

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL CONFIRMATION CASE NO.1 OF 2018

The State of Maharashtra ... Petitioner
Vs
Ramesh Vishwanath Darandale
& Ors. ... Respondents

With

CRIMINAL APPEAL NO.949 OF 2018

Ramesh Vishwanath Darandale
& Anr. ... Appellant
Vs
The State of Maharashtra ... Respondent

With

CRIMINAL APPEAL NO.950 OF 2018

Popat @ Raghunath Vishwanath
Darandale ... Appellant
Vs
The State of Maharashtra ... Respondent

With

CRIMINAL APPLICATION IN APPEAL NO.423 OF 2019

alongwith

CRIMINAL APPEAL NO.1146 OF 2018

Sandip Madhav Kurhe and Anr. ... Appellant
Vs
The State of Maharashtra ... Respondent

With

CRIMINAL APPLICATION IN APPEAL NO.1035 OF 2019

alongwith

CRIMINAL APPEAL NO.264 OF 2018

Ashok Sudhakar Navgire ... Appellant
Vs
The State of Maharashtra ... Respondent

...

Mr. Deepak Thakare, P.P. a/w Mr. J.P. Yagnik, APP
for the State/Petitioner.

Mr. Vijay Hiremath a/w Ms. Sahana i/b Swaraj
Jadhav for the Accused Nos. 1, 2 and 6.

Mr. Nitin Shivram Satpute a/w Ms. Divya R. Gupta
for Respondent No.4

Dr. Yug M. Chaudhry a/w Ms. Ragini Ahuja for
Respondent No.3.

...

**CORAM : B.P.DHARMADHIKARI &
SANDEEP K. SHINDE JJ.**

DATED : 02nd DECEMBER, 2019.

Judgment (Per Coram :- Sandeep K. Shinde J.):

1. The appellants in the above Appeals were found guilty of offence punishable under Section 302 read with Section 120B of the Indian Penal Code and were sentenced to death. The Learned Sessions Judge, Nashik, thus submitted the proceedings to this Court under Section 366 of the Criminal Procedure Code, for

confirmation of death sentence. Besides, appellants were also found guilty of offence punishable under Section 201 read with Section 120B of the Indian Penal Code and each were sentenced to suffer rigorous imprisonment for seven years and fine of Rs.10,000/- , in default to suffer rigorous imprisonment for three years each. Both the sentence were ordered to run concurrently. The fine amount, if recovered has been directed to be paid to the legal representatives of each deceased at the rate of Rs.20,000/- each, as compensation. However, the appellants were acquitted of the offence punishable under Section 135 of the Bombay Police Act. Accused no.7-Ashok Rohidas Falke has been acquitted of all the offences. The District Services Legal Authority, Nashik has been directed to make an enquiry and pay compensation under Victim Compensation Scheme envisaged under Section 357(a) of the Criminal Procedure Code ("Cr.P.C." for short) in addition to the compensation awarded under Section 357(5) of the Cr.P.C. It is against this conviction and sentence, these appeals are preferred.

2. Pending Appeals, accused no.5-Popat Darandale died on 23rd June, 2018 and thus the Appeal abates against him.

3. We shall advert to the exposition of facts of the case as projected by the prosecution : Sandeep Thanwar, Rahul Kandare and Sachin Gharu, (all three victims deceased) were working as sweepers at Trimurti Prathisthan College, Tal. Nevasa, Dist. Ahmednagar. Sachin who belongs to scheduled caste, fell in love with Ms. Seema Popat Darandale, who belongs to Maratha caste (upper class). Seema is the daughter of accused no.5-Popat @ Raghunath Darandale. She was pursuing B.Ed course in the Trimurti College. When family members learnt about Seema's alleged love affair with Sachin Gharu (deceased), Ramesh Vishwanath Darandale (accused no.1), Prakash Vishwanath Darandale (accused no.2) both paternal uncles of Seema, Sandeep Mahadev Kurhe (accused no.3 and relative of Seema), Ashok Navgire (accused no.4), Popat @ Raghunath Vishwanath

Darandale (accused no.5 and father of Seema), Ganesh @ Ramesh Popat Darandale, (accused no.6 and brother of Seema) and one Ashok Falke (accused no.7) hatched the conspiracy to eliminate Sachin Sohanlal Gharu. It is prosecutions narrative that on 1st January, 2013, accused, on the pretext of repairing/cleaning septic tank secured presence of Sandeep Thanwar, Sachin Gharu and Rahul Kandare at the farmhouse of Popat Darandale, father of Seema, (accused no.5) at Darandale Vasti, Ganeshwadi, Sonai, Taluka-Nevasa, District - Ahmednagar. At the instance of accused, all deceased victims reached at Darandale Vasti in afternoon of 1st January, 2013 at around 1 p.m. to clean the septic tanks. Darandale Vasti is a isolated place, where, farm house of Darandale family is situated. Abutting farmhouse, there were toilet blocks. That since Sandeep Thanwar, did not return home till late evening, his brother Kapil Thanwar, contacted accused no.3-Kurhe, who told him that Sandeep Thanwar, and his two friends left Darandale Vasti in the afternoon; however, at 8.30 p.m., he was informed that dead-body

of Sandeep was found lying in the septic tank of toilet block. Popat, accused no.5 reported accidental, death of Sandeep to the police. A case of Accidental Death was registered by the Police. On 2nd January, 2013, on the disclosure of, accused nos.1 and 2, dead-bodies of Sachin Gharu and Rahul Kandare were found, buried in the water less well in Darandale Vasti. Upper limbs and lower limbs of Sachin were discovered at the instance of accused no.2. Body of Sachin was found beheaded, and as such, offence under Section 302 of the Indian Penal Code, 1860 came to be registered on 2nd January, 2013 at Sonai Police Station.

4. Prosecution Evidence : It is unfolded in the prosecution evidence, that on 1st January, 2013 at 9.30 a.m., one **Kundan Bankar** (PW-16), who was working as JCB, driver, noticed Ashok Navgire (accused no.4) was talking with Sandeep Thanwar (one of the deceased) at Trimurti College. Ashok Navgire and Bankar, both being JCB drivers knew each other and were in employment of Mr. Tukaram Shende (Owner of JCB). It is Bankar's

evidence that at the relevant time, he heard, Ashok Navgire was requesting Sandeep Thanwar to undertake repair work of septic tanks at the house of Popat Darandale (Accused No.5) at Darandale Vasti Ganeshwadi. Bankar deposed, he heard Sandeep Thanwar (deceased) agreed to repair the septic tanks, and thereupon Ashok Navgire gave him the cell number of Kurhe (accused no.3) relative of Seema, to enable him to contact Kurhe in relation to the work of septic tanks. Sandeep Thanwar, at 10.30 a.m. contacted Kurhe (Accused No.3) on his cell phone, and informed him that he would clean the septic tanks with the help of his friends, Sachin Gharu and Rahul Kandare. It is further unfolded in the evidence that on 1st January, 2013 Sandeep Thanwar, Sachin Gharu and Rahul Kandare reached Ganeshwadi i.e. house of Popat (father of Seema) on motorcycle of Sandeep Thanwar bearing registration number MH-17 AP 8369 for cleaning septic tanks.

5. It unfolded in evidence, that deceased

persons had received calls on their mobile phones, from their relatives and/or their friends to whom they disclosed that they were working at Darandale Vasti, Ganeshwadi and repairing the septic tank over there. It is disclosed in the evidence that, deceased had informed the callers (relatives and friends) that at the relevant time all the accused were present at Darandale Vasti, Ganeshwadi. The evidence in the form of Call Details Record (CDR) has disclosed that, last call was received by one of the deceased (Sachin) at 15.27 hrs. at Darandale Vasti. As it appears from evidence, the deceased had informed their family members that they would return home soon after the work was over. Since Sandeep Thanwar (one of the deceased) did not return home till evening of 1st January, 2013, his brother Kapil (P.W.3) contacted accused no.3 - Kurhe to enquire the whereabouts of his brother and his two friends. He was told by Accused no.3 - Kurhe that Sandeep and his two friends had left Ganeshwadi in afternoon after partly completing the work.

6. Evidence in the form of call detail record (CDR for short) shows in late evening of 1st January, 2013, Kapil (PW-3), brother of Sandeep Thanwar, repeatedly called accused no.3 to enquire the whereabouts of his brother but, it is only at 8.30 p.m Kapil was informed by accused no.4 (Ashok Navgire) that dead body of Sandeep was found lying in the septic tanks, at Darandale Vasti, Ganeshwadi.

7. Evidence of Mr. Patil Investigation Officer - PSI - PW-49 : It is disclosed in the evidence of, Vilas Hiranand Patil (PW-49), Assistant Police Inspector (attached to Sonai Police Station) that on 1st January, 2013 at about 8.00 p.m. five - six persons came to the Police Station and one of them introduced himself as Popat Darandale (accused no.5). Amongst them, two were, Sandeep Kurhe (Accused No.3) and Ashok Navgire (accused no.4). Popat Darandale informed Vilas Patil, that he resides at Darandale Vasti at Ganeshwadi, and had hired the services of three sweepers for repairing the septic tanks at his farm

house, at Darandale Vasti. He informed that a dead body of one sweeper (Sandeep Thanwar) was found lying in the septic tank and whereabouts of other two sweepers was not known. Vilas Patil, API, after taking entry in the Station Diary, proceeded to the Darandale Vasti with Popat Darandale.

8. Vilas Patil - API (PW-49) deposed, after reaching Ganeshwadi, Popat Darandale, had shown the dead body of Sandeep Thanwar, which was lying in the septic tank; however only his legs were projecting out of the tank and rest of the body was in the septic tank. Officer thereupon inquired with Ashok Navgire (accused no.4) about deceased' relatives. Thereupon, Ashok, called Kapil (PW-3), brother of Sandeep Thanwar (deceased) and informed him that dead body of his brother was found lying in the septic tank. At about 9.00 p.m. Kapil, his father Ragu Thanwar with one Mukesh Changare (brother-in-law of Sandeep) reached at Darandale vasti. By that time, Vilas Patil Police Officer, had also called a photographer, **Ganesh Vithal**

Belekar (PW-2). Thereafter the body of Sandeep Thanwar was sent for post-mortem to the Nevasa Rural Hospital. It is the evidence of the Police Officer that, Kapil Thanwar and Mukesh Changare told him that, one Sachin Gharu and Rahul Kandare, friends of Sandeep, had accompanied him for cleaning the septic tank. Officer tried to search Sachin & Rahul at Darandale Vasti, but they were not found. The Officer therefore returned to the Police Station alongwith Kapil Thanwar, Raju Thanwar (father of deceased Sandeep) and Mukesh Changare. At Police Station, Kapil Thanwar (PW-3) filed accidental death report. The report was reduced writing by Head Constable, Vetal. Mr. Vilas Patil API, took over the investigation. He again proceeded to Darandale Vasti (Spot of accident/ offence) in search of Rahul and Sachin; however, they were not found. He also made enquiry with the mother of Sachin. She informed him that Sachin had gone to Darandale Vasti but had not returned home.

9. Next day, on 2nd January, 2013 at about 8.45

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p.m. Vilas Patil API (PW-49), drew inquest Panchanama at Rural Hospital Nevasa on the dead body of Sandeep Thanwar, in the presence of two Panchas. Inquest Panchanama is at Exhibit-160. The dead body was referred to the concerned Medical Officer for autopsy. After completing these formalities, Mr. Patil, proceeded to the Darandale vasti at Ganeshwadi and drew the spot Panchanama in the presence of Panchas Rajendra Kusalkar (PW-4) and Charan Chavan.

10. Discovery of corpse of Sachin and Rahul : ASI Vilas Patil (PW-49), deposed that while drawing the spot Panchanama on 2nd January, 2013 in A.D.1/12 under Section 194 of Cr.P.C., Ramesh Darandale and Prakash Darandale (accused nos.1 and 2) were present. He enquired with them about the incident, in presence of two Panchas. Since their responses were evasive, he became suspicious and thus took them in 'custody'. When he enquired in detail, Ramesh (accused No.1) voluntarily disclosed in presence of Panchas that, they had committed murder of three sweepers; Sachin,

Sandeep and Rahul and volunteered to show the place where they had committed the murder of Sachin Gharu and Rahul Khandare. It is officer's evidence that, Prakash Darandale (Accused No.2) disclosed in presence of Panchas that they cut the limbs of Sachin Gharu and dumped it in one borewell and further volunteered to show the place, where bodies of Sachin and Rahul Khandare were concealed.

11. Evidence of Vilas Patil, ASI reveals, that accused no.1-Ramesh, had shown a pit adjacent to septic tank where they had cut the limbs of Sachin Gharu. The officer found some brinjals in the pit stained with blood. He seized eighteen brinjals and sealed them in the presence of Panchas. He had collected sample of earth soaked with blood and sealed the same.

12. The evidence of this officer further disclosed that, Prakash Darandale-accused no.1 had volunteered to show a borewell where Sachin's body

parts were disposed of. The officer had noticed bloodstains inside the pipe of borewell, however, for want of necessary equipments, body parts of Sachin could not be taken out from the borewell. He therefore deployed one constable near the borewell.

13. Officer deposed, that accused no.1 , Ramesh Darandale volunteered to show a well, where they had buried the dead bodies of Sachin and Rahul. It was a water-less well and one footwear was found lying near the well. Officer, seized it. Depth of the well was about 40 feet. At his instructions, Bapurao Darandale (PW-8) and one Constable climbed down into the well with the help of a rope. Accused no.1-Ramesh pointed out the spot in the well, where the bodies were buried. Accordingly, Bapurao and one Constable, exhumed the bodies of two male persons . These two bodies were brought out from the well. Besides, the head of one dead body was found buried in the well. That as such, one body was found without head and limbs. At the relevant time, Mukesh Changre (PW-10) was also

present. Mukesh Changre (PW-10) informed the officer that the dead body found without head and limbs, was of Sachin Gharu and another dead body was of Rahul Kandare. Later, mother identified the dead body of Sachin which was without head and limbs. From the place near the septic tank few articles were discovered at the instance of accused nos. 1 and 2. Officers seized one sky blue colour shirt, one dark blue colour T-shirt, one ash colour sports pant, two black colour mobile handsets, one chappal and one pair of sandal. One motorcycle bearing registration number MH-17-AP-8369 was also seized. A composite spot cum discovery Panchanama was drawn in the presence of accused nos.1 and 2 at Exhibit 137. This exercise was done on 2nd January, 2013 between 14.15 hrs to 15.55 hrs at Darandale Vasti, Ganeshwadi. Soon thereafter, the Officer conducted inquest on the bodies of Sachin and Rahul and drew Panchanama separately at Exhibits-163 and 164. Dead bodies were forwarded for the autopsy to Nevasa Rural Hospital. Thereafter, Vilas Patil (PW-49) Police Officer, returned to the police

Station.

14. After reaching the police Station, ASI Dhangar informed him that on the complaint filed by Mukesh Changre (PW-10), Crime No.2 of 2013 was registered under Sections 302, 201 read with Section 34 of the Indian Penal Code at 8.30 p.m. Mr. Patil took over the investigation and arrested accused nos.1 and 2 at 9.30 p.m on 2nd January, 2013. The arrest Panchanamas are at Exhibits-309 and 310.

15. Evidence of Mr. Gangurde - Deputy Superintendent (PW-50) : On 5th January, 2013 as instructed by Superintendent of Police, investigation was made over to Dy. S.P., Mr. Gangurde (P.W.50). Mr. Gangurde after taking over investigation from Mr. Vilas Patil, procured a caste certificate of Sandeep Thanwar (deceased) which revealed he belongs to Mehtar, a Schedule Caste. In the course of investigation, Mr. Gangurde enquired with Ashok Navgire (accused no.4), Kurhe (accused no.3) and Popat

Darandale (accused no.5), about the incident, however, having found their responses inconsistent and evasive, they were arrested on 5th January, 2013 and thereafter the charge of conspiracy under Section 120-B of Indian Penal Code was added. The offence under Section 3(2)(v) of Prevention of Atrocities Act also came to be added. Evidence shows on 6th January, 2013, Mr. Gangurde recorded statements of Kapil Thanwal (P.W.3), Harischandra Atwal (P.W.9), Kalabai Sohanlal Gharu (P.W.18 and mother of Sachin), Pankaj Raju Thanwar (brother of Sandeep and P.W.22).

16. Recovery of Body-parts of Sachin Gharu : It is disclosed in the evidence that on 7th January, 2013, Mr.Gangurde instructed Vilas Patil to make efforts to recover the limbs of Sachin concealed in the borewell. The evidence shows on 8th January, 2013 the upper limbs and two lower limbs of Sachin Gharu were taken out from the borewell pipe in presence of Panchas by drawing a Panchanama at Exhibit-173. The limbs of Sachin were forwarded to Rural Hospital, Nevasa for examination.

17. Discovery of weapons / incriminating articles : It is the evidence of Mr. Gangurde (P.W.50) that on 7th January, 2013 Ramesh Darandale (accused no.1) volunteered to show the place where he had concealed one sickle and rope. Accordingly, Memorandum was recorded below Exhibit-270. Accused no.1 led police party to Darandale Vasti at Ganeshwadi and at his instance and in the presence of Panch witness Deshmukh and another, sickle was seized which was hid in the rotter of Tractor lying at that place. Ramesh Darandale had shown the place, wherefrom a wire rope was also seized in the presence of Panchas. Panchanama is at Exhibit-271. On the same day, Mr. Gangurde recorded the statement of Seema Popat Darandale (P.W.7).

18. On 9th January, 2013 Prakash Darandale (accused no.2) volunteered to show the place where he had concealed the weapons which were used for committing the crime. He led the police party to Darandale Vasti. Memorandum Panchanama Exhibit-272

was recorded. At his instance, one fodder cutting machine which was concealed in the crop of Wheat was recovered and marked Article-21, below Exhibit-273.

19. On 9th January, 2013 Ganesh-accused no.6 volunteered to produce one wooden log and a mobile handset which was concealed in the tin-shed at Ganeshwadi. These articles were seized in the presence of Panchas below Panchanama at Exhibit-278.

20. On 12th January, 2013, accused no.5-Popat Darandale volunteered to produce one spade and wooden log which he had concealed in the cattle-shed at Darandale Vasti. Accordingly, the spade (Article-22) and Wooden Log was seized below Exhibit-275.

21. On 13th February, 2013, accused Ganesh volunteered to produce mobile handset and accordingly, in presence of Panchas, he produced his mobile handset, which he had concealed behind his house at Darandale Vasti. Mobile set was marked as

Article 28 and seizure Panchanama as Exhibit 285.

22. Fodder-cutting Machine shown to Medical Officer : On 14th January, 2013 Mr. Gangurde had taken the fodder cutting machine, sickle and wooden log to the Nevasa Rural Hospital to seek the opinion of the Medical Officer, Dr. Kautuke (P.W.6) who had conducted autopsy. Dr. Kautuke opined that the injuries sustained by the deceased Sachin and Rahul were possibly caused by the weapons like fodder-cutting machine, sickle and wooden log. This exercise was done in the presence of Harishchandra Atwal (P.W.9) brother-in-law of deceased Sachin Gharu. When Dr. Kautuke had seen the fodder-cutting machine, one red colour thread was found entangled to the blade of fodder-cutting machine, which, Harischdra Atwal said, it belongs to Sachin Gharu. Panchanama to that effect was drawn at Exhibit-153 in presence of Panchas. All these articles were forwarded for analysis to the Forensic Laboratory.

23. Evidence of Sopan Bangar - Deputy Superintendent (P.W.51) : On 14th February, 2013, investigation was made over to Sopan Bangar (P.W.51) Deputy Superintendent of Police. His evidence shows, he had recorded statements of several witnesses and had also obtained School Leaving Certificates of accused, which shows that accused no.6 Ashok Navgire belongs to scheduled caste.

24. Mr. Bangar on 11th March, 2013, issued a letter to Nodal Officers of Mobile service providers through Superintendent of Police, Ahmednagar and called for call detail records (CDR) of mobile phones of deceased and accused. He filed charge-sheet on 26th March, 2013 and additional charge-sheet on 18th May, 2013.

25. The learned trial Sessions Court, framed the points;

(i) Whether the prosecution proves that Sachin gharu, Rahul Kandare and Sandeep Thanwar met with homicidal death on 1st January, 2013.

(ii) Whether it is proved by the prosecution that accused no. 1 to 7.

(a) Caused death of Sachin Gharu, Rahul Kandare and Sandeep Thanwar;

(b) Caused disappearance of evidence of murder;

(c) That they had hatched a conspiracy to commit these offences or were clothed with common intention or were members of unlawful assembly causing the rioting with the deadly weapon in prosecution of common object.

26. The trial Court convicted accused No. 1 to 6 for the offence punishable under Section 302 r/w Section 120-B of IPC and sentenced them to death; vide judgment and order dated 20th January, 2018. It is against this conviction and sentence these appeals are preferred.

27. Before advertng to arguments are points canvassed by the counsel for the appellants, we think it appropriate to state undisputed facts;

(1) Accused nos.1 to 3 and 5 to 7 are Marathas

(Upper Class); accused no.4 is a person belonging scheduled caste; whereas all deceased were from lower caste.

(2) At the material time, Sachin Gharu, Rahul Kandare and Sandeep Thanwar were working as sweepers at Trimurti College, Nevasa and they were living in the quarters provided by Trimurti College within its campus.

(3) At the material time, Seema Darandale, daughter of accused no.5 (P.W.37) was pursuing her B.Ed. Course in Trimurti College.

(4) Accused no.1 Ramesh and Accused No.2 Prakash are Seema's paternal uncles and accused no.6 Ganesh is his brother. Accused No.3 Sandeep Kurhe is relative of accused nos.1,2,5 and 6.

(5) Dead body of Sandeep Thanwar was found in septic tank situated at Darandale Vasti on 1st

January, 2013 at 7 p.m.

(6) Dead bodies of Rahul Kandare and Sachin Gharu were found in a well Gat No. 293 at Darandale Vasti.

(7) Limbs and head (separated) from body was found in Bore well in Gat No.298/2, owned by accused No.6.

(8) Defence of accused is denial.

28. Circumstance - proved and held against accused by the Trial Court : The case against the appellants rests on circumstantial evidence. In cases where evidence is of circumstantial in nature, circumstances from which conclusion of guilt is to be drawn, are required to be fully established and each fact sought to be relied upon must be proved individually. As it appears, the trial Court held that prosecution has proved chain of following circumstances against accused nos.1 to 6 :-

(i) Deceased Sachin Gharu was serving as sweeper in Trimurti College, Nevasa Phata and Seema Darandale daughter of accused no.5 (P.W.37) was studying in the said college;

(ii) There was love affair between the deceased Sachin Gharu and Seema Darandale;

(iii) Deceased Sachin Gharu belonged to scheduled caste and Seema Darandale a person belongs to Maratha caste;

(iv) Accused Nos.1,2,5 and 6 threatened Sachin Gharu few days before the incident over his alleged love affair with Seema Darandale.

(v) On 1st January, 2013, deceased Sandeep Thanwar was called to repair clean the septic tank at Darandale Vasti, Ganeshwadi (spot of the incident);

(vi) Sandeep Thanwar agreed to repair the septic tank with the help of Rahul Kandare and Sachin Gharu;

(vii) Deceased Sachin Gharu, Sandeep Thanwar and Rahul Kandare proceeded on Motor Cycle to Daradale Vasti on 1st January, 2013;

(viii) Dead bodies of Sandeep Thanwar, Sachin Gharu and Rahul Kandare were found at

Darandale Vasti;

(ix) Call detail record of deceased has established that Sachin Gharu, Rahul Kandare and Sandeep Thanwar were at Darandale Vasti on 1st January, 2013 since after 1 pm;

(x) Call detail of accused Nos. 1 to 3, 5 and 6 has established the fact that since afternoon of 1st January, 2013 accused were present at Darandale Vasti and undertook septic tank work;

(xi) Accused Nos. 1 to 6 were last seen together with the deceased at Darandale Vasti;

(xii) Accused Nos. 1 to 6 failed to offer explanation as to how Sandeep Thanwar, Sachin Gharu and Rahul Kandare died;

(xiii) That since accused were present at Darandale Vasti since after 1 pm, fact was within the special knowledge of accused as to how and in what circumstances Sachin Gharu, Rahul Kandare and Sandeep Thanwar died ;

(xiv) When deceased Sandeep Thanwar did not return home in the evening on 1st January, 2013, his brother Kapil Thanwar (PW-3) made

phone calls to accused No. 3 Sandeep Kurhe repeatedly to whom accused No. 3 informed that deceased partly carried out the work and left in afternoon (conduct);

(xv) On 1st January 2013 at 8:30 p.m. accused No. 4 Ashok informed, Kapil Thanwar that Sandeep Thanwar's dead body was found lying in the septic tank at Darandale Vasti, Ganeshwadi;

(xvii) Call detail records of accused and their tower location on 1st January, 2013 and in the night intervening 1st and 2nd January 2013 show their location at Ganeshwadi;

(xviii) Recovery of the dead body of Sachin Gharu and Rahul Kandare in the well at Darandale Vasti was at the instance of accused Nos. 1 and 2;

(xix) Recovery, lower and upper limbs of Sachin Gharu in the bore-well was at the instance of Accused No. 1, from Gat No. 298/2;

(xx) Recovery of incriminating articles stained with human blood was at the instance of the accused;

(xxi) Recovery of Motor Cycle No. MH17 AP 8369 owned by Sandeep Thanwar was from the spot of the incident;

(xxii) Recovery of mobile phones of the deceased Sachin Gharu, Rahul Khandare and Sandeep Thanwar from tin shade near the septic tank at Darandale Vasti, Ganeshwadi;

(xxiii) Accused Nos. 1, 2, 5 and 6 being owners and in possession of the spot of the incident ;

(xxiv) Seizure of blood stained clothes of the deceased Sachin Gharu and Rahul Khandare, (Exhibit 381) Sickle (Article 19), fodder cutting machine (Article 21) and clothes of the deceased bear human blood stains;

(xxv) Causing dis-appearance of the evidence and giving false information in order to screen themselves from legal punishment;

(xxvi) Accused failed to explain incriminating circumstances surfaced in the evidence against them;

29. Appellants disputed each circumstance having been proved by the prosecution and would criticize the

manner in which evidence has been appreciated and challenged the finding returned on each circumstance and points, by the learned Trial Court.

30. We will advert to the first circumstance i.e. accused' possession over Darandale Vasti, Ganeshwadi a spot of the incident on the date of the incident :

On 6th February, 2013 Nilkanth Bargaze (P.W.1) surveyor in the City Survey Office of Nevasa visited the place of the incident i.e. field Gat Nos.299 of Village: Ganeshwadi and drew a map Exhibit - 125. He found, only one house in Gat No.299 and nobody was residing in adjoining fields. He disclosed the Gat No.299 is owned by Vishwanath Darandale and Kusnath Darandale and house of accused in Gat No.299 is outside the village, Ganeshwadi say about 2.3 Km. at a distance from the Gram Panchayat Office. Surveyor found one bore-well in Gat No.298/2 situated on the Western side of Gat No.299 owned by accused no.6 Ganesh Darandale. Map at Exhibit 125 shows; toilet blocks and farm house was in Gat No.299; bore-well in Gat No.298/2; and well

in Gat No.293 ,towards the Southern side of Gat No.299. Evidence of this witness has not been controverted by the accused and as such, map at Exhibit 125 stood proved. Prosecution has examined Suresh Darandale PW-48, who deposed that he is the owner of Gat No. 294/1 situated on the Southern side of Gat No.299, and Popat Darandale (accused No.5) is his leasee for more than ten years. In view of this evidence, we hold that prosecution has proved. Darandale Vasti (spot of the incident) was in exclusive use and possession of accused Nos. 1, 2, 5 and 6.

31. Second circumstance : Presence of accused and deceased on the spot on 1st January, 2013 from 13 hrs and onwards. To prove this circumstance, prosecution has relied upon Call Detail Records (CDR) of the accused and the deceased and call details of the deceased' relatives and friends.

32. The learned counsels appearing for the accused have disputed authenticity and admissibility

of the electronic evidence in the form of CDR. They objected to its admissibility for want of strict compliance of the provisions of Section 65B of the Indian Evidence Act, 1872. Appellants have criticized the evidence of nodal officers of three service providers and the certificates issued by the Nodal Officers under Section 65B of the Indian Evidence Act, 1872. It is urged by the learned counsel for the appellants that CDR of 2 cells used by Sandeep Thanwar (Deceased) and Sachin Gharu (Deceased) of Vodafone, were provided by Nodal Officer Mr. Pareira (P.W.13) for the first time on 13th March, 2013. It is urged by learned Advocate Dr. Chaudhry that investigating officers were in possession of CDRs of the accused and the deceased before 13th March, 2013 as it could be seen and discerned from contents of the letter dated 11th March, 2013 (Article 16) addressed by the Deputy Superintendent of Police to the Superintendent of Police. It is urged that, letter dated 11th March, 2013 admits that prosecution was in possession of CDRs' unofficially before 13th March, 2013 and thus it is

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submitted that on the basis of such unofficial CDRs', official CDRs' provided on/or after 13th March, 2013 were manipulated by the prosecution. Therefore, it is submitted that the CDRs' sought to be relied upon are 'tailor made' to suit prosecutions' case, which could not have been relied upon at all. The submission is that CDRs' be kept out of the consideration.

33. The learned counsel for the appellants and the learned Public Prosecutor for the State have taken us through CDR of the deceased, accused, and CDRs of the relatives of the deceased and the witnesses. We were also taken through the evidence of Nodal Officers, details of corresponding tower locations of deceased, accused and witnesses.

34. Before answering points raised by the appellants as regard to admissibility / inadmissibility of CDRs; either for want of compliance of Section 65B of the Indian Evidence Act, 1872 and/or its admissibility on account of alleged manipulation,

we think it appropriate to summarize CDR of the deceased, accused and witnesses; so also, cell numbers used by them and the evidence of Nodal Officers and of subscribers, whose phones were used by the deceased.

‘CHART - A’ Details - Particulars of mobile phones used by the deceased.

Sr. No.	Name of Deceased.	Mobile No.	Owner of SIM Cards	Service Provider	Document of Ownership	CDR/Exh.
1	Sandeep Raju Thanwar	8806081988	PW.26 Anju Mansing Chawre	Vodafone PW.30 Francis Parera	Exh.209, Page No.354-55, Vol.II	D1, Exh.203, Page No.317, Vol.II
2	Sachin Sohanlal Gharu	8806441496	PW.27 Mahadu Kushal Salunkhe	Vodafone PW.30 Francis Parera	Exh.208 Pg. No.352-353, Vol.II	D2, Exh.204, Page No.332, Vol.II
3	Rahul Raju Kandare	9922024751	PW.32 Birju Narayan Tak	Idea PW.33 Datta Angre	Exh.226 Page No.395-396, Vol.III	D3, Exh.232, Page No.468, Vol.III
4	Rahul Raju Kandare	9665266694	PW.29 Sangita Kailas Chirawande	Airtel PW.34 Chetan Patil	Exh.254 Page No.534-935, Vol.III	D3, Exh.249, Page No.525, Vol.III

‘CHART - B’ Call details of Sandeep Thanwar (deceased)

SANDIP THANWAR D-1, Mobile no. 8806081988 (EXH. 203, PAGE 331, VOL.(II))

Sr.No	A Number	B Number	Date	Time	Du	Cell ID A	Cell ID B	Type	IMEI	IMEI	Caller name
1348	8806081988	9975588070	01.01.13	8.18.24	36	404270023061181	404270023057741	out	354850042574400	404276238165464	Sandip (D1)
1350	8806081988	9975588070	01.01.13	10.09.49	72	404270022056718	404270020615732	out	354850042574400	404276238165464	Sandip (D1)
1359	9975588070	8806081988	01.01.13	12.02.35	240	404270023061381	404270023061301	Inc	354850042574400	404276238165464	
1364	8605128987	8806081988	01.01.13	13.52.47	31	404270023032989	40270023032989	Inc	354850042574400	404276238165464	Kapil (PW-3)
1366	9422385133	8806081988	01.01.13	14.57.14	165	404270023032989	404270023032989	Inc	354850042574400	404276238165464	Chavre (PW-7)
											A4 Navgire talked with D1 on phone of A3 as follows
1351	9860161715	8806081988	01.01.13	10.30.45	41	404270047161281	404270047161281	Inc	354850042574400	404276238165464	Kurhe (A3)
1353	9860161715	8806081988	01.01.13	10.56.05	12	404270020615732	404270047161281	Inc	354850042574400	404276238165464	Kurhe (A3)
1355	9860161715	8806081988	01.01.13	11.06.39	14	404270023056718	404270023056718	Inc	354850042574400	404276238165464	Kurhe (A3)
1358	9860161715	8806081988	01.01.13	11.42.38	42	404270023008333	404270023008333	Inc	354850042574400	404276238165464	Kurhe (A3)
1361	9860161715	8806081988	01.01.13	12.11.14	08	404270023061303	404270023061303	Inc	354850042574400	404276238165464	Kurhe (A3)
1360	8806441496	8806081988	01.01.13	12.08.25	07	404270023061301	404270023061301	Inc	354850042574400	404276238165464	Sachin (D2)

‘CHART - C’ Call details of Sachin Gharu (deceased) .

SACHIN GHARU D-2, Mobile no. 8806441496 (EXH. 204, PAGE 346, VOL.(II))

Sr.No	A Number	B Number	Date	Time	Du	Cell ID A	Cell ID B	Type	IMEI	IMSI	Caller name
1377	8806441496	8806081988	01.01.13	10.34.10	28	404270023061181	404270020615732	out	359988044498110	404276265835705	Sachin (D2)
1379	8806441496	8806081988	01.01.13	12.08.25	07	404270023061303	404270023061303	out	359988044498110	404276265835705	Sachin (D2)
1381	9975650953	8806441496	01.01.13	15.27.03	48	404270023032989	404270023032989	Inc	359988044498110	404276265835705	Mukesh Teji
1378	8806441496	9503606361	01.01.13	11.37.32	51	404270023008333	404270023008333	Inc	359988044498110	404276265835705	Sachin (D2)

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**'CHART - D' Call details of Rahul Khandare (deceased).
Cell No. 9922024751**

RAHUL KHANDARE D-3 (EXH. 232, PAGE 469, VOL.(III)

Sr.No	A Number	B Number	Date	Time	Du	Cell ID A	Cell ID B	Type	IMEI	IMSI	Caller name
1	897534329 6	992202475 1	01.01.1 3	09.24.5 8	15 2	4042210102351 2	4042210102351 2	out	91112505006317 0	40422043362287 1	Sagar Kandare(PW20)
2	897534329 6	992202475 1	01.01.1 3	15.19.3 2	23 0	4042210074193 2	4042210074193 2	out	91112505006317 0	40422043362287 1	Sagar Kandare(PW20)

**'CHART - E' Calls made by Relatives and Friends of the
deceased.**

LAXMI THANWAR PW.14 (EXH. 238, PAGE 486, VOL.(III)

Sr. No.	A Number	B Number	Date	Time	D u.	Cell ID A	Cell ID B	Type	IMEI	IMSI
1	8605128 987	8806081 988	01.01. 13	13.52. 48	31	40422101023 512	40422101023 512	out	35357605085 4960	40422052049 0804

‘CHART - F’

MUKESH TEJI PW.15 (EXH. 258, PAGE 547, VOL.(III))

Sr.No.	A Number	B Number	Date	Time	D u.	Cell ID A	Cell ID B	Type	IMEI	IMSI
1	99756509 53	88064414 96	01.01. 13	15.27. 04	48	3201_453 51	3201_453 51	out	353273051428 700	404909035451 514

‘CHART - G’

SAGAR RAJU KHANDARE PW.20 (EXH. 241 AND 243, PAGE 498, VOL.(III))

Sr.No.	A Number	B Number	Date	Time	D u.	Cell ID A	Cell ID B	Type	IMEI	IMSI
1	8975343 296	9922024 751	01.01. 13	09.24. 58	15 2	40422100621 683	40422100621 683	out	35595047192 950	404220423005 307
2	8975343 296	9922024 751	01.01. 13	15.19. 32	23 0	40422100621 732	40422100621 732	out	35595047192 950	404220423005 307

‘CHART - H’ Mobile Phones particulars of accused persons.

S r. N o .	Name of Accused	Mobile No.	Owner of Mobile	Service Provider	Proof of Ownership	IMEI Numbers
1	Ramesh vishwanath Darandale	9689666517	A-1 Ramesh vishwanath Darandale	Idea PW.33 Datta Angre, Exh.216, Page No.373-378, Vol.II	Article – 18 Page No. 389-390, Vol.III	358010045217910 Exh.229, Page 423, Vol.III
2	Prakash vishwanath Darandale	8308931404	A-2 Prakash vishwanath Darandale	Idea PW.33 Datta Angre Exh.216, Page No.373-378, Vol.II	Exh.223 Page No.387- 388, Vol.III	357277046974610. Exh.229, Page 429, Vol.III
3	Sandeep Madhav Kurhe	9860161715	A-3 Sandeep Madhav Kurhe	Airtel PW.34 Chetan Patil, Exh.244, Page No. 502-505, Vol.III	Exh.253 Page No.532- 533, Vol.III	35296004879659 Exh.356, Page 1418, Vol.IX
4	Ashok Sudhakar Navgire	8605468754	PW.28 Suryabhan Yashwant Magar	Idea PW.33 Datta Angre Exh.216, Page No.373-378, Vol.II	Exh.221 Page No. 383-384, Vol.III	35424105290065 Exh.356, Page 1418, Vol.IX
5	Popat@Raghunath v.Darandale	9604569797	A-5 Popat@Raghunath v. Darandale	Idea PW.33 Datta Angre Exh.216, Page No.373-378, Vol.II	Exh.222 Page No. 385-386, Vol.III	35933603700603 Exh.356, Page 1418, Vol.IX
6	Ganesh@Pravin Darandale	8308976241	A-5 Popat@Raghunath v. Darandale	Idea PW.33 Datta Angre Exh.216, Page No.373-378, Vol.II	Exh.224 Page No. 391-392, Vol.III	91054660011520 91054660016570 Exh.356, Page 1418, Vol.IX

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‘CHART - I’ Call Details Record of Ramesh Darandale - Accused no. 1

Accused No. 1, Ramesh Darandale, Mobile No. 9689666517

Exh. No. 229 (colly), Page No.429-430, Vol.III

Calling (A) Party Telephone Number/MSI SDN	Lan+called (B) Party Telephone No/Access point name	Date & Time	Du rati on	First Cell ID/locatio n Area Code	Last Cell ID/PDP Address	Cal	IME	IMS	Type Of Con necti on	SMS Cent re No.. GG SN Add ress	First Roamin g	2G/ 3G Call	RA C
919604569797 Popat (A5)	919689666517 Ramesh (A1)	2.1.2013 05.56.02	112	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919604569797 Popat (A5)	919689666517 Ramesh (A1)	2.1.2013 05.52.31	150	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919860161715 Kurhe (A3)	919689666517 Ramesh (A1)	2.1.2013 03.15.55	27	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919860161715 Kurhe (A3)	919689666517 Ramesh (A1)	2.1.2013 03.11.11	18	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919763199737 Seema (PW37)	919689666517 Ramesh (A1)	2.1.2013 02.10.21	25	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919860161715 Kurhe (A3)	919689666517 Ramesh (A1)	1.1.2013 23.47.16	20	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919604569797 Popat (A5)	919689666517 Ramesh (A1)	1.1.2013 20.11.27	34	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919689666517 Ramesh (A1)	9860161715 Kurhe (A3)	1.1.2013 19.33.37	16	40422-10074-1932	40422-10074-1932	MO	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A

919689666517 Ramesh (A1)	919604569797 Popat (A5)	1.1.2013 19.26.17	26	40422-10074-1932	40422-10074-1932	MO	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919604569797 Popat (A5)	919689666517 Ramesh (A1)	1.1.2013 19.17.22	29	40422-10074-1932	40422-10074-1932	MO	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919689666517 Ramesh (A1)	9730993085	1.1.2013 16.32.27	67	40422-10074-1932	40422-10074-1932	MO	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919689666517 Ramesh (A1)	30759190110920 55	1.1.2013 16.16.55	97	40422-10074-1932	40422-10074-1932	MO	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A
919604569797 Popat (A5)	919689666517 Ramesh (A1)	1.1.2013 15.59.32	45	40422-10074-1932	40422-10074-1932	MT	358011045217910	404220419576682	PP	N/A	N/A	2G	N/A

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‘CHART - J’ Call Details Record of Prakash Darandale- Accused no.2.

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Accused No.2, Prakash Darandale (8308931404)

Exh. No. 229 (colly), Page No.423-424, Vol.III

Calling (A) Party Telephone Number/MSI SDN	Lan+called (B) Party Telephone No/Access point name	Date & Time	Duration	First Cell ID/location Area Code	Last Cell ID/PDP Address	Cal	IME	IMS	Type Of Connection	SMS Centre No.. GG SN Address	First Roaming	2G/3G Call	RA C
918308931404 Prakash (A2)	9767872473	02.01.13 03.19.31	22	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	357277046974610	PP	N/A	N/A	2G	N/A
918308976241 Ganesh (A6)	918308931404 Prakash (A2)	2.1.2013 01.05.22	5	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	357277046974610	PP	N/A	N/A	2G	N/A
918308976241 Ganesh (A6)	918308931404 Prakash (A2)	1.1.2013 18.52.49	19	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30758308976241 Ganesh (A6)	1.1.2013 18.48.05	28	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	919604569797 Popat (A5)	1.1.2013 17.03.57	93	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30758308976241 Ganesh (A6)	1.1.2013 15.04.17	42	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
919604569797 Popat (A5)	918308931404 Prakash (A2)	1.1.2013 14.34.14	113	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
919604569797 Popat (A5)	918308931404 Prakash (A2)	1.1.2013 13.27.07	111	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	404220514188554	PP	N/A			
919689666517 Ramesh (A1)	918308931404 Prakash (A2)	1.1.2013 13.03.54	53	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30758308976241 Ganesh (A6)	1.1.2013 12.54.50	6	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30759604569797 Popat (A5)	1.1.2013 12.46.01	70	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30759604569797 Popat (A5)	1.1.2013 12.32.55	168	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
919689666517 Ramesh (A1)	918308931404 Prakash (A2)	1.1.2013 12.31.27	50	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
919689666517 Ramesh (A1)	918308931404 Prakash (A2)	1.1.2013 12.20.17	91	40422-10074 - 1932	40422-10074 - 1932	MT	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30759689666517 Ramesh (A1)	1.1.2013 10.42.28	11	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A
918308931404 Prakash (A2)	30759011818918	31.12.12 10.42.54	19	40422-10074 - 1932	40422-10074 - 1932	MO	357277046974610	404220514188554	PP	N/A	N/A	2G	N/A

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‘CHART - K’ Calls made by Sandeep Kurhe-Accused no.3.

Accused No. 3, Sandip Madhav Kurhe, Mobile No. 9860161715
 Exh. No. 248, Page No.522-523, Vol.III

Calling No.	Called No	Date	Time	Dur(s)	Cell 1	Cell 2	Type	IMEI	IMSI	Type
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	10.28.48	100	3201-30873	3201-30873	IN	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8806081988 Sandip (D1)	01-Jan-13	10.30.46	41	3201-30873	3201-30873	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9604569797 Popat (A5)	01-Jan-13	10.31.46	17	3201-30873	3201-30873	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8806081988 Sandip (D1)	01-Jan-13	11.06.40	44	3201-30873	3201-30873	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8605468754 Navgire (A4)	01-Jan-13	11.33.40	51	3201-30873	3201-30873	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8806081988 Sandip (D1)	01-Jan-13	11.42.39	42	3201-30873	3201-30873	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8806081988 Sandip (D1)	01-Jan-13	12.11.15	8	3201-30872	3201-30872	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9689666517 Ramesh (A1)	01-Jan-13	12.22.50	20	3201-50237	3201-50237	OUT	352960048796510	404909015449546	PRE
9689666517 Ramesh (A1)	9860161715 Kurhe (A3)	01-Jan-13	12.24.27	23	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8605468754 Navgire (A4)	01-Jan-13	12.38.47	98	3201-50237	3201-50237	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9689666517 Ramesh (A1)	01-Jan-13	12.51.34	37	3201-50237	3201-50237	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9764522079	01-Jan-13	12.57.32	20	3201-50236	3201-50236	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9604254748	01-Jan-13	13.33.51	32	3201-30872	3201-30872	OUT	352960048796510	404909015449546	PRE
9604254748	9860161715 Kurhe (A3)	01-Jan-13	14.09.45	44	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE

9860161715 Kurhe (A3)	8625468754 Navgire (A4)	01-Jan-13	17.34.26	79	3201-30872	3201-30872	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9604569797 Popat (A5)	01-Jan-13	17.36.30	42	3201-30872	3201-30872	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8605458754 Navgire (A4)	01-Jan-13	17.53.29	42	3201-30872	3201-30872	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8605468754 Navgire (A4)	01-Jan-13	18.07.06	53	3201-50237	3201-50237	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8625468754 Navgire (A4)	01-Jan-13	18.24.54	128	3201-50237	3201-50237	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9604569797 Popat (A5)	01-Jan-13	18.59.08	23	3201-50236	3201-50236	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8605468754 Navgire (A4)	01-Jan-13	19.00.42	51	3201-30874	3201-30874	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8605468754 Navgire (A4)	01-Jan-13	19.10.47	22	3201-30873	3201-30873	OUT	352960048796510	404909015449546	PRE

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8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	19.21.33	17	3201-30872	3201-52666	IN	352960048796510	404909015449546	PRE
9604569797 Popat (A5)	9860161715 Kurhe (A3)	01-Jan-13	19.22.34	18	3201-30872	3201-30872	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	19.23.58	27	3201-30872	3201-30873	IN	352960048796510	404909015449546	PRE
9604569797 Popat (A5)	9860161715 Kurhe (A3)	01-Jan-13	19.25.17	27	3201-30873	3201-30873	IN	352960048796510	404909015449546	PRE
9604569797 Popat (A5)	9860161715 Kurhe (A3)	01-Jan-13	19.30.32	12	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE
9689666517 Ramesh (A1)	9860161715 Kurhe (A3)	01-Jan-13	19.33.38	17	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	19.47.02	38	3201-18676	3201-18677	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	20.11.06	13	3201-18676	3201-18676	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	20.11.34	60	3201-18676	3201-18676	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	20.17.58	8	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	20.33.57	154	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE
8975648022 Kapil (PW03)	9860161715 Kurhe (A3)	01-Jan-13	20.33.57	154	3201-50237	3201-50237	IN	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	8975648022 Kapil (PW03)	01-Jan-13	20.37.21	80	3201-50237	3201-50237	OUT	352960048796510	404909015449546	PRE
9604569797 Popat (A5)	9860161715 Kurhe (A3)	01-Jan-13	21.14.50	11	3201-50236	3201-50236	IN	352960048796510	404909015449546	PRE

9604569797 Popat (A5)	9860161715 Kurhe (A3)	01-Jan-13	23.40.05	24	3201-50236	3201-50236	IN	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9689666517 Ramesh (A1)	01-Jan-13	23.47.18	20	3201-52666	3201-52666	OUT	352960048796510	404909015449546	PRE
8605468754 Navgire (A4)	9860161715 Kurhe (A3)	02-Jan-13	03.08.21	142	3201-50236	3201-50236	IN	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9689666517 Ramesh (A1)	02-Jan-13	03.11.12	19	3201-50236	3201-50236	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9689666517 Ramesh (A1)	02-Jan-13	03.15.56	27	3201-50236	3201-50236	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9763199737 Seema (PW37)	02-Jan-13	03.26.49	52	3201-50236	3201-50236	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9763199737 Seema (PW37)	02-Jan-13	03.44.33	52	3201-50236	3201-50236	OUT	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9860161715 Kurhe (A3)	02-Jan-13	06.48.55	109	3201-30872	3201-30872	IN	352960048796510	404909015449546	PRE
9860161715 Kurhe (A3)	9689666517 Ramesh (A1)	02-Jan-13	06.58.11	32	3201-30872	3201-30872	OUT	352960048796510	404909015449546	PRE

‘CHART - L’ Call details record of Ashok Navgire - Accused no.4.

Accused No.4 Ashok Navgire, Mobile - 9198605488754, Exh. 227(Colly) Page no. 399-400, Vol.III

Calling A Party Telephone Number /MSISDN	LRN+Called (B) Party Telephone Number/Access Point Name	Date & Time	Duration in secs	First Cell ID/LOCATION AREA CODE	Last Cell ID/PDP Addresses	Call Type	IMEI	IMSI	Type of Connection	SMS Centre Number/GGSN Address/SGSN Address	First Roaming Network Cell ID/PLMN ID	2G/3G Call Indicator/Access Type	Routing Area Code (RAC)	Sr.No
9198605488754 Navgire (A4)	9860161715	02-01-2013 03:08:20	143	40422-10074-3038	40422-10074-3038	MO	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	1
91941956 7650	9186054687 54	01-01-2013 21:51:30	95	40422-10074-1932	40422-10074-126	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	2
91941956 7650	9186054687 54	01-01-2013 21:27:05	243	40422-10074-1932	40422-10074-1932	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	3
91941956 7650	9186054687 54	01-01-2013 20:43:13	138	40422-10074-1932	40422-10074-1932	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	4
91860546 8754 Navgire (A4)	3075897564 8022	01-01-2013 20:41:02	63	40422-10074-1932	40422-10074-1932	MO	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	5
91860546 8754 Navgire (A4)	3075919604 015474	01-01-2013 19:35:53	60	40422-10074-1932	40422-10074-126	MO	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	6
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 19:10:46	22	40422-10074-231	40422-10074-231	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	7
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 19:00:41	52	40422-10074-231	40422-10074-231	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	8

91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 18:24:53	129	40422-10102-36	40422-10102-133	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	9
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 18:07:05	53	40422-10102-34	40422-10102-3512	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	10
86054687 54 Navgire (A4) called to D3	3075992202 4751	01-01-2013 17:59:05	89	40422-10102-3512	40422-10102-3512	MO	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	11
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 17:53:29	42	40422-10102-34	40422-10102-34	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	12
30069196 23949441	9186054687 54	01-01-2013 17:35:55	18	40422-10102-34	40422-10102-34	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	13
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 17:34:26	79	40422-10102-3512	40422-10102-34	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	14
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 12:38:46	99	40422-10102-3512	40422-10102-741	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	15
91986016 1715 Kurhe (A3)	9186054687 54	01-01-2013 11:33:39	51	40422-10102-34	40422-10102-3512	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	16
91940439 9483	9186054687 54	01-01-2013 09:37:44	36	40422-10074-231	40422-10074-231	MT	354241052920060	40422051134 1184	PP	N/A	N/A	2G	N/A	17

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**‘CHART - M’ Call details record of Popat Darandale -
 Accused no.5.**

Accused No.5, Popat Darandale, Mobile - 9604569797
 Exh.No.228 (Colly), Page No.412-413, Vol.III

Sr. No	Calling A Party Telephone Number /MSISDN	LRN+Called (B) Party Telephone Number/Access Point Name	Date & Time	Duration in secs	First Cell ID/LOCATION AREA CODE	Last Cell ID/PDP Address	Call Type	IMEI	IMSI	Type of Connection	SMS Centre Number/ GGSN Address/ SGSN Address	First Roaming Network Cell ID/ PLMN ID	2G/3G Call Indicator/ Access Type	Routing Area Code (RAC)
1.	9604569797 Popat (A5)	9860161715	1.1.2013 23.40.05	24	40422-10074-126	40422-10074-126	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
2.	9604569797 Popat (A5)	9860161715	1.1.2013 21.14.49	24	40422-10074-126	40422-10074-126	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
3.	9604569797 Popat (A5)	9689666517	1.1.2013 20.11.27	34	40422-10074-126	40422-10074-126	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
4.	9604569797 Popat (A5)	8308976241	1.1.2013 19.43.41	38	40422-10074-126	40422-10074-126	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
5.	9689666517 Popat (A5)	9604569797	1.1.2013 19.39.58	14	40422-10074-126	40422-10074-126	MT	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
6.	9860161715 Kurhe (A3)	9604569797	1.1.2013 18.59.07	24	40422-10074-2313	40422-10074-1932	MT	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
7.	9604569797 Popat (A5)	8308976241	1.1.2013 18.06.40	23	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
8.	9860161715 Kurhe (A3)	9604569797	1.1.2013 17.36.29	42	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
9.	9604569797 Popat (A5)	9860161715	1.1.2013 17.31.33	37	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
10.	9689666517 Ramesh (A1)	9604569797	1.1.2013 17.17.33	142	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A

11.	9604569797 Popat (A5)	8308931404	1.1.2013 14.34.14	113	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
12.	9604569797 Popat (A5)	8308931404	1.1.2013 13.27.07	111	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
13.	8308931404 Prakash (A2)	9604569797	1.1.2013 12.46.01	71	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
14.	8308931404 Prakash (A2)	9604569797	1.1.2013 12.32.55	169	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
15.	9860161715 Kurhe (A3)	9730806503	1.1.2013 10.31.45	17	40422-10074-1932	40422-10074-1932	MT	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
16.	9860161715 Kurhe (A3)	9604569797	1.1.2013 09.19.32	30	40422-10074-1932	40422-10074-1932	MO	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A
17.	9860161715 Kurhe (A3)	9604569797	1.1.2013 09.17.13	23	40422-10074-1932	40422-10074-1932	MT	359336037006090	404220418895269	PP	N/A	N/A	2G	N/A

**‘CHART - N’ Call details record of Ganesh Darandale -
Accused no.6.**

Accused No. 6, Ganesh Darandale, Mobile – 8308976241, Exh.230 (Colly), Page No.438-439, Vol.III

Sr. No	Calling A Party Telephone Number /MSISDN	LRN+Called (B) Party Telephone Number/Access Point Name	Date & Time	Duration in secs	First Cell ID/LOCATION AREA CODE	Last Cell ID/PDP Address	Call Type	IMEI	IMSI	Type of Connection	SMS Centre Number/GGSN Address/SGSN Address	First Roaming Network Cell ID/PLMN ID	2G/3G Call Indicator/Access Type	Routing Area Code (RAC)
1.	9689666517 Ramesh (A1)	8308976241	1.1.2013 10.03.23	15	40422-10074-1932	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
2.	8308976241 Ganesh (A6)	9689666517	1.1.2013 10.41.00	12	40422-10074-128	40422-10074-128	MO	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
3.	9689666517 Ramesh (A1)	8308976241	1.1.2013 10.43.45	39	40422-10074-128	40422-10074-128	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
4.	9689666517 Ramesh (A1)	8308976241	1.1.2013 12.12.51	11	40422-10074-3038	40422-10074-3038	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
5.	8308931404 Prakash (A2)	8308976241	1.1.2013 12.54.50	6	40422-10074-1932	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
6.	9689666517 Ramesh (A1)	8308976241	1.1.2013 13.14.12	22	40422-10074-1932	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
7.	8308931404 Prakash (A2)	8308976241	1.1.2013 15.04.17	42	40422-10074-127	40422-10074-127	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
8.	9763199737 Seema (PW37)	8308976241	1.1.2013 16.11.00	26	40422-10074-1932	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
9.	8308976241 Ganesh (A6)	9665326417	1.1.2013 17.17.36	19	40422-10074-1932	40422-10074-1932	MO	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
10.	8308976241 Ganesh (A6)	9665326417	1.1.2013 17.24.47	3	40422-10074-1932	40422-10074-1932	MO	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
11.	9604569797 Popat (A5)	8308976241	1.1.2013 18.06.40	23	40422-10074-2313	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
12.	8308931404 Prakash (A2)	8308976241	1.1.2013 18.48.05	28	40422-10074-1932	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A
13.	8308976241 Ganesh (A6)	8308931404	1.1.2013 18.52.49	38	40422-10074-1932	40422-10074-1932	MT	91054660011 5290	4042205127 26147	PP	N/A	N/A	2G	N/A

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35. Admissibility of electronic evidence, i.e., CDR produced by the Nodal Officer of the respective service provider :

. This case rests the circumstantial evidence. One of the circumstances relied upon and proved by the prosecution is the calls made by the relatives of the deceased to the deceased; calls made by the accused to each other and to the deceased and respective tower locations when such calls were received by the deceased and/or accused.

. Electronic evidence is admissible, and provisions under Section 65A and 65B of the Indian Evidence Act, 1872 are by way of clarification and are procedural provisions as held in a three-Judge Bench Judgment in **Tomaso Bruno 2015(7) SCC 178** and **Ramsingh v. Ramsingh 1985 Supplement SCC 611**. It is also held, if electronic evidence is authentic and relevant, the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is

in a position to submit certificate under Section 65B(4) of the Indian Evidence Act, 1872.

36. The Apex Court in the case of **Shafi Mohammed v. State of Himachal Pradesh** in order dated 25th April, 2017 has observed in paragraph 26 as under:

"26. Section 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P.V., this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the Court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."

In **Shafi Mohammed (Supra)** use of videography of scene of crime is subject matter of consideration wherein it is observed that *'reliability of the piece of evidence is certainly a matter to be determined in the facts and circumstances of a fact situation. However, threshold admissibility of an electronic evidence cannot be ruled out on any technicality if the*

same was relevant.' (emphasis supplied)

Before we deal with objections raised by the appellants to the admissibility of the CDR (Electronic Record), we think it appropriate to reproduce the definition of the expression "Electronic Record" as defined in Section 2(1)(t) of the Information Technology Act, 2000;

*"2(1)(t)"**electronic record** means data, record or data generated, image or sound stored, received or sent in an electron form or micro film or computer generated micro fiche;"*

37. The expression "Data" is defined in Section 2(1)(o) of the Information Technology Act, 2000 as follows:

"2(1)(o)"data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;"

38. Applicability of procedural requirements under Section 65B(4) of the Indian Evidence Act, 1872 of furnishing certificate has to be applied only when such electronic evidence is produced by a person, who is in a position to produce such a certificate being in control of said device.

Thus, the provisions of Section 65B of the Indian Evidence Act, 1872 lay down procedural requirements to make electronic evidence admissible. Section 65B(4) is attracted in any proceedings "*where it is desired to give a statement in evidence by virtue of this section*" and it is admissible provided following conditions are satisfied:

(i) *identifies the electronic record containing the statement;*

(ii) *respective certificates describe the electronic record (CDRs) then produced;*

(iii) *Nodal Officers have certified that CDRs were retrieved and by means of appropriate electronic equipment*

And

(iv) *Nodal officers clarified that CDRs/ printouts are true and correct electronic*

records, supplied from master computer;

39. In the case of **Anvar P.V. v. P.K.Basheer (2014)10 SCC 473**, it has been held that requirement of producing certificate arises when electronic record is sought to be used as evidence and it is clarified in paragraph 16:

"16. ...Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice."

(emphasis supplied)

40. Keeping in mind the principles culled out by the Apex Court while admitting electronic evidence, we will deal with the objections raised by the appellants.

Prosecution has examined four Nodal Officers who have produced certificates under Section 65B of the Indian Evidence Act, 1872. The first objection of the appellants is certificates produced by the Nodal Officers are falling short of requirement of provisions of Section 65B of the Indian Evidence Act, 1872. It is contended that CDRs being printed on papers and being "computer out-put" are admissible only if conditions contemplated in Sub-section (2) of Section 65B of the Indian Evidence Act, 1872 are fully complied with.

41. Mr. Francis Parera (P.W.13), Nodal Officer of Vodafone Cellular Limited has produced a certificate at Exhibit 202. He provided CDRs of the deceased Sandeep Thanwar and Sachin Gharu to Mr. Bangar, Deputy Superintendent in pursuance of request letter dated 11th March, 2013. The learned counsel for the appellants has taken us through the contents of the certificate at Exhibit 202 and submits that the certificate does not contain a statement expressing

that for the period in question, he had operational control over the use of the computer. In our view, the omission of such a statement in a certificate by the Nodal Officer is not fatal in-as-much as in the evidence as well as in the certificate. Mr. Parera stated that the contents of the CDR of two cell numbers is as per the data saved in computer and printouts of such a data were taken out by him by using the password provided to him by the company. Thus, the evidence of Nodal Officer satisfies the requirements of the provisions of Sub-section (4) of Section 65B of the Indian Evidence Act, 1872. His evidence on this point has not been contradicted except by formal suggestion, which he denied.

42. The next witness is Mr. Ashish Kumar (P.W.31)Nodal Officer in BSNL. He has produced certificate challenged under Section 65B of the Indian Evidence Act, 1872 at Exhibit 214. Appellants contested this certificate only on the ground that it does not bear his name; however, in evidence he admits

his signature and contents of the same. This certificate shows substantial compliance of the procedural requirements of Section 65 B of the Indian Evidence Act, 1872 and, therefore, we reject the objection of the appellants that the certificate was not admissible as it was not bearing name of the Nodal Officer.

43. Mr. Datta S. Angre (P.W.33) Nodal Officer of Idea Cellular was examined, who has provided CDR relating to seven cell numbers, of accused and prosecution witnesses. He has produced and proved the certificate issued under Section 65B of the Indian Evidence Act, 1872, which are at Exhibit 229. We have gone through the certificates and we are satisfied that it complies with the procedural requirements of Section 65B(2) read with (4) of the Indian Evidence Act, 1872.

44. One more Nodal Officer, Mr. Chetan Patil of Airtel Cellular Company was examined. He has provided

CDRs of two cell numbers out of which one cell number was of accused no.3 and another of prosecution witness. He has produced certificate under Section 65B at Exhibit 250. It appears the 65B certificate was issued by Mr. Ganesh Pawar. However, prosecution has not examined Mr. Pawar but Mr. Chetan Patil. Appellants have raised objection on this count and would contend that the evidence of Mr. Patil cannot be admitted for proving subject certificate at Exhibit 250.

45. We have gone through the evidence of Mr. Patil who said that Mr. Pawar since, transferred to Gujarat State but during the period in question, he was working with him as his assistant. This witness deposed that only Nodal Officers of the company can obtain information by using their log-in password. He deposed Mr. Ganesh Pawar obtained printouts of CDRs and information of two subscribers in his presence and he identified his signatures. This witness was cross-examined wherein he stated that Mr. Ganesh Pawar was

authorized to issue certificates under Section 65B of the Indian Evidence Act, 1872.

We, therefore, hold that in view of substantial compliance of the procedural requirements envisaged in Section 65B of the Indian Evidence Act, 1872, all certificates stand proved and, therefore, electronic evidence in the form of printouts (computer output) CDRs' are duly proved by the prosecution.

46. Dr. Chaudhary, the learned counsel for the appellant (accused no.3) submits that electronic records are more susceptible to tampering and, therefore, before admitting such evidence, it is necessary to ensure source of such information and its authenticity. He submits that Mr. Parera, Nodal Officer, P.W.30 supplied CDR of deceased Sandeep Thanwar and Sachin Gharu to the Investigating Officer by e-mail. Mr. Chaudhry submits that Mr. Parera has admitted that he forwarded CDR by E-mail from Excel file. It is, therefore, submitted that excel file

being editable (as against non-editable file like 'WORD') one can manipulate it. Dr. Chaudhry, submitted, evidence of Mr.Parera shows, initially he downloaded data from server on the hard-disk on his PC and after saving it, he obtained its hard-copies. He has drawn our attention to the admission of Mr. Parera that material saved on hard-disk can be manipulated and since he forwarded CDR by E-mail by excel file, which is editable, possibility of tampering cannot be ruled out.

47. Mr. Parera has produced a certificate under Section 65B at Exhibit 202. In evidence, he stated that the CDR of two cell numbers are as per the data saved in master computer which he downloaded or retrieved from the master computer by using password provided to him by the company. He has certified printouts of two cell numbers are as true and correct. In view of this evidence though the CDR were forwarded to the Investigating Officer by E-mail from excel file, authenticity of such record cannot be doubted. There

is no material in the evidence of this witness to suggest subject CDRs were tampered with or manipulated. Once certificate under Section 65-B stands proved, it carries presumption of correctness. We, therefore, reject objection and the contention of Mr. Chaudhry and hold that CDRs of two cell numbers provided by Mr. Parera was admissible in evidence.

48. Evidence shows, none of the deceased were “subscribers” of service providers. All of them were using cell phones of their relatives or friends. Column-4 of Chart-A shows, name of the owner of SIM card/ subscriber. Prosecution has examined, subscribers and the Nodal Officers of the service providers to establish a given cell number (column No.3) was being used by the deceased. As such, Sandeep Thanwar (deceased) was using cell bearing number 8806081988 of which, Anju M. Chaware (P.W.26) was subscriber and Vodafone, was service provider. Anju M. Chaware (P.W.26) is maternal aunt of deceased, Sandeep. Her evidence has disclosed that her son,

Aakash was working at Trimurti College, Nevasa. Subscribers' documents (Exhibit-209) were produced and proved by the Nodal Officer, Mr. Francis Pereira (P.W.13). Last column of Chart 'A' shows CDRs' of each deceased, and its exhibit number.

49. With the able assistance of the Counsel for the Appellants and the State, we have reproduced relevant call details of accused, deceased and relatives of deceased hereinabove. It may be stated that Rahul Kandare (deceased) was using two cell numbers. Thus, out of four cell numbers, Vodafone was service provider for two cell numbers (deceased, Sandeep and Sachin), M/s. Idea for one cell used by Rahul and M/s. Bharti Airtel for another number of Rahul.

50. Evidence adduced by Prosecution to establish presence of each deceased at Darandale Vasti (spot of the incident) and calls made by them since morning of 1st January, 2013 :

(1) Sandeep Thanwar (Deceased) :

Deceased, Sandeep was working as a Sweeper at Trimurti College at Nevasa. Kapil (P.W.3) is his brother and Lakshmi (P.W.2) is his mother. Anjubai (P.W.6) is his maternal aunt whose cell number (8806601988) Sandeep was using and this fact has been established by the Prosecution. Summarized CDRs' of Sandeep, are at Chart 'B'. Last column of Chart shows callers name, column No.9 shows, out= outgoing call & inc= incoming call. Chart shows after he agreed to clean the septic tank and proceeded to Darandale Vasti, with Rahul and Sachin, Kurhe (accused No.3) was taking follow-up with Sandeep as he called Sandeep five times between 10:30 a.m. Calls Sr. No. 1351, 1353, 1355, 1361, Col. no.1 of the Chart. The CDRs, show when calls were made by Kurhe, Sandeep was at different locations, which means Sandeep was proceeding from Nevasa to spot of the incident.

Call details show at 1.52 hours, deceased Sandeep received a call from his brother's cell number 86051128987 (Sr. No.1364), and evidence of his mother,

Lakshmi (P.W.14) shows she spoke with him for 31 seconds. At the relevant time, corresponding tower location of Sandeep's phone was, Ganeshwadi (Cell I.D. No.404270023032899) as could be seen from Column-7 of the Chart and the CDRs at Exhibit-203. Sandeep received next call from Cell Number 9422385133, of Mr. Chaware (P.W.7), cousin of Sandeep at 14.57 hours (Sr. No.1366) and at that time, corresponding tower location was Ganeshwadi as could be seen from the Chart and the CDR's at Exhibit-206. Prosecution has examined Nodal Officer, Francis (PW-30) who proved the CDRs' and above said two calls and corresponding tower locations.

Thus, these two calls prove, the deceased Sandeep was at Ganeshwadi-Darandale Vasti on 1st January, 2013 atleast from 13 hrs. p.m. onwards. CDRs' have also proved Kurhe (accused No.3) was constantly in touch with Sandeep since morning till he reached the Ganeshwadi. It shows Kurhe was monitoring movements of Sandeep, from Nevasa to Darandale Vasti.

(2) SACHIN GHARU (Deceased):

Sachin (deceased) was friend of Sandeep and Rahul. CHART - A shows that he was using Cell Number 880644196; its service provider was Vodafone and one Mahadev Salunke (PW-27), relative of Sachin was subscriber of this cell number. Sachin's call detail records at Exhibit-204 are proved by Nodal Officer, Mr. Francis Pereira (P.W.30). We have reproduced it in Chart 'C', extracted from his CDRs at Exhibit-204. This chart shows that on 1st January, 2013 Sachin had received a call from his friend, Mukesh Teji (P.W.15) at 15.27 hours (Column No.1 of Chart at serial No.1381). When this call was received by Sachins' tower location was at Ganeshwadi (Cell I.D.A. No.404270023032989). Likewise, call detail records of Mukesh Teji which we have reproduced, in Chart-F Mukesh Teji had called Sachin at 15.27 hrs on 1st January, 2009 from his cell number 9975650953.

Mukesh Teji (P.W.15) deposed that he knew Sandeep Thanwar, Rahul and Sachin since he was also working as a sweeper in Trimurti College. He said that on 1st January, 2013 at about 15.27 hours he called

Sachin and asked him whether he would be joining the cricket match to be played on that day as decided a day before. Mukesh deposed, he also spoke with Sandeep and Sandeep told him that he was at Darandale Vasti and working with Rahul. Evidence of this witness has not been challenged by accused nos.3, 4 and 7, though he was cross-examined by accused nos.1, 2, 5 and 6. His testimony has not been contradicted at all.

Thus Call Detail records of Rahul and the evidence of Mukesh Teji has proved that on 1st January, 2013 Sachin Gharu was at Darandale Vasti, at 13.00 hours onwards.

(3) RAHUL KANDARE (Deceased) :

Rahul was using Cell No.9922024751 (Chart 'A') of which Idea Cellular was service provider. One, Birju Tak, (P.W.32) was its subscriber. Mr. Birju deposed his cell number was used by Rahul. Nodal Officer of Idea, Mr. Datta Angre (P.W.32), has proved that Birju was subscriber of the said cell number. Call Detail Records in relation to this cell number are proved by Nodal Officer. CDRs are at Exhibit-232.

Extract of relevant calls made and received by Rahul on this Cell number are reproduced hereinabove in Chart 'D'. CDRs' of Rahul show that on 1st January, 2013 at 9.24 a.m. his brother, Sagar Kandare (P.W.20) had called him (Call Sr. No.1 of Chart 'D'). It appears, Sagar called Rahul from the cell number of his mother-in-law, Lalita (P.W.46) since there was no balance in his Account. Prosecution has examined, Sagar Karande (P.W.20) and also Lalita (P.W.46). This call has been proved by prosecution through Nodal Officer, Mr. Datta Angre (P.W.33). It is Sagar's evidence that, Rahul told him that he got some work to do alongwith Sandeep Thanwar and Sachin Gharu.

CDRs' show that at 15.19 hrs, Sagar Kandare called, Rahul (Sr. No.2 in Chart 'D') from the cell number of his mother-in-law and when he enquired as to where was he, Rahul informed him that he was cleaning the septic tank with Sandeep Thanwar and Sachin Gharu, and also told him that, Popat, Ramesh, Prakash, Ganesh Darandale, Kurhe and Ashok Navgire (all accused) were present at work place. When this call was received by

Rahul at 15.19 hours, corresponding tower location was at Ganeshwadi (Cell I.D.A. No.40422100741932 - Column No.7 of Chart 'D'). Sagar also deposed that, he tried to call Rahul at about 4.00 p.m. and even thereafter, but Rahul's phone was reported switched off. Sagar Kandare (P.W.20) was cross-examined by defence. Evidence of this witness has been criticized on the ground that it sounds unnatural since this witness could recall full names of each accused, when examined by the prosecution, which according to appellant is not probable. It is urged by the appellants, when this witness met the police on 4th January, 2013, nothing prevented him from disclosing his conversation with Rahul to police. On these two counts, appellants urged testimony of this witness be rejected.

We do not see any force in the contention of the Counsel for the appellants. We found his evidence was consistent with his previous statement. Though a omission has been pointed out, however it was trivial in nature and has no bearing on the evidence of this witness.

Thus taking into consideration the Call Details Record of deceased Rahul which are proved by the Nodal Officer and evidence of Sagar Karande, we hold that deceased, Rahul was at Ganeshwadi on 1st January, 2013 at and onwards 13 hrs.

51. Thus, after analyzing CDR's of deceased, which were proved by the Nodal Officer of the respective service providers and the evidence of other witnesses, (who had called the deceased on 1st January, 2013) and the corresponding tower locations of the deceased at the relevant time, cumulatively proved that on 1st January, 2013 in the afternoon, from and onwards 1300 hours, the deceased were at Ganeshwadi, Darandale Vasti where from their dead-bodies were found / recovered. Evidence also suggest and point out presence of all accused at Darandale Vasti at 13 hrs. and thereafter.

52. Thus the next question (circumstance) is whether prosecution has proved presence of the accused

at Ganeshwadi, Darandale Vasti, (spot of the incident), on 1st January, 2013.

It may be stated that the trial Court upon appreciating evidence of Autopsy Surgeon coupled with the fact that cell phones of deceased was switched off after 16 hrs., has held probable time of death of deceased was around 16 hrs., which has not been seriously disputed by the defence. Thus, we have to ascertain, whether the accused were present at or around 16 hrs on 1st January, 2013 at Darandale Vasti. To prove this circumstance prosecution has relied on CDRs of accused and evidence of other witnesses. With the able assistance of the learned counsel for the appellants and the learned Public Prosecutor, we have extracted relevant CDRs' of each accused and reproduced it in the table/chart for the appreciation of the contention and arguments of rival parties.

53. It may be stated that all the accused were using their own phones/cells except, Ashok Navgire (Accused No.4). He was using cell of Suryakant Magar

(P.W.28). We have summarized their cell phone particulars in Chart - H.

54. CDR of Ramesh Darandale accused no.1 to ascertain his presence on the spot of the incident:

This accused was using mobile number 96896 66517 of which, Idea cellular was service provider. Mr. Datta Angre (PW-33), Nodal Officer has produced and proved his CDRs at Exhibit 229. It may be stated residence of accused nos.1,2,5 and 6 is at Darandale Vasti, Ganeshwadi as could be seen and ascertained from various documents on record. This fact is not in dispute. Surveyor Nilkanth (PW-1) has also shown the house of Darandale family in Gat No.299 in MAP Ex.125. This accused is paternal uncle of Seema Darandale and brother of accused nos.2 and 5. In the CHART - H as reproduced, its 1st columns show cell numbers of calling party; second column shows cell number of party receiving the calls; third column shows date and time of the call made/received on the mobile o accused; 5th and 6th column shows tower location; MT : means

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incoming calls; MO : means outgoing calls. Tower Location of incoming and outgoing calls of accused was at Ganeshwadi, i.e., (Tower location 40422-10074-1932 - Ganeshwadi). CDR shows, this accused had received/made, atleast seven calls in between the 15.59 hours till 23.47 hours on 1st January, 2013 and corresponding location was at Ganeshwadi. Thus his CDRs indicate and point out his presence at Ganeshwadi on 1st January, 2013.

Before we proceed to analyze the calls received by him on 2nd January, 2013, it may be stated that on 1st January, 2013 dead-body of Sandeep Thanwar was found lying in the septic tank, in Gat No.299 at Darandale Vasti. On 2nd January, 2013, CDRs; show there were calls between this accused and other accused no.3 and 5 in the wee hours from 2.10 a.m. to 5.56 a.m. Scrutiny of CDRs' show that this accused had received three calls; one at 2.10 a.m., second at 5.52 a.m. and third at 5.56 a.m. from accused no.5 on 2nd January, 2013 and two calls from accused no.3 at 3.11 a.m. and 3.15 a.m. Obviously all these calls were made or received at odd

hours in the night intervening 1st and 2nd January, 2013. It may be stated that dead-bodies of Rahul Kandare and Sachin Gharu were found in Darandale Vasti at the instance of this accused and accused no.2 on 2nd January, 2013. When this accused was examined under Section 313 of the Code of Criminal Procedure, 1973 and was questioned about these calls (Question Nos.443 to 446), he answered, tower location in relation to calls made and received by him was fake.

Thus, evidence on record i.e. CDR tower location, a fact that this accused was residing at Darandale Vasti coupled with the fact that the no explanation is coming forth for making and receiving calls at odd hours on 2nd January, 2013 (in early hours) we have no hesitation to hold that prosecution has established that on 1st January, 2013 this accused was present at Ganeshwadi, Darandale Vasti at-least after 15.15 hrs. till the next date.

55. CDRs of Accused No.2 Prakash Darandale, to ascertain his presence on spot of the incident:

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This accused is brother of accused nos.1 and 5. Evidence shows that he was residing at Darandale Vasti, Ganesh Wadi. He was using cell no.8308931404; its service provider was Idea Cellular. His CDRs are produced at Exhibit 299 and proved by Nodal Officer (P.W.33). In CHART - J, we have summarized calls-made and received by this accused on 1st and 2nd January, 2013, and such other particulars including tower location . Scrutiny of CDRs' show that on 1st January, 2013 this accused received/made calls from his cell and corresponding tower location was at Ganesh Wadi (area Code 40422100741932) Column No.5 of the chart-F. Thus, CDR, which were proved by Nodal Officer (P.W.33) has established the presence of this accused at Ganeshwadi on 1st January, 2013 between 10.42 a.m. till 18.52 hours. This accused had received one call from accused no.6 on 2nd January, 2013 at 1.05 hours and there was one outgoing call at 3.19 hours on 2nd January, 2013. This accused did not offer or explained reason for making such calls at odd hours when he was examined under Section 313 of the Cr.P.C. On the

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contrary he denied tower locations and such calls ever being made by him.

Thus, the evidence in the form of CDR, we hold that prosecution has proved beyond reasonable doubt that accused No.2 was present at Darandale Vasti, Ganeshwadi on 1st January, 2013 since morning till evening and again in the wee hours of 2nd January, 2013.

56. CDR of Accused No.3 Sandeep Kurhe to ascertain his presence on spot of the incident and his conduct :

This accused is relative of accused no.1,2,5 and 6. He was using cell no.9860161715 (CHART - H). Its service provider was Bharti Airtel. Mr. Chetan Patil, Nodal Officer (P.W.34) has produced and proved CDR in relation to his cell number at Exhibit 253. We have summarized details of calls received and made from the mobile phone of this accused on 1st and 2nd January, 2013 in CHART - K. We have scrutinized about 45+2, calls made and received on 1st and 2nd January, 2013. Nodal Officer P.W.34 has established that in the morning of

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1st January, 2013 at about 10.28 hrs. he received a call from Cell No.89756 48022 used by Kapil Thanwar. Evidence of Kapil Thanwar shows this call at 10.28 hrs. was made by his brother Sandeep Thanwar to this accused and in his presence, Sandeep (deceased) confirmed with this accused that he would come with his two friends Sachin Gharu and Rahul Kandare at Darandale Vasti to clean the septic tanks. A fact is established that, since 10.28 a.m. till 12 noon of 1st January, this accused was in the contact with the deceased Sandeep Thanwar, in-as-much as there were five (outgoing) calls by this accused to Sandeep Thanwar. Evidence of Kapil (PW-3) has established, since Sandeep Thanwar did not return home till late evening on 1st January, 2013, he had called this accused in the evening at 19.21, 19.23, 20.11, 20.17. and 20.33 hrs. It is Kapil's evidence that, he was told by this accused, that Sandeep Thanwar and his two friends had left Ganeshwadi in the afternoon. In fact this itself shows presence of this accused on the spot of the incident. CDRs' also show at 20.13 hours, this accused called

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Kapil (P.W.3) and informed him that Sandeeps' dead-body was found lying in septic tank. Call details and the corresponding tower location shows that this accused was at Ganeshwadi throughout since morning or at-least from 12.20 hrs. till 20.17 hrs., except for a brief period, i.e., between 17.34 hours to 17.53 hrs., during which, tower location was found at Kharavandi, an area adjacent to Darandale Vasti. Evidence of Nodal Officer P.W.34 has established a fact that as and when this accused made or received calls, he was at Ganeshwadi. CDRs' also show and establish, this accused had called Seema Darandale (daughter of accused no.5) on 2nd January, 2013 at 3.26 hours and 3.44 hours (odd hrs.) and corresponding tower location at relevant time was at Ganeshwadi. This accused was afforded opportunity to explain reasons for making calls to Seema Darandale at odd hours, however, he denied such calls having been made by him to Seema. Besides, CDR indicates and show that this accused was in contact with the other accused not only on 1st January, 2013 but also on 2nd January, 2013 at odd

hours. There are atleast two calls made by him at 3.11 a.m. hours and 3.15 a.m. hours on 2nd January, 2013 to accused no.1. Likewise, there are calls between this accused and accused nos.5 and 6 at 19.22, 19.25, 19.30 hrs. on 1st January, 2013. It may also be stated that this accused is residing at Village: Kangoni as could be seen from address disclosed in his arrest Panchanama and the address disclosed by him to the service provider while availing mobile facility. In fact evidence of Sagar (PW-20) shows when he called, Sachin at 15.15 hrs. Sachin told him he was at Darandale Vasti and mentioned about presence of this accused also.

57. When all the incriminating circumstances, were put to this accused, he denied the same. He did not explain why he was present at Darandale Vasti on 1st and 2nd January, 2013. However, in view of the evidence in the form of CDRs' which are duly proved by Nodal Officer and evidence of Sagar (P.W.20), we hold the prosecution has proved presence of the accused at

Ganeshwadi throughout in the afternoon of 1st January, 2013 till late night and during night intervening 1st and 2nd January, 2013. His presence at Ganeshwadi in the early/morning hours of 2nd January, 2013 assumes importance in the backdrop of the fact that the dead-body of Sandeep Thanwar was found in the evening of 1st January, 2013 at Ganeshwadi and dead-bodies of Rahul and Sachin were found in well on 2nd January, 2013. Prosecution has proved bodies of Sachin and Rahul were discovered on the voluntary disclosure made by Accused No. 1 and 2, on 2nd January, 2013. Thus besides his presence, on the spot overall conduct of this accused is one more incriminating circumstance, which strengthens prosecution case.

We, therefore, hold that prosecution has established presence of the accused at Darandale Vasti on 1st January, 2013 since afternoon till late night and also on 2nd January, 2013 in the early hours.

58. CDRs' of Accused No.4 Ashok Navgire to ascertain his presence on spot of the incident :

This accused was using Cell No.86054 68754. Its' service provider, was Idea Cellular. P.W.33,Nodal Officer, has produced CDR at Exhibit 240. This accused was not subscriber of service provider, but was using cell phone of P.W.28, uncle of his wife. We have summarized CDRs of this accused in the CHART - L extracted from his CDR. These call details and corresponding tower locations show this accused, reached at Ganeshwadi on 1st January, 2013 at 19.35 hours. It appears since morning till evening of 1st January, 2013, he was on location like Pune-Aurangabad Highway, Maktapur, Khadke-Nevasa. Analysis of CDR shows, this accused was not present at Ganeshwadi any time before at 19.35 hours on 1st January, 2013.

59. Presence of Popat Darandale (Accused No.5) and Ganesh Darandale (Accused No.6) at Darandale Vasti, on the spot of the incident : This accused was using cell no.96045 69797 of Idea Cellular. Nodal Officer P.W.33 has produced CDR and proved it below

Exhibit 228 Collectively. We have summarized and reproduced the details of calls made and received by this accused on his cell on 1st and 2nd January, 2013, in CHART - M.

This chart shows, on 1st January, 2013 since morning till evening (9.17 a.m. till 19 hours), all calls were received by him at Ganeshwadi.

60. Accused No.6 Ganesh is son of accused no.5 and brother of Seema Darandale. He was using Cell No.83089 76241 and its service provider was Idea Cellular. P.W.33 Nodal Officer has produced and proved CDR of this cell number at Exhibit 230. We have reproduced chart showing details of calls made and received by this accused on 1st January,2013 in CHART - N. It shows on 1st January, 2013 since morning till evening, he was at Darandale Vasti.

61. Thus, coupled with other incriminating circumstances, evidence in the form of CDR, prosecution has established a fact, beyond reasonable

doubt, that except accused No.4, other accused were present at Darandale Vasti, Ganeshwadi on 1st January, 2019 since afternoon and certainly after 13 hrs. onwards till late evening.

62. We therefore, conclude and hold,

(i) Deceased Sandeep Thanwar, Rahul Kandare and Sachin Gharu had been to Darandale Vasti on 1st January, 2013 at the instance of accused and undertook work of cleaning septic tank, in Gat No.299 at the house of accused nos.1,2,5 and 6.

(ii) The deceased persons had received calls, on their cell phones from their friends and relatives in between 13 hrs. to 16 hrs. on 1st January, 2013 and at the relevant time, corresponding tower location was Ganeshwadi.

(iii) Last call was received by one of the accused at 15.55 hours at Darandale Vasti.

(iv) CDR of accused nos.1,2,3,5 and 6 show, on 1st January, 2013, since after 13 hrs., period during which they received and made calls corresponding tower

location was at Ganeshwadi, Darandale Vasti.

(v) Accused No.3 Sandeep Kurhe was not living or residing at Darandale Vasti but his presence has been established at Darandale Vasti on 1st January, 2013 and even on 2nd January, 2013 at odd hours.

(vi) The accused no.3 has made calls to Seema Darandale on 2nd January, 2013 at 3 a.m. and he did not disclose his conversation with her and the reason why he made such calls at odd hours, and his presence at Darandale Vasti.

(vii) Dead-body of Sandeep Thanwar was found lying in the septic tank at Darandale Vasti, on 1st January, 2013 in evening.

(viii) Dead-bodies of Rahul Kandare and Sachin Gharu were discovered on disclosure by accused nos.1 and 2, on 2nd January, 2013 from the well at Darandale Vasti, situated at very short distance from the house of the accused nos.1,2,5 and 6.

(ix) Dead-body of Sachin Gharu was found beheaded in the dry well (bone dry), on 2nd January, 2013 at Darandale Vasti.

(x) Accused did not tender any explanation as to how Sandeep Thanwar met with accidental death nor did they tender explanation as to how and under what circumstances Sachin Gharu and Rahul Kandare met with homicidal death.

63. The Next Circumstance is Motive :

In a case relating to circumstantial evidence, motive is *sin-qua-non*. It is settled law, that, motive need not be established precisely. Motive is the reason and end result, which induces and actuates a man to do a certain act and the purpose for which act is done is called motive. The learned trial judge has correctly observed that the act cannot be judged from the mind of wrong doer, but the mind of wrong doer can be judged from his act. Motive is therefore, no doubt an important factor and therefore relevant under Section 8 of the Indian Evidence Act.

64. In this case motive alleged by the prosecution was love affair of Sachin Gharu (deceased)

with Seema Darandale (P.W.37)(daughter of Popat Darandale accused no.5) which was disliked by relatives- accused, who had shown hostility towards it, as Sachin Gharu belongs to Schedule Caste and Seema Darandale belongs to Upper Class. It is established in the evidence that, Sachin had spoken to his relative about his love affair with Seema, and his desire to marry her. Evidence shows, relatives advised Sachin not to marry a girl from the Upper-Class. It appears, Sachin was threatened by Seemas' relatives, but, he was determined to marry her, and it had developed animosity and distaste in the mind of her family members against him. In the backdrop of this evidence, the trial Court has rightly observed that, "One has to bear in mind that love affair is personal matter between two persons and always away from glare of public and seldom, there is a direct evidence available beyond the evidence of those two persons". Though, it is correct, the love affair is a personal matter, however, the close relatives who are nearer and dearer would know about such affair, with whom such

a person frequently interacts. The prosecution, to prove the motive has examined (i) Harischandra Atwal (P.W.8), (ii) Kalabai Atwal (P.W.18), (iii) Reena Atwal (P.W.19) and (iv) Pankaj Thanwar (P.W.22) and Seema Darandale (PW-37).

65. Prosecution has examined, Harishchandra Atwal (P.W.9), Sachin's brother-in-law of deceased, to whom he had disclosed his love affair with Seema. The statement of this witness was recorded on 6th January, 2013 i.e. on 5th day after the incident. Though, he was cross-examined, the defence could not elicit any material to disbelieve his evidence. Even mother of Sachin, P.W.18-Kalabai Gharu deposed, three to four days before the incident, Sachin expressed his wish to marry Seema. Her evidence has disclosed a fact that Seema's relatives were aware of her love affair with Sachin and they had threatened to eliminate him. It may be stated that, the alleged threats were omissions in the evidence of Harischandra Atwal and mother of Sachin, Kalabai Gharu, but in view other

evidence adduced by the prosecution, this, omission, does not render their evidence, unworthy to prove motive.

The evidence of Kalabhai Gharu is corroborated by Kajal(P.W.21) niece of deceased, Sachin Gharu. Her evidence shows, she was staying with the deceased and in her presence, Sachin told her mother, about his relationship with Seema Darandale, his desire to marry her.

66. Reema Atwal (P.W.19), sister of Sachin deposed, in December, 2012 Sachin told her on phone, about his affair with Seema. Her evidence shows, when Sachin told her Seema belongs to Maratha Caste, she advised him not to marry her as she does belong to their caste. Be that as it may, evidence of relatives of the Sachin, has established a fact, the love affair of Sachin with Seema was disliked by Seemas' relatives, on account of caste-conflict.

67. It may be stated, the statement of

Harischandra Atwal, was recorded on 6th January, 2013, i.e. soon after the incident wherein he disclosed Sachins' affair with Seema. Besides, prosecution had examined, Pankaj Thanwar (P.W.22), brother of deceased, Sandeep. This witness was friend by Sachin Gharu and Rahul Kandare, as both were working with his brother. Pankaj Thanwar is working in Indian Army. His evidence shows, in the month of September/November, 2012 he had been to Nevasa to meet his brother, he met Sachin Gharu and when he asked him his marriage plan, Sachin told him that he was in love with a girl, Seema studying in the B.Ed Course in the Trimurti College and both decided to marry. The statement of this witness was recorded five days after the incident i.e. on 6th January, 2013. In the cross-examination, defence could not elicit material omissions and/or improvements in his evidence, so far as Sachin's affair.

68. Thus, evidence of aforesaid prosecution witness, has proved, the Sachin prior to the incident

had disclosed to his near relatives, his affair with Seema and his desire to marry her and hostility of Seemas' relatives towards it.

69. It may be stated that, a motive cannot be proved by direct evidence but the inferences are to be drawn from the circumstances brought on record by the prosecution. In the case at hand, corpses of Sachin and Rahul, were found at Darandale Vasti. So far as Sachin is concerned, prosecution has proved, disfiguration of his dead body by cutting and separating his head from limbs and torso, however corpses of Sandeep and Rahul were not disfigured or mutilated. This is one more circumstance and it strengthens the motive alleged by the prosecution.

On the point of motive, we may refer to two observations made by the Hon'ble Supreme Court in the case of **Ravindra Kumar and another Vs. State of Punjab (2001) 7 SCC 690**, thus;

“It is generally an impossible task for the prosecution to prove what precisely would have

impelled the murderers to kill a particular person. All that the prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. It is, therefore, not possible to change the tide on account of the inability of the prosecution to prove the motive aspect to the hilt.

And in the case of **State of HP Vs. Jeet Singh (1999)**
4 SCC 370, thus ;

“33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on

record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

Thus, taking into consideration the evidence on record and the law laid down by the Hon'ble Apex Court, we hold that the prosecution has proved the motive.

70. The next question is, cause of death of Sachin Gharu, Rahul Kandare and Sandeep Thanwar;9 whether homicidal, accidental or natural and time of their death.

Prosecution alleged three, deceased met with homicidal death. Dr. Kautuke (P.W.6), medical officer and Dr. Gade conducted autopsy on the bodies of deceased. The post-mortem reports are at Exhibits

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144,147 and 150. Dr. Kautuke noticed, lungs of Sandeep Thanwar were contained with watery material, and Stomach was empty. He opined six hours prior to death if the food is taken then the stomach would find empty and it takes approximately six hours for digestion of food. Except abrasion on the right side chest (5x1 cm), no external injuries were noticed on the person of Sandeep Thanwar. Dr. Kautuke opined that Sandeep's death was due to, "cardio-respiratory arrest asphyxia due to drowning". Evidence of Dr. Kautuke therefore rules out homicidal death of Sandeep Thanwar.

71. The learned Trial Court, however, concluded Sandeep, died due to forcible drowning, and it was homicidal death. The Trial Court found the height of deceased Sandeep Thanwar, was 170 centimeters; whereas size of the septic tank where his body was found, was 2.5 x 4 ft. and depth was about 6 ft. Trial Court thus held, it was not probable that one would drown into the septic tank wherein two ft. sewage was found. Learned Trial Court drew support from the

evidence of Pankaj Thanwar, P.W.22, who deposed, for cleaning the septic tank, due to strong odors, persons avoid to get in the septic tank and always prefer to remove sewage by bucket and bamboo stick.

72. No doubt, the Trial Court has correctly considered the situation found and noticed on the spot and particularly, length and depth of the septic tank, however, fact cannot be overlooked that no external injuries (except one abrasion) was found on the person of the deceased Sandeep Thanwar. Dr. Kautuke being expert witness, once opined that death was due to drowning, in our view, in absence of other cogent and convincing evidence, opinion of Dr. Kautuke cannot be overlooked. Merely because spot situation i.e. size of septic tank does not admit the probability of accidental death, that itself, was not sufficient to deny the opinion/evidence of Dr. Kautuke. We, therefore, hold that Sandeep Thanwar, met with the accidental death.

73. Dr. Kautuke deposed that he conducted post-mortem on the corpse of Sachin Gharu. On his external examination, rigor mortis was found to be developed all over the body; both the upper limbs were found amputated from the shoulder region; right upper limbs were amputated from 5 cm below knee region.

74. On internal examination of Sachin Gharu, Dr. Kautake noticed following injuries;

- (i) fracture of right and left 2nd, 4th, 5th and 6th ribs at the level of nipple.
- (ii) Laceration of trachia and larynx.
- (iii) Stomach was empty.
- (iv) Spine was found cut below the level of 7th cervical vertebra.

Doctor opined, cause of death of Sachin Gharu is due to "cardio respiratory arrest due to hypo volemic shock due to multi organ injuries". In the course of recording his evidence, when fodder cutting machine (Article-21) was shown to him, he opined the said injuries could have been caused by means of fodder

cutting machine. Thus, Dr. Kautuke opined that deceased Sachin Gharu had sustained fatal injuries on the vital parts of his body and those injuries could have been caused by sharp weapon like fodder cutting machine. It proves Sachin Gharu met with homicidal death.

75. Dr. Kautuke and Dr. Gade conducted autopsy on the corpse, of Rahul Kandare and found following injuries;

1. One contused lacerated wound was found present on right side of occipital region having size of 8x2 c.m.
2. One abrasion with contusion was also present on left shoulder having size of 5 x 5 c.m.
3. One abrasion was also found present on right anterior part of chest and its size was 6 x 5 c.m.
4. One abrasion was also found on

epigastric and right subcostal region
and its size was 10 x 1 c.m.

5. One abrasion with contusion was
also found present on left flank and
its size was 6 x 3 c.m.

6. Depressed fracture of right side of
occipital bone was also found caused.

76. Injury nos.1 and 6 was found on the vital
parts of the body. Dr. Kautuke opined that these two
injuries were sufficient to cause death of a person. He
also opined injury nos.1 and 6 could be caused by
sickle (Art.19).

On internal examination, following injuries
were noticed:

1. One contused lacerated wound was found present
over occipital region which was mentioned by him in
column No. 17.

2. Extradural hemorrhage present on occipital and
temporal lobe of right cerebral hemisphere.

3. laceration of occipital and temporal lobe of

right cerebral hemisphere was also found.

Dr. Kautuke opined, cause of death of Rahul Kandare was due to, "cardio-respiratory arrest due to head injury". He proved post-mortem report of Rahul Kandare, at Exhibit 150. Rahul Kandare thus, met with homicidal death.

77. Next Circumstance is the discovery of dead bodies of Rahul and Sachin, weapons, and incriminating articles: Before answering the question as to who caused their death, we think it appropriate to appreciate the circumstance relating to the discovery of corpses of Sachin Gharu and Rahul Kandare and weapons, on voluntary disclosure made by the accused no. 1 and 2. On 2nd January, 2013, Vilas Patil, Investigating Officer (P.W.49) while drawing Panchnama of under Section 194 of Cr.P.C in the accidental death enquiry of Sandeep, he enquired with accused no. 1 - Ramesh and accused no.2 - Prakash about Sandeep's death and the whereabouts of Sachin and Rahul, in the presence of Panch witnesses, Rajendra Pusalkar (P.W. 4) and

Charanbabu Chavan. However their responses were evasive and incoherent. The Officer suspected something amiss and therefore, he caused their formal 'custody'. Evidence has proved accused Ramesh in the presence panch witnesses, volunteered to show the place of commission of murder of Sachin Gharu and Rahul Kandare and the place where dead-bodies of Rahul Kandare and Sachin Gharu were concealed. Accordingly, spot-cum-discovery Panchanama, was drawn and proved. Evidence of Panch, Rajendra Pusalkar (P.W.4) corroborates the evidence of Vilas Patil, Investigating Officer (P.W.49) and proved discovery of corpse of Rahul & Sachin on disclosure by accused Nos.1 and 2 and organs, of Sachin Gharu from the borewell. In the course of drawing Panchanama, Mr. Patil discovered articles like sky-blue coloured shirt (Art.4), sky-blue coloured T Shirt (Art.5), one sports pant of ash colour (Art.6), two mobile handsets (Art.9), one pair of sandle (Art.7) and one pair of chappal (Art.9) from tin shed situated near toilet. One motor-cycle bearing registration no.MH 17-AP-8369

was also seized from the spot of the incident. Prosecution has proved the motor-cycle, was owned by Sandeep Thanwar and on this point, Bharat (P.W.43) employee - RT0, Shrirampur was examined. The learned Trial Court thus held discovery under Section 27 of the Evidence Act, has been duly proved by the prosecution. Evidence further shows, though accused no.2 volunteered to show the place where the organs (limbs) of Sachin Gharu were disposed, but on the 1st January, organs could not be recovered from the well for want of adequate help or equipment. On 8th January, 2013 organs of Sachin Gharu were recovered from the bore-well situated in the agricultural land of Vishwanath Darandale in the presence of witness Shankar Pund (P.W.12). It is established, eight human body pieces were recovered from the bore-well. Panchanama was drawn, which is at Exhibit 173.

78. Objections to Discovery: The learned counsel for the appellants have criticized discovery Panchanama allegedly made under Section 27.

Appellants argued, on 2nd January, 2013, when spot cum-discovery Panchanama was drawn, accused nos.1 and 2 were not, 'arrested' and, hence, they were not in the 'custody' of police. It is argued that, Panchanama was drawn by the police in between 14.15 to 15.55 hours on 2nd January, 2013, but accused nos.1 and 2 were arrested in the night of 2nd January, 2013.

79. We do not agree with the submissions in-as-much as in order to make the statement under Section 27 of the Indian Evidence Act, 1872 admissible, what is required is maker of the statement should be in 'custody' of the police, but that custody need not be 'formal arrest', meaning thereby expression 'arrest' and 'custody' are not identical, though having resemblance in appearance. Prosecution in support, of this contention, relied on judgment of the Hon'ble Apex Court in the case of Vikram Singh vs. State of Punjab AIR 2010 SC 107, State of UP vs. Deoman Upadhyay AIR 1960 SC 1125 (a judgment of Constitution Bench) which calls out the following principles;

(1) To make statement, admissible under Section 27 of the Indian Evidence Act, 1872, maker of the statement should be in the 'custody' of the police but that custody need not be, formal arrest.

(2) In the case of more suspects, who have not been formally charged with any offence or arrested, their presence with police under some restraints amounts to custody.

Applying the ratio laid down in *Vikram Singh* (supra) to the facts of the case, in our view, though the accused nos.1 and 2 were not under formal arrest, evidence of Investigating Officer, Mr. Patil (P.W.49), shows, both the accused were under, some restraints the time since Mr. Patil started drawing spot Panchanama. We, therefore, uphold the discovery under Section 27 of the Evidence Act.

80. Seizure of weapons : Investigating Officer seized weapons, i.e. fodder cutting machine (Art.29), Sickle (Art.19), black coloured wire (Art.20), Spade (Art.22) and wooden sticks/logs (Arts.20,25 and 26) on

voluntary disclosure by the accused. Accused no.1, on 7th January, 2013 produced a sickle (Art.19) of orange colour handle of 26 inches blade with blood stains concealed in Tractor, near the spot of the incident and one black colour wire of 75 feet in length (Art.20) from bushes. It may be stated, the Chemical Analyser's Report confirms the human blood was found on the blade of the sickle.

81. Accused no.2 on 9th January, 2013 produced a fodder-cutting machine (Art.29) concealed in the standing crop; 4.5 feet in length and 1 feet in width. Prosecution has proved a red colour thread was entangled to the blade of fodder-cutting machine. Harischandra Atwal (P.W.9) relative of Sachin Gharu identified the thread was of Sachin Gharu. Cross-examination of Harischandra Atwal, could not elicit potential material, to disbelieve him. It constitutes additional incriminating circumstance, against the accused. Besides, Chemical Analyser's report has proved human blood-stains were found, on the blade of

fodder cutting machine. On 12th January, 2013 accused no.5 produced a wooden log and a spade. On 9th January, 2013, accused no.6-Ganesh Darandale produced a wooden log, a stick and a mobile handset.

82. Panch witnesses to the recovery were cross-examined by the defence. However, they could not impeach their credibility. Defence suggested the discovery of the weapons was from the open place and therefore the trial Court ought not to have considered it as additional link or circumstance against the accused.

83. Mr. Hiremath, learned Counsel for accused nos.1, 2, 5 and 6 (all members of Darandale family) disputed alleged disclosure made by accused nos. 1 and 2. He submitted, if evidence is to be made admissible, under Section 27 of the Evidence Act, it is obligatory upon the Investigating Officer, to state on record who gave the information, when he is dealing with more than one accused and what words were used by him, so that,

recovery pursuant to the information received may be connected to the person giving the information. He relied upon the judgment of the Hon'ble Supreme Court in the case of **Mohamamd Abdul Hafiz Vs. State of Andhra Pradesh, AIR 1993 S.C. 367** and judgment of the Division Bench of this Court in case of **Shankar Bopal Patil Vs. State of Maharashtra 2000 (5) Bom.C.R. 360.**

84. We have perused the evidence of Investigating Officer, Mr. Patil- P.W.9 and particularly paras-6, 7, 8 and 9 thereof, in view of which we do not see any substance in the objection, to the manner and mode of recording memorandum, discovery and consequent recovery or incriminating material/weapons from the spot of incident.

85. It is argued, recovery of organs of Sachin Gharu, from the borewell cannot be relied upon since borewell is accessible to anyone. He relied on the judgment of the Hon'ble Supreme Court in the case of **Jaharlaldas V/s. State of Orissa, AIR 1991 S.C. page**

1388. In the cited case, discovery panchanama was not prepared nor evidence was laid. In the case at hand, farmhouse of accused nos.1, 2, 5 and 6 was situate in Gat No.299 of Darandale Vasti and borewell was on the eastern side of Gat No.299 wherefrom organs of Sachin were discovered. Evidence of Surveyor has proved, it was a isolated place and except the farmhouse, no other houses were situate nearby the Darandale Vasti. The map drawn by the Surveyor at Exhibit-125, has been proved by the prosecution. Though Surveyor was cross-examined, but defence could not elicit from him any material, to disbelieve his evidence. We therefore hold, the farm house of accused nos.1, 2, 5 and 6, toilet-blocks (septic tank), borewell and another Well were at isolated place and none other than the accused had access to it. We therefore hold, there was recovery of the weapons, incriminating material, corpses of Sachin and Rahul and organs of Sachin from the spot, at the instance of accused persons.

86. Mr. Hiremath, as well as, Dr. Chaudhari

submit, the conduct of relatives of Rahul and Sachin seems unnatural since they did not approach the police immediately, though, both did not return home on 1st January, 2013. It is submitted, the relatives of these two deceased had enough opportunity to approach the police and disclose the facts within their knowledge, before their statements were recorded. Dr. Chaudhari, submitted the statements of material witnesses were recorded belatedly and that casts shadow of suspicion on the prosecution story. He relied upon the judgment of the Supreme Court in the case of **Kantilal Vs. State of Gujarat 2002 (10) SCC 39**.

87. We do not agree with the submissions of the learned Counsels. Evidence shows, statement of Sachin's mother was recorded on 6th January, 2013. Her evidence shows, on 1st January, 2013 she told the Investigating Officer, Mr. Patil that Sachin had not returned home. Similarly, the statement of Harischandra Atwal (brother-in-law of Sachin) was recorded on 2nd January, 2013. In view of this, we

reject the contention of Mr. Hiremath that delay in recording the statement of the witnesses is fatal to the prosecution.

88. Moot question is, who caused the death of Rahul and Sachin. None had witnessed the death of Sandeep Thanwar, Sachin Gharu and Rahul Khandare. However, corpses of Rahul and Sachin were discovered on the disclosure of accused nos. 1 and 2 at Darandale Vasti, which was in possession and use of accused nos.1, 2, 5 and 6. Prosecution has proved, presence of accused nos.1, 2, 3, 5 and 6 on the spot till evening, after 13.00 hours on 1st January, 2013, a day on which the dead body of Sandeep was found lying in the septic tank at Darandale Vasti. Thus, offence had taken place at the isolated place inside Darandale Vasti, where accused had all opportunity to plan and commit the offence at the time and place of their choice and therefore it is extremely difficult for the prosecution to lead the evidence to establish the guilt of the accused, if strict principles of

circumstantial evidence is insisted upon. The Hon'ble Supreme Court in the case of **State of Punjab V/s. Karnail Singh (2003) 11 SCC 271** has held "the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind, Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this Section throws some light on the content and scope of this provision."

89. Therefore, the question is having regard to the facts and circumstances of the case, whether accused have discharged the burden in terms of Section 106 of the Evidence Act. We answer it in negative for the following reasons :

90. Evidence has established,
- (i) presence of accused at Darandale Vasti (except of accused no.4) at 13.00 hours and onwards till evening of 1st January, 2013;
 - (ii) deceased persons had received calls from their relatives between 13 hours to 16.00 hours, of 1st January, 2013 and tower location was Ganesh Vaadi;
 - (iii) the cell phone of deceased was reported switched off after 16 hours;
 - (iv) on 1st January, 2013, Sandeep Thanwar did not return home and hence his brother, Kapil Thanwar had called accused no.3 to enquire about his whereabouts. However, accused no.3 told him that Sandeep Thanwar and his two friends left Darandale Vasti in the afternoon.
 - (v) on the same day, in evening, dead body of Sandeep Thanwar was found in the septic tank at 19.00 hours;
 - (vi) on the second day (i.e. on 2nd January, 2013) corpses of Sachin Gharu and Rahul Kandare were

discovered at Darandale Vasti;

(vii) Surveyor has established, Gat No.299 is situate in Darandale Vast and it is isolated place;

(viii) there was no other house at Darandale Vasti except accused nos. 1, 2, 5 and 6;

(ix) presence of accused has been proved at Darandale Vasti on 1st January, 2013.

(x) the accused persons did not offer explanation as to;

(a) how did Sandeep Thanwar met with accidental death;

(b) at what time, they learnt about Sandeep Thanwar's accidental death and where were they at the relevant time;

(c) how did Sachin and Rahul met with accidental death;

(d) why did accused no.3 called Seema on 2nd January, 2013 in wee hours from Darandale Vasti, although his residence was somewhere else;

(e) incriminating circumstances were put to them,

however, accused either denied it or said, it were untrue;

92. It may be stated that, accused no.1-Ramesh answered Question No. 807 when he was examined under Section 313 of the Criminal Procedure Code, stating sweepers were called for cleaning the septic tank.

93. In a case based on circumstantial evidence where no eyewitness account is available and when incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes additional link in the chain of circumstances to make it complete.

94. Thus, in view of the facts of the case and the evidence on record, we hold that "fact of death" of Rahul and Sachin was within the knowledge of the accused. However, accused have not discharged the burden. It is one more incriminating circumstance

against the accused.

95. Dr. Chaudhari learned Counsel for accused no.3-Kurhe disputed presence of the accused at Darandale Vasti in afternoon of 1st January, 2013. He submitted, the evidence in the form of Call Detail Records shows after 14.54 hrs till 18.07 hrs Kurhe was not at Darandale Vasti. Dr. Chaudhari submitted at 15.50 hrs, 16.06 hrs, 16.19 hrs, 16.52 hrs and 17.05 hrs, CDR shows, tower location was at open plot, Nevasa and not Darandale Vasti.

. Dr Chaudhari also submitted that, failure of accused to offer any explanation in his statement under Section 313 of Cr.P.C. alone was not sufficient to establish the charge against the accused. He relied on the judgment of the Hon'ble Apex Court in the case of **Anjan Kumar Sarma V.s. State of Assam 2000 17 SC Online 62.**

96. In the case at hand, Kurhe accused no.3 is relative of Seema. Though he was not residing at

Darandale Vasti, evidence on record shows on 1st January, 2013 and also during night intervening 1st and 2nd January, 2013, he was at Darandale Vasti. He is the person who was monitoring the movements of Sandeep Thanwar, when he was coming to the Darandale Vasti from Nevasa. Kurhe is the person who secured the presence of the deceased at Darandale Vasti through Ashok Navgire. This person had made calls to Seema in wee hours of 2nd January, 2013; however, he did not offer explanation as to why was he present at Darandale Vasti and made calls to Seema at such odd hours. The prosecution has therefore brought on record possible evidence. The crime has been committed inside the Darandale Vasti at a time convenient to the accused. In these circumstances, assuming Kurhe was not present at Ganeshwadi for a brief period on 1st January, 2013, that itself is not sufficient to extend benefit of doubt to Kurhe. We therefore reject the contention of Dr. Chaudhari and hold Kurhe was present on the spot on 1st and 2nd January, 2013.

97. So far as accused no.4 is concerned, evidence shows he was not on the spot of the incident in late evening of 1st January, 2013. He came to Ganeshwadi at 19.00 hrs on 1st January, 2013. No recovery had been effected from him. He is not a relative of Darandale family. Evidence shows, except a fact that he approached Sandeep Thanwar at the instance of accused no.3 and requested Sandeep Thanwar to repair the septic tank, there is no evidence to hold that Ashok Navgire conspired with other accused to eliminate Sachin.

98. Thus, having regard to all the circumstances we hold the prosecution has proved "fact of death" of Sachin and Rahul and the circumstances in which they suffered the death was within the knowledge of accused nos.1, 2, 3, 5 and 6. However, they have not discharged this burden. We therefore hold, Rahul Kandare and Sachin Gharu met with homicidal death and accused were authors of their death. In view of this, we uphold the conviction of accused nos.1, 2, 3, 5 and 6 under

Section 302 read with Section 120 of the Indian Penal Code for causing death of Sachin Gharu and Rahul Khandare and acquit accused no.4, Ashok Navgire .

99. We do not find cogent and convincing, the evidence to hold Ashok Navgire accused no.4 conspired with other accused, to eliminate Sachin. In fact he is outsider and not a member of Darandale family. Evidence shows he was not on the spot of the incident till late evening of 1st January, 2013. He came to Ganeshwadi at around 19 hrs. on 1st January, 2013. No incriminating material has been recovered from him. On the other hand, accused nos. 1, 2, 3, 5 and 6 are close relatives of Seema. They are from one family. Their presence has been proved at spot of the incident on whole day of 1st January, 2013. In fact accused nos. 1, 2, 5 and 6 live in house in Gat No.299 (spot of the incident). Presence of accused no.3 (Kurhe) has been proved on 1st and 2nd January, 2013 on the spot though he was not living with other accused at Darandale Vasti. We therefore uphold the conviction of accused nos. 1,

2, 3, 5 and 6 under Section 302 r/w 120-B of the Indian Penal Code and order accordingly.

100. Causing of disappearance of evidence : The learned trial Court convicted the accused for commission of the offence punishable under Section 102 r/w 120-B of the I.P.C. 1860. We have affirmed the findings recorded by the learned trial Judge holding that the accused conspired to eliminate Sachin and as such the charge under Section 302 r/w 120-B has been proved. Now, we will deal with the charge of causing disappearance of the evidence, Section 201 deals with the two aspects, one is causing disappearance of evidence and second is giving false information about the offence. The essential ingredients to prove the charge under Section 201 are ;

- (i) there must be an offence which has been committed ;
- (ii) the accused knew or had reason to believe the commission of such an offence ;
- (iii) a person should cause the disappearance of

any evidence of the crime committed ;

(iv) it should be done with the intention to screen the creditor of punishment ;

(v) person was given false information about the offence ;

(vi) he must be aware or have knowledge that the information given by him is false ;

101. The evidence on record has established, accused nos. 1, 2, 3, 5 and 6 were present on the spot on 1st and 2nd January, 2013. Evidence shows, accused nos. 1, 2, 5 and 6 were in the possession of spot of the incident. The well and bore-well were located at short distance from the house of the accused, in Gat no. 299. Evidence has established that Gat no. 299 and the area surrounding thereto was an isolated place. It is also established, other than accused, none had access to the well or bore-well where the dead bodies and Sachin's organs were found buried and dumped. Causing disappearance does not mean destruction of evidence but it means some active steps to cease to appear or to

be visible to any from the site. Disappearance of the evidence will be caused if the evidence ceased to be visible or to be traceable.

102. Evidence has established, active steps were taken by the accused to cause disappearance of the evidence by throwing organs of Sachin in the bore-well. Active steps were also taken by the accused by concealing the corpses in the water-less well. Evidence of Mr. Patil Investigating Officer (P.W.49) shows on 1st January, 2013 when he visited the site, he could not trace the whereabouts of Sachin and Rahul; however on the next day from the same place, two dead bodies were recovered. Further the evidence also shows, efforts were made by the the accused to conceal the sickle and the fodder cutting machine. It amounts to causing the disappearance of evidence of commission of offence. Be that as it may, prosecution has proved, accused no. 3 (Kurhe) knowing well that Sachin and Rahul were eliminated by them, he informed Sandeep's brother on telephone that Sandeep Thanwar, Rahul,

Sachin (all deceased) had left the Darandale Vasti after repairing the septic tanks partly. It may be stated that out of three sweepers, dead body of one sweeper was found lying in the septic tank and the other two sweepers were not found. When Popat Darandale was asked to lodge the accidental report, he declined to lodge the report. Subsequently, corpses of two sweepers were found at Darandale Vasti. Evidence has established, the presence of Popat Darandale on the spot of the incident on 1st and 2nd January, 2013. The circumstances therefore fully established a fact that, after committing the offence accused had caused disappearance of dead bodies in order to screen themselves from the legal punishment. We therefore hold, accused nos.1, 2, 3, 5 and 6 are guilty of an offence punishable under Section 201 read with Section 120-B of the I.P.C.

: SENTENCE :

103. Is this a case falls under the rarest of the rare cases :

Where the case falls under “the rarest of the rare cases”, principles laid down in **Bachchan Singh v. State of Punjab (1980) 2 SCC 684** are that, *‘normal rule is awarding of “life sentence”; imposition of death sentence is justified only in the “rarest of the rare cases”, when the option of awarding sentence of life imprisonment is unquestionably fore-closed’*. Principles laid down in **Bachchan Singh (Supra)** were considered in **Machhi Singh v. State of Punjab (1983) 3 SCC 470**. In **Machhi Singh (Supra)**, the Hon’ble Apex Court took the view that *‘In every case where death penalty is a question, a balance-sheet of aggravating and mitigating circumstances must be drawn up before arriving at the decision. The Court held that for practical application of the doctrine of “the rarest of rare cases”, it must be understood broadly in the background of five cases; that is,*

- (1) *Manner of commission of crime;*
- (2) *Motive;*
- (3) *Antisocial or socially abhorrent nature of the crime;*
- (4) *Magnitude of crime and*
- (5) *Personality of victim of murder.*

*A milestone in the sentencing policy is the concept of "life imprisonment till the remainder of life" evolved by the Hon'ble Apex Court in **Swamy Shraddananda v. State of Karnataka (2008) 13 SCC 767**. The Hon'ble Apex Court held therein that 'Relying upon the observations in **Bachchan Singh**, we respectfully wish to say, that even though the categories framed in **Machhi Singh** provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in **Bachchan Singh** itself.'*

Thus, after referring to a catena of judicial pronouncements post **Bachchan Singh** and **Machhi Singh**, the Hon'ble Apex Court laid down a list of aggravating

and mitigating circumstances, in **Ramnaresh v. State of Chhattisgarh (2012) 4 SCC 257**, paragraph 76 of its judgment reads thus;

Aggravating Circumstances :

(1) *The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.*

(2) *The offence was committed while the offender was engaged in the commission of another serious offence.*

(3) *The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.*

(4) *The offence of murder was committed for ransom or like offences to receive money or monetary benefits.*

(5) *Hired killings.*

(6) *The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.*

(7) *The offence was committed by a person while in lawful custody.*

(8) *The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under [Section 43 Cr.P.C.](#)*

(9) *When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.*

(10) *When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.*

(11) *When murder is committed for a motive which*

evidences total depravity and meanness.

(12) When there is a cold blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances :

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

104. Dr. Chaudhry, learned counsel for the appellants relied on the judgment of the Hon'ble Apex

Court in the case of **Bachchan Singh (Supra)** and submitted that the mitigating factors suggested by Dr. Chitle (paragraph no.204 of the judgment) are aptly apply to the facts of the case at hand. Dr. Chaudhry thus submitted; subject offence was committed under extreme mental or emotional disturbance; The murders were outcome of social issue like marriage / love affairs with a person of lower caste. He submitted caste is a concept which grips a person before his birth and does not live him after his death. He therefore submitted, the psyche of the offenders in the background of social issue like, inter-caste / community marriage, love affairs of a person with a girl from the upper caste, though wholly, unjustified would have to be considered in the peculiar circumstances of this case as a mitigating factor. Dr. Chaudhry relied on the judgment of the Hon'ble Apex Court in the case of **Dilip Tiwari Vs. State of Maharashtra 2010 1 SCC 7725 (Para 65)**, wherein, the Hon'ble Apex Court has held ; disturbed mental feeling or constant feeling of injustice is a mitigating

circumstance and mere number of persons killed is not by itself circumstance justifying a death circumstance. In para no.66, the Hon'ble Apex Court held thus; "it is because of this what we have ventured to consider the mind set of accused no.1 Dilip Tiwari and a vicious caste grip that might have captulated the crime committed by him."

Relying on these observations, Dr. Chaudhry, submitted offences arising out of genuine caste consideration is a mitigating factor. He submitted, in this case, the accused believed that they were morally justified in committing the offence which arose from genuine a caste consideration.

105. Dr. Chaudhry further submitted, the prosecution has not placed on record evidence to rule out the possibility of their reformation. He submitted, in exercise of discretion, the Court has to take into account, the probability that the accused would not commit criminal acts of violence and the probability that accused can be rehabilitate. Dr.

Chaudhry, submitted in this case, discretion has been exercised and death penalty is awarded without taking into consideration, these two probabilities.

106. Dr. Chaudhry submitted unless it is shown by the prosecution alternative punishment of life imprisonment will be futile and would not serve purpose, the Court cannot select and impose the death punishment. It is Dr. Chaudhry's submission, that selection of death punishment as a penalty is a resort, when alternative option is unquestionably foreclosed. He relied on the judgment of the Hon'ble Apex Court in the case of **Santosh Kumar 2009 6 SCC 498**.

107. Mr. Hiremath, learned counsel for the appellant nos. 1, 2, 5 and 6 besides adopting arguments of Dr. Chaudhry, submitted, the accused no.1 was 42 years old; accused no.2 was 32 years old; accused no.5 was 36 years old and accused no.6 was 22 years old as on the date of offence. He submitted looking to the age of the appellants, the possibility of their

reformation and rehabilitation cannot be ruled out. He submitted that antecedents of the appellants are unblemished.

108. Mr. Hiremath also submitted that imposition of the death penalty on each of the appellants may not be justified when no overact is attributed to the particular accused. It is submitted the investigating agency could not produced clear and a distinctive evidence to prove actual overact of each of the accused and in this circumstance, death penalty cannot be justified. In support of his contention, he relied on the judgment of the Hon'ble Apex Court, in the case of **Sahdev Vs. State of Madhyapradesh (2004) 10 SCC 682; Surendrapal Vs. State of Gujarat (2005) 3 SCC 127; Gurvil Singh Vs. State of Punjab AIR 2013 SCC 117 (young age a mitigating factor); M.A. Anthony Vs. State of Gujarat 2018 SCC online SCC 2800 (prior antecedents - relevant consideration); Shankar Khade Vs. State of Maharashtra (2013) 5 SCC 546 (age a mitigating factor); Gudda @ Duarikendra Vs. State of**

MP (2013) 16 SCC 596 (age a relevant factor).

109. Mr. Hiremath has also relied on the judgment of the Hon'ble Apex Court, in the case of **Kalu Khan Vs. State of Rajasthan Mannu/SC/0440/2015** to contend, that when the case is based on circumstantial evidence, the death penalty is not justified.

110. On the other hand, learned prosecutor Mr. Thakare relied upon the judgment of the Apex Court in the case of **Mukesh and Another v. State (NCT of Delhi) and Others (2017) 6 Supreme Court Cases 1**. wherein, it is held thus:

"497. As dealing with sentencing, courts have thus applied the "Crime Test", "Criminal Test" and the "Rarest of the Rare Test", the tests examine

(1) Whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community.

(2) Courts have further held that where the victims are helpless women, children or old persons and the accused displayed depraved mentality, committing crime in a diabolic manner, the accused should be shown no remorse and death penalty should be awarded. Reference may be made to Holiram Bordoloi v. State of Assam (2005) 3 SCC 793 [Para 15-17], Ankush Maruti Shinde and Ors. v. State of Maharashtra (2009) 6 SCC 667 (para 31-34), Kamta Tiwari v. State of Madhya Pradesh (1996) 6 SCC 250 (para 7-8), State of U.P. v. Satish (2005) 3 SCC 114

(para 24-31), *Sundar alias Sundarajan v. State by Inspector of Police and Anr.* (2013) 3 SCC 215 (para 36-38, 42-42.7, 43), *Sevaka Perumal and Anr. v. State of Tamil Nadu* (1991) 3 SCC 471 (para 8-10, 12), *Mohfil Khan and Anr. v. State of Jharkhand* (2015) 1 SCC 67 (para 63-65)."

111. Mr. Thakare also invited our attention to Paragraph 498 of the **Mukesh (Supra)** wherein it is held 'Even the young age of the accused is not a mitigating circumstance for commutation to life, as has been held in **Bhagwan Swarup v. State of U.P.**(1971)3 SCC 759, **Deepak Rai v. State of Bihar** (2013) 10 SCC 421.

Mr. Thakare also relied upon paragraph 509 of the judgment in **Mukesh (Supra)**, wherein it is held thus;

"509 Another significant development in the sentencing policy of India is the 'victim-centric' approach, clearly recognised in *Machhi Singh (Supra)* and re-emphasized in a plethora of cases. It has been consistently held that the courts have a duty towards society and that the punishment should be corresponding to the crime and should act as a soothing balm to the suffering of the victim and their family. [Ref: *Gurvail Singh @ Gala and Anr. v. State of Punjab* (2013) 2 SCC 713; *Mohfil Khan and Anr. v. State of Jharkhand* (2015) 1 SCC 67; *Purushottam Dashrath Borate and Anr. v. State of Maharashtra* (2015) 6 SCC 652]. The Courts while considering the issue of sentencing are bound to acknowledge the rights of the victims and their family, apart from the rights of the society and the accused. The agony suffered by the family of the victims cannot be ignored in any case. In *Mohfil Khan (supra)*, this Court specifically observed that 'it would be the paramount duty of the Court

to provide justice to the incidental victims of the crime - the family members of the deceased persons."

112. Thus, the Hon'ble Apex Court has held that the Courts while considering the issue of sentencing are bound to acknowledge the rights of victims and their family apart from the rights of the Society and the accused. In *Mofil Khan* (supra), the Apex Court has specifically observed that the paramount duty of the Court is to provide justice to the incidental victims of the crime - the family members of the deceased persons. Thus, the agony suffered by the family of victims cannot be ignored in any case. It is also held by the Apex Court that the Courts, have a duty towards the Society and a punishment should be corresponding to the crime.

113. The nature and manner of the act committed by the accused and the effect it casts on the Society and on the victims family, are to be weighed against the mitigating circumstances stated by the accused and

the scope of their reform so as to arrive at a definite conclusion as to what would be the appropriate punishment in the present case;"death sentence", "life sentence commutable to fourteen years or life sentence for the rest of the life". Before we proceed to make the choice, we would like to draw a balance-sheet of aggravating and mitigating circumstances attending to the commission of offence and then strike a balance between those aggravating and mitigating circumstances.

114. It may be stated in *Mukesh* (supra), the Apex Court has held "where a crime is committed with extreme brutality and the collective conscience of the Society is shocked, the Court must award death penalty, irrespective of their personal opinion as regards the desirability of death penalty. By not imposing a death sentence to such cases, Court may do injustice to the Society at large.

115. In this case, the accused preplanned and

secured the presence of Sachin Gharu through his friend, Sandeep Thanwar on the pretext of cleaning septic tanks. The accused are members of the Darandale Family (except accused no.4) intentionally chose accused no.4-Ashok Navgire, to approach and request Sandeep Thanwar to undertake the work of cleaning septic tanks at Darandale Vasti. It may be stated that, Ashok (accused no.4) belongs to lower caste as the deceased, and thus accused thought it fit and appropriate that if accused no.4 approach the deceased, it would make their task easy and smooth, for securing the presence of Sachin at Darandale Vasti, through Sandeep Thanwar. It is clear indication of premeditated crime and its execution. The evidence has established, the affairs between Sachin and Seema Darandale, were disliked by the family members of Seema for the obvious reason, that Sachin belonged to a lower caste. Be that as it may, the prosecution has proved the accused were present at the spot of incident throughout on 1st January, 2013 (except accused no.4) and were in exclusive possession of the spot of

incident. On 1st January, 2013 the accused reported to police, the accidental death of Sandeep Thanwar and pretended their ignorance relating to whereabouts of Sachin and Rahul. The evidence shows, the Investigating Officer-P.W.9, Mr. Patil searched the Darandale Vasti i.e. area around the septic tank, twice in late hours of 1st January, 2013, however, he could not trace the whereabouts of Rahul and Sandeep. On 2nd January, 2013 the corpses of these two persons were discovered at the instance of the accused. Sachin's body was violently disfigured. His body was chopped off. His upper and lower limbs were dumped into the borewell. Besides, the accused beheaded Sachin. It shows accused swore vengeance on Sachin. Bodies of these two victims were buried in the waterless borewell. The incriminating articles/weapons were recovered at the instance of the accused. The evidence shows, all efforts were made to cause disappearance of the evidence and no sign of remorse or repentance was felt over the incident. If we look at the aggravating circumstances in the present case, the

facts of the case and evidence has established, the offence was committed in most deceptive and cruel manner and was diabolic nature.

116. All the victims were defenceless and the crime was unprovoked. It is established, the crime was perfectly premeditated and it was committed with brazenness and coldness. The accused vengeance, caused loss of three precious lives. Two were innocents. The evidence shows that accused committed the crime in the most gruesome manner. They intended to hint at, section of the Society and set example as to what happens, if one belonging to the lower caste ventures to keep relations with a girl from upper class of the Society. Thus, the totality of the facts and circumstances, clearly reflects that there is no scope for reform of the accused. The manner in which the victims are eliminated and killed has shocked the conscience of the Society.

117. The learned Counsel for the appellants on the

aspect of sentencing sought commutation of death sentence to life imprisonment on the following mitigating circumstances :

(i)family circumstances and rural background of accused.

(ii)young age.

(iii)absence of criminal antecedents.

(iv)conduct in jail, and

(v) likelihood of reform.

118. Bearing in mind the principles governing the sentencing policy, we have considered all aggravating and mitigating circumstances in the present case. Justice demands that, Court should impose punishment befitting the crime. In our considered view, looking at the factors like young age of the accused, absence of criminal antecedents and likelihood of reforms cannot be said to be mitigating circumstances. Likewise, post crime, conduct of the accused clearly indicates there was no remorse felt by them for the acts committed. We are therefore of the view that family background, absence of criminal antecedents,

likelihood of reform of the accused cannot be taken as mitigating circumstances to take the case out of the category of rarest and rare cases. The aggravating circumstances are outweighing the mitigating circumstances and we do not find any justification to convert the death sentence imposed by the Courts below to "life imprisonment for the rest of life". We are aware that the accused may not be hardened criminals but the cruel manner in which they have committed the crime and particularly the mutilated dead body of Sachin and their collective efforts to cause disappearance of the body of Sachin and Rahul has shocked the collective conscience of the Society. The present case clearly comes within the category of "rarest and rare case" and therefore we hold, the question of any other punishment is unquestionably foreclosed. On this reasoning recorded by us, we affirm the death sentence awarded to accused nos.1, 2, 3, 5 and 6.

119. Resultantly, Appeal no.264 / 2018 is allowed

and conviction of accused no.4, Ashok Navgire is set aside. He may be released forthwith if not required in any other case.

120. Conviction of accused nos. 1, 2, 3, 5 and 6 for the offences punishable under Section 302, 201 a/w 120-B of the Indian Penal Code is confirmed and we uphold the sentence of death penalty.

121. The Cri. Appeal no.949/2018, Cri. Appeal no.950/2018 and Cri. Appeal no. 1146/2018 are accordingly dismissed.

122. Order of confirmation be forwarded to the Court of Sessions.

123. Muddemaal property may be disposed of after a period of 3 months.

124. The judgment in so far as convicted accused persons are concerned shall not be given effect to till expiry of appeal period as stipulated under Section 415, Criminal Procedure Code, 1973.

(SANDEEP K. SHINDE, J.)

(B.P.DHARMADHIKARI, J.)

Shivgan
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