

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CONFIRMATION CASE NO. 1 OF 2023**

State of Maharashtra .. Petitioner  
Versus  
Chetan Yashwantrao Pagare & Anr .. Respondents

**WITH**  
**CRIMINAL APPEAL NO.116 OF 2023**  
**WITH**  
**INTERIM APPLICATION NO. 3573 OF 2025**  
**IN**  
**CRIMINAL APPEAL NO. 116 OF 2023**

Aman Prakatsingh Jat .. Appellant  
Versus  
State of Maharashtra & Anr .. Respondents

**WITH**  
**CRIMINAL APPEAL NO.108 OF 2023**  
**WITH**  
**INTERIM APPLICATION NO.423 OF 2023**  
**IN**  
**CRIMINAL APPEAL NO.108 OF 2023**

Chetan Yashwantrao Pagare .. Appellant  
Versus  
State of Maharashtra & Anr .. Respondents

Ms. P.N. Dabholkar, A.P.P. for the Appellant/State in CONF/1/23 and for the Respondent in APPEAL/116/23 and APPEAL/108/23.

Mr. Nitin Satpute, Mr. Rachit Singh a/w Mr. Abhishek Bandekar, for the Appellant in APPEAL/108/23 and for the Respondent in CONF/1/23.

Mr. S.T. Pandey with Ms. Kajal Upadhyay, Mr. Deepak Singh, Mr. Imran Agsar and Ms. Deepika Jaiswal i/b SBG Legal, for the Appellant in APPEAL/116/23 and for the Respondent in CONF/1/23.

Mr. Mahesh Pawar a/w Mr. Mihir Kasliwal i/b Mr. Rahul Kasliwal, for the Respondent / Original Complainant in both appeals.

**CORAM: BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.  
RESERVED ON : 6<sup>th</sup> MAY, 2026  
PRONOUNCED ON : 25<sup>th</sup> June, 2026**

**P.C:-**

1. Five accused persons were charged by the Special Judge, Nashik in Special (MCOC) Case No.2 of 2013 under Section 3 (1) (i) of the Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOCA"), as it was alleged that they were the members of organised crime syndicate under the leadership of accused no.1 Chetan Yashwantrao Pagare, who indulged in organised crime with an objective of gaining pecuniary benefits using violence, coercion, threats and intimidation and for committing wrongful confinement of one Vipin Bafna for more than 3 days and thereby they committed an offence punishable under Section 3 (1) (ii) of MCOC Act. They also faced a charge under Section 3 (2) of the MCOC Act, as it was alleged that being the members of the organized crime syndicate they conspired to commit kidnapping for ransom and murder of Vipin Bafna under the gang leadership of accused no.1 and they were also charged under Section 3 (4) of the MCOCA.

All the five accused persons also faced charge under Section 120-B of IPC, as it was alleged that on 08/06/2013 all of them, as members of organised crime syndicate conspired with each other to commit an illegal act, namely, to kidnap for ransom and commit murder of Vipin Bafna and committed kidnapping for ransom and

murdered him in pursuance of the said conspiracy and therefore, they committed an offence punishable under Section 120-B of IPC. Since the accused persons kidnapped Vipin Bafna for ransom and put him to death, on failure of his father Gulabchand Bafna to pay ransom, they were also charged for committing an offence punishable under Section 364-A read with 34 of IPC.

In furtherance of common intention, since the accused knowingly caused death of Vipin Bafna, they also faced charge under Section 302 read with section 34 of IPC, and since they caused certain evidence connected with the offence to disappear with intention to screen themselves from legal punishment, they were also charged for committing an offence punishable under Section 201 read with section 34 of IPC. In addition, the charge against them also invoked Sections 343, 506 read with 34 of IPC, and they also faced accusations under the Arms Act, as they were found to be in possession of deadly weapon without any licence and the charge was also framed under Section 37(1) punishable under Section 135 of the Bombay Police Act.

2. All the accused persons pleaded innocence and they chose to be tried and they faced the trial before the Special MCOCA Court in form of Case No.2 of 2013.

In support of its case, the prosecution lead evidence of 37 witnesses and the evidence brought on record by the prosecution was put to the accused persons when their statements were recorded under Section 313 of Cr.P.C.

On appreciation of the evidence, the Special Court acquitted the three accused namely Akshay @ Valya Suraj Sule, accused no.3, Sanjay Randhir Pawar, accused no.4, and Pammi Bhagwan Chaudhari, accused no.5 of all the charges. The two accused, Chetan Yashwantrao Pagare and Aman Prakatsingh Jat were acquitted of the charges under the MCOCA, but they were convicted of the charges framed against them under Section 302, 201, 364-A, 120-B, 343 and 506 of Indian Penal Code (for short 'IPC')

The Special Judge relying upon the evidence laid before him and on recording a finding of guilt for the aforesaid charges, which were proved by the prosecution, extensively heard the prosecution as well as the Advocate for the accused no.1 and 2 on the point of imposition of sentence. Applying the principle laid down in several authoritative pronouncement, to fit the crime into the category of 'the rarest of the rare case', the fact that the victim was an innocent youngster, who had been done away to death for no fault of his own, and only for the sake of money and as he was killed in a brutal manner and his body was thrown in an isolated place, the learned Special Judge concluded that the offence committed by the accused was most heinous in the eyes of law. He also concluded that the victim was treated as a commodity and also inferred that the conduct of the accused explicitly showed that they are a menace to the society and looking into their antecedents and behavioral pattern, it was impossible that they would be reformed or rehabilitated.

By relying upon the principle of law laid down in ***Bachan Singh vs. State of Punjab***<sup>1</sup>, as well as the decision in case of

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1 1980 2 SCC 684

***Shankar Kisanrao Khade vs. State of Maharashtra***<sup>2</sup>, the learned Judge considered the aggravating and mitigating circumstances and by setting them apart, and by striking a balance between the two, an inference was drawn that there were approximately nine aggravating circumstances as juxtaposed against two of the mitigating circumstances that were collated. Giving full weightage to the mitigating circumstances, the balance-sheet of aggravating circumstances and mitigating circumstances was held to tilt in favour of the aggravating circumstances and the accused being of young age, was itself not sufficient to consider it to be a mitigating circumstance. It was concluded that the aggravating circumstances are outweighing the mitigating circumstances, and taking into consideration all the relevant factors i.e. crime, criminal balance-sheet of mitigating and aggravating circumstances, the conclusion was drawn that the offence committed by the accused fell into the category of 'rarest of rare'.

Since the Trial Judge expressed that there was no ground to show the leniency or mercy in case of such heinous crime, accused no.1 Chetan Yashwantrao Pagare and accused no.2 Aman Prakatsingh Jat, on their guilt being proved were directed to be hanged by neck till they are dead on being convicted for committing an offence punishable under Section 302, 364-A, read with 34 and 120-B of IPC.

In view of Section 28 (2) of the Code of Criminal Procedure, the sentence of death was subjected to confirmation by the High Court and that is how the Confirmation Case No.1 of 2023 is placed before us.

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<sup>2</sup> (2013) 5 SCC 546

Being aggrieved by the said judgment, the two accused, namely, Aman Prakatsingh Jat has preferred Criminal Appeal No. 116 of 2023, and accused Chetan Yashwantrao Pagare has preferred Criminal Appeal No. 108 of 2023.

The Criminal Appeals filed by the accused came to be admitted by order dated 29/01/2024. Upon the Record and Proceedings with the paper book being received in Confirmation Case No.1 of 2023, the three Appeals are taken up for hearing.

3. The State of Maharashtra in Confirmation Case No.1 of 2023 is represented by Ms. Dabholkar, the learned APP, who also represent the State in Appeal No. 116 of 2023 and Appeal No. 108 of 2023, Advocate Nitin Satpute represented the Appellant Chetan Pagare in Appeal No. 108 of 2023, wherein the learned Counsel Mr. S. T. Pandey represented the Appellant Aman Prakash Jat in Criminal Appeal No. 116 of 2023.

With their able assistance, we have perused the paper book, which comprise of the deposition of the witnesses as well as the documentary evidence brought on record which was appreciated by the Additional Sessions Judge, before delivering his judgment on 16/12/2022 which has given rise to the confirmation Appeal filed by the State and two Appeals by the convicts on death row.

4. Before we appreciate the submissions in the Appeals, it is necessary that we would briefly refer to the case of the prosecution as laid before the Trial Judge.

On 10/06/2013, PW-9 Gulabchand lodged an FIR alleging that his son Vipin, resident of Ozar, commuted daily to Nashik for

attending two classes, scheduled at 6:30 to 8:00 p.m. and 8:30 to 10:00 p.m. On 8/06/2013, Vipin was dropped to Nashik by his uncle at 5:00 p.m. by car, but he did not return home. However, between 11:00 to 11:15 p.m., on being contacted on his mobile, he informed that he was late from the class and had preferred to stay overnight with a friend named Deshmukh and his phone was disconnected.

On 9/06/2013 PW-9 and his brother Sunil inquired from the class of Vipin, to receive information that he did not attend the class the previous day and therefore they lodged a missing complaint at Panchavati Police Station, which was registered as CR No. 212 of 2013 under Section 364 of IPC. On the very same day, at about 11:00 a.m., Gulabchand PW-9 got call from Vipin's mobile number from an unknown person, who threatened that he must keep Rs. 1 Crore ready and must not tell anyone about the demand otherwise, they would cause harm to his son. He, therefore, approached the Panchavati Police Station and gave his statement to the police.

On 13/06/2013, PW-9 received another call from some unknown number demanding money and he responded by stating that he is ready to pay but he must be allowed to speak to his son but the phone was disconnected. This was also informed by him to the police on the very same date.

On 14/06/2013, at 4:00 p.m., he gained knowledge about the murder of his son, and on a call being received from the police, he approached the spot of the incident in Aadgaon Shivar on Vinchur-Dalvi road, when he saw the dead body of his son and he identified by him.

5. The investigating machinery being set in motion on the occurrence of the aforesaid events, the investigation was conducted and since the Investigating Officer attributed the act to an organized crime syndicate, Sanction under Section 23 of the Maharashtra Control of Organised Crime Act, 1999 was obtained and the case was made over to the Special Court. The accused were charge-sheeted on completion of investigation and charge was framed.

6. The version of PW-9 received corroboration from his brother Sunil Suhlal Bafna, examined as PW-14. He deposed before the Court that he dropped Vipin at Panchavati Karnja near Meghraj Bakery at around 5:00 - 5:30 p.m., on 8/06/2013 and thereafter, he picked up his daughter and went back to Ozar. On 9/06/2013, he received phone call from PW-9, informing about the threatening call received by him and therefore, they lodged a missing complaint.

PW-14 speak in sync with PW-9, when he deposed that from 9/06/2013 to 13/06/2013 they were searching for Vipin, and another call was received by his brother on 13/06/2013 demanding money. A further call was received about the dead body lying at Adgaon Shivar and on reaching the field, the dead person was identified to be Vipin. According to PW-14, he had sustained injuries on his body from which blood was oozing. The statement of Sunil was recorded on 10/06/2013, and his supplementary statement was recorded on 20/06/2013. He also identified the clothes worn by the Vipin on the day when he dropped him at Panchavati.

7. One Sanjay Suhlal Bafna, PW-20, the brother of the first informant, who runs a grocery shop in the name of Bafna Brothers also confirm the version of the informant that Vipin used to attend

tuition classes at Ashok Stambha between 6:00 to 8:30 p.m., and attended dance classes from 8:00 to 10:30 p.m., He received a phone call from his brother Gulabchand on 9/06/2013 informing that Vipin had not returned home and his mobile is switched off. According to him, father of Vipin took a search and when he could not be found, missing complaint was lodged with Panchavati Police Station. He corroborated the version of the informant by stating that his brother received a phone call from unknown person demanding a ransom of Rs. 1 Crore and threatening that if the demand is not satisfied, the consequence would be disastrous.

8. As per the case of the prosecution, on 14/06/2013 it was revealed to the family members that Vipin was found to be murdered when they received a call from the police, they went to the Adgaon Shivar on Vinchur-Dalvi road, to find his body outside a small house, which was identified by PW-9 and he also identified the articles belonging to him.

9. Narendra Pingle, the Investigating Officer attached to the Panchavati Police Station as Senior PI Crime received the information about one dead body lying at Adgaon in the agricultural field of one Mr. Salunkhe. In the presence of the relatives of the deceased, who identified the body and in presence of the panchas the inquest panchanama was conducted. Spot panchanama was prepared and the articles from the spot were seized. A rough sketch of the spot was drawn and further directions were issued to the Police Naik by the Investigating Officer to issue letter to the Civil Hospital to collect blood and nail samples of the deceased. The investigating machinery was thus set into motion to trace the accused, who had caused the

death of Vipin, son of PW-9.

10. During the course of investigation, several witnesses came forward, who provided clue to the Investigating Officer and after recording their statements and collecting the relevant evidence in form of the telephone calls as PW-9 had received call for ransom, five accused persons were nabbed and charge was framed against them, and they were put on trial. However, the trial Judge, acquitted three accused and only convicted accused no.1 Chetan Pagare and accused no.2 Aman Jat for committing offence punishable under Section 364-A, 302, 201, 120-B, 343, 506 r/w 34 of IPC.

11. The guilt of the accused persons was attempted to be proved by the prosecution, by resting its case on circumstantial evidence as there was no direct evidence available.

The chain commenced with the father of Vipin lodging a missing report, when his son who accompanied his brother Sunil Bafna (PW-14) on 8/06/2013, and was dropped at Panchavati Karanja in the regular routine for attending his classes, but did not return home. When attempt was made to contact him, his phone was switched off, but when contact was established between 11:00 to 11:15 p.m., he could speak to his son who told him that since he was delayed, he is halting at the place of his friend and his phone was disconnected. On 9/06/2013, the first informant along with his brother made inquiries with the coaching class of Vipin to gain information that he did not attend the class on the previous day and this prompted them to file a missing report on 9/06/2013.

Gulabchand received a phone call from Vipin's number and

one unknown person demanded a sum of Rs. 1 Crore and failure to do so, he was threatened of dire consequences. This resulted in he approaching the police on 10/06/2013 and lodging of a report. On 13/06/2013, he received another phone call from an unknown number when he expressed his willingness to make the payment as sought for but requested the caller to talk to his son, but this request was denied and the phone was disconnected. It is on 14/06/2013, when one dead body was found, it was identified by Gulabchand to be of his son.

12. In the chain of circumstances, falls one Hemant Deokar, a rickshaw driver, who was waiting for the customers at the rickshaw stand near Shitladevi temple on 9/06/2013, at around 9:00 to 9:15 a.m., and he was approached by Chetan Pagare accused no.1, Sanjay Pawar, accused no.4., Akshay Sule, accused no. 3, who were accompanied by one slim person. Aman Jat, who was behind the temple was called by Hemant from his mobile phone who responded by saying that he would come in two minutes and arrived at the spot a few minutes afterwards.

Hemant was told that some beddings were to be carried to the flat and thereafter accused no.1 and 2 along with the slim person sat in his rickshaw and they went to the flat of Aman Jat in the area of Kevdiban, River View Apartment. Two beddings were brought from the flat by Aman and put in the rickshaw and once again the trio sat in his rickshaw and asked him to take them to Dathrak Phata, Nishant garden, Nav Akash Apartment, Building No.12. Aman told the person in the rickshaw to take the bedding up, by calling him by his name 'Vipin' and thereafter Chetan and Vipin took the beddings to the flat.

Aman told to Hemant that his fare will be paid tomorrow.

Hemant Deokar, therefore, was cited as a key witness by the prosecution and examined as PW-18.

In the dock, he identified accused no.1 Chetan Pagare as well as Aman Jat and other accused persons. The slim person, who accompanied Aman and Chetan in the rickshaw was also identified by him when his photograph was shown to him (Articles 27 and 32). Before the Court he deposed that the person in the photograph was the slim person, who was in company of Chetan Pagare, Sanjay Pawar and Aman Jat on the said date.

PW-18 deposed before the Court that he was suffering from piles and diabetes, and he was admitted in Niramay Hospital from 9/06/2013 to 14/06/2013 and on 17/06/2013, he came across the news in the newspaper about Chetan Pagare, Sanjay Pawar, Akshay Sule kidnapping one person and demanding ransom of Rs. 1 Crore and he saw the photograph of Vipin in the newspaper, and he recollected that he had dropped the said person along with other four persons at Dhattrak Phata, Nishant Garden. He also recollected that the two persons, who were accompanying the person whose photograph had appeared in the newspaper were Chetan Pagare and Aman Jat. He therefore, called the police station from the Hospital and the police recorded his statement while he was admitted. His statement was also recorded by the Magistrate.

13. Another witness on whose version the prosecution has relied to establish the chain of circumstances is one Mayur Rajaram Kurhade, PW-17, who received a phone call from Chetan Pagare from the

mobile of Aman Jat on 12/06/2013. The phone call was received from mobile number 9511271313, and Chetan Pagare, who spoke to him from the mobile asked him to take his motorcycle Hero Honda from his house and bring it to the flat of Aman Jat near Panchavati college.

He abided by the directions and picked the vehicle from the house of Chetan Pagare. When he was at Jakat Naka, he received a phone call from Chetan Pagare and he asked him to come near M.E.T. college behind Girls Hostel. He went there on the vehicle and he was lead to a flat behind M.E.T. College Girls Hostel and found Chetan Pagare wearing banian and pant and sleeping on the cot with face downwards, whereas Aman was found sitting. Mayur was also asked to sit and he was there for 15-20 minutes chit-chatting.

He saw Vipin Bafna coming from the bedroom to the hall and kitchen arch on his knees with his hands tied behind, and his legs were crossed and tied with black lace and his mouth covered with white strip of cloth.

Looking at this scenario, he was frightened and he immediately expressed his desire to leave. While leaving, he was threatened that he shall not divulge what he saw to anyone, otherwise he would be done to death and he assured them that he will not disclose the incident.

14. Mayur Kurhade, being examined as PW-17, deposed about the happenings of 12/06/2013, and informed the Court that he did not speak about the incident to anyone as Chetan Pagare was a hardened criminal and was externed by the police and the incident was only

narrated to him by the police when his statement was recorded on 16/06/2013. His statement was also recorded by the Magistrate on 19/06/2013.

He was confronted with a CD, in which Mayur (PW17) is seen sitting and Vipin Bafna crawling on his knees with his hands and legs tied. There was also a sound of laughter and he identified it to be of Aman Jat.

Mayur is a witness who saw Vipin in confinement by the accused persons, and he specifically named Aman Jat and Chetan Pagare, who were present in the Flat, where he was asked to reach the motorbike of Chetan Pagare on 12/06/2013.

He identified Chetan Pagare and Aman Jat in the dock.

15. The body of Vipin, who went missing from the evening of 8/06/2013 was found in a field in Aadgaon Shivar, belonging to Rajendra Salunkhe, examined as PW-13. The agricultural land was uncultivated and there was a shed which was not in use but in a dilapidated condition with its doors and windows broken and this is reflected in the spot panchnama, which is proved through PW-2 Nemichand Madanlal Modi, who acted as a panch on the spot panchanama and the seizure panchnama.

From the spot, there is recovery of one goggle with grey glasses and a pair of brown colour sports shoes with '8' number, which was identified by Gulabchand as belonging to his son Vipin. From the spot, the samples of blood stained mud was also collected along with the gunny bag which was found at the spot. A wooden log (Article 5) was also recovered from the spot in addition to two pieces

of towel (cloth strip), which was also identified by the panch witness, Nemichand Modi (PW2).

16. The inquest panchanama is at (Exhibit – 77) and Gangaram Murlidhar Shelar, one of the pancha to the inquest panchnama is examined by the prosecution as PW-1. The panchanama refer to the injuries on the body, which was identified to be of Vipin by his father and uncle.

The inquest panchanama record the injuries on the body of the deceased on left and right hands, back and below the waist.

The body was thereafter sent for autopsy and the postmortem notes (Exhibit-162) is brought on record by the prosecution through Dr. Anand Vilas Pawar (PW-11). The postmortem notes were prepared by Dr. S.P. Datir, but since he was transferred to Nagpur, Dr. Pawar deposed on the basis of the postmortem notes prepared by him as the report was under the signature of Dr. Datir.

The postmortem, being conducted on 14/06/2013 from 17:15 p.m. to 08.25 p.m., and in Column no.17 of the report, there is a mention of 26 wounds, which include incised wounds as well as stab wounds and multiple abrasions. The postmortem notes, recorded the injuries in column 17, and in column 20, it record existence of fracture of 7, 8 and 9 ribs on the right side and the right and left lung collapse with rupture.

The cause of death as per the report was on account of '*hemorrhagic shock due to multiple stab injuries and multiple rupture of organs*'.

When Dr. Pawar was recalled, in the wake of the order passed by the Court, he admitted that postmortem notes were prepared by Dr. S.P. Datir, but he categorically stated that he has also performed autopsies. The Doctor is subjected to extensive cross-examination, but he remained consistent in his version that the injuries sustained was sufficient to cause death of the deceased.

From the postmortem report and the deposition of the Doctor who offered an explanation to the postmortem notes, though not the Medical Officer who conducted the autopsy, it is evidently clear that the deceased Vipin died due to hemorrhagic shock due to multiple stab injuries and multiple rupture of organs.

17. Upon conducting the investigation to the aforesaid extent, the Senior P.I. attached to Panchavati Police Station, Narendra Pingle analyzed the CDR and SDR in order to nail the assailants of Vipin, who initially went missing resulting into registration of CR No. 212 of 2013, by invoking the offence punishable under Section 364-A of IPC, but upon the body of Vipin being discovered, he sent a report to the JMFC informing that Section 302 and 201 are added.

On the basis of the investigation carried out and the analysis of CDR and SDR, on 15/06/2013, Aman Jat was called to the police station and it was found that he was shown as an accused on record at Panchavati Police Station. From the information supplied by Aman Jat, Chetan Pagare accused no.1 was also brought to the police station, to reveal that there was an injury sustained by him on his three left hand fingers. Thereafter, the other accused persons were brought to the police station and they were forwarded for medical examination. Through the investigating officer, the arrest

panchanama are exhibited to reveal that Chetan Pagare and Aman Jat were arrested on 15/06/2013.

Dr. Nareshkumar Shivajirao Bagul (PW-12) examined Chetan Pagare, who was referred to the Casualty Department of the Civil Hospital and he was brought to Panchavati Police Station. He was examined on 15/06/2013, and PW-12 issued medical certificate (Exhibit-164) in regards the injuries sustained by Chetan Pagare and the certificate mention of two horizontal incised wounds at the index finger and the little finger and one horizontal wound on the left middle finger at the tip.

PW-12, who examined Chetan deposed that the injuries were caused by sharp weapon and the age of injuries was more than 24 hours.

18. The Prosecution also relied on the discovery at the instance of the accused effected through Discovery Panchanama. Upon the arrest of the accused Nos.1 and 2, on 15/06/2013, while in police custody accused Aman Jat expressed his willingness to produce the memory card, in which the video clip of the deceased was recorded by him along with the sword-stick and the knife as well as the motorcycle which was used in commission of crime.

The memorandum statement was recorded in presence of two panch witnesses, Manoj Patani, being one of them, being examined as PW-3.

The memorandum statement record that Aman Jat lead the panch witnesses and the investigating team to Kevdi Van behind Dental College, Panchavati, Nashik, and when the vehicle was

stopped in front of River View Apartment, he lead to a black colour motorcycle of Hero Honda Company parked in the parking lot which was seized.

He also lead the investigating team to Flat No.1 in the apartment and by climbing on the cot, Aman Jat produced one memory card and sword-stick from the false ceiling. The said articles were seized by preparing seizure panchanama which bear the signature of PW-3 as well as the other panch and the investigating officer.

Similarly, on arrest of Chetan Pagare (Accused No.1), on the very same day i.e. on 15/06/2013, he expressed his willingness while in custody of the police to give a memorandum statement leading to production of the articles which were kept in the flat of Aman Jat. The memorandum panchanama prepared under Section 27 of the Indian Evidence Act (Exhibit-123) is brought on record by the prosecution through one of the panch witness being examined as PW-4.

When the panch witnesses, along with the team of the police officers at the directions of the accused reached Nav Akash building, the accused lead them to flat no.11, which was locked. The police broke open the lock and the accused lead the team to the kitchen and from loft of the kitchen, he produced 19 articles, which included a 14 inch blood stained knife (Article-17), blue colour jeans with blood stains (Article-19), cream colour tracksuit with blood stains, one blue jeans (Article-19), cream colour T-shirt, pieces of cello-tape (Article-29), pieces of shoelace (Article-23), four pieces of handkerchief (Article-24), 2 watches (Article-25), I-card of Bhujbal Knowledge

City (Article-27), one steel water bottle (Article-26), one receipt from Mumbai Education Trust (Article-28) and one sack bag (Article-22).

All the articles were sealed and when the panch witness stepped into the witness-box, he identified all the articles, including the knife (Article 17). The other articles seized through the memorandum panchanama from accused Chetan Pagare were identified by Gulabchand (PW-9) and this included article 27-Bhujbal Knowledge City College Identity card, college notebook, bus pass (Article 39), steel water bottle (Article 26), two watches (Article 25), a sack bag (Article 22). The Articles which were discovered and seized from Chetan Pagare were identified by the panch witness in the Court.

19. The weapons, which were discovered at the instance of the accused, Chetan Pagare and Aman Jat, were presented in a sealed condition to the Medical Officer, Civil Hospital, Nashik city, seeking his opinion, as to whether the injuries sustained by the deceased could have been caused by the said weapons. The said communication (Exhibit-158) is brought on record through PW-11, the Medical Officer.

He deposed before the Court that on receipt of the Exhibit-158 along with the sealed parcel, on its opening, he found two weapons; one being a knife and the other sword-stick. PW-11 examined the weapons and, he drew the diagrams, which was brought on record as figure-1 and figure-2, which described the dimensions of the weapon (Exhibit-159) and (Exhibit-160). As per the doctor, on examination of the weapons, he found blood stains on its handle and blade.

On examining the weapon, he gave his opinion, (Exhibit-161) and with reference to the weapon and the injuries by the deceased and, he specifically deposed thus:-

*“In my opinion, after matching the injuries present on the body of the deceased as mentioned in the postmortem report No.1190 conducted by Dr. S.P. Datir, it was found that injury Nos.1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 are consistent with being caused by sharp edged pointed weapon as in Fig Nos. 1 and 2. I also opine that death in this case was consequent upon the injuries sustained by the deceased. Accordingly, opinion was given by me. It bears my signature. Its contents are true and correct. It is marked as Exhibit-161.”*

20. As per the doctor, after examination, the weapons were repacked and resealed and handed over to the concerned person of the Police Station. Before the Court, he was again shown the weapons (Article-17 and Article A-15) which he compared to the figures drawn by him as figure-1 (Exhibit-159) and figure-2 (Exhibit-160).

The Medical Officer, therefore, confirmed that the injuries sustained by deceased Vipin were caused by the two weapons, which were discovered at the instance of accused nos.1 and 2 through a memorandum panchanama drawn under Section 27 of the Indian Evidence Act, 1872, which was proved by the two witnesses during the trial.

21. In addition to the recovery from the accused nos.1 and 2, the prosecution has also relied upon the recovery of wallet belonging to the deceased at the instance of accused no.4, Sanjay Pawar, and the Memorandum Panchnama (Exhibit-127) pursuant to the arrest of Sanjay on 15/06/2013 lead to the discovery of a wallet, which was kept below the cot in his house situated in Bhagwanpura, near

Hanuman Temple. Sanjay took out the wallet which contained receipt of dance academy, students' monthly ST bus pass, one passport size photograph, one copy of driving licence, one certificate of technical institute. In presence of the panch, the police seized the wallet and the things in polythene bag and by adopting the procedure, the same was seized.

Santosh Zanjari, the panch on Exhibit-127 identified the articles, i.e. the wallet (Article 30), driving licence (Article 31), Passport size photographs (Article 32), ST Bus pass (Article 33) the dance academy receipt (Article 34), and the technical institute certificate (Article 35). It is pertinent to note that PW-9 Gulabchand, father of Vipin also identified Exhibit-31, 32, 34, 35.

22. The prosecution also relied upon the discovery of Nokia company mobile phone belonging to the deceased, from accused no.3 Akshay Sule, which was given to him by Chetan Pagare and on his arrest he showed his willingness to produce the mobile phone concealed by him in his house. The memorandum panchnama Exhibit-133 is produced before the trial court through PW-6, Mohan Shinde, one of the panchas to the said memorandum and who accompanied the police team, who proceeded towards the house of Akshay Sule accused no.3. The Memorandum Panchnama record that on entering the house, Akshay went to one room, opened the door of a wooden cupboard and produced a mobile of Nokia company with black colour without a SIM card.

The mobile phone was seized and its I.M.E.I Number was noted to be '354866024450047'.

There is also recovery of clothes of the deceased from accused no.5, Pummy Chaudhari, through memorandum panchnama (Exhibit-137) proved by panch witness Ritesh Kothadiya.

Pummy Chaudhari, expressed her willingness to produce the clothes worn by Vipin, who was brought to her place by Aman. She accompanied the panch witness and the investigating team to her house and removed one black colour pant and white t-shirt from the iron cupboard in which she had concealed them. From the pant pocket, one monthly bus pass and one passport size photograph was recovered, and the clothes and the articles came to be seized and sealed. The monthly bus pass (Article 39), and the passport size photograph (Article 40), were identified by the panch witness along with the clothes i.e. Article 37 and 38.

PW-9 Gulabchand also identified Article 39-bus pass and the passport size photograph- Article 40.

23. In addition to the aforesaid recovery of articles, one more circumstance brought on record by the prosecution is the evidence about the accused leading the investigating team to the site, where the incident had taken place. Accused Aman Jat, on being arrested, expressed his desire to disclose the place and one Narayan Ghadge (PW-8) acted as a panch. In the custody of the police, Aman lead the team to Nav Jeevan Building No.12 and in particular flat no.11. He also lead the investigating team to Adgaon Shivar, and a panchanama was prepared (Exhibit-140).

24. With the aforesaid evidence being brought before the trial court, the prosecution established the chain of circumstances,

commencing from the disappearance of Vipin Bafna on 8/06/2013 and his body being discovered on 14/06/2013. By relying upon the testimony of PW-18 Hemant Deokar, who had seen the accused and the deceased together on 9/06/2013 and through PW-17 Mayur Kurhade who had seen Vipin being confined by accused nos.1 and 2 in the flat and he was threatened to not disclose the said incident to anyone, the prosecution has managed to establish the chain of circumstances leading to the inference that the deceased Vipin was kidnapped by the accused nos.1 & 2, and after that he was confined by them in a flat belonging to Aman Jat and the evidence brought on record by the prosecution has conclusively established that the deceased Vipin was in the custody of the accused nos.1 and 2. The flat No.11 situated in Nav Akash building No.12 was taken on rent by Aman Jat and this is established by the prosecution by examining Avinash Tandale (PW-16) who deal in the business of purchase and sale of flats and plots and letting out flats on rent. It is he who gave the flat of his maternal uncle on rent to Aman Jat in April, 2013. He has specifically deposed that Aman Jat used to stay there and he identified him in the Court.

25. The circumstance that the deceased Vipin was in confinement of accused nos.1 and 2 is also established through the memory card which is recovered by drawing memorandum panchnama under Section 27 from Aman Jat - accused no.2. Memory card which was seized during the investigation, was forwarded to Forensic Science Laboratory, Kalina along with the letter from the Investigating Officer.

PW-23 Abhijeet Belekar, the police constable is the carrier, who carried the muddemal i.e. two memory cards and one sealed photograph of Vipin Bafna to the Forensic Science Laboratory. In the cross-examination, he categorically admitted that the muddemal given to him was placed in his possession and it was valuable. On the muddemal being handed over, he proceeded to Mumbai by Panchavati Express along with the letter and the muddemal.

Exhibit-194, is the query report seeking comments on the shooting/recording in the memory card and also inquiring as to how many clips were comprised in the memory card and whether video therein was recorded by mobile camera or video shooting camera. A query was also raised whether the person seen in the video clipping is Vipin Bafna, whose photograph was also forwarded.

For the purposes of carrying out the examination two new memory cards (MICRO SD HC Card 2 GB of JV gold company) in red colour packet in sealed condition was also forwarded.

PW-24 police constable, buckle no.195, attached to Panchavati Police Station, also carried seized muddemal in sealed condition along with the letters to forensic science laboratory, Nashik and he deposited the seized muddemal.

26. The muddemal, which included the memory card (MICRO SD-capacity 1 GB) along with the two photographs were received by Sandip Patil (PW-26) working as Scientific Officer in Forensic Science Laboratory, Kallina.

PW-26 admitted that the said muddemal was sent in a sealed packet and received in the laboratory on 18/06/2013, and he started

analysis of the muddemal from 03/09/2013 and submitted his report on 25/09/2013. As per PW-26, upon analysis of the muddemal it was sealed and sent back to the concerned police station, and from the receipt of the muddemal till its dispatch, it was preserved properly in the exhibit room and he also produced before the court the chain of custody of the muddemal bearing his signature.

27. PW No.26 prepared a clone copy of the memory card bearing Sr. No. 0929004118078 with the help of an authorised software. While analysing the memory card, he found three videos; first video found was of 09/06/2013 recorded at 12.27 noon, second video of the same date recorded at 12.37 pm and third video of 13/06/2013 recorded at 4.31 p.m.

According to the expert witness, he did not find anything to have been tampered, nor did he find any human error while analysing the same.

He compared the photograph, which was forwarded to him along with the letter and he analysed and compared the same with the video clips and found that the person in the photograph was the same as in the video clip. PW-26 affirmed that the photograph and memory card of which he had done analysis could be identified by him. He was also shown the seal of the Forensic Science Laboratory and he identified the same.

Though this witness deposed that he had prepared CD of the memory card, it was not exhibited.

Since in witness box, he deposed that he had bought the original MICRO SD card, which he had examined, he was allowed to

play the same before the Court and three video clips were seen.

When the Memory Card was run before the Court, which according to him, was filed in the Court, it was found to contained three video clips. In cross-examination, PW-26, however, admitted that he had not issued any 65-B certificate while he undertook the cloning of the memory card and he also admitted that the police had not sent him the panchnama in respect of the hatch value.

28. Exhibit-215, the examination report of the memory card is exhibited through the said witness where it was clearly opined as below :-

*“The male in photographs provided for reference in Ex-2(Ex-2/1 and Ex-2/2) is found in the present video files, found in the memory card in Ex-1, by susceptible visual analysis.”*

The contents of the memory card is a crucial evidence relied upon by the prosecution. The memory card in respect of the video recording carried out by Aman Jat was seized from him while he was in police custody under the provisions of Section 27 of the Evidence Act. The Investigating Officer also obtained a report from the FSL about the memory card and the report was submitted to the Investigating Officer (Exhibit-215) which referred to the three video files; two videos recorded on 09/6/2013 and the third video recorded on 13/6/2013. The Investigating Officer prepared a panchnama about the contents of the memory card on 7/10/2013 (Exhibit-103). The said panchnama is exhibited through one of the panch witness Manoj Patani, examined as PW-3, as he acted as a panch, when Aman Jat expressed his willingness to produce the memory card in which the video clip of the deceased was recorded by him and this was recovered from a flat in River View Apartment, and it was found to

be concealed on the false ceiling of the room.

The same being seized and sealed, it was forwarded to the Forensic Analysis, Kallina, and the Memory card along with the CD and clone Memory Card were received from the Forensic Analysis Department in different sealed packets and the Investigating Officer deemed it appropriate to open the sealed packets and examine its contents by playing it on the computer. For this purpose, a separate panchnama was drawn (Exhibit-103) which bear the signature of the Investigating Officer Shri Pingle (PW-37). The panchnama also make reference to the photographs of the deceased forwarded for comparison with the videos in the memory card and the Micro SD, 2 GB memory card was played with the help of the computer and various screen shots of its contents were obtained.

The panchnama referred to a folder 'video' and one Annexure 'CY-285-13' a word document folder. In Annexure 'CY-285-13' three pages were found of which the printouts were taken and page no.1 comprised of two photographs of Vipin Bafna forwarded for investigation (Exhibit 2/1 and Exhibit 2/2).

Next to the same, is a photo print taken from the video after processing, in which Vipin is seen with a piece of cloth stuck in his mouth and his hands tied behind. On page no.2, the photograph of Vipin at Exhibit 2/1 and Exhibit 2/2 is compared with the photo print from the video where Vipin Bafna is seen sitting, whereas on page no.3, Vipin Bafna is seen with a locket hanging around his neck with 'OM'.

One file, bearing no.09062013007, which was found in Excel file, was clicked when Vipin Bafna is seen conversing and from the conversation which form part of the panchnama, Vipin is giving narration about the incident of the previous day when he had accompanied his uncle to the hospital and then he went to attend his classes. He is heard mentioning about a phone call received from one girl and when he was called to meet her, he went to Panchavati College, but found no one there, but at that time, Chetan arrived on a motorcycle and asked to accompany him.

In the video, Vipin then narrate as to how he was confined and told not to leave the flat where he was taken by Chetan and he was told that he was kidnapped. Stating that initially he thought it was a joke, but he was told to demand money from his father and he told them that his father do not have money, but his uncle has. He is then asked to connect the phone to his father and money was demanded.

There is a long narration from Vipin himself, when he spoke exhaustively as to why he was confined and by whom. Thereafter, the video is continued in another file where Vipin speak of the threat received by him from Chetan and he is heard lamenting since he was confined.

29. The panchnama further open file 12062013013, where Vipin is seen sitting near the wall with white shirt having black buttons and black pant with a white tape being fastened to his mouth and his hands tied at the back and even his legs tied with a black rope.

Chetan Pagare is also seen on the mattress with his face towards the wall and one person with blue pant, full shirt of a stout

built is also seen who is informed to be Mayur Khurade (PW-17).

The panchnama was prepared when the video clips were played in presence of the uncle of Vipin; Shri Kishor Bafna and he identified his nephew in the video.

The Investigating Officer, in his deposition, has spoken about the panchnama (Exhibit-103) by stating that to observe the contents of the memory card, he had taken help of Cyber expert, Vikas Naik and screen shots were taken of the visuals (Exhibit 96).

He categorically deposed that in all the photographs, which were drawn on the basis of the video, Vipin Bafna was seen and it was evident that he was confined and an adhesive tape was fixed on his mouth and his hands and legs were tied.

30. The prosecution has, therefore, successfully established that till 13/06/2013, Vipin was alive and he was in confinement and Vipin was made to talk and the video was recorded, where he spoke about the confinement and the demand of money since he was kidnapped. This recording was done by Aman Jat and the memory card in which the recording was done, was seized under recovery panchnama under Section 27 of the Evidence Act, and seizure is duly proved.

31. Another relevant circumstance, which has been brought on record by the prosecution to incriminate the accused Aman, is the CDR records. Deceased Vipin, who was using mobile number 7588195484 repeatedly received phone calls on 07/06/2013 and 08/06/2013 from one mobile number 7773989300. The prosecution has led evidence before the Trial Judge that mobile number 7773989300 was used by Aman Jat. This fact is established by

examining one Praful Tekade (PW-27). According to the said witness, the mobile which was being used by him with two SIM cards, one in his mother's name and another in name of Rameshwar Wad was stolen on 14/04/2013, when he went to watch the procession being taken out at Nashik Road on account of Dr. Ambedkar Jayanti. Since he got late he went to sleep on the station itself and when he woke up on the next day, he found that his mobile was stolen. He did not lodge any complaint in that regard, but on 10/06/2013, when he was present in a marriage ceremony, the officials from Washim Police Station inquired from him about the details of his mobile. Upon he being called by Washim police station in relation to his mobile, thinking that his mobile has been tracked, he reported to the Panchavati police station on 13/06/2013.

PW-27 established before the Court that SIM card No. 7773989300 is in the name of his mother and he produced form no. 6922094 (Article 44) to establish the same.

32. Since the mobile phone of Praful Tekade, which was stolen, had another SIM card in it and it belonged to Rameshwar Wad, he is also examined by the prosecution as a witness.

PW-28 deposed that he purchased a mobile phone and inserted idea company SIM card into it with the number 9011972139. While procuring the said number, he had provided his ration card and voter's card to the service provider. However, his mobile was broken and therefore, he gave the SIM card to Praful Tekade (PW-27) for use and since then he was using the same.

PW-28 corroborate Praful's version that when he was sleeping at the station after witnessing the Jayanti celebration, his mobile was lost and according to him, this information was given to Nashik Police.

33. The informant, the father of the deceased Gulabchand (PW-9) also informed the police and even deposed before the Court that on 13/06/2013, at about 6:06 p.m., he received a phone call from mobile number 9011972139 and this is the same SIM card, which was procured by Rameshwar Wad (PW-28) for his own use but was given to Praful Tekade (PW-27), whose mobile phone was stolen with both the SIM card numbers 7773989300 as well as 9011972139 in it, the mobile being stolen on 14/04/2013.

34. During the course of investigation, a requisition letter was sent for receiving the call detail record (CDR) in respect of two mobile numbers i.e. 7588195484 belonging to deceased Vipin and 7588195483 used by Gulabchand the father of the victim on whose mobile the call for ransom was made.

Nodal Officer from BSNL, Vikas Mali, collected the call details, a customer application form of the mobile numbers, and certified the same by providing 65-B certificate and furnished the relevant information to the DCB Crime Branch, Nashik, Vikas Mali was examined by the prosecution as PW-35 to produce the CDRs.

35. The prosecution has relied upon the evidence of one Radhakisan Gaikwad an owner of mobile shop at Bhimnagar, Nashik, being run in the name 'Sahil Enterprises'. He was indulging in mobile repairing and dealing in sale and purchase of secondhand

mobile handsets. It was his *modus operandi* to receive a mobile phone for repairing and putting a chit on the mobile handset by writing the name of the owner, the I.M.E.I number, and the amount to be paid for its repairing. Chit was affixed along with the mobile, and when the owner came to get his mobile back, it was handed over on receipt of the amount, and while returning home, the chit was then destroyed.

36. In June, 2013, inquiries were made with him in regard to one NOKIA Company Model 1200 and PW-22 received the mobile for repairing, and though he could not remember the name of the person who brought the mobile, he noted the I.M.E.I. number and the amount on the chit also mentioned the repairing charges as Rs. 300/-. He repaired the mobile, but the owner did not come to the shop.

He, therefore, put the mobile handset for sale and one customer came to the shop and purchased the mobile and while selling the mobile, the chit affixed with it was removed, and he wrote the name of the purchaser on it.

As per the owner of the shop, there was no SIM card in the mobile, but he scribed the name of the purchaser as 'Aman' who took away the mobile. Radhakisan produced the chit Exhibit-95, where he wrote the name of Aman with the make of the mobile and the I.M.E.I number.

In the witness-box before the Court, he identified the mobile (Article 36) which was sold by him to one Aman.

Article 36 (a mobile of NOKIA company of black colour) was seized, vide memorandum drawn under Section 27 from accused no.

3 Akshay Sule and PW 6, who acted as panch on the memorandum panchnama identified the mobile which was recovered from Akshay Sule.

37. The Investigating Officer deposed before the Court that during investigation, it transpired that 9 mobiles of witnesses and 5 mobiles of the accused persons were put to use and he had sought the CDR details from the service provider by sending them appropriate requisition and that was brought on record through the Nodal officers of the two service provider companies along with the certificate under Section 65-B.

38. The Investigating Officer (PW-37) deposed that Praful Tekade was using two numbers in a handset with dual SIM card and this mobile handset was stolen.

He also deposed that Radhakisan Gaikwad sold secondhand mobile set to Aman Jat and Aman Jat used this mobile for making phone calls to Vipin Bafna and even the phone call made by Vipin Bafna by using the mobile phone of his friend Yogesh Kadam, the SIM used was 7773989300 and this was in the mobile handset with I.M.E.I. No. 357993031858470. This is the same I.M.E.I. Number to be found on Exhibit-95.

This aforesaid fact is deposed by the Investigating officer based on the testimony of evidence of PW-34 Dattaram Aangre, Nodal officer with Vodafone Idea Ltd, when he produced the CDR of the numbers, which were furnished to him and this included the telephone numbers from which the phone calls were received by the deceased Vipin and his father. The CDR (Exhibit-262) established

that the mobile number 7773989300 which was used for calling the number 7588195484 (Vipin Bafna) was made by using a mobile with I.M.E.I. number. 357993031858470.

39. From Exhibit-262, prosecution has succeeded in establishing that mobile number 7773989300 has been used by Aman Jat to make consistent phone calls to the deceased on his phone, and this SIM was used in a mobile phone with the I.M.E.I. number, which was confirmed by PW-22, when he stated that he had sold his mobile with the said I.M.E.I. number to Aman.

Through the Nodal officer, it is also brought on record that phone calls were made by Aman Jat from SIM number 9511271313 on the mobile phone used by Chetan Pagare, who was using number 9764585333. From the CDR's it is evident that the various accused persons and in specific Aman Jat and Chetan Pagare, were in touch with each other before and during the time when Vipin was in their confinement.

40. The details of the mobile number 9764585333 used by Chetan Pagare is brought on record by the prosecution through PW-25, Harshal Shirapure, who informed the investigating agency and also deposed before the Court that the SIM card 9764585333 was in the name of his brother Ganesh Shirapure and he had taken the SIM card and used it for two to three days, but Chetan Pagare, accused no.1 liked the number and therefore he took it from him for his use at the end of 2011 and he was using the SIM card. He also deposed that when he requested to return back the same, he blankly refused by informing that he was using the SIM card. Considering his antecedents, he did not insist for receiving it back. Thus the

prosecution has also succeeded in establishing that the phone calls made by Aman Jat on SIM No. 9764585333 were made to Chetan, the co-accused.

41. The prosecution is also successful in establishing the tower location of the phone calls exchanged between the accused no.2 Aman Jat and the deceased as well as PW-9, the informant. PW-34, was shown the details of mobile number 7773989300 and 9011972139 which the prosecution has established to have been put to use by Aman Jat.

He deposed that the first number was registered in the name of Sunita Tekade, mother of Praful Tekade (PW-27), whereas the second number was in the name of Rameshwar Wad (PW-28). In the witness-box, he offered explanation of the CDR, which he had produced (Exhibit-262 and 263). He also produced the tower location list with cell id (Exhibit-264) and with its reference, he indicated the cell id address in the said Exhibit and with reference to Exhibit-262 and 263 i.e. the phone calls made by Aman Jat to the deceased Vipin and the phone call made by him to the father of the deceased PW-9, and he deposed thus:-

*“8. I am now referred Exh.262. Most of the calling on 08/06/2013 is done to mobile number 7588195484 from 7773989300. The tower location is 40422-10037-1771. This tower is situated at Plot No. 52, Parvati Smruti, Wadala-Pathardi road, Vinaynagar, Nashik. The radius of one tower in city is ranging from 400 meters to one kilometer and in rural area, radius is 5 to 6 kms. On 07/06/2013, most of the calls are made to 7588195484 from the mobile mentioned in column No.1. On 23/05/2013, there is only one call between these two mobile numbers. IMEI in column No. 9 is of mobile number mentioned in column No.1.*

*9. I am now referred Exh.263. It is with respect to mobile number 9011972139. There was call from the said mobile number to mobile No. 7588195483 on 13/06/2013. The tower location was 40422-10037-227. This tower location was at Madhu Plaza, near Patil Garden, 100 feet highway link road in Indiranagar.”*

42. The relevant exhibits being proved through PW-34, the Nodal Officer Vodafone Idea Limited has thus established the case of the prosecution that Aman Jat established contact with the deceased and persuaded him to join his company and he was in constant touch with Vipin even before the day when he was kidnapped. He also made a phone call to the father of deceased demanding ransom on 13/06/2013, on his mobile number 7588195483.

It is also established by prosecution that the tower location of the two phone calls is distinct as PW-9 was residing at some other place and not in the close proximity of Aman Jat. Thus, the involvement of two accused in the offence of kidnapping of Vipin for ransom and causing his death and throwing his body at the location from which it is recovered is established through reliable evidence.

Accused Nos.1 and 2, were also seen to be in touch through the mobile and SIM card used by Chetan Pagare was taken by him from Harshal (PW-25).

43. In the CDR, it is also noted that there is a phone call made by Hemant Deokar (PW-18), the Rikshaw driver, who had seen the accused and deceased together, and this phone call is made by him on SIM number 9511271313. He made three phone calls, all on June 9, 2013, at 19.30.01, 19.50.34, 19.54.31 hours.

It is PW-18 who had deposed that, when he was waiting at the Rickshaw Stand between 9 to 9:15 p.m., Chetan Pagare, Akshay Sule, and Sanjay Pawar with one slim person approached him. Aman Jat was behind the temple and Hemant called Aman from his mobile. He has admitted in the chief examination that he gave a phone call on

number 9511271313 and on he giving a call, Aman Jat came near the Rickshaw and told that the beddings have to be carried to the flat. The beddings being picked up from Aman Jat's flat in area of Kevdipant, River view Apartment, they were carried to building no.12 Nav Akash Apartment, Nishant Garden. The beddings were carried by Chetan Pagare, Aman and Vipin.

The testimony of PW-18 also established that Aman Jat was using mobile number 9511271313 from which number he made phone calls on multiple occasions to Chetan Pagare. The CDR have established the repeated connect between the two accused persons. Apart from this, mobile number 9511271313 was also put to use when Mayur Kurhade (PW-17) who had seen Vipin in confinement in a Flat, where he found him in the company of accused nos.1 and 2. PW-17 has also deposed that on 12/06/2013, Chetan Pagare had called him from mobile of Aman Jat and he specifically gave the number 9511271313 from which he received a call on his mobile number 9226750226 and Chetan Pagare talked to him and asked him to carry his motorcycle Hero Honda and bring it to the flat of Aman Jat near Panchavati college and he abided. This witness has also corroborated the case of the prosecution that mobile number 9511271313, which was in the name of PW-22 Radhakisan Gaikwad, the mobile shop owner, was used by Aman. Though, it has not been established by the prosecution as to how this SIM card came in possession of Aman Jat as PW-22 denied that he handed over the said SIM card to Aman. Though he admitted that he has various SIM cards in his name and they do not remember handing over the said SIM card to Aman. However, it is worth to note that in the statement

of this witness recorded under Section 164 before the Magistrate on 02/08/2013, he had stated that two and half months back, a mobile phone of NOKIA company 1200 model had come for repairing to him and the person who gave him for repairing did not return. Since the money did not come, he sold the mobile to one Aman Jat and since he had no documents for procuring the SIM, he gave him a SIM card which was in his name. He also categorically deposed that when he read in the newspaper about the Bafna case, he has given his statement to the Magistrate and he would identify the person to whom he has sold the mobile, though he did not identify him in Court and denied knowing him when he stepped into the witness-box.

In order to lend credence to the case of the prosecution the statement of PW-22, Radhakishan Pandurang Gaikwad, PW-27, Praful Tekade and PW-28 Rameshwar Vad was recorded before the Magistrate under Section 164.

44. Apart from the depositions and the version of the prosecution witnesses, the prosecution has relied upon the inquest panchnama (Exhibit 77) as well as the postmortem notes (Exhibit 162). The inquest panchnama is brought on record through PW-1 Gangaram Shelar, who while proceeding to the field, saw one dead body lying in the field of one Salunkhe and the dead body was identified to be of Vipin Bafna.

The inquest panchnama (Exhibit-77) record that there were injuries on the left and right hand, both side of the back below the waist, and the dead body had black colour T-shirt on his person. The panchnama also record that the death has occurred due to injuries sustained by sharp weapon on back, arm and other places on the

body.

The prosecution has also relied upon the postmortem report (Exhibit 159), which is brought on record through PW-11 Dr. Pawar, in which the cause of death is opined to be on account of multiple stab injuries and multiple rupture of organs, and though he is not the author of the postmortem report, on the basis of the said report, when he stepped in the witness-box, he opined about the injuries being caused by sharp edged pointed weapon in figure 1 and 2, and also opined that the death was the consequence of the injuries sustained by the deceased. He gave his specific opinion in that regard in Exhibit 161 in the form of weapon examination.

We have already discussed about the recovery of these weapons from the accused persons.

45. Prosecution has also relied upon the panchnama of the place, where the deceased was confined and the same is brought on record by one of the panch to the said panchnama same is brought on record through one of the panch (PW-10).

It is the accused Chetan Pagare, who lead the policy machinery to the said place while he was in custody of police and the investigating team with the panchas proceeded to NavAkash building and the accused lead them to Flat No. 12, where the panchnama was prepared, which along with the map of the flat, is also brought on record.

46. One more circumstance, on which the prosecution has placed reliance is the examination of Chetan Pagare by the Doctor in the Casualty Department in the Civil Hospital in the night of 14/06/2013.

The patient was brought by PSI Deore of Panchavati Police Station with an injury on his index finger, middle finger and incised wound on middle one third little finger. The patient gave the history that he was injured by way of knife on 13/06/2013, at 7:30 to 8:00 p.m.

As per PW-12, all the injuries were caused by sharp weapon and the age of injuries was more than 24 hours.

By examining the said witness, the prosecution has attempted to establish that there was a possibility that a scuffle took place in the incident when the deceased was done to death and since accused Chetan was present, he sustained an injury and the injury, according to the Doctor, was 24 hours old and caused by a knife. It is in light of the aforesaid evidence brought before the Sessions Judge, that he convicted the two accused persons Aman Jat, and Chetan Pagare and acquitted the other three accused persons.

47. The finding of conviction recorded in the impugned judgment, is based on the analysis of the evidence led by the prosecution before the Trial Judge in establishing the guilt of the two accused persons, Chetan Pagare and Aman Jat. It is conclusively established by the prosecution that they kidnapped victim Vipin for ransom, and then caused his death by use of deadly weapons i.e. knife & sword-stick and removed his body to an isolated place, so that the crime committed by them do not come to light. The chain of circumstances brought on record by the prosecution, with the evidence of the deceased found in the company of the two accused, by PW-17, Mayur Kurhade, as well as the rikshaw driver, who had seen the deceased in the company of the accused i.e. Hemant Deokar, along

with the phone calls made from the mobile of the deceased as well as the mobile phone used by Aman Jat along with the circumstance as to how Aman came in possession of the two SIM cards from which the phone calls for ransom were made to PW-9, as well as the mobile phones were used to establish contact with the deceased Vipin as well as the contact being established between the accused persons themselves have been painstakingly brought on record by the prosecution. The seizure of the incriminating articles under the recovery panchanama at the instance of the accused Chetan Pagare leading to recovery of knife and recovery of clothes stained with blood and recovery of article like piece of towel recovered from the spot matching with the pieces of towel recovered at the instance of Chetan Pagare has been held to be incriminating circumstances to record the finding of guilt against him.

Similarly, as far as accused no.2 Aman Jat is concerned, on the basis of the CDR report and on the basis of the testimony of PW-22 and PW-27, the prosecution has brought on record the use of NOKIA 1200 handset with IMEI Number, which has established that Aman Jat had made phone calls to the deceased as well as to the father of the deceased demanding ransom. Recovery of the memory card (Article-16) under the Memorandum Panchanama and the sword-stick (Article-15) had also established his involvement in the subject crime and prosecution has also established that it is this accused who had hired the flat to give effect to the conspiracy of kidnapping Vipin, son of PW-9 and for extorting the money from him.

48. With the consistent and reliable evidence brought on record against accused nos.1 and 2, the learned trial judge reached a

conclusion that the custody of Vipin on he being abducted remained with accused nos.1 and 2, till his body was discovered and the motive for commission of crime was the demand of ransom which though made was not satisfied as PW-9 approached the police station immediately on receiving the threatening calls. Based on the evidence, the trial judge held that there was sufficient evidence on record and a conclusion was reached that deceased Vipin was done to death with accused nos.1 and 2, although the charge under MCOCA was not proved and therefore all the accused persons stood convicted of the said charge.

49. We concur the conclusion arrived at by the learned Trial Judge and confirm the findings recorded in the impugned judgment as regards the guilt of the two accused persons and that they are responsible for causing death of Vipin which has been established through cogent and reliable circumstantial evidence, which inspire confidence, as the witnesses speak in sync with each other and the chain of circumstances brought on record established that it is the accused nos.1 and 2, who have committed the offence under Section 302 r/w 34 of IPC and it is these two accused, who have kidnapped the deceased with an intention to extract the amount from his father and therefore their guilt under Section 364-A, 343, 506 r/w 34 of IPC was also established.

50. The learned Public Prosecutor, Ms. Dabholkar, in support of the reference for confirmation of the death sentence imposed upon the two accused persons, would submit that five accused faced charge in the trial for kidnapping a 22 year old lad, and for confining him for 5 days and thereafter, murdering him for ransom. Out of the five,

three came to be acquitted and accused no.1 Chetan Pagare and accused no.2 Aman Jat are convicted.

According to Ms. Dabholkar, the charge-sheet compiled the relevant material establishing the involvement of the accused and charge was framed on 11/01/2017. She would submit that the investigation reveal the *modus operandi* of the accused, being to befriend the deceased, coax him into accompanying them by pre-planning and arranging resources, and then executing the plan of extortion of ransom from his father. According to her, the deceased was acquainted with accused no.1 and 2, which made it easier for them to threaten his father and also to eliminate him when the demand was not fulfilled. It is her specific submission that both the accused persons, who were sentenced to death, have criminal antecedents as various offences are registered against them and therefore, they had the mental setup for planning and executing a crime. For advancing their intent and purpose according to her, Aman hired a flat with the help of an agent and he also purchased a mobile from Radhakisan Gaikwad (PW-22) without a SIM, without using any of his document, but the document of Gaikwad were put to use. One mobile phone was also stolen from Praful Tekade (PW-27) from the Railway Station, which had two SIM cards; one in the name of his mother and other in the name of his friend. It is the other accused, Chetan who collected knife, rope, cello-tape, etc., and that is how the two accused persons arranged the resources for giving effect to their planning.

Thereafter, call was made to the deceased from SIM Card Number 7773989300 from 23/05/2013 on his mobile number and

they befriended the deceased and invited him to the hired flat on 8/06/2013, and then he was confined in the flat. He was made to change the clothes and his clothes were left in the flat of accused no.5, and thereafter, he was taken to the flat of Aman hired through PW-16, and then attempt was made to extract money from his father on the pretext of his abduction, but when they realized that the ransom amount is not coming and when a police complaint was lodged, the victim was done to death.

51. Taking us through the entire evidence brought on record by the prosecution in form of circumstantial evidence comprising of the electronic evidence, medical evidence, as well as the oral testimony of the witnesses, including the relatives and independent witnesses, she would submit that the prosecution has succeeded in establishing chain of circumstances, which do not leave any single ground consistent with the innocence of the accused and the chain is so clinching that it only point out to the two accused persons and this aspect was rightly appreciated by the learned Trial Judge, who recorded a finding of their guilt and in absence of any reliable evidence as regards the three other accused persons, who faced the charge, they came to be acquitted. According to the learned APP, the electronic evidence brought on record has also fully established the case of the prosecution and the Investigating Officers, (PW-33 36, 37) have specifically deposed about the manner in which investigation was carried out and the material collated to establish the guilt of the accused.

According to the Ms.Dabholkar, the evidence presented by the prosecution fully established the guilt of the accused beyond

reasonable doubt, and the learned Judge has also specifically recorded the reasons for handing over death sentence to the two accused for committing the offence which according to him was grave and serious and by striking a balance between aggravating and mitigating circumstances, a conclusion was reached that the case falls within the category of '*Rarest of Rare*'. The nine aggravating circumstances, as enlisted by the learned Judge, and in the wake of the brutality and heinousness of the offence, with no regard for human life, they were compared against the mitigating circumstances available, only two in number; the young age of the accused and absence of intention to commit the crime.

In light of the aforesaid material, it is the case of Ms. Dabholkar that the death sentence imposed under the impugned judgment against accused nos.1 and 2, deserve to be confirmed.

52. The learned counsel, Mr. Satpute, representing Chetan, accused No.1, has argued that the prosecution has failed to prove its case based on circumstantial evidence as the circumstances must be so placed against one another that it would not lead to any other inference than the guilt of the accused. He is extremely critical about the material brought on record by the prosecution through the evidence Ganesh Rajaram Shinde (PW-35) and according to him, the authenticity of the video clipping is not established by the prosecution. It is also his submission that the investigating officer did not maintain a station diary and there is no entry in the station diary reflecting the commencement of investigation and he also did not prepare a special report under Section 174 of Cr.P.C. According to Mr. Satpute, the learned Trial Judge has failed to consider that the

mobile phones, which were used were not in their name and no evidence is brought on record to establish that the mobile was used by the accused.

Relying upon the evidence of PW-36, who had deposed that Chetan Pagare sustained an injury along with the evidence of Dr. Nareshkumar Bagul (PW-12) who examined him, Mr. Satpute would submit that there is no relevance of the injury sustained by the accused Chetan, as it is not the case of the prosecution that some scuffle occurred when the deceased was done to death. Mr. Satpute would also rely upon various admissions, given by PW-37 and in particular, his admission that he did not conduct any investigation as to whether the mobile numbers used by the deceased and PW-9 were in their name. The Investigating Officer, according to Mr. Satpute, was unable to state as to why the local panchas were not called, when the seizure panchanama was prepared, and that he has not filed extracts of muddemal register along with the charge-sheet. According to Mr. Satpute, the prosecution has failed to discharge the burden to conclusively establish the guilt of the accused and therefore, the conviction and imposition of sentence cannot be sustained.

53. The learned counsel, Mr. Pandey, representing Aman Jat, has also pointed out the lacunae evidently appearing in the case of the prosecution, and he would submit that as regards the recovery of the memory card, the Scientific Officer (PW-26) admitted that he did not find any tampering, but he did not issue a certificate under Section 65-B of the Evidence Act. Apart from this, he would submit that a critical gap in the prosecution's chain of circumstances is a failure to establish the exact time of death and Dr. Pawar (PW-11), who did not

conduct the autopsy admitted that the post mortem report contain several lacuna, including the blank columns for dimensions and age of injuries and according to him, the medical officer, who actually conducted the autopsy was never examined.

Focusing his attention on the mobile numbers alleged to be used by Aman Jat, he would submit that the SIM card number 7773989300 was in the name of Sunita Tekade, mother of PW-27, whereas SIM card Number 9011972139 is in the name of Rameshwar Wad (PW-18), who gave it for its use to PW-17. Another SIM card number 9511271313 is in the name of Radhakisan Gaikwad (PW-22), the mobile shop owner, who allegedly sold the lost mobile of PW-27 to Aman Jat, but he failed to identify Aman Jat in the Court. Moreover, it is a submission of Mr. Pandey that prosecution has failed to establish that these numbers were used by Aman Jat and in its absence, the CDR records do not lend any credence to the case of the prosecution. Further, according to him, the owner of the flat which was hired by Aman Jat is not examined.

54. Mr. Pandey would submit that in cases of circumstantial evidence, the chain must be so complete, so as to leave no reasonable ground for a conclusion consistent with the innocence of the accused but in the present case, the discrepancies in the testimonies of 'last seen' witnesses, the lack of Section 65-B certification for electronic evidence, and the procedural infirmities in the recovery of articles break the required chain of circumstances and the judgment of their conviction and subsequent imposition of death sentence warrant an interference at the instance of this Court in exercise of its appellate power.

55. We have considered the submissions advanced on behalf of Additional Public Prosecutor in support of confirmation of the death sentence, and her opposition to the Appeals raising challenge to the judgment of conviction along with the imposition of sentence of death. The case rests on circumstantial evidence. As early as in 1984, the Hon'ble Apex Court in case of ***Sharad Birdhichand Sarda vs. State of Maharashtra***<sup>3</sup>, specified the circumstances to be satisfied before a case against accused is said to be established from which a conclusion of guilt is to be drawn and by relying upon the decision in case of ***Shivaji Sahabrao Bobade vs. State of Maharashtra***<sup>4</sup>, the Apex Court observed thus:-

*“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 Maharashtra where the observations were made:*

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

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

*(3) the circumstances should be of 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.”*

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<sup>3</sup> (1984) 4 SCC 116

<sup>4</sup> (1973) 2 SCC 793

56. The aforesaid test being laid for establishing the case of the prosecution, when there is no direct evidence available, but the circumstances in the form of five golden principles of circumstantial evidence constituting the panchsheel of the proof which the prosecution must establish, the burden being cast on the prosecution to prove beyond reasonable doubt that it is the accused and accused alone who have committed the crime. Every hypothesis, except the guilt of the accused will have to be ruled out and the case before us deserve to be tested on these well settled principles.

It is a well accepted principle in criminal law that suspicion, howsoever strong, cannot take place of proof beyond reasonable doubt and it is imperative for the prosecution to establish every circumstance in the chain of circumstances by adducing a proof thereof. The prosecution must discharge the burden of establishing the circumstance from which the conclusion of guilt is to be drawn fully, and also the facts so established should be consistent with the hypothesis of the guilt of the accused. The circumstances should be of conclusive nature and they should exclude every hypothesis, but the one proposed to be proved. In other words, it is necessary that the circumstances must be brought before the Court in form of a chain, so 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.

57. When we have examined the case of the prosecution, when five accused persons faced the charge under Section 364-A, 341, 302,

201, 120-B, 34 of IPC and under the provisions of MCOCA, as the accused were charged for kidnapping Vipin, a 22 year old, son of PW-9 Gulabchand in a planned manner for extorting an amount of Rs. One crore from the father and by keeping him in confinement to achieve this purpose.

The deceased used to commute to Nashik for attending the classes, and on the fateful date i.e. on 8/06/2013, he was dropped to Nashik by his uncle PW-14 by Car. He did not return home, but made a phone call to his father informing him that he would be staying overnight with his friend 'Deshmukh'. Inquiries were made by the family of the deceased to reveal that he did not attend the classes and on 9/06/2013, a phone call was received by PW-9 from the mobile number of his son, and an unknown person asked him to arrange an amount of Rs. One crore for release of Vipin. A missing complaint was lodged by the father at Panchvati Police Station, but he did not reveal that a phone call of ransom was received. After making inquiries that Vipin did not attend the classes, he lodged an FIR on 10/06/2016 and the offence under Section 364-A was invoked. On 13/06/2013, another phone call was received by Gulabchand from an unknown number once again demanding the ransom and threatening that if the amount is not paid, he will have to suffer dire consequences.

The information about the phone call was given to the Investigating Officer and before the investigation could progress, Vipin's dead body was found at Adgaon Shivar.

58. Upon identification of the body, to notice that the body was of Vipin, and in whose regard missing complaint was lodged by

Gulabchand, his father, the investigating machinery was set into motion and a spot panchnama was prepared. The investigating revealed that the dead person was inflicted injuries with sharp edged weapon and inquest of the body was conducted. PW-37, the SDPO directed photographs of the body to be taken and a spot panchanama was prepared and the articles found lying on the spot were seized. The body was sent for postmortem and the postmortem report revealed that the death was caused on account of multiple stab injuries and multiple rupture of organs.

Both the accused persons were arrested and an injury was found on the left hand three fingers of Chetan Pagare. Accused No.2, Aman Jat, while in custody of police led the investigating officer to his clothes, SD card, and gupti, whereas, from accused no.1, Chetan, articles like knife, clothes, sac, shoe lace came to be seized. Chetan also lead the investigating team to the place, where the deceased was confined. The weapons which were seized and made part of the investigation were forwarded to Dr. Anand Pawar (PW-11), who drew diagrams with the specifications, and he gave an opinion with the injuries of the deceased were possible by the said sharp edged weapon. Chetan Pagare, accused no.1, who sustained injury being referred to PW-12, was examined and it was opined that the injuries were caused to him by a sharp weapon and the age of injuries was also stated.

Investigation warranted an investigation into the aspect of how the deceased Vipin was caught hold by the accused and when the CDR of the phone of the deceased and his father were collected by the investigating officer, it revealed the link that the deceased was

receiving phone calls from accused Aman Jat, and even the phone call received on 13/06/2013 by Gulabchand, was from a mobile phone which was traced to accused no.1. The material collected from the spot as well as the one which was seized upon drawing of discovery panchnama, which included a memory card was forwarded to the Forensic Science Laboratory, Kalina, and it was converted into a CD and screenshots were drawn, and there was a comparison of the person seen in the video footage drawn from the said memory card with that of the deceased, and the accused and the involvement of the accused nos.1 and 2 clearly surfaced on record.

59. On the charge-sheet being filed in the competent court, all the accused were subjected to trial and the prosecution examined 36 witnesses to establish the charge levelled against the accused. PW-2 to PW-8 and PW-10 acted as panch witnesses, as they were signatory to the panchnama carried out for various processes resulting into recovery of articles from the accused persons as well as recovery of the clothes of the deceased. Accused No.1 also acted as a panch witness upon the panchnama being prepared of the dead body which was identified to be of 'Vipin Bafna' by his father and uncle. Accused No.2 acted as a panch for the seizure of the articles found lying on the spot including the shoes and two pieces of towel stained with blood, one gunny bag, as well as one wooden log with blood on one side and one goggle. Samples were drawn with the earth mixed with blood and all the articles were properly sealed by drawing a panchnama.

The prosecution also relied upon the testimony of two witnesses, which proved to be crucial being the testimony of PW-17,

Mayur Kurhade, friend of Aman Jat, who acted on his directions and brought the motorcycle to the flat in which Vipin was confined and he deposed before the Court that on 12/06/2013, when he went to the flat of Aman Jat, he referred to the presence of Chetan Pagare and Aman Jat along with the Vipin Bafna, who was in confinement. He specifically deposed that his hands were tied, his legs were crossed and tied with black lace and there was a white strip affixed on his mouth. He was threatened by the two accused persons that this incident shall not be disclosed by him to anyone and considering the fact that Chetan Pagare was a hardened criminal, he kept mum, but subsequently recorded his statement and also deposed before the Court about the scene noted by him on 12/06/2013.

Another important witness, who saw the deceased in the company of the accused person is a rickshaw driver (PW-18), who categorically deposed that he was asked by the two accused persons to carry the bedding to one apartment and, they approached Nav Akash Apartment, Building No.12, when accused no.1, Aman took the bedding and asked deceased Vipin to bring up other and he was told that the payment due to him shall be made subsequently. Hemant Deokar identified the accused as he knew them by names and he also identified the slim person to be the deceased from the photographs.

60. The prosecution also relied upon the evidence, as regards the mobile/SIM card and PW-22, the mobile shop owner, who was engaged in mobile repairing and dealing with sale and purchase of secondhand mobile cell handsets, deposed that he received one mobile phone for repairing and he used to note the I.M.E.I. number, write the name of the owner, when he received the mobile for

repairing. He deposed that a Nokia company model 1200 came to him for repair and he charged Rs. 300/- for its repairing, but the person who gave it did not come back and therefore, he sold the mobile to one person and noted his name on a chit. The chit was produced by him, which was seized by drawing a panchnama with the name 'Aman' scribed on it, though PW-22 was not able to identify Aman in the Court, in our view, what was the relevant circumstance was the purchase of mobile phone by accused no.2, Aman, from PW-22.

As per the prosecution, this mobile phone was used by Aman when he inserted the SIM cards, which were procured by him from a mobile phone belonging to Praful Tekade (PW-27), who lost his mobile and which contained two SIM cards, one in the name of his mother and other in the name of his friend Rameshwar Wad.

Prosecution also examined Rameshwar Wad (PW-28) to state that, it was Praful Tekade, who was using his SIM card with number 9011972139. With this evidence on record, when the CDRs of the two SIM numbers i.e. 7773989300 and 9011972139, were procured from the service provider i.e. Vodafone Idea Limited and BSNL, the prosecution established the connect by examining PW-34 and PW-35.

It was established that the phone calls were made from these two numbers, which were used by Aman Jat and the phone calls were received on the number of the deceased as well as PW-9 and who received a ransom call. The prosecution has also established the constant connect between number 9764585333, used by Chetan Pagare accused no.1, and PW-25 deposed that the SIM was in his name but he had given it to Chetan Pagare.

The prosecution has established that accused nos.1 and 2 were in constant touch with each other, and this establishes the conspiracy hatched between the two for kidnapping Vipin, demanding ransom and when the demand is not satisfied, causing his death.

61. The aforesaid evidence, being corroborated by the version of the Investigating Officers as well as the experts from Forensic Department i.e. PW-26, the learned Trial Judge appreciated the evidence and rightly reached a conclusion that it is the two accused persons, i.e. accused nos.1 and 2, who are the responsible for kidnapping Vipin, making phone calls for ransom by hatching a conspiracy and thereafter, since their demand for ransom was not made by PW-9, he was done to death and in the investigation, the weapons which were the cause for his death were also recovered and seized. Furthermore, in light of the other corroboration in form of identification of the belongings of the deceased by his own father, which were found from the spot and which were recovered from the accused persons, lead the Trial Judge to draw an inference, but the chain of circumstances has been conclusively established without any gap, and it conclusively proved that it is only the two accused who have committed the offence.

The Trial Judge, by referring to the evidence produced by the prosecution reflecting the sequence of incident i.e. kidnapping, calls for ransom and then murder, appreciated the evidence laid by the prosecution, by considering the circumstance of the plan to trap the victim, and to kidnap him and thereafter causing his death as the demand for ransom was not satisfied. Heavy reliance is also placed upon the discovery of Articles, including the weapons under Section

27 as well as the electronic evidence, including the memory card from Aman Jat (Exhibit -92) and the recovery muddemal article i.e. the memory card (Article -15) which was proved through PW – 3 as well as the Investigating Officer PW – 37. The said memory card was kept hidden by the accused Aman Jat in the room at River View Apartment and since Aman had exclusive knowledge about the said memory card, which was subsequently forwarded for analysis, the Trial Judge relied upon the evidence, by observing that the memory card, which was in form of primary evidence, which resulted into the videos and pictures being drawn therefrom and the evidence of PW – 26 was relied upon who deposed that the said evidence was not tampered. Apart from this, the link of CDR and SDR of the mobile phones used by the two accused persons and the phone calls made on the mobile phone of deceased and his father was also exhaustively dealt with by the learned Trial Judge. The Trial Judge also noted that the SIM cards used by the accused persons were not in their name, but the connect between the numbers used by them and the accused was efficiently brought on record by the prosecution. The Trial Judge specifically recorded the following conclusion in paragraph 120 :-

*“120. As discussed above, prosecution has established various circumstances i.e. since inception, designed plan to trap the victim phone-calls for ransom, phone-calls inerlinked accused No.1 & 2 and witnesses who were known to them and that they have deposed about last seen of the deceased Vipin in the company of accused Chetan Pagare and accused Aman Jat. Further, circumstances as to the discovery of incriminating articles at the instance of accused and from the spot of incident, CA reports which further established connection of accused No.1 & 2 with the incident. Defence of the accused No.1 & 2 is of total denial. Statements of accused recorded u/s. 313 of Cr.P.C., reflects that they did not explain any of the circumstance, put up to them.”*

The Trial Judge also recorded that the motive of committing the offence was very clear that is to extract money by putting the

victim and his family under pressure.

62. In the wake of the aforesaid evidence being brought on record, the Trial Judge recorded a finding of guilt though in absence of any material to establish the charge under the MCOCA, the accused persons stood acquitted. We concur with the opinion expressed by the Trial Judge in recording the finding of conviction, as regards the two accused, and see no reason to interfere with the said finding which is based upon proper appreciation of evidence brought on record by the prosecution through 36 witnesses and particularly, when the entire evidence being put to the accused nos.1 and 2, nothing was brought on record to impact its credibility. Though the accused persons had cross-examined the prosecution witnesses, the testimony of the prosecution witnesses remained unshattered, and though exhaustive arguments were made before the trial court about the lacuna and investigation, the learned Trial Judge has rightly observed that unless and until the lacuna pointed out, is vital and goes to the root of the matter which would render the case of the prosecution unbelievable, they deserve to be ignored, as they did not materially affect the case of the prosecution. We therefore, do not find any reason to interfere with the finding rendered by the Trial judge in recording the guilt of the two accused persons.

63. Then, the question arises whether the imposition of death penalty by the Trial Judge deserves confirmation and since the State has filed the reference for confirmation of the death sentence, and in exercise of the power conferred under Section 366 of Cr.P.C., the sentence of death cannot be executed unless confirmed by the High Court and while confirming the death sentence, it is imperative for us

to appreciate whether the imposition of death sentence is justified.

While imposing the death sentence upon the two accused persons, the trial judge has applied the test of '*rarest of the rare case*', and considered the mitigating circumstance, namely the age of the accused no.1 being of 25 years, and accused no.2 of 22 years.

As against this, the Judge considered the aggravating circumstances emerging on record to the following effect:-

(I) The offence is relating to commission of heinous crimes like murder, kidnapping and offences against human body etc., by the accused with a prior record, though there was no previous conviction handed over to them in the past, but many offences were registered against the accused for the previous 10 years.

Accused no.1 was externed and there were many complaints against the accused about their conduct and creating terror in the mind of general public and that they were leading life of vagrancy.

(II) The offence was committed while the offender was engaged in the commission of another serious offence : Record reflects that many offences were registered against the accused before the incident. It reveals that when they were on bail, they have committed the present offence which is very much heinous in nature. Initially offence of kidnapping for ransom, wrongful confinement was committed and during the course, accused committed brutal murder of the victim.

(III) The offence was committed with the intention to create fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of

a person. Evidence indicates that the accused made phone-call on 13.06.2013 to the father of victim and threatened that “गद्वारी करतो आहे” These words indicate that accused came to know that the father of victim approached police. On the next day, dead-body of victim Vipin was found. Deadly weapons like knife and sword-stick were used by accused to inflict multiple fatal stab injuries upon victim. This circumstance further indicate that the offence was committed with an intention to create fear in the mind of public at large as a consequence of non-fulfillment of the demand of ransom, so that, no-one should dare to resist the act of accused by lodging complaint against them.

(IV) The offence of murder was committed for ransom i.e. to receive money or monetary benefits : Evidence on record clearly indicates that the victim who belongs to sound financial background, was kidnapped and there was demand of ransom for Rs. One Crore. But when accused realized that the father of victim approached police, they have brutally killed the victim.

V) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim : Evidence on record indicates that victim was confined in the room. He was kept in a situation where his limbs were tied and mouth was gagged. Accused persons shot a video of the victim which further point out reckless behaviour on their part. Victim who was defenseless, was confined like an animal, outrageously and was tortured for no fault on his part. Mental torture and inhuman treatment through which deceased must have gone after he was kidnapped, cannot be imagined. Manner in which victim was killed was literally dreadful.

(VII) When murder is committed for a motive which evidences total depravity and meanness: The crime was committed with only motive to earn easy money. After kidnapping of victim, accused made phone-call to the father of victim for demand of ransom of Rs. One Crore. When their demand was not fulfilled, they have brutally done away with the victim.

(VIII) When there is a coldblooded murder without provocation: Victim was confined by the accused. Evidence indicates that his clothes were also changed. He was initially confined in the flat and thereafter, he was taken to an isolated place i.e. barren land where upon one dilapidated house structure was standing. Victim was brutally killed over there. All these circumstances clearly indicate coldblooded & pre-planned murder committed by accused.

(IX) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society: The manner and circumstances in which offence was committed, lead horrifying impact on the society. During routine of normal people, one young boy was suddenly kidnapped. Thereafter, threatening call for ransom were received by his family members. Faith of the family and the victim was kept hinging at the whims of accused. Thereafter last call was received by the father of victim on 13.06.2013. At that time, he requested accused to allow him to talk with his son but accused disconnected the call. Next day, dead-body of Vipin was found, lying at an isolated place. Injuries noticed on the dead-body reflected barbaric act attributed to the accused. Victim was defenseless, young boy of 22 years old. But then also, these two accused, who were in complete dominating position, assaulted him

with deadly weapons like sharp knife and sword-stick and inflicted multiple stab injuries. Inquest panchanama gives vivid idea of the situation of dead-body which indicate that the crime was committed so brutally that it shock the conscience of the society.

64. Relying upon various precedents, for striking a balance between the aggravating and mitigating circumstances, the trial Judge arrived at a conclusion that the guilt of the accused under Section 364-A r/w 34 of IPC, which is proved must be considered to be of the gravest nature, which justified stringent punishment prescribed for the offence. Similarly, they were found guilty under Section 302 of IPC, which contemplate punishment for death. Recording that the accused committed murder of a 22 years young boy with whom they had no previous enmity, nor was there any provocation on his part instigating the accused to take his life and the fact that there were 26 fatal injuries inflicted on him with deadly weapons, an inference was drawn that the mode and manner of commission of offence was ruthless and vicious and was indicative of extreme pervert mentality and also was assertion of a fact that the accused had no value for human life.

The trial Judge also applied the well settled principle that while imposing the punishment, the Court is required to consider as to whether the collective conscience of the Society was shocked and it will expect the holder of the judicial power to inflict death penalty, as ultimately, punishment is the way in which the Society expresses its denunciation of wrongdoing; and in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by majority of citizen for

them. Holding that there are about 9 aggravating circumstances, whereas none of the mitigating circumstances are available and though young age was projected as a mitigating circumstance, that itself would not compete with the 9 aggravating circumstances, by weighing all the mitigating and aggravating circumstances and holding that the aggravating circumstances outweighed the mitigating ones, and the criminal track record of the accused and their conduct in jail, further fortify that there is no likelihood of their reform, as the offence committed by them was brutal, inhuman and diabolic, the learned Judge arrived at a conclusion that there is no reason to show leniency in case of such heinous crime and handed over death sentence to the accused Aman Prakash Singh Jat and Chetan Yashwantrao Pagare on being convicted for the offence punishable under Section 302, 364- A r/w 34 and 120-B of IPC.

65. The death penalty jurisprudence strongly embedded as one of the punishment for heinous and grave offences is operated in India under 'rarest of rare' doctrine where death sentence is imposed by way of an exception and life imprisonment is the rule, and it is mandated only when the rehabilitation of the offender is impossible. Though Article 21 guarantee 'Right to life and liberty', it allows its deprivation according to the 'procedure established by law'. The imposition of capital punishment in case of serious offences like murder, terrorism resulting in death, gang rape, under the IPC as well as BNS, reflect that it is a punishment, which is only available in grave offences and while imposing death sentence, it contemplate recording of 'special reasons'.

The Apex Court, in a Constitution Bench decision, in case of **Bachan Singh** (supra), while upholding the constitutionality of death penalty, limited it strictly, to cases where the alternative of life imprisonment is unquestionably foreclosed.

In case of **Macchi Singh & Ors vs. State of Punjab**<sup>5</sup> the Apex Court directed a balance-sheet of aggravating and mitigating circumstances to be drawn to ascertain whether the case falls in 'rarest of rare' category and the Court was expected to draw a balance-sheet of the two before forming an opinion as to whether the case would fall within the rarest of rare category. For the reason that though death penalty was recognized as a deterrent penalty, it is expected to be resorted to only in exceptional circumstances.

The broad guidelines laid down by the two Benches of the Apex Court setting out the guidelines or indicators of the aggravating or mitigating circumstances, clarified that they cannot be put into water-tight compartments that curb the discretion of any Judge to do justice in a given individual case, and in specific words the Apex Court in **Bachan Singh** (supra) clarified thus:-

*"In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and, therefore, all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist."*

While laying down a list of helpful factors of aggravating and mitigating circumstances, in **Bachan Singh** (supra), a word of caution was expressed to be exercised from treating them to be exhaustive as

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it was clarified that they were merely indicative and the mitigating circumstances have to be read in a 'liberal and expansive way' accounting for dignity of human life. Paragraph 209 of Bachan Singh (supra) recorded thus:-

*“209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. ‘We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society.’ Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354 (3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency- a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz, that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”*

66. In Macchi Singh (supra), the guidelines indicated in Bachan Singh, were again tapered and it was expected for a Judge to ask an answer the following two questions:-

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

67. The above guiding principles, therefore, were laid down to the effect that if upon taking an overall view of all the circumstances in the light of the aforesaid proposition and taking into the account the answers to the questions posed herein above, the circumstances of the case are such that imposition of death sentence is warranted, the Court would proceed to do so.

In *Macchi Singh* (supra), it was indicated that the categories of cases could fall under five heads; viz the manner of commission of murder, motive, anti-social or socially abhorrent nature of the crime, magnitude of the crime, and personality of the victim.

68. In a recent decision in case of *Manoj vs. State of M.P.*<sup>6</sup>, the Division Bench of the Apex Court, once again revisited the principle laid down by the two Constitution Benches in *Bachan Singh* (supra) and *Macchi Singh* (supra) and culled out the parameters as below:-

*“221. In Machhi Singh, this court also attempted to categorise cases under broadly five heads (i.e., manner of commission of murder, motive, anti-social or socially abhorrent nature of the crime, magnitude of crime, and personality of victim), by strongly analysing the aggravating circumstances of the crime. A formalistic reliance on these categories however, has the potential of leading any court awry as it has the unintended effect of drawing attention away from the criminal, and focusing disproportionately on the crime – the dangers of this standardisation was also noted by this Court in Swamy Shraddananda, Sangeet and more recently in Sanjiv Khanna, J’s dissenting opinion in Manoharam v. State.*

*222. This court in Bachan Singh had warned against categorising cases. Rejecting the contention that standards and guidelines should be laid down, it was noted in Bachan Singh that degree of culpability cannot be measured, and aggravating and mitigating circumstances could not be rigidly enumerated so as to exclude “all free play of discretion”. Reiterating that criminal cases cannot be categorised as there were infinite, unpredictable and unforeseen variations, it was held that by such categorization, the sentencing process would cease to be judicial, and such standardisation or sentencing discretion is beyond the court’s function. Therefore, it would be befitting if reliance were placed not solely on those five categories of crimes (which lays undue emphasis on aggravating circumstances) enumerated in Machhi Singh, and instead on the two question-test, and the four guiding principles of Bachan Singh that were succinctly culled*

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out in *Machhi Singh*.

223. *The decades that followed, has witnessed a line of judgments in which this court has continually taken judicial notice of the incongruence in application of the 'rarest of rare' test enunciated in Bachan Singh, and therefore, tried to restrict imposition of the death penalty, in an attempt to strengthen a principled application of the same.*

224. *This aspect was dealt with extensively in Santosh Bariyar where the court articulated the test to be a two-step process to determine whether a case deserves the death sentence – firstly, that the case belongs to the 'rarest of rare' category, and secondly, that the option of life imprisonment would simply not suffice. For the first step, the aggravating and mitigating circumstances would have to be identified and considered equally. For the second test, the court had to consider whether the alternative of life imprisonment was unquestionable foreclosed as the sentencing aim of reformation was unachievable, for which the State must provide material."*

69. Reliance is also further placed in the decision in case of *Shankar Kisanrao Khade* (supra) when the Court developed the 'Crime test and the Criminal test' and expounded the criterion for 'rarest of rare case' in emphatic words as below:-

*"52. .... In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges."*

70. In light of the aforesaid principles being culled out, it is evidently clear that while imposing the sentence of death, the Court would be required to take into consideration multiple circumstances,

but what is expected is a flexible approach of considering case specific factors relating to the Crime and the Criminal and as there is no straight jacket formula of identification of any particular circumstance as purely aggravating or mitigating. That being the specific reason when in Manoj (supra), the Court expressed a serious concern about the non-uniform application of Bachan Singh (supra) framework, discretion in sentencing and noted that such concern need to be dispelled as generally judges turn to precedents for comfort of numbers, but that process will only give an indication as to how similar instances have been dealt with and it may have a limited role when it comes to sentencing. The discretion accorded to the Court in sentencing was expected not to be judge-centric or resulting in desperate rulings, but in fact, the guiding factors should arm the Court with flexibility of considering case specific factors relating to the crime and criminal without falling into pre-determined patterns.

71. It is in the wake of this scenario, emerging with a provision already existing in the form of Section 235 (2) for pre-sentencing herein, its scope was expanded by casting an obligation on the State to provide material on the accused, who may have a poor or rudimentary level of legal representation. Before categorizing the circumstances emerging on conclusion of a trial into 'Rarest of Rare category', certain practical guidelines for collecting the mitigating circumstances are also laid down, with great emphasis on collection of additional information pertaining to the accused and, at the same time, affording an opportunity to produce evidence in rebuttal towards establishing all mitigating circumstances. The conduct of the accused in jail, as well as the other activities in which he was

involved, are directed to be collected from the relevant jail authorities to ascertain whether it will provide further evidence of reformatory progress and reveal post-conviction mental illness, if any.

72. In light of the aforesaid discussion, it becomes crystal clear that, with the passage of time, the factors for determining 'rarest of rare' category and, before categorizing an offender into this category, the facts and circumstances of each case are to be gone into carefully. It is imperative to find 'special reasons', which would be arrived at by paying due regard to the 'Crime and the Criminal'. What is the relative weight to be given to the aggravating and mitigating factors would depend upon the facts and circumstances of a particular case, though none of these have been laid down as exhaustive factors and ultimately, it is to be seen that, with the advancement of the capital punishment jurisprudence in the country, and the tilt towards a reformatory approach, the imposition of death penalty itself demand consideration with an open mind and not to be foisted by testing it on the sole factor, as to whether it would shock the conscience of the community.

73. Applying the aforesaid factors, when we have appreciated the case of the prosecution as laid before the trial judge, with the circumstances leading to the guilt of the two accused, and though we have confirmed the finding rendered by the trial judge in the impugned judgment, as regards their guilt being established for committing the offence of kidnapping for ransom, and ultimately, when the demand is not satisfied, eliminating the victim, who was kept alive to receive ransom. We must note that the accused persons, aged 25 and 22 years, at the time of commission of crime, were two

young persons and in an attempt to acquire wealth by foul means, asked the deceased to be in their company, and he walked into their trap but he was then confined with a view to solicit ransom from his father.

The quest of two young persons to acquire wealth, and to become wealthy and live a comfortable life cannot be described as an exceptional desire, considering their age, they chose a simple mechanism of abducting a boy known to them and from the video footage recorded in the memory card as well as the deposition of the two witnesses Mayur, the friend of Chetan, and Hemant Deokar, the rikshaw driver, who saw them together do not talk of the victim being under some pressure. From the transcription of the memory card, it can be seen that the victim is talking in a very casual manner and probably was not apprehending death for non-payment of the ransom amount as demanded.

It is no doubt true that a young boy has been done to death by inflicting multiple injuries, and the body was taken to an isolated place and disposed of and this act of the accused definitely is abhorrent but in our view that itself is not sufficient to categorize the case in 'rarest of rare' category for imposition of death sentence.

The accused had some criminal cases registered against them but as the learned Judge has noted, that they had not sustained any conviction in those cases, and they were not even professional killers but as noted by us above, were lured by the temptation of wealth pursuit by receiving the ransom amount knowing very well that the boy kidnapped by them belongs to a wealthy family.

While imposing the extreme penalty of death, it is imperative to apply the proportionality test and keep in mind the rational and objective connection between capital punishment and the purpose for which it is prescribed. Imposition of every penalty is intended to create a deterrent effect, but it is not every death done or murder committed, where the sentence prescribed is death penalty, the Court is justified in imposing death sentence.

74. The preplanned and concerted effort on the part of the two accused in kidnapping Vipin for ransom, holding him in confinement, making calls for ransom, and when the demand of ransom is not satisfied, doing him to death, definitely is inhuman, cruel and ruthless act, and the penalty imposed must prove to be a deterrent, but when we proceed to answer the question whether it is one of the “rarest of rare cases”, our answer is in the negative.

The accused persons definitely hatched a conspiracy for kidnapping Vipin for fetching the amount of ransom, and when two phone calls made to Gulabchand, PW-9, did not yield any result, being baffled about what is to be done about the victim who was in their confinement, they thought it appropriate to eliminate him, as, if he was released they would have faced the charge of kidnapping and, typical of young men, being impulsive and impetuous, who wanted to find an immediate solution without being bothered about the long-term consequences, caused his death and, to shield themselves from any evidence being found attempted to dispose of the body at a desolate place, but ultimately they were nabbed, investigated, and tried.

75. The case against the accused, having been established by the prosecution, by adducing cogent and reliable evidence has been believed by the Trial Judge, and we have already confirmed the finding of recording of their guilt, but we are unable to subscribe to the view that they are liable for imposition of death penalty, and we set aside the imposition of death penalty, for committing the offences punishable under Section 302, 364-A r/w 120-B of the IPC, we commute the death sentence and direct that Appellant No.1 Chetan Pagare and Appellant No.2 Aman Jat, shall undergo life imprisonment for 30 years with no remission.

The Appeal is partly allowed by confirming the finding of conviction against the appellants but commuting the death sentence to life imprisonment for 30 years with no remission. The Confirmation Case No.1 of 2023 filed by the State is therefore dismissed, and Criminal Appeal Nos. 108 of 2023 and 116 of 2023 are partly allowed to the aforesaid extent.

**(MANJUSHA DESHPANDE, J.)**

**(BHARATI DANGRE, J.)**