
**The State of Maharashtra Vs Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan and Mahesh Dhanaji Shinde
 Mahesh Dhanaji Shinde Vs The State of Maharashtra**

Confirmation Case No. 3 of 2009 and Criminal Appeal No. 731 of 2010

Court: Bombay High Court

Date of Decision: Oct. 17, 2011

Acts Referred:

Arms Act, 1959 " Section 25, 3, 5, 6#Criminal Procedure Code, 1973 (CrPC) " Section 354, 366#Penal Code, 1860 (IPC) " Section 120(B), 201, 201(I), 201(II), 212

Hon'ble Judges: B.H. Marlapalle, J; A.M. Thipsay, J

Bench: Division Bench

Advocate: Mr. Abhaykumar Apte in Cri.Appeal Nos. 731 and 732 of 2010 and Mr. D.P. Adsule, APP for State in all the matters, for the Appellant; Mr. Sangram Desai for Respondent No. 1 in both the Conf. Cases, Mr. R.V. Raorane for Respondent No. 2 in both the Conf. Cases, Mr. S.S. Pai for Respondent No. 3 in both Conf. Cases and Mr. Abhaykumar Apte for Respondent No. 4 in both the Conf. Cases, for the Respondent

Judgement

B.H. Marlapalle, J.

These references for confirmation u/s 366 of the Code of Criminal Procedure (the Code for short) arise from the

separate order of conviction and sentence passed on 26/5/2009 by the learned Additional Session Judge, Sindhudurg at Oros in Sessions Case

No. 3 of 2005 and Sessions Case No. 5 of 2005. In the said Sessions Case in all seven accused came to be tried for the offences punishable

under Sections 302, 201, 364A, 394, 397, 404, 201(I), 201(II), 212, 120B read with Section 34 of Indian Penal Code and Sections 3, 5, 6 read

with Section 25 of the Arms Act, 1959. The learned Additional Sessions Judge, by his order dated 25/5/2009, was pleased to acquit accused

Nos. 4 and 7 on all the charges and on 26/5/2009, he passed an order convicting accused No. 1, accused No. 2, accused No. 3 and accused

No. 6 for the offences punishable under Sections 302, 364A read with Section 120B of Indian Penal Code for having murdered four members of

Mali family i.e. Sanjay Kerubhai Mali, Rajesh Kerubhai Mali, Anita Kerubhai Mali and Kerubhai Mali and awarded the sentence of death by

hanging. He further convicted accused Nos. 1 to 3 and 6 under Sections 394 and 397 read with Section 120B of Indian Penal Code and

sentenced to undergo RI for five years and to pay a fine of Rs. 5000/- each, in default to undergo RI for six months more. Accused Nos. 1 to 3

and 6 have also been convicted for the offences punishable u/s 404 read with Section 120B of Indian Penal Code and sentenced to undergo RI for

one year and to pay a fine of Rs. 5000/- each, in default to suffer RI for six months more, u/s 201 read with Section 120-B of Indian Penal Code

and sentenced to undergo RI for five years and to pay a fine of Rs. 5000/- each in default to undergo RI for six months more and under Sections

3, 5, 6 read with Section 25 of the Arms Act and sentenced to undergo SI for three years. Accused No. 6 has filed Criminal Appeal No. 732 of

2010 against the said order of conviction and sentence, whereas accused Nos. 1 to 3 have not challenged the said order. However, u/s 368 of the

Code, while deciding a confirmation reference, this Court has the powers to confirm the sentence, or pass any other sentence warranted by law, or

annul the conviction, and convict the accused of any offence of which the Court of Sessions might have convicted him, or order a new trial on the

same or on amended charge, or to acquit the accused persons. Thus, even in the absence of an appeal by accused Nos. 1 to 3, we have to decide

on the culpability of accused Nos. 1 to 3 as claimed to have been proved by the prosecution and also the legality, validity and justifiability of the

order of sentence of death by hanging.

2. So far as Criminal Appeal No. 731 of 2010 is concerned, it has been filed by accused No. 5 in Sessions Case No. 5 of 2005. In all six accused

came to be tried for the offences punishable under Sections 302, 201, 364A, 394, 397, 404, 201(I), 201 (II), 212, 120B read with Section 34 of

Indian Penal Code and Sections 3, 5 and 6 read with Section 25 of the Arms Act for having abducted and murdered in furtherance of their

criminal conspiracy four victims from different families i.e. Vijaysinh Dudhe, Dadasaheb Chavan, Sanjay Gavare and Bala Pisal. The learned

Additional Sessions Judge, by his order of conviction and sentence dated 26/5/2009 was pleased to convict accused Nos. 1 to 3 and 5 for the

offences punishable under Sections 302 and 364 read with Section 120B of Indian Penal Code for having murdered the victim Vijaysinh Dudhe

and they have been sentenced to death by hanging. The accused Nos. 1 to 3 and 5 came to be convicted for the offences punishable under

Sections 302 and 364A read with Section 120B of Indian Penal Code for having murdered the victim - Dadasaheb Chavan and they have been

sentenced to death by hanging. All these 4 accused have also been convicted and sentenced for the very same offences and in the like manner for

having murdered the victims - Sanjay Gavare and Vinayak Pisal. They have been also convicted under Sections 394, 397, 404, 201 read with

Section 120B of Indian Penal Code and sentenced to suffer RI for six months for each offence. They have been also convicted under Sections 3, 5

and 6 read with Section 25 of the Arms Act and sentenced to undergo SI for three years. The learned Additional Sessions Judge directed to

submit the record and proceedings to this Court for confirmation u/s 366 of Code of Criminal Procedure However, it appears that the Registry of

this Court, by inadvertence, failed to register a separate confirmation case arising from the order of conviction and sentence in Sessions Case No.

5 of 2005. We, therefore, direct that confirmation case arising from Sessions Case No. 5 of 2005 be registered separately. Accused No. 6 in

Sessions Case No. 3 of 2005 - Shri Mahesh Shinde is accused No. 5 in Sessions Case No. 5 of 2005 and, therefore, he has been referred as

accused No. 6 uniformly in this common judgment.

3. As per the prosecution case, on 20/12/2003, the Superintendent of Police, Sindhudurg-Oros, received anonymous letters and phone calls

informing that the dead bodies of some unknown persons were lying on the hillocks of village Nandos, Taluka -Malvan, District - Sindhudurg as

well as in the adjoining agricultural lands. He, therefore, issued necessary directions to the police officers to take search of the said area and

accordingly a search operation was carried out on the very same day, in which seven dead bodies scattered were found. The search operation was

continued on 21/12/2003 as well and two more dead bodies were found. Thus, in the search operation jointly carried out by the police officers

and villagers, nine dead bodies were recovered i.e. DB-1 to DB-9 and panchanamas were drawn. From the spots, some clothes, trousers" hooks,

blood stained diary, broken brief-case and such other articles were also recovered. All the dead bodies were brought to the civil hospital at Oros

for post mortem and all the medical officers were assigned to undertake the post mortem as per the directions of the Civil Surgeon. The dead

bodies were in decomposed, mummified and in skeleton form. The skulls and other parts of the bodies of some of the skeletons were separated.

Hence, though the medical officers of the civil hospital at Oros performed the autopsy, they could not record their opinion and preferred to

preserve the viscera of the dead bodies and expressed to refer bodies for Forensic Chemical Test. Hence, the dead bodies were taken to the

Medical College at Miraj for forensic examination and the Dean of the Medical College, on considering the gravity of the case, formed a

committee of the Medical Officers headed by Dr. Anil Digambarrao Jinturkar (PW 76). After conducting the procedure for maceration to clean

the skeletons by keeping them in separate drums, the team of Medical Officers performed the autopsy and recorded its opinion in respect of cause

of death. With the help of the Miraj Medical College, some of the organs of the dead bodies were also referred to C.D.F.D., Hyderabad for DNA

tests and at the same time the police referred the skulls of some of the victims to the Forensic Laboratory at Kalina, Mumbai for the purpose of

superimposition test. Undoubtedly, the recovery of seven dead bodies received wide publicity and sent a wavering shock and scare in the minds of

the villagers. With the help of the diary recovered from the spot, some names of the relations and friends of the victims were identified. The

information regarding the missing persons received at all the police stations in the State of Maharashtra was also assimilated.

During the course of the investigation, relations of some of the deceased were also contacted and their blood samples were taken for DNA test

and were sent to C.D.F.D., Hyderabad. Some of the dead bodies were identified by such relations/friends. The seized articles were also referred

to the C.A. and some gold ornaments, wrist watch, mobile phone sets were also recovered from the accused on the basis of the disclosure made

by them. On the basis of the missing complaints recorded at some of the police stations like Vashi, Badlapur and Wai, the investigating agency

received information that accused Nos. 1 to 3 had contacted the victims or their relations. Accused No. 1 had lost his father and, therefore, he

visited village Humarmala Domblewadi, in Taluka - Kudal on 18/12/2003. He was taken in custody at the first instance on 22/12/2003 and on the

basis of the information provided by him during the interrogation, accused Nos. 2 to 7 also came to be arrested. On the basis of the voluntary

disclosure statement made by them, while under arrest, iron rods, swords, cut bars of guns, one muzzle loader gun and other incriminating material

used in the crime was also seized by drawing panchanamas and the seized articles were sent to C.A. The test identification parade was also

conducted when accused Nos. 1 to 3 were identified by the witnesses and the assets acquired by the accused also came to be seized. Such assets

were motorbikes, Tata Sumo jeep and their bank accounts were also verified, including the bank accounts in the names of their wives and fiancées

etc. The investigating agency also came to know that the victims were brought from Mumbai and were kept at Lodges at Kankavali and/or Malvan

and from there they were taken to the hillocks of Nandos by auto-rickshaw and were subsequently done to death. The registers from such

hotels/lodges were also seized. As per the information received by the IO, it was accused No. 2 who was entrusted with the work to bring the

victims upto Kankavali or Malvan and to keep them in the hotels before they were taken to the hillocks of Nandos. The specimen conf-case-3-09

hand writing of accused No. 2 was collected and referred to the Hand Writing Expert.

4. During the course of investigation, the Superintendent of Police, Sindhudurg, had formed different investigation teams in view of the seriousness

and magnitude of the serial killings and the sever terror had sent throughout the area and in fact all over the State of Maharashtra. Recovery of

bank pass books from Mumbai, weapons and other articles in or around the house of accused No. 7 were also seized. The family members,

relations and friends of the deceased were contacted at different places based on the information of telephone numbers available in the diary as

well as with the police stations where the missing complaints were recorded. One more dead body was recovered (DB No. 10) on 29/12/2003,

during the course of investigation and it was also sent for autopsy, DNA as well as superimposition test. Though the investigating agency has

claimed to have identified the dead body as that of Hemnath Thakre, the trial court rejected the claim of the investigating agency and held that DB

No. 10 could not be proved to be that of Hemnath Thakre. As per the IO, the serial murders were committed on three different occasions. In the

first incident on 25/9/2003 two persons were killed i.e. Shankar Sarage (DB 1), resident of Goregaon, Mumbai and Shri Hemnath Thakre (DB

10), resident of Rajapur, Dist. Ratnagiri. But as noted earlier, the trial court has turned down the claim of the investigating agency that DB 10 was

that of Hemnath Thakre. The second incident had taken place on 30/10/2003 i.e. about two days after the Bhaubeez festival and the victims who

were killed were (1) Vijaysinh Dudhe (DB 2), resident of Kadegaon, Taluka - Wai, District Satara, (2) Dadasaheb Chavan (DB 3), resident of

Pune, (3) Sanjay Gaware (DB 4), resident of Pune and Vinayak Pisal (DB 5), resident of Kulgaon, Badalapur. Whereas in the third incident of

14/11/2003 when four members of Kerubhai Mali, resident of Vashi i.e. he himself, his wife - Anita and their two minor sons were brutally killed

on the hillocks of Nandos and at the time of Giroba Festival. The victims of the same gruesome killings were (1) Sanjay Kerubhai Mali (DB6), (2)

Anita Kerubhai Mali (DB 7), (3) Kerubhai Nanaji Mali (DB 8) and Rajesh Kerubhai Mali (DB 9).

5. On the first incident of 25/9/2003, C.R. No. 1 of 2004 came to be registered with the Malvan Police Station and on filing of chargesheet on

31/3/2004 Sessions Case No. 4 of 2005 came to be tried and it resulted in acquittal. In respect of second incident of 30/10/2003, C.R. No. 24 of

2004 was registered with same police station and on filing of the charge-sheet on 14/9/2004, Sessions Case No. 5 of 2005 came to be tried and

decided, resulting into conviction of accused Nos. 1 to 3 and 5.

In respect of the third incident of 14/11/2003, in which four members of the very same family were eliminated, including two innocent children,

C.R. No. 89 of 2003 was registered with the very same police station and on filing of the charge-sheet on 20/3/2004, Sessions Case No. 3 of

2005 came to be tried and decided. As noted earlier, this reference arises from Sessions Case No. 3 of 2005. It is also pertinent to note at this

stage that the order of acquittal passed in Sessions Case No. 4 of 2005 has been challenged by the State Government in Criminal Appeal No. 617

of 2010, whereas Criminal Appeal Nos. 731 and 732 of 2010 have been filed by accused - Mahesh Dhanaji Shinde. However, Criminal Appeal

No. 731 of 2010 arises from the order of conviction and sentence passed in Sessions Case No. 5 of 2005, in which the confirmation reference has

not been received and, therefore, the said appeal cannot be decided along with this confirmation case as well as Criminal Appeal Nos. 617/10 and

732/10. Though in all the three Sessions Cases and as per the order dated 21/7/2005 passed by the trial court on Exhibit - 5, the evidence of all

the three cases was recorded in Sessions Case No. 3 of 2005, the learned trial judge rendered three different judgments and orders and,

therefore, in our view, it was necessary to have a separate confirmation reference in Sessions Case No. 5 of 2005. The following tabular statement

would furnish the relevant details:

Dead Body No. Date of murder Identified by Sessions Case Cause of death

No.

DB No. 1 24/9/03 PW 119 4 of 2005 Fire arm injury

Shankar Sarage

DB No. 2 - 30/10/03 PW 63 5 of 2005 Head injury

Vijaysinh Dudhe

DB No. 3- 30/10/03 PW 98 5 of 2005

Dadasaheb Fire arm injury to chest

Chavan 1/2 fracture of skull

DB No. 4- 30/10/03 PW 80 5 of 2005 Head injury due to

Sanjay Gavare fracture of skull bone

DB No. 5-Bala

30/10/03 PW 97 5 of 2005 Head Injury

Pisal

DB No. 6- 14/11/03 PW 66 3 of 2005 Head injury 1/2 fracture

Sanjay Mali of bone

DB No. 7-Anita 14/11/03 PW 66 3 of 2005 Fire arm injury to

Mali abdomen and pelvis,

multiple fracture of skull

leading to head injury

DB No. 8- 14/11/03 PW 66 3 of 2005 Head injury

Kerubhai Mali

DB No. 9- 14/11/03 PW 66 3 of 2005 Head injury 1/2 fracture

Rajesh Mali of skull bone

DB No. 10- 24/9/03 PW 99 4 of 2005 Head Injury

Hemant Thakare

It is not in dispute that the respective festivals and their dates are as under:

31st August 2003 -Ganesh Chaturthi

9th September 2003 -Anant Chaturthi

25th September 2003 -Ghatsthapana

4th October 2003 -Dasera

24th October, 2003 -Diwali

26th October, 2003 -Bhaubeej

13th and 14th November 2003 -Lord Giroba festival

6. Accused No. 1, whom the prosecution claims to be mastermind, was the nephew (sister's son) of accused No. 7 and PW 34 -Satish Anant

Korgaonkar and he was brought up by accused No. 7 since the mother of accused No. 1 was a lunatic and the father was maintaining himself by

doing labour work. He used to assist accused No. 7 and his wife in agricultural work as well as grazing of cattle. Few years back, with the help of

PW 34 - Satish Korgaonkar, he shifted to Mumbai. He started plying rickshaw in the Borivali area. Accused No. 2 was working as LIC agent at

Mumbai, whereas accused No. 3 was employed in a private institution at Mumbai. Accused No. 6 was running a ration shop in Borivali area of

Mumbai and was a friend of PW 34 - Satish Korgaonkar. The bank accounts seized by the IOs during the course of investigation of all these

accused indicated cash deposits in high amounts and which was beyond the limits of their incomes. These deposits were made around the dates of

the incident and accused No. 1 purchased a Tata Sumo jeep on 24/8/03 in the sum of Rs. 2,60,000/-, whereas accused Nos. 2 and 3 purchased

separate motorbikes in the sum of Rs. 17500 and Rs. 20500/- respectively on 20/11/03 and 25/11/03. The victims in Sessions Case No. 3 of

2005 were the residents of Navi Mumbai. Mr. Kerubhai Mali was engaged in vegetable wholesale business. He had two shops at the APMC

Complex, Vashi, one was in his name and other one was in the name of his wife -Anita Mali. The couple had two minor sons, Rajesh and Sanjay.

7. The victims in Sessions Case No. 5 of 2005 were allegedly done to death on 30/10/2003 after robbing the cash worth Rs. 3 lakhs. They were

allegedly murdered with deadly weapons like guns, swords, revolvers and rods. Their bodies were disposed off into inaccessible places by

destroying the evidence of their identity and by concealing unauthorised guns used in the offence. They were the residents of Mumbai and Pune and

were dealing in business or as an Estate Agent. Two of the victims had reached Malwan directly from Mumbai, whereas other two had reached via

Pune, one day earlier to the date of the incident. As per the prosecution case, PW 14 - Jagan Patil was running canteen in a factory located in the

MIDC area, Dombivali and he was knowing Bala Pisal, Gurnath Gharat as his ex-colleagues. He came to know of accused No. 1 through Bala

Pisal as a spiritual power holder to multiple money from 3 lacs to 3 crores. Sachin Pawar and Gurnath Gharat were also present when Bala Pisal

had stated so Jagan Patil, who, in turn, contacted Balu Gadekar, a grape merchant from Junnar.

8. As per the prosecution, accused No. 1 claimed to be practicing magic in which he claimed to bring about money shower in as much as currency

notes used to emerge in his magic. He used to entice people to bring one lac rupees and with his money shower, he would make the very same

amount in multiples. Mr. Kerubhai Mali was the last victim of this enticement and he was told by accused No. 1 that with the help of special

science, charms, spells and spiritual power, this amount of Rs. 3 lacs would multiply in the shower which the accused No. 1, with the help of

accused Nos. 2,3 and 6 used to carry out on the hillocks of Nandos, which spot is few kilometers away from the house of accused No. 7, where

accused No. 1 was brought up till the age of about 18-19 years. It is also the prosecution case that the strategy to entice people adopted by these

accused was well orchestrated and they ensured that the victims did not travel by their private vehicles and instead they reached Malvan/Kankavali

by public transportation so that after they were eliminated, there would be no trace left behind to unearth the crime. It is also the prosecution case

that accused No. 1 was practicing such magic for money shower few years before the incident and in one such incident he was exposed. The

victims started chasing him and demanded money and this information gathered during the course of investigation, led to believe that the accused

were an organized gang involved in killing of innocent persons so as to brought the cash after enticing them to multiple in the so called magic spell

of money shower. As per the investigation Kerubhai Mali was asked to bring Rs. 3 lacs and he raised the said amount but did not hand over to the

accused at Mumbai or Vashi. He came with the said cash along with his wife and two minor sons to Malwan and accused No. 2 had made the

arrangement of his family to stay in Mayur Lodge on 13/11/2003. On the next day in the morning, he was taken to the Dharvas Dongar Katta,

Gaonkarwadi, Nandos and some distance very close to the house of accused No. 7 by rickshaw (after the office of Village Panchayat) and

thereafter by walk. Kerubhai was told to carry all his baggage with him when he would leave the hotel so as to go to the hillocks to attend magic

program of money shower. On 14/11/2003 all the four family members were escorted by accused No. 2 and reached at the hillocks and accused

Nos. 1 to 3 and 6 were all present. Kerubhai Mali and his wife Anita were told to travel some distance on the hillocks so that they would be out of

sight for their children. The money bag he carried was grabbed after brutally killing him by deadly weapons. His wife Anita was also done to death

by firing bullets. Their dead bodies were thrown into jungle on the hillocks so that they would not be visible ordinarily. It appears the hillock was a

secluded place, which was not visited by villagers in normal course. The accused then came back to the children of Malis and took them away at

some distance and they were brutally murdered. Their dead bodies were cut into pieces and thrown around. Anita Mali was wearing gold

ornaments and Kerubhai was wearing Rado watch on his wrist. He also had a cell phone in his pocket and all these articles were snatched by the

accused after they were done to death along with the cash. Though they were killed on 14/11/2003, their dead bodies were traced on 20/12/2003

i.e. after about five weeks.

9. The prosecution examined in all 128 witnesses because the evidence was common in all the three Sessions Cases and there was no eye witness

to any of the three incidents. The entire case of the prosecution was based on circumstantial evidence. These 128 witnesses included 38 panch

witnesses, 22 witnesses acquainted with the accused and victims, 9 witnesses as the relations of the victims, 12 medical officers, 5 witnesses

connected with the telephone/mobile bills, 29 police personnel, 2 Executive Magistrates, 5 bank officers and 5 experts on the subjects of DNA,

superimposition, hand writing, FSL and ballistic expert etc. The list of the witnesses has been annexed to the copy of the impugned order and

following the same, we annexed the list of these witnesses to this judgment as Annexure-I.

10. The learned Additional Sessions Judge framed the following issues:

1. Where the prosecution has established that the accused formed criminal conspiracy with intent to abduct the persons for the purpose of robbery

and murder by giving false promises, assurances and inducement of multiplying money in many folds?

2. Whether the prosecution has further established that in pursuance of that criminal conspiracy, the accused took Kerubhai Mali, Mrs. Anita Mali,

Sanjay Mali and Rajesh Mali from Mumbai to Nandos with intent to rob and to cause their murder?

3. Whether the prosecution has further established that the accused in pursuance of said conspiracy, abducted Kerubhai Mali, Mrs. Anita Mali,

Sanjay Mali and Rajesh Mali from Mumbai to Nandos with intent to rob money and to cause their murder?

4. Whether the prosecution has further established that accordingly the accused in furtherance of their conspiracy robbed Kerubhai Mali, Anita

Mali, Sanjay Mali and Rajesh Mali and caused their murders?

5. Whether the prosecution has further established that the accused in furtherance of their common intention threw the dead bodies of Kerubhai

Mali, Mrs. Anita Mali, Sanjay Mali, Rajesh Mali in the hillock of Nandos by taking all articles of identification.

6. Whether the prosecution has established that the bodies found in the hillock of Nandos were that of Kerubhai Mali, Sanjay Mali, Rajesh Mali

and Mrs. Anita Mali?

7. Whether the prosecution has further established that the accused in pursuance of the criminal conspiracy, murdered Kerubhai Mali, Mrs. Anita

Mali, Sanjay Mali and Rajesh Mali by assaulting them with weapons like knife, iron rod, lathis etc. and with intent to disappear the evidence, their

bodies were thrown into the valley?

8. Whether the prosecution has further established that the accused in pursuance of their common intention and in pursuance of criminal

conspiracy, dishonestly mis-appropriated sum of Rs. 3,00,000 ornamental gold, wrist watch etc. belonging to the victims by causing their murders?

9. Whether the prosecution has further established that the accused 4 and 7 with knowledge and/or reason to believe the criminal conspiracy of

accused 1 to 3, 6 and with the said knowledge, conf-case-3-09 harboured them and provided guns to accused No. 1 to achieve the said object?

10. Whether the prosecution has further established that the accused 1 to 3 and 6 in the commission of the crime, used deadly weapons like fire

arms, two muzzle loader guns, one revolver, and one sword without the permit and thereby committed the offence under Sections 3, 5, 6 R/w 25

of the Arms Act?

On assessment of the evidence, as adduced by the prosecution, all the issues were held to be proved and thus answered in the affirmative except

Issue No. 9. The trial court held that the prosecution could not establish that accused Nos. 4 and 7 with knowledge and/or reason to believe the

criminal conspiracy of accused Nos. 1 to 3 and 6 and with the said knowledge, harboured them and provided guns to accused No. 1 to kill the

four members of Mali family. The prosecution relied upon the following circumstances to bring home the charge against the accused:

(a) Identity of the accused.

(b) Recovery of weapons and clothes from the accused and blood stains found on such articles.

(c) Registers maintained by the hotels/lodges at Kankavli/Malvan.

(d) Hand writing expert's opinion about entries made in the said registers of hotels/lodges.

(e) Testimony of the hotel/lodge employees.

(f) Presence of the accused nos.1 to 3 as well as accused no.6 in the house of accused no.7 and in the area of Konkan around 14/11/2003.

(g) Deposits of cash amounts in the bank accounts of the accused and their wives or fiancées. Failure of the accused to provide satisfactory

explanation about the source of money.

(h) Purchase of motorbikes and Tata Sumo jeep.

(i) Recovery of mobile phones as well as the excessive calls made by the accused.

(j) Use of the SIM card in the mobile sets snatched from the person of Kerubhai Mali.

(k) Recovery of Rado watch and gold ornaments from the person of Kerubhai as well as his wife.

(l) Shower of money conducted by accused No. 1 at the instance of PW 34 - Satish Korgaonkar and the subsequent knowledge gathered by the

said witness that it was a fraud played by accused No. 1, including his demands for recovery of the money (60,000 + 60,000 from accused No.

(m) The evidence of PW 14 - Jagan Patil who was also enticed with the magic of money shower and traveled to Malvan/Kankavali on the given

dates but the accused announced that the shower of money program scheduled on 22/10/2003 was cancelled when they realized that the said

witness had traveled by his own car from Mumbai to Kankavali/Malvan.

(n) During their stay in the house of accused No. 7, accused Nos. 1 to 3 had collected guns from accused No. 4 -Tanaji Gavade and Shri Shekhar

Masurkar.

(o) Accused were repeatedly visiting the hillocks of Nandos with guns, swords, iron rods and under the pretext of hunting but they never brought

any prey to the house of accused No. 6.

(p) The telephone numbers found in the diary (Article -EC) recovered from the spot.

(q) Test identification parade conducted by PW 79 - S.G. Jadhavar and accused No. 2 was identified by PW 10 - Yogesh Dilip Dhake, PW 12 -

Dipakkumar Chottelal Pande and PW 1 - Ashok Vasant Nemalekar, whereas accused Nos. 2 and 3 were identified by PW 17 - Subhash

Dhondur Chalke and PW 9 - Appa Rajaram Rane.

(r) Medical treatment given by PW 30 -Dr. Rajendra Rane to accused No. 6 on 30/10/2003 when he had sustained a cut injury on his index finger

of right hand.

(s) The motive of robbing cash amounts from the victims by enticing them to multiply their wealth by the magic of money shower, and

(t) Last seen alive together.

11. In the case of circumstantial evidence, the prosecution has to establish its case beyond reasonable doubt and cannot derive any strength from

the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where

various links in the chain of circumstantial evidence are in themselves complete. The circumstances from which the conclusion of guilt is to be

drawn should be fully established. The same should be of a conclusive nature and exclude all possible hypothesis except the one to be proved.

Facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be so complete as not to

leave any reasonable ground for a 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. [Sharad Birdhichand Sarda Vs. State of Maharashtra,].

In the cases of circumstantial evidence motive is very important, unlike cases of direct evidence where it is not so important. At the same time,

when the dead bodies are recovered after a long gap of time, and they are all in decomposed conditions with skeletons, the task of the experts and

with the modern technique of DNA, super imposition and ballistic expert etc. is huge. In a case like this, when there is no whisper of any enmity

between the accused and the deceased and some of the prime witnesses like PW 4 - Smita Korgaonkar, PW 5 - Sachin Chavan, PW 34 - Satish

Korgaonkar, PW 75 - Santosh Yadav are the close relations/acquaintances of the accused and they have deposed against them, are the additional

circumstances which would add weight to the prosecution case. The task of the investigating teams in such ghastly serial killings and that too when

the dead bodies were recovered after a good gap of time from the date of the incident and connecting different links of circumstances, may find

some minor discrepancies or exaggerations, but that by itself should not make the prosecution case doubtful or unreliable. The victims were lured

to come to Kankavali/Malwan by public transportation from Mumbai/Navi Mumbai with good amount of money and the team work between the

accused. The prosecution case ought to be examined without giving undue importance to technicalities or without resorting to a hyper-technical

approach while assessing the evidence. The relations of the victims or their acquaintances were examined before the trial court had no animosity

against any of the accused. PW 34 - Satish Korgaonkar is a friend of accused No. 6 and some material recoveries have been made from him at

the instance of the said witness and these articles have been claimed to be from the person of either Kerubhai Mali or his wife Anita. If the

members of Mali family were killed on 14/11/2003 we have to scrutinize the bank accounts, telephone numbers, telephone bills to the proximate

period after the said date. So far as the identification of dead bodies is concerned, due weightage has to be given to the evidence of the experts

who performed a stupendous task. With these principles in mind, we proceed further to examine the prosecution case.

12. PI Rajendra Munekar - PW 124 who was on the plateau of Nandos right from the evening of 20/12/2003 had conducted the inquest

panchanama on Dead Body Nos. 6 and 7 (Exhibit Nos. 292 and 293), whereas PI Liyakat Ali Pardeshi (PW 121) carried out the inquest of DB

Nos. 8 and 9 (Exhibits 702 and 220). PW 83 Shri Vinod Supal Police Constable Buckle No. 895 has also proved these inquest panchanamas

and DB No. 8 along with the clothes and articles was entrusted to him so as to reach it to the Medical Officer of Civil Hospital, Sindhudurg. He

accordingly handed over the dead body to the Medical Officer. DB. No. 8 was found in the search carried out on 23/12/2003 by PI Pardeshi

(PW 121) and DB No. 9 was found from the very same plateau of Nandos on 24/12/2003 as per the said witness. The inquest at Exhibit 220 has

been also proved by the evidence of PW 33 Hemant Malkar. This witness stated that DB No. 9 was of male human being and was in

decomposed state with a yellow elastic underwear, one Talisman woven in black twine in the neck. Due to decomposition there was extreme foul

smell and the face of the dead body was in unidentifiable condition and the skull was visible and broken. He identified the Talisman woven in black

twine as Article DB/9-A. Dr. S.H. Patil - PW 28 had performed the autopsy on DB No. 9 which he had received on 24/12/2003 at about 9.30

p.m. through Police Constable Revandkar Buckle No. 88 and was referred by PI Pardeshi. He performed the autopsy on the dead body on the

next day i.e. 25/12/2003 between 8 to 9.30 p.m. As per him it was a dead body of male aged about 18 years and one underwear of VIP was

found on the person which was oiled. There was some thread in the neck and around the waist. In the upper jaw right side two incisors and one

canine and on upper jaw left side two incisors were missing in the lower jaw, on right side two incisors, one canine and one premolar and on left

side two incisors were missing. The dead body was skeletonised. The eye balls, tongue, all soft tissue organs in in thoracic cavity and abdominal

cavity were missing. The brain material was missing. External genitals were decomposed. Right upper limb was decomposed and fingers were

flexed. Left upper limb was decomposed and left hand was missing. Right lower limb was decomposed and flexed. Except great toe other toes

were missing. Left lower limb was decomposed and third toe and first toe were present, other toes were missing. There was broken skull in left

frontoparietal region. The ribs were present but dislocated at various places. The injuries on the dead body were ante mortem. The spinal cord

was not found but spine was seen. The doctor, therefore, preserved the viscera of hair, tooth, bone piece, nails and skin with flesh and dead larvae

in plastic bottles for CA and DNA testing. Since the dead body was highly decomposed, the Medical Officer could not record his opinion as to

the cause of death and advised to refer the same to Forensic Medical Expert. The evidence of this doctor proved that he had performed autopsy on

DB No. 9 but could not record his opinion as to the cause of death.

13. The autopsy on D.B. No. 8 was performed by Dr. J.D. Rokade - PW 78 on 24/12/2003 between 11 a.m. to 1 p.m. As per his evidence he

could not detect the sex of the body but the age was approximately 18 years and on the dead body there was a greenish black underwear stained

with mud and blood, banian stained with blood,. Only occipital and parietal region in skull was present and the body was completely decomposed

with bony skeleton. Teeth 12/12 were present and 4/4 fallen. Eighth rib on the left was absent whereas 9th rib on the right side was present. Hip

joint with ligament was present. Eyes and tongue were absent and so was the case with blood vessels. External genitals were also not present and

so was the case with hands and feet. No fracture of bone was seen externally. On internal examination head was found to be intact and the skull

was present with black hair in occipital region and both parietal regions. The base of skull was intact without any fracture. Rib No. 7 on left side

and Rib No. 8 on right side were present. No internal organs from abdomen were present. Time of death according to the post mortem findings

was estimated to be more than four weeks before. The contents of pieces of bone, hair, teeth and scalp were served as viscera both for medical

analysis and DNA and the box containing all bony skeleton was referred to Miraj Medical College. This witness could not record his opinion as to

the cause of death since the body was highly decomposed and only the skeleton was present. He signed the PM Notes at Exhibit 436 and made

over the said DB in a box and two viscera bottles to ASI with B. No. 219 for delivery to CA and DNA.

14. PW 83 - Supal and PW 84 - Sunil Parab proved that along with ASI Gosavi they delivered DB Nos. 8 and 9 to the Medical College on

31/12/2003. He also admitted that though DB No. 9 was entrusted to him by ASI Gosavi, it was not noted down in the station diary and because

there was a separate panchanama drawn for the said body.

15. Now coming to D.B. Nos. 6 and 7, we will have to consider the evidence of PW 124 PI Mungekar who had drawn inquest panchanamas on

the said bodies on 21/12/2003 as per the directions of PW 128 -Prabhukhanolkar (Exhibits 292 and 293 respectively). He also stated that the

numbers of the dead body were mentioned on the right top corner of the inquest panchanama. As per him on DB 6 a waist thread and nicker were

found (Art. CA and DB/6-A) and a hair clip indulged into the bunch of hair separated from skull was found near DB No. 7 and he identified the

same as Court Article DB 7/B. These panchanamas were proved by the evidence of Panch Witness PW 51 Mahesh Nikam. As per the said

witness on 21/12/2003 at about 7.30 a.m. he was at the plateau of Nandos along with Police Officers and villagers taking search of the dead body

and at the request of PI Mungekar he had acted as panch to the inquest panchanama. All the dead bodies were found in the rocky area 30 to 50

ft. below plateau. As per him DB 6 was a dead body of a male of fully grown up age and was in a highly decomposed condition. The left palm and

right leg before the knee were missing with only chocolate coloured elastic underwear on the dead body. It was in an inclined position. There was

crack on the left cheek of the dead body from the lower part of the earlobe upto lower jaw, one eye was closed and the other one was slightly

opened. The underwear on the body was of Lux make and there was a twine around the waist. The witness identified the twine Court Article CA

and underwear Court Article DB-6-A. The evidence of this witness further indicated that at a distance of 20 ft. from DB 6, police recovered DB 7

which was of a grown up female and in a highly decomposed condition. There were maggots in the body which was without head and was naked.

The breasts were swollen, the lower part below the waist was separated from the upper part. There was one hair clip black in colour and at a

distance of 5 ft. from the plaited hair with one skull of human body with no flesh. There was one lady pancha also present.

16. PW 27 - Dr. R.D. Dhuri stated before the Court that on 21/12/2003 seven dead bodies were referred to the Civil Hospital, Oros and they

were brought by Police Constable B. No. 312 as per the instructions of PI Mungekar. He conducted the autopsy on DB 6. As per him it was a

body of male aged about 15 years and no opinion could be given about the rigor mortis. The body was presented with the skull with decomposed

skin and hair. Both upper limbs and lower limbs were partially present with the body. Eyes, tongue external genitals were peritoneum and upper

and lower central incisor teeth were missing. Spinal cord was missing. The soft tissue organs in thoracic cavity and abdominal cavity were in

decomposed state. Both upper limbs were flexed at elbow joint. Hand of upper limb was absent from wrist joint. Right lower limb was flexed at

knee joint. The body was decomposed and mutilated. Skull was dismantled from vertebra but attached with skin of the body. Stomach and

intestine, liver spleen were decomposed. He opined that the deceased must have died between two to four weeks before the date of the post

mortem but he could not record his opinion as to the cause of death. He, therefore, recommended the body to be referred to the Forensic expert's

opinion and signed the PM report at Exhibit 170. He also stated that on 24/12/2003 he along with other six members visited the Miraj Medical

College for drawing samples for the purpose of DNA test and marked DB No. 6 on the cardboard in which the dead body was sealed.

PW 26 - Dr. R.R. Shetye had performed the autopsy on DB No. 7 which was referred to him by Police Constable Buckle No. 276 - G.D.

Bhavare. As per his evidence it was a body of female and the skull part above cervical vertebrae was dismantled and presented separately. The

right foot was missing. The scalp hair with plated hair of 10 cm was present separately with one broken hair clip. There were no clothes or

ornaments on the body except one brown black belt around upper 3rd thigh below waist. The body was decomposed with human skull presented

with skeleton. There were maggots, dead and alive all over the body. Nipples were seen prominently on both sides and the skull had no scalp. The

right foot was missing. The left toes were missing. The left hand finger tips were missing. Eye balls, tongue and lower jaw were missing. External

genitals were not seen. Both lower limbs were found to be detached with hip joints but connected with the body by cartilaginous attachment. Mud

and decomposed tissues at places in the body were seen. The brain matter was not seen. The soft tissue organs, thoracic cavity and abdominal

cavity were seen absolutely decomposed and were seen with maggots and mud. Lungs and heart were missing. The Medical Officer opined that

the death could have occurred one month prior to the date of post mortem but due to the decomposed state of dead body he could not record his

opinion about the cause of death. He also admitted that on 24/12/2003 he was called at Miraj Medical College for drawing samples which he did.

17. The prosecution examined PW 85 - Tukaram Padval Buckle No. 312 in order to prove that DB 6, after drawing inquest was entrusted to him

to deliver it to the Civil Hospital and thereafter to Miraj Medical College under the supervision and control of PSI Yadav. This witness also stated

that on 25/12/2003 he submitted the clothes and articles found on DB 6 to Malvan police under a panchanama drawn. He also stated that the

dead body was delivered in Miraj Medical College and various tests were carried out by a committee headed by Dr. Anil Jinturkar - PW 76. PW

87 - Gulab Bhavare PC had carried DB 7 from plateau of Nandos to Civil Hospital, Sindhudurg and from there to Miraj Medical College.

18. Let us now examine the Forensic Expert's opinion recorded for the cause of death in respect of DB No. 6 to DB No. 9. The Forensic

Expert's team was headed by PW 76 - Dr. Jinturkar and it was specifically formed to determine the probable cause of death. Dr. Jinturkar was a

Professor in Forensic Medicines at Miraj Medical College and he stated before the trial Court that DB 1 to 7 were received by his college on

23/12/2003 at about 6 p.m. The committee started the formalities and the dead bodies were taken for further assessment / revision on

24/12/2003. On receipt of requisition the Dean of GMC Miraj College had a discussion with him and the committee was formed by the Dean of

experts on various subjects and instructed the committee for acceptance and examination of dead bodies and giving expert's opinion. The other

members of the committee were Dr. Vaidya, Professor in Anatomy, Dr. Vivek Choudhari, Professor of Radiology, Dr. Mrs. P.P. Patil, Associate

Professor in Pathology and Dr. Sampson, Dental Surgeon. The bodies were accepted and kept in a strong room along with paper carton for each

body and the cartons were duly sealed with DB Nos. 1 to 7. The Medical Officers from Civil Hospital, Oros had taken the samples from each

body on 24/12/2003 in the presence of the committee members and thereafter each body was again sealed in the carton. He also clarified that the

clothes on the dead bodies and articles found on them were also sent along with dead bodies in respective cartons in separate polythene bag and

he handed over these clothes and articles to PSI Yadav. He also admitted that on 26/12/2003 two more dead bodies numbered as DB Nos. 8

and 9 were received in his hospital and the same procedure was adopted. He further stated that on 5/1/2004 PSI Gosavi came with one more

dead body i.e. DB No. 10.

As per this witness from 13th January 2004 the committee started examining the dead bodies. Each member of the committee examined the dead

bodies. Dr. Sampson, Dental Surgeon examined the skeletons in respect of the dental examination and explained his findings regarding the same.

Dr. Jinturkar and Dr. (Mrs.) Patil observed the injuries and obtained the photographs of the injured parts. Dr. Vaidya carried out the anatomical

examination pertaining to the bones to determine the age, sex and bony injuries. After such examination, the skeletons of the dead bodies wrapped

with the same polythene bag and in the same cartons and the bodies were sealed and kept in the strong room. Thereafter the committee decided to

go for maceration and transferred the entire skeletonized body each in a separate drum with proper label to the drum and the drums were filled

with water and leeches. The drums were then sealed after fixing the lids and the dead bodies were kept for maceration for one month. As per this

witness the soft tissues were eaten away by leeches and bones in clear form were available for examination. It has also come in the evidence of this

witness that the Medical Officers from Civil Hospital had collected femur bones of D.B. Nos. 2, 3, 4, 5, 7 and 10 in separate plastic bag and the

sealed boxes were handed over to PSI Tuppal in the first week of March 2004. Every body was taken near the strong room and examined in

detail so as to evaluate the probable height of the victim on the basis of examination of long bone. The skulls of all dead bodies and the bones

showing the firearm injuries were kept in separate plastic bags in the respective cartons for examination of ballistic experts. Abdominal skin of

body No. 7 had firearm injury and similar injury was on the iliac bone. After considering the details of the examination conducted by the

committee, the committee recorded its opinion in respect of each dead body.

19. As per the committee's opinion DB 6 was of human male aged between 12 to 18 years and the person had died about six months before the

examination. The committee could not give opinion about the blood group or poisoning. The committee found the following injuries on DB 6:

(a) Both styloid processes broken.

(b) Linear fracture 2" length over the left aspect of frontal bone, the fracture was tapering at its posterior part e/o infiltration staining present.

(c) e/o gnawing marks at metacarpals of left and right hands, lower end of right tibia and fibula and also left tibia the lower end of femur and upper

end of tibia also showed e/o gnawing on both sides, the cartilages were missing, no any e/o vital reaction at these sites.

It was further noticed that only injury No. (b) was ante mortem and it could be caused by hard and blunt object, whereas injury Nos. (a) and (c)

were post mortem. The cause of death was head injury as a result of linear fracture of bone of left side. The probable height of the deceased could

be about 144 cm. (Report at Exh. 413).

20. DB 7 was found to be of a human female aged between 25 to 45 years and could have died six months before the examination. On

examination the committee found the following injuries:

(a) Both the styloid processes broken.

(b) A curved fracture measuring 2.1/2" in length present 1/2" above and parallel in the left superior temporal lines, infiltration staining present.

(c) Two linear fracture measuring 3.1/2" in length each present extending from supra mastoid crest to the parietal eminence on either sides

infiltration staining present at these sites.

(d) Two linear fracture each measuring 1" in length present 1" above the right pterion. Infiltration staining present at these sites.

(e) A circular fire arm entry wound of near range seen at dried and hardened abdominal skin at the region of right hypochondrium, there was e/o

abrasion collar all around. The margins were swollen and dark reddish edges were inverted, blackish deposition noticed around it, even there was

e/o scorching of damaged subcutaneous tissue below the track was through and through the entire skin thickness, the diameter of this wound was

1" at the anterior part, at the posterior part the wound was wider 1.1/2" in diameter and showed e/o scorching and collar of abrasion all around in

a slightly oblique manner, the edges were everted, no any e/o presence of foreign body or metallic fragment within the wound or its track or in

underlying skeletal remnants.

(f) A slightly oblong firearm entry wound seen at the outer surface of right iliac bone near its crest measuring 3/4" in diameter, there was e/o

fissured tiny fracture lines conf-case-3-09 up to the upper part of the iliac crest, e/o Dark reddish collar of abrasion and scorching all around more

apparent at upper portion in an angular manner, this injury was involving entire thickness of iliac bone, the inner part of the bone showed a circular

hole measuring 1" in diameter with punch out edges and fissured tiny fracture lines all around, there was e/o scorching and blackish deposition all

around and at the vicinity of the same no any e/o presence of foreign body or metallic component at/within the wound track.

All the injuries were ante mortem and the probable cause of death was fire arm injuries to abdomen and pelvis with evidence of multiple fracture of

skull leading to head injury. The probable height of the deceased was 163 cms. Injury Nos. (e) and (f) were caused by firearm. Injuries (a) to (d)

could have been caused by hard and blunt object. Court Article Nos. 7-I and J were iliac bone showing fire arm injury (Photograph Nos. 10 and

11). The committee submitted its report at Exhibit 415. It was identified by the witness along with Court Article Nos. DB-7/K and L.

21. As per the report of the committee DB No. 8 was of human male aged between 25 to 45 years and the person could have died six months

before the examination. The committee found the following injuries on the bones:

(a) Both the styloid processes broken.

(b) A fracture 2" in length was present over the right side of the frontal bone extending upwards from the middle of right supra orbital margin and

also into the roof of the right orbit, infiltration staining noticed all along this fissured fracture.

(c) Lower 2/3 of the manubrium starni missing. The edges showed gnawing marks. No e/o vital reaction.

(d) The lateral ends of right clavical missing.

(e) Left scapula lower 2/3 missing, caracoid processes missing the cut edges sharp.

(f) Right scapula only coracoid process, glenoid and part of spine seen, edges sharp.

(g) Right humerus showed marks of gnawing at upper and over greater and lesser tubercles .

(h) Left humerus greater tubercle missing lower and end of capipulum and lateral and medical epicondyle missing e/o gnawing present.

(i) 5 (five) pieces of long bones (unidentifiable) present edges sharp.

Injury Nos. (g), (h) and (i) were post mortem injuries and injury Nos. (a) to (f) were ante mortem. All ante mortem injuries could be caused by

hard and blunt object. Probable cause of death was head injury resulting into fracture of vault and anterior cranial fossa at the base of skull. The

probable height of the deceased could be 174 cms. and according the committee submitted its report at Exhibit 417.

22. As per the committee the DB No. 9 was of human male aged between 18 to 20 years and he could have died about six months before the

examination. The committee found the following injuries on his person:

(a) Both the styloid processes broken.

(b) A depressed comminuted fracture just above the left frontal eminence measuring 1.1/2" x 1" with infiltration staining seen.

(c) A linear fracture measuring 2" in length present extending from nasion to the left side on the frontal bone e/o infiltration staining present.

All the injuries were ante mortem and were caused by hard and blunt object. The cause of death was head injury resulting into depressed

comminuted fracture of skull bone. The probable height of the deceased was 163 cms. The committee submitted its report at Exhibit 419 which

was identified by the witness.

This witness was cross-examined at length by the defence. He had admitted in the cross-examination that he did not supply copies of all the

documents to the IO and he also clarified that he had produced the photographs taken by the committee though they were not sought by the IO.

He also stated that the committee compared the bodies along with inquest panchanama and post mortem report. He also admitted that some

discrepancies in the description of the dead bodies in the inquest panchanamas and PM reports were noticed against the actual bodies received.

He further stated in his cross-examination that he had dealt with ballistic cases and in case of fire arm injury, there would be deposit of gun powder

residue on cloth and on internal injury at the place of entry of projectile. He also stated that in case of fire injury to body Nos. 1, 3 and 10, there

was single hole injury to sternum and in such case, it could not be opined whether the projectile was pellet or bullet. He also admitted that from the

nature of the injury it could not be opined that what type of firearm was used and whether it was shot gun or rifle. He also admitted that the range

of the firing could not be opined and the configuration of bullet or pellet could not be stated as in the case of close range firing by a shotgun. He

also admitted that DB Nos. 1,3 and 10 did not find any exit wound on the skeleton and the committee had not made any enquiry with the police

about the recovery of cartridges, or pellets near or around the spot. He also admitted that he could not authoritatively record the fire arm injury

found on D.B. Nos. 1, 3 and 10 was with the firearm shown to him before the court. These admissions of Dr. Jinturkar do not, in any way, shatter

the cause of death recorded by the committee in respect of D.B. Nos. 1 to 10 and, therefore, it could be safely accepted the prosecution case that

the cause of death of DB Nos. 6 to 9 was duly established and DB 7 was shot by firearm whereas in respect of DB Nos. 6, 8 and 9, the cause of

death was brutal assault by hard and blunt objects. DB Nos. 6 to 9 and 10 were the victims of culpable homicide (homicidal death). The possibility

of accidental death or suicidal death was ruled out. The Learned Counsel for the defence tried to highlight the deficiencies or irregularities that have

occurred in the transition of these dead bodies from Nandos plateau to the Civil Hospital and in turn to the Miraj Medical College and more

particularly in maintaining the case diaries / station diary by the IO concerned. However, even if it is accepted that some deficiencies / irregularities

have been noted by the trial Court, that by itself has not affected the prosecution case regarding the cause of death and there is no case made out

to doubt the opinion of the forensic expert committee headed by Dr. Jinturkar. During the course of lengthy arguments advanced before us the

learned defence counsel, by and large, have not raised any issue or ground which will raise doubts on the opinion given by the Forensic Expert

Committee regarding the cause of death. We, therefore, have no hesitation to hold that the prosecution proved its case of homicidal death in

respect of DB Nos. 6 to 10.

23. To prove its case against the accused, the prosecution has relied upon the circumstantial evidence and, therefore, we will have to consider, at

the first instance, in the process of assessing the case of circumstantial evidence the issue of identification of all these five dead bodies. As noted

earlier the trial Court has discarded the prosecution case of DB No. 1 and DB No. 10 and, therefore, acquitted the accused in Sessions Case No.

4 of 2005. For the identification of dead bodies the prosecution has relied upon:

- (a) The DNA test conducted by CDFD, Hyderabad;
- (b) Superimposition technique adopted by Expert from the office of Chemical Analysis, Kalina;
- (c) Oral evidence of friends and relatives of the deceased; and
- (d) The oral evidence of independent witnesses.

24. As per the prosecution in addition to the reports submitted by the Forensic Expert Committee headed by PW 76 - Dr. Jinturkar, the relations

of the victims were called for blood samples to the Civil Hospital, Sindhudurg and on 2/1/2004 ten relations of the missing persons / victims and on

3/1/2004 five relations of the missing persons / victims had given the blood samples. The witnesses to support this are PW 128 - Shri M.P.

Prabhukhanolkar and PW 71 - Mrs. Dipali Malgaonkar and furnished the names of the relations who visited the Civil Hospital on 2/1/2004. PW

71 was the Lab Technician in the Civil Hospital, Sindhudurg and she had collected the blood samples in the vials received from Hyderabad

CDFD. Dr. Shirsat, Dr. Shripad Patil, Dr. Rokade, Police Officers, Dy. S.P. Khanolkar, P.I. Godbole, P.I. Shitkar, Police Writer Pharmacist -

Anil Kumar Desai and two panch witnesses Malgaonkar and Rane-PW 86 were present when the blood samples were drawn. As per her

evidence Civil Surgeon Dr. Kulkarni opened the sealed packets containing vials and forms and another sealed packet containing syringes in the

presence of the above persons. Thereafter the photographs of the persons whose blood samples were to be drawn were also snapped outside the

cabin and one by one each of these relations was sent with the case paper. She had verified his / her name with the person concerned and also

compared the name from the case paper. The Police Officer then used to bring the photograph of such person and she verified the photograph

with the person she was drawing the blood sample. The doctors present had verified the MLC numbers and then she had collected 3 ml of blood

from the body of each of these relations. Each vial was then duly applied with the screw cap and handed over to Anilkumar Desai who was affixing

the sticking tape over the vial vertically and horizontally and at the center. All vials were having paper seals to write down the name of the person

MLC number which was filled by by Desai who had also affixed the seal of the Civil Hospital on the joints of the sticking tape. The signature of

two panch witnesses Malgaonkar and Rane were taken along with the signature of the IO i.e. Prabhukhanolkar - PW 128. Dr. Shripad Patil had

filled in the forms whose blood samples were extracted and he had affixed the photographs on each form of the concerned person. He had also

obtained the signature of the person whose blood sample was taken and the form was also attested by the Attesting witnesses with the signatures

and countersigned by IO - Prabhukhanolkar (Exhibits 330 to 339) which were filled in on 2/1/2004. She also stated that in the similar fashion

blood samples of five other relations of the victims were taken on 3/1/2004 and in similar fashion the forms were filled in at Exhibits 341 to 345.

She identified the list of persons whose blood samples were extracted and stated that all these vials were kept in the vertical position in the

cardboard box by using cotton balls. The seals were affixed thereon on the joint and they were signed by the panch witnesses and the IO. The

sealed packets were again wrapped in white paper with the tape affixed vertically and horizontally and the cartons were numbered as Khoka No.

1 and so on and so forth and were kept in the freezer. The testimony of this witness has been supported by the panch witness Uttam Malgaonkar

(PW 61). This witness admitted that she was not aware about any special procedure if required for taking samples of DNA but reiterated that she

had received the directions from CDFD, Hyderabad about procedure for taking samples and she has followed the same but she had not

maintained a record of the procedure adopted by her. She also confirmed that she had received a letter from FDFD, Hyderabad and denied the

suggestion to the contrary. She was subjected to a detailed cross-examination but nothing could be brought on record to suspect her evidence

regarding the blood samples she had drawn as per the directives of CDFD, Hyderabad and the syringes sealed, tagged and kept in the freezer.

The evidence of this witness read with the evidence of IO Prabhukhanolkar and Uttam Malgaonkar, has also been supported by Dr. Shripad Patil

- PW 28 who stated before the trial Court that IO Prabhukhanolkar had issued letter to the hospital on 2/1/2004 (Exhibit 174) and on the same

day the Lab Technical Dipali Malgaonkar had collected the blood samples of ten persons in the presence of Dr. Rokade, Dr. Shirsat and the Civil

Surgeon. He also furnished the list of the witnesses whose blood samples were collected on 2/1/2004 and 3/1/2004.

25. PW 107 - S. Pandurang Prasad, Senior Technical Examiner in Laboratory of DNA and Finger Printing Services under CDFD stated before

the Court that he passed his Masters Degree in Bio-Chemistry from Osmaniya University and was working with the CDFD from February 1998.

He had analysed more than 350 DNA cases and more than 200 samples. He confirmed before the Court the receipt of samples on 5th January

2004 from Civil Hospital, Sindhudurg and the samples were in tact, the seals were tallied with the specimen as well as the seals sent from S.P.

Sindhudurg. He also stated that every sample had specimen seal of police as well as that of the Civil Hospital, Sindhudurg. He had received in all

ten samples of bones and 15 blood samples, one vaccine container had ten blood samples and other container had five blood samples and third

box had the bone samples. The bones were packed in the plastic bottles independently. He stated before the trial Court that barring the bones

from bottle No. 4 in respect of DB No. 4, all other bones were metacarpal bones of respective bodies kept in separate plastic bottles. He also

confirmed the receipt of the forms at Exhibits 330 to 339 and 341 to 345. He also stated before the trial Court that out of ten bones received by

the office only four were found suitable for the purpose of DNA analysis i.e. the samples taken from DB Nos. 1, 6, 8 and 9 were found suitable.

By separate letter dated 5/3/2004 his office had requested the SP, Sindhudurg to transmit any other body part pertaining to unknown body Nos.

2, 3, 4, 5, 7 and 10 and in response thereto the SP Sindhudurg had despatched six femur bones of these bodies on 9/3/2004. He further stated

that on examination of these bones he found that femur bone sent from DB Nos. 2 and 7 were workable for the purpose of DNA analysis and the

other samples were not found suitable. He stated before the trial Court that on conducting tests he concluded his opinion as under:

(1)U.B. No. 1 was biological relative of Mr. D.B. Sarge.

(2)U.B. No. 8 was biological father of U.B. No. 6 and U.B. No. 7 was biological mother of U.B. No. 6 and also U.B. No. 6 is biological relative

of U.B. No. 9.

(3)U.B.No. 7 was biological relative of Ratnakar Tukaram Doke and Mohan Tukaram Doke.

(4)U.B.No. 8 was biological son of Mrs. Yamunabai Nanaji Mali and also biologically related to Mr. Kailas Nanaji Mali

(5)U.B. No. 8 was biological father of U.B. No. 9 and U.B. No. 7 was biological mother of U.B. No. 9 and biological relative of U.B. No. 6.

This witness further admitted before the trial Court that he could not record his opinion in respect of UB 10 since the samples sent were not

suitable for the purpose of analysis and minimum markers were not available for recording the results. He confirmed the contents of the report and

his signature (Exhibit 650). He also affirmed the confirmation of specimen seals and tallying of the seals present on the original letter received by his

office with the seal of Civil Hospital and produced the letter at Exhibit 651-A. He also confirmed that the photographs presented with the letter

dated 3/1/2004 were tallying with copies of photographs of blood donors and placed reliance on the letter at Exhibit 651-B.

26. Let us now consider the medical and forensic evidence in Sessions Case No. 5 of 2005. As per PW 86 -Suhas Rane, Police Constable, DB

Nos. 1 to 3 were entrusted to him after they were recovered from the plateau of Nandos on 20/12/2003 after drawing panchanama of inquest by

the Liyakat Ali Pardeshi (PW 121) and in the presence of panch witnesses Guruprasad Naik and Vasant Parab (PW 77). These dead bodies

were then shifted to the Civil Hospital, Oros. Dr. R.S. Patil (PW 23) conducted post mortem of DB No. 2 which was handed over to him by PW

86 on 21/12/2003 at the instance of PSI, Vengurla for post mortem. He found that the dead body was of a male, aging around 30 to 60 years and

dark blue colour trouser with metalick belt and buckle with lable ""Green World"", yellow colour waist full size and sando banian were present on

the body. The clothes were stained with blood, there was one metal ring with white top in the right hand ring finger, Roboc shoe only in the left foot

(7 size) were seen. No opinion could be expressed by the Medical Officer since the body was mummified and it was heavily decomposed with

minimal soft autolite tissues and skin. The bones were exposed and the body was almost skeletonized. The eye balls were missing and in addition,

the Medical Officer noticed the following injuries on the surface:

(i) Incised wound on scalp (i) on the vertex in midline of size 1 1/2 x 1/2 bone deep spindle shape with everted edges.

(ii) On right parietal area size 2""x1"" by bone deep spindle shaped with everted edges. Mark of sharp object on skull seen.

(iii) Right parietal area 3"" above right ear size 2"" x 1 1/2"" bone deep. Spindle shape with everted edges.

(iv) Right martoid area (1"" behind right ear). Size 1 1/2"" x 1/2"" bone deep. Spindle shaped with everted edges.

As per the Medial Officer all these injuries were ante mortem and he found mark of sharp object on the skull on injury No. 2 but without any

evidence of fracture was present. The brain matter was missing and in the rib cage only heart and liver were found. The stomach and intestine were

missing, liver was congested, spleen and kidney were missing. As per the doctor, the probable time of death was more than one month before the

date of post mortem. The viscera was preserved of liver and heart, skin and hair and nail. He opined that the exact cause of death could not be

given but stated that the ante mortem injuries found on the scalp could have resulted in profused bleeding and the patient might have died of

haemorrhagic shock on account of head injury. He signed the post mortem notes at Exhs.150 and 151. The body was thereafter packed in the

box and it was sealed and handed over to the police for further examination of Forensic Expert at Miraj Medical College. The Medical Officer

further stated that on 24/12/2003 he was again called at Miraj Medical College and in the presence of Dr. Jinturkar (PW 76) obtained samples of

muscles and metacarpal bone, scalp, hair, nails, metatarcel bone, thigh muscles mass and scalp piece for the purpose of DNA test. He sealed all

these samples and handed over to the police for referring it to C.A. He also admitted in his cross-examination that the DB No. 2 sent in the card

board box was not opened before he reached the Miraj Medical College.

27. PW 37 - Dr. P.N. Jadhav performed the autopsy on DB No. 3 between 6 p.m. To 7.30 p.m. On 21/12/2003. According to him the dead

body was of a male adult person around 18 years of age. It had bluish coloured pant, brown coloured underwear, leather belt, black thread

around the waist, yellow coloured shirt and white banian. The clothes were soiled and muddy and the body was highly decomposed and partly

skeletonized. The doctor admitted before the trial court that he could not opined about the cause of death and made a reference for opinion of

expert of Forensic Medicines, after signing the post mortem report at Exh. 239. He sealed the dead body in the cartoon box along with the articles

on the body, affixed the lable of his name on the box and handed over the custody to the police constable. He also stated that on 24/12/2003 he

along with other six Medical Officers visited the Miraj Medical College and in the presence of PW 76 - Dr. Jinturkar took the samples for

reference to C.A. and DNA in separate glass bottle.

28. As per PW 82 - Sharad Lohakare, Police Constable, after drawing the inquest panchanama of DB Nos. 4 and 5, they were brought to the

Civil Hospital, Oros and PW 36 - Pradeep Chavan was the panch witness. White sando banian and one jean pant of black colour were on the

dead body. The banian was torn, soiled and blood stained and the leather belt of black colour was stuck in the loops of jean pant. It was a body

of a male and without any flesh on the nasal bone and eyes were missing. Lower jaw was separated from the head and some teeth were missing.

Three ribs were dismantled. The police tied one label as Body No. 4 to the jean pant of the said dead body. The post mortem on DB No. 4 was

performed by PW 105 - Dr. Mangesh Tarate, whereas on DB No. 5 PW 24 - Dr. Balasaheb Joshi performed the autopsy and signed the post

mortem report at Exh. 157. The post mortem of DB No. 4 was at Exh.607. As per PW 105, DB No. 4 was of a male aging around 25 years and

only skeleton was there. No abdominal viscera was found, eyes were missing and there was no brain in the skull cavity. There was no thoracic and

abdominal viscera. He could not opined the probable cause of death and suggested expert"s opinion from Forensic Govt. Medical College, Miraj.

He also admitted that on 24/12/2003 he had visited the Miraj Medical College for the purpose of drawing samples for DNA test and he had

drawn samples under the receipt at Exh.487. In his cross-examination, he affirmed that no bone of the body was separated. PW 24 - Dr.

Balasaheb Joshi stated before the trial court that he performed the autopsy on DB No. 5 between 6 p.m. to 7 p.m. On 21/12/2003 and the dead

body was brought before him by PW 82 - Sharad Lohakare. The body was of a male aging around 18 years. There was a blue jean pant with

white checks full shirt and sando banian and underwear on the dead body. One yellow rubber band on the left hand of the dead body and two

black cut shoes of size No. 7, one blue sock over the feet of the deceased were found. There was no stains due to decomposition and shrinkage

of the body and, therefore, no surface injury was seen, no fracture of skull was observed but there was blunt depression about 4 cm. X 4 cm. right

frontal area. The blunt depression on the skull was ante mortem and according to him the death must have occurred about 3 to 4 weeks before the

date of post mortem. He also stated that he had preserved viscera and received the CA report that no poisonous substance or arsenic was found

in the viscera. He identified the articles found on the dead body when shown to him before the court (DB-5-A and DB-5-B). He also admitted

that he had visited the Miraj Medical College on 24/12/2003 and collected viscera samples of Metacarpal bone, muscle mass from right arm for

DNA test and metacarpal bone, piece of skin with hair from scalp for forensic science testing. Thus, the evidence of these four Medical Officers

went to show that DB Nos. 2 to 5 were of male human and indicating that the death was homicidal.

29. Let us now consider the forensic evidence in respect of DB-2 to DB-5. As noted earlier, while assessing the evidence for DB-1 and DB-6 to

DB-9, PW 76 -Dr. Jinturkar was the head of the Forensic Committee specifically formed at the Miraj Medical College. He affirmed before the

trial court that photographs of DB-2 to DB-5 were taken individually, in whatever form the bodies were available after they were received at the

said Medical College from the Civil Hospital, Oros. These photographs were taken, defining the description of every bone/skeleton and they were

marked separately for the respective DBs along with the key. The Forensic Committee's report at Exh. 405 was affirmed by the said witness.

DB No. 2:

As per the Committee, DB 2 was of a human male, aging around 25 to 45 years and the death could have occurred about six months before the

examination. The following injuries were found on the said DB:

(a) An obliquely located incised wound over scalp at vertex to the left from midline by half inch, the anterior portion showed overlying flap and the

margins were clean cut and swollen, at the posterior portion, hair bubble were clean cut, the edges showed dark reddish infiltration staining, it

measured 2"x1" gaping was apparent.

(b) A vertically placed incised wound over right parietal region, extending from right parietal eminence and tapering at the posterior most part, it

measured 2.1/2" x 3/4" bone deep, margins clean cut, hair bubble clean cut, edges swollen and dark reddish, evidence of significant bruising all

around the wound, gaping seen.

(c) An obliquely placed incised wound over right parieto temporal region, it measured 2.1/2"x1.1/4" bone deep, margins clean cut, swollen and

bruised, dark, reddish staining seen.

(d) An obliquely placed incised wound at right mastoid region measuring 1.1/2" x 1/2" muscle deep margins clean cut and swollen, dark reddish

staining at the edges, evidence of gaping present.

(e) Both the styloid processes broken.

(f) A sharp incised wound over the right parietal bone measuring 3" inch in length.

(g) Mandible broken just to the right of symphysis menti into two halves, edges sharp.

(h) Right transverse processes of two of the typical cervical vertebrae broken.

(i) The sacrum is broken on the right side near the lower part involving lower three sacral vertebrae.

(j) Lower end of the right ulna missing edges are smooth.

(k) Lower end of the left ulna missing edges show gnawing marks.

(l) Lower end of the left and right radius missing, edges shown gnawing marks.

PW 76 - Dr. Jinturkar stated that Injury Nos. (a) to (j) were ante mortem and Injury Nos. (k) and (l) were post mortem. As per him the probable

cause of death was the head injuries [(a) to (d)] resulting into the fracture of the skull and these injuries could have been caused by sharp cutting

object. Whereas Injury No. e, h, i, j could have been caused by hard and blunt object. External injury

(b) corresponds to internal injury (f). The relevant photographs in this case were at Exh.DB-2A to DB-2J and the key was admitted in evidence at

Exh. 104.

DB No. 3:

30. The Committee Report stated that DB-3 was of human male, aged between 25 to 45 years and the death could have occurred six months

before the examination. The following injuries were noted on the said dead body:

(a) Left styloid process broken.

(b) A linear fracture extending for right external acoustic meatus towards right parietal eminence seen about 3" in length.

(c) Two linear fractures each measuring 3" found extending from left external acoustic meatus upwards and towards the left parietal eminence.

(d) A circular hole measuring about 1/4" in diameter seen manubrium sterni, the margins on the anterior side were even and inverted with evidence

of linear fracture of surrounding bony portion, evidence of scorching and charring all around margins at the posterior portion it showed evidence of

carbon deposition and charring with everted punchout margins, the track was oblique.

(e) Another circular hole about 1/2" in diameter seen to the right of junction of upper 2/3" with lower 1/3" of the body of sternum, margins were

inverted and showed minimal evidence of scorching and blackening at the posterior part the margins were inverted.

(f) Right lower 1/3 part of the body of the sternum was broken from the rest of the body.

(g) Left clavicle broken at the junction of medial 1/3 with the lateral 2/3.

(h) Left scapula showed two holes each of 1" diameter just below the spine with linear extensions.

The Committee"s report (Exh. 407) further pointed out that all these injuries were ante mortem and the probable cause of death was fire arm injury

to chest and fracture of skull leading to head injury.

Injury Nos. (d) and (e) were caused by fire arm and rest of the injuries by hard and blunt object. The photographs of the dead body were Article

Nos. DB-3-I and DB-3-J, whereas photograph DB-3-K was of collar bone and scapula of left shoulder. The bone of scapula shown a fire arm

injury.

DB No. 4:

31. The photographs of the dead body were Court Articles DB-4C to K, whereas the key was marked at Exh. 408. The Committee"s report at

Exh. 409 opined that it was a body of a human male of age between 25 to 45 years and could have died six months prior to the date of

examination. The following injuries were found on the said body:

(a) Both the styloid processes are broken.

(b) A linear fracture 2"" in length extending from the right supra mastoid crest upwards towards parietal eminence.

(c) Left upper half of the manubrium broken, it is broken in ""L"" shaped manner, broken edges show reddish infiltration staining more marked at the

upper portion.

(d) Right coracoid process of scapula broken, e/o reddish infiltration staining present.

(e) Left ulna lower end broken, edges sharp infiltration staining present.

(f) Right radius styloid process broken.

(g) Right tibia medial malleolous missing e/o gnawing marks present.

(h) Right fibula lateral aspect of the lateral malleolus showed e/o gnawing.

(i) Left fibula lateral malleolous missing e/o gnawing present.

The Committee opined that the injuries from (a) to (f) were ante mortem and the injuries at (g), (h) and (i) were post mortem. All the ante mortem

injuries could be caused by hard and blunt object. The cause of death was head injury due to fracture of skull bone with blunt thoracic trauma

associated with multiple ante mortem fracture.

DB No. 5:

32. The photographs of this DB were before the trial court at Exh.DB-5-E to J, whereas the key was admitted in evidence at Exh. 410. As per the

Committee"s report at Exh. 411, on examination of the body and the skeleton, it was found to be a body of human male between 25 to 45 years

and the death could have occurred six months prior to the date of examination. The following injuries were found on the skeleton:

(a) Right styloid process broken.

(b) Small linear fracture measuring 3"" in length with e/o infiltration staining seen over the right side of the frontal bone extending from supra orbital

margin upwards and straight backwards showing infiltrating staining.

(c) Small linear fracture measuring 4"" in length with e/o infiltration staining seen over the left side of the frontal bone extending from supraorbital

margin upwards and straight backwards.

(d) A sharp linear injury about 1"" in length present behind the junction of medial wall and roof of right orbit with e/o infiltration staining.

(e) Left fibula broken in two pieces, edges are sharp.

(f) A sharp linear injury measuring about 1"" and lying just to the left of the midline seen over the lower segment of the sternum, e/o. Infiltration

staining seen, the injury is more marked at the back portion .

As per the Committee's report, injury Nos. (a) to (f) could have caused of hard and blunt object and the cause of death was, head injury due to

fracture of the skull bone with blunt thoracic trauma associated with multiple fracture. In his cross-examination PW 76 stated that the Committee

had compared all these DBs along with the inquest panchanama and post mortem report in each case. He also admitted that some discrepancies in

the description of the dead bodies in the inquest panchanama as well as the post mortem notes, against the actual bodies received. However, the

trial court has rightly held that these discrepancies were minor in nature and they could not have any impact on the forensic evidence leading to the

cause of death i.e. Homicidal death either by fire arm or by causing injuries with hard and blunt object/weapon. This Forensic Committee's report

in respect of DB-2 to DB-5 and at Exhs. 405, 407, 409 and 411 proved that in each case the victim was done to death i.e. culpable homicide

amounting to murder. In none of the cases it could be said that it was an accidental death or suicidal death.

IDENTIFICATION of DB-2 TO DB-5:

33. So as to establish the identification of these dead bodies, the prosecution relied upon,

(a) DNA test conducted by CDFD, Hyderabad,

(b) Superimposition technique adopted by Expert from the office of Chemical Analysis, Kalina,

(c) Evidence of friends and relations of the deceased,

(d) Evidence of independent witnesses

Let us first consider the evidence of DNA test. As noted in Sessions Case No. 3 of 2005, the main witnesses in this regard were PW 128 - Shri

Madhav Prabhukhanolkar and PW 71 - Sou. Dipali Malgaonkar. They had given the names of the relations who were present for giving blood

samples on 2/1/2004 and the blood samples were taken by PW 71. The persons who had given blood samples were Dudhe, aging around 80

years (father), Dudhe, aging around 40 years (brother), Chavan, aging 40 years, Pisal, aging around 40 years, Pisal, aging 38 years, Mali, aging 38

years (brother), Smt. Mali, aging 60 years (mother), Doke, aging 30 years, Gavare, aging 45 years and Sarge, aging 55 years. On the next day i.e.

On 3/1/2004 another batch of witnesses appeared for giving blood samples and such samples were taken by PW 71 - Dipali Malgaonkar. The

names of these witnesses were, Chavan, aging 45 years, Doke, aging 27 years, Thakur, aging 18 years, Ms. Swati, aging 17 years and Smt.

Chavan, aging 45 years. The samples were taken in the presence of a team of doctors and police officers along with two panchas i.e. Mr Uttam

Malgaonkar (PW 61) and Mr. Suhas Rane (PW 86). She also stated that Civil Surgeon Kulkarni opened the sealed packet containing vials and

forms and another sealed packet containing syringes in presence of the aforesaid persons. Thereafter photographs of the witnesses whose blood

samples were taken were snapped and she went through the case papers of each of the witnesses so as to verify the name of the witness and the

case paper and the police helped her to identify the said witness by showing her the photographs which were snapped. After taking their blood

samples, vials were sealed with the names of the donor written on respective vial and the signatures of panch witnesses were obtained along with

PW 128 - Prabhukhanolkar as the IO. Forms at Exhs. 330 to 339 were filled in on 2/1/2004 and the Forms at Exhs. 341 to 345 were filled in on

3/1/2004, after drawing blood samples. The evidence of PW 71 has been supported by the panch witness - Uttam Malgaonkar -(PW 61). This

evidence duly established that the blood samples of the relations were taken for DNA test and the samples were sent to CDFD, Hyderabad.

34. PW 107 - Shri S. Pandurang Prasad, Senior Technical Examiner in the DNA Laboratory of CDFD, Hyderabad, stated before the trial court

that the 10 blood samples of bone and 15 blood samples were received, has sent through the S.P., Sindhudurg with specimen seal of the police as

well as that of the Civil Hospital, Sindhudurg. He stated that femur bone sent from DB-2 was workable for the purpose of DNA analysis. After

conducting the tests, he concluded his opinion as under:

UB No. 2 is biological son of Mr. Vinayak Anandrao Dudhe, aged 80 years and also biological relative of Mr. Ranjitsing Vinayak Dhude age 40

years (brother). This witness admitted that he could not record his opinion in respect of blood samples of UB Nos. 3, 4, 5 and 10 since the

samples sent were not suitable for the purpose of analysis and minimum markers were not available for recording the result. He confirmed his

report at Exh. 650 and the photographs presented with the letter dated 3/1/2004 has tallied with the photographs of the blood donors (letter Exh.

651-B). This witness, therefore, supported the prosecution case only to identify that DB - 2 was that of Vijaysinh Vinayakrao Dudhe. We have,

therefore, to consider whether the prosecution has established the identity of DB Nos. 3 to 5 by superimposition test.

35. In this regard, the prosecution has relied upon the evidence of PW 95 - Arun Jadhav, Police Constable, who stated before the trial court that

on 5/8/2004 PI Landage had directed him to carry 107 articles, including the skulls of DB Nos. 3 to 5 and delivered them to the Forensic Lab at

Kalina, Mumbai for examination. He stated that he carried the sealed skulls of DB Nos. 3 to 5 with the photographs collected of each of these

DBs from their relations and while the deceased were alive. He had entrusted the same along with the skulls with covering letter at Exh.577. PW

108 - Ratnaprabha Gujarathi stated before the trial court that on 6/8/2004 the office of C.A. received three parcels and three envelopes through

the police constable, Buckle No. 787 vide the letter at Exh. 571. She had opened the parcels and found that all three skulls were sent in three

boxes and they were suitable for the purpose of C.A. She also stated that three photographs were sent in three envelopes and those photographs

were in workable condition. Three anatomical reports were also attached indicating the age and sex of the deceased. She found that the details of

the missing persons were not furnished by the police and, therefore, she sought clarification and she received reply vide Exh. 666 dated 9/9/2004,

but received in her office on 28/9/2004. She started working on the analysis from 28/9/2004 and the photographs received were sent to the

photography section of her laboratory. Each photograph was taken in front of the camera and the picture was seen on the plate and then the plate

was adjusted in order to acquire sharpness in the picture and the outlines of the picture are marked with the sketch pen on the plate. Thereafter,

the photograph of plate size was taken so as to superimpose. The skull was fixed on the stand in front of the camera by maintaining the very

distance which was maintained while taking photograph from the sketch and the photograph of the adjusted skull was taken. The skull was moved

horizontally and vertically so as to see that anatomical landmarks on the skull fits into the outline of the photograph, sketched on the place. She

affirmed Exh. 3 in her report at Exh. 629 as the photograph of the part of the skull stand. This procedure was followed for each of the three DBs.

The witness then had drawn polygone taking into consideration the anatomical landmarks and thereafter the landmarks were noticed by giving

different alphabets. The witness further affirmed that 12 different distances were drawn on polygone of the skull photograph and the fix

photograph. She noted that those distances were tallied with each other and when tallied with each other correctly, the positive report is prepared

and when it won't work out exactly, a negative report is prepared. Thus, by adopting this method, she had prepared the report in respect of skull

MR No. 27, Court Article No.DO as well as MR-26-Court Article DN, the second skull and MR-28-Court ArticleDP, 3rd skull. She concluded

that the photograph superimposed of suitably oriented skulls in Exhs.1, 3 and 5 onto the photographs of the face of the victims in Exhs. 2, 4 and 6

respectively showed consistency regarding craniofacial landmarks and indicates that the skulls in Exhs. 1, 3, 5 (DB Nos. 3 to 5) could have

belonged to the victims in Exhs.2, 4 and 6 respectively. She accordingly prepared the certificate dated 30/6/2004 and signed the same (Exh. 629).

In her cross-examination, she stated that by way of abundant caution age of missing person was sought though the lab can determine the

approximate age of the adult and the police had also furnished information regarding sex of the missing person. She also stated in her evidence that

by the very letter, the office had sought information from police about mandibles of all the three skulls since they were missing. However, the police

had informed that they were not available. She also stated in her cross-examination that in order to obtain the best result, the photographs all

referred to the office should be as recent as possible but the police had not informed as to when the photographs referred were taken. She also

admitted that the result may vary when the angles of mounting the skulls were set incorrectly and one of the important anatomical feature is

Nasometal frame, on the basis of which one can gather idea of muscles on the cheek and chin. She also admitted that DB No. 4 (Court Article

DO) had no incisors when it was referred to her. Whereas DB No. 5 (Court Article DP), four incisors right pre molar and left mastoid were

absent. In the third skull (Court Article DN) (DB-3) upper left incisor was not present. She did not know if the quality of photograph is affected on

account of retraction of the rays. She also admitted that she had not received any training in respect of Anthropology and explained that skull

superimpositions is not part of Forensic Anthropology. She also admitted that she had not made any study in Anatomy nor she had made any

special course in photography. She clarified that the lack of knowledge/ training in these areas, did not affect the superimposition test, she carried.

She denied that the superimposition science had been founded on probabilities but admitted that findings are subject to probability. She denied that

when the value of the probability increases above 5%, it is not considered as a finding. She emphasized that the probability of the finding recorded

by her was above 99%. She further admitted that the reliability of the superimposition technique has been shown to be 91%. This witness proved

that she had conducted the superimposition tests, she had sufficient experience in the said technique and DB Nos. 2 to 5 were that of Vijaysinh

Vinayakrao Dhude, Dadabsaheb Dinakr Chavan, Sanjay Namdeo Gavare and Bala @ Vinayak Anant Pisal respectively. Thus DB-3 -

Dadasaheb Dinkar Chavan, DB-4-Sanjay Namdeo Gavare and DB-5-Bala @ Vinayak anant Pisal came to be identified on the basis of the

superimposition technique alone, whereas DB-2-Vijaysinh Vinayakrao Chavan came to be identified on the basis of the DNA test as well as

superimposition test. It is also clear that DB Nos. 3,4,5 and 10 were as good as not referred DNA since the samples sent were found unsuitable

for the DNA test.

36. Identification of the DB Nos. 6 to 9 was on the basis of the evidence of PW 107 - Shri S. Pandurang Prasad, Senior Technical Examiner and

the trial court was right in accepting the evidence of this witness. His evidence proved beyond reasonable doubt that DB-6 and DB-9 were the

sons of DB 8 and DB 7. This witness stated before the trial court that DB 7 and BD 8 were related to each other. DB 6 was of Sanjay Kerubhai

Mali, DB 7 was of Anita Mali, the biological mother of DB-6 and DB-9. DB-8 - Kerubhai Mali was biological father of DB-6-Sanjay and DB-9-

Rajesh. The prosecution did not stop on examining Shri S. Pandurang Prasad alone so as to identify DB-6 to DB-9. PW 66 - Mohan Doke is the

full blood brother of DB-7 - Anita Mali. He stated before the trial court that his sister Anita was married to Kerubhai Mali (DB-8) and from the

said wedlock the couple begot two sons, Sanjay - DB-6 and Rajesh - DB-9. It has come in the evidence of this witness that Kerubhai Mali was

residing in a flat on ground floor in M.G. Complex at Vashi and had two shops in the APMC Market area, one of them registered in his name

while the other one was registered in the name of his wife-Anita. This witness also stated before the trial court that Kerubhai was maintaining a

diary (Court ArticleFJ) and the name and address present on the first page of the said diary was in the handwriting of Rajesh - DB-9. He identified

the photographs of Kerubhai and Anita (Court Article FE to FE-3) and stated that these photographs were taken at the religious function of

Warming Ceremony while occupying the flat at Vashi. He stated that Kerubhai was hospitalized between 6/11/2003 and 10/11/2003 and he had

met him at Vashi on 11/11/2003 at the time of dinner and noted that he was in a gay mood. Kerubhai had also told him that his financial problems

would be solved by one Santosh Chavan. This witness had also learnt from Kerubhai as well as his son - Sanjay that the family had decided to go

on trip to Mahabaleshwar and Kankavali area. On 13/11/2003 he had made a telephone call at the residence of Kerubhai Mali but there was no

response. He further stated that Kerubhai was using mobile phone No. 9821281575 and the instrument was of blue colour (Court ArticleX). He

continued to make attempts to contact Kerubhai but in futility. He identified piece of saree which was shown to him and it was a piece of his

sister's saree, including the hair clip. According to him, the younger son - Sanjay was about 4 1/2 ft. whereas the elder son - Rajesh was about 5

ft. 3 inch in height. He also identified hair pin (Court Article DB-7B) and claimed that Court Article E was the bag of Kerubhai Mali since

Kerubhai was using the said bag while travelling for carrying the cash for making payments to the agriculturists. He also stated that Kerubhai was

wearing a wrist watch of Rado brand, one or two gold rings, a gold chain with pendant. Rado wrist watch was big in size, had a golden colour dial

with metallic gold belt and. Alphabets KNP were carved on the said wrist watch outer side of the clip. The gold ring of Kerubhai was carved with

Idol of Lord Ganesh and the pendant of gold chain was also engraved with Balaji on one hand and Ganpati on the other. He thus identified Court

Article AX - wrist watch, Court ArticleBI - gold ring, Court ArticleBJ - pendant as well as the ear rings of Anita Mali along with Mangalsutra and

gold ring (Court Arts. U, BN and G). He was shown photograph (Court ArticleFE) and on careful observation, he stated that the Mangalsutra

(Court ArticleG) was the same which was on the person of DB-7, whereas the golden colour wrist watch would be in the hand of DB-8.. The

defence tried to bring out some contradictions in the evidence of this witness, but the trial court rightly discarded them as the minor human failures

and accepted PW 66 as a reliable and natural witness.

37. So far as DB Nos. 2 to 5 are concerned, the prosecution relied upon the evidence of PW 97 - Pradip Anantrao Pisal, PW 98 -Vinayak

Dinkar Chavan, PW 63 -Fattthesingh Vinayakrao Dudhe and PW 80 - Jyoti Gavare.

PW 80 - Jyoti Gavare was the wife of Sanjay Gavare - DB-4. She identified the photographs of Bala Pisal and her husband (Court Arts. AD and

AA). She also identified the other two photographs of her deceased husband marked as Court Arts.AA1 and AA2. She stated before the trial

court that on 25/10/2003 he had left the house at 4 p.m. with one Thorave and he returned home at about 11.30 p.m. On 28/10/2003 she had

received a phone call from her husband stating that his financial work was done and he would return within 2 to 3 days. She stated before the trial

court that her husband was carrying cell phone with No. 31065433. After 28/10/2003 she had made number of attempts to contact her husband

on that telephone but it was in vain. She also stated that her husband used to stay away from the family for long intervals because he was dealing in

land/property transactions/sale. As her husband failed to return within two months she made enquiries with her relations and also to her matrimonial

aunt's son who was a Corporator at Chinchavade. On 22/12/2003 she had learnt from one Sunil Chinchavade about seven dead bodies found by

the police on the hill of Nandos in Sindhudurg District. On 26/12/2003, she along with Sunil Chinchavade, his wife - Sharda, brother Anil and her

father-in-law Namdeo visited Malvan and read a newspaper called ""Vartahar"" , when the Malvan Police had shown her the clothes as well as 7x12

extract of one Kemase and one rubber ring. She identified the same as the articles belonging to her husband. He used to wear a rubber ring around

his wrist. On 1/1/2004 she was called with her father-in-law for taking blood sample and accordingly on 3/1/2004 blood sample of her father-in-

law was taken along with photograph. She also handed over to the police the old photographs of her husband. On 25/3/2004 she was called by

the police at Oros and the dead body of her husband was handed over to her and her father-in-law. She identified the clothes that were recovered

from DB-4 along with belt (Court ArticleDB-4-A, full shirt (Court ArticleDB-4-EP) and pant (Court ArticleDB-4-L) as well as the handkerchief

(Court ArticleDB-4-M). She admitted in the cross-examination that she knew Joyas @ Bela Nivenkar and that she was acquainted with her as

well as her husband. She denied the suggestion that before her husband went missing, he had deserted her and was staying with Joyas at Saint

Tukaram Nagar, Pune. She also stated that her husband held from Gavarwadi and his parents were alive. She had cohabited with her husband for

three years from 1996 and her house at Dattanagar is rented premise. She was working in the School at Akurdi from 1998-1999.

The prosecution examined PW 97 - Pradip Pisal and PW 98 - Vinayak Chavan. Pradip Pisal is the brother of Bala @ Vinayak Anant Pisal - DB-

5. PW 97 stated before the trial court that Vinayak was residing at Kulgaon with his wife and son in Parigandha Apartment, Room No. 4. Vinayak

was running a hotel in partnership and on 15/11/2003 he had received a phone call from the wife of Vinayak stating that Vinayak had left on

28/10/2003 with R.D. Pujar and Bala Lokhande and informed her that they were going to Borivali to meet accused Santosh. He had also learnt

from her that Vinayak had taken one pair of dress with him and, therefore, he had asked the details of the clothes. Vinayak's wife informed him

that he was wearing gray white shirt with checks and blue jeans pant and pair of shoes. As Vinayak did not return, he went to Badlapur Police

Station and informed that he was suspecting the involvement of Lokhande and Pujar in the disappearance of his brother.

PW 122 - Vijay Yadav stated that on 24/12/2004 the articles of DB-5 were shown to witness Pradip Pisal within the premises of railway station

of Khalapur. PW 98 - Vinayak Chavan is the brother of Dadasaheb Chavan - DB-3. He stated before the trial court that he had last met his

brother Dada on 26/10/2003 at Swarget near Natraj Hotel when Dada had told him that he was going to Ratnagiri and that time Dada was

wearing green colour pant and chocolate colour shirt. Vinayak Chavan gave the telephone number of his friend - Arjun Jadhav to Dada in order to

keep contact with him and since nothing was heard about his brother Dada for 8 to 10 days, he enquired with his parents at Jevur as well as friend

Arjun Jadhav. He also stated before the trial court that Dada had raised loan of local cooperative society. He further stated that on 21/12/2003 he

learnt from his friend Arjun Jadhav that a telephone call was received from Sindhudurg Police Station about the recovery of dead bodies and one

telephone diary in which the name of Arjun Jadhav was noted. The police had rang up Arjun Jadhav on the basis of the said telephone number.

Vinayak Chavan went to Sindhudurg by a private vehicle with his wife, wife of Dada and wife of Bhimrao. They were all taken to the civil hospital

on 22/12/2003 and around 6.30 to 6.45 p.m., they were shown the dead bodies and he had identified DB-3 as that of his brother Dada Chavan

on the basis of clothes and chapples. They stayed in Sindhudurg for one or two days and went to Pune. Again they received a telephone call on

31/12/2003 asking them to come to Oros for collection of blood sample for DNA test. His blood sample was taken on 21/1/2004. He also stated

that on 26/12/2003 he had visited Oros along with photograph of his brother Dada i.e. Court ArticleAC. He also identified the diary (Court Article

EC) as the one written by his brother Dada. He also identified the diary which was seized (Court ArticleFX) and it was a diary written by Dada.

He identified the waist belt with buckle (Court ArticleDB-3-B) as belonging to his brother - Dada. He also stated that on 21/12/2003 when he

visited Oros Civil Hospital, he had seen the articles belonging to his brother, kept adjacent to his body. He also admitted that when he saw the

dead body of his brother, the diary (Court Article EC) was not shown to him and he saw the diary on 23/12/2003 when police recorded his

statement. PW 5 - Sachin Chavan was the carrier of DB Nos. 2 to 5. Thus, PW 97 - Pradip Pisal identified DB-5 as the dead body of his brother

- Bala @ Vinayak Anant Pisal and PW 98 - Vinayak Chavan identified DB-3 - Dadasaheb Dinkar Chavan.

38. Sessions Case No. 4 of 2005 arose from C.R. No. 1 of 2004 and it was in respect of the abduction and murder by criminal conspiracy of

Shankar Sarage (DB 1) and Hemnath Thakre (DB 10). It was alleged that they were robbed of cash worth of Rs. 1,55,000/- and were done to

death by the accused on 24/9/2003 by deadly weapons like guns, swords, rods, revolvers etc. We have already noted that DB 1 was recovered

on 21/12/2003 and the prosecution proved beyond reasonable doubt that it was of Shankar Sarage.

So far as DB 10 is concerned, as per the prosecution, during the course of investigation in all the three CRs, it was transpired that one dead body

buried at Salel Nangarbhat was also of one of the victims of the accused. The said dead body was exhumed and was sent for post mortem at the

Civil Hospital, Oros and thereafter to the Miraj Medical College. Some metatarsal bones were taken and they were sent to CDFD, Hyderabad for

DNA tests along with sample of blood of PW 99 - Usha Anil Chavan. PW 38 - Ravindra Parab, panch witness, in his statement recorded, stated

that on 27/9/2003 at about 11.30 a.m. he was called near Salel Nangarbhat in presence of another pancha witness - Sambhaji Pofale and they had

noticed a dead body floating in the lake. The police had brought the dead body at the bank of the lake and kept on a gunny bag. They saw a blue

half pant around the dead body with a waist band and a small ring in the thread. The left side eye ball was protruding out and no one could identify

the deceased. Accordingly, the inquest panchanama at Exh. 242 was drawn. The ear lobe and lip of the deceased were eaten by the fish and there

was no other injury noticed on the dead body. Except the blue half pant, no other clothes were seen on the upper portion of the said DB. There

was no friend or relation who could identify the dead body when the inquest panchanama was drawn.

PW 54 - Shekhar Ghadge, Resident Nayab Tahasildar, stated before the trial court that from 26/11/2003 to 2/1/2004, he was deputed to exhume

the dead body as per letter received at Exh.300 and he took assistance of Circle Officer - Sharad Gosavi, Talathi - V.K. Sawant. By police jeep

along with Medical Officer - Dr. Sanjay Pol, he had gone to Salel Nangarbhat burial ground on Kasal Malwan road about 5 kms. from Katta

towards Malwan side. The spot was ascertained with the help of Police Patil - Gavade and it was a cremation ground. The spot was covered by

some stones and thorny bushes and after removal of the same by digging to the extent of 3 ft., the skeleton was noticed and it was brought out.

The skull was separated from the skeleton and there was decomposed flesh near chest and back with hair on the skull. Accordingly, the

panchanama was drawn at Exh. 301 and the body was delivered in the custody of ASI Gosavi from Katta Out Post.

PW 20 - Dr. Sanjay Pol conducted autopsy on DB 10. He stated before the trial court that on 27/9/2003 he had visited the spot Salel Nangarbhat

near the lake at about 3.30 p.m. and noticed the dead body in decomposed condition. It was the body of a male aging around 45 years and was

the wet due to decomposition and the colour of the body was greenish black. He conducted the autopsy on the dead body on the spot itself. He

noticed that the rigor mortis was slightly present, the dead body was swollen and signs of decomposition were present. The tongue was protruding

and was sandwiched between teeth with watery discharge oozing from mouth and nostrils. On internal examination, he found that the thoracic wall

was congested and both lungs, larynx and bronchi were cyanosed with abdominal cavity, full of water fluid. Kidney and spleen showed signs of

failure and as per him probable cause of death was asphyxia due to drowning but the exact cause could not be detected as the body was highly

decomposed. The doctor further opined that the death could have occurred about 30 to 40 hours before the autopsy. He signed the post mortem

report at Exh. 139 and identified the half pant and waist belt as Court Article DB-10-A and 10-B.

39. PW 76 - Dr. Jinturkar in his depositions before the trial court submitted that five photographs of DB 10 were taken in his presence and their

negatives were marked along with the body number and the parts of the body. The key was marked at Exh. 420 and the photographs were

marked as Court At. DB 10C to G. The Committee opined that the dead body was of a male between age group of 25 to 45 years and the death

could be occurred about six months before the examination by the Committee. He opined that like DB No. 1 and DB No. 3, DB No. 10 also had

suffered fire arm injuries, but he could not opined as to what type of fire arm was used in as much as it was a shot gun or rifle, but at the same time,

no exit wound was found on the skeleton.

40. In order to establish the identity of DB No. 10, the prosecution examined PW 99 - Usha Anil Chavan, the sister of Hemnath Thakre. She

stated before the trial court that Hemnath Thakre was her full blood brother, whereas she was married at Rajapur. Her brother Hemnath, with his

wife and children was residing at Dahisar, Mumbai and he used to visit the native place as well as her maternal home. She stated before the trial

court that no maid servant was working in her house and she was washing clothes of her family members. Hemnath was working at Mumbai and

was in the habit of collecting ancient and old coins and dried leaves and was strong believer of charms, spells etc. She stated that Hemnath could

not attend the funeral of his mother on 14/2/2003 at his village. She stated that on 3/1/2004 she visited the Oros Police Station along with her

husband and her blood samples were taken at the Hospital. She claimed that Court Article DB-10-B and half blue pant (Court Art. DB-10A) were

of her brother. She also identified the Court Article R - belt and pair of sandals, Court Article Q. It has come in her cross-examination that she

stated that police had recorded her statement on 3/1/2003 and all the articles were shown to her. The DNA report could not establish that DB-10

was a relation of this witness. It has also come in the evidence of this witness that she had not met her brother Hemnath for more than a month

before the incident. She had no reason to state that on the day he left from Mumbai, he was wearing particular clothes. Having regard to the

evidence of this witness, DNA report of the Committee and the evidence of PW 128 -Prabhukhanolkar, we agree with the trial court that the

prosecution failed to identify that DB No. 10 was that of Shri Hemnath Parshuram Thakre. Thus the prosecution succeeded in proving the identity

of DB Nos. 1 to 9, but it failed to prove the identity of DB No. 10. The minor deficiencies in the evidence of expert witnesses have been rightly

held to be insignificant by the trial court and we find no reason to take a different view.

41. The prosecution case is based on the following circumstances, in addition to the identification of the dead bodies:

(a) Motive.

(b) The accused had moderate monthly income and were known to each other.

(c) Some of the accused and more particularly accused No. 1 were introduced to some of the victims prior to the date of the incident.

(d) Accused No. 1 had performed magic for shower of money so as to benefit the brother of PW 18 - Aziz Ibrahim Desai on 2-3 occasions and

had collected about Rs. 60,000/- but without any benefit.

(e) Some witnesses were taken to Baroda at the instance of accused No. 1 and 3 and they were robbed of an amount of Rs. 3,00,000/-.

(f) On 21/8/2003 PW 14 had visited Malvan at the behest of the accused along with cash of Rs. 3,00,000/- so as to attend the magic for shower

of money but he was sent back as he had travelled by his own car.

(g) Modus operandi.

(h) Visit of accused Nos. 1 to 3 and 6 to the house of accused No. 7 during the relevant periods, though all the accused are otherwise residents of

Mumbai.

(i) Conduct of the accused during their stay with accused No. 7.

(j) Recovery of weapons from the accused.

(k) Injuries suffered by some of the accused.

(l) Recovery of blood stained clothes from some of the accused.

(m) Stay of some of the victims in the hotel at Malvan during the relevant period.

(n) The stay arrangements made in the hotel by a boy or at the behest of some of the accused.

(o) Deposits of cash amounts in the accounts maintained by the accused or wife or fiancée during the relevant period as well as the cash amounts

available with the family members.

(p) Purchase of motorbikes and TATA Sumo Jeep.

(q) Recovery of mobile phones.

(r) Recovery of telephone diary from the Nandos hillock on 21/12/2003 along with the telephone numbers.

(s) Telephone calls made from cell phones by the accused.

(t) Some of the star witnesses like PW 4 -Mrs. Smita Suryakant Korgaonkar, PW 5 - Sachin Chavan, PW 34 -Satish Korgaonkar are the close

relations/family members of the accused.

(u) The amounts borrowed by the victims or the amounts withdrawn from the bank by some of the victims so as to hand over the same to the

accused during the course of magic.

(v) Recoveries of gold ornaments, rado watch and cell phones belonging to the victims at the behest of the accused.

42. In the cases of circumstantial evidence the motive is very important and the prosecution claims that the motive of enticing by way of criminal

conspiracy so as to rob the cash amount and kill the victim from whom the amount is robbed at the location and under the pretext of magic for

shower of money is a very strong motive and the same has been proved. While dealing with the case of circumstantial evidence, it is well settled

that the onus lies on the prosecution to prove that the chain of its circumstantial evidence is complete and the lacuna in the prosecution cannot be

filled by the false defence version. We may usefully refer to the decisions in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, ,

State of U.P. Vs. Ram Balak and Another, and Padala Veera Reddy Vs. State of Andhra Pradesh and others, and summarise the conditions

precedent in a case of circumstantial evidence and required to be fully established, as under:

(a) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ""must"" or

should"" and not ""may be"" established.

(b) The fact 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.

(c) The circumstances should be of conclusive nature and tendency.

(d) They should exclude every possible hypothesis except the one to be proved. and

(e) There must be 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.

In State of Uttar Pradesh v. Kishanpal and Ors. (2008) 16 SCC 73, the Supreme Court examined the issue of motive in a case of circumstantial

evidence and observed that motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to

explain what actually prompted or excited them to commit the particular crime and thus, motive may be considered as a circumstance which is

relevant for assessing the evidence and becomes an issue of importance in a case of circumstantial evidence. Thus, absence of motive in a case

depending on circumstantial evidence is a factor that weighs in favour of the accused.

In the case of Hanumant Vs. The State of Madhya Pradesh, the Supreme Court observed,

12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to

be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of

the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but

the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been

done by the accused.

In the case of State of Karnataka Vs. K. Yarappa Reddy, it has been held that the Court must have predominance and preeminence in criminal

trials over the action taken by the Investigating Officers. Criminal justice should not be made a casualty for the wrongs committed by the

Investigating officers in the case. In other words, if the Court is convinced that the testimony of witness to the account is true the Court is free to

act on it. Minor loopholes and irregularities in the investigation cannot form crux of the case on which the Respondent can rely upon to prove his

innocence where there is circumstantial evidence adduced by the prosecution which logically and rationally points towards the guilt of the accused.

In the case of Sheikh Zakir Vs. State of Bihar, it has been held, ""It is not quite strange that some witnesses do turn hostile but that by itself would

not prevent the Court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction.

The maxim ""falsus in uno falsus in omnibus"" has no application in Indian criminal jurisdiction and it is the duty of the Court to separate the grain

from the chaff"" [Nisar Ali Vs. The State of Uttar Pradesh,].

On the testimony of witnesses who are near relations or the insistence on independent witnesses the Supreme Court in the case of State of

Rajasthan Vs. Teja Ram and Others, stated thus,

The over insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a

dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on

outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some

other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments

against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not

examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the

events and not those who have not seen it though the neighborhood may be replete with other residents also.

In the case of State of U.P. Vs. Satish, , it has been held that the, the last seen theory comes into play where the time-gap between the point of

time when the accused and the deceased were seen last alive together and when the deceased is found dead is so small that possibility of any

person other than the accused being the author of the crime becomes impossible. While appreciating the circumstantial evidence the Court must

remember the principle that when in a criminal case there is conflict between the presumption of innocence and any other presumption, the former

must prevail. Similarly in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and

incapable of explanation, upon any other reasonable hypothesis except his guilt.

In the case of State of U.P. Vs. Ashok Kumar Srivastava, , it has been pointed out that great care must be taken in evaluating circumstantial

evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted and the

circumstances relied upon must be found to have been fully established.

43. The prosecution in support of its case of circumstantial evidence examined in all 128 witnesses. 38 of them were panch witnesses, 22

witnesses were the persons acquainted with the accused or/and victims, nine witnesses were the relations of the victims, 13 Medical Officers, five

witness from telephone / mobile service providers, 29 police personnel, two Executive Magistrates, five Bank Officers and five experts on the

subjects of DNA, Superimposition, handwriting, FSL and Ballistic. The list of 128 witnesses is annexed at Annexure A and the documents referred

to, relied upon and admitted in the evidence are listed out in Annexure B whereas Annexure C contains the statements of various savings bank

accounts of the accused and their relations with status of account for the months of August to November 2003.

44. Let us first consider the background of the accused. Accused No. 1 - Santosh Manohar Chavan is the brother of PW 5 - Sachin. His mother

was the sister of PW 34 Satish Korgaonkar and accused No. 7 - Suryakant Korgaonkar. She was suffering from attacks of epilepsy and her

husband was an agricultural laborer. On account of poverty of the family, accused No. 1 and his brother Sachin were brought up in the house of

accused No. 7. Accused No. 1 studied upto 5th standard and thereafter started cattle grazing while staying with accused No. 7. His younger

brother Sachin studied upto 9th standard and became rickshaw driver and he used to drive his auto rickshaw within the local limits of Nandos.

Whereas PW 34 who himself had settled at Mumbai, brought accused No. 1 to Mumbai so as to provide him employment. Accused No. 1 learnt

auto rickshaw driving and started driving rickshaw on hire so as to make his living. He married Sujata More whose father was a police constable

and also the father-in-law of PW 34 Satish. Accused No. 2 also comes from a lower middle class family and used to work as LIC agent. His

earning was not adequate so as to maintain himself. Accused No. 3 also hails from the lower middle class family with moderate educational

background and was working in a private institute. Accused No. 6 is also moderately educated and has not crossed 10th standard. Initially he was

running his own grocery shop and his income was just adequate to maintain his family. He was the classmate of PW 47 - Chetan Rawoot and used

to home deliver the grocery articles to the customers. He is the cousin of accused No. 2 - Amit Shinde. PW 47 knows accused No. 2 as well. The

house of accused No. 6 is at a distance of about 5-10 minutes walk from the house of PW 47.

45. As per the prosecution case accused No. 1 was the kingpin and accused Nos. 2 and 3 were his associates. Accused Nos. 2 and 3 used to

propagate that accused No. 1 possessed charms and spells with spiritual power. They also used to claim that accused No. 1, whom they called as

Santosh Maharaj, was blessed with the powers to shower money by spiritual power / magic or by scientific method. In the beginning only accused

Nos. 1 to 3 were involved in practising a fraud under the name of performing magic for shower of money by accused No. 1. After few instances of

such magic performance the victims realised that it was a fraud and the victims started suspecting about the claims made by the accused. At

Mumbai when they failed to bring about results in the shower of money programmes performed for the brother of PW 18, they were being chased

for the recovery of money. Hence the accused shifted their operation from Mumbai to Malwan to perform the so called magic. They used to ask

the victims to bring currency notes of higher denomination so that the cash bundles would be easy to handle. The victims were asked to bring

gunny bags so that the multiplied money could be taken in such bags and villagers of Nandos would not suspect the victims. The accused were

inducing the victims with the assurance of multiplying the cash currency in the magic programme. Once they were conf-case-3-09 assured that the

money was collected, the accused used to ask the victims to bring that cash to Malwan where the accused would make the arrangements for the

stay of the victims at the hotel / lodge and from the lodge the victims used to be transported by an auto rickshaw upto to the hillock of Nandos

plateau. The autorickshaw would be stopped near the village panchayat office and from there the victims and some of the accused would proceed

to Nandos plateau by walk, under the garb of pooja and worshiping. The accused would ensure that the victims would not bring any vehicle from

Mumbai to Malwan and when they were taken from the hotel / lodge to Nandos plateau, it was ensured that none of the belongings of the victims

would remain in the hotel / lodge. In short, it was ensured that nothing would be left behind to trace the disappearance of the victims.

46. PW 69 - Dayanand Jagannath Thorat is the resident of Malad, Mumbai and is a rickshaw driver. He knew accused No. 1 - Santosh, accused

No. 2 - Amit and accused No. 3 - Yogesh and accused - Mahesh. He stated before the trial Court that till 1997 he used to hire rickshaw and

drive but he borrowed the money and purchased a second hand autorickshaw bearing No. MCJ-183 in 1997. At that time accused No. 1

Santosh Chavan was also driving a rickshaw in Malad area and, therefore, they got acquainted with each other. This witness also got acquainted

with Raghunath Gawali who was another rickshaw driver and Raghunath introduced him to Shankar Sarage as an estate agent. He identified the

photograph of Shankar Sarage shown to him in the Court (Court Article "Z"). He further stated that accused No. 1 Santosh had requested him for

selling land of his friend Arun Thakur located at Aksagaon, Malad. He arranged the meeting between Accused No. 1 Santosh and Shankar Sarage

sometimes in the month of February / March 1998 but no deal was struck between the two. Shankar Sarage, therefore, returned the papers to the

witness who in turn handed over the papers to accused Santosh Chavan. The witness again met accused No. 1 in the year 2000 and that time

accused No. 1 was wearing gold chain, gold ring and wrist watch. He enquired with accused No. 1 about his financial status and the accused No.

1 told him that he was showering money by using charms and spells. Accused No. 1 told him that if he wanted to ride on his luck, he should

accompany him to Charni Road where he was having a party. Hence PW 69 met accused No. 1 at 5 p.m. at Malad Railway Station and both of

them went to Charni Road. Accused No. 1 took the witness to the air conditioner repairing shop belonging to Satishbhai and introduced him to

three persons in the shop i.e. Aijazbhai, Jayantibhai and Satishbhai. In his presence accused No. 1 told them that he would arrange shower of

money of Laxmi Dhoop for which he would require Rs. 80,000/- on the next day. While on the way back from Churni Road the accused No. 1

told the witness that he would leave for Belgaum for bringing Laxmi Dhoop and that he would contact the witness after 3-4 days after return from

Belgaum. He received a ring from accused No. 1 after 3-4 days and accused No. 1 told him that he was having a meeting at the shop of

Satishbhai at 10 p.m. The witness, therefore, went to the shop of Satishbhai at 10 p.m. but nobody was present there. Aijazbhai - PW 18 reached

in five minutes and called Satishbhai on mobile phone. Within ten minutes Satishbhai and accused No. 1 arrived on the bike and Jayantibhai also

followed. Accused No. 1 told them that he would take bath before performing his charms and spells and, therefore, along with Aijazbhai he went

on bike to take bath and returned between 11 to 11.30 p.m. Accused No. 1 made all of them to sit in one room and had told them not to leave the

said room till he gave a call. He then went to the adjoining room for arranging shower of money and after about five minutes they started hearing

buzzing sound and sound of clapping for half an hour. Thereafter accused No. 1 came to them and told them that he had not obtained permission

of the idol from the temple adjacent to the room and, therefore, the programme of shower of money was unsuccessful and God had snatched away

the currency notes. He, therefore, stopped the programme. He told them to visit the adjoining room to see what he had done. All of them,

therefore, went to the adjoining room and found notes of various denominations from Rs. 5/- to Rs. 100/- lying in the room. Accused No. 1 told

them to collect all the notes and that he would give them a bundle for each which would be converted into Rs. 1,00,000/- (Rupees one lakh) after

41 days and thereafter he would open the bundle himself. After 41 days at the time of opening of bundle he did not go to the shop of Satishbhai

but two-three days later accused No. 1 - Santosh met him and told him that the bundle was opened and there were only waste papers and flowers

in the same. Accused No. 1 told him not to worry when he was there to help him. He also assured the witness that he should arrange a sum of Rs.

60,000/- and he would make the witness wealthy. Thereafter the witness demanded Rs. 60,000/- from his brother Mahadeo on the pretext that he

wanted to repair his room and wanted to change his rickshaw pass from RTO. Within two-three months accused Santosh gave a ring to the

witness and told him that his Guru Ramajibaba was likely to visit Mumbai and if the witness could conf-case-3-09 arrange money, he would

arrange shower of money through his Guru. The witness, therefore, went to his brother who gave him a cheque of Rs. 50,000/-. He went to the

house of accused No. 1-Santosh at Borivali along with cheque where he was told that the accused had gone to Vasai. He, therefore, contacted

him on mobile number, which he did not remember. Accused No. 1 asked him to come to Dhuri Industries, Gate No. 2, Gala No. 12, Vasai-

Satoli. The witness reached there between 9 to 9.30 p.m. and met accused No. 1 and 4-5 unknown persons. When the witness showed the

cheque to the accused No. 1, he told that cheque would not work and he had to arrange for cash. Accused No. 1 took the witness to Ramjibaba

and introduced him as his close friend. In the presence of witness accused No. 1 told Ramjibaba that he should work for the witness and accused

No. 1 would act as a surety for the amount. Accused No. 1 took Ramjibaba and the witness inside a plastic company where Ramjibaba started

chanting mantras. Ramjibaba asked him in Hindi, ""Baba, what happened to your voice"", suddenly a voice was heard behind the curtain saying that

he had not received money of his fees and, therefore, his voice was changed. Ramjibaba told the witness that his work could be done after getting

the money on the next day. He also told the witness that the shower of roses was of no use and the superpower conf-case-3-09 should give money.

Thereafter there was shower of currency notes on the person of the witness and the accused and this stopped after some time. Thereafter

Ramjibaba told him that he would give bundles which would be converted into money after 41 days and he would personally open them.

Ramjibaba gave him one bundle and cash of Rs. 11,500/-. There the witness got acquainted with one Ramesh Canteenwala and left the premises

with the bundle and cash of Rs. 11,500/-. He went home and told his family not to touch the bundle and nobody should go near it. The bundle was

kept in the wooden frame at the roof. On the next day he received Rs. 60,000/- from his brother and went to the house of accused No. 1. He was

not present there and, therefore, handed over the cash to his wife Sujata. After 40 days he contacted accused No. 1 - Santosh and told him to call

Ramjibaba for opening the bundle. Accused No. 1-Santosh informed him that Ramjibaba lost his nephew in a road accident and, therefore, he was

observing seclusion for more than one month and, therefore, he could not be contacted. Then witness waited for 41 days to open the bundle.

About 30 days thereafter Ramesh Canteenwala gave him a ring and informed him that accused No. 1 - Santosh was a cheater. Ramesh informed

the witness that along with Raju and Ganesh and accused No. 1 - Santosh had gone to Gujarat and had paid Rs. 60,000/- and received one

bundle. On returning from Gujarat he had opened the bundle and found that only flowers and waste papers were there. He also told him that Raju

and Ganesh had made a plan to call Ramjibaba to accused No. 1 - Santosh as there were two more parties interested in the shower of money

programme so that the money of the witness could be recovered from Ramjibaba. Accordingly Ramjibaba did not come personally but had sent

two persons and accused No. 1 told Ramjibaba that he would not release those two persons unless cash amount of Rs. 60,000/- was returned

and accordingly the money of Ramesh was released by Ramjibaba but the witness did not receive the money. As suggested by the accused No. 1,

the witness contacted Chandragirisaheb at Kandivali Municipality and took him, his wife and one person in rickshaw to Madh Church where

accused No. 1 - Santosh met them. He was along with another party whose bundle was also to be opened. Accused No. 1 made them sit in front

of a curtain tied in open space. He asked both the parties to remember the colour of cloth around the bundles. Accused No. 1 kept the bundles on

the other side of the curtain and started enchanting mantras in front of them. Suddenly there was sound ""Ya Allah"", from behind the curtain accused

No. 1 shouted, ""Salam Alekum Baba"" and asked the superpower to open the bundles as period of 41 days was over. Suddenly conf-case-3-09

there was a sound from the other side that one bundle was damaged and it was touched by a woman and that only the other bundle could be

opened. Accused - Santosh went behind and called both the parties. The bundle of Chandragiri Saheb was opened but the bundle of party from

Bandra only contained bundles of currency notes and some flowers. The witness asked accused - Santosh as to how much was the amount and

was told that it was Rs. 1.75 lakhs. When the witness was bringing Chandragiri Saheb and his wife back from the programme in his rickshaw, he

heard the squabble between the husband and wife and the wife apprehended loss of money. On the next day he met Chandragiri Saheb in his

office and told him that Santosh was cheating and Ramesh had informed him that Santosh should be arrested. On the request of Chandragirisahab

he contacted Ramesh Canteenwala on phone. There was a meeting between Ramesh, the witness and Chandragirisahab and Ramesh told that he

would call Raju and Ganesh so as to cause the arrest of accused Santosh. On the next day accused Santosh called the witness on phone and told

him that he had come to know about their plans to cause his arrest. Accused No. 1 promised him that he would return his amount of Rs. 60,000/-

but thereafter he started avoiding him. As instructed by accused No. 1 he went to Baroda for opening the bundle along with Ramesh conf-case-3-

09 Canteenwala but Ramjibaba did not meet them. He returned and told accused No. 1 that his work was not done. The witness again had gone

to Baroda along with accused No. 2 - Amit Shinde as instructed by accused No. 1 - Santosh but his work was not done. Accused No. 1 gave

him a cheque of Rs. 1500/- drawn on the account of his wife and the cheque was encashed. In the next month accused No. 1 gave him cheque of

Rs. 2000/- drawn from the account of his wife. Till then his bundle was not opened. He received a call from Santosh calling him to Borivali and,

therefore, he went home with a hope that his bundle would be opened. Accused No. 1 took him to give a photostat copy of his driving license and

to sign the form for obtaining a simcard. The witness further stated before the Court that in the first week of November 2003 one Raghunath

Gavali met him and told him that Shankar Sarage was missing for two months and further stated that most probably he had gone along with

accused No. 1 - Santosh to Baroda. He, therefore, contacted the accused No. 1 - Santosh on his mobile and enquired whether Shankar Sarage

had gone with him and about his whereabouts as he was missing. He also told the accused that Gavali had disclosed the said information to him.

The witness went to the house of Shankar Sarage and made enquiry with his wife. He was informed that Shankar Sarage had left the house along

with Mr. Tanksal carrying money for going to Gujarath and thereafter he had not returned. He had collected the photograph of Shankar Sarage.

Shankar Sarage was introduced to him in the year 1988. He had met Shankar Sarage along with accused No. 1 and had got acquainted with the

wife of Shankar Sarage. In his cross-examination by the defence, nothing was brought out to doubt the testimony of this witness. He was not

aware whether Ramesh Canteenwala was an assistant to Ramjibaba or was a spectator. He admitted that he had not lodged the complaint against

accused No. 1 for cheating him to the tune of Rs. 60,000/-. His statement was recorded by Dy.S.P. Prabhukhanolkar. He denied the suggestion

that he was brought by Malwan police and was beaten mercilessly. He admitted that Malwan police had recorded his statement against accused -

Santosh Chavan and it was forwarded to Borivali police station. As per him accused No. 1 - Santosh obtained Simcard on 5th or 6th August

2003 after he had signed the forms. Shankar Sarage was about 40 years of age and was slightly bald with gray beard. Besides accused No. 1 he

also had other friends from amongst rickshaw drivers at Malad. This witness proved the prosecution case that initially Ramjibaba was performing

the magic and thereafter it was accused No. 1 Santosh who performed the magic for shower of money. He was cheated for Rs. 60,000/- by

accused No. 1 under the pretext of shower of money and despite reminders the money was not returned to him. The bundle which was given to

him to open after 41 days did not turn out to be of cash currency. This witness also proved that accused No. 1 had performed the money shower

programme in the shop of Satishbhai.

47. PW 17 - Subhash son of Dhondur Chalke, a resident of Goregaon, Mumbai was working as a Security Guard after he retired from the Army

with North Canara Co-operative Bank since 1993 and was posted at the Bandra Branch since 2003. He was known to Shankar Sarage who

used to come to the Vile Parle Branch of the North Canara Co-operative Bank when PW 17 was with the said Branch. He stated that Shankar

Sarage was an estate agent and hailed from Mangaon which is about 20 Kms. away from Mahad (native place of the witness). He also met

Thakare as he used to accompany Shankar Sarage and Hemant Thakare was the resident of Rajapur, Dist. Ratnagiri. They used to meet the

witness once or twice in a week. In August 2003 Shankar Sarage had told him on more than one occasion that he was having a friend by name

Santosh Chavan who was capable of arranging shower of money. Shankar Sarage had requested the witness to pay him Rs. 1.50 to 3 Lakhs and

if required by borrowing from the Bank. Shankar Sarage had further told him that two rooms were standing in the name of his wife and not in his

name and, therefore, he was unable to raise the loan. On 12/9/2003 Shankar Sarage and Hemant Thakare had taken him to a hotel by name

Gokulanand at Borivali where he met Santosh Chavan - accused No. 1. Earlier also he had met accused No. 1 on one or two occasions at

Borivali and he was introduced by Shankar Sarage. When they reached the hotel, accused No. 1 was not present. He then called accused No. 1

on his mobile and accused No. 1 came out of the hotel. They went to the parking place near the hotel and were joined by Amit Shinde and

Yogesh Chavan. Shankar Sarage told accused No. 1 that the witness was having a room in his name and he should see whether some amount

would be raised against the documents of the room but accused No. 1 expressed his inability. Thereafter the witness along with his friends went to

the National Park and returned home.

On 13/9/2003 he met his friend Vijay Wadekar at his house at Jogeshwari and enquired with him whether a loan of Rs. 1.55 lakhs on security of

documents of his room could be obtained. He asked him to wait for two days and again on 15/9/2003 PW 17 met his friend Vijay Wadekar who

told him that he could get the money but the payment would be made on 22/9/2003. He also asked the witness to bring the documents of the room

and one blank stamp paper and come to Arasa Hotel, Andheri at 7 p.m. on 22/9/2003. Accordingly he went to Arasa Hotel along with the

documents of his room and one blank stamp paper. At about 7.15 p.m. Vijay Wadekar came there followed by his friend Krishna Hardas who

obtained from the witness transfer documents and blank paper signed by him and paid Rs. 1.55 lakhs.

On 22/9/2003 he visited the house of Shankar Sarage and paid him Rs. 1.55 lakhs outside his house at about 9 p.m. At that time Shankar Sarage

gave a ring to accused No. 1 from a PCO and told him that the money was arranged. Shankar Sarage told the witness that accused No. 1 had

asked them to start for Malwan on 23/9/2003 and on that day he received a phone call from Shankar Sarage on the land line of his Bank. Shankar

Sarage informed him that he and Hemant Thakare and accused Nos. 1 to 3 were proceeding to Malwan by Tata Sumo car. The witness further

stated that after 23/9/2003 telephone call, he had no contact with his friends Hemant Thakare and Shankar Sarage. He waited for the telephone

call from them but he did not receive any such call. He was not conf-case-3-09 knowing the residence of Hemant Thakare. He identified the

photograph shown to him in the Court (Article "Z"). He also identified the photographs at Sr. Nos. 19/2 and 19/3 in Sessions Case No. 4 of 2005

which were that of Hemant Thakare. He also identified the stamp paper purchased in his name, signed by him and handed over to Krishna Hardas

(Muddamal Article No. 34). By Court Article "BD" Sakpal had transferred the room in favour of the witness. He also identified his computerized

pay slip (Article 37). He also correctly identified accused Nos. 1 to 3 in the Court. He was called at Dindoshi Police Station on 16/1/2004 and

Police Officer Godbole from Oros Police Station had taken him to Oros Police Station. On 17/1/2004 his statement was recorded at Oros Police

Station and on 20/1/2004 his statement was recorded before the Judicial Magistrate, First Class at Kankavali. He identified the same at Exhibit

126 and stated that the contents therein were correct. He was in Sindhudurg on 20/1/2004 and stayed at Sahyadri Lodge at Kankavali and paid

the total charges from his own packet. On 21/1/2004 he submitted an application to the Bank for sick leave for the period from 16/1/2004 to

20/1/2004. For the first time on 16/1/2004 he had come to know from Shri Godbole PW 125 - Police Officer that Shankar Sarage and Hemant

Thakare were dead. In his cross examination he reiterated that he had conf-case-3-09 told Hardas and Wadekar the reason for which he had

taken money from them. He also stated that during the period from 23/9/2003 to 16/1/2004 he had gone twice to the house of Shankar Sarage to

make enquiry and last visit was on 4th or 5th October 2003. He used to meet Shankar Sarage's wife during his visits but he had not disclosed to

her about payment of money to Shankar Sarage whom he had known for the last five to six years. He read the Ratnagiri Times on 15/1/2004 in

STD Booth and came to know that Shankar Sarage was murdered. He also admitted that he did not make any efforts to find out from Shankar

Sarage during the period from 13/3/2003 till he read the news and did not meet the widow of Shankar Sarage to console her. He had tried to

search accused Nos. 1 to 3 near Gokul Hotel but could not trace them. He was in search of the accused so as to know the whereabouts of

Shankar Sarage and Hemant Thakare. However, he had not suspected that both of them would have been killed. He also did not feel that the

accused had deceived Shankar Sarage and Hemant Thakare. Wadekar had demanded the amount of Rs. 1.55 lakhs paid to him but he could not

return the same. Hardas had not taken any legal action against him for recovering the said amount. After 12/9/2003 he had never met the accused

Nos. 1 to 3 till the TI parade.

48. PW 18 - Aijaz s/o Ibrahim Desai is the resident of Chabildas Chawl in Islampura, Girgaon, Mumbai and had identified accused Nos. 1 to 3

before the trial court as the persons known to him. His sister - Azana is married to Shri Abdul Raufs Shaikh, whose father manufactures and sells

Nylon soft bags and school bags at Pala Galli, Dongari. The witness had served in Saudi Arabia from 1993 to 1999 and on 3/1/1999, he returned

to India. He worked for about 1 to 2 months with his brother-in-law and both of them found that the business was more profitable and increase the

capacity, but in the year 2000-2001 the Chinese products arrived in the domestic market and, therefore, he started losing business. He obtained a

loan of Rs. 14 lakhs from Bassein Catholic Bank, Vasai, but could not pay the installments in time. The bank had issued notice for recovery and

thus the witness and his brother-in-law was facing serious problems in the business. He discussed about his business problems with his friend

Satishbhai Divecha, resident of Girgaon, who was also known to accused No. 1 along with one Raja. The witness stated that he got well

acquainted with both of them and somewhere in 2002 there was some quarrel between Satishbhai Divecha, Raja and accused No. 1. Raja had

told him that accused No. 1 was a Trantrik having great spiritual power and was capable of arranging shower of money by charms and spells.

Initially, he conf-case-3-09 did not believe it, but in January/February 2003, accused No. 1 started visiting the shop of Satishbhai Divecha. In one

of these visits, accused No. 1 told the witness as well as Satishbhai that he had learnt charms and spells from his uncle and would help the witness

in his financial problems. One day accused No. 1 sat in a chair closed his eyes and after some times he asked the witness the address of his

factory. After he was given the address, accused No. 1 told the witness that there were evil spirits like Devil and Ghost in his factory premises and

the witness asked him to accompany the factory to find out solution. After 203 days accused No. 1 visited the factory around 12.30 p.m. and

Abdul Rauf was also there. Accused No. 1 was introduced to Abdul Rauf as the person with spiritual power and that he was brought to solve their

problem. Accused No. 1 took a round of the factory and told the witness and his brother-in-law that the factory was haunted by devil and ghosts

and, therefore, they were sustaining continuous losses. He suggested a Satyanarayan Pooja to be performed, but the witness opposed the same on

the ground of religion. Accused No. 1 agreed to perform the Pooja himself if he is paid the amount. He arranged the Pooja after 4-5 days. He had

brought one Poojari and Pooja articles. Satyanarayan Pooja was performed in the factory and photographs of Lord Shankar, Lord Ganesh and

Saint Saibaba were also kept around the Pooja place. They were told by accused No. 1 to keep these photographs in the factory. The witness

further stated that till March, 2003 accused No. 1 used to visit the factory and used to light holy lamps and perform pooja of the God. He further

stated that after the Satyanaran Pooja the losses and business problems were reduced to some extent and that his why he started believing that

accused No. 1 was having magic power. Accused No. 1 then started visiting the house of the witness. Abdul Rauf showed interest in shower of

money and accused No. 1 asked for the expenses of Rs. 60,000/- for the same. In March, 2003, the amount was paid to him in cash and accused

No. 1 agreed to visit the factory along with his uncle on the same night. Abdul Rauf, Satish Divecha and Jayantibhai went to the factory at about

9.30 p.m. and waited for accused No. 1 and his uncle. Accused No. 1 reached the factory by white Tata Sumo jeep at about 9.30 p.m. and

accompanied by three persons who were introduced as Ramajikaka, Mustaqbhai and Rajesh who were told to be the residents of Baroda,

Gujarat.

49. One bundle of cloth containing currency notes was shown to them by Ramajikaka and it was given as prasad. One parcel was given to Abdul

Rauf to take care for 41 days and open thereafter only. Ramajikaka, Rajesh and Mustaqbhai left the factory and accused No. 1 was remained

with them. The witness asked accused No. 1, whether the bundle given by Ramajikaka would contain currency notes and accused No. 1

answered in the affirmative. He told Abdul Rauf to keep the bundle for 41 days in his house. Thereafter Ramajikaka, Mushtaqbhai, Accused No.

1 and Rajesh came to the factory after 41 days for opening the bundle. They repeated the same magic show but no currency notes were there and

Ramajikaka told them that the show had failed as some woman who menstruation parcel. When the parcel was opened, they found that it had only

white papers with red spots and there were no currency notes.

50. After 10 days, accused No. 1 again met Abdul Rauf and assured that his work of shower of money would be done. As witness and his

brother-in-law were in serious financial problem, they believed accused No. 1 and arranged for cash of Rs. 60,000/-. The same experiment was

done and bundles were given. They were told to wait for 41 days and open the bundle. The bundles were opened and no currency notes were

found in the same. In fact, the bundles contained dry rose flowers. Accused No. 1 thus collected Rs. 1,20,000/- in cash from the witness and his

brother-in-law but went on giving assurance that he would remove the evil power from the factory. Accused No. 1 told them that after some days

they should dig a ditch in the factory and he would visit the factory. A ditch was dug by employing labourers and accused No. 1 visited the factory

between 10.30 to 11.30 p.m. on the given day by his Sumo car with a driver. He kept four lemons around the ditch, gave one lemon to the witness

and started enchanting something. There was a loud sound and accused No. 1 rushed towards the witness and his companions, made enquiries

whether they had heard any sound. Accused No. 1 told them that he was trying to remove the evil spirit from the factory, but there would be

danger to the life of elder daughter of Abdul Rauf. He frightened the witness and his brother-in-law.

51. About one and half month thereafter Rajesh, who had visited the factory along with Ramajikaka met the witness in a lane and told the witness

that his money purse was stolen and demanded some money for his journey to Baroda. The witness told him that the factory was attached by the

Bank. Rajesh again assured him that if Rs. 50,000/- was paid, he would invoke spiritual power to reduce the bank balance to 50%. The witness,

therefore, obtained a loan of Rs. 50,000/- from Jayantibhai and gave a message to Rajesh, but Rajesh was insisting for advance payment and the

witness suspected of foul play and threatened to call the B.P. Police Station. Rajesh then disclosed that accused No. 1 had cheated them and the

incident of shower of money was a fake. One Mehboob was coming with accused No. 1 and making sound and throwing money behind the

curtain. This Mehboob was brought in the Tata Sumo and was not known to the others. The witness, therefore, contacted accused No. 1 and told

him that the shower of money was fake and he had cheated them. The witness demanded refund of Rs. 1,20,000/- from him. Accused No. 1 told

him to come to Malvan ST Stand for getting the money but the witness demanded that the money was to be paid in Mumbai itself. Accused No. 1

never paid money.

PW 128 - Prabhukhanolkar met him on 31/12/2003 and recorded his statement on 4/1/2004 at Malvan Police Station. He had travelled to

Malvan from Mumbai on the night of 1/1/2004. His statement was recorded before the JFMC on 6/1/2004 and he signed the same (Exh. 129).

He identified his statement recorded before the Court on 6/1/2004. He also identified his statement recorded by the police on 4/1/2004. In conf-

case-3-09 his cross-examination he agreed that there was no document to show that payment of Rs. 1,20,000/- was made to accused No. 1 and

that he had repaid the amount of Rs. 50,000/- to Jayantibhai. He also admitted that he was not a tax payer but Jayantibhai was a tax payer. He

also admitted that he believed in black magic and spells and charms, but he did not visit any such person before accused No. 1 met him. Accused

No. 1 used to meet him once in two days in the month of March, 2003. He had asked accused No. 1 out of curiosity how the shower of money

was performed and accused No. 1 had given him details of programme of shower of money. He also admitted that he had not personally

requested accused No. 1 to arrange the programme of shower of money and the said decision was of Abdul Rauf. But the money collected on

both the occasions was by him as well as his brother-in-law. As accused No. 1 had given assurance to refund the money he did not file the police

complaint. He further stated that in the second week of November, 2003 when accused No. 1 had gone to his home town, he was assured that on

return, he would repay the money. During his stay at Malvan, he stayed in the house of Noorjahan Chachi who was his acquaintance. The

recording of his statement at the Kankavli Court went on for 45 minutes to one hour and he was given sufficient time by the learned Judge. He

further stated that accused No. 1 was not financially sound and he did not attempt to get more information regarding Ramajikaka and his

colleagues.

He stated before the court that in the first week of December, 2003 accused Nos. 2 and 3, the friends of accused No. 1, had met him and told

him that accused No. 1 had handed over Rs. 25,000/- to be paid to him but they lost the said amount on the way. He also stated that accused No.

2 - Amit Shinde had met him 7-8 times after first week of December, 2003. He thereafter learnt that the accused had killed some persons to

extract money by assuring shower of money.

A number of grounds were raised by the learned defence counsel to discard the testimony of this witness. However, we are satisfied that this

witness and his brother-in-law had paid an amount of Rs. 60,000/- in the first instance to Ramajikaka at the behest of accused No. 1 for the magic

show leading to shower of money and on the second occasion an amount of Rs. 60,000/- was paid to accused No. 1 to perform the magic. He

came to know from Rajesh, companion of Ramajikaka that the shower of money magic was fake and they were cheated for Rs. 1,20,000/-. To

this extent, the testimony of this witness is reliable.

52. PW 14 - Jagan son of Shriram Patil is a resident of Dombivali and at the relevant time he was running a canteen in a private company in the

MIDC area at Dombivali. He was having a mobile phone 3 to 4 years prior to the date of incident and his earlier cell number was 34208144 and

he changed it to 9223508144. He was known to Bala Pisal. This witness is an important witness to prove two material circumstances i.e. his visit

along with accused Nos. 1 to 3 to Baroda with Rs. 3 lakhs and his subsequent visit to Malwan on 20th October 2003 with an amount of Rs. 3

lakhs to attend the magic of shower of money. He stated before the trial Court that in the year 2003 and before the Gokulashtami festival, his

friend Gurunath Gharat had come to know that accused No. 1 would pay Rs. 3 crores if an amount of Rs. 3 lakhs is given to him, by his magic

shows. He then contacted Balu Gadekar, a grapes merchant from Junnar for raising Rs. 3 lakhs. On the next day the witness and Balu Gadekar

went to the house of Kerubhai Mali at Vashi on motorbike. Kerubhai Mali informed that he had Rs. 1.80 lakhs and he could not arrange more

than the said amount and Kerubhai Mali, Balu Gadekar and the witness went to Badlapur by a sumo arranged by Kerubhai Mali to meet Bala

Pisal. Kerubhai Mali showed a bag containing the cash and told Bala Pisal that it was Rs. 3 lakhs. Bala Pisal immediately gave a ring to accused

No. 1 and got a reply that accused No. 1 was busy as he had gone to Delhi and they would have to wait for two-three days. Hence witness, Balu

Gadekar and Kerubhai Mali came to Vashi and Kerubhai Mali carried his cash along with him.

After a few days witness told Gurunath Gharat that he had arranged Rs. 3 lakhs and called Balu Gadekar to his house. The witness along with Balu

Gadekar went to the house of Kerubhai Mali at Vashi and told them he was having a cash of Rs. 2.40 lakhs on that day. The witness, therefore,

called Gurunath Gharat, Bala Pisal, Ramesh Kadam, Sachin Pawar and Somnath Patil to the house of Kerubhai Mali and all of them stayed at the

house of Kerubhai Mali at night. Kerubhai Mali had two flats adjacent to each other situated on the ground floor and was residing with his wife and

two sons in one of the flats. On the next day Kerubhai Mali could not arrange the additional amount of Rs. 60,000/-. The witness added his own

cash of Rs. 10,000/- and gave a ring to his wife informing her that he would be sending Somnath Patil and she should hand over the amount of Rs.

10,000/- and the ornaments to him. He had pledged the ornaments and got additional amount of Rs. 30,000/-. Bala Pisal gave a ring to accused

No. 1 at Kandivali and informed that a total amount of Rs. 3 lakhs was arranged. The witness further stated that Bala Pisal had informed him

earlier that an amount of Rs. 3 lakhs would be required to bring a liquid bottle from Baroda and on spraying the liquid on flowers, there would be

shower of money. Kerubhai Mali had hired a qualis. As Kerubhai Mali was having a meeting on the next day, he did not go with the witness and

the entire cash was handed over to Balu Gadekar. All of them went to Borivali by Qualis in a hotel the name of which he did not remember. Three

persons were standing in the hotel and Bala Pisal and Ramesh Kadam introduced them as accused No. 1, accused No. 2 and accused No. 3.

Accused No. 1 told that accused No. 2 - Amit would make arrangement of pooja and the witness party should go to Baroda along with Yogesh -

accused No. 3 to bring the liquid. He identified all the three accused before the Court. The witness along with Balu Gadekar, Gurunath Gharat,

Accused No. 3 and Bala Pisal went to Baroda and on the next day i.e. 20th day of the month there was Gokul Kala. They saw accused Nos. 1 to

3. Accused No. 3 took them to a lodge known to him between 8 to 8.30 a.m. After snacks were served between 10 to 10.30 a.m., accused No.

3 went in search of the liquid bottle and returned at about 12.30 noon along with one person called Chhotu. Chhotu told them that the article was

not ready and would be available on the next day and conf-case-3-09 he demanded Rs. 1 lakhs as an advance. The witness, therefore, paid Rs. 1

lakh to accused No. 3 who along with Chhotu left the hotel informing that they would return between 5 to 6 p.m. At about 6 p.m. accused No. 3,

Chhotu and one more person came to the lodge and gave one small bottle containing oil type liquid. Then the witness handed over Rs. 2 lakhs to

accused No. 2 and in turn he handed over the money to the third person who immediately left the lodge. After 10 to 15 minutes two persons in

plain dress came to their room and both were speaking in Gujarathi. They told the witness company that they were from police and Chhotu had

told them to hide the bottle. Chhotu started talking to these persons in Gujarathi and they checked the baggage and thereafter they carried personal

search of all of them. The bottle was found in the pocket of Bala Pisal and they asked him about the contents. He told that it was an oil for

massaging. They threatened that he was indulging in illegal business of manufacture of chemicals and he would be taken to the police station. They

forcibly took the bottle from Bala Pisal, opened it and poured the liquid on the hand of Bala Pisal and threw the empty bottle out of the window.

Chhotu and accused No. 3 were present in the lodge and, therefore, the witness asked accused No. 3 that they had lost the money as well as the

bottle. They further asked as to how the magic show will be performed. Accused No. 3 gave a call to accused No. 1 from STD booth and the

witness also talked to accused No. 1 who advised him not to be tensed and to return to Borivali. All of them left the lodge at about 11 p.m. and

returned to Borivali. They met accused No. 3 who also called accused No. 1 and accused No. 2 at the same hotel at Borivali. Accused No. 1 told

them not to have tension and all of them went to the house of Kerubhai Mali. Accused No. 1 promised that the work will be done after 4 to 8

days. All the accused returned to their homes and the witness along with his friend went to his home. He kept on contacting Bala Pisal through

Gurunath Gharat making enquiries about the magic programme. Bala Pisal informed him that accused No. 1 had gone to Delhi and was having a

party to make investments. After 15-20 days he went to the house of Bala Pisal along with Gurunath Gharat. Bala Pisal told him that he was having

one party from Pune but the party was short of money. He took Bala Pisal to Borivali on the motorbike and met accused Nos. 1 to 3 near the

hotel at the highway. All of them had tea together. Accused No. 1 told the witness that he should arrange Rs. 3 lakhs and the witness assured that

he would arrange the same within 3-4 days. The accused assured him that the work would be done at Kankavali. The witness contacted his friend

Ganpat Gaikwad from Tisgaon, Tal. Kalyan and he was a cable conf-case-3-09 operator, and requested him to lend an amount of Rs. 3 lakhs for

the magic show. Ganpat Gaikwad agreed to pay the amount and to accompany him. Bala Pisal was told that the money was arranged and,

therefore, contacted accused Nos. 1 and 2 on phone and told them to arrange bus tickets for going to Kankavali. It was decided that on the next

day they would travel to Kankavali from Mumbai. Bala Pisal told him that accused No. 2 and Ors. have booked five tickets and the five tickets

were booked for the witness, accused No. 2, Sachin Pawar, Somnath Patil and Bala Pisal. Bus was to leave Borivali between 3-30 to 4-00 p.m.

and would reach Vashi between 8-30 to 9-00 p.m. The witness stated before the Court that he sent Bala Pisal, Sachin Pawar and Somnath Patil

to Borivali to catch the bus and informed them that he would catch the bus at Vashi. It was one day before the day of Laxmipoojan. He further

stated that it might be 20th or 21st day of October. At about 9 p.m. he got the information that Bala Pisal Sachin Pawar and Somnath Patil were

travelling by a private bus of a travel company and he enquired whether accused No. 1 was with them. Accused No. 3 told him that accused No.

1 had gone ahead by a private car with his family. The witness told them to go ahead and he would follow them. Accused No. 2 had asked him to

reach there on the next day. Accused No. 2 had also told him subsequently not to come by a conf-case-3-09 private vehicle and reach Kankavali

only by a bus and to bring one gunny bag along with the cash. Ganpat Gaikwad and the witness started their journey to Kankavali by Gaikwad's

Lancer car and along with the cash. They halted at Ratnagiri and reached Kankavali by about 4 p.m. They booked a room and carried their bags

along with the cash to the said room and Accused No. 2 accompanied them. They had not booked a separate room and had gone to the room of

Bala Pisal, Sachin Pawar and Somnath Patil as well as accused No. 2. The cash brought was shown to accused No. 2 who told them that he

would inform accused No. 1. After some time the witness party went downstairs and accused No. 2 told them that accused No. 1 had come to

know that a private car was brought to reach Kankavali and, therefore, the magic programme would not be conducted. They were informed to

return to Mumbai and come one day after Bhaubij. The witness and his party requested accused No. 2 to convince accused No. 1 to perform the

magic but they were told that they had brought a vehicle and, therefore, the programme stood cancelled. Hence the witness, Ganpat Gaikwad,

Somnath Patil and the car driver returned to Mumbai by Lancer car while Bala Pisal and Sachin Pawar returned to Mumbai by a bus. He identified

the Rado wrist watch (Article 62) shown to him in the Court as being the same which was seen by him on the wrist of Kerubhai Mali. He stated

that the wife of Kerubhai Mali was about 40 to 42 years of age and with a fair complexion. In all nine photographs of the deceased were handed

over to the witness in the Court with instructions not to read the names on the rear side. The witness handed over five photographs to the learned

Judge and told the names of each of the photographs as Bala Pisal, two sons of Kerubhai Mali, wife of Kerubhai Mali and Kerubhai Mali. He

stated that his statement was record by the police on 20/1/2004 at Oros and on 21/1/2004 his statement was recorded in the Court at Kankawali.

He identified the statement at Exhibit 117 and stated that he had voluntarily given the said statement.

In his cross-examination he stated that Sindhudurg Police had made enquiry with him about the missing of Kerubhai Mali family. He had enquired

with the police as to why he was being taken to Sindhudurg. He had reached Kudal at 4 a.m. and stayed at Kudal till 3 p.m. on the next day. He

was in Kudal and Oros only for 11 hours during which period an enquiry was made with him by PI Godbole. He also stated that when the Vashi

Police had enquired with him, he had given detailed information regarding the trip to Baroda. He denied the suggestion that liability to refund Rs.

2.40 lakhs was to be shared by himself, Bala Pisal, Gurunath conf-case-3-09 Gharat and Balu Gadekar. As per his knowledge Kerubhai had

obtained the loan of Rs. 2 lakhs against the security of his flat. He also stated that he and Balu Gadekar had informed Kerubhai Mali about the

multiplication of money from Rs. 3 lakhs to Rs. 3 crores and Bala Pisal had explained the scheme of multiplication of money. During the period

after the return from Baroda to the visit to Kankavali, he had met accused No. 1 and made efforts to recover the invested amount of Rs. 3 lakhs

and he was in touch with Bala Pisal once in 2 to 4 days. After returning from Kankavali he was again in touch with Bala Pisal on phone but did not

feel like lodging a complaint. He denied the suggestion that accused Nos. 1 to 3 had never met him. Kerubhai Mali was having his mobile phone of

Reliance company. Bala Pisal had not invested any amount in the magic show though he had signed the stamp paper as a security for the loan by

Kerubhai. After about 15 days from returning from Kankavali, he came to know that Bala Pisal was also missing and nobody had contacted him to

trace Bala Pisal. Before 22nd December 2003 the Vashi Police had called him twice in connection with the missing of Mali family. Again on

22/12/2003 he was called by Vashi police station for the same enquiry and he had met the police from Sindhudurg police station. He denied that

he had given a wrong statement to the police. He also denied the suggestion that he had not gone to Kankavali along with cash of Rs. 3 lakhs in a

Lancer car.

53. As per the prosecution, PW 4 - Smita Kolgaonkar, PW 34 - Satish Kolgaonkar, PW 5 - Sachin Chavan and PW 75 - Santosh Yadav are the

star witnesses and the defence has urged to discard them as unreliable witnesses, though PW 5 is the younger brother of accused No. 1, PW 34 is

the maternal uncle of accused No. 1 and PW 4 is the wife of original accused No. 7 and the younger brother of PW 34. It was urged before us,

like before the trial court, that all these were the got up witnesses and won over to support the prosecution and were lured by the prosecution on

the promise that Suryakant Koregaonkar (Accused No. 7) would be set free if they supported the prosecution. It was also urged that though all

these witnesses were available at all times, during the course of investigation, right from 20/12/2003 at Nandos or at Mumbai, as the case may be,

their statements were recorded belatedly and these circumstances itself would support the defence case that all of them were won over on the

promise that A-7 would be set free and ultimately he was discharged on an application moved by him during the course of trial. Thus, there was a

give and take between the prosecution and these witnesses and till their statements were recorded by the police, none of them was either

approached or they on their own approached the IO so as to record his/her statement about the visits of the accused to Nandos during the

Ganpati Festival of 2003, Dasehra of 2003, Bhaubij of 2003 or any visit during the year 2003, including the Lord Gairoba fete. If the prosecution

claimed the recovery of weapons from the house of PW 4, at no point of time she had informed the police that the weapons, which were used by

the accused or which she had seen during the visits of the accused, were hidden in her house or around the house. Accused No. 1 was arrested

from the house of PW 4 on 21/12/2003 late in the evening and in front of PW 4, her husband as well as PWs 34 and 75 and despite this none of

them ever contacted the IO to come out with their case of suspicion or fear of involvement of the accused in the serial killings. Referring to the

cross-examination of all these witnesses, it was pointed out that none of them ever disclosed their suspicion regarding the involvement of all or

anyone of the accused in the serial killings till they were called by the Malvan Police Station to record their statements sometimes in February,

2004. This was rather an unnatural behaviour and more so when not only to the IO but even to any other person none of these witnesses had ever

disclosed about their suspicion regarding the involvement of all or anyone of the accused in the serial killings. It was submitted by the defence that

the bail application of A-7 was kept pending and was decided only after PW 4, PW 34 and PW 75 supported the prosecution case.

54. We do not find any force in these arguments and the discharge of A-7 has been much after he was released on bail. In fact, the case was

committed on 8/2/2005 and A-7 was released on bail on 3/12/2005 i.e. much after the statement of PW 4 at Exh. 67 was recorded u/s 164 of

Code of Criminal Procedure. These grounds were urged before the trial court as well and the trial court considered these objections with due

deliberations and discarded them. As per the trial court, even if there were some improvements, contradictions in the statements of these witnesses,

on that count alone, they could not be discarded as unreliable witnesses, when the doctrine of ""falsus in uno falsus in omnibus"" is not applicable in

the Indian jurisprudence. We have given our anxious considerations to the testimony of these witnesses, the reasoning set out by the trial court as

well as the criticism advanced before us by the learned defence counsel and in our opinion they are natural witnesses though they may have tried to

improvise their case while in the witness box and they did not approach the police on their own before they received a call from the IO conf-case-

3-09 and their statements were recorded u/s 161 as well as u/s 164 of Code of Criminal Procedure. As has been noted, PW 75 has been brought

up by PW 4 along with accused No. 1 and PW 5 from their tender age and PW 34 is the person who supported accused No. 1 to shift to

Mumbai and become an auto-rickshaw driver. Accused No. 1 stayed in the house of PW 34 initially for a period of 2 -3 years from 1995

onwards and subsequently during the pregnancy of his wife. Accused No. 1 and PW 5 are the sons of the sister of PW 34 - Laxmibai who was

married in village Humarmala which is at a distance of 10-12 Kms. from Nandos. Though the father of accused No. 1 and PW 5 owned

agricultural land, he was addicted to liquor and, therefore, both of them were brought to the house of PW 4 and accused No. 1 stayed there till he

attained the age of 19 years and he studied upto 5th or 6th standard. In the year 1995 he requested PW 34 - Satish to take him to Mumbai for

employment and, therefore, PW 34 brought him to his house at Mumbai, helped him in obtaining a license as an auto-rickshaw driver. Thus, PW 4

and PW 34 have been like the guardians for accused No. 1 and PW 5 and PW 75 - Santosh Yadav also grew up with both of them in the house

of PW 4. Let us, therefore, examine with circumspection, care and caution the evidence of PW 4, PW 34 and PW 75. However, we do not find it

safe to treat PW 5 - Sachin Chavan as a reliable prosecution witness, though it appears from the evidence of PW 75 that PW 5 - Sachin had met

the accused in the house of PW 4 during the Ganpati festival of 2003. This witness claimed that he had transported some of the victims in his auto-

rickshaw (MH-07-F-448) at the instance of A1 and received the rickshaw charges as well. He also claimed to have identified some of the victims

when their photographs were shown to him. However, in his cross-examination, he admitted that after few days from the dead bodies were

recovered, the photographs of the victims were published in the local newspapers. In addition, we have perused his statement at Exh.73 recorded

by the learned JMFC at Kankavali and the said statement is innocuous. While in the witness box, PW 5 went on giving the graphic details of the

visits of the accused to Nandos, Katta as well as hotel Konkan Plaza, hotel Mhadgut and Pallavi Lodge. We are satisfied that PW 5 - Sachin

Chavan is a doubtful witness and hence unreliable.

55. PW 34 - Satish stated before the trial court that he has three elder brothers, namely, Shivram, Vilas and Suryakant (A-7) and one younger

brother by name Arvind with two sisters by name Smita Gawade and Laxmi Chavan (mother of accused No. 1 and PW 5). Shivram was the

Security Supervisor and Vilas was the Police Head Constable, both working at Mumbai. He shifted to Mumbai in the year 1984 and started

residing with his brother at Malad till 1987. He served for about four years on temporary basis after he shifted to Mumbai and thereafter started

driving an auto-rickshaw. He used to get about Rs. 3000/- to Rs. 4000/- per month by way of income and from 1992 to 1994, he was engaged in

the manufacture and sale of chiki and wafers. In the year 1995, he purchased one rickshaw after obtaining the license and in 1996 he purchased

another rickshaw. He was also doing a side business as a builder assistant. In the year 2000 he sold his rickshaw as the business was not

profitable, but in the year 2003 he purchased a second hand Tata Sumo of blue colour bearing registration No. MH-03/AH-8524 -and gave it on

hire / contract basis to Internet Global, a Call Centre at Malad. He shifted to his own house and married the elder daughter of Gajanan More who

was also a Police Constable and residing at Police Quarters at Malvani, Gaikwad Nagar (in the neighbourhood of Vilas). He brought accused No.

1 to Mumbai in the year 1995 and taught him rickshaw driving. Initially, accused No. 1 used to clean his rickshaw, which used to be parked near

the house of Gajanan More and that is how accused No. 1 fell in love with the younger daughter of Gajanan More by name Sujata, to whom he

married in 1996. Gajanan More, on retirement, stayed in Borivali and located a house for accused No. 1 and, therefore, accused No. 1 shifted to

Borivali and started driving rickshaw. Accused No. 1 obtained a tenement on leave and license with the help of his father-in-law and shifted to

Borivali.

When PW 34 met A-1, in April, 2003, he came to know from him that he had started a factory for the manufacture of plastics at Vasai and was

dealing in scrap sale. In May, 2003, his younger brother - Arvind got married at Mumbai and thereafter PW 34, along with his family and A-1,

along with his family, went to Nandos by the Tata Sumo of PW 34. That time A-1 was wearing two gold chains and gold rings in four fingers as

well as one gold bracelet, he was also having a mobile phone of Nokia make with SIM Card No. 9820963798. He identified the said instrument

before the court as Police Article 26 (Court Article V). He further stated that in August, 2003, A-1 met him and expressed his desire to purchase

a second hand Tata Sumo and, therefore, took A-1 to the agent by name Shri Vimal Kapoor at Ghatkopar on 24/8/2003 and A-1 was

accompanied by his two friends, A-2 and A-3. He identified both of them in the court. Tata Sumo Jeep bearing registration No. MH-04/AS-46 of

white colour was approved by A-1 and on negotiations, purchase price was fixed at Rs. 2,60,000/-. Accused No. 1 at the spot paid a cash

advance of Rs. 10,000/- and after four days accused Nos. 1 to 3 went to the said agent and paid a cash of Rs. 85,000/-. The balance amount was

arranged by way of loan from a Bank and the vehicle was purchased in the name of accused No. 2 - Amit.

PW 34 further stated before the trial court that on 30/8/2003 A-1 asked for his jeep to go to Nandos for Ganpati festival as the Tata Sumo car

purchased by A-1 was to be sent for repairs and, therefore, he lent his car to A-1. He received a telephone call from his brother - A7 the next day

of Ganesh Jayanti and learnt that A-1 with A-2 and A-3 and two other girls were at Nandos for 10 days. Out of these two girls, one was the

second wife (Sonali) of A-1. He also stated before the trial court that at the request of A-1 the white Tata Sumo car purchased by A-1 was also

put on monthly contract basis with Global Internet and the hire charges were Rs. 26,000/- per month, but the contract for hire was made in the

name of PW 34 and from the money he used to receive as hire charges, he used to deduct the driver's salary of Rs. 6000/- and maintenance

expenses and the balance amount was paid to A-1. In the first week of December, 2003, conf-case-3-09 he received a telephone call from

Sujata, the first wife of A-1, informing him that A-1 was taken in custody by the Vashi Police in connection with an enquiry. But on 9/12/2003, the

father of A-1 died and, therefore, he was released. On 18/12/2003, PW 34 along with his family and Sonali, the second wife of A-1 left Mumbai

for Nandos so as to attend the religious function on the 13th day after the demise of the father of A-1, who was on that day at Humarmala. On

19/12/2003 all of them gathered at Humarmala, he consoled his sister and A-1 and returned to Nandos. On the next day again PW 34 and his

brothers went to the house of A-1 at Humarmala and on completion of the religious function, all of them returned to the house of A7. A1 with his

two wives also arrived at the house of A7. At about 6 p.m. PW 34 happened to meet one of his relations - Daji Gawade while traveling from

Katta to Nandos and he gave him a lift. PW 34 came to know from Daji Gawade that the police had sized some dead bodies from the Nandos

Plateau. He dropped Daji Gawade on the way and went to his house. He expressed his suspicion about the involvement of A-1, to his brother

Vilas, who was a Police Constable and Vilas also did not rule out the possibility. On 21/12/2003 around 12 noon, PW 34 suggested to A-1 to

accompany him to go to Nandos plateau to see the dead bodies, but A-1 suggested that it was too conf-case-3-09 hot and could visit the said

place in the evening. Between 6 to 6.30 p.m. A-1 told him in the house of A7 that if something untoward happened, PW 34 should help him. At

about 7.30 p.m. while all of them were sitting at home, they saw a police jeep entering into the premises in the house of A7 and at that time A-1

went inside the room and was trying to hide himself on the loft at which the mother of PW 34 was surprised. The police got down from the jeep

and gave a call in the name of A-1. PW 34, therefore, gave a call to A-1 at which he came out and thereafter the police took him to the police

station. Somewhere around the mid-night PW 34 left Nandos for Mumbai along with his family and brother - Vilas. On 22/2/2004 he received a

call from Malvan Police Station to come to Nandos and accordingly, he reached in the morning of 25/2/2004. On 28th or 29th December, 2003

he received a phone call from PW 4 informing him that his brother Suryakant was also arrested by the police and subsequently on 1/1/2004 while

he was watching T.V. news he came to know that Suryakant - A7 was arrested in connection with the dead bodies recovered from Nandos. On

25/2/2004 he was produced before the learned JMFC and his statement (Exh.227) was recorded and on the same day, before he was produced

before the court, the police recorded his statement. He confirmed that the statement was correctly recorded conf-case-3-09 and he had signed the

same. In his cross-examination, it was brought out that he had submitted the hire charges bill to the company for the period from 1/9/2003 to

30/9/2003 in respect of his jeep. He also admitted that he had received the hire charges for the other jeep i.e. MH-04-AS-46 for all the days in

September, 2003. This witness further stated that accordingly even in the month of October and November, 2003, the hire charges of the jeep of

A-1 were also received. These admissions were highlighted by the defence in support of their contentions that the visits of the accused to Nandos

with white colour Tata Sumo jeep stated by the witnesses i.e. PW 4, PW 5 and PW 75 were unreliable or in the alternative PW 34 himself was

speaking lies while in the witness box and therefore, an unreliable witness. We do not find any force in these arguments. In his cross-examination

he also stated that after he returned from Nandos on 22/12/2003, the police attached the white Tata Sumo jeep bearing registration No. MH-04-

AS-46 from its driver Ashok Mawarkar while it was in his possession. He denied the suggestion that the said vehicle was purchased by him from

Shri Kapoor. He also denied the suggestion that he never met A-2 and A-3 along with A-1. We have assessed the testimony of this witness and

compared the same with his statement (Exh.227) recorded u/s 164 of Code of Criminal Procedure. and we found that on material circumstances

his depositions before the trial court have not contradicted his statements which are material and the minor variations have not affected the

testimony of this witness regarding the upbringing of accused No. 1, his shifting to Mumbai so as to become a rickshaw driver, performing two

marriages i.e. with Sujata and Sonali, purchase of auto-rickshaw and white Tata Sumo jeep as well as the visit, along with A-2 and A-3 to Nandos

during the Ganpati festival, including the arrest of A-1 by the police on 21/12/2003 from the house of PW 4.

56. PW 65 - Vimal s/o Madanlal Kapoor is the resident of Ghatkopar, Mumbai and was engaged in the purchase and sale of old automobiles for

more than 15 years. He was running a proprietary firm ""Part Auto Works"", opposite Vikroli Fire Station, Ghatkopar, Mumbai. While in the

witness box, he identified accused Nos. 1 to 3 and stated that accused No. 2 was known to him by name and his name was Amit Shinde. He

further stated that in the month of August, 2003 all the three accused had visited his shop so as to buy a second hand Tata Sumo vehicle and he

had shown them two Sumo cars. They had jointly selected one white Sumo car of 1999 model with registration No. MH-04-AS-0046. The price

of this car was settled at Rs. 2,60,000/-. The accused paid him initially Rs. 10,000/-, the second installment of Rs. 5000/- and at the time of

delivery they paid him in cash Rs. 80,000/-. The balance amount of Rs. 1,65,000/- was paid through finance company i.e. Mahindra and

Mahindra. He further stated that when the said Tata Sumo car was sold in the name of Amit Shinde (A2) and the RC book was transferred in his

name, but the entry in the RC book was in the name of Mahindra Financial Services Ltd., Mumbai as the accused had paid only one loan

installment. The photostate copy of RC book shown to him as Court Article FK was identified by him. He also identified the Tata Sumo car shown

to him as the same which was sold by him to the accused and in the name of A2-Amit Shinde. In his cross-examination, he stated that the

documents pertaining to the subject car were with the finance company when the police enquired with him and, therefore, he had to obtain

photostate copy. He denied the suggestion that Tata Sumo car No. MH-04-AS-0046 was not sold by him to the accused. This witness

corroborated the evidence of PW 34 that in August, 2003 accused No. 1 purchased a Tata Sumo car in the name of accused No. 2 and had paid

about Rs. 95,000/- in cash while taking the delivery of the said vehicle.

57. PW 4 - Smita, wife of A-7 - Suryakant stated before the trial court that she knew A-1 since his childhood and before her marriage as she

used to visit the house of A-7. Both the brothers used to take the cattle for grazing and grew up in her house till A-1 left Nandos in the year 1995

for Mumbai along with PW 34 - Satish, for employment and Sachin PW 5 stayed at her house till the year 1999. After PW 5 got married he

started residing separately and was running a auto-rickshaw to make his live. After A-1 shifted to Mumbai he used to come to her house once in a

year for the Ganpati Festival and stay there. She stated that she was the second wife of A-7 and his first wife, from whom he begot a daughter by

name Geetanjali, had died and, therefore, A-7 performed second marriage. PW 4 begot two daughters, namely, Deepika and Trupti and one son -

Suraj from A-7 and all the four children were staying at her home in addition to A-1, PW 5 and PW 75 - Santosh who was staying with her since

he was 3 years old, as his mother was insane. She further stated that till the year 2003, A-1 used to come to her house only once in a year and that

too during the Ganpati Festival, but surprisingly in May, 2003 he paid a visit to her house along with his wife Sujata and two children in a blue

colour Tata Sumo jeep belonging to PW 34. The family stayed at her home for about 15 days and returned to Mumbai. One day before the

installation of Lord Ganesh, in the year 2003, A-1 to A-3 along with two girls by name Sonali and Punam arrived at her house in a blue Tata Sumo

of PW 34. She came to know that Sonali was the second wife of A-1 and Punam was the friend of A-2 - Amit. They resided at her house till

Anant Chaturthi was over and during those 10 days, A-1 to A-3 used to go to plateau on the rear side of her house and allegedly for hunting, but

they did not bring any hunted animal or bird. During this visit, she had noticed that A-1 was having a mobile phone of white colour. One day, after

the Anant Chaturthi, all of them, along with her mother-in-law - Saraswati returned to Mumbai in the jeep which was driven by A-1.

She further stated that on the night, two days before the Ghat Sthapana (during the Dashera Festival) A-1 along with A-3 - Yogesh reached her

house at about 1.30 a.m. in a white Tata Sumo jeep and her husband asked A-1 as to why they reached at odd time. He replied that he had some

urgent work and in the morning she asked A-1 why he had brought the jeep only for two persons. A-1 replied that A-2 - Amit also had come and

was sitting at his friend's house. Around 9 a.m. A-1 received a call on his cell, which was picked up by A-3 - Yogesh and A-3 replied ""Bol Amit

and went out of the house talking on phone. At about 9.30 a.m. A-1 and A-3 went to Katta by a jeep and Katta town is located on Kasal-Malvan

road at a distance of about 15 minutes journey by an auto-rickshaw. At that time, A-1 was wearing a blue jacket though there was no rain and the

jacket had a cap attached to it with a lace. During the recess of school between 1.30 to 2.30 p.m. her daughter Deepika had returned home and

had seen A-3 roaming near her school, located near the Nandos Village Panchayat. At about 3 p.m. she had seen all the three accused returning to

her house by walk and the jacket of A-1 was around the waist of A-3. Before entering the house, all of them had gone to the well, located in front

of her house and had taken bath. They were served lunch after their bath. A-2 left after some time and she learnt from A-1 and A-3 that he went

to his friend's house. When her daughter Deepika returned from the school at about 5.30 p.m. she asked A-3 ""Yogesh Dada what were you

doing near our school"" and he told her that she might have seen someone else as he was not there. Yogesh left her house after 6 p.m. and followed

by A-1 by his jeep between 7 to 7.15 p.m. and all the accused returned between 9 to 9.30 p.m. and they were all drenched though there was no

rain. At that time, she was preparing Bhakari / cooking and all of them told her to wash their clothes and she replied that it was not possible to

wash them in the night. They told her that the stains of soil on their clothes would not be removed unless the clothes were immediately washed. All

of them drank beer and had their meals. She stated that these were the events that had taken place one day earlier to the Ghat Sthapana.

She further stated before the trial court that a day after Ghat Sthapana, she was in her menstruation and, therefore, A-1 cooked the food while A-

2 and A-3 were in her house till the evening. On the next day, they started at about 7.30 a.m., but the Tata Sumo would not start. They started the

Sumo by a push and left for Mumbai.

Again after a gap of 10 to 15 days and just two days before Diwali at about 7.30 a.m. A-1 with his wife Sonali, A-3 and Jitu Mavalkar, a friend of

A-1 visited her house by rickshaw. She learnt from Sonali that they had come by a bus of Jagdamba Travels from Borviali to Malvan. Sonali was

having a leather suitcase and A-1 was having a briefcase, whereas A-3 was having a hand bag with a belt so as to hang it around his shoulder. She

asked A-1 as to how they traveled and he replied her that they had come by Nikita Travels and that he had a factory of preparing articles from

plastic powder. Between 6.30 to 7 p.m. A-1 and A-3 had gone to Katta for a round and returned after half an hour. During the day time when she

returned home by about 1.30 p.m. she noticed that A-1 and A-3 were having mobile phone and one of them had received a call from which she

could gather that A-2 was talking to A-3. Both of them were served lunch between 1.30 to 3 p.m. On the next day, she went to the field for

harvesting paddy after 10.30 a.m. and all the three accused were in her house. When she returned between 11 to 11.30 a.m. she came to know

from her children that A-1 and A-3 had gone to Katta and they returned around 1.30 p.m. and were served with lunch. A-2 reached her house

between 7 to 7.30 p.m. by rickshaw and was there for about half an hour and went away, leaving behind A-1 and A-3. The next morning, Sonali,

A-1 and A-3 went to Katta at about 10.30 a.m. so as to buy the bus tickets for Mumbai. After lunch, all the three accused with her children

Deepika and Suraj went by a rickshaw to Katta along with Sonali and went to Mumbai by a luxury bus, one day prior to the Diwali festival.

The witness further stated before the trial court that 5 to 6 days later and two days after the Bhaubij, A-1, Sonali, A-3 and one friend of Santosh

came to her house by rickshaw at about 7.30 a.m. and the friend was introduced by A-1 as Mahesh Shinde (A-6). She identified Mahesh conf-

case-3-09 Shinde before the court and stated that she gave them snacks and tea on their arrival. At about 7.30 p.m. A-2 reached her house by

rickshaw and was there for about 10 to 15 minutes, talking to A-1. A-2 did not stay at her house for dinner. On the next morning, she saw A-1

keeping his shirt, pant and tiffin box and water bottle in an air-bag. When she returned around 11 a.m., she did not see any of the accused. At

about 3 p.m. while she was tying bundles of paddy crop, she had noticed A-2 standing near the well and he asked her whether she needed his

help. She saw A-2 - Amit, A-6 - Mahesh and A-3 - Yogesh taking bath at the well and A-1 was taking bath on the rear side of her house by

using a pipe. She heard A-1 saying somebody needed to be taken to the doctor and, therefore, she asked him who that somebody was. A-1 told

that it was A-6 - Mahesh to be taken to the doctor. A-6 told her that he sustained an accidental injury by a scythe. She further stated that around

7 p.m. A-1 and A-3 took A-6 - Mahesh to a doctor and A-6 returned with the bandage to his index finger of right hand. She also noticed that A-

6 was remaining silent and appeared frightened. He vomited and, therefore, she provided him lemon syrup. While they were chit-chatting around

mid-night, A-1 to A-3 returned to her house after they had taken their meals outside. On the next day at about 3 p.m. A-6 - Mahesh left for

Mumbai by Jagdamba Travels and a day later, A-2 - Amit left by bus for Mumbai. Two days thereafter A1, Sonali and A-3 left for Mumbai by a

bus.

This witness further stated before the trial court that on 12/11/2003 at about 7 a.m. A-1, Sonali, A-3 and A-6 arrived at her house by rickshaw

and that time it was the fete of Lord Giroba at her village. The fete was around 14th November, 2003. She noticed that besides the usual baggage,

the visitors had brought one gunny bag containing roses along with a black plastic sheet. Her daughter Trupti had picked up a rose from the bag

brought by A-1 and he had scolded her. The witness came to know from A-1 that the roses were brought for adorning Lord Giroba. She stated

before the court that during his previous visits A-1 had never brought such flowers. She asked A-1 why he did not bring her daughter - Deepika

and A-1 replied her that A-2 - Amit was bringing her by a luxury bus on the same day. She had seen A-3 taking roses and one plastic sheet in her

basket and was accompanied by A-6 Mahesh. On her query, A-3 told her that he was taking the flowers to clean them in the moon-light. A-3 and

A-6 then went in the direction of Gadhi and after some time A-1 along with two unknown persons also went in the same direction. Within half an

hour A-1, A-3 and A-6 returned to her house conf-case-3-09 and they had not brought back her basket as well as roses carried by them. She

also stated that she had not seen the two unknown persons in the company of the accused and when she asked A-3 as to where her basket was,

she was told, it would be returned on the next day. Before going to bed, A-1 had told her that her daughter -Deepika would come along with A-2

on the next day and she should receive her from Katta. She was further told that A-2 was proceeding to Malvan directly. On the next day at about

5.30 a.m. A-1 went to Katta and returned along with Deepika between 7 to 7.30 a.m. by a rickshaw. A1, A3 and A6 left her house. Between 3

to 3.30 p.m. all the four accused returned to her house by walking and before entering the house, they went to the well and took bath. It was the

day of Lord Giroba fete. She served them food. Between 9 to 9.30 p.m. A1 and A-3 went to attend the fete of Lord Giroba and A-2 and A-6

slept in her house. He along with her husband and children also went to the fete around the mid-night. When she reached there, she did not notice

the rose flowers around the palanquin of Lord Giroba. On the next day, A2 returned to Mumbai at 3.30 p.m. by bus and two days thereafter A-6

and A-3 followed him, again by bus. 8 to 10 days thereafter A1 with his wife Sonali returned to Mumbai. In the month of December, 2003 the

father of A-1 died and, therefore, her brother-in-law conf-case-3-09 and sister-in-law Mangala came to her house to attend the last rites. All of

them went to Pandur village to attend the religious function and thereafter they returned along with A1 and his two wives to her house. The

newspapers of the earlier day carried the news that some dead bodies were found in the hill of Nandos. She came to know about this as her

brothers-in-law were chit-chatting in the courtyard and A1 was present along with them. Between 8 to 9 p.m. police came to her house in a van

and took away A1 for enquiry. She further stated that about two days before the death of the father of A1, the police from Vashi Police, Mumbai

brought him to her house for enquiry. She further stated that a few days after his arrest, A1 was brought to her house while his wife Sonali was

staying with her and at that time at the instance of A1, Sonali handed over one gold mangalsutra and one gold ear ring to the police from Malvan

Police Station which she had removed from her bag. The mangalsutra was flat. This witness identified the suitcase (Art.P-4) belonging to A1, one

air-bag (Article 135) belonging to A6, black air-bag (Article 136) of A-3 - Yogesh. She also identified the blue coloured jacket (Art.O) which

was worn by A1. She also identified the mangalsutra which was recovered from Sonali by Malvan Police while she was in the house of the witness

(Court Article 132-G) as well as ear ring (Article 134-U). She further stated that mobile phone of A1 and A2 were of white colour, but the mobile

of A3 was black in colour. She identified all these instruments. She further stated that the black-sheet carried by A3 was of the length more than

her height and, therefore, she could identify the same (Art. Y). In her cross-examination, she admitted that 7 to 8 days after the arrest of A1, her

husband was also arrested by the police around 8.30 to 11.30 a.m. and her signature was obtained at the police station. She also stated that the

police from Malvan Police Station had not met her till her husband was arrested and she used to read the newspaper after the arrest of A1, as

Sonali used to bring the newspaper. When A1 was brought to her house by Vashi Police, the police had made enquiry with Sonali about the

business of A1. She denied the suggestion that the police had assured her to drop the charges against her husband, if she supported the

prosecution. She also denied the suggestion that her depositions about the visits of all the four accused to her house were false. She had studied

upto 10th standard and her husband had passed 9th standard and had a weak eye sight and suffered from epileptic fits. She also admitted that

during the stay of the accused at her house, she did not keep a watch on their activities. Courtyard of her house was about 30 mtrs. and there were

cashew-nuts trees beyond the courtyard. The Nandos plateau is on the conf-case-3-09 northern side of her house and she was not aware that it

was called as Nandos Gaonkarwadi Dharwas Plateau and she was not knowing the exact distance. She had never gone to the said plateau and as

per her, her husband had not given her information about the said plateau. Her house contained of five rooms and four rooms on four sides with

one center hall. The well is located at about 10 mtrs. on the northern side of her house and there is a cremation ground away from her house. She

stated that she was not able to tell the dates of Ganpati Festival in the year 2002 or that of Diwali or Ghat Sthapana. She was also not knowing the

date of birth of her husband as well as the dates on which her brothers-in-law used to visit during the Ganpati Festival. But she stated that her

daughter - Trupti was born on 14/3/1998. She had not noticed the number of Sumo Vehicle brought by A1 to her house but on white Tata Sumo

there was a name ""Nikita"" and on the blue Tata Sumo there was the name ""Sai Shraddha"", but she was not aware of the registration number of the

rickshaw of Sachin. She did not remember the day of Anant Chaturthi of 2003 as well as Dasehra, Ghat Sthapana, Bhaubij and Giroba Fete. She

again stated that the Giroba Fete was on 12/11/2003. Her mother-in-law had returned from Mumbai on 19/4/2004. Her statement was recorded

in the month of March, 2004 (19th March) and in the month conf-case-3-09 of December, 2003 she had not received a message that there were

weapons in her house. She admitted that a single barrel gun was in her house and she had handed it over to the Malvan Police Station after 15

days of the arrest of her husband. The weapon used to be surrendered during the election time as well. She was aware that it could not have been

used for hunting. Santosh Yadav and she were present at her house when her husband was arrested around 8.30 a.m. and A1 was brought to her

house by police. Santosh Yadav - PW 75 treated her like his mother. Santosh used to address her husband as Baba and to herself as Kaki. When

Vashi Police had brought A1 to her house, there were four police constables and it was around 10th December, 2003. She had enquired with her

husband as to why the police had visited her house and he had told her that the police had enquired whether he knew all the persons whose

photographs were shown to him and whether the said persons had visited her house. She also came to know from her husband that A1 was taken

in custody by Vashi Police in connection with the missing of two persons whose photographs were shown to him. When specifically asked, she

stated before the trial court that during the entire period from 10/12/2003 to 19/3/2004 she felt that she should disclose to the police whatever

information she had about A1 and when she met A1 during the final rites conf-case-3-09 of his father, she felt like asking him and she, in fact,

made enquiry with him but he gave evasive replies. She also admitted that since 20/12/2003 onwards the police were regularly visiting her house.

She admitted about the recoveries made from her house or from the courtyard and during the time of these recoveries A1 was brought to her

house in van. Her entire house was searched by the police and she was not knowing earlier that the weapons/articles recovered by the police were

in her house. The jacket was hidden by A3 in her house along with the clothes. During the visits of the accused to her house A1 used to sleep in

the first room at the right side after entering the house and the other accused used to sleep on the Ota and she, along with her children, was

sleeping in the center hall. She further stated that when A 6 was injured, she had not seen him holding scythe and he was not asked to peel-of a

coconut. She further stated that though she had seen a mobile for the first time when it was brought by A1, she knew how to dial and close the

mobile and she knew how to receive a call or make a call. She also knew reading of English alphabets and, therefore, she could read that mobile

of A1 was of Nokia and that of A2 was Samsung. But she was not aware of the cell numbers of A1 and A3. She also admitted that Santosh was

brought by her husband from a temple as he was an orphan and was brought up by them as a son. She also admitted that during all the incidents of

the visits of accused from May, 2003 to December, 2003, Santosh was residing at her house and he used to do agricultural work, household work

and grazing cattle. On getting a job in a bakery about two months before she was in witness box, Santosh had left the house, but use to visit her

house sometimes in the afternoon. Whenever she visits Katta, she used to meet Santosh in the bakery. Santosh was called for recording his

evidence in September, 2004. She was told by PW 128 - Prabhukhanolkar to visit the Sawantwadi court and she was produced before the court

between 5.30 to 6 p.m. Her statement was recorded by the court as per her replies. She identified the statement at Exh. 67 to have been correctly

recorded and it was signed by her. This witness was subjected to a searching cross-examination and though some contradictions were successfully

brought out by the defence, they had not affected the material evidence of this witness about the visits of the accused and their activities. The

contradictions or improvements regarding the receipt of phone calls by one or the other accused during their stay at her house have no significant

bearing on her material evidence. She is a natural witness and better educated than her husband, a rustic woman, attending to her household,

agricultural work and the family. She cannot be doubted to have supported the prosecution case because her husband was discharged as an

accused. The trial court was, therefore, justified in relying upon her evidence. We have perused her statement at Exh. 67 recorded before the

learned JMFC. She has been consistent in her statements in Exh.67 and her depositions before the trial court. The delay caused in recording her

statement by the police cannot be the sole reason to discard her and treat her as an one-over witness by the prosecution. This witness proved that

after the Ganesh festival of 2003, A-1 to A-3 paid four visits and A-6 Mahesh was with them during the last two visits.

58. PW 75 - Santosh s/o Mohan Yadav was of 18 years of age when he was in the witness box on 17/1/2006 and when his statement (Exh. 391)

u/s 164 of Code of Criminal Procedure. was recorded, he stated his age about 16 years. He is originally a resident of Vengurla but on account of

poverty his mother had kept him at the house of PW 4. He did not join any school and was looking after the household, agricultural work,

including grazing of cattle. He identified all the four accused (A1, A2, A3 and A6) while in the witness box. He stated before the trial court that one

day before the Ganesh Chaturthi festival of 2003, A1 along with two ladies and two men arrived at the house of A7 at about 8 p.m. by a blue Tata

conf-case-3-09 Sumo jeep. PW 4 asked Santosh to introduce guests and that is how the witness came to know that one of the ladies was Sonali

Chavan, the second wife of A1 and the second lady was Punam Loke. The two men were introduced as Amit Shinde and Yogesh Chavan and

Punam Loke was introduced as Amit's friend. At that time, witness had noticed that A1 was wearing 3-4 gold rings, one gold chain and he had a

mobile phone and was wearing good quality clothes. On enquiry, A1 stated that he was running a travel agency. On the next day all the guests had

gone to Malvan in the Sumo car and Punam Loke was dropped at the house of her maternal uncle and the others returned to Nandos. All the three

men along with Sonali stayed at the house of A7 upto Anant Chaturthi. During that stay, all the three accused had gone to the hill near the house of

A7 for hunting. On the 7th day of the arrival of Lord Ganesh, A7 had performed Satyanarayan Pooja which was attended by all the guests as well

as PW 5 - Sachin. Immediately, on the next day of Satyanarayan Pooja, all the three accused had gone to Katta by Sumo and returned with one

gun. On enquiry by A7, A1 had informed that he had brought that gun from Shekhar Masurkar of Katta and the gun was kept in the room where

A1 was sleeping. One cycle tube was wrapped around the barrel of the gun. The witness identified the gun shown to him in the court as Court

Article ""H"". On the day of Anant Chaturdashi, A1 had shown to his brother Sachin two revolvers and he had told them that they were brought for

hunting of birds. The revolvers were of the size of 10 inches. The witness identified Court Article ""CY"" as one of the revolvers. The witness stated

that Punnam Loke returned to the house of A1 on the 6th day of Ganesh Chaturthi and on the next day of Anant Chaturthi, A1, A2, A3, Sonali

and Punam Loke had left for Mumbai, by the Tata Sumo. This visit is the visit during the Ganpati festival and the evidence of this witness

corroborates the evidence of PW 4.

59. PW 75 further stated before the trial court that after the Ganpati festival and about 2 to 3 days before the Ghat Sthapana (during Dasehra

festival), A1 and A3 arrived at the house of A7 at about 2 a.m. and, therefore, A7 asked them why they came past the mid-night. A1 informed A7

that he had come for an urgent work and they have come by the Tata Sumo vehicle which was parked near the house. As per the instructions of

A1, the witness took out the luggage from the vehicle and the luggage included one gray suit-case of A1 and one blackish gold colour handbag of

A3 along with iron bar which was of arms length. The witness identified suit-case (Court Article P-4) and the iron bar (Court Article ""I"") as the

baggage brought in the jeep and the said baggage was kept in the room where A1 used to sleep. When he returned with the cattle's at about 6.15

p.m. he did not see A1 and A3 in the house as well as their vehicle. All the three accused returned to the house of A7 after 9 p.m. and they were

heavily drenched. The witness and PW 4 asked the accused as to how they were drenched and the accused informed that they had gone for

catching crabs. All of them took bath, drank beer and went to bed after the dinner. On the next day in the morning they left for Mumbai. This visit

coincided with the first incident that has taken place on 13/9/2003 and the evidence fully corroborates the testimony of PW 4.

The witness further stated that in the month of October and at the time of harvesting paddy crop, one day early in the morning between 7 to 7.30

a.m. A1 and A3 along with Sonali and one unknown person reached the house of A7 by an auto-rickshaw of PW 5. The healthy person was

introduced as Mahesh Shinde - A6 by A1. All these persons stayed in the house of A7 for 2 -3 days. On the next day, A1 and A3 walked down

to the house of Tanaji Gawade-A4 in the evening and brought two guns with a belt. The witness asked A1 as to why he had brought one gun from

Shekhar Masurkar and one gun from Tanaji Gawade and A1 replied that conf-case-3-09 the revolver was out of order. The guns were kept in the

room where A1 was sleeping and after some time, A1, A3 and A6 closed the room door. He stated that he had seen A1 breaking the parts of

both the guns and he identified these parts when shown to him in the court as Court Article Nos. AI to AH, Court Article Nos. AJ to AK and

Court Article Nos. J and K as the same broken parts of the guns. The witness further deposed that A1 had gone out in the night to Katta and

returned with A2 between 9 to 9.30 p.m. All the accused stayed in the house of A7 and one day prior to the Diwali festival, all the four accused

returned to Mumbai by a luxury bus along with Deepika, the daughter of A7. This visit is the third visit and the evidence of this witness

corroborates the evidence of PW 4 in that behalf. The witness then stated about the fourth visit of all the four accused to the house of A7 was 4-5

days after the Diwali festival and the A1, A3, A6 reached the house of A7 by rickshaw of PW 5 at about 7.30 a.m., whereas A2 reached the

house of A7 by rickshaw at about 7.30 p.m. While going to bed, A1 had told him that he wanted to go for hunting on the next day and accordingly

on the next day, A1 informed PW 4 that he was proceeding for hunting and kept tiffin, water bottle and some clothes and cut parts of the gun in

one handbag of A3, whereas the sword and iron bar were given to A6. The sword (Court Article AG) identified by the witness in the court. He

claimed to have seen A1 and A6 going towards the hill along with the weapons and at about 3 p.m. he met all the four accused while they were

returning from the hill. A1, A3, A6 and A7 had lunch together and A1, A3 and A7 had taken A6 to a dispensary at Katta at about 6 p.m. After

some time A7 along with A6 returned home but A1 and A3 did not. The witness saw A6 with a bandage on his right hand finger. The witness

asked A6 as to what had happened so as to cause a cut injury and A6 informed him that he had sustained the injury while peeling the coconut on

the hill. The witness further stated that A6 had vomited and he was given lemon syrup and he slept. At about 11 p.m., A1, A2 and A3 returned to

the house and had beers and went to bed after the dinner. On the next day, A2 and A6 left for Mumbai and two days later A1 and A3 along with

Sonali left for Mumbai. This visit tallies with the second incident that had taken place on 30/10/2009 and corroborates the evidence of PW 4.

The witness further stated before the trial court that about 8 to 10 days later again A1, A3, A6 along with Sonali reached the house of A7 in the

rickshaw of PW 5 in the morning at 7.30 a.m. and they had brought two baskets full of rose flowers. During this visit they stayed at the house of

A7 for 2-3 days and on the day of arrival, A3 and A6 were plucking petals of roses in the room of A1. Trupti, the youngest daughter of A7

picked up one flower and A1 had scolded her. But, when PW 4 intervened, A1 had told him that those flowers had to be offered to the palanquin

of Lord Giroba. On the third day of the visit, A1 went to Katta in the morning around 7 a.m. and returned with Deepika. A1 kept tiffin given by

PW 4 and water bottle and cut guns in the bag of A3. He gave iron bar and sword to A3 and A6 and at about 9.30 to 9.45 a.m. A1, A3 and A6

went to the hill for hunting along with the bag and sword as well as iron bar. At about 3 to 3.30 p.m. A3 and A6 came from the hill side and were

followed by A2. He saw all of them along with A1 taking bath near the well in the house compound. A1 kept the cut parts of the gun and the

sword on the loft. They had their meals and slept. In the evening, A6 left for going to Mumbai and next day morning at about 10 a.m. A1 and A2

were quarreling with each other and the witness learnt from A1 that the quarrel was over money and it was settled. On the same day, A2 left for

Mumbai and thereafter A3 also left for Mumbai, leaving behind A1 and Sonali who stayed there for about 8 days. The witness identified the

handbags of A3 and A2. The black handbag (Court ArticleT) was of A2 and the blue colour handbag (Court ArticleF) was of A3. This evidence

of the witness relates to the last incident of 13/11/2003 and supports the evidence of PW 4. The witness also stated about the death of the father

of A1 and subsequent visit to Nandos as well as his native place along with the family and PW 34. He also described the manner in which A1 was

arrested from the house of A7 on 21/12/2003. This witness was subjected to a searching cross-examination and barring a few exaggerations and

improvements, the material evidence regarding five visits of the accused starting from the Ganpati festival remained intact. He stated in his cross

examination that after the arrest of A1, police used to visit the house of A7 frequently. He supported the seizure of some bags and articles from the

house of A7 at the behest of A1 as well as the recovery of some bangles and ear rings by PI Landage. He admitted that he had never told PW 4

that A1 had brought guns and swords in the house, but added that PW 4 was aware that the accused had brought guns and revolvers but she did

not ask them as to why they had brought those weapons. He also confirmed the visit of the police officers from Vashi Police Station enquiring

about the visit of the accused. He admitted that he had not seen any special identification marks on the parts of the guns, but reiterated that some

parts of the guns were cut and were broken. He also admitted that his statement was recorded by constable - Vasu Rane.

60. The learned defence counsel urged before us that PW 75 was a got up witness and his statement at Exh. 391 was recorded by the learned

JMFC on 17/9/2004 i.e. after the charge-sheet was filed. These submissions have no substance. We have verified from the record that while filing

the charge-sheet, an application was submitted before the learned JMFC seeking permission to produce PW 75 for recording his statement u/s

164 of Code of Criminal Procedure. and as per the date fixed by the learned Judge, the statement of this witness at Exh. 391 has been recorded

on 17/9/2004. PW 75, therefore, cannot be termed as a got up witness. We have perused the statement recorded at Exh. 391 and the same is

substantially on the lines of the depositions made by the witness before the trial court and more particularly about the five visits of the accused to

the house of A7 from Ganpati festival of 2003 till the fete of Lord Giroba.

61. On the assessment of the evidence of PW 4 and PW 75, the prosecution proved before the trial Court that the accused Nos. 1 to 3 paid in all

five visits to village Nandos starting from the Ganpati festival of 2003 and during the first two visits A6 was not with them. However, he had

accompanied them in the remaining three consecutive visits and stayed at the house of A7. He was seen injured in the second visit and he was

taken to a local doctor who had put a bandage on his right hand finger. Both the witnesses also proved before the trial Court that A1 to A3 were

seen with drenched clothes during the second visit to Nandos and they were also seen taking bath around the well located in the compound of the

house of A7. During the fourth and fifth visit as well A1 to A3 and A6 were also seen taking bath near the well. They were also seen going

towards the hillock with weapons and while returning in the evening from the hillock. The accused had claimed that they had gone to the hillock /

plateau for the hunting. During all these visits A2 was not staying at the house of A7 on most of the days though he was on and of visiting the

remaining accused at the house of A7 and he was also seen while returning from the plateau along with A1, A3 and A6. It is also established that

during the last three visits A2 had reached Nandos separately and not along with A1 and A3 or A6. PW 30 Dr. Rajendra Rane stated before the

trial Court that on 3-1-2004 PW 128 -Prabhukhanolkar had approached him to enquire whether one Mahesh Shinde had visited his clinic on

30/10/2003. He verified the record and confirmed that a patient by name Mahesh Shinde had visited him with injury on the index finger of right

hand. He had dressed the injury and conf-case-3-09 also given anti tetanus injection to the patient who paid him Rs. 40/- as fees. He also stated

that A1 had brought the patient along with one more person. He submitted before the Court the medical papers which were handwritten. He

identified A7 as his regular patient and stated that he knew PW 4 as well as two nephews of A7 i.e. PW 5 and A1. He identified A6 in the Court

as the same person who had sustained injury on the index finger. In his cross-examination the witness admitted that during the Test Identification

parade he could not identify A6 at the first instance and it was submitted by the learned defence counsel that this witness was not reliable and he

was only brought in to support the prosecution case. The failure of the witness to identify A6 in the TI parade by itself cannot be a reason to

discard this witness when there is evidence brought out in his cross-examination that there was no other doctor available in Nandos and the witness

was well acquainted with A7, A1, PW 4 and PW 5 as one family unit. This witness proved before the Court that A7 had taken a patient to his

clinic on 30/10/2003 as the patient had sustained a cut injury on his index finger. It was also pointed out by the defence that no separate case

paper was produced by this witness so as to support his testimony that he had dressed the injury sustained by A6. The witness had referred to the

medical paper at Exhibit 185 and it carried the names of other patients who had visited his dispensary on 30/10/2003. In addition PW 4 and PW

75 have consistently stated that A6 had sustained a bleeding injury to his right hand and he was taken to a doctor at Nandos during the fourth visit.

The injury was dressed and on return he had vomited. He was given lemon syrup and he was nervous.

62. The first visit of A1 to A3 to Nandos during the Ganpati festival and for a period of about ten days has been proved by the evidence of PW 4,

PW 34 and PW 75. The evidence of PW 4 before the trial Court proved that on 24/9/2003 accused No. 1 asked PW 34, his maternal uncle, to

give his car to the contract service company in place of the white Sumo of the accused No. 1 as he wanted to purportedly go to Goa and he took

the said car i.e. Tata Sumo Jeep bearing Registration No. MH-4-AS-76. He further stated before the trial Court that on 28/9/2003 he returned

the white Tata Sumo and thus from 24/9/2003 to 27/9/2003 accused Nos. 1 to 3 were out of Mumbai. As per the evidence of PW 4, A1 and A3

reached Nandos along with Sonali and Punam past midnight i.e. around 1.30 a.m. on 25/9/2003 in a white Tata Sumo Jeep and her husband had

asked A1 as to why they had arrived at such odd time. She conf-case-3-09 had also learnt from A1 that A2 also had come to Nandos and had

stayed at his friend's house. Around 9 a.m. A2 called A1 on phone and around 9.30 a.m. A1 and A3 had gone to katta and returned. Again A2

came to her house between 11.30 a.m. and 12 noon, all of them had left her house but returned between 3 to 3.30 p.m. and they went to the well

and had bath. At 4 p.m. A2 left her house alone and was followed by A3 between 5.30 to 6 p.m. Within half an hour A1 also left her house by his

jeep and all of the three returned home around 9.30 p.m. All of them were in drenched clothes which they removed and kept for washing. They

had bath near the well. That was a Thursday falling on 25/9/2003. They stayed in her house on the next day and Saturday morning all of them left

for Mumbai by Tata Sumo vehicle after it was started by giving a push. Thus the accused had halted in the house of PW 4 on 25th and 26th

September 2003 and they left Nandos on 27th September 2003 to return to Mumbai. Obviously on the next day i.e. on 28/9/2003 A1 went to the

house of PW 34 and returned the white Tata Sumo Jeep to him.

63. PW 15 - Amit son of Bharat Patil stated before the trial Court that his father was running Konkan Plaza Hotel and lodge at Kankavli and it

belonged to Nijam-Uddin Kazi. The witness stated that he was the manager of the said hotel and he was maintaining a lodge register in which the

entries of the visitors along with their addresses, time of arrival and departure were recorded. He also stated that the register entries would be in

the handwriting of the customers. He identified Court Article ""BA"" as the register maintained by his hotel ""Konkan Plaza Lodge"" during the relevant

period i.e. year 2003. He referred to the entry dated 25/9/2003 in the said register when it was shown to him before the Court and Entry No. 892

disclosed the the names of Samir Sonavane, Shankar Sarge and Hemant Thakare who had occupied Room No. 5 in the said lodge. He stated that

they had arrived at 1 a.m. on 25/9/2003 and the entry also indicated their addresses, nationality, occupation etc. The entry was signed by one of

the customers as ""Sarge"" whereas the date and time of arrival was entered by the witness. The entry also indicated that they had arrived from

Mumbai and the handwriting at Exhibit 120 regarding payment of Rs. 300/- was in his handwriting. He further stated, for the first time the police

had visited his lodge on 25/12/2003 between 1.30 p.m. to 2 p.m. and his statement was recorded. They again visited his lodge on 27/12/2003

between 1.30 p.m. to 2 p.m. while his father was present and three to four police officers were in the civil dress and did not disclose their names.

He denied the suggestion that entries at Exhibits 120, 121, 122 and 110 were not in the register when the police had visited the lodge on

25/12/2003. He also admitted in his cross-examination that in the entry at Exhibit 120 there was some overwriting and the date from 26/9/2003

was corrected as 25/9/2003. This witness proved that on 25/9/2003 Shankar Sarge, Hemant Thakare and Samir Sonavane had occupied room

No. 5 in the Konkan Plaza Lodge at Kankavli and they had arrived at the hotel at 1 a.m.

64. PW 104 Deepak son of Manohar Wagle was the Assistant Examiner of Documents in the State CID office, Pune since 1986. He obtained a

graduation degree in Science from Pune University in 1982 and had completed the departmental training of one year along with a Diploma in

Documents Examination from New Delhi. He stated before the trial Court that by the time he was examined before the Court he had examined

about one lakh documents and recorded his opinion as a part of his duties. On 1st March 2004 he had received a letter from the SP of

Sindhudurga (Exhibit 515) and received the documents in 13 envelopes and one of them was the register maintained by Hotel Konkan Plaza. He

identified the register Court Article No. BA which was received by him and more particularly the entries at Exhibits 121 and 122 therein. He had

also received the specimen handwriting and signature of A2 Amit Shinde along with a notebook containing handwriting of the said accused. He had

also received the specimen signature of Subhash Dhondur Chalke and he had examined the same. His evidence proved before the Court that the

entries at Exhibits 121 and 122 in the register of Konkan Plaza Hotel were made by accused No. 2 - Amit Shinde including the signature ""Sarge"".

Thus the third person who occupied room No. 5 of Konkan Plaza Hotel in the name of Samir Sonwane was in fact accused No. 2 - Amit Shinde

but he deliberately entered his name in the hotel register as ""Samir Sonawane"". As noted earlier, when A1 and A3 reached the house of PW 4

around 1.30 a.m. on 25/9/2003, A1 had told her that A2 also had reached Nandos and he had halted at his friend's house.

65. PW 17 Subhash Chalke had received an amount of Rs. 1,55,000/- from Krishna Hardas in the company of Vijay Wadekar on 22/9/2003 at

about 7.30 p.m. after he had signed the transfer documents and blank papers. He was told by Shankar Sarge that the programme of shower of

money was to be arranged at Malwan and had requested the witness to accompany him to attend the said programme. However as he was in

service he declined to go to Malwan. On 22/9/2003 he visited the house of Shankar Sarge and paid him an amount of Rs. 1,55,000/- in cash

around 9 p.m. and in his presence Shankar Sarge gave a ring to accused No. 1 from a PCO informing him that the money was arranged. A1

asked Shankar Sarge to start for Malwan on 23/9/2003 at 12 noon. The witness had received a telephone call from Shankar Sarge at 12 noon on

23/9/2003 and told him that he along with Hemant Thakare, A1, A2 and A3 were proceeding to Malwan by a Tata Sumo car. This was the last

communication he had from Shankar Sarge. The evidence of PW 119 Parvati Shankar Sarge indicated that she knew her husband's friend by

name Chalke. The stamp paper issued by Sakpal in his favour and the stamp paper signed by him and handed over to Krishna Hardas were

identified by him. The stamp paper was of Rs. 20/- from the HDFC Bank and it was Muddemal Article No. 34 in Sessions Case No. 4 of 2005

and Muddemal Article No. 36 was the stamp paper executed by Sakpal in his favour for transferring the room. Court Article BD was the blank

stamp paper and Court Article BI was the stamp paper signed by Sakpal. This witness had identified A1 to A3 in the Court as the persons he had

met in the company of Shankar Sarge few days before he had handed over the amount of Rs. 1,55,000/- in cash to Shankar Sarge on 23/9/2003.

The evidence of PW 104 Dipak Wagle has proved the documents referred to conf-case-3-09 hereinabove including the signature of PW 17 on

the documents signed in favour of Krishna Hardas who had lent Rs. 1,55,000/-. These documents were seized by PW 39 Prabhakar Sail. The

entries which were proved by the evidence of PW 104 at Exhibits 244/1 to 246/6 were the specimen signatures of PW 17 Chalke and Exhibit 601

was the blank stamp paper with the date 22/9/2003 written on it. This evidence of PW 17 proved before the trial Court that on 24/9/2003

sometime after 12 noon A1 to A3 along with Shankar Sarge and Hemant Thakare had left Mumbai for their onward journey to Malwan by a Tata

Sumo car and Shankar Sarge carried a cash amount of Rs. 1,55,000/- with him. It was further established that Shankar Sarge, Hemant Thakare

and A2 - Amit Shinde occupied room No. 5 at Hotel Konkan Plaza at Kankavli and were dropped by A1 and A3 at the said place and A1 and

A3 proceeded in the Tata Sumo Jeep to the house of PW 4 and reached at about 1.30 a.m. on 25/9/2003. Both Shankar Sarge and Hemant

Thakare were not heard of after they had left Mumbai on 24/9/2003 in the company of Accused Nos. 1 to 3 till the dead bodies were recovered

on 20/12/2003 and the Dead Body No. 1 that of Shankar Sarge has been duly identified. Thus Shankar Sarge was last seen alive in the company

of A1 and A3 on 25/9/2003 at Kankavali.

66. PW 107 -Mr. S. Pandurang Prasad proved his report at Exhibit 650 before the trial Court and from the DNA test conducted by him on the

basis of the blood samples of Dhondu Babu Sarge the identification of DB1 was proved.

The evidence of PW 76 Dr. Anil Jinturkar proved that DB1 had sustained gun shot injury and so was the case of DB 10. The identification of DB

10 remained inconclusive and we have accepted the said finding of the trial Court.

67. We have already analysed the evidence of PW 69 Dayanand Jagannath Thorat as to how accused No. 1 had cheated some other persons

under the name of shower of money and he knew accused Nos. 1 to 3. He deposed before the trial Court that in November 2003 he had met

Raghunath Gavali who had told him that Shankar Sarge was missing for two months and most probably after he had gone with Accused No. 1 to

Baroda. This witness has further stated before the trial Court that accused No. 1 had obtained a Simcard on the basis of his driving licence and the

application form signed by him. When he came to know the missing of Shankar Sarge from Raghunath Gavali he had contacted accused No. 1 on

the mobile from the PCO and enquired with him whether Shankar Sarge had gone with accused No. 1. He had also told accused No. 1 that he

had come to know from Raghunath Gavali that Shankar Sarge had gone with accused No. 1. Accused No. 1 abused him and the witness went to

the house of Shankar Sarge and came to know from his wife that Shankar Sarge was not heard of for about two months. She further told him that

he was carrying money to go to Gujarat two months back and did not return. He had collected one photograph of Shankar Sarge from his wife

and on 21st or 22nd December 2003 he read in Navakal newspaper that accused No. 1 and his friends were arrested in connection with the

murders of Mali family at Nandos. He was called by the Malwan police and his statement was recorded on 21/1/2004. He admitted in his cross-

examination that he did not make further enquiry who Mr. Taksal was and the said person was not known to him. He also admitted in his cross-

examination that due to fear he did not go to the police station to report that Shankar Sarge was last reported to be travelling with accused No. 1.

68. Even though we have discarded the evidence of PW 5 who had claimed that he had transported two visitors from Konkan Plaza Lodge along

with A2 Amit, the evidence analysed by us has proved that Shankar Sarge had travelled along with A1 to A3 in the Tata Sumo jeep of A1 on

24/9/2003 from Mumbai and all of them had reached Kankavli around 1 a.m. on 25/9/2003 along with A2, Shankar Sarge and Hemant Thakare,

had occupied room No. 5 of Hotel Konkan Plaza and after depositing Rs. 300/- the register entries were made by accused No. 2 using his fake

name as Samir Sonavane. Shankar Sarge was thus last seen in the company of Accused No. 2 and he had travelled along with Accused Nos. 1 to

3 from Mumbai to Kankavli.

69. PW 112 -Shri Vidyadhar son of Shankar Rawool was the Branch Manager of Maratha Sahakari Bank Ltd. at Borivali since 2002. He stated

before the trial Court that Sindhudurga police had sought information from his bank and referring to the account of Mrs. Sujata Gajanan More. As

noted earlier Mrs. Sujata Gajanan More married accused No. 1 and became Sujata Santosh Chavan. The witness identified the extract of Savings

Account No. 34021 under Exhibit 648A. This bank account statement shows cash deposits from time to time and in the sums varying from Rs.

10000/- to Rs. 50000/-. On 29/9/2003 an amount of Rs. 20,000/- was deposited in cash in this account.

PW 110 -Vijaykumar Sangodkar was the Bank Officer from State Bank of India Dahisar Branch. He stated before the trial Court that the bank

account extract of accused No. 3 - Yogesh Chavan had a bank account with the said Branch with account No. 10155358534. He identified the

extract at Exhibit 646-A of the said account issued to the IO on requisition. The extract indicated that on 29/9/2003 a cash amount of Rs.

10,000/- was deposited in the said account.

70. It is also evident from the testimony of PW 13 -Bala @ Anand Lokhande that the accused had patronized Hotel Konkan Plaza for the halt of

their prey / victims and A2 Amit Shinde was using a fake name as and when he brought these victims from Mumbai and put them in the said hotel

and stayed with them as one of the visitors. He knew all the three accused i.e A1 to A3. It has also been proved by the evidence of PW 4 and PW

75 that on 25/9/2003 accused Nos. 1 to 3 returned between 3 to 3.30 p.m. and were seen taking bath near the well in the compound of the house

of PW 4. At the second time on the same day they returned at 9.30 p.m. and were seen in drenched clothes which they removed and put for

washing. They also had bath. This evidence indicated that every time the conf-case-3-09 accused eliminated their prey, they would return and have

bath near the well. The inference that could be drawn is that on 25/9/2003 in two different instances, the victims were killed. The first killing was in

the afternoon between 1 p.m to 3 p.m. and the second killing was in the night before 9 p.m. DB 10 could not be identified conclusively as being

that of Hemant Thakare and, therefore, even on the basis of the last seen theory there is no conclusive proof that the second victim killed on

25/9/2003 was in fact Hemant Thakare but in the case of Shankar Sarge it is proved beyond doubt that he was killed after he was last seen in the

company of the accused and he was killed by gun shot injuries. Having regards to the antecedents of the accused A1 to A3 and elaborately

brought out in the evidence of PW 69 Dayanand Thorat, PW 18 Aijaz Desai, PW 17 Subhash Chalke and PW 13 Bala Lokhande, it has been

established beyond doubt that A1 to A3 had engaged from time to time to lure people to the magic show for the shower of money and extracted

cash amounts from the victims. The accused at some point of time shifted their modus operandi to Kankavli and Nandos and changed their tactics

after they burnt their fingers in the earlier incidents where the robbed persons started chasing them to recover the money they had paid either to

perform the magic or on some other pretext. They decided to take their victims to conf-case-3-09 Kankavli and lure them for magic show so as to

multiply the amount given in cash by the victims. The victims would be taken to isolated places and killed in a planned manner so that the victims

would not leave any trace of evidence behind. They were not allowed to travel by their own vehicles and the accused insisted that the victims

would travel by a public transport and A2 would stay with the victims at Hotel Konkan Plaza. We, therefore, do not have any hesitation to hold

that it is the accused Nos. 1 to 3 who eliminated Shankar Sarge and the failure of the prosecution to lead evidence that from Hotel Konkan Plaza,

Shankar Sarge was taken to some isolated place by the accused and he was shot dead, has not affected its case. In our opinion, based on the last

seen theory the prosecution has reasonably proved that it were the accused and none else who could have eliminated Shankar Sarge and to this

extent we do not agree with the findings of the trial Court in the acquittal of the accused for the killing of Shankar Sarge on 25/9/2003 at the

plateau of Nandos wherefrom his dead body was recovered on 20/12/2003. The last seen alive together circumstance could not have been

discarded by the trial court, in such a case and with the established antecedents of the accused in engaging people to fall victims to the magic show

to multiply the money.

71. As discussed earlier, the evidence of PW 14 has conclusively proved that in the second attempt and after he was robbed in the first attempt of

Rs. 3 lakhs when he had gone with accused No. 2 at Badoda, PW 14 borrowed an amount of Rs. 3 lakhs from his friend Ganpatsheth Gaikwad

of Tisgaon village at Kalyan Taluka and he went to Bala Pisal at Badlapur and informed about the arrangement of Rs. 3 lakhs. Bala Pisal in turn

contacted A1 and A2 on phone and told them to arrange for the bus tickets for going to Kankavli. On the next day at about 10 a.m. he received a

phone call from Bala Pisal that A2 and Ors. have booked five tickets for A2, Sachin Pawar, Somnath Patil, Bala Pisal and the witness. He was

also informed that the bus would leave around 3.30 to 4.00 p.m. from Borivali so as to go to Kankavali and it would reach Vashi between 8.30 to

9.00 p.m. The witness, therefore, asked Bala Pisal, Sachin Pawar and Somnath Patil to catch the bus at Borivali and told them that he would join

them at Vashi. This was one day before the Laxmipoojan and the witness further stated that it might be 20th or 21st day of October. They

travelled by a private bus and after reaching at Vashi he was contacted on phone. He met them and did not see A1 and he was informed that A1

had gone with his family in a private car to Kankavli. The witness further stated that as he was to carry cash along with Shri conf-case-3-09

Ganpathsheth Gaikwad he did not join the bus and instead asked them to proceed further and he would follow them. A2 had given them contact

number of Konkan Plaza Hotel at Kankavli and told them to come to the said hotel after reaching Kankavli. He was also informed by A2 that he

should not reach Kankavali by a private vehicle and he should come only by a public transport. He was also told to bring one gunny bag along with

cash. He saw them off and after some time along with Ganpatsheth started his journey by his Lancer car. They halted at Ratnagiri, took bath and

reached Kankavali at about 4 p.m. and all the while during the journey he was in touch with A2 Amit on phone. A2 abruptly met them in front of

Konkan Plaza Hotel and saw them reaching there by a Lancer car. The witness took the bags along with cash to the said room in Konkan Plaza

hotel. They got into the same room where Bala Pisal, Sachin Pawar, Somnath Patil and A2 were staying. Cash amount was shown to A2 who

informed them that A1 came to know that the witness and his friend had arrived by a private car and A2 returned with the message that the

programme of shower of money was cancelled and the work of multiplying of money would not be carried out. The party was told to come back

on the next day of Bhaubij and in any case Bhaubij was about 4-5 days away. Despite the request made by the witness to A2 to arrange for the

programme, they were told that because they had come by a private vehicle the work would not be done. The witness further stated that he,

Ganpatsheth Gaikwad, Somnath Patil and the driver returned to Mumbai by Lancer car. Thus the third visit of the accused to Nandos / Kankavali

is also proved by the evidence of PW 4 and PW 75 and it is conclusively proved by the evidence of this witness that the magic for shower of

money was cancelled by A1 only because the witness had come along with his financier Shri Ganpatsheth Gaikwad by a private car. The modus

operandi of the accused was to ensure that after the victims were done to death, none of their private belongings would remain behind after they

were robbed of the cash they had brought. It is also proved by the evidence of this witness that during this visit A4 had joined A1 to A3 along with

Sonali wife of A1 and travelled by Jagdamba Travels which was running its buses between Borivali to Malwan and A1, A3 and Sonali along with

one more friend of A1 had reached her house at about 7.30 a.m. two days before the Diwali festival. The evidence of this witness further revealed

that A2 had written his name as Amit Shenoy in the hotel register.

72. Let us now go to the fourth visit of the accused to Nandos / Kankavli i.e. on the next day of Bhaubij. It is not in dispute that it fell around 30th

October 2003. As noted earlier this visit also has been proved by the evidence of PW 4 and PW 75. During this visit the accused i.e. accused No.

1, accused No. 3 and accused No. 6 along with Sonali stayed there for three days, at the house of PW 4.

73. PW 9 -Shri Appa son of Rajaram Rane was the manager of Pallavi Lodge at Kankavli when he had stepped in the witness box and he stated

that he was working for the last thirteen years. The said lodge was located on the National Highway near the petrol pump and the owner's name

was Janardan Savade. There used to be heavy rush in the lodge during Diwali and Ganesh festival as well as early May every year. During the rush

period he used to stay at the hotel and other times he used to reside at his house at Halwal after his duty hours. On 25/12/2003 police visited his

lodge and asked for the Visitor's Register which he had shown them. They were searching for the name of Amit Shenoy and the said name entry

was found in the register pertaining to 29th October 2003. The register indicated that on 29/10/2003 five persons had arrived at his lodge and he

provided them room No. 5 with five cots/beds. Amit Shenoy had recorded his name in the said register as one of these five persons. He identified

the person who had given his name as Amit Shenoy and that was accused No. 2 sitting in the dock at Serial No. 4 from South. He pointed to

accused No. 2 and stated that he was the same person who signed the register on 29/10/2003 and stayed in room No. 5 along with four others.

The key of the room was provided to him and Court Article No. AM was identified by him as the very same register maintained by him and the

red circled entries regarding room No. 5 from page No. 76 (Exhibit 89) the name of the customer as ""Amit Shenoy"" age as ""21"" date of arrival as

29/10/2003"" and arrived from ""Mumbai"" for ""office"" purpose and stay for ""1"" day and visitors ""5"" was written by A2. He stated that on the next

day at about 9 a.m. all these persons checked out of the hotel and A2 handed over to the witness one airbag of blue colour and had told him that

he would come subsequently and collect it. All of them left the lodge together. He was waiting in the lodge and A2 returned at about 5 p.m. and

collected his bag from the witness. This part of the evidence has not been in any way affected in the searching cross-examination of this witness.

He was also the witness who had attended the T1 parade and identified A2 at the T1 parade. In his cross-examination he stated that he

remembered the faces and descriptions of the four persons who had accompanied A2 and on 25/12/2003 when the police conf-case-3-09 had

shown him the photographs ""AA"", ""AB"", ""AC"" and ""AD"" which were shown to him while in the witness box. He stated that all these four persons

whose photographs were shown had arrived at Pallavi Lodge but their clothes were different from the clothes which were seen in the photographs.

He also admitted in his cross-examination that he had issued receipt in the name of Amit Shenoy. He also stated that the date of departure in the

Column of Departure at Exhibit 89 was in his handwriting and the date of departure was shown as 30/10/2003. By the evidence of PW 46 -Satish

son of Sadashiv Prabhu resident of Kanaknagar Taluka Kankavali and who was working at Pallavi Cold Drink House at Kankavali the

prosecution proved the seizure of the visitor's register maintained by the Pallavi Lodge and under panchanama (Exhibit 269) and which was signed

by him along with one another witness. He also stated that Pallavi Cold Drink was owned by the owner of Pallavi Lodge but he admitted that he

did not know the name of the manager of Pallavi lodge. The prosecution examined PW 56 Parshuram Ganpat Parab in support of the document at

Exhibit 306 i.e. specimen signature of accused No. 2. The evidence of PW 104 Dipak Wagle, handwriting expert proved that the entry at register

(Exhibit 89) was that of accused No. 2. Thus the prosecution proved that accused No. 2 along with four other visitors had stayed at the lodge and

even though their names were not entered in the register, PW 9 identified the four photographs shown to him being of the very same four persons

who had occupied his lodge along with A2 and checked out of the hotel on 30/10/2003 along with him. This evidence has not been shaken in any

way in the cross-examination of this witness though he admitted in his cross-examination that on 25/12/2003 the police had shown him four

photographs Court Articles AA, AB, AC and AD. He denied the suggestion that on 29/10/2003 accused No. 2 did not occupy the room in his

lodge along with the said four persons and that they did not stay in the said hotel till 30/10/2003. From the register which is available on record we

have verified Exhibit 89.

74. As per the evidence of PW 13 - Bala @ Anand son of Motiram Lokhande who was working as an operator with Bharat Bijlee at Belapur and

a friend of Bala @ Vinayak Pisal, he was introduced to accused No. 2 by Bala Pisal on 28/10/2003 and he identified accused No. 2 before the

Court as the person sitting in the dock at serial No. 3 from South. He had also met accused No. 1 along with accused No. 2 at Gora Gandhi Hotel

at Borivali on that day and Bala Pisal had introduced the witness to accused No. 1 as well. The evidence of this witness proved that on

28/10/2003 he travelled along with Ramesh Pujar by ST bus which left at 4.30 p.m. from Borivali and reached Kankawali at 4.30 to 5 a.m. Both

of them went to Konkan Plaza Hotel and occupied room No. 3. He verified entry made at Exhibit 110 in the register of Hotel Konkan Plaza when

it was shown to him while in the witness box. He further stated that between 5 to 5.30 p.m. Bala Pisal met him at Hotel Konkan Plaza and

informed that the magic of money shower programme was to be arranged on the next day i.e. on 30/10/2003 and that he would take them for the

said programme between 10 to 11 a.m. The witness gave Rs. 100/- to Bala Pisal for expenses and Bala Pisal left the hotel. The witness along with

his companion had a night halt at the hotel. On 30/10/2003 he waited upto 3 to 3.15 p.m. for Bala Pisal. After some time A2 reached the hotel

and enquired with them whether Bala Pisal had visited the hotel. He was with them upto 6 to 6.30 p.m. and A1 came to their room along with A3.

They also enquired whether Bala Pisal had come to Konkan Plaza Hotel and informed that the magic programme was arranged and they should

wait for Bala Pisal upto 10 p.m. and if he did not come the programme would be cancelled. A2 waited with them at the hotel but A1 and A3 had

left the hotel. However, after 10-15 minutes A1 and A3 returned to the hotel and conf-case-3-09 informed them that the programme was

cancelled as Bala Pisal had not come. The witness was told to return to Mumbai and was provided with Luxury bus tickets. He also stated that all

the three accused remained behind at Kankawali. On the next day he reached Mumbai and 2-3 days later he received a phone call from the wife

of Bala Pisal that he had not returned and she enquired about his whereabouts. He informed her that he had met Bala Pisal at Borivali and he had

travelled to Pune. 7-8 days thereafter, the Police from Badlapur police station had called him in connection with the enquiry of the missing report

by Bala Pisal's wife. He also stated that during the enquiry he had told the police that Bala Pisal and Sanjay Gaware had gone together to Pune

and the said enquiry was conducted on 30/11/2003. He also stated that on 11/11/2003 Vashi Police had also made enquiry with him. The

evidence of this witness also proved that he was a childhood friend of Bala Pisal and they had studied together from 5th standard onwards. The

evidence of this witness further proved that on 28/10/2003 Bala Pisal and Sanjay Gaware had left from Borivali and informed him that they were

proceeding to Pune and would meet him at Konkan Plaza Hotel at Kankavali. The evidence of this witness proved that he met A1 to A3 at

Konkan Plaza Hotel on 30/10/2003. It was submitted by the defence that the evidence of this witness was unreliable because he himself was

suspected to be an accused on the missing report filed by the wife of Bala Pisal and he deposed only to support the prosecution case, as he was at

the mercy of the police. These submissions did not impress us. He was certainly under enquiry by the Badlapur and Vashi Police and there is

nothing brought out in the cross-examination of this witness to disprove that he had not stayed at Hotel Konkan Plaza on 29th and 30th October

2003 and that Bala Pisal met them on 29/10/2003 and all the three accused met him at the said hotel on 30/10/2003 on 2-3 occasions.

75. Court Article No. FX is the blood stained diary recovered under the panchanama at Exhibit 279 and the recovery was proved through the

evidence of PW 50 -Subhash Thombre. PW 98 - Vinayak Chavan was shown the said diary while he was in the witness box and he identified the

said diary as being that of his brother Dada Chavan (deceased - DB 3). Chemical Analyser U.N. Banage"s report at Exhibit 644 proved that the

said diary was stained with blood. PW 104 - Deepak Wagle, handwriting expert also gave his report so as to prove that it was the diary

maintained by Dada Chavan. This diary had names and telephone numbers of the friends / acquaintances and near relations of Dada Chavan. The

said diary contained the name of PW 10 - Yogesh Dilip Dhake along with his cell number. The name of PW 10 Yogesh Dhake was handwritten in

the said diary with his telephone numbers as 9422278934 and 31038619. The said diary also carried the telephone number of accused No. 1 as

02113253253 and also the telephone numbers of Vivek Dudhe, the cousin of Vijaysingh Dudhe as 6810577 and 31038810. It has also come in

the evidence before the trial Court that on recovery of the said telephone diary of deceased Dada Chavan, the Superintendent of Police,

Sindhudurg started contacting the persons named in the diary from 20th December 2003 onwards and in that process he contacted PW 10

Yogesh Dhake on 21/12/2003. Let us, therefore, consider the evidence of PW 10.

76. PW 10 stated before the trial court that he originally hailed from Jalgaon and was a student of B.E. (Instrumentation) from 1997 to 2004 at

Pune and in the year 2003 his father was holding the post of Executive Engineer with MSEB at Ratnagiri. He was residing as a paying guest and

was appearing for the third year of B.E. in the year 2003 and, therefore, he was required to earn and learn. He was initially working with ""I

Newway"" at Apte Road, Pune and he got acquainted with Shri Vivek Dudhe who was also doing networking. Both of them also got acquainted

with D.R. Jagtap from Jejuri when PW 10 was engaged in marketing ""Spend and Save"" card of ""I Newway"" Company. Subsequently he joined

Active Network company and his job was to increase the number of members for Matrix Plans. He got D.R. Jagtap as a new member for Matrix

Plan and Dada Chavan also became a member of the Matrix Plan in May 2003 through D.R. Jagtap. Dada Chavan was from Jejuri like D.R.

Jagtap and this witness, Vivek Dudhe, Dada Chavan, D.R..Jagtap and 3-4 others of Sanjay Kadam Vikas Kemse and Amol Shaha started

working as a group. Dada Chavan was an occasional member and used to visit Pune once in a week. All of them used to meet near Alka Talkies

at Pune and Dada Chavan was dealing in purchase of flats land and used to carry always some 7/12 extracts. In September 2003 Dada Chavan

introduced the witness to two other persons viz. Sanjay Gavare and Thorave so as to make them members of the Matrix Plan. The witness was

told that Shri Thorve was dealing in sugar and business of Sanjay Gavare was not known to the witness. In February 2003 the witness was

introduced by Vivek Dudhe to a lady by name Mrs Khurshit Choksi. The witness had introduced to a plan of Mega Bio International, health care

product and she was also doing networking. She was also an investor. The witness was provided with a cell phone of conf-case-3-09 Reliance

Mobile with cell No. 02031038810. He used to talk frequently with Mrs. Choksi as she had invested an amount of Rs. 98,000/- in his Matrix Plan

of Active Network. The witness was introduced to Shri Vijaysingh Dudhe by his friend Vivek Dudhe in September 2003. Mrs. Choksi had the

personal cell number as 02031025342. The witness had convinced Mrs. Choksi to make an additional investment of at least Rs. 3 lakhs in Binary

Plan and she had agreed for the same. Along with the witness she came to Mumbai, withdrew an amount of Rs. 3 lakhs from her account of SBI

Commercial International Bank at Nariman Point on 20/10/2003 and handed over the said amount to the witness so as to invest in the Binary Plan.

As the said amount was not adequate for investment and Mrs. Choksi was not able to increase the same, the witness had told her to wait for

sometime so that he could locate another person with about Rs. 2 lakhs and she had agreed. She handed over the amount to the witness and this

was known to Vivek Dudhe and Dada Chavan. The witness was searching for a party to invest an amount of Rs. 1,80,000/- or more but he was

not successful and in that process Dada Chavan had come to know that PW 10 had an amount of Rs. 3 lakhs in cash lying with him.

77. On 20/10/2003 Dada Chavan gave him an offer to pay Rs. 6 lakhs if he would lend Rs. 3 lakhs for 10-15 days. On the next day the witness

met Dada Chavan along with Vijaysingh Dudhe, Gavare and Thorave and other four persons from their group. Gavare also told the witness that if

he could lend Rs. 3 lakhs for 15 days he would get back Rs. 6 lakhs. When he asked as to how the amount would be returned, Dada Chavan told

him that he was to receive about Rs. 20 lakhs. The witness left for Ratnagiri on 22/10/2003 because of the Diwali festival and returned to Pune on

27/10/2003. At about 3 p.m. he received a call from Gavare and Thorave and agreed to meet them after his office hours. At 9.30 p.m. all of them

met near hotel Darbar. Gavare again made enquiry about the willingness of the witness to lend Rs. 3.25 lakhs for 3-4 days and would return Rs. 6

lakhs. The witness agreed to the offer. On 28/10/2003 he received a call from Dada Chavan between 8 to 9 a.m. enquiring about his decision. He

was requested to meet them near Natraj hotel at Swargate and, therefore, between 1 to 2 p.m. he reached the spot and met Thorave, Dada

Chavan and Vijaysingh Dudhe. He was persuaded to lend Rs. 3 lakhs to Dada Chavan. He informed that the money with him actually belonged to

Mrs. Choksi and he would add Rs. 5000/- and had collected another Rs. 5000/- thus making a total of Rs. 3,10,000/-. The matrimonial name of

Mrs. Khurshit Choksi was Khurshi Puri. On the request of Vijaysingh Dudhe the witness had handed over his reliance telephone set with the

charger and at about 7 p.m. he went to Natraj hotel with a cash of Rs. 3,10,000/-. Dada Chavan was standing near a white luxury bus parked

near Natraj hotel and it was plying on Kolhapur Belgaum route. Vijaysingh Dudhe was also present and the amount of Rs. 3,10,000/- was handed

over to Dadasaheb Chavan in a black polythene bag. The witness asked them to take proper care of the money and Dada Chavan told him that he

along with Vijaysingh Dudge and Sanjay Gaware would be proceeding to Kankavali via Kolhapur in connection with some land transaction and

he would give a ring to the witness on reaching Kankavali. He was again called back by Dada Chavan to Natraj Hotel around 10.30 p.m. and

when the witness reached there, he saw two more persons accompanying Dada Chavan, Sanjay Gavare and Vijaysingh Dudhe. Both of them

were introduced to the witness by Dada Chavan as Amit Shinde and Pisal. The witness was further told that these two persons would also

accompany them to Kankavali and accordingly all the five of them left at about 11.30 p.m. to Kolhapur by a white luxury bus.

78. On 29/10/2003 he received a phone call on his BSNL Mobile No. 9422278934 at about 11.15 a.m. from Dada Chavan after he had reached

Kankavali. He received a second call after one hour and 15 minutes when Dada Chavan was staying at Pallavi Lodge at Kankavali and Dada

Chavan had told him that he was calling from the said lodge. He also told him that there was no range for Reliance mobile at Kankavali and in case

the witness wanted to contact him, he was told to dial mobile No. 9892202752 on 30/10/2003 and it was the mobile telephone of A2 - Amit

Shinde. As per the evidence of PW 59 - Gerard D'Mello the said mobile number originally was allotted to Mahesh Kini and subsequently to PW

69 - Dayanand Thorat. On 1st March 2004 PW 10 appeared before the Judicial Magistrate, First Class at Kankavali and his statement was

recorded at Exhibit 94. He stated that the contents therein were true and correct. On 14th March 2004 he received a call from the Malwan Police

Station to visit Sawantwadi jail on 16th March 2004 and accordingly between 11.30 to 12 noon he visited the said jail. He identified A2 - Amit

Shinde by touching his person at Sr. No. 5 out of the six persons standing in a row. He also identified the accused No. 2 in the Court. In his cross-

examination he admitted that Vai police station had made enquiry with him regarding the missing of Vijaysingh Dudhe and he had not told them

anything about the amount he had handed over to Dada Chavan on 28/10/2003. It is also a fact that Mrs. Khurshit Choksi @ Mrs. Khurshit Puri

was not examined before the trial Court but these circumstances by themselves would not be a reason to discard the evidence of this witness that

he had paid an amount of Rs. 3,10,000/- to Dada Chavan on 28/10/2003 when Dada Chavan, Vijaysingh Dudhe and Gaware had left for

Kolhapur by a white luxury bus from Natraj Hotel at Pune. He gave his explanation that the enquiry made by the Vai police was regarding the

missing of Vijaysingh Dudhe and in any case he had not paid any amount to Vijaysingh Dudhe. We have gone through his statement recorded at

Exhibit 94 and the same appears to be consistent with his evidence before the Court on the material points viz. that he had paid an amount of Rs.

3,10,000/- on 28/10/2003 along with his mobile set and that two unknown persons introduced to him on 28/10/2003 were A2 - Amit Shinde and

Pisal. He also stated before the trial Court that the learned Judicial Magistrate, First Class had told him to be precise and short while recording the

statement and, therefore, his elaborate statement was not recorded. The statement at Exhibit 94 before the Court is recorded on 1st March 2004

and this witness was in the witness box on 1st and 2nd September 2005. He had known Dada Chavan for quite some time and he used to meet

him often near Alka Talkies. Dada Chavan was part of the witness" group for promotion of investments. There is no substance in the allegations

that he is a got up witness or he was deposing at the behest of the police. This witness" acquaintance with Dada Chavan, Vijaysingh Dudhe and

Sanjay Gavare even before the incident and that he used to be a part of the same group has been duly proved. The telephone bills at Exhibits ED

to ED 5 placed before the trial Court do indicate that on 29/10/2003 this witness received telephone calls from Kankavali at 11.15 and 12.30

hours. These documents corroborate his statement that Dada Chavan on reaching Kankavali called him on phone and intimated that he had

reached Kankavali on that day.

79. From the evidence of PW 2 - Nilesh son of Vasant Jadhav, the memorandum panchanama at Exhibit 47 and drawn on 26/12/2003 has been

proved. This has to be read with the evidence of PW 128 Madhav Prabhukhanolkar, IO. The muzzled loader gun, a country made weapon, with

about 30"" in length and broken wooden butt and iron rod came to be recovered at the behest accused No. 1. PW 3 - Santosh son of Balaji

Gawade has proved the memorandum panchanama at Exhibit 51 and drawn on 23/12/2003. One iron rod with about 60 cm. in length, 7.5 cm. in

circumference and 2 cm. in diameter and one part with two barrels and some part, and one butt part of muzzled loader country make gun came to

be recovered at the behest of accused No. 1.

80. In the evidence of PW 112 - Vidhyadhar Shankar Rawool from Maratha Sahakari Bank Ltd. read with Exhibit 648-A it has been proved that

in the account of Smt. Sujata Gajanan More @ Sujata wife of Santosh Chavan that on 3/11/2003 an amount of Rs. 24,000/- was deposited in

cash in her bank account and again on the same date an amount of Rs. 25,000/- was deposited thus making a total of Rs. 49,000/- deposit in cash

on one single day i.e. 3/11/2003. The evidence of PW 4 read with the evidence of PW 75 - Santosh Yadav proved that A1 along with his second

wife and A3 left Nandos by a luxury bus of Jagdamba travels around 2/11/2003. On the next day i.e. on 3/11/2003 in the account of Sujata wife

of Santosh Chavan cash amount of Rs. 49,000/- came to be deposited. Deceased Dada Chavan was carrying an amount of Rs. 3,10,000/-.

Obviously after he was killed on 30/10/2003 the accused had taken possession of the said cash amount. From the evidence of PW 111 - Krishna

Dattaram Parab in the account of A2 - Amit Shinde an amount of Rs. 40,000/- was deposited in cash on 11/11/2003 and in the account of A3 -

Yogesh Chavan an amount of Rs. 5000/- was deposited on 09 10/11/2003 and an amount of Rs. 40,000/- was deposited on 11/11/2003. From

the evidence of the said witness it is proved that an amount of Rs. 40,000/- was deposited in cash in the account of A-2 - Amit and an amount of

Rs. 40,000/- was also deposited in the account of Punam Loke on the same day by cash. Punam Loke was the girlfriend of A-2. Court Article

GI-1 and Court Article GI-2 are the pay-in-slips for the said deposits. On 10/11/2003 a cash deposit of Rs. 5,000/- was made in the account of

A-2. Similarly on 11/11/2003 cash amount of Rs. 40,000/- was deposited in the account of A-3 - Yogesh Chavan. Court Article DV is passbook

of A-3 Yogesh, Article GF is the passbook of A2-Amit, Article GG is the passbook of Sangeeta Shinde, sister of A-2, Article GL is the cheque

book in the name of A-3 Yogesh Chavan, Article GM is in the name of A2-Amit Shinde and these these Court Articles have been seized and

proved. In the evidence of PW 109 - Anand Bandodkar from the Bank of Maharashtra it is proved that on 5/11/2003 an amount of Rs. 7,000/-

came to be deposited in the account of A2 - Amit Shinde in cash. In their statements recorded u/s 313 of Code of Criminal Procedure., there is no

explanation furnished by the said accused regarding the deposits made, except stating that it was false.

81. The recovery of knife (Court Article AE) at the behest of accused No. 6 - Mahesh Shinde has been proved by the evidence of PW 6 -

Surendra Bodye and PW 44 - Ankush Solanke, whereas in the evidence of PW 7 - Dilip Sitaram Parab at the instance of A-1 and read with

memorandum of statement at Exhibit 80 and memorandum panchanama at Exhibit 81 proved the recovery of sword, Court Article AG, recovery

of barrel with butt, Court Article AH, recovery of shot gun Court Article AI, recovery of barrel, Court Article AJ and recovery of butt Court

Article AK from the house of PW 12 has been proved. PW 2 - Nilesh Vasant Jadhav has been examined by the prosecution and he has proved,

in his evidence, the discovery panchanama (Exh.47) at the instance of A1 for the discovery of muzzled loader gun. In the evidence of PW 113 -

Shri S.S. Munj, who is a Ballistic expert, it has been proved that said gun was used as an assault weapon and his report at Exh. 614 has been

proved by him. As per the said report and the oral evidence of PW 113, the said muzzled loader gun was capable of being fired and was in

working condition. The residue of fired gun powder was detected in the barrel washing of the muzzled loader gun. The witness further deposed

that the presence of gun powder indicated that it was used for firing prior to its receipt by the laboratory. PW 75 - Santosh Yadav, in his conf-

case-3-09 depositions before the court, identified the muzzled loader gun and it was the weapon which was brought by A1 from Shri

Chandrashekar Masurkar (A4). PW 75 further stated before the trial court that he had asked A1 why he needed one more gun when he already

had several guns and the A1 explained to him that the said gun was useful for killing sparrows and smaller birds. In the evidence of PW 113 read

with his report at Exh. 614, it has been proved that the butt, barrel and the shortened gun when kept alienated, matched each other into a regular

muzzled loader gun. This witness further stated that the gun was used for firing prior to its receipt in the laboratory. PW 3 - Santosh Gawade

proved the recovery panchanama at Exh. 51 for the recovery of iron rod (Art.I) at the instance of A1 - Santosh. The C.A. report at Exh. 616 also

indicated trace of human blood on the said iron rod. PW 28 - Zillu Khot has proved the recovery panchanama at Exh. 178 in respect of broken

butt of muzzled loader gun (Art. CE) at the instance of A1. This witness also proved the recovery panchanama at Exh. 179 for the seizure of cloth

bag (Art. CF), 3 glass bottles (Art. CG, CI and CJ), plastic bottle (Art. CH), coir (Art. CK), hacksaw blade (Art. CL). Coir was used for the

purposes of loading the muzzled loader gun before its firing. The report of the Forensic Laboratory at Exh. 615 showed that the black powder in

the said glass bottles was gun powder while the lead in the plastic bottle are lead pellets used for shots. The report also showed the recovery of

live caps used for firing muzzled loader gun and as per the evidence of Shri S.S. Munj (PW 113), the shots were capable for being used in the

muzzled gun. PW 45 - Vilas Dongare is the panch witness who proved the panchanama at Exh. 262 and for the recovery of iron bar (Art.DZ),

Coir (Art. EA) and lead (Art. EB).

As per the evidence of PW 76 - Dr. Anil Jinturkar, the cause of death for DB 2 was head injuries, whereas the cause of death for DB 3 was head

injuries caused by sharp cutting object and gun shot. Some of the head injuries were also on account of hard and blunt object, like iron rod. The

cause of death for DB 4 was head injury due to fracture of skull bone and with blunt thoracic trauma associated with multiple ante mortem fracture.

Whereas for DB 5, the cause of death was head injury due to fracture of skull bone with blunt thoracic trauma associated with multiple fracture by

hard and blunt object. From the evidence of PW 76 - Dr. Jinturkar, it is proved that DB 4 and DB 5 were done to death by causing head injuries

which resulted in fracture of skull of bone and these injuries were caused by the hard and blunt object, like iron road.

82. The recovery of brief-case (Art.E) at the instance of A2 - Amit has been proved through the evidence of PW 3 and the said ArticleE matched

with the keys (Art.AF) as per the depositions of PW 7 - Dilip Parab, panch witness. The said Article E has been identified by PW 1 - Ashok

Nemalkar, rickshaw driver. PW 66 - Mohan Doke, the brother of deceased Anita Mali (DB 7) has also identified the briefcase (Art.E) as

belonging to Kerubhai Mali (DB 8). The recovery of jacket at the instance of A3-Yogesh has been proved by the evidence of PW 3 as per the

panchanama Exh.57. The said jacket has been identified by PW 4 - Smita and PW 75 - Santosh Yadav, as that of A3 - Yogesh. Thus the

evidence of PW 10 Yogesh Dhake, PW 13 - Bala Lokhande and PW 9 Appa Rane read together proved that on 30/10/2003, Vijaysinh Dudhe,

Dadasaheb Chavan, Bala Pisal and Sanjay Gavare were staying at Pallavi Lodge, Kankavali and accused No. 2 Amit Shinde had entered his

name as Amit Shenoy in the register of the said Lodge when he checked in with the four deceased. They were last seen alive in the company of A2

- Amit Shinde at Kankavli on 30/10/2003 in the morning hours.

83. Now let us turn to the third incident of serial killings that had taken place on 14/11/2003 as per the prosecution. PW 12 - Deepak Kumar

Chottelal Pande, a resident of Malad, Mumbai was working as booking clerk and pick-up man with ""Sarovottam Tours and Travels"" near Gokul

Hotel, Borivali (West) and the said agency belongs to one Mr. Pravin Shetty. He stated before the trial Court that he was working with the said

agency from the first week of November 2003 and the agency was running luxury tourist buses on the route between Borivali to Malwan i.e. the

route of Jagdamba Travels which was having only two luxury buses. One bus used to leave from Borivali at 3.30 p.m. for Malwan and the other bus

would be returning from Malwan in the early hours. He stated before the Court that accused No. 2, whom he identified as sitting at serial No. 3

from South side, had booked the bus tickets. He stated that he knew accused No. 2 by name and his name is Amit Shinde. He further stated that

on 13/11/2003, A2 -Amit came to the travel agency along with a girl aged about 3-4 years at about 3.15 p.m. When the bus reached Vashi one

male person, one female person and two children had boarded the same bus and they occupied seats along with A2 - Amit. The witness had

returned to Borivali from Vashi and the bus proceeded to Malwan. He further stated before the trial Court that on 30/12/2003, the police met him

for the enquiry and A2 Amit was with the police party. The booking document of the travel agency was shown to the police along with two ticket

books (Article Nos. 115 and 116). He identified the same before the Court as Court Articles AQ and AR respectively. Police had shown him

some newspapers with photographs of four persons and the witness confirmed that they were the photographs of the very same four persons who

got into the bus of Jagdamba Travels at Vashi on 13/11/2003 so as to go to Malwan. He was shown nine photographs while in the witness box

and he identified four of them as the photographs of the four persons who had travelled on 13/11/2003 from Vashi to Malwan by Jagdamba

Travels bus (Court Articles A to D). He further stated that again on 9th February 2004 he was called by the Police at the Malwan police station

and thereafter to Kankawali Court and he reached Malwan on 9/2/2004 at about 10 a.m. His statement was recorded by the police and as

directed by the police he also appeared before the Kankavali Court on the same day. There he met PI Godbole. The Judge recorded his statement

at Exhibit 103. The statement was shown to him and he identified his signature and stated that the contents of the statement were correctly

recorded. As per the telephonic message received from the police station, Malwan he also attended Sawantwadi jail on 16/3/2004 and identified

A2 - Amit Shinde standing at Sr. No. 7 from left and the accused was in jail uniform. Office copy of ticket No. 754 from ticket book (Article AR)

was shown to him in the Court and he had identified the handwriting of Pravin Shetty @ Anna and this was in respect of tickets booked by A2. In

his cross-examination he denied that A1 Santosh and A2 Amit had met him on 21/10/2003 for booking tickets to Malwan as he was not in the

employment of Sarvottam Travels on that day. He admitted that he could not remember the number of bus of Jagdamba Travels which left Borivali

on 13/11/2003 but he reiterated that he had checked the tickets of five persons who travelled on 13/11/2003 at Seat Nos. 3 to 6 and 18. He also

stated that he came to know of the change of date on 13/11/2003 at 9 a.m. for the first time and on 12/11/2003, 35 passengers had travelled by

Borivali-Malwan bus and he had accompanied bus upto Thane. He further stated that A2 Amit had occupied seat No. 18 on 13/11/2003 when

the bus left Borivali. He also admitted that no ticket was separately purchased for the girl travelling with A2 Amit on 13/11/2003. He denied the

suggestion that he could identify A2 Amit because he was shown by the police. He also denied the suggestion that police had shown him

photographs of the deceased persons to identify them in the Court. He also denied the suggestion that A2 - Amit had not travelled in Jagdamba

Travels bus. We have perused the statement at Exhibit 103 recorded u/s 164 of Code of Criminal Procedure. on 9/2/2004 by the Judicial

Magistrate, First Class at Kankavali. He stated before the learned JMFC that on 11/11/2003 A2 had visited his office of Sarvottam Travels and

purchased five tickets from him. On 12/11/2003 on receiving telephonic message the date of travel was changed to 13/11/2003. A2 along with a

small girl was sitting on Seat No. 18 on 13/11/2003 when the bus started from Borivali and when the bus reached Vashi, four other persons -one

male, one female and two children joined A2 Amit and they occupied seat Nos. 3 to 6. The evidence of this witness proved before the trial Court

that on 13/11/2003, A2 Amit along with a small girl and four other passengers i.e. Kerubhai Mali, Anita Mali and their two children had travelled

by Jagdamba Travels Luxury bus so as to reach Malwan on the next day morning. It has come in the evidence of PW 4 - Smita that her daughter

had also arrived from Mumbai along with the accused on 14/11/2003 in the early morning.

84. When the Mali family arrived at Malwan, the accused decided that they would not be put up at either Hotel Kankavali Plaza or Pallavi Lodge

conf-case-3-09 at Kankawali and A2 admitted the Mali family members at Mayur lodge, Malwan. PW 8 - Vinod son of Dhondur Deorukhkar

was the employee of Mayur Lodge, Malwan since July 2003 and Shri Govind More was the owner -Manager of the said lodge. The witness was

the only employee of the said lodge which is situated beside the Saraswat Co-operative Bank in the main Bazar Peth of Malwan. He stated before

the trial Court that on 14/11/2003 at about 7 to 7.30 a.m. one man aged about 40-45 years, one woman aged about 30-35 years and two boys

aged between 8 to 10 years and one man aged about 28-30 years reached Mayur Lodge when Govind More, the owner was present at the

lodge. On enquiry from the woman Shri More told them that the lodging charges would Rs. 50/- per cot and they were shown Room No. 6. On

admission at the lodge, the witness had provided them four buckets of warm water for bath and while the passengers were at the counter, Shri

More asked the lady their names but the man aged about 28-30 years came forward and disclosed his name as Anil Jadhav. Hence in the lodge

register entry ""Shri Anil Jadhav and family"" was made. The witness identified the register (note book) marked as Court Article AL and also entry

of ""Shri Anil Jadhav and family in room No. 6 dated 14/11/2003"" in the handwriting of Shri More (Exhibit 87). The entry was made in his

presence. He further stated that conf-case-3-09 at about 9 a.m. all the five passengers went out of the hotel for a walk and they returned at about

11 a.m. and within a short time they told the woman that they were leaving the lodge. At that time the person aged about 45 years was carrying a

suitcase of medium size and gray in colour. The suitcase was about 2 ft. in width and 7 to 8 inches in height. Court Article ""E"" was identified by him

as the same suitcase / briefcase and the said person was wearing white shirt with white trouser whereas the lady was wearing a saree of yellow

colour. The man aged about 45 years had paid the lodge charges and all of them left the lodge and walked away. He identified the person who had

disclosed his name as Anil Jadhav while in the witness box as being the same person i.e. accused No. 2 - Amit Shinde. He identified four

photographs out of the nine photographs shown to him while in the witness box and he correctly identified the photographs of all the four victims of

Mali family. He also stated that the police visited his lodge on 26/11/2003 and seized the lodge register Court Article AL. In his cross-examination

he stated that on 14/11/2003 one more merchant from Kolhapur was occupying room No. 1 but he did not remember his name whereas in room

No. 5 there was one more merchant from Sangli and he did not remember his name as well. He also did not remember names of the persons who

had occupied room No. 6 on conf-case-3-09 13/11/2003 and he stated that the said room was vacant on 15/11/2003. He admitted in his cross-

examination that the page of 13/11 to 14/11 in the Register AL is in respect of the entries pertaining to 14/11/2003 and 15/11/2003 shows some

erasers and over-writing. He also admitted that the lodge register was not in the prescribed form. On 26/11/2003 the police visited room No. 6 of

the lodge and also seized the register. His statement was recorded on that day as well as the statement of the owner. He also stated that there was

no specific incident to remember the persons who had occupied room No. 6 on 14/11/2003 except that they had left the hotel within a short time.

He also emphatically stated that there was no person with a beard in room No. 6 on 14/11/2003. He also denied the suggestion that accused No.

2 - Amit Shinde was shown to him by the police before recording his evidence. He also denied the suggestion that A2 - Amit Shinde had no

concern with the name of a person Anil Jadhav entered in the lodge register. He also admitted that on reading the newspaper he had come to

know that ten dead bodies were found at Nandos and surrounding area and the police were making enquiry in connection with the same. He also

admitted that in the newspapers published on 23-24 and 25th December, 2003 photographs of the deceased persons were published. He

reiterated that he remembered the faces of the customers of room No. 6 on 14/11/2003 and after reading the newspaper he had discussed with his

owner about the discovery of dead bodies and he also stated that on reading the newspaper and seeing the photographs he had recognized that

out of ten dead bodies, four had resided in his lodge and he had discussed the same with his owner. Both of them did not feel it necessary to pass

on the said information to the police. This witness has proved that the Mali family i.e. Keru Mali and Anita Mali along with their two children and

A2 - Amit Shinde had arrived at Mayur lodge on 14/11/2003 in the morning and occupied room No. 6, after taking bath they left the hotel at

about 9 a.m. on the same day and A2 was with them. The testimony of this witness also proved that Keru Mali, Anita Mali and their two children

were last seen alive in the company of A2 - Amit Shinde on 14/11/2003 at about 11 a.m.

85. PW 1 - Ashok s/o Vasant Nemalekar is the resident of Kolamb, Taluka - Malwan and he was running his auto-rickshaw with Registration

No. MH-07/K-6663 since the year 1990 and he generally used to part his rickshaw near the Saraswat Bank, Malwan Bazar Peth. He stated

before the trial court that on 14/11/2003, he had parked his auto-rickshaw near the Saraswat Bank between 9 to 9.30 a.m. and had two

passengers at 10 to 10.30 a.m. He reached them to ST Stand, Malwan and Malwan Medha. At about 11 to 11.30 a.m., five passengers, including

two males, one woman and two children had come from the side of Mayur Lodge and at that time his rickshaw was at No. 2 at the rickshaw

stand. But the driver of the rickshaw at Sr. No. 1 had gone somewhere and, therefore, one of the two males holding hand bag, enquired with him

about the rickshaw charges for taking them to Nandos which was 4 Kms. away from Katta. He stated that the rickshaw charges would be Rs.

150/- and it was agreed. On coming to know that all the five passengers were travelling in the rickshaw, he had told them that they would have to

adjust on the backside. He also stated that the person who hired the rickshaw was aged about 30 years with a fair complexion and the woman

was fair looking and aged about 40 years. The person hiring rickshaw was wearing a bluish shirt and jean pant, whereas woman was wearing a

yellow saree. The other man was aged about 45 years and the two boys were about 15 years and 20 years of age. He drove the rickshaw

towards Katta with five passengers and when the rickshaw came near Dewoolwada, the person hiring rickshaw asked him to stop as it was

uncomfortable to sit behind and sought his permission to sit by the driver side. The witness consented for the same and also told him that in case

the police would come, the passenger would have to sit behind. The rickshaw, after crossing a distance of about 7 Kms. and while climbing on the

steep of Malwan, started making some noise and, therefore, he stopped it. The person hiring the rickshaw got down along with the driver. After

replacing the pin within 2-3 minutes, he started the rickshaw and proceeded towards Katta Bazar Peth. The rickshaw was stopped earlier to the

police outpost and it was diverted from the temple of Seema Devi and leading to Nandos. The person hiring the rickshaw, instructed him to stop it

near the village panchayat office at Nandos and all the passengers got down. The man aged about 40 years gave him Rs. 150/- and all the

passengers proceeded towards Nandos, whereas the witness drove his rickshaw back to Malwan. He also stated that the woman was having a

big vermilion mark on her forehead and he identified the photographs shown to him i.e. Arts. A to D as being of the said four passengers he had

carried along with young man hiring rickshaw from Malwan to Nandos on 14/11/2003. He stated before the trial court that after about a month, he

read in the newspaper that some murders were committed at Nandos and 2-3 days thereafter police had made enquiries. He further stated that on

16/3/2004 the Mamlatdar had called him to Sawantwadi jail and he was made to sit in one small room in the jail. He was taken to one hall where

the Mamlatdar and two pachas were sitting and there were 5-6 persons standing in one line. The Mamlatdar asked him whether he could identify

any one of those 5-6 persons who had travelled by his rickshaw. He answered in the affirmative and, therefore, the Mamlatdar called upon him to

identify the said passenger from the seven persons standing in one line. He identified the person standing in the line at Sr. No. 2 from the left side

and by touching him. Before the court he stated that it was the same person - accused No. 2. He also identified the suitcase carried by the other

man aged about 40 years when the five passengers travelled in his rickshaw (Court ArticleE). He also identified the airbag which was in the hand

of the man who had hired the rickshaw (Court ArticleF). He also identified partly burnt piece of the saree in yellow colour (Art. No. 4) as well as

the Mangalsutra of the woman travelling in his rickshaw (Court ArticleG). In his cross-examination, he stated that on 5/1/2004 between 5 to 5.30

p.m. the police had visited the rickshaw stand near the Saraswat Bank and enquired with him and other rickshaw drivers. The police were there

for about 10 minutes, but he did not narrate the incident to the police. On the next day, he was regularly driving the rickshaw and the rickshaw

drivers were also talking with each other about Nandos murder case. He also admitted that the photographs of the deceased persons conf-case-3-

09 along with photographs of the accused were published in the local newspapers at Malwan. He had visited the police station on 8/1/2004 and

met Police Inspector - Landge who had recorded his statement. The police constable had taken his signature below the statement. This witness

was subjected to a searching cross-examination, but there was nothing to doubt his testimony. He stated in the cross-examination that when he

attended the Test Identification Parade, he was not knowing that he was required to identify accused No. 2 - Amit Shinde. He was not knowing

the name of the person who had hired the auto-rickshaw on 14/11/2003. On the next day of the TI Parade, he learnt from the police the name of

the person whom he had identified was Amit Shinde. He also stated that he approached the police station on his own. He denied the suggestion

that he had learnt the names of the passengers who had travelled in his rickshaw on 14/11/2003 before recording his statement by the police. The

evidence of this witness has proved beyond doubt that on 14/11/2003, five persons coming from the Mayur Lodge hired his rickshaw between 11

to 11.30 a.m. and he drove them to Nandos and dropped them at the village panchayat office. A2 - Amit Shinde was one of the five persons who

had hired the rickshaw and the other four persons were the members of the Mali family whose photographs (Court Article A to D) were identified

by him while in the witness box. Thus, DB Nos. 6 to 9 were seen alive last by this witness in the company of A2-Amit Shinde on 14/11/2003

between 11 to 11.30 a.m. till he dropped them near the village panchayat office at Nandos. It has come in the evidence of PW 4 that on

12/11/2003 at about 7.30 a.m., A1, his wife Sonali, A3 - Yogesh and A6 - Mahesh had reached her house at about 7 a.m. by a rickshaw. Lord

Giroba Jatra was on 14/11/2003. Besides the usual baggage, the visitors had brought one gunny bag containing roses and one black plastic sheet.

All of them were in her house on that day. On the next day morning, she was told by A1 that her daughter Deepika would be coming in a luxury

bus along with A2-Mahesh and accordingly on 14/11/2003 at about 5.30 a.m. A1 - Santosh went to Katta and returned between 7 to 7.30 a.m.

along with her daughter - Deepika in a rickshaw. At about 9.30 a.m. A1 had received a phone call from A2 - Amit. Between 10 to 10.30 a.m.

A1, A3 and A6 had left her house and between 3 to 3.30 p.m., A1, A2 and A3 and A6 had returned to her house on 14/11/2003. Before

entering her house, she had gone to the well and taken bath. She had provided them food and at about 9 to 9.30 p.m. A1, Sonali and A3 had gone

to the fete of Lord Giroba, whereas A2 and A6 had slept in her house. On the next day i.e. On 15/11/2003, A2 returned to Mumbai by a luxury

bus at about 3.30 p.m. Two days thereafter A6 and A3 also returned to Mumbai by bus. A1 along with his wife Sonali stayed at her house for 8-

10 days and then left for Mumbai by a bus. Thus, A1 returned to Mumbai after 25/11/2003 with his wife Sonali.

86. While corroborating the evidence of PW 4, PW 75 - Santosh Yadav stated before the trial court that between 3 to 3.30 p.m. On 14/11/2003,

A3 and A6 had come from the hill side and they were followed by A2 and A1. A1 had kept parts of the gun and the sword on the loft and

thereafter took bath near the well. He also stated that on 14/11/2003 he had heard A1 and A2 quarreling with each other at about 10 a.m. in the

room which was closed from inside and after some time A7 had asked A1 the cause of the quarrel. A1 had told him that the quarrel was over

money and it was settled and on the same day A2 had left for Mumbai. He also stated that whenever A2, A3 and A6 visited Nandos, they had

brought handbags with chain and belts to carry on their shoulder. The handbag of A2 was bluish in colour, whereas the handbag of A3 was

blackish gold in colour and handbag of A6 was reddish black in colour. He identified these three bags (Court Arts. S, F and T). He had also

stated before the trial court that A1 used to bring revolver every time he visited Nandso and he used to take it back while returning to Mumbai.

87. The evidence of PW 76 - Dr. Jinturkar read with the evidence of PW 113 - Shri S.S. Munj, DB 7 i.e. Smt. Anita Mali, died because of fire

arm injuries. DB 6 - Sanjay Mali died of head injury caused by hard and blunt object. Similarly DB 8 Kerubhai Nanaji Mali and DB 9 -Rajesh

Mali also died because of multiple head injuries with sharp weapon and blunt or hard object. It has also been proved by the prosecution as noted

earlier that all these four dead bodies were recovered from the plateau of Nandos on 20th and 21st December, 2003.

88. PW 100 - Babaji s/o Bhaskarrao Pavade was the Branch Manager of Mahanagar Cooperative Bank, Turbhe Branch, New Mumbai. He

stated before the trial court that on 27/2/2004 his bank had received a letter from PW 128, IO, and, therefore, the status of the account of

Kerubhai Nanaji Mali and the extract of the said account was provided to the IO (Exh.587). He stated that the contents of the extract were duly

verified with the original account of Kerubhai Nanaji Mali and necessary endorsement was also made by him under his signature and seal of the

bank. The extract was a copy of the original prepared electronically and the certificate issued by the EDP In-charge Shri Dhamale was dated

6/2/2006 (Exh.588) and its contents were correct. He also stated that he was knowing Kerubhai Nanaji Mali as he was account holder with his

branch. He identified the photograph shown to him of Kerubhai Mali (Court ArticleA). He also stated that Kerubhai Mali had withdrawn a sum of

Rs. 3,10,000/- from his account with Mahangar Cooperative Bank, Turbhe Branch on 13/11/2003 and the same was shown in the extract of

accounts (Exh.587). This evidence was not shaken in any way in his cross-examination. We have perused Exh.587, the copy of the statement of

accounts standing in the name of Kerubhai Nanaji Mali. There is a withdrawal of Rs. 3,10,000/- on 13/11/2003 by submitting a cheque drawn in

favour of himself.

89. In the evidence of PW 110 -Vijaykumar Sangodkar - Branch Manager of State Bank of India, Dahisar Branch, the extract of the savings bank

account of A3 -Yogesh Chavan has been proved. The said extract at Exh. 646A shows that on 19/11/2003 cash amount of Rs. 30,000/- was

deposited. Similarly, the bank account extract at Exh. 646B of A2 - Amit Shinde shows that cash amount of Rs. 15,000/- was deposited in his

account with SBI, Dahisar Branch on 19/11/2003. As per the evidence of PW 111 - Krishna Dattaram parab, Branch Manager of the Greater

Bombay Cooperative Bank, Borivali Branch, an amount of Rs. 40,000/- came to be deposited in cash in the account of A3 - Yogesh on

18/11/2003 as per Court Article GK-2. On the very same day, in the account of Punam Loke, girlfriend of A2-Amit, an amount of Rs. 40,000/-

was deposited, as per Court ArticleGI-1 and GI-2. On 20/11/2003 again an amount of Rs. 40,000/- was deposited in the account of Sangeeta

Shinde, the second wife of A1, as per Court Article GK-3. As per the evidence of PW 112 - Vidhyadhar Rawool, Branch Manager of Maratha

Sahakari Bank Ltd., Borivali Branch, an amount of Rs. 45,000/- came to be deposited in cash in the account of A2-Amit Shinde, as per Court

ArticleGN-1. On the same day, an amount of Rs. 20,000/- came to be deposited in cash in the account of A3-Yogesh (Court Article GN-2). All

the accused i.e. A1, A2, A3 and A6, while recording their statements u/s 313 of Code of Criminal Procedure., were put to their response to these

deposits and they merely denied the same.

It is also the prosecution case that accused No. 2 - Amit Shinde and A3 - Yogesh Chavan purchased motorcycles in resale from the ill-gotten

received after killing the four members of Mali family and the amount of Rs. 3,10,000/- was robbed from the deceased Kerubhai Mali, during the

said incident. PW 70 - Harjitshingh Kochar known as ""Raju"" runs a garage at Bhyander and he also sales/purchases second hand two wheelers.

He stated before the trial court that he used to purchase and sale used motorcycles and earned brokerage / commission. While in the witness box

he stated before the trial court that accused Nos. 2 and 3, whom he identified, had visited his garage on 20/11/2003 in the evening so as to

purchase second hand motorbikes and he had shown them 4-5 such two-wheelers. They like one motorbike of Hero Honda Splender 1996

model which was in black colour and finalised the deal at Rs. 17,500/-. They paid him a cash of Rs. 500/- as token and on the next day they paid

him Rs. 17,000/-. He handed over the motorcycle bearing Registration No. MH-04/W-8518 along with official notes and registration papers as

well as the T.T.O. form signed by the owner. He also stated that the accused did not give him proof of their address like telephone or light bill. The

said vehicle was purchased by A2 - Amit and he had issued receipt for having received Rs. 17,500/-. While leaving with the purchased motorbike

on 21/11/2003, they had told him that they would like to purchase one more bike. Accordingly, on 25/11/2003 A2 and A3 again visited his

garage at about 11 a.m. and purchased Hero Honda Splender of 1998 model with Registration No. MH-05/M-8485. The said vehicle was

purchased by A3 for Rs. 20,500/-. During the second visit made in the evening on 25/11/2003, A3-Yogesh Chavan paid the witness an amount of

Rs. 20,500/- in cash and signed a delivery note having received the delivery of the motorbike. The witness identified the vehicle documents shown

to him in the court. He also identified both the motorbikes (Court Arts. FM and EZ) along with the delivery receipt Exh. 366 and delivery note

Exh. 367. Official receipt of delivery to A3 was also identified (Exh. 368) along with delivery note. RC Book (Exh. 370) for the delivery of the

motorbike to A2 and A3. This witness was subjected to cross-examination but there was nothing brought out to disbelieve into a reliable witness

for the purchase of motorcycles by A2 and A3 from him and on payment of cash on 21/11/2003 and 25/11/2003. The motorcycle bearing

Registration No. MH-05/M-8485 was seized by the IO from New Shital Building in Ovaripada, Dahisar. PW 53 - Mahesh Parab stated before

the trial court that on 29/12/2003 at about 8 p.m. the police had called him to act as a panch and New Shital Building in Ovaripada was adjacent

to his house. PI Munagekar was leading the police team and A3 - Yogesh was with the police team. A3 was introduced to the witness by police

constable - Bhaumik and as identified by A3, the motorcycle was seized by drawing panchanama at Exh. 297, Muddemal Article No. 87.

90. PW 49 - Hariram Patil is the businessman from Eksar, Borviali and he was running a mutton shop. He stated before the trial court that he

knew A6 - Mahesh and he identified by him as the accused sitting at Sr. No. 2 from right side in the dock. Dhanaji Shinde, father of A6 was his

customer and on 15/6/2003 Dhanaji had approached him for purchasing the premises of his mutton shop which was a Gala of 8x9 ft. The witness

wanted to sell it and Dhanaji agreed to purchase the same for Rs. 2,50,000/-. On 15/6/2003, an amount of Rs. 50,000/- was paid as earnest

money by Dhanaji Shinde to PW 49. On 25/8/2003 Dhanaji again paid him Rs. 25,000/- in cash. An amount of Rs. 50,000/- by cheque drawn on

Maratha Co-operative Bank was paid to him on 1/12/2003. He stated before the trial court that on 30/12/2003 the police officer Shri Bagwan

from Malwan Police Station had met him at 2.30 p.m. and along A6 - Mahesh Shinde and two other police constables. During the course of police

enquiry, he handed over cash amount of Rs. 50,000/- to the police as being the amount received from the father of A6 - Mahesh Shinde. The

three receipts signed by him in acknowledgment of the cash amount received were identified at Exhs.271, 271-I and 271-II. In his cross

examination, he stated that he handed over the cash amount of Rs. 50,000/- to the police party when he came to know that the police enquiry was

in respect of the money paid by A6. The police were at his house for about one and half hours and the police party was led by PI Bagwan. He

also stated that the house of A6 was at a distance of 10 minutes walk from his house. He denied the suggestion that after departure of the police,

he handed over the cash of Rs. 50,000/- to Dhanaji Shinde. He also stated that the receipts at Exhs.271, 271-I and 271-II were in his house when

the police party had arrived and denied that these documents were fabricated by him at the instance of the police.

91. By the evidence of PW 50 - Subhash Thombre, the prosecution proved the recoveries of certain articles from the plateau of Nandos on

20/12/2003, in addition to the recoveries of the dead bodies. 7X12 extracts, one visiting card, some bills of Hotel Manjunath from Kankavali and

some receipts of STD Booth from Kankavali kept in a diary were recovered under the panchanama at Exh. 279. As per him the diary was slightly

bigger than a cigarette packet (Court Article EC). He also identified the hotel bills marked as EF, EF-I to EF-II along with the telephone bills

marked ED, ED-1 to ED-5. He also identified three visiting cards marked as EE,EE-1 and EE-2. On the next day i.e. On 21/12/2003 he again

went to the Nandos plateau along with police party at about 8 a.m. to help them in search of the dead bodies/articles. When the police searched

the ash, they found two buckles of belt and one buckle (Court ArticleEH) there letters in English as ""POLO"" and two keys of a suitcase tagged to

a ring. On the keys the words ""VIP"" were inscribed. Some pieces of magnets were also found around the ash along with partly burnt yellowish

cloth. A panchanama at Exh. 280 was drawn which he identified. One pendent (Court ArticleEJ) was found on the spot was also identified by him.

Two pant buckles (police Article No. 9), four coins of 25 paise and some coins of 50 paise (police Article No. 11) and two iron strips (police

Article No. 12) and ash (police Article 15) were shown to him and he identified as the very same articles recovered from the Nandos plateau

during the search for the dead bodies. He also identified pair of shoes (Court ArticleEO), one gents chappal (Court ArticleEN), one full shirt

(Court ArticleEP) and one khaki shirt (Court ArticleEQ) along with one handkerchief (Court ArticleES) as the articles recovered from the plateau

of Nandos. He further stated that on 11/3/2004 police had called him along with one Zilu Khot for drawing the panchanama of one bag containing

three bottles of gun material. The bag was recovered from the bushes on the Nandos plateau. A panchanama was drawn at Exh. 179 and there

was further search for additional articles. One hacksaw blade was also seized along with one cloth bag (Court ArticleCF). Three bottles in one

plastic box were also recovered and they were identified by the witness before the trial court. During his cross-examination nothing was brought

out to doubt the testimony of this witness for the seizure of the articles from the Nandos plateau on 20/12/2003, 21/12/2003 and the seizure

panchanamas at Exhs. 279, 280 came to be proved.

In the evidence of PW 3 - Santosh Gawade, the recovery of the briefcase of deceased Kerubhai Mali at the behest of A2-Amit on 25/2/2003

from Nandos has been proved on the basis of the memorandum of statement at Exh.54 and the seizure panchanama at Exh.55. The said recovery

was from the location on the southern side of the house of PW 4 and it was concealed in bushes. The top of the briefcase was broken and when it

was opened, a piece of newspaper ""Navakal"" of 13/11/2003 was found. There were blood spots on the outer side of the said suitcase. On

27/12/2003, in the presence of this witness, one jacket concealed by A3 - Yogesh in the house of PW 4 was also recovered (Exh.56). It was

submitted by the defence that this witness cannot be relied upon solely on the ground that he claimed to be the panch witness for all the recoveries

on 23/12/2003, 25/12/2003, 27/12/2003, 10/1/2004 and 14/1/2004. In our opinion, the witness cannot be discarded only because he acted as

the panch for all the recoveries of articles or the recoveries on different dates. In a small place, if the IO found the local witness and reliable, he

was not expected to look for other witnesses. Some of these recoveries are undoubtedly from open spots but at the same time they were not

accessible in normal course to third party. For example, on the plateau of Nandos hardly anybody could visit the forest area and that is how the

accused had selected the said place for committing the crimes.

In the evidence of PW 74 - Vijay Gawade, the recovery of one pair of sandals from the plateau of Nandos and at the instance of A2 has been

proved (Court ArticleFT) and recovery panchanama at Exh. 388. The recovery of keys of the briefcase has been proved by the evidence of PW 7

- Dilip Parab.

92. PW 47 - Chetan Bhagwan Rawoot was working in a company of Dimands and he stated before the trial court that he was the classmate of

accused No. 6 in a school at Borivali from 5th to 10th standards. Thereafter A6 started a grocery shop and used to deliver grocery to the house of

PW 47 as and when ordered by him. The witness also knew A2 - Amit Shinde as the cousin of A6-Mahesh Shinde. He stated before the trial

court that on 6/12/2003 between 9 to 9.15 p.m. A6 had gone to his house and handed over one wrist watch of Rado make and told him that he

was belonging to the customer who had not paid his dues. A6 also told him to keep the watch with him for some days and that he would come

again to collect the same. A6 met him 2-3 times during the next 4-5 days and made enquiry whether watch was with him but he did not ask for it.

The witness had kept the watch in his cupboard and he was not using it. On 29/12/2003 at about 7 to 7.30 p.m. some police personnel went to

him along with A6. PW 128 - Dy.S.P. Shri Prabhukhanolkar introduced himself to the witness and A6 was with him. A6 asked the witness to

return the Rado make wrist watch and the witness handed over the same to the police. As per the witness the wrist watch was heavy and was

having oval shape and golden dial with a metallic belt and the letters ""K.N.P."" were inscribed on the inner side of the attachment clip. The conf-

case-3-09 witness identified the wrist watch shown to him in the court as being the same Rado wrist watch which was given to him by A6 on

6/4/2003 and collected from his possession on 29/12/2003 (Court Article No. A-X). He also admitted that the police had attached the wrist

watch by drawing panchanama. He also identified that his statement recorded u/s 164 of Code of Criminal Procedure. before the court at Exh.

266 and stated that the contents therein were correct. In his cross-examination he admitted that there was nothing significant to remember the day

of 6/12/2003 and he did not remember when A6 had met him before that day or after 6/12/2003 and before 29/12/2003. He could not estimate

the cost of the wrist watch. He did not suspect when the wrist watch was kept with him by A6. A6 had met him 4-5 days before 29/12/2003 and

enquired about the wrist watch. On 29/12/2003 he had not given any information to PW 128 - Dy.S.P. Shri Prabhukhanolkar and the police were

standing outside his house for about 45 minutes to one hour. The police did not record his statement when the wrist watch was recovered from

him, but he was informed that he would be required to visit the Kankavali Court. He also admitted that his statement was recorded before the

Kankavali court. We have perused the statement at Exh. 266 and we find that the witness' evidence on material issue about the recovery of the

Rado watch is on the lines of the said statement. PW 48 - Janardan Ambekar, resident of Borivali was a witness to the Memorandum of Statement

of A6 at Exh.268. He had accompanied the police party to go to the house of PW 47 and the Rado watch was recovered in his presence by

drawing the recovery panchanama at Exh.269. We have no doubt that the prosecution proved beyond any reasonable doubt that the Rado watch

of deceased - Kerubhai Mali was handed over by A6 to PW 47 and the police recovered the said watch from PW 47.

93. PW 22 - Anil Kisan Garate, a resident of Borivali is a goldsmith by occupation and he has his goldsmith shop at Satyadevi Colony, Room No.

8, Eksar, Borivali. His father also is a goldsmith. He stated before the court that A6 - Mahesh Shinde had gone to his shop on 21/11/2003 and the

accused told the witness that it was his grandmother's ring which he wanted to sell. He further stated that he purchased it for Rs. 1000/- as it

weighed 2.100 mg. As per his usual practice he had obtained the signature of A6 in his notebook for having sold the gold ring to him. He also

stated that the condition of the gold ring was such that it could be sold after some polish. He had got it polished and kept it for sale in his shop. On

30/12/2003 some times in the afternoon some police officers with A6 - Mahesh and two panchas visited his shop. A6 asked him to return the gold

ring, which he had sold. The witness produced the gold ring before the police along with the receipt bearing the signature of A6. The police drew

discovery panchanama and obtained his signature in acknowledgment as well (Court ArticleBN). He also identified the signature of A6 at Exh. 146

on the receipt of having sold the gold ring. He also stated that after some time the police took him to the house of Santosh Chavan which was at a

distance of 2-3 minutes walk. He was knowing A1-Santosh Chavan. The police asked him to weigh one gold ring in and one necklace with

pendant and accordingly he weighed both the articles. He was also estimated approximate market value and handed over the same to the police.

He identified the certificate issued in his hand writing under his signature (Exh. 147). He admitted that the contents therein were correct. He further

stated that the gold ring was having cutting piece of Lord Ganesh in gold and there were four holes on the ring, whereas gold chain was having a

pendant having Lord Ganesh on one side and Tirupati Balaji at the other side. Lord Ganesh and Lord Tirupati Balaji were on thin layer of gold

affixed to the pendant. The gold chain was having a design of wire. He identified both the ornaments as Court Arts. BI and BJ shown to him the

court. To a specific question asked by the conf-case-3-09 court, the witness stated that when he was called for weighing gold ring and gold chain,

Accused No. 1 and some other persons were present but he did not know the name of that chawl. In his cross-examination, he stated that police

had recorded the panchanama at the house of A1 - Santosh Chavan in his presence between 6.30 to 6.45 p.m. He had viewed the ornaments

immediately after going to the house of A1 and before the writing of the panchanama commenced. He also stated that there was an entry in the bill

book about the purchase of gold ring by him from A6 - Mahesh Shinde for Rs. 1000/-. He also clarified that police did not seize those bill books

and receipt books. Despite searching cross-examination, this witness proved that gold right (Court ArticleBN) was recovered from his shop and

the said article was sold to him by A6. He also proved that Court Arts. BI and BJ i.e. gold ring and gold chain were weighed by him at the house

of A1 on 30/12/2003 and they were seized from the house of A1. In this regard the evidence of seizure of Court Arts. BI and BJ from the house

of A1 has also been proved by the panch witness PW 21 - Ashok Todankar. PW 66 - Mohan Doke who is the brother of deceased Anita Mali

has identified Rado watch, one gold ring and two gold chains. He stated before the trial court that Rado watch used to be on the wrist of Kerubhai

Mali and the golden ornaments i.e. gold ring and gold chains (one gold chain with pendant of Lord Ganesh on the one side and Tirupati Balaji on

the other side and one simple gold chain used to be on the person of his deceased sister - Anita Mali.

94. From the evidence PW 62 - Shri Madhukar Chavan, the prosecution proved that on 31/12/2003 the police had searched the house of late

Kerubhai Mali in the presence of this witness around 11.45 a.m. and the said flat is located in Amarjyoti Co-op. Society, Wing No. N-4, Flat No.

C-42. During the said search certain articles were seized under the seizure panchanama at Exh. 347 which has been duly proved. As per the said

panchanama, a photostat copy of the Maharashtra Government Gazette was seized from the said flat and it indicated that surname ""Padre"" was

changed to ""Mali"" by Kerubhai. A copy of the letter addressed to the Mumbai Agricultural Produce Market Committee addressed by Shri

Kerubhai Mali so as to incorporate the change in his surname was also recovered. PW 31 - Vasudeo Gaonkar was the witness to the arrest

panchanama drawn on 22/12/2003 for the arrest of A1-Santosh. The said panchanama at Exh. 196 was correctly identified by him. He had also

identified accused No. 1 before the court. At the time of arrest, accused No. 1 was wearing full pant and full shirt and wrist watch conf-case-3-09

of citizen company as well as a gold ring. He was having two mobile sets in his pant pocket and a money purse of chocolate colour. He was also

having one driving license in the name of Mhatre but the photograph in the said driving license was that of accused No. 1 - Santosh. Some more

articles were also recovered from accused No. 1 on his arrest. He identified all those articles i.e. mobile sets (Court Arts. `V" and `CN"),

chocolate colour money purse and driving license (Court Arts. `CO" and `CP"). He also identified 8 visiting cards (Court Arts. CS1 to CS7) and

some cards of Nikita Travels and a metallic plate having Shani Mantra and marked as Court Article C2. 8 visiting cards of Nikita Travels were

marked as CU-1 to CU-7). He also identified Court Article `CV" -wrist watch of citizen make. Seizure panchanama at Exh. 197 was proved by

this witness. The panchanama at Exh. 197 shows that out of two mobile phone instruments, one was of Nokia make, whereas the other one was of

Reliance. The SIM card in the mobile phone of Nokia make was that of Orange service provider. From the evidence of PW 66 - Mohan Doke,

the brother of deceased Anita Mali, it has been proved that the said instrument was, in fact, that of Kerubhai Mali. It has come in his evidence that

Kerubhai Mali was having the mobile of BPL and the cell number was 9821281575, whereas Anita Mali was having mobile set of conf-case-3-09

Reliance make and he stated that it was non operational for some time. He identified Court Article `X" as the same mobile set of blue colour which

was used by deceased Kerubhai Mali and the witness had seen it several times. He also identified the Rado make wrist watch of Kerubhai Mali

with a metallic belt inscribed as `K.N.P.". He further clarified that `K.N.P." represented Kerubhai Nanaji Padre (Court Article `AS"). He also

identified the gold ring with idol of Lord Ganesh (Court Article BI) as belonging to Kerubhai Mali. He also identified the pendant of gold chain used

by Kerubhai Mali and having Tirupati Balaji on one side and Lord Ganesh on the other side engraved upon it. He also identified gold chain

Article BJ belonging to Kerubhai Mali. He also identified gold ear ring (Court Article `U") and gold ring (Court Article `BN") as that of his sister

Anita Mali and which were shown to him in the court. He also identified the gold Mangalsutra (Court Article `G"). From the evidence of PW 35 -

Santosh Malkar read with the evidence of PW 128 - Prabhukhanolkar, it has been proved that on 17/1/2004 accused No. 1 - Santosh Chavan

made a disclosure statement and pursuant to the same from the house of PW 4, where Sonali, the wife of A1-Santosh was staying, one gold

Mangalsutra and one pair of ear rings were recovered. The Mangalsutra was having two connected chains with black beads woven in bold wire

with gold plates in between the beads (Court Arts. `G" and `U"). The articles were recovered under the panchanama at Exh. 232. The witness

proved the said panchanama.

Thus the evidence led by the prosecution proved that the golden ornaments which were on the person of or in the house of deceased Kerubhai

Mali and his wife deceased Anita Mali, which were identified by PW 66 before the court, were recovered from accused Nos. 1 and 6 or at their

behest after 21/12/2003 i.e. after their dead bodies were recovered from Nandos plateau.

95. The above evidence discussed proves the prosecution case beyond reasonable doubts that accused Nos. 1 to 3 and 6 had lured Kerubhai

Mali of shower of money programme and he had travelled along with his wife Anita Mali and their two minor sons Sanjay Mali and Rajesh Mali

from Navi Mumbai, Vashi to Malwan and reached Mayur Lodge at Malwan along with A2 - Amit Shinde who had entered his name in the register

as Anil Jadhav. Kerubhai Mali was carrying a cash of Rs. 3,10,000/- with him, Kerubhai Mali and family members along with A2 had checked out

of the hotel between 9.30 to 11 a.m. on 14/11/2003 and Kerubhai Mali, his wife Anita and two minor sons were done to death by the accused in

a planned manner so as to rob him of Rs. 3,10,000/- on the same day. Their dead bodies were thrown around in gunny bags, some of the personal

belongings like suitcase etc. were also recovered from the spot of incident i.e. Nandos Plateau and Rado watch and golden ornaments on the

person of Kerubhai Mali and his wife were also robbed and sold or handed over to third parties at Mumbai by the accused. All the four i.e.

Kerubhai Mali, and three of his family members were last seen alive along with A2 - Amit Shinde at Malwan. The amount of Rs. 3,10,000/- was

appropriated between the four accused convicted by the trial Court. The circumstantial evidence analyzed hereinabove has not weakened the case

of the prosecution on account of some minor lapses pointed out by the trial Court during the course of investigation. The Rado watch and some of

the golden ornaments had their own unique features and these were on the person of Kerubhai Mali and his wife Anita. These articles which were

identified by PW 66 - Mohan Doke directly connected the accused with the brutal killings of Kerubhai Mali, his wife Anita and two minor sons.

96. The entire prosecution evidence also proved that,

(i) each of the accused i.e. accused No. 1 - Santosh Chavan, accused No. 2 - Amit Shinde, accused No. 3 - Yogesh Chavan and accused No. 6 -

Maresh Shinde were residing permanently at Mumbai, they were knowing each other on account of relations / friendship;

(ii) they hatched a conspiracy at Mumbai to commit the crimes and used the house of PW 4 - Smita Korgaonkar as the place of abode during all

the four incidents though in one of them they were not successful in killing the victims so as to rob the cash brought by the victims;

(iii) in pursuance of the conspiracy the accused started defrauding the persons by robbing cash amounts from them and under the guise of the

miracle of money shower they lured the victims by showing them the dreams of becoming millionaires over-night and thus for multiplying money by

charm, spell and superpower;

(iv) The victims identified were induced to collect money and thereafter they were taken from Mumbai to Kankavali / Malwan, made to stay in

different lodges and ultimately killed at the plateau of Nandos and while doing so they were changing the lodges and booking the rooms in fictitious

names and it was also ensured that the names of the victims would not be listed in the lodge registers;

(v) While transporting the victims from Mumbai or Pune to Malwan / Kankawali, the bus tickets were not purchased in the names of the victims

and the tickets were purchased either in the fictitious names or in short name like Santosh or Amit.

(vi) A2 - Amit Shinde was managing the affairs of conveyance, abduction and stay of the victims at Kankavali / Malwan. At the same time the

victims stayed at these lodges along with A2 - Amit Shinde and accused No. 3 - Yogesh Chavan was assisting A2 Amit Shinde in shifting the

victims from lodges to Katta and then to the plateau.

(vii) Accused Nos. 1 to 3 and accused No. 6 - Mahesh Shinde had extracted the amount from the victims and caused murders. With a view to

cause disappearance of the evidence, they had thrown the dead bodies into the jungle after snatching the gold ornaments as well as other articles

like mobile, Rado wristwatch etc. found on the person of the victims;

(viii) the failure of the accused to explain the acquisition of assets like Tata Sumo jeep and two motor bikes would prove that these acquisitions

were made from the wrongful gains acquired by misappropriation of cash amounts deposited in the saving bank conf-case-3-09 accounts of their

beloved ones between September to November 2003 and this would give rise to logical inference that the accused had acquired these assets by

misappropriating the robbed amounts belonging to the victims after causing their murders. The failure to explain about acquisition of the

automobiles and cash deposits as well as recovery of Rado wrist watch and golden ornaments with their unique identity and recovered at the

behest of A1 - Santosh Chavan is, as noted by the trial Court, one of the strongest circumstances to infer that it is the accused and accused alone

who were the perpetrators of the crime. The victims were seen alive last in the company of accused No. 2 and accused No. 3. The recovery of

knife at the behest of accused - Mahesh Shinde and his sustaining a cut injury on his index finger are also the circumstances which proved the

prosecution case that DB 1 - Shankar Sarge was killed by accused Nos. 1 to 3 and was robbed of Rs. 1,55,000/- on 25/9/2003 at the plateau of

Nandos. It has been also duly proved by the prosecution that DB - 2 Vijaysinh Dudhe, DB - 3 Dadasaheb Chavan, DB 4 - Sanjay Gavre and DB

5 Vinayak Pisal were killed by accused Nos. 1 to 3 and accused No. 6 - Mahesh Shinde on 30/10/2003 at the very same place i.e. Plateau of

Nandos and the victim Dada Chavan was robbed of cash amount of Rs. 3,10,000/-. The prosecution also proved its case beyond reasonable

doubt that in the third incident of serial killings accused Nos. 1 to 3 and accused No. 6 - Mahesh Shinde killed Kerubhai Mali - DB 8, Anita Mali

- DB 7 and their two sons Sanjay Mali DB 6 and Rajesh Mali DB 9 on 14/11/2003 at the same place i.e. Plateau of Nandos. Anita was killed by

fire arm injury and other three were killed by causing fracture of skull by using hard and blunt objects and Kerubhai Mali was also robbed of Rs.

3,10,000/-, golden ornaments, Rado watch and mobile phone hand set etc.

(ix) From the evidence of PW 128 - IO Prabhukhanolkar it has been duly proved that accused Nos. 1 to 3 were in contact with Kerubhai Mali,

Dayanand Thorat etc. Accused No. 1 was holding mobile No. 34268026 which was registered in the name of Sujata More, his first wife.

Between 13/10/2003 and 30/11/2003 accused No. 1 had called accused No. 2 on 160 occasions on the landlines and 65 times on the mobile by

the use of telephone 34268026. He had also called accused No. 3 on 163 times on landline and 37 times on mobile. Accused No. 1 had also

called accused No. 6 - Mahesh Shinde on 31 occasions at his house landline and on three occasions on his mobile. Accused No. 1 had contacted

PW 69 Dayanand Thorat on seven occasions, PW 13 -Ananda Lokhande on seven occasions and PW 18 -Aizaz Desai on 50 occasions between

14th October to 20th October 2003. In respect of mobile No. 9820963798, PW 128 - Prabhukhanolkar deposed before the trial Court that the

said number was belonging to A6 - Mahesh Shinde between 1/9/2003 to 30/11/2003 and from this phone he had contacted accused No. 2 on

landline on 20 occasions and on mobile phone on 13 occasions. The IO also deposed that A6 had contacted A1 on 89 occasions and on 5

occasions with Aizaz Desai between 23/10/2003 to 15/11/2003 and this mobile was on roaming. A6 -Mahesh Shinde also had contacted

Dayanand Thorat on two occasions and to Kerubhai Mali on two occasions on 14/11/2003. The IO further stated before the trial Court that

mobile No. 9819255303 belonging to A6 - Mahesh Shinde was used with three IMEI numbers and this same mobile of Mali i.e. 9819255303

was also used in the said mobile between 18/11/2003 to 7/1/2004 and A6 - Mahesh Shinde had used the handset of Kerubhai of mobile bearing

No. 350104203498830 by using his Sim card bearing No. 919818255303. Thus the evidence of the prosecution established the links amongst

the accused Nos. 1 to 3 and accused No. 6 - Mahesh Shinde on the one hand and the victims on the other hand.

97. To sum up we hold that the prosecution proved beyond reasonable doubts that the accused and accused alone are the killers of Shankar

Sarage, Vijaysinh Dudhe, Dadasaheb Chavan, Sanjay Gavre, Vinayak Pisal, Kerubhai Mali, Anita Mali, Sanjay Mali and Rajesh Mali and these

murders were committed by hatching a conspiracy at Mumbai under the guise of charm / magic for shower of money. The prosecution also proved

that in addition to the victims, there were some others who were also defrauded by accused No. 1 - Santosh Chavan and accused Nos. 2 and 3

were his accomplice.

In Sessions Case No. 4 of 2005 arising from the first incident that had taken place on 25/9/2003 the trial Court held that the prosecution had

proved its case of criminal conspiracy with intent to rob them of cash amount and to murder the victim by giving false promises, assurances and

inducement of multiplying money by magic by the accused. We have also held that the prosecution duly proved that accused noo.1 to 3 had

committed the murder of Shankar Sarage and the trial Court's finding on that count is not sustainable. We also hold that the prosecution proved its

case that accused Nos. 1 to 3 in furtherance of their conspiracy had robbed Shankar Sarage of Rs. 1,55,000/- before he was done to death and

Shankar Sarage was murdered in pursuance of the criminal conspiracy hatched by accused Nos. 1 to 3. Hence Criminal Appeal No. 617 of 2010

filed by the State Government succeeds partly. However, from the entire evidence led scanned, we do not find any material to hold that the charge

u/s 364A of Indian Penal Code has been proved.

98. So far as Sessions Case No. 3 of 2005 and Sessions Case No. 5 of 2005 are concerned, we confirm the findings of conviction recorded by

the trial Court as against accused No. 1 - Santosh Chavan, accused No. 2 - Amit Shinde, accused No. 3 - Yogesh Chavan and accused No. 6 -

Mahesh Shinde, save and except the conviction u/s 364A for which there is no material on record. The victims had travelled to Malwan/Kankavali

and to Nandos on their own free will, even as per the prosecution case.

(a) The prosecution proved beyond reasonable doubt that accused No. 1 - Santosh Chavan, accused No. 2 - Amit Shinde, and accused No. 3 -

Yogesh Chavan are guilty of offences punishable u/s 302 read with Section 120B and Sections 394 and 397 read with Section 120B of Indian

Penal Code for having murdered Shankar Sarage. The offences punishable u/s 404 read with Section 120B and Section 201 read with Section

120B of Indian Penal Code have also been proved against them by the prosecution.

(b) The prosecution also proved beyond reasonable doubt that accused No. 1 - Santosh Chavan, accused No. 2 - Amit Shinde, accused No. 3 -

Yogesh Cahvan and accused No. 6 - Mahesh Shinde are guilty of offences punishable under Sections 302 read with Section 120B of Indian Penal

Code for having murdered the victims Dada Chavan, Sanjay Gavare, Vinayak Pisal and Vijaysinh Dudhe. Their conviction under Sections 394 and

397 read with Section 120B of Indian Penal Code has also been proved. The charges for the offences punishable u/s 404 read with Section 120B

and Section 201 read with Section 120B of Indian Penal Code have been also proved by the prosecution, before the trial court. We also uphold

the conviction of accused Nos. 1 to 3 and accused No. 6 for the offences punishable under Sections 3, 5, 6 read with Section 25 of the Arms Act.

(c) The prosecution proved beyond reasonable doubt that accused No. 1 - Santosh Chavan, accused No. 2 - Amit Shinde, accused No. 3 -

Yogesh Chavan and accused No. 6 - Mahesh Shinde are guilty of offences punishable under Sections 302 read with Section 120B of Indian Penal

Code for having murdered the victims Kerubhai Mali, his wife Anita Mali, their sons Sanjay and Rajesh Mali. Hence we uphold their conviction

recorded by the trial Court for the offences punishable under Sections 302 read with Section 120B of Indian Penal Code. We also uphold the

conviction of accused No. 1-Santosh Chavan, accused No. 2 - Amit Shinde, accused No. 3 - Yogesh Chavan and accused No. 6 - Mahesh

Shinde recorded by the trial Court for the offences punishable under Sections 394, 397 read with Section 120B of Indian Penal Code as well as

Section 404 read with Section 120B and Section 201 read with Section 120B of Indian Penal Code. We also uphold the conviction of accused

Nos. 1 to 3 and accused No. 6 for the offences punishable under Sections 3, 5, 6 read with Section 25 of the Arms Act.

99. On the point of sentence awarded in Sessions Case No. 3 of 2005 and Sessions Case No. 5 of 2005, the trial court has considered the

circumstances like the manner of commission of murders, motive behind the murders, anti-social or social abhorrent nature of the crime, magnitude

of the crime as well as the personality of the victims of murder and awarded the sentence of death by hanging to accused Nos. 1 to 3 and 6. The

trial court has also considered the young age of accused as the only mitigating circumstance in their favour. The trial court has also considered the

following aggravating circumstances overshadowing the single mitigating circumstance of young age,

(a) helpless victims.

(b) victims totally unarmed.

(c) the manner of inflicting injuries, 20-30 serious injuries on each of the deceased, whereas even a single injury would have been sufficient to kill

and these circumstances indicated the barbarous attitude of the accused.

(d) Attack on every vital organ.

(e) Planned serial killings.

The trial court also considered the law laid down by the Supreme Court in the case of Machhi Singh and Others Vs. State of Punjab, .

100. On the point of sentence, the learned defence counsel for accused Nos. 1 to 3 reiterated the same arguments that were advanced before the

trial court. It was contended that even if accused No. 1 is claimed to be a mastermind, the prosecution did not examine the Guruji from Baroda

and some other persons, who actually behind the magic show for the shower of money were left out and, therefore, the gravity of the offence

committed by accused No. 1 cannot be treated as the rarest of rare case. It was also submitted on behalf of the accused Nos. 2 and 3 that there

was no direct evidence against them for having participated in the actual killings and, therefore, they do not deserve to be sentenced with the

punishment of death. It was also urged that all three accused are of very young age and they have every potentiality for reformation. The law must

give them a chance to reform and that is the mandate of Section 354(3) of Code of Criminal Procedure. On behalf of accused No. 6 - Mahesh

Shinde, it was submitted that his presence along with accused Nos. 1 to 3 at Nandos in the house of PW 4 on or about 13/10/2003 and

14/11/2003 was doubtful. The evidence of PW 30 -Dr. Rajendra Rane, who claimed to have treated the said accused for his finger cut injury was

doubtful as he had not identified the said accused during the TI parade and the medical record produced by him could not be said to be relevant. It

was also submitted that the said accused is of young age and he has the potential for reformation. He was not a branded criminal and there were

no criminal antecedents against him and, therefore, he must be given an opportunity to reform rather than awarding him the sentence of death by

hanging, urged Shri Apte, the Learned Counsel.

101. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the pronouncement

of the Constitution Bench judgment in the case of Bachan Singh Vs. State of Punjab, . While awarding the sentence, the court is expected to keep

in mind the facts and circumstances of a case, the principles of law governing awarding of sentence and the impact of awarding such sentence on

the society. The legislative intent behind enacting Section 354(3) of the Code of Criminal Procedure. clearly demonstrates the concern of the

legislature for taking away a human life and imposing death penalty upon the accused. Concern for the dignity of the human life postulates

resistance to taking a life through law's instrumentalities and that ought not to be done, save in the rarest of rare cases, unless the alternative option

is unquestionably foreclosed. In exercise of its discretion, the court would also take into consideration the mitigating circumstances and their

resultant effects. The court also has to draw a balance-sheet between the mitigating and aggravating circumstances and examine whether the

aggravating circumstances outweigh the mitigating circumstances. The language of Section 354(3) also indicates the conditions which need to be

satisfied for the imposition of death penalty and it is imperative to record the reasons for imposing the death penalty. The death penalty should be

imposed, as has been well settled, in the rarest of rare cases and that too for special reasons to be recorded. To put it simply, the sentence of

death is not a rule but an exception and the exception must satisfy the pre-requisites contemplated u/s 354(3) of Code of Criminal Procedure. in

the light of dictum of the Supreme Court in Bachan Singh's case (Supra). As laid down in Bachan Singh's case, while considering the mitigating

circumstances, so as to follow the mandate of Section 354(3) of Code of Criminal Procedure., the following circumstances must be taken into

consideration:

- (a) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (b) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (d) The probability that the accused can be reformed and rehabilitated.
- (e) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (f) That the accused acted under the duress or domination of another person.
- (g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

102. While summarizing the Constitution Bench judgment in the case of Bachan Singh, the Supreme Court in the case of Machhi Singh (Supra)

framed the following guide-lines while considering the possibility of awarding the sentence of death,

- (h) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
- (i) Before opting for the death penalty the circumstances of the offender also required to be taken into consideration along with the circumstances of the Crime.
- (j) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- (k) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

At the same time, each case has to be analyzed on the basis of its facts and circumstances and the sentence of life imprisonment or death has to be

determined on a case by case basis and keeping in mind that death sentence is to be awarded in a case which falls in the category of rarest of rare.

The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the court to the extent that the

only and inevitable conclusion should be awarding of death penalty.

103. More recently in the case of Sudam @ Rahul Kaniram Jadhav Vs. State of Maharashtra, , the deceased Anita was living with the Appellant

as his wife and had come to know about his illicit relationship with PW 6 - Muktabai. The deceased used to protest the said relationship and that

had led to serious dispute amongst Anita, Muktabai and the Appellant. The Appellant had orally divorced Muktabai and agreed to pay Rs.

15,000/- to her and it was deceased Anita who had promised to pay that amount. Thereafter Muktabai had gone to her village and the Appellant

and deceased Anita and four children had settled down at Juna Pani where the Appellant had committed the murder of Anita and four children.

While approving the death sentence, the Supreme Court stated as under:

21. Now we proceed to consider as to whether the case in hand falls in the category of the rarest of the rare case. The Appellant had chosen to

kill the woman with whom he lived as husband and wife, a woman who was in deep love with him and willing to pay Rs. 15,000/- to PW 6

Muktabai, to save the relationship. The Appellant had not only killed the two children of the deceased who were born from the first husband but

had also killed his own two children. He projected himself to be single and changed his name to dupe a woman and in fact succeeded in marrying

her. However, when the truth came to light, he killed five persons.

22. The manner in which the crime has been committed clearly shows it to be premeditated and well planned. It seems that all the four children and

the woman were brought near the pond in a planned manner, strangled to death and the dead bodies of the children thrown in the pond to

conceal the crime. He not only killed Anita but crushed her head to avoid identification. Killing four children, tying the dead bodies in bundles of

two each and throwing them in the pond would not have been possible, had the Appellant not meticulously planned the murders. It shows that the

crime has been committed in a beastly, extremely brutal, barbaric and grotesque manner. It has resulted in intense and extreme indignation of the

community and shocked the collective conscience of the society.

23. We are of the opinion that the Appellant is a menace to society who cannot be reformed. Lesser punishment, in our opinion, shall be fraught

with danger as it may expose the society to peril once again at the hands of the Appellant. We are of the opinion that the case in hand falls in the

category of the rarest of rare cases and the trial court did not err in awarding the death sentence and the High Court confirming the same.

104. In the instant case of serial killings the accused, at the relevant time, were in the age group of about 20 to 25 years and accused No. 1 was

married with two wives and these are the only mitigating circumstances in their favour, including some dependent family members. There was no

enmity or any previous dispute or quarrel, either in respect of payment of money, between the accused on one hand and all the nine victims on the

other hand. In fact, the two minor sons of Kerubhai Mali and his wife conf-case-3-09 Anita Mali had accompanied him and accused No. 2 as

innocent victims who were interested in seeing the magic that would result in the shower of money. Whereas the other victims like Shankar Sarge,

Vijausinh Dudhe, Dadasaheb Chavan, Bala Pisal and Kerubhai Mali were lured with the dream of multiplying the money that would be handed

over to accused No. 1 - Santosh Chavan within minutes with the power of magic/charm. Accused Nos. 1 to 3 had some more victims of shower

of money and magic, but they remained alive as has come through the evidence of PW 18 - Aijaz Desai and other witnesses. It has also been

proved that the murders were meticulously planned in such a way that there would not be any trace of evidence after the victims were done to

death. The place of causing of death was an isolated place where there was hardly any chance of villagers visiting/frequenting. It was virtually a

jungle on the hillock and away from the residential localities. The medical evidence has proved that the deaths were caused in most barbaric and

grotesque manner and with a meticulous plan executed under the leadership of A1 - Santosh Chavan who is the mastermind and brain behind the

crimes. It has come in the evidence that A1 had claimed that he had acquired the art of magic from some other Guruji and the non examination of

the said person/Guruji by the prosecution has not weaken its case. The failed incident of 25/10/2003 is a clear indication of the magnitude of

conspiracy and the deep-rooted criminal tendency of the accused in the serial killings. PW 14 - Jagan Patil had travelled by his private Lancer car

and the accused realized that if he along with his companion would be killed, the car would remain behind as the evidence and, therefore, he was

informed that the shower of money programme was cancelled and was asked to return to Mumbai with the cash he was carrying. There was no

sign of repentance on the part of any of the accused even after PW 18 Aijaz Desai started chasing them for the recovery of money when he

realized that he and his brother-in-law were cheated by A1 and his accused accomplices. Even after causing killings, it is clear from the evidence

of PW 4 and PW 75 that there was nothing in their behaviour / appearance which indicated any repentance or guilt or a feeling of being scared.

They acted as if they were professional murderers. The accused used the house of PW 4 as almost the headquarter for their abode to carry out the

serial killings which were well planned and premeditated over a period of time. At the same time, the accused did not allow either PW 4, PW 75

or accused No. 7 for that matter to ever doubt that they were visiting the plateau of Nandos for any other purpose other than hunting. After every

incident of killing was over, the accused returned to the house conf-case-3-09 of PW 4, had bath at the well, enjoyed their drinks and dinner and

moved around freely. The medical evidence also speaks about the manner in which the killings were carried out. The victims were done to death

with the fire-arms and hard and blunt weapon as well as a sharp weapon like knife. Some of the victims' heads were brutally smashed with iron

rod. Anita Mali was shot dead and was inflicted with number of other injuries. After the dead bodies were recovered, not only the local

population but the entire Konkan belt was shocked and dismayed. The victims were taken from Mumbai to the remote area in Konkan and that

too by public transportation. Accused No. 2 went on giving his fake name whenever he took the victims to different lodges on the respective dates.

Bus tickets were purchased in fake names or with short names of the accused and the co-passengers' names (victims) were never recorded either

while buying the bus tickets or getting into the lodges at Malwan / Kankavali. This plan of crime committed by the accused was carried out over a

period of time and in the manner as if the accused are the professional killers, robbers and shooters. None of the accused had ever indicated the

signs of reformation. The trial court has observed their demeanour and during the course of hearing of these confirmation cases we also had the

advantage of observing the demeanour of the accused. We have no doubt in our mind that the reformation of the accused is a foregone possibility

and they are beyond any reformation despite their young age. The punishment of life sentence is going to shock the conscience of the society and

such an alternative cannot be considered in such a case of serial killings. The accused have exhibited from time to time their hunger for money and

human blood and life. If the police were not alerted on locating the dead bodies at the plateau, it could be reasonably inferred that the accused

would have continued their activities with equal determinations so as to make money by murdering innocent people by luring them in the name of

multiplying the wealth by the magic of shower of money. The serial killings have been committed in a beastly, extremely brutal and barbaric

manner. They have resulted in intense and extreme indignation of the community and shocked the collective conscience of the society. In our

opinion all the convicted four accused would be a menace to society and they cannot be reformed. Lesser punishment, in our opinion, shall be

fraught with danger as it may expose the society to peril once again at the hands of the convicts. We have no doubt that the case in hand falls in the

category of rarest of rare cases and the trial court did not err in awarding the death sentence to all the four convicts and hence we must confirm the

said death sentence awarded by the trial court.

105. In the premises, we allow Criminal Appeal No. 617 of 2010 partly and convict the Respondents - accused Nos. 1 to 3 for the offences

punishable u/s 302 read with Section 120B, Sections 394 and 397 each read with Section 120B as well as Section 404 read with Section 120B

and Section 201 read with Section 120B of Indian Penal Code for causing the murder of Shankar Sarge on 25/9/2003 and robbing him of the

amount of Rs. 1,55,000/-. We sentence accused No. 1 - Santosh Chavan, accused No. 2 - Amit Shinde and accused No. 3 - Yogesh Chavan to

suffer life imprisonment for the offence punishable u/s 302 read with Section 120B of Indian Penal Code. They are also sentenced to suffer RI for

three years and to pay a fine of Rs. 3000/- each in default to undergo RI for three months each for the offences punishable under Sections 394 and

397 read with Section 120B of Indian Penal Code. They are also sentenced to undergo RI for one year for the offence punishable u/s 404 read

with Section 120B and to pay a fine of Rs. 3000/- each in default to undergo RI for three months. We also sentence them i.e. Accused Nos. 1 to

3 to undergo RI for two years and to pay a fine of Rs. 2000/- each in default to undergo RI for two months for the offence punishable u/s 201

read with Section 120B of Indian Penal Code. The said appeal against Respondent Nos. 4 and 5 i.e. Tanaji Sitaram Gavade and Suryakant Anant

Korgaonkar is dismissed.

The order of conviction and sentence passed by the trial court in Sessions Case Nos. 3 of 2005 and 5 of 2005 is hereby confirmed for the

offences punishable under Sections 302 read with Section 120B, 394 and 397 read with Section 120B, 404 read with Section 120B, 201 read

with Section 120B of Indian Penal Code and Sections 3, 5, 6 read with Section 25 of the Arms Act.

The order of conviction and sentence passed in Sessions Case Nos. 3 of 2005 and 5 of 2005 for the offence punishable u/s 364A read with

Section 120B of Indian Penal Code is hereby quashed and set aside.

Barring the death penalty, all sentences to run concurrently.

All the accused are entitled to set off, if any, u/s 428 of Code of Criminal Procedure.

Confirmation Cases i.e. Confirmation Case No. 3 of 2009 and Confirmation Case No. 6 of 2009 are accordingly allowed.

Criminal Appeal Nos. 731 and 732 of 2010 filed by accused - Mahesh Shinde are partly allowed and his conviction and sentence for the offence

punishable u/s 364A read with Section 120B of Indian Penal Code is hereby set aside.

Before we part with the appeals and confirmation cases, we deem it appropriate to record our words of appreciation for the professionalism

shown during investigation, trial and before us by all the parties concerned, investigators, prosecutors and the defence counsel.