

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 64 OF 2014

1. Shailendrasingh Shivmurtisingh Thakur,
Age 22 years, R/o Kairhai (Dihar),
Taluka Mahuganj, District Rewa,
Madhya Pradesh
2. Shivkumar Ramsundar Saket,
Age 22 years, R/o Dihar,
Taluka Mahuganj, District Rewa,
Madhya Pradesh.
3. Rajeshsingh Hariharsingh Thakur,
Age 24 years, R/o Khairhai,
Taluka Mahuganj, District Rewa,
Madhya Pradesh
4. Sandip Rajendra Patel,
Age 19 years, R/o Atari, (Raghurajgad),
Taluka Raipur, District Rewa,
Madhya Pradesh
5. Balendrasingh Shivmurtisingh Thakur,
Age 20 years R/o Kaimhai (Dihar),
Taluka Mahuganj, District Rewa,
Madhya Pradesh

(At present detained in Yerwada
Central Prison, Pune 411 006.)

... Appellants
(Original Accused Nos. 2 to 6)

Versus

State of Maharashtra,
(Through Officer-in-charge,
Kotwali Police Station,
District Ahmednagar)

... Respondent

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Advocate for Appellant Nos.1 to 3 & 5 : Mr. A. Y. Pandule
(appointed)

Advocate for Appellant No. 4 : Mr. Sohail Subhedar h/f
Mr. N. S. Ghanekar

APP for Respondent-State : Mr. Shashibhushan P. Deshmukh

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**WITH
CRIMINAL APPEAL NO. 480 OF 2014
WITH CRIMINAL APPLICATION NO. 657 OF 2015
IN CRIMINAL APPEAL ON. 480 OF 2014**

Raju Sampat Darode,
Age 30 years, Occ. Nil,
R/o Indiranagar, Daund Road,
Ahmednagar.
At present convict no. 16752,
Yerwada Central Prison, Pune-6.

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra
(Through Kotwali Police Station,
Ahmednagar)

... Respondent

.....

Advocate for the Appellant : Mr. A. Y. Pandule (appointed)
APP for the Respondent-State : Mr. Shashibhushan P. Deshmukh

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**WITH
CRIMINAL APPEAL NO. 503 OF 2013**

The State of Maharashtra,
Through Kotwali Police Station,
District Ahmednagar.
[Cr.No.I-360/2007]

... Appellant
(Original Complainant)

Versus

1. Raju Sampat Darode,
Age 25 years, R/o Indiranagar,
Daund Road, Ahmednagar.
2. Shailendrasingh Shivmurtisingh Thakur,
Age 22 years, R/o Kairhai (Dihar),
Taluka Mahuganj, District Rewa,
Madhya Pradesh
3. Shivkumar Ramsundar Saket,
Age 22 years, R/o Dihar,
Taluka Mahuganj, District Rewa,
Madhya Pradesh.
4. Rajeshsingh Hariharsingh Thakur,
Age 24 years, R/o Khairhai,
Taluka Mahuganj, District Rewa,
Madhya Pradesh
5. Sandip Rajendra Patel,
Age 19 years, R/o Atari, (Raghurajgad),
Taluka Raipur, District Rewa,
Madhya Pradesh
6. Balendrasingh Shivmurtisingh Thakur,
Age 20 years R/o Kaimhai (Dihar),
Taluka Mahuganj, District Rewa,
Madhya Pradesh

... Respondents

(Original Accused Nos. 1 to 6)

.....

APP for the Appellant-State : Mr. Shashibhushan P. Deshmukh
 Advocate for Respondent Nos. 1 to 4 and 6 : Mr. A. Y. Pandule
 (appointed)

Advocate for Respondent No.5 : Mr. Sohail Subhedar h/f
 Mr. N. S. Ghanekar

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
RESERVED ON : 15.09.2021
PRONOUNCED ON : 08.04.2022**

JUDGMENT (PER V. K. JADHAV, J.) :-

1. Criminal Appeal No. 64 of 2014 preferred by original accused nos. 2 to 6 and Criminal Appeal No. 480 of 2014 preferred by original accused no.1 are directed against the judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 21.10.2013 in Sessions Case No. 51 of 2008.

Criminal Appeal No. 503 of 2013 is also directed against the same judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar, for enhancement of the sentence with a specific prayer that death sentence may be awarded to all the accused persons.

2. Brief facts giving rise to the prosecution case are as follows:

a. The informant Sunil Shantilal Munot resides in Rushikesh bungalow near Keshar Gulab Mangal Karayalaya on Sahakar Sabhagruha Road, Ahmednagar. He has four uncles namely (1) Dr. Ashok, (2) Ramesh (since deceased), (3) Mohan and (4) Amrutlal.

They are having two factories name and styled as K. G. Foam and Monish Spoke at Pune and three factories namely, Sumesh Industries at Kedgaon, Classic Factory at M.I.D.C., Ahmednagar and Sushant Industries, behind A.D.C.C. Bank, Ahmednagar. Informant Sunil runs the said business of factories along with his said uncles. Uncle deceased Ramesh Munot and aunt deceased Chitra w/o Ramesh Munot were residing in Basant bungalow at Manik Nagar, Chandan Estate, Ahmednagar with their two sons namely, Sagar and Sumit. Informant Sunil, his father Shantilal, uncle Ramesh and cousin Sumit were looking after the affairs of industry situated at Ahmednagar.

b. On 02.12.2007, the informant had conversation with uncle Ramesh up to 8.15 p.m. on his mobile from time to time. Thereafter, they had no talk with each other. On 03.12.2007, at 6.30 a.m., Sharad Gundecha, who is residing in the neighborhood of uncle Ramesh, informed him on mobile phone that there was something wrong in the bungalow of uncle Ramesh. The watchman of the said bungalow had come to his house having his hands and legs tied and the informant should come there early. Accordingly, informant Sunil went to the said bungalow. PW4 Sumitkumar

Tiwari was standing at the gate of the said bungalow.

c. On making inquiry with PW4 Sumitkumar Tiwari, he told that at about 9.30 to 10.00 p.m., one person came to the gate of the bungalow and asked him to give message to deceased Ramesh that Subhash has come to see him. PW4 Sumitkumar Tiwari thus opened the gate and asked the said person to wait till he informs about the same to deceased Ramesh. Thus the person came inside. At that time, 4 to 5 persons were standing by the side of road in front of the gate. PW4 Sumitkumar Tiwari when turned to make a call to deceased Ramesh, at that time, those persons covered his face with cloth and tied his hands, legs and mouth and then took him from the gate of the bungalow upto the latrine behind the watchman room and tied him to one electric pole. One person amongst them stopped near him. After some time he had heard the cries of deceased Chitra (wife of deceased Ramesh). PW4 Sumitkumar Tiwari was lying at the same place in tied condition. In the dawn time, anyhow PW4 Tiwari went upto the bungalow of neighbour Sharad Gundecha and informed him the above incident. Informant Sunil had inspected the bungalow. There were blood stains everywhere in the bungalow. His uncle Ramesh was lying

dead in the pool of blood near west side wall of the living room. There were injuries on right side of his forehead, on both sides of chest and adhesive tape was fixed on his mouth. His daily use wrist watch was found missing. In the bed room, his aunt Chitra was found tied to a wooden chair, having adhesive tape fixed on her mouth and her both hands were tied by a telephone wire and a cloth piece. She was dead. There was bleeding injury on her throat. Her wrist watch was also found missing. Informant Sunil has also seen that two cupboards were open and the clothes, ornament boxes and other articles were lying scattered. Thus, informant Sunil has confirmed that unknown thieves had committed murder of his uncle Ramesh and aunt Chitra and looted the property.

d. On the basis of the report Exhibit 255 lodged by the informant, crime no. 360 of 2007 under Sections 396, 397 and 452 of I.P.C. came to be registered with Kotwali Police Station, District Ahmednagar.

e. PW 58 PI. Shivaji Koli has visited the spot and prepared spot panchanama Exh. 65 in presence of two *panchas*. He has seized the articles such as hair clip, adhesive tape, sim card, one knife, purse,

empty boxes of wrist watches and ornaments, bulb holder and wire so also blood samples from different places under spot panchanama Exh. 65. PW 50 P.S.I. Abdul Shaikh prepared inquest panchanama of dead bodies of Ramesh Munot and Chitra Munot in presence of pancha witnesses and sent the dead bodies to Civil Hospital, Ahmednagar for postmortem. PW 60 P.I. Vahile made inquiry with the maid servant of the bungalow so also the security contractor. It was revealed that the previous watchmen working at the said bungalow were from Madhya Pradesh and they were absent from duty. Thus PW 60 P.I. Vahile contacted the Railway Station Manager and collected information about tickets sold on the said night for Satna and nearby station.

f. Further, on the instructions of the District Superintendent of Police, Ahmednagar, the Katni police arrested five suspects. During the course of investigation, certain cash amount and gold and silver ornaments, a lap-tap, Korean currency note, mobile phones, clothes etc. came to be seized from the custody of the accused persons. Further PW 49 A.P.I. Rakh has also inspected the room of accused no.2 Shailendrasingh situated at M.I.D.C., Supa and seized clothes and documents under panchanama. PW 60 P.I. Vahile, at the

instance of accused no.3 Shivkumar, seized a knife under seizure panchanama and at the instance of accused no.5 Sandip, seized blood stained clothes, one Nokia make mobile phone and some documents of Munot family. He has also collected the postmortem reports of both the deceased persons so also the medical certificates of medical examination of the accused persons. Further, Identification parade of the accused persons was conducted through Special Judicial Magistrate Shri Bhos (PW 45). The C.A. reports and the D.N.A. test reports were collected. After completion of the investigation, PW 60 PI. Vahile has filed chargesheet against the accused persons.

g. The learned Additional Sessions Judge has framed charge against the accused i.e. appellants before us and two more persons for the offence punishable under Sections 396, 397, 452, 408, 412, 201, 120-B of IPC, under Section 135 of the Bombay Police Act and under Section 4 r/w 25 of the Arms Act vide Exh. 16. The contents of the charge were read over and explained to accused nos. 1 to 8 in vernacular, for which they pleaded not guilty and claimed to be tried. Their defence is of total denial and false implication in the case.

h. In order to substantiate the charge leveled against the accused persons, the prosecution has examined in all 60 witnesses. The prosecution has mainly relied on 23 documents. After completion of the prosecution evidence, statement of the accused persons under Section 313 of Criminal Procedure Code (Cr.P.C.) came to be recorded. The learned Additional Sessions Judge, Ahmednagar, by judgment and order of conviction dated 21.10.2013 in Sessions Case No. 51 of 2008, has convicted the appellants-original accused nos. 1 to 6 and acquitted accused nos. 7 and 8. The operative part of the order dated 21.10.2013 is reproduced herein below:

1. The accused No.(1) Raju Sampat Darode, Age 25 yrs., R/o Indiranagar, Daund Road, Ahmednagar, (2) Shailendrasingh Shivmurtisingh Thakur, Age 22 yrs., R/o Kairhai (Dihar), Taluka Mahuganj, District Rewa, Madhya Pradesh (3) Shivkumar Ramsundar Saket, Age 22 yrs., R/o Dihar, Taluka Mahuganj, District Rewa, Madhya Pradesh (4) Rajeshsingh Hariharsingh Thakur, Age 24 yrs., R/o Khairhai, Taluka Mahuganj, District Rewa, Madhya Pradesh, (5) Sandip Rajendra Patel, Age 19 yrs., R/o Atari,(Raghurajgadh) Taluka Raipur, District Rewa, Madhya Pradesh, (6) Balendrasingh Shivmurtisingh Thakur, Age 20 yrs., R/o Kaimhai (Dihar), Taluka Mahuganj, District Rewa, Madhya Pradesh are held guilty and convicted of the offence punishable

under section 396, 397, 412, 452, 120-B r.w. 34 of the Penal Code vide section 235 (2) of the Code of Criminal Procedure.

2. The accused No.3 is held guilty and convicted of the offence punishable under section 408 of the Penal Code vide section 235 (2) of the Code of Criminal Procedure.
3. Accused Nos.1 to 6 are sentenced to suffer Imprisonment for life each and to pay fine of Rs.10,000/- (Rs. Ten Thousand only) each i.d. to suffer R.I. for one year each for the offence punishable under section 396 of I.PCode.
4. Accused nos. 1 to 6 are sentenced to suffer R.I. for Seven years each and to pay fine of Rs.10,000/- (Rs. Ten Thousand only) each i.d. to suffer R.I. for one year each for the offence punishable under section 397 of I.PCode.
5. Accused nos.1 to 6 are sentenced to suffer R.I. for Seven years each and to pay fine of Rs.5,000/- (Rs. Five Thousand only) each i.d. to suffer R.I. for Six Months each for the offence punishable under section 452 r.w. 34 of I.PCode.
6. Accused nos.1 to 6 are sentenced to suffer R.I. for Seven years each and to pay fine of Rs.10,000/- (Rs. Ten Thousand only) each i.d. to suffer R.I. for One Year each for the offence punishable under section 412 of I.PCode.
7. Accused nos.1 to 6 are sentenced to suffer Imprisonment for Life each and to pay fine of Rs.5,000/- (Rs. Five Thousand only) each i.d. to suffer R.I. for Six Months each for the offence punishable under section 396 r.w. 120-B of I.PCode.

8. Accused no.3 is sentenced to suffer R.I. for Five years and to pay fine of Rs.5,000/- (Rs. Five Thousand only) i.d. to suffer R.I. for Six months for the offence punishable under section 408 of I.P.Code.
9. Accused nos. 7 and 8 are acquitted for the offence punishable under section 120-B of I.P. Code vide Section 235 (1) of the Code of Criminal Procedure.
10. Accused nos. 1 to 6 are acquitted for the offence punishable under section 135 of Bombay Police Act vide Section 235(1) of the Code of Criminal Procedure.
11. Accused no. 8 is acquitted for the offence punishable under section 201 of I.P. Code vide Section 235(1) of the Code of Criminal Procedure.
12. Accused No. 7 is acquitted for the offence punishable under section 412 of I.P.Code vide Section 235(1) of the Code of the Criminal Procedure.
13. Accused nos. 1, 2 and 4 are acquitted for the offence punishable under section 408 of I.P.Code vide Section 235(1) of the Code of Criminal Procedure.
14. Accused nos.1 to 6 are acquitted for the offence punishable under section 25 of Arms Act vide Section 235(1) of the Code of Criminal Procedure.
15. The substantive sentences of accused nos. 1 to 6 under all the sections shall run concurrently.

16. Accused no. 1 is in jail since 4-12-2007, accused nos.3, 4 and 6 are in jail since 5-12-2007 and accused nos. 2 and 5 are in jail since 6-12-2007. They are entitled to set off under section 428 of the Cr.PCode for the period undergone in jail.
17. Accused nos.7 and 8 are released forthwith if not required in any other case/crime as per order in para no.433 of this Judgment.
18. Accused nos.7 and 8 shall furnish P.R. and S.B. of Rs.5,000/- as per provisions of Section 437-A of the Code of Criminal Procedure.
19. The muddemal property Article nos.1 to 5, 7 to 62, 66 to 78, 84, 87, 93, 95, 97 to 102, 107 to 110, 113 to 118, 122 to 125, 127, 128, 150, 160, 162, 163, 166 to 170, 172, 174, 175 and 178 to 188 being worthless be destroyed after the appeal period is over.
The muddemal property article nos.6, 79, 80, 82, 86, 88 to 92, 94, 96, 104 to 106, 119 to 121, 126, 129, 130, 132 to 143, 145 to 149, 151 to 159, 161, 164, 165, 171, 173 be returned to Sunit Ramesh Munot (PW 57) on his executing a Bond of Rs.10,00,000/- in the form of undertaking that he will produce the said muddemal articles/ornaments and cash amount as and when directed by the Court for the purpose of appeal and will keep the said articles in the same conditions till decision of appeal, if preferred.
Muddemal article no.63 be returned to officer bearer of Shivshakti Oil Co. Supa M.I.D.C., District Ahmednagar, article no.64 be returned to accused no.1 Raju Sampat Darode, article

no. 83 be returned to Sumitkumar Tiwari (PW 4), article no. 85 be returned to accused no.6 Balendrasingh Thakur, article no. 103 be returned to accused no.3 Shivkumar Saket, article no. 111 and 112 be returned to accused no.7 Sangita Saket, article no. 176 and 177 be returned to accused no.8 Shivbahour Nankuram Kaul after appeal period is over.

The muddemal article nos. 65 and 81 i.e. Mobile phones be auction sold and the sale proceeds be credited to State Government Account, after the appeal period is over.

Muddemal article no.144 are marked Exh.233 and 234 and hence, those be preserved with the case record.

Muddemal article nos.46 to 48 and article no.137 are omitted. Muddemal article no.131 is not produced in the Court, however, it being worthless be destroyed after appeal is over under intimation to the Sessions Court. (For detail description of muddemal articles and its disposal, see the chart in para no.452 given above in this Judgment.”

Criminal Appeal No. 64 of 2014 and Criminal Appeal No. 480 of 2014 filed by the appellants-accused nos. 1 to 6.

3-a. Learned counsel appearing for the appellants in both the appeals submit that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. It is submitted that the prosecution has failed to establish the chain of circumstantial evidence. Learned counsel submits that the circumstances brought on record are not consistent with the hypothesis of the guilt of the accused. Learned counsel submits that

mere recovery of the articles said to have been recovered from the accused and identified as ornaments belonging to the deceased cannot help the prosecution to prove its case. Merely on the basis of recovery of the alleged stolen articles only from four accused persons, the offence punishable under Section 397 of IPC cannot be made out.

3-b. Learned counsel for the appellants in both the appeals submit that so far as the test identification parade is concerned, the same was conducted in a great confusion and there was no sufficient identification of the accused in this respect. It is submitted that the guidelines in the criminal manual regarding holding of identification parade are not followed by the Special Judicial Magistrate Shri Bhos (PW 45) and hence, the evidence in this respect is liable to be discarded. Learned counsel submit that the witnesses, who have identified the accused persons being culprits of the incident have not given their description before the court and hence, their evidence is not worth to be believed. Further, there is delay in conducting identification parade of the accused after their arrest. Since the date of arrest till identification parade, the identifying witnesses had opportunity to see the

accused persons. The evidence of the prosecution witnesses about identification of the accused persons is self-contradictory and also contradicting each other.

3-c. Learned counsel submit that there are no special identification marks on the property shown to have been recovered from the accused. Therefore, it cannot be said that the said property is belonging to the Munot family members only. It is also submitted that the fingerprints available on the spot of the incident were not collected by the police. Thus, involvement of the accused persons in commission of the crime is doubtful.

3-d. Learned counsel submit that the prosecution has not proved the motive to commit such an offence. The prosecution has failed to prove the presence of the accused beyond doubt on the date of incident. The prosecution has also failed to prove that the appellants were under the employment of the deceased at the time of the incident or earlier thereto. There is no explanation tendered for the delay caused in lodging the FIR. There is no evidence of last seen together, nor the prosecution proved that deceased were lastly seen in the company of the appellants. There is considerable delay in conducting the test identification parade. The prosecution has

failed to prove the possession of the articles and ornaments belonging to the deceased. Further, during the course of investigation, the visitors register maintained at the gate of the bungalow of the deceased was neither seized nor produced before the court, which is vital document in the case. The prosecution has failed to prove the recovery at the instance of the accused persons. Furthermore, the medical evidence does not support the case of the prosecution. The C.A. report is not positive and as such, not useful for the prosecution. The evidence in the form of Call Detail Record (CDR) and messages is also not proved as there is no authorized record or due certification as required by the law.

3-e. Learned counsel submit that the trial court has erred in holding that the prosecution has proved the circumstance of last seen near the bungalow of deceased Ramesh Munot, which is before happening of the incident, in absence of any cogent evidence to that effect. There is no corroboration to the evidence of PW 24 Sachin Dalvi. Further, PW 24 Sachin Dalvi has improved his version in the Court. PW 24 Sachin Dalvi is an employee working in the company of deceased Ramesh Munot. His eye sight is also weak and he is using spectacles of distant number. He is highly

interested witness and thus his evidence cannot be believed.

3-f. Learned counsel submit that the trial court has erred in holding that the prosecution has proved conspiracy on the basis of circumstances.

3-g. Learned counsel submit that there is no satisfactory evidence to prove the circumstance that appellants-accused nos. 2 to 7 have purchased railway tickets between 08.00 p.m. to 11.00 p.m. for going to their village. The prosecution witnesses including the booking clerk of the railway station, did not identify the accused persons. Further, the daily chart about railway tickets dated 02.12.2007 was not produced before the Court. There is no evidence that the accused have purchased the railway tickets as on 02.12.2007. The tickets does not stand in the name of any of the accused as the tickets are general. The said recovered tickets are not verified with the original record maintained at the railway station.

3-h. Learned counsel for the appellants submit that so far as the circumstance about recovery of (i) copy of ration card of

Ramesh Munot found in the bag of accused no.2, (ii) money order coupons bearing address of Basant bungalow, (iii) visa card, cheque book of deceased Chitra Munot and paper slip on currency notes from Ahmednagar Bank found with the accused, (iv) N-72 mobile phone and Titan make wrist watch of Ramesh Munot at the instance of accused no.1, (v) mobile phone of deceased Chitra Munot (article 171) found with accused no.5, (vi) mobile phone of office (article 96) found with accused no.7 at Katani, Madhya Pradesh, (vii) mobile phone of Sumitkmar (PW 4) found with accused no.6, (viii) gold and silver ornaments, huge cash amount, laptop etc. found in possession of accused at Katani and Satna in Madhya Pradesh, is concerned, the prosecution has failed to prove the ownership and possession of the above said articles and the purchase receipts or other documents related to the above stated articles. The prosecution evidence about recovery of the above said articles at the instance of the accused persons is not duly proved. The articles as mentioned above are having no nexus with the main complaint filed by the complainant. The complainant has not given details of those articles in his complaint. Further, the articles were not duly identified. The test identification of the ornaments was also not properly done as per the norms of the Criminal Manual.

Further, the ownership of the mobile phones was not proved as no receipts of the same were produced. The CDR in respect of the recovered mobile hand sets was also not proved by the prosecution. The learned Judge of the trial court has wrongly held that on the basis of the circumstances, the guilt of the appellants-accused is proved beyond reasonable doubt. On the contrary, the learned Judge of the trial court ought to have given benefit of doubt to all the appellants-accused.

3-i. Learned counsel appearing for the appellants in both the appeals submit that both the appeals deserve to be allowed and the appellants-original accused nos. 1 to 6 may be acquitted by giving them benefit of doubt.

4-a. Learned APP submits that though the prosecution case rests upon circumstantial evidence, however, on the basis of oral as well as the voluminous documentary evidence adduced on behalf of the prosecution in this case, the prosecution has succeeded in proving the involvement of the appellants-accused in commission of the crime. It is proved beyond doubt that accused no.3 Shivkumar was working as watchman on the bungalow of deceased

Ramesh Munot during the period of incident. Appellant-accused no.1 Raju was working as driver on the bungalow of deceased Ramesh Munot one year prior to the incident. The appellant-accused no.2 Shailendrasingh and appellant-accused no.4 Rajeshsingh were working as watchman on the bungalow of deceased Ramesh Munot previously. Appellant-accused no. 6 Balendrasingh was working as watchman in another company, but he is real brother of accused no.2, whereas, appellant-accused no.5 Sandip is a friend. Learned APP submits that there is evidence of PW 24 Sachin Dalvi, who has lastly seen accused nos.1 to 4 near the bungalow of deceased Ramesh Munot, which is before the incident, along with two unknown persons i.e. accused nos. 5 and 6 to whom he has identified in the identification parade.

4-b. Learned APP submits that the appellants-accused hatched conspiracy to commit the crime. Many articles belonging to the Munot family were found in possession of the accused persons. Even the wrist watches of both the deceased were found in possession of the accused persons. Learned APP submits that this material circumstance leads to draw an irresistible conclusion that the accused persons have participated in commission of the crime.

4-c. Learned APP submits that the prosecution has established the chain of circumstances. Learned APP submits that the following are the circumstances linking the accused persons with the crime:

- (i) The appellants-accused nos. 1 to 6 were last seen near the bungalow of deceased Ramesh Munot just before happening of the incident.
- (ii) The appellants-accused nos. 5 and 6 with accused no.3 were seen near the watchman room on the earlier day of incident by PW 27 Anita Kamble.
- (iii) The appellants-accused nos. 5 and 6 were also seen by PW 4 Sumitkumar Tiwari on the earlier day of the incident near his room.
- (iv) The dog squad led the police from the bungalow of deceased Ramesh Munot, from the blood stained knife, towards the platform of Ahmednagar Railway Station.
- (v) The mobile phone stolen from the PW 4 Sumitkumar Tiwari shows the tower location of Bhusawal at 05.00 a.m. on 03.12.2007.
- (vi) The appellants-accused nos. 2 to 7 have purchased

railway tickets between 08.00 to 11.00 p.m. for going to their village.

- (vii) Copy of the ration card of deceased Ramesh Munot found in the bag of accused no.2 Shailendrasingh along with money order receipts of year 2004-2005 which bears address of Basant bungalow.
- (viii) The visa card, cheque book of deceased Chitra Munot and the paper slip on currency notes were found with the accused.
- (ix) The N-72 mobile phone and Titan make wrist watch of deceased Ramesh Munot was recovered at the instance of accused no.1 Raju.
- (x) The mobile phone of deceased Chitra Munot (article 171) was found at the instance of accused no.5 Sandip.
- (xi) The mobile phone of the office (article 96) was found with accused no.7 at Katani, Madhya Pradesh
- (xii) The mobile phone (article 83) of PW 4 Sumitkumar Tiwari was found with accused no.6 Balendrasingh.
- (xiii) The gold and silver ornaments, huge cash amount, lap-top etc. was found in possession of the accused at Katani and Satna in Madhya Pradesh.

Learned APP submits that thus, the evidence of prosecution is sufficient to prove the case against the accused beyond doubt.

4-d. Learned APP submits that the appellant-accused no.1 Raju was apprehended at Ahmednagar Railway Station while he was coming from Shrirampur two days after the incident. It is further brought on record by the prosecution by examining the pancha witnesses on the memorandum statement of appellant-accused no.1 Raju that he has shown his ready and willingness to point out the place where he concealed the articles and as per his statement, the cash amount, the mobile phone and other articles were recovered from the place at Gondhavani area in Shrirampur Taluka. Though the said place was open and accessible, however, recovery was made only at the instance of appellant-accused no.1. Learned APP submits that the stolen cash amount and also the gold and silver ornaments, the lap-top etc. were found with accused nos. 1 to 6 within a short span of time after the incident of dacoity. The appellants-accused could not offer any satisfactory explanation for possessing the said articles, nor claimed that the said cash and ornaments so also the other articles belong to them. Further, the

said articles seized from the accused persons were identified by the prosecution witnesses, i.e. the members of Munot family, as their own. Thus, the presumption can be drawn that the property was stolen by the accused and so they were in possession of it. Learned APP submits that the circumstances as discussed above are consistent only with the hypothesis of the guilt of the accused. The inference could be drawn that accused nos. 1 to 6 and none else is guilty of murder of Ramesh Munot and Chitra Munot while committing dacoity in their bungalow.

4-e. Learned APP submits that the evidence of PW 19 Rajendra Zumbarlal Bhandari, PW 26 Rajendra Laxman Patole, PW 24 Sachin Vijay Dalvi, PW 27 Anita Dadu Kamble and PW 4 Sumitkumar Shrishamji Tiwari, coupled with the evidence of PW 45 Bhaskar Bhikaji Bhos, the Special Judicial Magistrate has sufficiently established the identification parade. Learned APP submits that PW 19 Rajendra Zumbarlal Bhandari has identified appellants-accused nos. 1 and 3, PW 26 Rajendra Laxman Patole has identified appellants-accused nos. 4 and 5, PW 24 Sachin Vijay Dalvi has identified accused nos. 5 and 6, PW 27 Anita Dadu Kamble has identified accused nos. 4 and 5 and PW 4 Sumitkumar

Shrishamji Tiwari has identified accused nos. 4 to 6 during the course of identification parade. Furthermore, they have also identified the accused persons in the Court during the course of recording their evidence.

4-f. Learned APP submits that the muddemal gold and silver ornaments were specifically identified by the members of the Munot family during the course of identification of property conducted by PW 45 Bhaskar Bhikaji Bhos, Special Magistrate, those articles being in their daily use. Moreover, there were certain articles such as debit card, ration card, lap-top, cheque book, Korean currency note, 50 US \$, ladies and gents wrist watches, which were certainly belonging to the Munot family. Those articles were also found with the accused persons after the incident.

4-g. Learned APP submits that the prosecution has proved the names and addresses of the mobile phone holders, so also the call details of the mobile phones. The prosecution has examined the witnesses from the Idea Cellular company. The accused remained in contact with each other before and after the incident. Though there is no evidence regarding the conversation actually

taken place between the accused persons *inter se* at the relevant time, however, the call details are sufficient to infer that the accused were communicating with each other before and after the incident. Learned APP submits that the prosecution has proved its case beyond reasonable doubt. The learned Judge of the trial court has rightly found appellants-accused nos. 1 to 6 guilty for the charge leveled against them. Learned APP submits that so far as the sentence is concerned, the State has also preferred an appeal bearing Criminal Appeal No. 503 of 2013 for enhancement of the sentence and to award death sentence to the appellants-accused nos. 1 to 6. Learned APP submits that there is no substance in both the appeals preferred by the appellants-accused and both the appeals are thus liable to be dismissed.

Criminal Appeal No. 503 of 2013 filed by the State for enhancement of the Sentence.

5. Learned APP submits that the trial court ought to have considered that the present respondents-accused have committed brutal murder of two innocent persons in diabolical manner. Deceased Chitra Munot was found tied to a chair in sitting position. Her throat was slit with a sharp weapon. It shocked the conscience

of the common man. The trial court ought to have awarded capital punishment/death sentence to the respondents-accused persons. Learned APP submits that it is the rarest of rare case which requires death penalty. Learned APP submits that the respondents-accused persons are/were in the employment of the deceased persons for some time. Some of them were even watchmen of the residential house of the deceased for a considerable period. They have committed brutal murder of two middle aged helpless and hapless persons out of the lust for money and ornaments. It was a pre-planned, well executed crime. It also involves extreme brutality. Learned APP submits that a pre-planned, calculated, cold blooded murder has always been regarded as one of an aggravated kind. If a murder is “diabolically conceived and cruelly executed”, it would justify imposition of the death penalty on the murderer. Learned APP submits that the persons previously in employment of the Munot family as watchmen and driver have committed pre-planned murders which render the sentence of imprisonment for life inadequate and calls for the death sentence. There is no alternative but to impose death sentence even after weightage is given to the mitigating circumstances. The nature of the instant crime is cruel, diabolic, brutal and gruesome. The crime results in public

abhorrence, shocks the judicial conscience or the conscience of the society or the community. It was a premeditated unprovoked crime. Thus, the young age of the accused may not be relevant, so also the possibility of their reformation or rehabilitation.

6. Learned APP, in order to substantiate his contention, placed reliance on the following cases:

1. ***Bachan Singh v. State of Punjab***, reported in AIR 1980 SC 898 / MANU/SC/0055/1982.
2. ***Machhi Singh and Others v. State of Punjab***, reported in AIR 1983 SC 957 / MANU/SC/0211/1983.
3. ***Dhananjay Chatterjee v. State of West Bengal***, reported in (1994) 2 SCC 220 / MANU/SC/0626/1994.
4. ***Shankar Kisanrao Khade v. State of Maharashtra***, reported in (2013) 5 SCC 546 : MANU/SC/0476/2013.
5. ***Birbal Choudhary v. State of Bihar***, reported in (2018) 12 SCC 440 / MANU/SC/1314/2017.
6. ***Khushwinder Singh v. State of Punjab***, reported in AIR 2019 SC 2639 / MANU/SC/0318/2019.

7. Learned counsel appearing for the respondents-accused persons submit that there are mitigating circumstances, particularly the age and the possibility of reformation of the respondents-accused persons. There is no reason to solely look into the factum of double murder to award capital punishment. There are no antecedents and respondents-accused would not commit criminal acts of violence as would constitute a continuing threat to the society. Learned counsel submit that it is well settled that the sentencing discretion is to be exercised judicially on well recognized principles after balancing of the aggravated and mitigating circumstances of the crime. By “well recognized principles” the Court obviously meant the principles crystallized by judicial decisions illustrating as to what were regarded as aggravated or mitigating circumstances in those cases. Thus, the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2) of Cr.P.C., namely, (1) the extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the

offender. Learned counsel for the respondents-accused persons submit that the average age of the respondents-accused is between 19 to 25 years. Thus, the possibility of reformation exists due to their young age with no criminal background. Learned counsel submits that this is not a rarest of rare case wherein death punishment is to be awarded. The trial court has therefore not awarded the capital punishment to the respondents-accused persons by giving weightage to the mitigating circumstances.

8. Learned counsel for the respondents-accused persons, placed reliance on the following cases wherein, on various grounds, the imposition of death penalty has been expressly held erroneous.

1. *Ravji alias Ram Chandra v. State of Rajasthan* (1996) 2 SCC 175
2. *Shivaji v. State of Maharashtra* AIR 2009 SC 56
3. *Mohan Anna Chavan v. State of Maharashtra* (2008) 11 SCC 113.
4. *Dayanidhi Bisoi v. State of Orissa* (2003) 9 SCC 310
5. *Surja Ram v. State of Rajasthan* (1996) 6 SCC 271
6. *State of U.P. v. Sattan* (2009) 4 SCC 736

7. *Saibanna v. State of Karnataka* (2005) 4 SCC 165
8. *Shivu v. Registrar General, High Court of Karnataka* (2007) 4 SCC 713
9. *Rajendra Pralhadrao Wasnik v. State of Maharashtra* (2012) 4 SCC 37
10. *Mohd. Mannan v. State of Bihar* (2011) 5 SCC 317
11. *B.A. Umesh v. Registrar General, High Court of Karnataka* (2011) 3 SCC 85
12. *Sushil Murmu v. State of Jharkhand* (2004) 2 SCC 338
13. *Gurmukh Singh v. State of Haryana* (2009) 15 SCC 635
14. *Dhananjoy Chatterjee v. State of West Bengal* (1994) 2 SCC 220
15. *Kamta Tiwari v. State of M.P.* (1996) 6 SCC 250

In many of these cases, the Court has pointed out inconsistencies in the application of aggravating and mitigating circumstances. In a judicial system premised on the *stare decisis*,

especially in the context of the Court in ***Bachan Singh*** (supra) clearly mandating that sentencing discretion has to be exercised in light of precedent.

9. Learned counsel for the respondents-accused persons, in order to substantiate their contention, have further placed reliance on the following cases:

1. ***State of U.P. v. Bhoora and others***, reported in AIR 1998 SC 254.
2. ***Anshad and others v. State of Karnataka***, reported in (1994) 4 SCC 381.
3. ***Ramesh v. State of Rajasthan*** [Criminal Appeal No. 1236 of 2006 a/w other appeals decided by the Supreme Court of India by judgment dated 22.02.2011.
4. ***Shankar Kisanrao Khade v. State of Maharashtra***, reported in (2013) 5 SCC 546 : MANU/SC/0476/2013.
5. ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra***, reported in (2009) 6 SCC 498.

6. *Sangeet and another v. State of Haryana*, reported in (2013) 2 SCC 452.

7. *Mohd. Farooq Abdul Gafur and another v. State of Maharashtra*, reported in (2010) 14 SCC 641.

8. *Kalu Khan v. State of Rajasthan*, reported in MANU/SC/0440/2015

10. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statement of the appellants-accused recorded under Section 313 of the Criminal Procedure Code, the evidence of the appellants-accused and the impugned judgment.

11. The prosecution case is based upon circumstantial evidence. There is no direct evidence to the actual incident of dacoity with murder. The prosecution claims that it has established the chain of circumstantial evidence whereas the defence contends that the prosecution has failed to establish the chain of circumstantial evidence.

12. PW 4 Sumitkumar Tiwari is the important witness.

Admittedly, he was working as night watchman of the bungalow, namely, 'Basant', owned by deceased Ramesh Munot. The said bungalow is located in Manik Nagar, Chandan Estate, Ahmednagar. Admittedly, accused no.3 Shivkumar Saket was working as day time watchman in the said bungalow from 8.00 a.m. to 8.00 p.m., whereas the duty hours of PW 4 Sumitkumar Tiwari were from 8.00 p.m to 8.00 a.m. There are two rooms for watchman in front of said Basant Bungalow. PW 4 Sumitkumar Tiwari was given one of those two rooms for his residence by deceased Ramesh Munot and he was residing in that room. Accused no.3 Shivkumar Saket was residing in the watchman room located in the industry of deceased Ramesh Munot by name Sumesh Industry, Industrial Area, Ahmednagar.

13. We have carefully gone through the evidence of PW 4 Sumitkumar Tiwari. We summarize his evidence in the following manner:

A. Evidence about pre-incident activities and immediate post-incident activities

i) On 02.12.2007, PW 4 Sumitkumar Tiwari had finished his

duty by 8 a.m. as usual and accused no.3 Shivkumar Saket relieved him from his duty. He went to his room for taking rest. His room is just opposite to the bungalow of deceased Ramesh Munot. He slept for a while and got up at 11.30 a.m.

ii) At about 11.30 a.m. PW 4 Sumitkumar Tiwari had noticed that some friend was talking with accused no.3 Shivkumar Saket. The said friend of accused no.3 Shivkumar Saket was wearing blue coloured jean pant and yellow coloured full shirt. His age was about 20 to 22 years. He was the height of about 5 feet, having fair complex with mounted forehead (description of said person as deposed by PW 4 Sumitkumar Tiwari).

iii) After the said friend left that place, PW 4 Sumitkumar Tiwari, accused no.3 Shivkumar Saket along with his wife Sangita and son had lunch together in the room of PW 4 Sumitkumar Tiwari. At that time, the maid servant working inside the bungalow by name Anita (PW 27) brought papaw (papai) in his room.

iv) At that time, wife of accused no.3 Shivkumar Saket, namely, Sangita started crying and upon questioning by said PW 27 Anita, told her that her husband accused no.3 Shivkumar Saket was

intending to go to his village Dihar on the same night, but they did not have money and that her husband accused no.3 Shivkumar Saket should wait for at least two months. There was some discussion about the same between PW 27 Anita and accused no.3 Shivkumar and thereafter, PW 27 Anita went back in the bungalow.

v) At about 1.00 p.m. to 1.30 p.m., PW 4 Sumitkumar Tiwari went for toilet which is on the back side of his room. At that time, he noticed that accused no.3 Shivkumar was talking with two persons behind his room near the toilet. As PW 4 Sumitkumar Tiwari reached near them, they stopped talking with each other.

vi) At that time, PW 27 Anita again came there with bakery product *khari* from the bungalow. PW 27 Anita told that deceased Chitra Munot had given her the said bakery product. At that time, PW 27 Anita has asked accused Shivkumar as to who were those two persons. Accused Shivkumar told her that he was going to his village and those two persons were to accompany him. PW 4 Sumitkumar Tiwari has given description of those two persons; one of them was aged 20 to 22 years, of the height of about 5 feet, moderately built, having 'P' type cap. He was wearing full shirt of yellowish violet colour and full pant of ash colour. The second

person was of the age of about 20 to 25 years, of the height of 5 to 5^{1/2} feet, having strong built, wearing black coloured strips pant and yellow coloured shirt and military coloured jerkin.

vii) Accused Shivkumar told PW 4 Sumitkumar Tiwari to relieve him by 4.00 p.m. because he wanted to leave for his village. PW 4 Sumitkumar Tiwari thus went back to his room and slept. He was awakened by accused Shivkumar by 4.00 p.m. PW 4 Sumitkumar Tiwari thus dressed up and came on duty in the bungalow. Accused Shivkumar left the bungalow on his vehicle.

viii) At about 5.00 p.m. to 5.30 p.m., deceased Ramesh Munot came to the bungalow with 4 to 5 guests. All those persons went inside the bungalow. PW4 Sumitkumar Tiwari served them water as directed to him by his owner deceased Ramesh Munot. Those guests thereafter went in the neighbouring bungalow of Sharad Gundecha where some function was going on. The landlady deceased Chitra Munot also accompanied those guests to the neighbouring bungalow. Deceased Ramesh Munot also went in the neighbouring bungalow after 5 to 10 minutes.

ix) By 7.00 p.m. to 7.30 p.m., deceased Ramesh Munot returned

to his bungalow and he was followed by his wife deceased Chitra Munot. PW 4 Sumitkumar Tiwari was on duty in the bungalow at that time.

x) At about 9.30 p.m. to 9.45 p.m., somebody has given a call by referring surname of PW 4 Sumitkumar as "Tiwari". PW 4 Sumitkumar Tiwari was at the front of main gate of the bungalow. On hearing the call, he went near the picket gate (small gate) of the bungalow. The person who was calling him introduced himself as 'Subhash' and further told him that he wanted to meet deceased Ramesh Munot.

xi) According to PW 4 Sumitkumar Tiwari, the said person who told his name as 'Subhash' was the same person who came in the morning near his toilet and who talked with accused no.3 Shivkumar at about 1.00 p.m. near the toilet.

xii) PW 4 Sumitkumar Tiwari opened the latch of the small gate, came out and saw under the street tube light 4 to 5 persons. PW 4 Tiwari has recognized two persons amongst them who had come in the morning and talked with accused Shivkumar. According to him, one of them had came and talked with accused Shivkumar at about

11.30 a.m. and the other had come and talked with accused Shivkumar at about 1.00 p.m. near the toilet. PW 4 Sumitkumar Tiwari allowed said Subhash to enter in the campus of the bungalow.

xiii) As per the procedure, permission of the owner is required to be taken on intercom and name of the person visiting the owner is required to be written in the register and the signature of such person is required to be taken.

xiv) The intercom is installed in the south-east corner of the main entrance gate of the bungalow. It is at a distance of about 15 to 20 feet from the small gate of the bungalow. PW 4 Sumitkumar Tiwari did not latch the small gate fully while going towards the intercom. Said Subhash was slightly behind him.

xv) The moment PW 4 Sumitkumar Tiwari was to lift the receiver of the intercom, his head was closed with the help of cloth and his mouth was gagged with palm. PW 4 Sumitkumar Tiwari has deposed that Subhash did so because he was the only person with him inside the campus. Said Subhash threatened to kill him if he raised shout. Thereupon PW 4 Sumitkumar Tiwari was lifted by 4

to 5 persons. His head was closed and mouth was gagged by some person. He was taken to the place behind his resting room. He came to know about that place only when he was released on the next day morning. Those persons put adhesive tape on his mouth. The ear belt was put on his eyes and adhesive tape was fixed on that ear belt. The said ear belt was belonging to PW 4 Sumitkumar Tiwari and it was of blue colour and he was using it during night hours while on duty. The adhesive tape was fixed on his forehead in such manner that the ear belt was completely stuck on his eyes by the said adhesive tape.

xvi) The handset of PW 4 Tiwari was taken out by them from his pocket along with key of his room.

xvii) After 2 to 3 minutes, his hands were tied on his backside. He was made to sit cross legged and his legs were also tied. They gave him life threats in the event of taking any action. He was lifted by them in the same condition and tied behind the toilet to a pole of the compound wall. His hands were already tied and in that condition, were again tied to the pole.

xviii) After 15 to 20 minutes, he heard cry of deceased Chitra Munot.

xix) Somebody was present there and he was constantly threatening PW 4 Sumitkumar Tiwari of his life. PW 4 Sumitkumar Tiwari was trying to get himself rescued but could not succeed. After 5 to 6 hours, he heard the noise of birds and thought that it must be morning. He again tried to rescue himself and after several attempts, the wire with which his hands were tied to the pole got cut and he became free from the pole. He has also tried to remove the ear belt from the eyes with the help of his knees because he was in sitting condition. The said ear belt got loosen to some extent. Though he had tried to get up, but he could not do so. Ultimately, with the help of boundary made of tin sheets, he could stand with difficulty. Though he has tried to walk, but fell down because his hands and legs were tied. He started jumping slowly for going ahead. Though he fell down while jumping, somehow, he reached up to the road in front of his room. It took him about 45 minutes to one hour for reaching up to the road by jumping and falling. There were no lights inside the bungalow and there was darkness. He reached near the gate of the bungalow of neighbour

Gundecha. The watchman of neighbour Gundecha came near the gate of his bungalow and he did not release hands of PW 4 Sumitkumar Tiwari by saying that he would ask his landlady and he went inside the bungalow.

B. Evidence about post-incident scenario in the bungalow:

i) PW 4 Sumitkumar Tiwari alongwith neighbour Gundecha anti and their watchman and one maid servant returned to the bungalow of deceased Ramesh Munot. The main entrance door of the bungalow was found closed. They reached to the backside of the bed room of deceased Ramesh Munot. PW 4 Sumitkumar Tiwari again called through the window of the bedroom. They opened the outer planks of the window of the bed room of deceased Ramesh Munot. They saw through the window that deceased Chitra Munot was kept tied on the chair. Thus they went to the backside of the kitchen door and pushed it and it was opened. There were a lot of blood stains in the kitchen and in the rooms inside the bungalow. They went in the living hall by avoiding the blood stains. They found that deceased Ramesh Munot was lying dead in the living hall and there was lot of blood beneath his head. There were blood stains in the hall.

ii) They went inside the bedroom. They found that a saree was tied around the head of deceased Chitra Munot and her mouth was stuck with adhesive tape. Saree was wrapped around the entire mouth and the adhesive tape was visible through that saree. There was injury on the neck of Chitra Munot and blood had oozed from that injury. Her left leg was tied to the right leg of the chair with the help of cloth.

iii) Boxes in the bed room were lying scattered. Those boxes were of jewellery.

vi) PW 4 Sumitkumar Tiwari narrated all the above facts to neighbour Gundecha. By that time, yoga teacher came there. PW Sunil, nephew of deceased Ramesh Munot, also came there about 7.00 a.m. to 7.30 a.m. About 8.00 a.m. to 8.30 a.m., police also came on the spot and the other relatives of deceased Ramesh Munot also came there. PW 4 Sumitkumar Tiwari also received a telephone call from the younger son of deceased Ramesh Munot, namely, Sumit. PW 4 Sumitkumar Tiwari also told him the entire incident. His statement was recorded by the police. The police

asked his mobile number. PW 4 Sumitkumar Tiwari also showed them the wire with the help of which he was tied and also the adhesive tape used against him.

C. Identification of accused.

i) On 18.12.2007, PW 4 Sumitkumar Tiwari was called in the Sub-jail, Ahmednagar for identification of the accused. He was also accompanied by PW 27 Anita, made servant working in the bungalow and two to three other persons. They were asked to sit in a room where they could not see outside and the outsiders could not see the insiders. They were called inside the jail one by one by calling their names.

ii) There were 12 persons standing in a row. All the 12 persons were almost of the same height. PW 4 Sumitkumar Tiwari was asked whether he was able to identify the persons who had come in the room of bungalow in the afternoon and in the morning. He has looked at each and every person carefully and touched two of them and told that those two persons had come in the bungalow in the morning at about 1.00 p.m. or 1.15 p.m. Those two persons had also come in the night and one of them had come inside the small

gate and the other was standing near the pole. One of them was said Subhash and the other person was talking with accused Shivkumar Saket.

iii) PW 4 Sumitkumar Tiwari has pointed out in the open court towards accused no.4 Rajeshsingh Thakur and accused no. 5 Sandip Patel as the persons whom he had identified in the jail and who had come in the bungalow at the relevant time. Accused no.5 Sandip Patel told his name as 'Subhash' in the night when he was allowed to enter through the small gate.

iv) PW 4 Sumitkumar Tiwari was again called after 15 to 20 minutes. He was asked to identify the culprits from out of 7 persons who were standing in the row. He looked at all the 7 persons carefully and touched one person and identified him as the person who had come and talked with accused Shivkumar at about 11.00 a.m. to 11.30 a.m. and again was standing near the electric pole in the night when Subhash (accused no.5 Sandip Patel) entered through small gate.

v) PW 4 Sumitkumar Tiwari has identified the accused wearing

shirt of blue and white coloured strips sitting before the Court as the person whom he had identified as the person who talked with Shivkumar at about 11.00 a.m. to 11.30 a.m. and also come in the night. He had identified the said person as accused no.6 Balendrasingh Thakur.

D. Identification of articles.

PW 4 Sumitkumar Tiwari has identified the articles which were shown to him. He has identified the mobile handset-article 83 as belonging to him. He has also identified articles 31 to 44 which include his ear belt of blue colour, electric wire of red and black colour, antenna wire and the adhesive tape used for closing his mouth and pasting ear belt on his eyes.

14. PW 4 Sumitkumar Tiwari was subjected to cross-examination at length. He was asked as to why he has not sustained any injury on his shoulder and face while jumping in tied condition and falling on ground repeatedly. He was also cross-examined on the point that why he did not sustained any bleeding injury on his hands when his hands were tied with the help of wire. PW 4 Sumitkumar Tiwari has however given reasonable explanation for

the same. He has deposed that he did not sustain any bleeding injury on his hands but his hands got blackened. He has also deposed that he did not fall on the road while jumping. He did not sustain scratches on his shoulders despite falling because he was wearing clothes like jerkin to prevent cold. PW 4 Sumitkumar Tiwari was also put certain questions to the effect that his involvement in commission of the crime so also suspected by the police and he was kept in custody by the police for some days after 03.12.2007. However, PW 4 Sumitkumar Tiwari has denied the same. There are certain omissions pointed out to the witness, however, those are not material omissions to disbelieve his evidence.

15. PW 4 Sumitkumar Tiwari was also subjected to cross-examination at length on his identification of the accused during parade and before the court. PW 4 Sumitkumar Tiwari though has stated in his cross-examination that the persons who were lined up were not exactly of the same height and all those persons were having different hair styles, however, he has also stated that the persons who were lined up for identification parade were all of same age group and were almost of the same height. He has also

stated in the cross-examination that all were having mustaches and all of them were wearing cloths of the same colour but of different shades like dark or light shade. All those persons were medium built. Though the defence has subjected him to cross-examination at length on the point of identification, however, nothing has been revealed during cross-examination to disbelieve his evidence on the point of identification of the accused. In the cross-examination, at para 33, PW 4 Sumitkumar Tiwari has deposed that the main door of the bungalow was closed on 03.12.2007 when he tried to enter the bungalow. All the lights inside the bungalow were off. There was blue coloured saree on the person of deceased Chitra Munot. There was a black colour jacket and half pant of dark blue colour and T-shirt of gray colour on the person of deceased Ramesh Munot when he saw the dead body of deceased Ramesh Munot on 03.12.2007. All the windows of the bungalow were having curtains from inside. He has denied that he has planned the dacoity by taking information during the period of two months of his duty. There were also certain omissions put to him, however, those omissions are not material. Learned Judge of the trial court has rightly observed that considering the frightened state of mind of PW 4 Sumitkumar Tiwari when he has recalled the incident in the

witness box, it is but obvious if certain omissions have appeared in his evidence. Further, he is a Hindi speaking person and his mother tongue is not Marathi.

Spot Panchanama Exhibit 65

16. The prosecution has examined PW 3 Gangaram Hiranandani to prove the contents of the spot panchanama Exhibit 65. The spot panchanama Exhibit 65 fully corroborates the evidence of PW 4 Sumitkumar Tiwari. The evidence of PW 3 Gangaram and the contents of the spot panchanama Exhibit 65 are important to consider the (a) campus of the bungalow from outside, (b) premises of the bungalow inside the gate and (c) inside premises of the bungalow.

a. Campus of the bungalow from outside

i) The compound wall of the bungalow is about the height of 5 feet. Above the compound wall, there is grilled barricade of the height of 2 feet. The name of the bungalow is “Basant” and its owner’s name is Ramesh N. Munot.

ii) There is a gate of the width of about 10 feet and height of about 8 feet near the nameplate. The gate is having fiber sheet. There is a small gate near the main entrance gate. There are domes of light on the three pillars of the gate.

b. Premises of bungalow inside the gate

There were blood stains on the cement concrete slop near the main entrance inside the gate. There were blood stains on various places from the main entrance gate of the compound wall till the main entrance door of the bungalow. One intercom was found near the main entrance gate on the east-south corner. There is a porch in front of the main door of the bungalow and there is some distance between the porch and main entrance door of the bungalow. The main entrance door of the bungalow is of the height of 7 feet and width of 4 feet, made of stick wood. There were blood stains on the latch of the entrance door. There were blood stains on the other parts of the door also.

c. Inside premises of the bungalow

i) Inside the bungalow, there was a staircase made of marble

for going upstairs from the right side of the passage. The staircase was having railing of grill. There was a wooden cupboard beneath the staircase. There was a ladies hairpin studded with artificial diamond on the floor near the said cupboard. The hairpin was stained with blood. There was a dust-bin in the corner of the staircase. It was also found stained with blood. There was a glass door on the left side of the passage. Inside the glass door, there was a sitting room of deceased Ramesh Munot. There were some books and some show pieces on the show-case. There was a wooden sofa on the eastern and southern side of the room. There was a curtain fixed on the door. There were various articles in the room as well as *varandah* beyond the western side wall of the room.

ii) There were blood stains on various places in the main hall. The police in presence of the *pancha* witnesses have seized various articles including sim card, blood etc. from the spot.

iii) The bedroom of deceased Ramesh Munot is towards western side of the hall. There were various articles in the bedroom. The window on the western side wall was found slightly open. There was a chair facing towards east. There were bloodstains found on

and around the chair. It was informed to the *pancha* witness that deceased Chitra Munot was found tied to the chair and she was assaulted by the culprits there only. One knife was found at the south-east corner of the bed. The knife was found kept on the bed and it was having black colour grip of the length of 4 to 5 inches. Its blade was of steel having length of 7 to 8 inches. The said knife was stained with blood. It was seized, sealed and kept in a plastic bag. There was an empty purse, four empty boxes of jewellery and one empty box of Titan wrist watch which came to be seized from the spot.

iv) Further, bloodstains were also found scattered on the floor of the kitchen and on the kitchen *ota*. The electric switches were in off mode and they were stained with blood. There were blood stains up to the water tap which was at a distance of 15 to 20 feet towards western side of the door of the kitchen. The floor area of the place from kitchen up to the main entrance gate was stained with blood.

v) There was a watchman room on the opposite side of the bungalow after crossing the road. There were bloodstains on the

road up to the watchman room. A piece of electric wire of the length of about 10 feet along with cap of holder was found on the spot by which the watchman was tied. The latrine bathroom is on the south side of the watchman room. The floor of the place where the watchman was tied was stained with blood. The wire, cap of holder and the piece of tile were stained with blood. The *pancha* witness has identified all the articles seized from the spot before the Court.

Inquest panchanama Exhibits 50 and 51.

17. The prosecution has drawn two separate inquest panchanama of the dead bodies of Ramesh Munot and his wife Chitra Munot.

i) The inquest panchanama Exhibit 50 is of the dead body of Ramesh Munot. The prosecution has examined PW 1 Dilip Pitale to prove the contents of the said panchanama Exhibit 50. It appears from the evidence of PW 1 Dilip Pitale and the contents of the inquest panchanama Exhibit 50 that one dead body of male was lying near sofa. An adhesive tape of white colour was pasted on the lips of the dead body. The nephew of the deceased, namely, Sachin

Munot, identified the dead body. It was of deceased Ramesh Munot. There was blood on the face of the body which was in dry condition. There was one injury beneath right eye lid. There was blood on the nose of corpus and also on the part of face. There was injury on the right side pale of ear. There was T-shirt of ash colour on the person of the deceased and there was a jerkin of black colour having chain on the person of the deceased. There was half pant of blue colour on the person of deceased. There was injury on the left side chest 7 cm upward to the nipple near shoulder. It was a deep wound. There was other injury on the left side chest 14 cm. upwards from nipple. Both the injuries were vertical. Blood was found clotted near those injuries. PW 1 Pitale has identified the T-shirt article 49, baniyan article 45 and the jerkin.

ii) The prosecution has examined PW 2 Ramchandra Pawar to prove the contents of the inquest panchanama Exhibit 51 of the dead body of deceased Chitra Munot. It appears from the evidence of PW 2 Ramchandra Pawar and the contents of inquest panchanama Exhibit 51 that the dead body of Chitra Munot was found tied to a chair in the bed room near *diwan* and the face of corpus was covered with the help of scarf and sari. Both hands of

the body found tied with the help of telephone wire and they were in cross condition. Both hands of the body were tied with the help of small rope to the left side of the chair. The left leg of the body found tied to the right side of the chair with the help of sari. The adhesive tape was found pasted on the mouth. There was injury on the throat of the body. There were blood stains on the backside of the neck. There were wheel marks on both wrists of the deceased. The skin of both wrists was reddish black in colour. The skin of left leg was also found reddish black colour near ankle.

18. There is nothing in the cross-examination to disbelieve the contents of the spot panchanama Exhibit 65 and the inquest panchanama Exhibits 50 and 51 respectively. The contents of the spot panchanama Exhibit 65 fully corroborate the evidence of PW 4 Sumitkumar Tiwari pertaining to (i) the outside premises, (ii) the premises inside the gate of the bungalow, (iii) the inner side of the bungalow, (iv) the watchman room and (v) the latrine and bathroom behind the watchman room. It also appears from the contents of the inquest panchanama Exhibits 50 and 51 respectively that both the deceased were subjected to extreme violence and the leg of deceased Chitra Munot aged 52 years was

found tied with the leg of the chair despite her hands were tied backside of the chair.

19. There are certain small links of circumstances. However, those links are also important which help the prosecution to complete the chain.

i) PW 27 Anita Kamble has corroborated the prosecution story to the extent that she has given *papai* to PW 4 Sumitkumar Tiwari, accused no.3 Shivkumar Saket and his wife Sangita on 02.12.2007. She has also supported the prosecution story about handing over the *khari* pocket to Sangita as directed by deceased Chitra Munot. She has also deposed about the presence of unknown persons near toilet of the watchman room along with accused no.3 Shivkumar Saket. She has also deposed in her evidence that on that day, accused no.3 Shivkumar Saket has collected Rs.1,700/- from deceased Chitra Munot for giving it to driver Sattar. PW 27 Anita Kamble has also identified the said unknown person noticed by her near the toilet of the watchman room along with accused no.3 Shivkumar Saket.

ii) PW 32 Jitendra Pawar has also corroborated the prosecution

story to the extent of payment of Rs.1,700/- to accused no.3 Shivkumar Saket on the say of deceased Chitra Munot in presence of PW 27 Anita Kamble on the basis of the voucher for paying it to the driver Sattar.

iii) PW 29 Sattar Sayyad Noor Sayyad was working as driver in Sumesh Industries, Kedgaon since 1989. He used to take amount from the office on voucher. He was to go to Jaharabad in Andhra Pradesh after loading goods. Thus, he has obtained Rs.1,200/- from Classic Company by passing voucher. PW 29 Sattar has deposed that when he came to know that accused no.3 Shivkumar Saket has taken Rs.1,700/- on voucher for him, he informed PW 27 Anita Kamble that he had no talk with accused no.3 Shivkumar, nor they met each other and he had not received any amount from accused no.3 Shivkumar Saket.

iv) PW 28 Sau. Suraj Sharad Gundecha has also corroborated the post incident prosecution story. She has seen the condition of PW 4 Sumitkumar Tiwari. His hands and legs were tied. She has also corroborated the prosecution story about the entire scene in the bungalow of deceased Ramesh Munot. There was some religious function at her bungalow on 02.12.2007 and many

persons had come there to attend the said function.

v) The prosecution has examined PW 24 Sachin Dalvi who is employee of Classic Wheel Company owned by deceased Ramesh Munot. He used to attend office which is in the premises of the Basant bungalow, Chandan Estate, where deceased Ramesh Munot was residing. He has deposed that prior to accused no.3 Shivkumar Saket, accused no.2 Shailendrasingh Thakur and one Subhash were the watchmen at the said bungalow. However, in the month of August 2007, accused no.2 Shailendrasingh Thakur was removed from work as he behaved indecently with one employee of the company, namely, Shubhangi. The other watchman left the job and went to his native place. Prior to that, accused no.4 Rajeshsingh Thakur was working as watchman and accused no.1 Raju Darode was driver on the vehicle of deceased Ramesh Munot one year prior to the incident. PW 24 Sachin Dalvi has deposed that on 1st and 2nd December, he was on leave and went to Pune for private work. He returned from Pune at 8.00 p.m. on 2nd December. After taking dinner, He was going towards saloon on foot by 9.00 p.m. to 9.15 p.m. for cutting hair. At that time, he has noticed crowd near bungalow of Gundecha family which was near the bungalow of

deceased Ramesh Munot. Some religious function was going on there. PW 24 Sachin Dalvi has further deposed that at that time, he noticed 5 to 6 persons chitchatting near electric pole near bungalow of deceased Ramesh Munot. On seeing him, those persons stopped chitchatting and PW 24 Sachin Dalvi saw that accused nos. 1 to 4 were standing there with two unknown persons. He has asked accused no.3 Shivkumar Saket as to what they are doing there at such late night hours. He told that he was there to see his native village persons. At 10.30 p.m., while returning back at home, he noticed that PW 4 Sumitkumar Tiwari was not in the bungalow. PW 24 Sachin Dalvi thought that PW 4 Sumitkumar Tiwari might be taking round in the bungalow premises. PW 24 Sachin Dalvi has thus seen all the accused persons near Basant bungalow of deceased Ramesh Munot just prior to the incident.

vi) PW 19 Rajendra Bhandari is the owner of medical shop, namely, Dhanashri Medical and General Stores. According to him, two persons had come to his shop to purchase two small adhesive tapes and five minutes later, they again came to his shop contending that they do not want those small tapes and instead they

want the tapes larger in width. Accordingly, they had returned the two small tapes and paid for bigger tapes and took the same and went away. They have also returned the bill for purchase of small tapes and accordingly, PW 19 Rajendra Bhandari gave them bill for subsequent purchase of bigger adhesive tapes. Those adhesive tapes were of Johnson and Johnson company. He has identified accused no. 1 Raju Darode and accused no. 3 Shivkumar Saket as those two persons who had been to his shop for purchasing adhesive tapes. Though he was subjected to cross-examination at length that there was no special reason for him to remember the customers visiting his shop for purchase of medicines and other articles, however, he has stick up to his evidence.

vii) PW 26 Rajendra Patole is serving in Surekh Sangam shop as salesman. It is the shop of utensils. According to him, on 02.12.2007, two persons had been to his shop to purchase knives. They purchased Cartini make one small and one big knife. He has also deposed that the big knife was worth Rs.138/- and the small one was of Rs.105/-. According to him, those two persons paid the bill of Rs.250/- to the shop owner. He has handed over the said knives and the bill in plastic bag to those persons. They were

speaking in Hindi language. From their language, they appeared to be from U.P. or M.P. The age group of those persons was 20 to 22 years. One was tall in height and having fair complex. The another was simple looking and medium height. PW 26 Rajendra Patole has identified the *muddemal* article 9 i.e. the big knife and *muddemal* article 166 the small knife. PW 26 Rajendra Patole has also identified in the identification parade accused no. 4 Rajeshsingh Thakur and accused no.5 Sandip Patel as the persons who had been to his shop for purchasing knives. He has also identified them before the Court. Though he was submitted to searching cross-examination, however, there is nothing in his cross-examination to disbelieve his evidence.

Evidence about homicidal death.

20-i. The prosecution has examined PW 23 Dr. Suvarnamala Bangar, who has conducted postmortem examination on the dead bodies of Chitra Munot and Ramesh Munot. On examination of dead body of Chitra Munot, PW 23 Dr. Bangar has noticed rope marks on both wrists. There was incised wound over mid line of neck ad-measuring 5 cm X 1 cm. The throat was mostly cut below thyroid cartilage 1.5 cm semi circular in size. In her opinion, the

cause of death was because of cut throat injury. Through the neck blood was aspirated to the respiratory passage due to which patient was asphydiated. In her opinion, the injury on the person of deceased Chitra Munot was possible on account of weapon knife shown to her in the court articles 9 and 166.

20-ii. On the same day, PW 23 Dr. Suvarnamala Bangar has also conducted postmortem examination on the dead body of Ramesh Munot. She has noticed the following four incise wounds on the dead body :

1. 3x1 cm x 8 cm (on second inter costal space i.e. below second rib it was on right side. The said injury was above nipple ad-measuring 11 cm.
2. On the left side of second intercostal space ag 5x2x10 cm below i.e. second rib region on the left side.
3. 5x2x11 over fourth intercostal space i.e. below fourth rib region. left side. This injury was located at 7 cm. above left nipple.

4. incised wound over right lateral corner of right eye
it was vertical ad-measuring 1 cm x 5 mm x 5 mm.

According to PW 23 Dr. Bangar, all above four injuries were *ante mortem* injuries. She has also noticed the corresponding internal injuries :

Right pleura was broken at second intercostal space and there were two breaks at second and 4th intercostal space to left pluera. There was incised wound admeasuring 2 cm at right lung. Lower part of left lung was also found to be cut. Covering of heart (pericardium) was also broken. There was incise wound to the left ventricle.....

In her opinion, the cause of death was stab injury directly to the heart and deceased Ramesh Munot had gone into hypovolumic shock and died. She has further opined that injuries on the person of deceased Ramesh Munot were possible by weapon knife articles 9 and 166 before the court. The postmortem notes Exhibits 186 and 187 are accordingly proved by the prosecution. Though it was suggested to her that injuries on the person of both the dead bodies were not possible by articles 9 and 166, however, she has denied it.

She has also denied that in all cases when the weapon which is blunt on one side, there will be bruising and raggedness at one end of the wound. We find that the expert's opinion is based upon the notes of the postmortem examination and there is nothing in the cross-examination to draw any other inference about the cause of injuries on the dead bodies of the deceased persons by any other instrument or weapon.

21. Arrest of the accused and recovery of muddemal articles.

21-a. It appears from the evidence of PW 60 P.I. Tukaram Vahile (Investigating Officer) that during interrogation and inquiry, it was noticed by him that the suspects of the crime may be previous and present watchmen working at the Basant Bungalow of deceased Ramesh Munot and they were from the State of Madhya Pradesh. It further appears that during interrogation with PW 4 watchman Sumitkumar Tiwari, it was revealed that his mobile phone was stolen away. Thus, PW 60 P.I. Tukaram Vahile (I.O.) has contacted Vodafone company to ascertain the location of said mobile and it was found that it was used in Bhusawal area. It was also revealed during the course of investigation that accused no.2 Shailendrasingh Thakur and accused no. 4 Rajeshsingh Thakur

were working as watchman of the said bungalow previously and at that time, working at Shivshakti Industries at M.I.D.C., Supa. Thus, PW 60 P.I. Tukaram Vahile (I.O.) has taken a clever move to find out those watchmen first. Thus, he has sent PW 49 A.P.I. Rakh (the then P.S.I.) to Kedgaon and Supa M.I.D.C. in search of those watchmen. Thereupon, PW 49 P.S.I. Rakh has visited Shivshakti Industries, Supa. Accused no. 2 Shailendrasingh Thakur was working as watchman in the said company. It was revealed in the said inquiry that accused no. 2 Shailendrasingh Thakur, accused no.6 Balendrasingh Thakur, accused no.5 Sandip Patel and two watchmen were absent on duty since 02.12.2007 at about 11.00 a.m. Thus, PW 49 P.S.I. Rakh has collected information about the residence of those persons and went there. He went on the first floor of the house of Jafarbai along with pancha witnesses. Those persons were residing in the said building. On reaching there, PW 49 P.S.I. Rakh has searched the bags of the said accused persons, namely, accused no.2 Shailendrasingh Thakur, accused no. 4 Rajeshsingh Thakur and accused no.5 Sandip Patel. In the bag of accused no.2 Shailendrasingh he has noticed six articles and those were seized under panchanama Exhibit 93 in presence of the panchas. Those articles were one faint blue colour shirt having

name engraved on one side and the word “Security” engraved on the other side, discharge card of one Anandrishiji Hospital pertaining to the treatment taken by accused no.2 Shailendrasingh in the said hospital and his discharge summary, school leaving certificate, money order receipts, phone diary, daily diary with photocopy of ration card of deceased Ramesh Munot and duty register. The aforesaid seized muddemal articles vide Exhibit 93 are articles 58 to 63.

21-b. PW 60 PI. Tukaram Vahile (I.O.), after noticing that those missing watchmen are hailing from the State of Madhya Pradesh, has very appropriately applied his mind and contacted the Railway Station Manager PW 40 Arun Patil. PW 40 Arun Patil was working as Station Manager, Ahmednagar. From Ahmednagar station, train proceeds for the destination of Delhi, Nagpur, Madras, Madhya Pradesh, Gujrath, West Bengal etc. PW 40 Arun Patil has given information that Pune to Patna Express departed from Ahmednagar at about 00.10 a.m. on 03.12.2007. Thereafter, PW 40 Arun Patil, Railway Station Manager, on the basis of the record, has supplied the information that six tickets were sold for Ahmednagar to Satna and one ticket was sold for Ahmednagar to Manikpur

(which is near Satna Station). These tickets were issued from window nos. 5 and 3 respectively, of the Railway Station. Four tickets for Ahmednagar to Satna (Exhibits 233, 234, 235 and 237) were sold for four adults at 23.17 hours on 02.12.2007 and one ticket for Ahmednagar to Manikpur journey Exhibit 236 for one adult was sold at 20.09 hours on 02.12.2007. It is also revealed during investigation that for going to Riva (State of Madhya Pradesh), one has to take ticket from Satna Railway Station. Accordingly, information was given to all the district places on railway line from Ahmednagar to Satna to trace out the culprits. PW 60 PI. Tukaram Vahile (I.O.) has also appropriately guessed that one of the culprits has sustained bleeding injury in the said incident.

21-c. In the evening, the Superintendent of Police, Ahmednagar informed PW 60 PI. Tukaram Vahile (I.O.) that five suspected culprits have been apprehended by Katni Police Station. The prosecution has examined PW 52 PI. Mangalsingh Thakur, resident of Tehara, District Gwalior, Madhya Pradesh. On 03.12.2007, he was attached to Railway Police Station, Katni. He was given the information about dacoity at Ahmednagar and the

dacoits are likely to be arrived by Pune Patna railway. It was informed to him that they were five persons in all, including one female. Accordingly, he alongwith staff, checked the Pune Patana rail which arrived at platform no. 2. In a general bogi, one lady was sitting with small kid and on making inquiry with her, she had disclosed that she had come from Ahmednagar. She had told her name as Sangita (original accused no. 7) and also shown other four-five male members with her. He has just taken them in custody and also with the help of two police, taken custody of their luggage. He has brought them in the police station. PW 52 P.I. Mangalsingh Thakur has further deposed that one Rajeshsingh (accused no. 4) had injury on his hand caused with knife. The bag of accused no. 4 Rajeshsingh was opened in his presence and the articles found therein were seized by drawing seizure panchanama Exhibit 102.

21-d. The prosecution has examined PW 8 Sallan Ali Musalman to prove the contents of panchanama Exhibit 102. The black colour bag of accused no. 4 Rajeshsingh was searched in presence of the pancha witnesses and one gold necklace known as 'Panchali Har', gold ear tops, one Nokia mobile handset, charger,

cash amount of Rs.12,000/- and one Rado make wrist watch was found. PW 8 Sallan Ali Musalman has also identified accused no. 4 Rajeshsingh Thakur before the Court during the course of his evidence and also identified the muddemal articles as referred above. He has also deposed that there was injury on the right palm of accused no. 4 Rajeshsingh Thakur and it was bandaged by handkerchief.

21-e. The prosecution has examined PW 54 Dr. Suresh Jain before whom accused no. 4 Rajeshsingh Thakur was brought for his medical examination. On examination, he found incised wound on right hand palm in the middle with clotted blood. It was a penetrated wound passed through the palm and there was no movement of middle finger. In his opinion, the injury was caused by hard and sharp and pointed object within 24 hours and it was grievous in nature. According to him, such type of injury is possible with muddemal articles 9 and 166 knives. He has issued medical certificate which is marked at Exhibit 334.

21-f. Thereafter, luggage of suspected lady passenger Sangita was opened and searched. Her bag was also of black

colour. There were two yellow colour bangles of child, a pair of ear tops, a mobile handset, a dress of security guard in the bag and an amount of Rs.1750/- was also found in the bag. Likewise, one sari and clothes of child were also found in the bag. The said articles came to be seized by drawing separate panchanama Exhibit 103. PW 8 Sallan Ali Musalman has identified those articles before the court as referred above. PW 8 Sallan Ali was confused while identifying muddemal articles when mixed with other muddemal articles. However, his evidence coupled with the evidence of PW 52 PI. Mangalsingh Thakur inspires confidence. There is no reason for the Police Inspector of Police Station Katni to draw any false panchanama of the articles found in the bag.

21-g. Further, the bag of white colour (article 108) was found with accused no. 3 Shivkumar Saket. PW 8 Sallan Ali has deposed that the bag of accused no. 3 was opened. The said bag was containing dress of security guard (article 109), clothes of child i.e. four T-shirts, one half pant, towel and gown (article 110), a CD player (article 111), a lady wrist watch (article 104), white coloured plastic fertilizer bag (article 112/1), utensils like cooker, steel boxes and tiffin (articles 112/2, 112/4, 112/5, 112/6 and

112/7), two blankets (article 112/3), a lady wrist watch (article 105), a pair of nose ring (article 106) came to be seized by drawing panchanama Exhibit 104.

21-h. PW 52 P.I. Mangalsingh Thakur has thereafter deposed that one blue colour jeans bag was found with accused no.8 Shivbhavar Adivasi and certain articles came to be seized from his bag as per panchanama Exhibit 105.

21-i. PW 52 P.I. Mangalsingh Thakur has further deposed that one black colour bag was found with accused no. 6 Balendrasingh and the articles found in the said bag were seized as per Exhibit 106. PW 8 Sallan Ali Musalman has also deposed about the contents of panchanama Exhibit 106 and his signature below it. The said bag was containing a pair of uniform of security guard, mobile handset with charger and cash amount of Rs.1000/-. PW 8 Sallan Ali Musalman is a registered coolie and considering the same, even if certain minor deficiencies are there in his evidence, those can be ignored.

21-j. Further, PW 52 P.I. Mangalsingh Thakur has effected

arrest of accused no.3 Shivkumar Saket, accused no. 4 Rajeshsingh Thakur, accused no. 6 Balendrasingh Thakur, accused no.7 Sangita (acquitted) and accused no. 8 Shivbhavar (acquitted) by drawing arrest panchanama and further referred accused no. 4 Rajeshsingh Thakur for his medical examination. PW 52 PI. Mangalsingh Thakur has also produced the station diary index containing nine pages marked at Exhibit 325. The said station diary unmistakably point out the search and seizure of all the articles as deposed by PW 52 PI. Mangalsingh Thakur and PW 8 Sallan Ali Musalman.

21-k. PW 51 Inspector Mohammad Aslam, attached to Laur Police Station, Deotalab, District Riva, State of Madhya Pradesh, has deposed that on 03.12.2007, at about 8.00 p.m., he has received a call from Superintendent of Police, Riva informing him about the dacoity with murder committed at Ahmednagar by certain accused persons who are the local residents of his police station. The Superintendent of Police, Riva has directed him to take search of the accused persons. Accordingly, PW 51 Inspector Md. Aslam along with his police staff went to village Kemhai, Bihar, Chhapra, Umari, Suzi by taking entry to that effect in the station diary. On 04.12.2007, he went to Deotalab along with PW 46

Ramnaresh Soni and one Ashok Soni and started proceeding towards village Satna. He reached there at about 7.30 a.m. on 04.12.2007. He has noticed accused no. 5 Sandip Patel while carrying one bag with him. He has apprehended and inquired accused no. 5 Sandip Patel as to the contents of the bag. PW 51 Inspector Md. Aslam took search of the articles of the said bag. It was a black colour bag (article 150) on which word 'Dunhill' was written. The bag was also seized. It contained article 151-three gold wires, article 152-gold tops, article 153-pair of gold tops, article 154-pair of gold tops, article 155-pair of gold tops, article 156-pair of gold tops, article 157-gold bindiya, article 158-pair of gold tops, article 159-pair of gold tops, article 160-ration card, article 161-visa card of deceased Ramesh Munot, article 162-small jewelry bag having name Kapadiya Jewelers, article-163 wallet having blue colour border, article-164 one handkerchief containing cash amount of Rs.64,503/- and article 165-currency note of 50 US Dollars. The ornaments found in the said bag were weighed through pancha witnesses and thereafter, seizure panchanama was prepared. All the above articles have been identified by pancha witness PW 46 Ramnaresh Soni of the seizure panchanama Exhibit 270.

21-l. PW 46 Ramnaresh Soni was the pancha witness of the panchanama Exhibit 270. He has identified the muddemal articles 151 to 165 produced before the Court. Further, PW 51 Inspector Md. Aslam has also effected arrest of accused no.5 Sandip Patel by drawing arrest panchanama Exhibit 271.

21-m. Thereafter, PW 51 Inspector Md. Aslam has also noticed one another suspect accused no. 2 Shailendrasingh Thakur proceeding with a heavy bag of cloths. He was apprehended with the help of panchas and police. Besides gold and silver ornaments in the bag of accused no. 2 Shailendrasingh Thakur, cash amount of Rs.40,000/-, a check book of Ahmednagar Merchant Co-operative Bank in the name of deceased Chitra Munot, one key having inscribed name Habib, Korean currency of 1000 Won, one pearl garland known as 'Ranihar' weighing 44 gms. and two railway tickets having nos. 02260979 and 02260978 were found. All those articles were seized under panchanama Exhibit 272 in presence of pancha witness PW 46 Ramnaresh Soni. PW 51 Inspector Md. Aslam has taken station diary entry about the said search and seizure which is marked Exhibit 306. He has also noticed injury on

the left hand palm and near thumb of accused no. 2 Shailendrasingh Thakur. Both the accused were referred for medical examination.

21-n. PW 53 Dr. Arvind Sushilchandra Misra deposed that on 05.12.2007, he was attached to Community Health Center at Mahuganj as Medical Officer. Accused no. 2 Shailendrasingh Thakur was taken to him with letter Exhibit 329. He has examined accused no. 2 Shailendrasingh and found incised wound on left hand palm of size 1 x 1/4 x 1/4 cm caused by sharp and hard object like knife. Accordingly, he has issued medical certificate and the same is marked at Exhibit 330. PW 5. Dr. Arvind Misra has also examined accused no. 5 Sandip Patel. There was no injury on his person. The medical certificate Exhibit 332 is issued to that effect.

21-o. PW 50 A.P.I. Abdul Gafar Sardar Shaikh was attached to Kotwali Police Station, Ahmednagar in the month of December 2007. On 03.12.2007 at about 7.30 p.m., he went to Katni in State of Madhya Pradesh to take custody of the accused. He met the Railway Police Officer P.I. Mangalsingh Thakur. Four male and one female accused were in his custody and those were accused no. 4

Rajeshsingh Thakur, acquitted accused no. 7 Sangita Saket, accused no. 6 Balendrasingh Thakur, acquitted accused no. 8 Shivbhavar and accused no. 3 Shivkumar Saket, along with muddemal articles. He has taken said accused persons in custody with permission of the local court. The learned Magistrate granted transit custody on 04.12.2007. Accordingly, he has brought said accused persons to Kotwali Police Station, Ahmednagar alongwith documents, namely, arrest panchanama, medical examination papers, case diary, journey tickets of the accused and muddemal property. He has submitted a report to Kotwali Police Station marked at Exhibit 301. He has also taken entry in the station diary while leaving Katni Police Station. The extract of the said entry taken at Katni Police Station is marked at Exhibit 302. Acquitted accused Sangita was having small kid with her at that time.

21-p. PW 56 A.P.I. Dattatraya Pardeshi attached to L.C.B. Ahmednagar as P.S.I., on 03.12.2007 at 7.00 p.m., as per directions of the superior officer, along with police staff had proceed to Laur, State of Madhya Pradesh. He reached there at the night of 4.12.2007. On 5.12.2007, he went to Laur Police Station early in the morning. He learnt that the accused were taken to the court.

Therefore he went to the court in the noon. He submitted a report to the court for transfer of the accused in the crime registered at Kotwali Police Station, Ahmednagar. PW 51 Inspector Md. Aslam was in-charge of the Laur Police Station. A copy of the said report is marked at Exhibit 339. He took the accused persons in his custody, so also the documents prepared by PW 51 Inspector Md. Aslam i.e. seizure panchanama, arrest panchanama, medical report, case diary and seized articles from them. He has taken custody of accused no. 2 Shailendrasingh Thakur and accused no. 5 Sandip Patel. On reaching to Ahmednagar, he has handed over the accused, said documents and muddemal articles to Kotwali Police Station along with a report Exhibit 340. It appears from the contents of the report Exhibit 340 that accused no. 2 Shailendrasingh and accused no. 5 Sandip Patel were granted transit remand by the court till 08.12.2007.

21-q. It was also revealed during investigation that accused no. 1 Raju Darode was working as driver with Munot family. He was working with one Roshan Transport and he is also involved in commission of the crime. Therefore, on 04.12.2007, PW 60 PI. Tukaram Vahile (I.O.) went to the Manager of Roshan Transport.

The Manager informed him that Raju Darode is coming to Ahmednagar by railway from Shrirampur. Accordingly, he arranged a trap at Ahmednagar Railway Station and he was apprehended at 7.30 p.m. During his personal search, cash amount of Rs.1452/- and one diary was found, which was seized by drawing panchanama in presence of panchas. The prosecution has examined PW 6 Manoj Gandhi in respect of panchanama about personal search of accused no. 1 Raju Darode. On his personal search, one chocolate coloured wallet and one diary kept in pant pocket and one Nokia make mobile handset was found with him. Those articles were accordingly seized by drawing panchanama Exhibit 89. Accused no. 1 Raju Darode was thereafter brought to Kotwali Police Station along with the above referred articles. As per PW 60 PI. Tukaram Vahile (I.O.), accused no. 1 Raju Darode gave a memorandum in presence of panchas vide Exhibit 116 and at his instance, from Gondhavani area, the cash amount of Rs.57,000/- kept in a tiffin bag, Nokia make N-72 mobile and Titan make wrist watch came to be seized under Panchanama Exhibit 116/1. In order to prove the memorandum and seizure panchanama of the aforesaid articles, the prosecution has examined PW 10 Narendra Lohade, who has fully supported the contents of the memorandum

panchanama Exhibit 116 and seizure panchanama Exhibit 116/1. Though the said witness has shown his inability to identify the said articles as it has been six years ago, however, on this count alone there is no reason to discard his evidence which is otherwise reliable. It is also observed that the cash amount of Rs.50,000/- recovered at the instance of accused no. 1 Raju Darode was having slips of Sindhu Nagari Sahakari Pat Sanstha Maryadit, Ahmednagar and the said Titan make wrist watch was showing date as 02.12.2007. The said Nokia mobile handset was not having sim card and one sim card was found in the bungalow of deceased Ramesh Munot while preparing spot panchanama Exhibit 65.

21-r. Further, on 05.12.2007, accused Raju Darode gave a statement in presence of two panchas that he is ready to produce the blood stained clothes which were on his person at the time of the incident. Accordingly, memorandum panchanama was prepared vide Exhibit 122. Accused no. 1 Raju Darode took the pancha witnesses and the police to his house situated at Indiranagar. His mother was present in the house. Accused no. 1 has produced one ash colour pant stained with blood and one white colour shirt having blood stains on its sleeves, kept hidden beneath a wooden

cot in his house. The same were seized under panchanama vide Exhibit 122/1. The muddemal articles 77 and 78 are produced before the Court. The prosecution has also examined PW 11 Ranjit Pardeshi to prove the contents of the said panchanama Exhibit 122 and Exhibit 122/1. He has deposed that those clothes were kept in separate pockets and sealed in his presence and his signatures were also taken on the sealed packets. He has also deposed that there were blood stains on both the knee parts of the pant and on the left hand sleeve of the shirt. He has also identified the muddemal articles 77 and 78 before the court.

21-s. The prosecution has examined PW 13 Shantaram Kardile to prove the arrest panchanama Exhibit 145 of accused no. 2 Shailendrasingh Thakur and accused no. 5 Sandip Patel. He is also the pancha witness regarding the information collected from the muddemal article laptop with the help of computer expert. On 06.12.2007 in between 22.00 to 22.30 hrs, the arrest panchanama Exhibit 145 was drawn in his presence and the second pancha witness Santosh Kadam. According to PW 13 Shantaram Kardile, there were two accused persons wearing veils. Their veils were removed. One of them was accused no. 2 Shailendrasingh Thakur

and another one was accused no. 5 Sandip Patel. He has identified the accused persons before the Court. He has further deposed that there was injury on the left hand palm of accused no. 2 Shailendrasingh. The said injury was in bandaged condition. Though PW 13 Shantaram Kardile was not sure as to whether he could identify the accused before the Court after lapse of two years, however, he assured the court that he will try to identify them. There is a court noting that PW 13 Shantaram Kardile thereafter has correctly identified both the accused by pointing out towards them by taking their names.

21-t. PW 13 Shantaram Kardile along with another panch Santosh Kadam were again called on 02.01.2008. At that time, one Mr. Bora came in police station for examination of the laptop which was seized by the police in connection with the case. PW 13 Shantaram Kardile has deposed that one laptop in black coloured rexine bag was brought before them. It was Toshiba make blue colour laptop. The said laptop was operated with the help of charger and some prints of emails were taken out. PW 13 Shantaram Kardile further deposed that there was a card of Tata Indicom mobile. The said sim card was tested by inserting it in the

handset. Panchanama regarding the entire process was prepared. The said panchanama marked at Exhibit 146 bears his signature and the signature of other pancha Santosh Kadam. The printouts of the email are exhibited collectively at Exhibit 147. PW 13 Shantaram Kardile has further identified the rexine bag and the laptop muddemal article 86 collectively. There is nothing in the cross-examination to disbelieve the evidence of PW 13 Shantaram Kardile.

21-u. The prosecution has thereafter examined the said computer expert Atul Ratilal Bora as PW 14. He is B.E. Electronics and doing business of computer hardware maintenance at Ahmednagar. He is an expert in computer hardware maintenance. On 02.01.2008, he was called at Kotwali police station by PW 60 PI. Tukaram Vahile (I.O.) and in presence of the pancha PW 13 Shantaram Kardile and another pancha Santosh Kadam, the sealed bag containing laptop was opened. There was also a charger in the bag. PW 14 Atul Bora has thus connected the charger to the laptop and opened the laptop. The laptop was of Toshiba company and it contained Window XP version of Microsoft company. The configuration of the contents revealed that the said Window XP

version was registered in the name of Classic Wheels in Microsoft company. He also found a PCMCIA card of Tata Co. inserted in the laptop as modem for internet and e-mail connection. PW 14 Atul Bora has opened the email data and found that it contained few emails in the in-box of user by name R.N. Munot. A printer was also there. He connected the printer to the laptop and took out prints of those emails which were there in the in-box of user R.N. Munot. He has handed over the said printouts to the police. The said printouts are marked at Exhibit 147 collectively. He has further made it clear that since the Microsoft Window XP version was registered in the name of Classic Wheels by the Microsoft company, the said registered owner was authorized user of the said software.

21-v. We have also carefully gone through the said printouts marked at Exhibit 147 collectively. The said printouts corroborate the evidence of PW 14 Atul Bora. It further appears from the cross-examination of PW 14 Atul Bora that there were in all 78 emails stored in the said laptop but he was unable to tell the nature of communication in all those emails. According to PW 14 Atul Bora, password is required for having access to any email I.D. and he has no reason to know the email I.D. and password of the members of

the Munot family. The defence therefore questioned the printouts Exhibit 147 as really taken from the emails pending in the in-box of the said muddemal article 86 laptop. However, the trial court has rightly observed that the Muddemal article 86 laptop was owned by Munot family and it was found in the bag of accused no. 6 Balendrasingh after the incident. The said fact remains as it is even though the emails and the printouts thereof for certain reason are kept out of consideration.

21-w. We have already discussed in the foregoing paragraphs that accused nos. 2 to 8 were brought from Katni G.R.P Railway Police Station and Laur Police Station, Madhya Pradesh by obtaining transit remand to Kotwali Police Station and they were arrested in connection with the present crime thereafter. They were produced before the concerned Magistrate and their police custody remand was obtained. During the course of investigation, particularly when they were in police custody remand, a memorandum statement of accused no. 2 Shailendrasingh, accused no.3 Shivkumar, accused no. 4 Rajeshsingh and accused no. 5 Sandip Patel came to be recorded and further the recovery panchanama of recovery of different articles at their instance were

also drawn.

21-x. The prosecution has examined PW 16 Ashok Gaikwad to prove the memorandum panchanama Exhibit 161 and recovery thereof by drawing memorandum panchanama Exhibit 162. PW 16 Ashok Gaikwad has deposed that accused no. 2 Shailendrasingh has made a disclosure statement before him and the another pancha Sachin Pathade to show the place from where he had purchased the scarf used at the time of the alleged incident. Accordingly memorandum panchanama Exhibit 161 was prepared to that effect. It bears signature of both the panchas, PW 60 P.I. Tukaram Vahile (I.O.) and the accused. Thereafter, face of the accused Shailendrasingh was covered and along with police staff, they went to the destination in a police jeep. The jeep was taken towards Asha Talkies as directed by accused no.2 Shailendrasingh. Thereafter, accused no. 2 Shailendrasingh asked to stop the vehicle near one Krushna Hotel. He has pointed out one stall from where he has purchased the scarfs. The owner of the said stall has disclosed his name as Balesh Jain. Though PW 16 Ashok Gaikwad has not correctly identified accused no.2 before the court, however, the trial court has rightly justified the same for the reason that the

said panchanama Exhibits 161 and 162 were drawn on 08.12.2007 and the evidence of PW 16 Ashok Gaikwad was recorded on 25.07.2011 i.e. more than three and half years after drawing of the panchanama. It is further brought on record that the said witness Balesh Jain, whose statement was recorded during the course of investigation was not found during trial and his whereabouts also could not be traced out.

21-y. On 08.12.2007, accused no. 3 Shivkumar made a statement and shown his willingness to show the shop, namely Dhanashri Medical Store from where he has purchased the adhesive tape. The said shop was owned by one Rajendra Bhandari. The prosecution has examined PW 15 Mahesh Sancheti to prove the memorandum statement of accused no.3 Shivkumar marked at Exhibit 158 and the disclosure panchanama of Dhanashri Medical Store Exhibit 159. Accused no. 3 Shivkumar has taken the pancha witnesses and the police staff towards S.T. stand and pointed towards one shop namely Dhanashri Medical and General Store. A person sitting in the shop informed his name as Rajendra Bhandari and accordingly panchanama Exhibit 159 came to be prepared. He has also identified accused no. 3 Shivkumar

before the court.

21-z. The prosecution has also examined PW 19 Rajendra Bhandari who has fully supported the said fact of visit of police along with panchas and accused no.3. Shivkumar to his shop. He was questioned about the sale of adhesive tapes after drawing panchanama. After recollecting the earlier incident, PW 19 Rajendra Bhandari has deposed that two persons have purchased two small adhesive tapes first and after five minutes, they again came to his shop, purchased bigger one having large width by replacing small tapes by paying additional amount. It was of Johnson and Johnson company for which he had issued bill to those persons. PW 19 Rajendra Bhandari also gave a photocopy of the said bill to the police. It is true that there was no specific reason for PW 19 Rajendra Bhandari to remember accused persons who had purchased adhesive tapes from his shop. It appears that he has identified them for the reason that accused no. 3 Shivkumar has purchased small tapes and thereafter replaced it by purchasing large adhesive tapes by paying additional amount. PW 19 Rajendra Bhandari was also subjected to cross-examination regarding identification parade. However, the same is already discussed in the

foregoing paras. The muddemal article 5 reel of Johnson & Johnson tape was found on the spot of incident.

21-aa. On 09.12.2007, accused no. 3 Shivkumar has again given a statement that he is ready to produce the knife used in commission of the offence which was thrown by him near old bridge on railway station road. Accordingly memorandum of his statement Exhibit 168 was prepared in presence of two pancha witnesses. Thereafter, accused no. 3 Shivkumar led the police and the panchas to railway station road and produced one blood stained knife from thorny bushes near old bridge which came to be seized under panchanama Exhibit 169 in presence of the said two pancha witnesses. The prosecution has examined PW 18 Harshad Bhandari, who was the pancha witness. In his presence and another pancha Kishor Zawar, accused no. 3 Shivkumar gave a statement showing his ready and willingness to produce the weapon used in commission of the offence and accordingly, memorandum panchanama Exhibit 168 was drawn. It bears signatures of both the panchas and also that of accused no. 3 Shivkumar. PW 18 Harshad Bhandari has further deposed that accused no.3 then took them to the spot. After crossing Sina river

bridge, accused no. 3 asked to stop the vehicle and stated that he had thrown the weapon in right side direction. Thereafter, accused no.3 Shivkumar went at some distance, brought one knife from the thorny bushes and handed over the same to the police. The said knife was having blakish red colour blood stains on pointed side. It was having grip of black colour, sharp edge on one side and width of 1 inch and length of 15 to 16 cm. PW 18 Harshad Bhandari has identified accused no.3 Shivkumar before the court. Further, there is no material reason to disbelieve his version. Thus, from the evidence of PW 60 PI. Tukaram Vahile (I.O.) and PW 18 Harshad Bhandari and the contents of the memorandum panchanama Exhibit 168 and recovery panchanama Exhibit 169, it is clear that at the instance of accused no. 3 Shivkumar, the knife was recovered from the place which was exclusively within his knowledge.

21-ab. On 08.12.2007, accused no.4 Rajeshsingh while in custody, has made a disclosure statement in presence of two panchas showing his ready and willingness to show the place from where he has purchased the knives. The said panchanama is Exhibit 143. The prosecution has examined PW 12 Indrajit Jadhor, pancha witness to prove memorandum statement Exhibit 143 of

accused no.4 Rajeshsingh and the panchanama of the shop Exhibit 143/1. Accused no.4 Rajeshsingh took the panchas and the police with PW 60 P.I. Tukaram Vahile (I.O.) towards Ghas Galli and pointed out one utensils shop named as Surekh Sangam. Accused no.4 Rajeshsingh has further deposed that he along with accused no. 5 Sandip Patel purchased two knives from the said shop on 02.12.2007 and pointed towards the person sitting towards left hand side counter of the shop who sold the knives to them. The said person has disclosed his name as Rajendra Patole. PW 12 Indrajit Jadhav identified accused no. 4 Rajeshsingh before the Court. Even though nothing has been seized from the shop, however, the said information which was disclosed by accused no. 4 Rajeshsingh further gets confirmation by showing the said shop which was exclusively within his knowledge.

21-ac. The prosecution has also examined PW 26 Rajendra Patole who is the salesman in said Surekh Sangam shop. PW 26 Rajendra Patole is working in the said shop since 25 years prior to his examination before the Court. PW 26 Rajendra Patole has deposed that on 02.12.2007, two persons came in the said shop in between 2.00 to 2.30 p.m. and in Hindi language informed to him

that they want to purchase knife. Accordingly, PW 26 Rajendra Patole had shown them knives of all sizes and they had purchased one small and one big knife for Rs.105/- and Rs.138/- respectively. After payment, PW 26 Rajendra Patole handed over said knives and the bill in a plastic bag. He has also deposed about description of the clothes and age of the said persons. PW 26 Rajendra Patole further deposed that on 08.12.2007, police called him at Kotwali Police Station and shown one knife kept in transparent plastic bag and it was sealed. PW 26 Rajendra Patole has identified the said knife. On 09.12.2007, he was again called in the police station and this time, police showed him another small knife kept in transparent plastic bag duly sealed which was also identified by him. This witness has identified muddemal article nos. 9 and 166 respectively being the same knives which were sold by him to the said persons and which were identified by him in the police station on later dates. Though PW 26 Rajendra Patole had no reason to remember a customer who has purchased the articles on a particular date, however, he had a reason to remember the sale of two knives which is before six days of the incident by the persons speaking in Hindi language. We have already discussed the evidence about identification of accused no.4 Rajeshsingh in the

identification parade.

21-ad. On 09.12.2007, accused no. 5 Sandip Patel gave a memorandum statement in presence of two panchas and shown his ready and willingness to produce his blood stained clothes i.e. shirt, full pant, scarf, another pant having Nokia make phone in its pocket, some documents in the name of Munot family, which came to recovered at his instance from the roof of one room situated near urinal, which were kept in a plastic bag. The prosecution has examined PW 17 Ravi Abbot as pancha witness on the memorandum statement Exhibit 164 and the recovery panchanama Exhibit 165 of the blood stained clothes and other articles at the instance of accused no.5 Sandip Patel. PW 17 Ravi Abbot has deposed that on 07.12.2007, accused no. 5 Sandip Patel has made the disclosure statement in his presence and the another pancha witness and accordingly, memorandum statement was prepared vide Exhibit 164 which bears signatures of both the panchas, the police and also accused no. 5 Sandip Patel. PW 17 Ravi Abbot has further deposed that accused no. 5 Sandip Patel then took the police and both the panchas towards railway station and asked them to stop the vehicle near barricades. Accused no. 5 Sandip

Patel then went to right side where there was a toilet under construction and stated that the said clothes are kept on the upper side of said toilet. Then accused no. 5 Sandip Patel climbed over the said toilet and took one bag containing clothes and other articles. The said bag was containing one shirt having full sleeves and strips, one scarf, one bush shirt having yellow colour checks, Nokia make mobile phone, ash colour pant, one polythene bag containing documents such as invoice of Videocon company, passport of Ramesh Munot, photocopy of passport of Chitra Munot, bill of Kiran Photographer, secret code document, bank locker receipt, some counter foils of bank and other papers. All those articles i.e. clothes and documents came to be seized under panchanama in presence of the pancha witness and the police. PW 17 Ravi Abbot has also identified accused no. 5 Sandip Patel before the Court. There is nothing material in his cross-examination to disbelieve his testimony. It appears that the said under-construction urinal by the side of the railway track was exclusively within the knowledge of accused no.5 Sandip Patel and the articles recovered at his instance link him to the crime in question.

Identification parade of the accused persons on 18.12.2007.

22. PW 45 Bhaskar Bhos, Special Judicial Magistrate has conducted the identification parade of accused on 18.12.2007. PW 4 Sumitkumar Tiwari, PW 19 Rajendra Bhandari, PW 24 Sachin Dalvi, PW 26 Rajendra Patole and PW 27 Anita Kamble have identified the accused persons in the identification parade. On 18.12.2007, PW 45 Bhaskar Bhos conducted the identification parade in Sub-jail, Ahmednagar. He had called 10 other persons from jail having same age group and height.

a. PW 45 Bhaskar Bhos has deposed that PW 19 Rajendra Bhandari has identified accused no.1 Raju Sampat Darode and accused no. 3 Shivkumar Saket being the persons who have purchased adhesive tapes from his shop.

b. PW 45 Bhaskar Bhos has further deposed about the identification of accused persons by PW 26 Rajendra Patole. He has identified accused no.4 Rajeshsingh Thakur and accused no. 5 Sandip Patel. They have purchased knives from his shop.

c. PW 45 Bhaskar Bhos has further deposed that PW 24 Sachin Dalvi has identified accused no. 5 Sandip Patel and accused no. 6

Balendrasingh Thakur regarding their presence on the date and place of incident.

d. PW 45 Bhaskar Bhos has further deposed that PW 27 Anita Kamble has identified accused no. 4 Rajeshsingh Thakur and accused no. 5 Sandip Patel. They were the said two unknown persons seen by her near the room of PW 4 Sumitkumar Tiwari talking with accused no. 3 Shivkumar Saket when she had been to said room to hand over *khari* pocket to said Sangita.

e. PW 45 has further deposed that PW 4 Sumitkumar Tiwari has identified accused no.4 Rajeshsingh Thakur, accused no.5 Sandip Patel and accused no.6 Balendrasingh Thakur.

The identification of the accused persons by the witnesses during the identification parade is summarized and shown below in tabular form:

Sr. No.	Name and number of accused	Identified by whom (name of witness)	PW No.	particulars (identified in relation to)
1.	Raju Sampat Darode accused no.1	Rajendra Zumbarlal Bhandari	19	purchase of adhesive tape from his medical store a/w accused no. 3

2.	Shivkumar Ramsundar Saket accused no. 3	Rajendra Zumbarlal Bhandari	19	purchase of adhesive tape from his medical store a/w accused no.1
3.	Rajeshsingh Hariharsingh Thakur accused no. 4	Rajendra Laxman Patole	26	purchase of knife from his shop a/w accused no.5
		Anita Dadu Kamble	27	visit to bungalow to meet Shivkumar (accused no.3) on the day of incident
		Sumitkumar Shrishamji Tiwari	4	visit to bungalow two/three times on the day of incident a/w accused nos. 5 and 6
4.	Sandip Rajendra Patel accused no. 5	Rajendra Laxman Patole	26	purchase of knife from his shop a/w accused no.4
		Sachin Vijay Dalvi	24	presence on the date and place of incident
		Anita Dadu Kamble	27	visit to bungalow to meet Shivkumar (accused no.3) on the day of incident a/w accused nos. 4 and 6
		Sumitkumar Shrishamji Tiwari	4	visit to bungalow two/three times on the day of incident
5.	Balendrasingh Shivmurtisingh Thakur accused no. 6	Sachin Vijay Dalvi	24	presence on the date and place of incident
		Sumitkumar Shrishamji Tiwari	4	visit to bungalow two/three times on the day of incident a/w accused nos. 4 and 5

23. Though we notice some deficiencies in recording the identification parade panchanama, however, those deficiencies are

not material to disbelieve the entire evidence about the identification parade. In the instant case, identification of the accused is an important piece of evidence and a link to establish the guilt of the accused. The prosecution has drawn memorandum of identification parade Exhibits 70 and 172.

Identification of muddemal property.

24-a. There are various articles seized at the instance of accused nos. 2 to 8 as discussed in detail in the foregoing paragraphs. Those articles also include gold and silver ornaments, wrist watches, laptop etc. The prosecution has examined PW 41 Swity Gundecha, PW 55 Suvarna Sunit Munot and PW 57 Sunit Ramesh Munot who are members of the family of deceased Ramesh and deceased Chitra Munot. The prosecution has also examined PW 45 Special Judicial Magistrate Bhaskar Bhos who has conducted the said identification of the muddemal property.

24-b. PW 60 PI. Tukaram Vahile (I.O.) has sent a letter on 27.12.2007 to PW 45 Bhaskar Bhos, Special Judicial Magistrate for conducting identification of the seized muddemal property.

Accordingly, on 30.12.2007, PW 45 Bhaskar Bhos, Special Judicial Magistrate conducted identification of the said articles. For identification of the muddemal property, PW 60 PI. Tukaram Vahile (I.O.) has brought similar wrist watches from Titan showroom by giving letter (Exh. 351) and similar gold ornaments from Shrenik Shah, Jeweler by giving him letter (Exhibit 352). He has also called for similar bags from Riyaz Shaikh by giving him letter (Exhibit 353). The muddemal wrist watches were already sealed and kept in bags. Thus, those seals were opened in presence of two panchas and then, those were handed over to PW 45 Bhaskar Bhos, Special Judicial Magistrate for identification. After identification, all the muddemal articles and similar articles provided to him were returned by PW 45 Bhaskar Bhose, Special Judicial Magistrate.

24-c. PW 41 Swity Gundecha is the daughter of deceased Ramesh and Chitra Munot. In December 2007, she was staying in Seoul, South Korea. PW 41 Swity Gundecha was staying at Seoul along with her husband, daughter Sakshi and son Suyash. In the month of May 2007, her father deceased Ramesh Munot and her mother deceased Chitra Munot had gone to Seoul and stayed with

her for 8 to 10 days. She has deposed that while leaving Seoul after 8 to 10 days of their stay, she had gifted 1000 Won in Korean currency to her father deceased Ramesh. After the incident, her maternal uncle informed about it to her husband and accordingly, she had reached to Ahmednagar where she came to know that her parents were killed in the incident of dacoity of gold ornaments, cash amount and other articles. PW 41 Swity Gundecha has identified the following muddemal articles shown to her in the said test identification of the muddemal property:

Article 129	Korean currency note
Article 154	pair of gold tops
Article 79	gold panchali garland and pair of tops
Article 91	pair of gold tops
Article 146	silver anklet
Article 156	pair of gold tops
Article 152	gold tops
Article 141	two pairs of gold bangles
Article 106	two nose rings
Article 138	two pairs of plastic bangles having gold embroidery
Article 139	three pairs of plastic bangles having gold embroidery
Article 134	one pair of gold bangles
Article 135	one gold bangle
Article 130	one garland of white pearls with gold pendant

Article 142	two pairs of gold bangles
Article 157	gold bindiya with chain
Article 159	one pair of gold tops
Article 136	two pairs of red plastic bangles with gold embroidery
Article 158	one pair of gold tops
Article 104	ladies wrist watch of Titan make
Article 105	ladies wrist watch of Titan make

The memorandum of test identification of the muddemal property is marked at Exhibit 249 which bears her signature.

24-d. PW 41 Swity Gundecha though has admitted that there are no special identification marks on the gold ornaments and there is no special feature on the gold ornaments to point out that those were belonging to her parents, however, she has also explained that she has identified the same as those articles were in the regular use of her parents. Though she was subjected to cross-examination at length as to from which shop those ornaments were purchased etc., however, we find no reason for the daughter, who has settled abroad, to tell the details about purchase of those ornaments from which shop and the date thereof. Even though she has admitted that there is no special identification mark on the Korean currency note, however, the said currency note muddemal article 129 was

seized from accused no. 2 Shailendrasingh with other muddemal articles. Accused no. 2 Shailendrasingh has failed to explain about his possession, nor has he claimed the currency notes as that of his own.

24-e. The prosecution has examined PW 55 Suvarna Munot who is daughter in law of deceased Ramesh and Chitra Munot. On 29.12.2007, she had received a letter Exhibit 248 from Kotwali Police Station for identification of the stolen articles. Accordingly, on 30.12.2007, she herself, her husband (PW 57) and sister-in-law Swity (PW 41) went to Kotwali Police Station. The said identification of articles was conducted by PW 45 Bhaskar Bhos, Special Judicial Magistrate and he had asked them to sit in separate rooms. PW 55 Suvarna has identified the Panchali garland muddemal article 79. She has deposed that thereafter she herself and PW 41 Swity were called for identification of ornaments and they have identified many pairs of tops, bangles, string of gold and black bids, pearls garland, wrist watches of deceased Chitra Munot. Further PW Suvarna along with her husband PW 57 Sunit were also called for identification of the ornaments and both of them have identified bracelet and armlet, many gold chains, many gold

ear rings and wrist watches of her father-in-law deceased Ramesh Munot. They have also jointly identified the gold rings, pearl bangles, five pairs of gold bangles of deceased Chitra Munot. PW 55 Suvarna alongwith her husband PW 57 Sunit Munot and sister-in-law PW 41 Swity Gundecha have also identified cash amount having seals of Merchant Bank, laptop of deceased Ramesh Munot, three mobile phones, ration card, debit card, cheque book of deceased Chitra Munot, Korean currency note of 1000 Won and 50 US \$. PW 55 Suvarna has also deposed that she knows accused no. 1 Raju Darode, accused no. 3 Shivkumar, accused no. 2 Shailendrasingh, accused no. 4 Rajeshsingh and acquitted accused no. 7 Sangita. In order to summarize, the articles identified by PW 55 Suvarna are shown below in tabular form:

Article 79	gold panchali garland
Article 129	Korean currency note
Article 12 to 16	empty boxes of gold ornaments
Article 89 to 92	small gold bangles, gold chain and pair of gold tops
Article 96, 177 & 171	mobile phones
Article 146	silver anklet
Article 80, 121	wrist watches
Article 153, 154	three pairs of gold tops

& 155	
Article 156	pair of gold tops
Article 151	three gold wires
Article 152	gold tops
Article 141	two pairs of gold bangles
Article 143	gold locket
Article 106	two nose rings
Article 138	two pairs of plastic bangles having gold embroidery
Article 139	three pairs of plastic bangles having gold embroidery
Article 134	one pair of gold bangles
Article 135	one gold bangle
Article 130	one garland of white pearls with gold pendant
Article 132, 133	three pairs of bangles having pearls
Article 147, 148	nose rings
Article 149	string of black bids
Article 157	gold bindiya with chain
Article 159	one pair of gold tops
Article 136	two pairs of red plastic bangles with gold embroidery
Article 158	one pair of gold tops
Article 104	ladies wrist watch of Titan make
Article 105	ladies writ watch of Titan make
Article 165	50 US \$
Article 160, 161	Ration card Visa card
Article 127	Cheque book of Merchant Bank

24-f. PW 55 Suvarna was also subjected to similar cross-examination about special identification marks, however, we find

nothing in her cross-examination to disbelieve her evidence so far as identification of the property i.e. gold ornaments, wrist watches and certain documents as referred above.

24-g. PW 57 Sunit, who is son of deceased Ramesh and Chitra Munot, has deposed that accused no. 3 Shivkumar Saket was working as watchman for the day duty on the bungalow on the day of incident and PW 4 Sumitkumar Tiwari was the watchman of night duty on 02.12.2007. He had gone to Chandrapur for marriage ceremony with his wife PW 55 Suvarna and daughter Surabhi. He has also identified the said articles along with his wife PW 55 Suvarna. He alone has identified two bags-muddemal articles 150 and 125 having name as Classic Wheel and Done Hill respectively. He has signed the identification panchanama Exhibit 249 prepared by PW 45 Bhaskar Bhos, Special Judicial Magistrate. PW 57 Sunit has also identified the laptop of Toshiba make and also shown to police the data and information of his company so also the mail box contained in it by opening it. He has also log in muddemal laptop before the Court by opening system information so also system of Sumesh Industries installed in it. PW 57 Sunit has also identified three mobile handsets, one was of his

father deceased Ramesh Munot, second one was of his mother deceased Chitra Munot and the third one was of the office. He has also identified the debit card and cheque book of his mother, ration card, Korean currency note so also the cash amount. He has also given IMEI numbers of muddemal articles 119 and 96 i.e. the mobile handsets to police at that time. There is nothing in his cross-examination to disbelieve his evidence on this material point.

24-h. The prosecution has also examined PW 42 Indrakant Desale who is the pancha witness of the panchanama of identification of the property. He has deposed in detail about the articles kept for identification and the manner in which those articles were arranged etc. He has deposed that the panchanama was prepared while handing over muddemal articles to PW 45 Bhaskar Bhos, Special Judicial Magistrate. Though learned Judge of the trial court has observed about his demeanor during his cross-examination like giving evasive answers to some questions put to him, we find no reason to disbelieve the said witness who is somewhat formal in nature.

24-i. PW 45 Bhaskar Bhos, Special Judicial Magistrate has deposed in detail about conducting identification of the muddemal property. He has explained that there were 14 different kinds of gold and silver ornaments, two ladies wrist watches of Titan make, two gents wrist watches of Titan and Rado make, two canvass bags of black colour having written on it Classic Wheel and Dun Hill etc. He has also explained that three witnesses were present for identifying said articles along with two pancha witnesses. All those articles were kept on one table covered with cloth. PW 45 Bhaskar Bhos has further deposed that a string of Panchali bids was kept with similar five strings on table and PW 55 Suvarna was called for identification purpose. She has identified her string as it was of her daily use. In the same fashion, 14 times different witnesses were called and they have identified different 14 articles and those articles were kept aside. PW 45 Bhaskar Bhos has further deposed that alongwith Rado and Titan make gents wrist watches, similar watches of same company were kept for identification. PW 55 Suvarna and PW 57 Sunit have correctly identified said wrist watches. In the same manner, they have also identified two ladies wrist watches from the watches kept along with those wrist watches. PW 45 Bhaskar Bhos has deposed that PW 57 Sunit has

also identified the canvass bags even though similar bags were kept near those bags. PW 45 Bhaskar Bhos has thereafter prepared detailed identification panchanama Exhibit 249 under his signature and obtained signatures of panchas thereon. He has also prepared memorandum of identification of property. He has obtained signatures of goldsmith and other person on the said memorandum. PW 45 Bhaskar Bhos has deposed that he has followed the provisions about identification of property given in the Criminal Manual so also the guidelines issued by the Hon'ble High Court in this regard. We find no reason to disbelieve the identification of property conducted by this witness. Furthermore, some of the muddemal properties exclusively belong to Munot family and even identification of those properties could be an empty formality. The accused persons have offered no explanation for possession of those articles which can be identified even by the naked eyes that those articles belong to the Munot family.

24-j. PW 35 Sagar Munot is the elder son of deceased Ramesh Munot. He was in the United States of America since 1999 to 2011 for higher education and service with his wife Anjali. PW 35 Sagar has deposed about business and affairs of his father

deceased Ramesh. He has deposed that in the last week of July 2007, he had come to India for one month and at that time, he had gifted one laptop to his father deceased Ramesh. He had purchased it in U.S.A. for 700 US \$. It was Toshiba make model no. S129. He has also installed certain software in the said laptop for the use of his father by deleting his data. PW 35 Sagar has identified muddemal article 86 laptop before the Court. There is nothing in the cross-examination to disbelieve his version. There is no reason to doubt about his identification of the said laptop before the court. The said laptop came to be seized from the possession of accused no.6 Balendrasingh who has neither claimed ownership of the said laptop nor challenged the ownership.

24-k. PW 30 Nitin Bhandari was Branch Manager in Chitale Road Branch of the Ahmednagar Merchants Bank at the relevant time. He was knowing deceased Ramesh and Chitra being customers of his bank. He has deposed that deceased Chitra was having saving account no. 30/3987 in the said bank and the cheque book of 10 cheques was issued to her. He has further deposed on the basis of the statement of account Exhibit 211 that five cheques were passed from the cheque book of deceased Chitra

and payment of one cheque was stopped. He has identified muddemal article no. 127 being the cheque book issued to deceased Chitra Munot by his bank. He was subjected to cross-examination about his special knowledge about the said cheque book. However, we find no reason to disbelieve him because he has mainly deposed on the basis of the record available with the bank and particularly by referring the statement of account of deceased Chitra Munot. The said cheque book was found in possession of accused no.2 Shailendrasingh when he was arrested at Satna in Madhya Pradesh on the very next day of incident of dacoity which took place at Ahmednagar. Accused no.2 Shailendrasingh has not tendered any explanation for possession of the cheque book at the particular time.

24-1. PW 34 Mahavir Gandhi was the cashier in Chitale Road Branch of Ahmednagar Merchants Bank at the relevant time. He has produced photocopies of account opening form and specimen signature card of Chitra Munot at Exh. 219 and 220 respectively. On 18.01.2008, he was called at Kotwali Police Station by PW 60 PI. Tukaram Vahile (I.O.) and shown one packet of Rs.50/- having slip of his signature and seal of his bank. PW 34 Mahavir Gandhi

has identified his signature and the seal of the bank thereon.

24-m. PW 31 Mahendra Firodiya was serving as Clerk cum cashier in Dal Mandai Branch of Merchants Bank at the relevant time. He has deposed that on the bundle of currency notes collected in his bank, there were labels of signatures of cashier and seal of the Bank. He was shown nine bundles of currency notes of Rs.50/- and those were bearing labels of his signature.

24-n. PW 33 Vivek Suryawanshi was also working in Market Yard Branch of Ahmednagar Merchants Co-operative Bank Ltd. at the relevant time. Two persons namely Sandip Lodha and Subhash Barde were working with him. They used to prepare bundle of 100 notes, stitch it with label and seal and signature of cashier and Branch Manager. He has further deposed that on 17.01.2008, police had shown him a box containing cash amount and there were his signatures and seal of his bank on seven bundles and the remaining eight bundles were having signatures of Mr. Barde and other bundles were from Dal Mandai Branch. His evidence is helpful for the purpose of knowing the procedure adopted for counting and sealing notes with seal and signatures of Branch

Manager and Cashier.

24-o. PW 36 Sandip Chaudhari was working as Branch Manager in Axix Bank, Branch Ahmednagar. He has deposed that there was current account of Sumit Industries in the said bank and a debit card having 16 digits was issued to deceased Chitra Munot being the Proprietor of said firm. PW 36 Sandip Chaudhari has identified muddemal article 161 debit card which was issued to deceased Chitra Munot on the said current account. He has also produced in all 17 documents which were submitted by her to the Bank at the time of opening current account in the name of said firm. It appears from the cross-examination that he has deposed about the said facts on the basis of the record available with the bank. There is no reason to disbelieve him. So far as muddemal article 161 debit card is concerned, undoubtedly the same was issued to deceased Chitra Munot for her current account. The said debit card article 161 came to be seized from the physical custody of accused no. 5 Sandip Patel when he was arrested at Satna in Madhya Pradesh on the next day of the incident.

24-p. PW 43 Macchindra Jagtap is the employee of Sushant Industries. He has purchased Nokia make mobile handset for Rs.1,000/- with a particular sim card. He has used the said mobile phone and sim card for 10 to 15 days only, and thereafter sold the said mobile to accused no.3 Shivkumar for Rs.1,200/-. He was knowing accused no. 3 being employee of the same company. He has also identified accused no.3 Shivkumar before the Court.

Call Detail Record

25. The prosecution has examined PW 48 Datta Angre, Nodal Officer in Idea Cellular Company, to prove the call detail record and the ownership of the sim cards. He has referred various annexures received from the Additional Superintendent of Police Ahmednagar and Superintendent of Police, Ahmednagar for furnishing names and addresses of certain mobile phone owners and he has furnished various information as per demand vide Exhibits 278 to 291. The said information furnished by PW 48 Datta Angre can be summarized as follows:

i) Exhibit 278 -

Information about the mobile number 9850846757 in the

name of Tushar S. Munot, mobile number 9881522882 in the name of Shivaji S. Potkule and mobile number 9822664836 in the name of Anil G. Kadam.

ii) Exhibits 279, 280 and 281 -

Call details of four mobile numbers viz. 9921196356, 9922664836, 9881780651 and 9850285996 for the period from 01.11.2007 to 04.12.2007.

iii) Exhibits 282 and 283 -

Call details of two mobile numbers viz. 9822034191 and 9850627711 for the period from 01.12.2007 to 04.12.2007.

iv) Exhibits 284 and 285 -

Information about names and addresses of four mobile phone holders of 9921196356, 9922664836, 9881780651 and 9850285996.

v) Exhibits 286 and 287 -

Information about names and addresses two mobile phone holders of 9922571598 and 988178065 and its call details for the period from 01.11.2007 to 04.12.2007

vi) Exhibits 288 and 289 -

Information about one sim number bearing no. 89912204000002283368.

vii) Exhibits 290 and 291 -

Call details and names of holders of mobile phone no. 9850846757 for the period from 01.11.2007 to 05.12.2007.

We have carefully gone through all these Exhibits. So far as Exhibit 285 is concerned, as per the subscriber's details produced, the mobile phone number 9922664836 is in the name of accused no.1 Raju Darode. There is also information in Exhibit 285 that two mobile numbers viz. 9921196356 and 9881780651 are in the name of PW 39 Santosh Jeurkar. PW 39 Santosh Jeurkar has given his two photographs and photocopy of his driving licence for obtaining the sim card to accused no. 4 Rajeshsingh Thakur and accused no.8 Shivbhour. Accordingly, they have obtained two sim cards in his name by signing those documents. Mobile no. 9850285996 is standing in the name of PW 43 Macchindra Jagtap. PW 43 Macchinddra Jagtap was working as Box Machine Operator in

Sushant Industries and he has purchased a Nokia make mobile handset. He has sold the said mobile handset to accused no. 3 Shivkumar Saket.

It appears from Exhibit 289 that the sim number belongs to the cellular number 9850627711. Its subscriber is Sachin Munot and the said mobile phone was in the name of Kushal S. Munot.

On perusal of the call details, it reveals that accused no. 3 Shivkumar Saket, accused no. 5 Sandip Patel and accused no. 1 Raju Darode remained in contact with each other prior to the date of incident, on the date of incident and after the date of incident.

C.A. Reports

26. Further, during the course of investigation, various seized articles have been sent for chemical analysis along with covering letter Exhibit 176. The CA reports vide Exhibits 76/1 to 76/10 are extremely important and relevant. The CA reports Exhibits 76/1 to 76/7 speak about the blood group of accused persons named therein, whereas, Exhibit 76/8 speaks about the blood group of deceased Chitra Munot as blood group "B". Exhibit

76/9 is about the blood group of deceased Ramesh Munot as blood group "O".

CA report Exhibit 76/10 is about the grouping the blood found on various seized articles and sample of blood stains taken from the spot of incident i.e. bed room, staircase, kitchen etc.

CA report Exhibit 76/11 is about the DNA extracted from the blood stains dictated on Exhibit 32-sando banyan of deceased Ramesh Munot, Exhibit 36-blouse of deceased Chitra Munot, Exhibit 42-Full pant of accused no.1 Raju Darode, Exhibit 43-full bush shirt of accused no.1 Raju Darode, Exhibit 44-full bush shirt of accused no.3 Shivkumar Saket, Exhibit 45-full jean pant of accused no.3 Shivkumar Saket, Exhibit 48-full sleeves jerkin of accused no.4 Rajeshsingh Thakur, Exhibit 49-full bush shirt of accused no.4 Rajeshsingh Thakur, Exhibit 53-knife produced by accused no.3 Shivkumar Saket, Exhibit 54-full bush shirt of accused no.5 Sandip Patel, Exhibit 56-full open shirt of accused no.5 Sandip Patel, Exhibit 57-full pant of accused no.5 Sandip Patel and Exhibit 58-full pant of accused no.2 Shailendrasingh Thakur. The trial court has shown the same in the tabular form which we also

reproduced herein below to understand the DNA results more appropriately and conveniently.

Exh.8	Blood stained knife	No DNA profile
Exh.32	Sando banyan of Ramesh Munot	Matching with 43, 44, 57
Exh.36	Blouse of Chitra Munot	Matching with 56
Exh.42	Full pant of accused no.1 Raju	No matching DNA
Exh.43	Full bush shirt of accused no.1	Matching with 32, 44, 57
Exh.44	Full bush shirt of accused no.3	Matching with 32, 43, 57
Exh.45	Full jean pant of accused no.3	Matching with 48, 58
Exh.48	Full sleeves jerkin of accused no.4	Matching with 45, 58
Exh.49	Full bush shirt of accused no.4	No interpretable DNA
Exh.53	Knife produced by accused no.3	Matching with 54
Exh.54	Full bush shirt of accused no.5	Matching with 53
Exh.56	Full open shirt of accused no.5	Matching with 36
Exh.57	Full pant of accused no.5	Matching with 32, 43, 44
Exh.58	Full pant of accused no.2	Matching with 45, 48

The matching of DNA profile can be well understood from the aforesaid tabular form, for example, the DNA profile obtained from the blood samples Exhibit 32 (sando banyan of deceased Ramesh Munot) is matching with Exhibit 43 (full bush shirt of accused no.1 Raju Darode), Exhibit 44 (full bush shirt of accused no.3 Shivkumar Saket) and Exhibit 57 (full pant of accused no.5 Sandip Patel). The CA report from Exhibit 76/1 to 76/10, including the DNA matching, unerringly point out the involvement of the appellant-accused persons in commission of the crime. It is to be noted here that none of the accused persons has offered any explanation for the same.

27. We appreciate the efforts taken by the investigating agency in this case, particularly PW 60 P.I. Tukaram Vahile (I.O.) and his team. The pre-incident circumstances, the actual incident and the post incident circumstances connecting the accused persons with crime can be summarized in the following manner to avoid lengthy discussion again :

The main incident occurred on 02.12.2007 at about 9.30 to 10.30 p.m. [dacoity of muddemal property worth Rs.9,00,000/- in the residential bungalow, namely, "Basant", Maniknagar, Chandan Estate, Ahmednagar with murder of the occupants of the bungalow i.e. deceased Ramesh Munot and deceased Chitra Munot.

Pre incident activities of accused persons.

Purchase of railway tickets at 8.00 p.m. to 11.00 p.m. for leaving the place immediately after the incident for going to their respective villages.

Purchase of adhesive tapes.

Purchase of scarfs.

Purchase of knives.

Accused nos. 1 to 6 were seen near said bungalow of deceased Ramesh Munot just before happening of the incident and some of them were seen even on earlier day of the incident near watchman room.

I
Accused no. 5 Sandip Patel falsely told his name as "Subhash" to watchman PW 4 Sumitkumar to enter the bungalow on the night of 02.12.2007

Dog squad led police from blood stained knife towards Ahmednagar Railway Station platform

Stolen mobile of PW Sumitkumar had shown tower location at Bhusawal on 03.12.2007 at 5.00 a.m.

Accused 2 to 6 came to be arrested at Katni G.P.R. Railway Police Station and Laur Police Station, Madhya Pradesh

Accused no. 1 came to be arrested at Ahmednagar Railway Station

Accused persons are identified by various witnesses with regard to their pre-incident and post-incident activities.

Identification of muddemal properties by the son, daughter and daughter-in-law of deceased Ramesh and deceased Chitra Munot.

Identification of muddemal properties by various witnesses including the bank officials, shop owners, employees/servants of Munot family

28. It is true that simply on recovery of the stolen articles, no inference can be drawn that the person in possession of the stolen articles is guilty of the offence of murder and dacoity. In order to attract the presumption in Illustration (a) of Section 114 of the Evidence Act, the nature of the evidence is required to be considered. It is also well settled that no fix time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. In the instant case, if we consider the list of the stolen articles and the accused persons apprehended with the stolen articles within a short time of 48 hours or less, it is not possible that those articles are likely to be passed from hand to hand. The appellants-accused were found in possession of the incriminating articles soon after the crime. Thus, the presumption under Section 114 Illustration (a) could be safely drawn and the recovery of those articles within a short span after the incident from the possession of the accused unerringly point out their involvement in commission of the crime. We are aware that if the accused cannot account for his possession, merely on the basis of Illustration to Section 114 of the Evidence Act the burden of proof is not shifted on the accused. However, in the instant case,

there is no explanation at all from the accused about possession of all those incriminating articles when unquestionably certain articles are belonging to the Munot family. In the instant case, the presumption as contemplated under Section 114 Illustration (a) is not merely drawn on the basis of possession of the articles belonging to the deceased by the accused persons immediately after the murder and dacoity, however, there is other connecting evidence in the form of identification, the pre-incident and post-incident activities of the appellants-accused persons, the accused were found in the vicinity of the scene of murder pre-incident, even one of the accused person has stated his false name while entering into the bungalow from the picket gate and he has been duly identified, recovery of the weapons, adhesive tapes, scarfs etc., the CA reports and matching of the DNA profile. There are connecting links unerringly pointing out involvement of the appellants-accused in commission of dacoity with murder.

29. There is no reason to doubt the identification of the muddemal property such as Korean currency note, various gold and silver ornaments with certain peculiar design works and embroidery, cheque book, US dollar, laptop etc.

30. In the case of *Limbaji and others v. State of Maharashtra*, reported in **AIR 2002 SC 491**, the Supreme Court has elaborately discussed the presumption under Section 114 of the Evidence Act. In para III and V(i), the Supreme Court has made the following observations:

“III. As the presumption under Section 114 of Evidence Act looms large in this case a brief discussion on the basic postulates and evidentiary implications of presumption of fact may not be out of place. A presumption of fact is a type of circumstantial evidence which in the absence of direct evidence becomes a valuable tool in the hands of the Court to reach the truth without unduly diluting the presumption in favour of the innocence of the accused which is the foundation of our Criminal Law. It is an inference of fact drawn from another proved fact taking due note of common experience and common course of events. Holmes J. in Greer v. US [245 USR 559] remarked "a presumption upon a matter of fact, when it is not merely a disguise for some other principle, means that common experience shows the fact to be so

generally true that courts may notice the truth". Section 114 of the Evidence Act shows the way to the Court in its endeavour to discern the truth and to arrive at a finding with reasonable certainty. Under the Indian Evidence Act, the guiding rules for drawing the presumption are set out broadly in the section. Section 114 enjoins: "the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case." Having due regard to the germane considerations set out in the section, certain presumptions which the Court can draw are illustratively set out. It is obvious that they are not exhaustive or comprehensive. The presumption under Section 114 is, of course, rebuttable. When once the presumption is drawn, the duty of producing evidence to the contra so as to rebut the presumption is cast on the party who is subjected to the rigour of that presumption. Before drawing the presumption as to the existence of a fact on which there is no direct evidence, the facts of the particular case should remain uppermost in the mind of the Judge. These facts should be looked into from the angle of common sense, common experience of men and matters and then a conscious decision has to be arrived at whether to draw the presumption or not.

Among the illustrations appended to Section 114 of the Evidence Act, the very first one is what concerns us in the present case: "The Court may presume - that a man who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

Taylor in his treatise on The Law of Evidence has this to say on the nature and scope of the presumption similar to the one contained in Section 114 (a) :

"The possession of stolen property recently after the commission of a theft, is prima facie evidence that the possessor was either the thief, or the receiver, according to the other circumstances of the case, and this presumption, when unexplained, either by direct evidence, or by the character and habits of the possessor, or otherwise, is usually regarded by the jury as conclusive. The question of what amounts to recent possession varies according to whether the stolen article is or is not calculated to pass readily from hand to hand.

This presumption which in all cases is one of fact rather than of law, is occasionally so strong as to render unnecessary any direct proof of what is called

the corpus delicti. Thus, to borrow an apt illustration from Maule J., if a man were to go into the London Docks quite sober, and shortly afterwards were found very drunk, staggering out of one of the cellars, in which above a million gallons of wine are stored, "I think," says the learned Judge - and most persons will probably agree with him - "that this would be reasonable evidence that the man had stolen some of the wine in the cellar, though no proof were given that any particular vat had been broached, and that any wine had actually been missed."

V(i). The question then is, applying illustration (a) to Section 114, whether the presumption should be that the accused stole the goods or later on received them knowing them to be stolen. Though the trial court observed that the accused "might have robbed" the ornaments of the deceased after he was murdered by someone else, it found them guilty of the offence under Section 411, IPC only which is apparently self-contradictory. On an overall consideration of the circumstances established, it is reasonable to presume that the accused committed the theft of the articles from the person of the deceased after causing bodily harm to the deceased. The fact that within a short time after the murder of the deceased, the appellants came into possession of

the ornaments removed from the person of the deceased and the 1st accused offered one of the stolen articles for sale on the very day and the further fact that the other articles were found secreted to the knowledge of appellants coupled with non-accountal of the possession of the articles and the failure to give even a plausible explanation vis-à-vis the incriminating circumstances would go to show that they were not merely the receivers of stolen articles from another source but they themselves removed them from the person of the deceased. Thus, the presumption to be drawn under illustration (a) to Section 114 should not be confined to their involvement in the offence of receiving the stolen property under Section 411 but on the facts of the case, it can safely go beyond that. In this context, the three-Judge Bench decision of this Court in Sanwath Khan Vs. State of Rajasthan, is quite apposite. While holding that from the solitary circumstance of unexplained recovery of the articles belonging to the deceased from the houses of the accused, the presumption of commission of offence of murder cannot be raised, the Court nevertheless held that they can be convicted of theft under Section 380 I.P.C. which was one of the charges against the accused. Another decision of relevance is Shivappa v. State of Mysore [1970 (1) SCC 487]. That was a case in which bundles of cloth being

carried in carts were looted by twenty persons and the accused were charged for dacoity. Searches which took place within a few days after the incident led to the recovery of large quantities of stolen clothes from their houses. On these facts the Court drew the presumption that the persons with whom the items of clothes were found were the dacoits themselves and the conviction was sustained. Hidayatullah, C.J. speaking for the three Judge Bench observed that "It is only when accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn." Drawing support from these decisions too, we are of the view that by invoking the presumption under Section 114 read with Illustration (a) thereto, the appellants must, as a first step, be held to have committed theft of ornaments which were removed from the person of the deceased and that they are not mere receivers of stolen property. Theft is a component of the offence of robbery and theft becomes robbery, if, in order to the committing of theft, the offender causes or attempts to cause death, hurt or wrongful restraint or instils fear thereof. Whether, on the facts, they shall be convicted for robbery is yet another aspect which we shall advert to a little later. We are only pointing out presently that if we stop at applying illustration (a) to Section 114, the accused can be

safely convicted for the offence of theft rather than for the offence under S.411. What is the position if we look beyond illustration (a) is another aspect.”

In this case, the Supreme Court has also dealt with the question as to whether the presumption under Section 114 should be extended to the preparation of the offence of robbery or murder or both. The Supreme Court has considered as to whether the presumption could be further stretched to find the appellants guilty of the gravest offence of murder. The Supreme Court has referred the various divergent views of the Court on this point. The Supreme Court has also referred the view expressed by the three-Judge Bench of the Supreme Court in ***Sanwath Khan and Another v. State of Rajasthan*** (AIR 1956 SC 54 : 1956 CriLJ 150), wherein the three-Judge Bench did not consider it proper to extend the presumption beyond theft in absence of any other incriminating circumstances excepting possession of the articles belonging to the deceased. In this case, the Supreme Court has observed that while drawing the presumption under Section 114 on the basis of recent possession of belongings of the victim with the accused, the Court must adopt a cautious approach and have an assurance from all angles that the accused not merely committed theft or robbery but

also killed the victim.

31. In the case of *Baiju v. State of Madhya Pradesh*, reported in AIR 1978 SC 522, the Supreme Court referred the view expressed in the case of *Wasim Khan v. The State of Uttar Pradesh* (AIR 1956 SC 400), wherein it is held that recent and unexplained possession of stolen articles can well be taken to be presumptive evidence of the charge of murder as well. The Supreme Court has further referred the similar view which has been taken in *Alisher v. State of Uttar Pradesh* (AIR 1974 SC 1830). The Supreme Court in the case of *Baiju* (supra), in para 14 has thus made the following observations:

“14. As has been stated, the prosecution has succeeded in proving beyond any doubt that the commission of the murders and the robbery formed part of one transaction, and the recent and unexplained possession of the stolen property by the appellant justified the presumption that it was he, and no one else who had committed the murders and the robbery. It will be recalled that the offences were committed on the night intervening January 20 and 21, 1975, and the stolen property was

recovered from the house of the appellant or at his instance on January 28, 1975. The appellant was given an opportunity to explain his possession, as well as his conduct in decoying Smt. Lakhpatiya and the other persons who died at his hand, but he was unable to do so. The question whether a presumption should be drawn under illustration (a) of S.114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus, the nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision. We have made a mention of the facts and circumstances bearing on these points and we have no doubt that there was ample justification for reaching the inevitable conclusion that it was the appellant and no one else who had committed the four murders and the robbery. In the face of the overwhelming evidence on which reliance has been placed by the High Court, it is futile to argue that the murders could not have been committed by a single person. As has been stated, there is satisfactory evidence on the record to show

that the dead bodies of Ramdayal and Smt. Fulkunwar were found at two different places near the “nala” so that it cannot be said that they were murdered together. As regards Smt. Ghagwanti and Rambakas, the evidence on the record shows that they were murdered while they were asleep in the house, and there is no reason why a single person could not have committed their murders also.”

32. In the case of ***A. Deivendran v. State of Tamil Nadu***, reported in **AIR 1998 SC 2821**, the Supreme Court has discussed about the presumption under Section 114 with Illustration (a) as to when can be drawn and in para 20 of the judgment, has made the following observations:

20.Whether a presumption under S. 114 illustration (a) of the Evidence Act should be drawn in a given situation is a matter which depends on the evidence and the circumstances of the cases. The nature of the stolen articles, the nature of its identification by the owner, the place and the circumstances of its recovery, the intervening period between the date of occurrence and the date of recovery, the explanation of the persons concerned from whom the recovery is made are all factors

which are to be taken into consideration in arriving at a decision. In the case of Baijur v. State of Madhya Pradesh, AIR 1978 SC 522, this Court had held that the prosecution having succeeded in proving beyond any doubt that the commission of the murders and robbery formed part of one transaction and the recent and unexplained possession of the stolen property by the appellant justified the presumption that it was he and no one else, who had committed the murders and the robbery. In the said case the offence had been committed on the night of January 20 and 21, 1975 and the stolen property was recovered from the house of the appellant on January 28, 1975,”

33. Learned Judge of the trial court in para 408 of the Judgment has mentioned the circumstances connecting the appellants-accused with the crime. We deem it appropriate to reproduce the same as follows:

1. Accused nos. 1 to 6 were last seen near bungalow of Ramesh Munot just before happening of incident.
2. Accused nos. 5 and 6 were seen near watchman room on earlier day of incident, by Anita Kamble (PW 27) with accused no.3.

3. Accused nos. 5 and 6 were also seen by Sumitkumar (PW4) on earlier day of incident, near his room.
4. Dog squad lead police from blood stained knife towards platform of A'nagar railway station.
5. Mobile phone stolen from Sumitkumar shows tower location at Bhusawal at 5.00 a.m. on 3.12.2007.
6. accused nos. 2 to 7 have taken railway tickets between 8.00 to 11.00 p.m. for going to their village.
7. copy of ration card of Ramesh Munot found in the bag of accused no.2 Shailendrasingh. Money order coupons of 2004-2005 bear address of Basant bungalow.
8. Visa card, cheque book of Chitra Munot and paper slip on currency notes were from A'nagar bank was found with accused.
9. N-72 mobile phone and Titan make wrist watch of Ramesh Munot was recovered at the instance of accused no.1.
10. Mobile phone of Chitra Munot (article no.171) was found with accused no.5 Sandip Patel at Satna.

11. Mobile phone of office (article no.96) was found with accused no. 7 at Katani, Madhya Pradesh.
 12. Mobile phone (article no. 83) of Sumitkumar (PW 4) was found with accused no.6 Balendrasingh.
 13. Gold and silver ornaments, huge cash amount, laptop etc. was found in possession of accused at Katani and Satna in Madhya Pradesh.
34. The evidence of PW 4 Sumitkumar Tiwari is extremely important. PW 27 Anita Kamble has deposed about the presence of accused no. 4 Rajeshsingh, accused no. 5 Sandip with accused no. 3 Shivkumar on the earlier date of the incident and she has identified accused no.4 Rajeshsingh and accused no.5 Sandip during the course of identification parade. There is evidence of purchasing of adhesive tape from the shop and also the weapons i.e the knives. PW 19 Rajendra Bhandari and PW 26 Rajendra Patole have also identified the accused persons during the identification parade. There is clear evidence that the appellants-accused have hatched conspiracy to enter into the residential house of deceased Ramesh Munot for committing dacoity. They have tied the hands

and legs of PW 4 Sumitkumar Tiwari and also affixed adhesive tape on his mouth. They have looted the ornaments, cash and other articles and also committed murder of deceased Ramesh Munot and deceased Chitra Munot. It further appears that after the incident, accused no.1 Raju Darode has left for Shrirampur and accused nos. 2 to 6 directly proceeded towards Ahmednagar Railway Station for going to their native places in the State of Madhya Pradesh. There is evidence about buying tickets after reaching at the Railway Station and changing blood-stained clothes by some of the accused persons. They have escaped from Ahmednagar by boarding Pune Patna express at midnight hours. It is due to the efforts taken by the Investigating Officer under the guidance of the then Superintendent of Police, Ahmednagar, by sending wireless communication to the Satna Police and Katani Police, that accused nos. 2 and 5 were apprehended with muddemal articles while proceeding to their village Satna, whereas, accused nos. 3, 4, 6, 7 and 8 were apprehended with muddemal articles when the train reached at Katani Railway Station. Thereafter, accused nos. 2 to 8 were brought under the transit warrant along with muddemal articles at Ahmednagar. Further, at the instance of accused no.2 Shailendrasingh Thakur,

accused no.3 Shivkumar Saket, accused no.4 Rajeshsingh Thakur and accused no.5 Sandip Patel the weapon i.e. knife used in commission of offence, the blood stained clothes etc. came to be seized under panchanama in presence of the panchas. It is already discussed in the foregoing paras that the muddemal articles seized from the possession of accused nos. 2 to 8 at Katani and Satna in Madhya Pradesh, which includes the gold and silver ornaments and the documents, are belonging to the Munot family and the members of the Munot family have identified those muddemal articles. At the instance of accused no.1 Raju Darode, the cash amount and the mobile phone of deceased Ramesh Munot came to be recovered at village Gondhvani. There are muddemal articles such as gold and silver ornaments, laptop, wrist watches and the documents such as ration card, visa card, cheque book, mobile phones etc. and also the cash amount bearing labels of Ahmednagar Merchants' Bank, which unerringly point out the involvement of the appellants-accused in commission of the crime. It further appears from the CA reports that none of the accused persons is having blood group "B" and blood group of deceased Chitra Munot was "B". The clothes of accused no.4 Rajeshsingh were found stained with blood of group "B". There is further

evidence in the form of the DNA report Exhibit 76/11 and the matching of the blood on clothes. The prosecution has proved beyond doubt the dacoity with murder of deceased Ramesh and Chitra Munot by the appellants-accused nos. 1 to 6. The trial court has thus rightly held accused nos. 1 to 6 guilty of the offence punishable under Sections 396, 397 of IPC, Section 452 r/w 34 of IPC, Section 412, Section 396 r/w 120-B of IPC and Section 408 of IPC.

35. In view of the discussion above, we are of the considered opinion that the prosecution has proved its case beyond all reasonable doubts. The prosecution has established the chain of circumstantial evidence. On the basis of the established circumstances, the prosecution has fully established the guilt of the appellants-accused persons. The circumstances in the form of recovery of articles coupled with the other connecting circumstances are having conclusive nature and tendency. We find no fault in the judgment and order passed by the trial court convicting thereby the appellants-accused persons under various sections of the Indian Penal Code. The learned Judge of the trial court has rightly found the appellants-accused guilty of the offence

punishable under Sections 396, 397, 412, 452, 120-B r/w 34 of IPC.

Criminal Appeal No. 503 of 2013 filed by the State for enhancement of the sentence.

36. We have recorded the submissions of the learned APP for enhancement of the sentence against the appellants-accused and also the submissions of learned counsel for the appellants-accused in the foregoing paras 5 and 7 respectively, of the judgment.

36-a. Learned APP has submitted that the respondents-accused persons have committed brutal murder of two innocent persons in diabolic manner. Deceased Chitra Munot was found tied to a chair in sitting position and her throat was slit with a sharp weapon. It shocked the conscience of the common man. Learned APP has vehemently submitted that the appellants-accused persons were in the employment of the deceased persons for some time. Accused No. 3 Shivkumar Ramsundar Saket was working as watchman during day time in the said 'Basant' bungalow of deceased Ramesh Munot at Ahmednagar and his duty hours were from 8.00 a.m. to 8.00 p.m. Learned APP has submitted that the respondents-accused

persons have committed brutal murder of two helpless and hapless persons out of lust for money and ornaments. It was a pre-planned, well executed crime. It involves extreme brutality. Learned APP has submitted that a pre-planned, calculated, cold blooded murder has always been regarded as one of the aggravated kind. Learned APP has submitted that if a murder is “diabolically conceived and cruelly executed”, it would justify imposition of the death penalty on the murderer. Learned APP has submitted that the persons previously in employment of the Munot family as watchmen and driver have committed pre-planned murders of their employer deceased Ramesh Munot and his wife deceased Chitra Munot. The nature of the instant crime is cruel, diabolic, brutal and gruesome. The Crime has resulted in public abhorrence and shocked the judicial conscience as well the conscience of the society. It was a premeditated unprovoked crime. Learned APP has submitted that thus, the young age of the respondents-accused persons may not be relevant, so also the possibility of their reformation or rehabilitation. Learned APP has submitted that there is no alternative but to impose death sentence even after weightage is given to the mitigating circumstances.

36-b. Learned counsel appearing for the respondents-accused persons has submitted that there are mitigating circumstances, particularly the age and the possibility of reformation of the respondents-accused persons. There is no reason to solely look into the factum of double murder to award capital punishment. There are no antecedents and they are not likely to commit criminal acts of violence as would constitute a continuing threat to the society. Learned counsel has submitted that it is well settled that the sentencing discretion is to be exercised judicially on well recognized principles after balancing of the aggravated and mitigating circumstances of the crime. By “well recognized principles” the Court obviously meant the principles crystallized by judicial decisions illustrating as to what were regarded as aggravated or mitigating circumstances in those cases. Thus, the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2) of Cr.P.C., namely, (1) the extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender. Learned counsel for the respondents-accused persons has

submitted that the average age of the respondents-accused is between 19 to 25 years. Thus, the possibility of reformation exists due to their young age with no criminal background. Learned counsel submits that this is not a rarest of rare case wherein death punishment is to be awarded. The trial court has therefore not awarded the capital punishment to the respondents-accused persons by giving weightage to the mitigating circumstances.

37. In the case of ***Bachan Singh v. State of Punjab*** (supra) relied upon by learned APP, the Constitution Bench of the Supreme Court, while answering the reference, dealt with the issue of constitutional validity of death punishment for murder provided under Section 302 of IPC and the sentencing procedure embodied in Sub-section (3) of Section 354 of the Criminal Procedure Code, 1973. The Supreme Court has referred the observations and the ratio laid down in the case of ***Jagmohan Sing v. State of U.P.*** [(1973) 1 SCC 20], wherein it is held that the sentencing discretion is to be exercised judicially on well recognized principles, after balancing all the aggravating and mitigating circumstances of the crime. It is observed that “well recognized principles” means the principles crystallized by judicial decisions illustrating as to what

were regarded as aggravating or mitigating circumstances in those cases. It is further observed that the only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely, (1) the extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender, also.

In para 198 and 199 of the judgment, the Supreme Court has first discussed about the aggravating circumstances which, in the absence of any mitigating circumstances, have been regarded as an indication for imposition of extreme penalty. Pre-planned, calculated, cold blooded murder has always been regarded as one of the aggravated kind. The Supreme Court has again referred the view taken in *Jagmohan's* case (supra) that if the murder is “diabolically conceived and cruelly executed”, it would justify the imposition of the death penalty on the murderer. In para 201, the Supreme Court has observed that for making choice of the punishment or for ascertaining the existence or absence of “special

reasons” in that context, the court must pay due regard both to the crime and the criminal. In the same para, the Supreme Court has further observed that “it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability and it is only when a culpability assumes the proportion of extreme depravity that “special reasons” can legitimately be said to exist.

In para 206, the Supreme Court has considered the suggestions given by Dr. Chitale on mitigating factors. Those are as follows:

“206. Dr. Chitale has suggested these mitigating factors:

Mitigating circumstances:- *In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:-*

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

In para 209, the Supreme Court has made the concluding remarks which are as follows:

"209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern

for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

37-a. In the case of ***Machhi Singh and others v. State of Punjab*** (supra) relied upon by learned APP for the State, the Supreme Court after referring the guidelines in ***Bachan Singh*** (supra), in para 39, has made the following observations:

“39. In order to apply these guidelines inter alia the following questions may be asked and answered :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?”

37-b. In the case of ***Dhananjay Chatterjee v. State of West Bengal*** (supra), relied upon by learned APP for the State, in para 14 and

15, the Supreme Court has made the following observations:

“14. In recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility.

Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an over-all view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

37-c. In the case of ***Shankar Kisanrao Khade v. State of Maharashtra*** (supra), relied upon by both sides, the Supreme Court in para 102 [as reported in MANU/SC/0476/ 2013] has laid down the broad principles for confirming the death penalty and in para 103 [as reported in MANU/SC/0476/ 2013], the Supreme Court has referred the cases wherein the young age of the accused was not taken into consideration or held irrelevant. Para 102 and 103 read as under:

*“102. The principal reasons for confirming the death penalty in the above cases include (1) the cruel, diabolic, brutal, depraved and gruesome nature of the crime (**Jumman Khan, Dhananjoy Chatterjee, Laxman Naik, Kamta Tewari, Nirmal Singh, Jai Kumar, Satish, Bantu, Ankush Maruti Shinde, B.A. Umesh, Mohd. Mannan and Rajendra Pralhadrao Wasnik**); (2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (**Dhananjoy Chatterjee, Jai Kumar, Ankush Maruti Shinde and Mohd. Mannan**); (3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (**Jai Kumar, B.A. Umesh and Mohd. Mannan**); (4) the victims were defenceless (**Dhananjoy Chatterjee, Laxman Naik, Kamta Tewari, Ankush Maruti Shinde, Mohd. Mannan and Rajendra Pralhadrao Wasnik**); (5) the crime was either unprovoked or that it was premeditated (**Dhananjoy Chatterjee, Laxman Naik, Kamta Tewari, Nirmal Singh, Jai Kumar, Ankush Maruti Shinde, B.A. Umesh and Mohd. Mannan**) and in three cases the antecedents or the prior history of the convict was taken into consideration (**Shivu, B.A. Umesh and Rajendra Pralhadrao Wasnik**).*

103. However, what is more significant is that there are cases where the factors taken into consideration

for commuting the death penalty were given a go-bye in cases and the death penalty was confirmed. The young age of the accused was not taken into consideration or held irrelevant in **Dhananjoy Chatterjee** aged about 27 years, **Jai Kumar** aged about 22 years and **Shivu and Anr.** aged about 20 and 22 years while it was given importance in **Amit v. State of Maharashtra**, **Rahul**, **Santosh Kumar Singh**, **Rameshbhai Chandubhai Rathod (2)** and **Amit v. State of Uttar Pradesh**. The possibility of reformation or rehabilitation was ruled out, without any expert evidence, in **Jai Kumar**, **B.A. Umesh and Mohd. Mannan** in much the same manner, without any expert evidence, as the benefit thereof was given in **Nirmal Singh**, **Mohd. Chaman**, **Raju**, **Bantu**, **Surendra Pal Shivbalakpal**, **Rahul** and **Amit v. State of Uttar Pradesh**. Acquittal or life sentence awarded by the High Court was considered not good enough reason to convert the death sentence in **Satish**, **Ankush Maruti Shinde** and **B.A. Umesh** but it was good enough in **State of Tamil Nadu v. Suresh**, **State of Maharashtra v. Suresh**, **Bharat Fakira Dhiwar** and **Santosh Kumar Singh**. Even though the crime was not premeditated, the death penalty was confirmed in **Molai** notwithstanding the view expressed in **Akhtar**, **Raju** and **Amrit Singh**. Circumstantial evidence was held not to be a 'mitigating' factor in

Jumman Khan, Kamta Tewari, Molai and Shivaji but it was so held in Bishnu Prasad Sinha.”

37-d. In the case of *Khushwinder Singh v. State of Punjab* (supra) relied upon by learned APP for the State, the Supreme Court in para 14 has made the following observations:

“14. Now, so far as the capital punishment imposed by the learned Sessions Court and confirmed by the High Court is concerned, at the outset, it is required to be noted that, as such, the learned counsel appearing on behalf of the Accused is not in a position to point out any mitigating circumstance which warrants commutation of death sentence to the life imprisonment. In the present case, the Accused has killed six innocent persons, out of which two were minors – below 10 years of age. Almost, all the family members of PW-5 were done to death in a diabolical and dastardly manner. Fortunately, or unfortunately, only one person of the family of PW-5 could survive. In the present case, the accused has killed six innocent persons in a pre-planned manner. The convict meticulously planned the time. He first kidnapped three persons by way of deception and took them to the canal and after drugging them with sleeping tablets, pushed them

*in the canal at a mid-night to ensure that the crime is not detected. That, thereafter he killed another three persons in the second stage/instalment. Therefore, considering the law laid down by this Court in the case of **Mukesh v. State (NCT of Delhi)** MANU/SC/0575/2017 : (2017) 6 SCC 1, the case would fall in the category of the “rarest of rare case” warranting death sentence/capital punishment. The aggravating circumstances are in favour of the prosecution and against the Accused. Therefore, striking a balance between the aggravating and mitigating circumstances, we are of the opinion that the aggravating circumstance would tilt the balance in favour of the capital punishment. In the facts and circumstances of the case, we are of the opinion that there is no alternative punishment suitable, except the death sentence. The crime is committed with extremist brutality and the collective conscious of the society would be shocked. Therefore, we are of the opinion that the capital punishment/death sentence imposed by the learned Sessions Court and confirmed by the High Court does not warrant any interference by this Court. Therefore, we confirm the death sentence of the accused imposed by the learned Sessions Court and confirmed by the High Court while convicting the Appellant for the offence punishable under Section 302 Indian Penal Code.”*

38. In ***State of U.P. v. Bhoora*** (AIR 1998 SC 254 : 1997 (9) Supreme 319), relied upon by learned counsel for the respondents-accused persons, the Supreme Court has set aside the acquittal of respondents-accused and convicted them under Section 396 r/w 34 of IPC. Further, the Supreme Court while restoring the judgment and order passed by the trial court, has not restored the order of sentence. In para 8 of the judgment, the Supreme Court has observed that in view of long lapse of time and also because of the facts and circumstances of the case, ends of justice would be met if both the respondents are ordered to suffer imprisonment for life.

38-a. In the case of ***Anshad and others v. State of Karnataka*** [(1994) 4 SCC 381] relied upon by learned counsel for the respondents-accused persons, in para 18 and 19, the Supreme Court has made the following observations:

“18. We have perused the reasons given by the High Court for awarding the sentence of death. Apart from referring to some of the "aggravating circumstances" like the betrayal of confidence of the deceased by A-1 and murder for committing robbery on a helpless widow, the High Court only referred to some of the judgments of this Court and then almost

abruptly came to the conclusion that the sentence of death was called for in the instant case. We notice with regret that the High Court did not take into account any of the mitigating circumstances at all. Courts are expected to exhibit sensitiveness in the matter of award of sentence particularly, the sentence of death because life once lost cannot be brought back. This Court has in cases more than one emphasised that for determining the proper sentence in a case like this while the court should take into account the aggravating circumstances it should not overlook or ignore the mitigating circumstances. The manner in which the crime was committed, the weapons used and the brutality or the lack of it are some of the considerations which must be present to the mind of the court. Of course, the High Court has the power and jurisdiction to enhance the sentence of life imprisonment to death but that power has to be sparingly exercised, in "rarest of the rare cases" for 'special reasons' to be recorded. The courts must be alive to the legislative changes introduced in 1973 through Section 354(3) CrPC. Death sentence, being an exception to the general rule, should be awarded in the "rarest of the rare cases" for 'special reasons' to be recorded after balancing the aggravating and the mitigating circumstances, in the facts and circumstances of a given case. The number of persons murdered is a

consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of the rare cases". The courts must keep in view the nature of the crime, the brutality with which it was executed, the antecedent of the criminal, the weapons used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.

19. Some of the mitigating circumstances which have been pointed out by learned counsel for the appellants and of which notice was not taken by the High Court are:

(a) that A-1 to A-3 had gone to the house of the deceased empty handed and did not even pick up any weapon like knife etc. from the house of the deceased nor used any such weapon while committing the murder of the two deceased;

(b) that they did not do away with the lives of PW 2 and PW 3, the only two eyewitnesses and thereby screen the offence completely;

(c) that there is nothing on the record to show that they acted in an exceptionally brutal or cruel manner while committing murder. The medical evidence shows only abrasions and scratches on the

body of the deceased caused by nails frictions;

(d) there is nothing on the record to show as to which out of the three appellants strangled which of the two deceased;

(e) the manner in which the crime was committed and the jewellery removed from the person of the deceased would also show that A-1 to A-3 took off the jewellery from the person of the deceased by removing the same rather than tore it off from their bodies causing any injuries to the deceased.”

38-b. In ***Ramesh v. State of Rajasthan*** [Criminal Appeal No. 1236 of 2006 along with connected criminal appeals decided by the Supreme Court by judgment dated 22.02.2011] relied upon by learned counsel for the respondents-accused, the Supreme Court after referring the view expressed in ***Bachan Sing*** (supra) and ***Santosh Kumar Shantibhushan Beriyyar*** (supra), in para 30 to 33 has made the following observations:

“ 30. There can be no dispute that this was a case in which money was the motive. We have already seen that the accused person do not come from a wealthy background. On the other hand, it has been held

that they could not justify the possession of ornaments found with them. It has also been held that they were unlikely to own the ornaments on account of their financial position.

*31. Practically, the whole law on death sentence was referred to in **Santosh Kumar's** case. In paragraph 56, the Court observed "the court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict etc. Quality of evidence is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socio-economic background of the offenders. This issue was also raised in 48th Report of the Law Commission. The Court, thus, has in a guided manner referred to the quality of evidence and has sounded a note of caution that in a case where the reliance is on circumstantial evidence, that factor has to be taken into consideration while awarding the death sentence. This is also a case purely on the circumstantial evidence. We should not be*

*understood to say that in all cases of circumstantial evidence, the death sentence cannot be given. In fact in **Shivaji @ Dadya Shankar Alhat v. State of Maharashtra [2008 (15) SC 269]**, this Court had awarded death sentence though the evidence was of circumstantial nature. All that we say is that the case being dependent upon circumstantial evidence is one of the relevant considerations. We have only noted it as one of the circumstances in formulating the sentencing policy. Further in that case the Court upheld the principles emanating from **Bachan Singh v. State of Punjab [1980 (2) SCC 684]** where the probability that the accused can be reformed and rehabilitated was held as one of the mitigating circumstances and it was observed that the State should, by evidence prove that the accused does not satisfy these conditions, meaning thereby that the accused is not likely to be reformed. The Court went on to hold that the rarest of rare dictum imposes a wide ranging embargo on the award of death punishment which can only be revoked if the facts of the case successfully satisfy double qualification :*

1) that the case belongs to rarest of the rare category and;

2) alternative option of life imprisonment will not suffice in the facts of the case.

32. *The Court then observed that the rarest of the rare dictum places an extraordinary burden on the Court. Considering these principles, we do not think that there was no possibility of reformation of the accused persons. True it is that the accused were driven by their avarice for wealth but given a chance there is every possibility of their being reformed. We are also of the clear opinion that in this case it is not established that alternative punishment of life imprisonment will be futile and would serve no purpose. In paragraph 66 of **Santosh Kumar's** case (cited supra), the Court observed that life imprisonment can be said to be completely futile only when the sentencing aim of reformation can be said to be unachievable. The Court further went on to say "therefore, being satisfied the second explanation of rarest of rare doctrine the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme.*

33. *In our opinion, there has been no such exercise taken either by the trial Court or appellate Court nor do we find any discussion about the life imprisonment being rendered futile and serving no purpose."*

38-c. In **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra** (supra), relied upon by learned counsel for the respondents-accused, the Supreme Court has referred the view expressed in **Bachan Singh** (supra) and further elaborately discussed the doctrine of proportionality. In para 158, 159, 160 and 171, The Supreme Court has made the following observations:

*“ 158. The reasons assigned by the courts below, in our opinion, do not satisfy **Bachan Singh** (1980) 2 SCC 684 test. Section 354 (3) of the Code provides for an exception. General rule of doctrine of proportionality, therefore, would not apply. We must read the said provision in the light of Article 21 of the Constitution of India. Law laid down by **Bachan Singh** (supra) and **Machhi Singh** 1983 SCC (Cri) 681 interpreting Section 354 (3) of the Code should be taken to be a part of our constitutional scheme.*

*159. Although the Constitutional Bench judgment of the Supreme Court in **Bachan Singh** (supra) did not lay down any guidelines on determining which cases fall within the “rarest of rare” category, yet the mitigating circumstances listed in and endorsed by the judgment give reform and rehabilitation great importance, even requiring the State to prove that*

this would not be possible, as a precondition before the court awarded a death sentence. We cannot therefore determine punishment on grounds of proportionality alone. There is nothing before us that shows that the appellant cannot reform and be rehabilitated.

*160. In **Dhananjoy Chatterjee v. State of W.B.** [(1994) 2 SCC 220], this Court has taken notice of the fact that a shockingly large number of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility. Although the increasing number of cases which affect the society may hold some value for the sentencing court, but it cannot give a complete go-by to the legal principle laid down by this court in **Bachan Singh** (supra) that each case has to be considered on its own facts.*

161 to 170.....

171. Section 354(3) of the Code of Criminal Procedure requires that when the conviction is for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and in the case of sentence of death, the special

reasons thereof. We do not think that the reasons assigned by the courts below disclose any special reason to uphold the death penalty. The discretion granted to the courts must be exercised very cautiously especially because of the irrevocable character to death penalty. Requirements of law to assign special reasons should not be construed to be an empty formality.”

38-d. In ***Sangeet and another v. State of Haryana*** (supra), relied upon by learned counsel for the respondents-accused, the Supreme Court has referred the leading judgments on the death penalty, including the case of ***Jagmohan Singh v. State of U.P.*** [(1973) 1 SCC 20] and ***Bachan Singh’s*** case (supra), and in para 77, 77.1 to 77.4 and 78, the Supreme Court has made the following observations:

“77. The broad result of our discussion is that a relook is needed at some conclusions that have been taken for granted and we need to continue the development of the law on the basis of experience gained over the years and views expressed in various decisions of this Court. To be more specific, we conclude:

*77.1. This Court has not endorsed the approach of aggravating and mitigating circumstances in **Bachan***

Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.

77.2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

77.3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become Judge-centric sentencing rather than principled sentencing.

77.4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.

77.5

77.6

77.7

78. *Given these conclusions, we are of the opinion that in cases such as the present, there is considerable uncertainty on the punishment to be awarded in capital offences – whether it should be life imprisonment or death sentence. In our opinion, due to this uncertainty, awarding a sentence of life imprisonment, in cases such as the present is not unquestionably foreclosed. More so when, in this case, there is no evidence (contrary to the conclusion of the High Court) that Seema’s body was burnt by Sangeet from below the waist with a view to destroy evidence of her having been subjected to sexual harassment and rape. There is also no evidence (again contrary to the conclusion of the High Court) that Narender was a professional killer.”*

38-e. In ***Mohd. Farooq Abdul Gafur and another v. State of Maharashtra*** (supra) and ***Kalu Khan v. State of Rajasthan*** (supra) relied upon by learned counsel for the respondents-accused persons, the Supreme Court has expressly held the imposition of death penalty erroneous.

38-f. In ***Shankar Kisanrao Khade v. State of Maharashtra*** (2013) 5 SCC 546 : MANU/SC/0476/ 2013], relied upon by learned APP as

well as learned counsel for the respondents-accused, in para 49, the Supreme Court has referred various principles for awarding sentence, as laid down in ***Bachan Singh*** (supra) and ***Machhi Singh*** (supra). Para 49 of ***Shankar Kisanrao Khade***, [para 25 as reported in MANU/SC/0476/2013], reads as under:

*“ 49. In ***Bachan Singh*** and ***Machhi Singh*** cases, this Court laid down various principles for awarding sentence:*

“Aggravating circumstances – (Crime test)

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

2. The offence was committed while the offender was engaged in the commission of another serious offence.

3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

5. Hired killings.

6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

7. The offence was committed by a person while in lawful custody.

8. The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.

9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and

social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold blooded murder without provocation.

13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances: (Criminal test)

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability

of the accused being reformed and rehabilitated.

4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5. The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though prosecution has brought home the guilt of the accused.”

In para 50 [para 26 as reported in MANU/SC/0476/2013], the Supreme Court has referred the observations made in ***Santosh Kumar Satishbhushan Bariyar*** (supra) that the nature, motive and impact of crime, culpability, quality of evidence, socio-economic circumstances, impossibility of rehabilitation and some of the factors, the Court may take into consideration while dealing with such cases. In para 51 [para 27 as reported in MANU/SC/0476/2013], the Supreme Court has also referred the view expressed in ***Sangeet's*** case (supra) and observed as under:

*“51. In ***Sangeet*** case this Bench has held that there is no question of balancing the above mentioned circumstances to determine the question whether the case falls into the rarest of rare cases category because the consideration for both are distinct and unrelated. In other words the “balancing test” is not the correct test in deciding whether capital punishment be awarded or not. ”*

39. In the instant case, we have to apply the test as determined and discussed by the Hon'ble Supreme Court in various cases. The respondents-accused persons have committed the crime with pre-meditation and it involves extreme brutality. They have committed

brutal murder of two innocent middle aged persons in a cruel and diabolic manner. They have committed gruesome, brutal murder of two middle aged helpless and hapless persons out of lust for money and ornaments. It was a pre-planned, calculated, cold blooded murder. This crime resulted in public abhorrence and shocked the judicial conscience and the conscience of the society.

40. PW 4 Sumitkumar Tiwari is the most important witness on the pre-incident facts. He was the night duty watchman on “Basant” bungalow of deceased Ramesh Munot and his duty hours were from 8.00 p.m. to 8.00 a.m. The accused no.3 Shivkumar Ramsundar Saket was working as watchman for day hours from 8.00 a.m. to 8.00 p.m. He was residing in a room situated in Sumesh Industry owned by deceased Ramesh Munot. PW 4 Sumitkumar Tiwari was residing in a room in front of the Basant bungalow. On 02.12.2007, when PW 4 Sumitkumar Tiwari had finished his duty at 8.00 a.m., accused no.3 Shivkumar Saket relieved him. Then PW 4 Sumitkumar Tiwari slept in his room till 11.30 a.m. However, when he got up, he noticed that a friend of accused no.3 Shivkumar Saket was talking with him. At about 12.00 noon, wife of accused no.3 Shivkumar Saket, namely,

Sangita, came with her small son and a tiffin. By that time, said friend of accused no.3 Shivkumar Saket had left the place. PW4 Sumitkumar Tiwari has given description of that person. After taking lunch with accused no.3 Shivkumar Saket and his wife Sangita, he took rest in his room. At about 1.00 to 1.30 p.m., when he went towards toilet situated at the backside of his room, he noticed that accused no.3 Shivkumar Saket was talking with two persons. PW 4 Sumitkumar Tiwari has also given description of those two persons. He has further deposed that at about 4.00 p.m., accused no.3 Shivkumar Saket awoke him and left the bungalow on his bicycle. Deceased Ramesh Munot along with deceased Chitra Munot went to the neighbouring bungalow for some function and came back at about 7.30 p.m. At about 9.30 to 9.45 p.m., when PW 4 Sumitkumar Tiwari was on duty as night watchman, one person stated his name as 'Subhash' and told that he wanted to meet Ramesh saheb. PW 4 Sumitkumar Tiwari has identified that person as the same person who had come near the toilet in the morning and who has talked with accused no.3 Shivkumar Saket near the toilet at 1.00 p.m. At that time, PW 4 Sumitkumar Tiwari opened the small gate and saw that 4 to 5 persons were standing on the street. He has identified two persons out of them who had talked

with accused no.3 Shivkumar Ramsundar Saket in the morning and at about 1.00 p.m. near the toilet.

41. We have discussed at length in the foregoing paragraphs about all the pre-incident details, the post-incident details and arrests of the respondents-accused persons with the incriminating articles in the state of Madhya Pradesh. We have also discussed in detail in the foregoing paragraphs, by referring the scene of offence, the condition of the dead bodies. Deceased Ramesh Munot and Chitra Munot were the middle aged persons. Except them, no one was present in the bungalow. The postmortem report and the inquest panchanama show that the assailants have committed brutal murder of deceased Ramesh Munot by stabbing him on his heart and of deceased Chitra Munot by causing cut throat injury. She was found tied to a chair in sitting position.

42. We are not in agreement with the observations made by the learned Judge of the trial court in para 444 of the judgment that the murders of deceased persons were not committed with previous planning and it does not involve extreme brutality. We are also not in agreement with the observations made by the trial court that

when the middle aged couple resisted the accused persons while committing dacoity, they were done to death.

42-a. PW 24 Sachin Dalvi, who was serving as Hardware Engineer in one of the companies owned by deceased Ramesh Munot, has deposed that at the time of incident accused no.3 Shivkumar Saket was the watchman for day duty and PW 4 Sumitkumar Tiwari was the watchman for night duty. Prior to them, accused no.2 Shailendrasingh Thakur was the watchman. In August 2007, accused no.2 Shailendrasingh Thakur was removed from work as he had behaved indecently with one employee of the company, namely, Shubhangi. Prior to accused no.2 Shailendrasingh Thakur, accused no.4 Rajeshsingh Thakur was working as watchman. All those watchmen were hailing from the state of Madhya Pradesh. Accused no.1 Raju Darode was working as driver on the vehicle of deceased Ramesh Munot prior to one year of the incident.

42-b. There is no evidence that the middle aged couple i.e. deceased Ramesh and Chitra Munot had resisted the assailants. They were helpless and hapless victims. Both the deceased were knowing accused no.1 Raju Darode, accused no.2 Shailendrasingh

Thakur, accused no. 3 Shivkumar Saket and accused no.4 Rajeshsingh Thakur prior to the incident. We do not think that both the deceased were done to death because of their resistance. On the other hand, the respondents-accused have committed their brutal murder to conceal their identity and involvement in commission of the crime. So far as accused no.1 Raju Darode, accused no.2 Shailendrasingh Thakur and accused no.4 Rajeshsingh Thakur are concerned, at the time of the incident, they were not in the employment of deceased Ramesh Munot and accused no. 5 Sandip Patel and accused no.6 Balendrasingh Thakur had no concern with the deceased couple in any manner. However, accused no.3 Shivkumar Ramsundar Saket was serving as the day time watchman at the time of the incident. In our considered opinion, he has well executed the plan in a calculated manner with the help of other accused persons and committed cold blooded murder of the helpless and hapless couple. Accused no.3 Shivkumar Ramsundar Saket has betrayed the trust of his employer deceased Ramesh Munot. The aged couple was entirely dependent upon the bungalow security. Accused no.3 Shivkumar Ramsundar Saket was on day duty earlier to the date of incident. He was knowing well that the deceased couple was in the bungalow alone

and no other family member was present in the night. Accused no.3 Shivkumar Ramsundar Saket had also planned to leave the town after commission of the crime along with the family and for that purpose, he had also purchased railway tickets. The crime has been committed under no duress, nor on provocation. On the other hand, two innocent lives were snuffed out. The murders were gruesome, brutal and diabolic. The crime has been committed with extreme depravity and in a merciless manner. It falls in the category of rarest of rare case. In our considered opinion, it merits the death penalty to the extent of accused no.3 Shivkumar Ramsundar Saket. In the facts of the present case, age of accused no.3 Shivkumar Ramsundar Saket cannot be considered as a mitigating circumstance.

43. We are thus inclined to confirm the judgment and order passed by the trial court and the sentence passed against the respondents-accused persons under various sections of IPC except respondent-accused no.3 Shivkumar Ramsundar Saket.

44. We accordingly issued production warrant against respondent-accused no.3 Shivkumar Ramsundar Saket in terms of the provisions of First Proviso to Section 386 of the Cr.P.C. vide order dated 01.04.2022 and called upon him to show cause as to why death punishment should not be imposed on him. Accordingly, respondent-accused no.3 was produced before us in the Court today i.e. on 08.04.2022.

45. We have heard respondent-original accused no.3 Shivkumar Ramsundar Saket in person. He states that a lenient view may be taken for the reason that this is his first offence and after commission of the crime and his conviction, not only his parents left him, but even his wife has also left him. At present, his son is at the mercy of his friends and there is nobody to look after him.

46. Mr. A. Y. Pandule, learned counsel for the respondent-original accused no.3 submits that considering the young age of respondent-original accused no.3 and since this is his first offence, leniency may be shown and the death punishment may not be imposed on him.

47. Learned APP submits that respondent no.3-original accused

no.3 is the mastermind behind the crime and he has well executed the crime in a calculated manner with the help of other accused persons and committed cold blooded murder of the helpless and hapless couple. Learned APP submits that respondent no.3-original accused no.3 Shivkumar Ramsundar Saket deserves no sympathy.

48. We have elaborately discussed in our judgment as to the role played by respondent no.3-original accused no.3. He was on the day duty as watchman on the said Basant bungalow. He was knowing well the activities of deceased Ramesh Munot and deceased Chitra Munot. PW.4 Sumitkumar Tiwari was the night watchman on the said bungalow at the relevant time and during the day time, he had witnessed all the activities of the present respondent no.3-original accused no.3. The other accused persons had come to him and accordingly, he executed the plan in a very calculated manner. We have also observed in our judgment that this is a rarest of rare case. In our considered opinion, respondent no.3-original accused no.3 Shivkumar Ramsundar Saket deserves no sympathy. Accordingly we hereby sentence respondent no.3-original accused no.3 Shivkumar Ramsundar Saket to suffer death penalty for the offence punishable under Section 396 of IPC as well as under Section 396 r.w. 120-B of IPC. Hence, we proceed to pass the following order:

ORDER

- I. Criminal Appeal No. 64 of 2014 [Shailendrasingh Shivmurtisingh Thakur and others v. State of Maharashtra] and Criminal Appeal No. 480 of 2014 [Raju Sampat Darode v. The State of Maharashtra] are hereby dismissed.
- II. Criminal Appeal No. 503 of 2013 [The State of Maharashtra v. Raju Sampat Darode and others] is hereby partly allowed.
- III. Clauses (3) and (7) of the operative part of the order dated 21.10.2013 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 51 of 2008, sentencing thereby accused nos. 1 to 6 to suffer imprisonment for life for the offence punishable under Section 396 of IPC and under Section 396 r.w. 120-B of IPC respectively, are hereby modified to the extent of accused no.3 Shivkumar Ramsundar Saket, with no change in the fine amount, in the following manner :

“Accused no.3 Shivkumar Ramsundar Saket is hereby sentenced to suffer death penalty for the offence punishable under Section 396 of IPC as well as Section 396 r.w. 120-B of IPC”.

- IV. Rest of the judgment and order dated 21.10.2013 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 51 of 2008 stands confirmed.
- V. So far as the sentence of death penalty passed against accused no.3 Shivkumar Ramsundar Saket is concerned, the same shall not be given effect to till expiry of the appeal period as stipulated under Section 415 (3) of the Criminal Procedure Code, 1973
- VI. In view of dismissal of Criminal Appeal No. 480 of 2014, Criminal Application No. 657 of 2015 also stands disposed off.

49. We quantify the fees for the appointed counsel at Rs.25,000/- (Rupees Twenty Five Thousand only) to be paid by the High Court Legal Services, Sub-committee, Aurangabad.

50. A copy of this judgment shall be provided free of cost to the respondent-original accused no.3 Shivkumar Ramsundar Saket in Criminal Appeal No. 503 of 2013 through the jail authority forthwith.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)