.178). Along with the letters, two knives were sent in sealed condition. After examining the weapons i.e. knives and considering the injuries found on the dead body of deceased Manoj during post mortem, Doctor opined that the injuries found on the dead body were possible due to the weapons Article 30 and 31. It is to be noted here that the Autopsy Surgeon identified two knives in the Court at the time of giving his evidence.

MOTIVE

39. According to the prosecution, the cause for eliminating Manoj from this world was the illicit relations between accused Monika and accused Pramod. In order to accomplish the same, accused no.3 Ashish and accused no.4 Nitin had active participation. Thus, this is the motive as per the prosecution.

40. Learned Senior Advocate has submitted that there is no clinching evidence by which it could be said that the prosecution has proved the aspect of motive. He submitted that the present prosecution case being solely based on circumstantial evidence, it was incumbent upon the prosecution to prove the motive. According to him, since the prosecution has failed to prove the motive, prosecution must fail on that count itself.

41. Before adverting to the factual matrix concerning motive, we would like to test the arguments of the learned senior Advocate that if the prosecution is unable to prove motive, whether by that itself the prosecution case has to be thrown in the dust bin.

42. The Hon'ble Apex Court has ruled that it is a matter of common knowledge that murders are committed without any prominent motive. It is well established that mere fact that the prosecution has failed to translate the mental disposition of the accused into evidence that does not mean that no such mental condition existed in the mind of the accused.

43. In Criminal Appeal No. 50/2014 (Kirti Pal .vs. State of Bengal) and in Criminal No.1725/2014 (Durga Sutradhar .vs. State of West Bengal), decided on 16.04.2015, the Hon'ble Apex Court in paragraph 21 has observed as under :

“21. Learned counsel for the first appellant contended that no motive is attributed to the accused and merely because the first appellant had developed friendship and intimacy with Anjali Goswami, in the absence of any motive attributed, the courts below erred in convicting the first appellant. It is true that motive is an important factor in cases where the conviction is based on circumstantial evidence but that does not mean in all cases of circumstantial evidence if prosecution is unable to prove the motive satisfactorily, the prosecution must fail. In this case, of course, prosecution has not adduced evidence as to what was the motive for committing murder of Anjali. But it is a matter of common knowledge that murders have been committed without any prominent motive. It is well established that the mere fact that the prosecution has failed to translate the mental disposition of the accused into evidence, that does not mean that no such mental condition existed in the mind of the accused.”

Same view has been taken in ***Vivek Kalra .vs. State of Rajasthan***, reported in ***2014 (12) SCC 439***. In paragraph 17 of the said pronouncement, it was observed thus :

“17. Where the prosecution relies on circumstantial evidence, actual motive is relevant fact and can be taken into consideration under Section 8 of the Evidence Act, 1871. But where the chain of other circumstances establish beyond reasonable doubt that it is the accused and the accused alone who has committed the offence and this is one of such case, the Court cannot hold that in absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence.”

44. Motive is always locked inside the mind of perpetrator of the crime. There cannot be ocular evidence to prove the motive normally. The factum of motive can be gathered from the circumstances and the events brought on record. If the events brought on record are such to attribute something unusual, it can then, in our view, be the reason to believe that motive exists and in order to accomplish the motive, act of murder is done.

45. To prove motive in the present case, the prosecution has examined mother, brother and sister of deceased Manoj. In addition to that, the prosecution has also examined bank officials and transactions done by accused no.1 Monika.

46. PW1 Kusum Bhabat and PW4 Padma Sangai are the mother and married sister of deceased Manoj. PW4 Padma is resident of Amravati, however on 04.10.2013, she was at her mother's house at village Bramhanwada. These two ladies corroborate with each other that on 04.10.2013 Madhavrao Dhawde of their village came to PW1 Kusum's house and he called them at his house. Accordingly, these two ladies went to the house of Madhavrao. At his house, it was informed to them by police that one dead body is found within the jurisdiction of Police Station, Deoli and Aadhar Card of Manoj is found near the dead body. From the evidence of PW1 Kusum, it is clear that the said fact was transmitted to them by police on phone. They were asked to confirm about the body. Therefore, they went to Kasturba Hospital, Sewagram and they identified the body.

PW2 Nilesh Bhabat is the brother of the deceased. At the relevant time, he was at Parbhani. He received information on phone from one Sunil Nale about noticing of dead body of a person and along side with it there was identity card of Manoj. After receiving this information, Nilesh made enquiries with his relatives and it came to his knowledge that relatives were called to identify

the body. He, therefore, on 05.10.2013 left for Bramhanwada from Parbhani and reached there in the afternoon. His evidence would show that at 5.00 p.m. dead body of Manoj was brought by his mother and sister and other persons from Brahmanwada. Thereafter, last rites were performed.

47. As per the evidence of these three prosecution witnesses, marriage between deceased Manoj and accused Monika was solemnized in the year 2000 and the couple was having one son by name Nayan. The parental house of accused Monika is at Malipura, Yavatmal. Deceased Manoj was serving in Central Reserve Police Force. In view of his service, he used to be transferred at distant places and States far away from Maharashtra. At the relevant time, he was residing at CRPF quarters at Nagpur.

It is not in dispute at all that whenever deceased used to be transferred out of State of Maharashtra, accused Monika used to stay at Yavatmal as the deceased had purchased one house in her name at Yavatmal. Evidence of these three witnesses would show that accused Monika was not permitting the deceased to have relations with these prosecution witnesses. According to them, she

used to pick up quarrel with them on the said issue. Precisely, therefore, it is the submission of the learned senior Advocate that hence, these three prosecution witnesses were on inimical terms with Monika and therefore, they are falsely implicating her in the crime.

48. It is the evidence of Nilesh (PW2) that when he was living at Yavatmal, he received information that Monika has developed illicit relations with somebody. According to him, he came to know about the said in the year 2009. He had seen them around and the said person used to regularly visit the house of accused Monika and when deceased had come on vacation, he gathered knowledge about this and on that count there used to be quarrel in between Manoj and Monika.

49. Learned senior Advocate criticized Nilesh (PW2) for non-disclosure of the information about the illicit relations of Monika to deceased Manoj. He, therefore, submitted that this is nothing but figment of imagination of prosecution witness.

We are unable to persuade ourselves to this submission as canvased by the learned senior Advocate. It appears that the

deceased was the elder brother of Nilesh (PW2). In our conservative society, the status of wife of elder brother has its own place in the family. In the conservative society of ours, respect is always bestowed on her. Merely because Nilesh did not disclose the knowledge which he gathered about the relationship, that does not mean that there must not be the relations. It is quite possible that out of respect he must have hesitated to disclose the said to Manoj. Further, it is quite possible that Manoj was posted far away from Maharashtra and therefore, at the relevant time it must be the consideration of Nilesh that why he should bother his elder brother. Merely because at the relevant time the factum of illicit relations was not disclosed, though it was in know of Nilesh, he failed to communicate the same to the deceased, in our view, that by itself is not sufficient to discard evidence of Nilesh, which otherwise inspires confidence.

50. The prosecution has examined two senior employees of State Bank of India, Yavatmal, they are Dattatray Tukaram Rathod (PW3) and Smt. Mangala Uddhavrao Sukhdeve (PW8).

From July, 2014, Dattatray Rathod (PW3) was working as a Manager(PBD) at Yavatmal SBI Branch, whereas from July-2012 till March-2014, Smt. Mangala Sukhdev (PW8) was posted at SBI Yavatmal as Personal Banking Manager.

51. During the course of investigation, the Investigating Officer came to know about the bank transactions done by accused Monika. Therefore, he collected evidence in that behalf.

52. As per the evidence of PW3 Dattatray Rathod, Branch Manager Arun Ingle had supplied information to PSO Deoli as asked by police vide letter dated 25.10.2013. At the time of giving his evidence, he brought those original papers supplied by the bank to police as per letter dated 25.10.2013.

His evidence would show that at his branch, one saving account of Monika Bhabat was there. From the official record, he did state the saving account number of Monika as 11150607717. He also deposed from the witness box that Monika had three Fixed Deposit receipts with the bank. As per his evidence, on 03.10.2013 Monika Bhabat moved an application for withdrawing the said three

Fixed Deposits and accordingly, the amount from these fixed deposits were transferred in her saving account. Her evidence would show that as per the record on 03.10.2013 Monika had withdrawn an amount of Rs.1,14,000/- from the saving account. As per his evidence, this information was supplied to Police Station, Deoli in response to their letter dated 25.10.2013 along with covering letter dated 25.10.2013. The said letter was signed by Branch Manager Arun Ingle. As this witness PW3 Dattatray Rathod was working with Arun Ingle, he was able to identify his signature and accordingly, he proved the said covering letter, which is at Exh.128. Exh.129 is the information supplied to the police.

53. As per the evidence of PW3 Rathod, his SBI Branch at Yavatmal is a computerized branch. All records are maintained in computer. As per his evidence, official record shows that on 31.10.2013, Branch Manager had supplied copies of fixed deposit receipts of Monika to PSO Deoli under covering letter dated 31.10.2013 (Exh.130).

There is nothing in his cross-examination to show that he was not deposing as per the record maintained by the bank.

Therefore, there is no difficulty at all to accept and endorse the evidence of this bank official.

54. Another bank official is Sou. Mangala Sukhdeve (PW8). Her evidence would show that she had supplied photo copies of three fixed deposit certificates and withdrawal form. The photo copies were duly verified by her from original and then put her signature. At the time of recording of her evidence, she had brought originals of those documents in the Court. During her evidence, verification of the contents were made and after they were found to be similar with the original, those three copies were marked as Exhs.144 to 147.

Perusal of Exh.144 would show that it was the fixed deposit receipt in the name of Monika. The said receipt shows that it was for Rs.10,166/- issued on 22.03.2013 and it was for the period of three months and three days. Interest was 6.5% per annum. The receipt shows that its maturity date was 25.06.2013. Exh.145 was the another fixed deposit receipt. It was issued on 13.05.2013 and in that receipt, the amount of Rs.50,000/- was kept for six months at the interest rate of 6.50% per annum. Its maturity date was 13.11.2013. Exh.146 was the another fixed deposit receipt, issued

on 03.05.2013. Deposit of Rs.50,000/- was made and accrued rate of interest was 8.75% per annum and the maturity date was 03.05.2014.

55. Accused no.1 Monika liquidated these three deposits worth Rs.1,14,000/-. The said amount was transferred to her saving account.

On 03.10.2013 itself, she filed withdrawal form with the bank (Exh.147) and asked the bank to pay the amount of Rs.1,14,000/- in cash. Accordingly, the Passing Officer of the bank allowed Monika to withdraw the amount. When Monika's statement was recorded under Section 313 of the Cr. P. C., questions were put to her in that behalf i.e. Question Nos.31 and 32 and Monika had accepted the said transaction as done by her. Be that as it may. The record of State Bank of India duly proved by its two senior employees shows that accused Monika was having three different fixed deposits and before maturity, except the first one, on 03.10.2013, she applied for liquidating them prematurely and requested the bank to transfer the same in her saving account.

Having done so, on the very same day itself, she filled withdrawal form and withdrew Rs.1,14,000/- in cash.

56. It was the submission of learned senior Advocate that withdrawing her own money from the bank is hardly any incriminating circumstance that can be used against accused Monika.

At the first blush, one would tend to accept the said submission, however, for the following reasons we are unable to accept the said submission :-

- a] Premature liquidation of the fixed deposit receipts has its own consequences in respect of the account holder receiving the proceeds.
- b] At the relevant period and in the city like Yavatmal, amount of Rs.1,14,000/- is not a small amount by itself.
- c] Importantly, the amount was withdrawn in cash. It postulates that Monika was having some hard pressed need to have cash amount.
- d] No prudent person will liquidate his/her fixed deposit receipts prematurely and will withdraw the amount in cash.

- e] What was the need ? It was for Monika to throw light on the same. She should have offered some explanation about the same.
- f] The prosecution has discharged its burden to prove the fact about liquidation and withdrawal of the amount in cash. Therefore the purpose for which it was withdrawn was within the special knowledge of Monika and therefore, in view of the provisions of Section 106 of the Evidence Act, it was for Monika to offer explanation and in our view, failure in doing so will permit this Court to draw an adverse inference against her at least in that behalf.

57. For the aforesaid reasons, we reject the contention of the learned senior Advocate that it was own money of accused Monika and she was at liberty to act as per her will.

58. We have already noticed in the body of this judgment that the Autopsy Surgeon Dr. Pawan Wankhade (PW11) has proved the final post mortem report (Exh.161). The relevant opinion in

respect of the time since death is at page 115 of the paper book. It reads as under :

1. *Opinion as to time since death :*

Death occurred around 96 hours before the commencement of the Post Mortem Examination.

Document Exh.161 and the evidence of Dr. Wankhade (PW11) would show that post mortem commenced on 05.10.2013 at 10.45 am and it was over by 12.00 noon. It is also came in evidence that when the dead body was brought for post mortem, it was decomposed.

59. As per the opinion of the Autopsy Surgeon, death must have occurred 96 hours prior to 5.10.2013. Thus, conveniently on the basis of proved document (Exh.161), which is not at all challenged by any of the accused, it can be said that death of Manoj had occurred on 01.10.2013.

60. At the relevant time, Monika and deceased were residing jointly at Nagpur. Time of death of Manoj and time of withdrawal of amount of Rs.1,14,000/- shows that there was gap of two days. Thus, amount of Rs.1,14,000/- was withdrawn in cash by Monika

after the death of her husband. There is nothing on record to suggest that any attempt was made by Monika to trace out the whereabouts of her husband from 01.10.2013 till his dead body was identified by his mother.

61. At the time of arrest of remaining three accused, huge amount by their standard in life, was found in their possession. Different denominations of amount were recovered from their person by the Investigating Officer in presence of the panch witnesses Vijay (PW17) and Sachin (PW18). Arrest form (Exh.310) of accused Nitin shows his occupation as a labour, whereas arrest form (Exh.311) of accused Ashish and arrest form (Exh.312) of accused Pramod show their occupation as 'agriculturists'. The cause title of Criminal Appeal No. 416/2016 as well as Criminal Appeal No. 397/2016 also show occupation of the accused persons in conformity with their respective arrest forms. In that behalf, the amount to the extent which they were possessing on their person at the time of their respective arrest, will obviously raise eyebrows of anyone.

62. At the time of arrest, an amount of Rs.51,000/- was found on the person of accused Pramod. According to the learned senior Advocate, the prosecution has examined PW6 Rakesh Bansod as owner of four wheeler Indigo car. He submitted that if his evidence is perused then it will show that he had borrowed hand loan of Rs.80,000/- in the month of August-2013 from accused Pramod and by way of security he had handed over possession of his car to Pramod and as per his evidence, in the month of September-2013, Pramod demanded amount of Rs.4,000/- towards interest and accordingly, the same was paid to him. In view of this, it is the submission of the learned senior Advocate that if Pramod was having money lending business, then amount of Rs.51,000/- which he was possessing at the time of his arrest, is a very meager amount and that cannot be used an incriminating circumstance in any manner whatsoever against him.

63. From the evidence of PW6 Rakesh, the only fact established is that in August-2013, he had borrowed Rs.80,000/- from accused Pramod and he paid Rs.4,000/- towards interest in the month of September-2013 to Pramod. We have seen from arrest

memo (Exh.312) that accused Pramod was arrested on 10.10.2013. So, surely, the amount was not paid that too Rs.4,000/- by PW6 Rakesh to Pramod in the proximity of his arrest. Therefore, it was for accused Pramod to explain as to how Rs.51,000/- he was possessing at the time of his arrest. Similarly, accused Nitin and accused Ashish also failed to offer any explanation whatsoever in nature about the money in their possession at the time of their arrest. Evidence of the Investigating Officer Dhananjay Sayare (PW25) shows that on 12.10.2013 he gave request letter to D.I.G., CRPF, Nagpur (Exh.316) under which a request was made for taking search of the quarter of Manoj where he and Monika used to stay. Accordingly, in presence of the panchas, the lock was broke open. The house search panchanama is at Exh.149. The said shows that at the time of search on 12.10.2013, cash amount of Rs.10,500/- was found.

64. From the aforesaid evidence, as appearing in this prosecution case, there is no difficulty in recording a finding that huge amount of Rs.1,14,000/- was withdrawn by accused Monika in cash from her saving account, without there being any legal cause to

spend the same and various denominations of currency notes were found on the person of three remaining accused in the proximity of time of withdrawal of the amount and Rs.10,500/- were found in her house. In our view, it clearly shows and suggests that the amount so withdrawn by Monika was used as reward to other accused persons for the illegal act which they had done in respect of her husband. Cumulative effect of aforesaid circumstances, as discussed, allows us to record a finding that there was a motive on the part of accused no.1 Monika and accused no.2 Pramod to eliminate Manoj in view of their illicit relations and accused nos.3 Ashish and accused no.4 Nitin acted in furtherance of their common intention which they shared with accused nos.1 and 2. Accordingly we record our finding.

ELECTRONIC EVIDENCE

65. Shri Avinash Gupta, learned Senior Advocate submitted that the entire electronic evidence relied upon by the prosecution is not admissible as certificates below Exhs. 252, 259, 264 & 273 are not in accordance with Section 65B(4) of the Evidence Act. He, in addition to filing the written submissions, submitted that none of these certificates identify the electronic record containing the

statements i.e. CDR in the matter. He submitted that the certificates below Exhs. 252 & 259 are completely silent regarding the manner in which the statements were produced. He submitted that the certificates below Exhs. 264 & 273 deal with the manner in which the statements are produced but are entirely omitted, identifying the original electronic records. He submitted that none of the certificates give any particulars of the device like serial numbers, make or identification number that was involved in the production of the electronic record. He submitted that the certificates below Exhs. 252 & 259 do not state that the computer output was produced by a person having lawful control over the use of computer as required under Section 65B(2) of the Evidence Act. He submitted that none of the certificates are signed by either a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities. The respective Nodal Officers are neither falling in any of these two categories and neither have stated so in their certificates. He submitted that omission to specify particulars of the devices or computers over which they had control is fatal to the case of the prosecution, and therefore the certificates relied upon by the prosecution in support of electronic

evidence are not admissible in evidence. He submitted that the concept of a “Substantial compliance” is not applicable to the secondary evidence to be relied upon by the prosecution in view of the judgment of the Hon'ble Supreme Court in *Arjun Panditrao Khotkar* (supra). It needs to be noted that learned senior Advocate for the appellants has not disputed the exchange of calls between the accused persons. He has not made any submissions challenging the findings of the learned trial Court referring to cellphone locations of the accused persons and exchange of calls between them at the relevant time.

66. Sections 65A & 65B of the Evidence Act deal with the admissibility and contents of the evidence of information contained in electronic record which are complete code in themselves on the point of admissibility of evidence of information contained in electronic records. Section 65B(1) of the Evidence Act differentiates between the original document and the output from such devices. The original document is the electronic record on the devices in which the original information is first stored. The secondary document which is in the form of output from such device which contains the information originating from the original document i.e.

a copy or data occupied from the original document. The Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)* in para no. 73.2 expounded the law on admissibility of the primary and secondary evidence in the electronic form in the following words :-

*“73.2. The clarification referred to above is that the required certificate under [Section 65B\(4\)](#) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with [Section 65B\(1\)](#), together with the requisite certificate under [Section 65B\(4\)](#). The last sentence in *Anvar P.V. (supra)* which reads as “...if an electronic record as such is used as primary evidence under [Section 62](#) of the Evidence Act...” is thus clarified; it is to be read without the words “under [Section 62](#) of the Evidence Act,...” With this clarification, the law stated in paragraph 24 of *Anvar P.V. (supra)* does not need to be revisited.”*

67. In the case of *Arjun Panditrao Khotkar (supra)*, the Hon'ble Supreme Court held that in case of secondary evidence the certificate under Section 65B (4) is mandatory. It is held that such certificate can be provided by anyone out of several persons who occupy "responsible position" in relation to the operation of the relevant device or any other person who may "in management of the relevant activities". It has been held that the conditions mentioned in Section 65B(4) of the Evidence Act have to be read as cumulative in nature. The Hon'ble Supreme Court placed reliance upon two Latin maxims : *lex non cogit ad impossibilia* i.e. the law does not demand the impossible, and *impotentia excusat legem* i.e. when there is disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. The Supreme Court in para no. 51 has observed as under :-

"51. On an application of the aforesaid maxims to the present case, it is clear that though Section 65B(4) is mandatory, yet, on the facts of this case, the Respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third-party over whom the Respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section."

The Hon'ble Supreme Court in para no. 52 of the said judgment has further observed as under :-

*“52. We may hasten to add that [Section 65B](#) does not speak of the stage at which such certificate must be furnished to the Court. In *Anvar PV* (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in [Section 65B\(4\)](#) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the [CrPC](#).”*

68. In the light of the law expounded by Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)*, we have scrutinized the certificates below Exhs. 252, 259, 264 & 273. The Supreme Court in the case of *Anvar P. V. vs. P.K. Basheer (supra)* which has been approved and clarified in the case of *Arjun Panditrao Khotkar (supra)*, in para no. 15, has laid down the conditions to be fulfilled before a secondary evidence of the electronic evidence is made admissible. The Supreme Court in para no. 15 of the said judgment has held as under :-

“15. Under [Section 65-B\(4\)](#) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- a) There must be a certificate which identifies the electronic record containing the statement;*
- (b) The certificate must describe the manner in which the electronic record was produced;*
- (c) The certificate must furnish the particulars of the device involved in the production of that record;*
- (d) The certificate must deal with the applicable conditions mentioned under [Section 65-B\(2\)](#) of the Evidence Act; and*

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

69. In the light of the judgment of the Hon'ble Supreme Court in the case of *Anvar P V (supra)* and the submissions made on behalf of the appellant, we have carefully scrutinized each of the four certificates produced by the prosecution under Section 65B of the Evidence Act. On careful scrutiny of the certificates, we are of the opinion that each certificate identifies the electronic record from which the data is occupied. They also describe the manner in which the electronic record was produced along with the particulars of the devices. The testimonies of Vikas (PW19), Amit (PW20), Dattatraya (PW21) & Ravi (PW22) who are the Nodal Officers from BSNL (Exh. 252), UNINOR (Exh. 259), IDEA (Exh. 264) & VODAFONE (Exh. 273) companies respectively along with the contents of the certificates show that the Nodal Officer is occupying a responsible position in relation to the operation of the relevant devices. The Nodal Officers (PW19 to PW22) have stated in their testimonies that the Call Detail Records are stored in their respective servers and the server automatically records the call details. It is stated that the

server is the electronic instrument and the Call Detail Records stated in the server cannot be modified or altered or tampered. It is stated that they being the Nodal Officers, they are in control of the respective servers for assessing the data. It is also stated that during the relevant period, respective servers were in good working condition and they had obtained the call details from the server. It is stated that the record produced is electronically generated computer data.

70. Even otherwise, considering the observations of the Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)* in para no. 51 quoted above, though it has been held that Section 65B(4) of the Evidence Act is mandatory, yet in the facts of the present case, the prosecution having done everything possible to obtain the certificate in accordance with Section 65B(4) of the Evidence Act which was to be given by third parties like BSNL, UNINOR, IDEA & VODAFONE over whom the prosecution had no control, they must be relieved of any infirmity in the certificates as has been observed in the aforesaid paragraph by the Supreme Court.

71. It needs to be noted that the judgment in the case of *Arjun Panditrao Khotkar (supra)* has been subsequently followed by the Hon'ble Supreme Court in Civil Appeal Nos. 8733-8734/2018 in the case of ***Engineering Analysis Centre of Excellence Private Limited vs. Commissioner of Income Tax and anr.*** The Hon'ble Supreme Court in para no. 82 of the said judgment after quoting two latin maxims which are quoted above, has referred to the observations in the case of *Arjun Panditrao Khotkar (supra)* and observed in para no. 83 that as a matter of fact, even under the Income Tax Act, the High Court of Bombay has taken a view applying the aforesaid maxims in the context of the provisions of the relevant DTAA's to hold that the persons are not obligated to do the impossible i.e. to apply a provision of a statute when it was not actually or factually on the statute book.

72. In the light of the law expounded by the Hon'ble Supreme Court in the cases of *Arjun Panditrao Khotkar (supra)* and *Engineering Analysis Centre (supra)*, we are of the opinion that even though it is assumed that certificate below Exh. 259 is lacking any requirement under Section 65B(4) of the Evidence Act read with

Section 65B(2), still the prosecution having done everything possible to obtain necessary certificate and had no control over the four cellphone companies, it must be relieved of the mandatory obligation contained under Sub-Section (4) of Section 65B of the Evidence Act. We therefore hold that the electronic evidence produced by the prosecution by virtue of certificates below Exhs. 252, 259, 264 & 273 is admissible in evidence and we can read the contents of the electronic evidence for deciding circumstances alleged by the prosecution.

73. The electronic evidence produced by the prosecution indicates that Mobile No. 8484022974 was used by accused Pramod alias Premanand (SDR Exh. 258), Mobile Nos. 8551060965 and 8551063719 were used by deceased Manoj (SDR Exh. 271), Mobile No. 7741943679 was used by accused Ashish (CDR Exh. 261) and Mobile No. 8551063719 was used by accused Monika. CDR (Exh. 261) shows that there were 12 calls between Pramod (8484022974) and Manoj (8551063719) on 25/09/2013. Thereafter, there were continuous calls between those numbers till 30/09/2013. On 01/10/2013 & 02/10/2013, there was no conversation between

those numbers. On 03/10/2013, at 10:23:10 hours, there was again conversation between those numbers. Exh. 232 shows that the sim-card of Manoj was recovered at the instance of the accused Nitin from the garden at Yavatmal.

74. CDR of Mobile No. 8484022974 (Exh. 261) shows that on 27/09/2013, there was one call. It shows calls from Mobile Nos. 7741943679 & 8484022974 till 04/10/2013. Mobile No. 8551063719 though was seized from Monika, this number was in the name of one Saurabh. CDR of Mobile No. 8551063719 shows that there were 11 incoming calls from the mobile of the accused Pramod i.e. 8484022974 (Exh. 261). It shows that there was continuous conversation between the accused Monika and Pramod. The mobile tower location of the conversation between Pramod and Monika shows that except for conversation occurred on 01/10/2013, the tower location of the mobile of Monika was shown at Nagpur. On 01/10/2013, Monika received incoming call at 12:25:25 hours from the mobile phone of accused Ashish (7741943679) (Exh. 265). The location of the accused Monika was shown at Village Pardosi, BK, Tahsil Kalamb, Dist. Yavatmal and the said conversation lasted for 30

seconds. On the same day, at around 11:37:10 hours, on 01/10/2013, the location of the mobile of the accused Monika was at Petrol Pump at Kalamb. The accused Monika, at around 16:13:23 hours, on 01/10/2013, dialed a call and location of the said call is shown behind Mahendra-7, Mahendra, MIDC, Hingna. The time of call matches with the version testified by Dr. Prashant (PW7). While he stated that the accused Monika & Pramod had been to his hospital. Thereafter, the tower location of Monika is at Priyadarshani College, SRPF Camp, Nagpur wherein she was residing in her quarter. On consideration of the cellphone records of the accused persons, it lends assurance to the circumstance that the accused Monika and Pramod were having love affair. The frequency of calls between Monika and Pramod clearly leads to the finding that they were having love relationship with each other. The evidence on record in the form of CDR & tower location of the mobile phone of Monika shows that she was near the area of incident on 01/10/2013. The said fact also corroborates the evidence of Kusum (PW1) that Monika used to be with the accused whenever she used to come to Yavatmal.

75. We are therefore of the view that the electronic evidence in the form of CDR and tower location corroborates the circumstantial evidence led by the prosecution to prove that all the accused persons were in touch and contact with each other in furtherance of their common intention to kill Manoj, the deceased.

ABOUT CAR

76. One of the submissions of learned senior Advocate was that though the prosecution has examined PW6 Rakesh as owner of Indigo car, his ownership is not proved by the prosecution and in fact, the RTO documents which are brought on record shows that some other person is the owner of the said car and therefore, evidence in that behalf is required to be discarded.

77. Evidence of the Investigating Officer would show that he received information that two persons involved in the crime were coming to Yavatmal. Therefore, he issued summons to PW17 Vijay and PW18 Sachin (Exh.215) and along with them and the police staff, the Investigating Officer came to Wadgaon area of Yavatmal

near Bhagyoday Society. They noticed coming of one white Indigo car. Evidence of the Investigating Officer which is corroborated by both the panch witnesses shows that when the car was stopped, the persons tried to flee away and they were caught by the police party. On being asking them, they disclosed their identity as accused no.2 Pramod and accused no.4 Nitin. Exh.216 is the seizure panchanama regarding the articles and cash which were found on the person of accused no.4 Nitin, whereas Exh.217 pertains to seizure of the articles and cash together with Indigo car from possession of accused no.2 Pramod. From the evidence of the Investigating Officer and the panch witnesses corroborative to each other on this aspect, shows that at the time of arrest on 10.10.2013, accused no.2 Pramod was driving vehicle Indigo car and Nitin was accompanied him. Thus, Indigo car having registration No. MH-34/K-7154 was seized from the possession of accused no.2 Pramod on the spot of their arrest. Admittedly, accused Pramod is not the registered owner of said Indigo car. According to Rakesh (PW6), he gave possession of the said car to Pramod by way of security.

78. In this criminal trial, ownership of said Indigo car having registration No. MH-34/K-7154 is immaterial. What is important is, the said car which was having blood stains on the rear seat was seized from the possession of accused Pramod. Here we are not deciding the issue of title of this car. Therefore, we have no hesitation in our mind to reject the submission made in that behalf by the learned senior Advocate.

INJURIES ON THE PERSON OF ACCUSED

79. At the time of arrest of accused nos.2 to 4, it was noticed by the Investigating Officer that there were injuries on their person. Therefore, they were referred to Rural Hospital, Bhidi, Tal. Deoli, Dist. Wardha, by giving requisition (Exhs.374 to 376). Exh. 374 is in respect of accused Ashish, Exh.375 is in respect of Nitin, whereas Exh.376 is in respect of accused Pramod. They were examined at Rural Hospital, by Dr. Amruta Ladke (PW28). Her evidence would show that on 10.10.2013 when she was discharging her duties at Rural Hospital, Bhidi, during her duty hours, police brought three accused for their pre-arrest medical examination along with requisitions. Her evidence would show that on examination of

accused Ashish, she found incisional wound on left little finger. It was brownish in colour and mentioned the age of injury as eight days old. Her evidence would show that this injury was possible because of sharp object. Accordingly, on requisition (Exh.374) itself she gave her MLC report.

Similarly, when she examined accused Nitin, she found incisional wound on right palm near thumb. It was brownish in colour and therefore, she mentioned the age of the injury as eight days old. She also noticed abrasion on left palm. On abrasion, there was scar formation. Therefore, she mentioned that this injury was also eight days old and according to her these injuries are possible because of sharp object. According to her, abrasion is possible at the time of scuffle. She gave medical examination report of Nitin below requisition (Exh.375).

Similarly, when she examined accused no.2 Pramod, she found that there were sutured wound (linear) on left hand between thumb and index finger. According to her, the injury was eight days old and on the basis of the thread used for suturing, she opined that the injury was eight days old. Accordingly, she mentioned her medi-

cal observations in respect of accused Pramod below requisition (Exh.376).

80. On 14.10.2013, these three accused persons were medically examined by PW11 Dr. Pawan Wankhade at Kasturba Hospital, Sewagram. His evidence would show that on examination of accused Pramod, he noticed following injuries on his person :

(i) Stitched wound was present over the thenar eminence of hand having three black coloured non dissolving intact stitches, wound was oblique in direction, in healing stage, dried blood stains were present over the surrounded skin.

(ii) Incised injury was present on the thenar eminence on left palm majoring 1 cm. x 2 mm. Oblique in direction having sharp margin, reddish brown in colour and in healing stage.

(iii) Stitched wound was present over the left thenar eminence at the base of the thumb measuring 1.5 cm. in length and having one black coloured intact stitch. Swelling, pain and tenderness was present over the surrounding area. These injuries are possible due to sharp cutting object. The age of injury was approximately 15 days. I have collected the blood sample. ..”

Accordingly, he proved his report (Exh.168).

Similarly, on the same day, he examined accused Nitin to notice the following injuries on his person :

(i) Incised injury was present over the right thenar eminence of palm measuring 2.5 cm. x 3 mm.

Oblique direction having sharp margin, reddish brown in colour and in healing stage, skin deep, blackish tissue is seen in gaping and vertical in direction.

(ii) Incised injury in healing stage was present over the web right thenar eminence of hand in between the index finger and thumb in continuation with injury no.1 of size 1.5 cm. X 1 mm. skin deep with cleancut margin.

(iii) Incised injury over the thenar eminence of left hand of size 1.5 cm. X 1 mm. Horizontal in direction. Swelling pain and tenderness was present over the surrounding area. These injuries are possible due to sharp cutting object. The age of injury was approximately 15 days. I have collected the blood sample.”

He proved his medical report (Exh.169),

Also on the said day, he examined accused Ashish and on his medical examination, he noticed following injuries on his person :

(i) Incised wound was present over the dorsum of left little finger of hand in between second and third phalanges measuring of size 1 cm. x 2 mm. Skin deep, tapering at both ends, in healing stage, margin are clean cuts, horizontal in direction. This injury is possible due to sharp cutting object. The age of injury was approximately 15 days. I have collected the blood sample.”

He proved medical certificate (Exh.170).

81. The proved documents (Exhs.168 to 170) show that the cause for having said injuries was a sharp cutting object. Though the

Dr. Wankhade (PW11) found that all these injuries were simple in nature, also as per Dr. Wankhade, age of the injuries found on these three persons was within 15 days.

82. The prosecution has also examined Dr. Prashant Tidke (PW7) during trial. Before identifying in his substantive evidence accused no.1 Monika and accused No.2 Pramod, the test identification parade was held at Wardha Prison on 05.12.2013. In the said test identification parade, he identified accused no.1 Monika and accused no.2 Pramod as the persons, who had visited his dispensary. To show his presence on 05.12.2013 in Wardha Prison, the prosecution has proved the document (Exh.137). In this case, Naib Tahsildar, who conducted the test identification parade is not examined and panch witness PW29 Madhukar Khadse has turned hostile, though during cross-examination from the learned Additional Public Prosecutor, he has supported the event of test identification parade.

83. In our view, nothing turns on that as, it is a trite law that identification in the test identification parade is not the substantive

piece of evidence. The substantive piece of evidence in respect of the identification is the identification of the accused by the concerned witness from the witness box before the Court. In this case, identification of accused no.1 Monika and accused no.2 Pramod was done by Dr. Prashant Tidke (PW7) from witness box. In our view that is the substantive piece of evidence.

84. Evidence of PW7 Dr. Tidke would show that he is the medical practitioner, having his dispensary at Hingna Road, Nagpur. His hospital is named as “Jeevandhara Hospital” and the working hours of his hospital are 8.00 to 9.00 am and 6.00 to 9.00 pm. His hospital maintains OPD register and in that OPD register record of name of the patient and other details are mentioned. His evidence would show that on 01.10.2013 at about 6.30 pm when he was present in his hospital, one person came having injury on left space of thumb and along with him one lady was also there. PW7 Dr. Tidke’s evidence shows that blood was oozing from the thumb of that person. Therefore, he applied stitches on the injury. On enquiry being made about the injury, Doctor states from witness box that said person informed him that he had suffered injury while repairing car.

Evidence of Dr. Tidke shows that he prescribed medicine and thereafter they left the hospital. Thereafter, when he was called to identify the person if present in the Court hall, on that, Dr. Tidke identified the first person from left side standing in the row of the accused persons and the lady accused. On asking name of identified person, Dr. Tidke told his name as accused Pramod, is the noting made by the learned Judge while recording evidence of Dr. Tidke. He was shown photo copy of his OPD register where name of accused Pramod is shown at Serial No.7. He also mentioned cell number as provided by accused Pramod. Since, it was a photo copy, it was marked as 'Article-A', however at the same time Dr. Tidke states that he can produce the original register if called for. It shows that while giving witness summons to this Doctor, there was lapse on the part of the prosecution in not requesting him to produce the original OPD register. Evidence of Dr. Tidke would show that if asked, he could have produced the same. It shows that before hand if it was requested, he could have produced the same. Therefore, for fault of the prosecuting machinery, the truthfulness of 'Article-A' cannot be doubted.

85. According to the learned senior Advocate, Dr. Tidke (PW7), who examined accused Pramod, as per the prosecution on 01.10.2013 found only one injury and it was sutured by him. Similarly, when he was examined by Dr. Amruta (PW28) on 10.10.2013, she also noticed a sutured wound on left hand. However, according to the learned senior Advocate, when Pramod was examined at Kasturba Hospital, Sewagram on 14.10.2013, the Doctor noticed three injuries. The learned senior Advocate, therefore, submitted that on 01.10.2013, it was not the Pramod along with Monika, who visited the hospital of Dr. Tidke.

86. When Dr. Tidke examined accused Pramod on 01.10.2013, he found blood oozing injury. That was the only concern for Dr. Tidke at that time. He, therefore, immediately sutured the said wound to stop the blood. Further, when Pramod was examined on 10.10.2013 at Bhidi by Dr. Amruta, she also noticed a sutured wound on the left palm of Pramod, whereas according to Exh.168, there were three injuries. Important to note that all these three injuries were on left palm only. Dr. Tidke was concerned only in respect of the blood oozing from a particular wound. Therefore,

he must have paid attention only to that wound and probably, that must be the reason for not noticing the other wounds. Insofar as examination by Dr. Amruta is concerned, it appears that when she was giving evidence, she stated her occupation as DNB student. Her evidence was recorded on 17.12.2015 and she examined Pramod on 10.10.2013. Thus, it appears to the Court that she was not that experienced Doctor as compared to Dr. Wankhede (PW11), who examined Pramod at Kasturba Hospital, Sewagram, a very renowned hospital having all ultra modern equipments. In our view, evidence of Dr. Prashant that he identified accused no.1 Monika and accused no.2 Pramod in the test identification parade on 05.12.2013 and their identification by him from witness box on 11.11.2014, which is a substantive piece of evidence, cannot be discarded as a person who attended his hospital on 01.10.2013. Dr. Tidke is practicing in Hingna area of Nagpur. Accused Pramod is resident of Yavatmal. There is nothing on record to show that there was any reason for Dr. Tidke to depose against accused no.1 Monika and accused no.2 Pramod. In our view, Dr. Tidke is witness to the truth and he being a medical professional he applied stitches to stop oozing of blood. He deposed to that effect from the witness box.

87. As we have seen in the earlier part of this judgment, as per the evidence of Dr. Pawan Wankhade (PW11), on 28.10.2013, two knives were received in his hospital in sealed condition for examination and opinion in respect of the injuries on the person of deceased Manoj.

Similarly, on the said date, letters Exhs.171 to 174 were received by his hospital from the Investigating officer raising queries as to whether the injuries on the person of the accused can be caused by the said weapon and according to the opinion of Dr. Wankhade, for accused Pramod in Exh.175, for accused Nitin in Exh.176 and for accused Ashish in Exh.177, the injuries found on their person can be caused by those weapons.

88. We have already determined the date of death resulted due to murder of Manoj as 01.10.2013. As per the opinion of the Doctor, death had occurred before 96 hours of 05.10.2013. As such, 96 hours before 05.10.2013 comes to approximately in the noon hours of 01.10.2013. According to the opinion of Dr. Wankhade (PW11), as mentioned in Exhs.168 to 170, the cause for the injuries noticed on the person of the accused persons were due to sharp

object. Accused nos.3 and 4 did not offer any explanation about their injuries, whereas according to accused Pramod, he received the injuries while repairing car. Medical expert Dr. Pawan Wankhade (PW11), who is M.D. (Forensic) and who was attached to Kasturba Hospital, Sewagram since 2019 and who has conducted more than 400 post mortems, shows that he is a very experienced Doctor. According to his opinion, the injuries found on the person of accused Pramod were due to sharp object. In the light of that, we have no hesitation in our mind to reject the explanation offered by accused Pramod in respect of his injuries.

89. Exhs.374 to 376, medical reports dated 10.10.2013 of Dr. Amruta would show that the injuries were eight days old, whereas Exhs.168 to 170, injury reports given by Dr. Wankhede on 14.10.2013 show that age of the injury was within 15 days old. Thus, those injuries are in proximate time of murder of Manoj. According to the prosecution, two weapons namely long knife, which were recovered at the behest of accused persons, were used for murdering. Thus, it is clear that they handled the sharp cutting object resulting in causing injuries on their palm only. In our view,

the injuries on the hands of these accused persons caused to them in the proximity time of murder of Manoj, is one of the most incriminating circumstance and is a coupling in a chain of events against them.

RECOVERIES

90. Another coupling to complete chain of circumstances against the accused persons is the other recoveries such as blood stained clothes, weapons recovered at the instance of accused persons together with cash from their person so also recovery of cell phone of deceased Manoj and broken sim card of deceased Manoj at the behest of accused Nitin.

91. In this case, all the recoveries are proved by panch witnesses PW17 Vijay Deonade and PW18 Sachin Bire. These two witnesses have fully supported the prosecution. According to the learned senior Advocate, all the recoveries duly proved by PW17 Vijay and PW18 Sachin loses its importance because the Investigating Officer has done all the recoveries in their presence and that shows,

according to him, that they were interested witnesses. According to the learned senior Advocate, PW17 Vijay was a Police Patil of village Bhidi, whereas PW18 Sachin Bire, at that time was the President of Dispute Resolution Committee of his village. He submitted that obviously these two witnesses were under the thumb of the police and precisely for that, their evidence loses its sanctity. We are afraid that such a submission can be accepted.

92. It is not the law that for different recoveries and for seizing different articles at different point of time during the course of investigation, the Investigating Officer is bound to do those seizures in the presence of different panchas. Therefore, if only PW17 Vijay and PW18 Sachin had acted as panchas for all the recoveries and seizures, no exception can be taken. Further, it is not the case that just for asking, they accompanied the Investigating Officer. We have noticed that on every occasion summonses were issued to them to act as panchas and in obedience of said summonses as a dutiful citizen, they acted as panchas. If that be so, merely because they obeyed the rule of law and discharged their duties as a dutiful citizen, their evidence does not lose sanctity as tried to be

argued by the learned senior Advocate. It is the experience of this Court while discharging the duties as Appellate Court that panch witnesses turn hostile just for drop of hat. Therefore, if the Investigating Officer had summoned these two respectable persons to act as panchas, who have supported the prosecution in its entirety, fullest weightage has to be given to their respective evidence in respect of the acts and events those occurred in their presence and which were noted down in contemporaneous documents.

93. After recording of memorandum statement under Section 27 of the Evidence Act of accused Nitin, he led police party to his house situated near Bhagyoday Society, Wadgaon. He went inside his house and from a plastic container, he took out a mobile handset of Nokia company. But it was not having any sim card and was having IMEI No. 355721/02/484578/8. It was proved to be the handset of deceased Manoj. The place from where it was took out was within the special knowledge of Nitin. Similarly, cell phone without sim card has its own relevance, especially when it was proved to be of deceased Manoj. Thereafter, accused Nitin took the police party to Shivaji garden and behind the said garden in a '*nali*',

after search two broken pieces of sim card were recovered. Said contemporaneous document is at Exh.232. The contemporaneous document shows that when the broken pieces of sim card were taken in possession from the spot, it was found that it was of 'Vodafone' company.

94. Similarly, at the behest of accused Pramod, after recording his memorandum statement, his clothes as well as rear seat cover of Indigo car were seized from his own house. The panchanama is at Exh. 231. At the behest of accused Ashish, on his memorandum statement when he was taken to village Kalgaon, he from an agricultural field near a Mango tree, took out two knives wrapped in newspaper having blood stains after the place was dug out in his presence. The panchanama to that effect is at Exh.225. Similarly, his clothes were also seized. Thereafter, he shown the place near Jagruti Parking park, at Chhatrapati square, Wardha road where Aactiva vehicle was parked, which was belonging to the deceased. At the time of seizure itself, every article was sealed on the spot itself. The contemporaneous document coupled with the evidence of the Investigating Officer, corroborated by the

independent witnesses, show that sealing was done and the articles were kept in sealed position.

95. The prosecution has also examined PW15 Santosh Dhumne. At the relevant time, this prosecution witness was attached to Police Station, Deoli as Head Moharir. Being Head Moharir, it was his duty to receive the articles, maintain property, keep its record and send to CA office Nagpur for Police Station, Deoli. His evidence would show that on 05.08.2013, eight articles were received in A.D. No. 56/2013, which were in respect of deceased Manoj. His evidence further shows that from 11.10.2013 to 24.10.2013 various articles were deposited in the Police Station in Crime No. 149/2013 pertaining to murder of Manoj. His evidence would show that on 06.11.2013 those articles were sent to Chemical Analyser as per the requisition in sealed condition. His evidence would show that those articles were taken in police station and were kept in sealed condition till sent to C.A. The extract of register is at Exh.202. His evidence is challenged on the ground that when the articles were deposited, entry was not taken in the Station Diary. In our view, it hardly matters qua evaluation of evidence of this prosecution witness

because it was not his duty to maintain station diary. The learned senior Advocate submitted that in the cross-examination, he has admitted that some articles were not in sealed condition.

96. We have already seen all the contemporaneous documents, which specifically mentions sealing on the spot itself. Not only that, the aspect of sealing is duly proved by the Investigating Officer and corroborated by the panch witnesses. It is the duty of the Court to evaluate the evidence brought on record in its entirety. In that view of the mater and in the light of the consistent evidence, both documentary as well as oral about sealing, we are not ready to give much importance to the stray statement made by this prosecution witness during his cross-examination.

97. The learned senior Advocate submitted that in Entry No.90 of Exh.202, name of the person who had deposited those articles is not mentioned. Exh.202 shows that it is a printed form tabular in nature. The said printed form does not show that name of the person who deposited in Malkhana is to be mentioned.

Therefore, it appears that said submission of the learned senior Advocate is just out of cough.

98. Evidence of PW15 Santosh Dhumne, a person responsible being Head Moharir of Police Station, Deoli shows that right from the day when the articles were deposited in Malkhana till those were sent to Chemical Analyser, were in sealed condition. No circumstance is brought on record during his cross-examination to suggest that when those articles were in his exclusive possession, there was any opportunity to anybody including the Investigating Officer to tamper with the same.

99. Though, the learned senior Advocate has relied upon various decisions on the point of non-sealing of the articles, in view of our specific finding that all the seized articles were sealed properly on the spot itself and there is documentary as well as oral evidence in that behalf, in order to avoid bulkiness of the judgment, we are not discussing the judgments cited by the learned senior Advocate in respect of the fact of non-sealing of the articles.

100. Prosecution has also examined Pramod Dudhankar (PW23), a Head Constable. On 22.11.2013, he was attached to Police Station, Deoli. On the said day, he received duty pass for taking property in Crime No. 149/2013 to the Chemical Analyser's office, Nagpur. The duty pass was given to him by the Investigating Officer API Dhananjay Sayre (PW25). This witness proves the Duty Pass, which is at Exh.281. His evidence shows that he received two articles in sealed condition along with covering letter (Exh.282) to the Chemical Analyser. Perusal of the same would show that under the said letter, two weapons were sent to the Chemical Analyser. As per his evidence, he submitted those articles in sealed condition to the Chemical Analyser, Nagpur, who issued invoice challan to him (Exh.283). It shows that on 22.11.2013 itself, the CA office received two sealed packets. Evidence of this prosecution witness shows that CA receives only those properties which are sealed. Similarly, on 07.11.2013, the Investigating Officer issued letter to CA office, Nagpur and sent the same through PW13 Vijay Dhawle, PHC. His evidence would show that on 07.11.2013, he took 18 seized articles in sealed condition to the CA office. The requisition to CA office is at Exh.193. The duty pass given to him for the said is at Exh.194. He

also gave his compliance report to the Investigating Officer for the same.

101. C.A. report (Exh. 343) pertains to the clothes of the deceased, clothes of accused persons and seat cover, shoe, socks, bed sheet, carpet etc., whereas C.A. report (Exh. 349) pertains to two big knives.

102. C.A. Report (Exh.345) shows that group of the deceased's blood was determined as "B". Similarly, blood group of accused Pramod was determined as "B" (Exh.346), blood group of accused Nitin was determined as "AB" (Exh.347) and blood group of accused Ashish was determined as "B" (Exh.348).

103. C.A. report (Exh.349) pertains to two knives, which shows that those were received on 22.11.2013 in C.A. office in sealed condition. After examination, both were found to be stained with human blood and its group was determined as "B". Thus, it is clear that the weapons which were used in commission of murder were stained with not only human blood, but its group was determined that it was deceased's blood.

104. Item Nos. 14 and 15 in C.A. report (Exh. 343) were the velvet seat cover. We have already seen that the said seat cover was of rear seat of Indigo car and at the time of arrest and seizure of the vehicle, accused Pramod was driving the vehicle. Said item nos.14 and 15 were found to be stained with human blood i.e. "B" group. Therefore, there is no difficulty in reaching to the conclusion that before throwing away the dead body of Manoj, he was taken in that vehicle and was repeatedly stabbed inside the vehicle.

Similarly, on the full pant of accused Ashish, blood having group "B" was found. The bed sheet which was seized from the spot was also having stains of blood of group "B".

105. Thus, the scientific evidence also shows the finger of guilt towards accused persons, which confirms presence of three accused persons along the side of deceased when he was done to death by them.

MISLEADING INFORMATION BY ACCUSED MONIKA

106. The prosecution has examined Gopal Rathod (PW10). This witness is resident of village Bramhanwada since birth, where

mother of the deceased resides. The deceased and this witness were knowing each other since their childhood. According to this witness, whenever mother of the deceased remains ill, the deceased used to visit Bramhanwada. Evidence of this witness shows that in September-2013, the deceased had been to village Bramhanwada and he accompanied deceased to take his mother to the hospital at Ner. This witnesses claims that deceased provided his cell phone number to him. His evidence would show that on 23.09.2013, when deceased was going to Nagpur, he had been with him at bus stop.

107. According to the evidence of this prosecution witness, on 04.10.2013 at about 7.30 p.m., he heard rumour in the village that dead body of Manoj was found within the jurisdiction of Police Station, Deoli. Therefore, he made a phone on the mobile number which was provided by the deceased to him. His evidence would show that he could not get the response.

108. According to PW10 Gopal, on 05.10.2013, he received a call from the phone number of deceased Manoj at 7.30 a.m. and the caller made enquiry with him as to who is talking. Therefor, he

disclosed his name. He also enquired who is talking with him. On that, the caller replied the name as wife of deceased Manoj. According to the evidence of this witness, she enquired with him as to for what purpose he rang earlier. On this, Gopal stated that since there was discussion in the village about the accident of Manoj, therefore he made a phone call. As per the evidence of Gopal, on that, wife of deceased informed him that her husband Manoj had gone to Delhi for official work and said was informed to him repeatedly. In the cross-examination of this witness, no damage is made to his evidence except the fact that it was brought on record that he came to Court along with PW4 Padma. Thus, it is clear that accused no.1 Monika furnished false information to this prosecution witness that deceased Manoj had been to Delhi, knowing full well that at no point of time during that period the deceased went to Delhi.

110. On re-appreciation of the entire prosecution case, following are the circumstances which are proved by the prosecution. They are as under :-

- 1] Deceased Manoj met homicidal death.

- 2] There were illicit relations in between accused no.1 Monika and accused no.2 Pramod.
- 3] They were having motive to kill Manoj.
- 4] On 03.10.2013, accused Monika withdrew cash amount of Rs.1,14,000/- from State Bank of India after two days of murder of Manoj.
- 5] In furtherance of their said object, accused nos.3 and 4 participated in furtherance of their common intention.
- 6] All the accused persons were found to be in touch with each other.
- 7] Location of accused Monika is shown within Kalamb area, where Manoj was done to death.
- 8] Accused Monika and accused Pramod had been to the hospital of Dr. Prashant Tidke on 01.10.2013 for treatment on the hand of accused Pramod.
- 9] Similarly, stains of deceased Manoj's blood were found on the piece of seat cover seized during the investigation.
- 10] Rs.51,000/- were seized from accused Pramod for which there is no explanation. Similarly, the cash amounts

were seized from the person of accused Nitin and accused Ashish, for which there is no explanation.

- 11] Cell phone and broken sim card of deceased Manoj were seized at the instance of accused Nitin.
- 12] Weapons were seized from the place exclusively within the know of accused Ashish, which were found to be blood stained with deceased's blood.
- 13] On 05.10.2013, accused no.1 Monika had a talk with PW10 Gopal, where she falsely stated to him that deceased was at Delhi.

CONCLUSION

111. The aforesaid circumstances clearly establish that the prosecution has proved the guilt of the all accused/appellants and the circumstances are conclusive in nature to exclude every hypothesis but one proposed to be proved. The chain of circumstances is absolutely complete. Thus, we have no hesitation in confirming the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Wardha.

ORDER

1. Criminal Appeal No. 397/2016 and Criminal Appeal No. 426/2016 are dismissed.
2. The judgment and order of conviction passed by the learned Additional Sessions Judge, Wardha on 27.09.2016 in Sessions Case No. 11/2014 convicting the appellants for the offence punishable under Sections 302, 364 and 201 read with Section 34 of the Indian Penal Code, is hereby confirmed.
3. All the appellants are in jail from the date of their arrest. They should undergo the sentence imposed upon them.

JUDGE**JUDGE***Diwale*