



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

CRIMINAL APPEAL NO. 237 OF 2019

1. Abhilash @ Abhiraj Sudhir Mohanpurkar
Age: 27 years, Occu. : Business,
R/o Plot No.126, Monalisa,
Tilak Nagar, Aurangabad.

2. Sham s/o Laxman Magare,
Age: 25 Years, Occu. : Private Services,
R/o Tadgoor, Tq. Mandnoor,
District Nizamabad, (Telangana),
At present residing at
Plot No.126, Monalisa,
Tilak Nagar, Aurangabad

... Appellants
(Orig. Accused)

Versus

1. The State Of Maharashtra,
Through Police Station Officer,
Police Station Jawahar Nagar,
Aurangabad, Tq. Dist.
Aurangabad.

2. Bharati w/o Vivek Ghode,
Age: 36 years, Occu. : Business,
R/o: Plot No.31, Amrut Gurukunj Housing
Society, Tilaknagar, Aurangabad

... Respondents
(Orig. Complainant)

...
Mr. A. K. Bhosale, Advocate for Appellant No.1
Mr. Mahesh P. Kale, Advocate for Appellant No.2
Mr. S. R. Wakale, APP for Respondent/State
Mr. Chaitanya C. Deshpande, Advocate for Respondent No.2
...

**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, J.J.**

**RESERVED ON : 02nd SEPTEMBER, 2025
PRONOUNCED ON : 22nd SEPTEMBER, 2025**

JUDGMENT : [PER NITIN B. SURYAWANSHI, J.]

1. This appeal filed by original accused Nos.1 and 2 challenges the judgment and order of conviction dated 14/12/2018, passed by learned Additional Sessions Judge, Aurangabad, in Sessions Case No.150/2017, thereby convicting the appellants for offences punishable under Sections 302, 364-A, 201, 120-B read with 34 of the Indian Penal Code and imposing sentence of life imprisonment. Accused No.1 Abhilash is sentenced to pay total fine of Rs.2,50,000/-, whereas accused No.2 Sham is sentenced to pay total fine of Rs.5,000/-, with a default clause.

2. It is the prosecution case that informant Bharati (PW15) was married with Vivek Ghode, a builder from Kalwa, Thane, in Mumbai, in the year 1998. While cohabiting with him at Kalwa, she gave birth to two children i.e. Wardhan and Vajra. On 28/02/2010 Vivek Ghode was murdered. Thereafter she shifted to Aurangabad with her two children, at her parental house and started running cutlery shop. She was residing along with her two children, parents and one deemed brother Chandrakant Khandare. Accused No.1 Abhilash is resident of Gurukunj Housing Society, Tilaknagar, Aurangabad. Accused No.2 Sham was serving in the house of accused No.1. On 27/02/2017, at 04:00 p.m. informant left her son Wardhan at Zambhad Estate for attending tuition. At 06:30 p.m. she picked him up from tuition and left him at home and went to her

shop. She came back home at 08:45 p.m. Since Wardhan had not come home, she thought that he might be playing with his friends. Therefore, she sent Chandrakant to bring him back. He returned after some time and told her that Wardhan was standing with Abhilash, Sham and one Sachin in front of the house of Vijaywargiya and he refused to come. As Wardhan did not return home, she along with her mother started searching for him. After one and half hour accused No.1 Abhilash came to her house, she asked him whereabouts of Wardhan. He told that Wardhan left before one hour telling that he is going home. At that time accused No.1 picked a chit from the door and gave it to them. Her father read the chit, it was as follows:-

“पोलीसांना सांगितले तर, मुलाला मारून टाकण्यात येईल, पाच करोड नगर पूणे हायवे रोडवर सुवर्णज्योत धाबा स्मार्टल स्टोन हॉटेल समोर रोड वर पैसे टाकून दया, पैसे टाकून दिल्यावर मुलगा सुखरूप घरी परत येईल, कोणाला सांगितले तर मुलाला मारून टाकण्यात येईल.”

After reading the chit she called her uncle Laxmikant Khadke and requested him to come home. On his arrival he raised suspicion about accused No.1 Abhilash as to how come the chit was found by him only. He and Chandrakant started making inquiry with accused No.1 Abhilash. Accused No.1 told them that he is from good family and left from there. Though Chandrakant and Laxmikant followed him to his house, he gave evasive replies. Informant

suspected that accused No.1 might have kidnapped her son. She, therefore, went to Jawahar Nagar Police Station and narrated the incident to police. Police were about to go to her house, at that time, people from the society brought accused Abhilash and Sham to the Police Station. During inquiry they broke down and admitted that they kidnapped Wardhan in car and took him to Daulatabad Ghat and committed his murder by smothering and strangulation and threw his dead body at Shrey Nagar Nala. Police, Laxmikant Khadke, Chandrakant, Kiran, Shantilal Pawar and Vijaywargiya went to Shrey Nagar with accused. After some time her uncle Laxmikant Khadke and others came back and told her that accused No.1 and 2 have shown the dead body of Wardhan, which was lying at Shrey Nagar Nala, Aurangabad. PW33 Kashinath Mahandule, P.S.I., prepared panchanama and recorded their disclosure statement and recovered the dead body of Wardhan at the behest of accused No.1 Abhilash and accused No.2 Sham. The dead body was then sent to the CIGMA Hospital.

3. On the basis of report lodged by informant Bharati Crime No.74/2017 for offences punishable under Sections 364-A, 302, 120-B, 201 of I.P.C. was registered with Jawahar Nagar Police Station. Investigation was entrusted to PW36 Manish Kalyankar, P.I., who arrested the accused, seized their mobile phones and car bearing No. MH-01-BF-6088 parked near the house of accused No.1.

Incriminating articles found in the car were seized under the seizure panchanama.

Considering the seriousness of offence Police Commissioner, Aurangabad, formed Special Investigation Team (SIT) for investigation. PW14 Dr. Rahul Khatavkar, API, PW38 D.P. Kopnar, P.S.I. and Police Constables S. R. Badgujar, Viresh Ban and Shaikh Nawab Shaikh Gaffar, were members of the SIT headed by PW36 Kalyankar. During investigation PW14 collected CCTV footage of 27/02/2017 from Girija Samarth Petrol Pump, Daulatabad Gram Panchayat, Shankar Chest Hospital, Vardman Automobile, Renukadas Vaidya's home, Kidzee High School, downloaded it and seized the DVDs under the panchanamas, Call Detail Records of mobile numbers of both the accused were called from respective mobile companies. On the basis of CDR and CCTV footage and the information furnished by the accused, PW14 prepared map of the route showing places from where Wardhan was kidnapped, murdered and his body was thrown. PW33 prepared inquest panchanama. At that time, some hair were found on the clothes and in the fist of Wardhan. Autopsy on the body of Wardhan was conducted at the Ghati Hospital. Accused No.1 Abhilash was having scratch injury on his chest. He was medically examined. During investigation specimen handwriting of accused No.1 and 2 was obtained and those were sent to handwriting expert along with the disputed chit. PW36 forwarded all the incriminating material,

viscera, blood sample of accused to the CA, Aurangabad. DVD, DVR, screenshots obtained from CCTV footage were sent to Forensic laboratory, Pune, for analysis. DNA sample of Wardhan with blood sample of accused and hair of accused were sent to the Forensic laboratory, Kalina, Mumbai. All these reports were received during investigation. Two burnt chits were seized at the instance of accused No.2 Sham, one from the roof of house of accused No.1 Abhilash and another from compound of Lion statue. One handkerchief and chappal were seized from Balvatika Garden, Gurukunj housing society, Aurangabad, at the instance of accused No.1 Abhilash. After completion of investigation charge-sheet was filed.

4. The Trial Court framed charge against accused for commission of offences punishable under Sections 364-A, 302, 201 and 120-B of I.P.C. Accused abjured the guilt and claimed to be tried. Their defence is of total denial and false implication. Prosecution examined 41 witnesses in support of it's case. Accused have filed their written statement under Section 313 (5) of Cr.P.C. On appreciation of evidence trial Court convicted the accused. Hence, the appeal.

5. Heard learned advocates for appellants, learned APP for respondent / State and learned advocate for respondent No.2 / informant.

6. Learned advocate for appellant No.1 Abhilash has assailed the conviction submitting that there is delay in lodging the FIR. The alleged recovery of dead body and incriminating articles from the car of accused No.1 is prior to the registration of FIR. Therefore, it is inadmissible in evidence. He submits that as per prosecution, Chandrakant has lastly seen deceased Wardhan with accused No.1, however, Chandrakant is not examined. Therefore, the prosecution has failed to prove that deceased was lastly seen in the company of accused No.1. He submits that motive behind the commission of offence as per the prosecution is to demand ransom. However, ransom is demanded by giving the chit after commission of murder which is highly improbable. If the accused wanted ransom amount, the same would have been possible only if the deceased had been alive. If the murder was already committed then it is not believable that accused No.1 would go to the house of deceased and give the ransom chit to them. He submits that conduct of accused No.1 Abhilash of handing over the chit lying at the door of informant proves his innocence. If at all he had committed the murder of Wardhan, then he would not have handed over the chit to informant. According to him, therefore, prosecution has failed to prove the motive. He further submits that the evidence of CCTV footage is not reliable as the time in that is mismatched with Indian Standard Time (IST). He submits that it is highly improbable that within one hour accused committed murder at Daulatabad and

joined informant and others in search of the deceased. He further submits that apart from CCTV footage there is no evidence of last seen together. According to him, contents of ransom chit are not proved. The recovery of notebook at the instance of accused No.2 Sham is made from the kitchen of a restaurant, which is not believable as the hotel owner is not examined. He further submits that prosecution witnesses are got up witnesses. According to him, scratch mark on the chest of accused No.1 Abhilash was detected while he was in the custody of police, hence, the same is doubtful. By pointing out admission of Nodal Officer that if the mobile is switched off then the location cannot be traced, he submits that the evidence about location of mobile phones of accused cannot be believed.

7. He, therefore, submits that prosecution has failed to prove the complete chain of circumstances against the accused and therefore, accused No.1 is entitled for benefit of doubt. He has also filed written notes of arguments.

8. Learned advocate for appellant No.2 Sham adopted the arguments of learned advocate for accused No.1. He further submits that accused No.2 was servant appointed by the father of accused No.1 as his caretaker. His handwriting is found in the ransom chit. Notebook from which the page was torn to write the said chit was seized from the kitchen of a restaurant, which was

accessible to all. As the hotel owner is not examined the said seizure cannot be believed. According to him, there is no evidence connecting accused No.2 with the present crime. Except presence of accused No.2 with accused No.1, there is no evidence showing the role played by accused No.2 in the present crime. He, therefore, submitted that accused No.2 is entitled for acquittal.

9. On the other hand, learned APP has strenuously opposed the appeal and has supported the judgment and order of the Trial Court. He submitted that to prove the motive six witnesses were examined by the prosecution. It has come in the evidence of PW31 handwriting expert that handwriting of accused No.2 matches with the handwriting on the ransom chit. Notebook of accused No.2 was recovered at his instance. The same is proved by PW23. Recovery of ransom chit (Article-B) is proved by PW1. Evidence of PW15 informant shows that handing over of the ransom chit by accused No.1 to the informant is supported by PW8. Last seen theory is proved by PW21 neighbour of accused No.1 and the deceased. PW11 is the employer of petrol pump where accused No.1 filled petrol in the car. The said evidence is supported by CCTV footage recovered by the SIT. PW14 member of the SIT has recovered the CCTV footage and PW5 and PW9 are panchas to the said recovery. PW12, PW16, PW17, PW18, PW19 and PW20 have given 65-B certificates to the said CCTV footage. PW22, PW34 and

PW39 are the Nodal Officers who have proved tower locations of mobile numbers of accused Nos. 1 and 2, which was found at the spot of incident at the relevant time. PW22 has proved the CDR and tower location of accused No.1. Though tower location of mobile number of accused No.2 was not found since no calls were made by him at the relevant time, however, in CCTV footage he is seen along with accused No.1 and the deceased. According to him, the dead body is recovered at the instance of accused. Recovery of dead body is proved by panch PW6. Panch PW5 has proved recovery of chappal of the deceased at the instance of accused No.1. CA reports support the prosecution case. He, therefore, submitted that the prosecution has proved complete chain of circumstances which points to the guilt of the accused. In support of his submissions, he relied on the ***Dharam Deo Yadav Vs. State of Uttar Pradesh***¹. He, therefore, submits that there is no merit in the appeal and the same may be dismissed.

10. Learned advocate for respondent No.2 informant adopted the arguments of learned APP.

11. Heard learned advocates for the respective parties and learned APP. With their assistance we have perused the record.

12. The present case is a case which is based on the circumstantial evidence. The principles of appreciation of evidence in the case based on circumstantial evidence are enunciated in

¹ (2014) 5 SCC 509

Sharad Birdhi Chand Sarda Vs. State Of Maharashtra², as

follows:-

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, (1973) 2 SCC 793, where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and;

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

13. While convicting the accused trial Court has relied on following circumstances:

1) Homicidal death of Wardhan

² 1984 AIR 1622

- 2) Motive
- 3) Recovery of dead body at the instance of accused
- 4) Recovery of incriminating material at the instance of accused
- 5) Theory of Accused and Deceased Last Seen Together
- 6) Electronic Evidence of CCTV Footage
- 7) Scientific Evidence
- 8) Non-explanation of incriminating circumstances by the accused

We will now deal with each of the circumstances independently.

1] Homicidal death of Wardhan:

14. PW1 Shantanu Joshi has proved the inquest panchanama (Exhibit-50). During panchanama he noticed injuries on the cheek, neck, stomach, elbow and hand of Wardhan. Also, there were marks of throttling. Dr. Sachin PW2 has conducted autopsy on the dead body of Wardhan. He proved postmortem report Exhibit-60. During postmortem he found following injuries on the dead body:-

- 1] Multiple crescent shaped abrasions of sizes varying from 0.2 cm x 0.2 cm present over both ala of nose, philtrum, bridge of nose and both cheeks surrounding nasal openings and mouth over an area of size 7 cm x 5 cm, reddish.
- 2] Contusion of size 1 cm x 0.8 cm present over upper lip, 0.5 cm to right of mid-line, reddish.
- 3] Contusion of size 1.2 cm x 0.8 cm present over lower lip, 0.5 cm to left of mid-line, reddish.

- 4] Contused abrasion present on inner aspect of both lips except angle of mouth, of size 5 cm x 0.8 cm, reddish.
- 5] Contused abrasion of size 0.5 cm x 0.5 cm present over upper 1/3rd of posterior aspect of helix of left ear pinna, reddish.
- 6] Linear abrasion of size 2.5 cm x 0.1 cm present over left sub-mandibular region, reddish.
- 7] Irregular shaped contused pressure abrasion of size 7 cm x 1.5 cm present over right sub-mandibular region, lower aspect, extending from posterior ½ of body of mandible to right angle of mandible, hard and parchmented, reddish.
- 8] Irregular shaped contused pressure abrasion of size 4 cm x 1.5 cm present over right lateral aspect of neck, 0.5 cm behind and below injury number, hard and parchmented, reddish
- 9] Irregular shaped contused pressure abrasion of size 2.5 cm x 1 cm present over right lateral aspect of neck, 1 cm below injury number, hard and parchmented, reddish.
- 10] Irregular shaped abrasion of size 2 cm x 0.3 cm, obliquely placed, present over antero-lateral aspect of right side of neck, at the level of thyroid cartilage, 1.5 cm below mandible and 3.5 cm from midline, reddish.
- 11] Irregular shaped contused pressure abrasion of size 3.5 cm x 0.8 cm present over right lateral aspect of neck, below the level of thyroid cartilage, 4 cm from midline, hard and parchmented, reddish.

12] Multiple crescent shaped abrasions of sizes varyng from 0.5 cm x 0.1 cm to 1 cm x 0.5 cm present at places suggestive of finger nail markings over an area of size 4 cm x 3 cm over right angle of mandible and right infra-auricular region, reddish.

13] Multiple crescent shaped abrasions of sizes varying from 0.5 cm x 0.1 cm to 0.5 cm x 0.5 cm present at places suggestive of finger nail markings over antero-lateral aspect of right side of neck surrounding and intermingling with the injuries 7) to 11), reddish.

14] Irregular shaped contused pressure abrasion of size 5 cm x 0.8 cm present over left antero-lateral aspect of neck, horizontally placed, 3.5 cm from midline and at the level of thyroid cartilage, hard and parchmented, reddish.

15] Irregular shaped contused pressure abrasion of size 2.5 cm x 0.5 cm present over left anterior aspect of neck, 3 cm from midline and below the level of thyroid cartilage, 1 cm below injury number 14, reddish, hard and parchmented.

16] Pressure abrasion of size 2 cm x 1 cm present over left anterior aspect of neck, 4 cm from midline and below the level of thyroid cartilage, 1 cm below and behind injury number 15, reddish, hard and parchmented.

17] Multiple crescent shaped abrasions of sizes varying from 0.5 cm x 0.1 cm to 0.5 cm x 0.5 cm present at places suggestive of finger nail markings over antero-lateral aspect of left side of neck surrounding and intermingling with the injuries 14) to 16) reddish.

- 18] Horizontally placed pressure abrasion of size 9 cm x 0.5 cm present over nape of neck, 6 cm below occiput, running antero-inferiorly, reddish.
- 19] Abrasion of size 0.5 cm x 0.5 cm present over left mastoid prominence, reddish
- 20] Graze abrasion of size 6 cm x 1.5 cm, obliquely placed, present over left infra-scapular region of back, directed above downwards and from lateral to medial, reddish
- 21] Graze abrasion of size 4 cm x 0.5 cm, obliquely placed, present over left back, 0.5 cm below injury number, directed above downwards and from lateral to medial, reddish.
- 22] Graze abrasion of size 6 cm x 1.5 cm, obliquely placed, present over left back, 0.5 cm below injury number, directed above downwards and from lateral to medial, reddish.
- 23] Multiple abrasions of sizes varying from 0.2 cm x 0.2 cm to 0.5 cm x 0.5 cm present over antero-lateral aspect of right flank, over an area of size 8 cm x 3 cm, reddish
- 24] Multiple abrasions of sizes varying from 0.3 cm x 0.2 cm to 0.8 cm x 0.5 cm present over back at places, reddish.
- 25] Irregular shaped abrasion of size 3 cm x 3 cm present over posterior aspect of right elbow, reddish
- 26] Irregular shaped abrasion of size 4 cm x 3 cm present over posterior aspect of left elbow, reddish.
- 27] Irregular shaped abrasion of size 2 cm x 1.5 cm present over

anterior aspect of right knee, reddish.

28] Irregular shaped abrasion of size 1 cm x 1 cm present over anterior aspect of left knee, reddish

29] Irregular shaped abrasion of size 2 cm x 1.5 cm present over anterior aspect of upper 1/3rd of left leg, reddish

30] Irregular shaped abrasion of size 3 cm x 0.4 cm present over anterior aspect of middle 1/3rd of left leg, reddish

31] Irregular shaped abrasion of size 0.2 cm x 0.2 cm present over antero-medial aspect of lower 1/3rd of left leg, reddish.

All the injuries were ante-mortem and fresh. He also found internal injury, i.e. under scalp contusion of size 2 cm x 1 cm present over left frontal region reddish, there were multiple petechial hemorrhages present under-scalp at places. There was no fracture in skull. According to him, on internal examination of neck dissection, he found multiple contusions of sizes varying from 0.5 cm x 0.5 cm to 1.5 cm x 1 cm, present in the strap muscle of neck, below the level epiglottis, corresponding to the level of pressure abrasions mentioned in column No.17, dark reddish. Both the lungs on palpation, soft and spongy, there were presence of multiple petechial hemorrhages at the inter-lobar surfaces of the lungs. On cut section, congested reddish frothy fluid oozes. He deposed that there was no foreign material in the lungs. He opined that the death of Wardhan Ghode was homicidal in nature and the time of probable death was in between 6 to 18 hours prior to

commencement of the postmortem. He opined that cause of death of Wardhan was due to strangulation with smothering. Attention of this witnesses was drawn to the handkerchief, which was seized at the instance of accused No.1 Abhilash and he was asked whether by handkerchief death can be caused by strangulation. On inspection of handkerchief he opined that injury No.7 to 11, 14 to 16 and 18 mentioned in column No.17 of postmortem report are possible by handkerchief and in ordinary course of nature the injuries are sufficient to cause death. From his cross-examination it is clear that the defence has not seriously challenged the contention that cause of death of Wardhan is due to strangulation and smothering and it was homicidal death. Thus, the prosecution has proved homicidal death of Vardhan.

2] Motive:-

15. To prove the motive prosecution has examined PW15 informant Bharati, PW30 Indranil Pathak, friend of accused No.1 and PW8 Laxmikant Khadke. PW15 deposed in terms of FIR lodged by her that she knew accused No.1 Abhilash as he used to reside in their colony. He used to play with her children. He was having two sports bike and one sports car of saffron colour. The car was open top. His mental and physical condition was well. Incident took place on 27/02/2017. On that day at 04:00 p.m. she left Wardhan for tuition at Zambad estate. At 06:30 p.m. she brought Wardhan back

to house and went to her shop. At 09:00 to 09:15 p.m. she received call from her mother telling that Wardhan had gone to Abhilash and bring him back while returning home. She came back to home and noticed that Wardhan had not come. She then sent Chandrakant to search Wardhan. He returned back and told her that accused No.1 and 2, Sachin and Wardhan were standing in front of the house of Vijaywargiya. Though Chandrakant called Wardhan, he refused to come home. Thereafter they started to search Wardhan. She went near the house of accused No.1 Abhilash. Parents of accused No.1 Abhilash were watching TV. She asked them whereabouts of accused No.1 Abhilash and Wardhan. Mother of accused No.1 Abhilash told her that he had gone with his friends. Informant told father of Abhilash that he is ferrying Wardhan in his car since two days. She also requested him to call accused No.1 Abhilash and inquire whether Wardhan is with him. Though accused No.1 was called his phone was found switched off. On inquiry with Sachin, resident of their colony, he told that Wardhan went outside with accused No.1 Abhilash. Thereafter she along with the residents of colony tried to search Wardhan. After one and half hour she noticed accused No.1 Abhilash standing on the road in front of her house, at about 09:30 p.m. She asked him about Wardhan. He told her that Wardhan left before one hour by saying that he is going to his house and he was not knowing his whereabouts. Thereafter, she went inside the house. Accused No.1 Abhilash picked up one chit from the

main door of her house and handed it over to her father. In the chit there was demand of ransom of Rs.5 Crores. The said amount was to be kept in front of Suvarna Jyot Dhaba near Smile stone Hotel. The said amount was to be thrown on the road and thereafter the boy would return safe. If anybody is informed, the boy would be killed. It was also written not to inform police, else the boy would be killed. She got scared after reading the chit. She called Khadke Mama (PW8), who used to reside in their colony. He came to her house and inquired with accused No.1 Abhilash. During inquiry accused No.1 told that he is from good family and he does not know whereabouts of Wardhan. By saying so accused No.1 went away. PW8 and Chandrakant suspected as to how the chit was found by accused No.1 only. Thereafter, they followed accused No.1. After some time they returned back and told that accused No.1 Abhilash and accused No.2 Sham were giving evasive replies and they suspect them. She suspected that both the accused might have kidnapped Wardhan. He, therefore, asked him to go to Jawahar Nagar Police Station with chit.

Thereafter, she along with Chandrakant went to Jawahar Nagar Police Station at about 11:00 to 11:15 p.m. and narrated the entire incident to police. After hearing the incident some police went to her house, she was asked to sit in one room. After some time accused No.1 Abhilash, accused No.2 Sham, Khadke Mama, Vijayvargiya, Pawar and Shantilal uncle came to the police station.

Police inquired with accused No.1 and 2. At about 12:00 a.m. she came out of the room and saw police along with accused and others going out of the police station. In the morning at about 06:00 a.m. (PW8) Khadke came to her in the police station. He disclosed her that accused No.1 and 2 had committed murder of Wardhan at Daulatabad Ghat for ransom. The body of Wardhan was found lying in a drain at Shrey Nagar and it was shown by the accused. She lodged report of the incident at about 07:00 to 07:30 a.m. (Exhibit-131). Printed FIR is at Exhibit-132. On 13/03/2017 her supplementary statement was recorded. She identified the chit (Article-B) and clothes of Wardhan (Article - C/1 to C/4) and pair of chappal of Wardhan (Article-Q). She also identified accused in the Court.

16. Though lengthy cross-examination was conducted nothing favourable to the accused can be elicited in her cross-examination. She admitted that while going to the police station on 27/02/2017 in the night she had carried the chit with her and showed it to the police. Police did not seize the chit at that time. Portion in her statement dated 28/02/2017 i.e. “तेवढ्यात अभिलाशने आमच्या घराचे मुख्य दरवाजाचे जवळून एक चिट्ठी उचलून आमच्या हातात दिली” was confronted to her. She did not remember whether she has stated this portion while lodging the report. She did not remember whether she had stated portion marked ‘A’ and ‘B’ in her

supplementary statement to police i.e. “थोड्याच वेळात माझी आई घराबाहेर येत म्हणाली चिठ्ठी मिळाली बघ त्यात काय आहे. त्यावरून माझ्या घरात आले असता अभिलाश आमच्या घरात सोफ्यावर बसून पाणी पित होता व त्याची आई पण आमच्या घरात होती” and “आम्ही चर्चा करीत असतांना माझ्या वडिलांनी आम्हाला चिठ्ठी अभिलाश मोहनपुरकर याने दिल्याचे सांगितले”.

17. (PW8) Laxmikant Khadke was serving in police department. He retired in March, 2018. Informant is the daughter of his cousin brother. On 27/02/2017, he was at his house. At about 09:45 p.m. he received a phone call from the informant. She told that Wardhan was missing from 08:30 p.m. and she has received one chit. She, therefore, requested him to come to her house. He then went to her house. Other society members had gathered at her house. Even Abhilash was also there. Informant's father told him that accused No.1 Abhilash got the chit in the door. He read the chit. In the chit it was written that informant's son is kidnapped and Rs.5 Crore in Rs.500 denomination was demanded. The amount was to be kept near Smile Stone Dhaba on Nagar - Pune road. He identified the chit (Article-B). After reading the chit he made inquiry with accused No.1 Abhilash. He asked accused No.1 as to how the chit was found by him only and that Wardhan was with him lastly. He suspected accused No.1 Abhilash. Due to his inquiry accused No.1 got frightened and went away from the house of informant. He,

Chandrakant and some other colony members followed him upto his house. Accused No.1 boarded in his sports car and tried to go away from the spot. He saw one person sitting in the backside of the sports car, he was not wearing clothes on the upper part of his body. Accused No.1 sat on the driving seat of the sports car. As they were trying to stop him, accused No.1 started the car and tried to give a dash to him. He turned to the other side. Accused No.1 took the car in reverse. While reversing the rear portion of the car hit the board of society. Thereafter he ran away from the spot in the car, at about 10:30 p.m. He asked Kiran to follow him on motorcycle. By seeing the crowd and commotion, parents of accused No.1 Abhilash came there. He narrated all the incident to them. Father of Abhilash told him that he will call Abhilash. After ten minutes Kiran came back and told that Abhilash ran away by speeding the car and he could not chase him. He, therefore, informed to the control room about the car. He returned to the house of informant and advised her to lodge report to police station. As such, at about 11:00 p.m. informant Bharati went to the police station along with Chandrakant.

18. Thereafter, along with the members of society he went to the house of Abhilash. The car was parked there. Abhilash was in the house. He again asked about the incident to Abhilash. He told that he did nothing. Accused No.2 Sham was also there. He was the

same person who was seated in the backside of the car. He told Abhilash that, if he has done nothing he should come to police station. Accordingly Abhilash sat on his motorcycle and Sham sat on the motorcycle of Kiran. They went to Jawahar Nagar Police Station. On the way police from Jawahar Nagar Police Station met them. They reached Jawahar Nagar Police Station at about 11:25 p.m. Informant Bharati and Chandrakant were in the police station at that time. They were sitting in one room. Police took Abhilash and Sham in one room for inquiry. PI Kalyankar, PSI Mahandole and other police staff was present there. Police made inquiry with Abhilash and Sham about Wardhan. Abhilash and Sham told that they kidnapped Wardhan and committed his murder at Khultabad Ghat. They threw dead body of Wardhan in the Nala of Shrey Nagar. Thereafter they all went to Shrey Nagar along with accused at about 11:30 p.m. As per the instructions of Abhilash they reached at Shrey Nagar near one Nala at about 12:00 a.m. They searched for Wardhan in the mobile torch light and the light of police jeep. The dead body was found lying in the Nala. The body was taken away from Nala and shifted to CIIGMA Hospital. They were advised to take the dead body of Wardhan to Ghati Hospital. The dead body was referred to Ghati Hospital, Aurangabad, at about 03:00 a.m. to 03:30 a.m. From there he came to the house of informant at about 04:45 a.m. and narrated the incident to the parents of informant. Then he went to Jawahar Nagar Police Station at about 06:00 a.m. and narrated the

incident to informant Bharati. He was at the police station upto 07:45 a.m. Informant Bharati then lodged report in the police station. He identified accused in the Court and the photographs of Wardhan (Article DD/1 to DD/4 collectively).

19. It is clear from the evidence of PW8 Khadke that at the instance of informant he came to her house and after knowing about the kidnapping and ransom chit found by accused No.1, he suspected accused No.1. When confronted accused No.1 gave evasive replies. Therefore, PW8 advised informant to go and lodge the report with police station. PW1 Shantanu Joshi has proved the seizure of chit from informant. He is panch to the seizure panchanama (Exhibit-52). Evidence of informant and PW8 is consistent and reliable. The handwriting on the chit (Article-B) is proved to be of accused No.2.

20. Prosecution has examined PW30 Indranil Pathak a friend of accused No.1 Abhilash. He deposed that he knows accused No.1 as he was also studying in Deogiri College, where accused No.1 was pursuing B.Com course. He also knows accused No.2 Sham. Accused No.1 introduced accused No.2 to him as brother of his friend. Accused No.1 had told him that he wanted to kidnap a boy for money, as he was in need of money to spend the same on his girlfriends. In his presence accused No.1 made inquiry with Yashraj and Sagar and their family background and vehicles. Accused No.1

had disclosed him that there is no elderly person in the house of Wardhan and his mother is having a shop and car. Wardhan is from rich family and if he is kidnapped he will get money. PW30 asked him as to why he is doing such type of activities. Accused No.1 asked him to assist, however, he refused to do so. Accused No.1 was having a car and bike due to which small boys used to get attracted towards him. Accused No.1 used to watch CID and Savdhan India serials on Television. He told that if arrested in such cases, after sometime the accused would be released from jail by taking aid of illness. Prior to one day of Shivratri i.e. on 23rd he went along with accused No.1 to Pune, in the temple of Jungali Maharaj for offering prayers. While returning from Pune, when they were passing from Ghod river bridge, accused No.1 told him that if a person is thrown or if a person jumps from that bridge what would happen. As he could not understand in what respect accused No.1 was saying so, he told accused No.1 not to ask such questions to him and he is not interested in such things. Thereafter on 27/02/2017 at 04:30 p.m. he had gone to the house of accused No.1. They both went for drinking at Saili Bar. One person named Kulkarni met them. There were talks between them about Bramhan Seminar and his girlfriends. Accused No.1 did not take any drink. Since PW30 took excess drink he was feeling drowsy. Accused No.1 called accused No.2 there. Thereafter accused No.1 and 2 and Kulkarni carried him to his home at about 05:30 to 06:00 p.m. After

one to one and half hour he called accused on his mobile, he told that he was driving and would talk with him on the next day. His evidence could not be shaken in the cross-examination.

21. Evidence of PW15 and PW8 was assailed by the appellants on the ground that they are interested witnesses and their evidence shall not be relied upon. Evidence of PW30 is assailed on the ground that his statement under Section 161 was recorded belatedly and therefore, his evidence should be disbelieved. PW15 informant being mother of the deceased and PW8 being her relative residing in the same locality, their presence is natural.

22. It is well settled that *“a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”* [See **Namdeo Vs. State of Maharashtra**³]

23. Merely because statement of PW30 under Section 161 of Cr.P.C. was recorded late, that by itself is not sufficient to discard his otherwise reliable testimony. Only because his statement was

³ (2007) 14 SCC 150

recorded after five to six days of the incident his evidence which is otherwise reliable and trustworthy cannot be disbelieved. His evidence also corroborates the case of prosecution on the point of motive of accused No.1.

24. Learned advocate for appellant No.1 by relying on **Nagaraj Vs. State of Tamil Nadu**⁴, **Wakkar and Another Vs. State of U.P.**⁵ and **Babu Vs. State of Kerala**⁶, has submitted that Wardhan was already dead when ransom chit was given, hence, demand of ransom cannot be said to be the motive of appellant No.1. He, therefore, submitted that prosecution has failed to prove the motive on the part of appellant No.1.

25. In **Chunni Bai Vs. State of Chhattisgarh**⁷, the Apex Court has held,

“47. Motive is usually the basis for causing the “intention” to commit any crime, but it is highly elusive and difficult to prove as it remains hidden in the deep recesses of the mind and is not comprehensible to others, unless disclosed by the perpetrator. Though under the law, it is absolutely not necessary that to prove an offence, motive is also required to be established if the intention or the mens rea can be safely inferred from the surrounding facts. But where the motive which can provide the basis for the intention appears to be totally missing, the court has to be very circumspect in drawing the inference of the proof of the presence of intention.

48. For committing a serious crime like homicide,

4 (2015) 4 SCC 739

5 (2011) 3 SCC 306

6 (2010) 9 SCC 189

7 AIR 2025 (SC) 2370

there could be various motivating factors. One may commit the crime of homicide propelled by anger or motivated by insult, humiliation or jealousy. Other motivating factors may be to exact revenge or by way of retribution or to hide certain crimes already committed. One may also commit homicide to gain undue pecuniary benefit or otherwise. One may commit such a crime out of sheer frustration and dejection with life channelising through violent acts. One may commit such crime because of superstitious beliefs.

There could be numerous factors, and it may not be possible to contemplate and mention all such situations that motivates a person to commit violent crime like homicide. While proof of motive of the crime may strengthen the prosecution's case in proving the guilt of the offender, failure to prove motive is not fatal if the offence is otherwise proved through direct and incontrovertible evidence. At the same time, absence of any motive may benefit the accused under certain circumstances, for the ingredient of intention which constitutes the mens rea has also to be proved."

26. In **Subhash Aggarwal Vs. State of NCT of Delhi**⁸, the Apex Court has held that,

"24. Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted."

27. In this connection we deem it useful to refer to the observations of Apex Court in **State of Himachal Pradesh Vs. Jeet Singh**⁹:

⁸ 2025 SCC OnLine SC 808

⁹ 1999 SCC (Cri) 539

“33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.”

28. Applying the aforesaid ratio to the facts of the present case and after considering the evidence on record it is clear that the prosecution, by leading cogent and reliable evidence, has proved the motive of appellants to commit the crime in question. The decisions in **Nagaraj** (supra), **Wakkar** (supra) and **Babu** (supra) are rendered in different facts and are of no assistance to the appellants.

29. It appears from the prosecution evidence that accused No.1 and 2 hatched a conspiracy to kidnap Wardhan and commit his murder. As a part of conspiracy on 26/02/2017 accused No.1 Abhilash wrote a chit and asked accused No.2 Sham to write similar type of chit. He thereafter tried to burn the chit written by him on the roof of his house, but the chit was not fully burnt. Accused No.2 picked up the residue part of the chit and threw it near the Statue of Lion in the compound at Seven Hill area. During investigation accused No.2 showed the place where he and accused No.1 wrote

the chit, where they burnt the chit and where the half burnt chit was thrown. PW36, Investigation Officer Kalyankar prepared disclosure panchanama (Exhibit- 78 and 80) at the instance of accused. The accused led police and panchas to the statue of lion. From there accused No.2 gave recovery of half burnt chit. Then he took them to the roof of house of accused No.1 and from there piece of half burnt chit was recovered. Thereafter he produced one notebook and pen from the house of accused No.1. All these articles were seized vide seizure panchanama (Exhibit- 79 and 81). These panchanamas are proved by PW4 Ramesh Kathar. Specimen handwriting of accused No.1 and 2 were obtained vide panchanamas (Exhibits- 226 and 227) and those were forwarded to the handwriting expert through PW26 who handed over the envelop in the office of handwriting expert on 22/03/2017 and obtained the acknowledgment which also contains letter dated 21/03/2017 (Exhibit-167) addressed by the investigating officer to handwriting expert. Disputed chit was marked as Exhibit-Q1 and Q2. The chit recovered from compound of lion statue was marked as Exhibit-Q3, notebook seized from the house of accused No.1 was marked as Exhibit-Q4. Specimen handwriting of accused No.2 was marked as S-A-1 to S-A-6. Specimen handwriting of accused No.1 was marked as S-B-1 to S-B-6. Natural handwriting of accused No.2 which was seized from the notebook at Bhavani hotel was marked as Exhibits- N-1 to N-7. In the letter (Exhibit-167) handwriting expert was called upon to give

opinion as to whether disputed handwriting at Exhibit-Q1 to Q3 is written by the person who wrote S-A-1 to S-A-6. Sunil Ambilwade (PW31), the handwriting expert has proved his opinion at Exhibit-181. He has thoroughly examined all the documents with the help of different scientific equipments, hand magnifier, ultra-lense, microscope and under different lightning conditions by the process of comparison and came to a conclusion that there are similarities indicating common authorship in handwriting Q-1 to Q-3 and S-A-1 to S-A-6 and N-1 to N-7.

30. According to the prosecution, accused No.2 Sham had written the disputed chit (Article-B) at the instance of accused No.1. From the aforesaid evidence, it is proved beyond the reasonable doubt that chit (Article-B) which was handed over by accused No.1 to the informant was written by accused No.2 Sham at the instance of accused No.1 and in the said chit there was demand of Rs.5 Crores as ransom to release Wardhan from captivity. Thus, the prosecution has successfully proved that the motive behind kidnapping and murder of Wardhan was for ransom of Rs.5 Crores.

3] Recovery of Dead-body at the instance of accused:-

31. PW6 Shantilal Gudiwal is the panch witness for the memorandum statement under Section 27 of the Indian Evidence Act. He has deposed that on 27/02/2017 he was at his house, he received a call from Jawahar Nagar Police Station. Accordingly he

went there. He knows informant as he was doing water proofing work of her house. He was knowing the deceased also. Police asked him whether he is ready to act as panch. Accused No.1 and 2 were present there. Chandu was another panch. Accused disclosed before them that they committed murder of Wardhan at Daulatabad Ghat for demand of ransom of Rs.5 Crores and they are ready to show the place where dead body of Wardhan was thrown. Thereafter accused led them to Shrey Nagar. There was a Nala, wherein water was flowing. The jeep was stopped at a distance of 25 ft. from the Nala. Electricity pole No.527 was there. Accused told that they have thrown dead body of Wardhan there. The depth of Nala was about 9 to 10 ft. They saw the dead body of Wardhan in that Nala in a plastic cover. He and other panch Chandu entered the Nala. The place where dead body was lying was dry. They took out the dead body from Nala. Police prepared panchanama (Exhibit-88) there. Plastic cover was taken out by the accused. He identified both the accused persons in the Court.

32. On the next day, he again went to police station at about 04:00 p.m. and in the presence of two panchas conducted personal search of both the accused. Bunch of keys, mobile and driving licence was found with accused No.1. Those, articles were seized vide panchanama (Exhibit-89). On personal search of accused No.2 Sham one mobile and Aadhar card was found. Those were seized vide panchanama (Exhibit-90). He identified the keys

(Article-R), mobile of accused No.1 (Article-S), driving license (Article-T), mobile of accused No.2 (Article-U) and Aadhar Card (Article-V). His evidence could not be shaken in the cross-examination. It is clear from the evidence of PW6 that the information given by accused No.1 and 2 which led to the discovery of dead body, was distinctly and exclusively within their knowledge.

PW33 Kashinath Mahandule, PSI, is signatory to the said panchanama, he as well as PW36 Kalyankar, PI, have corroborated the testimony of PW6 on the point of recovery of dead body at the instance of accused.

33. It is argued on behalf of accused that panchanama (Exhibit-88) is prepared before registration of crime and arrest of the accused. Therefore, they were not in the custody of police and hence, the said evidence is inadmissible. There is no merit in the said argument as the evidence on record indicates that both the accused were in the police station since 11:00 p.m. of 27/02/2017. The dead body was discovered at their instance between 11:55 p.m. to 01:30 a.m. of 28/02/2017. Thus, the accused were in the constructive custody of investigating officer from 11:00 p.m. of 27/02/2017. In **Vikram Singh and Others Vs. State of Punjab**¹⁰, in similar facts the Apex Court has observed,

“12. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance

¹⁰ 2010 ALL.MR. (Cri.) 982

with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal arrest on the 15/02/2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused in an offence at the time of their apprehension on the 14/02/2005. Moreover in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of the person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion."

34. Merely because PW6 was working in the house of informant that is not sufficient to disbelieve his version being the version of interested witness. In **Vikram Singh** (supra), it is observed by the Apex Court that now a days there is tendency in our society that independent witnesses are not forthcoming in support of the victim of the crime and the prosecution is forced to rely upon the relatives or associates of the complainant. Thus, the prosecution has proved that the dead body of Wardhan was recovered at the instance of accused No.1 and 2. It is, therefore, clear that it was within the special knowledge of the accused that the dead body was lying there. It was for the accused to explain the source of their information about dead body lying in the Nala. No

explanation whatsoever was offered by the accused as to how they came to know about the place where the dead body is found. Therefore, it will have to be presumed that the dead body was thrown by the accused at that particular place, and from there it was recovered at their instance.

4] Recovery of incriminating material at the instance of accused:-

35. The vehicle used in commission of offence i.e. open top sports car of saffron colour bearing registration No.MH01-BM-6088 was seized at the instance of accused, vide panchanama (Exhibit-70), proved by PW3 Vallabh Kalegaonkar. On inspection of the said vehicle one black t-shirt having white strips with blood stains and some hair was found at the side of driving seat. On the seat also blood stains were found. The blood stains were collected by the forensic team. In the dickey of the car one white colour plastic piece (Menkapad) in torn condition was found. Some hair and spit was there on the plastic piece (Article-H). There was dent in the center of the dickey and the pole of the housing society was bent having saffron colour on it. Accordingly the spot panchanama (Exhibit-70) was prepared. PW3 identified the accused.

36. PW4 Ramesh Kathar, who is a Government Servant, has deposed that he was called at Jawahar Nagar Police Station on 01/03/2017 at about 01:00 p.m. PW36 Kalyankar was present there,

he told PW4 that they have to listen to the disclosure of accused and act as panch. Accused Abhilash and Sham were present there. Accused disclosed before him that they were ready to point out the place where they kidnapped Wardhan, committed his murder and threw his dead body. Atul Walke who was another panch, police Officer, accused and one CCTV footage expert boarded in one police jeep and one private jeep. They proceeded as per the instructions of accused. Accused firstly took them to Gurukul Housing Society, accused No.1 showed his house. Then both the accused told them that they took Wardhan in front of house of Vijay Wargiya to his sports car, from there they boarded in the sports car with Wardhan. Thereafter accused took them to Ropalekar square, from there they took them to Vardhan Auto. They stopped at Vardhan Auto on seeing CCTV camera installed there. They along with CCTV expert entered in Vardhan auto which was on upper floor and saved CCTV footage of 27/02/2017. Thereafter they again boarded the vehicle and proceeded as per the instructions of accused. Then they reached at Amarpreet Hotel, Baba Petrol Pump, Nagar Naka, Padegaon, Abdi Mandi, Girija Samarth Petrol Pump and Daulatabad. Accused disclosed that they filled petrol there in the car. CCTV camera was installed at the said petrol pump. They went to seize the CCTV footage of 27/02/2017. CCTV footage was saved. Similarly the CCTV footage at Gram Panchayat office, Daulatabad also saved.

37. Thereafter, the accused took them near his house and showed them the place where while reversing the car it struck to one pole. Then from there they told that they went to Ropalekar square, Sasawade hospital, Mahadeo temple, Saili Hotel, Tanhaji square, Balaji Nagar and Mondha Naka. From there they went to Ramanand Nagar via Amarpreet hotel and from there they reached Shrey Nagar. Then, on the instructions of accused, they alighted from the jeep. There was one Neem tree near Nala (drain). Accused pointed out the place near Nala where they threw the dead body. Then accused showed the route from which they went and parked their car near Bal Udyan. Panchanama of these events was drawn at Exhibit-75. In the presence of this panch police seized clothes of both the accused vide panchanamas Exhibit-76 and 77.

38. PW4 further deposed that, on 03/03/2017 accused No.2 showed his willingness to point out the place where he had thrown the chit. Accordingly, the disclosure panchanama (Exhibit-78) was prepared. Accused No.2 led them to Seven Hills at the lion statue. There was iron compound to the statue. Accused No.2 recovered one half burnt chit from there (Article-M), the same was seized vide panchanama (Exhibit-79). On the said chit words '500', 'Police' were written and erased. Accused No.2 also disclosed that he will show the place on the roof of accused No.1's house where remaining half burnt chit is lying. Accordingly the disclosure panchanama (Exhibit-

80) was prepared. Thereafter accused No.2 led them to Gurukul Housing Society in Monalisa Apartment. He led them to the roof where remaining half burnt chit (Article-N) was lying by the side of one pipe. The same was seized vide panchanama (Exhibit-81). Thereafter accused No.2 disclosed that he is ready to give recovery of notebook from which they took one page and wrote the chit. Accordingly, disclosure panchanama (Exhibit-82) was prepared. Then accused No.2 took them to the house of accused No.1 Abhilash, which was closed. His father was therefore called and the house was opened. Accused No.2 took out the notebook (Article-O) which was kept below the bed. He also showed the pen (Article-P) which was inside the notebook. The pen and notebook were seized vide panchanama (Exhibit-83). Police described whatever they found in the house by preparing panchanama (Exhibit-83), including one vehicle key. He identified accused No.2 Sham. Nothing supporting the defence is brought in the cross-examination of this witness.

Recovery of chit is assailed on the ground that it was from the open place accessible to all. Though it is from the open place, accused No.2 had exclusive knowledge about the place where those chits and note could be found. Therefore, the said submission is unacceptable.

39. PW5 Mohammad Mushtak s/o Mohammad Ibrahim is

panch to the disclosure statement of accused No.1 Abhilash. Accordingly, panchanama (Exhibit-85) of the disclosure statement of accused No.1 is prepared wherein he agreed to show the instrument used by him in commission of crime. Thereafter accused No.1 took them through Tilak Nagar and Ropalekar Hospital to the Bal Vatika Garden in Gurukul Housing Society. He asked to stop the jeep, then at the instance of accused No.1 they all went to Bal Vatika Garden. He led them to the corner of a wall. There was one stone and soil. Accused No.1 removed soil and removed one light coffee coloured handkerchief (Article-F/1) and a pair of green chappal of the deceased (Article-Q). These articles were seized vide seizure panchanama (Exhibit-86). He identified accused No.1 Abhilash. He is also pancha to the panchanama (Exhibit-97 to 99) of seizure of DVD from Vardhan Automobile (Article-Z/1,Z/2), Kidzee School (Article-W,X) and house of Renukadas Vaidya (AA/1, AA/2, AA/3). The CCTV footage was downloaded from DVDs in one cassette and the same was seized in his presence.

In cross-examination he stated that Mr. Khatavkar had prepared DVDs without assistance of technician. On 07/03/2017 he had seen CCTV footage of that day at three places.

40. PW7 Harish Agrawal is a panch in whose presence seized car of accused No.1 was taken to Garkheda Washing Center and with the help of forensic expert metallic pieces of suspension

and chamber were scrapped and seized vide panchanama (Exhibit-100).

41. From the aforesaid evidence it is clear that prosecution has proved that articles used in the crime and or related to the crime, belonging to the deceased and accused were recovered at the instance of accused.

5] Theory of Accused and Deceased Last Seen Together :-

42. Time gap between deceased last seen in the company of accused and occurrence of his death, is so short that leads to no other conclusion than the guilt of accused. PW21 Sachin Pawar is 16 years old boy who is taking education. He is the neighbour of accused and the deceased. He deposed that Wardhan who was residing at the backside of his house was his friend. He knows accused No.1 Abhilash, as Abhilash used to come in the garden when he and Wardhan used to go there. He also knows accused No.2 as he used to be in the company of accused No.1. On 26/02/2017 he was in need of bicycle, therefore, he along with Wardhan had gone to the house of accused No.1 as accused No.1 was having geared bicycle. He went to accused No.1 to purchase the same. He decided to purchase the bicycle for Rs.2,000/-. Accused No.1 told him that before selling or purchasing any article he used to offer prayers in the temple. Thereafter accused No.1 and 2 and Wardhan went to Gajanan Maharaj temple in his car and

PW21 followed them by bicycle. Accused No.1 was having open top car of orange colour. He, accused No.1 and Wardhan offered prayer in the Gajanan Maharaj Temple. Accused No.1 then told them to go to house and he would come after some time. As such, he returned back to his house. He was shown screenshot of CCTV footage (Exhibit-112/1) in which he, accused No.1 and Wardhan were seen offering prayers at the gate of Gajanan Maharaj temple. He identified the photographs of car of accused No.1 (Article G-1 and G-2). He also identified both the accused in the Court.

PW21 further deposed that on 27/02/2017 at about 07:00 p.m. Wardhan came to his house. He and Wardhan came out of the gate of his house. Accused No.1 and 2 came there. Accused No.1 asked him what happened to the price of bicycle. He told accused No.1 that by taking money from his father he will pay it to him. His father came out of the house and spoke with accused No.1 that he will pay money after his mother returns home. Thereafter he went inside the house and his father went to bring his mother. Accused No.1 and 2 and Wardhan went away. He does not know where they went. They did not return back. At about 09:00 p.m. to 09:30 p.m. mother of Wardhan came to his house and asked about Wardhan. He told her that he did not know about him but he went away with accused No.1 and 2. Thereafter she went to the house of accused No.1. Thereafter colony members started to search for Wardhan. At that time accused No.1 came there. He was sweating

and shivering. Thereafter he came to know about murder of Wardhan. Police recorded his statement as per his say and his statement was also recorded before the Magistrate. He admitted the contents of statement recorded before the Magistrate and his signature on the same.

In cross-examination he admitted the statement at portion mark 'A', which is to the effect that, *"thereafter Wardhan's mother and his maternal uncle came to my house in search of Wardhan and asked whether Wardhan is there. I told that Wardhan is not there. Wardhan's mother asked whether I know whereabouts of Wardhan, then I told that when I brought the cycle at that time Wardhan was with Abhiraj (alias Abhilash) Mohanpurkar and Sham Magare. Thereafter Wardhan's mother and we all started searching for Wardhan. Wardhan's mother and his maternal uncle went to the house of Abhiraj. Abhiraj (alias Abhilash) told them that Wardhan had left one hour before. When colony members came to know that Wardhan is not traceable they also started searching for him. Abhiraj (alias Abhilash) was also searching for Wardhan along with us. We all went to his house for searching Wardhan. Abhiraj (alias Abhilash) also came along with us to Wardhan's house"* and it was stated by him before the Magistrate. He stated that he was knowing Abhilash since one year prior to the day of incident. He sat in the car of accused No.1 at several times. Abhilash had decided the price of cycle at the rate of Rs.2,000/-. He denied having knowledge that

accused No.1 was suffering from epileptic-fits disease and he used to fall down suddenly and that someone always used to be in the company of accused No.1.

43. PW11 Santosh Machave is working at Girija Samarth Petrol Pump at Sharnapur, since last 4 to 5 years. His duty hours in day time are from 09:00 a.m. to 06:00 p.m. and at night from 06:00 p.m. to 09:00 a.m. He deposed that on 27/02/2017 he was on night duty. He was doing duty of filling petrol in the vehicles. At 08:45 p.m. one open top saffron colour car came to the petrol pump from Aurangabad side. It first went towards diesel pump and thereafter as it was a petrol car by taking a turn it came towards petrol pump. He was there at the petrol pump. In the car there were three persons. One person was sitting in the backside of the car and two were sitting at the front side. The person driving car was wearing spectacles and by his side one 10 years old boy was seating. In the backside one thin person was seated. He asked driver how much petrol was to be filled in. He told to fill petrol of Rs.500/-. The person who was driving the car gave Rs.500/- to the boy and the boy gave it to him. After filling petrol the vehicle went towards Daulatabad side. He further deposed that, in the morning at about 05:30 a.m. some policemen came to him and inquired whether any vehicle of aforesaid description came to his petrol pump. He told them that the said vehicle had come to his petrol pump. The said policemen

checked CCTV cameras of the petrol pump, wherein saffron colour vehicle was seen. He also saw the CCTV footage. He received notice (Exhibit-115) from the police. Accordingly, he went to the police station and his statement was recorded. He identified accused No.1 as the same person who was driving the car and accused No.2 as the person who was sitting in the backside of the car. He also identified photographs (Exhibit-110/1 to 110/8) in which accused No.1 and 2 and the deceased were appearing. He also identified photographs (Exhibits-110/3, 110/4, 110/5 and 110/6) wherein he was appearing. In photographs at Exhibit-110/4 he is seen filling petrol in the car. He also identified nine photographs of the car (Article- GG/1 to GG/9).

44. In the cross-examination PW11 stated that he is educated upto 9th standard and while issuing receipt to the customer it is necessary to write vehicle number in it. He admitted that it is also necessary to write mobile number of the vehicle owner in the receipt. He did not issue receipt to the customer who purchased petrol in the night of 27/02/2017 from his petrol pump at 08:45 p.m. He denied that only two wheeler owners used to fill petrol of Rs.500/- and the four wheeler vehicle owners used to purchase petrol generally of Rs.1,000/- and more. On 27/02/2017, between 06:00 p.m. to 09:00 a.m. of 28/02/2017 more than 25 customers might have purchased the petrol of Rs.500/-. DVR is

installed on the first floor. In the morning of 28/02/2017 police had gone on the first floor in DVR room. He denied that the police tampered the timing of CCTV footage and DVR.

45. From the evidence of these two witnesses, it is clear that in the evening of 27/02/2017 PW21 has seen deceased in the company of accused No.1 and 2 and PW11 has seen deceased in the company of accused No.1 and 2 at 08:45 p.m of that day and after filling petrol in the car accused No.1 and 2 along with the deceased were seen proceeding towards Daulatabad.

PW2 Dr. Darandale has conducted autopsy on the dead body of Wardhan at 10:50 a.m. on 28/02/2017. He opined that death of Wardhan occurred prior to 6 to 18 hours of commencement of the postmortem.

46. PW37 Kabir Tadvi is servant in poultry farm of Daud Bhai situated in the back side of Daulatabad fort on the road of Kesapuri Tanda. He stated that on 27/02/2017 at 9.00 p.m. to 9.30 p.m. he came out of farm house as their hens were being stolen by the thieves. He saw one car at the end of cement road. Its parking lights were on. The car was there for about 5 to 10 minutes. Thereafter, the car proceeded towards Daultabad Ghat.

In the cross examination, he stated that his statement was recorded on 15th of the month. Though he was told by his sister that police were making inquiry he did not feel to go to police to

give his statement. Prosecution claims that he has seen the vehicle of Accused No. 1, however, the evidence of this witness is not of any help to the prosecution.

6) Electronic Evidence of CCTV Footage:-

47. In support of the last seen together theory prosecution has also relied on CCTV footage recovered from the petrol pump wherein accused had filled petrol in his car. PW5 Mohammad Mushtak is panch to the seizure panchanama (Exhibit-97 to 99) of CCTV footage in DVD from Vardhan Automobile, Kidzee School and house of Renukadas Vaidya. CCTV footage from these DVRs was downloaded in one cassette and seized in one DVD. He has seen CCTV footage of these three places.

48. PW9 Vinod Kharat is panch who went along with the police officers to Gajanan Maharaj temple and saw CCTV footage of 26/02/2017 between 07:00 p.m. to 08:00 p.m. He deposed that in the said CCTV footage one small boy with two persons was seen. Police downloaded the said CCTV footage on blank CD from the operator. The said CD was seized and sealed in his presence. Police obtained his signature on the seizure panchanama (Exhibit-106). Then they went to Shankar Hospital and requested to see CCTV footage of 27/02/2017 between 07:00 p.m. to 08:00 p.m. One saffron colour car was seen passing from there in the CCTV footage.

The said CCTV footage was downloaded in blank CD by the CCTV camera operator. The said CD was seized and sealed vide panchanama (Exhibit-107).

In cross-examination PW9 stated that it is not mentioned in the panchanama (Exhibit-106 and 107) that blank CDs were given to the CCTV camera operator by police. He had ensured that the time shown in his watch and the time shown in the CCTV screen of that day was one and the same.

49. PW12 Balasaheb Kanhere, Manager of Girija Samarth Petrol Pump, Sharanapur, is working there since last 20 years. He deposed that at their petrol pump 12 cameras are installed, there are 16 DVRs unit and those are of CP+ company. The DVR is in the upper room of cabin of the petrol pump which is kept locked and it's keys are with him. DVRs are under his control. At the petrol pump they are having two petrol dispensing units and two diesel dispensing units. These units are covered by the canopy and there are 24 in-built light system at the petrol pump. On 27/02/2017, 12 CCTV cameras were in working condition at the petrol pump. Police approached him on 04/03/2017 and have issued notice (Exhibit-118). Police inspected all the cameras and asked about DVR. He showed DVR to them. One technician was with the police. He checked DVR. Technician of police saved CCTV footage of 27/02/2017 of time 20:40 to 20:45 Hours and downloaded the same

in empty DVD. Before downloading, police showed him the empty DVD by running it. He stated that the CCTV footage was downloaded in empty DVD. This downloading was done in his presence. He issued certificate under Section 65-B of the Indian Evidence Act (Exhibit-119). PW11 Santosh was on duty on 27/02/2017 for filling petrol at unit No.5. In CCTV cameras the time is set. They used to set the time manually and there is difference of approximately 09 minutes 30 seconds in the timing of CCTV camera and retail outlet automatic system. The time set in CCTV cameras was ahead with the time of retail outlet automatic system. Police seized DVR of CP+ company on 05/03/2017. One Suresh Patel was maintaining the DVR system. Exhibit-95 bears signature of Suresh Patel. He identified the DVR and CCTV footage (Exhibits-110/1 to 110/8).

During the examination-in-chief of this witness, the DVR was played on the screen. In CCTV footage the date was shown as 27/02/2017 and the time was from 20:40:00 to 20:45:00 Hours. In CCTV footage one open top saffron colour car is seen coming in the petrol pump. It took turn and stopped at one petrol unit. PW12 stated that in the car one boy and two persons are there. PW11 Santosh filled petrol in the said car. As the features of three persons were not clearly visible, the footage was replayed by zooming the screen. After zooming the screen Wardhan Ghode was seen sitting by the side of the driver. In the backside seat accused No.2 Sham

wearing parrot colour T-shirt was seen. There was some confusion in respect of person sitting in the driver seat of the car. In cross-examination he admitted that timing in CCTV footage can be changed manually. At some distance from their petrol pump there are two ways, one goes to Nashik and another goes to Daulatabad.

50. PW16 Pundlik Patil, is the Gram Sevak, who at the relevant time was working at Gram Panchayat Daulatabad. He deposed that office of Gram Panchayat Daulatabad, is near the bus-stand. The bus-stand and Gram Panchayat are on highway i.e. Aurangabad - Dhule road. At the Gram Panchayat 8 CCTV cameras were installed in the year 2015. DVR was kept in his cabin and it was in his possession and control. On 05/03/2017 police from Jawahar Nagar Police Station came at the Gram Panchayat and saw CCTV footage of 27/02/2017. At their request he downloaded necessary CCTV footage of that day on CD/DVD from cameras No.4 and 6. On 27/02/2017 all the CCTV cameras of office were in working condition. The time set in DVR was ahead by 27 minutes of Indian Standard Time. He issued certificate under Section 65-B of the Indian Evidence Act (Exhibit-134) on 07/03/2017.

51. In cross-examination he stated that when police came to his office with a request to download CCTV footage, at that time he came to know that the timing in CCTV footage is ahead by 27 minutes than the Indian Standard Time. Now he is transferred

from Daulatabad to Patoda and while he was at Daulatabad, difference of 27 minutes in CCTV camera was there.

52. PW17 Renukadas Vaidya is resident of Plot No.6, Shrey Nagar, Usmanpura, Aurangabad. He deposed that he installed CCTV cameras in his house prior to 7 to 8 years and the DVR is kept in one room inside the house. The DVR is under his control and possession. On 07/03/2017 and 10/03/2017 police from Jawahar Nagar Police Station came to his house with CD. They requested him to verify the CD. He checked it and it was blank. Police further requested him to download the footage of 27/02/2017. Accordingly he downloaded CCTV footage of 27/02/2017 of camera No.4, which was installed on front side of the house. It covers the main road which is in front of the house. The said road goes to Sahakar Nagar from Shrey Nagar. There was one Nala in Shrey Nagar. On 27/02/2017, CCTV cameras of his house were in working condition. Time set in the DVR was behind by 43 minutes of Indian Standard Time. As per the request of police, he issued certificate under Section 65-B of the Indian Evidence Act (Exhibit-136).

In cross-examination, PW17 admitted that time can be manually set in CCTV footage and till that day he has not corrected the timing of his CCTV footage.

53. PW18 Manjaram Ambegaonkar is working as administrator in Shankar Chest Hospital, which is behind Chetak

Ghoda in Vishwabharati colony, Garkheda, Aurangabad. He deposed that since 2013 thirteen CCTV cameras are installed in their hospital. The DVR is kept in the cabin of Doctor and it is under his control. Police issued notice (Exhibit-138) to him. Police came to the hospital on 11/03/2017 and requested him to download the CCTV footage. He downloaded the CCTV footage of camera No.6 of 27/02/2017 in 3 DVDs. Camera No.6 covers the area of main road which is in front of the hospital and goes from Chetak Ghoda to Gajanan Maharaj Temple. On 27/02/2017 all the cameras of the hospital were in working condition. He downloaded CCTV footage of 27/02/2017 in DVD as it was in the DVR. Time set in DVR was 43 minutes ahead than the Indian Standard Time. He issued certificate under Section 65-B of the Indian Evidence Act (Exhibit-139).

In cross-examination PW18 stated that he came to know about the difference of 43 minutes in the timing of CCTV footage and Indian Standard time when police came to their hospital to download CCTV footage. Now they have corrected the time in CCTV footage. He himself has corrected the time manually. He denied that at the instance of police he made difference in the timing of CCTV footage.

54. PW19 Jayant Shende is owner of Vardhan Automobile, which is situated at Sawarkar square. He deposed that he had installed four CCTV cameras in the year 2016 in his shop and the

DVR is kept in his shop which is under his control. Police had requested him to provide CCTV footage of 27/02/2017 of camera No.3 which is on the outside of shop and covers the front side road and Sawarkar square. The said road passes from Amarpreet hotel to Shahanoormiyan Dargah. He downloaded the CCTV footage of 27/02/2017 in DVD supplied by the police. On 27/02/2017 camera No.3 was in working condition. Time set in DVR was 34 minutes ahead than the Indian Standard Time. He issued certificate under Section 65-B of the Indian Evidence Act (Exhibit-142).

In cross-examination PW19 stated that prior to three days of arrival of police to his shop he came to know that there is difference of 34 minutes in the time set in CCTV cameras, however, he did not correct it. He admitted that the time in CCTV cameras can be corrected manually. He denied that he deliberately made the difference in timing of CCTV cameras by 34 minutes at the instance of police.

55. PW20 Sunil Gaybhave is working as Manager at Gajanan Maharaj temple, Garkheda, since last 4 to 5 years. He deposed that CCTV cameras were installed in the temple prior to 7 to 8 years. In February, 2017 police of Jawahar Nagar Police Station had come to him requesting to provide CCTV footage of 26/02/2017 of main gate i.e. camera No.18, which covers the main gate of the temple and main road which passes from Shivajinagar to Seven Hill. The DVR is

kept in the office of temple and it is under his control. He provided CCTV footage of 26/02/2017 to Police in DVD. He downloaded it as it was in the DVR. Camera No.18 was in working condition on 26/02/2017. He issued certificate under Section 65-B of the Indian Evidence Act (Exhibit-144).

56. PW4 Ramesh Kathar has deposed that he has seen CCTV footage of 27/02/2017 at Vardhan Automobiles, Girija Samarth Petrol Pump, Sharanapur and Gram Panchayat Daulatabad. In all these CCTV footage accused No.1 Abhilash, accused No.2 Sham and deceased Wardhan were seen in open top sports car of accused No.1 and the car was passing and returning back. In his presence on 04/03/2017 CCTV footage of Girija Samarth Petrol pump of 27/02/2017 was downloaded on DVD and the same was seized vide panchanama (Exhibit-94). On 05/03/2017 the hard disk, DDR and adopter were seized at Girija Samarth petrol pump vide panchanama (Exhibit-95). Three DVDs of CCTV footage at Daulatabad Gram Panchayat were seized vide panchanama (Exhibit-96).

57. PW6 Shantilal Gudiwal is panch in whose presence CCTV footage of Kidzee school dated 27/02/2017 is downloaded in DVD and the same is seized by panchanama (Exhibit-97). He has also proved panchanama of seizure of DVD on which CCTV footage at Wardhan Automobile dated 27/02/2017 was downloaded by

panchanama (Exhibit-98). He has also acted as panch to the panchanama of downloading CCTV footage from the house of PW17 Renukadas Vaidya of 27/02/2017 on Moserbaer company DVD vide panchanama (Exhibit-99). He has issued certificate under Section 65-B of the Indian Evidence Act.

58. PW13 Vijay Ingale is Government Servant. He has acted as panch to the panchanama of extracting hash value from three DVDs each at seven places. Milind Jahagirdar was another panch. In their presence CCTV footage of seven places were converted into DVDs with the help of laptop. He knows about the hash value, which means that the CCTV footage collected by police and those appearing in the DVD are one and the same. In their presence eight screenshots of the CCTV footage were taken. Police prepared panchanama (Exhibit-122) in their presence. Hash value mentioned in the screenshots is noted down in panchanama. Eight screenshots of hash value were admitted by him to be the same. They are collectively marked as Exhibit- 123/1 to 123/8. He identified the DVD in respect of CCTV footage at Girija Samarth Services (Article- BB/1 to BB/3), Daulatabad Gram Panchayat (Article- CC/1 to CC/3), Vardhan Automobiles (Article- Z/1 to Z/3), Kidzee School (Article- X/1 to X/3), Renukadas Vaidya's house (Article- AA/1 to AA/3), Gajanan Maharaj Temple (Article- EE/1 to EE/3) and Shankar Chest Hospital (Article- II/1 to II/3).

59. Appellants have assailed the evidence of CCTV footage on the ground that there is variance in the timing of CCTV footage, and therefore, reliance cannot be placed on the same. We have seen the CCTV footage. Trial Court has described the CCTV footage evidence in detail manner as follows:-

DVD at Article-BB/1 contains CCTV footage of 27/02/2017 at Girija Samarth petrol pump between 20:42:31 Hours to 20:42:48 Hours, wherein one saffron colour car is seen coming in front of petrol unit, PW11 Santosh filled petrol in the said car. Accused No.1 is seen driving the said car, Wardhan is sitting besides him in the front seat and accused No.2 Sham is seen sitting behind him. DVD at Article-CC/1 contains CCTV footage of 27/02/2017 at Daulatabad Gram Panchayat, wherein one saffron colour car is found passing at 21:09:39 Hours and it returned at 21:58:14 Hours. DVD at Article-Z/1 contains CCTV footage at Vardhan Automobile, wherein one open top car is seen passing from there. CCTV footage in DVD at Article-X/1 shows that at 22:37:01 Hours one open top car passed in fast speed from Kidzee School. It appears that in this footage date 28/07/2018 is wrongly mentioned instead of 27/02/2017.

PW14 Dr. Khatavkar has taken screenshots of all these CCTV footage and prepared it's transcripts and placed on record. On comparison of CCTV footage at Girija Samarth petrol pump with the screenshots (Exhibits-110/1 to 110/18) and it's transcript

panchanamas (Exhibit-111), there is slight difference of timings mentioned on the screenshots and Indian Standard Time (IST). Such as, timing mentioned on the screenshot is 20:42:31, however the Indian Standard Time was 20:33:31. The second screen shot is also of 27/02/2017 and the timing is 20.42.33 [IST 20.33.33]. The third screen shot is of 27/02/2017 and the timing is 20.42.41 [IST 20.33.41]. The fourth screen shot is of 27/02/2017 and the timing is 20.42.43 [IST 20.33.43]. The fifth screen shot is of 27/02/2017 and the timing is 20.42.51 [IST 20.33.51]. The sixth screen shot is of 27/02/2017 and the timing is 20.42.53 [IST 20.33.53]. The seventh screen shot is of 27/02/2017 and the timing is 20.42.21 [IST 20.33.31]. The eighth screen shot is of 27/02/2017 and the timing is 20.42.24 [IST 20.33.24]. The ninth screen shot is of 27.2.2017 and the timing is 20.42.25 [IST 20.33.25]. The tenth screen shot is of 27/02/2017 and the timing is 20.42.50 [IST 20.33.50]. The eleventh screen shot is of 27/02/2017 and the timing is 20.43.20 [IST 20.34.20]. The twelve screen shot is of 27/02/2017 and the timing is 20.44.02 [IST 20.35.02]. The thirteenth screen shot is of 27/02/2017 and the timing is 20.44.18 [IST 20.35.18]. The fourteenth screen shot is of 27/02/2017 and the timing is 20.43.14 [IST 20.34.14]. The fifteenth screen shot is of 27/02/2017 and the timing is 20.44.00 [IST 20.35.00]. The sixteenth screen shot is of 27/02/2017 and the timing is 20.42.29 [IST 20.33.29]. The seventeenth screen shot is of 27/02/2017 and the timing is 20.42.57 [IST 20.33.57]. The

eighteenth screen shot is of 27/02/2017 and the timing is 20.42.33 [IST 20.33.33] and the nineteenth screen shot is also of 27/02/2017 and the timing is 20.42.29 [IST 20.33.49]. The transcript panchnamas of above screen shots are at Exhibit-111. In the transcript panchnama, the description in respect of the car and the persons traveling in the car and its place has been mentioned along with timings. It further appears that the screen shots of 26/02/2017 are also on record and they are at Exhibit-112/1/12 collectively. The first screen shot is of Gajanan Maharaj temple of 26/02/2017 and the timing is 29.37.01 [IST 19.37.01]. The Second screen shot is of 26/02/2017 and the timing is 19.37.07 [IST 19.37.07]. The third screen shot is of 27/02/2017 and the timings are 21.09.39 and 21.09.40 [IST 20.42.39. and 20.42.40]. This screen shot is of the CCTV-footage of Daulatabad Gram panchayat road. The fourth screen shot is of 27/02/2017 and the timing is 21.09.40. The fifth and sixth screen shots are of 27/02/2017 and the timing is 21.58.14 [IST 21.31.14]. This CCTV-footage is also of Daulatabad Gram panchayat, however, in this footage the car has been shown returning from the same road. The seventh and eighth screen shots are of 27/02/2017 and the timings are 22.26.05 and 22.26.07 [IST 21.52.05 and 21.52.07]. These two CCTV-footage were obtained from Wardhan automobile. The ninth and tenth screen shots are of 27/02/2017 and the timings are 23.09.15 and 23.09.16 [IST 22.26.15 and 22.26.16]. This CCTV footage obtained from Shankar

Chest hospital. The eleventh screen shot is of 27/02/2017 and the timing is 21.53.01 [IST 22.36.01]. This CCTV footage was of the house of Renukadas Vaidy. The twelfth screenshot is of 28/02/2017 and the timing is 22.37.01 [IST 22.37.01]. This CCTV-footage obtained from Kidzee school, Shreyanagar, Aurangabad. In this CCTV-footage the date has been wrongly mentioned as 28/02/2017 instead of 27/02/2017.

60. Thus, the CCTV evidence and screenshots establish beyond reasonable doubt that deceased was lastly seen in the company of accused in the evening of 27/02/2017. There is no substance in the argument of appellants as the CCTV footage evidence and screenshots are proved in accordance with law and the said evidence is credible and reliable. Merely because there is difference of few seconds / minutes in the timings mentioned in the CCTV footage and Indian Standard Time, the said evidence cannot be said to be doubtful.

61. Prosecution has examined PW22 Ajay Patil. He owns a shop by name Jayesh Digital Services and he is dealing in the business of digital printing and preparing, design, maps and drawing, since 1994. He deposed that he used to prepare map on the request of all departments. On receipt of letter from Jawahar Nagar Police Station (Exhibit-147), whereby he was asked to prepare a map in respect of one incident, after the information about route

and tower location was given to him by police, with the help of Google map he prepared a map. He firstly prepared Google Map, then he put locations on that. He then filled information of mobile timing, tower locations and CCTV footage in those maps by mentioning time, mobile number, tower locations, CCTV footage and latitude and longitude. He also added Indian standard time and the timings of mobile in the maps, timing of CCTV footage and tower location timings in the map. He prepared information chart of the map towards right side of the map. On the basis of technical knowledge and information furnished by police, he has prepared three maps (Exhibit- 127 to 129) and printed them on his computer. Map at Exhibit-127 shows the place of kidnapping and place of murder. Map at Exhibit-128 denotes the route of returning from the place of murder to the place where accused along with the dead body of Wardhan were stopped and Exhibit-129 shows the route by which accused carried the dead body of Wardhan to dispose of the same. According to him, mobiles as mentioned in the maps travelled from the route shown by him on 27/02/2017 and it also matches with the CCTV footage record.

In cross-examination he admitted that he prepared map on the basis of information furnished by the police. If the information supplied by police is correct then the maps are correct and if the information is incorrect, then the maps are also incorrect.

62. To bolster the last seen theory, prosecution has examined Nodal Officers who proved CDR, SDR and CAF of the cellphone numbers of the accused. In the evidence of PW25 Akash Toke, prosecution has proved that he gave sim card of mobile No.7249870348 to accused No.2 Sham. PW39 Makarand Vidhwans, Nodal Officer of Telenor Company proved the CDR of said mobile number. He has also proved the cell I.D. (Exhibit-249), CAF (Exhibit-253), CDR (Exhibit-254) and certificate under Section 65-B of the Indian Evidence Act (Exhibit-255) of the said mobile number. In cross-examination he stated that on 27/02/2017 the mobile number was active lastly at 19:47 hours. During 08:30 p.m. to 09:30 p.m. of 27/02/2017, there was no outgoing or incoming calls.

63. PW24 Francis Parera is Nodal Officer of Reliance company. He deposed that his company received letter (Exhibit-155) from DCP Rahul Shrirame to supply the CDR, SDR and CAF of mobile No.8208499724 of accused No.1. He sent CDR of said mobile for the period from 10/02/2017 to 27/02/2017 (Exhibit-157) along with cell I.D. address (Exhibit-158) under his signature. On the basis of cell I.D. address they can locate exact address of the tower on the basis of it's code number. He also proved CAF (Customer Application Form) of the said cell number, which is in the name of Sudhir Mohanpurkar (father of accused No.1) (Exhibit-160). He issued certificate under Section 65-B of the Indian Evidence Act

(Exhibit-161). He is authorized to retrieve the data from master computer on the basis of login and password provided by the company. Master computer is under his control. In cross-examination he stated that when the mobile is on it shows tower location of that mobile within the area of 100 Meters. The location is detected on the basis of longitude and latitude. Nothing favourable to the accused is elicited in his cross-examination.

64. It has come the evidence of PW24 that accused No.1 had received call on 27/02/2017 at 21:08:15 hours from mobile No. 9822064665 and his tower location showed at 40586401E4F25. The address of this code has been shown in the cell I.D. as Mrs. Yogita Zamwal, Gut No.81(03), Abdimandi, near Daulatabad Fort. This also further corroborates the case of prosecution that at 09:08 p.m. accused No.1 was near Daulatabad fort and at 09:00 p.m. when informant Bharti Ghode went to the house of accused No.1, his father had called him. It is further proved from the CDR that at 21:55:42 accused No.1 again received call from his father from mobile No.9822064665. At this time, the cell I.D. is shown as 405864019D331. The tower location of this cell I.D. is shown at Shrey Nagar, Aurangabad. This further corroborates the prosecution case that accused had thrown the dead body of Wardhan in the Nala of Shrey Nagar.

65. PW34 Dattaram Aangre is Nodal Officer of Vodafone

company. He deposed that the D.C.P. of Aurangabad had called CDR of mobile No.9689473504 from his company vide letter (Exhibit-199). In the said letter tower location of the said mobile number was called. On 13/04/2017, he supplied CDR (Exhibit-203), CAF (Exhibit-202 and certificate under Section 65-B (Exhibit-201) to the police along with covering letter (Exhibit-200). CAF is in the name of Sudhir Mohanpurkar (father of accused No.1). Along with CAF photocopy of election identity card of father of accused No.1 is there.

In the cross-examination, he stated that his statement was not recorded by the police and he issued CDR as per the circular of Central Government. On the basis of their record it cannot be revealed when the mobile was switched off and when it again started. On the basis of CDR it cannot be said for how much time the mobile holder was in the area of tower location. The jurisdiction of tower area is about 4 to 5 kms out of the city. It can only be said from the tower location that the mobile was in the location of that tower.

66. As per the CDR (Exhibit-203) on 27/02/2017 at 20:45:50 Hours accused No.1 Abhilash had received a call from mobile No. 919146975781 and his tower location is shown at 40422-10022-241. In the cell I.D. address of this code his shown at Sardar, Plot No.22 and 23, 26, 27, Gut No.3 Daulatabad, Aurangabad. This

shows that on 27/02/2017 at 08:45 p.m. accused No.1 was at Daulatabad, which supports the prosecution case that at 08:45 pm accused No.1 and 2 by kidnapping Wardhan took him to Daulatabad and killed him there.

67. PW14 Dr. Rahul Khatavkar, investigating officer, has proved panchanama of downloading CCTV footage and has obtained hash value of the DVDs and prepared it's panchanamas (Exhibits-123/1 to 123/8). He has forwarded all the DVDs to the Forensic Science Lab, Kalina, Mumbai, on 23/03/2017.

68. PW41 Atul Patil has examined DVDs sent to him and prepared report (Exhibit-218). He has deposed that he received letter sent by Jawahar Nagar Police Station bearing No.823/17, along with the letter police had sent DVR with it's hard disk, seven DVD, reference photographs of the car No.MH-01-BF-6088 and photographs of Wardhan, mobile phone, sim card, memory card etc. He analyzed articles and prepared report as per Exhibit-171. He stated that videos as per the police letter (Exhibit-171) were found in the DVR. He saved the same. The videos were of 27/02/2017, he saved the same. He prepared image frames of those video files and compared the image frames with the reference photographs sent to him by police. The reference photograph of car at page No.5 of Exhibit-218 tallied with the frame image on page No.5. The car found in the video of 27/02/2017 at 20:42:34 Hours is the car as

shown in reference photograph. The reference photographs sent by police at page Nos.6 to 22 tally with the frame images extracted by him from the videos and DVD. The reference photographs on page Nos.10 to 22 of the car tally with the frame images taken by him from different DVDs which are on page Nos.6 to 22 of the report. He had received black and white DVD. He extracted frame image from the DVD and compared the same with reference photographs and found that the car in black and white DVD and reference photographs on page Nos.20 and 21 tally with each other. Three reference photographs i.e. of accused No.1 Abhilash, witness Sachin and deceased Wardhan were sent to his office. He checked the frame images sent to him through DVD and compared the same with the reference photographs and found that the frame images extracted by him from the DVD and the reference photographs of accused No.1 Abhhilash, witness Sachin and Wardhan tally with each other. He further deposed that the frame image extracted by him from DVR tally with the reference photograph of deceased Wardhan at page No.25. The person who was driving the car as mentioned in frame image at page No.8 tally with reference photograph of accused No.1 at page No.23.

69. PW3 Vallabh Kelgaonkar is panch to the arrest panchnama Exhibit-72 of Accused No. 1 and Exhibit-73 of Accused No. 1. At the time of arrest, mobile phones were seized from the

accused. From accused No.1 Abhilash black colour mobile of Vivo company bearing IMEI No. 861750032842617 and 861750032842609 (Real IMEI number is 861750032842600) was seized. There were two sim cards in the said mobile, one was of Jio company and another was of Idea company. From accused No.2 Sham one black colour mobile of Karbon company was seized, bearing IMEI No. 911490509423860 and 911490509423878. There were two sim cards in this mobile, one was of Telenor company and another was of Airtel company. PW6 Shantilal Gudiwal has proved this at Exhibit-89 and 90.

70. The CCTV footage of Girija Samarth Petrol pump tally with the screenshots at Exhibits- 110/1 to 110/18 and the transcripts. The screenshots of 26/02/2017 at Exhibit-112/1/12 (Collectively) are of Gajanan Maharaj Temple and their timing is 29:37:01 [IST 19:37:01]. These screenshots tally with the CCTV footage in the DVDs. Panchanama of these screenshots is at Exhibits- 89 and 90 and those are proved by PW6 Shantilal Gudiwal, along with panchanama of seizure of DVDs from Kidzee school, Vardhan Automobile and house of Renukadas Vaidya (Exhibits- 97, 98 and 99). PW12 Manager of Girija Samarth Petrol pump has proved Exhibits- 119 and 120 i.e. CCTV footage on the DVR of his petrol pump downloaded in his presence by the police on DVDs. He has issued the certificate under Section 65-B of the Evidence Act

(Exhibit-119). Thus, there is clinching electronic evidence showing the involvement of the accused in the commission of present crime. By leading cogent and reliable evidence prosecution has established that Wardhan was in the custody of both the accused in the evening of 27/02/2017. However, the accused have failed to discharge the burden under Section 106 of Evidence Act.

7] Scientific Evidence:

71. PW27 Police Constable Dnyaneshwar Thakur carried muddemal articles. PW26 Police Naik Badrinath Jadhav is the carrier who carried muddemal articles i.e. chits (Exhibits- Q1 and Q2), half burnt page of a notebook (Exhibit-Q3), notebook (Exhibit-Q4), specimen handwriting of accused No.2 (Exhibits- S-A-1 to S-A-6), specimen handwriting of accused No.1 (Exhibits- S-B-1 to S-B-6), natural specimen handwriting of accused No.2 from the pages of notebook (Exhibits- N-1 to N-7) to the Handwriting Expert, Crime Branch, Aurangabad, vide letter (Exhibit-167). He also carried the handkerchief by which Wardhan was strangled to the Forensic Science Lab, Aurangabad, vide letter (Exhibit-168).

72. PW31 Sunil Ambilwade, Assistant State Examiner of Documents, CID, Nagpur, Camp Aurangabad, has examined the documents forwarded by investigating officer through PW26 and has given his opinion (Exhibit-181) stating that red-encircled writing marked as Exhibits- Q-1 to Q-3 when compared with the red-

encircled writing marked as Exhibits- S-A-1 to S-A-6, N-1 to N-7 and N-1(R) to N-7(R), shown similarities in writing habits indicating towards their common authorship.

Red-encircled writing marked as Exhibits- Q-1 to Q-3 when compared with the red-encircled writing marked as Exhibits- S-B-1 to S-B-12 shown dis-similarities in writing habits indicating towards their different authorship. Red-encircled page marked as Exhibit- Q-4 shows marks of indentation, however, in absence of sufficient clarity to decipher the content, it has not been possible to express the definite opinion on those portion. He has also produced reasoning supporting his opinion (Exhibit-183). Thus, prosecution has proved that the handwriting in ransom chit was that of accused No.2.

73. PW33 Kashinath Mahandule, has deposed that on receipt of DNA kit sought by him, he sent buccase mucosal swabs, hand nails, clipping and teeth in sealed bottle to C.A., Pune, along with viscera form, blood soaked gauze and DNA form. F.S.L., Pune refused to receive the blood soaked gauze piece and directed him to submit the same to C.A., Aurangabad. Accordingly, he sent the blood soaked gauze piece to C.A., Aurangabad, vide letter (Exhibit-194). The said C.A. has carried out some part of the investigation.

74. PW40 Rohidas Mundhe, Assistant Chemical Analyser, Pune, has proved the chemical analyser report of the said Articles

(Exhibits- 212 and 213). As per Exhibit-211, the torn transparent polythene put in a packet (Exhibit-B) tally with the torn transparent polythene put in a packet (Exhibit- D-4) and the paint scrapping wrapped in paper put in a packets (Exhibits- D-7, D-8 and D-10) tally among each other. As per Exhibit-212, control DNA profiles are obtained from plucked scalp hair (Exhibit-1), tooth (Exhibit-2), two buckle swab (Exhibit-3), nail clippings of Wardhan (Exhibit-4), saliva stain cuttings from T-shirt (Exhibit-5a), sweat stain cuttings from T-shirt (Exhibit-5b), blood stain recovered from seat cover (Exhibit-7), hair found in car dickey (Exhibit-8), hair found in right hand fist of deceased (Exhibit-10) and hair found in T-shirt of deceased (Exhibit-11). Exhibit- 213 is the result of DNA analysis, which states that,

1) DNA profiles obtained from Ex.1 Scalp hair, Ex.2 Tooth, Ex.4 Nail clippings of Vardhan Vivek Ghode, Ex.5a Saliva Stain cuttings from T-shirt, Ex.7 Blood stain (Stain prepared from seat cover) and Ex.8 Hair (Hair found in car Dickey) [RFSL Pune ML Case No.DNAP-241/17] are **identical** and from one and the same source of male origin and **matched** with DNA profile obtained from Ex.3 Buccal swab of Wardhan Vivek Ghode [RFSL Pune ML Case No.DNAP-241/17].

2) DNA profiles obtained from Ex.10 Hair (Hair found in Right Hand fist of Deceased) and Ex.11 Hair (Hair found on T-shirt of Deceased) [RFSL Pune ML Case No.DNAP-241/17] are **identical** and from one and the same source of male origin and **matched** with DNA profile

obtained from Ex.2 Blood of Shyam Lakshamn Magare [RFSL Pune ML Case No.DNAp-290/17].

3) Mixed DNA profile obtained from Ex.6 Hair (Hair found on T-shirt in Car) is **matched** with DNA profile obtained from Ex.3 Buccal swab of Wardhan Vivek Ghode [RFSL Pune ML Case No.DNAp-241/17] and Ex.2 blood of Shyam Lakshamn Magare [RFSL Pune ML Case No.DNAp-290/17].

75. According to PW40, there were three hair on the T-shirt found in the car. After analyzing the hair, he came to a conclusion that those were of deceased Wardhan and accused No.2 Sham. Hair found in the right hand fist were of accused No.2 Sham. Hair found on the T-shirt of the deceased was of accused No.2 Sham. Blood stain found on the seat cover was of deceased Wardhan. Hair found in the car dickey were also of deceased Wardhan. Saliva found on the T-shirt matches with the DNA profile of deceased Wardhan. On the sweat found on the T-shirt of the deceased, he found mixed DNA profile of deceased Wardhan and accused No.1. Examination carried out by him is mentioned in Exhibit-213 in GENOTYPE.

76. Vide letter (Exhibit-23) clothes of the deceased, clothes of both the accused, blood and hair samples of the accused, blood sample of the deceased and handkerchief used for strangulation of deceased were forwarded for chemical analysis to F.S.L., Aurangabad. Vide report (Exhibit-214) it is opined that on the

clothes of the deceased blood and saliva was found. Blood of group 'A' was found on Exhibits- 1 and 2 i.e. clothes of the deceased. No blood was detected on half T-shirt and jeans pant of accused No.1 and 2. No saliva is detected on the clothes of accused. Human blood was detected on half T-shirt of accused No.2. Saliva detected on Exhibit-1 is of group 'A'. As per Exhibit-215 blood group of accused No.1 Abhilash is 'A'. Blood group of accused No.2 could not be determined as per the report Exhibit-216. As per the C.A. report (Exhibit-217) neither blood nor tissue matter is detected on handkerchief which was used for strangulation of deceased.

77. Appellants have challenged the scientific evidence submitting that the C.A. reports and DNA reports are not trustworthy and there are serious flaws in recovery and subsequent sending of them to Forensic Science Lab. This evidence against the appellants is fabricated. There is no substance in the said submission as the scientific evidence led by the prosecution is reliable and trustworthy and it proves involvement of the appellants in the present crime.

Thus, the above discussed scientific evidence proves involvement of present accused in the crime.

8] Non Explanation of Incriminating Circumstances by Accused:

78. At the time of arrest of Accused No. 1 PSI Kashinath

Mahandule PW33 found scratch injury on the right side of his chest. He therefore referred Accused No. 1 for medical examination at GHATI Hospital. Dr. Shruti Gurnale PW32 examined accused on 28/02/2017 and issued injury certificate (Exhibit-85). As per the injury certificate there was superficial abrasion on the chest of Accused No. 1, which was caused within 24 hours by blunt and hard object. When this circumstance was put to Accused No. 1 while recording his statement under Section 313 of Cr.P.C., he has failed to give any satisfactory answer about the cause of injury. Therefore, prosecution case that while committing murder of Wardhan he caused the said injury to Accused No. 1 can be accepted.

79. All the above discussed circumstantial evidence proving the involvement of accused were put to them while recording their statement under Section 313 of Cr.P.C. They have failed to give explanation as to in which circumstances Wardhan died homicidal death, how the blood stains of deceased were found in the car of accused No.1 and clothes of accused, how the accused got knowledge about the spot where dead body of Wardhan was thrown. Therefore, the accused have failed to discharge the burden. This is an additional circumstance establishing the guilt of the accused. Conduct of the accused during entire incident and subsequent thereto further confirms their culpability in the present crime.

80. Evidence on record clearly indicates that the accused

have planned the abduction and murder of the deceased. He submitted that the dead body was recovered at the instance of accused. Accused are seen with the deceased in the CCTV footage and timings in the CCTV footage match with the prosecution case. Therefore, there is sufficient evidence to sustain the conviction of the accused.

81. By relying on ***Lalita Kumari Vs. Government of U.P. and Others***¹¹ it is argued that though cognizable offence was disclosed by PW15 informant, police have failed to register FIR and therefore, prosecution case should be disbelieved. We are unable to agree with the said submission. In the present case, there is overwhelming circumstantial evidence brought on record against the accused.

82. ***Smt. Mula Devi and Another Vs. State of Uttarakhand***¹², ***Baldev Singh Vs. State of Haryana***¹³ and rest of the authorities relied upon by the defence are of circumstantial evidence. We have already held that a complete chain of circumstances against the accused is established by the prosecution by leading cogent and reliable evidence. Therefore, such rulings are of no assistance to the accused.

83. For the aforesaid reasons, we find that there is

¹¹ 2014(1) SCC (Cri) 524

¹² AIR 2009 SC 655

¹³ AIR 2009 SC 963

overwhelming circumstantial evidence brought on record by the prosecution which irresistibly points to the guilt of the appellants. All the circumstances from which inference of guilt of the appellants is drawn are established by the prosecution by leading cogent and reliable evidence. The circumstances against the appellants taken cumulatively form a chain so complete that there is no escape from the conclusion that it is only appellants who have committed the crime and none else. The circumstances proved on record are incapable of explanation of any other hypothesis than the guilt of appellants. The evidence on record proves that the appellants are the authors of the crime.

84. Trial Court has properly appreciated the evidence and has rightly convicted the appellants. The appeal being devoid of merit is dismissed.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)