

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

CRIMINAL APPEAL NO.1043 OF 2015

Mohan Madhav Chaurasiya	Appellant
Versus	
The State of Maharashtra	Respondent

.....
WITH
INTERIM APPLICATION NO.2513 OF 2025
IN
CRIMINAL APPEAL NO.1043 OF 2015

.....
WITH
CRIMINAL APPEAL NO.689 OF 2016

Ramdeen Khilawan Loniya	Appellant
Versus	
The State of Maharashtra	Respondent

Ms. Ameeta Kuttikrishnan, Advocate i/b. Shabhana Sayed,
Shambhavi Desai a/w. Gayatri Pore for the Appellant in
Apeal/1043/2015.

Mr. Pradeepkumar L. Pardeshi, Advocate a/w. Anushka Martis for
the Appellant in Apeal/689/2016.

Mr. Vinit A. Kulkarni, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
ADVAIT M. SETHNA, JJ.**

DATE : 04th SEPTEMBER, 2025

ORAL JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. Both these Appeals are decided by this common judgment and order because they arise out of the same impugned judgment and order. The Appellant Mohan Chaurasiya in Criminal Appeal No.1043/2015 was the original accused No.1 in Sessions Case Nos.271/2013 along with 552/2013 before the Additional Sessions Judge, Greater Bombay. The Appellant Ramdeen Loniya in Criminal Appeal No.689/2016 was the original accused No.2 in the same case. For the sake of convenience, both the Appellants are referred to by their original status as the accused, in the following discussion. The learned Judge, vide judgment and order dated 9.2.2015 convicted both of them for commission of the offence punishable under Section 302 read with 34 of IPC and sentenced them to suffer RI for life and to pay a fine of Rs.3,000/- each and in default to suffer SI for fifteen days. They were acquitted from the charges of commission of offence punishable under Section 341 read with 34 of IPC.

2. The prosecution case is that the deceased Samsher was in employment of one Zulphikar Abdul Sattar Ghachi. The accused No.1 Mohan was also employed with Zulphikar. According to the

prosecution case, said Zulphikar had two shops – one was a stationery shop and the other was a juice center. Samsheer had joined him only a couple of days before the incident. He was asked to work in the stationery shop. The accused No.1 Mohan was already working with Zulphikar in his juice center. After the day's work, the deceased Samsheer and the accused No.1 Mohan used to sleep in the juice center. The incident occurred in the night between 22nd and 23rd November, 2012. Zulphikar's father had seen both the accused and Samsheer in the juice center before he left from there. The accused No.2 Ramdeen was the accused No.1's friend who used to meet him often. Zulphikar came to his juice center at around 10.00 a.m. on 23.11.2012. The juice center was closed with its shutter down. Zulphikar knocked on the shutter but there was no response. He opened the shutter and went inside. He saw that Samsheer was lying on the floor. His hands were tied. His face was covered with a cloth. He alarmed everyone in the neighbourhood. A doctor was called, who declared Samsheer to be dead. The police were informed. Before opening the shutter, Zulphikar had tried to contact accused No.1 Mohan telephonically but there was no response. The accused No.1 Mohan was not

found. The police were informed accordingly. The FIR was lodged by Zulphikar at Deonar police station vide C.R. No.236/2012. The investigation was carried out. The accused No.1 Mohan was arrested from his native place on 28.11.2012. The accused No.2 Ramdin was arrested on 22.2.2013. The investigation continued and after completion of the investigation the charge-sheet was filed. The prosecution examined seven witnesses including the first informant Zulphikar, his father Abdul Sattar Abdulla Ghachi, a neighbouring tea-stall owner, an autorickshaw driver who has seen the accused in the night, the Medical Officer who conducted the postmortem examination and two investigating officers. The defence of the accused was of total denial. The accused No.1 Mohan stated in his examination under Section 313 of Cr.P.C. that he was a poor person. He was falsely implicated in that case. He added that he was at his native place and he was arrested from there. Importantly, he further stated that he never came to Mumbai.

3. Learned Judge considered the evidence on record, the defence of the accused, the submissions made on both sides and then recorded his conclusion as mentioned earlier. The learned

Judge specifically relied on the following circumstances for convicting both the Appellants. The learned Judge has enumerated those circumstances in paragraph-56 of his judgment and order, which are as under :

- i. Accused No.1 used to work with PW-1 and used to sleep in Noor Cold Drink shop,
- ii. Accused No.2 is the friend of accused No.1 and used to come to see him,
- iii. Deceased Samsher and accused No.1 were last seen together at about 11.30 p.m. of 22.11.2012,
- iv. The accused Nos.1 and 2 were seen together during the same time near Noor Cold Drink shop and they entered into Noor Cold Drink shop and they were with Samsher at that time,
- v. Samsher was found to be dead in the shop and his death was due to violent asphyxia due to smothering associated with head injury, which is unnatural,
- vi. The accused Nos.1 and 2 found left Noor Cold Drink shop at about 4.15 a.m. in the morning,
- vii. Accused Nos.1 and 2 both were absconding and subsequently the mobile phone of accused No.1 was switched off,
- viii. The proximity of time between the accused Nos.1 and 2 were together with the deceased Samsher and deceased Samsher was found dead was so small that there cannot be any possibility that any other person being with the deceased can be possible,
- ix. No explanation is given by the accused about their whereabouts during this period when the death of Samsher occurred.

4. PW-1 Zulphikar Abdul Sattar Ghachi was the first informant. He deposed that in the year 2012, he was doing business in Kenna Market at Tata Nagar, Govandi. He had two shops, one was having business of sugarcane juice and the other was a stationary store. Both the shops were adjacent to each other. His juice center was known as 'Noor Cold Drinks'. In the year 2012, the accused No.1 Mohan was working with him in 'Noor Cold Drinks'. There was one more person by name Kapil, who was working with him at that time. PW-1 identified the accused No.1 Mohan in the Court as the same person working with him. PW-1 used to open his 'Noor Cold Drinks' shop at 10.30 a.m. and used to close it at about 10.30 p.m. everyday. The accused No.1 and Kapil used to sleep in the shop only in the night. PW-1 has further stated that he knew the deceased Samsher. About one and half years before 2012, Samsher used to work in his shop and after that he had gone to his native place in Uttar Pradesh. He came back on 18.11.2012 and requested to give him work. PW-1 gave him job on 21.11.2012. Samsher started working for PW-1 Zulphikar from 21.11.2012. In the night of 21.11.2012, the accused No.1 Mohan, Kapil and Samsher slept in the shop. Kapil was to go out of station.

He left the shop at 8 a.m.. On 22.11.2012 the accused No.1 Mohan and Samsher worked for the entire day. In the evening, the accused No.1 Mohan approached PW-1 and requested PW-1 to pay Rs.1000/- to his brother Sanjay. PW-1 paid Rs.1000/- and at about 8.30 p.m. to 8.45 p.m. he went home. PW-1's father returned home at around 11.00 p.m. and told PW-1 that he had given tiffin to the accused No.1 Mohan and Samsher. Both of them had their dinner. PW-1's father further told him that he had instructed the accused No.1 Mohan to close the door from inside and then PW-1's father had come back home. On the next day i.e. on 23.11.2012, PW-1 went to his shop at 10.15 a.m. to 10.30 a.m.. When he reached there he found that the shutter of the shop was shut. Usually, the accused No.1 used to open the shop by that time, but, on this occasion the shutter was closed. PW-1 knocked on the shutter and called the accused No.1 and Samsher, but, there was no response from inside. PW-1 further deposed that he opened the lock of the shutter and pulled it up. He found that Samsher was lying in the shop. His face was covered with white cloth. His mouth was tied with a cloth with a knot at the backside. His hands were tied behind his back. The cloth which was used to tie his hands and

mouth was the cloth used for cleaning the shop. PW-1 called Dr. Mohammed Yusuf, whose clinic was nearby. The doctor examined Samsheer and informed that he was dead. PW-1 tried to contact the accused No.1 Mohan on his mobile phone but it was switched off. He tried to contact some acquaintance of the accused No.1 Mohan, but, Mohan's whereabouts were not known. PW-1 informed the police who came at the spot at about 10.45 a.m.. PW-1 then lodged his report with the police. The proforma of the FIR shows that the police were informed about the incident at 10.45 a.m. and the FIR was registered at 11.20 a.m. vide C.R. No.236/2012 at Deonar police station. The FIR is produced on record at Exhibit-38. PW-1 further deposed that the accused No.2 Ramdin was friend of the accused No.1 Mohan and he used to come to meet the accused No.1 Mohan. PW-1 identified both of them in the Court.

In the cross-examination, PW-1 deposed that he and his father used to sit on the counter of the stationery shop. The juice center was of the size 8.5 ft. X 18-19 ft. There was a lock to his shutter for locking it from inside. The shop was adjacent to the road. The police used to do patrolling in that area frequently. The crime rate was high in the area and, therefore, the shop-keepers

used to close their shops by 10.00 p.m.. According to PW-1, Samsher was not having enmity with anyone. PW-1 used to take entire amount received on that particular day to his house. He denied the suggestion that the accused No.1 Mohan was never working with him and that he was implicated falsely. He denied the suggestion that the accused No.2 Ramdin was not a friend of the accused No.1 Mohan and that he never used to meet the accused No.1.

5. The FIR, produced on record at Exhibit-38, substantially corroborates PW-1's deposition, except that, in the FIR it was mentioned that when he went to his shop on 23.11.2012 he opened the shutter as it was not locked. This statement is different from his deposition because in the deposition he had stated that he opened the lock of the shutter and then saw inside. However, this discrepancy was not brought to PW-1's notice. In that behalf, no question was asked even to the investigating officer who had recorded the FIR.

6. PW-2 Abdul Sattar Abdulla Ghachi is the father of PW-1. He deposed about their two shops. He stated that the accused No.1 Mohan and Kapil used to work in the sugarcane juice

shop. He identified the accused no.1 Mohan before the Court. Kapil and the accused No.1 Mohan used to sleep in the shop during the night. PW-2 knew the accused No.2 Ramdin. He identified the accused No.2 Ramdin before the Court. The accused No.1 Mohan had suggested that the accused No.2 Ramdin be given work with PW-2 but that proposal was not accepted by PW-2. He further explained that he knew the accused No.2 because he used to frequently visit the accused No.1. He further stated that Samsher was working with them one year earlier. He rejoined the duty on 21.11.2012. He used to work in the stationery shop with PW-1. PW-2, the accused No.1 Mohan and Kapil used to look after the shop 'Noor Cold Drinks'. PW-2 further added that Samsher and the accused No.1 Mohan used to sleep in 'Noor Cold Drinks' shop. Kapil wanted to go to his native place and, therefore, he left early in the morning on 22.11.2012. On that day, Samsher, Mohan, PW-1 and PW-2 attended their work as usual. At about 10.30 p.m., PW-2 closed his shop. Importantly, he has further stated that on that day the deceased Samsher and the accused No.1 Mohan were sleeping in the shop. He further stated that in the evening on 22.11.2012 he had paid Rs.1000/- to the accused No.1 Mohan's

brother Sanjay on his request. At about 10.35 p.m. PW-2 closed his shop. At that time, the accused No.1 was doing some cleaning job in the shop. PW-2 asked him to stop his work. At that time, the accused No.2 Ramdin came there. He informed PW-2 that he was to go to his native place and, therefore, he had come to see the accused No.1 Mohan. At that time, the deceased Samsher was also present in the shop and was to sleep in the shop. After all this, PW-2 went home. On the next day, PW-1 went to the shop and then found the dead body. PW-2 further stated that he was called once by the police and at that time he had seen both the accused in the police station.

He was cross-examined regarding ownership of the shop and as to whether it was a rented shop. He stated that when he went to the police station on two occasions, he saw the accused No.1 there. He further stated that the police had not told him to identify the accused during the trial. He described that there were three to four shops on one side and ten to fifteen shops on the other side of his shop. He denied the suggestion that the accused No.1 Mohan was not working with him and that he had seen the accused No.1 for the first time only in the police station. He also

denied the suggestion made by learned counsel for the accused No.2 that he identified the accused No.2 because he was shown by the police in the police station.

7. PW-3 Mushtaq Chandsaheb Footpak is the another important witness. He was having a tea-stall near the shops of PWs-1 & 2. He deposed that Kapil, Mohan and Samsher were working with PW-2. Mohan and Kapil used to work in the juice center and Samsher used to work in the stationery shop. He identified the accused No.1 Mohan before the Court. According to him, Mohan and Samsher used to sleep in PW-2's shop. The accused No.2 Ramdin used to come to meet the accused No.1 Mohan. Both the accused used to come to his tea-stall for having tea. He identified the accused No.2 before the Court. On 22.11.2012 at about 10.30 p.m. to 10.45 p.m. he was about to close his stall. PW-2's stationery shop was already closed. The shutter of the juice shop was half opened and the business was closed. He further deposed that accused No.1 Mohan and Samsher were in the juice center. The accused No.1 came out. He made a phone call on his mobile. After sometime, the accused No.2 Ramdin came there. Both the accused were seen talking outside

the shop near the shutter. Samsheer was inside the shop. Both the accused went away a little further while talking. In the meantime, PW-3 put all his utensils at their place. At that time, both the accused came near the juice center. Both of them went inside the shop. It was about 11.30 p.m. or 11.45 p.m.. The accused No.1 then closed the shutter of the shop. Then PW-3 went away. He has specifically stated that when the shutter was closed the accused No.1 Mohan, the accused No.2 Ramdin and the deceased Samsheer were inside the shop. On the next day, at about 10.00 a.m. to 10.30 a.m. he came to his stall. Then he described the incident of PW-1 knocking on the shutter and finding the dead body. Nobody else was there in the shop at that time. Then the police were informed.

In the cross-examination he deposed that he was in Mumbai till his statement was recorded by the police. When the police came to the spot he was present there. According to him, the police were not inquiring with anybody regarding the incident and he did not have any talk with the police at the place of the incident when they came there for the first time. He had a talk with the police on the next day. He spoke with the police officer Mr. Avhad.

PW-3 had informed everything that he knew to said Mr. Avhad. According to him, he had talked with Avhad on 30.11.2012. He further stated that he could see PW-1's shop only after coming out of his own shop. In his police statement, he had not stated that he was standing near the corner when the utensils were being washed in his shop by his employees. However, this omission does not make much difference to the prosecution case.

In the further cross-examination, he reiterated that since the time he was standing by the side of the road when utensils were being washed till he went home after completing work, the deceased Samsher was in the shop. Both the accused were standing there. He denied the suggestion that he was shown the accused No.1 Mohan in the police station and, therefore, he was identifying him in the Court. He denied the suggestion that he had not seen the accused No.1 and the deceased Samsher together before the incident.

In the cross-examination conducted on behalf of the accused No.2, he accepted that the tea-stall was looked after by himself and his brother as well as two other boys. He denied the suggestion that the police van on patrolling duty used to visit his

stall for tea. Sometimes he had to go to the police station to pay the charges as his brother did not have licence for conducting the tea-stall business. He had to pay the charges. He denied the suggestion that on 22.11.2022, the accused No.2 was not in Mumbai.

8. PW-4 Sajid Khan was a rickshaw driver. He knew PW-1 and PW-2. He deposed that the accused No.1 used to work in the juice center known as 'Noor Cold Drinks'. Sometimes the accused No.2 Ramdin used to come to meet the accused No.1 in the juice center. He knew both the accused. He identified both of them in the Court. On 22.11.2012, in the night at about 11.00 p.m. to 11.15 p.m. he had parked his rickshaw near a tailoring shop which was close to 'Noor Cold Drinks'. At that time, he had seen both the accused standing in front of 'Noor Cold Drinks'. They were talking with each other. PW-4 came back at the spot at around 3.45 a.m. to 4.15 a.m.. He had come to wash his rickshaw. At that time both the accused were present in front of 'Noor Cold Drinks'. He deposed further that the accused No.1 closed the shutter and latched it from outside. PW-4 asked the accused No.1 Mohan as to where he was going in a rush at such odd hours. Accused No.1

Mohan did not answer him properly; and told him that he was going for some work. He was having a plastic carry-bag with him. He went away hurriedly. PW-4 then left from that place in his autorickshaw. In the morning, he came to know about the incident.

In the cross-examination, he stated that he was in Mumbai from the date of incident till his statement was recorded. His house was at a five minutes driving distance from Deonar police station. He had not told anybody else till his statement was recorded that he had seen both the accused together. Some important omissions from his police statement were brought to his notice. He could not explain as to why his police statement did not mention that he had parked his rickshaw near the tailoring shop. He could not explain why his police statement did not mention that the accused No.1 had latched the shutter and that the accused No.1 was asked by him as to why he was going in a rush and that the accused No.1 replied that he was going for some work. However, he explained that his police statement did not mention only the portion that the accused No.1 told him that he was going for work but there is no omission that the accused Nos.1 & 2 were seen by him at that time going in a hurry.

9. PW-5 Dr. Anant Natikar had conducted the post-mortem examination and he had found twenty-four injuries. They were in the nature of abrasions and contused abrasions mostly on the head, face, hands, palm, fingers, legs and right foot. There is a clear sign of heavy struggle. The cause of death was mentioned as 'violent asphyxia due to smothering associated with head injury'. The postmortem notes were produced on record at Exhibit-44. It was conducted at 10.00 a.m. on 24.11.2012.

10. PW-6 API Amol Salunke had registered the FIR and had conducted the inquest panchnama and the spot panchnama. These panchnamas are produced on record at Exhibits-26 and 27. In the cross-examination, he deposed that API Avhad was present with him. Enquiries were made with the people present near the spot of incident. He could not say whether there was a tea-stall near the juice center. They enquired with the shop owners adjacent to the juice center but they could not get any clue. Nobody had told them that they had seen the accused or the deceased near the place of incident.

11. PW-7 API Kailash Avhad was the investigating officer. He sent the team to Uttar Pradesh to apprehend the accused No.1

who was arrested on 28.11.2012. The accused No.2 was arrested on 22.2.2013. He recorded the statements of some of the witnesses. He also recorded the supplementary statements of the first informant and filed the supplementary charge-sheet on 25.4.2013.

In the cross-examination, he stated that he had recorded the statements of PW-3's workers. He had not enquired with PW-3 on 23.11.2012. He did not get any information from PW-3 till 29.11.2012 and, therefore, till that date PW-3's statement was not recorded. He had arrested the accused No.1 on the basis of the statements of PW-1 and PW-2. He admitted that he had filed statement of PW-4 after filing of the charge-sheet against the accused No.1 and thereafter he had filed the supplementary charge-sheet. He had not recorded the statement of PW-4 at the time of filing the charge-sheet against the accused No.1 as PW-4 was not available.

12. Apart from this oral evidence, the prosecution produced the C.A. reports on record at Exhibits-19, 20, 21 and 22. Nothing much turns on those C.A. reports.

13. Learned counsel for the Appellants made the following

submissions:

- i. The case is based on the circumstantial evidence. The prosecution has failed to prove the circumstances beyond reasonable doubt. There was no motive for either of the accused to commit murder of the deceased. In the case based on circumstantial evidence, motive plays an important part. In this case, there is absolutely no evidence even suggesting a possible motive for commission of this offence. Therefore, in this present case absence of motive assumes importance and the benefit of doubt must be given to the Appellants.
- ii. The evidence of the prosecution witnesses is not consistent and reliable. When PW-1 had gone to his shop on 23.11.2012 the shutter was closed. There was no reason for him to knock on the shutter if it was locked from outside. His conduct was unnatural. If he had a key, he would have straightway opened the lock. There is no evidence to show that the accused No.1 Mohan was present at the spot at any point of time.
- iii. There was no enmity of both the accused with the deceased and, therefore, there was no reason to commit his murder. The deceased Samsher had come from his native place only two

days prior to the incident. There is nothing to show that anything serious had happened between the accused and Samsher within these two days.

- iv. PW-3 is a got-up witness and he was under the thumb of police and, therefore, he has deposed in favour of the prosecution. PW-3's police statement was recorded on 29.11.2012. There is no explanation offered as to why his statement was not recorded between 23.11.2012 to 29.11.2012 if his tea-stall was located near the spot of incident and since he had informed the police about what he had seen.
- v. PW-4 is totally an unreliable witness. His deposition must be left out of consideration. He was not only a chance witness but his deposition was full of omissions. Learned counsel for the accused No.1 emphasized the fact that his statement was not produced with the first charge-sheet, but, it was produced in the supplementary charge-sheet. PW-4 had admitted that his house was at a driving distance of five minutes from Deonar police station. He knew all the accused and PW-1 as well as PW-2. There was no reason as to why he did not tell what he knew to the police immediately after the incident.

- vi. There is no connection between the accused No.1 and the accused No.2. There is no evidence to show that the accused No.2 was ever working in that area or was sleeping in the shop. There is a suspicious role of other employee Kapil. The prosecution has not examined him.
- vii. The investigating agency has not investigated in respect of the CDR or the call made by PW-1 to the accused No.1.
- viii. Learned counsel for the accused No.2 submitted that there is only vague evidence against the accused No.2. He was not named in the FIR. No suspicion was expressed against him.

14. Learned APP, on the other hand, submitted that in a case based on circumstantial evidence, 'motive' is an important factor but absence of 'motive' by itself may not lead the Court to conclude that the accused had not committed the offence. In support of his submission, learned APP relied on the judgment of the Hon'ble Supreme court in the case of **Subhash Aggarwal Vs. State of NCT of Delhi**¹. He submitted that there are strong circumstances against both the accused which are proved by the prosecution beyond reasonable doubt. The evidence of PW-2 and

¹ AIROnline 2025 SC 517

PW-3 shows that both the accused were last seen in the company of the deceased while he was alive. All of them were seen near the shop and inside the shop. The incident had occurred shortly and, therefore, there is proximity of time and place as far as theory of 'last seen together' is concerned.

15. Learned APP further submitted that the conduct of the accused was highly incriminating. There is evidence to show that the accused No.1 used to sleep in that shop as a matter of routine, but only after the incident he was not found. He was not reachable. He was absconding. Therefore, in the background of these facts, presence of the accused No.1 near the shop in that night and absence thereafter is highly incriminating. He has not discharged his burden under Section 106 of the Indian Evidence Act to explain the facts which were within his exclusive knowledge. He was not only absconding on the next day, but he was not found till he was arrested on 28.11.2012 at his native place. He had left from the spot of incident without informing his employers. The evidence shows that the offence could not have been committed any person singlehandedly; it was a work of at least two people. The accused No.2 was also seen in the company of the accused

No.1 at that time and, therefore, the prosecution has proved its case beyond reasonable doubt.

16. We have considered these submissions. Undoubtedly the case is based on the circumstantial evidence and, therefore, ‘motive’ is an important consideration. In this case admittedly the prosecution has not brought on record any evidence regarding the motive for the accused to commit murder of the deceased. However, learned APP was justified in relying on the ratio of the judgment in the case of **Subhash Aggarwal**. The Hon’ble Supreme Court has held in paragraph-24 thus :

“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.”

17. The Hon’ble Supreme Court has considered this aspect in another judgment in the case of **Chetan Vs. State of Karnataka**². Paragraph-10.11.3 reads thus:

“10.11.3 The law is now well-settled that while proof of motive

² 2025 Cri.L.J. 3251

certainly strengthens the prosecution case based on circumstantial evidence, failure to prove the same cannot be fatal. In this regard, one may refer to *G. Parshwanath vs. State of Karnataka* 2010 (8) SCC 593 in which it was held as follows:

“45. The argument that in absence of motive on the part of the appellant to kill the deceased benefit of reasonable doubt should be given, cannot be accepted. First of all every suspicion is not a doubt. Only reasonable doubt gives benefit to the accused and not the doubt of a vacillating judge. Very often a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC. Effect of absence of motive would depend on the facts of each case. Therefore, this Court proposes to examine the question of motive which prompted the appellant to commit the crime in question.”

18. Thus, though the prosecution has not proved the motive in this case, the Court will have to consider the other circumstances seriously. The most incriminating circumstance in this case is the 'last seen together' theory. In that respect, the prosecution has relied on the evidence of PW-2 and PW-3 as discussed above. Their evidence shows that both the accused were seen in the company of the deceased at around 10.45 p.m. to 11.00 p.m. in the night of 22.11.2012. In the morning, his dead body was found. However, the incident had occurred in the night. There is proximity of place obviously, from the place where they were last seen together. Apart from that, though the dead body was discovered in the morning, the death had occurred in the night itself. This is a strong incriminating circumstance which has to be seen in the background of the departure from routine as far as the accused No.1 is concerned. The evidence shows that the accused No.1 Mohan used to sleep in the same shop throughout his employment. On that particular night also PW-2 and PW-3 had seen him inside the shop. PW-2 has stated that the accused No.1 and the deceased were to go to sleep in the shop itself after having their dinner. Therefore, the accused No.1 was expected to be in the shop

throughout the night but he had disappeared. The dead body was lying inside the shop and the accused No.1 had simply absconded without informing anyone else. Therefore, the 'last seen together' theory coupled with the accused No.1's conduct together make a strong case against him. The evidence shows that the accused No.1 was accompanied by the accused No.2. There is a consistent evidence of PW-2 and PW-3 to that effect.

19. The learned counsel for the Appellants submitted that the statements of PW-2 and PW-3 were recorded belatedly by the police. However, that would not make much difference in this particular case because it was not as if the suspicion was not expressed against the accused No.1 immediately. In fact, the FIR was lodged within a very short time. The dead body was discovered at around 10.15 a.m.. The police station was informed at 10.45 a.m. and the FIR was lodged at around 11.20 a.m.. There was no scope to deliberate and concoct a false story to express suspicion against the accused No.1. Therefore, the accused No.1 was not suspected because of the statements given by PW-2 or PW-3 subsequently, but, because he was always shown as a suspect right from the statement in the FIR. In this background it is interesting to

consider the statement given by the accused No.1 in his statement recorded under Section 313 of Cr.PC.. He had not only denied commission of the offence but significantly he has stated that he never came to Mumbai. This statement obviously is not correct. There are prosecution witnesses who have consistently deposed about his employment with PW-1 and PW-2. Therefore, his defence is not believable. Of course, the conviction cannot be based on his stray statement under Section 313 of Cr.PC. but the fact remains that the accused No.1 was given an opportunity to explain the facts which were within his exclusive knowledge and he has failed to do so.

20. As far as PW-4 is concerned, we agree with the submissions of the learned counsel for the Appellants that he is not a reliable witness. Though, the omissions pointed out by learned counsel for the Appellants do not impress us as far as merits are concerned, but, the fact remains that his statement was recorded much belatedly and in fact the investigating officer has admitted that his statement was not forming part of the first charge-sheet but it was a part of the supplementary charge-sheet. PW-4 was residing at five minutes driving distance from Deonar police

station and if he had seen the accused in the night closing the shutter and going away suspiciously and if he knew the accused as well as the deceased it was his duty to tell all these facts to the police but the police produced his statement not with the first charge-sheet, but with the supplementary charge-sheet. Therefore, we are not inclined to give much importance to his evidence.

21. Having said this, as discussed earlier, we are satisfied that the evidence led by PWs-1, 2 and 3 is satisfactory and consistent. There is evidence proving each of the above circumstances, forming a complete chain of events that unerringly points to the guilt of both accused.

22. PW-1 has stated that he tried to contact the accused No.1 telephonically. He tried to search for him by making phone calls to his acquaintance but he could not find. Those CDRs are not part of the investigation; but the deposition of PW-1 in that behalf cannot be ignored. The consistent evidence shows that the accused No.1 was working in the shop of PW-1 and was in fact sleeping in that shop. It would be natural for PW-1 to call him to ask him about the incident.

23. Considering the above discussion, we are satisfied that the prosecution has proved its case beyond reasonable doubt. We do not find any reason to interfere with the impugned judgment and order. Consequently the Appeals are dismissed. With dismissal of the Appeals, the connected Applications are also disposed of.

(ADVAIT M. SETHNA, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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