

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 563 OF 2014

Mangesh s/o Pandurang Gund,
Age : 28 years, Occ.: Petty Trader,
R/o.: Medical Campus, Ambajogai,
Tal. Ambajogai, Dist. Beed.

... APPELLANT

VERSUS

The State of Maharashtra,
Through Police Station-Ambajogai (City),
Tal.: Ambajogai, Dist. Beed.

... RESPONDENT

...

Mr. Anand Chaware, h/f Mr. P. K. Chaware, Advocate for Appellant.
Mr. K. S. Patil, APP for Respondent/State.

...

AND

CRIMINAL APPEAL NO. 572 OF 2014

Sanjay S/o Dinkar Kakade,
Age : 23 years, Occ : Service, now Nil,
R/o. Medical Campus, Ambajogai,
Tq. Ambajogai, Dist. Beed.

... APPELLANT
(ORI. ACCUSED NO.5)

VERSUS

The State of Maharashtra.

... RESPONDENT

...

Mr. R. N. Dhorde, Senior Counsel, i/b Mr. V. R. Dhorde, Advocate for Appellant.
Mr. K. S. Patil, APP for Respondent/State.

...

AND

CRIMINAL APPEAL NO. 526 OF 2015

Swapnil s/o Nandkumar Kamble,
Age : 25 years, Occu : Nil,
R/o : Kadoli, Tq. Sengaon,
Dist. Hingoli.

... **APPELLANT**
(Orig. Accused No.4)

VERSUS

The State of Maharashtra,
Through Police Inspector,
Ambajogai (City) Police Station,
Tq. Ambajogai, Dist. Beed.

... **RESPONDENT**
(Orig. Complainant)

...
Mr. V. D. Sapkal, Senior Counsel, i/b Mr. A. B. Jagtap, Advocate for
Appellant.
Mr. K. S. Patil, APP for Respondent/State.
...

CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.

RESERVED ON : 22nd October, 2021.

PRONOUNCED ON : 08th February, 2022.

JUDGMENT: (Per Shrikant D. Kulkarni, J.)

. Feeling aggrieved by the impugned judgment and order of

conviction and sentence passed in Sessions Case No.54 of 2012 by the learned Additional Sessions Judge, Ambajogai, original Accused Nos.4 to 6 have preferred these appeals by taking aid of Section 374 of the Code of Criminal Procedure.

2 The facts of the prosecution case in narrow compass are as under:

- i. Ganesh Sadre (since deceased) was serving in Swami Ramanand Teerth Rural Medical College and Hospital, Ambajogai (hereinafter referred to as "SRTRMCH Ambajogai") on the post of clerk at the time of incident. Sarubai Kashinath Sadre (first informant) is happened to be the mother of the deceased. Accused No.1/Nandkumar Tolaji Kamble was also serving in SRTRMCH Ambajogai as a clerk. The deceased and Accused No.1 were well acquainted with each other.
- ii. Accused No.1/Nandkumar was transferred to Latur and he was in need of money while giving charge to another clerk. By considering the genuine need of Accused No.1/Nandkumar, deceased had advanced him Rs.1,65,000/- as hand loan. It was agreed by Accused

No.1/Nandkumar that he would repay the same, but he did not stickup to his words. Therefore, the deceased was insisting to Accused No.1/Nandkumar to repay his hand loan amount, but Accused No.1/Nandkumar refused to repay the same.

- iii. The deceased had narrated the said fact to his mother and also disclosed apprehension to his life from Accused No.1/Nandkumar. The deceased and his mother went to the house of Accused No.1 and asked him to repay the hand loan. Due to which, Accused No.1/Nandkumar felt it as insult. Accused No.1 asked to the deceased and his mother as to why they had come to his house for demanding money. It was nothing but an insult in presence of his relatives and public at large. Accused No.2/Ganesh Nandkumar Kamble and Accused No.4/Swapnil Nandkumar Kamble, who are the sons of Accused No.1 also present. The relatives of Accused No.1 intervened in the dispute of hand loan and settled at Rs.1,20,000/-. Accused No.1/Nandkumar agreed to pay Rs.1,00,000/- on the very next day and the remaining balance amount of Rs.20,000/- was to be paid

after some days. Accused No.1/Nandkumar accordingly paid Rs.1,00,000/- to the deceased as agreed.

- iv. On 22nd April, 2012, the deceased left his house in the morning alongwith cash amount of Rs.1,00,000/-. His mother Sarubai left for Tuljapur for taking Darshan of Goddess Tuljabhavani. Sarubai returned to the home at about 11:00 p.m. She noticed that her son was not at home. She made inquiry with her daughter-in-law Dipmala and came to know that her son had left in the morning and did not return to home. Later on, Sarubai received phone call of her son deceased Ganesh, who informed to his mother that he was going to Latur with one patient and he may come back in the morning. Deceased Ganesh did not return to home even in the morning of 23rd April, 2012. Sarubai went to SRTRMCH Ambajogai and made inquiry about her son Ganesh. One peon attached to OPD, disclosed that on the last night deceased Ganesh and Accused No.3/Sunil Pratap Patil had heavy drinks and both of them left together about 09:30 p.m. Sarubai gave call to her neighbouring boy Vikas and asked him to go to the house of Accused

No.3/Sunil Pratap Patil. Vikas Paradwad, a neighbouring boy came back to the house of Sarubai and informed about 07:30 a.m. that Ganesh Sadre is murdered and is no more. The dead body of Ganesh Sadre was found near the Engineering College at Ambajogai. The police officials rushed to the spot.

- v. After conducting inquest and spot Panchanamas, the dead body was sent to SRTRMCH Ambajogai for postmortem examination and report.
- vi. Sarubai Sadre (mother of the deceased) rushed to Ambajogai City Police Station and lodged FIR on 23rd April, 2012 about 09:00 a.m. It is stated in the FIR that Accused No.1/Nandkumar Kamble, Accused No.2/Ganesh Nandkumar Kamble, Accused No.3/Sunil Pratap Patil and Accused No.4/Swapnil Nandkumar Kamble, have committed murder of her son Ganesh Sadre on account of money transactions. Crime No. 46 of 2012, for the offence punishable under Section 302 read with 34 of the Indian Penal Code came to be registered at Ambajogai City Police Station on the basis of FIR lodged by Sarubai Sadre against the abovesaid

accused persons.

- vii. The probe was handed over to Police Inspector Gitte, who arrested Nandkumar Tolaji Kamble, Sunil Pratap Patil and Ganesh Nandkumar Kamble on the very same day. When investigation was going on, Accused No.5/Sanjay Dinkar Kakde and Accused No.4/Swapnil Nandkumar Kamble surrendered themselves before the Gangakhed Police Station and accordingly, arrangement was made through PSI Bansode to bring them at Ambajogai. Accordingly, Accused No.5/Sanjay and Accused No.4/Swapnil were brought to Ambajogai. Both of them came to be arrested.
- viii. During the course of investigation, it was revealed that Accused No.4/Swapnil alongwith Accused Nos.5 and 6 had committed murder of Ganesh Sadre by using the weapon sickle. The role of remaining accused persons was also revealed. The weapon allegedly used in the commission of offence came to be recovered at the instance of Accused No.4/Swapnil Kamble. The motorcycle allegedly used while fleeing away also came to be recovered and seized. During the course of

investigation, the *Muddemal* articles, which were seized, sent to CA for analysis and report. The Investigation Officer found sufficient incriminating evidence against in all six accused persons in causing murder of Ganesh Sadre as well as destruction of evidence of murder. The Investigation Officer filed charge-sheet against all the accused for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code in the Court of Judicial Magistrate First Class at Ambajogai.

ix. After committal of case to the Sessions Division at Ambajogai, the learned Additional Sessions Judge at Ambajogai was pleased to frame the charge against all the accused for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code. The trial was commenced before the Additional Sessions Judge at Ambajogai. The prosecution agency had examined in all 17 witnesses to bring home the guilt of accused. None of the accused had preferred to adduce any evidence by way of defence. They defended that they have been falsely foisted upon in this case.

x. The learned Additional Sessions Judge after

appreciating the oral and documentary evidence produced by the prosecution agency and considering the argument advanced by the APP and the defence counsels, arrived at conclusion that Accused No.4/Swapnil Nandkumar Kamble, Accused No.5/Sanjay Dinkar Kakde and Accused No.6/Mangesh Pandurang Gund had committed offence punishable under Section 302 read with 34 of the Indian Penal Code. Accused No.4/Swapnil also came to be convicted for the offence punishable under Section 201 of the Indian Penal Code. Accused Nos.1 to 3 namely (Nandkumar Tolaji Kamble, Ganesh Nandkumar Kamble and Sunil Pratap Patil) came to be acquitted from the charge of murder and destruction of evidence punishable under Sections 302 and 201 read with 34 of the Indian Penal Code. The learned Additional Sessions Judge was pleased to pass the following order of sentence against Accused Nos.4 to 6, which reads thus:

“ORDER

- 1] Accused Nos.4, 5 and 6 namely:-
 - [4] Swapnil Nandkumar Kamble
 - [5] Sanjay Dinkar Kakade and
 - [6] Mangesh Pandurang Gund

all R/o Medical Campus, Ambajogai, District Beed are hereby convicted vide Section 235(2) of Cr.P.C. for the offence punishable under Sections 302 r.w. 34 of the Indian Penal Code and sentenced to suffer Life Imprisonment and to pay a fine of Rs.1000/- (Rs. One thousand only) each. In default, Rigorous Imprisonment for One month.

2] Accused Swapnil Nandkumar Kamble further convicted vide Section 235(2) of Cr.P.C. for the offence punishable under Section 201 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.1000/- (Rs. One thousand only). In default, R I. for One month.

3] Separate sentence awarded to accused Swapnil Kamble for two different Sessions shall run concurrently.

4] Accused Nos.1, 2 and 3 namely:-

[1] Nandkumar Tolaji Kamble,

[2] Ganesh Nandkumar Kamble &

[3] Sunil Pratprao Patil

all R/o. Medical Campus, Ambajogai, Taluka Ambajogai, District Beed are hereby acquitted under Section 235(1) of the Code of Criminal Procedure of the offence punishable under Sections 302 and 201 r.w.s. 34 of the Indian Penal Code.

- 5] Their bail bonds shall stand cancelled.
 - 6] Accused Nos.1, 2 & 3 shall furnish bail of Rs. 25,000/- (Rs.Twenty Five Thousand) each for the compliance of Section 437-A of the Code of Criminal Procedure.
 - 7] One or two sureties allowed.
 - 8] Muddemal Property Motorcycle be returned to its registered owner after verification of documents and identification. Rest of the Mudemal property be destroyed after appeal period is over.
 - 9] Copy of judgment be provided to the convicted accused free of costs.
 - 10] Copy of judgment be sent to the District Magistrate for compliance of Section 365 of Cr.P.C.
- Dictated in open Court.”

3 In the above background, original Accused Nos.4 to 6 are before us by way of their respective criminal appeals.

4 It may not be out of place to mention here that the State has filed Criminal Application No.5722 of 2014 thereby seeking leave to file an appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the judgment and order of acquittal of original Accused Nos.1 to 3 (Nandkumar Tolaji Kamble, Ganesh Nandkumar

Kamble and Sunil Pratap Patil) whereby they were set at liberty from the charges under Section 302 and 201 read with 34 of the Indian Penal Code.

5 During the pendency of appeals, original Accused No.2/Ganesh Nandkumar Kamble had passed away and his appeal therefore, came to be abated. So far as original Accused Nos.1 and 3 are concerned, the Division Bench of this Court (Coram: Ravindra V. Ghuge and B. U. Debadwar, JJ.) vide order dated 15th January, 2021 was pleased to reject Criminal Application No.5722 of 2014. Resultant, the order of acquittal passed against original Accused Nos.1 and 3 came to be upheld.

6 In the above scenario, original Accused Nos.4 to 6 are only before us, who had challenged their conviction and sentence awarded by the learned Additional Sessions Judge, Ambajogai.

7 We have heard Mr. R. N. Dhorde, learned Senior Counsel, instructed by Mr. V. R. Dhorde, learned counsel for Appellant/original Accused No.5 (Sanjay Dinkar Kakde) in Criminal Appeal No.572 of 2014, Mr. V. D. Sapkal, learned Senior Counsel, instructed by Mr. A. B. Jagtap, learned counsel for Appellant/original

Accused No.4/Swapnil Nandkumar Kamble in Criminal Appeal No.526 of 2015, Mr. Anand Chaware, learned counsel holding for Mr. P. K. Chaware, learned counsel for Appellant/original Accused No.6/Mangesh Pandurang Gund in Criminal Appeal No.563 of 2014 and Mr. K. S. Patil, learned APP for the Respondent/State, at length.

**SUBMISSIONS OF MR. R. N. DHORDE, LEARNED SENIOR
COUNSEL APPEARING FOR APPELLANT/ACCUSED NO.5**

8 Mr. R. N. Dhorde, learned Senior Counsel for appellant/accused No.5 submitted that the case is entirely rest upon circumstantial evidence. There is no direct evidence, which may focus light on the alleged incident. He submitted that the theory of last seen together projected by the prosecution agency is based upon weak piece of evidence. There is long time gap between appellant/accused No.5, last seen together in the company of Ganesh Sadre and his time of death. He pointed out the testimony of PW-7 Prakash Chintamani, who is brother of owner of Pan shop. He has stated that he had seen three persons namely Mangesh Gund, son of Kamble and one more person. If this is to be believed, the test identification parade ought to have been held to prove that said person was this accused No.5/appellant Sanjay. He further pointed out the variance in the evidence of PW-7 Prakash Chintamani and

PW-4 Prakash Paradwad. He submitted that the prosecution witnesses had given different versions about time and same place. The prosecution has failed to prove the story of last seen together with deceased Ganesh Sadre.

9 Mr. R. N. Dhorde, learned Senior Counsel submitted that the testimony of PW-6 Imran is not at all trustworthy and reliable. Similarly, the testimony of PW-15 Sanjay Pawar is full of omissions and contradictions and therefore, the same should be kept out of consideration. Mr. Dhorde, learned Senior Counsel also invited our attention to the evidence of PW-3 Rajendrakumar More, Panch witness, regarding seizure of clothes of this appellant Sanjay. He submitted that there are material omissions and contradictions in his evidence. He has also categorically stated that the clothes vide articles 15 and 16 and the clothes in the photographs are not the same. As such, there is no recovery from this appellant Sanjay.

10 Mr. Dhorde, learned Senior Counsel submitted that the complete chain of circumstances is not proved. The motive is also not proved. The deceased was involved in money lending business and as such, he might be having number of enemies. The prosecution has failed to prove the charge of murder against appellant Sanjay

beyond reasonable doubt. The evidence of PW-11, who is Manager of Ashirwad Lodge, did not prove the link in respect of stay of appellant Sanjay. Mr. Dhorde, learned Senior Counsel also invited our attention to the testimony of PW-12, who is Manager of Anjali Bar, Ambajogai. He pointed out that deceased was daily visitor of said Anjali Bar and paying the bills of many customers, which reflects about his money lending business. Mr. Dhorde, learned Senior Counsel submits that the learned Additional Sessions judge has committed an error in convicting appellant/original Accused No.5 on the basis of evidence, which is very weak. The original accused Nos.1 to 3 came to be acquitted on the same set of facts and evidence on record. The present appellant/accused No.5 needs same treatment. He needs to be acquitted when last seen together theory is not proved. The chain of circumstances is also not proved as contemplated in the eye of law.

11 Mr. Dhorde, learned Senior Counsel has placed his reliance on the following stock of citations in support of his submissions:

- a) *Anjan Kumar Sarma and others Vs. State of Assam*,
reported in, *(2017) 14 Supreme Court Cases 359*;

- b) Baiju Kumar Soni and another Vs. State of Jharkhand, reported in, (2019) 7 Supreme Court Cases 773 ;
- c) Kanhaiyalal Vs. State of Rajasthan, reported in, (2014) 4 Supreme Court Cases 715 ;
- d) Raj Kumar alias Raju Vs. State (NCT of Delhi), reported in, (2017) 11 Supreme Court Cases 160 ;
- e) Malaichamy and another Vs. State of Tamil Nadu, reported in, (2019) 17 Supreme Court Cases 568 ;
- f) Amarjit Singh alias Babbu Vs. State of Punjab, reported in, 1995 Supp (3) Supreme Court cases 217 ;
- g) Salim Akhtar alias Mota Vs. State of U.P., reported in, (2003) 5 Supreme Court Cases 499 ;
- h) VIP Industries Ltd. Vs. Commissioner of Customs & Central Excise, Aurangabad, reported in, (2003) 5 Supreme Court Cases 507 ;
- i) Khalil Khan Vs. State of M.P., reported in, (2003) 11 Supreme Court Cases 19 ;
- j) Kansa Behera Vs. State of Orissa, reported in, AIR 1987 Supreme Court 1507 ;
- k) Sattatiya @ Satish Raj anna Kartalla Vs. State of Maharashtra, reported in, 2008 CRI. L. J. 1816 ;
- l) Mustkeem alias Sirajudeen Vs. State of Rajasthan,

reported in, (2011) 11 Supreme Court Cases 724 ;

m) Brijesh Mavi Vs. State of NCT of Delhi, reported in, 2012 ALL SCR 2509 ;

n) State of Rajasthan Vs. Ramanand, reported in, (2017) 5 Supreme Court Cases 695 ;

o) Kumar VS. State Represented By Inspector Of Police, reported in, (2018) 7 Supreme Court Cases 536 ;

p) State of Uttar Pradesh Vs. Wasif Haider and others, reported in, (2019) 2 Supreme Court Cases 303 ;

q) Ramaiah @ Rama Vs. State of Karnataka, reported in, 2014 (9) SCC 365 ;

r) Vikramjit Singh alias Vicky Vs. State of Punjab, reported in, (2006) 12 Supreme Court Cases 306 ;
and

s) Asraf Ali Vs. State of Assam, reported in, (2008) 16 Supreme Court Cases 328.

SUBMISSIONS OF MR. V. D. SAPKAL, LEARNED SENIOR COUNSEL APPEARING FOR APPELLANT/ACCUSED NO.4

12 Mr. V. D. Sapkal, learned Senior Counsel submitted that the learned Trial Judge has committed an error in holding this appellant/accused No.4 guilty under Sections 302 and 201 read with

34 of the Indian Penal Code when the prosecution has failed to prove its case beyond reasonable doubt. The evidence produced by the prosecution agency is not sufficient to prove the charge of murder against this appellant. The case is based upon circumstantial evidence. The prosecution has failed to establish the chain of circumstantial evidence. The evidence of material witnesses is found to be unreliable in view of contradictions and omissions brought on record through their cross-examination.

13 Mr. V. D. Sapkal, learned Senior Counsel submitted that the theory of last seen together is also found to be unreliable and baseless in view of material contradictions and omissions brought on record through the evidence of respective prosecution witnesses. He submitted that, according to the prosecution case, blood stained clothes of accused No.5/Sanjay were recovered at the time of his arrest. As such, the said recovery cannot be said to be a recovery in pursuant to statement made under Section 27 of the Evidence Act. Apart from that, the person whose clothes are blood stained may not move for two days, cannot be believed. He further submitted that, according to the prosecution case, the appellant/accused No.4 alongwith his associates alleged to have tried to destroy the evidence. The present appellant/accused No.4 alleged to have burnt his clothes

in the field of PW-10, but PW-10 Suryakant Tone has turned hostile and not supported to the prosecution case. It is a vital blow to the prosecution case.

14 Mr. V. D. Sapkal, learned Senior Counsel further invited our attention to the recovery of weapon (sickle). He pointed out that the recovery of weapon is from open place and not admissible in evidence. That apart, the CA report pertaining to the weapon (sickle) is concerned, the blood report is found to be not conclusive. In that background, the prosecution cannot take help of said alleged recovery of weapon. According to Mr. V. D. Sapkal, learned Senior Counsel money transaction/money dispute stated to be the motive for causing murder of Ganesh Sadre. Accused No.1/Nandkumar had already repaid the amount of Rs.1,00,000/- to the deceased, which was borrowed. If it is so, there was no reason for any quarrel between the deceased and accused on account of money transaction. The prosecution has failed to prove the motive in this case.

15 Mr. V. D. Sapkal, learned Senior Counsel submitted that the deceased was doing business of real estate and money lending. He had advanced loans to various persons by way of private money lending business. He had invited so many enemies because of such

illegal money lending business. The possibility cannot be ruled out for committing murder of deceased/Ganesh Sadre by somebody else. The learned Trial Judge has not considered this aspect. Mr. Sapkal, learned Senior Counsel submitted that the impugned judgment and order of conviction passed against this appellant/accused No.4 is based upon assumptions and presumptions. The impugned judgment and order of conviction is bad in law. The appellant/original accused No.4 is liable to be acquitted by giving him benefit of doubt.

16 Mr. V. D. Sapkal, learned Senior Counsel has placed his reliance on the following citations in support of his argument:

- a) *The State Vs. Motia and others*, reported in, *AIR 1955 Rajasthan 82* ;
- b) *Deoraj Deju Suvarna and others Vs. State of Maharashtra*, reported in, *1994 (4) Bom.C.R. 85* ;
- c) *Bhanudas Bagaji Salve VS. State of Maharashtra*, reported in, *2006 (1) Bom.C.R.(Cri.) 22* ;
- d) *Chandru @ Chandrasekaran Vs. State Rep. By Deputy Superintendent of Police CB CID and anr.*, decided on 12th February, 2019 by the Honourable Supreme Court in Criminal Appeal No.1193 of 2011 ;
- e) *Mulak Raj and others Vs. State of Haryana*, reported in, *AIR 1996 Supreme Court 2868* ;

- f) *Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan*, reported in, *AIR 2013 Supreme Court 3150*; and
- g) *Popat Babu Mandale Vs. State of Maharashtra*, reported in, *2019 (4) Bom.C.R.(Cri.) 279*.

**SUBMISSIONS OF MR. ANAND CHAWARE, LEARNED COUNSEL
APPEARING FOR APPELLANT/ACCUSED NO.6**

17 Mr. Anand Chaware, learned counsel for appellant/original accused No.6 argued on the lines of submissions made earlier by Mr.R.N.Dhorde, learned Senior Counsel and Mr.V.D.Sapkal, learned Senior Counsel appearing for original accused Nos.4 and 5. In addition to that, Mr. Chaware, learned counsel invited our attention to the impugned judgment and order passed by the learned Additional Sessions Judge. He submitted that the prosecution case is rest upon story of last seen together coupled with circumstantial evidence. According to Mr. Chaware, learned counsel, the story of last seen together does not inspire confidence of the Court in view of quality of evidence of respective prosecution witnesses. The chain of circumstantial evidence is not completed. There are major gaps. The link to the involvement of this appellant/accused No.6 is not established.

18 Mr. Chaware, learned counsel for appellant/accused No.6 submitted that accused Mangesh Gund has no relation with accused Nos.1, 2 and 4. There is no evidence to connect this appellant/accused speaking about business relations with any of the accused as to why this accused joined the company of other accused when he had no motive. The postmortem report shows that there were 17 external injuries on the body. In normal circumstances, clothes of accused No.6 ought to have been stained with human blood, but the prosecution has failed to establish that link, which has resulted in serious doubt about the part played by appellant/accused No.6.

19 According to Mr. Chaware, learned counsel, the prosecution has come out with a case that accused No.6 Mangesh had joined the company of accused No.5 Sanjay and accused No.4 Swapnil and all of them went to Parli, Udgir, Nanded, Selgaon etc. The prosecution has not produced such supporting evidence. There is no material to show that this appellant/accused No.6 Mangesh has absconded after the alleged incident. Nothing is recovered or discovered much less seized from this appellant/accused No.6 Mangesh.

20 Mr. Chaware, learned counsel for appellant/accused No.6 vehemently submitted that there is absolutely no evidence to connect this appellant with the crime. The evidence of last seen in the company of deceased is found to be unreliable. The appellant/accused No.6 Mangesh is liable to be acquitted by giving him benefit of doubt.

21 Mr. Chaware, learned counsel for appellant/accused No.6 has placed his reliance on the following stock of citations in support of his submissions:

- a) Anter Singh Vs. State of Rajasthan, reported in, (2004) 10 SCC 657 ;
- b) Abdulwahab Abdulmajid Shaikh and Ors Vs. State of Gujarat, reported in, 2007 AIR SCW 2721 ;
- c) State of Gujarat Vs. Mohammed Atik and others, reported in, (1998) 4 Supreme Court Cases 351 ;
- d) Kusal Toppo and another Vs. State of Jharkhand, reported in, (2019) 13 Supreme Court Cases 676 ; and
- e) State of Goa Vs. Pandurang Mohite, reported in, 2009 AIR SCW 222.

**SUBMISSIONS OF MR. K. S. PATIL, LEARNED APP FOR
RESPONDENT / STATE**

22 Mr. K. S. Patil, learned APP for the State, per contra, submitted that the prosecution agency has proved its case of last seen together as well as completed the chain of circumstantial evidence in order to prove the charges levelled against the appellants/accused Nos.4 to 6. He submitted that there was money transaction between the deceased and accused No.1. Just two days before the incident, there was quarrel between the deceased and accused No.1/ Nandkumar and his family on account of repayment of hand loan advanced by deceased Ganesh. After intervention of relatives of accused No.1, accused No.1 had agreed to pay Rs.1,20,000/- to the deceased by way of settlement and accordingly, accused No.1 had paid Rs.1,00,000/- to the deceased. Rs.20,000/- was remained to be paid by accused No.1. The dispute on account of money lending transaction between the deceased and accused No.1 and his family, is the motive in eliminating the deceased.

23 Mr. K. S. Patil, learned APP invited our attention to the impugned judgment and evidence of prosecution witnesses. He submitted that the prosecution machinery has examined in all 17

witnesses to prove the charges against appellants/accused. The prosecution has proved with the help of medical evidence that the deceased met with homicidal death. It was unnatural death. Seventeen external injuries were found on the dead body at the time of postmortem examination. The weapon has been recovered from the scene of offence, which is used in causing murder of the deceased. Mr. Patil, learned APP took us to the findings recorded by the learned Trial Judge vis a vis evidence of relevant prosecution witnesses. He pointed out that accused Nos.4 to 6 were lastly seen roaming in the company of deceased Ganesh in a distance between Yeshwantrao Chavan Square to SRTRMCH Campus Ambajogai. On the same road, the dead body of Ganesh was found.

24 Mr. Patil, learned APP submitted that soon after the incident of murder, these three accused went absconding. Two accused stayed at Ashirwad Lodge, Nanded, who subsequently surrendered before the police. Blood stains were found on the clothes of accused No.5/Sanjay. The prosecution agency has proved the recovery of weapon, vehicle used for running away and clothes buried in the land, at the instance of accused No.4/Swapnil. The *Muddemal* articles seized in this case, were sent to CA for analysis and report. The prosecution machinery has placed on record the CA reports,

which are supporting to the prosecution case. Thus, the prosecution has established the chain of circumstances. The story of last seen together is also proved by examining the relevant witnesses. The prosecution has proved the charge of murder and destruction of evidence against appellant/accused beyond reasonable doubt. According to Mr. K. S. Patil, learned APP the learned Additional Sessions Judge has rightly convicted these appellants/accused. He submitted that the order of conviction and sentence passed by the learned Additional Sessions Judge, Ambajogai needs to be upheld in the appeals. He submitted that there is no merit in the appeals and the same are liable to be dismissed.

25 Mr. K. S. Patil, learned APP has placed his reliance on the following citations in support of his argument:

- a) **Bodh Raj Vs. State of Jammu and Kashmir**, reported in, **2002 AIR (SC) 3164** ;
- b) **Shyamal Ghosh Vs. State of West Bengal**, reported in, **2012 (7) SCC 646** ;
- c) **Madhu @ Madhuranatha & Anr Vs. State of Karnataka**, reported in, **2014 (12) SCC 419** ; and
- d) **Prakash Vs. State of Rajasthan**, reported in, **2013 (4) SCC 668**.

26 We have considered the submissions of Mr. R. N. Dhorde, learned Senior Counsel, Mr. V. D. Sapkal, learned Senior Counsel, and Mr. Anand Chaware, learned counsel, appearing for the respective appellant/accused and Mr. K. S. Patil, learned APP for respondent/State. We have also studied the impugned judgment and order of conviction passed in Sessions Case No.54 of 2012 by the learned Additional Sessions Judge, Ambajogai, Sessions Division, District Beed. We have also gone through the evidence of prosecution witnesses with the assistance of learned APP and the learned Senior Counsels and the learned counsel, appearing for the respective appellant/original accused.

27 In order to prove the charges levelled against the appellants/accused, the prosecution agency has examined in all 17 witnesses, which can be classified as under:

- i) PW-1 Sarubai w/o Kashinath Sadre, Exhibit-60 (mother of the deceased and first informant);
- ii) PW-2 Rambhau s/o Pandurang Panchal, Exhibit-109 (Panch witness on the scene of offence, inquest *Panchanama* and seizure of clothes of the deceased);
- iii) PW-3 Rajendrakumar s/o Vithal More, Exhibit-113, (Panch witness on the seizure of clothes of accused No.5/Sanjay Dinkar Kakde);

- iv) PW-4 Prakash Tanaji Paradwar, Exhibit-116
(Witness to the money transaction between deceased and accused No.1/Nandkumar)
- v) PW-5 Manik s/o Ganpati Dahiphale, Exhibit-122
(Witness serving in the SRTRMCH Ambajogai and acquainted with deceased and accused No.1 and also witness on the last seen theory)
- vi) PW-6 Shaikh Imran Shaikh Nijamoddin, Exhibit-123
(Pan shop owner and witness on last seen theory)
- vii) PW-7 Prakash s/o Kashinath Chintamani, Exhibit-124
(Witness on last seen theory)
- viii) PW-8 Pablik s/o Rambhau Maske, Exhibit-126
(Panch witness on disclosure statement given by accused No.4/Swapnil and recovery of sharp weapon)
- ix) PW-9 Mahadeo Vishwnath Valse, Exhibit-131
(witness to the money transaction between deceased and accused No.1 and last seen theory)
- x) PW-10 Suryakant s/o Ramchandra Tone, Exhibit-132
(Land owner, resident of Selgaon)
- xi) PW-11 Sambhaji Sopan Bhise, Exhibit-134
(Manager of Ashirwad Lodge, Nanded)
- xii) PW-12 Balaji s/o Shankarappa Kale, Exhibit-139
(Manager of Hotel Anjali Beer Bar, Morewadi, Ambajogai)
- xiii) PW-13 Dr. Raju s/o Rustumrao Surwase, Exhibit-143
(Associate Professor, Forensic Medicine, who conducted postmortem examination on the dead body of Ganesh Sadre);

- xiv) PW-14 Dhammpal s/o Shivaji Sarwade, Exhibit-164
(Witness on money lending transaction between deceased and accused No.1/Nandkumar and witness on last seen theory)
- xv) PW-15 Sanjay s/o Shriram Pawar, Exhibit-165
(Witness on money transaction between deceased and accused No.1/Nandkumar and witness on last seen theory);
- xvi) PW-16 Satish s/o Damodhar Bansode, Exhibit-177
(Then PSI, Police Station Ambajogai (City) / Investigation Officer)
- xvii) PW-17 Baliram Rakhamaji Gitte, Exhibit-193
(Then API, Police Station Ambajogai (City) and Investigation Officer)

28 Apart from oral stock of evidence, the prosecution agency has pressed into service the documentary evidence, which is as under:

- i) FIR, Exhibit-61;
- ii) Inquest Panchanama, Exhibit-101;
- iii) Postmortem Report, Exhibit-144;
- iv) Provisional Death Certificate, Exhibit-145; and
- v) Seizure Panchanamas vide Exhibit-102, Exhibit-112 and Exhibit-114 and extract of Ashirwad Lodge, Nanded vide Exhibit-135.

29 In the case in hand, there is no eye-witness of the occurrence and the prosecution case rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

30 Event though the learned Senior Counsels for appellants/accused Nos.4 and 5 and the learned counsel for appellant/accused No.6, have referred number of citations on the point of circumstantial evidence and need to establish complete chain of circumstantial evidence, the law is settled by the Honourable Supreme Court in a landmark case known as *Sharad Birdhichand Sarda Vs. State of Maharashtra*, reported in, *(1984) 4 Supreme Court Cases 116*. The Honourable Supreme Court has laid down the following conditions,

which need to be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

- (1) the circumstances from which the conclusion of guilt is to be drawn must be or should be and not merely 'may be' fully established,
- (2) 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,
- (3) The circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) 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.

31 The decision in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** (supra) is followed consistently even in recent times in the case of ***Bodh Raj Vs. State of Jammu and Kashmir*** (supra). Thus, law is clear that onus is on the prosecution to prove

that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea.

32 The learned Senior Counsels for accused Nos.4 and 5 and the learned counsel for accused No.6 have not much disputed that Ganesh Sadre (since deceased) met with homicidal death. However, it would be necessary to have a look on medical evidence produced by the prosecution agency in order to determine the death of Ganesh Sadre in the category of homicidal or otherwise.

33 The prosecution agency has examined PW-13 Dr. Raju Surwase a Assistant Professor attached to SRTRMCH Ambajogai vide Exhibit-143, who has conducted the postmortem examination on the dead body of Ganesh Sadre. According to PW-13 Dr. Raju Surwase, on external examination, he noticed following injuries on the dead body:

- [i] Deep incised wound over front and lateral aspect of neck [cut throat] above level of thyroid cartilage of size 18 X 3 X bone deep. Edges sharp & reddish cutting of trachea, oesophagus, both sides major vessel and sternocleidomastoid muscles on both sides and platysma, partially on right side of neck. Incised injury seen over anterior aspect of body of third cervical vertebra.

- [ii] A deep incised wound seen over right side of neck below angle of mandible of size 8 X 2 X 4 cm. above level injury no.1. Both above injuries were horizontally placed and edges were sharp & reddish.
- [iii] Incised wound over center of fore head, vertically placed of size 7 X 1.5 cm X bone deep.
- [iv] Incised wound over right side of forehead and front parietal region, vertically placed of size 9 X 1 cm X bone deep.
- [v] Incised wound over right perito occipital region obliquely placed of size 8 X 1.5 cm X bone deep.
- [vi] Incised wound over left side of occipital region, vertically placed of size 7 X 1 cm X bone deep. Edges of all above injuries were sharp and reddish.
- [vii] Superficial incised wound over front of neck below level of thyroid cartilage, of size 3 X 0.25 cm. involving only skin, reddish in colour.
- [viii] Superficial incised wound over front of neck, below level of thyroid cartilage, below injury no.7 of size 7 X 2 cm reddish in colour.
- [ix] Incised wound over front of chest, over sternal area of size 3 X 1 X 1cm, reddish in colour.
- [x] Stab injury of size 4 X 2 X cm X cavity deep over left side of chest laterally and below left nipple, edges

sharp and reddish,

- [xi] Incised wound over epigastic region of size 6 X 2 X 2 cm. edges sharp and reddish obliquely placed.
- [xii] Stab injury over left side of chest at level of 10th and 11th ribs. of size 8 X 3 cm X cavity deep vertically placed, edges sharp and reddish.
- [xiii] Stab injury over left iliac region parallel to inguinal canal obliquely placed of size 7 X 2 cm X cavity deep, edges sharp and reddish.
- [xiv] Incised wound over lumbar region at level of L1,L2 vertebra obliquely placed over back, of size 3 X 1 X 1cm. edges sharp and reddish.
- [xv] Incised wound over left lumbar region at level of L4 vertebra of size 4 X 2 X 2 cm. edges reddish.
- [xvi] Abrasion of size 3 X 2 cm over right knee, anterior aspect reddish in colour.
- [xvii] Abrasion over left elbow posterior aspect of size 3 X 2 cm, reddish in colour. Edges of all above mentioned stab and incised wound were clean cut and reddish.

On internal examination, Dr. Raju Surwase noticed the following injuries:

- [a] On internal examination of Head:
Subgalial haemorrhage present beneath scalp

corresponding to injury no.5, of size 8 X 3 cm reddish in colour. No fracture to skull found. Meninges intact, brain matter pale and oedematous.

[b] On internal examination of chest:

- [i] Haemorrhage in walls corresponding to injury nos.9,10,11 & 12, mentioned in column no.17.
- [ii] Fracture of 7th rib in midclavicular line corresponding to injury no.10 in filtration staining seen.
- [iii] Fracture of 10th and 11th ribs in midclavicular line corresponding to injury no.12, in filtration staining seen.

[c] Internal examination of abdomen:

- [i] Haemorrhages in abdominal wall present in relation to injury no.13.
- [ii] Tear of Peritoneum in relation of injury.
- [iii] No blood and clots seen .
- [iv] Oesophagus as per injury no.1.
- [v] Stomach empty, Mucosa congested, no abnormal smell perceived.
- [vi] Large and small intestine distended with feces and gases.

34 Dr. Raju Surwase had conducted postmortem examination with the assistance of Dr. S. L. Ghorpade and accordingly issued postmortem report, which is at Exhibit-144. According to the opinion given in the postmortem report, the cause of

death is “death due to haemorrhagic shock due to cut throat injury”, [incised wound over neck] associated with multiple stabs and incised wounds. Accordingly, provisional death certificate is issued, which is at Exhibit-145.

35 Having regard to the internal and external injuries found on the dead body of Ganesh Sadre as described above and in view of the opinion given by Dr. Raju Surwase and Dr. Ghorpade, it is a clear case of homicidal death. The learned Additional Sessions Judge has rightly recorded the finding after discussing the medical evidence coupled with postmortem report that it is a case of homicidal death. The finding recorded by the learned Additional Sessions Judge needs to be upheld.

36 The learned Additional Sessions Judge has formulated the following circumstances, which are against the appellants/accused:

- i) Deceased Ganesh Sadre had advanced hand loan of Rs.1,65,000/- to accused No.1/Nandkumar ;
- ii) On account of repayment of hand loan, there was brawl between the deceased and sons of accused No.1 on 19th April, 2012.

- iii) The incident has happened within three days of threat given by the sons of accused No.1/Nandkumar ;
- iv) Accused Nos.4 to 6 (present appellants) were lastly seen on 22nd April, 2012 in the company of deceased Ganesh Sadre at the Pan shop and Hotel Anjali Beer Bar and Restaurant situated in the area of Yeshwantrao Chavan Square to SRTRMCH Ambajogai ;
- v) The dead body of Ganesh Sadre was found on the very next day in the morning i.e. on 23rd April, 2012 ;
- vi) Ganesh Sadre met with homicidal death;
- vii) Immediately after the incident, three accused persons were absconded;
- viii) Two accused persons had stayed in Ashirwad Lodge, Nanded;
- ix) Both the accused surrendered themselves before the police;
- x) Blood stains were found on the clothes of accused Sanjay Kakde;
- xi) Recovery of weapon, motorcycle and clothes buried in the land at the instance of accused Swapnil Kamble; and
- xii) CA reports.

37 In a case of circumstantial evidence, it is the duty of the Court to satisfy itself, that various circumstances in the chain of evidence must have been established clearly and that completed the chain is such as to rule out a reasonable likelihood of innocence of accused as held in the case of ***Malaichamy and another Vs. State of Tamil Nadu*** (supra). In a case of ***Anjan Kumar Sarma and others Vs. State of Assam*** (supra), it is held by the Honourable Supreme Court that when a case of murder is entirely rest upon circumstantial evidence, only circumstance of last seen together and absence of satisfactory explanation cannot be made basis of conviction. Suspicion cannot take place of legal proof. Inferences drawn by the Court have to be on basis of established facts and not on conjectures. It is also held by the Honourable Supreme Court that mere failure of accused to offer any explanation while recording his statement under Section 313 of the Code of Criminal Procedure alone is not sufficient to establish charge against the accused.

38 In a case of ***Baiju Kumar Soni and another Vs. State of Jharkhand*** (supra), it is held by the Honourable Supreme Court that in a case of circumstantial evidence when chain of circumstances not fully established against accused, they are entitled to benefit of doubt. In a case of ***Raj Kumar alias Raju Vs. State (NCT of Delhi)*** (supra), it

is held by the Honourable Supreme Court that in a case based on circumstantial evidence, chain must lead to sole conclusion that accused persons only and nobody else had committed crime of murder. Relevance of time-gap between when accused were last seen with victim and time of occurrence is also important.

39 In a case of ***Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan*** (supra), it is held by the Honourable Supreme Court that in a criminal trial, suspicion, however grave it may be, cannot take place of proof. The same view finds place in a case of ***Mulak Raj and others Vs. State of Haryana*** (supra).

40 In a case of ***Abdulwahab Abdulmajid Shaikh and Ors Vs. State of Gujarat*** (supra), it is held by the Honourable Supreme Court that conviction of accused based on confession of co-accused is liable to be set aside. Confession of co-accused is a fragile. In a case of ***State of Goa Vs. Pandurang Mohite*** (supra), it is held by the Honourable Supreme Court that in a case of last seen together, time gap between last seen alive and recovery of dead body must be small.

41 Even though number of citations are referred by the

learned defence counsels appearing for the respective accused, the law in respect of case based on circumstantial evidence is now well settled. The view taken by the Honourable Supreme Court in a case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** (supra) has been followed till now. Therefore, there is no need to refer and discuss every citation relied on by the defence counsels when legal position is very much clear.

42 It is revealed during the course of argument as well as while appreciating the evidence of relevant witnesses that deceased Ganesh Sadre was a private money lender and also a real estate agent. The money dispute/hand loan transaction between deceased Ganesh Sadre and accused No.1/Nandkumar, is foundation of this case. It was attempted by the learned defence counsels to show that accused No.1 had repaid the loan before the death of Ganesh Sadre. As such, there was no intention on the part of accused or the family of accused No.1 to eliminate the deceased on account of money transaction. According to the learned defence counsels, money dispute cannot be termed as a motive to commit murder of Ganesh Sadre.

43 PW-1 Sarubai (mother of the deceased), PW-4 Prakash

Paradwar (witness to money transaction) and PW-9 Mahadeo Valse (witness to money transaction) have categorically stated in their deposition about the money transaction between the deceased and accused No.1/Nandkumar. The learned Additional Sessions Judge has appreciated the evidence of PW-1 Sarubai, PW-4 Prakash Paradwar and PW-9 Mahadeo Valse, in the light of defence taken by the respective accused. The learned Additional Sessions Judge after appreciating the evidence of above referred three witnesses, arrived at the conclusion that the deceased had advanced hand loan of Rs.1,65,000/- to accused No.1/Nandkumar. There was dispute between deceased and accused No.1 regarding repayment. The deceased alongwith his mother PW-1 Sarubai had been to the house of accused No.1/Nandkumar for repayment of hand loan just before two days of the incident. The relatives of accused No.1 intervened in the matter and the disputed was settled at Rs.1,20,000/- due to intervention of relatives of accused No.1. Accordingly, accused No.1 had paid Rs.1,00,000/- to deceased Ganesh Sadre and remaining amount was to be paid within a short time. The learned Trial Judge has rightly concluded that there was money transaction between deceased Ganesh Sadre and accused No.1/Nandkumar. Money dispute was the root cause and the Trial Judge held that money dispute was the motive to kill Ganesh Sadre.

44 The learned defence counsels vehemently submitted that deceased was a private money lender and real estate agent had many enemies. As such, the possibility cannot be ruled out to kill the deceased by someone else in the background of his private money lending business and real estate business. We are not impressed by such argument advanced by the learned defence counsels. There is absolutely no evidence to support such defence. There is no iota of evidence to show that deceased was lastly seen in the company of some other persons, who had taken private loan from the deceased and on the next day, the dead body of Ganesh Sadre was found. It is difficult to accept such defence in the absence of any iota of evidence. Though onus is not much higher on the accused, but there must be some evidence, which may focus on the defence and probability of eliminating the deceased at the hands of some other persons because of private money lending business. We do not find any merit in that line of argument advanced by the learned counsels for the respective accused. Money dispute between deceased and the family of accused No.1 is found to be the motive in eliminating the deceased. The family of accused No.1 was felt insulted and humiliated due to gathering of deceased and his mother at his house and insistence of repayment of hand loan in presence of large gathering of his relatives,

which ultimately prompted the family of accused No.1 to plan about killing of Ganesh Sadre.

EVIDENCE ON STORY OF LAST SEEN TOGETHER

45 According to the prosecution case, accused Nos.4 to 6 (preset appellants) were lastly seen in the night of 22nd April, 2012 in the company of deceased Ganesh Sadre at the pan shop and Hotel Anjali Beer Bar and Restaurant situated in the area of Yeshwantrao Chavan Square to SRTRMCH Ambajogai.

46 In order to prove the story of last seen together, the prosecution machinery has pressed into service the evidence of following prosecution witnesses :

- i) PW-5 Manik s/o Ganpati Dahiphale ;
- ii) PW-6 Shaikh Imran Shaikh Nijamoddin ;
- iii) PW-7 Prakash s/o Kashinath Chintamani ;
- iv) PW-9 Mahadeo Vishwnath Valse ;
- v) PW-12 Balaji s/o Shankarappa Kale ;
- vi) PW-14 Dhammpal s/o Shivaji Sarwade ; and
- vii) PW-15 Sanjay s/o Shriram Pawar.

47 On going through the testimony of PW-5 Manik Ganpati Dahiphale, it is evident that he is serving in the SRTRMCH Ambajogai in the OPD on the post of clerk. On 22nd April, 2012, he was on duty in the OPD section. His evidence further disclosed that on 22nd April, 2012 about 08:30 p.m. Ganesh Sadre and accused Sunil Patil had been to the OPD. Both of them were in drunken condition. They went away about 08:45 p.m. on motorcycle.

48 PW-6 Shaikh Imran Shaikh Nijamoddin is running his pan shop in the medical campus at Ambajogai. It is situated at the main entrance of the Medical College and Hospital, Ambajogai. He is well acquainted with deceased Ganesh Sadre and all the accused since they were his regular customers. He has further disclosed that on 22nd April, 2012 at about 11:15 to 11:30 p.m., deceased Ganesh Sadre, accused No.5/Sanjay Kakade, accused No.4/Swapnil Kamble and accused No.6/Mangesh Gund had been to his pan shop when he was about to close his shop. They purchased Gold Flake Cigarette and Gutka. All of them went towards Chanai road. Two went on motorcycle and remaining two went on foot. The evidence of PW-6 Shaikh Imran is found to be trustworthy and reliable. It is not any way shaken by way of cross-examination. He is the important witness, who had seen deceased Ganesh Sadre in the company of accused

Nos.4 to 6 on 22nd April, 2012 in the night about 11:30 p.m. when they left towards Chanai road.

49 Now coming to PW-7 Prakash Kashinath Chintamani, who is also serving in the SRTRMCH Ambajogai. His brother Macchindrao runs a pan shop, which is situated at Yeshwantrao Chavan Square, Ambajogai. His evidence further disclosed that one day before the incident during night hours he was standing near pan shop of his brother when accused Mangesh Gund, son of Kamble (Swapnil Kamble) and one more (Sanjay Kakade) had been to the pan shop of his brother. They purchased Pan, Tobacco, etc. and went towards medical college. He had lastly seen the above name accused persons at Yeshwantrao Chavan Square, Ambajogai.

50 Now coming to PW-9 Mahadeo Vishwnath Valse. His evidence also disclosed about money transaction between deceased Ganesh Sadre and accused No.1/Nandkumar and quarrel on account of repayment. His evidence further disclosed about real estate business of deceased and plots to be purchased situated at Pokhari road. Next part of evidence of PW-9 Mahadeo Valse disclosed that on 22nd April, 2012 deceased Ganesh Sadre had called him at Anjali hotel. He noticed that deceased Ganesh Sadre and accused Sunil

Patil were in the hotel and they had drinks. This witness Mahadeo Valse also joined them. There was discussion regarding transaction of five plots and Ganesh Sadre paid Rs.2,000/- as an earnest money to Mr. Nikam towards purchase of five plots. They had meals and they left the hotel about 05:00 to 05:30 p.m. He has noticed deceased in the company of accused Sunil Patil on 22nd April, 2012 from morning to evening.

51 The prosecution machinery has also examined Manager of Hotel Anjali Beer Bar as PW-12 Balaji Shankarappa Kale. His evidence disclosed that deceased Ganesh Sadre was regular customer of hotel Anjali and he had credit account. On 22nd April, 2012, deceased had been to hotel Anjali with his two friends about 02:00 to 02:30 p.m. and after taking beer, they left about 03:30 p.m. His evidence further disclosed that deceased Ganesh Sadre again came back to the hotel with 4-5 friends. They had drinks. After taking meals, they left the hotel about 07:30 to 08:00 p.m. His evidence further disclosed that deceased Ganesh Sadre again came back to hotel with two friends about 9:00 to 9:15 p.m. and had drinks. They left the hotel about 10:45 p.m. The testimony of Manager of Hotel Anjali Beer Bar gave clear picture that deceased Ganesh Sadre had visited Hotel Anjali Beer Bar on multiple times and had drinks. The

deceased and his friends left the hotel in the night about 10:45 p.m. It is shown by the prosecution that the deceased had drinks on that day with his friends.

52 Now coming to PW-14 Dhammpal Shivaji Sarwade. His father is serving in SRTRMCH Ambajogai. He is well acquainted with deceased Ganesh Sadre and the accused persons. His evidence disclosed that on 22nd April, 2012, deceased Ganesh Sadre alongwith Dhammpal Sarwade and Manoj Gaikwad had been to hotel Anjali about 06:30 to 07:00 p.m. Deceased Ganesh Sadre, one Burge, accused Sunil Patil and one more friend were in the hotel. Dhammpal Sarwade occupied the table with his friends beside deceased. Dhammpal Sarwade had seen accused Swapnil Kamble, Mangesh Gund and Sanjay Kakade, who was sitting beside the table. Deceased Ganesh Sadre and others left the hotel about 08:30 p.m. Thus, the evidence of PW-14 Dhammpal Sarwade also focuses that the deceased was in the company of accused Nos.4 to 6 and they had drinks.

53 PW-15 Sanjay Shriram Pawar is another witness on the story of last seen together. On going through the testimony of PW-15 Sanjay Pawar, it is revealed that he is residing in the medical campus

and the quarter of deceased Ganesh Sadre was close to him. He was also aware about the money transaction between deceased Ganesh Sadre and accused No.1/Nandkumar and quarrel on account of money dispute on 19th April, 2012. He has further disclosed that on 22nd April, 2012 about 11:15 to 11:30 p.m. he was at medical shop. He had parked his motorcycle in front of the hotel. He was taking out his motorcycle when he noticed that accused Swapnil Kamble and accused Mangesh Gund were proceeding to Vaidhye Chowk on foot and deceased Ganesh Sadre and accused Sanjay Kakade also went towards the same direction. Therefore, it is clear that PW-15 Sanjay Pawar is the last witness, who had seen deceased Ganesh Sadre in the company of accused Nos.4 to 6. The deceased was alive till 01:30 p.m. when PW-15 Sanjay Pawar had seen him in the company of these three accused persons.

54 On careful scrutiny of above stock evidence of prosecution witnesses on the point of last seen together, it is very much clear that their evidence is corroborating each other. Their evidence is consistent on the point of last seen. All of them have categorically stated that they had seen the deceased in the company of accused Nos.4 to 6 while roaming in the medical campus to Yeshwantrao Chavan Square, Ambajogai. The learned Additional

Sessions Judge has appreciated the evidence of above stock witnesses very carefully and minutely and after exercise of scanning, accepted their evidence. The learned Trial Judge has also considered about the omissions and contradictions produced on record by the defence counsels during their cross-examination and found that those are not any way fatal to the prosecution. The evidence of above referred prosecution witnesses cannot be discarded on account of simple contradictions and omissions. We do not see any error on the part of the learned Trial Judge while accepting the evidence of above referred stock of witnesses. The prosecution has been successful in proving with the help of evidence of above referred stock of witnesses that the deceased was lastly seen roaming in the company of accused Nos.4 to 6. The deceased was in the company of accused Nos.4 to 6 till 11:30 p.m. of 22nd April, 2012. It is very important to note that the deceased was lastly seen in the company of accused Nos.4 to 6 on 22nd April, 2012 about 11:30 p.m. and on the very next day i.e. on 23rd April, 2012 in the morning about 07:00 a.m. the dead body of Ganesh Sadre was found near Girwalkar Engineering College, Ambajogai, in an isolated place. The time gap of noticing Ganesh Sadre alive and noticing his dead body is small. It can be said to be gap of six hours approximately when the deceased was last seen while roaming in the company of accused Nos.4 to 6.

55 Having regard to the appreciation of evidence of above referred stock of prosecution witnesses, we do not find any difficulty in arriving at conclusion that the prosecution agency has been successful in proving the story of last seen together. The learned Trial Judge has rightly accepted the story of last seen together projected by the prosecution agency. We endorse the same.

56 Now coming to one more incriminating circumstance appearing against the accused. According to the prosecution story, accused Nos.4 to 6 namely (Swapnil Kamble, Sanjay Kakade and Mangesh Gund) after committing the crime proceeded to Parli Vaijnath by motorcycle. They parked their motorcycle at Deshmukh Petrol Pump, Parli Vaijnath. They boarded train and reached at Udgir. They boarded bus from Udgir and reached to Nanded and stayed in one lodge namely Ashirwad Lodge on 23rd April, 2012. According to the prosecution, the conduct of the accused and their fleeing away from the place and taking shelter in one lodge, speaks about their involvement in the commission of crime. The prosecution machinery has taken help of Manager of Ashirwad Lodge examined as PW-11 Sambhaji Sopan Bhise vide Exhibit-134. His evidence disclosed that at the relevant point of time he was working as Manager of Ashirwad

Lodge, Vajirabad, Nanded. His evidence further disclosed that accused Swapnil Kamble arrived at hotel Ashirwad on 23rd April, 2012 about 08:30 a.m. One person was accompanied with Swapnil Kamble. Swapnil Kamble filled the register of hotel Ashirwad as well as name of another person (Sanjay Kakade). They stayed in Room No.202 and also paid Rs.450/-. One of them signed the register. On the very day, they vacated the room in the evening. The extract of Ashirwad Lodge is also duly proved at the hands of PW-11 Sambhaji Bhise and the same is vide Exhibit-135. On going through the extract of Ashirwad Lodge vide Exhibit-135, we have noticed the entry of accused Swapnil Kamble and Sanjay Kakade for 23rd April, 2012 at serial No.2. Their arrival time is mentioned as 08:40 a.m. Their address is from Ambajogai. The evidence of Manager of Ashirwad Lodge was attempted to be shaken mainly on the ground that the lodge register is in printed format. The name of "Ashirwad" is mentioned in handwriting. The learned Trial Judge has considered this aspect and rightly discarded the objection raised by the defence side. On careful scrutiny of evidence of PW-11 Sambhaji Bhise, Manager of Ashirwad Lodge, we found that his evidence is trustworthy and reliable and supported by documentary evidence vide Exhibit-135. Thus, the prosecution has further travelled its journey by establishing that accused Nos.4 and 5 had taken shelter in Ashirwad

Lodge at Nanded on 23rd April, 2012 i.e. soon after committing the crime.

57 Further it is evident from the testimony of police officer, API Baliram Rakhamaji Gitte (PW-17) that accused Nos.4 and 5 had surrendered themselves before Gangakhed Police on 24th April, 2012 and they were brought back by Ambajogai Police through PSI Satish Bansode (PW-16). The report submitted by PSI Bansode is also placed on record vide Exhibit-179 to that effect. Letter given by Police Officer Gangakhed Police Station is also produced vide Exhibit-178. The entry of station diary is also produced to corroborate such fact vide Exhibit-180. This incriminating circumstance is also duly proved by the prosecution agency.

58 Another incriminating evidence is about recovery of blood stained clothes of accused No.5/Sanjay Kakade. The prosecution machinery has examined one of the *Panch* witnesses vide PW-3 Rajendrakumar Vithal More vide Exhibit-113. On going through the evidence of PW-3 Rajendrakumar More, it is revealed that police officer has seized clothes of accused Sanjay Kakade, which were stained with blood. It was red colour T-shirt and blue colour pant, which were seized by the police officer while making his arrest. The

seizure *Panchanama* is produced to that effect vide Exhibit-114. This incriminating evidence is also connecting and corroborating about the role played by accused Sanjay Kakade.

59 Now coming to recovery of weapon used in the commission of the crime. On going through the evidence of PSI Satish Damodhar Bansode (PW-16) and Pablik Rambhau Maske (PW-8), it is revealed that accused No.4/Swapnil Kamble gave disclosure statement under Section 27 of the Evidence Act before Police Officer PSI Bansode in presence of *Panch* witnesses. He disclosed his intention to show the place where ha had concealed the weapon. Accordingly, police party, *Panch* witnesses and accused/Swapnil Kamble reached to the place. Accused/Swapnil Kamble lead police party and *Panch* witnesses and reached at the gate of I.T.I college. Accused/Swapnil Kamble pointed out the place i.e. dunghill near the gate of I.T.I. college where from he took out the sickle (Sura) and produced before the police. The police party seized the weapon under the seizure *Panchanama* vide Exhibit-128. The learned Trial Judge has appreciated the evidence of PSI Bansode and *Panch* witness PW-8 Pablik Maske in a careful manner and rightly accepted their evidence. We do not find any error on the part of the learned Trial Judge while accepting the evidence on the point of

disclosure statement given by accused No.4/Swapnil Kamble and recovery of weapon at his instance.

60 It was attempted by the defence side to disbelieve the exercise of recovery of weapon on the ground that it was a recovery of weapon from open place. The learned Trial Judge has considered this aspect and recorded the reasons as to how that recovery is reliable. The weapon was concealed in a dunghill and it was not lying in an open place. We, therefore, do not find any merit in the argument advanced by the learned defence counsels.

61 The investigation officer has also recovered the motorcycle used by these accused while fleeing away to Parli Vajinath. That link is duly proved as to how the accused fled away by using the motorcycle. We have also gone through the CA reports, which are placed on record by the prosecution machinery vide Exhibits 202 to 209. Vide seizure *Panchanama* Exhibit-102, the clothes of the deceased came to be seized after postmortem examination. The clothes of Accused No.6/Mangesh Gund came to be seized under the seizure *Panchanama* vide Exhibit-112, whereas the clothes of accused No.5/Sanjay Kakade came to be seized under seizure *Panchanama* vide Exhibit-114. In the context of above said

seizure *Panchanamas*, we have also gone through the CA reports pertaining to *Muddemal* articles sent to chemical analyzer for analysis and report. On perusing the CA report Exhibit-203, it is revealed that human blood stains were found on the weapon dragger (sickle). Further it is evident from the result of analysis of the clothes of Accused No.5/Sanjay Kakade that human blood stains were also detected on his clothes. CA report vide Exhibit-202 pertains to analysis of earth taken from the spot where accused No.5 has burnt his clothes. The CA report vide Exhibit-202 indicates that burnt pieces of clothes wrapped in cloth tallies with the earth Exhibit-18 at the time of chemical analysis.

62 Above referred CA reports are against accused Nos.4 to 6. Mr. Dhorde, learned Senior Counsel vehemently submitted that mere recovery of blood stains clothes of accused No.5 after three to four days of the murder, cannot be believed. It is difficult to accept that even after committing crime like murder, accused No.5 was moving with the same blood stained clothes. Mr. Dhorde, learned Senior Counsel has placed reliance in the case of *Khalil Khan Vs. State of M.P.* (supra). Mr. Dhorde, learned Senior Counsel also submitted that simple recovery of human blood on the clothes cannot be said to be conclusive proof. It is held by the Honourable Supreme

Court in the case of ***Mustkeem alias Sirajudeen Vs. State of Rajasthan*** (supra) that Serologist's report cannot be *ipso facto* conclude guilt of appellant.

63 As discussed earlier, where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on touchstone of law relating to circumstantial evidence, which has been well settled by the Honourable Supreme Court. In the case at hand, the blood stained clothes of accused No.5/Sanjay Kakade were seized by the police officer under the *Panchanama* vide Exhibit-114 which has been duly proved. His clothes were sent to CA for analysis and report and CA report vide Exhibit-203 speaks that human blood was found on the clothes of accused No.5/Sanjay Kakade. The weapon seized in this case, which is allegedly used in the commission of the crime, was also sent to CA for analysis and human blood was found on the blade of that weapon. These are the incriminating evidence against the above set of accused. According to the recent view of the Honourable Supreme Court in the case of ***Nana Keshav Lagad Vs. State of***

Maharashtra, reported in, **AIR 2013 Supreme Court 3510**, the accused has to explain how his clothes get stained with blood. Failure to explain amounts to incriminating circumstance against the accused. No explanation is coming either from accused No.5 or Accused Nos.4 and 6 about the same. All of them were lastly seen in the company of the deceased. They have to explain about the blood stains found on the clothes of accused No.5 when it is supported by other incriminating evidence. In absence of any explanation from them, it must be accepted as incriminating circumstance against accused Nos.4 to 6.

64 The prosecution agency has also examined two police officers viz PW-16 PSI Satish Bansode vide Exhibit-177 and PW-17 API Baliram Gitte vide Exhibit-193. They have stated about their procedural part of investigation. PW-16 PSI Bansode has stated about recovery of weapon at the instance of accused No.4/Swapnil Kamble under Section 27 of the Evidence Act in presence of *Panch* witnesses, whereas PW-17 API Gitte has stated about *inquest Panchanama*, *postmortem* examination, arrest of two accused persons Sanjay Kakade and Swapnil Kamble and seizure of clothes of Sanjay Kakade. It is that piece of evidence which is corroborating the evidence of above stock prosecution witnesses discussed

hereinbefore.

65 Having regard to the appreciation of evidence of above referred stock of witnesses, we have arrived at the following conclusion:

- (i) The prosecution has proved the motive of accused Nos.4 to 6 in eliminating deceased Ganesh Sadre. Hand loan and repayment thereof at the hands of accused No.1/Nandkumar was prompted to the accused to prepare a plan of elimination of deceased ;
- (ii) It is proved by the prosecution that accused No.1 had repaid hand loan of Rs.1,00,000/- to the deceased and Rs.20,000/- was remained to be paid ;
- (iii) There was brawl between the deceased and the family of accused No.1 on 19th April, 2012 ;
- (iv) The prosecution has proved that incident of killing of Ganesh Sadre had taken place within three days of threats given by the sons of accused No.1/ Nandkumar Kamble ;
- (v) The prosecution has been successful in proving that the deceased was lastly seen on 22nd April, 2012 about

11:30 p.m. in the company of accused Nos.4 to 6 in the area of SRTRMCH Ambajogai to Yeshwantrao Chavan Square, Ambajogai ;

- (vi) The dead body of Ganesh Sadre was found on the very next day i.e. on 23rd April, 2012 about 07:00 a.m. The time gap of lastly seen the deceased in the company of accused Nos.4 to 6 is found to be small and approximately six hours, which unerringly pointing towards guilt of accused Nos.4 to 6 ;
- (vii) Ganesh Sadre met with homicidal death caused by sharp weapon, which is recovered at the instance of accused No.4/Swapnil Kamble ;
- (viii) The prosecution has been successful in proving that after the incident accused Nos.4 to 6 fled away. They first went to Parli Vajinath and boarded train and reached to Udgir and then went to Nanded ;
- (ix) Accused Nos.4 and 5 (Swapnil Kamble and Sanjay Kakade) had stayed in Ashirwad Lodge at Nanded on 23rd April, 2012 ; and
- (x) On the very next day i.e. 24th April, 2012, accused Nos.4 and 5 surrendered themselves before

Gangakhed police officials.

- (xi) Blood stains were found on the clothes of accused No.5/Sanjay Kakade.

66 Thus, the prosecution agency has been successful in establishing the chain of circumstantial evidence. The prosecution has succeeded in proving that it is none else, but accused Nos.4 to 6 had killed deceased Ganesh Sadre on account of money dispute. No one else had committed the crime. The learned Additional Sessions Judge has appreciated the evidence of prosecution witnesses in a proper manner and rightly held accused Nos.4 to 6 guilty for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code and accused No.4 alone guilty under Section 201 of the Indian Penal Code. We do not see any error on the part of the learned Additional Sessions Judge while recording findings against present set of accused. The findings recorded by the learned Trial Judge are found proper and correct based upon evidence. There is no need to disturb the conviction awarded by the learned Trial Judge against present set of accused Nos.4 to 6. The conviction and sentence awarded by the learned Additional Sessions Judge needs to be upheld in the appeals. No need of any sort of interference. The

appeals must fail. In the result, we pass the following order:

ORDER

- I. Criminal Appeal No.563 of 2014 preferred by appellant / Mangesh Pandurang Gund (Accused No.6), Criminal Appeal No. 572 of 2014 preferred by appellant / Sanjay Dinkar Kakade (Accused No.5) and Criminal Appeal No. 526 of 2015 preferred by appellant / Swapnil Nandkumar Kamble (Accused No.4), are hereby dismissed.
- II. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Ambajogai against accused Nos.4 to 6 in Sessions Case No.54 of 2012, is hereby confirmed.
- III. The appeals are accordingly disposed of.
- IV. Criminal applications, if any, also stand disposed of.
- V. Record and proceeding be sent to the Trial Court.

[SHRIKANT D. KULKARNI, J.]

[V. K. JADHAV, J.]