



IN THE COURT OF THE JUDGE AT BOMBAY

CRIMINAL

NO. 108

OF 2008

Deepti Anil Devasthali and
Leena Anil Devasthali .. Appellants
Vs.
State of Maharashtra .. Respondent

Ms. Rohini Salin, Amicus curiae
Convicts/Appellants present in person
Shri Mundargi, Special Prosecutor with Ms. U. K. Kejriwal and
Ms. S.D. Shinde APPs. For the State
Mr. S.V. Marwadi for the Applicant in Application No.1 of 2008

**CORAM: J. N. Patel &
Mrs. Mridula Bhatkar, JJ.**

DATE: 30 September, 2009

P. C (Mrs. Mridula Bhatkar, J.)

1. Accused no.1 Deepti Anil Devasthali (daughter of
Accused no.2) and Accused no.2 Leena Anil Devasthali are convicted
by the learned Ad Hoc Sessions Judge, Pune by judgment and order
dated 27 December, 2007 for committing the offence of abduction
and murder of one Dr. Deepak Mahajan along with other offences.
They are sentenced to death for the offences of abduction for
ransom and murder. Hence this appeal against the conviction filed

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confirmation.

2.

Accused no.1 Deepti

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daughter and mother

conspired to abduct Dr. Deepak Mahajan in order to demand ransom and commit his murder. Both the ladies started a detective agency by name Blue Bird Detective Agency having its office at Shaniwar Peth, Near Omkareshwar Temple, Pune. On 11/6/2006 they gave an advertisement in newspaper Sakal that they wanted to employ young, healthy and clever men to work in their detective agency. In response to their advertisement, PW3 Pravin Dnyaneshwar Kamble, PW2 Ashok Jagannath Magar, PW1 Ketan Pramod Kale and Court witness(CW1) Rahul Abhimanyu Bhosale amongst others have applied and were interviewed by Accused no.1 and Accused no.2. Accused no.1 and Accused no.2 did not disclose their identity and real names but they represented to be one Joshi Madam and Miss Pradnya Kale. In furtherance of the conspiracy out of these four persons PW2 Ashok Jagannath Magar had accompanied Accused no.1 Deepti to Yashwantrao Chavan Memorial Hospital (in short Y.C.M.Hospital) and introduced himself as Yogendra Shirke to Dr.

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3. In the year 2006 Dr. Deepak Mahajan was working as the Head of Orthopedic Department in Y.C.M.Hospital at Pimpri, Pune. On 29/6/2006, Accused No.1 wearing wig, spectacles and dentures had visited YCM Hospital and handed over one envelope to his colleague Dr. Ajay Bajirao Sonawane with message that the said envelope was to be given to Dr. Deepak Mahajan. It was containing a letter from Omkar Charitable Trust requesting Dr. Deepak Mahajan to accept a post of Honorary Surgeon in the hospital proposed to be run by the said Trust on honorarium of Rs. 15,000/ per month. On 30.6.2006 Dr.Deepak Mahajan was contacted in Y.C.M.hospital by Accused No.1 and PW2 Ashok Jagannath Maga and who introduced himself as Yogesh Shirke, the signatory of the said letter and they both again handed over copy of a similar letter to Dr.Mahajan. Dr.Mahajan sought time to think over the offer.

4. Rahul Abhimanyu
Bhosale Detective Agency by the
Accused conduct one doctor who
was ill to be interviewed by
the Head of their detective agency. On 1/7/2006 the Accused
alongwith PW1 Ketan Kale and C.W1 Rahul Bhosale searched for a
lodging house and booked room no.7 in one lodge named Shantanu
Lodge on 2/7/2006. On the previous day i.e. on 1/7/2006 the
Accused with the help of P.W.1 Ketan Kale and C.W1 Rahul Bhosale
performed rehearsal of overpowering the doctor as soon as he
would enter the room. Accused no.1 told P.W.1 Ketan Kale and CW
Rahul Bhosale how to hold the mouth and legs of Dr.Deepak
Mahajan after the signal was received by them.
prosecution's case that the Accused in the course of the
preparation had purchased by name Thisol Sodium/
Pentathol/Thiopentone from the chemists by name Darpan
Tashiba Medical & General Stores, Nasik. This drug is used to give
anesthesia and also to put the animals to sleep in Veterinary
hospitals.

5. contacted Dr. Deepak
Maha kur Hotel, at Pune.
Howe tion for lunch but
agree Dr. Mahajan had
discussion with his wife Dr. Smita Mahajan about this offer from
Omkar Charitable Trust and his meeting with the Trust people. Dr.
Deepak Mahajan left home around 3.45 p.m. on an Activa scooter
and went to Shantanu Lodge. At that time Accused no.1 Deepti who
had changed her identity like Jassi, received him at Shantanu Lodge
and brought him to room no.7 where CW1 Rahul Bhosale and PW1
Ketan Kale shut his mouth and held him as per their plan. Accused
no.1 Deepti injected drug Thiosol Sodium in the wrist of Dr. Mahajan
due to which Dr. Deepak Mahajan became unconscious within a
minute in the said room. Accused no.1 with the help of PW1 Ketan
Kale and CW1 Rahul Bhosale lifted him and put him in her Matiz
Car with changed registration number, which she had parked at the
gate of the Shantanu Lodge. Dr. Mahajan was kept in sitting position
on the back side seat between Ketan Kale and Rahul Bhosale and
Accused no.1 drove her Car towards Karve road, where Accused No
was waiting for them. Ketan Kale and Rahul Bhosale were asked to

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worried as her husband was not responding on his phone and some other person spoke to her and threatened in muffled voice that doctor was abducted by them and told her to follow their orders, if she wanted him alive. Dr. Smita Mahajan thereafter contacted Dr. Parag Mahajan, the brother of Dr. Deepak Mahajan and Dr. Deepak brother in law Mr. Phansalkar who also tried to contact Dr. Deepak Mahajan on his cell. However, they could not. When Dr. Smita Mahajan again contacted the cell phone of Dr. Deepak Mahajan the person on the other end told that they had abducted Dr. Deepak Mahajan and want a sum of Rs. 25. Smita Mahajan thereafter rushed to Prabhat Road police chowky under Deccan Gymkhana Police station and lodged complaint about missing and abduction of her husband and demand of ransom. P.S.I. Mr. Yadav registered the offence at C.R.No. 386/06 under sections 366, 384 of Indian Penal Code and forwarded it to Deccan Gymkhana police station for further investigation. Police Inspector Shri. V.R. Patil took

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Pravin Kamble who had come for the interview in Blue Bird

Detective Agency. On the same night police could trace Shantanu

Lodge and found that Dr. Deepak Mahajan had visited Shantanu

lodge on that day. On 7.7.2006 with the help of PW3 Pravin

Kamble and other clues they laid a trap in front of the office of

Blue Bird Detective Agency. On the very day, Accused no.1 and 2

visited their office of Blue Bird agency and they came to be

arrested by the police in the morning. Immediately thereafter on

the basis of disclosure by Accused no.2 parts of the body of Deepak

Mahajan except the head and hands were recovered by the police

under panchanama from different spots at Katraj Ghat and some

parts of the body were found in two plastic bags at Bhosari. The

Police in the presence of Panchas prepared an Inquest and

Recovery Panchanamas. The parts of Human Body were sent for

autopsy to Sasoon Hospital Pune. Thereafter the offence under

section 302 of the Indian Penal Code was registered against

Accused under Section 366 and 384
of the Criminal Code, 1960, was charged for an offence of
murder committed during the course of
investigation in connection with the case at Uttamnagar under
panchanama and also searched the residence of the Accused person
in Shrikrishna Watika, at Dahisar. The police were able to locate
Chemist Darpan and Tashiba at Nashik from where the drug
sodium thiosol was purchased by the Accused. In the course of
investigation, police recorded statements of witnesses and recovered
property and Aactiva Scooter. Matiz Car was recovered in the
month of September, 2006 i.e. two months after the date of the
incident. The police filed chargesheet against Accused No.1 and
Accused No.2. After committal of the case learned Ad Hoc Additional
Sessions Judge, Pune framed charges and tried the Accused. The
Accused persons did not engage advocate of their choice. So the
learned trial Judge offered and made them aware of the facility of
the legal aid service. However, both the ladies refused to avail of
legal aid facility. Accordingly the learned trial Judge has maintained
the record and finally went on with the trial and examined 46
witnesses. The Accused had cross examined first 12 to 13 witnesses

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vere found guilty.

7. When the Criminal appeal filed by the Accused was heard by this Court, the Division Bench found certain lapses in the trial viz. some important witnesses were not cross examined. One Rahul Bhosale deserved to be examined. Therefore, it held that Accused should have been given proper opportunity to defend themselves. The Division Bench remanded the case for recording of evidence and cross examination of material witnesses under section 367 of the Criminal Procedure Code.

8. The learned Sessions Judge, thereafter recalled PW1, PW4, PW6, PW8, PW30, PW32, PW33, PW40, PW43, PW5 and PW46 and examined Rahul Bhosale as Court Witness No.1. Both the Accused, in the second round of the trial, engaged their respective Advocates. Cross examination of the witnesses recalled was taken extensively. Both, the prosecution and the Accused, were given

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sent to the High Court.

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hearing before our Bench by Hon ble the Chief Justice.

9. When we took up the appeal and the submission for confirmation of capital punishment it came to our notice that both the Accused have discharged their previous Counsel and while answering question No. 85 of their further statement recorded under Section 313 of the Criminal Procedure Code, they had stated that they wanted to give evidence on oath. However, they did not press for the same before us but insisted that they wanted to argue in person. However, this being an appeal against capital sentence and a confirmation matter, it was our duty to take care that the Accused should be adequately defended through counsel. So, Ms. Rohini Salian was appointed as amicus curiae to defend them. The Accused, though did not make any grievance about appointment of the amicus curiae, insisted that they be also given opportunity to argue their case in person as it is a matter of their

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12. Lack of defence was
on the dishonest, shoddy and incomplete investigation by the
Police. The defence has highlighted some points to which the
prosecution could not give any answer. The lacunae reflecting the
quality of the investigation and how far they are fatal to the
prosecution is to be examined.

13. Accused Nos. 1 and 2 have been charged for the
offence of conspiracy under Section 120B of the IPC in committing
offence viz. of cheating by impersonation under Section, 419 of the
IPC, forgery under Sections 564, 468 of the IPC and 471 of the IPC,
for causing hurt with intent to commit offence under Section 328
of the IPC, wrongful confinement under Section 342 of the IPC, for
extortion and murder under Sections 387, 302 of the IPC and under
section 201 of the IPC for causing disappearance of evidence or
giving false information to screen offender. Abduction under Section
346A of the IPC. Causing hurt under Section 328 of the IPC and

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Sr. No.	Findings
(1)	Does the prosecution prove that The Accused No.1 and 2 have conspired to abduct D De epak Mahajan and have abducted in order that he may be murdered or may so disposed of as to be put in danger of being murdered under Section 364A read with Section 120 (b) of the Indian penal Code.
	Does the prosecution prove that The Accused No.1 and 2 have committed offence of extortion under Section 387A read with Section 120 (b) of the Indian penal Code.
(2)	Does the prosecution prove that The Accused have conspired and have committed an offence of cheating by personation, punishable under Section 419 read with Section 120 (b) of the Indian penal Code.
(3)	Does the prosecution prove that The Accused have conspired and have committed forgery for the purpose of cheating and thereby have committed an offence punishable under Section 465/468 read with Section 120 (b) of the Indian penal Code.

(4)		Yes and sent to section
(5)	Accused Nos. 1 and 2 have conspired and have committed an offence of confining wrongfully Dr. Deepak Mahajan which is punishable under Section 342 read with Section 120 (b) of the Indian penal Code.	Yes
(6)	Does the prosecution prove that Accused Nos. 1 and 2 have committed an offence of extortion by putting Dr. Smita Mahajan under the fear of death of Dr. Deepak Mahajan and thereby committed an offence punishable under Section 387 read with Section 120 (b) of the Indian penal Code.	Yes
(7)	Does the prosecution prove that Accused Nos. 1 and 2 have committed an offence of causing disappearance of evidence to screen the offender, punishable under Section 201 read with Section 120 (b) of the Indian penal Code.	No
(8)	Does the prosecution prove that Dr. Deepak Mahajan was murdered for ransom by accused person?	No
(9)	Does the prosecution prove that Accused have committed offence of murder punishable under Section 302 read with Section 120 (b) of the Indian penal Code.	No

14. .m. Dr. Deepak
Maha eeting with Trustees
of Orr a Mahajan learnt that
he ha ctors were demanding
ransom of Rs. 25/ lacs. Dr. Smita Mahajan PW11 gave a first
information in respect of Dr. Deepak Mahajan on July, 2006 at
about 21.15 hours (FIR Exh. 58). She was aware that Dr. Mahajan had
received an offer from one Omkar Charitable Trust to work as
Honourary Orthopedic Surgeon in Sanjivani Hospital run by the
said trust. She has stated that in that context the Doctor had left
his house at about 4 p.m. to meet the person concerned i.e.
trustees of Omkar Charitable Trust. She also gave details that
those persons had invited the Doctor for lunch at Hotel
Durvankur. However, the Doctor opted to meet them after having
his lunch at home. PW39 Atmacharan Balasaheb Shinde who
was attached to Vishram Baug Police Station has stated that he
received information on 3.7.2006 about registration of offence
under Sections 366 and 364 of the Indian Penal Code at Deccan
Police Station of kidnapping Dr. Deepak Mahajan and as per the
directions he conducted a surprise check of the lodges situated

near | Deepak Mahajan were
suppl | d July, they
took s | ing the photograph of
Dr. Dr | andra Garad (PW4)
Manager of Shantanu Lodge had identified the said photgraphs
and informed that in between 4 to 4.30 p.m. on the previous day,
Dr. Deepak Mahajan had been to their Lodge to meet Veena
Ranade who had booked room no.7. PW4 Vikas Harischandra Garad
has confirmed the visit of PW39Atmacharan Shinde at
night at about 1 a.m. and also he supplied him the said
information. PW4 Vikas Garad is an important independent
witness on the point of visit of Dr. Deepak Majan to Shantanu
Lodge to meet Ms Veena Ranade. He also mentioned that Dr.
Deepak Mahajan came on Activa Scooter of Silver colour and he
saw him parking the scooter. He has seen Mrs. Ranade waiting
near the main gate of Shantanu Lodge and then she received
Dr. Mahajan and took him to Room No.7. He had deposed that
one lady who has introduced herself as Pathak Bai came to the
Lodge on 1.7.2006 and she enquired about availability of a room
and she informed that Mr. & Mrs. Ranade from Mumbai wants the

room led over his visiting
card was subsequently
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Accus identified Accused
No.2 as Pathak Bai. He has also given details about the clothes of
Dr. Mahajan. He has described that Ms. Ranade and one person of
the age group of 30 years had come and he had an opportunity
to see that person and Mrs. Veena Ranade. In the cross
examination of Vikas Garad, the photograph on the application form
i.e. Exh.23 was shown to him and he has identified the
photograph of Ketan Kale as the person who had visited on that
day as Mr. Ranade, so also he has identified him as the person
who used the telephone of Shantanu Lodge and talked with the
person on the other end of the telephone and called him at Hotel
Durvankur. Thus, the visit of Dr. Deepak Mahajan to Shantanu
Lodge is established by the prosecution through the evidence of
Dr. Smita Mahajan, Manager of Shantanu Lodge Shri Vikas Garad
and PSI Atmacharan Shinde.

15. The Learned Amicus curiae has challenged the

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16. PW11 Dr. Smita Mahajan, in support of her evidence about the offer which the Doctor had received from Omkar Charitable Trusts produced the letter PW17 Dr. Ashutosh Vitthalrao Dabare, and PW29 Dr. Ajay Bajirao Sonawane, the colleagues of deceased Dr. Deepak Mahajan in YCM Hospital, Pimpri, were examined on the point of offer given to deceased Dr. Deepak Mahajan by Omkar Charitable Trust and handing over of letter of Omkar Charitable Trust. PW17 Dr. Ashutosh Dabare and PW29 Dr. Ajay Bajirao Sonawane corroborate that people from Omkar Charitable Trust had contacted Dr. Depeak Mahajan in the month of June, 2006 and both of them have stated that one lady looking like Jassi had visited Dr. Deepak Mahajan in YCM Hospital. PW29 Ajay Sonawane has referred that said lady had handed over one letter to Dr. Deepak Mahajan. Dr. Ashutosh

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17. PW11 Dr. Smita has further deposed when she tried to contact her husband Dr. Deepak Mahajan from her mobile No. 9822018863 on his mobile No. 9422511574 he did not reply for a longtime and after some time some person replied and disclosed that they had abducted Dr. Deepak Mahajan and there was threat that if she wanted Dr. Deepak Mahajan alive, then she should act as per their directions. After this call she contacted her relative and, alongwith her relative went to Prabhat Road Police Chowky and lodged the complaint about missing of her husband. Thereafter again, when Dr. Smita Mahajan and Dr. Parag Mahajan brother of the Dr. Deepak Mahajan, contacted on the Cell of Dr. Deepak Mahajan, the threats were repeated. All these facts are incorporated in the FIR which is marked as Exhibit58. Accordingly the offence of abduction under Section 366 read with Section 34 of the Indian Penal Code was registered. Dr. Smita Mahajan has deposed that during the night when she was at the Police station,

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Mahajan and has stated in his evidence that the complainant (Dr. Smita Mahajan) has lodged the complaint of kidnapping of Dr. Mahajan in the late evening of 2.7.2006. He corroborates that the complainant had called on the Cell No. from Police Station and he could hear threats as the phone was kept on loud speaker. Thus the prosecution has established the fact of abduction of Dr. Deepak Mahajan under the pretext of giving him Honourary Post Orthopedic Surgeon in the Hospital run by them, by the persons who were related to Omkar Charitable Trust. It was also established that the Dr. Depeak Mahajan had visited Shantanu Lodge around 4 to 4.30 on Activa Scooter and the couple who introduced themselves as Ms. Veena Ranade and Mr. Ranade had received the Doctor and took him to room No. 7 of the Lodge. All these facts are established by the prosecution. Nothing was brought in the cross examination of PW11 Dr. Smita Mahajan and also PW4 Mr. Vikas Garad to show that their evidence on this

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Mahjan and PW43

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nita contacted on the

Cell No. 9422511574 of Dr. Deepak Mahajan on the night interven

2nd and 3rd July 2007 and that the person on the other end told

that Activa Scooter of Dr. Mahajan was kept near Shivaji Nagar

ST stand, whereas the keys were kept on the electric meter at the

house situate near Tambdi Jogeshwari, Budhwar Peth, Pune i.e. the

house of the father of Dr. Deepak Mahajan. Pursuant to this, the

Scooter was found at Shivaji Nagar. Thus the prosecution has

proved that somebody has informed that somebody has abducted

Mahajan and his scooter was taken from Shantano Lodge and was

left at Shivanagar by those persons, and the person who informed

about the key was aware that the said house was at Budhwar Peth

Pune. PW31 Shridhar Dattatraya Mahajan is the father of Dr.

Deepak Mahajan and he has deposed that it is his residential

address.

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Thus, in view of the above discussion, the fact of

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21. The Prosecution has tendered evidence on calls made immediately after the abduction. There are Exh.88 i.e. call details of Cell No. 9422511574 (Cell Phone of Dr. Deepak Mahajan) and call details Exh.1301 9960224773 (Cell No. in the name of Ru Raj Mathur). Call details of Cell No. 9422511574 are proved through PW14 Shailaja S. Kulkarni, Divisional Engineer of BSNL (Exh.88) and call details of Cell No. 9960224773 were proved by PW25 Vijay Eknath Shinde Nodal Officer of Bharti Airtel Ltd. (Exh.1301). Dr. Smita Mahajan, in her evidence has stated that she went on calling her husband Dr. Deepak Mahajan after she realized that he has not come back on the time given by him. Her phone was attended not by Dr. Deepak Mahajan but it was attended by some other persons. Call details of Cell No. 9422511574 discloses incoming calls from Cell No. 9822018863 (Cell of Dr. Smita Mahajan) which corroborates the call details (Exh.190) of Cell No. 9822018863.

22. ent Identification)
No. is discloses that the call
receiv phone 9422511574 o
Deep hone No. 0202545469
of Dr. Deepak Mahajan and the said call was made by Arjun Son
of Dr. Deepak Mahajan. It was attended on the Nokia handset of
Dr. Deepak Mahajan having IMEI No. 35253600483225. However
after one minute i.e. at 17.45 Dr. Smita Mahajan contacted Dr.
Deepak Mahajan from her Cell No. and it was attended by
another person who disclosed that Dr. Deepak Mahajan was in
their custody and IMEI No. was changed as 351130741540560.

23. Letter Exh.28 was the first lead in the hands of the
Police. The letter Exh.28 produced by Dr. Smita, wife of the
deceased was the master key which opened the first door of the
investigation. Cell Phone No. 9960224773 written on the rear side
of Exh.28 was the first lead the police found. Production of the said
letter by Dr. Smita Mahajan on July 2, 2006 was challenged by
the defence.

24. proved as none of
the w hip. As per section 63
of the proved either by
prima document itself is
produced for the inspection of the Court, it is a primary evidence.
In the present case Exh. 28 produced by the prosecution and PW2
Ashok Jagannath Magar has stated about the contents of the said
letter. He deposed that Accused No.1 has told him that a letter of
Omkar Charitable Trust was to be handed over to Dr. Deepak
Mahajan in YCM Hospital and she also explained him that letter
was pertaining to appointment of Dr. Deepak Mahajan in Sanjavan
Hospital run by Omkar Charitable Trust. He has further deposed that
he had gone through the contents of the letter and the name of
one Yogendra Shirke as trustee was appearing on the letter. He
has admitted that Accused no.1 introduced him as Yogendra Shirke
and she took that letter from him and handed it over to Dr. Deepak
Mahajan. Further, the said letter Exh.28 was shown to him and he
deposed that signature of Yogendra Shirke was not made by him.
Section 60 is about direct oral evidence. PW2 has seen and read
that document and has used the document and therefore, he is

comp... ent. Section 67 is in
respe... riting of the person
allege... ents produced. However
in this... contents of the
document and not the handwriting and the signatory of
document. Thus, in the present case, who signed that document a
Yogendra Shirke though is not proved, contents of the
documents are proved as the said letter is produced before the
Court by PW2 who was aware of the contents of the letter as he
himself had read it, and he was asked to introduce himself as a
signatory of the said letter. The prosecution has tendered the
evidence of PW26 Sukdeo Nana Gaikwad who was working as
Inspector in Public Trust Registration Office. He has deposed that
there was no person by name Yogendra Shirke as Trustee of
Omkar Charitable Trust, Mumbai, though he found that Omkar
Charitable Trust was registered under Bombay Public Trust Act at
the address Shivaji Park Mumbai and the names of the trustees
of the Omkar Charitable Trust were Mr. and Mrs. Vaze and one
Mahadeo Katre. Thus, Exh.28 is a forged letter with bogus
contents, used by the Accused.

25. Uttam Krishna Yadav (PW43) did not mention the letter Exh.193 Yadi (list) dated 2.7.2008 to the handwriting expert in her evidence that she has produced the letter Exh.28 to the police not at the time of giving the FIR as she did not bring that letter when she gave the FIR but she produced it one hour later. The omission to record in her supplementary statement to that effect is not put to her or the police officer who recorded the supplementary statement. Hence, no opportunity was given to the witness to explain the circumstance.

26. Accused No. 1 pointed out a mistake at the time of the recording of the evidence. On Page No. 193 i.e. Cross examination of PW43 Uttam Krishna Yadav, in para 29, initially a sentence was typed ~~she~~ she has produced that letter after about one year from lodging the complaint (emphasis placed). This evidence was recorded by the Sessions Judge, Pune on 29.12.2008 which the Accused applied for certified copy and the certified copy of the said evidence was supplied to the Accused on 7 January,

2009, in the paper
book, written. The
learned, stating the word. Hence,
it is evident that the evidence was carried out
after 7th January, 2009. The Accused, by pointing out these two
documents, has submitted that the Sessions Judge has wrongly
made correction "hour" instead of "year" at the instance of the
prosecution because the said letter in Exh.28, was not
submitted by the wife of the deceased, Dr. Smita Mahajan. After she
gave the F.I.R. and letter Exh.28 was deliberately suppressed and
kept back by PW11 Dr. Smita Mahajan from the police. The
Accused NO.1, in the course of her argument, pointed out that Exh
193 Yadi (list) dated 2.7.2006 was prepared by the Police person
Uttam Krishna Yadav (PW43) while sending FIR. However in that
Yadi (Exh.193), there is no mention of Exh.28.

27. Further, the said letter was never sent to the
handwriting expert though it bears the signature of Yogendra
Shirke the alleged Director of Omkar Charitable Trust. The PW11
has not deposed that her supplementary statement was recorded

when Charitable Trust. On
the b. 224773 was written an
the sa ecution, was of Rui
Raj M ber, prosecution
claimed to trace Cell No. of one Shri Vikrant Ghone who is
relative of PW No.3 Mr. Pravin Dnyanehwar Kamble from whose
Cell No. he has phoned to Cell No. of Accused No.1. Thus, letter
Exh. 28 is very important. However, this letter was not sent to
handwriting expertThe two letters having signature of
Yogendra Shirke were available with the prosecution, one is dated
23.6.2006 and another is of 30.6.2006 (Exh.28). The prosecution c
to send the first letter i.e. letter dated 23.6.2006 as the signature
appearing on both the documents were of one and the same perso
i.e. Yogendra Shirke. The prosecution kept back the letter Exh.28
on which the material Cell No. was written.

28. Secondly, it appears that Learned Sessions Judge has
corrected the evidence definitely after 7, 2009. However,
it cannot be said that it is done at the instance of the prosecution,
as the learned Judge who records the evidence is supposed to

correcting mistakes after
recording immediately before signing the
recording out the said
mistake corrected. If the
mistake is innocuous, after comparing the evidence recorded in
vernacular language i.e. in Marathi, the learned Judge can correct
that particular innocuous and obvious mistake. This
vernacular language i.e. in Marathi is always considered as
authentic. We, therefore, perused Marathi record to compare
whether the said word is "hour" or "year". We found that in
Marathi the word "hour" was recorded. Hence there is no doubt
that it was sent not after a year, but after an hour and no fault can
be attributed to the learned Sessions Judge. The Accused have
unnecessarily tried to capitalize this circumstance in their favour. We
cannot nullify Exh.28 which is most formidable incriminating
evidence.

29. Cell No. 9960224773 of Rui Raj Mathur Letter from
C.P. to Airtel Cellular (Exh.185). How P. I. Barge was sent to Dahisar
on 5th July, 2006 when P. I. Balkrishna Bhikaji Agashe (PW 40) has

admit No. 9821486650 Cell M
of De f Other Cell No.
i.e. (2006. There
were f 15 seconds each
from the cell No. 9821486650 on Cell No. 9890060496 Cell of
Vikrant Ghone and as per the admissions given by Mr. Agashe
(PW40) there were several calls of longer duration from Cell No.
9821486650 of Deepti as per the call details. Learned Amicus Cur
Ms. Salian has argued that though it was admitted that there was
no contact between Cell No. 9821486650 (Deepti) and Cell No.
9890060496 (Vikrant Ghone) for a period of 8 days prior to 6
2006, why the Police suspected Vikrant Ghone ? Learned Special
prosecutor Mr. Mundargi, in reply, has submitted that Police have
collected all the call details urgently and then they verified
income/outgoing calls and used the process of eliminatio
However, out of those calls, the call details of Phone No. of
Vikrant Ghone was the relevant and material evidence as PW3
Dnyaneshwar Kamble was found on the phone No. of Vikrant
Ghone, PW3 corroborates the same and he was the one who first
disclosed to the police about the connection of Blue Bird

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30. linching evidence

which the defence could not shatter on the point of phone calls. It is earlier discussed that SIM Card having Cell No. 9960224773 was purchased in the name of Rui Raj Mathur. PW15 Bhavarlal Kojaram Mali who was seller of SIM card and recharge voucher for Airtel has deposed and confirmed that he had sold a charger of Alkateel mobile and on the next day two ladies have asked for Nokia handset and they have purchased SIM Card by filling t application form (Exh.98) in the name of Rui Raj Mathur and driving licence (Exh.98/2) and photograph were given by them. On the basis of copy of the driving licence and photograph, the SIM card which was initially not activated, was subsequently activated. PW2 Vijay Eknath Dhinde from Bharti Airtel has proved Ex. 98 i.e. mobile enrollment form filled in by Rui Raj Mathur wherein residential address was given as 8090, MG Road, Yeotmal. He corroborated that the form was submitted to retailer Mahavir Photoshop which was run by PW25 Bhawarlal Kojaram Mali. He

corroborated that the SIM card was active). The Prosecution has examined the evidence of the witness PW35 who stated that the said licence was issued in the name of Rui Raj Mathur on 10.1.2006 and the address has also appeared to be wrong. He also confirmed that the validity period shown on the licence of two years is found wrong as the validity is always for a period of five years or till the age of 50 years. With this evidence the prosecution could successfully prove that the said licence in the name of Rui Raj Mathur was false and that the SIM card was obtained on the fake identity.

31. Learned Amicus curiae Ms. Rohini Salian has submitted that the evidence of Mr. Agashe (PW40) that they have intercepted Cell 9821486650 or any other Cell numbers which are involved in this matter is incorrect because for keeping phones under observation one needs requisite permission of the Government under Section 5 of the Indian Posts and Telegraphic Act. It was further argued that the statement of Vikant Ghone is not recorded.

Police Grant Ghone and Cell
No. of in the Advertisement
of Blu details at Exhs. 127, 1
and 1 ier of Phone No. of Dr.
Mahajan 9422511574 to IMEI No. 351307415405600 Mobile Handset
of Deepti Devastha. The evidence of Tower location though was
available to the Police, if is not brought on record why
locations were so frequently changed while 14 calls were made
from 9890565992 to 9821486650. Original Papers of Cell No.
9821486650 are not produced. The documents Exh.127/2 i.e. BPL
Mobile Application Form and Exh.127/3 Outgoing calls
false and fabricated. Sanjay Kamble PW 24 (Nodal Officer on BPL
Mobile) is not a witness on facts and he does not know anything.
The entries made in Exh.88 at Serial No. 11 July 2006 of
Cell No. Dr. Mahajan 9422511574 and the IMEI No. do not
match. When Dr. Smita Mahajan, in her evidence has deposed
that Dr. Deepak Mahajan was having only one handset, then how
call details of his Cell No. 9422511574 disclose different IMEI Nos.
showing use of more than one handset by changing SIM cards.
Why Police have not taken out the call details of Phone No. of

Dr. Sr

Page

there

SIM C

handset having changed IMEI Nos.351307415405600.

submitted that the entire episode very suspicious. It is further argued by Ms. Salian that, the claim of the Police that they could trace Vikrant Ghone, Pravin Kamble and then Accused on the basis of call details of 9960224773 is false and she prayed that the Court may discard this evidence .

32. PW40 Balkrishna Bhikaji Agashe has said that Complainant Dr. Smita Mahajan had phoned him and informed that Cell No. 9960224773 was of one Ms. Joshi. Accused No.1 has raised question how Dr. Smita Mahajan knew the name of Joshi when she has not stated in her evidence that her husband has ever mentioned the name of the lady as Joshi from Omkar Charitable Trust. Accused No. 1 indicated that if Dr. Smita Mahajan said so then on the basis of this discrepancy, Smita Mahajan herself was involved and knew the names of the persons who abducted Dr.

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y the Accused, which i
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rticular handset.

34. Learned Prosecutor Mrs. Kejriwal has produced separate charts showing connections of the phone numbers. Through the evidence of PW40 Balkrishna Bhikaji Agashe and PW25 Vijay Eknath Shinde, the prosecution could bring on record that the Cell No. 9960224773 stands in the name of Rui Raj Mathur on Yaotmal address. Exh. 130/1 is the call details of Cell No. 9960224773 and ownership of SIM of Cell no. 9960224773. Exh. 129/2 is enrollment form of Airtel Cell No. 9890565992. Two Mobile phones of Bharti Airtel belongs to Accused No.1. The investigating officer has sent letter to this mobile Company i.e. Bharti Airtel and call details of these phones were furnished accordingly.

35. The ownership of the Mobile handsets is denied and challenged by the Accused. One handset of Alkatel Company was found in the purse of Accused No. 1, having its IMEI No. 351307415405600 and another one was found in the Matiz Car of

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possession of a particular article, cannot always be contended that said article does belong to that person. If an article carries any identification mark and the link between that identification mark and the identity of the person is associated then it can be said that article belongs to that person. Purchase of handsets, if proved, by the prosecution in the name of Accused no. it can safely be said that two handsets belong to Accused No. 1

36. Three handsets and four SIM cards are relevant articles and police have produced consistent evidence to show the ownership of the Cell No. and the handsets through representative of the mobile Companies i.e. PW24 Sanjay Dagdu Kamble of BPL Mobile, PW25 Vijay Eknath Shinde of Bharti Airtel and PW41 Sachin Shinde of Idea Cellular Company. Accused no.1 was having two handsets one Alkatel and other Nokia. They are seized and produced before the Court. Their IMEI Nos. are as follows:

	Io.
1.	36609417510
2.	307415405600
3.	36609417510

Dr. Deepak Mahajan was having handset of Nokia with IMEI No. 35253600483225 and SIM of Airtel, Mobile No. 9422511574.

37. Call details of Cell phone of Dr. Deepak Mahajan Exh.88 are proved through PW14 Shaileja Kulkarni. In the entire episode, the evidence of call details has played a crucial role. Rather this evidence is connecting the Cell Numbers of Dr. Deepak Mahajan, Dr. Smita Mahajan and Accused by use of different handsets, change of handsets and SIM Cards. Two handsets of Accused no.1 and use of three SIM cards by Accused No.1, so also use of SIM Card of Dr. Deepak Mahajan in the handset owned by Accused No.1 unmistakably establishes the nexus of the Accused with the offence. It reveals that Accused No. 1 and 2 were constantly in touch with Dr. Smita PW11 after 4.30 p.m. on 2.7.2006. If the prosecution establishes the missing of the person and thereafter demand of ransom amount through a particular Mobile phone

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family members of the

38. The police have issued letters to the concerned telephone/Mobile companies i.e. Airtel, BPL and BSNL for the supply of the call details in respect of Cell Nos. of the Accused and also Dr. Deepak Mahajan and pursuant to these letters, information was supplied and also the information of the subscription form and the call details was furnished. However, the statement giving call details of incoming and outgoing calls of a particular Cell Phone are electronically printed. So, the possibility of manipulation by human being is overruled. The Accused had pointed out in the course of the argument that all these statements were given on the date which is much after the date of the forwarding letter by the Company and so, it was submitted that the dates appearing on these statements are after the date of the forwarding letter and no explanation is tendered by the witnesses/representatives of the respective telephone companies, then it is to be presumed that

these were replaced by the
police attached and produced
The d earing on the call
detail or example, forwarding
letters of Airtel Company is marked as Exh 129 and the Call
details of Cell No.9890565992 is marked as Exh. 129/4. Forwarding
letter is dated 19.6.2006 and at the foot of the statement of the
calls details (Exh.129/4) the date is appearing 9/27/2006 (27.9.2006)
Though this fact is true, it can only be said that the company
has forwarded the call details along with the letter which was
prepared earlier or the company has sent this forwarding letter and
independently further provided these call details. The submission of
the Accused that the dates at the foot of the statements of the
call details are not in consonance with the dates of the forwarding
letter as they are beyond the dates of the forwarding letter and so
they are fabricated is too technical and incorrect so cannot be
accepted. The details in respect of Cell numbers, IMEI Nos. and call
details are established through ~~and~~ consistent oral
evidence, hence we hold that these call details are genuine and
authentic. When two contradictory circumstances are pointed out

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other ly the principle
mech possible then one
favou Court needs to
examine on the basis of other independent evidence how such
circumstance can exist otherwise. Court should not go
fallacious logic or take a narrow approach while applying the
above principle. Two plus two is four is a simple arithmetical
calculation. However, other calculation viz. one plus three is also
four and five minus one is also four are to be taken into account
while appreciating evidence if such other evidence is available.

39. The submissions advanced by Accused No.1 and Ld.
amicus curiae Ms. Rohini Salian about the non finding of the exact
tower location on IMEI No. 35130741540560. Sometime it appears
as 600 or some times appears as 5608 is minor electronic error as
other digits are same and call details, if tallied are correct. The
defence, while assailing the said evidence raised perfunctory points
which were explained by the prosecution. Learned Trial Judge has
scrutinised this evidence in depth and we do not find any fault or

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all the call details
The evidence on the
narised as follows.
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	Exh. Nos.	Name of the witnesses	Role of the witnesses
PW14	88	Shailaja S. Kulkarni	Divisional Engineer, BSNL
PW24	1273	Sanjay D. Kamble	Senior Executive BPL Mobile
PW25		Vijay E. Shinde	Nodal Officer Bharti Airtel Ltd.
	129		Letter from Airtel regarding information of Mobile No. 9890565992 (Deepti Devasthali Nashik Address) SIM Card activated on 16.10.2004
	1292		Airtel Prepaid Enrollment form of Deeptia Devasthali
	1294		Call Details report of Mobile No.9890565992 of A1 (Nashik address)
	98		Airtel Prepaid Enrollment form of Ruiraj Mathur Yavatmal address, SIM card activated on 26.5.2006
	1301		Call details report of Mobile no. 9960224773 of Rui Raj Mathur (Yavatmal address)
PW41	190	Sachin M. shinde	Woking with IDEA Cellular Co. call details of Mobile No. 9822018863 of Dr. Smita Mahajan

			esses
PW1			uchers/ / accessories was selling
			Enrollment Form in the name of Ruiraj Mathur.
PW11		Dr. Smita Mahajan	Wife of deceased complainant. After Dr. Deepak Mahajan was abducted, calls made and received on her mobile No. 9822018863 (Exh.190)

Accused No.1 had used the Mobile/SIM No. 9960224773 (Rui Raj Mathur)

(i) Call details of Mobile /SIM No 9890565992 (Accused 1 Nashik address) Exh-1294 details for the period April, 2006 to 4th July, 2006

(ii) Call Details of Mobile /SIM No. 9960224773 Rui Raj Mathur, Exh.1301 Cal details for the period from 1.6.2006 to 2.7.2006 it shows that for the said SIM Card the handset used is having IMEI No. 3514866094 17510

(iii) Call details report of Mobile/SIM No. 9890565992 (Accused No. 1) for the period from April, 2006 to July, 2006 Exh-1294 shows that April, 2006, May, 2006 to 30th June, 2006 and 1st July 2006 to 4th July, 2006, the hand set used for the said SIM card is having IMEI No. 351486609417510

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- (i) om bottom
Dr. Deepak Mahajan
525360048 3225.
- (ii) At page 2 sr. No. 3 onwards i.e. 2.7.2006 at 17.45, the said SIM Card was now used in handset having IMEI No. 351307415405600, this shows that the handset is changed and Doctor's Mobile/SIM Number is used in the changed handset.
- (iii) The Call Details of Dr. Deepak Mahajan at Sr. No. 88 shows that various calls were made and received upto 6.7.2006 and the handset which was used was having IMEI No. 351307415405600.
- (iv) The above said call details show that the Dr. Deepak Mahajan was in the custody of the person i.e. Accused who was using handset having IMEI No. 351307415405600.
- (v) Exh.1294 (Mobile/ SIM No. 9890565992 of Accused No.1) the call details of 12.6.2006 show that the said handset having IMEI No. 351307415405600 was used by Accused No.1 for Mobile No. 9890565992 clearly reveals that handset having IMEI No. 351307415405600 was also used by Accused No.1 much prior to the incident.

(vi)

No. 9960224773 of
and 2.7.2006 shows
Deepak Mahajan on his
handset having IMEI No.

(vii) This clearly indicates that the calls made from Mobile/SIM Card No. 9960224773 (Rui Raj Mathur) to Dr. Deepak Mahajan on 1.7.2006 and 2.7.2006 was in use by Accused No.1 only and none else as the SIM Card which stands in the name of Rui Raj Mathur was also used in the handset having IMEI No. 351307415405600 on 1.6.2006 and 2.6.2006 as the call details of Mobile No. 9890565992 at Exh.1294 for the period April, 2006 to 4.7.2006 shows that the handset in use was having IMEI No. 351486609417510.

(viii) Ex. 190 the call details of Dr. Smita Mahajan Shows various calls received to Dr. Deepak Mahajan on 2.7.2006 and tallied with Exh. 88 i.e. Call details of Dr. Deepak Mahajan.

40. The SIM having Cell No. 9960224773 which stands in the name of Rui Raj Mathur was found with Accused No.1. There was no reason to hold SIM card of any other person by name Rui Raj Mathur and make use of said said SIM Card in the handset of Accused No.1. This circumstance establishes that Rui Raj was non

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41. On seizure of the register of Shantanu lodge (Article/Exh.35) accused No.1 in the course of argument was successful in raising doubt. As per the case of the prosecution, the evidence given by PW16 Namdeo Narayan KunjerPanch and PW4 Vikas Garad Manager of Shantanu Lodge about seizure of Register of Shantanu lodge on 4.7.2006 under the Panchanama Exh.12. The entry appearing at Serial No.16 disclosing signature of Meena Joshi of Room No.7 on July was marked and was proved by PW4. It is the case of the Investigating officer PW46 that the police seized the said register of Shantanu lodge showing the entry of booking room No.7 by alleged Meena Joshi July, 2007. The Police could trace Shantanu Lodge and room No.7 which is the place from where Dr. Deepak Mahajan was abducted in the night intervening on 23 July, 2006. How the police could reach Shantanu Lodge without any specific information was explained by the learned counsel for the prosecution that the orders of search of

the loc and pursuant to this
direct ls and lodges near
Hotel ted for the lunch. After
gettir tion from Mr. Vikas
Garad, the said register was seized ~~July~~th July 2006. When the
register was seized ~~July~~th July, then obviously, no entires of the
future date i.e entries ~~July~~th July 2006 could appear in the said
register. However, though the witnesses have signed at the end of
the page at the time of panchanama, on the next page the entires
are appearing up ~~July~~th July, 2006. The entires ~~July~~th July and 6th July,
2006 are appearing. Thus, the submissions were made by the
defence that under this circumstance, the seizure of the register at
Shantanu Lodge is false and the register is bogus and the police
have planted this register against the Accused. This argument is
definitely based on sound logic and it is to be accepted that the
said seizure was not taken ~~July~~th July, 2006 and the claim of the
police of the seizure of the register on that day is false. However,
it will not nullify the register itself and the entires appearing
therein due to other evidence adduced by the witnesses.

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Veena Ranade

Accused no.1 who was present in the Court. He deposed about wearing a wig of shoulder cut with hair on the forehead and use of upper dentures of protruded teeth outside lips by Accused No.1

45. PW1 Ketan Kale has deposed that he has acted as husband of Joshi Madam who has taken name as Veena Ranade and has filed in the register of the Lodge. CW1 Rahul Bhosale corroborates the booking room at Shantanu Lodge and thus, the fact of booking room in Shantanu lodge and making the entry by name Veena Ranade is independently proved by the other witness. The entry in the register is a contemporaneous documentary evidence which corroborates the ocular evidence.

46. Opening of Blue Bird Detective Agency and employment in the said agency is another major evidence tendered by the prosecution. Evidence of PW19 Atmaram Namdeo

Ingav Blue Bird Detective
Agenc have taken office
prem f four witnesses i.e.
PW1k h Magar, PW3Pravin

Dnyaneshwar Kambh and CW1RahuAbhimanyu Bhosale
established the fact that Accused have given advertisement in
newspaper Sakal dated 11.6.2006 regarding employment in Blue B
Detective Agency. Accused have denied the fact of giving
advertisement in Sakal. Cutting of advertisement in Sakal
newspaper found in the room at Uttamnagar discloses Phone
No. 9821486650 of Deepti Accused No.1 as a contact number. In
response to this advertisement all the above four witnesses i.e.
PW1, PW2, PW3 and CW1 have contacted Accused no.1.

47. The prosecution has tendered evidence about the
residence of the Accused at Nashik and also at Krishnawatika
Dahisar. PW34 has acted as Panch in the Panchnama of residence
of Accused at Krishnawatika Dahsir. Airtel Prepaid Enrollment
Form Exh.98 discloses their addresses at Yeotmal.

48. 36650 belongs BPL
comp Officer of BPL has
prove e call details discloses
addre hisar. So, the Accused
have two residences, one at Nashik and one at Dahisir ,Mumbai.

49. Temporary residence of the Accused in the first
first week of June i.e. from 1.6.2006 to 6.6.2006 was in Hotel Ratna
Regency, Pimpri (PW2 Mansi Sandip Vinod) and another temporary
residence was at Uttamnagar, Kondwa which was taken on rental
basis for a period of one month in the last week of May, 2006.
PW5 Maroti Bajirao Gawande is the owner of the Uttamnagar room.
PW5 has deposed that both ladies have resided in that room for a
period of one month in June, 2006. Evidence of these temporary
residences and Panchanama of the property recovered from the
KrishnawatikaDahisar residence of the Accused
circumstantial evidence establishing link between the Accused and
the commission of offence.

50. execution, used to
change appearance PW20 Mansi Sandip Vinod has deposed that
protruded teeth, round black frame spectacles. On the point of
change appearance PW20 Mansi Sandip Vinod has deposed that
Accused no.1 sometimes used to change her look by using these
three articles i.e. wig, denture of protruded teeth, round black
frame spectacles. PW20 is the witness who has seen the Accused in
her normal normal look and also in her changed look and there is
no reason to discard her evidence.

51. Panchanama Exh.69 was drawn by the Police of
the room at Uttamnagar on the same date of arrest i.e. on 7
July, 2006. The said panchanama was proved by PW12 Preet
Chandrakant Babil. PW12 is B.Com. MBA (Finance) and serving in
ICICI Bank in Risk Analysis Department. This panchPW12 is an
independent, educated witness and has given consistent and reliable
evidence on the point of Panchanama which was drawn in three
parts started at 12.46 on 7.7.2006 and ended at 22.15 Exh. 68,69

52. panchanama under
Sectio ent to the room at
Uttan for a period of one
mont many articles were found
and list of the articles prepared. In the said room three wigs, two
dentures, round black frame spectacles, beard, mustaches were
found. Thus, seizure of these article and description given by the
witness Mansi Sandip Vinod(PW20), PW4 Vikash Garad and Dr.
Ashutosh Dabre (PW17) corroborate each other and prove the fact
that the Accused No.1 used to change hear appearance and looks
with the help of these articles i.e. artificial wig, dentures of
protruded teeth and round black frame spectacles.

53. Accused No.1 has challenged her identification as
Jassi by PW4Vikas Garad and PW17 Dr. Ashutosh Vitthalra
Dabare. It was argued that if these witnesses had never seen her in
her normal look, then assuming that she had changed her looks
and appearance by using different wig, dentures and spectacles,
these witnesses cannot identify her when she is in the normal look
in the Court. She has submitted that such identification in the Cour

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person who had no opportunity to see that person earlier in the
original look cannot be believed. In this context we notice that
the police have shown over enthusiasm in asking the Accused no.
to wear the wig and spectacles and put on the dentures and
shoot it and prepared a CD, disclosing the goofy look of Accused
no.1 in the character of Jassi. Learned Sessions Judge was also
swayed and allowed the identification of Accused no.1 as Jassi
by the witness believing the CD at the time of Attialle
20(3) of the Constitution of India states that no Accused of any
offence shall be compelled to be a witness against himself. Asking
the Accused in the police custody to change the makeup for the
purpose of making CD amounts to compelling the Accused to give
incriminating evidence against herself which is prohibited under
Article 20 (3) of the Constitution. It is to be noted that if the
Accused is having a peculiar look i.e. lame or having curly hair
or squint eye, then for the purpose of identification parade the

police to the look of the
Accused be asked to identify
the p e Accused was made t
put/w she was looking at the
time of incident. This may be relevant but it is an evidence
illegally collected and inadmissible in law. Suspicion however
grave it may be, cannot take place of legal proof.

54. Curiously, through out the evidence, the Investigating officer and all the witnesses have described this changed look of Accused No.1 'Jassi' which is explained as the well known fictitious character in the popular contemporary TV serial namely "Jassi Jaisi Koi Nahin". The Accused have objected to the use of this word 'Jassi' by the witnesses when deposed and pointed out that it is improved by them in the Court. Though the witnesses have not used the word 'Jassi' at the time of recording their statement and have admitted the improvement, it does not reduce the credibility of the witnesses on the proved fact that Accused No.1 used to change her looks and appearance with the help of the accessories as mentioned above. 'The word Jassi

by the her appearance as
Jassi. : which was popularly
know ded teeth and round
frame ble look to a person
and that look was very much like the fictitious "case" character
and, therefore, all the witnesses have used this word. However, the
fact of the change of the appearance is proved by all the
witnesses.

55. While assessing the evidence of the prosecution, on the point of abduction one has to take note of the conduct of the Accused under Section 8 of the Evidence Act. The prosecution has tendered sufficient and reliable evidence through the witnesses on the point of conduct of the Accused and their peculiar modus operandi of using different names, preparing and using forged documents to stagemanage the incidents under disguise.

56. Deceased ~~D~~ Deepak Mahajan was admittedly related to the Accused Nos. 1 and 2. Relationship between the Accused and the deceased is proved by PW10 Pramod Falgune, who

happened. He has given evidence that Deepak Mahajan was a close friend of Accused No.2. Shridhar Mahajan, who is a close friend of Accused No.1, has stated that he is a distant relation with Accused Nos. 1 and 2. Thus, Accused No.1 was distantly related to deceased Dr. Deepak Mahajan through Accused no.2. PW31 has stated about the visit and meeting of Accused Nos. 1 and 2 with deceased Dr. Deepak Mahajan and they both requested him to give one false certificate in respect of cause of death of the mother of Accused no.2 which was refused by Dr. Deepak Mahajan. That discloses that Dr. Deepak Mahajan has seen Accused No.1 in her normal look and she was known to deceased. Thus, it is to be safely inferred that previous acquaintance of the Accused no.1 and the deceased is the reason for Accused no.1 to change her looks and appearance. Accused No.1 wanted to present herself in a goofy look so that her identity should not be revealed.

57. It was argued that if the prosecution witness like Mansi Sandip Vinod(PW20) and PW2 Vikas Gard could identify Accused No.1 in her changed look then Dr. Deepak Mahajan who

was r . This argument is not
tenak ng at YCM Hospital
and a . Dr. Deepak Mahajan
was g he Orthopedic
department at Sanjivani Hospital run by Omkar Charitable Trust.
He was given the impression that trustees of the said trust were to
meet him. Under such circumstances, naturally Dr. Deepak Mahaja
believed the information exfacie and accepted it. One cannot
imagine that any distant relative may approach as a person in
disguise. Moreover, the deceased is not closely related to
Accused no.1 but was distantly related and was not in constant
touch with Accused no.1. Further the capacity to identify the
disguise and to identify the person behind the mask differs from
man to man. If a person is very simple and naive, cannot
imagine such goofy look and so it is not unnatural for the
deceased to accept Accused no.1 in the manner in which she had
presented herself. This disguised personality was one of the means
to commit the offence of abduction.

58. Learned Prosecutor has submitted that the opening of

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the defence. There is mere denial of evidence. However, the
evidence of the set of four witnesses(PW1,PW2,PW3 and C1) who
have applied to Blue Bird Detective Agency is consistent on certain
facts that after reading the advertisement in Sakal of Blue Bird
Detective Agency they found Cell Phone No. 9821486650 as conta
No.and thereafter on the basis of that advertisement they
contacted Accused Nos. 1 and 2. All the four witnesses have
identified Accused Nos. 1 and 2 as the persons who were running
Blue Bird Detective Agency.

59. Among the set of these four witnesses, evidence of
PW1 and CW1 can be considered later. Witnesses PW2 Ashok
Jagannath Magar and PW3 Pravin Dnyaneshwar Kamble have
deposed that they had gone to meet these ladies at the office of
Blue Bird Detective Agency near Vaibhaveshwar Mandir, Shanivar
Peth, Pune and Accused No.1 has informed them that in Pune City,

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old him that one

Doctor from YCM Hospital was to be contacted for the purpose of giving invitation and some papers were to be handed over to the said Doctor. The presentation of the letter and conversation with the Doctor was practiced. PW3 has stated that Accused no.1 applied white colour to her hair and also instructed that he should apply the colour to his hair like a senior person. However, he took objection. At that time, Accused No.1 convinced him that he was doing the work for the Nation. However, he left the job.

60. PW2 Ashok Jagannath Magar corroborates all the details in respect of giving invitation and papers to Dr. Deepak Mahajan. However, Accused did not ask him to change his looks. He has deposed that Accused no.1 changed her identity/looks by using makeup accessories and was looking like Jassi. He has deposed that he acted as a person by name Yogendra Shirke whose name was appearing as signatory of Exh.28. PW2 has given

detail
to de
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0.1 in her goofy looks
ng over letter to Dr.

61. Both the witnesses PW2 and PW3 corroborate on the material aspect of advertisement of employment in Blue Bird Detective Agency given by the Accused, the interviews taken by Accused of the candidates and story of Kidney Scandal in respect of Dr. Deepak Mahajan who was working in YCM Hospital so also the change of looks with makeup and and handing over of letter Exh. 28 to the Doctor.

62. PW2 and PW3 were cross examined by the Accused Nos. 1 and 2 in person. Nothing damaging was brought in the cross examination of these two witnesses. In this background, the contention of the Accused that the Police have not conducted the TI parade and the identification in the Court is not properly proved, does not hold substance. When the witnesses have enough opportunity to see the Accused Nos. 1 and 2 on different occasions in their normal look and Accused No.1 in her changed look on

certainly, it is not possible to say anything about the reliability of the evidence. The fact that the witnesses have seen the Accused only once and had no chance to see them on more occasions prior to the incident or after the incident. This, should ensure the correctness of investigation to eliminate the error of mistaken identity. If correctly identified, it definitely gives assurance to the investigating machinery about the proper direction of the investigation.

63. Learned amicus curiae and the Accused No.1, both have challenged the evidence of both the eye witnesses (PW1 and CW1) on various grounds. It was argued that if the case of the prosecution is accepted as it is, then these two witnesses PW1 and CW1 are the accomplice and the evidence of accomplice is not admissible in the absence of corroboration. It is further submitted that the corroboration of one accomplice to the other accomplice is

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“Section 133 : An accomplice shall be a competent witness against an Accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.”

64.

However, before we begin to assess the evidence of PW1 and CW1 it is necessary to fix their status; whether they are accomplice or not ? As per their own evidence, they were employed in Blue Bird Detective Agency by both the Accused and they have participated in the actual act of abduction. The deceased was abducted by making him unconscious and they have participated actively and put him in the Matiz Car of the Accused.

65.

The learned Trial Judge has discussed the evidence of PW1 at length as to how he and Accused No.1 went to Shantanu Lodge. Accused No.2 has booked room No.7 in the Shantanu Lodge. He stated the details of the role played by CW1 a

he wa The incident was to
take | ed No.1 could not
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booki . Dr. Deepak Mahajan
was called for lunch. However, he did not accept the invitation for
lunch at Durvankur Hotel which was near Shantanu Lodge. PW1
has deposed about the presence of Accused No.1 in goofy look like
Jassi. He mentions about the phone calls made to Dr. Deepak
Mahajan from Shantanu Lodge on 14 July, 2006. He deposed about
the rehearsal taken by the Accused Nos. 1 and 2 of PW1 and CW1
of holding legs, hands and mouth of Dr. Deepak Mahajan on the
previous day. He says how Accused No.1 had received the Doctor
outside Shantanu Lodge. The Accused were having a Matiz Car of
grey colour. He has further deposed that the Doctor was received
and brought in the room by Accused No.1. He came on Activa
Scooter. PW1 and CW1, after receiving signal from Accused No.1,
both caught hold of the Doctor and the Accused No.1 took out
injection and inserted in the hand of Dr. Mahajan. He
elaborately described further that when the Doctor resisted, the
needle which was inserted in the hand of Dr. Mahajan bent. Dr.

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and thereafter they both lifted the Doctor and put him into the
Matiz Car and took him to the corner of Karve Road.

66. While assailing the evidence of PW1 and CW1, the prosecution could not answer satisfactorily regarding delay in recording statement of these witnesses. The Accused were arrested on 7.7.2006. Search of Uttamnagar room was carried out on the same day and the file containing of the applications of the candidates who have applied for employment in Blue B Detective Agency was recovered. Learned prosecutor has submitted that on the basis of those applications in the file, they could trace PW1 Ketan Kale, PW2 Ashok Magar, PW3 Pravin Kamble and CW1 Rahul Bhosale. Statement of PW2 was recorded in the last week of July, 2006 and the statement of both PW1 and CW1 were recorded on 15/9/2006. Thus, nearly two months and one week after the recovery of the file and arrest of the Accused the statement of

these prosecutor tried to
expla e two persons there
were nd the Police took
time t e interrogated them
and it took time in getting these two candidates. It was further
explained that the Police did not look into it and tried to investigate
on that line. Thus, even though we accept these explanations, it
reveals a gross negligence on the part of the Investigating officer
who failed to be alert and prompt. We have to treat it as failure
of the investigating officer to study and analyze the evidence in
hand diligently. Similarly this throws light on the disapprovable
conduct of these two witnesses. They both have admitted that
after the incident of abduction and their participation in the said ac
they came across the news of murder of Dr. Mahajan and arrest o
these two ladies and it shows that they realized that they have
committed a wrong by getting involved in the commission of the
offence. It is the tendency of the human being to stay away from
any problematic situation where he is likely to get entangled and
will have to face the police. However any good citizen respecting
rule of law will come forward and approach the police. It would

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ed to hide themselves

67. It is required to be mentioned that, in the first round of trial the CW1 was not examined but was examined on the direction given by the High Court. The evidence of CW1 was not available to the Trial Court. Non examination of this witness was also a loophole in the case of the prosecution. While explaining the reason, Mr. Mundergi has pointed out that the Accused have written two letters separately to PW1Ketan Kale and CW1 Rahul Bhosale that they should not support the prosecution under the pressure of police. These two letters are not denied by the Accused. It is to be remembered that the conduct of the Accused during the trial should not be mixed up by the Trial Judge under Section 8 as a conduct which is to be taken as an incriminating circumstance and relate it to the commission of offence. However, as the contents in the said letters are admitted by the Accused, it shows the prior acquaintance of the Accused with these two witnesses. Learned Prosecutor has submitted that the

evidence of PW3 Pravin Kamble is sufficient to prove the fact of abduction. In view of the evidence, CW1 Rahul Bhosale's statement supporting CW1 is given, the delay in tracing PW1 and CW1 and recording their statements by the police officer discloses lethargy of the Investigating Officer. We hold the Investigating officer PW46 responsible for such tardy and loose investigation.

68. Witness CW1 was examined in the second round of the trial when the matter was sent for recording of further evidence. He has corroborated PW1, in all material particulars except very minor discrepancies like the name of the Accused. However the identity of Accused No.1 and Accused 2 can be fixed on the basis of the acts attributed to them by the witnesses which corroborates with the evidence of PW1. At the time of kidnapping the deceased was given anesthesia and was made to sleep by the Accused. For the purpose of giving general anesthesia the drug Thipentone was used. The said drug is available in the market in white powder in the quantity of 500 mg or 1000 mg.

69. the drug namely
thiper cution has examined
five w Darpan Medical
Gene ar Magetia owner
of Kashiba Medical and General Stores. Thereafter PW9 Ajit
Bhagwan Mandle Panch witness, PW28 Milind Somnath Potnis a
service Manager in Neon Laboratory and I. O. PW46 were
examined. The Bills pertaining to date 23.4.2006 25.4.2006, 29.4
from PW8 Jayesh Majethia i.e Exh. 46 to 49 from Kashiba
Medical and General Store were proved through panch.

70. Learned Special prosecutor has submitted that
Mr. Milind Somnath Potnis PW28 has deposed that Neon
Laboratory is manufacturing thipentone drug and said drug is used
for the purpose of anesthesia and also he has confirmed that
batch no. 172134 was supplied to the Distributors at Pune and
MumbaiHe has identified the seven bottles of Thipentone
injection,two bottles powder and five empty bottles and
confirmed the Batch No. 172134 on the labels of those bottles. Ld.
Prosecutor has further submitted that PW7 has deposed that in

June, Sodium Pentathol and
19.4.2006 Sodium Pentathol to D. A.
Devasathi Patil and he has also
issued a notice and stated that the said lady is
before the Court. Further learned Prosecutor pointed out that PW8
has given the evidence on the similar lines that he has purchased
25 vials of Sodium Pentathol from Neon Laboratories of Batch
172134 from Neyon and on 13.9.06 Police had come along with
Accused no.1 and he identified Accused no.1 as the lady who had
come on 24.4.2004 and have purchased six vials of thisol sodium
of batch no. 172134 along with six bottles of distilled water so also
on 25.4.2006 and 29.4.2006 both of them have purchased Inject
Thisol Sodium 500 gms. from batch no. 172134, seven vials and
four vials and so also bottles of distill water. PW8 has
identified the Accused No. 1 and also the bills issued in the name of
Deepti Devasthali were proved by. Prosecutor has
submitted that in the search of the house of the Accused at
Krishniwatika, Police has seized a box vials of the injections
sodium Pentathol and thus the prosecution has proved that
Accused no.1 has purchased sodium pentathol from Nashik.

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71. Accused No.1 and Accused No.2 both have cross examined these two witnesses at length. In the cross examination PW7 has admitted that nearly 40 to 50 persons purchased drug from his shop through the day and he did not recollect that Accused had purchased any drug from his shop on any occasion. He saw Accused no.1 only once i.e. on 19.4.06 and thereafter, on 13.9.06 he identified her. He has also admitted the overwriting of the date of the bills Exh.41 and 43. Similarly PW8 has given admission that prescription of Dr. Patil were used to come regularly to his shop and he knew that Dr. Patil and Dr. Gaikwad were from veterinary hospital. He has also given admission that one or two injections are prescribed for the purpose of one operation by the Doctor and he did not ask the reason for purchase of injection in bulk quantity to the Accused.

72. The Learned Amicus curiae and also Accused no.

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the Accused is also challenged.

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73. Medical Bills Exh.41 and 43 show overwriting and alteration in the date. It is not possible for the chemist to remember the face of the person who has visited to his shop only once after four months. The submissions of Accused no. 1 and learned amicus curiae Ms. Rohini Salian on known examination of Dr. Patil and Dr. Gaikwad are convincing. The bills 41, 43 so also Exh. 48 appear manipulated document and there was no reason for these two chemists to remember the face of the Accused in the absence of any special incident. Hence the evidence of the purchase of thisol sodium of PW7 and PW8 by the Accused is found not reliable. The prosecution has, therefore, failed on this point of purchase of thisol sodium from PW7 and PW8.

74. The learned special prosecutor has successfully

connected to the Uttamnagar room during the commission of the offence. The use of thipentone by the Accused was proved by the evidence. The Accused's statements were found in one hand and the evidence in the other hand which two bottles were sealed containing white powder and five bottles were empty having batch No. 172134 manufacturing date October, 2005. PW34 in the Panchanama Exh.163 dated 11.7.2008 of Krishna Vatika, Dahisar F.No. 1, a Box of 25 bottles, 12 bottles were used and 13 were containing powder, 15 Bottles of distilled water were found. Exh. 163 Thisol having batch No. 172134 manufacturing date October 2005. The defence could not demolish this concrete circumstantial evidence. Thus seizure of thisol in Uttamnagar and at Krishna Vatika and use of Thisol at the time of commission of offence by the Accused is proved by the prosecution by leading consistent and cogent evidence.

75. We are required to see whether the prosecution has proved that Accused no. 1 and 2 have committed culpable homicide amounting to murder punishable under Section 302 read with Section 34 of the Indian Penal Code ? The exact cause of

death was not available for
postn ilable were decomposed
The b death. All these parts
may rts is possible with
the knife which was shown i.e. Articles 45/47 recovered from the
room hired by the Accused at Uttamnagar. On the characteristic of
Thiopentone drug and method of its use PW 28 Milind Somkant
Potnis and PW 45 Balasaheb Dagdu Pande both have corroborated
that the effect of the drug is based on the quantity of the dose.
It is to be administered Intravenously (IV). Over dose of thiopentone
affects respiratory system and sudden fall of blood pressure
resulting in death. It is important to note that thiopentone is the
drug which does not leave its trace, when
administered, within 15 to 30 second affects the brain so that the
person goes to sleep. Thereafter the drug is distributed/spread in
the body and is detoxified in the liver. The drug thiopentone has
unique characteristic that after a period of some hours it leaves
no trace of it in the blood or body. It is to be remembered that
the thiopentone is a drug mainly used for induction of anaesthesia
and it is not a poison. However there is no conclusive proof to

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76. A person can be said to be an accomplice who actually participates in the commission of offence and shares a similar intention to do so along with the Accused. If a person is hired for the commission of offence by paying some money and he accepts to commit the crime, then that person is an accomplice. CW1 and PW1, as per the case of the prosecution, have actually participated in abducting Dr. Mahajan which is an illegal act. They both helped Accused no.1 when she injected drug to the deceased Dr. Deepak Mahajan. The act of holding the deceased to enable the Accused to the inject drug is no doubt the participation in the crime or offence. However, these two witnesses cannot be labelled as accomplice in true sense due to another unfolded layer of evidence of their employment in Blue Bird Detective Agency. The Accused have informed them that it being a detective agency, their task was to record the statement of a Doctor involved in Kidney scandal. Such acts are required to be done by

the d... agency is neither an
illega... , if taken in isolation.
To ru... ence under the garb o
the w... : devilish idea which
was implemented by the Accused. Public advertisement in the
newspaper about employment in detective agency and regular
office in Pune, has definitely created confidence in the minds of
these witnesses, who believed the story of involvement of the
deceased doctor in the kidney scandal and an idea to abduct
him for the purpose of recording his statement by the head of the
detective agency who was Bombay based was believed to be
genuine by them. Therefore, as per the bonafide belief of PW1
and CW1 their participation was a part of their duty being the
employees of a detective agency. Their evidence fully corroborated
with the evidence of many other circumstances. It is not the case
that besides the evidence of these two witnesses on the point of
abduction, no evidence is tendered by the prosecution. Evidence of
PW4 (Vikas Harischandra Garad) who was the Manager
Shantanu Lodge has identified the photographs of PW1 on the
application forms for employment in Blue Bird Detective Agency. T

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of Panchanama of
application forms of the
active Agency, out of
which these two application forms, Form Exh.23 is of PW1Ketan
Kale and Exh.230 of CW1 are evident to show that they were
really employed in Blue Bird Detective Agency by the Accused. PW
Ashok Jagannath Magar and PW3 Pravin Dayanand Kamb
corroborates the evidence of PW1 and CW1.

77. Dr. Deeak Mahajan came to Shantanu Lodge on
Activa Scooter and said scooter was taken by CW1 Rahul Bhosale
and was kept at Shivajinagar and it was informed telephonically to
PW11 Dr. Smita Mahajan. The said scooter was not found at the
first instance to the police but was found subsequently by PW46
Investigating OfficerBharat Patil at the spot which was informed by
the Accused to Dr. Smita Mahajan. Evidence of PW12 Preet Babil
Panch of the Panchanama of Uttamnagar room corroborates the
details given by PW1 and CW1 that the needle was bent so
Accused no.1 threw that bent needle and used other needle to

inject e and syringe were
found a at Uttamnagar. The
fact c oved by the prosecutio
throu of the articles of
makeup. Hence, the Sessions Judge was correct in believing PW1
The evidence of CW1 has come before us afresh and we found it
unshaken and reliable. Thus the prosecution has established that
the Accused Nos. 1 and 2 had conspired to abduct Dr. Deepak
Mahajan and had abducted him on 2.7.2006 from Shantanu Lodge
and have committed various offences in order to commit abduction

78. We shall have to consider the offence under
various sections with which the Accused are charged. Section 364
deals with abducting a person for ransom. The essential ingredients
of the section are as follows:

- (i) That the Accused kidnapped or abducted a person; or
- (ii) That the Accused kept such person under his detention;
- (iii) That the Accused threatened to cause death or hurt to such
person or caused death or hurt to him;
- (iv) That the Accused did commit so to compel
 - (a) the Government; or
 - (b) any foreign state; or

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(v) stain from doing any
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In the present case the prosecution has proved all the ingredients of Section 364A that Accused No.1 and 2 have conspired to abduct and have abducted Dr. Deepak Mahajan. While taking Dr. Deepak Mahajan, the Accused Nos 1 and 2 have made him unconscious and kept him under their detention in Room No. 7 of Shantanu Lodge and thereafter in their Matiz car. Further, the Accused have threatened to cause death or hurt to Dr. Deepak Mahajan and they did this to compel Dr. Smita Mahajan to pay ransom of Rs.25 Lakhs. Both, Accused No.1 and Accused No.2 shared common intention and have planned a sinister design to abduct Dr. Deepak Mahajan. The conspiracy is absolutely evident and proved.

79. On the point of demand of ransom, the prosecution relied on the telephonic conversation which was heard by Dr. Smita and Investigating Officer PW46 at the police station. In telephonic talk, the person talking on the other end had

threatened the
Doctor was argued by the
defence execution witness, the sa
demand for there was actual
handing over of the money and thus, in fact there was no intention
of demanding ransom while Dr. Deepak Mahajan was abducted and
hence the act of the Accused will not fall under Section 364A of
the Criminal Procedure Code. Section 364A does not require the
amount of ransom is to be actually parted with from the
complainant to the Accused. It requires only a threat of death or
hurt or even reasonable hurt that the person may be put to death
or hurt to pay ransom. The Accused, attending telephone/
Mobile of Dr. Deepak Mahajan gave threats on the same phone to
Dr. Smita which confirmed the fact of abduction and also give rise
to reasonable apprehension to Dr. Smita that Dr. Mahajan may be
put to death or hurt and simultaneously ransom of Rs.25/ lacs
was demanded with specific threat of killing Dr. Deepak Mahajan.

80. **'Abduction'** is defined under Section 362 of the
Indian Penal Code. Section 364A is an aggravated form of

abduc death or imprisonment
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sente by neck until they are
dead urt. As we hold both
the Accused guilty of Section 364A we need to hear the Accused on
the point of sentence of death.

81. The Accused are also charged under Section 387 of the Indian Penal Code for the commission of offence of extortion which requires putting or attempting to put any person in fear of death or grievous hurt to that person or any other, for which punishment of imprisonment upto 7 years is prescribed. Evidence adduced in respect of Section 365A and Section 387 is relied for the propose of proving of offence under Section 387 read with 120 (b) of the Indian penal Code. The learned Sessions held the Accused guilt of the same and has awarded sentence of seven years rigorous imprisonment and to pay fine of Rs.10,000/ each, in default rigorous imprisonment for three months. We agree with the said sentence.

82. Penal Code, if a
perso by the any person any
poiso wholesome drug or othe
thing on, with intent to
commit or facilitate commission of an offence or knowing it to be
likely that he will thereby cause hurt, the offence is committed. It
is to be noted that the offence under this section is complete even
if no hurt is caused to the victim. Mere administration of the
poison or unwholesome drug or other things is sufficient to bring
the offender under this section. Intention to cause hurt to such
person to commit or to facilitate to commit an offence
knowledge that hurt will be caused should be present.
Thiopentone/sodium thioisolate as discussed above is not a poison but it
is a drug having effect of paralyzing the function of the brain.
Thiopentone is required to be injected through intravenously. This
drug is to be injected slowly and it cannot be given in the muscle
and therefore, the administration of this drug itself needs a lot of
caution and basic medical knowledge and specialized knowledge of
injecting the drug in the vein. If the drug is administered quickly,
then it may have adverse effect. The prosecution has brought this

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nervous system of the body. Hence offence under Section 328 of
IPC is proved beyond reasonable doubt. For this offence, the
learned Sessions Judge has sentenced the Accused to undergo
rigorous imprisonment for seven years and pay fine of Rs.7,000/
each, and in default awarded further rigorous imprisonment for
three months. We agree with the extent of sentence given by the
learned Sessions Judge.

83. It is submitted that the prosecution has proved that
the Accused have committed the offence of forgery in respect of
creating and using fake driving licence in the name of Rui Raj
Mathur and thus has committed offence under Section 465 and
468 of the Indian Penal Code. Section 465 is the penal section. For
committing offence of forgery a false document i.e. driving licence
in the name of Rui Raj Mathur was prepared and used. While
committing forgery the Accused Nos. 1 and 2 had intention that the

case, 1 and 2 as they made
effort re different entities.
Thus, proved by the
prose s punished them to
suffer rigorous imprisonment for three years and to pay fine of Rs.
10,000/ each and in default to suffer rigorous imprisonment for
three months. We find no need to disturb the finding.

85. Section 342 speaks about wrongful confinement. Dr. Deepak Mahajan was wrongfully confined by the Accused and the said fact was proved through the witnesses. We agree with the punishment given by the learned Sessions Judge which is of one year rigorous imprisonment and fine of Rs.1000/each and in default to suffer rigorous imprisonment for one month.

86. The Accused Nos. 1 and 2 have also been charged for the offence punishable under Section 471 of the Indian Penal Code. If the person uses a forged document with knowledge, as genuine, then he commits offence under Section 471 of IPC. Driving licence in the name of Rui Raj Mathur was forged

docur Mobile SIM Card was
obtain as genuine. So also
the A i the name of Omkar
Chari Dr. Deepak Mahajan
for the post of orthopedic surgeon. There was no such offer in
reality for Dr. Deepak Mahajan to join as Head in the
Orthopedic department in Sanjivani Hospital run by Omkar
Charitable Trust. However, this particular offer was faked by creatin
/forging a false letter. The said fake letter was used as a bait to
lure Dr. Deepak Mahajan who was made to believe that forged
document as genuine and became prey to the sinister design of th
Accused. The Sessions Judge rightly convicted the Accused Nos. 1
and 2 for the offence punishable under Section 471 read with
Section 120B of the IPC and sentenced to undergo rigorous
imprisonment for three years and to fine of Rs.3000/ each, in
default to suffer further IR for three months. We concur with the
finding and the punishment awarded by the learned Sessions
Judge.

87. There is no eye witness to the fact of murder of Dr.

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- i. l
- ii. Discovery of body parts at the instance of Accused No.2
- iii. (a) Room at Uttamnagar
(b) Panchanama of Uttamnagar Room and the articles/weapons found therein.
- iv. DNA (para 90, 91 and 92)
- v. Discovery of Matiz Car
- vi. Arrest Panchanama
- vii. Case diary ()

88. To destroy the case of the prosecution on the point of identification of the body of Dr. Deepak Mahajan, the defence has pointed out the circumstances / loopholes in the case of the prosecutions which can be summarised as follows.

POINTS RAISED BY DEFENCE	
(1)	Identification of the body in absence of head and hands
(2)	Specious DNA
(3)	Cause of death not established
(4)	Planting of shirt of Dr. Mahajan
(5)	Challenge to discovery Panchanama
(6)	Blood group of Dr. Deepak Mahajan is not brought on record.

(7)

(8)

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f more than two

89. In the present case there is no eye witness. The theory of last seen together was pressed into service by the learned special prosecutor. Ld. Counsel Mr. Mundargi has argued that Doctor Deepak Mahajan was seen last in the company of Accused Nos. 1 and 2. PW1 and C1 are the witnesses on this vital point. To establish the offence of murder, the prosecution has heavily relied on the last seen'together theory and contended that in the absence of any explanation as to when the Accused left the company of Dr. Mahajan, Section 106 of the Indian Penal Code is to be invoked.

90. It is the defence of the Accused that these two witnesses PW1 and CW1 have committed murder with the help of Ratansingh and were involved in the murder of Dr. Deepak Mahajan. The other defence was also suggested at the most it can be said that these two Accused ladies abducted the deceased

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furthe answering Question No
87, Accused no.2 answered that one Jayashree Vipradas and
Sadanand Kenge have committed murder and fourthly through th
arguments names of Dr. Smita and Parag Mahajan were suggeste
as the culprits. Thus the explanation given by the defence
appears to be inconsistent and imaginary. In this back ground and
considering the proof of the other circumstantial evidence we
assess how far the prosecution can get the benefit of under
Section 106 of the Evidence Act.

91. Section 106 states “~~when~~ any fact is especially
within the knowledge of any person, the burden of proving that fact
is upon him”. Section 106 cannot be freely applied to the
Accused in the criminal trial. The Accused may be covered under
the phrase “any person”. However the applicability of the section
is restricted by the basic principle of criminal jurisprudence that the
burden on the prosecution to prove the facts never shifts. In fact,

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serious miscarriage of justice. Therefore, the Accused is always
insulated with the right to silence. Disclosure of the subsequent
facts within the knowledge of the Accused thereafter takes colour
of the confession which is barred under section 25 of the Evidence
Act.

92. On the point of fast seen together, the prosecution
has relied on the case of State of Rajasthan Vs. Kashi Ram Vs. (200
12 SCC 254) in which it is observed that:

“19. Before advertng to the decisions relied upon by the
counsel for the State, we may observe that whether an
inference ought to be drawn under Section 106 Evidence
Act is a question which must be determined by reference
to proved. It is ultimately a matter of appreciation of
evidence and, therefore, each case must rest on its own
facts”

evidence if the
planation in discharge
If provides an
stances proved
against him. Section 106 does not shift the burden of
proof in a criminal ~~which~~ is always upon the
prosecution. It lays down the rule that when the Accused
does not throw any light upon facts which are especially
within his knowledge and which could not support any
theory or hypothesis compatible with his innocence, the
Court can consider his failure to adduce any explanation,
as an additional link which completes the chain. The
principles has been succinctly stated in Naina Mohd.(AIR
1960 Mad. 218:1960 Cri. LJ 620:

93. The provisions of Section 106 of the Evidence act
itself are unambiguous and categoric and lay down that when any
fact is specially within the knowledge of a person, the burden of
proving that fact is upon the him. Thus, if a person is last seen
with the deceased, then it is expected that he should offer an

explains the company with the
deceased who have discharged his
burden on the basis of facts
with in which to charge the burden cast
upon him by Section 106 of the Evidence Act. If the
Accused fails to discharge any burden under section 106, it is not
a principal or major burden, its just an additional
circumstance against the Accused. It cannot be replaced for missing
chain of the prosecution.

94. In the decision rendered by the Hon ble Supreme
Court in the case of Sucha Singh Vs. State of Punjab (2001 SCC
(Cri.) 717), it was observed in para 15 of the judgment as under:

“15. The abductors alone could tell the court as to
what happened to the deceased after they were abducted.
When the abductors withheld that information from the
Court there is every justification for drawing the inference
in the light of all the preceding and succeeding
circumstances adverted to above that the abductors are
the murderers of the deceased.”

(Referred (2000) 8 SCC 382 State W..B. Vs. Mir Mohd.
Omar)/ 31. The pristine rule that the burden of proof
is on the prosecution to prove the guilt of the Accused

ctrine as though it
ning. The doctrine of
rule, nor would it
other hand, if the
of proof of the
prosecution is allowed to be wrapped in pedantic coverage,
the offenders in serious offences would be the major
beneficiaries and the society would be the casualty.”

95. Prosecution has further placed reliance on the ratio laid down in the case of State of Maharashtra Vs. Suresh, reported in (200) 1 Supreme Court Cases 471, in which the Supreme Court, while discussing the value of evidence tendered under section 2 of the Indian Evidence Act have observed that:

“We too countenance three possibilities when an Accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And third is that he would have been told by another person that it was concealed there. But if the Accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal court can presume

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himself. This is
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the presumption is a well justified course to be adopted
by the criminal Court that the concealment was made
by himself. Such an interpretation is not consistent
with the principle embodied in Section 27 of the
Evidence Act.

In the case of State of Maharashtra Vs. Suresh (Supra) the
Accused had raped and murdered four years old girl child and the
mangled body of the child was dumped in the field. The Accused
and victim were last seen together by three prosecution witnesses.
The body of child was recovered from the cotton field in
pursuance of the information given by the Accused. In the medical
examination of the Accused the injuries consistent with the theory
of the rape were found on the private parts of the Accused. In the
present case there was a gap of five days between the incident of
abduction of Dr. Deepak Mahajan and discovery of the parts of mal
body and the identification of the body was seriously in dispute for
want of head of the body. Thus the ratio laid down by the

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96. In the case of Hatti Singh Vs. State of Harayana reported in 2008 (3) SCC (Cri.) 246, the Hon ble Supreme Court observed that:

“The evidence of last seen by itself apart from having not been proved in this case cannot be of much significance. It may provide for a link in the chain but unless the time gap between the deceased of having been last seen in the company of the Accused person and the murder is proximate, it is difficult to prove the guilt of the Accused only on that basis.”

97. In the present case as per the prosecution discovery of the body parts in pieces at the instance of Accused No.2 is an authentic nexus between offence of murder and the Accused. In the postmortem report, Dr. Milind Sharad Wable (PW 36) has opined that it was male body and the parts of the body may

be of two to five days prior
to the ece is a normal
circur the murder itself is
abnor 1 parts wrapped in
six similar/identical blue plastic bags. If the body parts would have
been found scattered at different places and not in the packed or
wrapped condition, then it would have been inferred that some
stray animals or birds have taken away some parts of the body
and eaten and so the body was found in pieces. However, in this
case, it is to be concluded that it was an act of human being.
Finding of four packets at Katraj Ghat and then finding of two
packets at a long distance i.e. at Bhosari is also another
important consideration. These two places Katrajghat and Bhosari
are away from the residential area of Pune city.

98. PW12 Preet Babil is examined for the discovery of
the body parts. (Panchanama under Section 27 of the Evidence Act
Dfence could not demolish his evidence. This Panchanama is
proved and we have no hesitation to hold that body parts were
found consequent to the information given by Accused No.2.

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ody is found at the
n is successful in
se instance the body is
found can be held guilty for the offence of murder of the said victim.
However, in the present case there are some abnormal
circumstances which constrain us to question the case of the
prosecution on the point of murder. The fact of last seen together
and the discovery of body parts are two circumstances necessary
to be joined with the circumstance i.e. identification of the body.
Identification of the body can be proved by various ways. The most
natural and common is by face. It may also be with the help of
marks on the body or due to the peculiarity of the limbs or if the
body is decomposed, then on the basis of forensic evidence.

99. As per Section 27 of the Indian Evidence Act, the
information given by the Accused is made admissible only for the
limited purpose. The total ban on accepting confession is
partially lifted under this section, if the fact is actually discovered in
consequence of the information given by the Accused and it affords

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admissible hanama. Parts are o
the body of Deepak Mahajan should have been proved through
other independent evidence. Further details will amount to
confessional statement and admissibility of it is strictly barred
under Section 25 of the Evidence Act.

100. The fact of keeping certain object at a particular
spot is always within the exclusive knowledge of the Accused
because it is the tendency of the criminal to hide the object used
in crime and therefore it is known to the Accused only and the
Accused only can point out the place where the object is kept.
Therefore, in the absence of discovery of any object, the statement
can not be considered as memo under Section 27 of the Evidence
Act and hence the mere pointing of the spot is not admissible.
Therefore, when the body parts are found one cannot jump to the
conclusion that these body parts are of Dr. Deepak Mahajan
because the body parts are found after the information given by

Accusation is not sufficient to satisfy the legal requirements required to prove the identity of the deceased drawing inference on the basis of the evidence.

101. On the point of identification of dead body reliance is placed on Kesav Vs. State of Maharashtra, reported in 2008 (3) Soft. (SC) 91 in which the Supreme Court observed and held as follows:

“All parts of the dead body including small intestine were missing. The dead body was lying in an open field at least for four days. How apparels and clothes purported to be belonging to deceased had been found near the dead body separately is beyond comprehension. If he was killed by using a hard and blunt substance on his head as it appears from the postmortem report, the clothes of the deceased would still be found over the skeleton and not at a distance from it. If the body was eaten away by vultures or other animals the garments would have also been found in torn conditions and beyond recognition. In this situation the evidence that the garments have been recognized by the mother and wife of the deceased for the purpose of identification of the dead

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Accepted.”

102.
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evidence of the landlord PW 5 Maroti Bajirao Gawande who let
out the said room at Uttamnagar. PW6 Sharda Takbhate was the
neighbour and she is examined on this point. She has stated about
the residence of Accused nos. 1 and 2 in the said room at
Uttamnagar, their Matiz Car and foul smell emanating from the
said room in the first week of July, 2007. The defence has
pointed out a material omission in the evidence of PW6 that she
has admitted that she did not state to the police at the time of
recording her statement that she has seen the Accused Nos. 1 and
removing very heavy article wrapped in blue plastic cover from the
Car and then after some time keeping small packets in blue
plastic bags in their car. The prosecution on the basis of this
evidence wanted to create indirect circumstance showing
connection between the use of blue plastic bags and Accused
taking out heavy article from the Car to their house and after
two days taking out something in the blue packets. However,
this evidence is not believable. Evidence of PW6 Mrs. Sharda

Takbla le fact throwing light
on the Deepak Mahajan at
Uttan ed by the prosecution
to show lling Dr. Deepak
Mahajan. The Room of Uttamnagar was sealed and Panchanama
was carried out and in the said Panchanama (Exh. 69/75) many
articles were found.

103. The relevant articles i.e. Full pant(Court Article29,
blood stained Blue Shirt (Court Article30), Pair of socks(Court
Article31) Black leather belt (Court Article 32), Spectacles (Court
Article23). KnifeArticle 45, Blade of SpadeArticle 46, KnifeE3
Article 47, human hairArticle 41, pieces of cloth Article 17, blood
stained KurtaArticle 50, Blood stained SalwarArticle 53, Latex Hand
gloves Article 40 and Article 16 underwear were found in the room
of Uttamnagar and they were sent for the Chemical Analysis (CA)
It was pointed by the Learned Special Prosecutor that in the
Panchanama of Uttamnagar room one piece of blue colour cloth
(Exh.51) having design of the triangles was found and three pieces
of blue colour cloth having design of triangles were found with

the blood on the pieces of cloth as the evidence in an appeal to connect these three pieces of cloth as the same cloth, this is an issue.

On appreciating this evidence, we found that the said pieces of cloth were not before the Court and they all were not sent to C.A. The police should have done forensic Panchanama of the three pieces of cloth and one piece of cloth showing that they are the pieces of one and the same cloth. Three pieces and one piece of cloth, all should have been sent to the C.A. No evidence of Panchanama of PW12 Preet Babil was tendered on the point that Article 51 (one piece of cloth) and other three pieces of cloth were matching and they are of one and the same cloth. Moreover, the result of all these articles which were sent to C.A. though was "human blood detected", the opinion about the blood group was inconclusive. Though leads were available to the police, they could not exploit the same properly by taking investigation to the logical end. The Prosecution has failed to bring on record even the blood group of the deceased and the blood group of Accused no.2. If the evidence in respect of the blood group of the Accused and

the blood was found on the clothes of a female is not a normal but an incriminating circumstance. Article 46, Green Knife of uneven pointed edge of blade was found and if anything is cut with that blade then because of the design of the edge the cut will not be smooth but it may be zigzag.

104. Rabbits play interesting role in the entire episode. Accused have admitted that they are fond of rabbits and they had kept rabbits in their house at Uttamnagar. In the panchanama, two rabbits and cage were found in the room at Uttamnagar. . The Accused on complaint of foul smell by PW6 Sharda Takbhate told her that due to the rabbits there was a foul smell in the room and they would clean it. The prosecution, on the basis of evidence of Mrs. TakbhatePW6, tried to tender indirect evidence on the point of place of killing and dismembering the body part

of the prosecution is weak and
imagi gating officer in fact
shoul r scientific examination
of th ated the prosecution
case that deceased was done to death and his body w
dismembered in the room. We find that except the recovery and
seizure of the articles and statement of PW 6, no efforts were taken
by the Investigating officer to establish the spot of the murder.

105. Murder of Dr. Deepak Mahajan is seriously
challenged by the defence on the ground that prosecution has failed
to prove the death of Dr. Mahajan . The fact that some body parts
were sent for the postmortem examination on 7.7.2006 at 10 p.m
to the Sasoon Hospital Pune and Dr. Milind Sharad Wagale has
conducted postmortem on those body parts on 8.7.2006 is not denied
by the defence. However, the head and the hands of the body
were not found and therefore the identification of the said parts
of the body was challenged. In support of their case of last seen
together, prosecution could not solve a mystery of five days as to
what happened to Dr. Deepak Mahajan after he was abducted. Who

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106. In the background of this challenge, the evidence of Dr. Milind Sharad Vable, PW36 who conducted autopsy is to be looked into. He has mentioned that the body was brought in six packets. He observed that maggots were present on the body. The cut ends of the bone showed sharp zigzag edges at places. The heart was cut at the base of aorta. The right leg, left leg and feet were dismembered. Blood was not found. It is to be noted that cutting of the body in pieces cannot prove the murder, unless the cutting of body was proved to be antemortem. The Doctor has opined that the parts were cut probably after death. He has opined that exact cause of death cannot be given. It was mentioned that the parts apparently might be of one person and as the male organs were found, it is to be inferred that it was a male body. A person might have died a natural death and subsequently the

body cause of death could
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to hold conclusively that Dr. Deepak Mahajan died due to Thisol Sodium/Thiopentone. Through evidence of Dr. Wable, prosecution has established that the said body parts were of male person and they were apparently of one person and the time of the death was approximately two to five days before the postmortem examination. So it may be between 26th July, 2006. The opinion of Dr. Wable is found consistent with the case of the prosecution on the point of approximate period of death of Dr. Mahajan though it does not prove conclusively the identification of the body.

107. It was argued that the prosecution could not prove that the body parts recovered by the police in Katraj Ghat and at Bhosari are of Dr. Deepak Mahajan. The submissions are based on the quality of the experts evidence on the point of DNA, a chemical of which human chromosomes are made. The Prosecution has produced the report of the DNA test. For the purpose of DNA test,

blood s. Shridhar Mahajan
i.e. pā PW31 has stated
accor ~~to~~ his
wife v for the purpose of
comparison of the DNA, the prosecution has sent blood stained blue
shirt of Dr. Deepak Mahajan which marked as Court Article 30 and
the samples of body parts i.e. hair, skin, tissues, left femur, left tibia,
right femur, right tibia, right hip bone were sent to the DNA experts.

108. The learned amicus curiae and the Accused no.1,
while assailing the evidence of PW32 Shrikant Hanumant Lade
and PW33 Dilip Yashwantrao desai who were working in DNA
Laboratory Kalina, challenged the competency of DNA experts for
want of requisite qualification.

109. PW33 Dr. Dilip Desai has used STR (Short Tandem
Repeats) method for DNA analysis and ~~the~~ report
which is marked as Exh.274 dated 6.10.2006 is produced before the
Court . It is said in the report that no interpretable profile is
possible. In the cross examination, the witnesses PW32 and PW33

have
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carried out at Kalina Mumbai. The learned counsel for the
prosecution gave explanation that the Laboratory at Hyderabad
and the experts working there were burdened so heavily that they
could not spare time to perform the test on the body parts sent
by the police. PW32 has admitted that he went to Hyderabad.
These samples were forwarded to the Laboratory at Hyderabad on
10.11.2006 by their A/c. After receipt of the samples,
technicians of Kalina Lab informed the police that they require
controlled blood sample of Shridhar Mahajan(PW21). However, no
samples were sent to Hyderabad and the Hyderabad Laboratory
refused to carry out the examination of the samples due to the
work load. He has also stated that the Hyderabad Laboratory did
not communicate any reason in writing. He went to Hyderabad on
13.11.2006. He stayed there from 13.11.2006 to 21.11.2006 and
purpose of the visit to the Hyderabad was training programme of
DNA Isolation from bone samples. Kalina Laboratory have received

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(PW3

ing YSTR (YShort

Tandem Repeats) method. He has explained in the evidence that STR method is automatic. In STR method, analysis of DNA profile by using electro phonogram of the exhibits is done and YSTR method is used if the samples are degraded.

110. PW32 has admitted that DNA technique is in developing stage. PW32 has opined that DNA profile of bone samples and DNA profile of Shridhar Mahajan are from same paternal progeny and he on the basis of that has made report that deceased Dr. Deepak Mahajan is the biological son of Shridhar Mahajan. (432/433). In his chief, he has said that he carried out the test of DNA extract from the Blue Shirt of Dr. Deepak Mahajan (Exh.8) and controlled blood samples of Shridhar Mahajan and Charushila Mahajan (father and mother of deceased) by using STR method. He has opined that STR small DNA fragments which are present in every human being are highly

indivi on the basis of
comp e. Blood stains on the
shirts) are of the biological
offspr . In the entire evidenc
of DNA or CA, the prosecution did not bother to bring the blood
group of Dr. Deepak Mahajan.

111. In the cross examination, defence could successfully bring a number of discrepancies in the evidence of PW32 and PW33. In respect of the evidence of PW32 Shrikant Lade, especially in the background of his admission that though there were specific directions by the police that DNA was to be carried out at Hyderabad and not in their laboratory at Kalina and the seal of the samples was not to be opened at Kalina, the DNA was carried out at Kalina. In the first round when carried out by PW33 Dilip Yashwantrao Desai it gave negative result. The DNA test which was finally carried out by PW32 at Kalina of the samples of the body parts is not found reliable. He has not said anything about the use of YSTR method and why he did it and how YSTR method was useful to arrive at the positive conclusion in

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112. DNA, is considered as a science of precision and accuracy to establish the biological relationship between human beings. We are constrained to observe that how, when and where the samples of blood are sent by the police to the Laboratory and when the analysis was made in what method and when the report was sent should all be brought on record very systematically by the prosecution. These institutions are working as an extended arm of the Police investigation. If so, the communication between the Laboratory and the Police should be in writing. In the present case the prosecution could not justify why Shrikant Lade went to Hyderabad for training and why the samples of the body parts of Deceased and of the samples of controlled blood of the parents of deceased Dr. Deepak Mahajan sent by the police for DNA test were not tested at Hyderabad. Moreover, if such samples were sent

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from statement of the poli
or Lal e accepted. DNA tests
are to be seriously conducted with optimum care as it provide
unshakable and concrete scientific evidence against the Accused
Moreover no satisfactory explanation is advanced how first DNA
test failed and why second DNA was carried out.

113. It was argued by Accused No.1 that Shridhar Mahajan is having one more son viz. Parag Mahajan and one daughter, so there is possibility that the police might have taken the blood of their other two children and could have planted on the blue shirt and therefore, DNA technician has given report that the DNA of the blood stains on Blue shirt (Exh.8) are of biological offspring of Mr. And Mrs. Shridhar Mahajan (parents of deceased). This argument though not convincing, indicates some possibility. Moreover, the Police have proved the fact of seizure of the Blue shirt from the rented room of the Accused at Uttamnagar and Dr. Smita Mahajan (wife of the deceased) has identified the

said s identification of the
shirt o :o prove the fact that
said s e mentioned that
besid agar, police found
number of articles at the time of Panchanama (Exh.75 Panchanama
of Uttamnagar room) through PW12 Preet Babil Panch. Total 96
articles were recovered and out of those articles Yellowish Colour
Full pant (Court Article 29), Shirt (Article 30), Pair of
socks (Article 31) Black leather belt (Article 32), Spectacles
(Article 23) were found and these articles were identified by D.r
Smita Mahajan (PW11) wife of the deceased and Shridhar Mahajan
(PW31) father of the deceased. These articles were found in the
room of the Accused. There is cross examination as this score and
incriminating circumstance against the Accused
unchallenged by the defence.

114. The Learned Special Prosecutor on the point of
circumstantial evidence has relied on the case of Anant Chintama
Lagu Vs. State of Bombay AIR 1960 SC 5 00 (IV) 47 C8 5 , in which
it is held that :

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ference but of
a medical man
who conducted the postmortem and of the chemical
analyzer as decisive of the matter is to render the
other evidence entirely fruitless. While the
circumstances often speak with unerring certainty, the
autopsy and the chemical analysis taken by themselves
may be most misleading. No doubt, due weight must
be given to the negative findings at such examination.
But bearing in mind the difficult task which the man
of medicine performs and the limitations under which
he works, his failure should not be taken as the end of
the cause for good and probative circumstances and
irresistible inference on guilt can be drawn."

115. In the case of Anant Chintaman Lagu (Supra) the
cause of the death of the deceased Laxmibai, given by Dr. Jhala
was due to diabetic Coma. However the said postmortem was
conducted not as a medico legal case and the Dr. Has admitted that
his opinion might be inaccurate. However, Dr. H. S. Mehta, as an
expert has opined that the death was probably due to

admir n. While appreciating
the ci man as a guideline fo
appre l especially in the case
of dea are of the fact that in
the present case, the circumstance which has remained
unexplained and not proved is the identification of the body itself.
The DNA evidence which is produced by the prosecution is found
unreliable and though it was proved that thipentone wa
administered to the deceased in the absence of the identification
of the body and cause of his death in the opinion of Dr. Wable
who performed PM, this ruling cannot be of any use to the
prosecution.

116. Even if discovery panchanama (though it does not
inspire confidence) is accepted, it only proves that some parts of
male body were discovered at the instance of Accused no.2. The
important link that the said parts of the dead body were
conclusively of Dr. Deepak Mahajan is not established. However, the
prosecution could not tender reliable evidence on the point of DNA
or any other evidence to draw conclusion that the said body parts

immediately
show

statement that she would
be lying.

118. It is stated that Thiopentone
or Thisol Sodium was administered and Dr. Deepak Mahajan was
made unconscious and was taken away by the Accused 1 and 2 in
their Matiz Car. However, the prosecution is absolutely silent on
the vital point as to what happened to the Doctor thereafter. It
is the case of the prosecution that Dr. Mahajan was taken to the
room at Uttamnagar and in that room these two ladies killed Dr.
Deepak Mahajan and dismembered his body. No eye witness is
examined by the prosecution to prove this fact. There is no direct
or indirect evidence on the point of murder and no efforts have
been made by the prosecution to prove these important and
crucial aspects of the case, as already observed by us.

119. The prosecution witnesses PW11 Dr. Smita Mahajan
and PW10 Pramod Prabhakar Falgunebrother of Accused No.2,
both have confirmed that around 12.30 news about the recovery of
the body parts of the deceased Doctor at the instance of

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system
is wrong
of security
publication of the matter in the print/electronic media and
highhanded telecast and immature comments of the anchors of
the TV media may mislead the people as public opinion is bound
to be influenced by the manner the case is projected and
ultimately affect the sanctity and fairness of the criminal trial. The
overzealous efforts made by the prosecution to telecast the
investigation i.e. discovery panchanama dilutes the investigation and
lends support to the argument of the defence that the police from
the beginning were not fair in the investigation.

121. The ownership of the Matiz Car and its recovery is
not disputed. The prosecution has also proved through the oral
and documentary evidence that Car Bearing No.MH02254 stands
in the name of Accused No.1. This car was used for the purpose of
taking away the Doctor in unconscious condition. This car was
found by the police in the first week of September 2006 when a

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In the Matiz Car Cell
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122. It is the case of the prosecution that Accused No.1 was holding a purse and number of articles were found in it on which the prosecution hasIt ~~relied~~. necessary for the investigating officer to seize the said purse under the Panchanama. If the police were short of time, then the purse could have been sealed by the police and the panchanama of the said purse could have been carried out subsequently. However, unfortunately the police failed to do so. The Learned Special Prosecutor could not give any plausible explanation about this error committed by the police. It is evident that the police, at the time of investigation have not taken necessary care to prove each step of their investigation before the Court. The Learned Special Counsel Mr. Mundargi has submitted that though he cannot justify the seizure of the purse without panchanama, the articles found in the purse are such that

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the police. We do
submission.

123.

viz. Alkatel Mobile

Handset IMEI No. 35130741540560, Bank pass book in the name of
Accused no.2 Dahisar address, visiting Card of Ratansing (Blue Bird
Agency), visiting Card of Shantanu Lodge, etc. found in the purse
of Accused No.1 are incriminating. All the articles found in the
purse are of such nature that planting is difficult. Moreover, the
articles found in the room at Uttamnagar, the fact of opening Blue
Bird Detective agency and the articles found in the search of the
Flat at Krishna Watika, Dahisar of the Accused are intrinsically
related to each other and the seizure of those articles
independently established with the help of the panchas. It is to be
noted that this is a case in which no witness has turned hostile; all
the witnesses have supported the case of the prosecution.

124.

Accused No.1 has argued they were not arrested
on 7.7.2006 but both of them were detained in the police custody
two to three days earlier and Accused no.1 was beaten up by the

police of the injuries on her
perso ommitted that she was
sent f ical report was given.
Medic ily 13 to 14 injuries of
minor abrasion or contusion. Medical certificate discloses that
injuries were found on the person of Accused No1. Learned
Special Prosecutor pointed out that the Accused, when the
Accused made the complaint of injury to the magistrate, they did
not make any grievance that they were confined for two to three
days prior to their arrest. He has further submitted that this total
silence about their grievance does show that they were never
detained prior to their arrest i.e. 7.7.2006. Moreover, no question w
put to PW40 Balkrishna Bhikaji Agashe on the point detention
and beating. Thus the submissions of the learned special prosecut
are correct and therefore, we do not find any force in the
submissions of the Accused that they were arrested prior to 7.7.20

125. While hearing appeal, on the submissions of the
Accused on the point of their arrest and interrogations we went
through the case diary of Investigating officer. It has already

ment : Accused is shown as
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wante police apprehended
the Accused. We wanted to know when and how they found CW1
and PW1 and other leads. While going through the case diary we
realized that the diary was written very casually. Investigating officer
has not mentioned the details of the steps taken in investigation.
Police official PW40 Balkrishna Bhikaji Agashe who actually
apprehended the Accused has filed an affidavit before us that he
did not maintain any diary.

126. The Learned Special Prosecutor had submitted that
all the police working in Crime branch or DCB CID are not
required to maintain the case diary prescribed under Section 172 of
the Criminal Procedure Code. He has explained that
exemption to the crime branch police is necessary because utmost
secrecy is required to be maintained by Crime Branch during
investigation. There is urgency to take quick steps and hence they
are excused from maintaining the case diary under Section 172 of

the ... submissions he has
relied ... Chapter 6, Clause
225 (... Case diary under
Sectio ... As per the said clause
exemption is not given from writing case diary, however, the
exemption is given in respect of procedure to submit the case diary
to the higher officer and their supervision on the Police officers
from the crime branch. Accused no.1, after going through the
Maharashtra Police Rules 1999, has rightly pointed out that the
said rules never absolve the police officers from crime branch of
their duty to write and maintain the case diary under Section 172
of the Criminal Procedure Code.

127. Section 172 (1) of the Criminal Procedure Code reads as under:

“S.172. Diary of proceeding in investigation.(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places

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making an investigation . Sub Section 2 and 3 of Section 172 is in respect of limited use of the diary by the police Officer. The submissions of Accused No.1 are absolutely correct and it is mandatory for all the police officer irrespective of their assignment in any branch to maintain case diary as prescribed under Section 172 of the Criminal Procedure Code.

128. On the point of maintenance of case diary, we rely on the case of Bhagwant Singh Vs. Commissioner of Police, Delhi reported in 1983 Cri. L. J. 1081, in which the Hon ble Supreme Court has observed as under:

“ The haphazard maintenance of a police case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. The entries in the police case diary should be made with promptness, in sufficient detail, mentioning all significant facts in careful chronological order and with complete objectivity.”

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Vs. E
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5, in which it is held

ended on the
failure of the police witnesses to keep a diary as
required by Section 172(1), Criminal P. C., may be
conveniently disposed of at this stage. It was contended
by learned counsel for the appellant that the evidence
of he officers was inadmissible. This contention was not
supported by reference to the statute or to authority,
nor was it the view taken by the Magistrate. In the
opinion of their Lordships, a contravention of Section
172, lays the evidence of the police officers open to
adverse criticism and may diminish its value, but it
does not have the effect of making that evidence
inadmissible.”

129. In view of the fact that PW40Balkrishna Bhikaji
Agashe did not maintain case diary and for want of evidence
the prosecution has failed to bring on record what the police did
on arresting the accused person from the office of Blue Bird
Detective Agency at or about 10 a.m. to 10.30 a.m. on 7.7.2006 ti
they came to be formally arrested by PW43 Uttam YadavPSI of
Deccan Police station. This is indicative of the fact that the

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further search and seizures.

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human body and

130. Accused 2 was sent to Forensic Laboratory, Bangalore for Narco analysis, 10 to 12 days after her arrest. Brain mapping test was carried out. The Police record shows the transcript of the questions (Exhs. 304, 305 and 306) put by one Dr. Malini who is specialized in conducting narco test and answers given to her by Accused no.2 during the narco test. The prosecution has filed an application Exh.247 on 30.9.2006 that they do not want to rely on narco test of Accused no.2. However, the Accused have said that the report of narco test be considered along with the report of Dr. Malini of Forensic Laboratory, Bangalore.

131. On the point of reliability and admissibility of narco test, the Learned Trial Judge has committed an error. Though the learned trial Judge has mentioned in the judgment that the

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The Learned Judge has
Investigating Officer on
have relied upon or
narco test conducted
by Dr. Malini. The contents of a written opinion given by the
expert are required to be proved by the proving the said
document. That can be done by direct oral evidence of the author
of the document. Hence, the evidence on the narco test was not
admissible except through Dr. Malini who has conducted the narco
test. We find that in the examination in chief, the Learned
Prosecutor put a number of questions to the Investigating officer
PW46, and the investigating officer went on deposing the contents
and the outcome of the narco test in detail. Such evidence ought
not to have been recorded by the learned Trial Judge. It is the
duty of the trial court to record only the admissible evidence as per
the principles laid down under the Indian Evidence Act.

132. It is clear that the prosecution did not want to
rely on the narco test as the prosecution found that the said
evidence is not going to help them. The Accused wanted to

rely on the narco test, in
the sequence of the appeal. It
is the chargesheet consisting
of the evidence. However, whether to rely
on a particular piece of evidence or not is the discretion of the
prosecution and this liberty is given to the prosecutor as the
prosecutor navigates the case of the prosecution and is aware
which evidence is helpful to build up the case and which witness
may dilute the case of the prosecution. The evidence collected by
the Investigating officer is to be properly arranged and then to be
presented in the Court. While doing so, the prosecutor has to decide
the sequence in which the witnesses are to be examined. The
prosecutor may objectively delete any witness to keep back
irrelevant or inadmissible evidence collected by the police. The
prosecution enjoys the privilege to be selective to produce such
evidence to reveal the truth of the case. In the present case
the police have formed an opinion that the evidence of narco
analysis is of no worth due to the falsity involved in it. If at all
the defence wanted to rely on it, the defence could have examined
Dr. Malini. However, that was not done and, therefore, we cannot

considered that the Trial Judge should not have refrained himself from discussing the facts like to mention that whether the evidence collected by the police for the investigation or is substantive evidence admissible in the trial is the issue pending before the Supreme Court. We do not express any opinion on this issue as the Supreme Court is in seisin of that matter.

133. The Learned Trial Judge has considered that the demand of ransom amount of Rs. 25 lakhs was the motive for abduction. Accused No.1 argued that it was not so. That, she argued, can be seen from the fact that during the conversation with Dr. Smita Mahajan the culprits did not tell her where and how the money was to be handed over. There was no repetition of the demand. Hence, in the absence of proof of motive, it was argued that the edifice of the story of murder is without any foundation. It is expected from the prosecution to bring the motive on record to prove the offence. However, failure of the prosecution to establish the motive will not destroy the entire case of the prosecution. On

certainly an impasse as motive
so that it does not reflect
circumstances and with other evidence,
then it would be fatal to the case
of the prosecution. In the case of Manikumar Thapa Vs. State of
Sikkim, reported in (2002) 7 Supreme Court Cases 157, when motive
was absent and corpus was also not found, the Supreme Court has
taken a following view:

“Assuming that this evidence is insufficient to establish
the motive for murder even then if the prosecution is
able to establish beyond all reasonable doubt from
other circumstantial evidence that it is the Accused
(including the appellant) alone who could have
committed the murder, the absence of motive will not
hamper a safe conviction.”

It is the prosecution's case that the demand of money was
verbally made by the Accused to PW11, pursuant to Dr. Deepak
Mahajan's abduction. Hence demand of ransom was expressed. From
such expressions the intention can be gathered. Subsequently
change in the intention may be possible. In such a case the proof
of such motive cannot be brought on record. This would not be

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134. The above discussion takes us to the final conclusion, the heinous crime has been committed but when there is no satisfactory proof of the guilt we have to take safe approach and we are constrained to give benefit of doubt to the Accused. We have no hesitation to conclude that the accused are guilty of having committed offence under sections 364A, 419, 465, 468, 328, 342 and 187 read with 120(b) of the Indian penal Code. The findings of the Trial Court is not disturbed in respect of extent of offence except under Section 364A of the Indian Penal Code. In so far as the charges of having committed offence under sections 302 and 2 read with Section 120(b) of the IPC are concerned, the prosecution having failed to establish their guilt beyond reasonable doubt, the Accused are entitled to be acquitted of the said charges and to this extent the findings of the Trial Court are quashed and set aside.

On 3

135. it we have called
upon address us on the point
of se ce under Section 364A
read with Section 120B of the IPC, wherein the Trial Court has
imposed capital punishment and has submitted the matter to the
High Court for confirmation.

136. The learned Special Public Prosecutor submitted that
in view of the fact that this Court has acquitted the appellants of
the charge of having committed murder and causing disappearance
of evidence, the State do not want to press capital sentence in so
far as offence under Section 364 A is concerned and as sentence
for life is the minimum punishment that would meet ends of justice
The learned Special Public Prosecutor submitted that the discretion
used by the trial Court in case of imposing punishment on various
other counts does not appear to be unreasonable and that the
learned trial Court has kept in mind the principal of proportionality
while imposing the punishment and, therefore, it does not call for
any interference particularly when this Court in appeal has upheld

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137.

eepti Devasthali

submitted that they not only want but insist for capital punishment being imposed on them by sentencing them to death and say they should be punished with death. For taking such a stand this Court made a specific query from them as they are appearing in person as to why they are insisting that they should be punished with death as the Court want to understand whether this submission is made because the Court has partly allowed their appeal or otherwise. Amongst the appellants Ms. Deepti Devasthali (original accused no stated that if death sentence is awarded their appeal before the Supreme Court will be taken up on priority otherwise they will be required to languish in jail and it is uncertain when the Supreme Court will take up their appeal for hearing and by the time their appeal is taken up for hearing and in case they are acquitted they will come out as free citizens by actually undergoing the sentence of life imprisonment.

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contention cannot be

139. On going through the judgment of the trial Court, what we find is that the trial Court while justifying imposing of capital punishment on both the counts i.e. under section 364A and 302 of the IPC read with Section 120 B, has taken into consideration decisions of the Supreme Court on the issue, viz., Mohan and others vs. State of Tamilnadu, reported in 1998 (5) Supreme Court Cases 336, Machchisiingh vs. State of Punjab, reported in 1983 Supreme Court Cases (Cri.) 681, Bachan Singh vs. State of Punjab reported in 1980 Supreme Court 898, Renuka @ Rinku and another vs. State of Maharashtra reported in A.I.R. 2006 and Daya Nand Bisto vs. State of Orissa reported in 2003 (5) Supreme Court Cases page 74 which reveal that the trial Court was well conversant in respect of the guidelines in order to take a decision as to whether in the given facts and circumstances of the case, death sentence deserves to be imposed or not? What we find from the reasoning given by the trial Court is that though the trial Court was conscious of the fact

that c ssible in rarest of rare
cases ed in ascertaining the
existence and has given undue
import consideration for the
said purpose, particularly when it has taken into consideration
family background of the deceased and observed that one can
understand the pain and agony of the father that he has to perform
the last rites of his son who was brought up as a doctor and he
was killed mercilessly while he was leading well to do life apart
from being blessed with two young children left behind as orphans.

140. Furtherjt laid unnecessary emphasis on the
evidence of PW12 Prabhakar Phalgune, brother of accused Leena,
who in his evidence rather attacked the character of his sister and
that she was a problematic child and on one occasion both the
accused have approached Dr. Deepak Mahajan to give certificate
that Maltibai's (i.e. mother of accused no. 2) death was unnatural
to bring him and their other sister Jayashri in trouble and also
erred in taking into consideration the evidence of the Investigating
Officer PW46 that the appellantsaccused have adopted the same

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Jassi and Sardarji in
Police Station. In our
consideration whether th

141. The Trial Court should understand that Section 302, I.P.C. casts a heavy duty on the Court to choose between death and imprisonment for life. When the Court is called upon to choose between the convict's cry 'I want to live' and the prosecutor's demand 'he deserves to die' it goes without saying that the Court must show a high degree of concern and sensitiveness in the choice of sentence. In the justice delivery system several difficult decisions are left to the presiding officers, sometimes without providing the scales or the weights for the same. In cases of murder, however, since the choice is between ~~capital~~ imprisonment and life imprisonment the legislature has provided a guideline in the form of subsec (3) of S. 354. This provision makes it obligatory in cases of conviction for an offence punishable with death or with imprisonment for life or for a term of years to assign reasons in support of the sentence awarded to the convict and further ordains

that i alty, "special reasons"
for su ment. When it casts a
duty (that he is under a
legal entence. It may seem
trite to say so, but the existence of the 'special reasons clause' in S
354(3), Cr.P.C. implies that the Court can in fit cases impose the
extreme penalty of death which negatives the plea that there never
can be a valid reason to visit an offender with the death penalty,
no matter how cruel, gruesome or shocking the crime may be. In
order that the sentences may be properly graded to fit the degree
of gravity of each case, it is necessary that the maximum sentence
prescribed by law should be reserved for the rarest of rare cases
which are of an exceptional nature. Unless the nature of the crime
and the circumstances of the offender reveal that the criminal is a
menace to the society and the sentence of life imprisonment would
be altogether inadequate, the Court should ordinarily impose the
lesser punishment and not the extreme punishment of death which
should be reserved for exceptional cases only. (Alauddin Mian v.
State of Bihar, AIR 1989 SC 1456).

142. | Public Prosecutor,
has b | his Court has acquitted
the a| |mitting murder of Dr.
Maha | |state does not insist fo
capital punishment for the offence under Section 364 A of IPC.

143. Section 364A has been inserted by Section 2 of Amending Act 42 of 1993 providing severe punishments in cases of kidnapping or abduction for ransom which says that whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct given rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or and other person to do or abstain from doing any act or to pay a ransom as demanded by the accused. The later part of Section 364 A came to be inserted by section (2) of the Amending Act 42 of 1995 which lay emphasis on "any foreign State or international intergovernmental organisation" which is indicative

of the organization of activities
like kidnapping a serious offence on par
with kidnapping under Penal Code which
punishes kidnapping as it was noticed
that kidnappings and abductions are at times done of certain
persons in order to compel the government or foreign State by
involving intergovernmental organisations apart from any other
persons either by terrorist organisation or organised crime syndicate
and in such cases death sentence may be justified, otherwise
imprisonment for life sufficiently meets the ends of justice. As in
the earlier section i.e. Section 364 what is contemplated is the
person charged with the offence had the intention at the time of
kidnapping or abducting that the person kidnapped or abducted will
be killed or may be so disposed of as to be put in danger of being
murdered and which provides for imposition of punishment of
imprisonment for life or rigorous imprisonment for a term which
may extend to ten years, and shall also be liable to fine.

144. In the facts and circumstances of the present case
as the accused appellants have been charged with the offence under

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finding of the trial
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145. In so far as the sentence imposed by the trial Court on finding the appellants accused guilty of the other charges is concerned, we find no reason to interfere as the trial Court has taken into consideration the principles of proportionality and imposed sentence of imprisonment with appropriate variation in the period of imprisonment and fine. Hence, we have no hesitation to pronounce the following sentences for the offences for which we have held the appellants accused guilty and they stand convicted for. Hence we proceed to pass the following order:

1. Accused No.1 Deepti Anil Devasthali and Accused No.2 Leena Anil Devasthali are held guilty of the offence punishable under Section 364A read with Section 120B of the Indian Penal Code and they are sentenced to imprisonment for life and to pay fine of Rs.10,000/ (Rs. Ten thousand) each, in default to suffer imprisonment for three months.
2. Accused No.1 Deepti Anil Devasthali and Accused No.2 Leena Anil Devasthali are held guilty of the offence punishable under Section 387 read with Section 120B of the Indian Penal Code

Section 328 of the Indian Penal Code
and they are sentenced to rigorous imprisonment
for three months to pay fine of Rs. Three thousand)
each, in default to suffer imprisonment
for three months.

7. Accused No.1 Deepti Anil Devasthali and Accused No.2 Leena Anil Devasthali are held guilty of the offence punishable under Section 328 read with Section 120B of the Indian Penal Code and they are sentenced to undergo rigorous imprisonment for seven years to pay fine of Rs.10,000/ (Rs. Ten thousand) each, in default to suffer imprisonment for one months.
8. Accused No.1 Deepti Anil Devasthali and Accused No.2 Leena Anil Devasthali are held guilty of the offence punishable under Section 342 read with Section 120B of the Indian Penal Code and they are sentenced to undergo rigorous imprisonment for one years to pay fine of Rs.1,000/ (Rs. One thousand) each, in default to suffer imprisonment for one months.
9. Substantive sentences awarded to both the accused shall run concurrently.
10. If fine amount is paid, then the amount be paid to the children of the deceased, viz. Arjun Deepak Mahajan and Rashmi Deepak Mahajan.

11. A | Accused No.2 Leena
A offences punishable
ui)B and Section 201
re al Code and both of
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12. Accused No.1 Deepti Anil Devasthali and Accused No.2 Leena Anil Devasthali, both are in jail since 7.7.2006 and they are entitled for set off under Section 428 of the Criminal Procedure Code.
13. The Appeal is partly allowed.
14. The submission for confirmation of capital sentence by the Trial Court i.e. Confirmation Case No. 1 of 2008 is dismissed.
15. The Muddemal seized in the case be disposed of in terms of the order passed by Trial Court after the period of appeal is over.
16. The convicts be lodged in Yerwada Central Prison after 9 October, 2009.
17. Certified copy of the judgment and order would be furnished to the appellants on or before 9 October, 2009, free of cost.

18. The appellants are informed that they can take assistance of the Supreme Court Legal Aid Committee for preferring their appeal and represent them before the Hon ble Supreme Court of India, if they so

19. The appellants are also informed that they can take assistance of the Supreme Court Legal Aid Committee for preferring their appeal and represent them before the Hon ble Supreme Court of India, if they so

(MRIDULA BHATKAR, J)

(J. N. PATEL, J.

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