



Sawant/Sagar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 169 OF 2018
WITH
INTERIM APPLICATION NO. 4770 OF 2024

Vrishal Madhukar Kalane
R/o. Rudra Shivalay Society
Building No.E-4, Bhekrainagar
(Rupinagar), Phursungi,
Tal. Haveli, Dist. Pune
Presently in Yerwada Central Jail, Pune.

... Appellant
(Original Accused No.2)

V/s.

1. The State of Maharashtra
(at the instance of Hadapsar Police Station, Pune)
2. Mr. Ajit Suryakant Bankar
Age: 43 years, Occ.: Service
R/o. E-8, Rudrashivalay Society
Building No.E-4, Bhekrainagar
(Rupinagar), Fursungi,
Tal. Haveli, Dist. Pune

... Respondents

Ms. Rupa J. Singh i/b Mr. Rajesh More, Advocate for the Appellant.

Mr. Ashish I. Satpute, A.P.P. for Respondent No.1- State.

Mr. Abhishek R. Avachat, Appointed Advocate by Legal Aid for the Respondent
No.2.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 19th SEPTEMBER 2026.

PRONOUNCED ON : 9th JUNE 2026.

JUDGMENT : [Per: RANJITSINHA RAJA BHONSALE, J]

1) Criminal proceedings/trials, in which a conviction is based on circumstantial evidence, the possibility of the conviction being partly based on surmises or conjecture or even strong suspicion cannot be ruled out and the possibility of the surmises or conjecture taking the place and taking over legal evidence and proof is a lurking possibility. It is, therefore apt, to be reminded by, cautioned and guided by the following observation, in *R. v. Hodge* [*R. v. Hodge*, (1838) 2 Lew 227 : 168 ER 1136] that:-

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

2) The present Appeal, deals with a conviction, based on circumstantial evidence which is sought to be challenged by the Appellant i.e Original Accused No.2. The Appellant has preferred the present Appeal, challenging the Judgment and Order of conviction dated 1st September 2017, passed by the learned Special Judge in Special Case No. 328 of 2014 filed

under the Protection of Children from Sexual Offences Act, 2012, whereby the Appellant is convicted under Section 363 of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for five years. The Appellant, further seeks to challenge his conviction, for the offence punishable under section 302 of the Indian Penal Code, 1860, whereby he has been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1,00,000/- (Rs. One Lakh Only) and in default suffer simple imprisonment for two years. The Order directs, the fine amount if realized from Appellant, be paid to the informant Mr. Ajit Bankar, as a compensation under section 357(1)(b) of Criminal Procedure Code, 1973. Respondent No. 2 in the present Appeal, is the Original Complainant.

3) Briefly stated, the prosecution case, as alleged is as under.

3.1) Mr. Ajit Bankar (PW.1) resided with his wife Anita, daughter and his 9 year old victim son, at E-8, Rudra Shivalay Society, Bhekrai Nagar, Fursungi, Tal-Haveli, Dist-Pune. Appellant (Original Accused No.2), Madhukar Sopan Kalane (Original Accused No.1/Appellant's father) and Nalini Madhukar Kalane (Original Accused No.3/Appellant's mother) were residing in flat No. E-4 in the same society and building. All accused being residents of the same society were known to the Complainant.

3.2) Mr. Ajit Bankar (PW.1) and his wife Anita were a working couple. The school timings of daughter Manali, were from 12.30 p.m. to 5.30 p.m and that, of the victim son, were 7.20 a.m. to 2.20 p.m. The victim son, returned

home from school, at about 2.20 p.m. and would inform his father P.W. No.1 about his return. The victim son was instructed to take the keys from neighbour Mrs. Rupali Choudhary (P.W.4). In the presence of P.W.4, victim son would open the door of the house and enter into it. The victim son was instructed not to open the door unless the person is known. That, the victim son remained alone at home till 5.30 p.m, when his mother would return from work. This routine of the victim son, was known to the residents of the Society.

3.3) On 27th August 2014, victim returned from school, took the keys of his house from P.W.4. That, in the presence of P.W.4, he entered the house and closed the door. That, victim on informing PW No.1 that, he had reached home, was instructed to remain in the house and study. That, victim informed P.W.1 that, he was watching TV.

3.4) That, at about 5.00 p.m. when the wife of P.W.1/mother of victim son returned home, she noticed that, the door of their house was open, TV was on and victim son was missing. She immediately informed P.W.1, who came home and tried to trace victim son but to no avail. P.W.4 also made efforts to trace the victim/son.

3.5) That, when P.W.4 went to take the assistance of Accused No.2 i.e. the Appellant, Original Accused No. 3 informed her that, the Appellant is in the midst of repairing a TV and would participate in the search once he is finished the job. As P.W.1 could not find his son, he lodged report of

kidnapping by unknown person with Hadapsar Police Station, Pune.

3.6) That, Original Accused No.3 despite knowing the situation did not come to the house of P.W.1 and was only observing the events. P.W.1, termed this as an abnormal behavior on the part of Original Accused No.3. That, the Accused family allegedly had some disputes with society members on account of damage/tearing of the cover of rickshaw of Accused No.1.

3.7) That, on 28th August 2014, at about 4.30 a.m., P.W.4 had seen Accused No.1 and the Appellant physically pushing their rickshaw towards the road without plying/starting the rickshaw. P.W.4 viewed the act of physically pushing the rickshaw early in the morning instead of starting it, as an abnormal/suspicious act and therefore, narrated said fact to P.W.1. Based on the said fact, suspicion arose, that the Accused family must be involved in the act/offence. The said facts were informed to the police officer, who investigated the matter and after verifying the facts, arrested the accused persons.

3.8) That, Original Accused No.1 made disclosure statement and in consonance with the same the dead body of victim was discovered. The Investigating officer arrested the Appellant who gave statement and in consonance of the same, handkerchief, tub, TV remote and blood etc. from the floor of the house of Accused Nos.1 to 3 were recovered. The prosecution alleges that, Appellant kidnapped deceased victim, tried to perform carnal intercourse with him, which was resisted. That, Appellant upon facing

resistance put the mouth of deceased victim in water tub and when the deceased victim became unconscious, he performed carnal intercourse with the deceased victim and then caused his death. That, original Accused Nos. 1 along with the Appellant caused to dispose off body by throwing it in Bopdeo Ghat. The dead body of deceased victim was discovered at the instance of Original Accused No.1.

3.9) Upon completing the investigation, chargesheet was filed against all accused. The charge was framed below (Exhibit-4) under section 363, 302, 377, 201 read with 34 of the Indian Penal Code and sections 4, 5 (1) and 6 of POCSO Act. That, accused persons pleaded not guilty and claimed to be tried.

4) Nine witnesses were examined by the Prosecution, as detailed herein under.

Sr.No	Particulars	Nature of Witness	Exhibit No.
1	P.W.1 Ajit Bankar	Complainant	Exh. No.36
2	P.W.2 Raju Choudhary	Spot panch	Exh.No.44
3	P.W.3 Sambhaji Bharti	Panch witness	Exh.No.50
4	P.W.4Rupali Choudhary	Neighbour	Exh.No.53
5	P.W.5 Prakash Patil	Eye witness/Last saw accused	Exh. No.55
6	P.W.6 Arun Mahapure	Recovery panch	Exh.No.56
7	P.W.7 Vikram Jadhav	Spot Panch	Exh.No.65
8	P.W.8 Abhishek Kumar	Doctor who conducted post mortem	Exh.No.70
9	P.W.9 Varsharani Patil	Investigating Officer	Exh.No.81

4.1) The Prosecution relies upon the Spot Panchanama (Exh-42), recovery from Appellant (Exh-45, 57), recovery from original Accused No.1 (Exh-51), Inquest Panchanama (Exh-67), Post Mortem Report (Exh-71), RTO details of Auto rickshaw (Exh.-87), Birth Certificate of victim at Exh-96 and missing complaint at Exh-82, Forensic Laboratory Reports (Exh-10,13 and 14).

5) The Appellant did not lead any defense evidence. The Appellant, in his statement recorded under Section 313 of CrPC (Exh-103) denied all the allegations. The defense, is that of false implication, at the instance of society members. It is his case that, he was beaten up at the instance of the Investigating agency and a false disclosure statement is shown to implicate him.

6) Only the present Appellant, has preferred an Appeal. The Original Accused No.1, though convicted under Section 201 of the Indian Penal Code did not prefer an Appeal. The Original Accused No.3 has been acquitted of all the charges.

7) We have heard Ms. Rupa J. Singh, learned Advocate for Appellant. Mr. Ashish I. Satpute, APP for the State and Mr. Abhishek R. Avachat, Advocate appointed by Legal Aid for the Respondent No.2/Original Complainant. We have perused the entire record.

8) Ms. Rupa J. Singh, learned Advocate appearing for the Appellant, submitted that, the present case is based on circumstantial evidence and her

endeavor would be to point out and demonstrate that, the prosecution has failed to prove the complete chain of circumstantial evidence. In support of her contention, she would submit that, certain vital facts and circumstances, which go to the root of the matter have not been established/proved by the prosecution. That, due to the failure to prove each and every circumstance, the entire case of the prosecution has become doubtful. It is not proved beyond reasonable doubt. That, the chain of circumstances has broken/snapped at critical points of evidence.

9) In support of her contentions, the learned advocate for the Appellant, *inter alia* relied on judgments of Hon'ble Supreme Court, as under:-

9.1) The case of *Ganpat Singh Vs. State of Madhya Pradesh reported in AIR 2017 SC 4839*, to contend that, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and all the circumstances must be consistent only with the guilt of the accused.

9.2) The case of *Pannayar Vs. State of Tamil Nadu by Inspector of Police reported in (2009) 9 Supreme Court Cases 152*, to contend that, if the prosecution is unable to establish motive which can be attributable to the accused, the benefit thereof ought to be given to the accused.

9.3) The case of *Shivaji Chintappa Patil Vs. State of Maharashtra reported in (2021) 5 Supreme Court Cases 626*, to contend that a non-

explanation or false explanation of circumstances can only be used as additional circumstance, when prosecution has proved the complete chain of circumstances leading to no other conclusion other than the guilt of accused beyond reasonable doubt. That, motive especially in a case of circumstantial evidence, plays an important link to complete the chain of circumstances.

10) On the other hand, Mr. Ashish I. Satpute, learned APP appearing for the State submitted that:-

10.1) The prosecution has successfully proved the case on the basis of circumstantial evidence. That, each fact/link has been independently established and when taken together cumulatively establishes chain of circumstances beyond reasonable doubt and points only at the guilt of the Appellant.

10.2) Motive for the said offence was previous fight/quarrel which the Appellant's family had with the members of the society. That, 6 to 7 months prior the incident someone had torn the roof of the auto-rickshaw owned by the Appellants family, at which time accused No.1 had a quarrel with the wards and their guardians in the society. Therefore, members of the society including PW No.1 and his family were not in the talking terms with the Accused persons. That, even if motive is not established, the chain of circumstantial evidence is otherwise completely established and proved.

10.3) P.W.2 is the panch for the spot panchanama. Blood was extracted from floor of the house of Appellant. The body of the deceased, was recovered

at the instance of original accused No.1. The same is proved by P.W.3. The conviction of accused No.1 under Section 201 has attained finality and accused No.1 has undergone the sentence. In view thereof, discovery of the dead body, cannot now be faulted.

10.4) That, through P.W No.1 it is proved that Appellant and deceased were in talking terms. That,Appellant gave colour beads to the deceased for inserting the same in the cord of his cycle.

10.5) Under Section 106 of the Evidence Act, when a fact is within the knowledge of a person, the burden of proving the said fact is on the said person and if not proved an adverse inference can be drawn. That, it was on the Appellant to explain as to how the blood stains, gunny bag, TV remote etc were found in the house. That, the Appeal ought to be dismissed.

10.6) In support of his contention, the learned APP relied upon and cited following judgments namely (i) *Trimukh Maroti Kirkan Vs. State of Maharashtra reported in 2006 AIR SCW 5300*; (ii) *State of Rajasthan Vs.Kashi Ram reported in AIR 2007 Supreme Court 144*;(iii) *Subhash Aggarwal Vs. The State of NCT of Delhi in @ Special Leave Petition (Crl.) No.1069 of 2025*; and (iv) *Abdul Nassar Vs. State of Kerala and Anr in Criminal Appeal No(s).1122-1123 of 2018*.

11) Mr. Abhishek R. Avachat, learned Advocated appointed to represent Respondent No. 1 adopted the arguments of learned APP. He further submitted that, the prosecution has successfully proved the entire chain of

circumstances beyond reasonable doubt. He submitted that, the trial Court has rightly convicted the Appellant. That, there is no error in the impugned judgment. Mr. Avachat therefore submitted that, the Appeal be dismissed.

12) Considering the submissions made and keeping in mind the fact that, the present criminal prosecution is based and proceeded on the basis of circumstantial evidence, in our opinion, the following principles of law, would be relevant and required to be considered, while deciding the present appeal i.e absence of motive; effect of Section 106 of the Evidence Act; applicability of the principle of benefit of doubt and the law relating to circumstantial evidence.

13) The law related to a case based on circumstantial evidence, and aspects relevant to decide a case based solely on circumstantial evidence has evolved, developed and is now well settled. In case related to and based on circumstantial evidence, it is important and necessary, to consider as to whether there was a motive for the accused to commit the alleged crime. If absent, the effect of absence of motive and whether any benefit accrues to the accused and to what extent are all factors that are required to be considered. Further, one needs to consider as to when and to what extent the principles of benefit of doubt apply to a case based on circumstantial evidence. One needs to consider, in what circumstances, case under circumstantial evidence would made out and proved in the absence of motive. One also needs to consider the circumstances under which the non-explanation of facts within the knowledge

of an accused can be used against the accused.

14) We shall now proceed to consider the law on the aforementioned points.

14.1) The Hon'ble Supreme Court in the case of *State of Rajasthan Vs. Kashi Ram* reported in AIR 2007 Supreme Court 144, in paragraph 23 has observed that :-

“23.... when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. For example, if the person is last seen with deceased, he must offer an explanation as to how and when he parted company. Such explanation if proper and satisfactory leads to the conclusion that he has discharged the burden. If he fails to offer the explanation for facts within his special knowledge he fails to discharge the burden cast upon him under Section 106 of the Evidence Act.”

14.2) The Hon'ble Supreme Court in the case of *Shivaji Chintappa Patil Vs. State of Maharashtra* reported in (2021) 5 Supreme Court Cases 626, has observed that:

“25. It is well-settled principle of law, that false explanation or non-explanation by the accused can only be used as additional circumstance, when prosecution has proved chain of circumstances leading to no other conclusion than guilt of accused.

27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances.....”

14.3) The Hon'ble Supreme Court in the case of *Pannayar Vs. State of Tamil Nadu* by Inspector of Police reported in (2009) 9 Supreme Court Cases 152, has observed that:

“28. The absence of motive in the case which depended on circumstantial evidence is more favourable to the defence.”

14.4) The Hon’ble Supreme Court in the case of *Bipin Kumar Mondal V/s State of West Bengal*, reported in (2010) 12 SCC 91 has observed that :-

“23. In *Shivji Genu Mohite Vs. State of Maharashtra*, AIR 1973 SC 55, this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy.

24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide *Hari Shankar Vs. State of U.P.*,². *Vs. State of Bihar*³ and *Abu Thakir & Ors. Vs. State of Tamil Nadu*⁴.

25. In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide *Ujagar Singh Vs. State of Punjab*⁵.

26. While dealing with a similar issue, this Court in *State of U.P Vs. Kishanpal & Ors.*,⁶ held as under:

"The motive may be considered as a circumstance which is

relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

32. *In Namdeo Vs. State of Maharashtra¹¹, this Court reiterated the similar view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence*

33. *In Kunju @ Balachandran Vs. State of Tamil Nadu¹², a similar view has been re-iterated placing reliance on various earlier judgments of this court including Jagdish Prasad Vs. State of M.P.,¹³ and Vadivelu Thevar Vs. State of Madras¹⁴."*

14.5) In the case of *Subhash Aggarwal Vs. The State of NCT of Delhi* (*supra*) reliance is placed on paragraph 24, which read as under:-

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

14.6) In the case of *Nandu Singh v. State of Madhya Pradesh* (now

Chhattisgarh)⁷, reported in Criminal Appeal No. 285 of 2022 has observed that:-

"10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

14.7) The Hon'ble Supreme Court in the case of *Dharambir Singh v. State of Punjab* (Cri. Appeal. No. 98 of 1958), reported in 1958 SCC OnLine SC 1 has observed that, motive alone in cases of circumstantial evidence though relevant is not enough to dispense with the proof of certain facts which are essential to be proved in such cases.

14.8) The Hon'ble Supreme Court in the case of *Hanumant v. State of M.P.*, reported in (1952) 2 SCC 71, has observed that:-

"12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

14.9) The Hon'ble Supreme Court in the case of *M.G. Agarwal v. State of Maharashtra*, reported in 1962 SCC OnLine SC 22, has observed that:

“18. It is a well-established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. It is in the light of this legal position that the evidence in the present case has to be appreciated.”

14.10) The Hon'ble Supreme Court in the case of *Tufail v. State of U.P.*, reported in (1969) 3 SCC 198, while reiterating and affirming the view taken in *Hanumant v/s State of M P*, (Supra), has observed in Paragraph 13 that, the circumstances in a case based on circumstantial evidence must be fully established, form a complete chain, and be consistent only with the hypothesis of the guilt of the accused, excluding every possible hypothesis of innocence.

14.11) The Hon'ble Supreme Court in the case of *Ram Gopal v.*

State of Maharashtra, reported in (1972) 4 SCC 625, after referring to the case of *Hanumant v/s State of Madhya Pradesh (Supra)* and affirming the view taken therein has observed in Paragraph 14 & 15 that, courts must guard against conjecture in circumstantial cases and ensure a complete chain of conclusive facts.

14.12) The Hon'ble Supreme Court in the case of *Chandmal and Anr v/s State of Rajasthan, reported in (1976) 1 SCC 621*, has observed that;

“14. It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis say that of the accused's guilt.”

14.13) The Hon'ble Supreme Court in the landmark case of *Sharad Birdhichand Sarda v. State of Maharashtra, reported in (1984) 4 SCC 116*, has observed that:-

“151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words,

before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.

152. *Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh¹. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh¹⁷ and Ramgopal v. State of Maharashtra¹⁸. It may be useful to extract what Mahajan, J. has laid down in Hanumant case¹;*

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of

Maharashtra¹⁹ where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

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

14.14) In the case of *Ganpat Singh Vs. State of Madhya Pradesh* reported in AIR 2017 Supreme Court 4839, reliance is placed on para 9 which reads as under:

“9. In the case of circumstantial evidence where there is no eye witness to the crime, the law postulates a twofold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus:

“The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to

be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

14.15) The Hon’ble Supreme Court in the case of *Rajesh and anr. V/s State of Madhya Pradesh reported in 2023 INSC 839*, (dated 21st September 2023) in Paragraph 14 has observed that, in cases based on circumstantial evidence, the prosecution must establish a complete and unbroken chain of circumstances pointing only to the guilt of the accused and excluding every hypothesis of innocence (*Hanumant v. State of M.P., (Supra)* *Sharad Birdhichand Sarda v. State of Maharashtra, (Supra)*). Further, as laid down in *Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706*, such evidence must satisfy the tests that the circumstances are firmly established, of definite tendency pointing to guilt, form a complete chain, and are incapable of explanation on any hypothesis other than that of the guilt of the accused.

14.16) The Hon’ble Supreme Court in the case of *Abdul Nassar V/s State of Kerala and Anr., (Criminal Appeal Nos. 1122-1123 of 2018 dated 7th January 2025)*, in Paragraphs 13, 14 & 30 has observed that, in cases resting on circumstantial evidence, the Court must ensure that each incriminating circumstance is fully established and forms a complete and unbroken chain pointing only to the guilt of the accused and excluding every hypothesis of

innocence. Relying upon the settled principles laid down in *Sharad Birdhichand Sarda v. State of Maharashtra*, (*Supra*) and *Hanumant v. State of M.P.*, (*Supra*), it was reiterated that, the circumstances must be conclusive in nature and consistent only with the hypothesis of guilt, and collectively must establish that in all human probability the offence was committed by the accused. It was further emphasised that while appreciating circumstantial evidence, the Court must meticulously analyses the testimony of witnesses, evaluate each circumstance independently, and ensure that the chain of evidence is complete, with the judgment clearly reflecting the reasoning for accepting or rejecting the evidence on record.” It was further observed that:-

“26. Based on the analysis of the evidence on the record, we are of the view that the chain of incriminating circumstances required to bring home the guilt of the accused is complete in all aspects. In the present case, we affirm that the prosecution has been able to prove the guilt of the accused appellant by fulfilling the five golden principles (Panchsheel) laid down by this Court in the case of Sharad Birdhichand Sarda(supra) and that the circumstances present before us, taken together establish conclusively only one hypothesis that being the guilt of the accused appellant.

30. We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:

(i) he testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness’s evidence should be assessed in its entirety to ensure no material aspect is overlooked.

ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

iii) *Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.*

iv) *The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.*

v) *The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.”*

14.17) The Hon’ble Supreme Court in the case of *Suresh Chandra and Anr. V/s State of Uttar Pradesh (Criminal Appeal No. 1283 of 2024, Judgment dated 30th January 2025)* in Paragraph 11 & 12 has observed that, in cases resting on circumstantial evidence, the prosecution must establish a complete chain of circumstances consistent only with the guilt of the accused and excluding every hypothesis of innocence. Reliance was placed on the principles laid down in *Sharad Birdhichand Sarda v. State of Maharashtra*, (Supra), which require that the circumstances must be fully proved, of conclusive nature, and incapable of explanation on any other hypothesis. It was further emphasised that there is a clear legal distinction between ‘may be’ and ‘must be’ guilty, and conviction can be sustained only when every reasonable hypothesis except that of the accused’s guilt is ruled out.”

14.18) In the case of *Vaibhav V/s State of Maharashtra*, (Criminal

Appeal No.1643 of 2012, Judgment dated 4th June 2025), Hon'ble Supreme Court has observed that;

“21. Having said so, we may now examine what weighed with the High Court to arrive at the finding of guilt of the appellant. On a careful reading of the impugned judgment, one would unmistakably note that the subsequent conduct of the appellant in indulging in destruction of evidence weighed heavily against him in the mind of the Court. The inability of the appellant to explain certain aspects also weighed against him. Undoubtedly, in a case based on circumstantial evidence, facts indicating subsequent conduct are relevant facts under Section 8 of the Evidence Act. Equally, the inconsistencies in the version of the appellant are also relevant. However, the occasion to examine the version/defence of the appellant could have arisen only if the prosecution had succeeded in discharging its primary burden beyond reasonable doubt. In criminal jurisprudence, it is a time-tested proposition that the primary burden falls upon the shoulders of the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence. In the present case, the version of the prosecution suffers from inherent inconsistencies and doubts, as discussed above, and in such a scenario, the inability of the appellant to explain certain circumstances could not be made the basis to relieve the prosecution from discharging its primary burden. The High Court fell in a grave error in doing so, as it placed greater reliance on the loopholes in the appellant's version without first determining whether the chain of circumstances sought to be proved by the prosecution was complete or not. Pertinently, the inability of an accused to offer plausible explanation on certain aspects would not automatically absolve the prosecution of its evidentiary burden, which must be discharged first and beyond doubt.

22. In law, there is a significant difference in the evidentiary burden to be discharged by the prosecution and the accused. Whereas, the former is expected to discharge its burden beyond reasonable doubt, the latter is only required to prove a defence on the anvil of preponderance of probabilities. If the accused leads defence evidence in the course of a criminal trial, the same ought to be tested as probable or improbable in

the facts and circumstances of the case. The present case, we are afraid, reveals that the defence taken by the accused since the beginning of the case was not tested by the Trial Court and the High Court. Despite a specific defence taken by the appellant before both the Courts, the Courts simply did not examine the same in the manner required by law. The probability of the version put across by the appellant ought to have been tested against the circumstantial theory of the prosecution. In other words, it was incumbent upon the Courts below to have examined whether the defence taken by the appellant was a probable defence or not. The failure to do so has certainly resulted into a failure of justice and it is sufficient to reopen the evidence in the instant appeal, as we have done.

23. *We may now come to the next aspect of the case i.e. absence of motive and consequence thereof. It is trite law that in a case based on circumstantial evidence, motive is relevant. However, it is not conclusive of the matter. There is no rule of law that the absence of motive would ipso facto dismember the chain of evidence and would lead to automatic acquittal of the accused. It is so because the weight of other evidence needs to be seen and if the remaining evidence is sufficient to prove guilt, motive may not hold relevance. But a complete absence of motive is certainly a circumstance which may weigh in favour of the accused. During appreciation of evidence wherein favourable and unfavourable circumstances are sifted and weighed against each other, this circumstance ought to be incorporated as one leaning in favour of the accused. In Anwar Ali & Anr. v. State of Himachal Pradesh', this Court analyzed the position of law thus:*

“24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court Suresh Chandra Bahri v. State of Bihar that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and

held as under:

"25. In *State of U.P. v. Kishanpal*, this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39)

"38.... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (*Vide s v. State of T.N.5*)"

14.19) The Hon'ble Supreme Court in the case of *Shail Kumari V/s State of Chattisgarh*, (Criminal Appeal Nos. 2189 of 2017, Judgment dated 06th August 2025,) has observed in cases resting on circumstantial evidence that, the prosecution must establish a complete chain of circumstances consistent only with the guilt of the accused and excluding every hypothesis of innocence. Reliance was placed on the principles laid down in *Sharad*

Birdhichand Sarda v. State of Maharashtra, (Supra) and *Hanumant v. State of M.P.*, (Supra), which constitute the 'panchsheel' governing circumstantial evidence. It was further reiterated that each circumstance must be fully established, of conclusive nature, and incapable of explanation on any other hypothesis, and that conviction can be sustained only when the chain of events is so complete that it leads to no other conclusion than the guilt of the accused.

14.20) The Hon'ble Supreme Court in the case of *Vadivelu Thevar v. State of Madras* reported in AIR 1957 SC 614 has observed that:

"17. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our

opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.

18. *Generally speaking, oral testimony in this context may be classified into three categories, namely:*

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

19. *There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."*

(emphasis supplied)

15) Section 106 of the Indian Evidence Act, provides that, when the existence of any fact is within the knowledge of a person, the burden of proving that fact is upon the person. If the explanation put forth is found proper and satisfactory, it can be said that the person has discharged the burden. If the person fails to offer an explanation for the facts which are within the special knowledge, then in that event it is concluded that the person has failed to discharge the burden against him as is envisaged under Section 106 of the Evidence Act. In matters based on circumstantial evidence, the primary responsibility and duty is that of the prosecution to prove the prosecution case to the hilt. All the facts and circumstances must have been independently proved by the prosecution. The primary burden of proving and establishing the case is and always will remain on the prosecution. Only when the prosecution succeeds in establishing its case and discharging its burden beyond reasonable doubt that the accused may be called upon to explain certain facts/evidence which according to the prosecution are against the accused. We are of the opinion that if the prosecution is unable to conclusively prove and establish the case of the prosecution or the case of the prosecution carries with it and suffers from unexplainable doubts, contradictions and/or inconsistencies, then in such a case, the non-explanation or inability of the appellant accused to explain certain circumstances or a single circumstance ought not to be made the reason and basis to relieve the prosecution from discharging its burden and or drawing a adverse inference against the

accused.

16) We are of the considered opinion that, the provisions of section 106 would come into play or can be invoked by the prosecution only when the prosecution is otherwise successful in establishing a complete chain of circumstances against the accused, which chain of circumstances of leads only to the conclusion of guilt of the accused and no other. Further, such conclusion must be beyond all reasonable doubt. In our opinion, for the prosecution to take aid of section 106 of the Indian Evidence Act as against the accused, it is incumbent on the prosecution to prove the case on circumstantial evidence beyond reasonable doubt. If the chain of circumstances is not complete, then an incorrect or false explanation or non-explanation, of special circumstances within the knowledge of an accused will not be of any assistance to the prosecution and section 106 of the Evidence Act cannot be called in aid. If the entire chain of circumstances is established and proved i.e each link is independently established and when put together conclusively only points to the guilt of the accused, the non-explanation may be used as an additional evidence and no more.

17) Motive, being in the mind of the accused and an internal process, is difficult to fathom or prove to the hilt. Motive in a case of direct evidence may not be that relevant, as is in a case of based solely on circumstantial evidence. In a case of circumstantial evidence, motive, plays an important link to complete the chain of circumstances. Based on an established and proved

motive, reasonable and sustainable inferences may be drawn to complete a chain of circumstances. Motive becomes a crucial connecting link in the chain of circumstances. This is not the case in a matter based on direct evidence. A reliable and otherwise proved prosecution case, may not be dislodged, due to the absence of motive. Nor is motive to be given undue importance nor is motive based solely on unfounded allegations and general suspicion to be given any credence.

18) Having said that, it does not mean that, if the motive is not proved, direct evidence which is otherwise reliable becomes untrustworthy. If a case is established by direct evidence then motive to a large extent becomes less relevant and a conviction can be based on reliable direct evidence. If the evidence is clear, unambiguous and the guilt of the accused is proved, then motive may not remain relevant for assessing the evidence. Established and proved evidence will not be weakened if the motive is absent. It is also settled law that motive loses its importance in a case where direct evidence of eyewitnesses is available. In cases of circumstantial evidence, motive assumes importance and significance, as it becomes the crucial link in the case to be established by the prosecution and in its absence assumes a different complexion and such absence definitely weighs in favour of the accused. Motiveless crimes are not unknown to the society, but such should be prosecution case. In cases based on circumstantial evidence, the absence of motive raises doubts and in some cases renders the chain of evidence

incomplete, weak and therefore doubtful. In cases based on circumstantial evidence, motive acts as catalyst of explaining the circumstantial evidence or providing the missing link for enabling the Court to draw a reasonable and probable inference. The prosecution ascribing a motive, initiating a prosecution case on the said motive and then terming it as “not significant to prove the case” when it fails to prove motive makes the prosecution case doubtful. It raises doubts as to why motive was ascribed in the first place. The reliability of the prosecution case, to say the least becomes questionable. In our opinion, it can be safely said that, the absence of motive, in a case which depends on circumstantial evidence, is more favorable to the accused.

19) In cases of circumstantial evidence, it is the settled position of law that, each circumstance in a case based on circumstantial evidence must independently and fully established and once established merge seamlessly to form a complete chain, and most importantly be consistent only with the hypothesis of the guilt of the accused, excluding any and every possible hypothesis of innocence. As in the present case, the starting point in a case of circumstantial evidence, many a times is suspicion. We are of the considered opinion that, the suspicion is required to be substantiated by undeniable, reliable, unequivocal, consistent and credible evidence, which does not leave the probability of any other possibility or theory. It is settled law that, suspicion however strong cannot take the place of proof.

20) In cases based on circumstantial evidence, conviction cannot be

based on a possible view. It is based on the “only view pointing to only the guilt”. The view has to be one which only points to the guilty of the accused. All possible interpretations of the circumstances, must necessarily point to the guilty of the accused. The remote possibility of an “other possible view”, even if reasonable is impermissible, alien to a cases based on circumstantial evidence. If a Court, while deciding a case based on circumstantial evidence, is faced with a situation wherein two different views appear to be reasonably possible, the matter we must say would have to be decided in favour of the accused and by accepting the view which is beneficial to the accused would be required to be accepted. As it is settled position of law, the benefit of doubt, always goes in the favour of the accused.

21) It is well settled proposition under criminal law, that the burden of proof is on the prosecution to prove the case beyond reasonable doubt, unless there is of course a statutory presumption in favour of the prosecution. Once the prosecution is successful in discharging this duty and proving a case beyond doubt that the burden shifts to the accused in explaining evidence against him or to present a defence. We find that in the present case, the prosecution has failed to discharge its duty in proving and establishing all the circumstances and that the case of the prosecution suffers from inherent gaps, loopholes, doubts, contradictions and inconsistencies, as discussed above. In such circumstances, the question of the Appellant explaining facts in his knowledge or the non-explanation thereof would not come to the rescue of

the prosecution nor assist the prosecution in drawing an adverse inference or considering it as an additional circumstance against the accused. We find that the gaps and deficiencies in the evidence are material and fatal. The suspicion, in our view is unfounded. Placing undue reliance on incomplete and incoherent circumstances without the chain of circumstances being complete would be uncalled for and therefore unwarranted. The duty of the prosecution is to prove a case beyond reasonable doubt. On the other hand, the onus cast on the accused is to establish a probable defence and or create doubts in the prosecution case so as to give rise to the possibility of the Court coming to more than one possible conclusion. Once more than one conclusion is reached or available, the one favorable to the accused ought to be accepted.

22) The other aspect which one needs to consider, as to whether the prosecution witness is reliable. The reliability of the evidence of the witnesses is important and it is on this evidence that the primary fact is said to have been proved and consequently the referential fact. The Hon'ble Supreme Court in *Vadivelu Thevar (supra)* has classified the witnesses into three types: (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. It has been held that in the first category of cases, there is no difficulty inasmuch as if the testimony of such witness is found to be fully reliable, it may convict or may acquit on the basis of his statement. Even in the second category cases, there is no difficulty that if evidence of such a witness is found to be wholly unreliable, the testimony must be discarded. The

difficulty arises only in the case of third type of witnesses, where the Court is required to separate the chaff from grain to arrive at a conclusion. If on a perusal of the evidence and cross -examination of prosecution witnesses it is revealed that, the witnesses have improved their case in the evidence or certain statements and admissions are made in the cross examination which make case of the prosecution doubtful, then in that event the said evidence ought not to be relied upon. The omissions and improvements if any made may be damaging to the case of the prosecution. If in the evidence of the witnesses, there are material inconsistencies and contradictions, the same ought to be termed as doubtful and unreliable.

23) In the backdrop the law and guided by the pronouncements of the Hon'ble Supreme Court, we shall now proceed to consider and analyse the prosecution evidence.

24) PW-1 Ajit Bankar, complainant/father of the deceased has deposed that, prior to 6-7 months somebody had torn the roof of auto rickshaw belonging to the accused by blade, hence Accused No.1 had quarreled with the members of the society, due to which, the members of the society were not talking with the accused persons. This, according to the prosecution, is the motive as ascribed to the Appellant and other accused. That, even otherwise the Appellant used to talk with the deceased. That, prior to 7-8 days of the deceased going missing, Appellant had given colored beads to the deceased for inserting in the cord of cycle. That, deceased had disclosed

this fact to his mother, who in turn informed the PW No.1. PW No.1 has deposed that, on 28th August 2014, at about 4.30 to 5.00 am, PW No.4 Rupali Chaudhari had seen Accused No.1 and the Appellant taking their rickshaw towards road from parking by physically pushing it. This fact was informed to PW No.1 and his wife. Yogita Vikram Jadhav had also disclosed the same fact to them on the next day. The suspicion is also founded on this fact. Further, the suspicion is also based on the fact that, accused Nalini used to visit the house of PW No.1, not speak to anyone, only observe the happenings and leave. The said acts were disclosed by the P.W. No.1, to police, when his supplementary statement was recorded.

25) It is pertinent to note that, P.W. No.1, in his cross-examination, has deposed that when his son was missing, he had not personally gone to search him in the area of Bhekraingar, Gadital, Mantharwadi Chowk, Swargate. PW No.1, has admitted that, while recording his statement, he had not disclosed to the police about missing of articles from his house. PW No.1 has further stated that, he had disclosed the contact number to police on which he was contacting his son.

26) PW-4 Rupali Choudhary, has deposed that on 27th August 2014, son of PW No.1 returned home from school at about 2.30 p.m and she handed over the keys of the house to him. That, till the opening of the door of the flat and him entering into the flat, she was present at the door of her flat. That, after the son of PW No.1 shut the door of the house from inside, she entered

into her flat. That, at about 4.15 p.m., accused Nalini Kalane rang the bell of my flat and asked her, “where is Durva?”. PW No.4 informed her that Durva is sleeping and also asked her as to why she was asking/making enquiries. At that time, accused Nalini Kalane told her that the Appellant asked her to bring Durva for playing with her. PW No.4, found the said conduct of Nalini strange/abnormal as she felt that as to how could the Appellant play with an infant child Durva. That, the mother of deceased told her that the door of the house is open, the TV was on and that, her son was not in the house. PW No.4 and the mother of deceased tried to search for the deceased, first in the flats of the society, and then in the nearby areas. Thereafter, when PW No.4 knocked the door of the Appellants house, accused Nalini opened the door. On asking for help of the Appellant in searching for the victim, she was informed that the Appellant would help after he finished repairing the TV. That, on 28th August 2014, early in the morning at about 4.30 a.m., when she was warming the milk for serving to her daughter, she saw, through her kitchen window, that the Appellant and original Accused No.1 were taking their rickshaw towards roadside by physically pushing it. That, she does not remember the registration number of the auto rickshaw. That, she disclosed the fact to the mother and father of deceased in the morning.

27) PW No.4 in her cross-examination has deposed that, the police also made inquiry with accused persons. That, on 28th August 2014, at about 4.30 a.m., she had not seen the Appellant and Accused No. 2, going by

staircase nor seen which colour's clothes were worn by the deceased on 27th August 2014. PW No. 4 has admitted that, on 27th August 2014, when police had came to the society, she had not disclosed the fact of accused Nalini visiting her house. She has admitted that, no child was going to the house of accused. PW No.4 has further stated that, it is not true to say that today I do not remember when I had disclosed the incident of 4.20 am to the police

28) PW-5 Prakash Swarupchand Patil, is an independent witness. In his examination-in-chief, he has deposed that, on 28th August 2014, at about 5.15 a.m., he as per his routine had gone towards Bopdev Ghat, for morning walk. That, in the Ghat, there is one stonewall besides the road. That, when, he reached to the point from where the said stonewall starts, he found that one auto-rickshaw was stationary in the Ghat facing towards Saswad side. That, he saw the said auto-rickshaw from a long distance. That, at that time, he also found that two persons were standing beside the said auto-rickshaw. That, soon the said persons who were standing beside the said auto-rickshaw saw him and they immediately boarded in auto-rickshaw and by taking turn, they went towards Kondhwa side in speed. That, he could not see the faces of said persons, but saw the registration number of said auto-rickshaw as MH-12-HC-5749. This witness has deposed that, on 29th August 2014 and 30th August 2014 as there was heavy raining, he could not go for the morning walk. That, after reading the news article, he recollected the incident of auto-rickshaw which he had seen in the Bopdev Ghat. That, thereafter, he went to

the police station and narrated the fact of noticing the auto-rickshaw by him on 28th August 2014.

29) PW No.5 in his cross-examination has deposed that, in the news the number of the auto-rickshaw was also mentioned. That, from 29th August 2014 to 31st August 2014, he did not go to the police station. PW No.5 has admitted that, he knows Vilas Babu Raut, as they work in the same institute. That, Vilas Raut comes with him for morning walks. That, on 28th August 2014, he was accompanied by Vilas Raut for the morning walk. The news pertaining to the incident with the deceased was published continuously for two to three days in newspaper and therefore, he went to police station on 1st September 2014. That, it is true that on 28th August 2014, when he had been to Bopdev ghat for morning walk, there were many vehicles which were passing in the ghat.

30) PW-2 Raju Choudhary, in his examination-in-chief has deposed that, spot panchanama at Exh.42 was prepared. That, on 2nd September 2014, he was called at police station, when the other panch Kashinath Gaikwad was also present there. One lady Police Inspector and one accused were present in Police Station. The said person disclosed his name as Vrishal Kalane. That, Appellant made disclosure statement, to the place where he had kept the chadar (bedsheet).

31) PW No.2 in his cross-examination, has deposed that he resides in the same society as the complainant. That, he was called at around 10.30 am

to 11.00 am. That, his working hours are 8.00 am to 6.00 pm. It is the specific case of PW No.2, that all the persons in the society were busy in search of the son of PW No.1, hence nobody went to attend work. That, contents of the panchnama were written by police and that he signed the same. PW No.2 has admitted that, the date on the panchnama is written as 28th August 2014. PW No.2 has denied that the spot panchnama (Exh.42) bears date as 29th August 2014 and that it was prepared on 29th August 2014. That, for reaching the spot of recovery, 40 minutes time was required.

32) PW-3 Sambhaji S. Bharti is the panch witness for recovery of body of deceased, in his examination-in-chief has deposed that, accused No.1 has disclosed his name as Madhukar Kalane. That, accused No.1, voluntarily stated that he would show the place in Bopdev Ghat, where he had thrown the dead body of deceased.

33) In the cross examination, PW No.3, admits that except this case, he has never acted as panch witness in any case. That, he did not enquire with police as to when the accused was arrested. It is pertinent to note that, PW No.3 has admitted that when he went to the spot, the police were already present at the spot. That, the road which leads to Bopdev Ghat has heavy traffic. That, the photographer or video shooting person did not accompany them in the jeep. That, at around 12.15 p.m., they proceeded towards Bopdev Ghat from police station and reached at the spot within a period of one to one and half hours. That, he was present at the spot up to 3.00 to 3.15 p.m.

34) PW-6 Arun B. Mahapure, in his examination-in-chief has deposed that, in his presence, Appellant made the disclosure statement that, he had concealed some articles in the house and he will show the same. That, the flat was locked, hence, Appellant procured the key from somebody and then, they entered into the flat.

35) PW No. 6 in his cross-examination has deposed that, he was called at police station at about 3.30 to 3.45 p.m. That, after the incident, police were frequently visiting the society. That, on earlier occasions, i.e. before going for recovery, police had visited the house of accused, on one or two occasion. That, he has no knowledge if the key of the flat was with the accused. That, he does not know, who opened the door of the flat of accused.

36) PW-8 Dr. Abhishek Kumar in his examination-in-chief has admitted the fact that, the body of the deceased was fully decomposed. That, maggots were found on dead body, which are at different stages. That, the abdomen and genitals were distended, the eyes and tongue protruded. That, there was prolapse of anus and the scalp were loose. That, parts of body of the deceased were eaten by the animals. That, the right and left wrist joint, right fibula and ankle joint were missing. That, right thigh inner aspect, middle 1/3, measuring 10 cm X 3 cm with exposers of underline bone present. That, bite marks of animals were present on the bones. That, these were external injuries. PW No.8 has deposed that, the cause of death could not be provided, as the body was in a highly decomposed state. That, the death had occurred

about 2 to 3 days prior. That, it was not possible to say whether the death of deceased was due to smothering, as the body was totally decomposed. It was opined that, in this case the possibility of homicidal death cannot be ruled out. The samples preserved for DNA examination were handed over to duty police officer along with postmortem report in a sealed condition.

37) PW-9 Varsharani Jivandhar Patil in her examination-in-chief has deposed that, the accused Madhukar Kalane came to be arrested on 30th August 2014 at about 11.50 hr. On 30th August 2014 the accused Madhukar Kalane made voluntary disclosure that, he and his son Vrishal threw the dead body of deceased at Bopdeo ghat and he will show that place. Accused Madhukar accordingly showed the place. That, the key of the flat was with the Appellant and by using key he opened the door of the flat.

38) PW No.9 in the cross examination has admitted that, she had not called for the call details of the phone of deceased and his father. PW No.9 has admitted that, where the body of the deceased was found, that area was not within jurisdiction of her police station, but within limits of Kondhwa police station. That, the Kondhwa police did not inform that, they found the dead body within their jurisdiction. That, on 27th August 2014 the statements of accused were recorded as a witness. That, she has not seen any blood stains or hair of deceased in rickshaw. That, she has not brought CCTV camera footage on record to show that rickshaw proceeded towards Bopdev ghat.

39) As regards the presence of motive and attributing it to the

Appellant, the prosecution relies upon the evidence of PW No.1 and PW No.4. Perusal of the evidence would indicate that the case of motive or an attempt to attribute motive is solely based on a mere suspicion. We find that, there is no concrete or proper motive attributable to the Appellant which has been established. We have noted that, even as per the prosecution case, the disputes or differences due to the tearing of the roof of the auto rickshaw is concerned the said disputes differences are allegedly with all the members of the housing society and not solely attributed to the appellant and his family. As far as motive is concerned, there is none proved or established. In fact the PW No.1 has categorically stated that, the Appellant used to talk with the deceased and had also given him beads, for being put in the cycle of the deceased. In view thereof, there is a clear contradiction as to the fact as to whether the Appellants family and PW No.1 and his family were on talking terms or not. This gains significance, as the prosecution has based its case for proving motive on the said fact. Considering the contradiction, we are of the opinion that the prosecution has in fact failed to prove the motive. Further, ascribing motive on such incorrect facts and contradictory evidence would be fatal to the prosecution. It is thus clear that the Appellant and the other Accused, were admittedly been arraigned as accused only on the basis of mere suspicion. We therefore conclude, that the prosecution has in fact failed to attribute any motive to the Appellant. Considering the aforementioned judicial pronouncements, we shall now proceed to examine if the prosecution has

been successful in proving the case on circumstantial evidence.

40) The fact and circumstance, sought to be relied upon the prosecution is that, the PW No 4 saw the Appellant and his father pushing the auto rickshaw at 4.00 am in morning of 28th August 2014. This is the only circumstance. Based on the said circumstance, the prosecution alleges that the body of the deceased was transported by the Accused for disposal and that the Appellant and his father were spotted with the said rickshaw near the Bopdeo Ghat, where eventually the body of the deceased was found. This circumstance, in our opinion does not take the prosecution case any further, in as much as, there is no evidence nor any fact/circumstance to indicate that the Appellant and/or his father were seen taking a gunny bag or any substantial heavy articles/parcel to the rickshaw, based on which an inference could be drawn that the body of the deceased was been carried away. Further, PW No. 9, has in the evidence clearly deposed that, there was no blood or hair or any evidence found in the auto rickshaw to indicate that, the body of the deceased was taken in the auto rickshaw. Further, admittedly the PW No.4 has not seen any movement or anybody or the Appellant and his family walking down the staircase. In the background of this factual position, the pushing of the auto rickshaw, without starting it even if accepted as proved is of no consequence and does not support the case of the prosecution as the further links of the chain are not established.

41) We also find that the disposition of the PW No.4 and PW No.1, in

respect of the layout of the flats and the building in relations to the road leading to the society is at a material variance and contradictory. The PW No.4, in her disposition has specifically stated that that the door of the flat is facing towards northern side and that the staircase of the building is in front of her flat. That, the entrance of the building is from the western side. That, the road in front of the building is in east-west direction. That, the windows of the living room, bed room and kitchen of the flat are towards the southern side. When we peruse the disposition of PW No .1 with regard to the aspect of the layout of the flats, we find that the description given by PW No.1 of the location of the building and layout of the flats is materially different. PW No.1 has stated that entrance of building is towards eastern side, while PW No.4 stated that entrance of the building is on the western side. That, the kitchen window of the flat of PW No. 4 is towards the western side, while PW No. 4 has stated that the kitchen window is towards the southern side. PW No.1 has further stated that the kitchen and living room window of the flat of Vikram Jadhav is towards the eastern side. Perusal of the evidence of PW No.1 and PW No.4 in respect of the layout of the building and flats in relation to the entrance and roads leading to the building are at a material variance. The said variance, demolishes the circumstance that the PW No.4 could have possibly seen the rickshaw being pushed physically by the accused No.2 and the Appellant. Considering the contradiction in the dispositions of the witnesses, it becomes doubtful as to whether the PW No.4 even witnessed the Accused

No.1 and the Appellant pushing the rickshaw. This circumstance in fact becomes doubtful.

42) Further, when the evidence of PW No.5 is considered, the same does not inspire confidence. If the evidence is considered, the PW No.5 has admitted that the rickshaw passed him in high speed and that he was unable to see the occupants. Surprisingly the PW No.5 has noted the RTO registration number of the rickshaw, at a high speed and when the PW No. 5 was on a morning walk with Mr. Raut. The said Mr. Raut is not examined by the prosecution. Even as regards the contention of PW No.5 that, he saw and remembered the registration number of the rickshaw, we find the same extremely doubtful given the aforementioned circumstances. Additionally, the evidence of the PW No.5 seems to be doubtful and unreliable, as PW No.5 has not reported the incident even after reading the same in the newspapers and knowing well that the said news was actively relayed on the news where the number of the vehicle was also disclosed. The reason that the delay was due to the rains, cannot be accepted in such serious matters. We find the evidence of PW No.5 unreliable and one which does not inspire confidence.

43) This present prosecution being based on circumstantial evidence, the starting point/circumstance, according to the prosecution is the suspicious conduct of the present Appellant and Original Accused No.3 Mrs. Kalane the mother of the present Appellant.

44) Perusal of the evidence of PW No.2 would indicate that, all the

members or majority of the members of the housing society were searching for the son of PW No.1. The prosecution has based its suspicion on the following facts:- (i) Appellant or his family members did not participate in the search operation/activity and that Accused No.3 informed that the Appellant would help in the search after the TV repair work is over; (ii) On 27th August 2014 at about 4.15 p.m., accused No.3 Nalini Kalane rang the bell of the flat of this witness and made enquiries of her daughter Durva as the Appellant wanted to allegedly play with her. The said conduct of Nalini was found strange/abnormal as she felt that as to how could the Appellant play with an infant child Durva;(iii) PW No.4 saw Appellant and Accused No.2 taking their rickshaw towards roadside by physically pushing it, without starting it and (iv) Accused No.3 was coming to the house of PW No.1 observing the events and leaving without saying anything.

45) Perusal of the evidence would indicate that, a substantial number of members of the society were already helping/ assisting in the search of the deceased. It may not be necessary that, each and every member of the society would participate in the search operation. One cannot loose sight of the fact that, it is also the case of the prosecution that, the Appellant and his family members were not in talking terms with the members of the society. Even otherwise, the conduct of the Appellants family more particularly the mother of the Appellant, at the highest may be termed as rude or an unacceptable social behavior but not which is suspicious or conduct which would give rise

to the suspicion. In these circumstances, if the Appellant or his family members did not immediately participate in the search operation/activity or if Accused No.3 informed that the Appellant would help in the search after the TV repair work is over, the same, in our opinion cannot be considered as a circumstance against the Appellant so as to raise suspicion against him.

46) PW No. 4, is the witness, on whose information the alleged suspicious circumstances came to light. PW No. 4 is one of the main witness, in a sense that, it based on the information provided by this witness that the suspicion against the accused has arisen. The other instance, based on which, the suspicion has arisen is that, on 27th August 2014 at about 4.15 p.m., original accused No.3 Nalini Kalane rang the bell of the flat of this witness and made enquiries of her daughter Durva as the Appellant wanted to allegedly play with her. PW No.4, found the said conduct of Nalini strange/abnormal as she felt that as to how could the Appellant play with an infant child Durva. However, from the evidence it appears that the when police had came to the society on 27th August 2014, this witness at the first instance did not disclose the said facts and suspicion to the police. This according to us is not a conduct of normal and prudent person and certainly not that of an immediate neighbor. The conduct of the PW No.4 raises some doubt.

47) The third instance on which suspicion is raised is that, PW No.4 Further, it is contended that this witness on 28th August 2014, at about 4.30 a.m., when she was warming the milk for her infant daughter, through her

kitchen window, allegedly saw that the Appellant and original Accused No.2 taking their rickshaw towards roadside by physically pushing it. We have noted that, the said witness specifically states that, on 28th August 2014, at about 4.30 a.m., she had not seen the Appellant and Accused No. 2, while going by staircase nor seen which color clothes were worn by deceased on 27th August 2014. We have also noted that this witness has also specifically admitted in her cross examination that, no child was going to the house of Appellant. If these statements and evidence of PW No.4 is considered, in its entirety the basis of suspicion including that the appellant not helping in the search or the story that the original accused No 3 made enquiries regarding the infant daughter of the PW No.4 appear to be doubtful.

48) PW No. 5 is the independent witness. In our view, the evidence of an independent third party witness is most crucial in a criminal prosecution and more so when based on and being adjudicated on the basis of circumstantial evidence. One would seek to rely on and seek corroboration from the evidence of an independent witness to test the genuineness and also the credibility of the evidence of the other prosecution witnesses and to see if the circumstances and facts are proved as required.

49) Perusal of the testimony of this witness, would indicate that, the witness when was on his morning walk has allegedly seen from a long distance i.e point from where the said stonewall starts, that one auto-rickshaw was stationary in the Ghat facing towards the Saswad town side. From the

said admitted long distance he has seen two persons standing beside the said auto-rickshaw. The said two persons are unknown to the witness. The witness has not stated that he could see the persons so as to identify them. The very fact that they were standing at a “long distance” the possibility of the witness in identifying any peculiar mark or trait of the persons is ruled out. The witness has further deposed that, when the said two persons, saw the witness they immediately boarded in auto-rickshaw and after taking turn, went towards Kondhwa side in speed. The witness has admitted that, the rickshaw was in speed, and he could not see the faces of said persons. The witness states that he was able to see the registration number of said auto-rickshaw as MH-12-HC-5749. This conduct, we find most surprising for seeing and registering the number of a vehicle which admittedly was passing by in speed and when the witness was on a morning walk with his friend. Further, this witness after witnessing the entire events, memorized or kept in mind the number of the auto riskshaw, but choose not to inform the police immediately. We further find even more surprising is the fact that, the witness even after getting knowledge of the unfortunate incident from the news/newspapers on 29th August 2014 and which news was running for a couple of days, did not inform the police for a period of 2 to 3 days of the incident. The reason given by the witness for the said conduct is that, on 29th August 2014 and 30th August 2014 there was heavy rain and therefore he could not go for the morning walk. The witness has stated that, after reading the news article, he

recollected the incident of auto-rickshaw which he had seen in the Bopdev Ghat. That, thereafter, he went to the police station on 1st September 2014 and narrated the facts which he had noticed on 28th August 2014 and also the registration number. We find this extremely surprising. We find, the conduct of this witness, not to be that of a normal and prudent person. Further, the reason given for the delay is also far from convincing. The heavy rains for the next few days may have created a hindrance to go for a walk, but for informing the police, we find that the rains cannot be an excuse or reason for the delay. One more reason, which makes the prosecution story doubtful or unreliable is that, the number of the auto-rickshaw was already mentioned in the news article. We have noted that, PW No.5 has not informed the police of the information/observation till 31st August 2014, as he did not go to the police station, although the news pertaining to the incident with the deceased was being published continuously for two to three days in newspaper. The said witness reported/informed the police only on 1st September 2014. This is after the arrest of accused, the recovery and discovery etc. We have also noted that the investigating authorities have not even conducted a test identification parade.

50) The other important aspect is that, Vilas Babu Raut and the witness work in the same institute and are known to each other. On 28th August 2014, the witness was accompanied by Vilas Raut for the morning walk. We have noted that the said Vilas Raut has not been examined. The

evidence of this witness is also doubtful as, the said witness has also deposed that on 28th August 2014, when the witness had been for his walk to the Bopdev ghat, there were many vehicles which were passing by in the ghat. For these reason the narration and evidence of this witness that he noted the registration number of the rickshaw becomes questionable.

51) PW No.6, is the witness who was present for the recovery which was done at the instance of the Appellant. The witness has stated that, the key was procured from somebody and then, they entered into the flat. Further, PW No. 6 has specifically stated that, after the incident, police were frequently visiting the society and before going for the recovery, the police had already visited the house of accused, on one or two occasion. This being the case the recovery at the instance of the Appellant becomes doubtful. The witness has further specifically stated that, he has no knowledge if the key of the flat was with the accused and he does not know, who opened the door of the flat of accused. Considering this, testimony and evidence of this witness, his presence at the time of the alleged recovery itself become doubtful.

52) PW No.2, the pancha for the spot panchanama, in his evidence has specifically stated that, on 2nd September 2014, when he was called at police station, the other panch Kashinath Gaikwad was also present there. One lady Police Inspector and one accused were present in Police Station. The said person disclosed his name as Vrishal Kalane. We have noted that, PW No.2 is known to the complainant, as in his cross-examination, he has

admitted that he resides in the same society as the complainant. Further, it has come in the evidence of PW No.2 that, the contents of the panchnama were written by police and he thereafter, signed the same. PW No.2 has further admitted that the date on the panchnama is written as 28th August 2014. PW No.2 has denied that the spot panchnama (Exh.42) bears date as 29th August 2014 and that it was prepared on 29th August 2014.

53) Perusal of the evidence of PW No.3, i.e. the pancha for the spot panchanama would indicate that, in his cross-examination, he admits that except the present case, he has never acted as panch witness in any case. The most striking aspect of the evidence is that, PW No.3 admits when he went to the spot, the police were already present at the spot. This part of the evidence is crucial and hits the very foundation of the prosecution case and questions the very recovery of the body of the deceased. Further it is also on record that, the photographer/video shooting persons were already present there and that they did not accompany the witness in the jeep. If the police and the photographer were already present at the spot, before the panch witness reaches there, the entire process of the recovery to a large extent becomes questionable. The testimony of this witness, therefore cannot be relied upon or accepted. In aforementioned circumstance and evidence in that regard the evidence of this witness is required to be discarded.

54) PW No.8, the doctor has specifically stated that the body of the deceased was in a totally decomposed state and therefore he could not

definitely give the cause of death. The doctor was not able to tell whether the death of deceased was due to smothering but has opined that, the possibility of homicidal death cannot be ruled out. We have also noted that the samples preserved for DNA examination were handed over to police along with postmortem report in a sealed condition. The result of the DNA testing would indicate that the deceased and the PW 1 have the same common male origin. The evidence of the Doctor, is in a sense of no consequence because the doctor has not been able to give any definitive opinion due to the condition of the body of the deceased.

55) In the evidence of PW No. 9, we have noted that, PW No.9 in her examination in chief has stated that on inspection of the internal portion of the rickshaw, one empty gunny bag was found which has blood stains, but in the cross examination the witness has specifically stated that, she has not seen any blood stains or hair of deceased in rickshaw. This admission, on a crucial circumstance, negates the prosecution story and makes the deposition of the witness doubtful. PW No.9 has further deposed that, she has not brought CCTV camera footage on record to show that rickshaw proceeded towards Bhopdev ghat. This according to us is crucial piece of evidence, which ought to have been considered by the learned trial court. If the auto rickshaw did not have any trace of the body of the deceased been taken in it, nor was any CCTV footage produced though available, warrants that an adverse inference be drawn. In this background facts, the evidence of the PW No.4 of seeing the

Appellant and his father physically pushing the auto rickshaw, without starting it, at about 4.30 am on 28th August 2014, will be of no consequence. In fact, not finding any trace of any blood stains or hair of the deceased, would negate the circumstances and thereby the prosecution story. The question as to how did the body of the deceased reach the alleged spot remained to be established by the prosecution. The chain of circumstances and the link therein would be weakened. According to us, the chain would snap. There is an unexplained gap and a missing link.

56) The chain of circumstantial evidence as per the prosecution case is alleged to be as under: -

- a) PW No. 4 opened the door of the flat of PW.1 and let the deceased son enter into the house.
- b) Mother of deceased son returned home at 5 O'clock, and saw that the door of the flat was open, and the TV was on.
- c) PW.No.1 identifies the said remote and claims ownership. The remote of the said TV has been allegedly recovered at the instance of the Appellant.
- d) PW. No. 4 has further proved the abnormal behaviour of the Appellant in wanting to play with the eight months old daughter of PW No. 4.
- e) PW No.4 has further stated of abnormal and suspicious conduct of the original Accused No.3 in not helping in the search of the

deceased and informing her that, Appellant would participate in the search after repairing the TV.

f) P.W. No. 4's evidence that original accused No.1 and present Appellant were spotted at 4.30 a.m in the morning, physically pushing their auto-rickshaw towards road without starting it.

g) The blood stains and other recovery i.e body of the deceased and the clothes etc are at the instance of original Accused No.1 and present Appellant.

h) That DNA of the deceased matched with P.W. No.1 being of the same male origin.

i) P.W.No.5, an Independent witness had seen two persons standing next to auto-rickshaw owned by the Appellant. That, on seeing him the said 2 persons sat in the rickshaw and fled away from there.

j) P.W.4 has deposed that, no child was going to the house of accused No.2

k) The strange conduct of Accused No.3 in going to the house of P.W.4 and asking P.W.4 the whereabouts of eight months old daughter Durva and informing her that the Appellant had asked her to bring to Durva for playing with her.

l) That, the blood stains found on the floor of the house of the accused and blood of mouldy mass extracted from the body of the P.W.1 was sent to the Forensic Laboratory have examined and found to

be identical/matching. Report discloses that the DNA profile of Exh-2 Mouldy Mass and Exh-3 blood detected at scene of crime (house of Appellant) are identical and very same source of male origin.

57) We find it necessary to mention that, we have not taken into consideration minor contradictions or gaps in the prosecution story which have remained to be explained. The said minor gaps are listed herein for the sake of completeness and to understand the purport and effect of such gaps. They are as under:-

- i) PW No.1 had not disclosed to the police authorities about missing articles from his house.
- ii) PW No. 1 personally had not gone to search for the missing son in the area of Bhekrainagar, Gadital , Mantharwadi chowk at Swargate.
- iii) That, Investigating officer has failed to conduct any investigation to ascertain call details location of the accused nor as the statement of accused No.1 is being video recorded.
- iv) That, the Prosecution has failed to prove that which of the activity of the accused was found to be suspicious.
- v) That recovery at the instance of the accused is of green tub, emote, clothes, handkerchief, gunny bag. We find that there are no blood stains of any of the articles except the blood found on the floor.
- vi) That, the investigating authorities had already visited the flat of the Appellant on a couple of occasions

vii) Yogita Jadhav, who has allegedly also seen the rickshaw being pushed though witness has not been examined.

58) According to us, even with the said minor gaps, the case against the Appellant would have been made out and proved but for the following material and relevant links in the chain which are totally absent, which are as under:-

- (i) The motive is totally absent. We further find that the attempt to ascribe a motive to the Appellant to say the least was uncalled for. An attempt has been made to attribute a general motive to a specific person i.e the Appellant. The non-disclosure of the alleged conduct of the Accused No 3, by the Prosecution Witness No.4 immediately to the investigating officer also raises doubts.
- (ii) There is no explanation as to how the body of the deceased reached at Bopdeo Ghat. The circumstance of the Appellant and his father physically pushing the rickshaw is of no consequence as there is no trace of hair or blood or any evidence to indicate that the body of the deceased was taken in the rickshaw. Nobody has seen the body being put in the rickshaw.
- (iii) That there was no forensic examination was done of auto-rickshaw to show that the body of the deceased was transported in the said auto-rickshaw. Due to lack of proving motive and preparation the chain is not completed.

- (iv) That, PW No.9 has stated in examination in chief that blood stains an hair were found in the rickshaw and with the help of scientific assistance the samples of the blood and hair from the rickshaw were collected. Surprisingly, there is no separate panchanama of the rickshaw. The Panchanama dated 30th August 2014 (Exh 58), is a panchanama allegedly of the flat of the Appellant and the rickshaw. There is no reference therein that blood and hair was found in the rickshaw.. Further in the cross examination, PW No.9 has stated that, there was no blood or hair in the rickshaw. This evidence in fact snaps the chain of circumstances.
- (v) Further considering the evidence of PW No.4, it is stated that the staircase of the building is in front of the flat and the door of the flat is facing towards northern side. The entrance of the building is from the western side. The road in front of the building is east-west direction. The windows of the living room, bed room and kitchen of the flat of PW .No.4 are towards the southern side.
- (vi) As against this the description given by PW No.1 of the location of the building and layout of the flats is materially different. PW No.1 has stated that entrance of building is towards eastern side, while PW No.4 stated that entrance of the building is on the western side. That, the kitchen window of the flat of PW No. 4 is towards the western side, while PW No. 4 has stated that the kitchen window is

towards the southern side. PW No.1 has further stated that the kitchen and living room window of the flat of Vikram Jadhav is towards the eastern side. Perusal of the evidence of PW No.1 and PW No.4 in respect of the layout of the building and flats in relation to the entrance and roads leading to the building are at a material variance. The said variance, demolishes the circumstance that the PW No.4 saw the rickshaw being pushed physically. Considering the dispositions of the witness, it becomes doubtful as to whether the PW No.4 even witness the Accused No 1 and the Appellant pushing the rickshaw.

- (vii) The CCTV footage though available was not brought by the investigating officer on record, therefore the movement of the rickshaw is not proved. The said non production of the CCTV footage, could possibly lead to drawing an adverse inference against the prosecution.
- (viii) Police were already at the spot before discovery and panch reaching. It means that the spot was already known to the police.
- (ix) The evidence of PW No. 5, the independent witness appears to be doubtful and does not inspire confidence. There is no test identification parade. The PW No.5, has not informed the police, of the incident and his observation till 1st September 2014. By 1st September 2014, the Appellant was arrested, panchanama of the

spot where the body was allegedly discovered was drawn up, the news article/ news was in circulation along with the registration number of the rickshaw. The disclosure by PW No. 5 after all of the above events creates doubts.

- (x) Furthermore, the conduct of PW No.5, in being unable to see the accused present in rickshaw due to the rickshaw passing by in high speed, but at the same time being able to see, read and register the number of the rickshaw and not disclose the same to the police till 1st September 2014 appears to be extremely doubtful.
- (xi) That the evidence of P.W.5 cannot be relied upon as P.W.5 has only seen auto-rickshaw from the long distance. Admittedly PW No. 5 could not see the faces of the persons in the rickshaw as the rickshaw passed him in high/fast speed. That, surprisingly at the same time, PW No.5 could identify the registration number of the rickshaw.
- (xii) Furthermore, PW No.5 was accompanied by Mr. Raut, who despite of being an independent witness has not been examined.
- (xiii) The prosecution has failed to establish the offences under Section 377 of the Indian Penal Code and Section 4, 5(1) and section 6 of the Protection of Children from Sexual Offences Act, 2012. The Appellant has been acquitted of the said charges. Therefore, it cannot be said that the motive behind alleged kidnapping was for

committing the said acts.

- (xiv) Even the act of kidnapping, is alleged to have been proved only on the basis that the remote control of the TV was found in the possession of the Appellant. As regards the remote, the PW No.1 has himself stated that he did not inform the police authorities of the missing articles from his house.
- (xv) The needle of suspicion is being pointed towards Appellant only on the ground that the Appellant's mother i.e. original Accused No.3 did not help in the search operation, and informed to P.W.4 that the Appellant would participate/assist in the search after he has finished the repairing the TV. This cannot be said to be a circumstance, in as much as according to the prosecution the entire society was helping in assisting the search operation.
- (xvi) That, P.W.4 found the conduct of the Appellant suspicious and strange, as the Appellant wanted to play with her daughter. This suspicion is contrary to the evidence of PW No. 4 who has stated that none of the children went to the house of the Accused. This being the case, the probability of Accused No.3 making the request becomes doubtful. Furthermore, more importantly PW No.4 has not disclosed this important fact to the police authorities on 27th August 2014, when the police visited the society. This very conduct of the PW No.4 makes the alleged suspicion doubtful.

(xvii) That, some part of the suspicion, is founded on the basis of hearsay evidence of P.W.1, that accused used to talk to the deceased. That motive and preparation for the said crime is missing.

59) In the present case, we are of the considered opinion that, the circumstances from which the conclusion of guilt is to be drawn are not fully established and the chain of circumstances is incomplete. We are of the opinion that, the circumstantial facts so established are not consistent only with the hypothesis of the guilt of the accused. The facts are explainable even to other hypothesis other than the guilt of the accused. We do not find that, the circumstances are of a conclusive nature and tendency or that they exclude every possible hypothesis except the one to be proved. In our opinion, the chain of circumstances is not fully complete. The evidence creates doubt in favour of the accused. As we have concluded that there was no motive, it was required that the evidence be appreciated in a manner where favourable and unfavourable circumstances are sifted and weighed against each other. In our opinion, the very fact that motive is absent or not proved, is one which would lean in favour of the accused.

60) In view of the aforementioned facts and circumstances and reasons, we are of the considered opinion, that the prosecution has failed to prove the case beyond reasonable doubt on the basis of the circumstances and the circumstantial evidence. We have noted that, the learned trial court has acquitted the Appellant of the offences of section 377 of the Indian Penal

Code.

61) In view thereof we are inclined to give benefit of doubt to the Appellant.

62) Hence the following Order:-

(i) The Judgment and Order passed by the learned Special Court, Pune, (POCSO) in Special Sessions Case No. 328 of 2014, is hereby quashed and set aside.

(ii) Appeal is allowed.

(iii) The Appellant be released from jail forthwith, if not required in any other case, on production of the authenticated copy of this Judgment and Order.

(iv) The Interim Application pending herein does not survive and is also disposed off.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)