



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

CRIMINAL APPEAL NO.174 OF 2018

Amir Bhaiya Sayed
Age 20 years, Occ. Agriculturist,
R/at Shirapur, Tal. Ashti,
District Beed

...APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on P.P.
High Court of Judicature of Bombay,
Bench at Aurangabad)

...RESPONDENT

.....
Mr. S.J. Salunke, Advocate for appellants
Mrs. K.B. Patil Bharaswadkar, A.P.P. for respondent
.....

WITH

CRIMINAL APPEAL NO.278 OF 2019

Hanumant s/o Hausrao kavchale,
Age 22 years, Occ. Agriculture,
R/o Shirpur, Tq. Ashti, Dist. Beed
(At present as in Central Prison,
at Nashik)

...APPELLANT

VERSUS

- 1) The State of Maharashtra
(Copy of respondent to be served
on Public Prosecutor, High Court
of Judicature of Bombay,
Bench at Aurangabad)
- 2) Meena w/o Balasaheb Chavan,
Age major, Occ. Household,

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R/o Pimparkhed, Tq. Ashti,
Dist. Beed.

...RESPONDENTS

.....
Mr. S.J. Salunke, Advocate for appellants
Mrs. K.B. Patil Bharaswadkar, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.833 OF 2022

Ajit Mahadeo Ithape
Age 29 years, Occu. Agri,
R/o Chincholi, Tq. Ashti,
Dist. Beed

...APPELLANT

VERSUS

The State of Maharashtra
through the Police Inspector,
Ashti Police Station,
Tq. Ashti, Dist. Beed

...RESPONDENTS

.....
Mr. Sanjiv Deshpande, Senior Advocate with
Mr. A.L. Kanade, Advocate for appellant
Mrs. K.B. Patil Bharaswadkar, A.P.P. for respondent

.....

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

**Date of reserving judgment : 5th March, 2025
Date of pronouncing judgment : 16th April, 2025**

J U D G M E N T (PER : R.G. AVACHAT, J.) :

This group of three appeals takes exception to a
judgment and order of conviction and consequential sentence,

dated 18/1/2018, passed by the Court of Additional Sessions Judge, Beed in Sessions Case No.61/2016. The appellants herein were the accused in the said Sessions Case. They have been convicted and consequently sentenced for the offence of murder and causing disappearance of evidence thereof. The details of their conviction and consequential sentences is given in tabular form below :

Sr. No.	Sections	Conviction & Sentence
1	302 r/w 120-B IPC	<u>Appellants Hanumant & Ajit</u> Imprisonment for life and fine of Rs.10,000/- each, in default R.I. for 4 months <u>Appellant Amir</u> Imprisonment for life and fine of Rs.1000/-, in default R.I. for 4 months.
2	201 r/w 34 IPC	R.I. for 3 years and fine of Rs.1000/- each, in default, R.I. for 2 months
Both the substantive sentences have been directed to run concurrently.		

Along with the appellants, one more person (original accused No.4) was tried. He stood acquitted. Neither the State nor the victim preferred appeal against his acquittal.

2. The facts, in short, giving rise to the appeals are as under :

Balasaheb Chavan (deceased) was a resident of Pimparkhed. He was agriculturist by profession. Besides agriculture, he was in the business of a husk and money lending as well. He did not hold licence for money lending. He had lent money to number of persons. Since his second daughter was of marriageable age, in the year 2016, he was in need of money. He, therefore, started asking the borrowers to pay back his money. The appellants were said to have been indebted to him. With a view to avoid repayment of loan amount, the appellants conspired to eliminate him.

Deceased Balasaheb left the house in the afternoon on 10/1/2016. He informed his family members that he was going with Hanumant (Accused No.1, appellant in Criminal Appeal No.278/2019) to the place of his in-laws for purchase of husk. He also informed that, if there was late for him, he would stay overnight at the place of in-laws of Hanumant. Both Hanumant and deceased went to one Dhaba,

“Ranmala”. The appellants Ajit and Amir joined them there. Some of them did take wine and meal. Appellants Ajit and Amir went back and returned with four-wheeler of appellant Hanumant. In the meanwhile, both the deceased and appellant Hanumant went towards Karjat on the motorcycle of the deceased. On way, the four got together. Again they went to one hotel. Bought liquor bottle and consumed. Then all the appellants took Balasaheb to a secluded place. He was strangled with a seat belt of the car. He was assaulted with. The four-wheeler was run over his head. Then his dead body was taken and thrown by the side of Waki-Kanadi Road in the night. The police patil of the village noticed the dead body. A report to that effect was made to the Police Station Ashti.

3. The police officer visited to the spot. Inquest panchanama was drawn. The mortal remains of Balasaheb was subjected to autopsy. The medical officer opined the deceased died of strangulation and severe head injury with multiple injuries all over body.

4. P.W.1 Satish, brother of the deceased was informed. He lodged the F.I.R. (Exh.51), alleging the appellants to have killed his brother. The appellants were arrested. Clothes on the person of appellants were seized pursuant to the disclosure statement made by appellants Hanumant and Amir. A seat belt was recovered pursuant to the disclosure statements made by appellant Ajit. Scorpio vehicle was seized. The officials from Forensic Science Laboratory (FSL), Aurangabad inspected the vehicle from inside. They collected pieces of seat of the vehicle and other items of the vehicle. Clothes on the person of the deceased were also seized. The appellant Hanumant took the investigating officer to the place whereat the deceased was done to death. From that place, liquor bottles and other articles were seized besides earth. All the seized articles were forwarded to FSL. CCTV footages captured in the CCTV installed at liquor shop/s were obtained. Hard Disk was also taken charge of. Cell phones were seized. CDRs. And SDRs. Were obtained. Upon completion of the investigation, the appellants were proceeded against by filing a charge sheet.

5. The Trial Court framed the charge. The appellants pleaded not guilty. Their defence was of false implication.

6. To bring home the charge, the prosecution examined 22 witnesses and produced in evidence certain documents.

7. The Trial Court, on appreciation of the evidence in the case, convicted and consequently sentenced the appellants as stated above.

8. The appellant Ajit was reported to have absconded from jail. Other appellants are behind the bars for little over 9 years. Initially we were not inclined to hear the appeal of the absconding appellant Ajit. Later on, we allowed learned Senior Advocate to work out the appeal. Learned Senior Advocate relied on the judgment of the Apex Court in case of **Dhananjay Rai @ Guddi Rai Vs. State of Bihar, 2022 LiveLaw (SC) 597**, wherein it has been observed :

“8. The anguish expressed by the Division Bench about the brazen action of the appellant of absconding and defeating the administration of

justice can be well understood. However, that is no ground to dismiss an appeal against conviction, which was already admitted for final hearing, for non-prosecution without adverting to merits. Therefore, the impugned judgment will have to be set aside and the appeal will have to be remanded to the High Court for consideration on merits.”

9. Learned Advocates for the appellants would submit that, the case was based on circumstantial evidence. They relied on the principles enunciated in the case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)**. They would also submit that, even the case of the prosecution was accepted as it is, there was a long gap between the appellants to have been last seen in the company of the deceased and finding of the dead body. Relying on the judgment of the Apex Court in case of **Suresh Chandra Tiwari & anr. Vs. State of Uttarakhand, 2024 DGLS (SC) 1199**, the learned Advocates would submit that, in the factual backdrop, the appellants could not be expected to offer explanation as to when did they part with the company of the deceased or what they did with him. It was further submitted that, most of the witnesses

were the relatives of the deceased. One of the witnesses was detained by the police officials on suspicion. His evidence would, therefore, could not be said to be voluntary. As regards the evidence in the nature of CCTV footage, the learned Advocates would submit that there was no Section 65-B Certificate in proof of secondary evidence in the nature of screen shots obtained in a DVD or pen drive. The original Hard Disk was never played before the Court. So far as recovery of clothes, seat belt and the vehicle are concerned, the learned Advocates would submit that, these articles were found at open places accessible to one and all. The seat belt could not be connected with the seized vehicle. While the articles were seized, the seizure panchanamas do not demonstrate the articles to have been stained with blood. The seized articles were sent to FSL very late. There was no evidence about these articles to have been properly seized and kept in safe until they were submitted to FSL. The learned Advocates meant to say that the possibility of tampering with the seized articles could not be ruled out. They would further submit that, the blood

group of deceased and two of the appellants was one and the same i.e. "A". There was no evidence to indicate that the clothes seized were on the person of the appellants at the time the crime was said to have been committed. The learned Advocate for the appellants Hanumant and Amir would submit that, the investigating officer has admitted in so many words that these persons did not avail hand loan from the deceased. These appellants did not have motive to eliminate the deceased Balasaheb. It was also submitted that, the diaries maintained by the deceased have not been duly proved. None of the prosecution witness pointed out any entry therein indicating appellant Ajit to have raised loan from the deceased. It has also not been proved that, the entries were in the handwriting of the deceased. The learned Advocates made submissions threadbare to ultimately submit for allowing the appeals.

10. The learned A.P.P. would, on the other hand, submit that, there is voluminous evidence to indicate the appellants and the deceased were together on 10 January. They visited the Hotel Ranmala. Some of them wine and

dined there. The deceased had informed his widow and other family members that he would be going to the place of in-laws of appellant Hanumant for purchase of husk and if there was late, he would stay overnight there. The CCTV footages indicate the deceased and appellants Hanumant and Amir were together until 7.30 p.m. They were seen going on motorcycle of Hanumant. The medical officer has opined that the death took place beyond 12 hours of the post mortem examination. The time of death indicate that at the material time the appellants were in the company of the deceased. The appellants, therefore, owe explanation as to when did they part with company of the deceased or what they did with him. The appellants made disclosure statement, pursuant to which the clothes, seat belt and the vehicle came to be seized. The seized articles were stained with blood of the Group "A". The blood of the deceased was of the very group. The appellant Hanumant made a disclosure statement and pointed out the crime scene wherefrom liquor bottles were seized besides other articles. The DVD was sent to FSL along with photographs.

The FSL report indicate the vehicle of the deceased was seen at the liquor shop. The photographs of appellants Hanumant and Amir matched with the persons appearing in the scene captured in the DVD. The learned A.P.P. would further submit that, the CDRs. and SDRs. vouch for the prosecution case. The tower location indicate the appellant Hanumant was in the vicinity at the crime scene and at the place where the dead body was dumped. In the circumstances, the appellants owed explanation. Their silence and mere denial go a long way to add to the prosecution case. According to learned A.P.P., although some of the prosecution witnesses were related to the deceased, they were natural witnesses. Their evidence cannot be disbelieved merely on the ground of being relatives of the deceased. According to learned A.P.P., no interference with the impugned order of conviction and consequential sentences is warranted. She, therefore, urged for dismissal of the appeals.

11. Considered the submissions advanced. Perused the judgment impugned herein. Since the case is based on

circumstantial evidence, the following circumstances were sought to be proved, to bring home the charge.

- (1) Homicidal death,
- (2) Motive,
- (3) Last seen together,
- (4) Recoveries pursuant to disclosure statements,
- (5) CCTV footages,
- (6) CDRs/ SDRs and tower locations of cell phones.

12. In case of Sharad Sarda (supra), the Apex Court observed :

“152. A close analysis of the 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 Sahebrao Bobade v. 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 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.”

Homicidal Death :-

13. It is not in dispute that the dead body of Balasaheb was found by the side of the road by 10.00 in the morning. A report to that effect was made to the concerned Police Station. The police officers rushed to the spot. The inquest

panchanama (Exh.52) was drawn on the spot. Mortal remains of Balasaheb were sent to the hospital for autopsy. P.W.17 Dr. Vishal conducted the autopsy. The autopsy report (Exh.118) does indicate number of injuries were noticed on the person of the deceased. He died due to strangulation. The deceased met with homicidal death is not disputed before us.

Motive :

14. The deceased was an agriculturist. Besides agriculture, he was in the business of husk. He, however, also said to have been lending money on interest. P.W.1 Satish, brother of the deceased, P.W.13 Meena (widow of the deceased) and even his son-in-law P.W.7 Sanjay testified that, the deceased would lend money for interest. Since his daughter was of marriageable age, he was in need of money. He had, therefore, started asking his debtors to pay back the amount advanced as loan. The investigating officer has, however, admitted that, he did not get any evidence indicating the appellants Hanumant and Gajanan had not received any amount from the deceased as hand loan. Although three pocket diaries were seized under the panchanama (Exh.67) in

the presence of Ajinath (P.W.4), not a single prosecution witness referred to any of the pages in those diaries to show the names of appellants Ajit and Amir appearing therein as persons to whom money was advanced. No witness testified that the entries in the diaries were in the handwriting of the deceased.

15. P.W.3 Bapu testified that, he would run a Bhishi (Chit Fund). Appellant Ajit and acquitted accused Gajanan were members of his Bhishi. He claimed to have heard both the appellants Ajit and Gajanan to have talked inter-se regarding the deceased to have been harassing appellant Ajit for refund of money advanced by him. Ajit was also said to have told Gajanan that the deceased would visit his poultry farm and take away hens. He further testified that, both have discussed of doing away with the deceased so that the amount due to him would be saved.

16. According to P.W.3, the said incident took place one year before the deceased was done to death. He did not report the said incident to anyone else no sooner he heard

such talk between appellant Ajit and Gajanan. The evidence of P.W.3 Bapu is, therefore, found to be unreliable.

17. P.W.1 Satish (brother of the deceased) lodged the F.I.R. (Exh.51). Whatever narrated by him in the F.I.R. and in his oral evidence was totally based on hear-say as regards the deceased to have been in the company of the appellant Hanumant and others since the day prior to the incident. Admittedly, he lodged the F.I.R. on suspicion. True, he testified that the deceased would lend money and the appellants had borrowed money from the deceased. Except his bare words, there is no evidence to reinforce the same. His evidence would, therefore, be relevant only to the extent of setting the criminal law in motion.

Last seen together :

18. P.W.2 Chandrakant testified that, he would run a Tea Stall and do husk business. Deceased Balasaheb was his partner in the husk business. He was in the company of the deceased on 9/1/2016. At village Rui Nalkol they purchased husk and sent to Sahajpur. Balasaheb (deceased) called him

to Dhanora on the next day. Since they proposed to go to village Chobha Nimgaon for purchase of husk, he, therefore, went to Dhanora by 10.00 in the morning. Balasaheb (deceased) was not there. He received his phone call. He gave the cell phone numbers of the deceased as 9420302924 and the other one with the last digits 5151. Deceased Balasaheb asked him to come to Kada. He went there in autorickshaw. He met the deceased Balasaheb. Both of them went to the field of one Ishwar Thete. They could not purchase husk there. Then they went to Rui Nalkol. Both of them went to Hotel Radhai for lunch. It was 1.30 p.m. Deceased received a phone call from Hanumant (A/1). After the call was over, deceased Balasaheb told him that Hanumant (A/1) told him that husk was available at cheaper rate at the village of his in-laws in Karjat Taluq. He also informed him that if he got delayed, he would stay at the place of in-laws of Hanumant (A/1). Therefrom both of them went to Kada on the motorcycle of the deceased. There they went to the house of one Dada Shelke. He gave deceased Rs.18,600/- as a price of husk. The deceased gave Rs.6600/- to Shelke and kept remaining

amount with him. Therefrom both of them went to the house of the deceased. The deceased Balasaheb changed the clothes. Told his wife that he was going with Hanumant (A/1). He further testified that, both of them then went to "Ranmala Dhaba" at Chincholi Phata. They reached there by 3.00 p.m. Hanumant (A/1) and Ajit (A/2) along with one Atul Ekshinge and owner of the Dhaba- Akash Adagale were present there. They were taking meals. Hanumant (A/1) went on motorcycle and returned with two liquor bottles (quarters). He and deceased Balasaheb sat together. Both of them consumed liquor. Appellant Ajit went to them. They discussed over money transaction. After meals were over, the appellant Hanumant and deceased together went on motorcycle. Then appellant Ajit and Atul went to Kada on the motorcycle. He was also with them. All of them took tea at the Tea Stall of one Bokke Khod. Appellant Ajit received a phone call. He immediately left after telling him that there was some problem with hens (poultry). He left him (P.W.2 Chandrakant) at Chincholi Phata and went to Dhanora. He then went to Pimparkhed on the motorcycle of one Krishna Chaudhary. On

the following day, he learnt about the dead body of Balasaheb to have been found.

19. P.W.2 Chandrakant was subjected to a searching cross-examination. He testified that, the deceased was his relative. He was not on visiting terms with P.W.1 Satish (brother of the deceased). Both Satish and Balasaheb were residing separately. He was confronted with his police statement, which was silent to record therein that he was friend of Balasaheb (deceased) and would do business of husk in partnership with him. He had no reason to visit "Hotel Ranmala". He did not see the appellant Hanumant and the deceased Balasaheb on motorcycle on Karjat Road or at Damalwadi. He admitted that, he did not have money for husk business. He admitted that, he had never been in the business of husk. He was prompt to state that he was not doing such business independently. He meant to say that he was doing the said business in partnership with deceased Balasaheb. It was, however, suggested to him that, he was in the company of the deceased up to 3.30 p.m. on 10/1/2016. He further admitted that, thereafter he was not in his company.

20. The appreciation of the evidence of this witness indicate that he was the relative of the deceased. There is no evidence to indicate that he was doing business of husk in partnership with the deceased. It was, however, suggested to him on behalf of the appellant Hanumant that, he was in the company of the deceased until 3.30 p.m. This suggests this appellant admits both of them to have been together at least by that time.

21. P.W.13 Meena (widow of the deceased) testified that, deceased and P.W.2 Chandrakant had come to the house. The deceased changed the clothes and left. He informed her that he was going to buy husk at the place of in-laws of appellant Hanumant. He also told her that if there was late, he would stay there overnight.

22. We have no reason to disbelieve the evidence of the widow of the deceased. But, what can be proved by her evidence is that the deceased left the house informing that he would be in the company of the appellant Hanumant.

23. P.W.5 Akash would run a hotel taken on lease from the father of appellant Ajit. He testified that, by 10.00 in the morning of 10 January, he was at his hotel. Appellant Hanumant brought with him a chicken for dining. Appellant Ajit was also with him. Atul Ekshinge had already been at the hotel. Both the appellants Hanumant and Ajit consumed liquor and took meals. Thereafter Balasaheb (deceased) joined them. He was accompanied by one person. He had not known Balasaheb. He had facial acquaintance with him as he used to visit his hotel for tea. After taking the meal, all of them left. Appellant Ajit and Atul left on one motorcycle. While appellant Hanumant and deceased Balasaheb left on another. They left in different directions. He further testified that, again after a while, appellant Ajit and Atul came to his hotel. They were there for 10 minutes. They informed him to have been called by appellant Hanumant and they were proceeding to join him. He, however, testified that, he did not know towards which village they went.

24. In the cross-examination, he testified that, the police had detained him for 2-3 days in connection with the very crime. He was scared of police.

The evidence of this witness does not further the prosecution case. According to learned Advocate for the appellants, his testimony was not voluntary as he deposed under pressure of police. Even we accept his testimony as it is, it does only make a case of deceased and appellants Hanumant and Ajit to have been together at his hotel and then did part ways. The appellant Hanumant and deceased Balasaheb went together. While Ajit and Atul went in different directions. This witness did not state to have seen all the four again together. He even did not state at what time they left his hotel. It was afternoon according to the witness. It would, therefore, be anybody's guess whether the four parted ways by 12.00 noon or by 3.00 p.m.

25. The other evidence on the point of last seen is that of P.W.19 Vitthal. He would run "Shivani Wine Shop" at Karjat. He testified that, on 15/1/2016, the police had come to his

shop and asked for CCTV footage of 10/1/2016. He, therefore, called the Operator. The CCTV footage of the day was seen. Three persons were seen taking away liquor and water bottles from his shop. A motorcycle was parked in front of the shop. The police officer Shri Aher (P.W.22) took the CCTV footage in a pen drive.

26. P.W.14 Rajendra was a panch witness, in whose presence CCTV footage was obtained by the police officer Shri Aher. According to this witness, the appellant Hanumant made a disclosure statement and took them to the wine shop on 15/1/2016. The police officials seen the CCTV footage at the shop. He along with the police watched the same. In the footage, A/1 and A/3 were seen. Appellant Hanumant then took them to a secluded place at a hilly area towards village Dawalwadi (Khandobache Malran). At the spot, there were empty liquor and water bottles. There was blood on the ground. Police seized those articles and collected blood mixed soil. Then he took them to a place nearby Gosavi Temple. At the spot, there were wheel marks on the road. A blue Chappal was found. Then the appellant Hanumant took them to one

Nim tree at village Waki. In the cross-examination, the witness testified that, except statement that he will show the spot, nothing was disclosed by appellant Hanumant. A DVD was played in the open Court. He identified the A/1 and A/3 seen on the screen.

27. The seized Hard Disk was sent to FSL along with some photographs of appellants Hanumant and Amir. The report thereof was heavily relied by the learned A.P.P. It is at Exh.147. Close reading of the report would indicate that the persons seen on the screen were similar to that the persons appearing in the photographs. Not a single witness testified that during investigation photographs of any of the appellants were snapped. Although it was stated that the report was accompanied with Section 65-B Certificate, we did not come across such certificate. The Hard Disk was played to P.W.19. So far as regards other aspects are concerned, the FSL could not give its report.

28. On the question of the CCTV footage collected in pen drive and played in the open Court, while evidence of

P.W.14 was being recorded, the same has not been supported by Section 65-B Certificate. The contents of the pen drive being secondary evidence, uncertified by Section 65-B Certificate, is inadmissible in evidence. Same is the case relating to contents of Hard Disk.

29. With a view to do complete justice and with the consent of parties, we tried to play the Hard Disk in the open Court. The official of the Computer Department told us that the DVD was blank.

Other circumstantial evidence:-

30. Although the Scorpio jeep was seized pursuant to the disclosure statement made by the appellant Hanumant, it was inspected by the investigating officer and nothing incriminating was found. After 8 days of the seizure of the vehicle, experts from FSL were summoned to inspect the vehicle from inside. They allegedly collected some seat cover parts from the vehicle. Who was that official is not known. He has not been examined. While the witness in whose presence the vehicle was seized and inspected (P.W.9 Ashok) testified

nothing incriminating was seen in the vehicle. The C.A. report as regards those articles even though borne blood stains, would, therefore, be of little consequence to further the prosecution case. Discovery of the spot whereat liquor and water bottles were found with blood mixed soil too is of little consequence. Since Blood Group "A" although was of the deceased, even two of the appellants have the same blood group.

31. The appellant Ajit made a disclosure statement, pursuant to which a seat belt was recovered. The seat belt was sent for chemical analysis. The report thereof indicates it borne blood stains of Group "A". The investigating officer did no exercise to suggest that the said seat belt was of the seat of the seized Scorpio jeep since such was the prosecution case.

32. Although a shirt and trouser of appellants Hanumant and Ajit came to be seized pursuant to disclosure statement made by appellant Hanumant, not a single witness testified that on 10 January, both of them were sporting these clothes. There is also no evidence to indicate as to whether

those clothes were matching with the measurement so as to fit on their person.

33. On arrest of the appellants, although cell phones were seized, the cell phones of two of them namely Ajit and Amir did not bear any SIM Card. The SIM cards of particular number alleged to have been used by both of them were in the name of someone else, namely P.W.11 Bandu and P.W.15 Machindra. Although CDRs and SDRs placed on record were admitted in evidence on behalf of appellant Hanumant, the same could not be used against other appellants for want of Section 65-B Certificate or they are proved through the concerned Nodal officer of the Cellular Companies. The said record was not relied on before us. Same is the case about the cell phone number of appellant Hanumant. The SIM Card that was used by him too stood in the name of his employee. Although these witnesses have testified accordingly, it cannot be said that those facts have been proved conclusively so as to connect the appellants with the crime in question.

34. Reliance was placed on the judgment of the Apex Court in case of **Suresh Chandra Tiwari & anr. Vs. State of Uttarakhand [2024 DGLS (SC) 1199]**, wherein the Apex Court observed thus :

“26. The circumstances of deceased being last seen alive in the company of the deceased is a vital link in the chain of other circumstances but on its own strength it is insufficient to sustain conviction unless the time-gap between the deceased being last seen alive with the accused and recovery of dead body of the deceased is so small that possibility of any other person being the author of the crime is just about impossible. Where the time-gap is large, intervening circumstances including act by some third person cannot be ruled out. In such a case, adverse inference cannot be drawn against the accused merely because he has failed to prove as to when he parted company of the deceased.”

35. Similarly, in case of **Malleshappa Vs. State of Karnataka [2007 DGLS (SC) 1063]**, the Apex Court observed :-

“23. In the light of the evidence available on record, can it be said that the circumstances of last seen together by itself and necessarily lead to the inference that it was the appellant who committed the crime? The High Court took the view that accused Nos. 6 and 7 are entitled to the benefit of doubt though, PW-10 stated in her evidence that the appellant, accused Nos. 6 and 7 took her son Yankanna on the fateful day. No motive was shown with regard to accused Nos. 6 and 7 for their

involvement in the crime. It is under those circumstances, the High Court said that the burden shifts to the appellant to show as to what happened to the deceased-Yankanna. In our considered opinion, the High Court committed serious error in arriving at such conclusion. The first information report lodged by PW-10 itself is highly doubtful. PW-10's evidence itself does not reveal any circumstances to hold that the prosecution has established the charge against the appellant. The appellant's failure to offer any explanation in his statement under [Section 313](#) Cr.P.C. is not a circumstance to hold appellant guilty of the charge. The prosecution has failed to establish as to when the death of Yankanna took place, it could be at any time between 12th July, 2001 to 21st July, 2001. There is nothing on record to show as to what transpired between 12th July, 2001 to 21st July, 2001. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant. Learned Counsel for the State relied upon the decision in Mohibur Rahman and Anr. v. State of Assam which in fact is in support of the defence and nor the prosecution.

..The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. As already noted the death body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance between the two places is about 30-40 kms. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW6) does not bear such close proximity with the death of victim by

reference to time or place. According to Dr. Ratan Ch. Das the death occurred 5 to 10 days before 9.2.1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24.1.1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed the evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.

24. In the present case also, there is no proximity of time and place. We have already noted that the dead body, even if it is to be accepted, was that of the deceased-Yankanna, had been recovered after 10 days after the date of which the deceased was last seen in the company of the appellant. This singular piece of circumstantial evidence available against the appellant, even if the version of PW-10 is to be accepted, is not enough. It is fairly well settled that the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. It is true as has been held by this Court in *Lakshmi and Ors. v. State of U.P.* that it is not an inflexible rule that the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased though are factors to be established by the prosecution but it cannot be held as a general rule and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all eventualities, it ought to result in acquittal of those who may be charged with the offence of murder provided the charges against the accused otherwise can be established on the basis of the other reliable and trustworthy evidence.”

36. P.W.2 Satish (informant/ brother of the deceased) has testified that, all the four accused (3 of the appellants herein and acquitted one) were of different villages. They did not share common caste. Even two of them namely appellant Hanumant (A/1) and the acquitted one had admittedly not taken any amount as a hand loan from the deceased. There is also no witness to indicate appellant Ajit and the other appellant had borrowed some money from the deceased. While all the four were together along with the deceased at the hotel, it was not beyond 3.00 p.m. Even therebefore, appellant Ajit had left the company of the deceased and appellant Hanumant. There is no evidence at all to indicate the appellant Ajit had thereafter joined them. The dead body of the deceased was found on the following day by little past 10.00 in the morning. Although the deceased admittedly met with homicidal death, the Medical Officer who conducted the autopsy did not state in examination-in-chief even approximate time of death. It was only brought on record through cross-examination undertaken on behalf of A/1. The Medical Officer then testified that death had occurred 12 Hours beyond the last

meal. Even this evidence may take us to presume that the deceased was alive on the night of 10 January, there being a long gap between the appellant to have been seen by P.W.5 Akash and admitted by appellant Hanumant himself that he was with the deceased by 3.00 p.m. In view of the observations of the Apex Court in the cases referred to hereinabove, the time gap between last seen together and finding of the dead body was so large, possibility of the crime to have been committed by someone else could not be ruled out. More so when the prosecution case is that the appellants and one acquitted accused to have committed murder in furtherance of their common intention and conspiracy as well. It is reiterated that, one of the four has already been acquitted. There is no evidence to indicate the appellant Ajit was seen in the company of the deceased and appellant Hanumant or appellant Amir. As such, the case of the prosecution that the four came together and did eliminate deceased Balasaheb would be a far-fetched inference. The evidence of each and every witness has been appreciated while adverted thereto hereinabove. The circumstantial evidence in the nature of

seizure of articles such as clothes, seat belt, vehicle and C.A. report pertaining thereto, indicating some of them to have borne blood of Group "A" does not lead us to conclude the prosecution to have conclusively established involvement of the appellants in the crime in question. The seized articles were sent to FSL on 9/2/2015 i.e. 27 days after the seizure. There is no evidence that those were kept safe till date of delivery at FSL. The appellants are behind the bars for little over nine years. In our view, the appreciation of the aforesaid evidence lead us to conclude the prosecution to have failed to bring home the charge beyond reasonable doubt. Interference with the impugned order is, therefore, called for.

37. In the result, the appeals succeed. Hence the order :-

ORDER

(i) The Criminal Appeals are allowed.

(ii) The order of conviction and consequential sentence, dated 18/1/2018, passed by the Additional Sessions Judge, Beed in Sessions Case No.61/2016 is hereby set aside. The

appellants are acquitted of the offences punishable under Sections 302 r/w 120-B and 201 r/w 34 of the Indian Penal Code.

(iii) The appellants be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to them.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-