

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.744 OF 2013

Nitin Shamrao Samudre	 Appellant
versus	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPEAL NO.186 OF 2013**

1. Bharat Dnyandeo Kamble	
2. Sou. Vimal Dnyandeo Kamble	 Appellants
versus	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPEAL NO.795 OF 2013**

Sandeep Dnyandeo Kamble	 Appellant
versus	
The State of Maharashtra	... Respondent

Ms. Anjali Patil a/w Mr. Abdeali Kothawala & Mr. Aashay Topiwala,
Advocate for Appellant in Appeal No.744/2013.

Mr. D. G. Khamkar, Advocate for Appellant in Appeal
Nos.186/2013 and 795/2013.

Ms. G. P. Mulekar, APP for State/Respondent.

**CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.**

RESERVED ON	: 30th MARCH 2022.
PRONOUNCED ON	: 7th APRIL 2022.

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JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. All these three Appeals are decided by this common Judgment because they arise out of the same trial. For the sake of convenience, the Appellants are referred to by their original status as accused in the trial court.

2. Criminal Appeal No. 795 of 2013 is preferred by the accused No.1 Sandeep Kamble. Criminal Appeal No. 744 of 2013 is preferred by the Accused No.2 Nitin Samudre and Criminal Appeal No. 186 of 2013 is preferred by Accused No.3 Bharat Kamble and accused No.4 Vimal Kamble. Accused Nos.1 and 3 are brothers. Accused No.4 is their mother and accused No.2 is friend of accused No.1.

3. The Appellants have challenged the Judgment and order dated 27/12/2012 passed by the Additional Sessions Judge, Pune in Sessions Case No. 564 of 2010. By the impugned Judgment and order the accused Nos.1 and 2 were convicted for commission of the offence punishable under sections 364-A r/w. 34 of the Indian Penal Code, 1860 (for short 'IPC') and were sentenced to suffer

imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine to undergo S.I. for three years. Accused Nos.1 and 2 were convicted for commission of offence punishable under section 363 of IPC and were sentenced to suffer R.I. for 7 years and to pay a fine of Rs.5000/- each and in default of payment of fine to undergo S.I. for one and half years. Accused Nos.1 and 2 were convicted for commission of offence punishable under section 384 of IPC and were sentenced to suffer R.I. for three years and to pay a fine of Rs.1000/- each and in default of payment of fine to undergo S.I. for six months. Accused Nos.1 and 2 were convicted for commission of offence punishable under section 120-B of IPC but no sentence was imposed on them under this section.

4. Accused Nos.3 and 4 were convicted for commission of offence punishable under section 414 of IPC and were sentenced to suffer R.I. for three years and to pay a fine of Rs.2000/- each and in default of payment of fine to suffer S.I. for six months. All the substantive sentences were directed to run concurrently. All the accused were given set off under section 428 of Cr.p.c. Accused

Nos.3 and 4 were acquitted from the charges of commission of offence punishable under sections 363, 364-A, 384 and 120-B of IPC.

5. The prosecution case is that, the accused Nos.1 and 2 abducted five and half years old boy named Atharva from Raja Shivaji Nagar, Chinchwad, in the morning of 09/04/2010 in an Indica car. Phone calls were made to Atharva's mother Bhagyashri on a few occasions and Rs.15 lakhs were demanded as ransom for release of Atharva. Bhagyashri could arrange Rs.6 lakhs. She was asked to board a local train and to throw the bag containing money at a particular spot. In the meantime, police were informed by Bhagyashri. A tracking devise was kept in the bag. The money was traced to the house of accused Nos.1, 3 and 4. The bundles of currency notes, of which some of the notes were marked, were traced in that house. Cash of Rs.5,85,000/- was recovered. The investigation was carried out. All the accused were arrested. In the meantime, the boy came home at about 7.45p.m. on 12/04/2010. After the investigation the charge-sheet was filed. The case was committed to the court of sessions. During trial, the

prosecution examined 28 witnesses. The defence of the accused was of total denial. At the conclusion of the trial, the learned trial Judge passed impugned Judgment and order.

6. We have heard Ms. Anjali Patil, learned counsel for the Appellant in Appeal No.744/2013, Shri. Khamkar, learned counsel for the Appellants in Appeal Nos.186/2013 and 795/2013 and Ms. G. P. Mulekar, learned APP for the State/Respondent.

7. Learned counsel for the accused Nos.3 and 4 submitted that, they are acquitted from the charges of commission of major offences. The only charge proved against them was of concealing stolen property, but the cash amount was recovered from the house which was jointly occupied by accused Nos.1, 3 and 4. Therefore, their conviction under that section is not sustainable. So far as accused No.1 is concerned, there is no reliable evidence against him. Atharva has not identified him in the court. The evidence of identification parade which at best can only be a corroborating piece of evidence; does not help the prosecution case; though, allegedly, Atharva had identified accused Nos.1 and

2 at the parade.

8. The Call Data Record (CDR) and other evidence connecting the accused No.1 is not proved by the prosecution. The recovery of bag, in which cash was carried by Bhagyashri and which was allegedly taken away by the accused No.1 is not proved, because the investigating officer has stated that the bag was thrown away in the river. The tracking devise is not recovered.

9. Learned counsel appearing for the accused No.2 submitted that, there is nothing to show that, there is connection between accused Nos.1 and 2. The prosecution case is that, Atharva went in an Indica car which was driven by accused No.1. Even as per the prosecution case, accused No.2 was not in that car. There is no linking evidence of transferring recorded telephone calls to the C.D. The link to establish the sample voice with the recorded conversation is missing. The evidence of accused No.2's cousin cannot be relied upon because he was kept in police custody for a few days and, therefore, he was deposing under pressure of the police. Nothing was recovered from the accused

No.2 and, hence, he deserves to be acquitted.

10. Learned APP, on the other hand, submitted that, there is overwhelming evidence in the form of deposition of accused No.2's cousin. There are recorded conversations. The voice samples of both accused matched with the recorded conversation. Atharva has identified both the accused at the Test Identification Parade which was held immediately. He was only 8 years of age when he was examined in the court and, therefore, it was understandable that he could not identify accused Nos.1 and 2, but that does not wash away the identification of these two accused at the test identification parade. The evidence shows that, every time a phone call was made to Bhagyashre, Accused No.1 was in the vicinity of the coin-box from where the calls were made; meaning thereby those phone calls were made by none other than the accused No.1. Evidence of accused No.2's cousin is clinching. The house was shown by the accused No.3. There was nothing wrong in the police interrogating that witness because the boy was kept in his house, that does not mean that the police had pressurised this witness to depose to suit the prosecution case.

11. We have considered these submissions and we have perused the entire record. The prosecution case has unfolded through the evidence of PW-23 Bhagyashree; she was Atharva's mother. She has stated that, she was working in a company as Assistant Manager. It was situated in Chinchwad. Her duty hours were from 9.00a.m. to 6.00p.m. At that time her husband was in service and was posted at Pantnagar, Uttarakhand. Atharva was five and half years old at the time of incident. He was in Sr. K.G. She, Atharva and her mother in law were staying together. Her mother in law was looking after Atharva when Bhagyashree would not be at home.

12. On 9.04.2010, she returned home at about 6.30p.m. from her office. She could not see Atharva. She made inquiries with her mother in law, but she was not aware of Atharva's whereabouts. PW-23 then made inquiries with neighbourhood, but she could not find him. Then she called her brother Vijay Shete. He was in Mumbai. She also called her husband. Not having found Atharva, she lodged a report at the police station about his missing. This report was lodged at

Dehuroad police station. That report is produced at Exhibit 38. One Asha Kumari Yadav from her neighbourhood recollected that one white Indica car was parked near the compound of the society. There were two persons and Atharva was talking with one of them. Another neighbour Agarkar told the number of the car as MH-14 or 16/X-2124. On the next morning she received a phone call on her mobile phone. The caller was speaking in Hindi. He told her that, he had kidnapped Atharva and demanded Rs.15 lakhs within two days. He did not speak beyond this. After some time, PW-23 dialed the same number. It was received by one Bharat Bhangarwala of Kalewadi. He told her that, two persons had approached him and had asked for his mobile phone and using that phone this phone call was made. Realizing that Atharva was kidnapped, Bhagyashree's uncle Rajendra Honrao lodged this F.I.R. at Dehuroad police station. At about 8.30p.m. she again received a phone call and the caller asked her about her efforts of arranging the money. She wanted to hear voice of her son, but the telephone call was disconnected. She dialed the same phone number. It was the phone number of a coin-box belonging to one Sadashiv Mulay

at Loni-Kand. She told this fact to the police. They gave her a Black-berry handset. She inserted her SIM card in that handset. The police in plain clothes kept watch on her house.

13. On 11.04.2010, she again received a phone call. The caller again asked about the money. She told him that, she had arranged Rs.6 lakhs. Even on that occasion she was not allowed to speak to her son. On 12/04/2010, again she received a phone call. She again told the caller that she had made arrangement of Rs.6 lakhs. She was asked to board Chinchwad Lonavala local train. She informed this fact to the police. She collected Rs.6 lakhs and went to Pune Rural police station. The police gave their bag. They put identification mark on the first and last note of each bundle. Bhagyashree, her brother and police constables in civil dress went to Chinchwad police station at about 2.15p.m. She received a phone call on her mobile phone at 3.05p.m. She was instructed to board the last bogie of the local train and to stand near the door. She was allowed to take her brother with her, but she was threatened that if she informed the police, her son would face the consequences. Bhagyashree and her brother boarded the local

train from Chinchwad to Lonavala at 4.15p.m. At about 4.17p.m. she received a phone call verifying that she was in the train. After five minutes again she received another phone call and she was instructed to throw the bag from the compartment near a brick factory. She received another phone call and was told to return home instead of going to Lonavala. She got down at Lonavala and searched for her son, but could not find him. By that time, her husband had reached Lonavala and from there they returned back home. At about 7.45p.m. Atharva returned home. He was frightened and was crying. He hid himself under the staircase. After some time he became normal. She made inquiries with him. He told her that he had gone with Raju Kaka and Balu Kaka in an Indica car. This witness identified the bag shown to her. During investigation she had taken Atharva to Yerwada jail for attending the identification parade. Her cross-examination is hardly of any significance and the incident is sufficiently proved. The question is whether the accused were involved in the crime. Her version is corroborated on all particulars by the evidence of PW-1 Vijay Shete who was her brother and PW-2 Rajendra Honrao who was her

uncle. PW-2 had lodged the F.I.R. which is produced on record at Exhibit 26. It was registered at Dehuroad police station vide C.R.No.126 of 2010 on 10/04/2010, U/s.363, 384 and 364-A of IPC.

14. PW-3 Dinesh Shelke was a friend of Bhagyashree's husband and had arranged for Rs.1 lakhs out of Rs.6 lakhs paid as ransom amount. PW-4 Deepak Jamma was Atharva's uncle and he had tried to search for him. He had shown the spot to the police where Atharva was seen playing before being abducted. PW-5 Mahendra Gaikwad was a Police Naik attached to LCB, Pune. He has deposed about Bhagyashree carrying the bag in the local train and throwing of that bag as per the direction of kidnappers. He had accompanied Bhagyashree in the local train. PW-6 police constable Ravindra Shingare was on duty at Bhagyashree's house in plain clothes to keep watch. PW-8 police constable Mahadeo Hatkar had registered the complaint regarding Atharva's missing. It is produced on record at Exhibit 38. It was registered on 09/04/2010 at about 9.10p.m. PW-9 Meghraj Jamma was father of Atharva. He was at Uttarakhand at the time of incident, but he had

rushed to Pune.

15. PW-10 Sanjay Torkhade was a pancha in whose presence the currency notes were marked. The markings were in the form of circle, star and Swastik. The marking was made on the first and last notes of the bundle. Star mark was put on the bundle of currency notes of Rs.1000/-. Swastik mark was put on the bundle of currency notes of Rs.500/- and circle mark was put on the bundle of currency notes of Rs.100/-. He accompanied Bhagyashree and police officers in the local train. On 29/04/2010, he was a witness to the panchanama of recovery of the bag which was found at the instance of accused No.1. The bag was recovered from under a bridge below the slab near river water.

16. PW-11 Yashwant Deshmukh was a pancha in whose presence the accused No.1 showed his willingness to point out the place where Indica car was kept. The car was recovered at his instance. The panchanama was produced on record at Exh.47. Two mobile handsets were recovered from the car. The car was also seized. The panchanama is produced on record at Exh.48.

17. PW-12 Rajendra Gawali was a pancha in whose presence cash amount was recovered from the house of accused Nos.1, 3 and 4. The markings and numbers of those currency notes matched with the markings and numbers recorded earlier. The cash was of Rs.5,85,000/-. It was found in the house search of accused No.1 on 13/04/2010.

18. PW-13 Sunil Jadhav was the owner of Indica car. It was stolen by accused No.1. He had reported theft of his car at Hinjwadi police station. During investigation he identified the car seized at the instance of accused No.1. This witness had confirmed about his car by verifying engine number and chassis number.

19. PW-14 Rahul Munot was the owner of motorcycle which was stolen. He had lodged F.I.R. at Pharaskhana police station on 10/04/2010. After recovery of that motorcycle he identified it by its chassis number and engine number. PW-15 Dinesh Harke had prepared the number plate which was used by accused No.1 on the stolen Indica car.

20. PW-16 Asha Yadav had seen the Indica car near the main

gate of the society at about 4.00 to 4.30p.m. and again at 5.30 to 6.00p.m. Atharva was talking to that person who was standing near the Indica car. However, beyond that she has not identified the accused in the court.

21. PW-17 Anil Pangudwale was a pancha in whose presence the motorcycle was recovered at the instance of accused No.2. PW-18 Mahesh Agarkar had seen the Indica car and one person near the house of this witness and that of Bhagyashree. He had given number of the car to the police. PW-19 Arun Kanaskar had held the test identification parade on 01/07/2010. According to him, at that time, Atharva had identified accused Nos.1 and 2. The memorandum of identification parade was produced at Exhibit 61.

22. PW-20 Bhagirath Kumbhar had a telephone booth which was used by the accused for making a phone call, but he did not give details of those persons or the car. PW-21 Bapurao Pawar was a hostile witness regarding witnessing accused Nos.1 and 2 in each other's company. He was neighbour of accused Nos.1, 3 and 4.

23. PW-25 Makarand Vidwans was a Nodal Officer in Tata

Tele Service. He had produced Call Data records of the phone used by Bhagyashree. PW-26 Tushar Wakade was a Software expert. He had fixed a chip in the bag to track the movement of the bag. He tracked the bag electronically and supplied the locations to the police. He has produced that map at Exh.80.

24. PW-27 Shrikrishna Kokate, Dy.S.P. had investigated the case. He has deposed about recording the sample voice, transferring recorded conversation between Bhagyashree and abductors on the CD and sending them for voice analysis. The voice analysis shows that, sample voice matched with the recorded conversation. However, the prosecution has not examined the important witness who had transferred the recorded conversation on the CD. The procedure for recording and transferring of that record on C.D. is also not clearly brought on in the evidence. The covering letter giving details about recorded conversation and the sample recording is also not proved beyond reasonable doubt. Therefore, we are ignoring this piece of evidence.

25. PW-28 Dnaneshwar Ganore, API, was attached to LCB

Pune and was in the investigation team. He has deposed about recovery of cash from the house of accused Nos.1, 3 and 4. He has attached the audio cassette of conversation between the accused and Bhagyashree.

26. Besides this oral evidence the prosecution also produced the CDR of a particular handset which was found in the Indica car. That call data record is admitted by the defence. This is an incriminating piece of evidence. The CDR mentions IMEI number as 356858022666280. The location of this handset bearing IMEI number was found around the area of different coin boxes from where the calls were made on the mobile phone number of Bhagyashree. There were 9 such phone calls. The phone numbers were saved in Bhagyashree's phone. The mobile handset found in the Indica car which was used by accused No.1 showed location of that particular handset in the vicinity of all those coin boxes at the same time when calls were made from those coin-boxes to the phone number of Bhagyashree. This is a seriously incriminating circumstance against the accused No.1.

27. Having discussed this evidence, now we are referring to the most important evidence in this case.

28. The most important evidence is that of the victim Atharva himself obviously. He was examined as PW-24. At the time of recording his evidence he was 8 years of age. He has deposed that, on the date of incident, he was playing in front of his house. At about 5.00p.m. one Raju Kaka came in Indica car. It was parked in front of his building. He asked Atharva as to whether Atharva wanted to see a dead cow. Atharva replied affirmatively. He sat in that Indica car. He was taken to Moshi road. Then he was taken to one hotel. They had dinner there. Then he was taken to one village. Then he was taken to a house. There was a small child in the house. There were hens and goats. Atharva played with them, had dinner in the night and then slept there itself. On the next day, he was taken in the car. At that time, a person known to him as Raju Kaka was driving the car and another person known to him as Balu Kaka was sitting next to the driver. In that night Atharva slept with Balu Kaka. On the third day, he slept in the car and on 12/04/2010 he was left near his house. He has also deposed that,

he identified both of them in Yerwada jail at the time of test identification parade. However, he could not identify Raju kaka and Balu kaka in the court. Atharva's evidence is undoubtedly important. He was kept away from his home for three days. It appears that the accused had won over his trust. Atharva treated them like his uncles. Though, identification parade is only a corroborative piece of evidence, the prosecution has established that, at the parade Atharva identified the accused whom he was knowing as Raju kaka and Balu kaka. To that extent the test identification parade can be used. Though, it is made clear that, we are not treating the test identification parade as the substantive piece of evidence against the accused in this case. Having said this, we also note that, considering the tender age of Atharva it was understandable that he was not able to identify the accused in the court. However, leaving aside this issue of identification, we find that there is sufficient material against both the accused.

29. PW-7 Amit Togare was a pancha. He has stated that, on 15/04/2010, he was called by the police. Accused No.3 Bharat expressed his willingness to show the place where Atharva was

kept. His statement was recorded. This witness and police were led by Bharat to Bhangaon. Atharva had accompanied them. Bharat led them to one house. Atharva told them that Balu kaka and Raju kaka had brought him to that house. The panchanama is produced at Exh.36. It is mentioned in the panchanama that, when the pancha and police reached there, one Pawar came out of the house. He was PW-22 Yesu Pawar. He spoke with Atharva and conversed with him. The police asked that person as to how he knew Atharva. At that time he told them that accused No.2, who was his relative, and accused No.1 had brought Atharva to his house and had kept him with them for two days. This evidence is important which is further strengthened by the evidence of PW-22 Yesu Pawar himself.

30. PW-22 Yesu Pawar has stated that, he was cousin of accused No.2. This witness was called by the accused No.2 telephonically. He was told that accused No.2 was coming to his house with his friend and one child. At about 4.00p.m. accused No.2 came to his house in white Indica car with a five year old boy and another person named Raju @ Sandeep. The child's name was

mentioned as Atharva. Accused No.2 told this witness that the child was his friend's son. Atharva was calling accused No.2 as Balu kaka. Atharva played with buffaloes, goats and hens. In the night he slept with accused No.2. On the next day accused No.1 Sandeep returned on a splendor motorcycle and then accused Nos.1, 2 and Atharva went away. Accused No.1 and Atharva were in the car and accused No.2 followed them on splendor motorcycle. On 16/04/2010 police recorded his statement.

In the cross-examination, he has stated that from 14/04/2010 for 2-3 days he had been to the police station and he was kept in the lock-up of Dehuroad police station, but he denied the suggestion that police had assured him that he would not be made an accused if he gave statement as per their say.

In our view, evidence of this witness is the most incriminating circumstance against both the accused. He has clarified as to how Atharva was referring to both these accused as Raju kaka and Balu kaka. He was cousin of accused No.2. He has no reason to depose against him. Atharva was kept in his house

which was pointed out by accused No.3 as per his knowledge. Atharva himself identified the house. This witness had conversation with Atharva showing that they had met previously. All these things corroborated each other and this evidence proves the prosecution case against accused Nos.1 and 2 beyond reasonable doubt.

31. Learned counsel for the accused No.2 tried to rely on the Judgment of Hon'ble Supreme court in the case of *K. Venkateshwarlu Versus State of Andhra Pradesh*¹ to contend that, there was a strong possibility that PW-22 was deposing as a tutored witness for the police because he was detained at the police station. In *K. Venkateshwarlu's case (supra)*, the child witnesses were detained at the police station and, therefore, the court had observed that they were tutored by the police. In that case, paragraph No.4 of the said Judgment mentions that the child witnesses had admitted that they were at the police station for a considerable period before they were brought to the court. Similarly, PW-5 Swapna in that case had admitted that she had

1 (2012) 8 Supreme Court Cases 73

given statement before the Magistrate at the instance of the police.

These facts are materially different from the facts of the case before us. In the present case, PW-22 was not detained or tutored by the police before his deposition was recorded during trial. The defence has not developed that line of cross-examination to establish that the PW-22 was actually detained at the police station in April 2010. When the police came across this PW-22, the investigation was in progress. The investigation had revealed that Atharva was kept in that house belonging to this witness. Therefore, it was but natural that police would inquire with this witness regarding the same. At that time he was a strong suspect. However, no questions were put to the investigating officer and, therefore, in the facts of this case, there is no reason to draw an inference that, PW-22 was giving evidence under pressure of police. There is no contemporaneous record to show that PW-22 had any grievance against the police. It needs to be noted that the PW-22 was cousin of accused No.2. PW-22 had deposed before the court after quite some time and at that time, definitely, there was no apprehension of he being arrested or roped in, in connection

with this case. He has strongly supported the prosecution case and we find his evidence to be truthful. His evidence is corroborated by the pancha PW-7, who had gone to his house as per the information given by accused No.3.

32. Learned counsel for the accused No.2 relied on the Judgment of Hon'ble Supreme court in the case of *Shaik Ahmed Vs. State of Telangana*². It was observed in that case, that the essential ingredients to convict the accused U/s.364-A of IPC which are required to be proved by the prosecution are as follows:

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction;
- (ii) threatens to cause death or hurt to such person, or by this conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;
- (iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

In the fact of that case, the Hon'ble Supreme court had noted that, neither father of the victim who was

² Criminal Appeal No.533 of 2021 decided on 28/06/2021.

the complainant nor the victim had said that any accused threatened to cause death or hurt. The evidence which was laid before the court suggested otherwise that the victim was not assaulted and he was treated well in good manner as stated by the victim.

However, in the present case before us, PW-23, mother of the victim has clearly stated that, she was threatened that, if she informed the police, her son would face the consequences. This threat given to her was corroborated by PW-1 Vijay. Thus, there is a direct threat giving reasonable apprehension of possible hurt to Atharva. Therefore, the case cited by the learned counsel on behalf of the accused No.1 will not help his submissions, as there is direct evidence satisfying ingredients of Section 364-A of IPC. Section 364-A of IPC reads thus:

“364-A. Kidnapping for ransom, etc. - Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person

may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or International inter-Governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

33. To summarise, there are following definite incriminating circumstances and depositions against both the accused:

- i) calls made by accused No.1 which is proved by CDR and location of mobile handset found from Indica car.
- ii) Theft of Indica car and it's recovery at the instance of accused No.1 and definite material to show that the Indica car was used in abducting Atharva.
- iii) Theft of motorcycle and recovery of the same at the instance of accused No.2. As narrated by PW-22, the accused No.2 had followed the Indica car on his motorcycle when Atharva was taken away from the house of PW-22.

iv) Recovery of the marked bundles of currency notes from the house of accused Nos.1, 3 and 4 soon after the incident. No explanation was offered by the accused.

v) The most incriminating deposition is in the form of evidence of PW-22 who has clearly implicated accused Nos.1 and 2, though, he was cousin of accused No.2. He had also explained as to who was Raju kaka and Balu kaka according to Atharva.

All these circumstances are proved beyond reasonable doubt and they complete the chain proving the guilt of both accused Nos.1 and 2. All the ingredients of section 364-A of IPC are satisfied. Once this offence is proved, the punishment provided is life imprisonment which is rightly imposed by the trial court.

34. Learned Sessions Judge has considered this evidence in its proper perspective. Therefore, there is no reason to interfere in the conviction and sentence recorded against accused Nos.1 and 2.

35. So far as, accused Nos.3 and 4 are concerned, they are acquitted of the main offences. However, they are convicted only

U/s.414 of IPC. However, the marked currency notes were found from the house which was jointly occupied by accused Nos.1, 3 and 4, therefore, accused Nos.3 and 4 were not in exclusive possession of that house. Accused No.1 collected that cash which was thrown from the local train. He was the main offender. He had brought that cash home and kept it in his house. Therefore, there is scope to believe that accused Nos.3 and 4 had not concealed that cash. Accused No.1 had kept it in his own house which was also occupied by accused Nos.3 and 4. Therefore, to that extent, we are inclined to grant benefit of doubt to accused Nos.3 and 4.

36. Hence, the following order:

ORDER

- (i) Criminal Appeal No. 795 of 2013 preferred by accused No.1 is dismissed.
- (ii) Criminal Appeal No.744 of 2013 preferred by accused No.2 is dismissed.
- (iii) Criminal Appeal No.186 of 2013 preferred by accused Nos.3 and 4 is allowed.
- (iv) Accused No.3 and 4 are acquitted of the offence punishable U/s.414 of IPC.

- (v) Accused Nos.3 and 4 are on bail. Their bail bonds shall stand cancelled. They shall execute P.R. bonds in the trial court U/s. 437-A of Cr.p.c. in the sum of Rs.30,000/- each with one or two sureties each in the like amount, within a period of six weeks from today.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)