



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

CRIMINAL APPEAL NO.238 OF 2018

1. Shaikh Ahemad Pasha @ Pavan s/o Rajmohammad
@ Rajamiya
Age : 30 years, Occu : Business,
R/o. At Present C/o. Tarlapalli Krushna
Laxminarayan Sangam Manda, Road
Makhtal, Dist. Maheboobnagar
(Andhra Pradesh)

2. Shaikh Sailani Baba s/o. Rajmohammad @ Rajamiya
Age : 27 years, Occu : Labour
R/o. Zadi Jamalpur Mandal,
Bodhan, Dist. Nizamabad

.. Appellants
(Orig. Accused)

Versus

The State of Maharashtra
Through Police Station Bhagyanagar,
Nanded

.. Respondent

.....

Shri. Sudarshan J. Salunke, Advocate for the Appellants
Smt. U. S. Bhosle, APP for the Respondent / State

.....

**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 12.02.2024
PRONOUNCED ON : 07.03.2024**

JUDGMENT : [Per NEERAJ P. DHOTE, J.]

1. This is the Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the Judgment and Order dated 14.03.2018 passed by the learned Additional Sessions Judge-2, Nanded in Sessions Case No.117 of 2014

convicting the Appellants for the offence punishable under Sections 364, 365, 397, 302, 201 r/w. Section 34 of the Indian Penal Code, 1860 (for short, 'I.P.C.') and sentencing them as detailed in the operative order of the Judgment.

2. The Prosecution's case as revealed from the Police Report is as under:

2.1. The Informant – Shri. Ajaykumar Gorakhnath Suryawanshi's father Gorakhnath Kishanrao Suryawanshi purchased one Swift Car bearing No.MH-26/AK-1248 after his retirement from the services as the Driver. He used to ply the said car on rental basis. In the morning of 10.06.2014, Gorakhnath left his house with the car, however did not return home. When the Informant and his family members made a phone call on his Mobile No.9096148624, Gorakhnath informed them that he had completed the trip of Sawargaon and was going for a trip to Bodhan and told them that he will return in the early morning between 03:00 a.m. to 04:00 a.m., however, Gorakhnath did not return home. Thereafter, they tried to contact him over phone, but his phone was switched off. The Informant and his family members enquired about Gorakhnath with their known persons in the town and surrounding area, however no information was received. The Informant lodged Missing Report with the Police Station Bhagyanagar, Nanded on 12.06.2014 and thereafter lodged the Report on 17.06.2014 that his

father was kidnapped for ransom. The police registered the Crime *vide* Cr. No.113/14 for the offence punishable under Sections 364 and 365 of the I.P.C.

2.2. On 18.06.2014 the Informant along with his friends Balaji Somwanshi (PW No.2) and Sushant Sone (PW No.3), and the Police of Crime Branch went in search of Gorakhnath to Andhra Pradesh. On 20.06.2014 the Police Officer informed Sushant Sone and Balaji Somwanshi that Gorakhnath's car was seized from Appellant No.1, who was lodging in one lodge at Bodhan and visiting card of Mudita Tours and Travels was also found in the pocket of Appellant No.1. Police informed that the Appellants had rented the car of Gorakhnath and killed him near one lake within the vicinity of Malaram village in Nizamabad District and changed the number plate of his car by putting the number AP-25-AN-4949.

2.3. On receiving the information, the Informant along with his relatives and friends went to Nizamabad Rural Police Station, where they were shown the photo of Gorakhnath. In the photo, Gorakhnath was seen with the injuries on his face and left rib. The Informant received the custody of the dead body of Gorakhnath and returned to his native place and performed the last rites. On 21.06.2014 the Informant went to the Local Crime Branch Office at Nanded, where Appellant No.1 was found in the police custody.

2.4. During investigation, it was revealed that the Appellants murdered Gorakhnath 'by Strangulation' with the use of wire and thereafter the car was run over his body. On verifying chasis and engine number of the car it was confirmed that the car was that of Gorakhnath. During investigation, the police seized the articles at the instance of the Appellants pursuant to Section 27 of the Indian Evidence Act and found that on 10.06.2014 there was telephonic contact between Appellant No.1 and deceased Gorakhnath, the statement of witnesses were recorded and the articles seized during the investigation were referred to the Chemical Analyzer, the Post-mortem Report came to be collected, the necessary panchanamas were drawn. On completion of investigation, the Appellants came to be Charge-sheeted.

3. Heard learned Advocate for the Appellants and the learned APP for the State. Scrutinized the evidence on record.

4. It is submitted by the learned Advocate for the Appellants that except the recovery of the car and phone call details, there is no evidence against the Appellants. The case is based on vague panchanamas. The panchanamas were prepared in one go at the Police Station itself. If the motive was to rob the deceased, then there was no reason why gold ring of deceased was not removed. No documents of the car are brought on record. There is no Chemical Analysis Report in

the evidence. The best evidence is not brought on record. The body of deceased Gorakhnath was found on open space. The Appellants are entitled for acquittal by setting aside the impugned Judgment.

5. It is submitted by the learned APP that the seizure of the car from the possession of Appellant No. 1 and the phone call details show the involvement of the Appellants in the crime. The number plate of the car of the deceased was changed and this show that the Appellants had destroyed the evidence to screen themselves. The motive was to rob the car. In the Test Identification Parade (TIP) Appellant No.1 was identified. The PAN card and other incriminating documents are seized from the possession of Appellant No.2. The injuries on the dead body show that the death was Homicidal. The learned Trial Court has rightly convicted the Appellants and the Appeal be dismissed.

6. To prove the Charge, Prosecution brought on record the following circumstances :-

- (i) Going missing of Gorakhnath Suryawanshi from 10.06.2014.
- (ii) Dead body of Gorakhnath Suryawanshi found near the lake in Nizamabad District of Andhra Pradesh on 11.06.2014.
- (iii) Homicidal Death of Gorakhnath Suryawanshi.
- (iv) Seizure of deceased Gorakhnath Suryawanshi's car from the possession of Appellant No.1 with different number plate.
- (v) Calls between Appellant No.1 and deceased Gorakhnath Suryawanshi on 10.06.2014.

- (vi) Seizure of the original number plate of deceased Gorakhnath Suryawanshi's car at the instance of Appellant No.1.

(i) Going missing of Gorakhnath Suryawanshi from 10.06.2014 :-

7. PW No.1 - Ajaykumar Gorakhnath Suryawanshi is the son of deceased Gorakhnath. He is the resident of Nanded. After retirement from the services, deceased Gorakhnath purchased the Swift Car having registration no. MH-26/AK-1248. On 10.06.2014 deceased Gorakhnath left with his car for a trip to Sawargaon and did not return till evening, so he contacted his father on his mobile no. 9096861424 between 09:30 and 10:00 p.m. His father told him that he had a trip for Bodhan and will return by 03:00 a.m. to 04:00 a.m. On the next day when he called his father over his mobile, it was switched off. He took search for his father, however he was not traceable.

8. The evidence of PW No.1 – Ajaykumar further show that on 12.06.2014 he lodged Missing Report with Bhagyanagar Police, however till 17.06.2014 his father was not found. He suspected that his father was kidnapped for blood money and therefore, lodged Report at Exh.22 with the concerned police station. The cross-examination show that the above discussed evidence of PW No.1 – Ajaykumar is not challenged.

9. The evidence of PW No.2 – Balaji Dattatraya Somwanshi show that he knew the Informant – Ajaykumar Suryawanshi (PW No.1)

and his father Gorakhnath Suryawanshi. After retirement, Gorakhnath Suryawanshi purchased a Swift Maroti Car having Registration No.MH-26/AK-1248 and used to run the said car on hire basis. On 11.06.2014 PW No.1 – Ajaykumar informed him that his father left for Sawargaon, Tq. Degloor on 10.06.2014 for a trip with the car and from there he had to go to Bodhan, however he was not responding to the phone calls. They took search for Gorakhnath, but could not find him. On 17.06.2014 PW No.1 – Ajaykumar lodged Report with the police. The cross-examination show that this evidence of PW No.2 – Balaji is not challenged.

10. The evidence of PW No.3 – Sushant Suryakant Sone show that he knew PW No.1 – Ajaykumar and his father Gorakhnath. After retirement, Gorakhnath Suryawanshi purchased the Swift Car having Registration No. MH-26-AK-1248. On 11.06.2014 PW No.1 - Ajaykumar informed him over the phone that his father went to Sawargaon, Tal. Degloor for a trip with his car on 10.06.2014 and he had a trip for Bodhan in the night and did not return home. They took search for Gorakhnath, however he was not traceable. On 17.06.2014 PW No.1 - Ajaykumar lodged the Report with Bhagyanagar Police Station that his father was kidnapped. His cross-examination show that the said evidence is not challenged.

11. The evidence of PW No.28 - Shivaji Anna Doiphode show

that he was attached to the Local Crime Branch, Nanded at the relevant time. On 18.06.2014 P. I. Pawar of LCB directed him to take search of Gorakhnath Suryawanshi in Crime No. 113/2014 registered with Bhagyanagar Police Station. He met API Mr. Patil of the said police station and Mr. Patil told him that in the said crime there was a missing report lodged on 12.06.2014 and during the enquiry of missing report, the CDRs were obtained.

12. From the above discussed evidence, it is established that Gorakhnath Suryawanshi left his residence on 10.06.2014 with his aforesaid car for trip and did not return, therefore, his son PW No.1 – Ajaykumar lodged the Missing Report and thereafter Report that his father was kidnapped. Thus, Circumstance No.(i) is proved by the Prosecution.

(ii) Dead body of Gorakhnath Suryawanshi found near the lake in Nizamabad District of Andhra Pradesh on 11.06.2014:-

13. The evidence of PW No.13 – Chitti Bojaram Rajayya show that he was serving as the Patwari at Malkapur, Dist. Nizamabad (Andhara Pradesh). On 11.06.2014 when he was in his office, one employee informed him at about 11:00 a.m. that one dead body was lying near Moulai lake, so he went there. He saw the dead body of male person aged about 50 years with baniyan and underwear. There were injuries on left eye and left eye brow of the dead body which were

reddish in colour. There were blood stains on the baniyan. The height of the body was above five (05) feet. He informed the Police Station Nizamabad (Rural). His information was recorded as the FIR at Exh.78 in Telugu language and its translation at Exh.78/A. His evidence show that the photograph at Article - 'A' was that of the said dead body. The cross-examination show that this evidence was not seriously challenged.

14. The evidence of PW No.20 – Vithal Malkaji Panchal show that he was the resident of Malkapur, Tal & Dist. Nizamabad and was Carpenter by profession. On 11.06.2014 the police called him near Maulali Lake at Malkapur. Naga Goud was the another panch. The police from Nizamabad (Rural) Police Station were present at the spot. One dead body of male was lying in the bushes. Chappals and Ghutkha sachet were found which were seized by the police. The dead body was lying at the distance of half ($\frac{1}{2}$) kilometer from Warli – Nizamabad road. Dead body was aged about 55 to 60 years having underwear and baniyan. There were injuries on chest, head etc., and blood stains on the dead body. There was ring in the finger of the dead body. The police prepared the Inquest at Exh.116 in Telugu language and its translation at Exh.117 and also prepared the Spot Panchanama in Telugu language at Exh.114 and its English translation at Exh.115.

15. The cross-examination of PW No.20 – Vithal show that he was the Sarpanch of village Kotapalli. His frequent visit to the police

station being the Sarpanch cannot be the factor to discard his testimony. Not knowing the crime number by this witness cannot be said to be unnatural. He denied the suggestion that the panchanamas were not prepared in his presence.

16. The evidence of PW No.22 - Mr. K. Adireddy s/o. Gangareddy show that at the relevant time i.e. from 24.02.2014 to 14.08.2014 he was attached to Nizamabad Police Station as Police Inspector. On 11.06.2014 at 13:00 hours one Mr. C.H. Bhojaram lodged the report with the police station that unknown dead body was lying near Maulali Tank. He proceeded towards spot which was the outskirts of Mallaram village near Maulali Tank. The age of the deceased was 55 to 60 years and there were injuries on forehead and right elbow. There was full baniyan and ash colour underwear on the dead body and one pair of chappal and three gutkha packets were lying nearby. He prepared the Inquest, which was in Tamil at Exh.116 and its translation at Exh.117 and prepared the Spot Panchanama which was in Tamil at Exh.114 and its translation at Exh.115. His evidence show that there was gold ring in the finger of the dead body. The body was sent to Government Hospital, Nizamabad for Post-mortem with the requisition that the femur bone of the deceased be preserved for DNA. On 14.06.2014 he gave request letter to Municipal Council, Nizamabad for burial of the dead body. The cross-examination on the point of his

investigation do not affect the evidence.

17. Thus, from the above discussed evidence the Circumstance No.(ii) is established.

(iii) Homicidal Death of Gorakhnath Suryawanshi:-

18. The evidence of PW No.16 - Dr. Sridharacharya Upendracharya show that he was the Assistant Civil Surgeon at Government Hospital, Nizamabad at the relevant time. On 12.06.2014 he received the requisition for Post-mortem on the unknown male dead body. He conducted the Post-mortem and found following injuries :

- “1) Brush burn abrasion 6 x 4 cms. Present over anterior part of left temporal region.
- 2) Abrasion 3 x 2 cms present on forehead, just above the root of the nose.
- 3) Multiple abraded contusions present over back and outer aspect of left arm and forearm
- 4) Multiple irregular abrasions present over back of right upper limb, extending from elbow joint to dorsum of hand. Fracture dislocating of elbow joint present.
- 5) Multiple abrasions spread in an area of 20 x 10 cms present at outer aspect of left side of abdomen.
- 6) Multiple stretch abrasions spread in an area of 25 x 12 cms present at outer aspect of right side on abdomen.
- 7) Contusion 12 x 5 cms present over right side of chest three cms outer to the sternal border.
- 8) Abrasion 15 x 98 cms present over back of right side abdomen
- 9) On reflection of chest wall diffuse contusion present. Fracture of middle third of sternum noted. Fracture right side ribs of 3rd, 4th, 5th and 6th are mid clavicular line and left side ribs of 4th, 5th, 6th at mid clavicular line with underlying lung laceration and contusion noted. Massive haemo thorax present.
- 10) Liver laceration of 6 cms x 1 cm x 1 cms present over anterior surface of right lobe of liver. Haemo peritoneum noted.”

He gave the approximate time of death about 24 to 36 hours prior

to Post-mortem examination. The cause of death was '**due to chest injury and abdominal injury**'. He preserved femur bone for DNA analysis. The Post-mortem Report at Exh.91 is brought on record which corroborate his evidence.

19. The evidence of PW No.16 - Dr. Sridharacharya Upendracharya show that the injury no.1 and 2 were possible by dragging a person. Injury No.3 was possible, if a person is compressed on hard surface. Injury No.4 was possible, if a person is forcibly compressed and fracture is also possible. Injury No.2 to 5 are possible by rolling tire on the body. Injury No.4 and 5 were possible by compression of tire of the car. The injury No. 5 and 6 were possible by application of heavy force. Injury No.7 was possible by application of blunt force. Injury No.8 was possible by contact with rough surface. Injury No. 9 and 10 were internal injuries resulted by application of heavy blunt force. The injury No.1 to 8 were external injuries. The Injury No.1 to 10 were possible by hit and compression of car. Injury No.9 and 10 were sufficient to cause death in ordinary course of nature. In cross-examination it has come that in the heavy motor accident injuries were possible.

20. The evidence of PW No.21 – Amiroddin Naziroddin show that on 20.06.2014 the police called him in the hospital. The police took

him to the Nizamabad Municipality graveyard where the police, doctor and municipal employees were present. The police exhumed the dead body. The son of deceased identified dead body. The dead body was in Chaddi and Baniyan and was decomposed. The bone of right thigh was cut at the time of the post-mortem. Dead body was given in the possession of son of deceased. The panchanama (Exh.119) to that effect was prepared. His cross-examination show that the said evidence was not seriously disputed.

21. Further evidence of PW No.22 - Mr. K. Adireddy s/o. Gangareddy show that on 20.06.2014 Nanded Police and Informant / PW No.1 - Ajaykumar came to Nizamabad (Rural) Police Station and PW No.1 - Ajaykumar identified the photographs of the dead body. He recorded the statement of PW No.1 – Ajaykumar and gave a letter to Tahsildar, Nizamabad for exhumation of the dead body and the dead body was exhumated by the Tahsildar under the Panchanama in Tamil at Exh.119 and its translation at Exh.120. Further, his evidence show that on 08.07.2014 he handed over the muddemal to Nanded Police and handed over the dead body to PW No.1 – Ajaykumar. His cross-examination do not show that his evidence was seriously challenged.

22. Further, evidence of PW No.1 – Ajaykumar show that on 18.06.2014 he along with API from Bhagyanagar Police Station, his two friends and LCB team went to Andhra Pradesh to take

search of his father. They went to Nizamabad (Rural) Police Station where the photographs of his father were shown him. There were injuries on the face and body and blood was oozing from the mouth. He took the dead body of his father and performed the funeral at his native place.

23. Considering the above discussed evidence in respect of the dead body lying in open place, having injuries over the body and the cause of death, there is no difficulty in holding that the Prosecution has established that Gorakhnath Suryawanshi died by Homicidal Death. Thus, circumstance No.(ii) is established.

(iv) Seizure of deceased Gorakhnath Suryawanshi's car from the possession of Appellant No.1 with different number plate :-

24. The evidence of PW No.2 – Balaji Dattatraya Somwanshi and PW No.3 - Sushant Suryakant Sone show that they were knowing the deceased and his son PW No.1 – Ajaykumar. On 18.06.2014 they along with the Police Officers of LCB went to Nizamabad, Hyderabad and Mehboobnagar as per mobile tower location in search of Gorakhnath. On 20.06.2014 in the morning they came to Bodhan and went to one Goutam lodge. The police enquired with Manager. Appellant No.1 was lodging in Room No.209. The Police took search of Appellant No.1 and found the

Aadhar card, election card, the visiting card of Mudita Tours and Travels in the name of G.K. Suryawnshi and key of Swift Car in his possession. During enquiry the police found the car was standing outside the lodge. The said car was of white colour with number plate having registration No.AP-25/AN-4949. The said documents and the car were seized by the police under the panchanama at Exh.30. Though, these witnesses were cross-examined in detail, their above discussed evidence remained unaffected.

25. The evidence of PW No.28 - Shivaji Anna Doiphode show that on 24.02.2014 he was attached to the Local Crime Branch, Nanded and he was directed to take search for deceased Gorakhnath Suryawanshi in Cr. No.113/2014. His evidence further show that in the Missing Report dated 12.06.2014 Police Head Constable Rathod had taken the CDR's and he found that there were no calls on the mobile phone of the kidnapped person after 10.06.2014. The other number in the CDR was of Andhra Pradesh. He saw the CDR of the said mobile phone and noticed that the SIM card was in the name of Appellant No.1 with the address at Maktal, Maheboob Nagar, Andhra Pradesh. Accordingly, he proceeded to Maktal with PW No.1 - Ajaykumar and PW No. 2 - Balaji. He contacted the Cyber Cell Crime, Nanded and Cyber Cell searched number of Appellant No.1 and the location was found at Bodhan. Accordingly, they went to Bodhan in the morning of 20.06.2014 at

Gautam Lodge. They found the entries in the name of Ahemad Pasha in the register of the said lodge. The Manager of the lodge was contacted and he took them to the room where the Appellant No.1 was lodging. During the search, he found Samsung White colour mobile handset, election card, Aadhar Card, visiting card in the name of Mudita Tours and Travels and one key. On enquiry, it was found that the car was parked in front of the lodge. The said articles and the car bearing No.AP-25-AN-4949 came to be seized under the panchanama at Exh.30.

26. The evidence of PW No.1 - Ajaykumar Suryawanshi show that in the morning of 20.06.2014 his friend contacted him and informed that the car was found. On 21.06.2014 he was called in LCB Office, Nanded where he confirmed from the chassis number and engine number that it was their car. In the cross-examination it is confirmed that on 20.06.2014 he received the phone call from his friend Sushant Sone (PW No.3) and he phoned from Bodhan.

27. The evidence of PW No.17 – Shri. Saibaba Mallagaud show that he was the Receptionist at Goutam Lodge, Bodhan. His work was booking of the customer in the lodge and was maintaining the register. In his evidence, Article 'A' which was the copy from the register, was exhibited at 93. His evidence show that the person by name Sk. Ahemad Pasha boarded the lodge on 18.06.2014 and boarded the Room

No.209. The police from Maharashtra came to lodge and apprehended Sk. Pasha from the lodge. His cross-examination show that full name was not written in the register and it was mentioned as Sk. Pasha.

28. The evidence of PW No.4 – Girish Rathod, the panch for Memorandum and Seizure under Section 27 of the Indian Evidence Act show that, Appellant No.1 took them to one Nidhi Radium Works, the place from where Appellant No.1 got prepared two duplicate number plates having No.AP-25-AN-4949. The owner of the said shop Nagraju (PW No.18) was present there and his statement was recorded by the police. The panchanama to that effect was at Exh.35.

29. The evidence of PW No.18 – Nagraju Sataya Yelegetti show that he was having the shop in front of Satya Sai Petrol Pump at Midchal under the name and style 'Shrinidhi Radium Works'. His evidence show that on 11.06.2014 the Appellant No.1 came to his shop for preparing number plate for the swift car. At the instance of Appellant No. 1 he prepared two number plates of the number AP-25-AN-4949 and they were fitted on the said swift car and charged Rs.400/-. His statement was recorded by the police. He deposed that the Appellant No.1 was the same person.

30. Further evidence of PW No.18 - Nagraju Sataya Yelegetti show that the receipt was issued in the name of the customer 'Ahemad

Pasha'. The said receipt is brought on record at Exh.103. His evidence show that since the customer did not ask for receipt, he had not issued it. In the cross-examination the extract from the register was brought on record at Exh.104. The tenor of cross-examination show that the evidence of this witness have been further fortified or remained unshaken. Even if his identification of Appellant No.1 is kept aside for want of corroboration in the nature of previous identification in T.I.P, his testimony corroborate the evidence of discovery of the said place at the instance of Appellant No.1.

31. It is established that at the instance of Appellant No.1 the place from where number plate with a different registration number was prepared, is discovered and from the evidence of PW No.18 - Nagraju Sataya Yelegetti it is established that number plate with different number was prepared which was found on the car of deceased when it was seized from the Appellant No.1.

32. The evidence of PW No.28 - Shivaji Anna Doiphode show that he sought the information from the Regional Transport Office, Nizamabad regarding the details of vehicle No. AP-25-AN-4949 by letter at Exh.169 and the R.T.O. Nizamabad provided the information which was at Exh.170, according to which the said registration number was of red colour Maruti Swift V.D.R. car, which was in the name of one Satish Komanna, resident of Zadi-Jamalpur.

33. From the above discussed evidence, the circumstance No. (iv) is established.

(v) Calls between Appellant No.1 and deceased Gorakhnath Suryawanshi on 10.06.2014 :-

34. The evidence of PW No.26 - Mr. Milind Digamber Kolwadkar show that he was the Nodal Officer of Bharati Airtel Service Provider from March-2007. On 26.12.2016 he received the communication from the Nanded Police about Mobile No.9096148624 and call records for the period from 01.05.2014 to 15.06.2014 and he provided the required details and also gave the Certificate under Section 65B of the Indian Evidence Act. His evidence show that the said cell number was that of deceased Gorakhnath Kishanrao Suryawanshi. In his evidence he deposed that 'Mobile No.9422418182 called mobile No.9096148624 on 10/6/2014 at 10:54:41 hours. Mobile No.9096148624 called mobile No.9422418182 on 10/6/2014 at 11:08:24 hours. Mobile No.9096148624 received call from phone No.2462-231233 on 10/6/2014 at 14:05:37 hours. Similarly, same phone number called mobile No.9096148624 on 10/6/2014 at 20:18:57 hours. On the same day on the same phone number, three calls received to mobile phone No.9096148624.'

35. The evidence of PW No.26 - Mr. Milind Digamber Kolwadkar further show that call was received on the said phone of deceased from Mobile No.7386037786 on 10.06.2014 at 20:23:56 hrs., and there was further call from Mobile No.9156806994 on 10.06.2014 at 22:18:06 hrs. The documents such as the covering letter giving the necessary details of the phone number of deceased, the Certificate under Section 65B of the Indian Evidence Act and the call details of cell number of deceased were brought on record in the evidence of this witness from Exh. No.149 to 155.

36. The evidence of PW No.24 – Makrand Bhalchandra Vidwans show that he was the Nodal Officer in the Telenor India Company from May-2015. He received letter dated 26.12.2016 from Nanded Police about call details of Mobile No.7386037786 for the period from 09.06.2014 to 13.06.2014 and accordingly, he provided the required call details and gave the Certificate under Section 65B of the Indian Evidence Act. His evidence show that the said mobile number was registered in the name of Sk. Ahemad Pasha (Appellant No.1). His further evidence show that on 10.06.2014 at about 20:23:56 hours the cell number of deceased i.e. 9096148624 received the phone call from the aforesaid cell number of Appellant No.1 i.e. 7386037786.

37. There is evidence of PW No.6 – Narayan Bhagwanrao

Malkatwar which show that on 10.06.2014 at about 10:00 p.m., he was near Hingoli gate as his maternal uncle was hospitalized. As he was hungry, he stopped there to eat some food. At that time, Appellant No.1 came to him and requested his mobile for making a call. The call was made from his mobile by Appellant No.1. The evidence of this witness show that his cell numbers were 9975976140 and 9156806984. Further, his evidence show that the police enquired with him on 15.07.2014 and he was called in the jail on 11.09.2014 for the test identification parade, where he identified Appellant No.1 from amongst 14 persons who were standing in the queue. His evidence show that during the evidence, he identified the Appellant No.1.

38. The evidence of PW No.23 – Shriniwas Ramlu Andelwad show that he was in the services of MSRTC, Nanded. On 11.09.2014 he was called as the Panch for the Test Identification Parade (T.I.P) at the District Prison. The said TIP was conducted by the Naib Tahsildar. Fourteen (14) persons stood in the queue and PW No.6 - Narayan Bhagwanrao Malkatwar identified the person who was at serial no.9. The Memorandum of the TIP was at Exh.133 and the Panchanama of TIP was at Exh.134. The cross-examination of this panch witness could not dilute the evidence of this witness.

39. There is further evidence of PW No.7 – Sanjay

Rameshchandra Raibagkar which show that he was having the medical shop at Hingoli Gate, Nanded from 1989 under the name and style 'Rajesh Medical and General Stores'. There was coin box at his shop having No.231233. The Police had come to his shop for investigation on 25.06.2014. Ten (10) to fifteen (15) days prior to 25.06.2014, Appellant No.1 had come to his shop at about 02:00 p.m. and sought the coins from him by tendering five (5) rupees coin. He made call from the coin box. On that day, Appellant No.1 had also come at about 08:00 to 09:00 p.m. Appellant No.1 had come to his shop, sought coins by tendering ten (10) rupees note. Since he was not having ten (10) coins, Appellant No.1 purchased the cream of Rs.8/- and this witness gave two (2) coins of one (1) rupees to Appellant No.1. The Appellant No.1 made two phone calls from the said coin box and left.

40. The cross-examination of PW No.7 - Sanjay Rameshchandra Raibagkar show that he was not called for identification parade. Therefore, his identification of Appellant No.1 was for the first time in the Court. However, his evidence show that twice on same day the Appellant No.1 had visited his shop and made the phone calls by seeking the coins first time in the afternoon and second time in the evening. This show that he had the full and proper opportunity to see Appellant No.1 and register his identity in the mind. The evidence of this witness is recorded on 15.07.2016 i.e. three (3) months less for two years from the date Appellant No.1 visited his shop. Thus, his identification of

Appellant No.1 is accepted.

41. From the above discussed evidence, the Prosecution has established that on 10.06.2014 there were telephonic call between the Appellant No.1 and deceased Gorakhnath Suryawanshi. Thus, circumstance No. (v) is established.

(vi) Seizure of the original number plates of deceased Gorakhnath Suryawanshi's car at the instance of Appellant No.1 :-

42. The evidence of PW No.28 – Shivaji Anna Doiphode show that he investigated the crime and the Appellants were arrested under the Arrest Panchnamas at Exhs.166 and 167, respectively. The said panchanamas show that both the Appellants were arrested on 21.06.2014. There can be no dispute on the aspect that the Appellants were arrested.

43. The evidence of PW No.4 – Girish Shriram Rathod show that on 21.06.2014 he was called at Vazirabad Police Station by the LCB Officer Shri. Doiphode (PW No.28). The accused were present. Appellant No.1 showed willingness to show the spot of incident, clothes of deceased and the wire. The memorandum at Exh.33 was recorded. The evidence of PW No.4 – Girish show that at the instance of Accused No.1 two number plates having No. MH-26-AK-1248 (number of deceased Car) were seized from one house, wherein Sunita Tarlapalli

was residing, from behind the cupboard under the Seizure Panchanama at Exh.34.

44. The further evidence of PW No.4 - Girish Shriram Rathod show that Appellant No.1 took them to one Super Wash Center at Kamareddy where he had washed car. The Police recorded the statement of Syed Nawaz (PW No.27) who washed the car. The Panchanama to that effect was at Exh.36.

45. The further evidence of PW No.4 – Girish Shriram Rathod show that at the instance of Appellant No.2 vehicle was stopped near the Kisan Petrol Pump, Nizamabad and Appellant No.2 pointed to one water tap where he washed his blood stained hands. The Appellant No.2 removed one belt of white colour (Article-‘7’), blue colour jeans pant, and one shirt (Article ‘5’ and ‘6’, respectively) from bushes near the petrol pump which were stained with blood. The panchanama to that effect was at Exh.37.

46. The further evidence of PW No.4 - Girish Shriram Rathod show that at the instance of Appellant No.2 the vehicle was stopped near the railway track when they were proceeding towards Nizamabad. The Appellant No.2 removed the Wire (Article ‘10’) from that place. The Panchanama to that effect was at Exh.38.

47. The further evidence of PW No.4 - Girish Shriram Rathod show that the Appellant No.2 showed one spot which was in Borgam shivar near Nizamabad from where he produced one blood stained yellow colour shirt (Article ' 11') of deceased. The Panchanama to that effect was at Exh.39.

48. The further evidence of PW No.4 - Girish Shriram Rathod show that at the instance of Appellant No.1 the vehicle was taken to one Borgam shivar which was at the distance of 8 to 10 kilometers from Nizamabad. The Appellant No.1 pointed one spot which was about 300 meters away from the *pakka* (main) road. Appellant No.1 showed the spot of incident which was near the lake. The Panchanama to that effect was at Exh.40.

49. Further, evidence of PW No.4 - Girish Shriram Rathod show that Appellant No.1 took them to Bodhan *via* Nizamabad and took them to Gautam Lodge near bus-stand. The police checked the register of the said lodge and took extract of the said register and prepared the panchanama at Exh.41.

50. PW No.28 – Shivaji Anna Doiphode, who investigated the crime, deposed about discovery / recovery / seizure on the line of the evidence given by PW No.4 - Girish Shriram Rathod. Their testimony corroborate each other.

51. The cross-examination of PW No.4 - Girish Shriram Rathod show that there was no time on one Panchanama and he knew the deceased prior to two years of his death. These aspects will not affect his testimony as it remained unshaken.

52. The above discussed evidence show that the Memorandum at Exh.33 was prepared in respect of the information given by the Appellant No.1. However, the above discussed evidence show that even at the instance of Appellant No.2 there is discovery / recovery *sans* disclosure from Appellant No.2. Therefore, the aforesaid evidence against the Appellant No.2 will not be relevant or admissible and cannot be used against the Appellant No.2, as it militates against the purport of Section 27 of the Indian Evidence Act.

53. As regards the evidence that the Appellant No.1 took them to Gautam Lodge from where the extract of Register was seized, cannot be called as the discovery for the reason that the Appellant No.1 was arrested by the police from the said lodge and therefore, the police knew that place.

54. The evidence of PW No.3 - Sushant Suryakant Sone and PW No.28 - Shivaji Anna Doiphode show that the ring of Appellant No. 2 was seized pursuant to the Memorandum at Exh.32 from his house and was seized under the Panchanama at Exh.33. However, the same cannot be incriminating circumstance against the Appellant No.2 for want of evidence to link it with the crime. The incriminating statement in the Memorandum at Exh.32 is not admissible.

55. The other circumstance is the discovery and seizure of the documents of the car of deceased from the house of Appellant No.2. The evidence of PW No.28 - Shivaji Anna Doiphode and PW No.4 - Girish Shriram Rathod nowhere show that the said discovery / seizure was pursuant to the disclosure mode by Appellant No.2. Thus, that discovery / seizure will not be relevant.

56. Secondly, the wire (Article - '10') and yellow colour shirt (Article - '11') are seized from the open space and there is no evidence to connect the said articles with the crime as no reports of Chemical Analyzer's are brought on record. The evidence of PW No.1 - Ajaykumar who is the son of deceased do not show that the said Article '11' was shown to him and he identified the same. What his evidence show is that the Shirt at Article- '4' was shown to him and he identified the same.

57. From the above discussed evidence, the Prosecution has established the seizure of the original number plates of the car of deceased at the instance of Appellant No.1 and the circumstance No.1 is established.

58. Learned Advocate for the Appellants relied on the Judgment in the case of **Vijay Kumar vs. State of Rajasthan, 2014 AIR SCW 1364** in support of his contention that the discovery / recovery at the instance of Appellant No.2 was not acceptable and cannot be relied upon for the reason that the said house was not in his exclusive possession. In this Judgment both the recoveries were made from the houses of the accused / Appellants where their families were residing and it was held that the recovery of certain incriminating articles at the instance of the accused, that by itself cannot form the basis of conviction.

58-a) He further relied on the Judgment in the case of **Hanumant Govind Nargundkar and another vs. State of M.P, 1953 Cri.L.J. 129** wherein it is observed as under :

‘in dealing with circumstantial evidence, rules specially applicable to such evidence must be born in mind and in such cases there is always danger that conjuncture may take place of legal proof’.

58-b) He further relied on the judgment in the case of **Shailendra Rajdev Pasvan vs. State of Gujarat etc., AIR 2020 Supreme Court 180** in which it is observed thus:

‘In case based on circumstantial evidence all the links of the chain shall be complete pointing to the guilt of the accused and every link in the chain must be established by the prosecution beyond reasonable doubt’.

58-c) He further relied on the judgment in the case of **Ajij Khan Mohd. Khan Pathan vs. State of Maharashtra, 2023 (3) ABR (Cri.) 737**, wherein the conviction was set aside based on the principle that the conviction cannot be solely on the basis of discovery statements’.

58-d) He further relied on the judgment in the case of **Ajab Singh vs. State of Madhya Pradesh, 2023 Cri. L. J. 3275** wherein ‘the recovery was held to be of no consequences in absence of the FSL report’.

59. The legal position enumerated in the above Judgments is well settled.

60. It would not be out of context to reproduce the observations in the case of **Gulab Chand vs. State of M.P., AIR 1995 SC 1598**, which are as under:

“We have considered the judgment passed by the learned Sessions Judge and also by the High Court and we have been taken through the evidences adduced in this case. It has been established in the instant case that the appellant Gulab Chand was taken into custody on 27th April, 1979 by the police and

when the police searched his house with the key supplied by the accused, a musical instrument called Banjo was found in his room and from inside the said instrument, the police seized golden Tabij ([Article 10](#)), two pair of Jhumkas ([Article 11](#)), Shrinagaridan ([Article 9](#)), silver bangles ([Art. 7](#)), one brass Bungari ([Art. 21](#)) and currency notes worth Rs. 1200. It has also been established in this case that on the information given by the said accused, the police seized certain silver ornaments from PW. 12. Balram from his shop at Jabalpur and it has been established that the accused sold the said ornaments to Balram and signed in the register maintained by Balram in proof of selling the said ornaments. It has also been established by cogent evidence that the said ornaments belonged to the deceased. It may be stated that 29th May, 1979, a test identification Parade was held in which the recovered ornaments were duly identified as belonging to the deceased by Durgaprasad and other witnesses. It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in *Santhanakrishnan v. State of Rajasthan*, AIR (1956) SC 54, that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in *Tulsiram v. State*, AIR (1954) SC 1. In [the said decision](#), this court has indicated that the presumption permitted to be drawn under [Section 114](#), illustration (a) of the [Evidence Act](#) has to be read along with the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if Several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house, at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an "important time

factor", should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in [Earabharappa v. State of Karnataka](#), [1983] 2 SCC 330, this Court has held that the nature of the presumption and illustration (a) under [Section 114](#) of the Evidence Act must depend upon the nature of evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under illustration (a) of [Section 114](#) Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments. We therefore do not find any reason to interfere with the impugned decision of the High Court and accordingly this appeal fails and is dismissed."

61. The Appellants have submitted the common statement under Section 313 of the Code of Criminal Procedure, which is at Exh.174. According to the Appellants, the Informant and his friends PW No.2 – Balaji Somwanshi and PW No.3 – Sushant Sone used the car of the deceased without paying any charges to the deceased. The Appellants were resident of Telangana which is adjacent to the State of Maharashtra. The Appellants were in the business of cloth at Biloli. The

woman by name Rama Pandharinath Fulari, her sister by name Geeta Pandharinath Fulari and their mother were working in their shop. However, the Appellants shifted their business to Maktal, Dist. Maheboobnagar. However, phone of Appellant No.1 remained with the said Rama Fulari and she used the said phone at Nanded. The father of Rama Fulari was the teacher and he was removed from the services and therefore, their family came to Nanded. The car of deceased was found outside Biloli Police Station and with the help of Rama Fulari the police arrested the Appellants from the shop by name Sharif Traders near Madina Complex, Charminar, Hyderabad when they had gone for shopping after withdrawing of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand). Rama Fulari was knowing that the Appellant No.1 shops from the said shop. The Appellants were the businessman having no criminal antecedents. The Appellants were implicated on suspicion. They were innocent.

62. From the above discussed evidence, the Prosecution has established that the car of deceased with different registration number was seized from the possession of Appellant No. 1. It is further established that the number plate of the actual registration number of the car of deceased was seized at the instance of Appellant No.1. The Prosecution has established that the registration number, which was put on the car of deceased, was that of another car. The Prosecution has

further established the telephonic contact between Appellant No.1 and deceased before his death. Though Appellant No.1 was having his mobile phone, he contacted the deceased from another phones i.e. from booth and from mobile of PW No.6 - Narayan Bhagwanrao Malkatwar. This clearly show that to hide his identity the same was done. The date of contact is the same from which deceased Gorakhnath Suryawanshi did not return home. As seen while discussing the circumstance No.(iii), the medical evidence show that the Post-mortem was conducted on 12.06.2014 and the death of Gorakhnath Suryawanshi was about 24 to 36 hours prior to the Post-mortem. The telephonic call between the Appellant No.1 and deceased were before or soon before his death. It is established that on eleventh (11th) days of the death of Gorakhnath Suryawanshi, his car was seized from the possession of the Appellant No.1. All these factors form a complete chain which points towards the guilt of Appellant No.1. The evidence on record established that the proved circumstances form the part of same series. The explanation given in the statement under Section 313 of the Cr.P.C. is not plausible and not acceptable. The proved circumstances rule out all the hypothesis, except the involvement and guilt of Appellant No.1 in the crime.

63. When the case is based on circumstantial evidence, the motive assumes importance. From the evidence available on record and

the proved circumstances, the Motive is obvious and that is to rob and use the motor car of the deceased. From the proved circumstances, it is clear that the Appellant No.1 telephonically contacted the deceased, abducted the deceased, committed the murder and disposed of the dead body in the isolated place, robbed the car and changed number plate of the robbed car. Thus, the essential ingredients for the charged offences are established against Appellant No.1

64. The evidence on record show that there is no legally admissible evidence against Appellant No.2. Whatever evidence is brought on record by the Prosecution against the Appellant No.2, as discussed earlier, is not admissible or relevant in the eye of law.

65. The conspectus of the above discussion is that the Prosecution has proved the Charge against the Appellant No.1 only. The Appellant No.2 is liable to be acquitted. Consequently, the conviction and sentence with the aid of Section 34 IPC melts down. Hence, we proceed to pass the following order:

ORDER

(i) The Criminal Appeal to the extent of Appellant No.1 by name Shaikh Ahemad Pasha @ Pavan s/o Rajmohammad @ Rajamiya is dismissed. His conviction and sentence is maintained *sans* Section 34 of I.P.C.

(ii) The Criminal Appeal to the extent of Appellant No.2 by name Shaikh Sailani Baba s/o. Rajmohammad @ Rajamiya is allowed.

(iii) The Judgment and Order dated 14.03.2018 passed by the learned Additional Sessions Judge-2, Nanded in Sessions Case No.117 of 2014 convicting and sentencing the Appellant No.2 by name Shaikh Sailani Baba s/o. Rajmohammad @ Rajamiya is hereby quashed and set aside.

(iv) The Appellant No.2 by name Shaikh Sailani Baba s/o. Rajmohammad @ Rajamiya is acquitted of the offence punishable under Sections 364, 365, 397, 302, 201 r/w. Section 34 of the I.P.C.

(v) The Appellant No.2 be released forthwith, if not required in any other crime.

(vi) Record & Proceedings be sent back to the Trial Court.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)