

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.734 OF 2013

Dharmendra Paras Chauhan	]
Age 26 yrs.	]
R/o. Nalasopara (E)	]
Dist. Thane	]
At present lodged in	]
Yerwada Central Prison	]..... Appellant.
Yerwada, Pune	] (Org. Accused No.1)

versus

State of Maharashtra	]
(Through Manickpur Police Station, Dist. Thane	]..... Respondent.

ALONG WITH
CRIMINAL APPEAL NO.873 OF 2013

Aazar Azim Shaikh	]
Age 23 yrs.	]
R/o. Shabana Apartment	]
Room No.207, 2 nd Floor	]
Baitulnagar,	]
Nalasopara (E), Tal. Vasai	]
Dist. Thane	]
At present lodged in	]
Yerwada Central Prison	]..... Appellant.
Yerwada, Pune	] (Org. Accused No.3)

versus

State of Maharashtra	]
(Through Manickpur Police Station, Dist. Thane	]..... Respondent.

ALONG WITH
CRIMINAL APPEAL NO.735 OF 2013

Ravindra Mishri Chauhan	]
Age 35 yrs.	]

R/o. Nalasopara (E)]
 Dist. Thane]
 At present lodged in]
 Yerwada Central Prison]..... Appellant.
 Yerwada, Pune] (Org.Accused No.4)

versus

State of Maharashtra]
 (Through Manickpur Police Station, Dist. Thane]..... Respondent.

ALONG WITH
 CRIMINAL APPEAL NO.737 OF 2018

Ashfaq Akram Khan]
 Age : 32 yrs. Occ. Nil]
 R/at : Nawail Area, Room No.3]
 Majid Chawl, Room No.4]
 Nalasopara (E), Tal. Vasai]
 Dist. Palghar]
 (Presently lodged at Kolhapur]..... Appellant
 Central Prison, Kolhapur.] (Ori. Accused No.2)

versus

The State of Maharashtra]
 (At the instance of Sr. P. I. Manickpur]
 Police Station, Dist : Thane]..... Respondent.

Mr. Kuldeep S Patil for the Appellants in Criminal Appeal Nos.734 of 2013, 873
 of 2013 and 737 of 2018

Ms. Racheeta Dhuru for the Appellant in Criminal Appeal No.735 of 2013

Mr. V B Konde Deshmukh, APP for the Respondent/State.

CORAM : S. S. SHINDE,
 N. R. BORKAR, JJ
 Reserved on : 21st February 2022
 Pronounced on : 25th February 2022

COMMON JUDGMENT : (PER S. S. SHINDE, J)

1 Since the aforesaid four separate appeals are arising out of one
 and the same judgment dated 19/01/2013 passed by the Additional Sessions

Judge, Vasai, with the consent of the learned counsel appearing for the parties, the same are being decided by this common judgment.

2 These four appeal are directed against the judgment and order dated 19/01/2013 passed by Additional Sessions Judge, Vasai, thereby convicting the appellants-original accused Nos.1 to 4 for the offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to suffer imprisonment for life and to pay a fine of Rs. 2500/- each and in default to suffer further imprisonment for six months. The Accused Nos. 1 to 4 are further convicted for the offence punishable under Section 394 of IPC and sentenced to suffer R.I. for 5 years with fine of Rs.2500/- each in default to suffer further R.I. for six months. Both the substantive sentences to run concurrently.

3 The prosecution story in nutshell can be summarized as under-

That on 24/05/2010, at about 3.00 pm one Ashok Bagul – Police Hawaldar attached to Manikpur Police Station, received an information about lying of a dead body of an unknown person behind Kinara Dhaba in a dry Nala. He along with other police personnel went to the spot and found the dead body of a male person aged about 25 to 30 years. The dead body had slit to his neck and there were black coloured abrasion on the chest and the abdomen. He also observed that the dead body was dragged from Ahmedabad Highway to a dry Nala. The said Ashok Bagul – Police Hawaldar lodged FIR

being CR No. I-172/2010 on behalf of the State against the unknown persons. On the basis of said FIR, an offence came to be registered against unknown persons for the offence punishable under Section 302 of the IPC.

4 After about one month of registration of the above FIR, one person by name Kishor Kathepuri (PW-5) informed Manickpur Police Station that 4 assailants i.e. the accused had killed his friend Sanjay in front of him. The Investigation Officer API Kerubhau Kolhe (PW-8), who conducted the investigation, recorded his statement and started further investigation.

5 During the course of investigation, the IO (PW-8) conducted spot panchanama, and seized simple earth and blood stained earth from the spot. The accused were arrested and in pursuant thereto, memorandum statements of the accused were recorded, incriminating articles such as motorcycle of the deceased, wire, knife and gold ingots were seized under seizure panchanama. API Kolhe (PW-8) also recorded the statements of witnesses and seized muddemal were sent to Chemical Analysis.

6 After completing the investigation, IO filed charge-sheet against the accused in the Court of Judicial Magistrate First Class, Vasai, who in turn, committed the case to the Court of Sessions as the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions.

7 The trial Court framed charge against the accused for the offence punishable under Sections 302 and 394 of the IPC. The accused pleaded not guilty and claimed to be tried. After a full fledged trial, the trial Court convicted the appellants – original accused Nos.1 to 4.

8 In order to bring home the guilt of the accused and to prove that the death of deceased was homicidal, the prosecution has examined 10 witnesses viz. PW-1 Ashok Bagul – Police Hawaldar – the first informant; PW-2 Abhayaraj Ramcharan – Panch witness on seizure of the clothes of the deceased; PW-3 Dr.Anilkumar Yadav - who conducted post mortem; PW-4 – Rambali Rajbhar – Panch witness for arrest of accused and on seizure panchanama of motor-cycle; PW-5 Kishor Kathepuri – Eye witness; PW-6 Shrinivas Mhatre – Panch witness on seizure of gold ingots and on memorandum statement of Accused No.2; PW-7 Rajesh Singh – Panch witness on arrest panchanama and memorandum statement of Accused No.1 and ; PW-8 Kerubhau Kolhe – IO who conducted investigation; PW-9 Sharad Vinerarkar – witness; and PW-10 Vivek Kadam – witness.

9 Mr. K. S Patil, the learned counsel appearing for the Appellants – Accused Nos.1 to 3 submitted that, the learned Judge has not appreciated and evaluated the evidence on record in proper perspective. It is submitted that

the eye witness PW-5 is not a reliable and trustworthy witness as he did not disclose the incident to the police immediately. It is further submitted that the deceased, accused and eye witness (PW-5) were the friends and neither there was evidence on record to show the enmity between them nor any motive was attributed to the accused, and if it is assumed that the accused committed murder of Sanjay in the presence of PW-5, then there was no reason why the accused would have allowed PW-5 to go unharmed. There is no satisfactory explanation on the part of PW-5 as to why he had approached the police after a period month of the incident. In so far as evidence of PW-5 and the evidence of IO (PW-8) are concerned, the learned counsel for the Appellants submitted that, there is no consistency in their evidence about the date on which the witness went to the police and when his statement was recorded. The incriminating articles seized under the panchanama like cable and knife were accessible to all. The prosecution has failed to bring on record that the gold ingots allegedly seized by the police belonged to the deceased. It is submitted that the accused were falsely roped in the criminal case and the trial Court erred in holding that the Appellants accused have committed the alleged offence. In support of the aforesaid submissions, Mr. K. S. Patil, the learned counsel appearing for the Appellants – Original Accused No.1 to 3 sought to place reliance on the following judgments :-

1] Vadively Thevur v/s The State of Maharashtra¹;

1 AIR 1957 SC 614

- 2] Lallu Manjhi v/s. The State of Jharkhand²;
- 3] Joseph v/s. The State of Kerala³;
- 4] Ansar Dastagir Aitawade v/s. The State of Maharashtra⁴; and
- 5] Sujit Gulab Sohatre and others v/s. The State of Maharashtra⁵

10 Ms. Racheeta Dhuru the learned counsel appearing for the Appellant – Accused No.4 in Criminal Appeal No.735 of 2013 submitted that, the version of all the prosecution witnesses are contradictory, inconsistent and conflicting to each other, and therefore, they are not trustworthy and reliable. She further submitted that, the prosecution has miserably failed to bring on record cogent and convincing evidence in support of the seizure of gold from Uttam Jewellers of Bihar. She also submitted that there is no independent witness to prove the close proximity to the place of alleged incident, and there is no recovery from the Appellant – Accused No.4. The learned counsel appearing for the Appellant in aforesaid Appeal therefore submitted that the Appeal filed by the said Appellant may be allowed.

11 Per contra, the learned Additional Public Prosecutor appearing for the Respondent/State submits that the prosecution has proved its case by adducing material evidence on record to bring home the guilt of the accused. He submitted that in so far as non disclosure of the incident to the police by

2 2003(2) SCC 401

3 2003(1) SCC 465

4 Cri.Appeal No.281 of 2012 decided on 12/09/2018

5 1996 (5) Bom CR 630

eye witness is concerned, the threat given by the accused was sufficient reasons for him for not approaching the police. There is direct evidence in the form of eye witness. There is recovery of incriminating articles at the instance of the accused. It is therefore urged that, there is sufficient evidence and material brought on record by the prosecution to prove that the death of the deceased is homicidal. The impugned judgment and order passed by the learned Additional Sessions Judge is well reasoned judgment, and needs no interference at the hands of this Court.

12 Heard the learned counsel for the Appellants and the learned APP for the Respondent/State. With their able assistance we have perused the notes of evidence placed on record by the Appellant, so also record and proceedings and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment.

13 The prosecution case mainly rests upon the solitary evidence of PW-5 Kishor Kathepuri, who is eye witness to the alleged incident. Therefore, first we will discuss the evidence of PW-5. In his deposition before the Court, he stated that on 23/05/2010 at about 10.30 to 10.45 pm after closing the shop, he and his mother went back to home. After 10 to 15 minutes, his friend Sanjay Gokhale came to house of PW-5 and told him that they have to go out for dinner. Sanjay told to mother of PW-5 that they would go and come back

immediately, so mother of PW-5 told to Sanjay to come back soon. Therefore, they went towards Achole road on red colour pulser motor cycle of Sanjay. PW-5 had seen that Asphak, Dharmendra and Azhar were standing near the shop of PW-5 with activa motor cycle. They told PW-5 that, all of them have to go for dinner together. Thereafter all of them went towards Tulinj Road and when they reached Tiwari Nagar, he found that Ravindra was waiting for them. Thereafter they went on Bombay Ahmedabad Highway towards Mumbai and took dinner in a Dhaba near Tungareshwar Phata. At that time, it was about 12 to 12: 15 midnight. Thereafter they went upto Kinara Dhaba from there they took U turn for coming towards Nalasopara. PW-5 stated that at some distance, they stopped both the motor cycles, and attended the natures call. PW-5 stated that he and Sanjay came first near the motor cycle, and when PW-5 was rubbing tobacco on his palm, Ravindra came from behind Sanjay and put a wire over his neck. Ravindra dragged him from the corner of the road. PW-5 asked others as to why they are beating Sanjay, they told him to keep quite or else same thing would be done with him. They took Sanjay to the field abutting to the road. They took him to 10 to 12 fts. From the place where PW-5 was standing. Azhar and Asphak caught hold of Sanjay's leg, Dharmendra sat on his chest. Ravindra slit the neck of Sanjay with knife. They took money, gold chain, gold rings and bracelet of Sanjay. PW-5 deposed that the dead body was thrown in a dry drain and they threatened him that, if he disclosed same to anyone, they would also cut him like Sanjay. PW-5 further

deposed that as he was frightened, he told them that he will not tell anything to anyone and told the accused to take away from said place. Thereafter they came back. Asphak was driving Sanjay's motor cycle. PW-5 got down at Vasai Phata. From there PW-5 went to his home. PW-5 further deposed that they all were friends. PW-5 did not inform about the incident to anybody for a month. Thereafter he disclosed the said incident to his mother and at her instance they came to Manikpur Police station and disclosed the same to the Police Officer – Kolhe, who recorded his statement.

In his cross examination PW-5 stated that there is traffic light on Achole road after 11:00 pm, and on the way from Achole Road to High Way there are police chowki of Tulinj, Toll Naka and Pelhar Police Chowki. There are rickshaws at Vasai Phat in the night and there are hotels and residential premises at Vasai Phata as also petrol pump is situated at about 200 ft. away from Vasai Phata. He stated that he does not know and remember the name of Dhaba in which they took dinner. However, he stated that the said Dhaba is situated at a distance of about $\frac{1}{2}$ kms from Tungareshwar phata. He stated that he does not know the distance between Dhaba where they took dinner and Kinara Dhaba. He further stated that they have taken U turn before 1 km of Kinara Dhaba. However, he stated that he never knew about Kinara Dhaba. He further stated that whenever police called him for inquiry, he used to go police station and thereafter he used to continue his work in shop. He stated

that police called him for the first time after 15 days of the incident and at that time police made inquiry with him and he did not raise any suspicion nor named anyone to the police. PW-5 stated that he was again called after 5 to 6 days. Even on the second occasion he did not tell anything to the police. He further stated that he went to police station after one month of the incident.

We have carefully perused the evidence of PW-5. Though he has stated that there is traffic light on Achole Road after 11.00 pm and from Achole Road to High Way there is toll naka as also police chowki at Tulinj and Pelhar, however it is surprising to note that nobody had seen PW-5, the deceased and the accused while going on motor-cycles. If PW-5 in his cross examination has given minute details about the time consumed for dinner, about Kinara Dhaba and taking U turn before 1 kms of Kinara Dhaba, then it is really surprising, how he did not know the name of the Dhaba where they took the dinner, though he remembered the distance of the said Dhaba from Tungareshwar Phata. In the aforesaid background it is difficult to believe the testimony of PW-5. One more important fact which is required to be noted is that, before going for dinner, PW-5 and deceased Sanjay informed the mother of PW-5 that they are going for dinner and will return immediately, however, the prosecution did not examine the mother who would have been supporting the version of the PW-5. The another aspect which cannot be lost sight of is, PW-5 twice visited the police station, however, he did not disclose anything about the

alleged incident to the police. PW-5 in his deposition admitted that he did not inform the incident to anybody for a month, and thereafter he disclosed the said incident to his mother and at her instance he went to police station and disclosed the incident to police. The reason given by PW-5 for not disclosing the incident to anybody for a month is due to the threat given by the accused. But considering the fact of not disclosing such a serious incident even to his own mother for one month, creates doubt about the credibility of the witness. Therefore in the aforesaid background the incident narrated by PW-5 in detail before the court right from the time of leaving his home till the happening of alleged incident appears to be afterthought and concocted, and no implicit reliance whatsoever can be placed on such evidence. Being a friend of deceased Sanjay, it was expected of PW-5 to disclose the incident to the police immediately, but not disclosing the incident to the police even when he visited twice to the police station during the said month creates suspicion and doubt about the truthfulness of testimony of the said solitary witness. Therefore the evidence of so called eye-witness (PW-5) is highly suspicious, doubtful and no implicit reliance whatsoever can be placed in his testimony.

14 In so far as evidence of PW-1 Ashok Bagul – Police Hawaldar, is concerned, he deposed before the court that he received telephonic information in respect of one dead body lying behind Kinara Hotel. He visited the spot and lodged the FIR. However, he was not in a position to tell who had

given the said call and from which number. Therefore, evidence of this witness (PW-1) is not helpful to the prosecution to connect the Appellants-Accused with the alleged commission of offence.

15 The next witness is PW-2 Abhayaraj Ramcharan, who is the panch witness in respect of seizure of clothes. However, in his cross he admitted that he cannot read and write Marathi. He also admitted that he cannot read the contents of panchanama Exhibit-39, though he stated in his chief examination that the contents are true.

16 The prosecution has also examined Dr. Anilkumar Ghanshyam Yadav as PW-3, who conducted the post mortem on the dead body. He found two injuries, which according to Doctor, are sufficient to cause death. The cause of death mentioned by the Doctor is, Haemodynamic Shock due to cut injury. However, he has not recorded the age of the injury.

17 The next witness examined by prosecution is Rambali Rajbhar as (PW-4) who is the panch witness for arrest panchanama of accused Dharmendra, Azar and accused Ashfaq. He has acted as a panch witness for the panchanama of seizure of the motor cycle at the instance of accused Ashfaq. However, he stated that he is not aware of the contents of the said panchanama (Exh.58). He stated that he does not recollect the name of the

accused nor he can identify the accused. As PW-4 is not supporting the prosecution case on the aspect of identification and recording of statement of witness, he was declared as hostile witness. In the cross examination, he denied the suggestion given by the prosecution that he is deliberately not identifying the accused. Thereafter in his further cross examination, he admitted that accused Ashfaq has not made any statement in his presence.

18 Another Panch witness examined by prosecution is PW-6 Shrinivas Mhatre, who stated that he was called by the police at Manikpur Police Station on 25/06/2010, where Shri Kolhe (IO) told him that they have to go to Bihar Dist. Siwan. The police took accused Asphak Khan with them. They went there on 27/06/2010 in Tavera Car. After reaching there, the accused has shown shop of one Uttam Jeweller saying that he has sold the ornaments to him. The said jeweller told them that he has prepared gold ingots of the said ornaments. The said jeweller gave the ingots to them. Thereafter they came to Vasai. He stated that initially the writing was done at Manikpur Police Station and after seizure of gold ingot panchanama was drawn.

In his cross PW-6 admitted that he used to visit police station. He does not know the registration number of the Tavera car, and the name of the said driver. He does not remember the area in which Uttam Jewellers was situated. He does not remember the name of the owner of said shop.

It is impossible to believe that he (PW-6) does not remember the registration number of Tavera car in which he along with officers went to Bihar as also he does not remember the name of driver of said Tavera car with whom he travelled for two days. Even though he does not remember the name of owner of the shop and the area in which the said shop is situated. It cannot be believed that a person, who travelled with Police in a car from Vasai to Bihar for two days, does not know the basic things i.e. names of the driver, shop owner, the registration number of car or area in which the shop is situated. Therefore his evidence is not reliable.

19 The next witness PW-7 Rajesh Singh, who is the panch witness in respect of seizure of knife and cable wire. He stated that accused Dharmendra showed the place near Asha Bar from where he removed cable wire and knife kept under table at that place. At the instance of accused Azhar one black coloured motorcycle Activa was seized from the place in front of the office of Jivdani Finance Company.

In his cross examination PW-7 stated that his mobile number was there with the police and in connection with work as estate agent, he is required to go to police station. Before this case, he visited the police station on 4 to 5 occasions. Though he acted as a Panch, this witness (PW-7) does not

remember the registration number of motorcycle.

The Investigating Officer Mr. Kerubhau Kolhe is examined by the prosecution as PW-8. He conducted the investigation of the crime. During the course of investigating he prepared seizure panchanama, spot panchanama, collected the simple earth and earth stained with blood from the spot of incident, sent the dead body for post mortem, accused were arrested. He stated that on 23.06.2010 accused Asphak made a statement that he is ready to show the place where the motor-cycle of the deceased is concealed. Thereafter they went to a stone Quarry at Vasai Phata from where they found red coloured Pulser Motor-cycle. On 25.06.2010, accused Asphak made a voluntary statement that the gold ornaments of the deceased were sold by them to a jeweller at Siwan, State of Bihar, and he agreed to show the said place. Thereafter they went to Bihar in a private vehicle Tavera car. Accused Asphak took them to Uttam Jewellers. The accused informed about the selling of gold chain, gold ring, and bracelet to the owner of the said shop, who in turn admitted to have purchased of said ornaments from Asphak and others. The owner of the said shop told that he has prepared gold ingots of the said ornaments and, the ingots were given by the said jeweller to the police. On 1.7.2010 Activa Motorcycle used by Azar was seized. At the instance of Accused Azar, the said motor-cycle owned by Vivek Kadam was seized from virar (East) from the place in front of his office. He recorded the statement of

jeweller Sonukumar, statement of owner of Activa Motorcycle and the statement eye witness Kishor Kathepuri. The statement of Mobin Khan – the driver of the Tavera Car was also recorded.

In his cross examination, the IO admitted that the family member of the deceased did not lodge any missing complaint. He also admitted that the place where the dead body was found no one was found in the nearby area having witnessed the incident. The deceased was married. He also admitted that there used to be disputes between deceased and his wife and there was a divorce between them. He also admitted that deceased used to lent money. The IO denied the suggestion that deceased was staying with a Muslim lady. However, he has voluntarily made a statement that the deceased used to go to her for taking food. The said lady was married. He also denied the suggestion that the deceased had illicit relations with the said lady and for the said reason, the husband of the said lady was annoyed with the deceased. The deceased was staying alone at Nalasopara. He stated that no investigation was done in whose house he was staying and no inquiry was made with the neighbours of the deceased. The deceased was wearing shoes and his shoes were seized, however, no panchanama about seizure of shoes of the deceased was drawn. Except for Kishor (PW-5) no one else has stated about having witnessed the said incident. On 12.06.2010 Kishor and his mother came to the police station on their own. Their statements were not recorded on that day. As the witness

again came on 20.6.2010, his statement was recorded on that day. He stated that Vasai Phata is populated area. The distance between Vasai Phata and stone quarry is not mentioned in panchanama. Enquiry was made with regard to ownership of the stone quarry. He admitted that the key of the said motorcycle was not seized from any of the accused. He also admitted that there is no mention in panchanama about the carat of gold ingots. No documents was obtained to show that the accused Azhar was working with Vivek Kadam. He also admitted that Kishor (PW-5) did not state that the murder was committed with black coloured folding knife. There is no recovery from accused Ravindra. No finger print was lifted from the knife.

It is clear from the afore-stated admissions given by the Investigating Officer in his cross examination that the investigation has not been carried out in a proper manner.

20 One more witness Sharad Anant Vinerarkar has been examined by the prosecution as PW-9, who was employed with Vivek Kadam. He knows accused Azar. On 23.5.2010 after finishing work, this witness and Azar went to the house of Vivek Kadam for sleeping there on Activa at about 11.15 pm. At that that Azar told this witness that he wants to go to party and left the place on Activa. The activa bears registration No.MH-04 DH 3353 and it belongs to wife of Vivek Kadam. Police recorded his statement. In his cross

examination this witness stated that he had not personally seen Azar taking Activa with him. He was called after one month of the said date by the police.

Therefore, it is clear that the version of this witness is not consistent with the prosecution case. At one place he stated that Azar left the place for party on Activa, however in the cross examination he stated that he had not personally seen Azar taking Activa with him.

21 Now coming to the Chemical Analysis report. Nail clippings of right hand and left hand as also scalp hair of the deceased Sanjay were sent to CA for examination. The results of analysis show that Exhibits 1, 2 and 3 are stained with blood, however, the result of ABO Grouping is “Inconclusive.” Examination of report of blood of accused Asphak Khan is also placed on record. The blood group of Asphak Khan is shown in the said report is “AB”.

22 In the light of above discussion, in our considered view, the evidence of PW-5 does not inspire confidence and there is no corroborative evidence in material particulars by a reliable testimony to match the version of PW-5. In our view, the evidence of the eye-witness (PW-5), upon which the prosecution case mainly rests, is not satisfactory to sustain the conviction of the Appellants-accused in the crime. PW-1 Police Hawaldar, who visited the spot on the basis of telephonic information received by him and thereafter he

lodged the complaint. The incriminating articles i.e. knife and wire are easily available in the market. It is pertinent to note here that the police person who carried the articles to the CA has not been examined by the prosecution to prove that the articles were sent to CA in a sealed packet. There is no evidence or material on record to show that samples and/or articles were sent after following proper procedure. It appears from record the clothes of the deceased seized during investigation have not been sent to CA. It also appears from the record that the prosecution did not examine the owner of the Uttam Jewellers nor did prosecution examine the driver of the Tavera Car in which the police went to the shop of the said Jeweller to prove that accused Asphak sold the ornaments to him and he made ingots of the said ornaments. The knife and cable wire seized from the accused Dharmendra are easily accessible in market. There is no recovery from Accused Ravindra. The prosecution also did not examine Vivek Kadam with whom the accused Azar was working and, the Activa motor-cycle allegedly used in the crime stands in his wife's name. The Investigating officer did not record the statement of neighbours of the deceased, so also the statement of owner of quarry, from where the police seized the motor-cycle of the deceased at the instance of accused Asphak. Considering all these relevant facts, we are of the considered view that the investigation was not properly done by the Investigating Officer in the crime, and therefore, the investigation in this case is defective.

23 The deceased Sanjay, eye-witness (PW-5) and the Appellants-Accused were friends. There are no material particulars on record to show that the Appellants-Accused had any motive to kill Sanjay. The version of the incident given by the sole eye witness, who in our opinion, is the interested witness on account of his relationship with the deceased, is highly exaggerated and not corroborated by the evidence of any independent witness.

24 In so far as the statements of the Accused recorded under Section 313 of the Criminal Procedure Code are concerned, the defence of the Accused is of total denied and they have stated that they are innocent and falsely implicated in the crime.

25 The prosecution has miserably failed to bring home the guilt of the accused. The prosecution case is based on solitary evidence of eye-witness (PW-5) which is not trustworthy and there is no corroboration to his version, and therefore, it would be unsafe to convict the Appellants-Accused on the basis of evidence of such witness. As per the prosecution case, the cause of murder of Sanjay was theft, however, there is no evidence on record to show that there was any previous meeting of minds between all the accused. The Trial Court, in the absence of trustworthy evidence, proceeded to convict the Appellants-Accused. It was incumbent upon the Trial Court to meticulously consider the reliability of evidence of PW-5 since his statement was recorded by

the police officer after one month when admittedly twice he visited the police station during the said month. The Trial Court in the absence of corroboration to the evidence of PW-5, whose evidence itself was not trustworthy, and without having evidence on record regarding motive for commission of such crime, wrongly convicted the Appellants-Accused.

26 In the light of discussion in foregoing paragraphs, we are of the considered view that the impugned judgment and order passed by the trial Court cannot legally sustain, and therefore, inevitable conclusion is that the appellants/accused are entitled for benefit of doubt. Hence, we pass the following order-

ORDER

- a] Criminal Appeal No.734 of 2013, Criminal Appeal No.873 of 2013; Criminal Appeal No.735 of 2013 and Criminal Appeal No.737 of 2018 are allowed.
- b] The impugned judgment and order dated 19.01.2013 passed by the Additional Sessions Judge, Vasai in Sessions Case No.95 of 2010 is quashed and set aside.
- c] Appellant – Dharmendra Paras Chauhan; Appellant – Aazar Azim Shaikh; Appellant - Ravindra Mishri Chauhan and Appellant - Ashfaq Akram Khan are acquitted of the offences punishable under Sections 302 and 394 of the Indian Penal Code, 1860.
- d] The Appellant – Ravindra Mishri Chauhan is in jail. He shall be released forthwith, if not required in any other case.

- e] The bail bonds of Appellant – Dharmendra Paras Chauhan; Appellant – Aazar Azim Shaikh; and Appellant - Ashfaq Akram Khan stand cancelled.
- f] All the Appellants shall, within one months furnish a bail in terms of Section 437-A of Code of Criminal Procedure, 1973 in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) each with one surety in the like amount before the concerned Trial Court.
- g] All the Appeals stand disposed of.
- h] A copy of this judgment shall be sent forthwith to Appellant – Ravindra Mishri Chauhan in Criminal Appeal No.735 of 2013.

(N. R. BORKAR, J.)

(S. S. SHINDE, J.)